

ACMA submission to Consumer Safeguards Review

Part C: Choice and Fairness

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Canberra

Red Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne

Level 32
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney

Level 5
The Bay Centre
65 Pirrama Road
Pyrmont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700 or 1800 226 667
F +61 2 9334 7799

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Written enquiries may be sent to:

Manager, Editorial Services
PO Box 13112
Law Courts
Melbourne VIC 8010
Email: info@acma.gov.au

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Executive summary

Australia's telecommunications landscape has changed significantly in the last two decades

Protections for consumers of telecommunications products and services were first set out in the *Telecommunications Act 1997* and later in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. In 2020, it is difficult to imagine the telecommunications industry that existed when these protections were first put in place.

In 1997, Australia had a single, fixed-line, vertically-integrated, monopoly telecommunications provider—Telstra—providing voice-only services to its 9.6 million customers.¹ As a consequence, the 1997 legislative framework was directed towards opening up the telecommunications market to competition to deliver strong consumer benefits. The framework prioritised the use of industry self-regulation so that the then nascent industry could develop rules as real-life issues emerged.

The goals of the 1997 legislative framework appear to have been largely met. It is estimated there are now over 1,400 providers² operating in the market, with the sector achieving significant innovation and decreasing costs to consumers in real terms over time.

Significantly, the services provided by the telecommunication sector have evolved from voice-only services to data services, fuelled by the internet and technology developments, which have become the dominant way that we do business and keep informed, entertained and connected.

Communications services are now essential and are at the centre of our economy and society

In the first half of 2020:

- > 99 per cent of Australian adults had accessed the internet—up from 90 per cent in 2019
- > 98 per cent of Australian internet users had sent or received emails, 96 per cent browsed or researched online, and 89 per cent watched videos or accessed banking
- > 77 per cent of Australians adults had used an app to communicate via messages, voice or video calls in the past six months, up from 67 per cent in 2019
- > 72 per cent had used an app for social networking, up from 63 per cent in 2019.³

Between June 2010 and June 2019, the amount of broadband and mobile data we downloaded per quarter increased from 156,220 terabytes⁴ to 5,987,510 terabytes.⁵

In 2020 we consider that telecommunication services are essential services, like energy and water. These services underpin extensive economic activity and play an important role in social connection and cohesion. This importance has been highlighted as a result of the COVID-19 pandemic. This means that Australians need to:

- > be able to find telecommunications services that meet their needs
- > have telecommunications services supplied in an inclusive way if they are disadvantaged or in vulnerable circumstances
- > be treated fairly at the time of sale and throughout the lifecycle of a service or an associated product
- > have telecommunications services that are reliable and reasonably free of faults and interruptions
- > have any complaints addressed promptly and experience reasonable customer service.

¹ Australian Communications Authority, Telecommunications Performance Monitoring Bulletin, Issue 3 - December 1997 quarter

² The TIO reported over 1,400 members at June 2019. TIO Annual Report 2018–19.

³ ACMA, [Trends in online behaviour and technology usage: ACMA consumer survey 2020](#), September 2020.

⁴ ACMA, *Communications report 2010–11*, p. 26.

⁵ ACMA, [Communications report 2018–19](#), p. 11.

But the industry is more complex, with longer supply chains, and its products are more diverse

Complex supply chains now characterise the telecommunications market, meaning that when a consumer is supplied a service by a retail provider, the performance of a service is increasingly dependent on different entities in the supply chain. This may include:

- > NBN Co, as the operator of the wholesale-only National Broadband Network (NBN) as well other smaller wholesale-only providers
- > licensed carriers that provide services to customers and carry other retail providers on their networks
- > retail providers that do not own their own network infrastructure.

There is also a strong focus on price-based competition and greater diversity of retail offerings focused mainly on ‘bundled’ offerings, that is, home broadband (voice and/or data) often coupled with mobile voice and data.

Safeguards need to better reflect the importance of communications services and increased expectations of today’s consumers

The centrality of communications services to our daily lives means it is more important than ever that consumers can be confident about service reliability, accessibility and affordability.

We consider that a regulatory framework that is better aligned with the contemporary needs of residential consumers and small businesses would have the following features:

- > visibility of all suppliers of retail telecommunications services.
- > rules about essential consumer protection matters that are clear, targeted and directly enforceable
- > the needs of disadvantaged consumers and those in vulnerable circumstances reflected in telecommunications service offerings
- > transparency of the performance of carriage service providers (CSPs) against key metrics related to essential consumer protections
- > reassessment of consumer protections that were designed for legacy copper-based networks delivering voice services.

We therefore strongly support the proposals for reform to the current consumer protections regime outlined in the consultation paper.

Reform will require defining what are essential safeguards and the right mix of regulatory interventions to achieve real results for consumers

We consider that essential consumer protection matters include those that:

- > enable consumers to exercise informed choice and consent
- > enable consumers who are disadvantaged or in vulnerable circumstances to access telecommunications services in an inclusive manner
- > provide assurance that products and services will perform as promised, issues are resolved quickly, and charges are as reasonably expected.

We consider that clearly drafted and properly enforceable rules made by the regulator—rather than the current co-regulatory arrangements— are required to deliver these essential consumer safeguards. Simple, clear and better-defined commitments would also provide more certainty to industry of its obligations to consumers than current code requirements, which are often confusing and not necessarily well-understood or applied by all providers.

Co-regulation requires certain conditions to be effective, which no longer apply in the current telecommunications environment. For example, co-regulation may suit markets where the products available are essentially homogeneous, and where there is low or moderate public interest concern. It

is apparent from the wide and often complex variety of products on the market, and the level of consumer dependence on telecommunications services, that these conditions no longer exist.

As the regulator, the Australian Communications and Media Authority (the ACMA) is often frustrated by the lengthy and complex regulatory process we must navigate to address non-compliance by a telecommunications provider. We are unable to take direct enforcement action (other than issue a formal warning) where there is a breach of an industry code, regardless of the level of consumer harm. We are also unable to prevent a supplier found responsible for repeated, egregious acts of non-compliance from continuing to operate in the market. We are therefore unable to deliver outcomes for consumers in a timely and efficient manner or adequately protect them from rogue operators.

That said, self- and co-regulation still have roles to play within the telecommunications regulatory framework, including for matters that are concerned with the operation of interconnected networks and services that may affect consumers indirectly or are unlikely to be relevant to consumers.

The ACMA proposes a model for implementing reform and transition arrangements

The ACMA envisages that reform of the current telecommunications consumer safeguards framework could best be implemented through:

- > enshrining essential consumer protection rules in direct regulation—some of which currently reside in industry codes
- > implementing a registration scheme to administer market entry and exit by retail CSPs and provide clarity to consumers about which entities are subject to the rules
- > introducing transparency measures to improve public accountability of providers and assist with informed consumer choice
- > focusing on vulnerability as a key consumer protection matter.

