

**COMMUNICATIONS
ALLIANCE LTD**



**PERFORMANCE BENCHMARKING OF
AUSTRALIAN BUSINESS REGULATION STUDY**

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1 INTRODUCTION

Communications Alliance is pleased to have this opportunity to make a submission to the Performance Benchmarking of Australian Business Regulation study. This submission follows on from the submission made to the Regulation Taskforce in October 2006 and the earlier submission to the Taskforce's report on Reducing Regulatory Burdens on Business, made by the Australian Communications Industry Forum (ACIF) in November 2005.

Communications Alliance Ltd is the result of a merger between the Australian Communications Industry Forum and the Service Providers Association Inc. which took place in September 2006. The vision of the new entity is to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups.

The Communications Industry, as represented by the Communications Alliance membership, has a significant impact on consumer and business activity and the general economy. Telecommunication services are fundamental inputs into the operations of nearly all consumer and business activities.

This fact has been recently affirmed in an independent study conducted on behalf of the Australian Government by the Australian Communications and Media Authority [ACMA] which examined benefits flowing from reforms to Australia's telecommunications sector, found, inter alia, :-

- implied consumer benefits of around \$1.9 billion in 2005-06 due to changes in telecommunications services during the year.
- increased productivity and reduced inputs generated implied net benefits to small business of around \$444 million in 2005-06.
- during 2005-06, the additional production in the Australian economy flowing from effects from the 1997 reforms and subsequent developments, over and above those already embedded in the economy at the end of 04-05, was worth around \$2.5 billion.
- impact of telecommunications services on employment growth in 2005-06 is estimated to have been the equivalent of an extra 17,550 jobs across the Australian economy.
- nearly all economic sectors in all jurisdictions showed increases in output with a pronounced increase in those service sectors that made substantial use of telecommunications.¹

The purpose of this study is to present the concerns of the Australian communications industry to the Taskforce regarding regulatory burden in the industry. In its examination of the discussion draft Communications Alliance has identified areas which it perceives to be 'gaps' in the study in terms of communications industry specific issues and seeks to make suggestions about how these issues could be incorporated into later stages of the study.

¹ Chapter 10 ACMA Communications Report 2005-06

1.1 Background

The Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne was commissioned “to assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business.”²

COAG met on 10 February 2006 and agreed that all governments would:

- establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition;
- undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community;
- identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies; and
- in-principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden.³

At this time COAG also agreed “to address six priority cross-jurisdictional ‘hot spot’ areas where overlapping and inconsistent regimes are impeding economic activity”.⁴ In its discussion draft the Productivity Commission (PC) states that benchmarking the ‘hot spots’ will provide a sensible starting point for achieving its overall goal of reducing regulatory burden. These ‘hot spots’ have been identified as follows:

- rail safety regulation;
- occupational health and safety;
- national trade measurement;
- chemicals and plastics;
- development assessment arrangements; and
- building regulation.⁵

It is important to note that although some of the more generic hot spots (for example OHS) do affect our constituency, the overall list identified by COAG does not encompass the regulatory burdens imposed on the industries of our broad member base.

In light of this, Communications Alliance’s attention centres on the more generic aims of the study which focus on benchmarking opportunities, including:

² P.III Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne

³ P8: Council of Australian Governments’ Meeting 10 February 2006, Communiqué

⁴ P8: Council of Australian Governments’ Meeting 10 February 2006, Communiqué

⁵ P8: Council of Australian Governments’ Meeting 10 February 2006, Communiqué

- comparing regulatory compliance costs;
- measuring changes to the quantity of regulation over time; and
- examining the quality of regulation against 'best practice' principles.⁶

Communications Alliance believes that these measures have greater bearing on the telecommunications industry and correlate to the areas of concern identified by members in submissions made to the Taskforce on Reducing Regulatory Burdens on Business, in November 2005.

In Communications Alliance's November 2005 submission, it referenced the submissions made by Optus, Telstra and Vodafone to the study and at that time presented the main areas of concern our members had identified to the Taskforce. We would like to reiterate these concerns and ask that the Taskforce distinctly recognise and consider the onerous regulatory burden in the telecommunications industry in the next stage of its study.

By reducing the regulatory burden on the telecommunications sector, Communications Alliance is firmly of the view that significant and measurable cost reductions and operational efficiencies can be achieved by participants in the telecommunications sector.

