



CHOICE

**Consumer Protection in the Communications Industry:
Moving to best practice - Issues Paper**

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Client

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Document Purpose

This document was submitted to the 2008 [Telecommunications Consumer Representation Stakeholder Forum](#) (external link).

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1. Scope and Purpose

This paper provides a brief overview of consumer concerns with the current co-regulatory consumer protection framework in the telecommunications sector in Australia.

CHOICE, like a number of other consumer organisations, has contributed to the development of industry codes of conduct in many industries including the telecommunications industry. CHOICE has for some time been frustrated by the poor overall standard of consumer protection outcomes delivered in the telecommunications industry.

CHOICE commissioned Galexia to assist document the problems with current arrangements and put forward our suggestions about ways in which better systems could be developed. Galexia have undertaken research in response to our brief and a limited amount of consultation with experienced consumer representatives from a range of consumer interests.

CHOICE supports a consistent approach to the development of consumer protection frameworks in Australia:

It is time to put consumers at the heart of market reforms across all sectors of the economy. This will require national leadership on consumer policy issues, rather than fragmentation across different levels of government, and fragmentation across different industry sectors. At present there is an unproductive ‘silo’ approach to consumer issues across different portfolios – financial services, health, product safety, telecommunications, energy, food and so on. This contrasts with the approach found in the UK and other parts of Europe and North America, where a coherent cross-market approach to consumer policy and competition policy can be found.¹

The telecommunications sector is one sector that could benefit from alignment with a national best practice approach to consumer protection, particularly in relation to the use of co-regulation.

This paper examines the consumer protection framework in the telecommunications sector, compares this framework to co-regulation in other sectors, and makes recommendations for improvements in six key areas:

- Legislation;
- Code development;
- Code content;
- Dispute resolution;
- Code compliance monitoring and code enforcement; and
- Code review.

¹ CHOICE, *Submission to the Review of Australia’s Consumer Policy Framework Issues Paper*, 4 June 2007, <http://www.pc.gov.au/data/assets/pdf_file/0010/68869/sub088.pdf>.

2. Consumer Protection Framework in Telecommunications

The consumer protection framework for telecommunications in Australia is based on a form of co-regulation. It includes high level legislation that provides for the development and registration of industry codes of conduct on consumer issues, with a regulator in place to monitor codes of conduct and enforce non-compliance.

In practice the framework is neither co-regulation nor self regulation – it is in a strange position between the two. Worse, it is ineffective. As will be seen in this section, the legislation itself is silent on consumer protection issues, the multitudes of codes of conduct are not subject to a meaningful system of signing and compliance, and monitoring and enforcement are applied sparingly and inconsistently.

There is insufficient direction (provided in legislation or otherwise) about the considerations that should be taken into account in deciding that a code-based co-regulatory approach should be taken to a particular market problem. For example there is no system for identifying consumer issues that require either more robust enforcement of existing legislative or code based rules or new direct legislative action.

The current co-regulatory regime in telecommunications does not ensure that best practice is achieved in the development, implementation, monitoring and enforcement of codes of conduct.

2.1. Legislation

A range of generic consumer protections applies to telecommunications, through legislation such as the *Trade Practices Act 1974*² and the *Privacy Act 1998*.³ Specific consumer protections for the telecommunications sector arise in the *Telecommunications Act 1997*⁴ and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.⁵

The *Telecommunications Act 1997* has the following overall Objectives:

Section 3 – Objects (relevant extracts):

(d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community; and

(h) to provide appropriate community safeguards in relation to telecommunications activities and to regulate adequately participants in sections of the Australian telecommunications industry.

² *Trade Practices Act 1974* (Cth), <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401339>>.

³ *Privacy Act 1988* (Cth), <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401860>>.

⁴ *Telecommunications Act 1997* (Cth), <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401743>>.

⁵ *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401807>>.

Section 4 – Regulatory Policy:

The Parliament intends that telecommunications be regulated in a manner that:

- (a) promotes the greatest practicable use of industry self-regulation; and
- (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;

but does not compromise the effectiveness of regulation in achieving the objects mentioned in Section 3.

However, the Act does not contain a set of consumer protection principles for telecommunications consumers. It also does not contain comprehensive consumer protection provisions. This is a significant contrast to consumer protection legislation in other sectors. The result is a significant level of reliance on industry codes of conduct, without any guidance on the minimum content of such codes.

2.2. Code development

Part 6 of the *Telecommunications Act 1997* provides that industry may develop and implement codes of conduct for consumer protection matters.

Codes can be submitted to the regulator (the Australian Communications and Media Authority – ACMA) by industry bodies for registration and, where ACMA is satisfied that the code meets stipulated criteria, it is included on a codes register. It should be noted that the criteria are largely procedural (discussed in more detail below in *Section 2.3 Code content*).

If industry fails to develop adequate codes ACMA has the power to either request that a code be developed by industry, or develop a ‘standard’ that is binding on industry.

On at least two occasions ACMA has encouraged the industry to develop a code on a specific issue – this has included threats to develop a mandatory standard. Industry has responded by developing or amending a code of conduct on both occasions.⁶

The legislation is vague on the code development process. There are no provisions that require independent consumer input to code development or prevent ACMA from registering a code which does not have consumer input. There are no requirements for adequate consultation with affected consumers or their representatives. There is no provision for the funding of consumer input, or a requirement that consumer consultation should be adequate and reasonable (e.g. regarding the time allowed for consultation). All of these elements are common in other industry sectors.

The exact status of a registered code is also complex and there are different views amongst the industry, regulators and consumer advocates about code status. A registered code is listed as subordinate legislation – this lends it a certain credibility and gravitas. However there is no proactive requirement for parties to comply with any code, even a registered code. Although the Act contains a specific provision requiring parties to comply with an industry standard (Section 128) there are no similar requirements for compliance with an industry code.

⁶ On one occasion this involved a mix of legislation and codes – see the Communications Alliance, *ACIF C555:2008 Integrated Public Number Database (IPND)*, 2008, <http://www.commsalliance.com.au/_data/page/3230/C555_2008.pdf>.

The regulator has the power to direct a particular participant to comply with a code following a breach (where ACMA has registered the code). Sections 121 and 122 can be used to ensure compliance with registered codes through formal warnings to industry participants regarding breaches of the code or directions to comply with the provisions of a code where the code is being contravened. A breach of an ACMA direction to comply may attract civil penalty provisions.

This structure is apparently unique in Australian and international approaches to co-regulation and has caused considerable confusion. In our view, this structure is inappropriate and should be reviewed.

Improvements that could be considered are to:

- Concentrate resources on a limited number of comprehensive codes rather than numerous fragmented codes;
- Achieve industry buy-in and commitment through a meaningful signature process based on an expectation that all industry members would sign any consumer protection code relevant to their operations (to replace the current bizarre situation where signing a code is not a priority and where a company does sign, it means very little);
- Change the emphasis in the code approval / registration process to focus on the content of the code rather than process issues;
- Set standards or develop a good practice statement for consultation in the development and review processes; and
- Improve resourcing for consumer input.

In addition, at present signing up to industry codes is voluntary. Some codes have multiple signatories (although no code has a significant proportion of this large industry sector). Other codes have no signatories at all. The consequences of signing are not set out in the legislation – to date the only apparent impact is that code signatories are subject to the *Communications Alliance Code Administration and Compliance Scheme* (discussed below in *Section 2.5 Code compliance monitoring*).

In practice a multitude of codes on diverse topics have been developed by the industry and registered by ACMA.⁷ There are currently 27 codes in force.⁸ Six of these codes are considered to relate to core consumer protection issues and they will shortly be replaced by a single code – the Telecommunications Consumer Protection Code (the TCP Code.). However, significant consumer protection issues are scattered throughout the remaining codes. (A summary of the current codes is included in *Appendix 1 – Summary of Australian Codes*).

The promotion of the codes is also quite subdued, compared with other industries. Communications Alliance published a brochure in March 2007 titled ‘An introduction to Consumer Codes’.⁹ The brochure briefly summaries seven codes and provides contact details for the Communications Alliance. It mentions the Telecommunications Industry Ombudsman (TIO) and other relevant bodies without providing contact details. It states that ‘Once a Code is registered, ACMA can direct service providers to comply with its terms’. It does not claim that providers are otherwise compliant with Codes and it does not mention or discuss code signatories.

⁷ Australian Communications and Media Authority, *Register of Codes*, 25 March 2008, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2525>.

⁸ The current status of the codes is also important – under the Telecommunications Act a code cannot be revised. Old codes are therefore superseded and new replacement codes are registered in their place. This has resulted in multiple versions of codes with the same number and title but with a different year.

⁹ Communications Alliance, *An Introduction to Consumer Codes*, March 2007, <http://www.commsalliance.com.au/_data/page/13230/Intro_to_Consumer_codes.pdf>

Industry participants in the telecommunications sector do not generally promote their compliance with the codes. There is no operational ‘compliance mark’ and the websites of major providers do not discuss codes or list the codes they have signed. The TIO website briefly lists some relevant codes (last updated 2005) with links to the Communications Alliance site, but again, does not mention or discuss signatories.

2.3. Code content

Section 113 of the Act provides a list of ‘examples of matters that may be dealt with by industry codes and industry standards’. Although the list is meant to act as a non-definitive set of examples, it appears to have been given considerable weight by industry. As a result, consumer issues that do not appear on the list are unlikely to appear in a code.

Once a topic is selected for a code, there is very little direction in the Act regarding the consumer protection content of the code.

