



Australian Government

Department of Infrastructure, Transport,  
Regional Development and Communications

# Consumer Safeguards Review

Part C / Choice and Fairness

Consultation paper

July 2020



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## Consumer Safeguards Review

The Consumer Safeguards Review (Terms of Reference at Appendix A) is being conducted in three parts and is making recommendations on the consumer safeguards required so consumers:

- > can access an effective complaints handling and redress scheme that provides transparency, and holds telecommunications providers accountable for their performance (Part A)
- > have reliable telecommunications services, including reasonable timeframes for connections, fault repairs and appointments (Part B)
- > are able to make informed choices and are treated fairly by their provider in areas such as customer service, contracts, billing, credit/debt management and switching providers (Part C)

This consultation paper seeks your views on proposals for reform regarding choice and fairness in the retail relationship between customers and their provider (Part C).

## Have your say

The Government welcomes submissions from individuals, businesses, peak bodies and other interested parties on the matters set out in this consultation paper and the proposals for reform.

Submissions will be accepted until **close of business Monday 24 August 2020** via:

<p><b>Email:</b> <a href="mailto:consumersafeguardsreview@communications.gov.au">consumersafeguardsreview@communications.gov.au</a> or</p> <p><b>Post:</b> Consumer Safeguards Review Department of Infrastructure, Transport, Regional Development and Communications GPO Box 2154 CANBERRA ACT 2601</p>
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Personal information such as your name and contact details will be collected by the Department through this consultation process when it is contained in submissions (including submissions in the form of an email or letter). Submissions will be used for the purpose of conducting the Consumer Safeguards Review.

All submissions will be published on the Department's website unless a need for confidentiality is indicated to the Department in writing at the time of submission. The names of individuals who submit will be published with their submission unless a request for anonymity is made in writing with the submission. It is not our practice to publish contact details or other personal information contained in submissions and, if included by submitters, this will be redacted prior to publication.

Your name, contact details and other personal information will not be provided to any other person or organisation unless it is required for the purposes of the Consumer Safeguards Review or by law, or we seek, and you give us, your permission to do so.

The Department's [Privacy Policy](#) contains information about privacy obligations, as well as complaint handling processes and how to access and/or seek correction of personal information held by the Department. If you wish to correct personal information in relation to your submission to this consultation process, please email [consumersafeguardsreview@communications.gov.au](mailto:consumersafeguardsreview@communications.gov.au).

## Introduction

The Consumer Safeguards Review (the Review) is examining what consumer safeguards are required for a changing communications environment, with a focus on the post-2020 environment – one in which the large scale roll-out of the National Broadband Network (NBN) will be complete and the vast majority of premises will have migrated to an NBN service. Part A of the Review has considered complaints handling and redress and Part B has considered service reliability, including existing obligations for service connection and fault repair. Terms of Reference for the Review are at [Appendix A](#).

As consumers, we are increasingly reliant on communications services. They are essential to the way in which we live, much like utilities such as water and electricity. We think voice and internet services should be easy to connect and reliable. We want to make informed choices about services and providers, and be treated fairly.

The telecommunications market has delivered for consumers by providing a wide variety of products and services at generally affordable prices.<sup>1</sup> However, there are areas where commercial incentives may be weaker (for example, in delivering a high standard of customer service or meeting the needs of those experiencing financial hardship) or where there are limits to the market mechanism (for example, in addressing barriers to digital inclusion). We are interested in understanding what aspects of choice and fairness might not be adequately addressed by the market in the post-2020 environment. In connection with this, we are considering what changes could be made to regulatory arrangements to improve the way rules are made, the content of those rules, and how they are enforced. We would like to see a framework that provides adequate choice and fairness, without imposing an unnecessary burden on industry or impact on the market.

<sup>1</sup> [www.communications.gov.au/departmental-news/communications-affordability-continues-improve](http://www.communications.gov.au/departmental-news/communications-affordability-continues-improve)

This analysis requires us to consider the changes that are already occurring in the market (including market offerings), the relationship between providers and their customers, and the effectiveness of existing regulatory arrangements intended to protect consumers. Of course, we must understand where we are, and where we're headed, to work out whether changes are required. This paper follows that logic by first assessing the status quo, before making proposals about future needs.

This Part C paper is set out in four parts:

1. Current legislative and regulatory framework
2. Key issues
3. What changes are required?
4. Proposals for reform

Through these four parts, the paper:

1. Considers what choice and fairness looks like in a changing communications environment and how they can best be delivered (including the role of self-regulation<sup>2</sup> and direct regulation).
2. Tests the ongoing relevance of some specific legacy obligations, particularly those that apply to legacy voice services, and whether these could be phased-out, as the majority of fixed line services move to the NBN.
3. Briefly canvases the importance of digital inclusion and productivity to choice and fairness, and asks whether the requirement on Telstra to promote low income measures is a necessary and effective way of supporting the connectivity of Australians on low incomes.

<sup>2</sup> This paper uses the term 'self-regulation' in place of 'co-regulation' to reflect the terminology in the Tel Act. Co-regulation is where industry develops its own codes with legislative backing. Australia's system of industry codes can be categorised as co-regulation because the system is authorised through legislation.

## Current legislative and regulatory framework

The sale and provision of communications services is covered by laws of general application such as the Australian Consumer Law (ACL). The ACL is administered and enforced jointly by the Australian Competition and Consumer Commission (ACCC) and the state and territory consumer protection agencies, with involvement of the Australian Securities and Investments Commission (ASIC) on relevant matters. Telecommunications sector-specific rules are contained in legislation, including:

- > The Telecommunications Act 1997 (Tel Act); and
- > The Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act)

Legislative instruments (such as service provider determinations and industry standards) also apply, as do registered industry codes. Telecommunications sector-specific rules are enforced by the communications regulator, the Australian Communications and Media Authority (ACMA). The 2016 Review of ACMA found that these tiered arrangements complement each other and enable consumer protections to be tailored to the communications industry, in a way that builds on core rights and obligations set out in the ACL.<sup>3</sup>

Legislative instruments made under the Tel Act, relevant to this paper, include:

- > Telecommunications Service Provider (Mobile Premium Services) Determinations No.1 and No.2 of 2010 (the MPS Determinations)
- > Telecommunications (International Mobile Roaming)<sup>4</sup> Industry Standard 2013 (the IMR Standard), replaced by the Telecommunication Service Provider (International Mobile Roaming) Determination 2019 (the IMR Determination)
- > Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (the Complaints Handling Standard)
- > Telecommunications (NBN Continuity of Service) Industry Standard 2018 (the NBN Service Continuity Standard)
- > Telecommunications (NBN Consumer Information) Industry Standard 2018 (the NBN Consumer Information Standard)
- > Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the NBN Migration Determination)
- > Telecommunications (Mobile Number Pre-porting Additional Verification) Industry Standard 2020 (the Mobile Number Pre-porting Additional Verification Standard).

<sup>3</sup> Review of the Australian Communications and Media Authority: Final report, October 2016, p.50

<sup>4</sup> The IMR Determination commenced on 1 July 2020, however, ACMA has decided to provide regulatory forbearance on new customer notification and expenditure caps until 31 December 2020 given the COVID-19 pandemic.

## Industry Standards

ACMA can make standards that apply to participants in a section of the industry if:

- > directed by the Minister to do so (section 125AA of the Tel Act)
- > an ACMA request to develop an industry code is not complied with in a timely way (section 123); or
- > ACMA forms a view a code is deficient and issues have not been remedied by the industry (section 125).

Compliance with a standard is mandatory (section 128). If a provider breaches a standard ACMA can seek pecuniary penalties through the Federal Court (up to \$250,000 for each breach), or issue an infringement notice (up to \$13,320<sup>5</sup> for each contravention) (Parts 31 and 31B).

## Service Provider Rules

ACMA can make service provider rules under section 99 of the Tel Act that apply to carriage service providers – though is limited to matters specified in the Telecommunications Regulations 2001. As a result of the Telecommunications Legislation Amendment (Competition and Consumer) Act 2020, new subsection 99(1A) of the Tel Act enables the Minister to make a service provider determination – the Minister’s determinations prevail over ACMA’s determinations to the extent they are inconsistent (new subsection 99(6) of the Tel Act). Compliance with service provider determinations is also mandatory (section 101) and ACMA can seek pecuniary penalties up to \$10 million for each breach, and in some limited circumstances issue infringement notices (Parts 31 and 31B).



<sup>5</sup> Increased from \$12,600 on 1 July 2020, in line with increases in Commonwealth penalty units set by the Crimes Act 2014.

## Industry Codes

Industry codes are developed by the industry body, Communications Alliance, and registered and enforced by ACMA under Part 6 of the Tel Act. The most relevant industry code to Part C of the Review is the Telecommunications Consumer Protections Code (TCP Code) which sets out consumer protections in the areas of advertising, sales, contracts, customer service, billing, credit and debt management, financial hardship and transferring providers.

Section 106 of the Tel Act describes compliance with industry codes as 'voluntary'. If ACMA is satisfied that an industry participant has contravened a registered code, it may:

- > direct that industry participant to comply with some or all of the code's provisions (section 121); or
- > issue that industry participant with a formal warning (section 122).

If an industry participant contravenes a direction to comply with a code, ACMA can seek pecuniary penalties through the Federal Court (up to \$250,000 for each breach) or issue an infringement notice (up to \$13,320<sup>6</sup> for each contravention) (sections 121, Parts 31 and 31B). In effect, a provider must contravene an industry code and a subsequent direction to comply from ACMA before running the risk of a penalty for non-compliance.

TCP Code compliance and monitoring is also undertaken by the industry's compliance body, Communications Compliance. It is responsible for undertaking education, investigation and audit activities, primarily informed by the provider annual compliance attestation lodgement process. It may seek information from a provider, direct a provider to comply with one or more code obligations where there is evidence of non-compliance and make referrals of non-compliance to ACMA.<sup>7</sup>

## The TIO

The Telecommunications Industry Ombudsman (TIO) can handle escalated complaints from consumers on a broad range of issues, including matters governed by the TCP Code and other consumer safeguards. It can make decisions that require providers to take actions up to the value of \$50,000 and non-binding recommendations up to \$100,000.<sup>8</sup> It may also refer systemic issues to ACMA or the ACCC, and has recently commenced publishing systemic issues reports based on the trends it is seeing in complaints. This is consistent with the strengthened partnerships between the TIO and other key elements of the consumer protection framework, as envisaged by the recommendations in Part A of the Review.

<sup>6</sup> Increased from \$12,600 on 1 July 2020, in line with increases in Commonwealth penalty units set by the Crimes Act 2014.

<sup>7</sup> Telecommunications Consumer Protections Code C628:2019, Appendix 1

<sup>8</sup> [Telecommunications Industry Ombudsman Terms of Reference, As approved by the Board on 12 November 2019](#), p.9

## Key issues

### 1. The changing communications environment

Over the past 25 years, communications markets, technology and consumer use of telecommunications services have changed dramatically. The sector has moved from being dominated by a Government-owned, vertically integrated, monopoly provider (Telstra), to one where NBN Co (a wholesale only provider) offers high speed broadband connectivity to the majority of Australian premises, and many retail service providers compete to sell NBN services. Telstra's copper network, originally designed primarily to deliver voice services, is being largely replaced with a network that pushes fibre closer to the customer's premises and is designed primarily to deliver broadband services (with voice a component of the data carried by the network). We note the 'copper continuity obligation' requires Telstra to maintain services on the legacy copper network to customers outside the NBN fixed line footprint.