We consider that such a framework is likely to achieve a market that is better reflective of telecommunications' status as an essential service, where providers are accountable for their delivery of these services in accordance with reasonable community expectations, and where consumers are consistently treated fairly and are able to properly exercise choice.

We consider this framework as readily capable of being implemented within a reasonably short period, and our submission sets out a roadmap for that implementation.

In reforming the consumer protection framework, we recognise that there is a balance between ensuring fairness and choice for telecommunications consumers, while not imposing significant costs on industry that may affect service affordability.

However, we consider that current regulatory settings are not providing optimal outcomes for consumers, and market mechanisms are increasingly challenged in meeting consumer needs and expectations. A reformed regulatory framework that better reflects the contemporary telecommunications marketplace will deliver benefits to consumers and encourage performance improvements in the industry.

Introduction

The ACMA is Australia's regulator for telecommunications, radiocommunications, broadcasting and some online content.

We are the primary sector-specific regulator for telecommunications, with responsibility for administering key elements of the consumer safeguards framework (including registering industry codes, making standards and determinations, and addressing issues of non-compliance), and reporting requirements under the *Telecommunications Act 1997*. As a result, we are well-placed to provide advice on the regulatory and practical implications of any proposed changes to Australia's telecommunications consumer safeguards regime.

We welcome the opportunity to comment on the last of three consultation papers for the Consumer Safeguards Review. We support the government's approach to developing a consumer protection framework for a post-2020 environment that facilitates improved choice and fairness for consumers in their relationships with retail CSPs.

The ACMA looks forward to engaging with the Department of Infrastructure, Transport, Regional Development and Communications to implement new consumer safeguards that are fit-for-purpose in a contemporary telecommunications environment.

Context

As the consultation paper identified, rapid technological, environmental and structural change in the telecommunications sector has exposed the limitations of our legacy regulatory models. Regulatory frameworks and settings must be contemporised so that they remain fit-for-purpose in this changing environment.

Regulatory settings for the current consumer safeguards framework were formulated in the context of a single, fixed-line, vertically-integrated, voice-only, monopoly provider. In 1997, a legislative framework was established to assist with the move away from a single-provider structure by facilitating competition in the Australian telecommunications market, with the focus on regulating the behaviour of carriers through licence conditions. The framework also prioritised the use of industry self-regulation on operational, technical and consumer protection matters.

This framework is now over 20 years old and the current market and communications landscape is unrecognisable from when it was first implemented.

Today, telecommunications is an essential service and at the centre of household and small business social and economic engagement and participation. We now use telecommunications services to work, shop, access entertainment and information, and connect to our friends and families.

Some indicators of how we used telecommunications services in the first half of 2020 are:

- > 99 per cent of Australian adults had accessed the internet—up from 90 per cent in 2019
- > 98 per cent of Australian internet users had sent or received emails, 96 per cent browsed or researched online, and 89 per cent watched videos or accessed banking
- > 77 per cent of Australians adults had used an app to communicate via messages, voice or video calls in the past six months, up from 67 per cent in 2019
- > 72 per cent had used an app for social networking, up from 63 per cent in 2019.⁶

⁶ ACMA, [Trends in online behaviour and technology usage: ACMA consumer survey 2020](#), September 2020.

Between June 2010 and June 2019, the amount of broadband and mobile data we downloaded per quarter increased from 156,220 terabytes⁷ to 5,987,510 terabytes.⁸

This centrality of communications services to our daily lives means it is more important than ever that consumers can be confident about service reliability, accessibility and affordability.

The competition ambition of the 1997 telecommunication legislation appears to have been largely met, with the market providing a substantial range of products and services to consumers, significant innovation and decreased costs in real terms, all of which have provided benefits to consumers. However, despite these positive developments, the experience of consumers is not consistently a positive one.

As the consultation paper identifies, there are some notable indicators of deficiencies in consumers' experience of the telecommunications market, including:

- > high levels of consumer distrust—the Roy Morgan Trust and Distrust Monitor (April 2018 to March 2019) indicated the telecommunications industry averaged the highest level of net distrust of all industries surveyed
- > enduring concerns about customer service—customer service was at or near the top of the list of complaint issues reported to the Telecommunications Industry Ombudsman (TIO) from 2012–13 to 2018–19
- > total number of consumer complaints to the TIO remains high—at above 100,000 per annum since 2006–07.⁹

In addition to the factors identified in the consultation paper, recent ACMA data and research reveals an increasing misalignment between matters that are important to consumers and the performance of industry in these areas. Unsurprisingly, our research shows that the majority of Australian adults, households, and small and medium-sized businesses consider customer service and faults management to be important telco issues.¹⁰ Despite this, providers are not consistently meeting consumer expectations in managing these issues. Of those that complained about a fault or other issue, 35 per cent of households and 46 per cent of small and medium-sized businesses were either dissatisfied or very dissatisfied with how their complaint was handled by their telco.

Our complaints-reporting data shows that for the 2019–20 financial year, providers performed as follows:¹¹

- > 25 per cent of providers take, on average, between one and 2.8 days to resolve a complaint
- > 50 per cent of providers take, on average, 2.8 to 6.8 days to resolve a complaint
- > the remaining 25 per cent of providers take, on average, 6.8 to 9.8 days to resolve a complaint.¹²

Complex supply chains now characterise the telecommunications market, with services supplied to consumers dependent on commercial arrangements between several entities. Despite this, legacy regulatory settings are still based on an assumption of vertical integration in the fixed network and reflect that authorisation requirements are limited to carriers rather than CSPs.¹³

⁷ ACMA, *Communications report 2010–11*, p. 26.

⁸ ACMA, *Communications report 2018–19*, p. 11.

⁹ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review—Part C—Choice and Fairness: Consultation paper*, July 2020, p. 11.

¹⁰ ACMA, *Telco consumer experience—Australian adults and households: Phone and internet services*, October 2020.

¹¹ Percentages are based on the 32 providers that reported complaints-handling data to the ACMA in 2019–20 under the Telecommunications (Consumer Complaints) Record-Keeping Rules 2018.

¹² This data does not, however, take account of an outlier, which corresponds to the average time to resolve a complaint for one provider sitting significantly outside of these ranges at 17.5 days for the 2019–20 financial year.

¹³ As at July 2020, there were 307 active carrier licences (ACMA) and the TIO reported over 1,400 members at June 2019 (TIO Annual Report 2018–19.).

Unlike other essential service industries—banking, insurance, electricity, gas—retail CSPs are not required to register to operate in the communications market. Limited visibility of CSPs as a key part of the telecommunications supply chain has resulted in challenges for the regulator and, we would argue, poor outcomes for some consumers. The absence of an ability to exit providers that are responsible for repeated or egregious failures to comply with essential consumer protections from the market has made it easier for some unscrupulous providers to continue to operate. This is to the detriment of consumers.

