COMMUNICATIONS ALLIANCE LTD

COMMUNICATIONS ALLIANCE SUBMISSION

in response to the
Exposure Draft of the

Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022

(Schedule 3: Disclosure of Information)

4 October 2022

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INTRODUCTION

Communications Alliance welcomes the opportunity to make this submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Department), in response to the consultation of the Exposure Draft (Draft) of *Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022* (Bill).

We are grateful for the Department's willingness to grant us a short extension to the original response deadline, taking into account the challenges posed by public and other holidays at this time, and other resource-consuming events in the industry at present.

This submission does not address the entirety of the Draft. Rather, if focuses on Schedule 3 of the Draft – **Disclosure of Information**

For any questions relating to this submission please contact [redacted]

About Communications Alliance

Communications Alliance is the primary communications 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, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see http://www.commsalliance.com.au.

1 EXECUTIVE SUMMARY

1.1 Communications Alliance and its members support wholeheartedly the objective of ensuring that telecommunications consumers and business customers are afforded the benefit of transparency about the performance of the Carriers and Carriage Service Providers (C/CSPs) operating in the Australian marketplace, as a means of assisting those customers to make informed decisions as to their preferred provider(s).

1.2 An examination of the amendments proposed by the Draft to the Australian Communications and Media Authority Act 2005 does, however, raise a number of questions, in our view, regarding:

- clarity as to how some of the new powers will be exercised and the extent to which there will be boundaries and safeguards placed around them; (issues that we hope will become clearer once industry has had an opportunity to consult with the Department in relation to the draft Explanatory Memorandum, that is yet to be released);
- whether any or all of the proposed new powers for the ACMA are necessary, given the mechanisms already in place via industry initiatives, regulatory agencies, the Telecommunications Industry Ombudsman (TIO) and Government that can already provide salient comparative performance data; and
- whether some aspects of the amendments, as currently framed, will actually be counterproductive, because they risk creating contention and confusion over the consistency and comparability of the data that is already collected by the ACMA (e.g., re volumes of complaints made to C/CSPs) and which is currently published on an aggregated basis (as was always the intention when agreement was made to provide such data to the regulator). There is a risk, therefore, that the 'noise' that may be generated by contentious or inconsistent releases of public information by the ACMA will distract customers from the existing comparative tools in the marketplace (also see further below) and leave them less well-placed to understand the relative performance of different providers.

1.3 This submission also seeks confirmation that the amendments proposed by the Draft will be subject to a Regulation Impact Statement (RIS) that is scrutinised by the Government's Office of Best Practice Regulation (OBPR) – in line with the Government's commitment to pursue best-practice regulation and in order to seek to ascertain whether – or not – the proposed amendments will generate a net-benefit. (Also refer to our comments further below.)

1.4 Finally, as referenced above, we seek confirmation that industry will be given the opportunity to consult with Government in relation to the draft Explanatory Memorandum, which we expect will be, as typically, a very important ancillary tool for all stakeholders if the amendments, in whatever form, become law.

2 RATIONALE/JUSTIFICATION FOR THE PROPOSED AMENDMENTS

2.1 The impetus for the proposed Schedule 3 elements of the Draft came from the Australian Communications Consumer Action Network (ACCAN) during a forum earlier in 2022. The assertion was that there needed to be greater transparency around the performance of individual C/CSPs.

2.2 The Department was tasked to examine the question – centred around the authority of the ACMA to report the data it received from C/CSPs in a provider-specific format, as opposed to the aggregated – whole-of-industry-based – the reporting which was the basis on which the industry had provided the ACMA access to data about a range of performance parameters, including the number of 'complaints' being received by

customers of the C/CSP (as opposed to the publicly reported volume of complaints being received by the TIO).

2.3 The two key questions to address in relation to this are:

- is there sufficient transparency today?; and
- if not, how should it be improved?

2.4 Communications Alliance supports the overall objective of transparent performance reporting. Transparency promotes competition and facilitates better customer experience, by enabling customers to make better-informed choices about which provider they choose to interact with.

