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22 December 2023

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By submission: <https://www.infrastructure.gov.au/have-your-say/discussion-paper-carriage-service-provider-csp-registration-or-licensing-scheme-telecommunications>

RE: Discussion Paper - Carriage Service Provider (CSP) registration or licensing scheme for the Telecommunications industry

INTRODUCTION

The Internet Association of Australia Ltd (**IAA**) thanks the Department for the opportunity to provide its perspective on the Carriage Service Provider (**CSP**) registration or licensing scheme (**Scheme**).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**), who would therefore be captured under the Scheme as CSPs. This response is primarily in representation of these members, whom we believe would be particularly affected by any regulatory burdens imposed by the Scheme as smaller entities lack the resources to unpack complex legislation and navigate any complicated registration or licensing processes and/or systems.

Given our broad membership, we have heard various and to some extent, conflicting positions from our members with regards to the Scheme. While some have supported the introduction of such a measure, others have vehemently opposed the Scheme entirely. However, there is an overwhelming consensus amongst our membership that if a Scheme is to be introduced in the telecommunications industry, it should be developed in a manner that is in no way onerous, and is simple to understand and navigate, both in terms of the:

- legislative instrument and guidance materials that are drafted to set out the requirements under the Scheme; and
- the simplicity and ease of navigation that must also apply to the actual registration system and processes that entities will have to use to comply with the Scheme.

We also hope that the Department, as well as other regulatory bodies such as the ACMA, use this opportunity to assist CSPs in understanding their overall obligations under other legislation as these are persistently complex, overlap and are extraordinarily difficult to identify and follow.

Overall, IAA and many of our members understand the concerns raised by the various stakeholders in support of the Scheme with regards to the lack of visibility of the market and the harms suffered as a result of bad actors who engage in ‘phoenixing’ behaviour. However, we are equally concerned of the potential consequences such a Scheme could have on the industry, and for end-users that may outweigh the expected benefits. To the extent that a Scheme is required, we strongly recommend that it is used to also assist CSPs with their compliance obligations rather than implementing it as a one-way regulatory burden.

Our concerns and recommendations will be further detailed in our responses to the questions set out in the Discussion Paper below.

OUR RESPONSE

BACKGROUND AND IDENTIFIED ISSUES

- 1. Do you think a CSP registration or licensing scheme should be implemented in the telecommunications sector and what are the key arguments for and against?**
- 2. Are current issues with transparency and enforcement (as raised by stakeholders) substantial enough to warrant the creation of a registration or licensing scheme, and do these outweigh possible impacts (for example, any barriers to market entry and competition impacts)?**

Overall, IAA and many of our members agree that a very simple and light-touch registration scheme may be helpful in the telecommunications sector. IAA itself has observed actors who have attempted to take advantage of discounts provided to new members by phoenixing as a new ISP entity to access our peering services for free, then cancelling the membership once the discount period expires. We understand that this sort of behaviour would be particularly harmful for consumers who find themselves with little recourse once a CSP dissolves its business, after having paid for services that they didn’t receive, or to the requisite standard for service. To that end, having some simple process that ensures visibility into the industry to discourage such behaviour may be helpful.

However, we note that any Scheme, even if it is simple, will still result in increased regulatory burdens for CSPs. Regardless of how light touch the Scheme is, it would add yet another obligation for CSPs in what is already a very heavily regulated industry, which only continues to grow increasingly complex in light of the ongoing regulatory developments that affect the telecommunications sector. We note that this in turn, will result in increased costs for end-users as CSPs will no doubt have to pass on the costs to end-users associated with complying with such new regulation. Moreover, this should be considered in the context of the rising cost of living in Australia, and higher costs that end-users will soon face (if not already) for services in light of the new NBN SAU, and other recently introduced or soon to be introduced regulatory obligations the cost of which will also be passed through to consumers.

In that light, we do not believe there has been sufficient analysis or research done to study the scale of the harm caused by those phoenixing CSPs who do not comply with their obligations. We appreciate the information provided in the Discussion Paper, including the case studies, but we do not believe this to be sufficient. There should be a more in-depth analysis undertaken to identify the extent of the risk and harm (including monetary amounts) posed by the absence of such a Scheme to consumers, government and regulators, and industry in order to conduct a cost-benefit

analysis into the costs that industry, and in turn, end-users will have to pay to comply with a Scheme versus the benefits of having such a Scheme.

Furthermore, as noted in Question 2 of the Discussion Paper, increased regulation of the sector will no doubt increase barriers to market entry, which is already high in the telecommunications industry. This will then affect competition in the market as fewer entities will seek to become CSPs due to the high regulatory burden, and further exacerbate the competition issue in the industry, which is not only to the detriment of industry, but also consumers. Moreover, increased regulatory burdens particularly disadvantage smaller entities who lack the resources to engage in complex regulatory processes, and therefore further worsens competition. Again, these are costs that should be weighed against a thoroughly researched analysis of the harms suffered as a result of not having such a Scheme.