However, there is some guidance regarding code process requirements. ACMA provides the following list of criteria for the registration of a code:

- Consistent with the objects of the *Telecommunications Act 1997*;
- Consistent with the provisions of the Act and with other legislation;
- Consistent with codes already registered;
- Contains a comprehensive set of rules which are directed at achieving, and measuring the achievement of, the code objectives;
- Rules are expressed predominantly in mandatory terms such as ‘must’ instead of ‘should’ or ‘may’;
- Relates to a telecommunications activity, as defined in the Act;
- Does **not** prescribe pecuniary penalties for breaches of code rules;
- Does not include clauses that indemnify one party against loss suffered as a result of a breach of a code;
- If it references other documents, these clauses are appropriately drafted and with relevant documents clearly referenced or included;
- If it references bilateral agreements, these clauses are appropriately drafted;
- If it references agency agreements, these clauses are appropriately drafted;
- Contains appropriate code administration, including provisions for complaint handling, sanctions, monitoring and review;
- Specifies the complaint-handling body, what functions and powers will be undertaken, and which code provisions they relate to; and
- Addresses the concerns of the groups and individuals consulted during the development of the code.

It is important to note that none of these criteria address consumer protection issues or requires a code to meet specific consumer protection standards. This is a significant contrast with co-regulation in other sectors.

Codes are informally divided between consumer codes and operational codes. See for example the TIO's description of codes:

There are two types of codes: operational codes cover operational matters such as the way that industry players deal with processes between themselves, and consumer codes focus on practices between telecommunications providers and their customers.¹⁰

It is important to note here that the distinction between operational codes and consumer codes is relatively informal. In most effective systems of co-regulation a more formal distinction is made between consumer protection instruments (that must usually meet certain content requirements) and purely operational instruments. There is room in the telecommunications sector to formalise arrangements so that a more rigorous and specific consumer protection framework applies to relevant codes, and operational matters are left to industry self regulation within generic consumer and competition safeguards. This requires a thorough analysis of Codes that may appear operational in nature, but contain important consumer safeguards (e.g. the CND¹¹, IPND¹², and Emergency Call Services¹³ Codes).

There may also be a need in the Australian telecommunications sector to review the reactive process for determining the subject matter of codes. For example, consideration could be given to providing the regulator with a Market Inquiries power, to identify matters that should be the subject of stronger consumer protection, rather than waiting for industry to develop codes on their own.¹⁴

Formal market inquiry provisions could help to formalise and codify activities which already exist at an informal level in the telecommunications sector – and give consumer an open and transparent avenue for seeking the exercise of these powers.

2.4. Dispute resolution

The legislation permits codes to confer power on the TIO to handle customer complaints about breaches of the code, and this has become a standard part of the code regime. Other arrangements are in place for disputes between industry members (not discussed in this paper).

The TIO will usually consent to deal with Consumer Codes only. However, it may also deal with operational/network codes if it believes this will improve consumer protection.¹⁵

¹⁰ <<http://www.tio.com.au/FAQ/Codes.htm>>

¹¹ Communications Alliance, *ACIF C522:2007 Calling Number Display*, 2007, <http://www.commsalliance.com.au/_data/page/3218/ACIF_C522_2007.pdf>.

¹² Communications Alliance, *ACIF C536:2003 Emergency Call Services Requirements*, 2003, <http://www.commsalliance.com.au/_data/page/3223/C536_2003.pdf>.

¹³ Communications Alliance, *ACIF C555:2008 Integrated Public Number Database (IPND)*, 2008, <http://www.commsalliance.com.au/_data/page/3230/C555_2008.pdf>.

¹⁴ CHOICE, *Supplementary Submission to the Productivity Commission Review of Consumer Policy Framework*, March 2008, pages 4–6, <<http://www.choice.com.au/files/fl32453.pdf>>.

¹⁵ <<http://www.tio.com.au/FAQ/Codes.htm>>

The operation of the TIO has been the subject of detailed review and reform. We do not believe that all relevant issues have yet been addressed – for example in relation to TIO governance – however these issues are not the subject of this paper. Overall, the TIO plays a similar role to independent External Dispute Resolution providers in certain other industry sectors (notable financial services and energy) – allowing routine complaints to be handled quickly without charge to the consumer.

A more innovative approach to complaints in the telecommunications sector may also be required, particularly in relation to systemic problems. Consumer stakeholders in Australia are currently advocating for the introduction of a super-complaints model – similar to the model operating in the UK. Super-complaints are made by designated consumer bodies to consumer regulators, who must make a considered response within 90 days to properly investigated complaints.¹⁶

The super-complaint mechanism is not intended for complaints about matters that can be handled directly by existing enforcement powers or complaints resolution agencies, particularly single-firm conduct. In that regard super-complaints would neither replace nor crowd-out standard complaint processes in the telecommunications sector. Instead, the super-complaint mechanism enables consumer groups to bring to the attention of the regulator market features harming the interests of consumers. Super complaints are also relevant to code compliance monitoring, and could play a useful role in identifying the failure of specific codes of conduct.

2.5. Code compliance monitoring

The Act does not provide any guidance on code compliance monitoring. It does contain a provision allowing ACMA to determine a mandatory industry standard where an industry code has failed (Section 125), but this provision does not set out any mechanism for monitoring code compliance – there is no specific test of ‘failure’.

The lack of clarity and direction regarding code compliance monitoring in telecommunications is a common concern among stakeholders. In their submission to the Productivity Commission Inquiry into the Consumer Protection Framework the TIO noted:

As to a measure of effectiveness, greater clarity about how the Australian Communications and Media Authority (ACMA) will enforce Communications Alliance Consumer Codes would send a powerful signal both to consumers and the industry.¹⁷

Currently the code compliance monitoring role is shared between the industry association (Communications Alliance) and the regulator (ACMA). There is no independent third party tasked with monitoring.

Communications Alliance (CA) has a *Code Administration and Compliance Scheme*. This regime produces regular compliance reports. However, ‘The Communications Alliance Compliance Report is available exclusively to financial Communications Alliance members.’ In contrast to many other sectors, no detailed information on compliance is available to the public.

¹⁶ CHOICE, *Submission by CHOICE to the Productivity Commission Review of Consumer Policy Framework*, February 2008, pages 10–11, <<http://www.choice.com.au/files/fl32347.pdf>>; Joint Consumer Groups, *Model Consumer Submission in Response to Productivity Commission Draft Report on Australia’s Consumer Policy Framework*, March 2008, pages 21–23, <<http://www.choice.com.au/files/fl32378.pdf>>.

¹⁷ Telecommunications Industry Ombudsman, *Submission to the Review of Australia’s Consumer Policy Framework Issues Paper*, 3 July 2007, page 2, <http://www.pc.gov.au/_data/assets/pdf_file/0004/65794/sub097.pdf>.

CA note that their compliance methodology depends to some extent on the specific requirements in each code:

Where specifically required by a Code, CA will monitor compliance with Code provisions and the overall effectiveness of the Code in achieving its objectives by, for example:

- (a) complaints monitoring;
- (b) compliance monitoring;
- (c) routine verification of Code compliance by Signatories;
- (d) identification of systemic Code issues and breaches.¹⁸

An example of how this operates in practice is Clause 6.1 of the *Emergency Call Services Requirements Code*:

Under ACIF Industry Code Signatory arrangements, Signatories to this Industry Code are subject to ACIF G524:2001 *Code Administration and Compliance Scheme* (the Scheme). Accordingly, all signatories who are bound by this Industry Code are also bound by the Scheme.¹⁹

The result is that the *Code Administration and Compliance Scheme* only applies to signatories. This is a somewhat unusual and confusing arrangement. It can be very difficult to determine which organisation has signed a code, and the overall level of signing is extremely low. There are close to 2000 participants in the telecommunications sector. A typical code has only 3-4 signatories. Some have none.

CA states that it conducts some additional monitoring regarding overall code compliance, including compliance by non-signatories. For example, CA receives and reviews the TIO complaints statistics.

As mentioned earlier, compliance monitoring responsibility is shared with the regulator.

ACMA has published the 'Australian Communications and Media Authority's (ACMA) approach to code compliance'.²⁰ This is a five-category compliance approach with a graduated use of regulatory measures:

Step	Triggers	Category	Action
1	<ul style="list-style-type: none"> • Consumer complaints made directly to ACMA • Advice or referral from the TIO, another regulatory or industry body or a provider • Issue raised in public debate 	Preliminary Enquiry	<ul style="list-style-type: none"> • Alert provider that breach may have occurred • Provider encouraged to address issue • Assess whether issue requires escalation
2	<ul style="list-style-type: none"> • Systemic code breach is probable and provider is not adequately addressing the matter • Formal investigation is required to ascertain if provider is complying • No response or inadequate response from provider to ACMA's preliminary enquiry 	Investigation	<ul style="list-style-type: none"> • ACMA views that systemic code breach is probable • Provider formally invited to respond to issues

¹⁸ Communications Alliance, *ACIF G514:2003 ACIF Code Administration and Compliance Scheme*, 2003, clause 2.7.1, <http://www.commsalliance.com.au/_data/page/3420/G514_2003.pdf>.

¹⁹ Communications Alliance, *ACIF C536:2003 Emergency Call Services Requirements*, 2003, <http://www.commsalliance.com.au/_data/page/3223/C536_2003.pdf>.

²⁰ Australian Communications and Media Authority, *ACMA approach to telecommunications code compliance*, 11 March 2008, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2526>.

