

# **What consumers want – Consumer expectations for telecommunications safeguards**

A position paper for the  
telecommunications sector

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# Executive summary

## ***Telecommunications is now considered an essential service***

Being connected and having access to a reliable and affordable phone and internet service has become necessary for us to work and connect to education, health and government services, as well as being vital for social connections and management of our everyday lives.

Consumer access to telecommunications (telco) services has become even more critical since the beginning of the COVID-19 pandemic, with many now settling into a new era of unprecedented hybrid working-arrangements and the increased reliance on telco services.

## ***The industry and consumer use have radically changed over the last 25 years***

The telecommunications landscape has changed since the introduction of key legislation in 1997. There has been substantial change through the deployment of new or upgraded technologies, both for fixed-line and mobile services. The rollout of the National Broadband Network (NBN) has significantly changed the way that fixed-line voice and internet services are delivered. The use of mobile phones dominates fixed line as a communications technology.<sup>1</sup> Mobile technology is also changing, with 5G mobile networks now rolled out to many parts of Australia, supplementing 4G networks, and heralding the withdrawal of 3G services in some areas.

Consumer use has also radically changed since 1997 when fixed line, voice-only services were dominant. Today, consumers use multiple devices to access a huge range of services over telecommunications networks – recent ACMA research revealed 39% of online Australians use 5 or more types of devices to go online.<sup>2</sup> The industry, supported by a pro-competition *Telecommunications Act 1997* has expanded beyond the original monopoly telecommunications provider to a competitive landscape of more than 1,500 retail service providers.

Against these positive developments, consumers are currently facing a challenging economic environment as the cost of living has risen sharply over the past year as inflation has substantially increased. Inflation, as measured by the Consumer Price Index (CPI,) rose 7.8% between December 2021 and December 2022. Wages have not kept pace with inflation, growing at less than half the rate of inflation over the same period. Real wages are not forecast to rise until 2024. Interest rates have also risen in response to the sharp rise in inflation, placing further pressure on household budgets.

It is important that telcos, like other essential service providers, operate in an environment where their practices do not increase the risk of a consumer becoming financially stressed, and have appropriate financial hardship assistance available if that does become the case, irrespective of the cause. Against the background of the ACMA's Statement of Expectations for consumers in vulnerable circumstances released in May 2022, and its more recent *Financial hardship in the telco sector – keeping the customer connected* (Financial Hardship Report) published in May 2023,

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<sup>1</sup> Australian Communications and Media Authority (ACMA), [Communications and media in Australia: How we communicate](#), ACMA website, 2022, accessed 26 June 2023.

<sup>2</sup> ACMA, [Communications and media in Australia: How we use the internet](#), ACMA website, 2022, accessed 26 June 2023.

the ACMA has seen no demonstrable indication that the telco sector has reviewed or adjusted the ways in which it is helping customers to get and stay connected against a background where this is becoming an increasingly difficult proposition for many Australians.

It is essential that all Australians, regardless of their individual circumstances, are able to access and use telecommunications services. Contemporary consumer safeguards and telco industry obligations should reflect the role of telecommunications as an essential service, especially as businesses, government, and other organisations increasingly shift to online interaction platforms.

### ***Telco consumer protections are delivered through different regulatory arrangements***

Under the telecommunications consumer protection framework in Australia, set up in 1997, safeguards are delivered across a range of regulatory approaches. These include co-regulation and direct regulation through law. Each approach is suitable for different circumstances and has different strengths and weaknesses – including, but not limited to, flexibility in evolving the framework to address changes in the market versus enforceability of consumer protections.

Currently, the key safeguards protecting telco consumers are co-regulated in the [Telecommunication Consumer Protections Industry Code C628:2019](#) (TCP Code), which sets out rules for how telcos interact with their residential and small business mobile, landline and internet customers. The current TCP Code provides consumer protections for advertising and sales, contracts, customer service, billing, credit and debt management, financial hardship and changing providers. Industry designed the TCP Code and the ACMA registered it under Part 6 of the Telecommunications Act, which gives us powers to enforce the Code.

The [Telecommunications \(Consumer Complaints Handling\) Industry Standard 2018](#) also provides important consumer protections, establishing minimum rules for how residential and small business customers must be able to complain and, when they do, rules for handling and resolving such complaints. This Standard was made following a 2018 direction from the then Minister for Communications. In effect, it resulted in the ACMA moving and enhancing the telco customer complaints-handling provisions that were in Chapter 8 of the TCP Code into a directly enforceable instrument. This change was made to address circumstances where the previous rules were not meeting community expectations for acceptable complaint handling.

Telco consumers are also covered by the overarching consumer protections in the Australian Consumer Law (ACL). The ACL applies to businesses economy-wide and addresses misleading or deceptive conduct, unconscionable conduct, unfair practices, consumer guarantees and product safety with the purpose of enhancing the welfare of Australians by promoting fair trading and competition through the provision of consumer protections. The TCP Code complements the general protections of the ACL by setting out standards of conduct for specific telecommunications consumer protection issues, which can assist providers in complying with the ACL provisions.

### ***ACMA's position paper sets out its expectations of improvements to consumer protections***

In light of the rapidly changing telecommunications environment and the continued cost of living pressures, we consider it timely to explore contemporary consumer expectations for telecommunications safeguards.

Communications Alliance (CA) is the lead industry association responsible for development of the telecommunications industry's codes of practice. On 5 May 2023, CA announced the commencement of a review of the TCP Code with the release of a general discussion paper.

This position paper sets out the ACMA's views on the efficacy of the current TCP Code in providing appropriate consumer safeguards in the contemporary telecommunications environment. It highlights areas where, in our view, current safeguards are inadequate and require substantial improvement to meet consumer expectations.

It is informed by our regulatory monitoring, compliance and research activities, understanding of existing consumer safeguards, the findings of government and external research and discussions with consumer advocates.

It is consistent with the government's 2023 Statement of Expectations that the ACMA will be more directive in setting expectations for the development of industry codes.

The ACMA notes it is open to the minister to direct the ACMA to move to direct regulation for any aspects of the TCP Code. This has previously occurred with the complaints-handling provisions.

### ***The TCP Code needs major improvements in a range of important areas***

The ACMA has considerable insights into the kinds of protections or safeguards that Australian consumers expect when engaging with the telecommunications sector. Many of these protections are incorporated into the industry's TCP Code.

In our view, there are requirements in the TCP Code, such as Critical Information Summaries and other information provided to consumers, and those relating to advertising, customer service, billing and customer contracts, which would benefit from tightening and clarification.

However, we have been concerned for some time that the current TCP Code is not delivering for consumers in a range of important areas. This paper articulates our current views on contemporary consumers' expectations across 6 distinct areas of focus:

1. **Clarity about purchases and commitment** – Consumers expect that telcos will actively seek to understand their needs in order to provide appropriate advice on services or products that will best meet those needs. They expect telcos to not try to upsell them unnecessary or unaffordable plans or equipment, that product information about plans and equipment will be easy to obtain and understand, that this information will be comparable and show what is and isn't included, will include information on what the plan or equipment costs monthly and annually, and advice on whether there are any important conditions or material limitations that may help them choose the service/s that best suits their needs.
2. **Quality of assistance** – Consumers expect to be able to reach their telco quickly and easily to get help with a question, problem or complaint, and regardless of the method of contact – in person, by phone or online – the same standard and quality of assistance will be provided without having to wait an unreasonably long time to obtain meaningful assistance.
3. **Attend to an enquiry/issue/problem in a reasonable time and keep customer service promises** – Consumers expect that telcos will answer their enquiry or fix their issue or problem at first contact or within a reasonably short time, where possible, and do what they promised to do. For more complex or difficult issues that take longer to address, consumers expect that these will still be completed

within a reasonable timeframe and that they will be kept informed of progress and told when the issue has been resolved.

4. **Payment – choice of method, clarity and accuracy** – Consumers expect to have a choice about how they pay their bills, not be forced to pay by direct debit or auto-payments that may be outside their income cycles, and that their bills and invoices will be accurate, and the charges easily understood.
5. **Help when in difficulty** – Consumers expect their telco to take steps to proactively identify customers who may be experiencing financial difficulty and have trained staff who are prepared to discuss realistic payment plans and other options, and are empowered to help these customers, enabling them to maintain a phone and/or internet service. Consumers also expect their telco to make reasonable efforts to advise them if an auto-payment has been unsuccessful and give them a chance to make the payment before the telco takes further action.
6. **Fair treatment of consumers in vulnerable circumstances** – Consumers in vulnerable circumstances expect to receive a level of customer care that enables them to select and maintain telecommunications services and devices that are suited to their needs, and that the services supplied, and personal information provided are managed in a way that protects personal safety.

#### ***Principles to inform a revised telco consumer protection framework***

We also consider the following consumer protection principles are essential for developing, reviewing and maintaining robust and effective consumer safeguards that continue to be responsive to consumer expectations and engender trust within the telco sector:

1. **Accountable** – Telecommunications consumer safeguards are clear, objective and enforceable to enable telcos to be held accountable if they do not comply.
2. **Transparent** – Telco service providers will ensure consumers have access to clear, accurate and relevant information to choose telecommunications products that suit their needs and budget and enables them to understand their billing arrangements.
3. **Accessible and responsive** – Telco service providers need to be easy to contact, responsive to customer service requests and provide reasonable and timely assistance to all consumers.
4. **Flexible** – Consumers have flexibility in making arrangements for payment plans, ‘bill smoothing’ or other options to maintain a service and a choice about how they pay their bills so that payment methods do not unnecessarily add to or cause financial stress.
5. **Connected** – Effort is made to assist consumers to remain connected; action to disconnect or suspend services due to non-payment is only taken after reasonable efforts are made to discuss resolutions with the consumer and financial hardship assistance is made available but is unsuccessful.
6. **Fair** – Telecommunications services and devices are being sold responsibly and not to consumers if there are clear signs that the services and devices will be unaffordable or are not appropriate for their circumstances.

#### ***Improvements are urgent and non-negotiable***

This paper highlights areas where, in the ACMA’s view, existing protections are not delivering appropriate community safeguards for customers of telecommunications products and services. This is not the first time the ACMA has raised these issues and concerns. We are also not alone in raising them.



The essential requirement of access to telecommunications services now also raises questions about whether the existing co-regulatory approach is providing sufficiently strong protections for consumers in these areas.

We are of the view that, given the harm to consumers from the lack of strong protections, that action by the industry cannot wait until the current identified timeframe for the TCP Code review of end 2024.

We note that the Minister for Communications will instruct the ACMA to make a directly enforceable instrument that establishes substantive protections for telco consumers experiencing financial hardship. This reflects the government's significant concern about the findings in the ACMA's Financial Hardship Report, and the deficiencies it highlighted regarding the industry's management of financial hardship. Noting the significant impact of current cost of living pressures, and the essential nature of telecommunications, the minister has decided that clear and directly enforceable rules are needed urgently to ensure telcos adequately support customers experiencing financial hardship.

Outside of any matters covered by an anticipated direction from the Minister for Communications, the ACMA will seek an early and definitive indication from the telecommunications industry on the detailed amendments it will make to its code that will address the issues raised. The ACMA will also seek a timetable that reflects the urgency of the improvements needed to bring industry's code of practice in line with the best practice approaches identified in this position paper.

If the industry is unwilling to step up for its customers and improve protections in its code, the ACMA considers there is a sufficient evidence-base to support the introduction of direct regulation through pathways available under the Telecommunications Act.

Following publication of this paper, we will open a dialogue with the telco industry representative body, CA and its members, to pursue the ACMA's expectations and also seek an understanding of industry's position.

# Introduction

This paper sets out the views of the Australian Communications and Media Authority (ACMA) on:

- > current expectations of Australian phone and internet consumers about how retail telecommunications providers interact with them when selling and delivering services, and keep them connected
- > a set of consumer safeguard principles, based on contemporary consumer expectations, which can be used to underpin developments in the Australian telecommunications consumer protections regulatory framework
- > where there appear to be gaps between existing telecommunications consumer safeguards and contemporary customer expectations, and ways these could be bridged.

We intend this paper to be relevant to the telecommunications industry, consumer advocates, government and regulatory stakeholders and the wider public to inform discussion and be a guide for regulatory development, including industry codes.

## Structure and scope

Telecommunications in today's world is diverse and entrenched within the social and economic fabric of our daily lives. This paper is focused on consumer protections around accessing and maintaining access to phone and internet services.

The discussion in this paper applies across all types of telecommunication services (fixed-line, mobile, voice and internet) regardless of delivery technology. It focuses on the needs of residential and small business consumers, who are most reliant on appropriate consumer safeguards being in place.

In forming the views in this paper, we considered a broad range of information from research, stakeholder discussions, complaints trends, our compliance and enforcement experiences and a comparative study of consumer safeguards in other countries and essential service sectors. We also took into account our findings and observations from our May 2023 Financial Hardship Report.

We used this information to:

- > identify key issues at important touchpoints in the customer lifecycle (such as purchasing a service that meets their needs, resolving an issue or maintaining access)
- > refine our understanding of what consumers consider to be the most important aspects of their interactions with telco service providers in today's environment
- > look at current consumer safeguards and protections and identify any gaps
- > derive core groups of consumer expectations that pinpoint critical areas of focus for consumer safeguards.

From these, we developed a set of key consumer protection principles. These key principles can be used to inform consideration of what contemporary consumer protections look like.

This paper has 3 main sections:

- > The first provides context about the current telecommunications environment, consumer trends and pressures, and types of regulation and enforcement measures in place.
- > The second section identifies the key expectations and examines the current protections available, the contemporary and emerging issues and the ACMA's views on best practice approaches that could be adopted to meet consumer expectations.
- > The third section discusses the suite of consumer protection principles that underpin the delivery of effective, contemporary consumer safeguards.

# Section 1: Context

Telecommunications is now regarded as an essential service, as critical as other key utilities and services, such as power, water and banking for Australians to fully participate in and contribute to our society.

