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Australian Communications and Media Authority
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MELBOURNE VIC 8010
Via email: codefunding@acma.gov.au

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Dear Bridget,

Re: Reimbursement of Costs of Development of Consumer-related Industry Codes- Discussion Paper

Thank you for the opportunity to comment on the above discussion paper.

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general.

It is important that the overarching principle of creating self-regulatory mechanisms that safeguard consumers are developed with full and effective consumer participation. This should be the guiding factor in decisions to reimburse costs incurred developing regulations. It is imperative that the administration of the funding regime does not in any way lessen the ability of consumer groups to participate, nor serve as a disincentive for consumer inclusion and participation.

Overview

We broadly agree with the approach ACMA intends to take in administering the consumer code reimbursement scheme. The answer to all four questions posed in the discussion paper is, on the whole, yes. However, a number of key issues are not addressed in the paper, and we have particular issue with the exclusion of consumer costs being categorised as non-refundable. We are also concerned that the effectiveness and importance of consumer participation is not as prominent as it should be. Our comments are set out below in order of priority in 2 broad categories- Discussion Paper Specific and Additional Comments and Concerns.

Discussion Paper Specific Comments

Categories of Non-refundable costs

In our view, ACMA should not presume that applications for the reimbursement of consumer costs will be “double dipping”, simply because some funding goes toward participation in self-regulatory industry bodies. CTN is required to fully acquit to our funding body all our costs; any additional costs that can be substantiated as additional to the work undertaken for the purposes of fulfilling obligations under that grant should be refundable.

The Consumer Driven Communications project undertaken by consumer groups in 2004 highlighted the need for funding of consumers to be scalable, so that funding given to consumers was commensurate to the task of participating effectively. CTN strongly supports this recommendation with regard to funding for consumers in Code development projects.

ACMA’s categorisation of consumer costs being non-refundable is in our view misguided and we would like to see this revoked and replaced with a policy to address each application for reimbursement on its merits.

In CTN’s submission to the Senate Inquiry CTN urged that the proposed legislation be amended to expedite CTN’s ability to be declared as an association able to be reimbursed for costs of consumer-related code development. This was because on the reading of the proposed section 136A of the *Telecommunications Act*- Application for the eligibility for reimbursement of costs of development of consumer-related industry codes would exclude consumer organisations including CTN from redeeming costs incurred by participating in code working groups due to its current funding arrangements with DCITA.

Our view was based on the following rationale. A large proportion of CTN’s current work is its ACIF committee workload. The workload is ever-increasing and at times becomes burdensome to this community organisation staffed by 5 (3 full time and 2 part time) people. Two full time employees participate in ACIF as a majority of their workload, and both part timers are also ACIF participants. In the period from 1 October 2004 – 31 March 2005, CTN attended over 50 meetings and participated in 26 different ACIF Councils, reference panels, working committees and ad hoc groups.

This period of CTN work was dominated by the development of the Consumer Contracts Code, which allocated funding to third party resources including the chair and the code drafting. CTN wrote off nearly 500 hours of unpaid staff time and there was also considerable contributions made by CTN volunteers also during this time. As we all now acknowledge the Consumer Contracts Code was a project that could not be quantified prior to our application for funding from the DCITA Grants Scheme for consumer representation, but this project had to be accommodated in CTN’s general activities regardless as it was absolutely a high priority.

Similarly the ACIF Credit Management Code, which was reviewed as a direct result of Ministerial intervention, also required considerably more resources of CTN than we could have estimated when we applied for DCITA grant funding. To categorise all consumer funded bodies as resourced to undertake any work that may arise does not recognise the reality of consumer input to self-regulation.

One project looming on the horizon is the Single Consumer Code. Regardless of the final form of the Code, this project will be enormous. CTN is a key player in ACIF, and we expect to play a central role in the development of this Code. Because the specifics of the process have yet to be decided, it is difficult for us to estimate what costs this will impose on our staffing arrangements. What we want to ensure though, is that if there is a significant shortfall in the funding we receive to work in self regulation, and the actual cost to CTN of participating in self-regulation, that we will still be able to represent the needs of consumers effectively, which may require the reimbursement of additional costs we incur.

Adequate representation of interests of retail customers

That ACMA will seek to ensure that consumer bodies are representing the interests of retail customers is insufficient. From CTN's point of view, effective consumer input is crucial for self-regulation to function as a legitimate regime in this country.