Step	Triggers	Category	Action
3	<ul style="list-style-type: none"> Provider has not taken any remedial action Provider's remedial action insufficient to rectify the problem No response or inadequate response from provider to ACMA's investigation 	Systemic Breach Finding	<ul style="list-style-type: none"> Systemic code breach has occurred Provider formally requested to propose rectification strategy ACMA may make public comment
4	<ul style="list-style-type: none"> Provider has not followed through on strategy committed to earlier Provider has failed to amend systemic non-compliant practices 	Formal Warning	<ul style="list-style-type: none"> Formal warning issued to provider to comply with the code under section 122 ACMA may make public comment
5	<ul style="list-style-type: none"> Matter escalated from ACMA formal warning 	Formal Direction	<ul style="list-style-type: none"> Formal direction issued to provider to comply with the code under section 121 ACMA may make public comment

ACMA states that it 'retains the discretion to decide where an individual matter falls within the approach and may decide it is appropriate to consider urgent matters at higher categories, on a case by case basis'.²¹ In practice ACMA (including its predecessor the Australian Communications Authority) has made only three directions under Section 121 of the Act regarding code compliance during the ten years that the Section has been operational.

Overall, compliance monitoring appears fragmented. Significant monitoring is in place for the small handful of signatories to specific codes. Higher level monitoring is in place for all codes, but this has resulted in only minimal enforcement action. The absence of regular reporting and published statistics is a major weakness.

2.6. Code review

All codes are regularly reviewed. As there are a large number of codes these reviews require a considerable amount of time and resources for all stakeholders.

ACMA describes the review process as follows:

Codes should provide for regular review and amendment of the provisions of the code to ensure they are meeting community expectations and working effectively.

Industry bodies should promote discussion on codes and make recommendations for improvement. Among the matters considered should be whether the revised code should apply to any new sections of the industry that have been created, any matters asked to be attended to by a provider of a mandatory consultation certificate and any recommendations made by the [regulator] when the code was registered. Suggested amendments should be considered promptly and resolution of the consideration referred to the submitter.²²

²¹ Australian Communications and Media Authority, *ACMA approach to telecommunications code compliance*, 11 March 2008, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2526>.

²² Australian Communications and Media Authority, *Developing Telecommunications Codes for Registration: A Guide*, 13 November 2003, page 9, <http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/codes.pdf>.

Under section 125 in ensuring that registered codes continue to meet registration criteria, codes should provide for regular review and amendment of the provisions of the code to ensure they are meeting community expectations and working effectively. Industry bodies should promote discussion on codes and make recommendations for improvement. Among the matters considered should be whether the revised code should apply to any new sections of the industry that have been created, any matters asked to be attended to by a provider of a mandatory consultation certificate and any recommendations made by the ACMA when the code was registered.²³

Under section 120 of the Act, changes to registered codes must be effected by the registration of a new code and not by amending the old code. This has resulted in multiple versions of codes. Signatories to a previous code do not automatically become signatories to a new code – so the number of code signatories has fallen significantly for more recent codes.

One positive outcome from the review process has been the decision to amalgamate six consumer codes into a single Telecommunications Consumer Protection code. The Communications Alliance submission to the Productivity Commission review noted:

Significant substantive protections have been put in place over a period of 10 years and the form of those protections has recently been revised to incorporate them in a single Code which is less prescriptive and more easily read and understood.²⁴

It should be noted, however, that the amalgamation of the six codes into the TCP code did not include any substantive reform of the content of these codes.

Overall, the code review process in telecommunications appears to have required considerable input and resources from consumer stakeholders due to the plethora of codes and the regularity of reviews.

The resourcing of consumer input is an issue in these circumstances. While a small number of consumer groups are provided with resources for consumer advocacy in telecommunications – the total sum for which has not increased in ten years – their remit extends far beyond the development and review of industry codes and they do not have sufficient resources to participate in the way that would be most effective to protect consumer interests. There are other relevant consumers organisations (e.g. CHOICE, the Australian Privacy Foundation) that do provide input where possible, but do not receive resources for providing input into code development and review.

²³ Australian Communications and Media Authority, *Developing Telecommunications Codes for Registration: A Guide*, 13 November 2003, page 9, <http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/codes.pdf>.

²⁴ Communications Alliance, *Submission to the Review of Australia's Consumer Policy Framework Issues Paper*, 14 May 2007, page 2, <http://www.pc.gov.au/_data/assets/pdf_file/0020/63731/sub050.pdf>.

3. Comparison with other sectors

There is no consistent approach to co-regulation and the development, implementation and enforcement of codes of conduct in Australia. The Productivity Commission has recently recommended that a consistent framework should be developed, and there have been similar calls from a variety of inquiries and taskforces over many years.

Nevertheless, a potential set of basic threshold principles for co-regulation can be extracted from common practice across a range of sectors. This chapter briefly considers a number of key elements in four sectors where co-regulation is in place: financial services, energy, Internet and privacy.

3.1. Financial services

The financial services sector is probably the most mature sector in terms of co-regulation. Codes of conduct are not specifically required by law, but they are common-place. There is significant integration of the legislation, the regulator, industry self regulation and external dispute resolution.

Unlike the telecommunications sector, there are only a small number of comprehensive codes – typically one per industry group (e.g. banking, general insurance). An additional code is in place for electronic transactions that involve the entire sector – the EFT Code of Conduct.²⁵

The Australian Securities and Investments Commission has a general monitoring function for all codes and has the option of approving codes under Regulatory Guide 183.²⁶ In recent years the regulator has allowed industry to develop alternative independent compliance monitoring – for example the Code of Banking Practice is now monitored by an independent Code Compliance Monitoring Committee.²⁷ Code compliance is the subject of high profile public reports (e.g. the detailed reports published by ASIC regarding the EFT Code) and also regular public workshops and seminars. Regular independent reviews of the Codes are also a feature.

Regulatory Guide 183 sets out a number of *threshold* criteria for the approval of industry codes:

RG 183.5 We believe that the primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers. We expect an effective code to do at least one of the following:

- (a) address specific industry issues and consumer problems not covered by legislation;
- (b) elaborate upon legislation to deliver additional benefits to consumers; and/or
- (c) clarify what needs to be done from the perspective of a particular industry or practice or product to comply with legislation.

²⁵ Australian Securities and Investments Commission, *Electronic Funds Transfer Code of Conduct*, 18 March 2002, <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/eft_code.pdf/\\$file/eft_code.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/eft_code.pdf/$file/eft_code.pdf)>.

²⁶ Australian Securities and Investments Commission, *Regulatory Guide 183 (RG 183)*, 4 March 2005, <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/\\$file/ps183.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/$file/ps183.pdf)>.

²⁷ <<http://www.bankcodecompliance.org/>>

Once these threshold criteria have been passed, the regulatory guide then sets out a series of more detailed criteria for approval. A code must:

- Be freestanding and written in plain English;
- Incorporate a comprehensive body of rules (not a single issue guideline);
- Be enforceable against subscribers;
- Be developed in a consultative way with key stakeholders;
- Be effectively and independently administered;
- Be adequately promoted;
- Have monitored and enforced compliance;
- Contain appropriate remedies and sanctions; and
- Be subject to a mandatory review every three years.

An important component of the co-regulatory approach in the financial services sector is that the basic consumer protection provisions are contained in legislation. Codes of conduct can provide further enhancement or elaboration of these protections, but they cannot weaken them. For example, the General Insurance Code of Practice cannot derogate from the detailed consumer protection provisions in the *Insurance Contracts Act 1984*.

The criteria for approving and reviewing codes in the financial services sector have a stronger emphasis on delivering enforceable consumer protections – and less emphasis on process issues.

3.2. Energy

The consumer protection framework for the energy sector is the subject of considerable reform. The Ministerial Council on Energy is currently developing the new National Gas Law (NGL) and National Electricity Law (NEL) and has established a national regulator to enforce these laws – the Australian Energy Regulator (AER).²⁸ The AER was established in 2005 as a constituent part of the Australian Competition and Consumer Commission (ACCC). It operates as a separate legal, decision-making entity to the ACCC.

Some components of the energy-related consumer protection framework remain at the State and Territory level (including retail price regulation, alternative dispute resolution and service performance standards in some jurisdictions).

²⁸ Edwell S, *National Energy Regulation: The Way Forward*, speech to Australian Institute of Energy, 28 November 2006, <http://www.conferences.unimelb.edu.au/aie2006/files/2A2_Edwell.pdf>.

However, this split of responsibility between the Commonwealth and the States does not have universal support. The Productivity Commission, in their draft report on the Consumer Policy Framework, has recommended that the entire regulation of energy should be moved to the national level:

The inevitable variation in requirements will add to compliance costs for national energy suppliers and thereby to the price of energy. In the face of divergent requirements (such as service performance standards) imposed on suppliers, the task of the Commission's proposed new energy and water ombudsman would also be rendered much more difficult. Accordingly, the Commission considers that it is now a logical time to implement a single consumer protection regime encompassing all jurisdictions participating in national energy market arrangements.²⁹

Until such a move occurs, the consumer protection framework in the energy sector involves a complex mix of State legislation and industry codes of conduct. Some examples include:

- Energy Marketing Code (NSW);
- Energy Retail Code (SA);
- Energy Marketing Code (SA);
- Energy Customer Transfer and Consent Code (SA);
- Gas Distribution Code (SA);
- Electricity Industry Code (QLD);
- Marketing Code of Conduct (QLD);
- Code of Conduct for the Supply of Electricity to Small Use Customers (WA);
- Code of Conduct for Marketing Retail Energy (Victoria);
- Customer Transfer Code (WA); and
- Electricity Industry Metering Code 2005 (WA).

