

**COMMUNICATIONS
ALLIANCE LTD**



REVIEW OF PRIVACY
FEBRUARY 2007

Prepared by
Anne Hurley
CEO
Communications Alliance Ltd

Australian Law Reform Commission's (ALRC) Issues Papers 31 And 32 – Review Of Privacy Submission by Communications Alliance

Communications Alliance is pleased to have this opportunity to provide initial comments in response to the Australian Law Reform Commission's (ALRC) Issues Papers 31 and 32 – **Review of Privacy**.

Communications Alliance Ltd is the result of a merger between the Australian Communications Industry Forum (ACIF) and the Service Providers Association Inc. which took place in September 2006. The vision of the new entity is to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

Communications Alliance understands the importance of the privacy concerns of customers in the telecommunications sector. Carriers and service providers in the telecommunications sector process large amounts of detailed personal information belonging to their customers, including financial information, personal communications and lifestyle details. As a result, the sector has historically operated under extensive regulations relating to the privacy and security of customer information. Members of the Communications Alliance have played an industry leadership role in developing some of the earliest and most comprehensive privacy compliance programs implemented in Australia.

This submission does not attempt to address the specific questions posed throughout the Issues Papers 31 and 32. Rather, it seeks to identify issues touching on privacy that are either being addressed by Communications Alliance or that we believe should be brought to the ALRC's attention.

This is intended to be a preliminary submission. A more detailed submission will be provided by Communications Alliance in response to the ALRC's discussion paper to be released in mid-2007.

This submission can be treated as non-confidential.

Communications Alliance Codes

Communications Alliance is committed to fostering a thriving, effective communications industry serving the Australian community through both the timely delivery of Industry Codes and promoting widespread compliance with these Codes.

As part of this commitment, Communications Alliance has put in place a **Code Administration and Compliance Scheme** that allows a carrier or carriage service provider to formally sign-up to (and commit to comply with) Communications Alliance Industry Codes.

Part 6 of the Telecommunications Act empowers organisations such as Communications Alliance to create industry codes for the telecommunications sector in relation to privacy (s.113(3)(f)).

All codes touching upon privacy issues are developed in consultation with the Office of the Privacy Commissioner (OPC) prior to registration with the Australian Communications and Media Authority (ACMA). Whilst Communications Alliance endeavours to ensure compliance with the codes, ACMA is responsible for enforcement of compliance requirements within the telecommunications sector.

Communications Alliance currently has 7 registered codes which contain privacy provisions and/or references to relevant privacy legislation, depending upon the supplier processes and services that the Code seeks to address. Details of these codes and specific privacy provisions are listed in Annexure 1.

In order to minimise confusion and duplication for the telecommunications sector, Communications Alliance is in the process of preparing a single industry code (this code will be called the Telecommunications Consumer Protections Code, "TCP Code") which will capture the majority of Communications Alliances' *consumer* industry codes. Communications Alliance is working with the OPC, Telecommunications Industry Ombudsman (TIO), ACMA and the Australian Competition and Consumer Commission (ACCC) to formulate the content of the TCP Code. It is also undertaking an extensive public consultation process to enable input by all relevant industry stakeholders. Communications Alliance anticipates that concerns in relation to the treatment of privacy in the TCP Code will be addressed during the consultation phase. Communications Alliance expects the code to be completed by mid-2007.

NGN Workplan

Communications Alliance has been addressing a range of new challenges, including privacy protection, that are created by rapid changes in technology in the telecommunications sector. In 2002 ACIF established a **NGN Framework Options Group** whose purpose was to focus on the desirable policy and regulatory environment to assist in the delivery of new and emerging telecommunications services, as well as applications on packet-based networks. The Next Generation Networks (NGN) project was in part, a response to a Department of Communications Information Technology and the Arts (DCITA) invitation to ACIF to develop an industry view of the regulatory issues associated with the transition to NGNs. **ACIF's Next Generation Network Project** paper details the views that were established by the **NGN Framework Options Group**. A copy can be found at: <http://www.commsalliance.com.au/projects/previous/ngn>

ACIF also held a series of **Future Forums** last year to identify the priority issues related to access technologies for NGNs which could then be fed into the development of Australia's strategic framework for the NGN transition. A copy of Communications Alliances' report on issues arising from the **Future Forum** series can be found at http://www.commsalliance.com.au/_data/page/13053/Future_Forum_report_final_211106.pdf. Communications Alliance will use this input for discussions with government and regulators to prioritise the identified issues.