Technological change and innovation have impacted the type of services consumers use – consumers have embraced broadband (fixed and mobile) and are increasingly giving up their fixed line voice services. 91 per cent of Australian adults retained an internet connection in their home in the six months prior to May 2019 (with 88.4 per cent of data downloaded via fixed networks),<sup>9</sup> and 87 per cent of Australian adults had accessed the internet through their mobile device.<sup>10</sup> Consumer data consumption tripled between 2015 and 2019, driven primarily by consumption of video content.<sup>11</sup>

According to the ACCC's Internet activity report for December 2019, data consumption for NBN retail services increased by 17 per cent in the three months to December 2019 compared to the June 2019 reporting period – an average consumption of 277GB per service per month.<sup>12</sup> At June 2019, 51 per cent of adults in Australia had a mobile phone and no fixed-line phone at home.<sup>13</sup> Use of over-the-top (OTT) applications for voice and messaging (like Skype and WhatsApp) is also increasingly prevalent. At May 2019, 67 per cent of Australian internet users had used an app to communicate via messages, voice or video calls in the last six months.<sup>14</sup>

There has also been innovation and change in the market offerings of providers, with the trend generally being towards simpler pricing structures and more inclusions. Bundled voice and broadband services, and flat rate voice plans with unlimited local and national calls, have become the norm. Data is a key determinant for pricing of retail services, with voice often included as an add-on. Many fixed line broadband plans in the market now offer unlimited data (57 per cent of plans in 2018–19)<sup>15</sup>, and in 2018–19 the most popular NBN speed tier was the 50/20 Mbps tier (which the ACCC considers is likely a response to NBN Co's wholesale pricing changes which made the 50 Mbps speed tier more attractive).<sup>16</sup> According to the ACCC, the price of fixed broadband services declined by 2.3 per cent over the five years to 2018–19, mobile phone services by 7.5 per cent and mobile broadband by 9.6 per cent.<sup>17</sup>

<sup>9</sup> [ACMA Communications Report 2018–19](#), p.1

<sup>10</sup> [ACMA Communications Report 2018–19](#), p.6

<sup>11</sup> [ACMA Communications Report 2018-19](#), p.11

<sup>12</sup> [ACCC Internet activity report, December 2019](#) (published April 2020), p.4

<sup>13</sup> [www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home](http://www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home)

<sup>14</sup> [ACMA Communications Report 2018–19](#), p.83

<sup>15</sup> [ACCC Communications Market Report 2018–19](#), p.2

<sup>16</sup> [ACCC Communications Market Report 2018–19](#), p.18

<sup>17</sup> [ACCC Communications Market Report 2018–19](#), p.2

Data allowances for mobile services have increased by 65 per cent since 2014–15, and by 118 per cent for mobile broadband.<sup>18</sup>

These changes are bringing many benefits to consumers, including greater service choice, real price reductions<sup>19</sup> and the broader social and economic benefits of connectivity. In the context of the COVID-19 pandemic, this connectivity has proven critically important – fostering commercial and social interaction, education, work and entertainment. However, the increasing array of market players and products may also create complexity for consumers that can be difficult to navigate. At the network level there is the NBN (fixed line, wireless or satellite depending on location) which will cover the majority of consumer premises. However, there are also non-NBN fixed line networks (e.g. localised fibre networks or Telstra’s residual copper network in the NBN fixed wireless and satellite footprints), non-NBN wireless networks (generally smaller scale), mobile networks (3G, 4G, 5G) or non-NBN satellite networks.

At the retail level, there is a wide range of voice (fixed line, mobile or VoIP/OTT) and broadband products and services available with differing pricing structures and inclusions, as well as bundling options that include devices and/or content services.

The multi-layered supply chain impacts on the likelihood of a seamless service experience and challenges the existing consumer protection paradigm. For example, NBN Co and a consumer’s retail provider are separate businesses, though both impact on the consumer experience. A network provider and an OTT provider are similarly separate businesses, though both impact on consumer experience. Further, many current consumer safeguards either apply only to Telstra (reflecting the old market structure) or are designed for a voice service delivered over the copper network. They are not reflective of the new environment.

The rapidly changing and complex environment necessitates a consumer protection framework that is able to respond in a timely way to address emerging issues, without stifling beneficial innovation.



18 [ACCC Communications Market Report 2018–19](#), p.2

19 [ACCC Communications Market Report 2018–19](#), p.5

## 2. Choice and fairness

Choice and fairness are crucial for consumers dealing with communications providers, especially given the range of products and services available.

By 'choice' we mean that consumers need accurate, relevant and usable information about products and services so they can confidently choose those that meet their needs.

By 'fairness' we mean that consumers should be treated honestly and reasonably by their provider. This includes ethical selling practices, even-handed and easily understood contracts, accurate and timely billing, services that perform as described, and providers who respond promptly and effectively when a consumer experiences problems with the product or service, or financial hardship.

While market forces largely encourage choice and fairness, evidence suggests (see 'customer service and satisfaction') that rules are still required for the foreseeable future. Rules that support choice and fairness should be clear, effective, directly enforceable and actively enforced. They should not unnecessarily burden industry or interfere with the market.

This section of the paper considers three broad issues in relation to regulating choice and fairness in the relationship between customers (including small business) and their providers:

- > customer service and satisfaction, including as evidenced by complaints to the TIO and complaints made directly to providers
- > the way in which consumer protection rules are made under the regulatory framework; and
- > compliance with, and enforcement of, those consumer protection rules.

### Customer service and satisfaction

According to the Roy Morgan Trust and Distrust Monitor, over the period April 2018 to March 2019, the telecommunications industry averaged the highest level of net distrust of all industries surveyed.<sup>20</sup> The February 2018 Roy Morgan Net Trust Survey<sup>21</sup> also reported high consumer distrust of the telecommunications sector. The February 2018 survey findings identified good customer service as being the top driver of consumer trust, followed by honesty and ethical behaviour.

Customer service was the top or second top complaint issue reported to the TIO from 2012–13 to 2015–16 (see Appendix B which shows the total number of new TIO complaints and top complaint issues for the financial years 2012–13 to 2018–19). In 2017–18 the TIO's reporting methodology changed, however, in both 2017–18 and 2018–19 customer service issues featured at or near the top of the list of top five consumer complaint issues. In 2017–18, 34.1 per cent of complaints had a customer service issue (no or delayed action by the provider),<sup>22</sup> and in 2018–19 customer service (no or delayed action by the provider) was the top complaint issue for internet and landline service complaints and the second top issue for complaints about mobile services and multiple services.<sup>23</sup>

The volume of consumer complaints reported to the TIO has fluctuated over the years but has been consistently above 100,000 since 2006–07. The highest complaint numbers (197,682) were reported in 2010–11.

20 [Roy Morgan Net Trust Score monitor](#), 4 July 2019

21 [Roy Morgan Net Trust Score](#), 27 February 2018

22 [Telecommunications Industry Ombudsman Annual Report 2017–18](#), p.36

23 [Telecommunications Industry Ombudsman Annual Report 2018–19](#), p.16

Total complaints declined year-on-year from the 2010–11 peak<sup>24</sup> until 2015–16, but increased to 167,831<sup>25</sup> in 2017–18. The TIO's 2018–19 Annual Report showed a welcome decline in complaints by 21 per cent to 132,387.<sup>26</sup> The TIO's reporting for the first three quarters of 2019–20 shows complaints have remained relatively steady (a 13 per cent increase in Quarter 3 compared to Quarter 2, but remaining lower than Quarter 1), and a general downward trend in complaints numbers being observed since mid-2019.<sup>27</sup> This result may reflect action to improve the experience of consumers migrating to the NBN and better handling of complaints by industry following the recent focus of industry, ACMA and Government on these areas, but it is too soon to tell if the decline will be sustained.

The Communications Alliance 'Complaints in Context' report publishes TIO data for 12 providers by 10,000 services in operation (SIOs). The providers represented are the 10 providers that received the most complaints to the TIO in the previous financial year. The other providers may also volunteer to participate, and two currently do. The most recent report covers [January – March 2020](#)<sup>28</sup> and the average number of complaints for all 12 participants was 7.1 per 10,000 SIOs. Southern Phone had the highest number of complaints at 22.5 per 10,000 SIOs, followed by MyRepublic with 18.7. amaysim had the fewest proportion of complaints at less than one per 10,000 SIOs.

While this suggests TIO complaint numbers are reasonable when considered against the number of SIOs, these do not reflect the much higher number of complaints made directly to providers as reported by ACMA (see below).

ACMA commenced reporting on complaints made directly to providers under the Complaints Handling Standard (as opposed to those escalated to the TIO) in 2018–19.<sup>29</sup> ACMA's first annual report on complaints, covering 2018–19, found complaints numbers were steady before declining in the last quarter of the financial year.<sup>30</sup> The total number of complaints made to providers over the course of the financial year was 1.407 million, with the average number of complaints per 10,000 SIOs per quarter being 115.<sup>31</sup> Numbers look to be tracking down for 2019–20, with total complaints for the September and December quarters being 581,086.<sup>32</sup> The number of complaints referred back to providers by the TIO has also declined over time, from a high of 10.9 per cent in the first quarter of 2018-19 to a low of 4.9 per cent in the December quarter 2019-20.<sup>33</sup>

24 [Telecommunications Industry Ombudsman Annual Report 2012–13](#), p.22

25 [Telecommunications Industry Ombudsman Annual Report 2017–18](#), p.14

26 [Telecommunications Industry Ombudsman Annual Report 2018–19](#), p.10

27 [Telecommunications Industry Ombudsman, Quarterly Report, Quarter 3, Financial year 2020](#), p.2

28 [Telecommunications Complaints in Context, January – March 2020](#)

29 [ACMA Telecommunications complaints handling 2018 to 2019](#). This report excludes data from Optus.

30 ACMA [Telecommunications complaints handling 2018 to 2019](#), p.4 & 11

31 ACMA [Telecommunications complaints handling 2018 to 2019](#), p.11

32 [www.acma.gov.au/publications/2020-03/report/telco-complaints-handling-performance-september-and-december-2019](http://www.acma.gov.au/publications/2020-03/report/telco-complaints-handling-performance-september-and-december-2019)

33 ACMA [Telecommunications complaints handling 2018 to 2019](#), p.12 and [www.acma.gov.au/publications/2020-03/report/telco-complaints-handling-performance-september-and-december-2019](http://www.acma.gov.au/publications/2020-03/report/telco-complaints-handling-performance-september-and-december-2019)

By comparison, in 2018-19 the total number of complaints received from QLD, NSW, ACT, SA and TAS energy (electricity and gas) consumers was 207,408, and 35,378 contacted an ombudsman when they were unable to resolve their complaint with their retailer. Victoria separately reported 119,160 complaints to providers,<sup>34</sup> with 28,384 escalated to the Energy and Water Ombudsman Victoria.<sup>35</sup> The lower complaint volumes in the energy sector may in part be explained by there being fewer customers/SIOs<sup>36</sup> – in 2018-19 there were approximately 7.141 million residential and small business customers in the energy sector,<sup>37</sup> compared to 30.289 million SIOs in the telco sector.<sup>38</sup>

In relation to the proportion of complaints, the Australian Energy Regulator and Victoria's Essential Services Commission indicated that 2.9 per cent of energy customers made a complaint in 2018-19.<sup>39</sup>

For the telco sector in 2018-19, the number of complaints made to providers compared with the number of SIOs results in a complaint rate of 4.6 per cent.<sup>40</sup>

Relatively high complaint numbers, sustained levels of consumer dissatisfaction<sup>41</sup> with telecommunications providers, and the prevalence of customer service complaints as the most complained about service to the TIO, suggests that not all telco providers are consistently delivering<sup>42</sup> on their customers' wants and expectations around choice and fairness. This detracts from the positive benefits that telecommunications are bringing to the community.