Typically, each of these codes is closely integrated with the relevant state legislation. For example, industry codes in NSW are made pursuant to Section 28 of the *Essential Services Commission Act (NSW) 2002*.

There is a strong emphasis on code content in each jurisdiction. A list of common non-price consumer protection provisions can be extracted from the various energy codes:

- An obligation to offer to supply and sell energy;
- Mandatory financial hardship policies for all retailers;
- Retailer of last resort obligations;
- Minimum contract terms and conditions for energy contracts;
- Prescriptive requirements for the levying of fees and billing arrangements;

²⁹ Productivity Commission, *Review of Australia's Consumer Policy Framework: Draft Report*, Volume 2, 12 December 2007, page 94, <http://www.pc.gov.au/data/assets/pdf_file/0006/73662/consumer2.pdf>.

- Rules for disconnections; and
- Prescribed conduct for marketing.³⁰

In addition, there are detailed provisions regarding code development, including the establishment of consumer consultative processes and the funding of energy consumer input. Code development is facilitated by the regulator, which in many instances also ‘holds the pen.’

3.3. Internet

Co-regulation is the dominant form of regulation for the Internet. Codes of conduct are common and they are closely integrated with legislation such as the *Broadcasting Services Act 1992*.³¹

Relevant industry codes include:

- The Spam Code;
- The Content Code;
- The Gambling Code;
- The Privacy Code (Draft);
- The Cybercrime Code (Draft); and
- The Content Services Code for Industry Co-Regulation in the area of Content Services (Draft 2008).

Several of these Codes are required by law (Content, Gambling and Content Services).

The Internet Industry Association is itself a strong supporter of co-regulation:

Co-regulation is a method of sharing responsibility between business and government. This system is supported by the IIA in many areas because it can provide a flexible way of maintaining relevant and enforceable best practice standards within a rapidly changing communications environment. Pure self-regulation has problems because not all business will voluntarily meet best practice standards, leaving some users exposed. This can create a bad reputation for the industry as a whole and retard the uptake of e-commerce. In areas like privacy, we think there should be minimum protections which apply to all customers, whether or not the businesses they deal with choose to subscribe to an industry code. However, pure government regulation is problematic because the processes of making new laws is far too slow to keep up with rapid changes in technology. Co-regulation provides the strengths of both systems - keeping pace with change, and providing an industry-wide safety net for consumers.³²

³⁰ Monash Centre for Regulatory Studies, *Consumer Protection in a Deregulated Retail Energy Market*, report for the Energy Retailers Association of Australia, April 2008, http://www.eraa.com.au/db_uploads/ConsumerProtectioninaDeregulatedRetailEnergyMarketFinalReporttotheERAAApril08.pdf.

³¹ Internet Industry Association, *Register of Codes*, http://www.iaa.net.au/index.php?option=com_content&task=section&id=3&Itemid=33

³² Internet Industry Association, *What is Co-regulation*, 30 November 1998, http://www.iaa.net.au/index.php?option=com_content&task=view&id=100&Itemid=35.

Some significant features of the co-regulatory approach in the Internet sector are:

- A small number of high profile, comprehensive codes are in place;
- Codes are closely integrated with legislation;
- The basic principles of consumer protection are set out in legislation – the codes elaborate on these principles and provide industry guidance on day-to-day compliance; and
- Code content can be (and has been) the subject of direction from the Government and the regulator.

Some problems have been identified regarding the consultation process for codes of conduct and a perceived lack of transparency regarding monitoring and enforcement mechanisms. However, some aspects of co-regulation appear to be working well in the Internet sector, considering how immature the industry is and how complex and fast-moving the consumer issues are for online services.

3.4. Privacy

Codes of conduct can be developed by industry and approved by the Office of the Privacy Commissioner (OPC) under Section 18BB of the *Privacy Act 1988*.

To gain the official approval of the OPC, a privacy code has to meet certain criteria. In contrast to some other sectors, there is a strong emphasis on the content of the code, not just process matters relating to code development and consultation.

A primary requirement is that the code must be, overall, equivalent to or stronger than the National Privacy Principles (NPPs) contained in the *Privacy Act 1988*. The registered privacy code scheme allows variations on these Principles – but the changes should offer a higher level of protection to consumers than would normally be afforded under the Principles.

Once registered, the OPC continues to play an ongoing role in monitoring code compliance.

The code has to provide for an annual report to the OPC on the operation of the code. This report should include:

- Complaint statistics and demographics, including unresolved cases, and waiting times;
- Statistics on enquiries;
- Any systemic problems revealed by complaints;
- Some representative case studies;
- Information to demonstrate equitable access is being provided;
- A list of code members, noting changes to the list, and those code members who have not met their obligations; and
- Any significant recent policy or technological developments in the area.

The code should also provide for the independent review of the code’s overall operation (including a commitment to funding this review). Normally the review would occur a year after the code’s introduction, and thereafter every three years.

There are also significant requirements relating to stakeholder consultation during the development of codes,³³ although in practice this has not always been implemented.

In practice, very few codes have been registered, and the codes that have been registered have very low industry membership (e.g. just four organisations have signed the Biometrics Industry Privacy Code).³⁴ This may reflect the ease with which most industries can comply with the NPPs. Another reason for low take-up of Codes is the perceived high cost to industry compared to the benefit, given that decisions of Code Adjudicators can be appealed to the Privacy Commissioner.

The co-regulatory approach in Privacy was developed at the request of industry. In practice, most sectors have simply chosen to comply with the legislation.

3.5. Common principles

A number of basic threshold principles for co-regulation can be extracted from common practice across a range of sectors:

- Co-regulation requires the close integration of legislation and codes of conduct;
- Legislation should contain at least basic consumer protection principles and guidance;
- Codes of conduct may enhance existing legislative consumer safeguards or provide more detailed industry guidance on compliance, but should not weaken existing consumer protections;
- Codes of conduct should deliver real, enforceable outcomes;
- Codes of conduct should be developed through comprehensive stakeholder consultation;
- Subject to the nature and purpose of the particular code, codes of conduct should generally apply to all industry participants and not just those that sign up; industry members should be encouraged to communicate the existence of codes to which they are subject to their customers;
- Codes of conduct should be subject to effective, transparent compliance monitoring – there is a trend towards independent, innovative compliance monitoring and the publication of compliance reports; and
- Codes of conduct should be subject to regular independent review.

³³ Office of the Federal Privacy Commissioner, *Revised Version of the Code Development Guidelines*, September 2001, <http://privacy.gov.au/publications/cdg_01.html>.

³⁴ Biometrics Institute, *Biometrics Institute Privacy Code Public Register*, 4 March 2008, <<http://www.biometricsinstitute.org/displaycommon.cfm?an=1&subarticlenbr=80>>

4. An improved model

This section discusses the need for improvements to the generic consumer protection framework in Australia – with an emphasis on the development of best practice in co-regulation – and specific improvements in the telecommunications sector.

4.1. Need for whole of government approach to consumer policy development

Co-regulation through codes of conduct can often be a very effective form of consumer protection for the reasons cited by the Internet Industry Association above. But it is not appropriate in all circumstances.

Codes of conduct across a range of industry sectors suffer – to differing degrees – from issues relating to credibility, consumer confidence and consumer awareness. No single sector in Australia is succeeding at addressing all of these issues, although there are some individual codes that have strong consumer awareness and support.

In many sectors it may be necessary to reconsider the reliance on codes of conduct as a consumer protection mechanism. In all sectors it is – we believe – time to review the underlying principles which guide the development and implementation of codes.

ASIC has set out some threshold criteria for selecting co-regulation as a viable model in a particular sector. These tests include:

- A common industry interest;
- A viable industry association(s) or industry commitment;
- Wide industry coverage;
- A competitive market;
- Clear objectives developed with stakeholders;
- Promotion and review;
- Integration into the regulatory framework; and
- Accountability, compliance and enforcement.³⁵

We understand that ASIC regards these as minimum criteria – satisfying them all does not necessarily lead to a conclusion that co-regulation will work. Another factor that might be taken into account is the degree to which an industry is subject to public scrutiny and public pressure – where this is so it is more likely to do a good job in developing a Code. Applying an appropriate set of criteria, there will be some industry sectors where co-regulation should be wound back in favour of simple, direct regulation.

In sectors where co-regulation is likely to be effective, a consistent national approach should be adopted to the development of codes of conduct – the core instrument of co-regulation.

³⁵ Segal J, *Institutional self-regulation: what should be the role of the regulator?*, address to the National Institute for Governance, 8 November 2001, pages 6–7, [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/\\$file/NIGConf_081101.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/$file/NIGConf_081101.pdf).

4.2. Best practice co-regulation for the telecommunication sector

This paper has identified a number of weaknesses in the consumer protection framework for telecommunications in Australia. The current framework is unique, complex and cumbersome. It is neither effective co-regulation or effective self regulation. This section sets out recommendations for aligning the consumer protection framework in the telecommunications sector with best practice co-regulation. Considerable reform will be required to achieve this goal.

4.2.1. Legislation

An area of considerable weakness in the telecommunications co-regulation framework, is the lack of integration between the legislation and the codes of conduct – especially regarding the content of codes of conduct. Most sectors establish a core set of consumer protection principles or requirements in legislation. These are then the subject of further enhancement and elaboration in codes of conduct.