As a result of feedback to ACIF's NGN report, the Future Forum series and pursuant to Recommendation 3 of DCITA's document "**Examination of Policy and Regulation relating to Voice over Internet Protocol (VoIP) Services**" Communications Alliance has completed stage 1 of a draft work plan for strategic transitioning of the telecommunications industry to the NGN environment. Communications Alliance is working collaboratively with ACMA, DCITA, the ACCC and other organisations as appropriate to take the work plan through to stages 2 and 3. The resulting work plan will inform discussions about moving forward to the NGN environment.

The draft Work plan currently identifies privacy issues in two categories: (1) content and (2) security. Communications Alliance is happy to discuss the privacy related aspects of the draft Work plan with the ALRC as well as make available any further privacy issues that may be identified during this project.

Privacy Compliance

The ALRC will be aware that the Productivity Commission (PC) is currently undertaking an on-going project titled “**Performance Benchmarking of Australian Business Regulation**”. Communications Alliance strongly recommends that matters relating to privacy are factored into this review.

Communications Alliance's submissions to the PC Benchmarking project can be found at: www.pc.gov.au/study/regulationbenchmarking/subs/sublist.html.

Communications Alliance recognises that it is important to ensure that there is a balance between protection of the privacy of the consumer and the cost of compliance with privacy regulation to the business sector. However, maintaining full compliance in the telecommunications sector is a labour intensive process which, for larger service providers, may require a team of dedicated staff who spend hundreds of hours per year collecting and preparing the data and reports for various regulatory bodies.

The problem of high compliance costs is further compounded by the duplication of compliance regulations and reporting requirements. This occurs, for example, when obligations in the **Telecommunications Act** overlap with other legislation such as the **Trade Practices Act** and require that service providers present the same, or very similar, information to two regulatory bodies. In addition, the interaction between overlapping regulations, is often complex and unclear, such as is the case with the restrictions on the disclosure of telecommunications-related personal information in Part 13 of the Telecommunications Act and the Privacy Act's National Privacy Principle 2.

In order to reduce duplication and compliance costs that are ultimately borne by consumers, Communications Alliance is currently undertaking a project with DCITA, Attorney General's and ACMA to identify duplication of regulations in the telecommunications sector. Communications Alliance would welcome the opportunity to discuss issues relating to privacy compliance arising from this project with the ALRC.

Privacy complaints in the telecommunications sector

Complaints relating to telecommunications privacy are received by several agencies, chiefly the Privacy Commissioner's office, the Telecommunications Industry Ombudsman and the Australian Communications and Media Authority. Only 7 per cent of complaints investigated by the Privacy Commissioner in 2005-06 related to telecommunications issues. Communications Alliance has conducted an analysis of the privacy related complaints data generated by the TIO as a result of Communications Alliance's review of the **ACIF C523: 2001 Protection of personal information of Customers of telecommunications providers** Code. In essence, this research suggests that the TIO is classifying what are actually telemarketing related complaints as privacy complaints. Further, some of these complaints may be incorrectly attributed to the telemarketing activities of a supplier, when the unsolicited telemarketing activity is the action of an independent telemarketing agency. Accordingly, although the TIO recorded 2,718 complaints relating to privacy in 2004-05, in our view it may be that reported privacy breaches in the telecommunications sector are not as prevalent as the TIO's statistics would suggest.

Legislation

Telecommunications Act 1997 and Telecommunications (Interception of Access) Act

Communications Alliance notes that the exposure Draft of the **Telecommunications (Interception and Access) Amendment Bill 2007** was released by the Attorney-General on Friday 2 February 2007 as a further response to the recommendations contained in the Blunn Report.