The emphasis in the current framework on self- and co-regulation also fails to differentiate between essential consumer matters and other issues that have less direct relevance to consumers. Co-regulatory rules are developed by the industry, with limited capacity for the regulator to intervene or require higher levels of performance than the industry sets for itself. Co-regulation requires certain conditions to be effective, which no longer apply in the current telecommunications environment. For example, co-regulation may suit markets where the products available are essentially homogeneous, and where there is low or moderate public interest concern.¹⁴ It is apparent from the wide and often complex variety of products on the market, and the level of consumer dependence on telecommunications services, that these conditions no longer exist.

There is also evidence that impediments exist for a significant number of consumers to take advantage of Australia's competitive telecommunications sector by changing provider. Our 2020 telco consumer experience research shows that 47 per cent of Australian adults had not changed their mobile service plan or provider in the previous two years. A little over half (53 per cent) of Australian adults have been with their current telco for their mobile phone for more than five years.¹⁵

Rather than an indication of consumer satisfaction, we consider that limited consumer churn may be due to the lack of transparency in the market and the difficulty consumers face in comparing non-price factors in choosing a provider. We note that, unlike other regulators and dispute resolution agencies¹⁶, the ACMA is unable to report on individual providers' performance against essential consumer protection measures, and thereby better enable consumers to make informed choices considering non-price matters.

Another key challenge inherent in the current regulatory framework is the costly, lengthy and complex regulatory process the regulator must navigate to address non-compliance by a CSP. We are unable to take direct enforcement action (other than issue a formal warning) where there is a breach of an industry code, regardless of the level of consumer harm. We are also unable to prevent a CSP found responsible for repeated, egregious acts of non-compliance from continuing to operate in the market.

In reforming the consumer protection framework, we recognise that there is a balance between ensuring fairness and choice for telecommunications consumers, while not imposing significant costs on industry that may affect service affordability. However, we consider that current regulatory settings are not providing optimal outcomes for consumers, and market mechanisms are increasingly challenged in meeting consumer needs and expectations. A reformed regulatory framework that better reflects the contemporary telecommunications marketplace will deliver benefits to consumers and encourage performance improvements in the industry.

¹⁴ ACMA, [Optimal conditions for effective self- and co-regulatory arrangements](#), occasional paper, June 2015.

¹⁵ ACMA, *Telco consumer experience—Australian adults and households: Phone and internet services*, October 2020.

¹⁶ For example, see Australian Energy Regulator, *Retail markets performance reporting and Australian Financial Complaints Authority*, [AFCA Datacube](#).

Proposals for reform

The ACMA strongly supports the proposals for reform set out in the consultation paper and provides additional research and information in support of each of the proposals.

Proposal 1

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

We support this proposal and the associated principles:

- > Principle 1: Rules are needed to drive customer-focused behaviour where market/commercial incentives are weak.
- > Principle 2: Consumers should be treated fairly and in good faith by providers.

Coverage of telecommunications consumer protection rules should be guided by underlying principles that ensure safeguards are both aligned with reasonable community expectations and address the key harms affecting residential and small business consumers. We agree that rules should provide protections for public interest matters, as well as areas where there may be limited commercial incentives to pursue positive consumer outcomes, such as in the areas of ethical sales practices, customer service and financial hardship.

We consider that essential consumer protection matters include those that:

- > enable consumers to exercise informed choice and consent
- > enable consumers who are disadvantaged or in vulnerable circumstances to access telecommunications services in an inclusive manner
- > provide assurance that products and services will perform as promised, issues are resolved quickly, and charges are as reasonably expected.

Our research, together with evidence outlined in the consultation paper, suggests that despite improvements in some key areas, existing rules are not effectively protecting consumers or promoting choice and fairness in consumers' dealings with CSPs.

Our 2020 consumer survey of Australian adults found that while consumer satisfaction with many aspects of home internet services improved, satisfaction remained unchanged for customer service (including call wait times), complaints-handling and fault repair/technical support.¹⁷ Similarly, satisfaction remained unchanged for complaints-handling and call wait times for mobile phone services.¹⁸

Complaints-handling also remains an ongoing issue, with our 2020 telco consumer experience research showing that among households and businesses that indicated their most recent complaint made in the last six months was resolved, 35 per cent of households and 46 per cent of small and medium-sized businesses were dissatisfied with their provider's complaints-handling process.¹⁹

In developing its proposals further, we suggest the Department give increased consideration to:

- > the regulation of third-party over-the-top (OTT) services
- > how responsibility is apportioned throughout the supply chain.

¹⁷ In 2020, satisfaction with customer service was 3.5 out of 5, satisfaction with call wait times was 3.1 out of 5, and satisfaction with complaints-handling was 3.3 out of 5. Satisfaction with fault repair and technical support was 3.2 and 3.4 respectively.

¹⁸ In 2020, satisfaction with complaints-handling was 3.5 out of 5, while satisfaction with call wait times was 3.2 out of 5

¹⁹ ACMA, *Telco consumer experience—Australian adults and households: Phone and internet services*, October 2020.

Third-party over-the-top (OTT) services

The ACMA's approach to regulating OTT communication services has historically been based on whether a service has the characteristics of a standard telephone service²⁰, and whether a provider is providing that service as a CSP.

It is often a non-trivial process to determine whether a particular OTT communications service meets the definitional requirements to be subject to the same rules as a legacy telephony service. Individual service delivery models must be assessed on a case-by-case basis, which can be lengthy and resource intensive. Uniform application of rules across functionally equivalent OTT services would provide clarity for industry in understanding their obligations and assist the ACMA in enforcing the rules.

Our 2020 consumer survey found that three in four Australians (77 per cent) had used an app to make voice calls, video calls or send messages in the past six months. At June 2020, Facebook Messenger was the most commonly used communications app (66 per cent of Australians) followed by Zoom (43 per cent).

Many OTT services are available at no cost to consumers and do not provide for any-to-any connectivity, limiting communication to users on the same platform. For these services, issues related to the cost of the service and expectations about service quality do not usually arise. Despite the widespread and increasing use of these free OTT services, they are unlikely to be considered 'functionally equivalent' to traditional services. We do not consider there is sufficient evidence of consumer detriment to support regulation of OTT services that are not functionally equivalent to traditional services under the telecommunications consumer safeguard umbrella.