This approach is common in other industry sectors. For example, ASIC has been a key supporter of this approach in the financial services sector:

For self-regulation to be effective it needs to be properly integrated into the overall regulatory framework – that is, it needs to dovetail with the law and the regulator's policies – not repeating or confusing requirements, but assisting and possibly extending them in some areas. As you would appreciate, the regulator relies on self-regulatory schemes to cover many day-to-day complaints and industry issues that it would otherwise not have the capacity to deal with. If self-regulatory schemes are inconsistent with the underlying principles of the overall regulatory framework, or do not operate within the parameters clearly laid down by the law, then the fundamental purpose to be served by self-regulation may be defeated and consumer welfare may be compromised.³⁶

It is possible to develop a list of core consumer protection principles for the telecommunications sector. For example, the Consumers Telecommunications Network (CTN) has developed a draft Charter of Communications Rights that contains the following core protections:

1. Universal Access to Communications Services

All people are entitled to a choice of communications services, wherever they live or work in Australia. Communications services include voice, video, text and data, or equivalent depending on the most appropriate technology for a particular user.

2. Universal Accessibility of Communications Services

All people are entitled to equal access to communications services regardless of ability. The needs of people with disabilities must be taken into account in the design of all communications services, and must be met with guaranteed and subsidised additional and/or alternative equipment and services if necessary. Services, including equipment, must be interoperable and allow for backwards compatibility wherever possible.

3. Universal Affordability of Communications Services

All people are entitled to communications services at reasonable cost, including price controls on basic services, and the availability of tools and mechanisms that allow them to control and limit their expenditure on communications. All communications services must provide a reasonable and accessible financial hardship policy to customers.

³⁶ Segal J, *Institutional self-regulation: what should be the role of the regulator?*, address to the National Institute for Governance, 8 November 2001, <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/\\$file/NIGConf_081101.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/NIGConf_081101.pdf/$file/NIGConf_081101.pdf)>.

4. Guaranteed Quality of Communications Services

All people are entitled to services that guarantee a minimum level of performance to ensure reliable communications and, in particular, access to effective emergency services. Furthermore, all communications equipment and services must be safe, and both delivered and repaired in a timely manner.

5. Consumer Protection

All people are entitled to mandatory consumer protections of their communications services, including the right to be given the facts needed to make an informed choice, the right to education resources, the right to fair contracts, the right to privacy, and the right to security.

6. Consumer Representation

All people are entitled to have their needs represented in the development of communications services and policy in Australia through well-resourced consumer consultation and representative processes.

7. Right to redress

All people are entitled to an appropriate form of redress if a breach of their communication rights occurs, including access to an independent dispute resolution body.³⁷

A code of conduct framework could then be established that allowed the industry to further develop these protections for particular products, services or issues. The framework could adopt the approach (which is common to other sectors) that codes must not deliver protections that are weaker than the core principles in the legislation.

There is also some industry support for developing more specific objectives. See for example the Communications Alliance submission to the Productivity Commission inquiry:

The current consumer policy framework has worked well in providing outcomes for consumers, however there are opportunities for improvement which could usefully be considered. These include:

- A statement of specific objectives for consumer policy in telecommunications; and
- Consideration of overseas approaches which include specific objectives of consumer empowerment.

In the absence of this approach, codes are developed in a regulatory vacuum, and the establishment of significant consumer protection relies on the relative strengths of the stakeholders consulted during the code development process.

Recommendation 1:

Develop a set of core consumer protection principles in the telecommunications legislation. Require codes of conduct to be developed within this framework – allowing them to enhance these protections or provide more detail, but not to weaken these basic consumer rights.

4.2.2. Code development

The process for the development of codes of conduct in the telecommunications sector is unique and complex. Significant improvements could be achieved by aligning the process with code development processes in other sectors.

³⁷ Consumers Telecommunications Network (CTN), *Charter of Communications Rights* (Draft), 2007.

Improvements that could be considered are to:

- Concentrate resources on a limited number of comprehensive codes rather than numerous fragmented codes;
- Achieve industry buy-in and commitment through a meaningful signature process based on an expectation that all industry members would sign any consumer protection code relevant to their operations (to replace the current bizarre situation where signing a code is not a priority and where a company does sign, it means very little);
- Change the emphasis in the code approval / registration process to focus on the content of the code rather than process issues;
- Set standards or develop a good practice statement for consultation in the development and review processes; and
- Improve resourcing for consumer input.

It is interesting to note that this last recommendation also has some limited industry support, in that the industry at least recognises the value of funding consumer input. For example, the Communications Alliance submission to the Productivity Commission inquiry sought:

A more ‘macro approach’ to consumer participation rather the overlapping/duplication of consumer bodies in ACMA, Comms Alliance, the TIO, ACMA and suppliers, for example the creation of a well-resourced single organisation.³⁸

Recommendation 2:

Align the telecommunications code development process with best practice code development processes in other sectors. Improvements should include:

- Concentrating resources on a limited number of comprehensive codes rather than numerous fragmented codes;
- Achieving industry buy-in and commitment through a meaningful signature process based on an expectation that all industry members would sign any consumer protection code relevant to their operations (to replace the current bizarre situation where signing a code is not a priority and if a company does sign, it means very little);
- Changing the emphasis in the code approval / registration process to focus on the content of the code rather than process issues;
- Setting standards or developing a good practice statement for consultation in the development and review processes, and
- Improving resourcing for consumer input.

³⁸ Communications Alliance, *Submission to the Review of Australia’s Consumer Policy Framework Issues Paper*, 14 May 2007, pages 2–3, <http://www.pc.gov.au/data/assets/pdf_file/0020/63731/sub050.pdf>.

4.2.3. Code content

Co-regulation in the telecommunications sector appears to have resulted in an unbalanced approach to assessing the adequacy of the content of codes. There is a significant emphasis on some process issues. There is virtually no consideration of content issues.

This is in contrast to other sectors where the core consumer protection content of a code is the key focus of the entire framework.

For example, the development and approval of codes of conduct in the financial services sector is guided by ASIC RG 183:

59 Our approval process will focus primarily on the adequacy of a code's core rules. Core rules are the substance of any code, and the main vehicle for improving industry practices. It is therefore essential that core rules address existing and/or emerging problems in the marketplace, rather than merely restating the law.³⁹

The TIO also criticised the absence of core consumer protections in their submission to the Productivity Commission inquiry:

In the TIO's experience, some providers fail to recognise that, taken as a whole, Sections 3 (Objects) and 4 (Regulatory Policy) of the Act establish a co-regulatory mechanism. As a result, and given the absence of a strong enforcement regime, many consumer groups see the co-regulatory safety net set far too low.⁴⁰

It is essential that a core set of telecommunications consumer protection principles is embedded at the heart of co-regulation in this sector. This might take the form of a charter of rights or a set of core principles in the legislation. Code content should then reflect these protections, building on them and enhancing them in the day-to-day practice of industry members.

In addition, the inclusion of a formal market inquiries power in the legislation should be considered, so that the subject matter of code content can be determined by reference to the consumer experience, rather than waiting for industry to develop codes.

Recommendation 3:

Align the telecommunications code content requirements with best practice code content requirements in other sectors. Improvements should include:

- Establishing a core set of telecommunications consumer protection principles in the telecommunications legislation;
- Requiring code content to reflect these protections, building on them and enhancing them in the day to day practice of industry members;
- Ensuring that code content cannot be weaker than the core consumer protection principles in the legislation; and
- Including a formal market inquiries power in the legislation, so that the subject matter of code content can be determined by reference to the consumer experience, rather than waiting for industry to develop codes.

³⁹ Australian Securities and Investments Commission, *Regulatory Guide 183 (RG 183)*, 4 March 2005, guideline 183.59, <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/\\$file/ps183.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/$file/ps183.pdf)>.

⁴⁰ Telecommunications Industry Ombudsman, *Submission to the Review of Australia's Consumer Policy Framework Issues Paper*, 3 July 2007, page 7, <http://www.pc.gov.au/_data/assets/pdf_file/0004/65794/sub097.pdf>.

4.2.4. *Dispute resolution*

Dispute resolution in the telecommunications sector has been the subject of detailed review and reform – these issues are not the focus of this current paper save to note that as with Code development, review and monitoring, dispute resolution in the telecommunications sector would be improved if it complied more fully with best practice approaches and benchmarks developed in other sectors, particularly relating to governance.

In addition, we do recommend the consideration of a more innovative approach to complaints in the telecommunications sector through the introduction of a super-complaints model – similar to the model operating in the UK.

Super-complaints should be available to designated consumer and dispute resolution providers. This will enable consumer groups to bring to the attention of the regulator market features harming the interests of consumers. Super complaints are also relevant to code compliance monitoring, and could play a useful role in identifying the failure of specific codes of conduct.

Recommendation 4:

Dispute resolution in the telecommunications sector should to be aligned with best practice in co-regulation.

A super complaints mechanism should be introduced to enable consumer organisations and dispute resolution providers to formally raise significant issues directly with the regulator.

4.2.5. *Code compliance monitoring*

Code compliance monitoring in the telecommunications sector is unusual and fragmented. The CA monitoring process appears to be quite elaborate but as it only applies to signatories it only applies to a tiny fraction of the relevant industry. It is very secretive and does not appear to have been effective in practice.

The ACMA compliance monitoring regime is even more complex, but has resulted in very little enforcement activity. This is despite significant evidence of non-compliance.

Many other industry sectors have adopted more independent, innovative code compliance monitoring. See for example the approach taken in financial services under ASIC RG 183.

