



**Australian Communications and Media Authority's
Proposed Amendments to Emergency Call Service
Arrangements- Draft Determination 2009**

**Submission by Communications Alliance and the Australian
Mobile Telecommunication Association**

Table of Contents

1	INTRODUCTION	3
2	CODE AND GUIDELINE REFERENCES.....	4
3	HANDLING OF NON-GENUINE CALLS	5
4	EXEMPTIONS FOR VOIP-OUT ONLY SERVICES.....	12
5	CHARGING PRINCIPLES.....	13
6	GENERAL REQUIREMENTS FOR EMERGENCY CALL SERVICES	13
7	CALL /IPND INFORMATION REQUIREMENTS	14
8	RECORD KEEPING	14
9	CONCLUSION	15
10	CONTACTS	15

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Proposed Amendments to Emergency Call Service Arrangements
Consultation Paper

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1 INTRODUCTION

Communications Alliance and the Australian Mobile Telecommunication Association (AMTA) are pleased to have the opportunity to comment on the Australian Communications and Media Authority's Consultation Paper on *Proposed Amendments to Emergency Call Service Arrangements* (the Consultation Paper).

Communications Alliance and AMTA believe it is in the best interests of all participants, customers and government that the industry takes responsibility for devising practical, self-imposed solutions that are developed by co-operative processes.

In doing so, Communications Alliance and AMTA seek to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

Communications Alliance

Communications Alliance is the peak telecommunications industry body in Australia. 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. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behavior through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

Australian Mobile Telecommunication Association

AMTA is the Australian mobile industry's peak body. AMTA's members include mobile phone carriers, handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. AMTA's mission is to promote a socially, environmentally and financially responsible and

successful mobile telecommunications industry in Australia. For more details about AMTA, see <http://www.amta.org.au>.

Background

The themes presented in this paper reflect the views expressed by a number of industry members that contributed to review sessions carried out by both Communications Alliance and AMTA seeking a joint industry response to the ACMA discussion paper and draft 2009 Determination.

The structure of this submission reflects a number of recurring themes that surfaced during these review sessions. Many of the members of Communications Alliance will also make individual submissions directly to ACMA following consideration of both the Consultation Paper and the *Emergency Call Services Determination 2009* in its current draft form. This submission is intended to be additional input to the submissions of individual members and not to derogate from the individual positions advanced.

This submission presents the Communications Alliance and AMTA joint position on the following issues:

- Code and Guideline references
- Handling of non-genuine calls
- Exemption for VOIP-out only services
- Charging Principles
- General requirements for emergency call services
- Call/IPND information requirements
- Record Keeping

2 CODE AND GUIDELINE REFERENCES

It is the position of this submission that the recurring references to existing industry Codes and Guidelines within the Determination are not appropriate for a number of reasons. First and foremost compliance with Codes and Guidelines is already the subject of regulatory processes and it is not the place of this Determination to either reinforce or de facto change that existing compliance regime in this regard. It is also redundant to the extent the obligation is already covered by an instrument in place. Moreover Codes and Guidelines are subject to reviews and subsequent revisions (if deemed necessary) on an ongoing basis. Where a clause in a Code or Guideline is amended or removed during the course of a revision then references to that clause in other documents usually become redundant, however reference to a Code in a Determination could have the effect of requiring compliance to a number of variants of an Industry Code, which is

not normal practice and will make compliance more difficult for industry. It is also the case that compliance to an Industry Guideline is not mandatory. Industry contends that references in the Determination must be limited to obligations or principles and there should be no references to specific clauses in an Industry Code, or Guideline, or the Industry Code or Guideline itself.

3 HANDLING OF NON-GENUINE CALLS

Non-genuine calls are of significant concern to the industry. The following points and observations are made in this regard:

- (i) Sections 28 and 29 of the Draft Determination place a requirement on carriers and the emergency call person (ECP) for Triple Zero and 112 to take steps to minimise the number of non-genuine calls that reach the Emergency Call Service (ECS) from public mobile telecommunication services. The Consultation Paper states that these new provisions are designed to give effect to recent industry initiatives to reduce non-genuine calls to the ECS, including the introduction of a recorded voice announcement (RVA) alerting callers who may have inadvertently dialled the ECS and a process for identifying and managing repeat offenders, as described in the C525: 2009 *Handling of Life Threatening and Unwelcome Communications* Industry Code (the Code).
- (ii) Clearly, the industry is keen to assist the Authorities and the ECP reduce the number of non-genuine calls to the ECP, as demonstrated by its re-introduction of the RVA and the considerable time and effort spent in designing and implementing a process to identify and manage repeat offenders.
- (iii) However, the industry is strongly opposed to these efforts being mandated through the Draft Telecommunications (Emergency Call Service) Determination 2009 as currently set out in Division 3.3.
- (iv) Industry's concerns and objections can be categorised as falling into two broad categories:
 - a. High-level, regulatory policy concerns: the imposition of a mandatory requirement through the Determination as proposed runs contrary to the principles of good regulatory practice. It is inappropriate, unnecessary, and inflexible. It also places an unreasonable regulatory burden on carriers by requiring them to provide a service and then penalising them for the behaviour of some individuals using that service.
 - b. Practical and operational concerns: problems with proposed review conditions, data collection issues and similar concerns.

