



Submission by AAPT Limited (18 December 2013)

to

Minister for Communications

Deregulation: Initiatives in the Communications Sector



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Government's proposal to reform the Communications sector to reduce the regulatory burden for business and the community (**Deregulation Initiative**).
2. AAPT agrees with the sentiment that excessive or poor regulation can cause unintended consequences or unnecessarily add red tape, which can lead to reduced productivity and stifle economic growth. Accordingly, AAPT supports the Government's Deregulation Initiative.
3. In AAPT's view, for regulation to create benefits and reduce costs for society, it must be effective, transparent and to the extent possible, be simple. Proper regulatory reform can be achieved through a combination of regulation, deregulation and re-regulation. In this submission, AAPT focuses on "deregulation" to cut red tape and reduce unwarranted regulatory costs.
4. At Attachment 1, AAPT sets out its proposals for reform of areas which it considers can be implemented in the short term.
5. At Attachment 2, AAPT provides its high level views on the more involved and complex changes it wishes to see happen in the longer term to reduce the regulatory burden for business and the community.
6. At Attachment 3, AAPT sets out its comments on the Government's proposed framework for measuring and quantifying the costs of regulation.

Attachment 1

AAPT proposals for short-term deregulation reform

A TCP Code

		AAPT Response
1.	Description of relevant legislation	Communications Alliance C628:2012 Telecommunications Consumer Protections (TCP) Code
2.	Policy underlying regulation	The TCP Code is a code of conduct for the Telecommunications Industry in Australia. It protects residential and small business customers in the areas of sales, service and contracts, billing, credit and debt management, changing suppliers, and complaint handling. It applies to all Carriage Service Providers (CSPs) in Australia.
3.	Reasons regulation is no longer needed/could be amended	The TCP Code requires amendment because there is: (a) Duplication of privacy obligations - Among others things, the TCP Code regulates CSPs in the areas of privacy and information security. It therefore gives the ACMA jurisdiction in areas which are already sufficiently administered by the Privacy Commission. (b) Disproportionate burden on business service providers - The TCP Code is aimed at protecting residential and small business customers (i.e. consumers), yet service providers whose core business do not lie in the “consumer” market (business service providers) also get caught. This means the TCP Code compliance obligations and costs are overly burdensome on such business service providers like AAPT and are disproportionate to their share of the consumer market.
4.	Proposal to remove or amend (if amend, please described amendment)	(a) Remove duplication of privacy obligations - The TCP Code should be amended to remove the privacy and information security provisions to: <ul style="list-style-type: none"> ○ avoid duplication of the Privacy Act and ○ remove ACMA’s jurisdiction over matters that are already sufficiently administered by the Privacy Commission. (b) Carve-out business service providers - business service providers (whose revenue is primarily earned from its medium and large enterprise and

		government customer base) should be carved out from the application of the TCP Code. As a safeguard, an obligation can be placed on such exempted business service providers to inform any potential new residential and small business customers that they must waive the benefits of the TCP Code before they sign up to a service.
5.	What impact removal/amendment will have on industry	The proposed amendments would: (a) remove the duplication and overlap of jurisdiction between the ACMA and the Privacy Commissioner. This will simplify compliance processes, reduce associated administrative costs and promote efficiency for industry. (b) allow exempted business service providers to compete more effectively, without being unduly burdened with unwarranted, yet substantial compliance costs.
6.	What impact removal/amendment will have on consumers/individuals	The proposed amendments would not be detrimental to the interests of consumers, provided appropriate safeguards are implemented (as proposed above). The proposed changes will likely promote efficiency and competition, which is an important safeguard to consumers/individuals.

B TIO Scheme

		AAPT Response
1.	Description of relevant legislation	All carriers and eligible carriage service providers have a legal obligation under sections 128 and 132 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> to enter into a scheme providing for a Telecommunications Industry Ombudsman (TIO Scheme).
2.	Policy underlying regulation	The TIO Scheme enables an independent dispute resolution service for “small business and residential customers” who have a complaint about their telephone service.
3.	Reasons regulation is no longer needed/could be amended	The TIO has chosen to exercise its jurisdiction in a manner that is broader than originally intended under the TIO Scheme. For example, the TIO is applying provisions of the TCP Code as "best practice" to all

		<p>TIO complainants, notwithstanding that:</p> <p>(a) those complainants may not be caught by the TCP Code¹ (and thus imposing rules that are not required by any regulation); and</p> <p>(b) applying the TCP Code provisions arbitrarily (for example, by requiring that service providers respond to complaints that are "urgent" within 2 business days, being the timeframe specified in the code, but not requiring that such "urgent" complaints meet the definition of "urgent" set out in the code).</p> <p>Such application conflicts with the intent of the regulation, particularly in its application to business customers.</p> <p>In addition, the fee structure of the TIO is such that service providers have little choice but to settle with a consumer, purely on a cost/benefit analysis, despite clear contractual arrangements or factual circumstances to the contrary.</p>
4.	<p>Proposal to remove or amend (if amend, please described amendment)</p>	<p>In AAPT’s view, mandatory participation in the TIO scheme should be removed for service providers like AAPT who do not generally service the residential or small business market (i.e. consumer market). As a safeguard, non-participating service providers can be required to disclose to customers at the time of sign up that the service provider is not part of the TIO scheme.</p>
5.	<p>What impact removal/amendment will have on industry</p>	<p>The proposed carve-out will assist in preventing the use of the TIO scheme to aid the “gaming” of the TIO dispute process by so-called consumer businesses at the expense of clear contractual arrangements (both in terms of agreed service levels and dispute resolution).</p> <p>For example, in AAPT’s experience, some of its business customers can technically fall within the TCP Code definition² of “small business customers”, but are in reality commercially sophisticated. It can</p>

¹ Under the Telecommunications Consumer Protections Code C628:2012 (**TCP Code**), a business is a consumer if the acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the customer contract, it:

(i) does not have a genuine and reasonable opportunity to negotiate the terms of the customer contract; and

(ii) has or will have an annual spend with the Supplier which is, or is estimated on reasonable grounds by the Supplier to be, no greater than \$20,000.