34 Essential Services Commission, [Victorian Energy Market Report 2018-19](#), p.31

35 Energy and Water Ombudsman Victoria, 2019 [Annual Report Case Snapshot](#) – the complaint figure this is a slight over estimate as complaint numbers for electricity and gas include enquiries

36 Noting that energy customers and telco SIOs are not the same but provide a reasonable basis for comparison based on the publicly available data.

37 Annual retail markets report 2018-19, Australian Energy Regulator, p.11 & 49 – QLD, NSW, ACT, SA and TAS electricity customers only, report notes gas customers are excluded from calculations as almost all gas customers also have electricity

38 [ACMA Telecommunications complaints handling 2018 to 2019](#), p.2

39 [Annual retail markets report 2018-19](#), Australian Energy Regulator, p.13 & 47 and Essential Services Commission, [Victorian Energy Market Report 2018-19](#), p.31

40 Calculated using the total complaints to providers for the financial year on p.11 of ACMA's 2018-19 complaints handling report (i.e. 1,406,716), divided by the total number of services in operation for June 2019 on p.14 of ACMA's report (i.e. 30,288,723), multiplied by 100 to give a percentage

41 Roy Morgan Research for Communications Alliance conducted quarterly since 2013 has shown a persistent level of dissatisfaction with customer service fluctuating between 14% and 21%. The most recent results from [April 2020](#) found 17% of customers were either dissatisfied or very dissatisfied with overall customer service and 20% were neutral, figures for [January 2020 and October 2019](#) were 17% negative/15% neutral and 18% negative/17% neutral respectively. The Australian Communications Consumer Action Network's report, [Can you hear me?](#), released in July 2018 found 18% of participants were negative about their customer service experience and 36% were neutral.

42 The TIO deals with complaints that have not been able to be resolved directly between the consumer or small business and their provider.

## Making consumer protection rules

Section 4 of the Tel Act records that Parliament intended for telecommunications to be regulated in a manner that promotes the greatest practicable use of industry self-regulation. However, this applies only to the extent that self-regulation does not compromise the effectiveness of regulation in achieving the objects of the Tel Act at section 3. These objects include:

- > promoting the long term interests of end users
- > promoting the availability of accessible and affordable carriage services that enhance the welfare of Australians; and
- > providing appropriate community safeguards in relation to telecommunications activities and to regulate adequately participants in sections of the telecommunications industry.

The TCP Code, developed through the industry-led code-making process, contains many of the telco specific rules governing choice and fairness in the consumer-provider retail relationship. The TCP Code is buttressed by direct regulation set out in industry standards and service provider determinations made by ACMA—covering specific issues such as international mobile roaming, the NBN migration process and complaints handling.

## Self-regulation

The Department's May 2014 policy background paper, *Regulating harms in the Australian communications sector*,<sup>43</sup> noted that the communications market has changed significantly since self-regulation was established over 20 years ago – a larger number of providers, diverse products, new business models and changing consumer preferences. There is also now a much greater reliance on communications services. The paper concluded that there are questions as to whether self-regulation should be the default approach to dealing with regulatory harms.<sup>44</sup> This is because self-regulation tends to work best where:

- > products and services are relatively homogenous<sup>45</sup>
- > there are a smaller number of market players;<sup>46</sup> and
- > industry has high visibility of the problem and is willing to disclose information on performance in addressing the problem and can manage the problem themselves.<sup>47</sup>

43 [Regulating harms in the Australian communications sector: Policy Background Paper No.2](#), May 2014, p.14

44 [Regulating harms in the Australian communications sector: Policy Background Paper No.2](#), May 2014, p.14

45 [Optimal conditions for effective self- and co-regulatory arrangements](#), ACMA Occasional paper, September 2011, p.12

46 [Optimal conditions for effective self- and co-regulatory arrangements](#), ACMA Occasional paper, September 2011, p.12

47 [Regulating harms in the Australian communications sector: Policy Background Paper No.2](#), May 2014, p.10-13

Self-regulation, through a code, has a number of potential strengths, including:

- > That rules in codes may be more efficient for business through potentially lower compliance and administrative costs.<sup>48</sup>
- > Code-making has the potential for greater flexibility and adaptability.<sup>49</sup> It provides the opportunity for industry to address emerging issues quickly, where industry sees clear benefits in doing so. Noting (as per the points below), the lived experience is that code-making can be a slow process.
- > The consensus approach may help build industry support for addressing a problem or issue.<sup>50</sup>
- > The rules may potentially be more workable/practical.<sup>51</sup> The code development process draws directly on the technical expertise and experience of industry. The businesses that will implement the rules 'hold the pen'. However, it is worth noting that industry is consulted in the development of direct regulation including standards and service provider determinations.
- > That code-making may provide a structured approach for industry participants to engage with each other where they need to cooperate, e.g. where different players in a supply chain need to coordinate their actions,<sup>52</sup> including to develop technical or process rules to support other forms of regulation.

48 [Optimal conditions for effective self- and co-regulatory arrangements, ACMA Occasional paper](#), September 2011, p.5

49 [Optimal conditions for effective self- and co-regulatory arrangements, ACMA Occasional paper](#), September 2011, p.5

50 [Regulating harms in the Australian communications sector: Policy Background Paper No.2](#), May 2014, p.11

51 [Connected Nation: The Regulatory Ecosystem, Communications Alliance](#), 2020, p.18

52 [Connected Nation: The Regulatory Ecosystem, Communications Alliance](#), 2020, p.12

However, the lived experience of using self-regulation for consumer protection rules (in the telecommunications space) has raised a number of issues, including:

- > The current code development process appears to be better suited to managing existing problems, rather than emerging ones. ACMA can only request that industry develop a code if it is satisfied that development of the code is necessary or convenient to provide appropriate safeguards, or to otherwise deal with the performance or conduct of participants in a section of the industry, noting industry can create a code of its own volition.
- > The current code development process is slow. The 2011–12 TCP Code development process took two years to complete.<sup>53</sup> The most recent TCP Code review process commenced in August 2017 and took in excess of 18 months. Typically, code development involves a committee that garners the views of industry, government and consumer groups, undertakes detailed drafting of codes and takes a consensus-based approach to decision-making. Codes can be varied but this only tends to be done for minor/straightforward matters. Arguably this means the existing code development process is better suited to static, non-pressing issues, or those where there is agreement on the way forward. Contested matters are difficult to manage expeditiously.

53 [Regulating harms in the Australian communications sector: Policy Background Paper No.2](#), May 2014, p.13

- > Connected to the above point, technological developments and changes to consumer offerings can out-pace code making processes. The Mobile Premium Services Code (MPS Code) was first developed in 2009 to provide consumer safeguards for advertising, information provision and unsubscribe/opt-out mechanisms for MPS. It was reviewed and updated in 2011. However, technology has changed and similar third party content services can be purchased online and through apps, not just by using premium mobile numbers. Content can also be delivered using a data connection instead of by text or multimedia messaging, with content service charges added to a consumer's telco bill. The MPS Code was only updated in 2019 to capture these market developments.
  - > The code development process has appeared to suit matters that require cooperation across industry (e.g. technical matters), rather than consumer issues that may create an impost on industry. There is an inherent tension in a process that requires industry to formulate its own consumer protection rules. While industry must have invited public submissions on any code proposed for registration with ACMA, and must have consulted at least one body or association that represents the interests of consumers (usually this occurs through the committee approach described above), ultimately, industry decides the form of the code brought for registration.
  - > Code-making has lent itself to some unclear and ambiguous rules. Code making is done by committee, with an emphasis on consensus. Unclear and ambiguous rules have potential flow-on effects for enforceability. For example, the TCP Code often qualifies obligations by use of terms such as 'take reasonable steps' or 'use reasonable endeavours/efforts'.
  - > The test for registering codes is low and subjective. ACMA must register a code if it is satisfied that the code 'provides appropriate community safeguards' for the matters it covers, amongst other things. The test applies to the code as a whole, meaning individual safeguards within a code might be of varied quality. Moreover, the safeguards quality test is 'appropriate'— a subjective test for all involved (consumers, industry and the regulator). This means that some code protections are likely to be sub-optimal, depending on the perspective taken, and a balance needs to be struck. In practice, ACMA could assess each article, though is not required to do so or prompted to under legislation.
  - > The current code enforcement process is indirect. Enforcement requires a two-step process. ACMA cannot choose to take immediate and direct action, regardless of the circumstances. This is discussed further in the 'compliance and enforcement' section below. The process arguably does not create strong compliance incentives.
  - > Self-regulation has often required 'buttressing' via government or ACMA intervention. Examples of this include:
    - the MPS Determinations in 2010
    - the IMR Standard in 2013 (directed to be made by the Minister) (now replaced by the IMR Determination)
    - the standard/service provider determinations in 2018 containing NBN consumer experience measures (directed/facilitated by the Minister); and
    - the Mobile Number Pre-porting Additional Verification Standard in 2020, designed to stop fraudulent mobile number porting (directed to be made by the Minister).
- Arguably, these direct interventions would not have been necessary if industry had acted more decisively and swiftly to address emerging issues.

### Direct regulation

The Department's May 2014 policy background paper, *Regulating harms in the Australian communications sector*,<sup>54</sup> states that 'direct regulation (or black letter law) is appropriate where there is a compelling policy reason for regulation, usually related to protection of the public or industry from harm, and where a legal foundation is required for enforcement measures in the case of noncompliance.' Direct regulation is also appropriate when industry has fewer incentives to control risks (or cannot control them easily) or where industry consensus is uncertain about regulatory intervention.

Many of these conditions appear to be met in relation to consumer protection issues in the telecommunications space, for example, in areas such as ethical sales practices, complaints handling or managing customer issues related to financial hardship. In these instances, there are arguably fewer commercial incentives to address risks and the potential for significant consumer detriment.

Direct regulation, has a number of potential strengths,<sup>55</sup> including that:

- > It tends to provide clearer rules and expectations
- > Compliance is compulsory
- > Enforcement is direct (not requiring a two-step process, as noted above and discussed further below); and
- > Sanctions are unambiguous, and provide flexibility for a graduated approach that is tailored to the situation/breach.

Experience has shown that targeted direct regulation, set out in standards and service provider determinations (subordinate legislation) can be responsive and flexible. Changes to primary legislation are usually longer and less agile processes. Recent experience making the NBN consumer experience instruments (including the Complaints Handling Standard) and the Mobile Number Pre-porting Additional Verification Standard, demonstrate how quickly these instruments can be made.