The use of phone and internet services is integrated into our everyday lives in endless ways – for work (as individuals and to run businesses), maintaining social contact with family and friends; using social media; obtaining news; interacting with governments; undertaking banking, telehealth, education, job-hunting, food and other retail shopping; and streaming entertainment services and gaming, to name some common uses.

People are also being nudged to do more online. Businesses, governments and other organisations, including telcos, increasingly have a broad expectation that citizens will be able to interact with them online. They have communications methods and processes that preference these modes of contact. While online interactions can provide greater convenience for everyone, it can make getting things done harder or take longer for people without access to an online service, or without the confidence and knowledge to use it.

It is essential that contemporary telco industry obligations and consumer protections are in place that are appropriate for our current environment, and that they enable and support all Australians, regardless of their individual circumstances, to access and use telecommunications services.

The type of regulation and the tools to enforce compliance, if necessary, should also match the importance that telecommunications services play in Australians' lives.

## **Changes in consumer trends**

The mass disruption of society in Australia (and globally) due to the impacts of the COVID-19 pandemic highlighted how dependant we are on telecommunications services. It also clearly showed the benefits that telecommunications services gave us by offering flexibility in remaining connected. For many people, online connectivity significantly dampened the pandemic impacts and allowed them to continue to work and keep in touch with people from home.

While pandemic restrictions have now been removed, the shifts in the way we live and work appear to have led to permanent changes, with mobility and remote working (for example, hybrid work arrangements) remaining popular. This change has placed a greater importance and reliance on people's personal home and mobile services, both for voice and broadband.

## **Telecommunications changes**

The contemporary telecommunications technology and industry landscape has also seen numerous changes. Major changes are frequently occurring through the deployment of new or upgraded technologies, both for fixed-line and mobile services. The rollout of the National Broadband Network (NBN) has significantly changed the way that fixed-line voice and internet services are delivered. It has increased internet speeds available across the country and extended better internet services to consumers in rural and remote areas. Other private fibre network and satellite operators are also offering competing fast broadband services.

Mobile technology is also changing, with 5G mobile networks now rolled out to many parts of Australia, supplementing 4G networks, but also marking the withdrawal of 3G

services in some places. As with previous network upgrades, these changes come with the need for consumers to have access to mobile devices to be able to experience the benefits of the new 5G network.

New ways for customers to communicate with their service providers are now also available, both during the sales process and in seeking customer service or reporting problems. Providers offer a range of interactive online methods to customers, including apps, web chat/chat-bots and social media, as well as via online forms or email. These usually supplement other conventional and still popular methods, including phone and in-store visits (where available).

These online communication channels offer benefits to consumers, such as being able to fit contacting their provider around their daily schedule more easily, rather than having to wait on the phone, and can be quicker than other methods. Some consumers simply prefer online and written interactions or find these more accessible.

However, these newer communication channels can also present barriers to some consumers, who can find them difficult to use, harder to get more complex issues resolved, and can result in more time-consuming back and forth to resolve an issue than if they were speaking directly to a person. Consumer advocates and the Telecommunications Industry Ombudsman (TIO) have reported that consumers can find these methods direct them to unhelpful online information, trap them in a communication loop, or make it difficult to contact a real person for assistance.<sup>3</sup> These methods can also be particularly unsuitable for certain consumers in vulnerable circumstances.

### **Phone and internet plans**

Consumers need to navigate a wide range of service types and products from telecommunications providers. These can often change, including the terms and conditions under which telco providers sell these goods.

Phone and internet plans can change and vary in ways such as:

- > voice and data inclusions
- > broadband speed tier
- > basic plan charges
- > charges or conditions for using data after the included plan data is used up
- > international roaming charges
- > payment methods required
- > contract plan length and exit fees
- > cost of a mobile device or other equipment to use the service.

In a recent trend, service plans offered on a month-to-month contract basis are now widespread in the telecommunications industry. This means that customers are not locked into contracts for 12 or 24 months, as has previously been common, and can stop their plan without incurring expensive early contract exit fees. Consumers can still combine their plan with a device to use the service, however the device component is typically provided under a longer-term contract (12, 24 or 36 months), with monthly instalments due.

Although customers are free to stop month-to-month service contracts at any time, if a device such as a mobile phone is linked to their service, customers may also be

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<sup>3</sup> Telecommunications Industry Ombudsman (TIO), [Investigating complaints about essential mobile services](#), TIO, July 2022, accessed 26 June 2023.

charged the total balance still owing on the device in the next billing cycle, which can be a significant cost in one bill and lead to financial stress.

The timing and method of payment for month-to-month plans also now differs to what customers have previously been used to with post-paid plans. Telcos often require customers to pay the basic phone or internet plan amount one month in advance ('upfront') of their usage. Many telecommunications service providers, including major telcos, now also require customers to pay for these new upfront plans by direct debit or another auto-payment method (for example, by credit card).

### **Economic pressures**

Australia is currently going through a financially challenging time for many people. The cost of living for Australians has risen sharply over the past year as inflation has increased. The annual inflation rate, as measured by the Consumer Price Index, rose to a peak of 7.8% in the December quarter 2022 and remains high (7.0%, March quarter 2023). Mortgage interest rates have also increased rapidly, putting greater financial pressure on Australians.

The Australian economy will always experience good and bad times, however it is important that telecommunications service providers, like other essential service providers, offer appropriate financial hardship assistance to their consumers when necessary.

## **Types of regulation**

A range of regulatory options (and other non-regulatory tools) are generally required to successfully address various types of policy problems, market issues and community concerns that emerge over time as environmental factors change.

Under the current telecommunications consumer protection framework in Australia, safeguards are delivered through a range of regulatory approaches. These include co-regulation and direct regulation through law. Each approach is suitable for different circumstances and has different strengths and weaknesses.

It is important to note that the form of obligations – whether in co-regulation or direct regulation – should make no difference to the effort made by the telco industry in meeting them. Equally important is the need to revisit existing interventions from time to time to ask whether they remain appropriate in the current environment and how protections can be assured in the future.

### **Co-regulation**

Co-regulation usually involves the industry developing its own code. In the Australian environment, co-regulation is developed at an industry-wide level, predominantly through codes of practice, with enforcement by the regulator.

The ACMA can register an industry code under Part 6 of the Telecommunications Act, if it is satisfied that the code provides appropriate community safeguards, and the industry has undertaken the required consultation with the industry, the public, consumer representatives, and other organisations such as the ACCC, TIO and, where relevant, the Office of the Australian Information Commissioner. In 2014, the then Department of Communications published its *Regulating harms in the Australian communications sector* policy background paper<sup>4</sup>, which set out strengths and weaknesses of co-regulation.

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<sup>4</sup> Department of Communications, [Regulating harms in the Australian communications sector: Observations on current arrangements](#) (Policy background paper No.2), Department of Communications, Australian Government, 2014, accessed 26 June 2023.

Strengths included:

- > providing a structured approach to engaging industry is more likely to reflect current industry practices and may better provide for more cost-effective compliance models
- > retaining legislative backing provides greater confidence than self-regulation only
- > having a consensus approach can be useful in building industry buy-in to address the problem
- > moving more quickly than developing black letter law to deal with rapidly changing technologies and issues.<sup>5</sup>

Weaknesses included:

- > compliance may be considered as voluntary by most industry participants, with safeguards put at risk
- > consensus may not be possible when many businesses are involved, resulting in code development reaching an impasse where conflicting views are intractable
- > regulator sign-off may distort industry inputs while responses to breaches are directed towards continuous improvement rather than direct sanction.

Co-regulation will generally only be effective where there is a reasonable alignment between the interests of industry participants and the public interest. The process of developing or updating an industry code can also limit the influence of consumer representatives, potentially leading to weaker protections for consumers.

The Department's 2014 paper noted that the ACMA's work had raised issues about the continued suitability of industry codes for some parts of the telecommunications sector. For example, it points out that co-regulation is less effective when the products offered to consumers are varied and difficult to compare, leading to information asymmetry and product confusion. Telco services are increasingly complex and difficult for all consumers to understand. The number of businesses in a sector can also impact the effectiveness of co-regulation, where a relatively small number of players with wide industry coverage is preferable. However, the telco industry now has over 1,500 retail service providers, ranging from major companies to micro-service providers.

### **Direct regulation**

Direct regulation includes primary and subordinate legislation, such as Acts of Parliament, regulations, industry standards, or service provider rules (for example, a service provider determination), which are made to affect the behaviour of participants in the telecommunications sector.

In the case of rules and standards, the government (through the regulator or other agencies) develops the rules.<sup>6</sup> Industry contributes through consultation during the development phase. Compliance with these rules is mandatory and is enforced by the regulator via a range of sanctions (potentially including civil penalties).

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<sup>5</sup> The Department's 2020 paper [Consumer Safeguards Review consultation—Part C: Choice and fairness](#) provides some nuance to these positions, including noting that development of consumer protection codes has proven to be slow, in practice.

<sup>6</sup> For example, under subsection 99(1A) of the Telecommunications Act, the minister may make a service provider determination setting out rules that apply to carriage service providers that supply specified carriage services. Similarly, pursuant to section 125AA, the minister may direct the ACMA to determine an industry standard that applies to particular participants in the industry and deals with one or more matters relating to the telecommunications activities of those participants.

Direct regulatory approaches are, in contrast to co-regulatory approaches, appropriate where the nature of the harm that could be expected to flow from non-compliance is such that a legal foundation is required for enforcement measures (beyond a focus on continuous improvement) in the case of non-compliance. It is also appropriate when industry has little interest in controlling risks (or cannot control them easily) or where industry consensus is uncertain without regulatory intervention.

Strengths of direct regulation include<sup>7</sup>:

- > it provides clear rules and expectations
- > sanctions are unambiguous and can be significant (civil penalties)
- > compliance is compulsory for industry participants – but can allow for different obligations being applied to different industry sectors/companies.

Weaknesses of direct regulation include<sup>8</sup>:

- > it may be more difficult to change and may be inflexible in a rapidly changing industry environment
- > it may provide a barrier to entry for innovative services or firms with limited resources to engage in the legislative development process
- > differences in business size and capacity to comply or be fully informed through industry engagement may not be accommodated
- > may require high standards of proof and evidence are required, which adds time and costs.

### **Outcomes-based regulation vs rules-based regulation**

The telco industry has often submitted that it would envisage over time that outcomes-based regulation (principles based) would be more effective than the current rules-based regulation.

Outcomes-based regulation is an approach to regulation where outcomes and principles are set, while the controls, measures and procedures on how to achieve that outcome are left for each organisation to determine. Critically, outcomes-based regulation must retain the essential characteristic of establishing a standard of conduct that can be measured, and for which non-compliance can be identified and enforced (as distinct from 'motherhood' statements). Further, it depends on high levels of transparency on the part of regulated entities being clear about how they are achieving the desired outcome both in terms of describing systems and processes, but also determining and reporting on performance metrics that demonstrate compliance. While there is flexibility on how outcomes or principles are achieved or implemented, the challenges with this type of regulation include an inconsistent approach to implementation and uncertainty about how a regulator (in this case, the ACMA) will view the conduct, measures and controls.

Rules-based regulation is an approach to regulation that imposes standards and delineates undesirable conduct in a prescriptive way. This type of regulation allows for greater certainty on how a company should act to stay within their legal duties and can facilitate enforcement by focusing on efforts on establishing whether actions have infringed a set of prescriptive obligations.<sup>9</sup> However, rules-based regulation can become outdated in highly dynamic markets as changes in market context can create

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<sup>7</sup> Department of Communications, [Regulating harms in the Australian communications sector: Observations on current arrangements](#) (Policy background paper No.2).

<sup>8</sup> Department of Communications, [Regulating harms in the Australian communications sector: Observations on current arrangements](#) (Policy background paper No.2).

<sup>9</sup> T. Van den Brande, [Rules-based versus principles-based regulation – is there a clear front-runner?](#), Ofcom website, 2021, accessed 26 June 2023.



scope for new harmful conduct that is not captured by existing rules, or developments in business practices can allow firms to circumvent these rules.<sup>10</sup>

We have been open to the telco industry initiating outcomes-based regulation and invited the industry to demonstrate its commitment.<sup>11</sup> To date, we have not seen industry progress this type of regulation, suggesting that the telco industry has not demonstrated a mature approach to utilising outcomes-based regulation for the foreseeable future.

## Enforcement options

The ACMA has a variety of enforcement options in its regulatory toolkit that provide incentives for telcos to comply with regulation and can be applied when non-compliance is identified. There are differences in the strength of enforcement tools available, depending on the type of regulation that is breached.

For contraventions of industry codes such as the TCP Code, the ACMA has only 2 enforcement options. We can issue a formal warning to a company for contravening the code or, in more serious cases, issue them with a direction to comply with the code. Directions to comply are typically focused on the part of the code breached, not the whole code (although not always).

We can only take more serious action for a breach of an industry code if a company has breached the conditions of a direction to comply (that is, a second or repeated breach).

For non-compliance with direct regulation, the ACMA has a more powerful range of enforcement tools available. These include:

- > remedial directions requiring a telco to take specific actions to avoid contraventions in future (which may involve financial costs to the telco)
- > accepting an enforceable undertaking
- > issuing an infringement notice
- > seeking pecuniary penalties from the Federal Court, which, under the Telecommunications Act, can be up to \$250,000 for a breach of an industry standard or direction to comply with an industry code, or up to \$10 million for a breach of a service provider rule.

The non-court action suite of enforcement options is relatively adaptable and can achieve positive improvements much faster than court action. Options such as enforceable undertakings and remedial directions can provide mechanisms for us to monitor compliance more closely and be assured that a telco's actions to become and remain compliant are working.

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<sup>10</sup> T. Van den Brande, [Rules-based versus principles-based regulation – is there a clear front-runner?](#)

<sup>11</sup> The ACMA published in May 2022 [Consumer vulnerability: expectations for the telecommunications industry](#), which encouraged industry to produce outcomes-based regulation on this significant issue.