We propose that services which, from a consumer perspective, are functionally equivalent be subject to the same consumer protection rules, regardless of how they are provided. This is because in these circumstances, a consumer may find it difficult to differentiate between a traditional fixed-line or mobile telephony service and a functionally equivalent OTT communications service, and could reasonably expect to be protected by equivalent consumer safeguards when using the OTT service. With the migration of fixed-line voice services to the NBN, any voice service supplied using the NBN will be considered an OTT service.²¹

Apportioning responsibility throughout the supply chain

Complex supply chains now mean that while a consumer is supplied a service by a retail CSP, the performance of a service is increasingly dependent on different entities in the supply chain. This may include carriers, CSPs and carriage service intermediaries.

We consider that rules about choice and fairness are appropriately directed at retailers in the first instance (as the customer-facing entity). However, in some cases, it will be necessary for retailers to secure the cooperation of another party—such as NBN Co or a wholesale CSP—to negotiate an outcome for a consumer.

This cooperation is already required in some instruments. For example, the Telecommunications (Consumer Complaints Handling) Industry Standard requires all parties in the NBN supply chain to provide 'reasonable assistance' to resolve consumer complaints in a timely and effective manner.

Where a supplier of retail telecommunications services depends on another party in the supply chain for service quality and reliability, rules and associated enforcement powers should be capable of

²⁰ Standard telephone service (STS) is defined at section 6 of the *Telecommunications (Consumer Protection and Services Standards) Act 1999*. Two-way VoIP services that connect to the public telephone network allowing any-to-any connectivity are considered an STS.

²¹ A subset of these services will be considered functionally equivalent, such as an OTT voice service supplied by a CSP or another party that allows users to make outbound calls to public switched telephone network (PSTN) numbers and is assigned a PSTN number to receive inbound calls.

applying to all relevant parties. We propose that the ACMA be empowered to make essential consumer protection rules that apply to any or all parties in the telecommunications supply chain with a role in delivering positive consumer outcomes.

Proposal 2

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

We support this proposal and the underlying 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.

Within Proposal 2, the consultation paper suggests two high-level options for improving the rule-making process—strengthening the industry code-making process or giving the ACMA or the Minister responsibility for developing essential consumer protection rules. We consider that progressing both these options would improve the effectiveness of the consumer protection rule-making process, while maintaining a flexible regulatory framework.

We are well placed to develop and administer essential consumer protection rules within the boundaries set for us by the Parliament and consider that direct regulation is the most efficient mechanism to implement this proposal. We note that co-regulation and the use of industry codes may remain appropriate for technical or operational rules, where industry can demonstrate it is motivated to solve problems.

The co-regulatory experience

Under existing co-regulatory settings, industry participants assume responsibility for designing the regulatory detail of key telecommunications consumer protections.

The inherent tension in a framework that requires industry to develop its own consumer protection rules in the form of codes can result in ambiguous rules, indirect and lengthy enforcement processes and less than ideal outcomes for consumers.

Key problems with the code development process are set out below.



The ACMA has limited scope to refuse to register a code. This is particularly the case where non-registration would leave consumers without essential (or adequate) protection because an outdated code remains in place, or no code applies at all. If a code deals with matters of substantial relevance to the community (and is otherwise compliant with legislative requirements), the ACMA must register it if satisfied the code 'provides appropriate community safeguards' for the matters it covers.



The code development process is slow. This is due in part to the number of legislative 'steps' that must be completed for a code to be developed or reviewed, and the number of parties involved in the drafting of the code.



The membership of industry bodies is not necessarily representative of the industry that will be affected by the code. Drafting is dominated by the larger established providers who are adequately resourced to participate in code development. Engagement, and therefore the perspective of smaller or new providers, may not be fully considered.



Commercial incentives of industry outweigh the interests of consumers. Industry must invite public submissions on any code proposed for registration and must have consulted at least one body or association that represents the interests of consumers. However, consumer representatives have limited capacity to persuade industry to take a course that is

contrary to commercial interests. Ultimately, industry decides the form of the code submitted to the ACMA for registration.



ACMA ‘observer’ status for code review processes is resource intensive and delivers limited incremental value. We can and do provide advice and commentary to the committee drafting the code but cannot determine the drafting.



The code development process can result in poor drafting. The process often involves a committee comprising various stakeholders, with the industry body making necessary drafting compromises to achieve consensus. Imprecise drafting creates confusion for industry participants trying to understand how to comply and may compromise our ability to enforce code compliance.

If industry codes are retained under a new framework, changes are needed to improve the code-making process. The Implementation and transition section of our submission discusses proposed changes.

Form of future regulation

In considering the best form of regulation for essential consumer protection rules, we apply the regulatory assessment framework set out in the ACMA’s occasional paper *Optimal conditions for effective self- and co-regulatory arrangements*.²²

The current co-regulatory framework does not consistently deliver equitable or positive outcomes for all consumers. Experience has shown that for essential consumer protection matters, few of the threshold optimal conditions for effective co-regulation are met across the telecommunications industry.

Essential consumer protection rules are more appropriately housed in direct regulation, because:

- > the market is characterised by a small number of dominant larger providers, many small providers and limited barriers to entry, making it difficult to monitor and influence the behaviour of providers
- > despite a high degree of competition in the market, there is little commercial incentive for industry to behave in a way that results in optimal outcomes for all consumers—for example, in delivering a high standard of customer service or meeting the needs of those experiencing financial hardship
- > information asymmetry means it can be difficult for consumers to differentiate between a large number of providers and product offerings—in some cases, there may be a range of similar services delivered over the same network (for example, the NBN or a mobile network) and consumers may lack the necessary information to make a decision based on factors other than price
- > there is evidence of ongoing and significant consumer detriment, particularly in relation to consumers in vulnerable circumstances²³
- > the range of products available in the market is increasingly varied, complex and difficult to compare
- > unlike other essential service markets, there is no ‘single source of truth’ for consumers seeking information about the entities in the CSP market, and the individual performance of CSPs is not reported.

While we are well-placed to develop essential consumer protection rules, our ability to do so is restricted under the current framework. We can make an industry standard in limited circumstances, including where a request for a code is not complied with, a code fails, or upon direction by the Minister.²⁴ Alternatively, we may make a service provider determination for specified carriage or

²² ACMA, [Optimal conditions for effective self- and co-regulatory arrangements](#), occasional paper, June 2015.

²³ Vulnerability is discussed further in the *Implementation and transition* section of this submission.

²⁴ Sections 123, 125 & 125AA of the Telecommunications Act.

content services, but this applies only to CSPs or content service providers, and only in relation to matters specified in the regulations²⁵, or about designated disaster plans.²⁶

We propose that as a regulator, we should be empowered to make rules by direct regulation for any essential consumer protection matter or related operational matters.

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.