54 [Regulating harms in the Australian communications sector: Policy Background Paper No.2, May 2014, p.6](#)

55 [Regulating harms in the Australian communications sector: Policy Background Paper No.2, May 2014, p.6](#)

Both were made by ACMA within six months of the Minister directing it to do so. Deloitte research commissioned by Communications Alliance states that standards and determinations can be made at a similar pace to co-regulatory codes or even faster.<sup>56</sup>

As noted previously, complaint numbers held steady or declined over the past year since the Complaints Handling Standard and NBN migration instruments have been in place. Similarly, there was a significant reduction in complaints following the introduction of the IMR Standard in 2013, and lowering of the financial amounts in dispute. Complaints increased again in 2017 and 2018, possibly (in part) due to customer confusion about applying the rules to tablet use overseas. As a result, the new IMR Determination is responsively addressing this.<sup>57</sup>

Direct regulation does have some potential weaknesses, for example:

- > it may not reflect industry practice/ operational requirements as well as an industry code.
- > industry does not 'hold the pen' though is consulted on drafting; and

- > It might be more costly<sup>58</sup> and one-size-fits-all: not accommodating business size and capacity to comply or be fully informed. It may therefore provide a barrier to entry for innovative firms with limited resources to engage in the rule development process<sup>59</sup> – however, this issue is not limited to direct regulation and may also apply to other processes like code-development.

Industry has certainly raised concerns at different times with the consumer protection rules set out in direct regulation. Notably, concerns have focussed on excessive prescriptiveness,<sup>60</sup> rules not always reflecting industry practice/operational realities<sup>61</sup> and, in some cases, potentially creating unnecessary cost/administrative burden.<sup>62</sup> Though in many cases these issues have been identified in consultation on draft instruments and have lessened over time as ACMA has adjusted the rules in response to industry and other stakeholder feedback.

56 [Connected Nation: The Regulatory Ecosystem, Communications Alliance, 2020, p.22](#)

57 [Telecommunications Industry Ombudsman submission to ACMA's 2018 Review of the International Mobile Roaming Industry Standard, p.1 & 5](#)

58 The Connection Nation report commissioned by Communications Alliance states that surveyed businesses believe that the effort and cost of co-regulatory requirements are lower than direct regulation (p.2)

59 [Connected Nation: The Regulatory Ecosystem, Communications Alliance, 2020, p.12](#)

60 [Connected Nation: The Regulatory Ecosystem, Communications Alliance, 2020, p.18-19 and Communications Alliance/AMTA submission to ACMA: Proposed changes to international mobile roaming regulations, 9 September 2019, p.1](#)

61 [Connected Nation: The Regulatory Ecosystem, Communications Alliance, 2020, p.18-19](#)

62 [Communications Alliance submission: ACMA Proposed Revisions to the NBN Consumer Experience Rules and Complaints Handling Standard, February 2020, p.4, 15, 20, 23 & 29](#)

## Compliance and Enforcement

### The enforcement process (telecommunications-specific rules)

Enforcement of codes is a two-step process – ACMA may issue a formal warning or a written direction to comply with a code. This means initial action is focussed on discouraging future breaches. No immediate sanction can be applied, even if significant consumer detriment occurred. ACMA can only issue an infringement notice or seek a pecuniary penalty order from the Federal Court if there is non-compliance with a direction to comply with a code. A direction to comply with an industry code endures only as long as the industry code itself – when a new TCP Code is registered, all existing directions to comply cease to have effect and the indirect enforcement process re-sets. For example, when the 2019 TCP Code was registered, directions issued by ACMA to comply with the 2015 TCP Code ceased. ACMA has the power to give a direction to comply with a replacement code in respect of conduct that breached the previous industry code, provided the conduct would have also breached the replacement code if it was registered when the conduct occurred.

As described in the preceding section, the enforcement pathway for direct regulation (industry standards and service provider determinations) is more direct. Compliance is mandatory in the first instance, and ACMA can impose penalties without having to first issue a direction to comply.

An issue that is common to enforcing both industry codes and industry standards is the penalty amounts that apply for breaches. Neither the court imposed penalty maximum of \$250,000 nor the infringement notice maximum penalty of \$13,320 is likely to act as a financial deterrent to profitable conduct that contravenes a code or standard, nor to reflect the detriment to consumers that may have occurred.

Breaches of service provider determinations on the other hand attract penalties of up to \$10 million for bodies corporate.

Breaches of standards or directions to comply with a code would likely amount to a breach of the Tel Act and therefore a breach of a service provider rule that attracts penalties of up to \$10 million for bodies corporate. However, proceedings for a breach of a service provider rule can only be instituted if the contravention does not also breach another civil penalty provision. In the case of breaches of a standard or direction to comply with a code, there are other civil penalty provisions that apply and therefore proceedings can only be instituted in relation to these provisions (invoking the associated (lower) penalties).

Remedial directions can be used to require telcos that breach a service provider rule to, for example, put in place systems and processes to bring themselves into compliance with a code or standard. A penalty of up to \$10 million for bodies corporate would apply in the event of a breach of a remedial direction, but only if the conduct did not also amount to a breach of a standard, direction to comply with a code or other civil penalty provision. The \$10 million maximum does not apply to the breach of the code or standard itself, but rather the breach of the remedial direction.

The penalties across the different instruments are not well-calibrated. The use of these instruments has evolved over time. In practice, the subject matter covered and the harms to be addressed via codes, standards and service provider determinations tend to be similar but enforcement options, including maximum penalties, can be very different depending on the regulatory pathway used.

### The compliance and enforcement experience

In 2017–18, ACMA conducted a review of critical information summaries required by the TCP Code, assessing 212 offers from 131 NBN service providers and finding 97 per cent compliance (an improvement on 2015 where there was 69 per cent compliance among 35 providers assessed).<sup>63</sup> In March 2019, ACMA announced it had formally warned Telstra, Optus and Vodafone for failing to provide information about products and services that may suit the needs of consumers with a disability, as required by the TCP Code.<sup>64</sup>

In 2018–19, ACMA tested the compliance of 41 providers with obligations in the Complaints Handling Standard, finding widespread non-compliance and formally warning 27 providers and issuing remedial directions to four providers.<sup>65</sup> ACMA has also taken recent enforcement action in relation to the NBN Consumer Information Standard, issuing \$88,200 in infringement notices to seven providers for failing to comply with the standard.<sup>66</sup>

However, the impact of ACMA's compliance and enforcement actions appears to have been constrained, potentially by the:

- > number and nature of providers (in particular, the large number of small providers)
- > lack of clarity of TCP Code obligations as developed through the consensus-based code-making process

- > inability to directly enforce rules set out in industry codes (with code enforcement confined, at first, to either a formal warning or a direction to comply)
- > regulatory 're-set' that occurs each time a code is replaced; and
- > relatively modest penalties available where ACMA finds a standard or code contravention.

Providers self-assess compliance with the TCP Code through an annual attestation to Communications Compliance. The TCP Code states that Communications Compliance will refer compliance attestation failures to ACMA and may refer a provider to ACMA for possible investigation and enforcement of substantive compliance breaches. In practice, Communications Compliance provides ACMA with a list of who has lodged a compliance attestation, and it is then a matter for ACMA to determine who has not lodged an attestation.

In November 2019, ACMA issued directions to 10 providers who failed to submit annual compliance statements.<sup>67</sup> During 2017–18, ACMA issued three directions and four formal warnings to providers who failed to lodge compliance attestations.<sup>68</sup> Compliance attestation lodgement rates appear to have improved over time. For example, in 2013–14, ACMA reported having given four directions to comply and 95 formal warnings in response to non-compliance with self-attestation requirements.<sup>69</sup>

63 [ACMA Annual Report 2017–18, p.75 and ACMA Annual Report 2015–16, p.74](#)

64 [www.acma.gov.au/articles/2019-03/telcos-warned-about-disability-information-failures](http://www.acma.gov.au/articles/2019-03/telcos-warned-about-disability-information-failures)

65 [ACMA Annual Report 2017–18, p.75, and www.acma.gov.au/articles/2019-05/telcos-directed-comply-complaints-handling-rules](#)

66 [www.acma.gov.au/articles/2019-08/acma-issues-88200-infringement-notices-under-nbn-rules](http://www.acma.gov.au/articles/2019-08/acma-issues-88200-infringement-notices-under-nbn-rules)

67 [www.acma.gov.au/articles/2019-11/acma-takes-action-against-eleven-telcos](http://www.acma.gov.au/articles/2019-11/acma-takes-action-against-eleven-telcos)

68 [ACMA Annual Report 2017–18, p.74](#)

69 [ACMA Annual Report 2013–14, p.79](#)

Providers attesting to compliance with the TCP Code are not necessarily fully compliant, as can be seen from ACMA's TCP Code compliance activities. However, the attestation requirement does, at least, focus management attention on the TCP Code and compliance processes.

ACMA's compliance work suggests that industry compliance is mixed. Breaches have been found against both large and small providers. Compliance appears to have improved over time in some areas (i.e. compliance attestations and critical information summaries) but non-compliance persists, including in relation to newer rules like complaints handling and NBN consumer information.

The ACL, enforced by the ACCC, prohibits certain conduct and practices, including false and misleading representations, unconscionable conduct and unfair contract terms, and provides a set of economy wide consumer guarantees that apply to the supply of all goods and services. The ACCC can take action under the ACL to protect consumers and mitigate losses. However, it cannot take action in relation to telecommunications-specific rules set out in industry consumer codes as that is the role of ACMA.

In recent years the ACCC has taken strong enforcement action on misleading conduct in relation to third party billing,<sup>70</sup> advertising of NBN plans,<sup>71</sup> transitioning to the NBN<sup>72</sup> and promoting 'unlimited' mobile data plans,<sup>73</sup>

and has actively pursued better information for consumers around broadband speeds by developing guidance on advertising broadband speeds, introducing the Measuring Broadband Australia program to provide consumers with comparable information on fixed broadband speeds, and taking action against some providers.<sup>74</sup>

The ACCC has also taken action against companies that have engaged in unconscionable conduct – for example, in 2017 it took action against Solenet/Sure Telecom.<sup>75</sup> There, contraventions of the ACL resulted in orders including financial penalties, orders for consumer reimbursement and management disqualification. The number and range of companies involved demonstrates that breaches of the ACL are not necessarily limited to smaller or 'rogue' providers. As indicated by the ACCC in its submission to Part A of the Review, there could arguably be a cultural issue within some of the industry.<sup>76</sup>

70 [www.accc.gov.au/media-release/telstra-to-pay-10-million-for-misleading-premium-billing-charge-representations](http://www.accc.gov.au/media-release/telstra-to-pay-10-million-for-misleading-premium-billing-charge-representations), [www.accc.gov.au/media-release/optus-penalised-10-million-for-misleading-customers-over-digital-purchases](http://www.accc.gov.au/media-release/optus-penalised-10-million-for-misleading-customers-over-digital-purchases) and [www.accc.gov.au/media-release/vodafone-to-compensate-customers-over-direct-carrier-billing-charges](http://www.accc.gov.au/media-release/vodafone-to-compensate-customers-over-direct-carrier-billing-charges)

71 [www.accc.gov.au/media-release/dodo-to-refund-360000-over-nbn-streaming-claims](http://www.accc.gov.au/media-release/dodo-to-refund-360000-over-nbn-streaming-claims)

72 [www.accc.gov.au/media-release/optus-to-pay-15-million-for-misleading-customers-during-nbn-transition](http://www.accc.gov.au/media-release/optus-to-pay-15-million-for-misleading-customers-during-nbn-transition)

73 [www.accc.gov.au/media-release/telcos-on-notice-about-false-and-misleading-advertising](http://www.accc.gov.au/media-release/telcos-on-notice-about-false-and-misleading-advertising)

74 [www.accc.gov.au/consumers/national-broadband-network/broadband-speeds](http://www.accc.gov.au/consumers/national-broadband-network/broadband-speeds) and [www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/measuring-broadband-australia-program/previous-performance-reports](http://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/measuring-broadband-australia-program/previous-performance-reports)

75 [www.accc.gov.au/media-release/solenet-and-sure-telecom-banned-from-operating-telco-services](http://www.accc.gov.au/media-release/solenet-and-sure-telecom-banned-from-operating-telco-services)

76 ACCC submission to Part A of the Consumer Safeguards Review, August 2018, p.5

### 3. Legacy obligations for voice services

There are a number of legacy obligations, primarily for voice services, currently in place that are relevant to the discussion of choice and fairness (or overall consumer protection). It is timely to test them for efficacy and relevance as the telecommunications environment changes. These protections are set out in direct regulation (the Tel Act, the TCPSS Act and related legislative instruments), rather than industry codes (although some are supported by industry codes) and were originally developed in an environment where most consumers predominantly relied on voice services delivered over the legacy copper network. They include:

- > access to untimed local calls (Part 4, TCPSS Act)
- > free access to emergency call services (Part 8, TCPSS Act)
- > price control arrangements for Telstra (Part 9, TCPSS Act)
- > pre-selection<sup>77</sup> (Part 17, Tel Act)
- > provision of calling line identification (Part 18, Tel Act)
- > number portability (Part 22, Tel Act)
- > standard terms and conditions (Part 23, Tel Act)
- > operator services for reporting faults and service difficulties (Schedule 2, Tel Act)
- > directory assistance services (Schedule 2, Tel Act); and
- > itemised billing (Schedule 2, Tel Act).

