

30 July 2009

Regulatory Burdens: Social and Economic Infrastructure Services  
Productivity Commission  
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Dear Sir/Madam

**AMTA Response to the Productivity Commission's Draft Research Report, Annual Review on Regulatory Burdens on Business: Social and Economic Infrastructure Services**

AMTA welcomes the Productivity Commission's Draft Research Report (the Draft Report) and thanks the Commission for the opportunity to provide further comment. As the Commission will be aware, AMTA provided a detailed submission to the Commission early in 2009, building on its 2005 submission to the Regulation Taskforce. The comments (below) represent the views of Telstra, Optus and Vodafone Hutchison Australia (the Carriers) and focus on the Commission's comments on telecommunications in Section 4 of the Draft Report.

**General comments**

The Productivity Commission's assessment of the telecommunications sector and the regulatory environment under which it operates is succinctly and accurately analysed and the Carriers are supportive of the Commission's conclusions and associated recommendations.

AMTA acknowledges the Commission's decision not to focus on telecommunications regulatory reform issues that are being addressed through a separate process (as noted on page 105). The Association understands the decision not to comment on proposed legislative reforms currently being debated but notes that the Commission provides a valuable perspective on regulatory efficiency that may otherwise be overlooked. The Carriers would therefore support the Commission having a role and providing input as the new regime is further developed.

AMTA does not seek to repeat points from its previous submissions in this response, but provides the following comments on the Commission's recommendations.

## Development of regulation

The Draft Report describes the regulatory environment for information media and telecommunications (pages 109-112), describing the main regulatory instruments that govern it and the extensive network of co-regulatory arrangements. It then notes industry's concerns about *the increasing burden of regulation, the overlap between regulations, and the cost and speed of developing industry codes* (p114).

The Carriers do not disagree with the Commission's analysis, but believe the Report should explicitly recognise that the regulation governing the telecommunications sector envisages reliance on self-regulation: the stated aim of the *Telecommunications Act 1997* is to establish a telecommunications regulatory regime that promotes the greatest practicable use of industry self-regulation<sup>1</sup> without compromising meeting the stated legislative objectives.

This is important in a dynamic, fast-moving industry where competition and innovation dictate that industry must be able to respond quickly to identified problems. The reality, as recognised in the Draft Report, is a complex co-regulatory model with overlap and inconsistency between jurisdictional and agency responsibilities.

### AMTA clarification (p114)

AMTA is quoted extensively throughout pages 114-115. Although generally accurate, AMTA would like to clarify one issue. The Draft Report (p114) summarises AMTA's concerns that:

- *regulators, such as ACMA, should not be playing a role in policy development which is more appropriately the responsibility of policy departments*
- *there is a poor understanding of the existing regulation and the structure of the industry among those with responsibility for policy development.*

Read together, these points may be interpreted to mean that AMTA believes that ACMA does not understand the existing regulation or industry structure. This would not be an accurate interpretation of AMTA's comments. AMTA's point was that there are numerous bodies developing policy without adequate reference to other agencies or industry. AMTA's original submission to the PC stated:

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<sup>1</sup> Section 4a, Telecommunications Act 199.

*the regulator and policy department must properly consult each other to ensure they understand the status quo before making any decision to make amendments or regulate afresh. They should then be required to demonstrate that any proposed changes would more effectively achieve the regulation's objectives than the existing regulation or any other alternative regulation or policy tool. (p6, AMTA submission, Feb 09)*

AMTA requests that the wording of the original submission be reflected in the final report.

#### **Draft Recommendation 4.1: Customer information requirements**

The Carriers supports the Commission's analysis and Draft Recommendation 4.1: Customer Information requirements and have no further comments on this issue.

#### **Draft Recommendation 4.2: Prepaid mobile phone identity checks**

AMTA fully supports the Commission's assessment of the prepaid mobile phone identity checks regime and its Draft Recommendation 4.2.

AMTA is pleased to advise that all relevant parties (the Department of Broadband, Communications and the Digital Economy, the Australian Communications and Media Authority, the Attorney-General's Department, Law Enforcement Agencies (LEAs) and industry) have recently reached in-principle agreement to undertake a policy review on prepaid identification requirements for mobile telecommunications services.

AMTA welcomes this development but notes that the policy review has not commenced and that its initiation is progressing slowly, with the scope of review, terms of reference, etc, not yet discussed or agreed. AMTA would therefore strongly support the Commission keeping its recommendation as outlined in its Draft Report. Any change to the Report to reflect a policy review that is still at the 'in-principle' level would not be supported.

AMTA also supports the final Report extending and strengthening its comments in relation to the costs and benefits of the regime. The Draft Report currently states:

*The regime should be reviewed, to more fully establish the costs and benefits of the regime. The review should involve consultation with law enforcement agencies **who will be able to identify** the extent to which the identity information being gathered has actually proved useful in leading to convictions or preventing criminal activity. (p123, emphasis added)*

The point the Commission makes here is critical; any regime must be outcomes focused, with all parties clearly able to see the costs and benefits of the regime. As outlined in its most recent submission, to AMTA's knowledge, despite repeated requests, **no empirical**

***evidence was ever provided by the LEAs to demonstrate the extent of the problem in the first place, or against which to consider the effectiveness of an 'improved' regime in helping them address their objectives*** (p7-8, AMTA submission, Feb 09). Without such information, it is impossible to consider the effectiveness of any regime, or proposed regime, or possible alternatives. Moreover, it damages the trust and goodwill necessary to ensure good outcomes: continuous, honest and open assessment of any regime is vital to allow incremental improvement and better meet any regime's objectives.

AMTA is unclear whether the LEAs are unable to provide the requested empirical evidence (in which case, a system change would be required to ensure appropriate feedback and assessment mechanisms), or do not wish to. Either way, AMTA suggests that a recommendation to ensure that LEAs **must** be able to identify how the information has been helpful in assisting them achieve their objectives would address the issue. There must also be a requirement to ensure appropriate consideration of other methods that could give effect to LEA objectives, such as use of mobile location information and traditional surveillance methods.

This issue becomes more critical when cost-benefit issues are considered. Section 314 of the *Telecommunications Act 1997* states that telecommunications providers must assist law enforcement agencies on the basis that *the person neither profits from, nor bears the costs of, giving that help*. Yet to date, industry has borne all the costs in relation to the Prepaid Regime. This has provided no incentive for LEAs to consider the cost-benefits. Clearly, the LEAs are best positioned to determine the benefits that accrue to them from any identification process. Further, if Agencies are required to bear the associated costs, they will have every incentive to make rational cost-benefit decisions about the nature and extent of identification and verification processes and about alternate uses of their resources.

In this context, AMTA encourages the LEAs and the industry to work towards sound cost recovery principles that balance national security, consumer, commercial and industry demands.

If you have any questions or would like further information on any issue, please do not hesitate to contact AMTA's Policy Manager, Peppi Wilson, on 02 6239 6555.

Yours sincerely

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