Organisations like ACIF are industry organisations; and by industry we mean it consists of regulators, consumer groups, and telecommunications suppliers. Any industry body that claims to be creating self-regulatory instruments must demonstrate that consumers will have equal input to the project as industry. There must be a verifiable commitment to the inclusion of consumer representation and views in any project that is eligible for reimbursement. This means equal numbers of consumer and industry representatives must be at the table and contributing to the development of a self-regulatory instrument.

The selection process of consumer representatives must include consumers in that process if real, transparent representation is to be achieved. Greater participation of existing consumer committees- such as the Consumer and Disability Councils within ACIF- is an obvious means to achieving this.

There is also an opportunity to expand the function of ACMA's Mandatory Certificate of Consultation regime. It is appropriate that these be signed by consumer groups before any money is reimbursed. This is an established mechanism to ensure consumers feel their views have been adequately represented and should play a central role in determining the interests of retail customers have been addressed.

It may also be useful that project proposals are required to be officially endorsed by consumer groups who will be participating in the project. This could be required on the application form.

CTN believes a stronger commitment to including consumer representatives needs to be enunciated in ACMA's approach to approving funding. We are also of the view

that projects should not be reimbursed until the final Code is actually registered. That is, the purpose for which money was allocated has been actually achieved- the creation of a self regulatory instrument that is fit for registration.

Codes not covered by the reimbursement scheme

We are concerned that there is an emphasis on “Codes”, rather than all self-regulatory instruments. It is feasible that some Standards and Guidelines will offer benefits to consumers, and should be judged according to their subject matter, rather than the form. Whilst CTN is a strong advocate of developing effective self regulatory instruments rather than non-binding ones, we think that there may be projects that could benefit consumers that should be eligible for reimbursement of costs. One potential area of work within ACIF, for example, is on the issue of Informed Consent for consumers, where important work may be done but a Code may not be the outcome of the project. Therefore, we recommend ACMA take a broader view of the types of projects that will be eligible for reimbursement to ensure appropriate projects are eligible to apply to the fund.

One consideration might be that partial funding be given to projects that have a consumer element to them. These might be subject to special approval at the discretion of ACMA. Again, the object should be not to preclude reimbursement that might mean a project is simply not undertaken because of ineligibility for reimbursement.

Research Costs

One of the problems of only allowing industry organisations to re-coup costs will be the difficulty consumer organisations will have getting required research refunded from the industry body, rather than directly from ACMA. Whilst we welcome the opportunity to have research conducted to ensure codes are being developed to meet real consumer needs, in practice it may be difficult to get the industry body auspicing the code development to agree to pay for this work. This is a particular concern because there is such a heavy emphasis on a cost estimate being made at the outset of a project. Often in code development processes issues arise that require further exploration; the ability of an organisation like CTN to allocate scarce resources to better understanding and scoping the issue at hand that will have better outcomes for consumers as a result from that additional research. Without knowing we can re-coup those costs though, it is difficult to make the investment when other priorities are competing for the same resourcing. In practice, it may prove difficult to be reimbursed for additional work undertaken when the industry body has little flexibility in adjusting it's estimated project cost, which may result in the inability to undertake refundable research despite it being necessary to the project.

Categories of refundable Costs

Also listed in the refundable costs were items that do not seem reasonable to claim for reimbursement. In particular, things such as printing, publishing and web

authoring, the costs of hosting meetings, and communications infrastructure costs would seem to be items that are integral to the function of industry bodies. They are not special or additional costs; they are seemingly part of the general operations and responsibilities of the industry organisation. Eligibility for reimbursement for these would seem very different in nature to the other types of code development processes that are eligible (such as the outsourcing of drafting or the cost of running public forums to scope issues, for example). We suggest ACMA reconsider keeping the abovementioned inclusions in this category.

We support the refund of costs for consultation and meetings. Forums are also particularly useful and should be eligible for funding.

With the exception of our earlier comments about funded consumer groups, we are pleased to see that travel costs for consumers are eligible for reimbursement. It is important that the additional travel costs for consumers with disabilities and rural and remote consumers are recognised and will not prevent adequate representation by those parties.

Sitting Fees as an addition to categories of refundable costs

CTN is strongly of the view that consumer representatives who participate in industry self-regulatory forums should receive sitting fees for the time they are engaged in undertaking work for a project. That is, time in meetings and time spent preparing for meetings. Often consumer representatives are volunteers- some don't even receive funding for travel, let alone travel time (which is especially relevant for interstate travellers).