## Current consumer protection regulations

The overall consumer protections framework for the telco sector in Australia is made up of safeguards across a suite of industry codes, industry standards, service provider determinations and black letter law. The main broad consumer-focused safeguards for supporting telco consumers to access and stay connected to telecommunications services are described below.

### TCP Code

The [Telecommunication Consumer Protections Industry Code C628:2019](#) (TCP Code) sets out rules for how telcos interact with consumers. It provides consumer protections for advertising and sales, contracts, customer service, billing, credit and debt management, financial hardship and changing providers.

The TCP Code applies to all carriage service providers (CSPs) in Australia. It is registered and enforced by the ACMA.

### Complaints Handling Standard

The [Telecommunications \(Consumer Complaints Handling\) Industry Standard 2018](#) (Complaints Handling Standard) sets out minimum requirements for telcos to meet in relation to having a complaints-handling policy, processes, accessibility, timeliness, transparency, and managing customer complaints. It includes requirements for managing, monitoring, analysing, recording and reporting complaints by carriers and CSPs. It also requires wholesale service providers to provide reasonable assistance to retail service providers to resolve customer complaints where needed. It applies to all CSPs and carriers responsible for the supply of services used by CSPs.

The Complaints Handling Standard is an example of direct regulation. Compliance is mandatory and is directly enforceable by the ACMA.

The Complaints Handling Standard was made by the ACMA in response to a direction from the minister to address the high level of complaints, especially as the NBN rollout occurred. Complaints-handling rules were previously in the TCP Code; however, they were moved into an industry standard and strengthened to provide greater consumer protections. Since the introduction of the Complaints Handling Standard, overall customer complaints to the TIO have fallen significantly.

### Australian Consumer Law

Telco consumers are also covered by the overarching consumer protections in the Australian Consumer Law (ACL), which is a national framework administered by the Australian Competition and Consumer Commission (ACCC). The ACL focus is on economy-wide provisions concerning misleading or deceptive conduct, unconscionable conduct, unfair practices, consumer guarantees and product safety and information, with the purpose of enhancing the welfare of Australians by promoting fair trading and competition through the provision of consumer protections.

While the ACL can apply to harmful conduct within the telco industry, it is important to note that it is not, and should not be, the sole regulation to protect consumers and address harmful conduct. Any effective regulatory strategy should be structured not only to address harmful conduct after it occurs but also to proactively prevent harm to consumers. Incentives for compliance with telco-specific regulation, in conjunction with the ACL provisions, enhance consumer protection in the telecommunications sector. In particular, the TCP Code sets out standards of conduct for specific consumer protection issues, with which a telco provider is expected to comply and will often assist providers in also complying with the ACL provisions.

## Regulatory environment activities

Elements of the consumer protection framework for the Australian telecommunications sector and measures that have an impact on consumer service standards are currently under consideration or due to be reviewed soon. This provides an opportunity to improve the framework so that it is appropriate for the contemporary environment, addresses current inadequacies and works in everyone's best interests to support the use of telco services.

Relevant development activities include:

- > The industry body Communications Alliance has recently begun a process to review the TCP Code, which is re-examined every 5 years. To assist this process, the ACMA is providing Communications Alliance with advice through this paper about the areas of the TCP Code that it considers industry should focus on.
- > The Department of Infrastructure, Transport, Regional Development, Communications and the Arts is undertaking a [thematic review of the Customer Service Guarantee \(CSG\)](#), before a suite of regulations that give it effect sunset later in 2023. The CSG scheme sets out performance standards for landline services to be connected, for faults to be repaired and for technician appointments to be kept, with compensation due to customers if these standards are missed.
- > The ACCC is [proposing to make a Record Keeping Rule for NBN Co Limited](#) (NBN Co) that relates to NBN Co's service quality and network performance. The data collected will assist the ACCC to monitor and publish reports of NBN Co's performance. The ACCC held a public consultation on this proposal in early 2023. It also proposes to develop similar rules for other superfast broadband access networks at a later date.
- > The ACCC is currently considering a proposed variation to the Special Access Undertaking (SAU) from NBN Co. In this revised SAU variation, NBN Co is proposing to include service quality standards for connection, repair, and appointment-keeping timeframes, as well as a mechanism to change these over time.<sup>12</sup> In May 2023, the ACCC rejected NBN Co's current proposal in a draft decision. The ACCC is expected to announce its final decision on the proposed SAU over the next few months.
- > In early 2021, the Australian Government consulted on standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs) about the level of service SIPs are required to supply, with the aim to address some of the concerns about reliability of service. It also consulted on a draft Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill. The Bill intends to provide greater certainty for industry and consumers about how they can access essential broadband and voice services. It will do this by amending the current legislation to refine the operation of the SIP regime and implement specific SIP performance and compliance provisions.

## Core expectations

As a regulator, we want to understand contemporary needs and core expectations of consumers in the changing environment to be sure that any regulation is appropriate.

Using consumers' core expectations, we have developed key principles to underpin contemporary consumer protections and important consumer choice factors. The principles will reflect consumers' expectations, the current telecommunications environment, including how services are offered to customers (for example, contract

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<sup>12</sup> The proposed revised SAU extends well beyond the measures above. It would establish a framework for regulating access to the NBN, including rules on how maximum prices are determined and other measures aimed at promoting competition and encouraging efficiency.

commitment timeframes), new ways that people live and work since the COVID-19 pandemic, and the ways that consumers interact with their telcos.

## Information gathering

In preparing this paper, we drew on a range of information from existing and new sources. Existing sources included:

- > research we have already completed about telco consumer experiences
- > our telco industry monitoring and compliance activities, and experiences gained from these activities from both investigative and legal perspectives
- > analysis of customer complaints to the TIO and complaints made directly to the ACMA from individual telecommunications service providers<sup>13</sup>
- > TIO systemic investigation reports about consumer-complaint themes, including responsible selling, customer service and accessibility, and financial hardship assistance
- > views of consumer representatives who are on the ACMA's Consumer Consultative Forum (CCF), both separately<sup>14</sup> and expressed through the CCF
- > studies by and submissions from the TIO and consumer representative organisations, including ACCAN, Consumer Action Law Centre, WestJustice and Financial Counselling Australia and the Centre for Policy Research (CPRC)
- > in-house desktop study of consumer protections in the telecommunications sectors in the United Kingdom (UK), Canada and New Zealand, and in the essential service sectors of energy and water in Australia and subsequent engagement with the respective regulators in overseas jurisdictions and the energy sector.

### New research

New ACMA research has also informed our views on consumer safeguards in this paper.

In 2022–23, we commissioned Roy Morgan to conduct extensive research into the financial hardship experiences of consumers in a quantitative survey (1,342 participants) and a qualitative study involving 40 in-depth interviews of participants. Participants in the quantitative research were targeted towards consumers who had experienced financial difficulty or concern with telco or other essential services bills (energy or water) in the previous 12 months. Recruitment for the qualitative research was targeted at those who had experienced difficulties or concerns paying their telco bills and was drawn from the quantitative research.

This financial hardship research formed part of our compliance priority activities in 2022–23. The 2 research pieces, and the ACMA's Financial Hardship Report draws insights and information from industry, and are published on the [ACMA website](#).

In 2023, we also commissioned quantitative and qualitative research to examine a broad range of telecommunications consumer experiences and views about topics, including:

- > sales and product information
- > selling practices and understanding contract arrangements

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<sup>13</sup> Under the ACMA's [Telecommunications \(Consumer Complaints Handling\) Industry Standard 2018](#), telecommunications service providers with more than 30,000 services in operation must report quarterly data to the ACMA.

<sup>14</sup> The ACMA held stakeholder consultation meetings with ACCAN, WestJustice, the Consumer Action Law Centre (CALC) and the Isolated Children's Parents Association (ICPA) during August to October 2022.

- > credit assessments and checking affordability
- > satisfaction with customer service
- > connection delays and fault repair
- > views and experiences of payment and contact options
- > price and non-price reasons for changing provider.

This telco consumer experience research samples both the general population and target groups who have recently changed plans and providers or purchased a new telco service or product. Results from this research will inform future consumer protection work, including during the review of the TCP Code. Research results are expected to be published in coming months.

# Section 2: Key consumer expectations

Australian consumers of telecommunications services and products expect that consumer safeguards in this industry will be up-to-date and effective, and that telecommunications service providers will comply with them.

We have identified 6 groups of key consumer expectations of the telecommunications sector. Five of these relate to day-to-day interactions with telcos and one relates to overarching values that apply across all interactions with customers.

We have identified these key consumer expectations because:

- > of their importance as features of a consumer protection framework for regulating what is an essential service
- > of their identification as enduring concepts and matters of relevance for consumers
- > they have been raised in submissions made in recent reviews undertaken by government or the ACMA
- > of their relevance in addressing contemporary use of telecommunications services.

The 6 key consumer expectation groups are discussed below, with an overview and an explanation of the consumer safeguards that exist to support each one, what the contemporary and emerging issues are, as well as the ACMA's view.

In Section 3, we set out a suite of principles that link to and underpin the key consumer expectations.

## **Expectation 1: Clarity about purchases and commitment**

Consumers expect that telcos will actively seek to understand their needs in order to provide appropriate advice on services or products that will best meet those needs. They expect telcos to not try to upsell them unnecessary or unaffordable plans or equipment, that product information about plans and equipment will be easy to obtain and understand, that this information will be comparable and show what is and isn't included, will include information on what the plan or equipment costs monthly and annually, and advise on whether there are any important conditions or material limitations that may help them choose the service/s that best suit their needs.

### **Overview**

Telecommunications are an essential service that should be accessible to everyone in an inclusive way.

When consumers are considering purchasing telecommunications plans and any associated devices or equipment needed to use a service, they need clarity and transparency about key aspects of their offers. It must also be clear to consumers exactly how much their services and devices will cost them each billing period, and whether this will change over time (such as when a discount period runs out) and over the entire term of a contract (such as when buying a mobile phone). This will help consumers compare products, make informed choices to suit their individual needs, that are within their budget, and avoid unexpected expenses.

Telcos should remember that consumers may not always have the ability, understanding or knowledge to assess whether they need the level of products and

services being offered to them or whether something simpler could be supplied instead. Consumers are influenced by information and advice supplied by telcos.

Telco sales staff have an obligation to sell responsibly, which includes not pressuring consumers into purchasing expensive plans and devices with inclusions and capabilities beyond what they have asked for. This is especially so when sales staff have identified signs, either from what a customer has described about their circumstances, or in other ways, that a consumer could struggle to afford such purchases or are in other circumstances of vulnerability that may affect their capacity to understand, or pay for, products on offer.

Consumers who sign up to plans and device contracts that will be difficult to afford will be at higher risk of financial difficulty in the future.

### **Current safeguards**

The TCP Code requires telcos to provide product and sales information in an inclusive way that is appropriate to a consumer's communication needs, including consumers with a disability. This information must be clear, accurate, free of material omissions, current, relevant and readily available with the ability for all relevant terms and conditions of the telco's telecommunications products to be viewed and downloaded from a website. Any advertising must include any important conditions, limitations, qualifications or restrictions about an offer to allow consumers to make informed choices and avoid being misled.

The TCP Code also contains provisions that address responsible selling, affordability checks and enable authorised representatives to act on behalf of a customer. Telcos must ensure that sales staff promote (and sell) products in a fair, transparent, responsible and accurate manner, and clearly explain the key terms, conditions and cost of products that consumers are purchasing, and that staff are appropriately trained and monitored.

Part of the requirements for responsible selling includes credit assessments of customers, to determine their capacity to pay. If a telco determines from a credit check that the products and services the consumer wants would be unaffordable or incur significant financial difficulty, it must advise the consumer of alternative, lower cost products.

Telcos must provide consumers with a customer contract that includes details of the telco providing the service, details of inclusions in the service, and any associated goods (equipment) included by the telco to use the service.

Telco consumers are also covered by the overarching consumer protections in the Australian Consumer Law (ACL) administered by the ACCC. The ACL provides economy-wide safeguards relating to misleading, deceptive or unconscionable conduct and unfair contract terms.

### **Contemporary and emerging issues**

#### ***Telco plans and payment timings have changed***

- > Mobile plans now commonly include unlimited Australian calls and text, and substantial data allowances (both mobile and home internet).
- > There is an increasing trend for telcos to require, or set as the default or preferred option, payment by direct debit or other auto-payment method to access their products.

- > Many telco services that were previously treated as post-paid services are now charged one month in advance, with any outside plan use charged at the beginning of the next month.
- > Plans with a month-to-month contract length are now common, meaning that consumers are not locked into contract periods of 12- or 24-months that have early termination fees.
- > Although telcos prominently advertise service plans that are month-to-month with no exit fees, it is not nearly as clear to consumers that if they combine a device on a contract (12, 24, 36 months) with that plan, cancellation of the short-term service plan will usually also cancel the device contract. The consequence is that the total remaining device cost (potentially \$1,000+) can be due in the next payment, which can cause considerable difficulty for some consumers.
- > It is not always clear to consumers who purchase a plan on discount that the cost of that plan will increase after a specific period.
- > Service and equipment fees are consistently the second-highest source of TIO complaints.

### **Responsible selling and affordability checks**

- > Responsible selling obligations are not preventing consumers from being sold expensive devices or plans they are unable to afford, according to findings from research, experiences in assisting telco customers and case studies from consumer representative groups, financial counsellors and the TIO:
  - > According to Financial Counselling Australia's *Telcos and Financial Hardship: Feedback from the Frontline*, (April 2021), counsellors report that some telco customers are being sold services and goods/devices that are in excess or inappropriate for their needs or high-value contracts are being offered to customers who cannot afford them, and that this practice is not limited to a small number of minor telcos.
  - > In our research, *Telco financial hardship programs: views from financial counsellors* (February 2021), financial counsellors gave examples of telco sales staff selling to customers who did not understand the contracts or services being offered. They also considered that consumers' language and literacy barriers were not being handled appropriately by telcos to make sure that customers understand their contract commitments (especially First Nations Australians).
  - > In November 2020, the Australian Communications Consumer Action Network (ACCAN) reported that poor sales practices by telcos had led to systemic debt for First Nations Australians telecommunications consumers in regional and remote Central Australian communities.<sup>15</sup>
  - > A TIO systemic investigation (July 2022) identified that mis-selling of mobile services was leading to poor outcomes for consumers and telcos were not always meeting their obligations for engaging with vulnerable customers. It noted increased numbers of complaints about mobile services, misconduct during in-store sales coupled with inadequate sales discussion records kept, consumers being sold products they didn't need or couldn't afford, and consumers being given incorrect information (such as mobile coverage in their area).<sup>16</sup>

<sup>15</sup> Australian Communications Consumer Action Network (ACCAN), [Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities](#), ACCAN website, 2020, accessed 26 June 2023.

