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27 November 2023

Nerida O’Laughlin
Chair
Australian Communications and Media Authority
PO Box 13112 Law Courts
Melbourne Victoria 8010

Dear Nerida

Re: ACCC submission on proposed Telecommunications Financial Hardship Industry Standard

The ACCC welcomes the Minister for Communications’ direction to the ACMA to make the Telecommunications (Financial Hardship) Industry Standard 2024, and we welcome the opportunity to comment on the ACMA’s proposed Standard.

The ACCC considers the proposed Standard to be a positive step for consumers, and we are supportive of many aspects of it. However, our submission also outlines a number of areas in which we consider the Standard could and should be strengthened to ensure intended protections are delivered in practice. We consider there are two keys way this can be achieved:

- By codifying and then working from the principle that access to affordable telecommunications is essential;
- Taking account of and/or referencing more overtly, lessons learned in other markets where financial hardship regulation has been operative for some time including energy, water and financial services.

The ACCC looks forward to continuing to engage with the ACMA on this important Standard development process. Please don’t hesitate to contact me if you would like to discuss this letter or the content of our submission.

Yours sincerely

Catriona Lowe
Deputy Chair
ACCC



ACMA proposed Telecommunications (Financial Hardship) Industry Standard 2024

ACCC Submission

November 2023

1. Introduction

The ACCC is the economy-wide competition regulator, responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets.

The ACCC is responsible for monitoring and enforcing compliance with the Australian Consumer Law (ACL). The ACL requires that businesses ensure that consumers are not misled when purchasing goods and services, and that businesses have reasonable grounds for making representations about future matters.

Telecommunications services are essential. They support a vast range of access to government services, work, business, education, health, and entertainment needs. Because of this essential status, businesses operating in the telecommunications industry are subject not just to the economy-wide provisions set out in the ACL, but also to industry-specific obligations, including the Telecommunications Consumer Protections (TCP) Code.

The TCP Code is drafted by members of Communications Alliance, that is, members of the telecommunications industry. It is registered by the Australian Communications and Media Authority (ACMA), who is also responsible for enforcing compliance with the TCP Code.

The ACCC has considered for some time that the consumer protections offered by the TCP Code need to be strengthened.

Given this, we welcome the Minister for Communications' direction to the ACMA, and the opportunity to comment on the ACMA's proposed Telecommunications (Financial Hardship) Industry Standard 2024 (the proposed Standard).

This submission notes that we consider the proposed Standard to be a positive step for consumers, and provides our perspective on where we think it could be improved from the principle of telecommunications being an essential service. We also think there is an opportunity to benefit from lessons learned in other essential services markets.

2. The proposed Standard is a positive step for telecommunications consumers

We support the many positive aspects of the proposed Standard and consider that it significantly strengthens the protections afforded to telecommunications consumers.

The proposed Standard supports innovative ways for providers to assist consumers

We consider the examples in the definition section of options to help with payments and options to keep customers connected provide minimum examples that will assist providers to develop innovative solutions to assist customers in financial hardship to stay connected.

In particular, the scope of options included, and the fact that the definitions are non-exhaustive, enable providers to innovate in hardship solutions. Consumers seek telecommunications services and products to meet their particular connectivity needs, whether to support an individual or household, high or low data needs, wide or narrow geographic coverage and many other situations. Enabling providers to consider the needs of consumers in financial hardship and tailor solutions to meet their particular needs is welcomed.

Minimum requirements for communicating with customers

The proposed Standard recognises that many consumers may not always know how to communicate to their service provider that they require assistance. The inclusion at clause 15 of a number of examples of language that may indicate that a consumer is in financial hardship is very useful. This is a helpful recognition that consumers should not need to say “magic words” in order to be identified as being in hardship.

Early identification of consumer potentially in hardship

The provision of a minimum standard for identifying that a consumer may potentially be in hardship is welcomed. The requirement for a provider to make reasonable efforts to communicate in writing with a customer with more than 2 consecutive overdue bills or a total of 3 overdue bills in a previous 6-month period will support early identification of consumers and should assist both providers and consumers.

Limitations on credit management action

We consider that generally the credit management provisions in the proposed Standard provide much greater protections for consumers while still enabling providers to initiate credit management action where appropriate. However, the default position should be that there is no credit management where hardship is being assessed or where an arrangement is in place. We also have some other concerns regarding the framing of certain situations where credit management can be taken and discuss this further in the following section.

3. Areas where the proposed Standard could be strengthened

The proposed Standard is a positive step for consumers of telecommunications services. However, it must be viewed from the principle of telecommunications as being an essential service.

Given this, while the ACCC supports most aspects of the proposed Standard, there are some areas where it could be strengthened. In particular, we consider that the definition and eligibility for financial hardship require some further thought. Otherwise, there is a risk that the intention of protection that is evident in the standard will fail at the point of implementation.

Definition of financial hardship

Framing hardship as a situation arising from, and subject to, change

We note that the definition of ‘financial hardship’ in the proposed Standard is largely consistent with the existing definition in the current TCP Code. This definition of hardship is framed by reference to it being a situation arising from a range of circumstances or events that may result in a consumer being unable to discharge their financial obligations.

The definition of financial hardship in the proposed Standard does not appear to contemplate low income or poverty as a cause of hardship given its focus on changing circumstances. According to the Australian Council of Social Service (ACOSS), 3.3 million Australians (13.4%) live below the poverty line,¹ which is likely to have a significant effect on a consumer’s ability to manage their bill, particularly in the context of price increases in other essential services.

¹ ACOSS, Poverty in Australia, <https://povertyandinequality.acoss.org.au/a-snapshot-of-poverty-in-australia-2022/>.

