



Australian Government
Attorney-General's Department

09/18036

4 August 2009

Annual Review of Regulatory Burdens on Business
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear ...

Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services, draft recommendation 4.2

I am writing to you in my capacity as the Communications Access Co-ordinator (CAC) to comment on recommendation 4.2 of the Productivity Commission's *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* draft report dated 26 June 2009.

The CAC is a statutory office created under the *Telecommunications (Interception and Access) Act 1979* (the TIA Act), whose role is to act as the primary point of liaison between telecommunications interception agencies and the telecommunications industry. The Telecommunications and Surveillance Law Branch of the Attorney-General's Department, which reports to me, plays a major role in assisting members of the industry to comply with their obligation to provide reasonably necessary assistance to Australian law enforcement and national security agencies.

I fully support the Commission's recommendation that a review of the regime be conducted and I encourage the exploration of more cost-effective business models for industry to meet its obligations. The Attorney-General's Department and Department of Broadband, Communications and the Digital Economy (DBCDE) are engaged with agencies and industry representatives to conduct a co-ordinated review of the regime.

However, the abolition of the requirement that identity checks be made for pre-paid mobile telecommunications would result in a serious reduction in the capability of law enforcement agencies and therefore cannot be supported. The key purpose of the *Telecommunications (Service Provider - Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000* (the Determination) is to avoid the registration of anonymous pre-paid mobile telecommunications services. Agencies may seek customer information under provisions in the TIA Act. As highlighted in the TIA Act's Annual Report for the year ending 30 June 2008, agencies made 183,099 requests for non-content data across all types of telecommunications services, including pre-paid mobile services. The information gathered under the Determination has been vital to investigations of terrorists, murderers, drug traffickers, kidnappers and those who have committed crimes of violence.

Without accurate purchaser information, investigations by law enforcement and national security agencies could be significantly hindered. It is common practice for individuals seeking to avoid scrutiny from security or law enforcement agencies to try to avoid using properly subscribed pre-paid mobile telecommunications services. The abolition of this policy would allow all persons of interests to purchase mobile devices anonymously, thereby avoiding lawful interception of their communications.

The issue of collecting and verifying identification information for pre-paid mobile telecommunications services has been previously considered by the Parliamentary Joint Committee on the Australian Crime Commission. The Committee's report from the "Inquiry into the future impact of serious and organised crime on Australian society" made pertinent conclusions on this very matter in September 2007.

The Committee noted that "The accurate collecting of SIM user information is critical to law enforcement agencies' ability to investigate serious and organised crime." In considering detailed submissions from law enforcement agencies and the Australian Mobile Telecommunications Association at paragraph 7.18:

The committee considers that prompt and serious attention must be given to ensuring that reliable records of mobile phone users are created and kept. Apart from data and information acquired through telecommunications interception under warrant, law enforcement agencies rely heavily on this data from telecommunications companies. While the committee recognises the potential for greater regulation to be a considerable impost on telecommunications providers and consumers, the lack of access to reliable SIM user information is seriously undermining the ability of police to detect, investigate and prosecute organised crime groups. The advantages of a deregulated telecommunications market must therefore be tempered by a system of obtaining accurate SIM user information. The committee's support for stricter proof of - identity requirements is given with recognition that, ultimately, the success of any system will be judged by how well commercial and consumer interests are preserved within a system that achieves comprehensive and accurate SIM card user registration.

I also note that the Parliamentary Joint Committee drew that conclusion in the context of the financial and economic cost of serious and organised crime to Australia. At paragraph 5.36 of the Review, the committee gave its view that the economic costs of countering serious and organised crime are very significant:

While it was not possible to quantify this cost across a range of sectors, the committee believes that the cost of serious and organised crime places a financial burden on all of Australian society. Along with the tangible cost to law enforcement agencies and government departments, there is the huge yet unquantifiable cost to society of the undermining of confidence in public institutions, the financial sector and the economy. There is also the human cost to individuals, families and communities that are affected by the activities of organised and serious crime, as is the case with drug addiction and people trafficking.

I urge the Productivity Commission to consider the cost to industry of the Determination in the greater context of the Australian Government's fight against terrorism and serious and organised crime. As others have recognised, the financial and social costs of crime justify the costs to an industry that is required by law to provide reasonably necessary assistance to law enforcement.

I agree with the Productivity Commission's objective to reduce the financial burden of complying with the Determination and fully support a co-operative approach to identify more efficient mechanisms that would facilitate the identification of users of falsely subscribed pre-paid telecommunications services.

Yours sincerely

Geoff McDonald
Communications Access Co-ordinator