- (v) These issues are further explored below, following some general comments about the newly re-introduced RVA and the non-genuine call reduction strategy.

3.1 Recorded Voice Messages

The introduction in December 2008 of a recorded voice message has already reduced the number of non-genuine calls reaching the ECP by around 25 per cent¹. This is in line with New Zealand's experience where a 27 per cent reduction in non-genuine calls to the emergency call number was achieved after a similar system was introduced in June 2008 by Telecom New Zealand².

Importantly, to industry's knowledge, this reduction has been achieved without impacting on genuine calls to ECS and without any negative effects on the network. Industry understands that the ECS has been very supportive of the RVA.

Notably, the RVA success has been enjoyed without the need for any regulatory intervention; it was introduced on a voluntary basis, with the ACMA's approval.

3.2 Non-genuine Call Reduction Strategy

As the Consultation Paper recognises, a Non-genuine Call Reduction Strategy (hereon referred to as the AMTA Strategy) was developed by mobile carriers under the auspices of AMTA. Like the RVA, the AMTA strategy was a voluntary industry initiative, undertaken with appropriate consultation with ACMA. It provides that those who repeatedly place non-genuine calls to the emergency services are subject to an escalated warning system, with penalty for repeat offenders.

The AMTA Strategy forms part of the yet-to-be-registered Communications Alliance Handling of Life Threatening and Unwelcome Calls Code. Carriers are, therefore, not currently obliged to implement the AMTA Strategy; the formal obligation to comply will not come into effect until Code registration. Notwithstanding this, Telstra implemented the Strategy on 1 July 2009 and the other Carriers expect to implement it very soon - and well before the Communications Alliance Code is registered.

Again, this illustrates industry's willingness and commitment to consider what it can do to assist address a community problem and act, without regulatory intervention.

¹ Figures from the ECP

² ACMA: http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_311582

3.3 Regulatory policy issues

The stated aim of the *Telecommunications Act 1997* is to establish a telecommunications regulatory regime that promotes the greatest practicable use of industry self-regulation³. This is important in a dynamic, fast-moving industry where it is desirable to be able to respond to identified problems quickly.

The Productivity Commission describes good practice regulation as exhibiting several characteristics, including that it⁴:

- *must have a sound rationale and be shown to bring a net benefit to society, requiring costs as well as benefits to be brought into account.*
- *must be better than any alternative regulation or policy tool.*
- *should be clear and concise. It should also be communicated effectively and be readily accessible to those affected by it.*
- *must be enforceable. But it should embody incentives or disciplines no greater than are needed for reasonable enforcement, and involve adequate resources for the purpose.*
- *needs to be administered by accountable bodies in a fair and consistent manner...important features of good governance include clear statutory guidance, transparency of both process and judgement, and public accessibility.*

Expanding on this, it is clear that regulatory forbearance should be the default position of a regulator until such time that it can be plainly demonstrated that a durable market failure exists, and that regulatory intervention will actually deliver a superior outcome compared with market delivered outcomes.

These principles of good regulation have been ignored on a number of fronts in relation to the Draft Determination.

3.4 Community problem

It is indisputable that the problem of non-genuine calls to emergency services is a community problem. It is not a problem caused by Carriers themselves. Clearly, Carriers are willing to take every reasonable action within their control to try and assist authorities reduce the number of

³ Section 4a, Telecommunications Act 1997

⁴ See address by Commission Chairman Gary Banks *The good, the bad and the ugly: economic perspectives on regulation in Australia* to the Conference of Economists, Business Symposium, Hyatt Hotel, Canberra, 2 October 2003; at <http://www.pc.gov.au/speeches/cs20031002/cs20031002.pdf>

non-genuine calls received, but any technical or procedural initiatives implemented by the Carriers will be only part of the solution.

While technical solutions such as the RVA will minimise the number of accidental calls to the ECP, they cannot prevent malicious, nuisance or hoax calls. This is clearly a behavioural problem.

