

Submission to Australian Media and Communication Authority - Consumer vulnerability: Expectations for the telecommunications industry

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By email: TelcoPerformanceRegulation@acma.gov.au

Dear Mr Woodley

Thank you for the opportunity to provide a submission to the Australian Communication and Media Authority's (ACMA) consultation on the draft Consumer Vulnerability: Expectations for the Telecommunications Industry.

CPRC is an independent, non-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change. Data and technology issues are a research focus for CPRC, including emerging consumer risks and harms and the opportunities to better use data and technology to improve consumer wellbeing and welfare. Consumer vulnerability has also been at the forefront of our research, producing reports for the *AER Exploring regulatory approaches to consumer vulnerability*¹, Data Standards Body consumer research report series² and the *Consumers and COVID-19 2020* research series.

Before addressing the specific questions in the consultation paper, below are some general statements on the role of telecommunications in consumers lives, especially those consumers experiencing vulnerability.

CPRC recently provided a submission to the Consumer Safeguards Review³ and consider our recommendations are relevant to the proposed Statement of Expectations (the Statement). These recommendations encourage ACMA to adopt a market stewardship approach to developing and implementing the Statement with the following hierarchy of priorities:

- Creating accessible, functional and sustainable marketplaces
- Designing systems that enable fair and inclusive products and services
- Enabling good outcomes both for active and engaged consumers, and for those who prefer to rely on defaults
- Ensuring product and service design reflects real-world human decision-making

¹ CPRC - Exploring Regulatory Approaches to Consumer Vulnerability - February 2020

² CPRC Report 1: Stepping Towards Trust; CPRC Report 2: Joint Accounts and the Consumer Data Right; CPRC Report 3: Vulnerability, Capability, Opportunity

³ Department of Infrastructure, Transport, Regional development and Communications, Consumer Safeguards Review – part C: Choice and Fairness. Consultation paper July 2020

This may include activities such as undertaking user testing (including comprehension testing and ensure a focus on clear and independent advice) and ensuring inclusive design and communication options that are fit for purpose and adapted to people's needs.⁴

Without effective consumer protections and enhanced safeguards, the Statement will have limited success in improving outcomes. CPRC calls for the Department of Infrastructure, Transport, Regional Development and Communication to finalise Consumer Safeguards Review Part C: Choice and Fairness. It has been almost a year since submissions closed and nothing has progressed.

Telecommunications devices and services are essential services. Now is the time for the ACMA and industry to whole-heartedly embrace this fact and the elevated responsibility that comes with telecommunications services underpinning our communities and economy. These services connect people to their families, friends, employment and are a gateway for engaging with banking, shopping, and entertainment. This reliance across the community on these services is only more pronounced for people experiencing disadvantage or vulnerability, making affordability and accessibility paramount.

As such, CPRC would caution against any attempt to define certain products or level of service as essential and the rest as not. Doing so risks creating a two-tiered system and further disadvantaging consumers experiencing vulnerability. As the past 18 months have taught us, access to fast internet speeds and other telecommunication services are vital in our highly virtual environments. Consumers we spoke to in our qualitative research conducted between June and August 2020, confirmed, it is an essential part of their daily lives.

"The internet is essential. Like mobile phones and laptop - it is about having that level of connectivity. Especially as we are working from home a bit more." Melbourne, Victoria

"Netflix, that is my way of keeping my sanity. Working from home and two kids, two very young kids, that adds the extra level of complexity. So, Netflix is one way of entertainment." CALD, Victoria⁵

CPRC surveyed consumers between May and December 2020 about their experiences across the mortgage, energy, telecommunications, credit / finance, rental and insurance sectors. In May 2020, **one in five** consumers (21%) reported a negative experience (could not navigate the website or phone system, wait times too long, provider was unhelpful, or received poor service) with their telco provider. This increased to nearly **one in three (29%)** reporting a negative experience with their telco in August 2020. This was higher than any other sector. Concerningly, those seeking payment assistance were more likely to report a negative experience, with a peak **of 85% of those seeking payment assistance reporting a negative experience** with telecommunications providers in July, again the highest across sectors.⁶

The picture is worse for those consumers with a disability, 43% of consumers with a disability reported a negative experience in August 2020. Consumers with a disability

⁴ CPRC, Submission to the Consumer Safeguards Review Part C: Choice and Fairness, 24 September 2020.