We agree with this proposal and the supporting principle:

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

To be capable of effective enforcement, rules must be clearly articulated and unambiguous. It is not possible to simply uplift entire industry codes and make them directly enforceable (for example, by converting them to industry standards) because the rules they contain do not uniformly meet this requirement for clear articulation and being unambiguous. They may also not adhere to best practice drafting or consultation requirements. For example, several clauses in the Telecommunications Consumer Protection Code (TCP Code) specify that a CSP must 'take steps' towards achieving a particular outcome, or ensure their representatives are 'able to' interact with consumers in a particular way. This indirect language creates ambiguity about an obligation and therefore may limit enforceability.

Limitations of current enforcement options

Consumer safeguards that address choice and fairness are encapsulated in a range of industry codes, industry standards and service provider determinations. However, inconsistent and complex enforcement options across these regulatory instruments do not result in optimal protections for consumers.

While we can directly enforce the instruments we make, we are unable to directly enforce industry codes. Rather, where we are satisfied a provider has contravened a code, we can either issue it with a formal warning or a direction to comply. These indirect enforcement measures may have little broader educative effect and may be less effective to deter future non-compliance than more direct measures. We may only take direct enforcement action (for example, by issuing an infringement notice or seeking a pecuniary penalty) where a direction is not complied with—that is, where a further breach has occurred.

The differences between the enforcement options available in the event of a breach of an industry code compared to a legislative instrument can also lead to inconsistent outcomes. For example, the Telecommunications (NBN Consumer Information Industry) Standard 2018 requires CSPs to provide consumers with NBN key fact sheets containing clear information to assist in making an informed choice. Here we are able to directly enforce contraventions of these requirements, including by seeking financial penalties.

In contrast, the TCP Code requires CSPs to provide critical information summaries to help consumers make informed purchasing choices about phone and internet plans. If a CSP fails to do so, we are limited to issuing a formal warning or direction to comply. Further enforcement action is only available to us where a CSP continues to be non-compliant and breaches a direction to comply.

²⁵ Section 99 of the Telecommunications Act.

²⁶ Section 346 of the Telecommunications Act.

Penalties

As a general principle, penalties for contravention of rules dealing with essential consumer protection matters should be commensurate with the harm caused.

Under the Telecommunications Act, we can seek pecuniary penalties through the Federal Court of up to \$250,000 for a breach of an industry standard, or of a direction to comply with an industry code (for a body corporate). In contrast, we can seek pecuniary penalties of up to \$10 million for a breach of a service provider rule. In all cases, we can issue an infringement notice of up to \$13,320 per breach.

The difference between pecuniary penalty amounts available for service provider rules and industry standards can lead to some inconsistencies. For example, a provider could face a penalty up to \$250,000 for a contravention of the Telecommunications (NBN Continuity of Service) Industry Standard 2018, but a penalty of up to \$10 million for a contravention of the Telecommunications Service Provider (NBN Service Migration) Determination 2018. These instruments provide similar protections to consumers.

We consider there is scope to improve consistency between penalty amounts that may be sought for breaches of standards and service provider determinations. Aligning the penalties that apply for breaches would result in greater consistency between key instruments of direct regulation and associated improved outcomes for consumers.

Proposal 4

The legacy obligations of declining relevance should be removed or adjusted as Telstra's legacy copper network is phased-out.

The ACMA agrees with this proposal and the supporting 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.
- > Principle 6: Services should be available, accessible and affordable for all people in Australia.

Legacy regulatory obligations that are of declining relevance due to changes in industry structure, product offerings or consumer usage should be reviewed. Many legacy obligations were intended to provide safeguards for fixed-line telephone services, which are decreasing in relevance as consumers migrate to the NBN. Our 2020 consumer survey shows that fixed-line telephone usage continues to decline—from 54 per cent in 2017 to 40 per cent in 2020.²⁷

The ACMA's assessment of the ongoing relevance of the legacy obligations raised in the consultation paper is set out at Appendix A.

²⁷ ACMA, [Trends in online behaviour and technology usage: ACMA consumer survey 2020](#), September 2020.

Implementation and transition

To achieve a fit-for-purpose telecommunications consumer protection framework, reform is needed across the rule coverage, content, development and enforcement process. While a balance must be struck between mandating essential consumer protections and the cost imposition for industry, evidence of ongoing consumer detriment means that incremental change is no longer sufficient to address identified and emerging harms. As outlined in the consultation paper, relatively high complaint numbers, sustained levels of consumer dissatisfaction, and the prevalence of telco customer service complaints as the most complained about matter to the TIO, suggests that not all CSPs are consistently delivering on their customers' needs and expectations around choice and fairness.²⁸

The ACMA envisages reform could best be implemented through:

- > enshrining essential consumer protection rules in direct regulation—with direct regulation replacing essential rules currently housed in industry codes
- > implementing a registration scheme to administer market entry and exit by retail CSPs and provide clarity to consumers about which entities are subject to the rules
- > introducing transparency measures to improve public accountability of providers and assist with informed consumer choice
- > focusing on vulnerability as a key consumer protection matter.

Consumer protection objectives

We consider that essential consumer protection matters should be defined as those that:

- > enable consumers to exercise informed choice and consent
- > enable consumers who are disadvantaged or in vulnerable circumstances to access telecommunications services in an inclusive manner
- > provide assurance that products and services will perform as promised, issues are resolved quickly, and charges are as reasonably expected.

We propose that the government enshrine a statement of consumer protection objectives in primary legislation to facilitate the development of effective rules by the ACMA covering these matters and provide a clear foundation for our compliance and enforcement activities.

We support the principles set out in the consultation paper and suggest the government legislate the intent of these key principles as a statement of the objects of a consumer protection framework.

Legislation should make clear that an effective framework will:

- > promote customer-focused behaviour by CSPs where market or commercial incentives are weak
- > promote treatment of consumers by CSPs that is fair and in good faith
- > promote the availability, accessibility and affordability of services to all people in Australia
- > protect the interests of people with disability, the elderly, on low incomes and others whose circumstances may mean they are vulnerable
- > ensure consumer protection rules made by the ACMA are clear, targeted and enforceable.

Empower the ACMA to make rules

As the sectoral regulator, we consider we are well placed to play a key role in the reform of the consumer protection framework. This would require us to be given strengthened powers to enable us

²⁸ Department of Infrastructure, Transport, Regional Development and Communications, [Consumer Safeguards Review—Part C—Choice and Fairness: Consultation paper](#), July 2020, p. 13.

to make directly enforceable rules. We propose the government consider legislating to enable the ACMA to:

- > make rules dealing with essential consumer protection matters or related operational matters without needing to demonstrate that a code has failed or receiving a direction from the Minister
- > apply essential consumer protection rules to any or all parties in the telecommunications supply chain with a role in delivering positive consumer outcomes
- > ensure essential consumer protection rules have broad application, enabling functionally equivalent communications services to be subject to the same rules.