The AMTA Strategy hopes to further reduce the number of calls reaching the ECP through a behaviour modification strategy. It is too early to tell whether this strategy will be effective at all, but in any event there is no expectation that it will prevent all non-genuine or hoax calls reaching the Emergency Service Organisation (ESO). To do so would require the ECP (whose role is essentially a human switching point) to have powers enabling them to identify hoax callers, perhaps by more vigorous questioning of the motives of the caller; that would result in unnecessary delay in the delivery of the call to the ESO. Carriers have to err on the side of caution and pass on any calls that could be genuine to the ESO. Similarly, the ESO has to appropriately respond to calls and will not know a call is a hoax until reaching the supposed emergency.

Clearly it is the emergency service organisations – through the police - that ultimately have the power to modify the behaviour of repeat offenders. Industry is not qualified to comment in detail on the most effective way of addressing such antisocial behavioural problems, but suggests that the most powerful message is likely to come from the police. Or, where the perpetrator's behaviour is a symptom of mental health issues, through the health services, working in conjunction with the police.

Industry suggests that an infringement notice approach to the problem of repeat offenders could help modify the behaviour of those placing hoax calls to the ESO. This could allow police to devise and implement a process to penalise repeat offenders consistently, whether perpetrators are identified through the AMTA process or directly by the ESOs rather than the ESOs having to undertake lengthy and resource intensive investigations in taking offenders to court. The process could also appropriately include processes and procedures for identifying and assisting individuals whose behaviour is a symptom of their mental health.

The fact that the issue is clearly a community behavioural problem, not a carrier behaviour issue, means that it should not and cannot be addressed by placing an obligation on carriers through the Determination. This issue is further explored below.

3.5 Clauses 28 2(b), 29 3 (a) and 28 2(a)

It is unnecessary and duplicative to mandate the Code's requirements in relation to reducing non-genuine calls to the emergency services through the Determination; there will be a regulatory obligation for carriers to comply once the Code is registered with the ACMA.

Further, contrary to the principles of good regulation, mandating the AMTA Strategy and use of the RVA in the Determination embodies incentives or disciplines much greater than are needed for reasonable enforcement. As already noted, the AMTA Strategy will be fully operational before its use is mandated.

Similarly, the ECP has already introduced the RVA on a voluntary, co-operative basis, with the ACMA's approval. Mandating its use through the Determination is unnecessary.

Moreover, despite some recognition in Part 3, S13 that there may be situations when it is reasonable for carriers to legitimately not connect genuine callers to the ESO, these exclusions are very limited. The inflexible and detailed nature of the Determination as a regulatory instrument makes it difficult for it to take reasonable account of unforeseen issues like natural disasters. Conversely, as the compliance manager of a registered Code, the ACMA can enforce the Code as required, but has sufficient flexibility to take account of specific circumstances.

For example, had the current Draft Determination been in place during the recent bushfires in Victoria, carriers would have been obliged to play the RVA and take action against any caller having made repeated attempts to call emergency services. Clearly in such situations the ECP and Carriers should be given some latitude to suspend normal procedures and switch off the RVA and/or disregard escalation procedures in relation to repeated calls to the emergency call numbers.

It is for these reasons that industry believes Clauses 28 2(b), 29 3 (a) and 28 2(a) should be removed from the Draft Determination.

3.6 Clauses 28 (c) and 29 (b)

Industry strongly objects to Clauses 28 (c) and 29 (b). These Clauses would allow the ACMA to unilaterally introduce any change or introduce any new measure in relation to non-genuine calls to emergency services. This bypasses all regulatory review processes and could not hope to achieve good outcomes. This area is complicated and considerable expertise and skill is required to ensure good policy

and processes. Industry, the ESOs and the ACMA clearly need to work together to address issues. This can be achieved through Code review processes and negotiations.

Clauses 28 (c) and 29 (b) should therefore be removed.

3.7 Determination must enable carriers to act to reduce non-genuine calls

The Consultation Paper states that the new provisions at Division 3.3 are designed to give effect to recent industry initiatives to reduce non-genuine calls to the ECS. Clearly, it is important that the Determination enables (and does not prevent) Carriers from implementing initiatives to reduce non-genuine calls. However, as noted above, industry strongly opposes this being achieved through the Determination mandating requirements as is currently proposed.

Industry believes that it would be appropriate to reword current Clause 28 with:

The ECP for 000 and 112 must work co-operatively with ACMA to minimise the number of calls received by the ECP on the emergency service numbers 000 and 112 that are not emergency calls, where it is reasonably possible to identify that they are not emergency calls.