The TCP Code definition can be broader than the TIO’s definition of when a small business is a consumer (i.e. when a small business has 20 full-time employees and 3,000,000 annual turnover).

² Ibid



		<p>be difficult for the service provider to prove such a customer did have a “genuine and reasonable opportunity to negotiate” if that customer chose to go on standard terms from the outset. As there is no reference to the size of the customer (only their annual spend), it is open for a large corporation to seek recourse from the TIO via a complaint under TCP Code.</p> <p>The proposed amendments will also allow business service providers like AAPT to be better able to streamline its internal processes and not be forced to implement cumbersome and expensive compliance procedures that only apply to a customer base that contributes only a small fraction to its revenue base.</p>
6.	<p>What impact removal/amendment will have on consumers/individuals</p>	<p>Business customers will be encouraged to more actively consider its contractual obligations at the time of sign up, and negotiate if necessary, rather than abusing the TIO process to achieve a desired outcome despite its agreed contract.</p>



Attachment 2

Below, AAPT provides its high level views on the more involved and complex changes it wishes to see happen in the longer term to reduce the regulatory burden for business and the community.

A. Restructure and simplification of the various industry licence fees, levies & charges, including any associated reporting requirements

In AAPT's view, the cost of operating in the industry is not only very high, it also places substantial administrative and operational burdens on service providers (e.g. the Eligible Revenue reporting requirement). This can be a barrier to entry and ultimately reduce competition and stifle growth.

For these reasons, there is a need to conduct a comprehensive review of the industry fees framework to determine what is fair and equitable in terms of the following:

- the types of licence fees, levies or charges that should be imposed on service providers and the bases for imposition;
- the amount of those licence fees, levies or charges; and
- the need for consolidation, restructure and simplification of the funding and payment arrangements that apply to the communications industry, including the relevance and necessity of associated reporting and provision of information requirements.

AAPT considers that existing industry levies/contributions need to be more equitable and reasonable. For example, the USO levy funding source should be broadened to include other participants beyond carriers (e.g. include Carriage Service Providers) to avoid it being a burden on only a small group of contributors. In addition, the USO levy funding should be based on eligible profit rather than based on current eligible revenue principles.



B. Review of the industry regulatory bodies and relevant legislation to ensure their powers and functions do not overlap

AAPT believes there is a need to review the powers and functions of each industry regulatory body (e.g. the ACMA, ACCC, Privacy Commissioner, TIO, TUSMA etc) to identify duplication of powers and functions. Some examples of overlapping jurisdictions include:

- ACMA and Privacy Commissioner – overlap on matters related to privacy and information security. The TIO may also have jurisdiction to handle disputes about privacy and information security via consumers complaints made under the TCP Code.
- ACMA and the TUSMA – is a separate Authority actually required to undertake tasks that were once administered by the ACMA?
- ACMA, ACCC and TIO – overlap on matters related to industry specific consumer protection.

C. Review monitoring and reporting requirements

There are a myriad of legislation and codes that require services providers to commit substantial resources to provide large amounts of information that is often duplicative to meet the various existing reporting requirements.

For example, there are a number of industry reports that require carriers and carriage service providers to submit information to government agencies. In many cases, there is an overlap in the data required, but slight differences in the requested format or delivery method means that effective streamlining of processes is not practicable resulting in considerable administrative costs to service providers. Accordingly, a thorough review of all monitoring and reporting requirements needs to be conducted to determine whether the requested information is actually necessary and whether



reporting requirements can be simplified and streamlined between government agencies.

D. Mandatory provision of information to customers

While AAPT understands the benefits of requiring service providers to provide important information to customers to allow them to make informed decision prior to signing up to a service, AAPT believes that the pendulum may have swung too far in this respect.

The numerous and overlapping mandatory customer information requirements have not only placed ever increasing administrative and compliance burdens on service providers, it is also likely lead to information fatigue for customers. This calls into question the effectiveness of existing customer information requirements in achieving the goal of informing customers. In some cases, AAPT has serious doubts about whether mandatory customer information requirements are actually necessary.

For example, the Telecommunications (International Mobile Roaming) Industry Standard 2013 is a very cumbersome piece of regulation which requires service providers to provide visibility downstream around international mobile roaming rates. In AAPT's view, there is no real consumer need, particularly in the business retail space, for exact international mobile roaming rates to be delivered at the time of arrival in a foreign country. Most consumers know that such rates are very expensive and most would either turn off the roaming function on their mobile or buy a prepaid local service. Yet the technical compliance costs involved with collating and delivering this information in real time is highly disproportionate to any perceived benefits that could be gained.



Attachment 3

AAPT considers that the proposed framework for measuring and quantifying the costs of “red tape” is reasonable and has no further comments.