The Exposure draft brings across sections 282 and 283 of Part 13, part of section 313 and the whole of section 314A of Part 14 and the whole of Part 15 of the **Telecommunications Act 1997** into the **Telecommunications (Interception and Access) Act**.

Communications Alliance has not yet had the opportunity to consider what impact, if any, the draft Bill will have in relation to privacy issues and law enforcement in the telecommunications sector. Communications Alliance notes that the lack of clarity relating to the interception requirements has been a source of concern among industry and consumer groups for some time. We are happy to provide comments to ALRC once it has completed a full review of the Bill.

Spam Act, Privacy Act and Mobile Premium Services Industry Scheme

On 29 June 2005, the Australian Communications Authority made the **Telecommunications Service Provider (Mobile Premium Services) Determination 2005 No.1** (the Determination) under section 99 of the **Telecommunications Act**. The Determination specifies the minimum obligations on Carriage Service Providers and Content Service Providers intending to supply mobile premium services to the Australian marketplace. In response to the Determination, the **Mobile Premium Services Industry Scheme** was approved by ACMA. Communications Alliance is the custodian of the Scheme and a copy can be located at:
http://www.commsalliance.com.au/projects/mobile_premium_services.

The Scheme includes privacy provisions which state that SMS messages can not be sent without the customer's consent and that clear opt out mechanisms must be used in all instances. All relevant organisations in the telecommunications sector must comply with the Scheme (or Default Scheme – see below) thereby ensuring that consumer protection is enhanced.

The Scheme also provides that mobile messaging and content products must not be used for the purposes of Spam under any circumstances, whether wholly or only partially operated via mobile.

As 'responsible delivery' of premium mobile services is not only a matter of compliance with legal and regulatory obligations, a set of Guidelines has also been produced which, when followed, will help ensure the safe and responsible delivery of premium mobile services, informed and satisfied customers, and a sustainable marketplace for all. A copy of the Guidelines can be located at the above html link.

The Determination also established a **Default Scheme** which applies to any carriage service provider and content service provider which is not a member of an ACMA approved self-regulatory scheme. A copy of the Default Scheme is available at http://www.acma.gov.au/ACMAINTER.1638528:STANDARD::pc=PC_100796. Both Schemes came into effect on the 29 October 2006.

Do Not Call Register Act

Communications Alliance notes that the **Do Not Call Register** will come into effect from May 2007. Until the Register is fully operational, Communications Alliance does not have any comment to make in relation to privacy aspects of the legislation, other than to express some concern as to how the provisions relating to nominees and verification of registrations will work.

Consumer privacy issues

Communications Alliance has two standing consumer councils: the Communications Alliance Consumer Council which is an initiative to ensure adequate and appropriate broad consumer input into Communications Alliances' processes and activities, particularly, in Code development. The Council works in parallel with, and is complementary to, the existing Communications Alliance structure; and the Communications Alliance Disability Council which was established to develop a framework for ensuring adequate and appropriate disability sector input into Communications Alliance Codes and Standards.

Both Councils provide an effective barometer of key consumer and industry concerns and issues. It is relevant to note that no privacy issues have been raised by either Council to date.

Communications Alliance compliance programs

Communications Alliance notes that the ALRC has queried whether the small business exemption should be modified or removed from the NPPs. Whilst we concede that there are non-complying operators in the telecommunications sector that fall within the small business exemption, Communications Alliance recommends education and awareness raising and incentives to industry for voluntary adoption of the NPPs as a way to resolve the problem, rather than additional codes which will only increase the regulatory burden on small business operations.

By way of example, one of the initiatives Communications Alliance is currently undertaking is a series of compliance training programs which it will roll out in late 2007. The purpose of the compliance programs is to ensure that **ALL** members of the telecommunications sector are aware of their regulatory obligations, particularly with respect to privacy. Communications Alliance is happy to discuss these programs in more detail with the ALRC.

