

Tanzanian visitor hears about consumer issues

Dr Cleophas Kente Rutabingwa, Chief Executive Office of the Consumer Consultative Council (CCC) of the Tanzania Communications Regulatory Authority, recently spent several days visiting ACMA. He was keen to learn from ACMA's experience of consumer issues in the communications sector in Australia and to meet with other regulatory bodies as well as consumer advocacy groups.

Dr Rutabingwa was particularly interested in ACMA's approach to consumer consultation through the Consumer Consultative Forum and our current proposal to include industry representatives on the forum to achieve better balanced outcomes.

The Tanzanian CCC is a relatively new body and faces multiple challenges in advocating for lower tariffs, fairer billing systems, high quality service delivery and universal access. There is also a need to ensure Tanzanian consumers are better informed about their rights and consumer law.

During his visit, as well as discussing regulatory and consumer interest Telecommunications Industry matters with ACMA representatives, Dr Rutabingwa met with the Deputy Telecommunications Industry Ombudsman and representatives of the Australian Competition and Consumer Commission, the Australian Communications Industry Forum, the Consumer Telecommunications Network and the Australian Telecommunications Users' Group (ATUG). While in Australia, he also attended the ATUG conference, held in Sydney in early March 2006.



LEFT TO RIGHT: VINCE HUMPHRIES, MANAGER CONTENT CREDIT MANAGEMENT AND INFRASTRUCTURE, MICK OWENS, ACTING MANAGER INTERNATIONAL TELECOMMUNICATIONS, DR RUTABINGWA, NERIDA O'LOUGHLIN, GENERAL MANAGER INDUSTRY OUTPUTS, AND JACKIE THORPE, FORMERLY OF ACMA'S CONSUMER INTERESTS SECTION

Guidelines for ACMA's use of enforceable undertakings released

Guidelines about ACMA's use of enforceable undertakings associated with compliance with telecommunications obligations were released recently. Enforceable undertakings are aimed at encouraging behavioural change in an organisation.

They are able to address systemic problems rather than simply penalise isolated instances of non-compliance or misconduct and a key advantage of this approach from the regulator's point of view is that the undertaking party takes responsibility for its own organisational and behavioural change.

This power has been successfully used by other regulators to require compliance in a cost-effective and tailored manner. It is similar to the powers of the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority to accept enforceable undertakings.

The acceptance of enforceable undertakings is part of a suite of

regulatory measures available to ACMA and could be used as an alternative to, or in addition to, the exercise of other enforcement powers. Measures available to ensure compliance with telecommunications obligations include advice and encouragement, formal warnings, enforceable undertakings, infringement notices, remedial directions or notices to comply, cancellation and suspension of licences, court action, and civil and criminal penalties.

While ACMA seeks to use the minimum power or intervention necessary to achieve a sustained and ongoing commitment to compliance from regulated entities, the ability to accept undertakings is seen as a more responsive and flexible regulatory tool. Undertakings have advantages over other regulatory measures—they can save time and the financial and court resources required for litigation; they allow flexibility and compromise, in that both parties can contribute to structuring the compliance action; they encourage learning; and they

ensure that the regulated entity's process of compliance is ongoing, for example, compared to a one-off fine.

ACMA can accept enforceable undertakings about compliance with the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. It may accept enforceable undertakings at any time, including during or following an investigation of a breach or alleged breach of these Acts. Undertakings are enforceable by the Federal Court. ACMA may accept undertakings that a person will take specified action or refrain from taking specified action to comply with these Acts, or take action directed towards avoiding contravention in the future.

ACMA also has the power to accept enforceable undertakings to prevent spam under the *Spam Act 2003*, although that framework is slightly different. Accordingly, these guidelines do not apply to the acceptance of enforceable undertakings under the Spam Act, or to undertakings that may be given under other legislation.

An undertaking is a formal promise to act or refrain from acting in a particular manner. Enforceable undertakings for the purposes of the Telecommunications Act are a person's written promise expressed to be undertakings under section 572B of the Telecommunications Act which are accepted by ACMA. Practically, they are included in a document signed by both parties which can be used by ACMA as the basis for a court order without ACMA having to establish, in court, a contravention of the relevant Act if the promise is broken.

Enforceable undertakings can be cancelled by ACMA, or withdrawn or varied by the undertaking party with ACMA's consent.

Unless exceptional circumstances apply, ACMA will publish enforceable undertakings on its website at www.acma.gov.au, as they are given. *Guidelines for the use of enforceable undertakings – telecommunications obligations* is also on the ACMA website.