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CONSUMER REPRESENTATION: REVIEW OF SECTION 593 OF THE TELECOMMUNICATIONS ACT 1997

Thank you for the opportunity to make a submission concerning the review of section 593 of the *Telecommunications Act 1997* (the Act). This submission addresses the following two questions posed in the Issues Paper:

1. Should Government continue to fund a consumer body for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues?
2. Is a telecommunications specific consumer representative body funded by Government required; or could a telecommunications representation function be carried out by a general consumer body?

I am a lecturer at the School of Law of the University of New England. My submission is informed by the research I carried out for my PhD that was recently awarded by the University of New South Wales (UNSW). My thesis, for which I will receive the UNSW Faculty of Law's PhD Excellence Award later this year, involved an in-depth study of the legitimacy and responsiveness of industry rule-making in accordance with Part 6 of the Act. The three case studies that formed the heart of my thesis concerned the development of three consumer codes of practice formulated by working committees of the Communications Alliance: the Consumer Contracts code, drafted between May and December 2004; the Information on Accessibility Features for Telephone Equipment code, developed between April 2004 and November 2005; and the Mobile Premium Services code, written between April 2008 and March 2009. These codes were developed before ACCAN was established. Nevertheless, my research findings are relevant to each of the two questions listed above.

Question 1

First, my research suggests that it is entirely appropriate and, indeed necessary, for Government to continue to fund a consumer body for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues. Moreover, it suggests that participation by such a consumer body in working committees of the Communications Alliance is essential if Government wishes to ensure that the process of Part 6 rulemaking remains legitimate and responsive.

In the case studies, funded consumer organisations served three important functions that contributed to the legitimacy and responsiveness of the code development process. First, along with other interested parties, funded consumer organisations challenged industry. They applied pressure to industry participants to provide reasons for their conduct. They coaxed industry to

think through the actions it proposed to take in order to address the underlying regulatory problems. Secondly, they kept relevant regulatory bodies and Ministers 'honest'. They pushed regulatory bodies and Ministers to ask questions of and demand possible solutions from industry. The pressure from regulatory bodies and Ministers contributed to industry's willingness to listen to and consider the concerns of consumer organisations. Thirdly, the involvement of consumer organisations triggered industry engagement in rule-making. In one case study, consumer organisations participated throughout the rule-making process, but an important sub-sector of the industry declined to become involved early on. Following publication of a draft code of conduct that was perceived to be too responsive to the norms of consumer representatives, this industry sub-sector became actively involved. In this instance, fear of consumer organisations created a powerful incentive to participate and formulate a possible solution to the underlying regulatory problem.

I am not suggesting that participation by funded consumer organisations was the sole factor that led to legitimate and responsive rule-making processes. Indeed, I concluded in my doctoral thesis that the Part 6 process was legitimate and responsive due to the complex interplay between a range of factors between and among the different actors involved in the process, the wider context in which rule-making occurred, the principles of representativeness and consensus embodied in the rule-making framework of the Communications Alliance; and the subject matter of the rules drafted by its working committees. However, the involvement of funded consumer organisations in each of the case studies was a significant contributing factor, and the Part 6 processes would not have been legitimate and responsive had these consumer organisations not participated.

It is important to add that public consultation (at least in the form it took in the three case studies) should not be seen as a substitute for participation by funded consumer organisations in the Part 6 process. In the case studies, in order to contribute meaningfully to the debate, consumer and public interest organisations needed to be educated about the relevant sectors of the industry and their specific practices. Participation in the rule-making process provided that education, giving these organisations the opportunity to think through how consumer and public interests could be addressed in the specific — and often complex — market circumstances. Public consultation permitted members of the public to make contributions to the process, and industry responded in writing to these submissions. However, educating the wider public, thereby allowing its members to make informed contributions to the debate, was not a focus of public consultation. Even more importantly, public consultation did not provide members of the public with an opportunity to scrutinise industry's responses.

Question 2

My research also suggests that it would be much more difficult for a general consumer body to perform each of the three functions (described above) that funded consumer organisations served. Many of the consumer organisations involved in the development of the three consumer codes I studied were telecommunications-specific. They already had some understanding of the complex and continuously evolving telecommunications industry. Industry participants involved in the process often had to supplement the understanding of the representatives from these telecommunications-specific consumer bodies by explaining in detail specific industry practices and their commercial rationales. However, these representatives had a sufficient amount of knowledge about the industry such that they could contribute from the outset to the robust debate in a way that is characteristic of legitimate and responsive industry rule-making. Employees of a general consumer body are unlikely to have the required level of industry knowledge. In addition, if a general consumer body were involved, industry would have to spend even more time educating consumer representatives that served on working committees.

Inevitably, the rulemaking processes of the Communications Alliance, which are already thought by some to take too long, will be prolonged.

For the purposes of this submission, I have only briefly summarised the main points of my thesis, but I would be happy to expand on any of the matters raised in my submission if this would be helpful. I can be contacted via email at [REDACTED] or by phone on [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karen Lee', written in a cursive style.

Dr Karen Lee
Lecturer