<sup>77</sup> Pre-selection enables a customer to choose a different telephone provider (other than the provider that supplies their local calls) to supply other call types such as national long distance and international calls, and calls to mobiles.

The table at [Appendix C](#) identifies the purpose of these obligations and what they deliver in practice, and analyses their continuing importance. Other legislated consumer safeguards for voice services – the Customer Service Guarantee (CSG) and Universal Service Obligation (USO) – are the subject of other processes. The CSG has been considered in Part B<sup>78</sup> of the Review. The USO is being considered as part of work relating to the Universal Service Guarantee (USG). The USG provides all homes and businesses in Australia with access to both voice and broadband services.<sup>79</sup> Work is currently underway on how to provide the USG more efficiently into the future.

These legacy obligations were put in place at a time when a consumer's key communications service was a voice-only service provided over Telstra's fixed-line copper access network, and many were designed to address issues arising from Telstra's dominant market position. As the NBN nears completion, Telstra's position in the fixed market has changed and much of its copper network is being replaced.

Some of these legacy obligations are likely to reflect enduring public interest aims such as competition, choice, access and participation or public safety.<sup>80</sup> Others may be of diminishing relevance and could potentially be progressively phased out over time. Where the protections or underlying public policy aim remain relevant, it is important to ask whether the specific regulatory rule remains the best way of securing that aim.

<sup>78</sup> [www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services](http://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services)

<sup>79</sup> [www.communications.gov.au/what-we-do/phone/phone-services/universal-service-guarantee-telecommunications](http://www.communications.gov.au/what-we-do/phone/phone-services/universal-service-guarantee-telecommunications)

<sup>80</sup> [Deregulation in the Communications Portfolio Policy background Paper No. 1](#), 2014 p.6-7; and ACMA Review final report, Part 5, p.73

An example is pre-selection, which is an obligation that enables customers of fixed phone services to manage their expenditure on phone services by choosing different providers to supply local, long distance and international calls, and calls to mobiles. It is also used to support some wholesale services provided over the copper network, including some business services. In practice, pre-selection is not widely used by consumers,<sup>81</sup> particularly as market offerings have changed. Many fixed and mobile plans now offer unlimited local, national and mobile calls. Unlimited international calls tend to be limited to higher priced fixed voice plans, and mid-to-higher priced mobile plans. There are exceptions, for example, Boost's prepaid services offer unlimited international calls to selected countries. Other plans (generally VoIP services supplied with a broadband connection and those offered by mobile resellers) offer discounted international rates or add-ons for as little as \$10 per month. There are also alternative services available such as OTT voice and messenger apps or calling cards. Pre-selection is not available for mobiles or over the NBN so will cease to be an option for most consumers once the transition to the NBN is complete.

In terms of wholesale voice and business services that utilise pre-selection functionality, ISDN business services are considered 'special services' under the NBN migration and are being phased out, with an intended market exit date of May 2022.<sup>82</sup> The ACCC has extended the fixed line service declarations that facilitate wholesale voice access to the copper network until 30 June 2024, to enable access seekers to continue to compete and build market share prior to moving to the NBN.<sup>83</sup>

These trends and activities raise the question of the ongoing need for the obligation beyond the NBN migration timeframe. The obligation to provide pre-selection is set out in the Telecommunications (Provision of Pre-selection) Determination 2015. ACMA has recently completed a review of the Determination, as required by the Tel Act, and decided to keep the current rules in place for the time being, while acknowledging there would be benefit in reconsidering its viability once the NBN transition is complete.<sup>84</sup>

81 For example, [Telstra's submission](#) to ACMA's 2020 review of Telecommunications (Provision of Pre-selection) Determination 2015 indicates that, once customers migrate to the NBN over the next year, it will have 3,192 business customers and 710 individual residential customers on products that allow for preselection.

82 [www.telstrawholesale.com.au/nbn/special-services.html#1](http://www.telstrawholesale.com.au/nbn/special-services.html#1)

83 [www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018/final-decision](http://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services-declaration-inquiry-2018/final-decision)

84 [www.acma.gov.au/publications/2020-05/publication/acma-announces-outcome-pre-selection-review](http://www.acma.gov.au/publications/2020-05/publication/acma-announces-outcome-pre-selection-review)

#### 4. Digital inclusion and productivity

If choice and fairness are to be realised, essential communications services should be available, accessible and affordable. Fairness requires that consumers are able to access and make use of essential services. Similarly, choice is more difficult to exercise if consumers lack the skills to choose or are not able to afford the level of service needed to perform essential activities. Improving digital participation will also support economic productivity by enabling people to more fully participate in society and the economy and will help make sure the benefits of infrastructure investment are maximised. Additionally, it allows government and other services to be provided and accessed more conveniently, widely and efficiently and at reduced cost. Low levels of digital inclusion not only impact on the individual but also on the economic dividend that can be delivered by telecommunications services, especially broadband.

Evidence from the Australian Digital Inclusion Index (ADII) indicates that some groups are less able to take advantage of the benefits of being online. The ADII shows that while digital inclusion in Australia is generally improving, a number of digital divides persist, including for low income households, mobile-only users, older Australians, Australians with a disability and Indigenous Australians.<sup>85</sup> For example, recent research from the Department's Bureau of Communications and Arts Research (BCAR) indicates that full-time students, the unemployed and retirees tend to spend more of their disposable income on communications services, which in part reflects lower than average incomes for these groups and possibly higher communications needs.<sup>86</sup>

85 [Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2018](#), p.5-6

86 [Affordability of communications services for low income households, BCAR](#), April 2020, p.10

Low income households (those with incomes below \$22,000) spend disproportionately more as a share of income on communications services (8.3 per cent of their annual income compared to 3.3 per cent for an average household).<sup>87</sup>

More broadly, however, the Productivity Commission (PC)<sup>88</sup> has noted that communications services will continue to be affordable for most people – with prices having fallen substantially over the past decade – and that remaining access and affordability gaps are likely to be small and concentrated. In its latest Communications Market Report, the ACCC found that the average price of broadband services have been on a downward trend since 2015. The average price of these services fell by 1.5 per cent in 2018-19 and 2.2 per cent in 2017-18, for NBN services the decline was 1.4 per cent in 2018-19 and 5.5 per cent in 2017-18.<sup>89</sup> Infrastructure Australia's Australia Infrastructure Audit<sup>90</sup> also noted that consumer demand for telecommunications services has grown rapidly yet the average affordability of these services has also improved in the last decade. This is in contrast with most other types of infrastructure, including water, energy and transport.

87 [Affordability of communications services for low income households, BCAR](#), April 2020, p.6

88 [Telecommunications Universal Service Obligations, Productivity Commission Inquiry Report, Overview and Recommendations, No. 83, 28 April 2017](#).

89 [ACCC Communications Market Report 2018–19](#), p.23

90 [www.infrastructureaustralia.gov.au/sites/default/files/2019-08/Australian%20Infrastructure%20Audit%202019%20-%208.%20Telecommunications.pdf](http://www.infrastructureaustralia.gov.au/sites/default/files/2019-08/Australian%20Infrastructure%20Audit%202019%20-%208.%20Telecommunications.pdf)

The NBN and programs like the Mobile Black Spot Program have significantly improved availability of infrastructure and services. The Australian Government also has programs in place to support digital inclusion, such as the Be Connected initiative for older Australians, the Digi House initiative which improves digital inclusion for people living in social housing and the Your Journey app for Indigenous Australians. The introduction by NBN Co of an entry-level bundle in October 2019 supports greater affordability of NBN services, and states and territories also have measures in place which aim to support digital participation.

Supporting digital participation and realising the benefits it can bring continues to be a priority for governments across Australia. A number of bodies at the national level are considering digital inclusion as part of the broader digital transformation policy agenda, including the Data and Digital Ministerial Forum (part of the National Federation Reform Council system with representation from the Commonwealth and all Australian states and territories).<sup>91</sup> The Department will continue to work collaboratively with other agencies with a remit in this area to consider what further action may be required, including with the Department of Industry, Science, Energy and Resources, Department of Social Services and the Department of the Prime Minister and Cabinet. The Department will also work with industry to understand what it is doing or can do in this area.

### Telstra's low income measures

An immediate 'affordability' question arises in the context of this review's examination of legacy obligations. Telstra is currently required (as one of a number of conditions of its carrier licence) to develop and promote a low income measures package to assist those on low incomes maintain access to communications services. These measures currently include a:

- > low-cost fixed home phone plan aimed at Health Care Card and Pension Concession Card holders, starting at \$25 per month with call charges extra
- > home phone pensioner discount providing eligible pensioner customers with a monthly call discount on their Telstra home phone service
- > free limited fixed home service for those that meet certain eligibility criteria that allows incoming calls but restricts outgoing calls to certain numbers, for example triple zero and 1800 freecall services, available for a maximum of 12 months (except in certain circumstances); and
- > calling card program accessed through community agencies for those in financial crisis.

91 [www.pm.gov.au/media/update-following-national-cabinet-meeting](http://www.pm.gov.au/media/update-following-national-cabinet-meeting) and [www.pmc.gov.au/public-data/australian-data-and-digital-council](http://www.pmc.gov.au/public-data/australian-data-and-digital-council)

These measures are primarily focussed on affordability of fixed line voice-only services. This obligation may no longer be meeting the needs of many low income consumers, due to:

- > changing consumer preferences away from fixed voice services (voice call minutes originating from fixed line networks declined in 2018–19 from 12 to 10 billion);<sup>92</sup> and
- > the central role data services now play for consumers (89 per cent of Australian adults accessed the internet in the six months to May 2018, and 74 per cent went online three or more times a day),<sup>93</sup> including for access to government and business services.

Mobile services offer both voice and data at a similar or lower price to Telstra's low income fixed voice-only service. While mobile services are not available to everyone, they are widely available and it raises questions about whether an obligation of this nature remains necessary for voice services (as noted above, SIM-only mobile plans with unlimited national calls and SMS start at around \$15 per month). Telstra has also announced its intention to launch a low-income mobile plan for \$30 per month with no lock in contract or excess data charges.<sup>94</sup> However, cheaper, low data pre-paid plans continue to have a higher cost per unit of data than plans with larger inclusions.<sup>95</sup>

The evolution of the industry structure will result in Telstra being largely structurally separated once the NBN rollout is complete (except in copper continuity areas). However, Telstra will remain the contracted USO provider until 2032, raising the question of whether Telstra should continue to be obligated to offer low income measures. Going forward, the importance of data services to all consumers and their universal availability (through the NBN and the USG) raises questions about whether affordability measures should continue to focus on fixed line phone services, whether there is a need to address affordability of broadband services, and if so, how.