<sup>16</sup> TIO, [Investigating complaints about essential mobile services](#).



- > Instances of recent unfair upselling include:
  - > a 2021 TIO systemic investigation report<sup>17</sup> on telco selling practices investigated a telco with 100 complaints about selling practices and found that the problem was widespread (at that telco), affecting over 10,000 customers. This led to credits being issued for more than \$1.4 million
  - > in May 2021, the Federal Court [ordered](#), by consent, Telstra to pay \$50 million in penalties for engaging in unconscionable conduct when it sold mobile contracts to more than 100 First Nations Australians, in proceedings brought by the ACCC.
- > Credit assessment rules remain relatively weak for telcos to check affordability before a sale of post-paid plans to existing customers. The minimum requirement to check the customer's payment history does not take into account the cost of new services. Credit assessments are more stringent for new customers but do not apply to plans categorised as 'pre-paid'.<sup>18</sup>
- > In stakeholder consultations, through the Consumer Consultative Forum, and on other occasions (ACCANect 2022), consumer representative organisations have strongly indicated that protections for consumers in vulnerable circumstances in the TCP Code are too general and broadly worded, and do not provide specific and effective protections, including at the point of purchase.
- > It has been disappointing that the telco sector has not incorporated outcomes-focused guidance measures from the ACMA's Statement of Expectations around responsible selling to consumers in vulnerable circumstances.<sup>19</sup>
- > The structure of current telco offerings (month-to-month, with upfront payment) potentially reduces the scope of when credit assessment rules apply under the TCP Code. This is because the wording in the Code, applies to post-paid offerings of more than one month and therefore weakens their effectiveness.



## Case study: Mis-selling

Consumer E had a contract with Telco E for a mobile phone and tablet on a 24-month plan. Consumer E's contract included a Device Protect insurance policy. The mobile phone was defective, so in January 2020, 18 months into the 24-month contract period, Consumer E took the mobile to a Telco E store and received documentation confirming that the device had been received and would be sent to Telco E's repair facility.

A month later, Consumer E went to the store to follow-up on the repairs after being informed that the repair facility had not received the phone. Telco E was unable to find the device and advised that it was 'lost in transit'. Consumer E was visibly upset and explained to Telco E that she and her child were victims of family violence and needed a phone for safety reasons, as well as work.

Telco E appears to have been responsible for the loss of Consumer E's mobile device, yet they did not offer a replacement device, nor did they suggest Consumer E make a claim under the Device Protect insurance policy.

<sup>17</sup> TIO, [Helping telco customers sign up to the right phone and internet products](#), TIO website, 2021, accessed 26 June 2023.

<sup>18</sup> It appears that the definition of 'pre-paid' in the TCP Code will need to be revisited based on the nature of some of the plans offered under this category.

<sup>19</sup> ACMA, [Consumer vulnerability: expectations for the telecommunications industry](#), ACMA website, 2022, accessed 26 June 2023.

Instead, Telco E staff advised Consumer E that that if she wanted a replacement phone, she would need to enter a new contract. Consumer E was sold an Apple iPhone and Apple watch on a 36-month plan. This plan was more expensive than Consumer E's first plan and the addition of the Apple watch was beyond Consumer E's identified need, which was a mobile device for safety and work reasons. However, Consumer E said she was advised that the Apple phone and watch were a package deal, leading her to believe that the phone could not be purchased without the watch and adding to the overall cost.

## **Safeguard gaps**

### ***Responsible selling rules***

- > In the experience of ACMA compliance and legal officers, the structure and broad wording of the responsible selling TCP Code rules in clause 4.5.1 make it difficult to determine and enforce compliance.
- > This clause has a complex structure, with overarching responsible selling outcomes split into 2 parts, followed by a set of second-tier actions that telcos must consider to enable these outcomes. Even when it appears that there is evidence to suggest that sales do not comply with the overarching outcomes, it can be difficult to find a breach if there is no evidence of breaches of the second-tier actions.
- > The responsible-selling obligations are all based on systemic actions that telcos must take, but do not ensure that the conduct of individual staff during the sales transaction complies with the overarching objectives of fairness, transparency and responsibility, to prevent mis-selling.
- > Responsible selling rules are also difficult to administer due to a lack of clarity about what constitutes 'appropriate' staff training and ongoing monitoring of sales staff. Lack of record-keeping requirements to demonstrate compliance with responsible selling rules add to the difficulty of investigating and enforcing compliance.
- > The definition of 'Sales Representative' in the TCP Code appears not to include sales staff who sell telco services and goods at third-party retail outlets (for example, JB Hi-Fi or Harvey Norman) and should be amended.

### ***Credit assessments***

- > The current credit assessment rules for determining the capacity of existing customers to pay do not consider the cost of additional services on top of the cost of the existing service.
- > The definition of 'existing' customer is not clear in cases where the customer has an interrupted payment history as a post-paid customer (either through an interval of going onto a pre-paid plan or not having a service for a time at all).
- > Lack of record-keeping requirements make it difficult to assess compliance with responsible selling rules (for example, to demonstrate compliance with capacity to pay assessments, and what steps were taken if a customer is assessed as being unlikely to be able to pay).
- > Although the TCP Code requires a telco to advise a customer if a credit check determines the customer is unlikely to be able to afford the service, and provide cheaper alternatives, it does not oblige the telco to only sell a cheaper alternative to the customer.
- > Credit assessments are subjective, with the telco determining the criteria that applies and in a way that is not consistent across the industry.

## Best practice approaches

- > Responsible selling, suitable credit/affordability pre-sale checks and treating consumers in vulnerable circumstances appropriately are vital in helping consumers acquire the telco services they need and can afford. We consider the credit assessment processes deficient and should be reviewed and strengthened. Selling practices also need to be revisited. To support this, we recommend the current arrangements under the TCP Code should be replaced with consumer protections that put clear obligations on telcos and require the telcos to demonstrate their compliance. These obligations should be easily understood by consumers and have enhanced enforcement mechanisms that the ACMA can use if non-compliance occurs.
- > We also consider that the TCP Code should be amended to ensure sales incentives promote responsible selling.

## Expectation 2: Quality of assistance

Consumers expect to be able to reach their telco quickly and easily to seek help with a question, problem or complaint, and regardless of the method of contact – in person, by phone or online – the same standard and quality of assistance will be provided without having to wait an unreasonably long time to obtain meaningful assistance.

### Overview

Telcos now offer a variety of ways for consumers to contact them when considering a phone or internet product or to seek help with an issue. This gives consumers more flexibility to use the contact method that is most convenient and easy for them to utilise. Some also provide inclusive options for consumers who may prefer one contact method over another, including a reason relating to vulnerability or disability.

It is important that, regardless of the contact method used, consumers are provided with the information and advice they need in a clear, transparent and comprehensible way that enables them to make informed decisions.

Consumers should be able to get through to their telco within a reasonable timeframe to get an answer or resolution. They should be able to find contact details for their telco easily to reach a person or information source and seek help about their question or issue (for example, technical support, billing or service fault) promptly in a way that limits their inconvenience.

Web chat, telco apps and other online contact methods are increasingly being made available and can be used to address many enquiries satisfactorily. However, research by the ACMA and consumer representative organisations indicates that a majority of consumers still prefer to talk to their provider by phone.<sup>20</sup> Contact by phone is also an important option for more complex issues and can be easier for people in some vulnerable circumstances to use.

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<sup>20</sup> ACMA, [Telco consumer experience – Australian adults and households: Phone and internet services](#), ACMA website, 2020, accessed 26 June 2023; ACCAN, [Still Waiting...Costing Wait Times for Telecommunications Consumers](#), ACCAN website, 2020, accessed 26 June 2023.

## **Current safeguards**

Regardless of the method of contact, customer service rules in the TCP Code require telcos to ensure that enquiries by customers are dealt with in a timely and effective manner and that consumers can contact their provider for general reasons and at critical times (for example, if payment difficulty is being experienced).

Telcos must inform customers about how to contact them and their hours of operation and include at least one point of contact for customers to make billing enquiries, which must include a phone number. Wait times must be monitored with average wait times kept to a reasonable minimum (noting that this is not limited to any particular contact method). Any contact information must be accurate, current and readily available.

## **Contemporary and emerging issues**

### ***Dissatisfaction with customer service quality***

- > The number of customer complaints to the TIO about their telcos not taking action or delaying action has been consistently high over several years. In its published quarterly reports, the TIO has reported this issue as being the number one source of complaints received since Q4 2020. It is significantly higher than other TIO complaint issues reported by residential and small business customers.
- > Complaints about providers agreeing to a resolution but not putting it in place also have typically appeared in the top 5 reasons for complaints over the same timeframe. The TIO Ombudsman drew attention to these issues at the ACCANect 2022 conference, noting that telcos were failing to do what they promised their customers, and this was a major source of customer frustration.
- > We are examining further the number of customer complaints being made to the TIO about telcos not taking action or delaying action. This is so we can be well-informed as to whether further action is needed to address this issue and wish to determine whether these issues are occurring at the wholesale or retail level.
- > Our consumer experience research found that a high number of consumers who had a new fixed internet/broadband connection in the previous 12 months experienced connection delays (44%) and, in many cases (35%), their provider did not take any action in response to the delay. Similarly, of those customers who experienced an internet fault in the previous 3 months (26%), 46% of consumers reported that their provider did nothing in response.<sup>21</sup>

### ***New contact methods***

- > Telcos are increasingly encouraging or directing consumers to use newer online communication channels, rather than using more traditional methods such as by phone. Telstra, Optus and TPG have gone further with their new telco brands (Belong, Gomo<sup>22</sup> and Felix) that focus on a small, streamlined range of cheaper offerings relying heavily on online communication with their customers to conduct their business.
- > While new online contact methods have been embraced by some consumers, conventional contact methods remain important for most consumers.
- > Our consumer experience research indicated that both individuals and households preferred to contact their telco by phone for enquiries (72% households, 43% individuals) and complaints (87% households, 68% individuals).<sup>23</sup> SME businesses also strongly preferred contact by phone, either to a general number, a business

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<sup>21</sup> ACMA, OmniPoll telco research [unpublished data], ACMA, Sydney, 2022, accessed 3 July 2023.

<sup>22</sup> Optus [announced](#) that from 1 June 2023 its Gomo brand service will no longer accepting new customers.

<sup>23</sup> ACMA, [Telco consumer experience – Australian adults and households: Phone and internet services](#).

call centre or a dedicated account manager or contact (77% for enquiries and 79% for complaints).<sup>24</sup>

- > Our 'contactability' audit reports (January 2022 and February 2019), which used information obtained directly from a range of telcos, emphasised that customers more commonly used the phone to contact their telco with an enquiry, with this trend more pronounced for making complaints.
- > There are indications that the newer online contact methods are not always easy to use and can pose accessibility barriers to some groups of consumers in obtaining customer service assistance.
  - > ACCAN has noted to the ACMA that some consumers have difficulty navigating online communication channels, which can be particularly hard for customers with limited English or literacy difficulties, especially if telcos only offer assistance via these methods (for example, Gomo, Felix, Belong).<sup>25</sup>
  - > In a 2022 systemic review of complaints about mobile services<sup>26</sup>, the TIO observed a steadily increasing trend of complaints about consumers having difficulty contacting their telco (excluding pandemic effects). This included being unable to find a contact number, telcos not answering calls or responding to voice messages, long wait times on web chat or a problem they have that prevents them from using the available contact methods.
  - > In the same systemic review, the TIO also noted that there were limitations to automated functions for unique/complex enquiries or complaints, especially when the issue is not straightforward. Consumers can get stuck in transfer loops, may be referred to irrelevant online information, and/or cannot find a way to talk to a real person.
- > An audit we conducted in 2022<sup>27</sup> that used data from 11 telcos indicated a patchy and inconsistent performance of online channels for effective customer service.
  - > There was significant variability in the wait times for customers using online channels (between channels and between telcos). In several cases, these were far longer than wait times on the phone. For example, online web chat metrics from the telcos who provided data indicated that out of 8 telcos, 6 had an average wait time of 10 minutes or less, with the remaining 2 having average wait times of 63 minutes and 89 minutes, respectively.
  - > Rates of resolution from the first contact were highest over the phone. The audit found that if a phone contact was available, this method resulted in higher rates of first-contact resolution for 5 out of the 7 telcos that provided data. By comparison, online channels offered a mix of very good performance (at least as good as phone results) to very poor. Online webchat first-contact resolution rates ranged from 91% (for a digital-preferred telco) to 17% for a small-to-medium telco. The first-contact resolution rate for telco apps varied between 53% and 90%.
- > Under the TCP Code, telcos are required to monitor their customer service performance, including their rates of first-contact resolution, to help them identify issues and improve. However, nearly half (5 of the 11) of the telcos selected for the above ACMA audit were unable to provide data for all contact methods, including online channels.

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<sup>24</sup> ACMA, [Telco consumer experience – Australian businesses: Phone and internet services](#).

<sup>25</sup> After ACCAN held discussions with Belong about this issue, Belong introduced a call option for customer service.

<sup>26</sup> TIO, [Investigating complaints about essential mobile services](#).

<sup>27</sup> ACMA, [Telco contactability: Audit of telco compliance with customer contact and related complaints handling rules](#), ACMA website, 2022, accessed 26 June 2023.