2.5 It is unclear to us, however, as to whether:

- there is a supportable rationale or need for these new powers; and
- whether the amendments proposed would help consumers or, in fact, make the situation less transparent.

2.6 There is already numerous other mechanisms available and used by the ACMA, industry and other regulators – and published information from TIO. The following examples are relevant.

- The ACMA already names C/CSPs as an outcome of its investigations and publishes aggregated industry data on financial hardship metrics in its **State of play report** and **quarterly complaints data** – as well as in its **Annual Report** – as provided for under **s308 of the *Telecommunications Act 1997***. These publications typically garner significant mainstream, social and industry media coverage and are available on the ACMA website. The ACMA also already names C/CSPs in outcomes of its investigations in media releases
- The TIO also publishes C/CSP complaints data annually, including the rankings and complaint volumes of the ten C/CSPs that have generated the most complaints during the relevant reporting period.
- The ACCC publishes detailed data on a quarterly basis about the broadband speed and quality performance of the major Internet Service Providers (ISPs) in Australia. This is an initiative funded by industry at a significant expense.
- The ACCC also publishes details on enforcement action it has taken in its annual Communications market report as well as in its media releases.
- **Communications Alliance** in 2014 initiated a highly relevant program (in cooperation with the TIO) known as the **Complaints-in-Context (CiC)index**. This quarterly report uses complaints data provided by the TIO, and services-in-operation (SIO) numbers provided by each participating C/CSP, to calculate the ratio of complaints received by each C/CSP per 10,000 SIO. Participants include the 10 C/CSP with the highest number of new (level 1) complaints recorded against them by the TIO in the previous financial year (these participants are bound to participate under the Telecommunications Consumer Protection (TCP) Code), plus any C/CSP that wishes to voluntarily participate for the full year. The CiC not only offers to customers, for the first time, the opportunity to equitably compare the performance of C/CSPs, whether they are large or smaller.
- **S309 of the *Telecommunications Act 1997*** gives the Information Commissioner powers to monitor the compliance of providers and to report the outcomes of such monitoring to the Minister.

2.7 We believe, therefore that it is infeasible to argue that:

- the Minister cannot be fully informed of the performance of C/CSPs, nor that:

- consumers cannot already gain a fair assessment of the relative performance of a C/CSP from which they are already purchasing services, or from which they are considering services with which they are considering buying services.

2.8 The key questions then become, whether the proposed amendments in the Draft would:

- enhance the customer's ability in this respect; or
- add little or no value; or
- actually make the situation less transparent, more difficult or more confusing for the customer.

3 WHY THE PROPOSED AMENDMENTS MAY DO MORE HARM THAN GOOD

3.1 As those in Government, regulators and industry know, there is an active and unresolved debate about the definition of what constitutes, from a customer, a 'complaint'.

3.2 Industry has heard from various regulatory stakeholders and from others in Government circles, the assertion that any contact from a customer that that contains an expression of discontent, automatically qualifies as a complaint.

3.3 Those in industry, who deal daily with hundreds of thousands of customer interactions have, in our view, a more nuanced and experienced-based view of what a 'complaint' actually is – or is not.

3.4 It is clear to our industry that not every interaction during which the customer may express some dissatisfaction but can be assisted and leaves the interaction content, is in fact a complaint. Consider, for example, interactions where the customer has committed a 'rookie error' (such as not having switched on the device/power). Or as recently happened to Communications Alliance staff, a non-C/CSP device suddenly failed to interconnect with the provider's modem after an automatic software update of that device, leaving the staff without internet connectivity but without failure of the C/CSP. The staff may have expressed a degree of dissatisfaction, but certainly would not want the interaction classified as a complaint, given the issue was not a C/CSP failure but was efficiently remedied by the C/CSP.

3.5 According to the opinions we have heard from some regulatory heads and other stakeholders, the preceding examples should constitute complaints, because there was an initial customer expression of discontent.

3.6 In industry's view, and we would expect that in the view of most fair-minded customers, – those are not instances that ought to be categorised as complaints.