This is an area under active consideration, with NBN Co recently introducing reduced wholesale pricing for its entry level bundle to enable retailers to develop affordable 12/1 Mbps services for customers.<sup>96</sup> The ACCC is undertaking an inquiry into NBN access pricing for residential services, and is considering regulating a basic speed broadband access product and a voice-only access product.<sup>97</sup> BCAR's April 2020 research indicates that the market is offering a range of services to meet the basic monthly data needs of low income individuals, but not necessarily the amount of data an individual may want to use each month or the needs of households with multiple data users. It recommends ongoing monitoring of pricing trends to gauge whether the market continues to offer a range of services that meet consumer needs.<sup>98</sup>

92 [ACCC Communications Market Report 2018–19](#), p.43

93 [ACMA Communications Report 2018–19](#), p.5 – this has not changed from 2017–18.

94 'Telstra CEO says "toughest experience" shaped response to vulnerable customers', Communications Day, 7 February 2020

95 [Affordability of communications services for low income households, BCAR](#), April 2020, p.6

96 [www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-proposes-big-discounts-to-wholesale-prices](http://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-proposes-big-discounts-to-wholesale-prices), 17 September 2019

97 [ACCC inquiry into NBN access pricing, Position paper, April 2020](#), p.12-13 & 15

98 [Affordability of communications services for low income households, BCAR](#), April 2020, p.6

## What changes are required?

### Choice and fairness

Noting the strengths and weaknesses outlined previously in relation to direct regulation and selfregulation, the Department is interested in views about the best way to make consumer protection rules, what the content of the rules should be, and how they can best be enforced. Is the code-making process working as effectively as it could? Are codes made quickly enough? How good is industry compliance with codes? Do the rules cover the right matters? Is there a case for change to the rule-making process and the way in which the rules are enforced? Should any existing rules be removed and why?

### Rule making

The rule-making process should be effective i.e. timely and efficient, appropriately consultative and result in clear, targeted rules for both industry and consumers. The objective should be to provide clarity on the essential things that the rules are aimed at achieving for consumers, thereby making it easier for providers to 'do the right thing', in-turn improving compliance.

Strengthening the self-regulatory framework to set tighter parameters around the industry codemaking process could achieve this, for example, by:

- > providing additional flexibility for the communications regulator, ACMA, to request codes or code changes by:
  - enabling ACMA to specify a timeframe for industry to submit a code (currently the timeframe is set in the Tel Act at 120 days); and/or
  - reducing the time that has to elapse, following code registration, before ACMA can request that code deficiencies be remedied (currently a code must be registered for at least 180 days before a request can be made, and industry must be given at least 30 days' notice to remedy deficiencies);

- > specifying that ACMA must refuse to register sub-optimal codes or code provision(s), and can require changes to sub-optimal provisions, for example, to address consumer concerns or lack of clarity in provisions; and
- > providing a higher threshold for code registration beyond providing 'appropriate community safeguards.'

As part of this approach, ACMA could be given 'reserve' powers to make consumer protection rules without first requesting a code or finding a code deficient, where it is satisfied that prompt, direct action is necessary.

Alternatively, essential consumer protection rules could instead be made by the Minister<sup>99</sup> or ACMA in consultation with industry, consumers and other relevant stakeholders as appropriate, and set out in direct regulation – currently the majority of core rules are set out in the TCP Code. Market conditions and the experience to-date suggest that targeted direct regulation of this nature can be an appropriate and effective approach to address consumer harm.

This option would see self-regulation confined to second order safeguards or situations where Minister or regulator-developed rules could usefully be supported by technical or process requirements. ACMA would continue to be subject to Ministerial oversight (for example, section 14 of the Australian Communications and Media Authority Act 2005 empowers the Minister to give written directions to ACMA in relation to the performance of its functions and the exercise of its powers). The Minister and ACMA are subject to obligations to consult publicly on any proposed regulatory instruments. Rules set out in legislative instruments (whether made by ACMA or the Minister) are also generally subject to disallowance by the Parliament.

<sup>99</sup> With the passage of the [Telecommunications Reform Package](#), the Tel Act now enables the Minister to make service provider determinations.

## Rule coverage

The Department considers the rules should cover essential protections, focusing on provider behaviour where commercial and other market incentives for good service and fair treatment are lacking, for example, ethical sales practices when signing up customers or providing assistance to contracted customers if they experience financial hardship. The rules should not create unnecessary burden for industry or interference with the market.

Consideration of the rules could include the level of prescription, and whether there is value in making rules more outcomes-based – noting a balance would need to be struck between providing clarity/avoiding ambiguity and reducing prescription.

In the event that a strengthened self-regulatory process is pursued, consideration should be given to how the rules can be improved to better direct provider behaviour and unambiguously guide compliance by industry and enforcement by ACMA.

In the event that direct regulation of essential protections is pursued, existing regulation may provide a starting point for considering the range of areas that should be covered, though it may not be desirable to simply replicate these rules – consideration should be given to what are essential matters.

Part 6 (section 113) of the Tel Act lists a range of matters that may be dealt with by industry codes and standards. The TCP Code covers some but not all of those matters. Other consumer safeguards include the MPS Code, the IMR Determination, the Complaints Handling Standard and NBN consumer experience instruments. This option provides an opportunity for greater consolidation of the rules so that they are set out in fewer instruments and locations.

The NBN has changed the communications market structure and the supply chain is becoming more complex. While we consider that choice and fairness measures are mostly in the direct control of retailers, there may be a need for some rules to address supply chain complexity. An example is the 2018 Complaints-handling Standard that requires all entities in the NBN supply chain to work together to resolve complaints in a timely and effective manner.

The emergence of OTT services and apps may present particular issues for consumers and may need to be captured by any new consumer protection rules. This is most apparent in the context of mobile premium services and direct carrier billing where the MPS Code has been extended to some content services purchased online and through apps.

## Rule enforcement

Consumer protection rules should be directly enforceable.

A number of changes to ACMA's powers to enforce compliance with codes appear to be needed. In particular, there are strong arguments for ACMA being empowered to directly enforce compliance with codes, including by issuing infringement notices, seeking pecuniary penalties and accepting enforceable undertakings—without having to first direct a provider to comply.

It is also arguable that civil penalty and infringement notice amounts for breaches of codes and standards should be recalibrated so that they offer remedies commensurate with the seriousness of the conduct, and support specific and general deterrence. For example, breaches of service provider rules attract penalties of up to \$10 million for bodies corporate in contrast to penalties of up to \$250,000 for breaches of industry standards. Industry standards and service provider determinations are often used interchangeably to develop consumer protection rules. Aligning the penalties that apply for breaches would result in greater consistency between these key instruments of direct regulation.

## Legacy obligations

### Obligations of ongoing importance

Legacy consumer safeguards should only be retained in a future framework if they deliver an enduring policy objective, efficiently and effectively. The Department considers that free access to emergency call services, number portability, calling line identification, and standard terms and conditions are likely to meet these criteria and hence there should continue to be a regulatory obligation on all operators to provide these services. Many of these safeguards deal with public interest matters (e.g. public safety, competition and choice) where there may not be strong commercial incentives, so continued direct regulation is considered appropriate going forward. The Department is interested to know whether stakeholders agree with this view.

### Obligations potentially of declining relevance

The Department considers that there is another group of regulatory obligations where there is an open question as to whether they will continue to be required and for how long. In our view, these include pre-selection, the untimed local call obligation, directory assistance services, operator services and itemised billing (which are largely designed around legacy voice services) and powers to place price controls on Telstra (which were developed to deal with Telstra's vertical integration and market dominance). Many of these obligations relate to legacy fixed line voice services, which are used by a steadily diminishing proportion of the population.

Specifically

- > less than half (49 per cent) of Australian adults now have a fixed voice service;<sup>100</sup>
- > there are 27 million mobile handset services in operation;<sup>101</sup> and
- > 96 per cent of Australian adults have a mobile phone and 83 per cent have a smartphone.<sup>102</sup>

In addition, there are many market offerings which arguably make these regulatory obligations unnecessary. For example, flat rate local calls remain a feature of some voice plans offered in the market today. However, the trend is towards unlimited call value in both fixed and mobile plans (i.e. moving away from charging separately for local and national long distance calls), raising the question of whether there is an ongoing need for a formal regulatory obligation for an untimed local call. For example, 96 per cent of post-paid mobile plans and 97 per cent of prepaid plans offer unlimited calls or SMS.<sup>103</sup> Increasingly, voice is included in fixed broadband bundles or can be purchased as an add-on starting at around \$5-\$10 per month – the cheapest broadband plans with unlimited local and national calls included cost around \$50-\$60 per month.<sup>104</sup>

Standalone fixed line phone plans featuring unlimited national calls to landlines and mobiles also cost around \$50-\$60 per month.<sup>105</sup> Some lower-priced fixed line phone plans (starting at around \$22 per month)<sup>106</sup> still charge separately for making calls, including an untimed/flat rate for local calls and timed rates for other call types. Mobile plans that are not subject to the untimed local call obligation are arguably offering better value (for example, a SIM-only mobile plan with 2GB of data and unlimited national calls, calls to mobiles and SMS start at approximately \$15 per month).<sup>107</sup>

That being said, we acknowledge that the use of legacy fixed voice services is higher amongst particular groups such as older Australians or low income Australians. According to ACMA's June 2019 report *Mobile-only Australia – living without a fixed line at home*, those aged 45 and over were more likely to use fixed line voice services (with percentages of adults being mobile-only ranging from 46 per cent (for those in the 45–54 age bracket) to 18 per cent for those aged 75+).<sup>108</sup>

100 According to ACMA, as at June 2019, 51% of Australian adults were mobile-only for voice calls at home: [www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home](http://www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home)

101 [ACCC Internet Activity Report](#), June 2019, p.3

102 [ACMA Communications Report](#) 2018–19, p.15

103 [ACCC Communications Market Report 2018–19](#), p.36

104 [www.whistleout.com.au/Broadband/Search?data=25000&connection=NBN-Fixed-Line&homephone=true&customer=Personal&address=Canberra%20ACT](http://www.whistleout.com.au/Broadband/Search?data=25000&connection=NBN-Fixed-Line&homephone=true&customer=Personal&address=Canberra%20ACT). Accessed 15/01/2020.

105 For example, [Telstra](#) offers a \$55 per month plan (discounted to \$45 per month for health care card or pensioner concession card holders) and [Southern Phone](#) offers a \$60 per month plan (discounted to \$50 per month for seniors). Accessed 15/01/2020.

106 For example, [Optus](#)' low rental home phone starts at \$22 per month with call costs extra and [Telstra](#) offers a low cost service for \$25 per month with call costs extra.

107 [www.whistleout.com.au/MobilePhones/Search?calls=-1&sms=-1&data=2000&simonly=true&customer=personal&minspend=8&sort=Popularity&type=postpaid&address=City+ACT+2601&tab=plans](http://www.whistleout.com.au/MobilePhones/Search?calls=-1&sms=-1&data=2000&simonly=true&customer=personal&minspend=8&sort=Popularity&type=postpaid&address=City+ACT+2601&tab=plans). Accessed 14/01/2020.