Importantly, Communications Alliance also wishes to highlight the significant positive flow-on effect that will be generated to the Australian economy generally; other important sectors such as manufacturing and service sectors who are major users of telecommunications services; and business and consumers as users of telecommunications services.

1.2 Reference Businesses

As previously stated, Communications Alliance acknowledges the Taskforce's decision to address COAG's 'hot spots' as a starting point for the study. The hot spot's wide-ranging nature will provide a useful yardstick for benchmarking purposes and also provide information on 'examining the quality of regulation against 'best practice' principles'. Communications Alliance submits that a gap in the scope of this study exists due to the lack of investigations into the regulatory environment of the telecommunications industry.

To help fill this gap we would encourage the Taskforce's consideration of the use of several telecommunications industry participants as reference businesses for the next stage of the study. We believe that the use of reference businesses is a prudent approach as it will help to concentrate the data collected and reduce the time and costs associated with canvassing all businesses. Communications Alliance would welcome the selection of a sample of small, medium and large sized businesses participating in the telecommunications industry to provide suitable data for benchmarking purposes. This would also allow for a partial review of the industry ahead of the telecommunications competition regulation review due to take place in 2009.

⁶ P.XVIII Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne

Communications Alliance believes that there is scope for the Taskforce to use telecommunications industry information as part of its benchmarking exercise against other Industries. For example, there is very good data already available as to the scope and cost of licence fees required to be paid by Industry participants before they can operate in the Australian market. Communications Alliance members can easily articulate other compliance costs and obligations required to operate specific elements of their business.

1.3 Areas of Concern

The Performance Benchmarking of Australian Business Regulation study considers the level of burden in different aspects of business activity namely:

- becoming and being a business;
- doing business; and
- doing business interstate.⁷

These indicators correlate with the concerns identified by Optus, Telstra and Vodafone and it is also understood that these indicators are consistent with the concerns of our broader membership base. This submission will look at the burdens associated with becoming and being a business and doing business interstate as we recognise a number of areas of commonality in these indicators upon which we can offer constructive comment. We believe however, that the doing business indicator is largely out of scope for the telecommunications industry, as it appears to relate to the 'hot spots' of development assessment arrangements and building regulation.

The telecommunications industry is one of the most heavily regulated industries in Australia. Our members believe that regulations pertaining to industry participants are out of step with its contemporary profile. As a previously monopolised industry it was necessary for the regulator to oversee all business activities to ensure that consumers received the best possible services from the incumbent provider, as there was no alternative on offer. Now that the industry has evolved successfully into an environment of open competition it is unnecessary for it to remain shackled by burdensome, costly and / or outmoded regulations.

As part of our previous submission we listed some of the more onerous aspects of telecommunications industry regulation from the submissions made by our members. This list highlighted that the telecommunications industry is subject to significant:

- reporting burdens imposed by Section 105 of the Telecommunications Act;
- cost and time imposts associated with complying to the raft of Telecommunications regulations; and
- imposts associated with the requirements imposed by duplicative regulation and sunseting. (Sunsetting is discussed in more detail later in this submission).

⁷ P.XXIII Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne

Many of these concerns relate to the indicators to be benchmarked by the Taskforce and are addressed in the following sections of this submission.

2 BECOMING AND BEING A BUSINESS

2.1 Ombudsman's Scheme

A requirement of becoming and being a business in the telecommunications industry is that all new and existing providers and resellers of telephone, mobile or internet services to small business or residential customers are required to become members of the Telecommunications Industry Ombudsman (TIO) Scheme, as set out in the *Telecommunications Consumer Protection and Service Standards Act 1999*. Whilst most service providers accept the need for the TIO Scheme it is important to note that this requirement represents a significant cost and resource burden to the industry. There are costs associated with complaint handling fees for the services provided by the TIO, plus the time and dedicated human resources needed to deal with the TIO when resolving complaints. Many of our members believe that the burdens associated with being a member of the TIO are increasing exponentially and resources to meet the requirements of the Scheme are ever growing.

