

## **Submission to the Regional Telecommunications Inquiry**

**Consumers' Federation of Australia  
27 September 2002**

### ***Issues to be addressed in submission:***

As noted in the covering letter, this submission will only seek to address issues arising under Term of Reference 4.

### ***Summary of points in submission:***

- All Australians, regardless of whether they live in regional Australia or elsewhere should be able to rely on a safe and fair telecommunications market.
- The current regulatory landscape for telecommunications is seriously flawed to the extent that a safe, fair market cannot be assured and is not being reliably delivered.
- It is unacceptable for all Australian consumers that Government should be considering policy change that may, if accepted, create a monopoly provider with extraordinary commercial power, unless and until current regulatory systems are structured in a manner that assures and reliably delivers a safe and fair market.

### ***Points against Term of Reference 4:***

*Question: How well do you think the current legislated safeguards like the Universal Service Obligation (USO), Customer Service Guarantee (CSG) and Telecommunications Industry Ombudsman (TIO) are protecting the interests of consumers in regional Australia?*

The CFA expects that many submissions to the Inquiry will focus exclusively on issues of importance to regional Australian consumers. In making the following comments we do not seek to challenge or undermine the presumption that consumers who live in regional Australia should be able to expect the same level of service experienced by urban consumers. <sup>1</sup>We would prefer for the purpose of this submission to ask the question “are the current safeguards sufficient to protect the interests of all Australian consumers?” It is the view of the CFA that the answer to this question is no. Striving for equality should not equate with a dive for the lowest common denominator.

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<sup>1</sup> The CFA agrees with and endorses the comments made in the Australian Consumers' Association submission to this Inquiry in relation to the importance of ensuring access to new and emerging technologies to consumers in regional Australia.

The legislative protections listed in the question represent only a segment of the complex web that is telecommunications regulation in Australia. Complexity, in the experience of our members, has not delivered a satisfactory regulatory landscape. It does not ensure or deliver reliable access to all that need it. Similarly it does not ensure or deliver reliable protection for all, especially the most vulnerable. Consumer advocates and CFA member agencies continue to draw attention to the plight of such vulnerable consumers as the regular victims of sharp industry practice and unfair contract terms.<sup>2</sup>

It is beyond the scope of this submission to comment in detail on the range and scope of current telecommunications legislation. It is however important to note the reliance this legislative framework has placed on self-regulation and market forces. Other consumer commentators have noted the current emphasis on section 4 of the Telecommunications Act 1997 as a key cause of concern.<sup>3</sup> The CFA endorses and shares these concerns. Section 4 notes: *“The Parliament intends that telecommunications be regulated in a manner that:*

- (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;*

*but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3”*

At a practical level, many of the safeguards are delivered not through reference to the legislation, but by a complex system of self-regulatory codes. Consumer groups have made clear their dissatisfaction with the Australian Communications Industry Forum process that develops these Codes and the quality, accessibility and general fitness for purpose of the Codes produced.

The Codes themselves are long-winded, overly complex and totally inaccessible to ordinary consumers. Because their development has been dominated by industry interests the “protections” they describe are hopelessly compromised. Perhaps the most damning criticism is that there exists no credible threat of sanction for non-compliance, a point expanded on in the response to the following question.

The CFA acknowledges and applauds the efforts that the TIO Scheme has made to ensure it is accessible, fair and reliable in its treatment of consumer complainants. It is our impression, however, that the TIO suffers as a result of being the most accessible point in the current regulatory framework. To relate this comment back to the question, the TIO will not be as effective as it can and should be when the other elements of regulation fail.

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<sup>2</sup> It is these experiences that have driven the need for important publications like the booklet “Telecommunications Contracts: Checklist of Fair and Unfair Contract Terms” launched by the Consumer Law Centre of Victoria, the Australian Consumers’ Association and the Communications Law Centre on 9 August 2002.

<sup>3</sup> For example, the Communications Law Centre, Submission to the Senate Environment, Communications, Information Technology and the Arts Reference Committee – Australian Telecommunications Network Review, August 2002 at 4 and the Consumer Law Centre of Victoria submission to the same review, August 2002 at 6.

The pressure the TIO Scheme endures comes from below, from an industry that lacks good faith and credibility in its commitment to appropriate consumer protection and from above, when regulatory options are not activated to address obvious problems. The CFA noted these pressures in its oral submissions to the Review of the TIO, conducted earlier this year.

*Question: Are regulators (particularly the Australian Communications Authority and the Australian Competition and Consumer Commission) able to adequately protect consumers' interests under current arrangements?*

No. It is the view of the CFA that the current regulatory arrangements do not adequately protect consumers' interests.

In support of this view we would like to draw the Committee's attention to the Australian Communication Authority's recent investigation into the Complaints Handling Code. The investigation was prompted by a TIO report of systemic non-compliance with the Code.

It is the CFA's understanding that the Authority has met to consider its final report on the investigation. That report has not yet been released, although a number of our members have been briefed on summary content of that final report. Based on the material we have seen and our discussions with the Authority, it is our view that the investigation has failed in a number of key respects, including:

- an unacceptable level of reliance on representations made by the providers about which complaint had been made,
- limited objective analysis of compliance,
- no or insufficient understanding and testing of actual consumer detriment,
- dismissal of the compelling nature of data provided by the TIO and
- internal inconsistencies in the rationale for finding no systemic problems and concluding no direct action to be necessary.

Even more disturbing was a suggestion by the Authority in discussions concerning the summary draft report that it wants to effectively outsource code policing to industry.<sup>4</sup> These responses, at best, indicate a lack of understanding of the role of a consumer protection regulator.

The CFA notes the ACA's press release of 17 September 2002, indicating that it will oversee Telstra's provision of priority services. If the experience of the investigation of the Complaint Handling Code is anything to go by, this assurance would be cold comfort for consumers.

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<sup>4</sup> The CFA notes the vision statement of the Australian Communications Authority: "An efficient, competitive and increasingly self-regulated communications sector which meets the needs of the Australian community." The CFA believes that safe, fair regulation that "meets the needs of the Australian community" cannot and should not outsource policing and enforcement activities in instances of non-compliance with self-regulatory frameworks, to the industry being regulated.

It is the CFA's view that consideration should be given to transferring the consumer protection functions currently overseen by the ACA to the ACCC. The ACCC is seen by both consumers and industry as an active and robust consumer protection regulator. That recognition confirms an organisation that both understands and is capable of delivering on such a function. Transfer might also address any confusion in the current system with two regulators sharing consumer protection functions in telecommunications.

**Closing comment:**

Finally, the CFA would like to make specific comment on the potential full privatisation of Telstra. An issue that we believe has not been sufficiently considered in debate on this subject is the effectiveness and reliability of the current regulatory landscape. Sale of the remaining share of Telstra would create a commercial entity of enormous size and power, relative to the market in which it operates. The question we leave the Committee with is:

If Telstra is concerned to ensure that its activities are seen to be consumer responsive, fair and accessible at a time that it wishes to position itself for sale, what mechanisms exist and how reliable are they likely to be in ensuring Telstra retains such a focus if or when a sale were to proceed?

**27 September 2002.**