

**COMMUNICATIONS  
ALLIANCE LTD**



## **COMMUNICATIONS ALLIANCE SUBMISSION**

### **POTENTIAL CREATION OF A DEFINITIVE REGISTER OF AUSTRALIAN CARRIAGE SERVICE PROVIDERS (CSPs)**

7 DECEMBER 2023

## **TABLE OF CONTENTS**

---

<b>1. INTRODUCTION</b>	<b>3</b>
<b>2. WHY A REGISTER?</b>	<b>3</b>
<b>3. DESIGN CONSIDERATIONS FOR A SCHEME</b>	<b>4</b>
<b>4. SCOPE OF CSPS REQUIRED TO REGISTER</b>	<b>5</b>
<b>5. INFORMATION REQUIREMENTS FOR REGISTRATION/PROCESS FOR RE-REGISTRATION</b>	<b>6</b>

## **ABOUT COMMUNICATIONS ALLIANCE**

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

## **1. INTRODUCTION**

Communications Alliance Ltd and its members welcome the opportunity to contribute to the ACMA's consultation on the potential creation of a definitive register of Australian Carriage Service Providers (CSPs)

There is a broad in-principle consensus among a range of stakeholders in favour of the creation of a comprehensive register. These include the ACCC, ACMA, CA, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA), the Telecommunications Industry Ombudsman (TIO) and the consumer representative body, ACCAN.

Various CSP registers currently exist, including:

- Communications Compliance's register of CSPs subject to the Telecommunications Consumer Protections Code (C628);
- CA's list of CSP members;
- Integrated Public Number Database (IPND) list of all CSPs that provide telecommunications services using public numbers;
- The ACMA's database of entities accessing numbers; and
- TIO membership register of CSPs supplying services to residential or small business customers.

None of these are comprehensive. Elements of the TIO database are outdated and/or inaccurate. The IPND CSP database is arguably the most complete list of CSPs as all CSPs are obliged to provide data to the IPND for services they supply using a public number. However, not all CSPs supply services using a public number (e.g.; broadband services). NBN also has a list of Retail Service Providers using its infrastructure, however given that there are other fibre optic backbone networks only the wholesale networks owners have details of those CSPs.

## **2. WHY A REGISTER?**

CA agrees with the observation by DITRDCA in its September 2023 discussion paper that the absence of a comprehensive register hampers the ACMA's efforts to proactively educate CSPs about their obligations and target compliance and enforcement activity.

### 3. DESIGN CONSIDERATIONS FOR A SCHEME

CA agrees with DITRDC's view that any new register should be guided by the desire to achieve a 'Light Touch Approach', while consolidating, to the extent practicable, the range of existing, non-exhaustive registers. Such consolidation could help limit the cost to service providers – and ultimately to consumers – of maintaining an accurate presence on a multitude of different databases/registers.

We are also in broad agreement with most of the suggested key features outlined in the discussion paper, i.e. that a register should:

- Maintain an appropriate low barrier to entry into the telecommunications retail market. Including minimal impost and cost for CSPs to register.
- Integrate with existing requirements to the extent possible, for example, joining the TIO Scheme and/or registering with the IPND Manager (where applicable).
- Not create new rules for dealing with customers.
- Include appropriate transparency, appeal and review mechanisms.
- Allow the ACMA to deregister CSPs (or possibly refuse registration) in limited circumstances:
  - to disrupt 'phoenixing' activity; and
  - in response to repeated or egregious failures to meet regulatory obligations.
- Provide that deregistration is only considered a last resort and appropriate plans are in place for any customers being supplied services by that CSP to ensure that they are not harmed by deregistration. (The use of monetary penalties as an alternative to deregistration might also warrant further consideration, in industry's view. In any event, industry agrees that the requirement for a CSP to qualify for and be on the register should be sufficiently robust to act as a deterrent to poor practices by any CSP.)
- Create a more exhaustive list of CSPs.

We are not, however, supportive of creating an obligation on carriers and wholesale CSPs to periodically validate registration of CSPs with which they engage.

Industry believes that such a requirement would add considerable cost and complexity to the provision of wholesale services, and potentially place Carriers and wholesale CSPs in an invidious position if they face responsibility for checking the veracity of statements from wholesale customers and/or the registration of those customers.

Rather, the ACMA should be responsible for:

- setting up registration arrangements and maintaining the publicly available register;
- promoting the existence of the register and its requirements (industry and other stakeholders could provide a supporting role in this task); and
- ensuring the accuracy and public availability of the register and transparency as to the identity of operators supplying retail carriage services.
- managing deregistration arrangements and maintaining a publicly available register of CSPs that have been deregistered – either at their own instigation or due to action by the regulator (and if the latter, the reason the regulator chose to deregister).
- 

In addition, we submit that:

- The register and compliance with it be managed with a focus on outcomes for consumers, rather than a focus on inadvertent or minor/technical non-compliance where this does not generate customer harm;
- CSPs should be given an opportunity and a reasonable timeframe to rectify non-compliant actions, where these are not part of a persistent or egregious pattern of non-compliance; and
- The effectiveness of the register should be reviewed after the initial two-year period of operation, including via consultation with industry.