### **Safeguard gaps**

- > Under the TCP Code there are no rules specifically targeting the way that telcos ensure their customer service staff perform to achieve an acceptable outcome for customers. Although the rate of first-contact resolution must be monitored for customer service enquiries, there is no actual requirement to achieve first-contact resolution for customer service where possible (unlike in Complaints Handling Standard where first-contact resolution is expected).
- > While there is an increased availability and expectation that online communication channels will be used for customer service contact, the current rules in the TCP Code have not been written with these in mind. Current protections need to be adapted to ensure consistent and effective customer service outcomes, regardless of the communication method they use to contact telcos.
- > The phone remains a very important and preferred method for consumers to contact their telco for help, especially for some groups of customers in vulnerable circumstances. It is imperative that prospective customers for digital only plans are told at the point of sale (if not before) of the limited contact options available for these types of plans. In all other circumstances we consider there is benefit in the telcos continuing to maintain human based contact as a contact method for customer service.
- > Although obligations exist in the TCP Code customer service chapter that telcos are required to collect and monitor data about their customer service performance and that customer service should be communication channel-neutral, the 2022 ACMA audit showed that telcos do not appear to be collecting this data for all contact methods. For example, almost half of the 11 telcos included in the audit could not provide first-contact resolution data for all their communication channels.

### **Best practice approaches**

- > We note that the proposed Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill would permit the ACMA to publish league tables about telcos' performance measures, including for quality of service and customer service issues.
- > Customer service performance across all communication methods should be carefully monitored and underperformance addressed quickly.
- > The New Zealand regulator, the Commerce Commission, is undertaking a project to improve retail service quality. One proposal being considered is to regularly publish a dashboard showing the relative performance of a range of customer service measures important to consumers. This is intended to improve transparency and incentivise improved customer service (which we will consider once available).
- > The ACMA notes telco brands that are focused on providing digital-only plans must ensure that consumers fully understand what they are purchasing. This is important because consumers sometimes do not realise that for some digital-only service models, there may be no way of contacting a person when a problem with their service or product occurs.

## **Expectation 3: Attend to an enquiry/issue/problem in a reasonable time and keep customer service promises**

Consumers expect that telcos will answer their enquiry or fix their issue or problem at first contact or within a reasonably short time, where possible, and do what they promised to do. For more complex or difficult issues that take longer to address, consumers expect that the issue will still be completed within a reasonable timeframe and that they will be kept informed of progress and that they will be told when the issue has been resolved.

### **Overview**

Receiving timely and effective customer service is an essential part of providing telecommunications services. Telcos need to have appropriate systems and trained staff in place that will allow them to deliver customer service that will help consumers.

Wherever possible, consumers should have their customer service query or issue resolved the first time that they contact their telco about it. While this may not always occur, it is important that the process can be as fast and smooth for consumers as possible, and they are kept informed of progress until the matter is resolved.

If consumers are dissatisfied with their telco's customer service, they expect their telco to escalate the matter to a complaint if they are clearly unhappy or expressly complain. If this situation arises, consumers expect that telcos will take their issue seriously and provide a resolution in a reasonable timeframe (preferably at the time of making the complaint).<sup>28</sup> They also expect not to need to repeatedly contact their telco to get an answer or resolution to their problem, spend lengthy periods of time engaged with their telco, or have to explain their problem to different staff at each point of contact.

Telcos also need to meet consumer expectations by acting on promises they have given to consumers to address a question or resolve a customer service problem or complaint.

### **Current safeguards**

Under customer service rules in the TCP Code, telcos must deal with customer enquiries in a timely and effective manner.

To meet this requirement, telcos need to:

- > tell customers how and when they will be contacted
- > monitor and seek to keep average contact wait times to a reasonable minimum
- > monitor the level of first-contact resolutions
- > take reasonable steps to identify root causes if this does not occur and address those root causes
- > keep records of interactions between the telco and customers to help resolve customer service enquiries.

Telcos also need to assess their customer service performance by seeking feedback from customers about the way enquiries were handled and using this information to identify systemic issues and improve customer service processes.

Consumers who are dissatisfied with the customer service response to resolve an issue can make a complaint to their provider. Under the Telecommunications (Consumer Complaints Handling) Industry Standard 2018, telcos must have and follow

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<sup>28</sup> Section 13 of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 requires a carriage service provider to use its best efforts to resolve a complaint on first contact.

a complaints-handling policy, which meets specific criteria about identifying when a customer is making a complaint, acknowledging receipt of a complaint, timeframes for resolving urgent and general complaints, using best efforts to resolve a complaint on first contact, keeping the consumer informed if delays occur and keeping records of complaints.

If a telco does not address a complaint to a consumer's satisfaction, the consumer can seek redress through the [Telecommunications Industry Ombudsman](#) (TIO). This is an independent external dispute resolution service that helps consumers settle residential and small business complaints relating to their telecommunications services.

Under the TCP Code, telcos that are in the TIO 'top 10' for highest number of complaints received in the previous financial year must participate in the following year's [Complaints in Context](#) quarterly public reporting.

This report names participating telcos and shows the number of TIO complaints they generate per 10,000 services in operation to enable a comparison between telcos. The report also shows the trend in complaints per 10,000 services over the previous 4 quarters. It is published quarterly by the telecommunications industry body, Communications Alliance, informed by TIO complaints data.

### **Contemporary and emerging issues**

- > As identified in Expectation 2, the main issues emerging under this expectation concern the lack of action or difficulty in contacting telcos to ask for assistance and the level of dissatisfaction with customer service quality.
- > Our research indicates that consumers are frustrated that there is not a simpler way to contact their telco and talk to a real person and often have difficulties in getting more complex enquiries dealt with via online communication channels due not only to long wait times, but the web/chat bot is unable to answer the customer's question.<sup>29</sup>

### **Safeguard gaps**

- > The same gaps exist under this expectation as for Expectation 2. Relevant customer service requirements in the TCP Code are framed around systemic actions by telcos with no timeframes for addressing a customer service issue or requirements about how customers will be kept up to date about their issue included.

### **Best practice approaches**

- > Customer service obligations should be introduced that hold telcos responsible for ensuring that relevant staff resolve customer issues in a timely and effective way, rather than the current requirements where telcos are only required to take systemic actions such as the monitoring of average wait times and first contact resolution rates.
- > These obligations should set out timeframes for telcos to address a customer service issue and also set out how customers will be kept informed about their enquiry.

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<sup>29</sup> ACMA, OmniPoll telco research [unpublished data].



## **Expectation 4: Payment – choice of method, clarity and accuracy**

Consumers expect to have a choice about how they pay their bills, not be forced to pay by direct debit or auto-payments that may be outside their income cycles, and that their bills and invoices will be accurate, and the charges easily understood.

### **Overview**

#### ***Payment method options***

Direct debit and other auto-payment arrangements appeal to many consumers, offering them convenience and certainty that they don't need to remember to manually pay their regular bill each month. It can also help to avoid the risk of incurring late payment fees.

However, auto-payments can also reduce consumers' awareness about when payments are approaching, making it difficult to ensure that they have sufficient funds in their nominated account and, especially if no bill is provided, make it less likely that consumers will remember to check that their charges are correct before a payment.

Having a choice about how to pay telco bills remains important to consumers and methods other than direct debit need to be made available. Consumers may be reluctant to provide personal banking details to their telco, especially given the threat of cyber-attacks. Many consumers simply prefer to keep control of making their payment or to have some flexibility about the exact date of payment to coincide with income cycles.

#### ***Billing clarity and accuracy***

Consumers need to have confidence that their telco is charging them consistently with the description, terms and conditions of their phone or internet plans, as advertised, and that any variable charges have been calculated accurately.

Billing information must be set out clearly and comprehensibly to enable consumers to review and check that the right charges have been applied, and to be able to query any charges that they do not understand or may be incorrect before payment.

If consumers agree to not receiving a bill (as is permitted in some circumstances), they still need to be informed about how and where they can see the charges applied to their account, for example, on their telcos' website.

### **Current safeguards**

There are limited consumer protections regarding giving telco consumers a choice of payment method. To comply with the TCP Code, a telco must offer at least one method of payment for its telecommunications products that is free of charge. However, telcos decide which payment methods they will accept, and which will be offered free. There is no requirement to offer more than one charge-free billing option.

The telcos that do offer direct debit for a telecommunications service must comply with the customer's authorisation and ensure the customer can verify, on request, that their direct debit authorisation is being adhered to. If the amount of a direct debit transaction is incorrect, telcos must ensure that the customer receives a full and timely refund of any excess amount paid or take other appropriate action agreed to by the customer.

Customers must be able to access all billing information on request and before a direct debit occurs with telcos required to allow customers to check their bill and all applicable charges, at least 10 working days before the direct debit transaction occurs.

Under the TCP Code, consumers must be provided with sufficient information in a readily available way so they can verify charges applied by their telco are correct and consistent with charges and any discounts that have been published or are in their contract, for the telco services (and equipment) that they are receiving or using unless the inaccuracy is caused by another person or party or by mistake beyond the control of the telco.

In some circumstances, telcos do not need to provide a bill to customers. This applies to pre-paid services. It also applies to post-paid services if they are paid by direct debit, the charges for each billing period are a fixed amount, and the customer and telco both agree. However, a bill must still be given to the customer if for some reason the billing amount exceeds the regular fixed amount by 10% or more (for example, usage outside a plan's inclusions).

### Contemporary and emerging issues

- > Direct debit or other auto-payments now appear to be the most prevalent payment method by telco customers, based on recent research. This is likely to be driven by the convenience of these methods for consumers but also by telcos steering consumers to these arrangements:
  - > Quantitative telco consumer experience research commissioned by the ACMA in 2023 indicates that of adults who have started or changed to a new telco service in the previous 12 months, 65% pay using direct debit or other auto-payment method.
  - > Quantitative research by ACCAN and the Public Interest Advocacy Centre (PIAC) of 1,000 adult telco and energy consumers in May 2023 found that among telco consumers, direct debit was the most used form of payment (44%).
- > While it can be a convenient way to pay for most people, some consumers experience problems using direct debit with their telco services:
  - > Our consumer experience research across the telco, energy, water and banking services found that the telco sector had the highest experience of failed direct debits (25%) by those in financial difficulty or experiencing concern about bills.<sup>30</sup>
  - > ACCAN/PIAC research of a targeted group of telco consumers on low household annual income (less than \$50,000) or who experienced difficulty paying their household bills found that First Nations Australians (28%) and consumers with low-income (15%) did not find direct debit an easy method to pay telco bills (compared to 11% overall). First Nations Australians (80%), Culturally and Linguistically Diverse (CALD) consumers (45%) and consumers with low-income (36%) have experienced a payment problem with their telco bill and asked for help (compared to 32% overall).<sup>31</sup>
  - > TIO complaints data shows that complaints about direct debits have remained between approximately 150 to 200 per month from January 2022 to January 2023. During the same time, the average number of monthly complaints about unsuitable payment options has risen from around 66 to 121.
- > During in-depth interviews conducted for our qualitative research on consumers' experiences with telco financial hardship, participants discussed the inflexibility of direct debit dates:

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<sup>30</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#), ACMA website, 2023, accessed 26 June 2023.

<sup>31</sup> ACCAN and the Public Interest Advocacy Centre (PIAC), [Direct Debit in Telecommunications](#), ACCAN website, 2023, accessed 26 June 2023.

There's no guarantee that I'm going to have money in my account on any other day apart from pay day. We live week-to-week.  
(Participant 25, Female 35–44)

It's helpful for some bills. But usually, we run such a tight budget that it doesn't always work and then if something fails, you get the extra fees of it failing. It can then push you back.  
(Participant 8, Female 25–34)

- > Our recent in-depth qualitative research<sup>32</sup> of consumers who experienced financial stress or concern with payment of telco bills in the last 12 months also indicated the following problems experienced by consumers using direct debit arrangements:
  - > research participants resented being forced into direct debit arrangements to use telco products
  - > they did not know the exact amount that would be deducted from their account, especially if the monthly charges were variable
  - > direct debit schedules sometimes appeared to be irregular, which made it difficult to know when money would be taken out of their account
  - > many experienced direct debit failures from having insufficient funds due partly to the date of direct debits not aligning with the date of the participants' regular income or pay day.
- > Consumers struggling to keep up with their bills can also experience other serious adverse effects when direct debits fail. Our financial hardship qualitative research<sup>33</sup> found that consumers may incur extra fees for late payment plus bank fees for having their account overdrawn. Some participants also reported that large amounts of money were debited from their account unexpectedly.

Reports of large amounts being debited unexpectedly aligns with an ACMA analysis of TIO complaints about direct debit, and information received from consumer advocacy groups, where consumers are charged the entire remainder to pay out a device (such as a mobile phone) used with a service for which direct debits have been missed, which, in extreme cases, has left consumers without money to pay for other living essentials.
- > The TIO has also identified in a systemic investigation report about essential mobile services that automatic payments could sometimes lead to loss of service or disadvantage. The report noted that consumers had complained that:
  - > when they had been unable to meet a direct debit payment or it was unexpectedly high, that telcos were unwilling to help with flexible alternatives and, in some cases, restricted or cancelled services
  - > it was harder to dispute a direct debit, with disputed amounts still taken out, leading to the TIO calling for telcos to ensure that their direct debit systems are able to pause disputed amounts of a bill to comply with the TCP Code.<sup>34</sup>
- > Failed direct debit transactions are not always due to consumers having insufficient funds in their nominated account. There can be problems with telcos' billing and payment systems. Our analysis of complaints to the TIO related to direct debits and auto-payments (acquired using the ACMA's information gathering powers), indicated that some complaints to a major telco stemmed from payments not being recognised due to technical problems between new and old parts of its billing system.

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<sup>32</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#), ACMA website, 2023, accessed 26 June 2023.

<sup>33</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#).

<sup>34</sup> TIO, [Investigating complaints about essential mobile services](#).