3.7 The issue we are pointing to here is that, currently, the ACMA collects data from C/CSPs about the number of direct, 'first contact' complaints that they receive. (These are separate to any complaints received by or escalated to the TIO.). However, as the ACMA is aware, the data can be problematic.

3.8 The data as currently provided to the ACMA by C/CSPs – and intended for use in a deidentified and aggregate basis – is not homogeneous and certainly not suitable for comparison amongst each other.

3.9 Some providers take a slightly different view as to whether a contact a from a customer is a:

- question;
- technical query, or request for service clarification;

- request for service assistance;
- billing query; or
- an actual complaint

3.10 The number of complaints C/CSPs receive may also not only depend on the quality of customer service they provide but also the number of avenues made available to complain, whether or not the C/CSP actively encourages customers to 'complain' and other factors.

3.11 In industry's view it would be ill-advised to proceed with the amendments as proposed, as it would enable the ACMA to publish individualised, C/CSP-specific data, without being able to credibly say that it is directly comparable. We are mindful of creating such powers on the basis of assertions of how they would be used or ought to be used, given that with the passage of time and change of key personnel, policy directions etc. those assertions may become lost.

3.12 To do so would risk creating confusion, intense debate about whether C/CSP-specific data was 'fair' in a reputational sense, compared to the data published about other C/CSPs.

3.13 The ACMA would be left in the invidious position of not being able to credibly defend the comparability or integrity of the data it had published.

3.14 Compounding the problem is the reality that publication of 'comparative' information that is not, in fact, comparable, will, nonetheless, guide customer choices and thereby distort the smooth and free operation of the market.

3.15 C/CSPs will feel they have little choice, other than to focus on their performance against the metrics that the ACMA chooses to publish. This will artificially narrow the field of competition and will tend to drive C/CSP behaviour toward achieving 'better-looking performance' rather than actually improving service delivery.

3.16 In all likelihood, the ACMA will want to drive the data it collects towards greater comparability by imposing common definitions and additional rules across the industry, which in turn will force C/CSP operating models into a single mould from which they dare not diverge, thus restricting competition and innovation on customer service delivery. Customers with specific needs and preferences may find themselves unable to source the service offerings they want, as the service provision model becomes more 'vanilla' across the sector.

3.17 The proposed powers are not subject to any procedural protections, unlike the ACCC's record keeping powers, which list criteria the ACCC must consider before choosing to publish information, and require consultation with a C/CSP whose data they want to publish before it is published. At a minimum the ACMA should be required to consult with the C/CSPs whose data it wants to publish at an individual level.

3.18 Overall, the proposed amendments would likely mean that consumers would be disadvantaged, in comparison to where they stand today.

4 WE NEED A RIS

4.1 We believe that the proposed amendment ought to be subject to a RIS in order to be subject to independent scrutiny as to whether the proposed changes generate a net benefit. We believe that an 'independent self-certification equivalent to a RIS' (as is

often used by some Departments) is more at risk of a lack of genuine independent assessment and generally ought not be permitted.

4.2 While the ACMA already has powers to request information from C/CSPs under s521, we are mindful that the proposed powers to publish certain information may increase the number of requests substantially, thereby increasing costs to industry.

4.3 However, and more importantly as highlighted above, we believe that the anticipated benefits may not materialise, or in fact, turn out not to be benefits at all and ought to be formally recorded as risks or costs in a RIS.

5 CONCLUSION

5.1 We believe that the proposed Schedule 3 Amendments of the Draft should be deleted, in order to provide time for a more complete examination of that, if any, action is needed.

5.2 Industry would be very pleased to engage with the Minister's Office, the Department, consumer representatives and other stakeholders as to how we can cooperatively engage to further enhance performance transparency in meaningful ways, to the benefit of consumers.

5.3 We believe the amendments in the Exposure Draft, as they presently stand, are poorly based and – if enacted – will become a source of contention for involved stakeholders and confusion for consumers who will likely be disadvantaged as a result.

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