New Technologies

Communications Alliance notes the ALRC's focus on the impact of new technologies on privacy, detailed in Chapter 11 of Issues Paper 31. Communications Alliance is doing a considerable amount of work in the area of location detection devices and its report on the outcomes of the **Communications Alliance IP Location Information Working Group** can be located at:

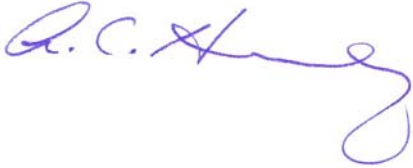
http://commsalliance.com.au/_data/page/12628/CommsAlliance_Report_on_Location_Information_Options.pdf.

Communications Alliance is also a participant in ACMA's ENUM discussion group and we would welcome the opportunity to discuss the outcomes of these groups in the context of privacy with the ALRC.

Conclusion

Communications Alliance and the telecommunications industry as a whole recognise the need for privacy regulation and the importance of consumer confidence in the protection of their personal information, especially as consumers take up the new generation of telecommunications services. Communications Alliance looks forward to further discussions with the ALRC and contribution of a more detailed submission on release of ALRC's discussion paper mid-year.

Yours sincerely



Anne Hurley
Chief Executive Officer
Communications Alliance Ltd

ANNEXURE 1

ACIF C522:2007 Calling Number Display Industry Code

This Code mainly deals with privacy related matters and specifies minimum requirements on suppliers to provide their customers with the choice to enable, or block sending their calling number display information or a per call or per line basis, and to ensure customers are aware of those choices.

ACIF C525:2006 Handling of Life Threatening and Unwelcome Calls Industry Code

Specifies standard procedures for the cooperative handling (including call tracing) by carriers/carriage service providers of cross-network life threatening calls or repeated unwelcome calls.

This Code references privacy a number of times and requires that personal information collected by carriers and carriage service providers is only used and disclosed for purposes for which it was collected. The Code ensures that any information about the calling or called parties in relation to life threatening or unwelcome calls remains with that party's carrier or carriage service provider, and is not further disclosed, except as required in the course of the investigation by police of life threatening calls".

ACIF C541 Credit Management Industry Code

Specifies requirements for suppliers' credit assessment of customers, the provision of credit control tools and the development and use of financial hardship policies.

Appendix B of this Code specifically references the Privacy Act as well as privacy issues relevant to the Code.

ACIF C542:2003 Billing Industry Code

Specifies minimum requirements for billing procedures and the provision of billing information to customers. The Code covers bill content, the timeliness and frequency of issue, terms of payment and credit.

S. 5.3 of this Code stipulates that any supplier process for allowing a customer's authorised representative to act on the customer's behalf must include procedures to protect that customer's privacy and confidentiality.

ACIF C609:2007 Priority Assistance for Life Threatening Medical Conditions Industry Code

Specifies the minimum requirements to provide the highest level of service practically available to customers who suffer from a life threatening medical condition. Specific references to privacy are contained in s.5.9 – Customer contact and the collection, use and disclosure and disposal of information, and s.6.9 - Records Management and privacy.

ACIF C617:2005 Connect Outstanding Industry Code

Specifies the process for re-use of an existing service by a new customer when it has not been cancelled. Section 6.2 deals with privacy and use of information.

ACIF C555:2002 Integrated Public Number Database (IPND) Data Provider, Data User and IPND Manager Industry Code,

Specifies who can supply and/or receive data to/from the IPND, as well as the obligations on use of IPND data. This Code contains several references to the security and privacy issues to which each IPND participant must have regard.

In addition the Communications Alliance Codes dealing with customer transfer issues all contain specific privacy rules. These Codes are:

- **C546 - Customer Transfer**
- **C570 - Mobile Number Portability**
- **C540 - Local Number Portability**
- **C515 - Preselection**

For the sake of completeness it is also relevant to mention ACIF C523: 2001 Protection of Personal Information of Customers of Telecommunications Providers which has been deregistered as it was superseded by the ***National Privacy Principles***.

ACIF C547:2004 Complaint Handling Industry Code,

Specifies that Suppliers must advise customers of their external avenues of recourse, (i.e., the TIO and, in matters of privacy, the TIO or the OPC). Customers who choose to have their privacy complaint considered by the TIO still retain their right to make a complaint about the same matter to the OPC.