2.2 Section 105 Reporting

Section 105 of the *Telecommunications Act 1997*, requires industry participants to provide reports to the Australian Communications and Media Authority (ACMA) on an annual or quarterly basis. An extract of Section 105 requirements is detailed below:

- (1) ACMA must monitor, and report each financial year to the Minister on, all significant matters relating to the performance of:
 - (a) carriers; and
 - (b) carriage service providers;with particular reference to:
 - (c) consumer satisfaction; and
 - (d) consumer benefits; and
 - (e) quality of service.
- (2) In performing its functions under subsection (1), ACMA must have regard to such world best practice performance indicators as ACMA considers appropriate. This subsection does not, by implication, limit subsection (1).⁸

The level of information necessary to satisfy Section 105 reporting requirements to ACMA has been described as particularly burdensome by our members. They are also concerned that ACMA has been somewhat vague about what it considers appropriate reporting content and has been inconsistent in the type

⁸ S105 *Telecommunications Act 1997*

of information sought from year to year. For instance, Vodafone was concerned that:

“This resulted in inconsistent information provided by market participants and the s105 report became a ‘fishing expedition’. In addition there was no explanation of how each particular piece of information would be used or its relevance to the reporting objective of the regulator, especially w[h]ere information was not congruent between market participants.”⁹

When the vagaries of the information sought are added to the time and costs related to the provision of the required information, the result is not only onerous and burdensome but also cause for concern across our membership. Telstra believes that “The extent of Section 105 reporting is excessive in relation to the objectives. This diversion of resources makes it harder to focus on improving customer service.”¹⁰

“A key to improving regulatory regimes is for governments to deepen their understanding of the burdens that their regulations impose, and adopt regulatory approaches that avoid unnecessary burdens on business (given policy objectives).”¹¹

This statement echoes the sentiments of telecommunications industry participants who find the regulatory regime within which they operate to be particularly burdensome. They perceive a need for the streamlining and simplification of reporting requirements.

Industry participants believe that it is difficult to put a dollar amount on the cost of compliance with regulations; they are however, able to record the number of staff deployed and hours spent in carrying out administrative tasks relating to compliance matters. Telstra estimates that compliance with Section 105 of the *Telecommunications Act 1997* alone “consumes about 20,000 hours each year, which is equivalent to about 10 full time staff.”¹²

It is important to note that there have been some recent improvements made by ACMA in the collection of Section 105 reporting data. For example if a service provider provides quarterly reports to ACMA it is no longer necessary to provide annualised data for the same reports. This is a welcome lessening in the reporting requirements under Section 105, however, our members believe that there is scope to further reduction in the reporting requirements. Appendix 1 details an indicative sample of the type of reporting criteria that is required under Section 105 of the *Telecommunications Act*, plus a sample of the additional reporting requirements, not specific to s 105, imposed on the Telecommunications industry by ACMA.

⁹ P.18 Vodafone, November 2005

¹⁰ P.40 Telstra, November 2005

¹¹ P.12 Productivity Commission 2006, *Performance Benchmarking of Australian Business Regulation*, Discussion Draft, Melbourne

¹² P.40 Telstra, November 2005

Whilst all industry participants have slightly different reporting requirements imposed on them by ACMA, the basic set of data is similar across all participants. The lists above detail the industry specific data required by ACMA. The requirement to comply with, and provide data on, these regulations reinforces the view that the telecommunications industry is one of the most heavily regulated industries in Australia.

2.3 Compliance Programs

As the Telecommunications industry is subject to a large and varied raft of regulatory and reporting requirements, it is prudent for the industry to develop, implement and maintain a wide range of compliance programs to support those requirements. For instance, it is sound business practice to develop compliance programs for the suite of ACIF Industry Codes, plus compliance programs are required for other legislative burdens. Development of a compliance program, let alone multiple programs to support different regulatory requirements, represents a significant burden to the industry.

2.4 Additional requests for information

In addition to the reporting requirements mentioned above, industry participants are regularly required to provide ad hoc reports and / or contribute information to reports by a number of agencies other than ACMA. The provision of such reports and information is a cause for concern for our members as it is burdensome in terms of time and resources required.

This burden is further compounded by the requirement for industry participants to provide general business reports on a raft of other matters, including:

- Law Enforcement (eg number of interception requests)
- Corporate Governance matters
- ABS data (eg information re CPI)
- ACCC related matters
- Financial and auditing reports
- OH&S
- Business name, Australian business number and related business registration processes;
- Personal property securities (prioritising and registration of interests in property);
- Standard Forms of Agreement (SFOAs); and
- Product safety.

2.5 An evolving industry

Due to its dynamic and rapidly evolving nature, new products, technology and services are regularly rolled out in the telecommunications industry. Every introduction brings new regulations, reporting requirements and standards for industry participants to contend with. The introduction of voice over Internet protocol (VoIP) technology has seen new regulations that all VoIP providers must adhere to.