76 The monitoring process overseen by the code administration body should also provide for some form of external or independent monitoring or auditing from time to time. Further, if the monitoring process relies on self-reporting by subscribing members, then the code administration body should consider selected shadow shopping exercises to verify code compliance.⁴¹

See also the banking code compliance monitoring regime – which now involves an independent body dedicated to code compliance monitoring, the publication of regular compliance reports, and the use of innovative monitoring tools such as shadow shopping.

⁴¹ Australian Securities and Investments Commission, *Regulatory Guide 183 (RG 183)*, 4 March 2005, guideline 183.76, <[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/\\$file/ps183.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps183.pdf/$file/ps183.pdf)>.

Recommendation 5:

The co-regulatory framework should include an open, comprehensive, independent and innovative code compliance monitoring function, which results in effective monitoring and enforcement. Improvements should include:

- A consistent compliance monitoring approach should be used for the entire industry, replacing the current disjointed approach which is split between signatories and non-signatories;
- Code compliance monitoring should include external independent monitoring;
- Code compliance monitoring should include innovative tools such as shadow shopping;
- Regular compliance reports should be published.

4.2.6. Code review

The code review process in the telecommunications sector has required considerable input and resources from consumer stakeholders due to the plethora of codes and the regularity of reviews. The resourcing of consumer input has been inadequate to ensure effective consumer input to these reviews.

The number of codes and reviews in the telecommunications sector requires some rationalisation, so that limited resources of all stakeholders can be shifted to important monitoring and enforcement tasks instead of the constant demands of review committees.

Regular, independent review of each code, a feature in other industries, should also be required.

Recommendation 6:

The code review process in the telecommunications sector should be rationalised by reducing the number of codes and reviews to a reasonable amount. Adequate resources should be provided for consumer input to code reviews. There should be a requirement that each code is subject to regular independent review.

4.3. Benefits of the improved model

The current co-regulatory regime in telecommunications does not deliver best practice in the development, implementation, monitoring and enforcement of codes of conduct. This has resulted in significant issues in the telecommunications co-regulatory regime in terms of credibility, consumer confidence and consumer awareness.

A new model should be created taking into account the recommendations in this paper. Such a model will align the telecommunications sector more closely with best practice in co-regulation, at a time when there is strong support for the development of a national, consistent approach to consumer protection.

The new model would replace a unique, complex, inconsistent and often bizarre system of purported co-regulation with a more recognisable and acceptable form of co-regulation that is common in other sectors. The integration of legislation and codes of conduct will deliver a comprehensive package of consumer protection that can deliver consumer confidence in telecommunications products and services.

5. Appendix 1 – Summary of Australian Codes

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C513:2004 – Customer and Network Fault Management</p> <p>The objectives of this Code are as follows:</p> <ol style="list-style-type: none"> 1. outline the process of recording, managing and resolving customer faults and network faults between carriers and carriage service providers in the most efficient manner to the benefit of users of telecommunications services; 2. allocate responsibility for the recording, managing and resolving of customer faults and network faults to the appropriate carrier or carriage service provider; 3. establish procedures to address fault management processes; and 4. establish service levels for fault resolution. <p><http://www.commsalliance.com.au/documents/codes/C513></p>	<ul style="list-style-type: none"> • Telstra • Hutchison 3G Australia 	In force	<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 3.2).
<p>ACIF C515:2005 – Pre-selection</p> <p>The objectives of this code are as follows:</p> <ol style="list-style-type: none"> 1. to set out competitively neutral processes for implementation of pre-selection 2. to set out competitively neutral processes by which Prime Service Deliverers (PSDs) may exchange information with each other and with Access Service Deliverers (ASDs), while at the same time fulfilling the legal requirements and community expectations in relation to privacy 3. to set out criteria against which the compliance of PSDs and ASDs with the code can be measured and 4. to maximise customer choice through processes which are convenient and customer friendly so that a customer's wishes can be implemented with as little inconvenience as possible. <p><http://www.commsalliance.com.au/documents/codes/C515></p>	<ul style="list-style-type: none"> • Telstra 	In force	<ul style="list-style-type: none"> • Complaints to the TIO (clause 22); • Industry complaints to ACIF (clause 23).
<p>ACIF C518:2006 – Call Charging and Billing Accuracy</p> <p>The Code specifies the requirements for checking the accuracy of call charging and billing of the standard telephone service in a multi-service deliverer, multi-network environment in Australia. The Code is intended to be a significant part of the industry approach to self regulation of call charging and billing accuracy for the standard telephone service . The Code provides visible and specific criteria through which the effectiveness of industry self regulation of call charging and billing accuracy can be monitored.</p> <p>In a competitive market, many new and different call charging options are continually introduced, some of which may apply only to a single customer or group of customers, for either a defined or ongoing period. The Code requires a representative sample of these options to be tested as a part of complying with the Code.</p> <p><http://www.commsalliance.com.au/documents/codes/C518></p>	<ul style="list-style-type: none"> • Hutchison 3G Australia • Optus 	In force	<ul style="list-style-type: none"> • No powers to the TIO (expressly stated in clause 5.5); • Industry complaints to ACIF (clause 5.6).

⁴² Unless otherwise noted, abstracts are taken from ACMA's Registry of Codes at <http://www.acma.gov.au/WEB/STANDARD/pc=PC_2525>.

⁴³ Lists of signatories are extracted from Communications Alliance, *Communications Alliance and ACIF Codes: Status Report*, January 2007, <http://www.pc.gov.au/_data/assets/pdf_file/0006/68595/consumer.pdf>.

⁴⁴ Complaints mechanisms under the codes empower the Telecommunications Industry Ombudsman to handle disputes under that Code.

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C519:2004 – End-to-End Network Performance for the Standard Telephone Service</p> <p>This Code specifies minimum levels of performance for the end-to-end carriage of the standard telephone service over public telecommunication networks. The Code provides visible and specific criteria through which end-to-end network performance can be assessed. Compliance with this Code is demonstrated by self-attestation (i.e. self-verification and declaration) for both connectivity and transmission parameters.</p> <p><http://www.commsalliance.com.au/documents/codes/C519></p>	<ul style="list-style-type: none"> Telstra Hutchison 3G Australia 	In force	<ul style="list-style-type: none"> Industry complaints to ACIF (clause 9.1).
<p>ACIF C521:2004 – Customer Information on Prices, Terms and Conditions</p> <p>The objectives of the code are:</p> <ol style="list-style-type: none"> to provide a concrete set of minimum standards for suppliers to meet in telling customers about the prices, terms and conditions of telecommunications products on offer; to educate and inform residential and small business customers; to provide safeguards against confusion and deception of customers generally; to improve fairness and accuracy of disclosure to customers; to ensure customer confidence in acquiring and using telecommunications products; to address conduct which has resulted in customer confusion; to promote competition in telecommunications markets; and to recognise the legitimate business interests of suppliers of telecommunications products. <p><http://www.commsalliance.com.au/documents/codes/C521></p>	None	In force This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)	<ul style="list-style-type: none"> Complaints to the TIO (clause 3.2); Industry complaints to ACIF (clause 3.3).
<p>ACIF C522:2007 – Calling Number Display</p> <p>This Code is intended to:</p> <ol style="list-style-type: none"> require suppliers to provide privacy protections in the use of Calling Line Identification (CLI) and Calling Number Display (CND); ensure that suppliers adopt procedures to allow callers using the standard telephone service (STS) to easily enable or block CND to the called party; require suppliers to inform their customers, on an ongoing basis, about CLI and CND and the privacy implications of both, and how customers can utilise CND blocking features of their STS so that they are able to make informed choices about their use of telecommunications; and deal with the use of CLI by suppliers. <p><http://www.commsalliance.com.au/documents/codes/C522></p>	None	In force	<ul style="list-style-type: none"> Complaints to the TIO (clause 6.2); Industry complaints to ACIF (clause 6.3).
<p>ACIF C524:2004 – External Telecommunication Cable Networks</p> <p>This Code provides a standard, universal set of considerations for the installation of new networks, such as the electrical environment, access restriction, environmental impact, and public safety.⁴⁵</p> <p><http://www.commsalliance.com.au/documents/codes/C524></p>	None	In force	<ul style="list-style-type: none"> Industry complaints to ACIF (clause 3.2).
<p>ACIF C525:2006 – Handling of Life Threatening and Unwelcome Calls</p> <p>This Code provides a standard procedure for the cooperative handling, including call tracing, by carriers, CSPs and the NRS provider of incidents of communications which traverse the networks of one or more carrier/CSP and which are connected with life threatening calls or repeated unwelcome calls.</p> <p><http://www.commsalliance.com.au/documents/codes/C525></p>	None	In force	<ul style="list-style-type: none"> Complaints to the TIO (clause 4.2); Industry complaints to ACIF (clause 4.3).

⁴⁵ This abstract draws upon the explanatory statement contained in the Code.