108 [www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home](http://www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home)

In relation to income, those on the highest incomes (above \$150,000) were most likely to use fixed line voice services (45 per cent of adults were mobile-only), followed closely by those on incomes lower than \$50,000 (where 49 per cent of adults were mobile-only).<sup>109</sup>

The Department seeks the views of stakeholders as to whether there is a continuing need for the provision of these services (pre-selection, untimed local calls, directory assistance services, operator services, itemised billing and powers to regulate Telstra's retail prices) to be mandated by regulation. In particular:

- > if these services were not mandated, whether they would likely continue to be provided by the market
- > whether any of these services are now in practice replaced in the market by other services – such as online search services, providing information which 30 years ago was typically provided by directory assistance services; and

- > if any of these services were to no longer be the subject of regulatory obligations, whether there should be transitional or grandfathering arrangements so that existing users who wish to retain these services are not disadvantaged.

Given the changes in the market and consumer use, the Department considers that the obligation on Telstra to provide low income measures is of declining relevance. However, it may be appropriate for Telstra to continue to provide low income measures in relation to fixed line phone services for the duration of its contract as the USO provider (currently until 2032).

Broader affordability issues will be considered as part of the Department's work on digital inclusion and productivity and therefore separate to the Consumer Safeguards Review. The work of NBN Co and the ACCC on affordability issues will be taken into consideration as part of this.



109 [www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home](http://www.acma.gov.au/publications/2019-10/report/mobile-only-australia-living-without-fixed-line-home)

## Proposals for reform

**Proposal 1**—Telecommunications-specific consumer protection rules should cover essential matters between consumers (including small businesses) and their communications providers.

- > Both the economy-wide ACL and communications-specific consumer protections should continue to apply to the communications industry.
- > Telecommunications-specific rules should provide protections for public interest matters and where there are limited market/commercial incentives for good service/fair treatment, for example, ethical sales practices, customer service and financial hardship.
- > Telecommunications-specific rules should reflect key values and safeguards and address key risks to consumers/small business.
- > Reform should result in a clearer and targeted set of rules and provide certainty for industry, consumers and small business and support enforcement.

### Issues for comment:

1. What are the essential consumer protection matters that should be covered by the rules? Part 6 (section 113) of the Tel Act lists a range of matters that may be dealt with by industry codes and standards. The TCP Code covers some but not all of those matters. Are these the right starting points?
2. Do the existing consumer protection rules governing the retail relationship e.g. in the TCP Code and various standards and service provider determinations need to be redesigned, or are new rules required, to address increasingly complex supply chains? If so, why?
3. To what extent should third parties such as communication 'apps' providers be captured by any new rules, and why?

This proposal is based on the following principles:

**Principle 1: Rules are needed to drive customer-focussed behaviour where market/commercial incentives are weak.**

Market/commercial incentives are likely to be weak where a customer has already signed up to a contract. In areas like sales practices, financial hardship and customer transfers, commercial incentives and/or competitive pressures are not always aligned to customer needs.

**Principle 2: Consumers should be treated fairly and in good faith by providers.**

Consumers should be able to exercise informed choice and consent; products and services should perform as promised; issues should be resolved quickly; and all parties in the supply chain should work together and individually to deliver consumer outcomes.

**Proposal 2**—The telecommunications consumer protection rule-making process should be reformed to improve its effectiveness.

- > The industry code-making process could be strengthened. For example:
  - the triggers for ACMA to request and/or register a code could be changed
  - more flexibility could be provided to ACMA in setting timeframes for code development
  - the test for code registration could be strengthened
  - the period of time a code must be registered before ACMA can request that code deficiencies be remedied could be reduced; and
  - ACMA could be given the ability to make a standard where no code had been requested or an existing code found to be deficient.
- > Alternatively (or in addition), ACMA or the Minister could develop essential consumer protection rules through direct regulation.
  - Industry codes would continue to be used, but would focus on providing guidance to industry on secondary, process and technical matters.

**Issues for comment:**

1. What role should direct regulation, industry codes and guidelines play in a revised safeguards framework?
2. How could the code-making process be strengthened to improve consumer outcomes and industry compliance?
3. Are current constraints on ACMA’s power to make industry standards regulating consumer safeguards appropriate?

This proposal is based on the following principle:

**Principle 3: The rule-making process should be timely, efficient, enable a wide range of views to be considered and produce clear, targeted rules.**

The rule-making process will be less effective if it is unable to address emerging issues quickly, is overly burdensome for participants, and is unable to effectively balance/resolve contested issues and provide clarity for industry and consumers.

**Proposal 3**—The essential telecommunications-specific consumer protection rules should be mandatory and directly enforceable by ACMA, and the enforcement options available should encourage compliance.

- > ACMA should be able to directly enforce telecommunications-specific consumer protection rules.
- > Code compliance should be mandatory if a code is registered by ACMA – a direction from ACMA to comply should no longer be required before infringement notices or pecuniary penalties can be invoked.
- > More flexible and better calibrated enforcement options should be given to ACMA.
- > ACMA should apply a risk-based approach to regulation, compliance and enforcement. Consistent with the Government’s Regulator Performance Framework, ACMA will be an agile, timely and informed decision-maker and take actions which are targeted and commensurate with risk.
- > ACMA should continue to communicate its compliance and enforcement priorities with industry and the public. It should work towards consolidating and simplifying how it communicates its consumer protection compliance priorities.

**Issues for comment:**

1. What additional regulatory and/or enforcement tools should be made available to ACMA?
2. Are the currently available civil penalty and infringement notice maximums appropriate?

This proposal is based on the following principle:

**Principle 4: The regulator should have appropriate powers and actively enforce consumer protection rules based on risk.**

Consumer protections will not be effective if the penalties available for breaches do not encourage compliance, and the rules are not actively enforced.

**Proposal 4**—The legacy obligations of declining relevance should be removed or adjusted as Telstra’s legacy copper network is phased-out.

- > Consistent with best practice regulation, outdated regulation should be removed or adjusted.
- > The Department considers that free access to emergency services, number portability, calling line identification, and standard terms and conditions are enduring protections and should remain in place in direct regulation.
- > The Department seeks views as to whether there is a continuing requirement for regulatory obligations covering pre-selection, the untimed local call obligation, directory assistance services, operator services, itemised billing, and powers to set price controls on Telstra.
- > When revising or removing obligations, the needs of consumers with special requirements will be considered, including those with a disability or on low incomes.

**Issues for comment:**

1. Which legacy regulatory obligations should continue to be mandated by regulation?
2. If obligations are not mandated, would these services continue to be provided by the market?
3. Which obligations/services have, in practice, been replaced in the market by other services?
4. Which obligations, if no longer mandated, should be subject to transitional or grandfathering arrangements? What form should such arrangements take and how long should they remain in place?
5. Is it appropriate for Telstra to continue to provide low income measures in relation to fixed line phone services for the duration of its contract as the USO provider?

This proposal is based on the following principles:

**Principle 5: Consumer protections should remain in place where they are of enduring importance but be removed or phased out if they no longer serve a purpose.**

Consumer protections are likely to be of enduring importance if they, for example, deliver outcomes in the areas of competition, access and participation, values and safeguards and the national interest.

**Principle 6: Services should be available, accessible and affordable for all people in Australia.**

Telecommunications are essential services and connectivity is increasingly critical, and in some cases required, to interact with business and government. Consumers should be able to access a service regardless of personal attributes (physical, cognitive, cultural) and purchasing a service should not create undue hardship, particularly for people on low incomes.

### General issues for comment

1. Do the proposals in this paper address the major issues of concern around choice and fairness and consumer safeguards?
2. Are there any unforeseen issues or unintended consequences of the proposals?
3. Are there any other issues that should be brought to the Government's attention?



## Appendix A—Terms of Reference

### Telecommunications Consumer Safeguards Review

The Australian telecommunications industry has undergone extensive transformation over the last two decades, driven by new technologies, increased competition, rapidly changing consumer preferences and the rollout of the National Broadband Network (NBN). With the NBN due to be completed by 2020, it is timely to examine consumer safeguards and to ask what protections are required for consumers within this new environment.

The Consumer Safeguards Review (the 'Review') will develop the next generation of consumer safeguards. It will be conducted by the Department of Communications and the Arts in three stages and will report progressively to the Minister for Communications over the course of 2018. The full review will be completed by the end of 2018. The Review will make recommendations on the level of consumer safeguards required so that telecommunications (voice and broadband) customers:

**Part A**—Have access to effective consumer redress and complaint handling mechanisms, including:

- > The most appropriate complaints handling, resolution and redress model; and
- > Whole of system complaints data collection, analysis and reporting that provides transparency and holds industry accountable for its performance.

**Part B**—Have reliable telecommunications services that allow customers to carry out everyday activities, including:

Effective consumer protections that ensure:

- > reliability and performance of the underlying telecommunications networks; and
- > connections, faults repairs and appointments are performed within reasonable timeframes.

The form these protections should take (e.g. service level standards) and the appropriateness of penalties, compensation or other recourse.

**Part C**—Are able to exercise informed choice in selecting services and are treated fairly, including with respect to sales and customer service; contracts, billing, credit and debt management; and switching providers.

In formulating its advice and recommendations, the Review will have regard to:

- > the need for regulatory or institutional reform
- > the types of service to which safeguards should apply
- > existing consumer protection frameworks (e.g. Customer Service Guarantee, the Telecommunications Consumer Protections Code and Australian Consumer Law)
- > the Telecommunications Reform Package (including provisions that enable the Minister to make standards for a Statutory Infrastructure Provider) currently before the Parliament
- > whether interventions should be targeted at the wholesale or retail parts of the market
- > scope for innovation and for industry players to transparently differentiate their level and quality of services; and
- > retail and wholesale competition in the provision of services.