## Safeguard gaps

- > There are currently no requirements in the telco consumer framework around providing flexibility with payment methods, particularly in the use of direct debit, such as a consumer being able to nominate or change the date of payment. This could help address some of the reported issues by enabling consumers to better align the telco bill payment date with the receipt of income.
- > There are very few rules regulating the conduct of telcos if direct debits fail, including how a telco communicates the failure to consumers, flexibility in allowing payment, and steps they should take before cancelling a device contract.

## Best practice approaches

- > Failed direct debits for payment of a service should not lead to:
  - > a suspended, restricted or disconnected service
  - > the remaining device contract payment being required to be paid in full immediatelybefore the telco makes reasonable efforts to:
  - (a) confirm that its own systems are not at fault
  - (b) contact and notify the customer of the failed direct debit attempts and tries to reach a short-term flexible payment solution with the customer, and
  - (c) if payment cannot be provided under a short-term flexible arrangement, inform the customer of its financial hardship policy and allow a reasonable time to apply for assistance.
- > We note that in the Australian energy sector, the Australian National Energy Rules state that energy providers must accept payment for a bill by a small (end-user) customer in person, over the phone, by mail, direct debit, electronic funds transfer and by CentrePay.
- > We consider that further measures are required regarding payment methods and will be examining whether provisions under the Australian National Energy Rules may be adopted or amended for the telco industry, including through direct regulation.
- > In our recent consumer experience research, some participants were concerned that their contracts were automatically renewed, and large amounts of money were direct debited from their accounts.<sup>35</sup>
- > Telcos should ensure that they have clear consent from customers for payment by direct debit or other automatic payment authorisations, and that customers understand what the payments will be and when they will occur. Amounts higher than a customer authorises should not be removed, and payment arrangements cancelled promptly if the customer moves to a different service, so they are not paying for an old service they are not using.

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<sup>35</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#).

## Expectation 5: Help when in difficulty

Consumers expect their telco to take steps to proactively identify customers who may be experiencing financial difficulty and have trained staff who are prepared to discuss realistic payment plans and other options, and are empowered to help these customers, enabling them to maintain a phone and/or internet service. Consumers also expect their telco to make reasonable efforts to advise them if an auto-payment has been unsuccessful and give them a chance to make the payment before the telco takes further action.

### Overview

#### ***Unsuccessful auto-payments***

Auto-payments can fail because there are insufficient funds in the customer's linked account or sometimes due to a technical or other problem with the telco's systems. If auto-payments fail, it is important to find out the reason, and if insufficient funds are the cause, the telco needs to make reasonable efforts to contact the customer to resolve the matter. The customer may be unaware of the problem, and it may be relatively easy for them to pay another way.

Consumers in vulnerable circumstances and those on low incomes are more at risk of direct debit attempts failing. Unexpected circumstances may also arise in people's lives that can suddenly affect their ability to have sufficient money available on the set payment date.

These consumers expect telcos to provide some flexibility when circumstances make it difficult to meet the auto-payment date, such as allowing payment to be made another way. Telcos should refrain from taking major action, including restricting or disconnecting a consumer's service because of failed attempts of a direct debit payment, or cancelling service and device contracts, unless as a last resort and after complying with financial hardship and credit/debt management consumer protections in the TCP Code.

#### ***Broader difficulties paying bills***

Anyone's personal circumstances can change unexpectedly, such as through serious illness, family violence, job loss, relationship breakdown or other significant change, which can push people into financial difficulty. This can lead to problems meeting financial commitments, including paying telco bills, either temporarily or on an ongoing basis, depending on what is occurring. ACMA research indicated that difficulty paying telco bills is common among those experiencing financial difficulty or concern when paying essential service bills (banking, energy, water and telco). Nearly half (48%) of this group also had difficulty paying their telco bills in the previous 12 months.<sup>36</sup>

People in financial difficulty expect that their telco will help them stay connected to essential telco services by offering practical hardship assistance measures that they can afford and fit their circumstances. This could mean providing options to help customers pay off current overdue bills until their situation improves and they can afford their regular charges, and/or moving them to cheaper, more manageable, services to reduce future costs.

Telcos should make it easy for consumers to find information about what can be done to assist them when circumstances change, including the financial hardship assistance they offer, how to access it and what criteria need to be met, including in a range of ways that are accessible to consumers in vulnerable circumstances. They should also look out for signs that a customer may be experiencing financial difficulty, such as

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<sup>36</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#).

when payments are frequently late, and alert them to the financial hardship assistance available.

On a personal level, it can be very difficult for people who are in financial difficulty to contact their telco provider and seek help with paying their bills so that they can keep a telco service connected for them or their family. Advice from consumer advocate organisations and ACMA qualitative research informs us that people can find it embarrassing or humiliating to ask telco staff for help and reveal deeply personal details for the reasons. In some cases, such as where domestic or family violence is involved, it can be upsetting simply to discuss the reason that help is needed.

Telcos need to ensure that they have staff who are properly trained to both understand how to deal sensitively and empathetically with customers who may be in financial difficulty and have discretion to discuss and agree to practical options offered by the telco that will help. In some cases, this will need to include working with a financial counsellor or other advocate working on behalf of the customer to obtain a suitable and viable outcome.

## **Current safeguards**

### ***Unsuccessful auto-payments***

There are no specific protections under the TCP Code about actions that telcos must take to pursue a consumer when their direct debit payment fails due to insufficient funds. Nevertheless, there are protections to alert consumers about the availability of financial hardship assistance and warn them of any decision that will affect their services.

Under the TCP Code, reminder notices sent out to consumers about outstanding payments must advise them about the telco's financial hardship policy, how to find out more about it and how to contact the telco to discuss hardship assistance options with the customer given at least 5 working days' notice before a telco restricts, suspends or disconnects a consumer's service.

### ***Financial hardship assistance***

Telcos must make financial hardship assistance available to eligible customers under the TCP Code and it is defined as a situation where the customer:

- > is unable to discharge their financial obligations under their customer contract due to illness, unemployment, being the victim of domestic or family violence, or other reasonable temporary or ongoing cause; and
- > believes they are able to discharge their obligations if the relevant payment arrangements or other arrangements for their telco products are changed.

Under the current consumer protections, a telco must have a financial hardship policy (FHP) and ensure that it is easy for consumers to find and access, including on its website and that a consumer can appoint an authorised representative to act on their behalf. The FHP must provide a summary of how it will assist a customer if they are experiencing financial difficulty, or if the telco considers that the customer may be eligible for the policy.

There is discretion about the options that a telco offers customers in financial difficulty, including temporarily deferring payment (longer than for a payment extension outside a financial hardship arrangement), alternative payment plans, discounting or waiving debt or cancellation fees, and incentives for making payments.

The TCP Code does not prescribe how telcos must assess eligibility for financial hardship assistance, but it does set out rules around the information to be provided,

the timeliness of assessments, communicating the outcome of these assessments to the customer, and implementing and applying financial hardship arrangements.

To pro-actively help to make consumers aware of the assistance available and keep them connected, telcos must also alert their customers about their financial hardship policies when they issue the first bill to customers (or before), in reminder notices or in a notice to restrict or suspend a service.

Where a financial hardship arrangement is being discussed or is in place telcos must suspend any credit management action and are prohibited from selling on a customer's debt.

Safeguards relating to the conduct of telco staff involved in dealing with financial hardship consumers are set out in general terms under the TCP Code, with a telco required to ensure staff who are directly involved in applying the financial hardship policy are appropriately trained and that a customer's eligibility for assistance is assessed in a fair and timely manner.

Communications Alliance has also updated its industry guideline (G660:2023 Assisting customers affected by domestic and family violence) to support its members when managing customers who are affected by domestic and family violence.<sup>37</sup>

### Contemporary and emerging issues

- > The rates of financial hardship in the telco sector are significant, and the reasonable expectations of telco consumers are not currently being met. Consumer research commissioned by the ACMA indicated that 25% of Australians had experienced payment difficulty or concerns in the previous 12 months for at least one of their essential services bills (telco, energy, water) and 48% of those had difficulty with their telco bills. This represents just under 2.4 million Australian adults who had financial difficulty or concern for their telco bills in that period.<sup>38</sup> In contrast, industry data from the main telcos reported 4,388 residential financial hardship customers as at 30 June 2022. This represents 0.03% of all residential customers.<sup>39</sup>
- > Our consumer experience research found awareness of telco financial assistance to be low in the general population (57%) and only slightly higher in customers who experienced financial hardship (64%).<sup>40</sup> Our research also found that 68% of those experiencing difficulties or concerns paying their telco bills did not contact their provider for advice to manage their bill payments. The total contacts for the telco sector (32%) are significantly higher than for the water sector (21%), but not higher than the energy (40%) or banking (32%) sectors.<sup>41</sup>
- > During 2021–22, a total of 237,166 residential customers had their services disconnected due to non-payment. Of those, 834 were financial hardship customers. Telcos may also disconnect customers when they are not able to be contacted – during 2021–22, a total of 169,262 residential customers had their services disconnected due to being uncontactable. Of those, 1,293 were financial hardship customers.<sup>42</sup>

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<sup>37</sup> Communications Alliance (CA), [Industry Guideline G660:2023 Assisting customers affected by domestic and family violence](#) [PDF], CA website, 2023, accessed 26 June 2023.

<sup>38</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#), p. 3.

<sup>39</sup> The ACMA notes that telcos can offer payment plans and bill payment extensions outside of formal Financial Hardship programs. However, these do not attract the TCP Code protections, such as from credit management action, afforded the customer on a formal Financial Hardship program.

<sup>40</sup> ACMA, OmniPoll telco research [unpublished data].

<sup>41</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#), p. 23.

<sup>42</sup> ACMA, [Financial hardship in the telco sector: Keeping the customer connected](#), ACMA website, 2023, accessed 26 June 2023.

- > The most common themes emerging from consumers in recent financial difficulty about what telco providers could do better were reducing prices and being more friendly, polite, helpful, supportive, or understanding.<sup>43</sup> Further, the means of contact is important to consumers. Consumers who reported financial difficulties or concerns with their telco bills reported it was rare for telcos to initiate contact, especially human contact, in relation to potential financial difficulty.<sup>44</sup>
- > Our consumer experience research has indicated that telco customers want providers to be more proactive in identifying and supporting customers struggling to pay their bills and offer increased flexibility in applying entry criteria for financial hardship arrangements.<sup>45</sup>
- > It has also shown that research participants who had been disconnected recently were dissatisfied with the way their provider communicated with them to advise them of their disconnection. They noted that their providers did not always give them adequate time between their disconnection notice and the actual disconnection. The means of communication was also criticised, with disconnection warnings and notices made by text message or email. There was also a broad consensus that more could be done to forewarn customers about the possibility of disconnection before it occurred. One participant noted they would have preferred a phone call from their provider, as a text message did not convey an appropriate level of seriousness and was lost among the many other marketing and direct communications from the telco provider.<sup>46</sup>
- > During in-depth interviews conducted for our qualitative research on consumers' experiences with telco financial hardship, it was reported:

There was no warning, I was getting text messages saying that they've tried to contact me, but, for me, that means making phone calls, because even the bank will make a phone call and even if it's an automated, you know, press 1, if you're going to pay within the next six days sort of thing. There was nothing like that. It was just a 'You've missed a payment and we have now therefore cancelled the account; you now owe the full amount. (Participant 25, Female 35–44 years)<sup>47</sup>

### Safeguard gaps

- > While telcos can offer payment plans and bill payment extensions outside of formal financial hardship programs, these do not attract the TCP Code protections (for example, avoiding credit management action), afforded to customers on a formal financial hardship program.
- > Existing incentives to comply with the requirement to suspend credit management action for financial hardship customers may not be working adequately. For example, in August 2022, we found that a telco had breached the requirement to suspend credit management activity for 70 financial hardship customers between August 2019 to April 2022.<sup>48</sup>
- > Timeframes for telcos to notify customers of impending disconnection, suspension or restriction of services are too short and, in some cases, are not being complied with.<sup>49</sup>
- > The TCP Code does not prescribe what factors should be considered in assessing a customer's eligibility for financial hardship assistance or what staff training would be appropriate in these circumstances.

<sup>43</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#).

<sup>44</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#), p. 21.

<sup>45</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#).

<sup>46</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#).

<sup>47</sup> ACMA, [Financial hardship: telco and other essential sectors – Quantitative research](#).

<sup>48</sup> ACMA, [Telstra breaches credit management rules for financial hardship customers](#) [media release], Australian Government, 24 November 2022, accessed 26 June 2023.

<sup>49</sup> ACMA, [Telstra fails to warn customers about service restrictions](#) [media release], Australian Government, 20 April 2023, accessed 26 June 2023.



- > The definition of 'financial hardship' is narrow. The ACMA is aware that telcos offer 'financial assistance' but see this as sitting outside of the TCP Code definition, which we consider unsatisfactory.

### **Best practice approaches**

- > Stronger measures are needed to help consumers in financial difficulty. We consider that these measures are not only in relation to financial hardship, but also around the issues leading consumers into financial hardship, namely selling practices, credit assessment and payments methods.
- > Telcos should make financial assistance information easy to find and access. Finding financial hardship policies on telco websites should be straight-forward, with a clearly worded direct link provided on the home page or a phone number customers can contact. Once consumers access this information, the consumer should be able to understand what assistance is available, what they have to do and what is needed to qualify for a financial hardship arrangement.
- > Telcos should be more proactive in contacting customers struggling to pay their bills and offer assistance including:
  - > increased flexibility in the application of entry criteria for financial hardship arrangements
  - > providing concessions for those on low incomes
  - > offering financial hardship arrangements that are flexible and tailored to individual circumstances. This includes flexible approaches to billing and bill payment – including increased payment options that are free (other than direct debit) and allowing customers to part-pay their bills linked to their income payment frequency, such as 'bill smoothing'.
- > Given that telecommunications are an essential service, before any disconnection, telcos should contact customers well in advance with messages that clearly state the consequences of disconnection, and provide customers sufficient time between sending the disconnection notice and the actual disconnection to seek financial assistance or make alternative arrangements.
- > We are examining the regulation that exists in Canada and also the NZ Industry Code on disconnection, which sets out a detailed process for the disconnection of telco customers to determine if these regulations can be adapted to the Australian environment.
- > Methods of contact with consumers should be appropriate to consumer needs. While there has been a push from telcos to direct customers to online forms of communication, these are not suitable for all customers. The majority of customers noted they preferred contacting their provider via phone to resolve complex matters, including financial assistance.<sup>50</sup>
- > The definition of 'financial hardship' is narrow and should be broadened so there is no ambiguity.