We would like to see ACMA state that eligibility for costs to be reimbursed by the body making consumer-related industry codes include sitting fees for all consumer representatives on Working Committees for both consumer-related Codes and Guidelines. This will allow consumer representatives to participate more effectively and efficiently to ensure better outcomes for end users.

Estimation of Costs

There is a strong emphasis on the estimation of costs at the outset of the project being undertaken. We'd like to see more flexibility built in to ensure timely revisions can be incorporated throughout a project. Whilst we understand a need to limit costs as appropriate, but at the same time additional work needing to be undertaken should not be precluded. Project proposals should be required to categorically state the costs that will be allocated to resourcing consumer participation, so that this is a transparent inclusion.

Additional Comments and Concerns

Reasonableness of Costs Incurred to be Reimbursed

In the recent past, two very high profile Code reviews were conducted within ACIF that involved the outsourcing of central roles to parties outside of ACIF. This involved ACIF contracting of independent Chairs and legal drafters for the Consumer Contracts and Credit Management Codes. It is notable that ACIF has yet to formally review the effectiveness of these investments with committee participants, yet they are often referred to as “best practice” models of code development.

In CTN’s view, it is not simply the timeliness or involvement of third parties in the course of a project that should measure the success of a self-regulatory process. The full exploration of issues, appropriate consultation with all stakeholders, genuine attempts to create regulation to deal with the issues at hand, and a consensus outcome need to be the basis of all self-regulatory codes. Whilst the legislation is not the place to set out guidelines for what is or is not appropriate to outsource, there needs to be a debate about what should and should not be outsourced, simply because costs can be reimbursed. There needs to be an element of reasonableness in the decision to outsource in the first instance, if that money is eligible to be reclaimed, and ideally all industry stakeholders should agree to any roles being outsourced before this occurs.

For example, usual practice is for drafting work is undertaken by participants in the ACIF working committees. Would it be reasonable for a third party to be contracted to draft a Code revision, when this is actually an identified role of the committee members? Similarly, if a third party were to be contracted to undertake a role an existing ACIF project manager would be expected to fulfil- minute taking for example, or sometimes as Chair- would this be a reasonable activity to claim funding for? There is also a risk of losing or under-utilising the expertise of committee and staff members if a third party is engaged to undertake work that could be done by working committee members. It is crucial to use the existing resources effectively, rather than outsource roles due to preference alone.

We see a pressing need for guidance about what will and what will not be able to be re-claimed by the industry organisation developing the code. CTN would be very disturbed if work were regularly outsourced because it could be refunded for that money, when the work is able to be done by committee members or existing staff of the industry body. Potential approaches to this issue might be to have a funding cap on a per-project basis (which would then require the industry body to prioritise where it wants to spend the available money that will be reimbursed) or ACMA may nominate a set of criteria which take into account things such as whether staff exist to perform that same function. We’d like to see ACMA offer stronger guidance about reasonable applications for reimbursement in light of these issues.

Potential Impact on Projects Undertaken by Industry Bodies

One potential side effect of the consumer code funding regime is that the industry may become less willing to undertake projects if they are not eligible for a reimbursement of funds. Clearly if work can be undertaken and costs covered, the industry will see a lot to gain from doing that work. Unfortunately, the reverse may be true when ineligible work is being proposed. It is important that ACMA's criteria for eligibility is sufficiently flexible so as to not exclude funding for projects that will provide benefit to consumers or that will mean consumer participation is funded to ensure input, where otherwise none would be sought.

Conclusion

We are of the view that ACMA needs to reconsider its categorisation of consumer representative funding as being non-refundable, and furthermore that sitting fees for consumer representatives be declared as eligible for cost reimbursement. There needs to be a review of the effectiveness of outsourcing roles in code development processes before these roles are declared eligible for reimbursement. This fund should be encouraging consumer participation in self-regulation, and we think this can be achieved if ACMA incorporates the views of consumer organisations on this matter.

Should you wish to discuss this response in more detail please contact myself, Annie McCall or Sarah Wilson at Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,



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CTN Executive Director

This submission was prepared by Teresa Corbin, CTN Executive Director, Annie McCall, CTN Information Officer, and Sarah Wilson, CTN Policy Officer. It has been approved out of session by the CTN Council.