## Appendix B—Total TIO complaints and issues

**Table 1:** TIO Complaints 2012–13 to 2018–19

	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
<b>Total new complaints</b>	158,652	138,946	124,417	112,518	158,016	167,831	132,387

**Table 2:** Top 7 TIO complaint issues 2012–13 to 2016–17

	2012–13	2013–14	2014–15	2015–16	2016–17
<b>Customer service</b>	83,927 (1) <b>52.9%</b>	67,250 (1) <b>48.4%</b>	52,380 (2) <b>42.1%</b>	43,432 (2) <b>38.6%</b>	76,932 (1) <b>48.7%</b>
<b>Billing and payments</b>	67,744 (2) <b>42.7%</b>	65,860 (2) <b>47.4%</b>	56,734 (1) <b>45.6%</b>	46,807 (1) <b>41.6%</b>	66,142 (2) <b>41.9%</b>
<b>Faults</b>	59,177 (3) <b>37.3%</b>	42,934 (4) 30.9%	37,450 (3) <b>30.1%</b>	38,369 (3) 34.1%	57,723 (3) <b>36.5%</b>
<b>Complaint handling</b>	46,960 (4) <b>29.6%</b>	43,629 (3) <b>31.4%</b>	35,210 (4) <b>28.3%</b>	34,205 (4) <b>30.4%</b>	49,268 (4) <b>31.2%</b>
<b>Contracts</b>	35,538 (6) <b>22.4%</b>	32,513 (5) 23.4%	29,611 (5) <b>23.8%</b>	24,641 (5) <b>21.9%</b>	30,731 (5) <b>19.4%</b>
<b>Connection</b>	9,995 (7) <b>6.3%</b>	12,088 (7) <b>8.7%</b>	13,064 (7) <b>10.5%</b>	15,978 (6) <b>14.2%</b>	25,604 (6) <b>16.2%</b>
<b>Credit management</b>	36,173 (5) <b>22.8%</b>	30,707 (6) <b>22.1%</b>	22,893 (6) <b>18.4%</b>	15,865 (7) <b>14.1%</b>	15,619 (7) <b>9.9%</b>

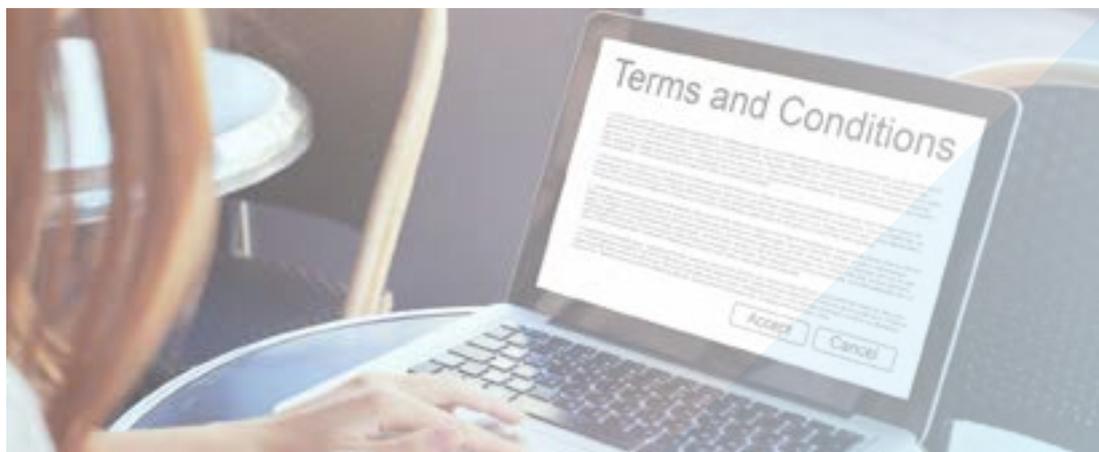
**Table 3:** Top TIO complaint issues 2017–18

Complaint issue category	Issue	% of complaints with issue <sup>110</sup>
<b>Customer service</b>	No or delayed action	<b>34.1%</b>
<b>Payment for a service</b>	Service and equipment fees	<b>25.5%</b>
<b>Establishing a service</b>	Delay in establishing a service	<b>12.8%</b>
<b>Service Delivery</b>	No service	<b>12.5%</b>
<b>Service Delivery</b>	Intermittent service/drop outs	<b>10.1%</b>

110 Complaints may include more than one issue

**Table 4:** Top TIO complaint issues<sup>111</sup> 2018–19

Service	Complaint issue category	Issue	No. of complaints with issue <sup>112</sup>
Internet	Customer service	No or delayed action	13,976
	Payment for a service	Service and equipment fees	13,509
	Service delivery	Slow data speed	8,668
Landline	Customer service	No or delayed action	5,653
	Service delivery	No phone or internet service	4,964
	Payment for a service	Service and equipment fees	3,812
Mobile	Payment for a service	Service and equipment fees	12,905
	Customer service	No or delayed action	11,675
	Customer service	Resolution agreed but not met	4,263
Multiple	Payment for a service	Service and equipment fees	10,495
	Customer service	No or delayed action	10,229
	Service delivery	No phone or internet service	6,469



111 Top 3 complaint categories/issues for each service type

112 Complaints may include more than one issue

## Appendix C—Analysis of legacy obligations

**Table 4a:** Legacy obligations of ongoing importance

Obligation	Purpose	Outcome	Ongoing importance
<b>Emergency call services</b> TCPSS Act, Part 8	<b>To assist individual and community safety.</b>	Enables callers to make calls to the emergency service numbers (000, 112 and 106) free of charge, and these calls to be connected to the police, fire or ambulance.	Will continue to be important for assisting safety of individuals and the community.
<b>Calling line identification (CLI)</b> Tel Act, Part 18	<b>To facilitate efficiency, safety of individuals and the community, and choice.</b>	Enables efficient call management, route selection and billing within networks, including for emergency call services; and call screening by consumers.  Enables businesses to further contact and tailor offerings to customers.	Will continue to be important for ensuring safety and efficient networks. Will continue to be of use to business and for call screening by consumers, provided consumers are able to continue to have CLI blocked on request for fixed line phone services. For mobile services CLI blocking is generally a feature of phone settings and can be controlled by the user.
<b>Number portability</b> Tel Act, Part 22	<b>To facilitate competition and consumer choice.</b>	Enables consumers to take their phone number(s) with them when they change provider (changing numbers may be a barrier to changing providers).	Will continue to be important for enabling competition and choice of retail service provider.
<b>Standard terms and conditions</b> Tel Act, Part 23	<b>To facilitate efficiency and transparency.</b>	Enables providers to develop standard forms of agreement and rely on the terms and conditions in them when supplying goods and services to customers. The TCP Code requires these to be in plain language, clear and consistent and made available on providers' websites.	Will continue to be important for efficiency for providers and customers, and enabling transparent access to terms and conditions of goods and services for customers. May be better addressed through Minister or regulator-developed rules rather than in primary legislation.

**Table 4b:** Legacy obligations of diminishing importance

Obligation	Purpose	Outcome	Ongoing importance
<p><b>Untimed local calls</b> TCPSS Act, Part 4</p>	<p><b>To facilitate access and affordability.</b></p>	<p>Enables standard telephone service customers to pay a flat rate to make calls in their local call zone. There is no legal cap or limit on the cost of an untimed local call.<sup>113</sup> Most providers charge between 20 and 30 cents per call.</p>	<p>May be less important. Local call zones are a product of Telstra's copper network, which is being phased out. In practice many fixed line and most mobile phone plans (including most prepaid plans<sup>114</sup>) now offer unlimited local and national calls as part of the included value. May still apply for those who use basic fixed line phone services, but there may be other ways to achieve the affordability objective.</p>
<p><b>Telstra price controls</b> TCPSS Act, Part 9</p>	<p><b>To support development of market competition and facilitate equity/affordability.</b></p>	<p>Enables price caps to be set for a range of Telstra's fixed line voice services, including untimed local calls and the basic line rental service. Provided metro/regional price parity for line rental provided to schools and charities.</p>	<p>May be less important. Telstra's price controls were repealed in 2015 as growth in a competitive retail market had made them redundant. The reserve power to determine price controls for Telstra in Part 9 of the TCPSS Act may no longer be required.</p> <p>Other mechanisms for setting prices generally apply to specific services (for example, the emergency call service) or at the wholesale, not retail, level (for example, the ACCC powers to set terms of access to declared services). The Minister is able to declare carrier licence conditions that could cover prices, and make determinations setting out pricing principles in relation to number portability and access to declared services, facilities and network information.</p> <p>The Tel Act now enables the Minister to make standards, rules and benchmarks in relation to eligible services supplied by Statutory Infrastructure Providers, and service provider rules that could address supply of carriage services to consumers.</p>

113 Retail price controls, including those setting price caps on untimed local calls, were revoked by the Minister in 2015.

114 [www.whistleout.com.au/MobilePhones/Search?calls=10&data=2000&customer=Personal&supplier=Telstra,Optus,Boost-Mobile,ALDImobile,OVO&includefeatured=false&tab=prepaidrecharge](http://www.whistleout.com.au/MobilePhones/Search?calls=10&data=2000&customer=Personal&supplier=Telstra,Optus,Boost-Mobile,ALDImobile,OVO&includefeatured=false&tab=prepaidrecharge). Accessed 6/11/2019.

Obligation	Purpose	Outcome	Ongoing importance
<p><b>Pre-selection</b> Tel Act, Part 17</p>	<p><b>To facilitate price competition, affordability and consumer choice.</b></p>	<p>Enables standard telephone service customers to manage their spending on phone services by choosing different providers to supply local, long distance and international calls, and calls to mobiles. Also used for Integrated Services Digital Network (ISDN) business services.</p>	<p>Unlikely to be required beyond the NBN migration. Preselection is not available for phone services over the NBN, the obligation only applies to phone services supplied over the legacy copper network. In practice it is not widely used as many plans now offer capped or unlimited long distance and mobile calls. For international calls, plans offer discounted rates or there are alternatives e.g. OTT, calling cards.</p> <p>For ISDN business services disconnection commences from 30 September 2019, with final national exit of these services intended for 31 May 2022.<sup>115</sup> For other wholesale services supplied over the copper network, the ACCC has extended the fixed line service declarations that facilitate wholesale access to Telstra's copper network until 30 June 2024.</p>

115 [www.telstrawholesale.com.au/nbn/special-services.html#6](http://www.telstrawholesale.com.au/nbn/special-services.html#6)

Obligation	Purpose	Outcome	Ongoing importance
<p><b>Directory assistance services</b></p> <p>Tel Act, Sched 2</p>	<p><b>To facilitate connectivity, access and participation.</b></p>	<p>Mandates that telcos provide standard telephone service customers an operator assisted or automated voice response service which will give the telephone number of a person or business. If a provider does not offer this service itself, it must arrange with another provider to provide the service. Call costs are determined by the individual provider. For the national 1223 number, the cost is generally 50 cents per call, with extra charges applying for call connection. Premium directory assistance services offered commercially by providers incur higher costs.</p>	<p>May be less important. May not be widely used as internet search engines have developed and mobiles increasingly used.<sup>116</sup> Sensis distributes hardcopies of the White Pages and also provides a free White Pages App. Basic Directory Assistance services may be loss-making for providers<sup>117</sup> so they may not continue to provide them if the requirement is removed. Providers may continue to provide premium services on a commercial basis.<sup>118</sup> Providers generally offer free operator-assisted services for those with a disability or special requirements.<sup>119</sup></p>
<p><b>Operator services</b></p> <p>Tel Act, Sched 2</p>	<p><b>To facilitate connectivity and service reliability.</b></p>	<p>Enables standard telephone service customers to contact an operator to report faults and service difficulties. If a provider does not offer this service itself, it must arrange with another provider to provide the service.</p>	<p>May be less important. Providers appear to offer this through their generic customer contact numbers. Some also offer online reporting of faults/service difficulties. Providers are likely to continue to offer customers a means to report faults and service difficulties, regardless of service type.</p>
<p><b>Itemised billing</b></p> <p>Tel Act, Sched 2</p>	<p><b>To facilitate transparency, fairness and choice.</b></p>	<p>Enables standard telephone service customers to see the details of call charges by providing a bill that contains the date, duration and charge for each call (other than untimed local calls) and the number to which the call was made.</p>	<p>May be less important. OTT, VoIP and unlimited voice call plans are making this obligation less relevant. Billing transparency requirements, if still needed, may be better addressed through industry or Minister/regulator-developed rules rather than in primary legislation.</p>

116 [Telstra](#) has indicated that call volumes had fallen by 90 percent in the 10 years preceding 2015. Accessed 7/11/2019.

117 [Telstra](#) announced price increases to its 1223 directory assistance service in 2015, but indicated they will remain loss-making. Accessed 7/11/2019.

118 For example, Telstra's 1234 and 12456 services, and Optus 124YES.

119 [Telstra](#) indicates that customers with a disability or special requirements can access a free directory assistance helpline on 12551. [Optus](#) provides access to 1800 numbers to eligible customers to access free operator assisted calls for disability customers. Accessed 7/11/2019.