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C536:2003 – Emergency Call Services Requirements</p> <p>The objectives of this industry code are:</p> <ul style="list-style-type: none"> - to ensure all end users of a standard telephone service have access to an emergency call service in case of life threatening emergencies or where a time critical response is required from an emergency service organisation; - to ensure the operational effectiveness of the Telecommunications (Emergency Call Service) Determination 1999; - to ensure that the obligations of carriers and carriage service providers, in relation to the emergency call services, are clearly documented and understood; and - to promote public understanding (through public number directories) of the emergency call services, including appropriate use, and advise that the disclosure of personal information to emergency service organisations will occur as part of the emergency call process, in accordance with section 35 of the Telecommunications (Emergency Call Service) Determination 1999. <p>http://www.commsalliance.com.au/documents/codes/C536</p>	<ul style="list-style-type: none"> • PowerTel • Telstra • AAPT • Hutchison 3G Australia 	In force	<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 6.2).
<p>ACIF C540:2007 – Local Number Portability</p> <p>The objectives of the Code are:</p> <ul style="list-style-type: none"> - to put in place operational arrangements which enable a Customer to directly connect to another carrier or CSP's network and retain the same telephone number; - to put in place operational arrangements which enable a Customer to relocate premises within the same standard zone unit and retain the same telephone number; - to set out competitively neutral and non-discriminatory processes for the implementation and operation of LNP; - to set out competitively neutral processes by which carriers and CSPs may exchange information with each other in accordance with the requirements of Part 13 of the Telecommunications Act 1997 and the Privacy Act 1998; - to set out criteria against which the compliance of carriers and CSPs with the Code may be measured; and - to set out procedures between carriers and CSPs to enable a Customer to retain their telephone number when transferring from one carrier or CSP to another, even though the relevant number range will still be allocated to the donor carrier or CSP. <p>http://www.commsalliance.com.au/documents/codes/C540</p>	None	In force	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).
<p>ACIF C541:2006 – Credit Management</p> <p>The objectives of this Code are to provide customer protection by setting minimum industry standards on credit management practices and to foster good industry practice rather than rely on remedial measures enforced through legislation.</p> <p>http://www.commsalliance.com.au/documents/codes/C541</p>	<ul style="list-style-type: none"> • Hutchison 3G Australia 	In force This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)	<ul style="list-style-type: none"> • Complaints to the TIO (clause 8.2); • Industry complaints to ACIF (clause 8.3).
<p>ACIF C542:2003 – Billing</p> <p>The objectives of this code are to promote informed customer choice, and enable customers to understand and have confidence in their bills. It does this by establishing a set of minimum standards for suppliers to meet when billing their customers, by ensuring that:</p> <ol style="list-style-type: none"> 1. customers are provided with or have access to sufficient information to enable them to verify the correctness of billed charges 2. bills are easy to read and understand and 3. charges are billed, bills are issued, and payments are credited in a timely manner. <p>http://www.commsalliance.com.au/documents/codes/C542</p>	<ul style="list-style-type: none"> • PowerTel • Telstra • AAPT • B Digital • Hutchison 3G Australia 	In force This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)	<ul style="list-style-type: none"> • Complaints to the TIO (clause 14.3); • Industry complaints to ACIF (clause 14.4).

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C546:2007 – Customer Transfer</p> <p>The objectives of this code are to protect consumers and minimise the incidence of unauthorised transfer of telecommunications service(s) from one supplier to another. It establishes procedures for suppliers to:</p> <ol style="list-style-type: none"> 1. identify the authorised customer; 2. inform customers of all relevant terms and conditions of the transfer and supplier contact details; 3. ensure appropriate conduct of suppliers' sales representatives; 4. confirm the components of the transfer to the customer; 5. verify the transfer through independent means; 6. notify the customer of the completion of the transfer; 7. maintain records of the transfer process; and 8. provide customer access to suppliers' records of the transfer. <p><http://www.commsalliance.com.au/documents/codes/C546></p>	<ul style="list-style-type: none"> • Macquarie Corporate 	<p>In force</p> <p>This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)</p>	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).
<p>ACIF C547:2004 – Complaint Handling</p> <p>The objectives of this code are for suppliers to develop and enforce a comprehensive complaint handling process that will maintain and enhance customer satisfaction, through:</p> <ol style="list-style-type: none"> 1. recognising, promoting, and protecting customers' rights, including the right to actively provide feedback; 2. providing an efficient, fair and accessible mechanism for handling customer complaints; 3. providing information to customers on the complaint handling process for telecommunications products and services provided by suppliers; and 4. monitoring complaints for the purpose of improving the quality of products and services. <p><http://www.commsalliance.com.au/documents/codes/C547></p>	<ul style="list-style-type: none"> • Optus • PowerTel • Hutchison 3G Australia • Primus 	<p>In force</p> <p>This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)</p>	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).
<p>ACIF C554:2004 – Rights of Use of Premium Rate Service Numbers</p> <p>The objectives of this Code are to:</p> <ol style="list-style-type: none"> 1. recognise and protect the interests of rights of use holders in numbers; 2. recognise and protect the investment and interest in numbers of the parties involved in the provision of a service; 3. provide certainty in arrangements for numbers so that the identity of the rights of use holder can be clearly ascertained and be supported by appropriate contractual arrangements; and 4. provide a concise procedure for rights of use holders to move their numbers between premium rate service providers. <p><http://www.commsalliance.com.au/documents/codes/C554></p>	<p>None</p>	<p>In force</p>	<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 3.2).

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C555:2008 – Integrated Public Number Database (IPND)</p> <p>This industry code sets out rights and obligations of data providers, data users and the IPND Manager regarding the access, input, use, disclosure and storage of public number customer data in the IPND.</p> <p>The objectives of the industry code are to ensure that:</p> <ol style="list-style-type: none"> 1. data providers capture and record details of the customer's choice of listed or unlisted entry, or where offered, suppressed address entry; 2. data providers take reasonable steps to provide customers with sufficient information about the use of public number customer data; 3. the rights and obligations of participants regarding their input, use, disclosure and storage of public number customer data in the IPND are clear; 4. agreed uniform procedures and formats are followed when public number customer data is transferred to the IPND by data providers; 5. agreed uniform procedures and formats are followed when public number customer data is transferred from the IPND Manager to data users; 6. IPND procedures treat data providers on an equitable basis; 7. IPND procedures treat data users in the same approved purpose category on an equitable basis; 8. IPND procedures do not detract from customers' reasonable rights with regard privacy of personal information; 9. procedures and processes maximise data accuracy and efficiency through the cooperation of all participants; and 10. the integrity and confidentiality of the public number customer data that is input to, stored in, used and disclosed from the IPND is adequately protected. <p>http://www.commsalliance.com.au/documents/codes/C555</p>	None	In force	<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 13.2).
<p>ACIF C559:2006 – Unconditioned Local Loop Service (ULLS) Network Deployment</p> <p>The objectives of this industry code are:</p> <ul style="list-style-type: none"> - to protect the integrity of the telecommunications network when systems and services (including the standard telephone service) are operated using the ULLS; - to facilitate the most efficient use of ULLS for the deployment of carriage services taking into account the nature of access networks and the likely use of the ULLS; - to limit to an acceptable level the risk of interference between systems and services (including standard telephone services) operated using ULLS; - to identify specific Deployment Classes with associated Deployment Rules which, if complied with, will ensure a carrier or carriage service provider will meet the obligations in this Code; - to prescribe the process by which new Deployment Classes may be identified and new services operated using ULLS; - to promote the greatest practical use of industry self-regulation in providing guidance to the telecommunications industry in operating systems using the ULLS; - to develop performance requirements for the operation of systems using the ULLS that promote the long term interests of end users and the efficiency of the Australian communications industry; - to facilitate the supply of diverse and innovative carriage services and content services using the ULLS; - to specify the safety requirements for equipment that uses remote power feeding and is used as part of the operation of a system using ULLS; and - to avoid the use of spectrum prior to the consideration by the telecommunications industry of the most efficient use of that spectrum in the operation of systems using ULLS. <p>http://www.commsalliance.com.au/documents/codes/C559</p>	None	In force	N/A

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C564:2004 – Deployment of Mobile Phone Network Infrastructure</p> <p>The objectives of this industry code are to:</p> <ol style="list-style-type: none"> 1. apply a precautionary approach to the deployment of radiocommunications infrastructure; 2. provide best practice processes for demonstrating compliance with relevant exposure limits and the protection of the public; 3. ensure relevant stakeholders are informed and consulted before radiocommunications infrastructure is constructed; 4. specify standards for consultation, information availability and presentation; 5. consider the impact on the well being of the community, physical or otherwise, of radiocommunications infrastructure; and 6. ensure Council and community views are incorporated into the radiocommunications infrastructure site selection. <p><http://www.commsalliance.com.au/documents/codes/C564></p>	<ul style="list-style-type: none"> • Telstra 	In force	N/A
<p>ACIF C566:2005 – Rights of Use of Numbers</p> <p>The objectives of this Code are to:</p> <ol style="list-style-type: none"> 1. define when a number is issued to a customer in association with a service and to clarify carriage service provider obligations in managing numbers; and 2. confirm and clarify rights of use of numbers and the obligations of carriage service providers in relation to the reservation, issue, porting, disconnection and quarantine of numbers. <p><http://www.commsalliance.com.au/documents/codes/C566></p>	<ul style="list-style-type: none"> • Hutchison 3G Australia 	In force	<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 3.2).
<p>ACIF C569:2005 – Unconditioned Local Loop Service - Ordering, Provisioning and Customer Transfer</p> <p>This Code sets out technical requirements for Unconditioned Local Loop Services (such as ADSL networks).</p> <p><http://www.commsalliance.com.au/documents/codes/C569></p>	None	In force	N/A
<p>ACIF C570:2005 – Mobile Number Portability</p> <p>The objectives of this code are as follows:</p> <ol style="list-style-type: none"> 1. set out procedures between CSPs to enable a Customer to retain their mobile number when transferring from one CSP to another or changing Mobile Carrier Networks, even though the relevant number range will still be allocated to the Donor CSP; 2. set out competitively neutral and non-discriminatory processes for the implementation and operation of MNP; 3. set out competitively neutral processes by which CSPs may exchange information with each other in accordance with applicable privacy regulation; 4. set out criteria against which the compliance of CSPs with the Code may be assessed; and 5. provide a robust process that can support MNP in a timely fashion. <p><http://www.commsalliance.com.au/documents/codes/C570></p>	<ul style="list-style-type: none"> • Telstra • PowerTel • Globalstar Australia 	In force	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).
<p>ACIF C609:2007 – Priority Assistance for Life Threatening Medical Conditions</p> <p>The objectives of the Code are to:</p> <ul style="list-style-type: none"> - promote consistent industry arrangements for maximising standard telephone service continuity to those individuals who by reason of a diagnosed, life threatening medical condition are at the risk of suffering a rapid, life threatening deterioration in their condition; - promote consistent industry arrangements for identifying and - maintaining priority customers; and - ensure that people are informed of the eligibility requirements for priority assistance. <p><http://www.commsalliance.com.au/documents/codes/C609></p>	None	In force	<ul style="list-style-type: none"> • Complaints to the TIO (clause 6.2); • Industry complaints to ACIF (clause 6.3).