The introduction of the national do not call register (DNCR) due to go live in May 2007 will also bring a considerable amount of burden with it. All industry participants carrying out telemarketing functions will have to adhere to the new DNCR regulations and ensure that calls are not made to any parties who have placed their details on the register. Failure to comply with this legislation will be seen as a breach and could attract a penalty from ACMA.

2.6 Sunset Clauses

The main premise of a competitive market is that it requires less regulation by government. Market forces work to ensure that competition, and subsequently, consumer choice exists to allow industry participants greater freedom from stringent regulations. The fact that consumers are no longer tied to obtaining telecommunications services from a single source would suggest that competitive market place has been established. It would seem appropriate therefore, for ACMA to assess and review legislation that is no longer necessary and allow sunset clauses to take effect wherever possible.

The existence of redundant regulations is burdensome as it requires the gathering and presentation of information that may not be relevant to an industry that has progressed from monopoly status to supporting many market players. In its "Guiding Principles for Regulatory Quality and Performance" the OECD recommends the following:

"Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of those affected rather than of the regulator; update regulations through automatic review procedures such as sun-setting."¹³

Telstra made recommendations which linked to the OECD Guiding Principles in their submission to the Taskforce of November 2005 and called for the existing framework to be regularly assessed and reviewed. They believe that the industry has reached a point where the many aspects of the current regulatory framework are either out of date or no longer appropriate. Their opinion is that the existing regulatory framework is such that there are:

"too few sunset provisions and where there are powers of revocation they are rarely used. The result is that redundant regulation is not receding. The framework is now outdated as it was originally designed to open the industry from 2 market players to many new entrants;"¹⁴

As pressure grows for the telecommunications industry to continuously improve the products and services it offers to consumers in order to keep step with the industry on an international basis, it would seem both prudent and necessary for government to adopt the same approach to the regulatory framework. A good way to do this would be to ensure that regular reviews take place.

¹³ P.4 OECD Guiding Principles for Regulatory Quality and Performance 2005

¹⁴ P.21 Telstra, November 2005

2.7 Doing Business Interstate

The telecommunications industry can be described as fortunate, insofar as it has less cross-jurisdictional burden than many other industries. Having said that, the Communications Sector still operates within a complex web of separate agencies that are either involved in a regulatory or co-regulatory activity. These relationships are described at Appendix 4.1.¹⁵

Like most other industries it has to comply with the relevant Fair Trading and Consumer Affairs legislation at Federal, State and Territory level, but the majority of telecommunications industry specific legislation is Federal legislation. The raft of legislation includes, but is not limited to:

- *Telecommunications Act 1997*;
- *Telecommunications (CPSS) Act*;
- *The Telecommunications Interception Act*;
- *Disability Discrimination*;
- *Racial Discrimination*; and
- *Privacy Act*

The existence of separate Fair Trading and Consumer Affairs Acts for each government in the commonwealth is perceived to be duplicated regulation and is a further issue that our members have identified as being particularly burdensome.

2.8 Duplicated Regulation

In addition to the *Telecommunications Act 1997*, industry participants must also comply with Parts XIB and XIC of the *Trade Practices Act 1974* (TPA). The TPA is administered by the Australian Competition and Consumer Commission and has counterpart legislation at state and territory level in the form of Fair Trading Acts for each government of the commonwealth. The compliance requirements of the TPA are cited as duplicative regulation by industry participants and something that “Vodafone holds that [t]he depth of replication of existing instruments and potential development of such is unnecessary and burdensome to business.”¹⁶

The level of duplicated regulation existing in the telecommunications industry is compounded by the fact that industry participants have to interact with many government agencies in addition to the primary regulator, ACMA, in order to fulfil all regulatory commitments. Industry participants have to liaise with each of these agencies separately and report that there is little or no difference in their information requirements. This factor is burdensome to industry participants in terms of the staff time and costs as it requires a large team of compliance staff to be responsible for data collection and reporting to each different agency.