We therefore consider that the proposed Standard should recognise that there will be consumers subject to persistent financial hardship who should be able to access financial hardship programs.

The ACCC is concerned that because low income is not included in the definition of financial hardship, the benefits to consumers arising from the ability to access low-cost options, payment plans, and shaping, may not be available to low-income consumers.

"Willing but unable to pay"

The ACCC is concerned that the language of 'willing but unable' at clause 24(2)(d) introduces the notion of consumers who 'won't' versus 'can't' pay. This can create unnecessary barriers for consumers in hardship.

The numbers of consumers who fit into this first category of gaming the system, are likely to be small. Designing a system to avoid exploitation by the few is likely to lead to significant barriers to accessing help for the many who need it.

Concept and language like this can undermine businesses' capacity to proactively identify consumers in hardship, as it tends to create an unhelpful narrative. In particular, if front-line staff view consumers as trying to avoid their obligations, rather than people in difficult circumstances who need their service and help, this can lead to poor outcomes.

Discussions in other markets have or are evolving to understand the importance of believing consumers who declare hardship in order for programs to meet their intended objectives.

Ability to discharge obligations if a financial hardship arrangement is in place

Clause (b) of the definition of financial hardship imports into the definition of financial hardship the concept that the customer must believe that they will be able to discharge their financial obligations if financial hardship arrangements are implemented on a temporary or ongoing basis.

We note that this is also consistent with the existing definition of financial hardship in the TCP Code and consider it has significant shortcomings and does not reflect the fact that telecommunications is an essential service.

Under this definition, a customer cannot be considered to be in financial hardship if they are unable to afford the proposed financial hardship arrangements. The objective of this appears to be to enable providers to enter into credit management practices and or disconnection if they believe a customer is unable to afford any type of financial hardship arrangement or is unwilling to discharge their obligations.

While the ACCC considers that businesses should be able to seek recovery of debts owed to them, telecommunications is an essential services and disconnection may place some consumers in an extremely vulnerable situation. We are concerned that the provision as framed (particularly in the absence of an obligation to assess capacity to pay in reaching arrangements) could incentivise the offer of arrangements that are unaffordable as a path to credit management or disconnection.

We would therefore expect that suitable financial hardship arrangements would enable customers to meet requirements while also maintaining connectivity to an essential service. However, the approach in the proposed Standard may disincentivise service providers from seeking to keep customers connected.

Customer eligible for financial hardship	Customer ineligible for financial hardship
<ul style="list-style-type: none"> unable to discharge obligations due to defined situations (eg loss of employment, family violence) believes that they will be able to discharge obligations if in a financial hardship program 	<ul style="list-style-type: none"> persistent low-income unable to afford to meet obligations even if in a financial hardship program unwilling to meet financial obligations to service provider

Potential interaction between customers unable to meet obligations and mis-selling practices

We note that there is likely to be a strong interaction between customers who are either faced with persistent low-income, and therefore unlikely to be able to meet their financial obligations even if able to access a financial hardship program, and the selling practices and assessment of providers. To put it bluntly, the ability of these customers to access financial hardship arrangement may be undermined by them having been sold products and services they were never able to afford.

Definition of long-term hardship

The proposed Standard defines long-term hardship as the need for assistance for more than two billing cycles. Given billing cycles are typically monthly, we consider this period too short a time to constitute long term hardship. Further, providers are able to require 'proof' of 'long-term' hardship, the scope of which is undefined. This combination has the potential to cause significant barriers to customers accessing help they may only need for a short time.

A period of 6 months' need for assistance appears more appropriate; however, we are particularly interested in the views of consumer groups on this measure. We also suggest that if the requirement for proof is maintained, that the standard make some reference to what may be reasonable to request.

Providers must be required to assess capacity to pay for financial hardship arrangements

Clause 18 provides for minimum requirements that providers must comply with in options for financial assistance for customers. While we note that this clause is unlikely to be prescriptive, in order to encourage providers to design innovative solutions to assist consumers, we do consider that more is required to protect customers.

As a minimum, providers must be required to assess a customer's capacity to pay for a financial hardship requirement. Again, given that telecommunications is an essential service, it is important that consumers are not set up to fail by being placed in arrangements they cannot afford as this could ultimately lead to disconnection.

Disconnection as a last resort

We agree that disconnection of services must be a last resort given the essential nature of telecommunications connectivity. While the proposed Standard recognises this, it does not

provide any further information or a minimum standard on what the last resort measures look like in practice.

We note that under the energy rules, disconnection as a last resort measures require:

- offering 2 payment plans before disconnection can occur, for those identified as experiencing hardship or payment difficulty
- offering a payment instalment arrangement before disconnection, for general residential customers, and
- making acknowledged contact before disconnection.

It may be helpful for the proposed Standard to provide further guidance to service providers about what measures must be taken before disconnection can occur in order to ensure that consumers are protected.

Compliance with minimum standards

The proposed Standard requires carriage service providers to implement a hardship policy which adheres to the Standard and is signed off by each provider's Chief Executive Officer. While compliance procedures are likely to be developed by the ACMA, we suggest that a mechanism be considered for either the ACMA or the Telecommunications Industry Ombudsman to review a financial hardship policy where a complaint has been made about its application. The proposed Standard could include an external review mechanism to cover these instances.

We note that clause 28 provides for monitoring and review of providers' personnel and effectiveness of its financial hardship training. We recommend that this been extended to a review of the hardship program itself.

Accessibility and promotion of financial hardship policies

We note that clause 8 of the proposed Standard requires providers at a minimum to make their financial hardship policy be available to the public on the provider's website, and on an app, where the provider uses an app, via a direct hyperlink from the home page of the website and landing page of the app.

Given the principle that telecommunications is an essential service, we consider that it is important that hardship information be included in bills to customers.