Clause 29 should be replaced with wording such as:

If there is clear evidence that malicious attempts are being made to impede the legitimate activities of the ECS and access to the ECS by genuine emergency callers, carriers may, in consultation with the ACMA, develop methods to take reasonable action to address such behaviour.

Note: Reasonable action could include:

- *the use of RVAs; and/or*
- *application of the Non-genuine Call Reduction Strategy, as outlined in any relevant Communications Alliance Code.*

Since the ECP has significant obligations under the Determination and is exposed to significant tort liability, without reward, the ACMA should also exercise its power to limit the tort liability of the ECP under Clause 46, Schedule 3 of the *Telecommunications Act*.

Carriers /Service Providers should not be expected to provide access to emergency call services in the event of a Denial of Service (DoS) attack. It is noted that support from the ACMA in assisting providers in dealing with DoS attacks has not been forthcoming. The protection of 000 services in general has not been addressed at a regulatory level.

Clauses 28 (2) (c) and 29 (3) (b) stipulate that the emergency call person or a carrier that owns or controls a public mobile telecommunications network must also take into account written directions from the ACMA with regard to the minimisation of non-genuine calls. Industry objects to this stipulation for the reasons stated before. It implies both a lack of accountability on industry's behalf and a lack of cooperation within industry itself.

Industry further objects to any tabling of civil penalties being imposed upon carriers for any perceived failure to minimise non-genuine calls to emergency services. Industry cannot be held liable for a behavioural issue on the part of the caller. Provisions already exist in the Code with which industry must comply. Furthermore industry notes that behavioural aberrations on the part of the end user cannot be resolved via the application of technical solutions, noting that the individuals who generate these calls are not generally held liable.

3.8 Practical and operational concerns

The Consultation Paper states that the effectiveness of the escalated warning and blocking process will be reviewed in three months, with a view to identifying improvements that could be made, such as adjusting the call thresholds that will trigger the process. It goes on to state that sufficient call data should be available after three months to assist in making informed judgements regarding the thresholds.

It is unclear when the proposed three months trial starts or ends, but industry suggests in any case that three months is an inadequate trial period. In order for sufficient data to be collected, no analysis should be conducted until the AMTA Strategy has been in operation across all carriers for at least six months.

Industry further notes that analysis may take some time. Data management issues are still being addressed. Clearly, the information collected must be able to be presented in a format that enables patterns of behaviour to be identified and that allows analysis about whether warnings are having any impact on an individual's behaviour, etc. Evaluation of thresholds or any other parameters can not and should not occur until all parties have a clear understanding of the data and a benchmark against which to measure any potential 'improvements'.

On a similar note, it is vital that ESOs collect and analyse data on the non-genuine calls that they deal with. Without such quantitative information, it is impossible to design any solutions or measure their effectiveness. Clearly the solution to one caller making 10,000 hoax calls

would be very different to the solution to 10,000 people each making one hoax call.

On a related point, industry notes that the effectiveness of any strategy to reduce non-genuine calls to the ECP may be adversely impacted by the increasing incidence of non-unique IMEIs. For example, there are 19,975 MSISDNs associated with the one IMEI 13575790246811220.

Recent statistics from one carrier reveal that, of the calls to 000 or 112 that they handled in one week in July 2009 that triggered the Non-genuine Call Reduction Strategy, nearly two-thirds (almost 2500) were from mobiles with a null or blank IMEI number.

This is consistent with early reports that industry is receiving from the Non-genuine Call Reduction Strategy. This indicates that of the SIM-less calls to 000 or 112 that are triggering the Non-genuine Call Reduction Strategy, more than half are from mobiles with a null or blank IMEI.

While some of these could be traced to an individual through other mechanisms, a large number could not. Clearly the ACMA needs to work with industry and other agencies to address this issue.

3.9 Extending the process to calls transferred to the ESO

The Consultation Paper states that consideration will be given to extending the process to include calls transferred from the ECP to an ESO. Industry does not support this at this time.

It is critical that the new process (the AMTA Strategy) is provided the opportunity to be tested and properly evaluated, without distraction about how it might be extended.

Moreover, it is clearly the police who ultimately have the power to modify the behaviour of repeat offenders, whether those offenders are identified through this process and referred to police, or are referred directly to the police by the ESO. Referring the issue back to the carrier would not only appear to add no value, but would be inappropriate. Although the community should support them, it is ultimately the job of the police (in consultation with the health authorities where appropriate) to address inappropriate behaviour where it breaches the law.