At a minimum, rules should be made about essential consumer protection matters including:

- > advertising and selling practices
- > providing information to customers about goods and services, their prices and other terms and conditions
- > design of products and services to meet particular consumer needs (including for consumers in vulnerable circumstances)
- > contracts (including facilitating informed consent)
- > customer service
- > billing (including billing for third-party services)
- > complaints-handling
- > credit, debt and spend management (including financial hardship)
- > changing suppliers (including number portability)
- > disconnections.

We consider that industry codes are no longer an appropriate mechanism to address essential consumer protections. However, we support the ongoing use of industry codes for technical or operational matters, and as a tool to augment or provide guidance to providers on how to operationalise rules in direct regulation. In most cases, it will be entirely appropriate for industry to continue codifying operational and technical matters via the code development process.

However, should an industry code-making process be retained, changes are needed to improve this process. These may include:

- > streamlining the legislative 'steps' involved in making and registering a code, including by enabling the ACMA to specify a timeframe within which industry must submit a code for registration
- > setting a higher bar for code registration beyond 'providing appropriate community safeguards'—for example, to require the ACMA to consider each provision separately and the extent to which provisions are clear and enforceable
- > establishing a mandatory quality control process.

Protect vulnerable consumers

The needs of vulnerable consumers should be considered and reflected when making rules about essential consumer protection matters. Telecommunication services are now essential for Australians to work and access education, health and government services, and also to participate in social and economic transactions. However, individual capacity to exercise choice in accessing and using telecommunications services can vary markedly.

Many consumers find themselves in vulnerable circumstances, either for personal reasons (for example, income, age, disability, physical or mental health) or as a result of market features (for

example, unfair practices, complex product or service offerings, information asymmetries, conflicting commercial incentives) or both.²⁹



Vulnerability and telco consumers

Vulnerability data reported by the Consumer Policy and Research Centre shows that:

- > 44 per cent of Australians have low levels of literacy
- > two in three Australians experience some level of financial stress
- > one in six Australian women has experienced physical and/or sexual violence by a current or previous partner
- > 30 per cent of Australians have savings of less than one month's income or none at all
- > one in five Australians has a disability
- > one in five speak a language other than English at home.³⁰

A recent ACMA report reviewing the financial hardship policies of telco providers showed that for 2018–19, 36,541 consumers entered into a financial hardship arrangement with their provider and that at 30 June 2019, 10,259 customers remained on these arrangements with a combined hardship debt of \$5.71 million.³¹ Of these financial hardship customers, 8,580 had their services disconnected by their provider due to non-payment.

Our 2020 telco consumer experience research found that low-income households (<\$60,000 pa) were less likely to have actively considered changing plan or provider and were more likely to have been with their provider for more than five years, compared with those on higher incomes (≥\$60,000 pa).³² These low-income households placed more importance on not being locked into a contract with their CSP. Individuals living in low-income households were less likely than those on higher incomes to have home internet or use their mobile phone for banking, bills or emails.

We have a key role in fostering conditions where telecommunications services meet the specific needs of people across a range of personal and market circumstances so they can confidently and fairly access and use those services. Addressing consumer vulnerability and the harms created can be managed at multiple stages along the customer journey.³³ Protecting disadvantaged and vulnerable consumers in their dealings with CSPs is a central aspect of one of the ACMA's seven compliance priorities for 2020–21.³⁴

Treating customers in vulnerable circumstances fairly is also a focus of international regulatory agencies. Ofcom recently released a guideline that encourages an inclusive approach to the design of services, policies and procedures to ensure a wide range of consumers benefit from improved choice and fairness, whether or not they have identified as vulnerable.³⁵

Protecting vulnerable consumers should be at the heart of a robust consumer protection framework. We propose the ACMA be required to consider the needs of vulnerable consumers when making rules

²⁹ Consumer Policy Research Centre, [Exploring regulatory approaches to consumer vulnerability: A report for the AER](#), February 2020.

³⁰ Consumer Policy Research Centre, [Exploring regulatory approaches to consumer vulnerability: A report for the AER](#), February 2020.

³¹ ACMA, [Customer financial hardship in the telco industry, State of play report 2018–19](#), March 2020.

³² ACMA, [Telco consumer experience—Australian adults and households: Phone and internet services](#), October 2020.

³³ Consumer Policy Research Centre, [Exploring regulatory approaches to consumer vulnerability: A report for the AER](#), February 2020.

³⁴ ACMA, [Compliance priorities 2020–21](#), accessed 17 September 2020.

³⁵ Ofcom, [Treating vulnerable consumers fairly](#), July 2020.

about essential consumer protection matters. This could be similar to the requirements under the *Communications Act 2003* (UK), which require Ofcom to, where relevant, consider the needs of people with disability, the elderly, those on low incomes, children and others whose circumstances may mean they need special protection.

Registration of market entrants

As telecommunications services are now considered essential services, the regulator should have full visibility of the market for supply of these services and the ability to prevent continued supply where defined standards are not upheld, and significant consumer harm is identified.

Few barriers to entry exist in the telecommunications regulatory framework for retail CSPs. While telecommunications carriers must hold a carrier licence, CSPs do not need to register or be authorised to provide telecommunications services. Carriers and CSPs must join and comply with the TIO scheme³⁶, but there is no immediate consequence of failing to do so. Rather, when the TIO becomes aware a party is not a member and should be, it will ask them to join. If they fail to comply, the party will be referred to the ACMA for enforcement action. While the low barrier to entry has enabled a large and diverse market for the supply of telecommunications services, it has also allowed some irresponsible providers to operate in a manner that causes significant consumer detriment.³⁷

The ease of entry to market for telecommunications service providers differs markedly from other essential services sectors such as banking, energy and financial services, where licensing or authorisation schemes are commonplace.

Our ability to effectively enforce telecommunications consumer protection rules in a post-2020 environment is compromised by the absence of a registration mechanism for retail CSPs. While CSPs can be penalised for non-compliance with consumer protection rules, there is no mechanism to compel a CSP to cease trading where it has engaged in repeated or egregious non-compliance resulting in consumer detriment.

We propose the government legislate a mandatory registration scheme to require suppliers of retail telecommunications services to register their details with the regulator prior to operating in the market. Such a scheme would:

- > enable the ACMA to have greater visibility of entities operating in the market (including market share)³⁸, thereby improving our ability to monitor and report on industry activities
- > reduce the risks posed by irresponsible providers and improve the quality of service to consumers by, for example, requiring prospective providers to meet basic suitability criteria such as establishing a director has not previously been found responsible for repeated, egregious breaches of consumer protection rules
- > improve the ability of the ACMA to target compliance activity by making it easier to identify providers and activities that could cause consumer detriment
- > enable irresponsible providers that cause considerable ongoing consumer harms to be deregistered and required to exit the market
- > reduce the risk that unscrupulous operators re-enter the industry without notice by allowing the ACMA to trace CSPs that enter and exit the industry—for example, via a registration renewal process
- > improve consumer confidence by providing certainty that all CSPs in the market have been registered by the ACMA and have undertaken to provide services to consumers in compliance with consumer safeguards

³⁶ Sections 128 and 132, of the *Telecommunications (Consumer Protection and Services Standards) Act 1999*.