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C617:2005 – Connect Outstanding</p> <p>The objectives of the Code are:</p> <ol style="list-style-type: none"> 1. to set out procedures between carriage service providers that provide timely connection of a new occupant's standard telephone service where a working standard telephone service has not been cancelled at the service address; 2. to ensure an appropriate balance between the rights of the new occupant and the previous occupant; 3. to set out competitively neutral and non-discriminatory processes; and 4. to minimise disadvantage to the previous occupant or any third party where a reversal is necessary. <p><http://www.commsalliance.com.au/documents/codes/C617></p>	None	In force	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).
<p>ACIF C620:2005 – Consumer Contracts</p> <p>The objectives of this Code are:</p> <ol style="list-style-type: none"> 1. to identify and prohibit the use of unfair terms in Contracts; 2. to provide an objective basis for determining whether a contractual term is unfair; and 3. to state the minimum requirements for the format and structure of Contracts and to encourage the use of plain language. <p><http://www.commsalliance.com.au/documents/codes/C620></p>	<ul style="list-style-type: none"> • Hutchison 3G Australia 	<p>In force</p> <p>This code is one of six to be replaced by C628:2007 – Telecommunications Consumer Protections (TCP)</p>	<ul style="list-style-type: none"> • Complaints to the TIO (clause 3.2); • Industry complaints to ACIF (clause 3.3).

Abstract ⁴²	Signatories ⁴³	Status	Complaints mechanism ⁴⁴
<p>ACIF C625:2005 – Information on Accessibility Features for Telephone Equipment</p> <p>The objectives of this Industry Code are to:</p> <ol style="list-style-type: none"> 1. specify obligations on equipment suppliers to provide product information on the functional characteristics of their customer equipment used with a standard telephone service (which covers services that deliver voice telephony) that would be beneficial to people with a disability and older people; and 2. to ensure that the information provided by equipment suppliers is clear and comprehensible to assist both carriage service providers and consumers in identifying equipment features that will meet an individual's communications needs. <p><http://www.commsalliance.com.au/documents/codes/C625></p>	None		<ul style="list-style-type: none"> • Industry complaints to ACIF (clause 4.2).
<p>C628:2007 – Telecommunications Consumer Protections (TCP)</p> <p>This Code seeks to:</p> <ul style="list-style-type: none"> - make it easier to know consumers' rights; - ensure consistency in drafting, style, and terminology; - separate rules from procedures; and - allow suppliers to determine their own methods for complying with the code, rather than specifying mandatory procedures. <p>The Code contains rules about:</p> <ul style="list-style-type: none"> - advertising of products and informing customers about the prices, terms and conditions of products on offer; - determining when consumer contract terms may be considered unfair, including having regard to the intelligibility and accessibility of contract terms; - billing procedures and the provision of billing information to customers; - the credit assessment of customers, the provision of security and credit control tools, and a requirement to have a financial hardship policy to assist customers experiencing financial difficulties; - ensuring all transfers of service that occur are authorised and verified; and - complaint handling procedures for information provision to customers and recording of their complaints. <p>Once registered with ACMA, this Code will replace:</p> <ul style="list-style-type: none"> - ACIF C521:2004 – Customer Information on Prices, Terms and Conditions; - ACIF C541:2006 – Credit Management; - ACIF C542:2003 – Billing; - ACIF C546:2007 – Customer Transfer; - ACIF C547:2004 – Complaint Handling; and - ACIF C620:2005 – Consumer Contracts.⁴⁶ <p><http://www.commsalliance.com.au/documents/codes/C628></p>	None	Not yet in force – awaiting ACMA registration (as at April 2008)	<ul style="list-style-type: none"> • Complaints to the TIO (clause 10.2); • Industry complaints to ACIF (clause 10.3).

⁴⁶ This abstract is based on information contained in Communications Alliance, *C628:2007 Explanatory Statement*, 2007, <http://www.commsalliance.com.au/_data/page/21676/C628_2007.pdf>, and on the Communications Alliance's webpage for the Code, at <<http://www.commsalliance.com.au/documents/codes/C628>>.

6. Appendix 2 – Case Study on the Code on Information on Accessibility Features for Telephone Equipment

This case study (prepared by Telecommunications and Disability Consumer Representation – TEDICORE⁴⁷) provides an overview of some of the significant consumer concerns that have arisen during the development process for a specific code.

The ACIF Code on Information on Accessibility Features for Telephone Equipment⁴⁸ has been in operation since April 2007. The Communications Alliance website states:

The Code requires customer equipment importers and manufacturers to provide information to CSPs on features of their equipment that will meet people’s communications needs. The information provided must be consistent with the features matrices provided in ACIF G627:2005. Equipment suppliers must also have a contact point for consumers to seek further information about the equipment supplier’s equipment features. The Information Accessibility Code summary sheet⁴⁹ has been produced to provide an overview of the Code Provisions, the Guideline and the regulatory framework under which the Code was registered.

The Working Committee to develop the Code was set up in April 2004. Public comments were requested on the draft Code in November 2004. The Working Committee struck a number of problems in progressing the work in 2005 due to differences in what consumers and equipment supplier representatives wanted as outcomes for the Code. A meeting between ACIF, ACA and industry stakeholders where a number of issues were discussed helped to lead into a new working form where a sub-committee comprising the three key stakeholder groups developed methodology that was reported to the Working Committee on 28th November 2005.

After considerable negotiation, agreement was reached on the Code – the ACIF Board approved its publication in December 2006 and sent it to ACMA for registration. Unfortunately, industry continued to express its concerns to ACMA about the Code and there were further delays. After discussions with ACMA, ACIF and other key stakeholders, TEDICORE could still not see any result. Finally, TEDICORE resorted to writing to the Minister about its concerns. The ACIF Code (C625:2005) Information on Accessibility Features for Telephone Equipment⁵⁰ with the accompanying ACIF G627:2005 Operational Matrices for Reporting on Accessibility Features for Telephone Equipment was registered in October 2006.

The end result was a Code that left out key consumer information such as hearing aid compatibility.

⁴⁷ <<http://www.tedicore.org.au/>>

⁴⁸ Communications Alliance, *ACIF G627:2005 Operational Matrices for Reporting on Accessibility Features for Telephone Equipment*, 2005, <<http://www.commsalliance.com.au/documents/guidelines/g627>>.

⁴⁹ Communications Alliance, *Providing information on the accessibility features of telephone equipment*, fact sheet, December 2007, <http://www.commsalliance.com.au/_data/page/13230/ACIF_C625_2005_and_ACIF_G627_2005.pdf>.

⁵⁰ Communications Alliance, *ACIF C625:2005 Information on Accessibility Features for Telephone Equipment*, 2005, <http://www.commsalliance.com.au/_data/page/15367/C625.pdf>.

Communications Alliance established an Information Implementation Group comprising industry stakeholders (and no consumer representatives) to decide on mechanisms for the implementation of the Code. Consumers were denied involvement in this group, despite Communications Alliance stating that this group may influence revisions of the Code. Currently, information from each manufacturer is meant to be sent in spreadsheet format (based on the matrices in the Guidelines) to each carriage service provider and in turn each carriage service provider is meant to make the information available to its customers. Even when companies like Nokia have followed the Code requirements by placing information prominently about each phone model on its website, it is time-consuming both for CSP staff and customers to open the link to each of the 39 models listed and go down the list manually to find which of the models have a particular feature.

Even with the current system there has been a lack of compliance by some of the key suppliers and manufacturers of phone equipment. As a result, Communications Alliance wrote a letter in December 2007 reminding them of the requirements under the Code. There still continues to be a significant lack of compliance by these suppliers. This is very frustrating for people with disabilities who need to find phone handsets to meet their needs. In addition, the Code has been registered with ACMA, making the Code a legal requirement, yet there has been no enforcement of the Code to date. After TEDICORE raised its concerns, ACMA has undertaken to contact non-compliant suppliers in the near future.

Sen. Stephen Conroy, Minister of Broadband, Communications and the Digital Economy stated in his speech to the 2008 ATUG Conference that ‘Industry members need to be much more responsive to the interests of consumers, and respectful of the needs and experiences of individual consumers. To ensure that self-regulatory mechanisms continue to adapt to emerging technologies and services, consumers need to be given a strong voice in the development of codes and other protections.’

Therefore, a much more effective way would be for the establishment of an online database where manufacturers can input data on each phone model in a secure manner. This could then be searched based on criteria such as feature or disability to produce a list of handsets meeting the search criteria.

In addition, the Code needs to be considerably expanded in its reporting of features, by informing consumers about features that they really need rather than those that are easy to report.

7. Appendix 3 – Resources

Telecommunications Codes

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