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<sup>50</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#).

## Expectation 6: Fair treatment of consumers in vulnerable circumstances

Consumers in vulnerable circumstances expect to receive a level of customer care that enables them to select and maintain telecommunications services and devices that are suited to their needs, and that the services supplied, and personal information provided are managed in a way that protects personal safety.

### Overview

Telecommunications services should be accessible to all Australians, regardless of their personal circumstances. Consumers in vulnerable circumstances often have different needs to other consumers and telecommunications service providers need to have practices in place that can help manage these needs. This can include the ability to identify such consumers and be equipped to help them select services and products that are right for them. It also includes having suitable processes and communication channels to enable these consumers to obtain customer service when they need it, pay their bills, and remain connected.

We recognise that most Australians may experience being in vulnerable circumstances, in some form, during their lifetime. The devastating effects of environmental emergencies (such as drought, bushfires or floods), the challenges of living with a serious illness, personal circumstances involving domestic or family violence or the difficulties of raising a family on a low income are some of the many circumstances that contribute to people's experience of vulnerability. When this occurs, these customers need sensitivity and discretion as part of their interactions with telcos.

The ACMA expects telcos to:

1. Treat all consumers fairly and reasonably, so that consumers are less likely to experience vulnerability and harm when accessing and maintaining communications services.
2. Be proactive in identifying and responding to consumers in vulnerable circumstances.
3. Have better-practice policies and processes in place to assist consumers in vulnerable circumstances to gain and maintain access to telecommunications services that meet their needs and circumstances.
4. Include supporting consumers experiencing vulnerability in their business strategy/planning.<sup>51</sup>

### Current safeguards

Under the TCP Code, when dealing with consumers experiencing vulnerability, telcos have an overarching obligation to have regard to best practice in their interactions with consumers, as set out in the ACCC publication: [Consumer vulnerability: A business guide to the Australian Consumer Law](#).

This ACCC guide has advice for businesses economy-wide about understanding vulnerability and its impacts, the benefits of treating consumers fairly and the ACL obligations in the context of consumer vulnerability. It also highlights and recommends to businesses the use of the National Relay Service and the Translating and Interpreting Service.

Throughout the TCP Code specific clauses for consumers in vulnerable circumstances are included in the different chapters of the Code in the areas of sales, service and

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<sup>51</sup> ACMA, [Consumer vulnerability: expectations for the telecommunications industry](#), p. 5.

contracts, billing, credit and debt management, changing suppliers and the right for a consumer to appoint an authorised representative or advocate to act on their behalf.

Communications Alliance, the industry representative organisation, has a guidance note to help its industry members appoint and work with advocates and authorised representatives – [Advocates and Authorised Representatives Industry Guidance Note \(IGN 017\)](#)).

### Contemporary and emerging issues

- > A key commitment to consumers by the telco industry in the TCP Code (Introductory statement) is that disadvantaged and vulnerable consumers will be assisted and protected by appropriate supplier policies and practices. Despite existing protections to access telco services, there continue to be indications that practices by some telcos have disadvantaged consumers, particularly those who are vulnerable.
  - > ACCAN has reported that people with a disability or impairment contacted their provider 4.1 times on average, significantly higher than those without, who made 2.7 contacts.<sup>52</sup>
  - > In stakeholder meetings, ACCAN reported to the ACMA that there is inconsistency in the way that customer advocates and authorised representatives are appointed, and the powers they have to be able to act to help a client.
  - > In July 2022, the TIO released a systemic investigation report<sup>53</sup> that found customer self-service options do not meet the communication needs of all consumers, including those in vulnerable circumstances.
  - > Research conducted by the Consumer Policy Research Centre (CPRC) between May and October 2020 found that barriers and difficulties in contacting telcos disproportionately affected consumers with a disability – 43% of these consumers reported a negative experience.<sup>54</sup>
- > In September 2021, the CPRC released a report comparing the experiences of consumers between May and December 2020 across the energy, telecommunications, private rental, mortgage, credit/finance and insurance sectors. The telco sector ranked last in providing support to consumers, (4.1/10) and for user experience and accessibility (2.8/10). The sector also compared poorly for providing helpful advice and customer service.<sup>55</sup>
- > The Centre for Accessibility Australia notes that Australian mainstream organisations are now expected to comply with [WCAG2.0 Level AA standard](#), which helps make web content more accessible to people with disabilities. This appears to be a higher standard than is required under the current TCP Code.

### Safeguard gaps

- > The rules for vulnerable and disadvantaged customers in the TCP Code are not well-defined and are hard to apply and enforce because the protections are too general and subjective, and do not provide sufficient protection to this group of customers.
- > The language in the TCP Code regarding consumers experiencing vulnerability is unclear. For example, the main provision addressing vulnerable and disadvantaged

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<sup>52</sup> ACCAN, [Still Waiting...Costing Wait Times for Telecommunications Consumers](#).

<sup>53</sup> TIO, [Investigating complaints about essential mobile services](#).

<sup>54</sup> CPRC, [Monthly-Policy-Briefing – August Results](#), CPRC website, 2020, accessed 1 March 2023

<sup>55</sup> CPRC, [COVID-19 and Consumers: Sector Scorecard](#) [PDF], CPRC website, 2021, accessed 26 June 2023.

customers (clause 3.4.1) only requires telcos to 'have regard to' an ACCC best practice compliance guide. This is an ambiguous term.

### **Best practice/alternative approaches**

- > As outlined above the ACMA expects telcos to treat all consumers fairly and reasonably.
- > It was anticipated that the telco industry would demonstrate a commitment to improving its performance regarding consumers in vulnerable circumstances by implementing measures such as those presented in the ACMA's Statement of Expectations relating to selling practices, contacts, financial hardship, credit and debt management and customer service. To date, it does not appear that industry has progressed with this outcomes-based initiative.
- > Protections in other jurisdictions can provide alternative examples of better practice. For instance, direct regulations in the UK require telcos to develop and publish a vulnerable consumer policy that has been reviewed by a consumer panel and demonstrate compliance with it. The Australian energy sector also has a more robust regulatory approach to the dissemination of financial hardship information, with the regulator able to approve and review financial hardship plans in addition to the UK measures.
- > In the UK 'unfairness' is defined as causing significant imbalance in the parties' rights and detriment to the consumer. The consideration for unfairness takes into account all the circumstances that were existing when the terms of sale were agreed to, which includes a person's vulnerability.
- > We consider stronger measures are needed and are examining whether these consumer protections can be adapted to the telecommunications sector.

# Section 3: Consumer safeguard principles

This section sets out safeguard principles that underpin the key consumer expectations. We have identified 6 key consumer safeguard principles for the telecommunications sector focused on being:

- > accountable
- > transparent
- > accessible and responsive
- > flexible
- > connected
- > fair.

Accountability is a fundamental norm in both public administration and corporate governance, and reflects an organisation's various legal, political, social and ethical responsibilities to its stakeholders. Accordingly, the ACMA considers that accountability and the related principles below are relevant to all of the consumer expectations outlined in Section 2.

## Principle 1: Accountable

Telecommunications consumer safeguards are clear, objective and enforceable to enable telcos to be held accountable if they do not comply.

### Overview

Accountability is not solely concerned with enforcement mechanisms and sanctions. It also involves a system of internal and external checks and balances aimed at ensuring that organisations comply with regulation and are held responsible if they fail to do so.

### Current safeguards

Under the current telecommunications consumer protection framework in Australia, safeguards are delivered across a range of regulatory approaches. These include co-regulation and direct regulation through law.

Most key safeguards protecting telco consumers are co-regulated in the TCP Code, which sets out rules for how telcos interact with their residential and small business mobile, landline and internet customers. The current TCP Code provides consumer protections for advertising and sales, contracts, customer service, billing, credit and debt management, financial hardship and changing providers.

Telco consumers are also covered by the overarching consumer protections in the Australian Consumer Law (ACL). The ACL applies to businesses economy-wide and addresses misleading or deceptive conduct, unconscionable conduct, unfair practices, consumer guarantees and product safety.

The TCP Code complements the general protections of the ACL by setting out standards of conduct for specific consumer protection issues for industry with which a telco provider is expected to comply and will often assist providers in also complying with the ACL provisions.

## Contemporary and emerging issues

Consumer advocate groups have strongly argued that consumer protections in a co-regulatory code are not adequate for an essential service and are not enforceable with some support from the TIO. Other essential services, such as energy, have a stronger consumer protection framework through direct regulation, with tougher penalties available (e.g., the National Energy Retail Law and the National Energy Retail Rules and the associated penalties) for breaching these obligations.<sup>56</sup>

An example of the impact of direct regulation and stronger penalties available for breaches is illustrated by action brought by the Australian Energy Regulator (AER). In June 2022, the Federal Court found that Origin Energy Electricity Ltd and other Origin-related entities (together, Origin) contravened obligations when dealing with customers experiencing hardship and payment difficulties. The Court ordered, by consent, that Origin pay a penalty of \$17 million in relation to the contraventions, contribute to the AER's legal costs in the sum of \$200,000 and implement a compliance and training program in relation to its hardship obligations.<sup>57</sup>

Rules need to be able to be assessed by the regulator to monitor and determine if they are being complied with. For example, the disadvantaged and vulnerable consumer provisions in the TCP Code are too general and lack provisions, with wording such as 'have regard to'. This may make it difficult to clarify what the obligations are, and for the regulator to determine if there is compliance.

## Safeguard gaps

Enforcement actions available to the ACMA for industry non-compliance with provisions of the TCP Code are relatively weak and do not appear to provide a strong incentive for telcos to comply in important areas of consumer protection.

The lack of record-keeping requirements in areas (such as responsible selling practices and credit assessment) that may lead to consumers having difficulty paying bills also hampers the ability of the regulator to assess whether non-compliance has occurred.

Some obligations within the TCP Code are vague and, in some instances, quite subjective. Combined with a lack of transparency, this makes enforcement of the TCP Code difficult.

The TCP Code does not address the consequences of not fulfilling obligations and it is not clear whether all telco providers understand what their obligations are and what they must do to meet them.

## Best practice approaches

- > Clarity in drafting consumer protection rules is needed to assist industry understand their obligations and take appropriate measures.
- > Obligations in the consumer protection rules need to be assessable so that appropriate compliance action can be undertaken.
- > Penalties for breaches of consumer protection rules need to be stronger and sufficient to provide incentive for industry to comply.

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<sup>56</sup> Australian Energy Market Commission (AEMC), [National Energy Retail Rules](#), AEMA website, n.d., accessed 26 June 2023.

<sup>57</sup> Australian Energy Regulator (AER), [AER v Origin Energy Electricity Ltd & Ors](#), AER website, 2022, accessed 15 February 2023.

- > There should be record-keeping requirements in areas that may lead to consumers experiencing difficulty paying bills; for example, responsible selling practices and credit assessment.
- > Regulation, whether co-regulation or direct, should include provisions that require telcos to develop performance reporting systems to demonstrate code compliance, which are monitored and reviewed at an executive or board level. Telcos should also publish the key performance indicators they use to measure compliance, including reporting systems and methodology, to demonstrate accountability.

## Principle 2: Transparent

Telco service providers will ensure consumers have access to clear, accurate and relevant information to enable them to choose telecommunications products that suit their needs, buy products that are affordable, and understand billing arrangements.

### Overview

Transparency refers to the process of making information about an organisation's activities available and accessible to the public and other key stakeholders.

In the context of consumer safeguards for the telco industry, transparency is primarily about informing consumers and the broader community, in a clear and easy to understand manner, about what they can expect from the products and services they buy, what the consumer obligations are and what action can be taken if identified expectations are not met.

### Current safeguards

From our research, we have ascertained that it is important that telco product information can be found easily, either on a website or by contacting the telco, and that the information is provided in a clear and easy to understand manner, in written or verbal form.

Plans can differ widely in their call and data inclusions and exclusions, the basic price and the cost of any usage outside the plan inclusions, the cost of devices or equipment that may be added (or required) as part of the service, and the contract length. Services may be offered in bundled arrangements, or a customer may purchase multiple plans and devices for the use of several people in a household.

Key aspects of plans and their terms and conditions also include information such as the timing and frequency of billing, what payment options can or must be used, and what charges apply if a contract is terminated early, especially if a device is linked to the service.

As part of ensuring that there is transparency for consumers when they are purchasing a product or service, telcos must have a Critical Information Summary (CIS) available about each of their offers, regardless of whether it is a pre-paid or post-paid, voice and/or data, mobile or fixed line service.

The CIS is a cornerstone document to help consumers understand and compare telco offers. Currently they must:

- > be provided free of charge
- > be readily accessible on the telco's website, where the telco advertises the plan, and be available from a telco's stores (if it has them)
- > include a description of the service, information about minimum and maximum monthly charges, the contract length and the maximum charge for early termination

- > standard unit costs for mobile calls and text (where relevant), and data, for comparison of plans between telcos
- > clarify any bundling arrangements required for an offer
- > set out any exclusions and important conditions, limitations, restrictions and qualifications applicable to the offer
- > tell consumers how to access call and data usage information (as applicable)
- > include warnings about international roaming costs if these can be incurred
- > include customer service contact details, how to make a complaint, and the contact details of the TIO.

The CIS must be provided to them prior to a sale, or if the sale is carried out over the phone, provided afterwards either within a cooling off period (unsolicited calls) or within 5 working days.

### **Contemporary and emerging issues**

The CIS remains an important tool to help consumers understand telco offerings, their key terms and conditions, and making a choice about a suitable service.