We believe that many of our members (such as Aussie Broadband Limited which was Australia's most trusted telecommunications brand in 2023¹), are great examples of challenger telecommunications providers that have grown to become widely respected as they were given the opportunity to grow and flourish. Had the current and proposed regulatory landscape been in place when these entities first emerged, we consider it potentially unlikely that they would have been able to develop to the scale that they have, precisely because of the great regulatory impost that already exists for CSPs in Australia, which would only be further exacerbated by the Scheme.

We also note that the Discussion Paper does not discuss what would be involved in a licensing scheme versus a registration scheme. Nor does it provide any details about any fees that would be introduced for registration or licensing, if any. Given that a licensing scheme currently exists for carriers (**Carrier Licensing Scheme**), we assume that if CSPs are also made subject to a licensing scheme, the Carrier Licensing Scheme may be used as a model to replicate for CSPs. If our assumption is correct, we strongly oppose using the Carrier Licensing Scheme as the basis for how the CSP Scheme would operate. We do not believe the Carrier Licensing Scheme to be appropriate. In particular, the application process and the various fees associated with being deemed a carrier is very complex and unnecessary to address the issues raised with respect to CSPs as per the Discussion Paper.

Therefore, to the extent any Scheme is necessary, we recommend that it is designed to be very simple and practical, as will be further detailed in the below section.

DESIGN CONSIDERATIONS FOR A SCHEME

3. What information or assessments should be required at the point of registration?

As discussed above, we do not support a CSP Scheme replicating the Carrier Licensing Scheme for CSPs. In particular, we advocate for minimal 'assessments' to be conducted at the registration stage to grant an entity approval to become a CSP, as opposed to the assessment carried out under the Carrier Licensing Scheme. The carrier licence application process is quite complex, with entities often needing to seek legal assistance to make an application. Furthermore, we understand that there is often a long wait time before an entity is granted a licence as various regulatory and government bodies conduct checks or otherwise process the application, which causes great uncertainty and other commercial difficulties for entities during this process. Reiterating our above comments about the lack of resources of many CSPs, especially the smaller

¹ <https://www.roymorgan.com/findings/roy-morgan-trusted-brand-annual-awards-2023>.

telecommunications entities that IAA represents, subjecting entities to such an application and assessment process would be hugely detrimental to the industry, and therefore consumers who would be adversely affected by the lack of competition in the market due to the Scheme.

We consider that in addressing the issues raised in the Discussion Paper, the registration process should only require an entity's:

- legal and trading name;
- ABN/ACN (or international equivalent);
- contact information (or multiple contact fields to provide for public facing, and internal contact to receive outcome of registration);
- whether any executive or otherwise senior level personnel of the entity have been part of another CSP in the last 24 months and if so, the details of that CSP;
- whether any executive or otherwise senior level personnel of the entity are disqualified from managing corporations; and
- the carriage services that an entity provides.

This should be sufficient so that:

- end-users can verify that the entity they seek to receive services from are legitimate by accessing the public register;
- in the case that end-users have grievances about a CSP, they are able to bring complaints about that CSP, or the relevant responsible persons if a CSP is dissolved;
- phoenixing behaviour can be more closely regulated; and
- regulators are better able to enforce compliance.

4. *What other harmful activities could potentially be disrupted through registration?*

We have no comment on other harmful activities that could be addressed via a Scheme. However, we reiterate the importance of conducting enough research to sufficiently analyse the cost and benefits of introducing a Scheme to combat those harmful activities.

5. *Which CSPs should be required to register, and what are the advantages or disadvantages of different approaches?*

6. *How could a registration scheme best integrate with existing obligations and processes?*

7. *What processes could be used to ensure and maintain a rigorous list of CSPs?*

In addition to the above list of the information that should be provided at registration, we make the below recommendations as to how a CSP Register should operate to optimise the benefits of having such a Scheme for CSPs, instead of just introducing obligations.

- a) The Scheme should capture all CSPs;
- b) At registration, entities should simply provide the required information (set out above) and submit this information, ideally, via a webform;
- c) Based on the services selected by the entity, the entity should be advised of what 'categories' of CSPs or carriage services apply to that entity (e.g. eligible CSP, listed carriage services etc);
- d) The webform should also populate key pieces of relevant legislation and obligations that apply to those specific categories to assist CSPs in understanding and complying with their obligations;

- e) Once the ACMA receives the application, it should conduct, within a reasonable timeframe, the necessary checks to ensure the entity or persons involved are not known bad actors;
- f) If the ACMA is satisfied that the entity can be registered, its legal and trading name, ABN and contact details should be published on a public facing register so that consumers are able to access this information;
- g) If the ACMA is not satisfied that an entity can be registered, it should notify the entity of the grounds on which its registration was not accepted.
- h) Registered CSPs should be able to update any of the information provided via the webform, and:
 - o where changes include changes to the services provided, the CSP should again be advised of what specific categories they fall under and accordingly, the relevant legislation and obligations that apply; and
 - o other details such as name and contact details should be updated in the public register.
- i) The ACMA and/or other regulatory bodies could use the contact information provided to create and maintain a mailing list to send regulatory updates (for example, about the annual Communications Compliance Attestation)

We understand that for the purposes of the issues that this Scheme is intended to address, it may not be relevant or necessary to capture all CSPs. However, given the complexity of definitions of certain types of CSPs, it is not very clear or easy for industry to ascertain which CSPs are relevant.