³⁷ In 2019–20, the ACMA completed 16 investigations into the TCP Code. Two formal warnings and 11 directions to comply were issued for contraventions.

³⁸ Market concentration is a key metric for energy and gas regulation.

- > assist the TIO in managing its membership—currently, the TIO generally only becomes aware of a CSP failing to join the TIO scheme via its complaints process.

We propose that a registration scheme applying to retail telecommunications service providers should:

- > be administered by the ACMA
- > have clear requirements, and a simple process for parties to register
- > allow the Minister or the ACMA to exempt specific CSPs or classes of CSPs from registration requirements
- > empower the ACMA to revoke a registration via an administrative decision, while taking account of the impact of any revocation on continuity of service
- > facilitate the disqualification of directors found responsible for serious breaches of consumer protection rules.³⁹

Transparency measures

Public accountability through transparency is a key mechanism to inform consumer choice. Without transparency, asymmetric information between providers and consumers has several consequences that lead to poor outcomes, including:⁴⁰

- > reduced ability for consumers to effectively compare and identify the most appropriate service for them, at a price they are willing to pay
- > some consumers expending undue time and cost searching for products, choosing the wrong product and making a complaint
- > an absence of competitive pressure to improve service quality, resulting in poorer customer service practices and a reduction in consumer trust.

We propose measuring the performance of suppliers of retail telecommunications services against key metrics and reporting this publicly to facilitate informed consumer choice.

A relevant model for providing this performance transparency is the Australian Energy Regulator's (AER) publication of retailer 'report cards' as part of its annual retail markets report. These reveal market share, and a retailer's performance in a range of areas (by residential and small business customers), including:⁴¹

- > customer service (including call centre responsiveness measures)⁴²
- > complaint types and the proportion of customers that make complaints
- > proportion of customers in debt and the average energy debt (non-hardship)
- > hardship metrics, including customer hardship, average debt levels, hardship customers not meeting usage costs, credit collection
- > disconnections.

As a regulator, there are various ways we can obtain data and information, including through consumer research, formal ongoing record-keeping requirements and statutory information requests made under the Telecommunications Act. However, we have limited ability to report publicly on individual provider performance in the telecommunications market. This means our ability to facilitate

³⁹ This would align with the Australian Consumer Law, under which the ACCC can seek an order disqualifying individuals from being directors of corporations if they breach specified consumer protection provisions. See s86E *Competition and Consumer Act 2010* (Cth).

⁴⁰ Consumer Policy Research Centre, ["But are they any good?" – The value of service quality information in complex markets.](#)

⁴¹ Australian Energy Regulator, [Retail Report - Retailer Report Cards 2018-19.](#)

⁴² Measures include average call wait times, calls taken within 30 seconds, calls abandoned before answer, Australian Energy Regulator, [Retail Report - Retailer Report Cards 2018-19.](#)

transparency and choice, while driving performance improvements through reputational regulation, is restricted.

For example, in 2019 we used our powers under the Telecommunications Act to obtain performance data from providers to gain a deeper understanding of the customer service performance of major providers against key TCP Code requirements.⁴³ While we reported on this performance⁴⁴, we were unable to identify specific providers associated with each dataset.⁴⁵ For this reason, the data was of limited use to consumers in informing their choice of telecommunications provider.

Similarly, our Telecommunications (Consumer Complaints) Record Keeping Rules require retail providers with 30,000 or more services in operation to keep certain records of complaints by service and type, and report to us. While we report publicly at an aggregated level, we are unable to report on individual provider performance.

We propose that the ACMA be empowered through legislation to report publicly on the performance of individual CSPs. To underpin reporting, new record-keeping rules should be developed that require CSPs to report against key performance indicators for metrics in areas such as:

- > customer service: call/chat wait times
- > complaints-handling
- > churn: numbers ported to other CSPs
- > disconnections
- > hardship measures: customers on hardship agreements, debt levels and changes
- > service reliability metrics: availability, fault repair.⁴⁶

This type of performance data is typically collected and publicly reported on by other essential service regulators, including the AER.⁴⁷ Both the Australian Competition and Consumer Commission and the AER have the power to disclose information given to them in accordance with their record-keeping powers, providing certain conditions are met.⁴⁸ A similar power would allow the ACMA to comprehensively measure the performance of different providers, more effectively target compliance activity and better assist consumers with informed choice.

Fit-for-purpose enforcement tools

As a regulator, we should be able to directly enforce essential telecommunications-specific consumer protection rules. The range of enforcement options available to us to respond to breaches of direct regulation is generally adequate, with the exception of the ability to prevent unscrupulous operators from participating in the market, which our proposed registration scheme would facilitate. However, there is scope to improve consistency of available penalty amounts across different instrument types.

In the current framework 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, which can lead to some inconsistencies. Given these instruments often provide similar or equivalent

⁴³ Under the TCP Code, providers are required to ensure customer service enquiries are dealt with in a timely and effective manner, including keeping average wait times to a minimum, and aiming to resolve customer service enquiries at the first contact.

⁴⁴ ACMA, [Telco customer service report](#), February 2019.

⁴⁵ Subject to some other few exceptions, under Part 7A of the *Australian Communications and Media Authority Act 2005*, the ACMA cannot publicly disclose the information collected under section 521 notices without the consent of the provider.

⁴⁶ We note that the [Part B: reliability of services—Consumer Safeguards Review—Final report](#) recommended the development of record-keeping rules to facilitate reporting on network reliability.

⁴⁷ Australian Energy Regulator, [Retail markets performance reporting](#), accessed 17 September 2020.

⁴⁸ See section 151BUA [Competition and Consumer Act 2010](#), section 214 National Energy Retail Law.

protections to consumers, breaches resulting in equivalent consumer harms should attract similar penalties.

To facilitate a consistent and proportionate enforcement response where rules relating to essential consumer protection matters are breached, the maximum civil penalties currently available for a breach of a standard and a breach of a service provider determination should align. We propose the maximum civil penalty amount be set at \$10 million for both instrument types.

Transitional arrangements

Appropriate transitional arrangements will be required to implement new consumer protection rules and introduce transparency and registration measures. These arrangements will include detailed consultation with industry and consumer stakeholders.

Key objectives of transitional arrangements should be that:

- > they are simple to understand and follow
- > existing essential consumer safeguards are maintained during the transition period—providers must continue to comply with existing rules until new rules are in place
- > providers will be given adequate time to understand and comply with new rules
- > existing providers will be given adequate time to join the registration scheme.