It is not agreed that, as contemplated in the discussion paper, limiting unregistered CSPs from exercising their contractual rights with Carriers could/should form part of the ACMA's method of compelling CSPs to join the register.

Although regulators have spoken in the past about their fears of seeing the emergence of 'hordes of rogue operators', we believe that this type of behaviour is rare.

More often, non-compliance arises because some smaller operators are not aware of the full suite of compliance obligations and/or struggle to comply with an ever-increasing set of often complicated regulatory requirements. The ACMA could assist with uplifting awareness by providing updated educational resources that provide insight into the critical regulatory obligations. For example, the ACMA could create an updated version of a document like its previous "carrier licensing guide" for CSPs<sup>1</sup>.

Recent audit activity associated with identification of entities needing to register as a CSP with the IPND Manager found that many CSPs did not understand that their activities made them a CSP and did not understand the consequential regulatory compliance impacts.

We also do not support the creation of a licensing scheme. Industry does not believe that the case has yet been made for formal licensing in the CSP space.

A register could, as the discussion paper points out, provide deregistration of CSPs by the ACMA to occur. Industry supports such an approach subject to the design principles above that:

- ACMA use its other powers such as monetary penalties as an alternative to deregistration;
- deregistration is only considered a tool of 'last resort' in response to egregious and repeated non-compliance;
- there are fair and adequate avenues for appeal and review for CSPs that may be at risk of deregistration; and
- there is consideration of the impacts on the customers of that CSP and that the action of deregistration has no deleterious effect on the customers of that CSP having ongoing use of a telecommunications service.

## **4. SCOPE OF CSPs REQUIRED TO REGISTER**

The discussion paper questions how to define an "eligible CSP" for the purposes of the register – i.e. whether via use of an existing definition, or another definition.

The definition used in s137 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 would seem to provide a generally useable definition, although stakeholders would almost certainly wish to review the adequacy of the existing descriptions of eligible services within that definition.

That definition does have at least one clear shortcoming, in that it does not define "end-user". This should be clarified, to specify that "end-user" does not include wholesale customers/ enterprise customers. We note the Government has proposed to update the Statutory Infrastructure Provider (SIP) legislation to require CSPs to nominate as SIPs in certain circumstances. Should this be implemented, if a CSP is a SIP for a service area, and is also supplying services direct to end-users, then that CSP would be covered by both the SIP register and a CSP register.

For clarity, a CSP who supplies services directly to end-users and also to wholesale customers would be within scope of a CSP register insofar as the supply of services directly to end-users is concerned. But a CSP who supplies services to only wholesale customers/ enterprise customers will not be in the scope of CSP Register.

---

<sup>1</sup> ACMA Carrier Licensing Guide 2019 <https://www.acma.gov.au/sites/default/files/2019-11/Carrier%20licensing%20guide.pdf>

## 5. INFORMATION REQUIREMENTS FOR REGISTRATION/PROCESS FOR RE-REGISTRATION

We recommend that both Communications Compliance and CA be consulted on the design of the registration forms, as both entities have experience in this area.

Requiring information about whether a CSP's directors have been associated with breaches of other existing safeguards (e.g. in other sectors) and/or are on the list of persons disqualified by the ACCC or ASIC from managing corporations – as contemplated in the discussion paper, would appear to be a sensible proposal.

The priority should be to ensure that the process is aligned to existing registers, using the example of the IPND Register and leveraging off the existing obligations, facilitating a low-cost, single touch process, maintaining simplicity of market entry.

One example is the process used in Canada, as raised in the discussion paper, where it is free to register with the CRTC <https://crtc.gc.ca/eng/comm/telecom/registr.htm>

The registration scheme should be a one-time upfront registration, where there is no requirement for regular renewal or other future action from CSPs. i.e a one-time registration that continues until CSPs notifies to deregister (if ever). A regular renewal requirement would place an unnecessary administrative burden on providers with no material further benefit for consumers.

Industry does not support the further suggestion in the discussion paper that pre-registration assessments should be made as to the organisation and technical capacity of, and financial resources available to CSPs seeking registration. Such a process would inevitably add cost to the process for both CSPs and the ACMA, raise barriers to entry, and thereby likely limiting competition. Industry is very concerned that such assessments would lead to complex and subjective judgments needing to be made.

Any scheme that involves the possibility of de-registration should also address the requirements for re-registration. There should be a process for a CSP to address their removal from the register and a process to re-register. CSPs should not be permanently excluded from the industry. This submission does not offer specific proposals as to re-registration, but industry requests that this be further discussed with the ACMA as part of the register design process.



Published by:  
**COMMUNICATIONS  
ALLIANCE LTD**

Level 12  
75 Miller Street  
North Sydney  
NSW 2060 Australia

Correspondence  
PO Box 444  
Milsons Point  
NSW 1565

T 61 2 9959 9111  
F 61 2 9954 6136  
E [info@commsalliance.com.au](mailto:info@commsalliance.com.au)  
[www.commsalliance.com.au](http://www.commsalliance.com.au)  
ABN 56 078 026 507