4 EXEMPTIONS FOR VOIP-OUT ONLY SERVICES

Industry has strong concerns in regard to the proposed exemption from providing access to emergency call services, as stipulated in Clauses 15 (2) – (5), of services which do not have bi-directional calling facilities or the ability to present a CLI (Calling Line Identifier) where the customer has been notified

prior to taking up the service. In Australia this allows for VOIP-out only (VOIP Type 2) services to avoid any obligation to provide access to emergency call services.

Any exemption from a requirement to provide access to emergency call services undermines the entire philosophy behind the provision of emergency services ie, providing all Australian telecommunications users with access to potentially life-saving communications facilities.

A mandated regulatory exemption at this time will allow for the obligation to be avoided in the future irrespective of technological developments.

The exemption is a clear indication of a reluctance to acknowledge the development of CLI Overstamping technology, allowing a call to be made using a VoIP service, whilst still presenting the PSTN CLI.

5 CHARGING PRINCIPLES

Industry contends that the ability to charge an emergency call services organisation for the provision of emergency call services infrastructure should be addressed in Part 6 of the Determination noting the following:

- (i) Industry is aware of the underlying principle that no organisation should profit from the provision of emergency call services.
- (ii) The responsibility (both operationally and financially) for providing the ECP function should not fall to a single provider.
- (iii) Industry proposes that either the ESO fund the provision of the emergency call person function or that it should be federally funded.
- (iv) Industry contends that a provider should have the authority to levy a charge upon the caller if the ECP identifies it as a non-genuine call.
- (v) To enable industry to apply call charges to nuisance callers to the emergency call service as part of nuisance call reduction strategies, section 54 of the draft Determination should be expanded with the following:

The requirement to provide free access does not apply to non-genuine calls to the emergency call service. Carriers and Carriage Service Providers may apply a fee for any hoax, abusive or harassing call, or any call that is part of a persistent pattern of non-genuine calls.

6 GENERAL REQUIREMENTS FOR EMERGENCY CALL SERVICES

Industry notes the stipulation in Clause 8 (1) for a carrier supplying an emergency call service to have in place written arrangements enabling compliance with the requirements of the Determination. Industry requests

clarification of this requirement in regards to with whom these written arrangements must exist and further the intention of this requirement.

7 CALL /IPND INFORMATION REQUIREMENTS

Industry notes the following in regards to Clauses 38, 39, 40 and 41

- (i) In the event that the customer refuses to provide an address the carrier should be given authority to deny access to emergency call services until this information is provided. At a minimum the carrier's liability for denying access should be removed.
- (ii) These requirements are covered in the ACIF C555:2008 *Integrated Public Number Database (IPND)* Industry Code. The need to restate these requirements in this Determination undermines the scope of the Code and its enforcement on all suppliers rather than carriers alone.
- (iii) Clause 39 (2) (a) makes reference to a 'physical address'. By way of reference the IPND Code defines a physical address as a service address identifying a physical location as supplied by the customer. Industry questions the value of this address if the calls are made via a mobile device. Further the address can be changed by the customer at any time.
- (iv) The requirements in 48 (3) and 48 (4) where reference is made to ACIF G557:2007 *Standardised Mobile Service Area and Location Indicator Register* Industry Guideline conflict with the fact that this document is a guideline. If clauses in this guideline are being stipulated as being mandatory in the Determination, consideration should be given as to whether the guideline in question should be revised to become a registered Code.

8 RECORD KEEPING

Industry requests clarification of the purpose of the information listed in Clause 61 (1) that is required to be recorded by the emergency call person.

- (i) Will this information be used to assess the performance of the emergency call person?
- (ii) Will this information be used to inform a specific policy? If so which policy?
- (iii) Industry notes that the consideration of this information with regard to service levels should also have a facility for correlation with a specific emergency event.

9 CONCLUSION

Industry is committed to working closely with the ACMA and ESOs to ensure that there are appropriate and effective emergency call service arrangements in place, as demonstrated by the various initiatives and recommendations outlined in this submission paper.

Industry is concerned, however, that the proposed changes to the Determination may actually result in a degradation of existing emergency call service levels rather than any anticipated enhancement. This submission aims to clearly enunciate industry's concerns, highlighting both operational and regulatory shortcomings in the approach to emergency call services as tabled in the draft Determination. Industry would specifically like to highlight its concern at the setting of precedents that allow specific types of providers to in effect "opt-out" of any obligation to provide emergency call services facilities to their customers.

Industry would welcome the opportunity to discuss these issues in more detail with the ACMA. Given the level and wide range of concerns tabled in this submission, industry further requests that it be provided with the opportunity for further consultation on the revised draft of this Determination.

10 CONTACTS

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