Implementation timeline

Reforming the telecommunications consumer protection framework is a significant undertaking, requiring substantial input across the ACMA, government, industry and consumer groups.

Based on our preliminary analysis of the work required to implement the proposals canvassed in this submission, we have outlined a high-level implementation timeline (Appendix B). The timeline envisages completion of the work across three key stages in the short-, medium- and longer-term. It does not include revision of compliance programs that will need to be developed following the implementation of new rules.

Cost recovery

Developing a reformed consumer safeguards framework that provides for adequate choice and fairness may result in changes to the profile of how costs are apportioned across government, industry and potentially consumers. The need for a reformed regulatory effort has been articulated in the consultation paper and in this paper.

Many aspects of our implementation proposal, such as the remake of existing rules in direct regulation, are not expected to lead to additional costs on an ongoing basis. There is also the potential for efficiencies to be realised if proposed registration requirements were streamlined with requirements to join the TIO scheme and associated exemption processes. It is possible that some proposals, such as the establishment of a registration scheme, may lead to a modest increase in the regulatory burden on industry. However, efficiencies may also be derived from the clarity created around the application of rules that a registration scheme delivers.

We consider a small increase in the regulatory burden a measured response to the increased importance of telecommunications as an essential service. It is important that the delivery of these services is closely aligned with contemporary consumer expectations of choice and fairness.

The government operates the Australian Government Charging Framework (AGCF) which has been in place since 2015. It may be appropriate to use this framework to apply cost recovery arrangements to the development and operation of a new consumer protection framework, where the cost of some of these activities are transferred to the industry and market that has created the regulatory effort.

As implementation of a registration scheme would provide a complete list of CSPs that have created the regulatory effort, our costs could be recovered under the AGCF. This would ensure the proposal would be fully offset and cost neutral to government.

Appendix A—Legacy obligations

Obligation	Purpose	ACMA view
Emergency call services— <i>Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act), Part 8</i>	Assist individual and community safety	We agree these services will continue to be important for assisting safety of individuals and the community.
Calling line identification (CLI)— <i>Telecommunications Act, Part 18</i>	Facilitate efficiency, safety of individuals and the community, and choice	We agree CLI will continue to play a role in enabling efficient call management, route selection and billing within networks, including for emergency call services.
Number portability— <i>Telecommunications Act, Part 22</i>	Facilitate competition and consumer choice	We agree this will continue to be important for enabling competition and facilitating consumer choice of CSP.
Standard terms and conditions— <i>Telecommunications Act, Part 23</i>	Facilitate efficiency and transparency	We agree this will continue to be important for efficiency for providers and enabling transparent access to terms and conditions of services for customers. However, rules about terms and conditions may be more flexibly addressed by direct regulation developed by the ACMA, than in primary legislation.
Untimed local calls— <i>TCPSS Act, Part 4</i>	Facilitate access and affordability	We agree that this requirement is of decreasing relevance, with many fixed-line and most mobile phone plans now offering unlimited local and national calls as part of the included value. However, we note that access to untimed local calls is likely to be more important for particular groups such as older or low-income Australians who are more likely to use legacy fixed voice services. We have not measured the extent to which untimed local calls remain important to these groups.
Telstra price controls— <i>TCPSS Act, Part 9</i>	Support development of market competition and facilitate equity/affordability	We agree that the ability to set price caps on Telstra has become less relevant as the retail market and the cost of services have become more competitive. There are other measures in place to ensure low cost services are available to certain consumer groups. Any future requirement to provide low-income measures should apply to all services, and not be limited to fixed-line services within the scope of the USO.

Obligation	Purpose	ACMA view
Pre-selection— Telecommunications Act, Part 17	Facilitate price competition, affordability and consumer choice	<p>We recently conducted a targeted review of the Telecommunications (Provisions of Pre-selection) Determination 2015. The outcomes of this review are available on the ACMA's website.⁴⁹</p> <p>While no changes were made to the Determination as a result of the review, we acknowledge there would be benefit in considering its viability once the NBN transition is complete.</p>
Directory assistance services— Telecommunications Act, Sched 2	Facilitate connectivity, access and participation	<p>We agree these services are of decreasing relevance given the widespread use of internet search engines and apps to locate numbers and log service issues.</p>
Operator services— Telecommunications Act, Sched 2	Facilitate connectivity and service reliability	<p>However, these services may still be relied upon by specific groups of consumers, such as the elderly or those with disability, who may find it difficult to access services via mobile phone or online.</p> <p>Consideration should be given to the best way to ensure ongoing access to assistance for these groups.</p>
Itemised billing— Telecommunications Act, Sched 2	Facilitate transparency, fairness and choice	<p>We consider that billing transparency is a key consumer protection.</p> <p>However, itemised billing may be of decreasing relevance with the increasing popularity of unlimited or all-inclusive plans.</p> <p>We propose that the future of the requirement to facilitate itemised billing be further considered in the context of the application of the Consumer Data Right to the telecommunications sector.⁵⁰</p>

⁴⁹ [ACMA announces outcome of pre-selection review](#), May 2020.

⁵⁰ The [Consumer Data Right](#) gives consumers greater access to and control over their own data, including the ability to securely share data with a trusted third party. It will be introduced in the banking sector from July 2020 and is then expected to rollout across other sectors of the economy, including energy and telecommunications.

Appendix B—Proposed implementation timeline

Short term (0–12 months)	Medium term (12–24 months)	Longer term (24+ months)
<ul style="list-style-type: none"> > Identify essential consumer protection matters for which rules are needed: <ul style="list-style-type: none"> > complete gap analysis of where such rules exist (in direct regulation or co-regulation) and prioritise rules to make. > Prepare and consult on exposure draft legislation to specify principles to guide a reformed consumer protection framework. > Prepare and consult on exposure draft legislation to give the ACMA the power to: <ul style="list-style-type: none"> > make rules by direct regulation for any essential consumer protection matter or related operational matter > make record-keeping rules requiring CSPs to report against specified essential service metrics > report publicly on the performance of industry and individual providers measured against these metrics > create a retail CSP registration scheme > take appropriate compliance/enforcement action in response to breaches of consumer protection rules. > Commence design of the CSP registration scheme. 	<ul style="list-style-type: none"> > Draft, consult on, make and implement essential consumer protection rules. > Draft, consult on, make and implement associated record-keeping rules. 	<ul style="list-style-type: none"> > Commence public reporting on essential service metrics (including both industry and individual CSP performance). > Implement a compliance monitoring program for consumer protection rules and record-keeping rule requirements. > Implement a registration scheme (allowing six months for CSPs to apply for registration once scheme is in place).