In recent ACMA research<sup>58</sup>, preliminary results indicated that 88% of respondents found the CIS either very or somewhat useful when making their purchasing decisions. Respondents also reported that at the time of signing a contract, they read the relevant CIS a lot (29%) or a little (53%). Information in the CIS of most interest to respondents include data, call and text inclusions and what isn't included, monthly charges, plan lengths, payment options, how to cancel or change a plan (and any associated fees) and how to track usage.

However, availability and visibility of online information about telco products and services is not consistently well presented – for example, TIO systemic reporting<sup>59</sup> found that advertising and point-of-sale information does not always cover key terms and online information about telco products and services can be difficult to find and understand. Consumers complained that they were not directed to a CIS or terms and conditions during online sign-up, couldn't find them online, or needed to visit multiple pages.

Our analysis of TIO complaints data indicates that many customers have complained that it was not clear to them before the sale that they would be paying by direct debit/auto-payment arrangements. Some upgraded or re-contracted customers found that a credit card previously provided was used for this purpose without their consent.

Changes to telco product inclusions and aspects of payment now make some required CIS information less useful; for example, they render standard unit charging for calls, text and using data on post-paid mobile services less useful. In contrast, other key information that is not required would benefit consumers and provide more consistency.

While telcos may include details about payment timing and options in their CIS, there are no specific requirements to do so, or in a way that is consistent and clear across the industry.

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<sup>58</sup> ACMA, Telco consumer expectations: Quantitative research [unpublished data].

<sup>59</sup> TIO, [Helping telco customers sign up to the right phone and internet products](#), TIO website, 2021, accessed 26 June 2023.



## Safeguard gaps

There are no explicit requirements for a CIS to contain information about:

- > if a plan is paid upfront/in-advance or post-paid
- > what payment options are available and whether direct debit is the only option
- > if direct debit or other auto-payment is required or used, when will the payment be taken
- > the billing consequences for cancelling a plan (including a month-to-month plan) when the plan is combined with device repayments.

The requirements about where to place online links to a CIS, or their prominence on a telco website, are relatively loose. Currently, links to CIS must be put 'where the supplier advertises the offer on the supplier's website', which gives discretion for a telco to comply, yet still make the CIS possible to overlook.

By contrast, rules describing the location and prominence of NBN Key Facts Sheets<sup>60</sup> are more prescriptive and have ensured that compliance is likely to lead to consumers finding this information more easily.

## Best practice approaches

We consider that some information contained in the CIS is no longer appropriate and should be reviewed to reflect the changes in telco plans and payment methods. There should also be no distinction about obligations applying to post-paid or pre-paid plans.

During the sales process, telcos must give consumers key information that is easily understood about the terms and conditions of their products. They must also direct consumers to the CIS before a sale (or just after if it is not possible to provide the CIS beforehand for practical reasons).

Telcos should ensure that consumers can easily find information about each of their products and that the information is transparent, accurate, complete, relevant and up to date. The CIS should be prominently available on their websites and in-store. Customers should also be told about the CIS and where to find them in sales conversations over the phone or via online contact methods. Any redundant information should be removed.

We also consider that telcos should ensure each CIS is made available in translated form in Mandarin, Arabic, Vietnamese, Cantonese, and Punjabi, which represent the top 5 most common languages other than English spoken in Australia.<sup>61</sup>

Billing information, in particular, should also be very clear so that consumers understand what their charges will be, what their payment options are, and when payment will occur.

Further, it depends on high levels of transparency on the part of regulated entities being clear about how they are achieving the desired outcome both in terms of describing systems and processes, but also determining and reporting on performance metrics that demonstrate compliance.

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<sup>60</sup> NBN Key Facts Sheets are one-page product summaries that telcos must make available on their website for all NBN service offerings. They focus on NBN-specific aspects of these plans that help consumers choose a suitable plan and alert them to NBN-specific issues that may affect them.

<sup>61</sup> Australian Bureau of Statistics (ABS), [Cultural Diversity of Australia](#), ABS website, 2022, accessed 26 June 2023.

## Principle 3: Accessible and responsive

Telco service providers need to be easy to contact, responsive to customer service requests and provide reasonable and timely assistance to all consumers.

### Overview

Quality customer service is a vital need for consumers to ensure that they can get and stay connected to their essential telco services. Consumers put a high value on good customer service.

### Current safeguards

Customer service rules concerning accessibility and responsiveness to customer service requests are set out in Chapter 4 of the TCP Code.

### Contemporary and emerging issues

Our consumer experience research<sup>62</sup>, found good customer service was ranked as the third most important non-price issue by individuals (81%) and households (86%) in their experience with their telco.

Small and medium-sized businesses also regarded good customer service from their telco as very or extremely important (89% of SME customers). This result was even more pronounced among small businesses.<sup>63</sup>

OmniPoll quarterly research during 2022, commissioned by the ACMA, indicated that while price was the most important driver for customers to change provider (mobile and fixed internet/broadband), better customer service was in the top 5 reasons for churning (61% for mobile phone provider change, 66% for changing broadband).<sup>64</sup>

In recent years, telcos have added a number of online communication channels for consumers, including automated assistants, webchat with customer service staff, and contact through a dedicated telco app. Social media channels can also be used. These provide additional ways for consumers to contact their telco with customer service issues.

### Safeguard gaps

There is a lack of transparency about the quality of telco customer service and currently no easily accessible way for consumers to compare the performance of different providers to help them make an informed decision about the level of customer service they can expect when selecting a new service.

Relevant customer service requirements in the TCP Code are framed around systemic actions by telcos – there are no rules specifically targeting the way that telcos must ensure their customer service staff perform to achieve an outcome for customers.

For example, there are no timeframes for addressing a customer service issue or requirements about how customers will be kept up-to-date about how their issue is being addressed.

### Best practice approaches

Customer service obligations should be introduced that hold telcos responsible for ensuring that relevant staff resolve customer issues in a timely and effective way,

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<sup>62</sup> ACMA, [Telco consumer experience – Australian adults and households: Phone and internet services](#).

<sup>63</sup> ACMA, [Telco consumer experience – Australian adults and households: Phone and internet services](#).

<sup>64</sup> ACMA, OmniPoll telco research [unpublished data].

rather than only being required to take systemic actions such as monitoring of average wait times and first contact resolution rates.

Customer service performance should be carefully monitored across all communication methods and underperformance addressed quickly.

## Principle 4: Flexible

Consumers have flexibility in making arrangements for payment plans, 'bill smoothing' or other options to maintain a service and a choice about how they pay their bills so that payment methods do not unnecessarily add to or cause their financial stress.

### Overview

There is an increasing trend in the telco sector, including among major service providers, to offer direct debit as the default payment option or only offer certain phone and internet service plans and devices on the condition that payment is by direct debit or similar auto-payment.

This removes choice from consumers. For vulnerable customers and those on low incomes, being on direct debit can add to the difficulty of paying bills by removing control about how and when they pay. This can especially cause difficulties when direct debit payment dates do not align with the date when consumers receive income, particularly for those on low incomes. In more serious cases, failed direct debit attempts can lead to consumers defaulting on their telco service contracts, and even loss of service.

### Current safeguards

Under Chapter 5 of the TCP Code, where consumers are issued with a bill, it must include specific content to help with clarity (Cl. 5.3.1), and include at least:

- > a description of the charges included in the bill, including the total amount, any applicable discounts or credits applied, and any third-party charges
- > any charges that exceeded any spend limits or included use
- > for plans with included value (such as an allowance of calls, text, data), a link to the telco's website where consumers can obtain call and data usage information (or ways to obtain this information)
- > a contact point with at least a phone number for the customer to make billing enquiries.

### Contemporary and emerging issues

Inflexibility is the biggest issue with direct debit or other auto-payment for consumers facing difficulty with bills. It removes control from consumers about exactly when they pay, making it difficult to balance telco and other bills and expenses, with the timing of income into their accounts.

Although direct debit can be very convenient in predictable circumstances, it is more problematic at times of financial difficulty and uncertainty, adding to stress. This can considerably disadvantage consumers on low, precarious or uncertain incomes, or consumers in other vulnerable circumstances.

The TIO in its report about essential mobiles noted that when customers had been unable to meet a direct debit payment or it was unexpectedly high, telcos were unwilling to help with flexible alternatives and, in some cases, restricted or cancelled services. The TIO also noted that it was harder to dispute a direct debit, with disputed amounts still taken out.

## Safeguard gaps

There are currently no requirements in the telco consumer framework around providing flexibility with payment methods, particularly in the use of direct debit, such as a consumer being able to nominate or change the date of payment.

## Best practice approaches

Consumers should have a choice about how they pay for their telco products, including by CentrePay.<sup>65</sup>

There should be flexibility to enable consumers to set or change the regular date of direct debits to better align with the timing of regular income or alternatively a set payment date.

Telcos should be required to make all reasonable efforts to alert customers when direct debits fail, and not to take action that affects a customer's service continuity or charge the full amount remaining for a device before customers have had a chance to pay the missed direct debit or, if appropriate, made aware of financial hardship assistance if eligible.

## Principle 5: Connected

Effort is made to assist consumers to remain connected; and action to disconnect or suspend services due to non-payment is only taken after reasonable efforts are made to discuss resolutions with the consumer and financial hardship assistance is made available but is unsuccessful.

### Overview

Access to telecommunications services is essential. Being connected and having access to a reliable and affordable phone and internet service has become necessary for many to work and connect to education, health and government services, as well as for vital social connections and management of our everyday lives.

Telcos should refrain from taking major action, including restricting or disconnecting a consumer's service because of failed attempts of a direct debit payment, or cancelling service and device contracts, unless as a last resort and after complying with financial hardship and credit/debt management consumer protections in the TCP Code.

### Current safeguards

Under Chapter 6 of the TCP Code telcos must provide customers with adequate notice of any restriction, suspension or disconnection.

Before a telco restricts, suspends or disconnects a consumer's service, telcos must give the customer at least 5 working days' notice of this impending action (with some exceptions such as if the telco suspects fraud or determines the customer or account status presents an unacceptably high credit risk) and explain the consequences of the impending action.

### Contemporary and emerging issues

Telco providers reported to the ACMA<sup>66</sup> that they implement measures to prevent disconnection in error. However, participants in our consumer research, who had been disconnected recently were dissatisfied with the way their provider communicated with them to advise them of their disconnection. Participants noted that their providers did

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<sup>65</sup> [CentrePay](#) is a free bill paying service that can be used to arrange regular deductions from Centrelink payments.

<sup>66</sup> ACMA, [Financial hardship in the telco sector: Keeping the customer connected](#), p. 40.

not always give them adequate time between their disconnection notice and the actual disconnection.<sup>67</sup>

The means of communication was also criticised, with disconnection warnings and notices made by text message or email. There was also a broad consensus that more could be done to forewarn customers about the possibility of disconnection before it occurred. One participant noted they would have preferred a phone call from their provider, as a text message did not convey an appropriate level of seriousness and was lost among the many other marketing and direct communications from the telco provider.<sup>68</sup>

### **Safeguard gaps**

Timeframes for telcos to notify customers of impending disconnection, suspension or restriction of services are too short and, in some cases, are not being complied with.<sup>69</sup>

### **Best practice approaches**

Given that telecommunications are an essential service, telcos should contact customers well in advance of proposed disconnection with messages that clearly state the consequences of disconnection and afford customers sufficient time between sending the disconnection notice and the actual disconnection to seek financial assistance or make alternative arrangements.

Telcos should be more pro-active in contacting consumers who show signs of having difficulty paying.

## **Principle 6: Fair**

Telecommunications services and devices are sold responsibly and not to consumers when there are clear signs that they will be unaffordable or are not appropriate for their circumstances.

### **Overview**

Telecommunications services should be accessible to all Australians, regardless of their personal circumstances.

The ACMA seeks to regulate the telco market in a way that enables fair outcomes and supports consumers to make informed choices about their telco services. We expect telcos to treat all consumers fairly and reasonably, so that consumers are less likely to experience vulnerability and harm when accessing and maintaining communications services.

### **Current safeguards**

Under Chapter 4 of the TCP Code telcos must ensure their sales representatives adopt a responsible approach to selling that assists consumers to make informed purchasing decisions. To achieve this outcome, telcos must ensure sales representatives are appropriately trained to promote and sell in a fair, transparent, responsible and accurate manner, monitor periodically to see how sales representatives interact with consumers and take steps to address deficiencies in sales conduct and ensure sales representatives are appropriately trained and have tools and aids to assist consumers to understand the telecommunications products they are purchasing.

<sup>67</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#), p. 30.

<sup>68</sup> ACMA, [Consumers' experiences with telco financial hardship: Qualitative research](#).

<sup>69</sup> ACMA, [Telstra fails to warn customers about service restrictions](#) [media release].

Telcos must also have appropriate credit and debt management processes, including by conducting credit assessments at the point-of-sale to prevent consumer overcommitment and providing advice about alternative products where the consumer is unable to meet the financial commitment (Chapter 6 of the TCP Code).

### **Contemporary and emerging issues**

Responsible selling obligations are not preventing consumers from being sold expensive devices or plans they are unable to afford, according to findings from research, experiences in assisting telco customers and case studies from consumer representative groups, financial counsellors and the TIO.

Credit assessment rules remain relatively weak for telcos to check affordability before a sale of post-paid plans to existing customers. The minimum requirement to check the customer's payment history does not take into account the cost of new services.

### **Safeguard gaps**

The structure and broad wording of the responsible selling TCP Code rules makes it difficult to determine and enforce compliance.

The responsible-selling obligations do not ensure that the conduct of individual staff during the sales transaction complies with the overarching objectives of fairness, transparency and responsibility, to prevent mis-selling.

The current credit assessment rules for determining the capacity of existing customers to pay do not consider the cost of additional services on top of the cost of the existing service.

### **Best practice approaches**

- > Responsible selling obligations should be framed around the need for sales practices to deliver fair, transparent and responsible outcomes for the consumer.
- > In the UK 'unfairness' is defined as causing significant imbalance in the parties' rights and detriment to the consumer. The consideration for unfairness takes into account all circumstances existing when the terms of sale were agreed to, which includes a person's vulnerability.