



Australian Government

Office of the Australian Information Commissioner

Our reference: D2023/029023

[REDACTED]
Executive Manager
Telecommunications Safeguards and Numbers Branch
Australian Communications and Media Authority

By email: [REDACTED]

Telecommunications (Financial Hardship) Industry Standard 2024

Dear [REDACTED]

Thank you for consulting me under subsection 134(2) of the *Telecommunications Act 1997* on the draft *Telecommunications (Financial Hardship) Industry Standard 2024* (the Standard).

I understand that the Standard is intended to strengthen protections for telecommunications consumers experiencing financial hardship to ensure that they can access appropriate support to remain connected to telecommunications services.

Financial hardship information and the Privacy Act

As you are aware, Part IIIA of the *Privacy Act 1988* (Cth) (Privacy Act) relates to the use and disclosure of credit reporting information, and also contains Financial Hardship Arrangement provisions. This Part of the Act affords strong privacy protections to financial hardship information relating to an individual given the highly sensitive nature of this information.

Whilst the provisions of Part IIIA are not directly applicable to telecommunications service providers (see paragraph 6QA(1)(b) of the Privacy Act), the Office of the Australian Information Commissioner (OAIC) considers that it is important that any standard relating to financial hardship also have strong privacy protections embedded in relation to the handling of this information, and that the collection of such information be limited to what is expressly needed.

I note that the Standard seeks to achieve this by including strict limitations around the circumstances in which financial information can be requested, used and disclosed. My recommendations below are primarily intended to promote greater alignment between the Standard and the Privacy Act.

Security of personal information

I understand the Standard limits the circumstances in which CSPs can request information from customers in connection with an application for financial hardship assistance. The Standard also requires the destruction or disposal of requested information following the completion of the financial hardship assessment. The OAIC is supportive of measures to minimise the collection and retention of personal information under the Standard, noting that this may include sensitive information of customers.

However, I note that the Standard requires the retention of other records which are likely to include personal information, including customer contact details, correspondence and the financial hardship application, for at least two years after the arrangement for financial hardship has been completed.

I encourage the Australian Communications and Media Authority (ACMA) to carefully consider whether this timeframe is reasonable and proportionate, and to clearly set out the reasoning for any retention period in any explanatory material prepared in connection with the Standard.

I also note that while subsection 30(2) provides for the destruction or disposal of information collected under subsection 16(3), there is no equivalent obligation to destroy or dispose of records retained under section 29 at the end of the retention period. I recommend the Standard clearly state that personal information held by CSPs should be destroyed or de-identified once it is no longer needed under the Standard or any other applicable laws.

Additionally, I note that the Standard is likely to require the collection and retention of personal information by CSPs who may not be subject to the Privacy Act. In light of this, I recommend that subsection 29(3), which provides for the secure retention of records, be more closely aligned with the requirements in Australian Privacy Principle (APP) 11.1, which provides:

If an APP entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information:

(a) from misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

Collection of personal information

I note the Standard sets out a number of limitations in relation to the collection of information to support assessments of eligibility for financial hardship assistance. Under subsection 16(6), a CSP may only request information if it is strictly necessary to conduct such an assessment. Subsection 16(2) also places restrictions on the collection of information in certain circumstances, including where it appears that the customer may be a victim or survivor of domestic or family violence. However, I note that on the current drafting it appears the limitations in subsection 16(2) would only apply in relation to requests for short term assistance, and not where the general conditions in subsection 16(3) are otherwise met.

Noting the sensitivity of the personal information that may be requested to support an application for hardship assistance, and noting CSPs have discretion in deciding whether to request such information (subsection 16(3)), I recommend that the ACMA consider whether the restrictions on the collection of information in section 16 are appropriate, or whether further guidance should be provided to CSPs on when such collection is reasonable, necessary and proportionate. Further guidance could be provided in either the Standard itself, or in any explanatory material associated with the Standard.

Disclosure of personal information

Section 31 of the Standard sets out the circumstances in which a CSP who is not subject to the Privacy Act may disclose personal information collected in connection with an application or arrangement for financial hardship assistance.

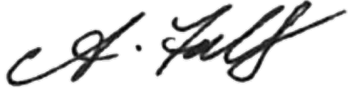
To more closely align with requirements under APP 6, I suggest that the ACMA consider also specifying that disclosure is permitted where it is required or authorised by or under a court or tribunal order.

I also recommend that a Note be included under section 31 to make clear that APP 6 will apply to the disclosure of personal information by CSPs which are subject to the Privacy Act.

Finally, in addition to the restrictions on disclosure under this provision, I recommend the Standard expressly require that CSPs must only use information collected in connection with a financial hardship assistance application for the purpose of assessing the application, or for a directly related purpose.

If you would like to discuss these comments further, please contact [REDACTED], Director, Regulation & Strategy on [REDACTED] or at [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Falk', written in a cursive style.

Angelene Falk

Australian Information Commissioner
Privacy Commissioner

28 November 2023