We have provided as [Appendix 1](#), a spreadsheet compiled by one of our members that demonstrates the incredibly diverse types of services that a CSP may provide, which may attract different obligations according to each service type or category. We hope this will be of use for the Department in considering what services are relevant for the purposes of the Scheme.

Furthermore, even if it is not necessary to capture all CSPs, we believe that at least making it a voluntary exercise for all CSPs so that they can access the regulatory information could be helpful for such entities. This will ensure the Scheme integrates well with other existing obligations. For example, one of the regulatory information provided to CSPs could be about the TIO Scheme.

We believe the above approach would be a mutually beneficial way to ensure regulators have visibility over CSPs, while also actually assisting industry to comply with their obligations in what is a very convoluted regulatory landscape. In particular, we note that addressing non-compliance by CSPs is one of the primary issues that this Scheme is proposed to resolve. We believe that often, non-compliance in the industry is often framed in the lens of providers being negligent or wilfully non-compliant. However, it is our view that rather, the overly burdensome and complex nature of the regulatory landscape makes it difficult for CSPs to actually understand and comply with their obligations.

Indeed, we consider that respectfully, the constantly expanding and changing policy context makes it hard for even regulators to keep up. We note that the Carrier Licence Application Form (**Form**) managed by the ACMA requires updating, and reflects incorrect information. For example, under 'Compliance Information' in Section 6 of the Form, which sets out amongst other things, a carrier's obligations to comply with Part 14 of the Telecommunications Act, it does not include security obligations such as the asset registration and mandatory notification requirements that apply to carriers under the recent Telecommunications (Carrier License Conditions – Security Information) Declaration 2022. The telecommunications interception regime is also now administered by the Attorney-General's Department, as opposed to the Department of Home Affairs as is currently set out in the Form.

Therefore, we strongly believe that it is equally important to provide such assistance to CSPs, so that entities don't view compliance as only a tick-box exercise, but also derive genuine benefits. We believe the above approach could help achieve such a mutually beneficial outcome. This will then also boost the accuracy and rigour of the Scheme as CSPs are encouraged to update their information and engage with the register. Overall, we view the above process/system as a collaborative and symbiotic approach that will contribute to and improve the relationship and trust between industry, government and regulators, which in the interests of all stakeholders.

We also take this opportunity to propose an upgrade to the Carrier Licensing Scheme to adopt some of the above processes, noting some of the limitations of the Carrier Licensing Scheme discussed in this response. For example, operating via a webform instead of the current static document would make it easier for the ACMA to update information as and when needed.

APPROACHES TO EXCLUDING CSPs FROM THE MARKET

8. What factors should be considered before deregistering a CSP, and what alternatives should the ACMA consider?

9. How can deregistration be best leveraged to facilitate compliance and enforcement of existing regulatory obligations?

In general, we support the considerations provided in the Discussion Paper for threshold of deregistration, and the alternative actions the ACMA can take to address non-compliance.

We also believe another relevant consideration would be the insolvency or winding up of an entity. In certain circumstances, the bankruptcy of a Director may also be relevant, but only if it materially affects the CSP.

10. What transparency and review measures should be implemented?

Our understanding of the Carrier Licensing Scheme is that entities are not provided with timely nor sufficient information as to why their application was rejected. As mentioned above, entities should be promptly notified and provided clear and sufficient information as to why their registration was rejected, or in the case of deregistration, reasons for deregistration.

Entities should be given opportunity to dispute such grounds for rejection or deregistration. There should also be both internal and external review mechanisms that the entity can pursue. Furthermore, the ACMA should be subject to clear record keeping rules.

In the case of deregistration, we support the proposal in the Discussion Paper that such decisions should be published. Equally, any reversed decisions and re-registration should also be published.

Upon the implementation of the Scheme (if it is so introduced), an annual review should be conducted to identify areas of improvement to ensure the Scheme is robust, effective and efficient.

11. What would be the advantages or disadvantages of establishing a mechanism to remove CSPs with a history of non-compliance without also having a complementary registration scheme?

We agree that alternative measures could be established to ban entities or persons from providing carriage services without introducing a registration scheme. In such a case, we would strongly

recommend that the Department alongside the ACMA still maintain comprehensive guidance material to assist CSPs with their compliance obligations.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the CSP registration or licensing scheme. We are committed to ensuring a robust telecommunications industry that is to the benefit of all stakeholders. To that end, we look forward to continue working with the Department, regulatory bodies, industry, consumers and other stakeholders to ensure the development of an appropriate and effective regulatory framework.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

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Internet Association of Australia