⁵ CPRC, Consumer Wellbeing Report Unpublished

⁶ CPRC, Covid-19 and Consumers: From crisis to recovery. Monthly Policy Briefing – August Results. September 2020

reported higher rates of problems with their telco than the general population across a range of issues:

- 22% reported wait times on the phone or email were too long (vs 17% nationally)
- 16% reported difficulties navigating the website or phone system (vs 8% nationally)
- 13% reported their provider was unhelpful or provided poor service (vs 9% nationally)
- 12% reported difficulties understanding how to contact their telco provider (vs 7% nationally)
- 12% reported unfair terms or conditions (vs 4% nationally)
- 10% reported misleading information by their telco provider (vs 6% nationally).
- 12% reported unfair terms or conditions (4% nationally).⁷

These findings signal an urgent need for significant improvements in service, support and practices of telecommunications providers, and particularly so when engaging with consumers experiencing vulnerability.

In terms of ACMA's role in leading the response and expectations of the industry in responding to vulnerability, our desktop research undertaken for the AER *Exploring regulatory approaches to consumer vulnerability (2019)* highlighted four general priorities for regulators when developing vulnerability strategies, which we believe are relevant to ACMA's work on this Statement, these include:

- Determining whether the regulatory response will focus on consumer empowerment or consumer protection, and whether interventions are required consumers-wide or targeted for particular groups
- Considering the application of vulnerability impact assessments to ensure regulatory decisions do not have profound, lasting repercussions for people in vulnerable circumstances (as per Ofgem)
- Ensuring products and services available in the market are safe and not disadvantaging consumers experiencing vulnerability by adopting inclusive design, user testing, and using product intervention powers
- Approaches to identifying and supporting consumers in vulnerable circumstances – such as proactive identification and early intervention and ensuring flexible, targeted support is provided

ACMA has the opportunity to take a more inclusive approach to the development of policy and regulatory responses by more inclusively developing the remedies themselves with consumers experiencing vulnerability. This can also include encouragement for industry to take a more proactive and consumer centric approach to designing and delivering effective supports. Examples may include:

- **Establishing a citizen's panel** - a panel can be engaged to inform ACMA's strategy and approach to incorporating consumer input into their regulatory approach. ESC undertook a deliberative community engagement program to inform their vulnerability strategy and outcomes can be found in a report on the process.⁸
- **Undertaking comprehension testing of information remedies** – The ACMA and telcos should develop and test any communications for consumers using rigorous

⁷ CPRC, Covid-19 and Consumers: From crisis to recovery. Monthly Policy Briefing – August Results. September 2020

⁸ ESC, Report on the Deliberative Engagement Process with Victorian Consumers: To Inform the Essential Services Commission's 'Getting to Fair' Strategy, 4 May 2021.

behavioural and user testing to ensure ease of comprehension of these communication materials. This is particularly important for consumers with disabilities, Indigenous Australians, or Culturally and Linguistically Diverse communities.⁹ As recommended in our report on the preconditions for effective consumer engagement, interventions and remedies should consider the specific types of vulnerabilities and barriers being experienced and then create tailored outreach and intervention strategies.¹⁰

Lastly, we note that while ‘consumer vulnerability’ may be a useful shorthand term for regulators, industry participants and consumer advocates, it can be alienating when used directly with consumers. The term can be disempowering and stigmatising, and fail to reflect a person’s own identity, strengths, and capabilities.¹¹ The ACMA might instead refer to “consumers experiencing vulnerability” both internally and in consumer facing materials.

