



18 October 2011

By email: accan.review@dbcde.gov.au

Mr Simon Cobcroft
Consumer Policy and Post
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Dear Mr Cobcroft

Review of the Australian Communications Consumer Action Network

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to contribute to the review of the Australian Communications Consumer Action Network (**ACCAN**).

The purpose of this brief submission is to broadly express our confidence in the ability of ACCAN to represent the needs of consumers on communications issues. ACCAN has been an active, vocal and effective consumer advocate and may rightly claim credit for a number of recent improvements in consumer outcomes in the communications sector. We have also made one recommendation regarding the structure of the ACCAN Board.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

Term of reference one: *The effectiveness of ACCAN in representing and harnessing its constituent bodies and representatives to support and actively participate in the work of the organisation.*

ACCAN has built strong working relationships across the consumer policy landscape and has effectively become a key organisation representing consumer interests in communications in

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consultative forums, public inquiries and in the media. This indicates both that ACCAN is well abreast of consumer policy debates and is understood to be a necessary part of those debates.

Effective advocacy on telecommunications issues requires specialist knowledge and experience. It is very difficult for generalist consumer advocacy organisations to keep up to date with complex communications issues and provide robust analysis and advocacy. Part of ACCAN's value to the rest of the consumer advocacy movement has been in its ability to monitor and analyse complex communications policy issues and facilitate other consumer organisations to become engaged.

This represents a clear improvement compared to the situation that existed before ACCAN's establishment, principally because of the significant funding provided to ACCAN compared to its predecessor organisation, the Consumer Telecommunications Network. Since the establishment of ACCAN, the broader consumer advocacy movement is more involved and informed on communications issues. Equally, these strong links with the broader consumer movement enhance ACCAN's ability to learn from policy developments in other markets that may be applied in a communications context.

Term of reference three and four: ACCAN's policy positions and performance in promoting consumer awareness of telecommunications issues

ACCAN develops well-argued and coherent policy positions and has been instrumental in recent developments in consumer protection in telecommunications. Its policy positions and advocacy has covered a range of issues such as consumer protections and complaint handling through the Australian Communications and Media Authority's (ACMA) *Reconnecting the Customer* inquiry, the effectiveness of industry self-regulation through the review of the Telecommunications Consumer Protection Code and effective consumer protections in the National Broadband Network (NBN). Importantly, ACCAN has been a key and effective advocate in relation to ACMA's recent proposal to review its numbering plan regarding calls from mobiles to 1800 and 13 numbers through its charismatic 'Fair Calls for All' campaign.

It is no coincidence that these initiatives and a general increase of consumer voices in telecommunications debates have all followed the establishment of ACCAN. Apart from consultation in formal inquiries, ACCAN has proven itself adept at getting its message across in the media. Based on how frequently ACCAN staff are quoted in the mainstream media, it is clear that ACCAN has confirmed itself as the key organisation to provide media comment on consumer telecommunications issues.

Term of reference five: The appropriateness and effectiveness of ACCAN's current governance arrangements—ACCAN's board structure

ACCAN has largely been able to attract quality consumer experienced directors to its Board. Nevertheless we suggest that there is an element of luck to this given the way the constitutional requirements regarding the qualifications and experience of board members are cast.

Article 20.2 of ACCAN's constitution states that the ACCAN Board should comprise directors who have expertise in corporate governance (20.2.1) and/or represent one of ten different consumer sectors (20.2.2). The ACCAN Board comprises a total of between nine and 12

directors, which we note is at the upper end of good practice for an entity of its size and type. For example, the Australian Institute of Company Directors suggests that 8-10 Directors is an ideal maximum for a public company and 6-8 for most non-profits.

We strongly support the aim of the Board membership achieving a balance between governance experience and an understanding of different stakeholder groups, including consumers generally. However, we are concerned that this balance is not struck in practice for a number of interacting reasons:

- The use of the term 'represent' in Article 20.2 is unfortunate. Governance responsibility of course requires a director to act in the best interests of ACCAN first and foremost - which means that the views or agenda of a particular stakeholder group can only be represented where they coincide with the interests of ACCAN. Being informed by experience and understanding of a particular sector is different to representing it.
- Article 20.2.2 lists a large number of sectors to potentially be represented Whilst we acknowledge that the constitution does not require that all sectors are represented and that a single board member could represent more than one sector, we suggest that use of the word 'represent' mitigates against this outcome.
- Board members could both represent a particular consumer sector and have corporate governance experience or relevant Board skills. ACCAN has been lucky to have this occur on a number of occasions. However we suggest that present arrangements tend to place the representative function above the governance function rather than have the two have equal primacy. This may make it difficult for the ACCAN board to acquire particular skills sets.

Thus, we suggest the large number of sectors listed at 20.2.2 and the apparent intent that the Board represent each of those sectors may mean in practice that most directors are selected as sectoral representatives and few seats are left for those with governance experience or particular skill sets that may be required by the Board. Further, the need for sectoral representation may mean that representatives of the consumer interest in the broad sense are not included or insufficiently represented in Board membership.

We contend that the primary role of a Board is governance, including determining strategy, though that Board members of a consumer advocacy organisation should have the capacity to represent the consumer interest. We suggest that article 20.2.2 of ACCAN's constitution be reframed to require that Directors:

- have relevant governance expertise or experience,
- an understanding of or experience in the sectors listed in 20.2.2; and
- the capacity to consult with one or more of the sectors listed in 20.2.2.

We note that ACCAN already has capacity to consult with particular sectors through their Standing Advisory Committee on Consumer Affairs and Standing Advisory Committee on Disability Issues.

Recommendation:

We recommend that consideration be given to amending the constitutional provisions relating to ACCAN's Board structure so that Directors:

- have relevant governance expertise or experience,
- an understanding of or experience in the sectors listed in 20.2.2; and
- the capacity to consult with one or more of the sectors listed in 20.2.2.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Catriona Lowe
Co-CEO



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Policy Officer



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

**Mid-term review of the
Australian Communications Consumer Action Network
Submission cover sheet**

Please complete and return this cover sheet with your submission to the review by:

Email to accan.review@dbcde.gov.au

Post to Mr Simon Cobcroft

Consumer Policy and Post (ACCAN Review)

Department of Broadband, Communications and the Digital Economy

GPO Box 2154

CANBERRA ACT 2601

Section one—contact information

Please note, the department is subject to the *Privacy Act 1988*. Any personal information you provide on this cover sheet or in your submission will be used only for the purposes of this review.

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Can we contact you to discuss your submission, if necessary?	Yes
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Date	18 October 2011