



**Australian
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Chairman

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Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dunstone

Inquiry into comprehensive revision of the *Telecommunications (Interception and Access) Act 1979*

Thank you for inviting the Australian Communications and Media Authority (the **ACMA**) to contribute to the inquiry into the comprehensive revision of the *Telecommunications (Interception and Access) Act 1979* (the **TIA Act**) by the Senate Legal and Constitutional Affairs References Committee (the **Inquiry**).

The ACMA has consistently and publicly drawn attention to its view that legislation in the communications landscape has been falling behind developments in technology and the telecommunications industry, and supports the need for legislative reform to address these pressures (see *Broken Concepts – A 2013 update on the Australian communications legislative landscape* <http://www.acma.gov.au/theACMA/About/The-ACMA-story/Connected-regulation/broken-concepts>).

The ACMA's role under the TIA Act is largely confined to enforcing industry compliance with Chapter 5 of the TIA Act. The ACMA has limited its comments to clarifying the options available to it to enforce compliance with the TIA Act and has situated these, for your information, within the ACMA's general approach to enforcement.

The ACMA regulates carriers and carriage service providers under the *Telecommunications Act 1997*. Compliance with Chapter 5 of the TIA Act is a standard carrier licence condition for carriers¹ and a standard service provider rule for carriage service providers.² While the Parliamentary Joint Committee on Intelligence and Security *Inquiry into the potential reforms of Australia's National Security Legislation* report, dated May 2013, focuses on the power the ACMA has to take court action, the ACMA has a range of other available enforcement mechanisms.

Where there has been a breach of a standard carrier licence condition or a standard service provider rule as a consequence of a contravention of Chapter 5 of the TIA Act, the ACMA's enforcement options include:

- giving a remedial direction to a carrier³ or carriage service provider⁴ requiring the carrier or carriage service provider to take specified action directed toward ensuring that, in the case of a carrier, it does not contravene or will not contravene a carrier licence condition, and, in the case of a carriage service provider, that it does not contravene or will not contravene a service provider rule
- giving a formal warning to a carrier⁵ or carriage service provider⁶
- issuing an infringement notice to a carriage service provider if the alleged breach involves a breach of subsections 197(1) or (3) of the TIA Act⁷
- accepting an enforceable undertaking under section 572B of the Telecommunications Act with respect to compliance with that Act

- commencing civil penalty proceedings in the Federal Court under Part 31 of the Telecommunications Act
- seeking an injunction in the Federal Court under Part 30 for an alleged contravention of the Telecommunications Act.

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The ACMA adopts a graduated and strategic risk-based approach to all its compliance and enforcement activities. This approach recognises the importance of engaging with the regulated community to obtain, to the greatest extent possible, voluntary compliance. The ACMA's approach is to take action that is commensurate with the seriousness of the conduct, which would include consideration of the consequences of the conduct and any detriment or damage caused.

The ACMA looks forward to the release of the report of the Committee in June 2014.

Yours sincerely

Chris Chapman
Chairman

Endnotes

- 1 Clause 1 of Schedule 1 to the Telecommunications Act provides that a standard carrier licence condition includes a requirement for a carrier to comply with the Telecommunications Act and Chapter 5 of the TIA Act
- 2 Clause 1 of Schedule 2 to the Telecommunications Act provides that a standard service provider rule includes a requirement for a service provider to comply with the Telecommunications Act and Chapter 5 of the TIA Act
- 3 Section 69 of the Telecommunications Act
- 4 Section 102 of the Telecommunications Act
- 5 Section 70 of the Telecommunications Act
- 6 Section 103 of the Telecommunications Act
- 7 These provisions being listed infringement notice provisions, see the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*