¹⁵ P.258 ACMA Communications Report 2005-06

¹⁶ P.18 Vodafone, November 2005

Communications Alliance welcomes the fact that the Treasurer has announced that this matter has been addressed by proposing Standard Business Reporting which will work by:

- reducing the number of different agencies to which businesses have to report directly the same or similar information
- reducing the number of data elements that businesses report to government through standardising and harmonising data definitions and eliminating duplication
- providing options for increased automation of business reporting, including greater pre-population of forms.¹⁷

Our members accept their obligation to report to regulators but find the duplication of reporting requirements to be prohibitive to business operations. The introduction of Standard Business Reporting will assist greatly in the streamlining of data collection and reporting throughout our industry.

2.9 Conclusion

The substance of many objections to the current regulatory framework of the telecommunications industry is that it fails to achieve policy goals, due to the fact that the level of compliance reporting required is burdensome in both dollar amounts and time.

The intentions of the regulatory policy are that it:

- (a) promotes the greatest practicable use of industry self-regulation;

and

- (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry.¹⁸

Communications Alliance and the telecommunications industry as a whole recognise the need for regulation and the purpose it serves. The issues for our membership however, are that the level of regulation currently in existence is excessive and not conducive to fostering an environment of growth and open competition.

As previously mentioned we perceive that a gap exists in the exclusion of industry specific issues and would welcome telecommunication industry participation in future stages of the benchmarking study. We do, however, recognise that there are limitations in the process and understand the Taskforce's view that:

¹⁷ The Hon Peter Costello, Treasurer of the Commonwealth of Australia, Press Release No. 138: Standard Business Reporting

¹⁸ S4 *Telecommunications Act 1997*

“Benchmarking would not, of itself, reveal ‘best practice’ or whether a regulation is appropriate. All that can be measured is relative performance and performance gaps that might be addressed.”¹⁹

To facilitate industry specific benchmarking we would welcome the participation of small, medium, and large-sized telecommunications providers as reference businesses. As previously stated the main areas of concern for our membership focus on the existence duplicative regulations and redundant regulations which could be reduced through the implementation of sunset clauses and would welcome their inclusion in the next stage of the study.

¹⁹ P.XXI Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne

2.10 References

ACMA Communications Report 2005-06

The Hon Peter Costello, Treasurer of the Commonwealth of Australia, Press Release No. 138: Standard Business Reporting

Council of Australian Governments' Meeting 10 February 2006, Communiqué

OECD Guiding Principles for Regulatory Quality and Performance 2005

Productivity Commission 2006, Performance Benchmarking of Australian Business Regulation, Discussion Draft, Melbourne

Regulation Taskforce 2006, Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, Canberra, January

S4 Telecommunications Act 1997

S105 Telecommunications Act 1997

Telstra Corporation Limited, Submission to Taskforce on Reducing Regulatory Burden on Business, November 2005

Vodafone Australia Limited, Submission to the Regulation Taskforce, Reducing the Regulatory Burden on Business, November 2005

APPENDIX 1 Quarterly and Annual Reports provided to ACMA

Quarterly Reports to be provided to ACMA

- Volume of In-Place Connections
- Volume of In-Place Connections met within CSG timeframes
- Volume of In-Place Connections Exemptions
- Volume of New Connections
- Volume of New Connections met within CSG timeframes
- Volume of New Connections Exemptions
- Volume of Fault Repairs
- Volume of Fault Repairs met within CSG timeframes
- Volume of Fault Repairs Exemptions
- Volume of Appointments (now provided annually)
- Volume of Appointments met within CSG timeframes (now provided annually)
- Timing of CSG Compensation Payment Decisions and Payments
- CSG Extreme Failures for both Connections and Fault Repairs (split by how many days over CSG timeframes)
- Mean Time to restore Faults
- Amount of CSG Compensation paid
- Network Loss for local, national and international calls
- Network Digital Call Dropout
- Network Digital Call Congestion

Annual Reports to be provided to ACMA

- Costs involved in maintaining interception capabilities
- Number of fixed STS in operation
- Coverage maps for fixed voice networks
- Fixed network congestion
- LNP – monthly totals of ports in, ports out, completion times
- Mobile Coverage
- Number of access agreements for preselection
- Number of CSG-eligible STS in operation
- CSG volume and performance data (similar to quarterly reporting requirements)
- Number and value of CSG compensation payments disaggregated by faults / connections / appointments and by State / Territory
- Number of CSG waivers
- Number of requests for disability equipment / number of these requests that were fulfilled
- Number of requests for disability equipment refused, and the reasons for the refusal
- Number of each type of disability equipment provided
- Information on new types of disability equipment trialled during the previous year
- Information on trends relating to disability equipment since July 1997



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