

INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

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The Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
NSW Legislative Council
Parliament House
Macquarie Street, SYDNEY NSW 2000



Dear Ms Robertson,

Following is Communications Alliance's submission in response to the Inquiry into Unfair Terms in Consumer Contracts.

Yours sincerely,

Anne Hurley
Chief Executive Officer
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Inquiry into Unfair Terms in Consumer Contracts Submission by Communications Alliance

Communications Alliance is pleased to make this submission in response to the Legislative Council's Inquiry into Unfair Terms in Consumer contracts.

Communications Alliance was formed on 1 September 2006 from the merger of the Australian Communications Industry Forum (ACIF) and the Service Providers Industry Association (SPAN). The membership of Communications Alliance comprises carriers/carriage service providers, business and residential consumer groups, industry associations and individual companies. Its mission is to provide leadership through a neutral forum, independent of individual interests, in which all Australian communications industry stakeholders cooperate in the development of initiatives that foster the effective and safe operation of competitive networks, the provision of innovative services and the protection of consumer interests.

It is a policy objective of the *Telecommunications Act 1997* that the industry be regulated be the maximum degree of industry self-regulation, without imposing undue financial and administrative burden on the industry.

The telecommunications industry is currently subject to a layer of requirements - regulatory and self-regulatory, Commonwealth and State - in relation to unfair terms in consumer contracts. These include the *Trade Practices Act 1974* and the *Fair Trading Act 1999 (Vic)* and significantly, an industry code on consumer contracts - the *Consumer Contracts Industry Code ACIF C620:2005* (copy attached).

The Consumer Contracts Industry Code is the first industry-developed code dealing with consumer contracts. It was developed by a Working Committee through the auspices of ACIF. The membership of the Working Committee included supplier representatives as well as consumer representatives, and they were able to reach consensus on the scope of obligations to be included in the Code. Observer members of the Working Committee were the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman and the Australian Communications Authority (now merged with the Australian Broadcasting Authority to form the Australian Communications and Media Authority - ACMA).

The Code addresses the following issues of contractual fairness:

- Provision of a general rule as to when a term in a consumer contract is to be considered as unfair, largely mirroring similar provisions in the Victorian legislation,
- Provision of specific instances when a contract term will be considered as unfair, relating directly to the telecommunications industry. Those situations include, for example:
 - permitting service providers to avoid or limit performance of their contractual obligations to the detriment of the consumer;
 - permitting service providers to charge fees for events caused by supplier error or failure to perform their obligations; and
 - permitting the service provider to unilaterally amend or vary the goods or services (including price) in a fixed term contract without providing a specified notice period and allowing the Customer to terminate the contract without penalty.

The Code also requires that contracts are provided in plain, easily understood language, are structured to be easily understood, and are accessible to consumers, particularly those from a culturally or linguistically diverse background and consumers with a disability.

The Code was registered by ACMA in May 2005. The significance of Code registration is that, once a Code is registered, ACMA has the power, under Part 6 of the *Telecommunications Act 1997*, to issue Formal Warnings against service providers for non-compliance, and to issue Directions which are enforceable in Federal Court for continued non-compliance.

The development and publication of the Code has made a significant difference to the consumer contracts used by industry. In the September 2006 quarter, the TIO statistics show there were 95 possible complaints about unfair contract terms, and 15 confirmed complaints. By the March 2006 quarter – six months after all Code provision took effect – TIO statistics record only one possible complaint against the Code, and complaints relating to Code provisions have remained negligible since.

It is the submission of Communications Alliance that the telecommunications industry is already subject to existing Commonwealth and State legislative requirements with which it must comply to ensure contractual fairness for consumers.

Further, that the detailed Industry Code on Consumer Contracts which was developed under the self-regulatory environment of the industry is demonstrating improved outcomes and fewer complaints from consumers.

It does need to be considered whether additional State legislation, which would provide yet another layer of regulatory requirement and increase the regulatory costs of suppliers, would assist either in meeting the policy objective of the Telecommunications Act of maximum industry self-regulation without imposing undue cost and whether it would achieve any greater outcomes for consumers than are demonstrably being delivered in the telecommunications industry.

I would be happy to provide any further information on the Code and in our role in monitoring compliance with its provisions.