

I note that your reporting deadline has been extended. We had assumed it was too late for us to make a submission, but if this is not the case, please accept the following brief but heartfelt submission from the Australian Privacy Foundation.

Please note that as an all volunteer, unfunded NGO, we are stretched to breaking point by the number of important enquiries and reviews in which we have a potential interest. The brevity of this submission no way detracts from its importance from our perspective.

Failure of telecommunications regulatory regime to protect consumer interests.

We have a long history of involvement in telecommunications regulation – we have been represented continuously on ACIF working committees since 1998, and have made many submissions to ACA (now ACMA) and government enquiries. See our web site at <http://www.privacy.org.au/Papers/indexPolicies.html> for papers listed under telecommunications.

Our main criticism of the regulatory regime is that it relies far too heavily on self-regulation. While some useful Codes and Guidelines have emerged from ACIF, the ACIF processes have been cynically manipulated by industry participants to delay and avoid effective regulation. The processes also stretch and exhaust the limited resources of relevant consumer NGOs such as CTN and APF. Many industry participants have even failed to sign up to Codes they have been involved in drafting. The ACA and the Department have been far too reluctant to step in even when self regulatory processes have manifestly failed, and when they have done so (as in the recent case of the IPND Code/Standard), they have been painfully slow.

ACA has also been unwilling or unable to respond effectively to proven cases of consumer detriment and policy failures – one example is the finding in 2003 that some carriers had unlawfully provided CLI information to ISPs, but that nothing would be done about it. This issue is now proceeding (very slowly) as a representative complaint to the Privacy Commissioner, and as a complaint to the Ombudsman about ACA's inaction. ACA has also declined to accept any consumer/privacy input to its Law Enforcement Advisory Committee (LEAC) – even refusing to admit the Privacy Commissioner to its meetings.

If requested, we could give many other examples of the failure of the regime in practice over the entire period since the 1997 Act (and before). But our overall conclusion is that the regime is irretrievably broken.

Please let us know if we can provide further input.

Nigel Waters, Board Member and Policy Coordinator
Australian Privacy Foundation
G.P.O. Box 1196, Sydney NSW 2001
APF Web site: <http://www.privacy.org.au>