CPRC also recommends that the ACMA develop a strategy to create a fair telecommunications sector that includes a focus on capacity building **within** the ACMA as well as the telco businesses, the ESC recently formalised its vulnerability strategy, while the Australian Energy Regulator is currently consulting on its own vulnerability strategy¹².

Recommendations

1. ACMA develop a vulnerability strategy to create a fair, safe and inclusive telecommunications sector that includes a focus on capacity building within ACMA and in the telco businesses. This should include providing a timeframe for when telcos are expected to demonstrate improvement in practices.
2. Include additional priority areas, such as dispute resolution, debt and credit handling practices, and reporting, compliance, and enforcement measures.
3. Include more prescriptive detail and provide measurable indicators within each priority area.
4. The Minister for Telecommunications must finalise and implement the Safeguards Review Part C as a matter of priority.

Statement of Expectations

Issue 1: Identifying consumers in vulnerable circumstances

The ACMA proposes that when identifying consumers who may be vulnerable, telcos should consider consumer vulnerability in terms of the circumstances that create risks of harm, detriment or disadvantage in consumers’ interactions with the telecommunications market. Do you agree with this approach? If not, please explain and provide alternative thinking?

The proposed approach is an appropriate start; however, it could be interpreted as limited to focusing on just the harm and disadvantage from engaging *with* the telecommunications market. Any definition of vulnerability must include the potential broader economic and/or social exclusion impacts or harms and should reflect the cumulative harm to a consumers life that can be caused by poor access to or disconnection from either a mobile phone or

⁹ CPRC submission to the Consumer Safeguards Review Part C: Choice and Fairness, 24 September 2020.

¹⁰ Solomon and Martin-Hobbs, Five preconditions of effective consumer engagement – a conceptual framework. Product information, consumer choice and market engagement. 2018.5

¹¹ Emma O’Neill, ‘Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator’, Consumer Policy Research Centre, February 2020.

¹² Essential Services Commission, Getting fair: Breaking down barriers to essential services, 2021

internet. The ESC Getting to Fair strategy definition is a good model to adopt for the telecommunication sector.

A person experiencing, or at risk of experiencing, vulnerability is someone who experiences barriers to accessing or engaging in the essential services we regulate or administer. As a result of those barriers, that person experiences economic and/or social exclusion or harm. Barriers can include event-based circumstances, systemic factors, and market-based factors.¹³

Going further than the ESC the definition should include place-based factors that contribute to or exacerbate the other barriers to access and support. This could be regional and remote areas or blackspots where the NBN is not available or where mobile reception is poor.

The Statement needs to reflect the fluidity and complexity of vulnerability. Someone may move in and out of the circumstances that contribute to them experiencing vulnerability. They may be trying to navigate multiple systems to seek support which compounds their experience of vulnerability.

Finally, the Statement currently places too much emphasis on consumers self-identifying as vulnerable. For many, they will not take this step and it is important that telco providers take proactive steps to identify someone at risk and to provide them support – especially when there is evidence that the products and services being accessed are creating unnecessary harm, regardless of circumstance. While we acknowledge the responsibility of industry to respond swiftly, appropriately and supportively once a disclosure of vulnerability is made, proactive methods to identify products and consumer behaviour which is demonstrably making consumers worse off should also be considered. This may include using data to identify patterns that could indicate someone is experiencing an issue. However, we caution there are risks this could be misused to profile consumers and prevent them accessing services. Any use of data needs to be transparent to consumers and reviewable. Partnerships with community organisations can also strengthen the ability to identify and connect consumers experiencing vulnerability with appropriate industry support measures. These should also be actively explored and supported.

Issue 2: Setting expectations for telcos -priority areas

Are the ACMA's five proposed priority areas appropriate? Are there any other priority areas that should be substituted or included?

The five priority areas are an appropriate starting point. However, CPRC supports other consumer organisations such as the Australian Communications Consumer Action Network's (ACCAN) suggestion of including the areas:¹⁴

- Dispute resolution processes
- Credit and debt handling practices
- Success metrics, reporting and compliance against the Statement, even if a voluntary document.

Are the outcomes set out under each priority area appropriate? Are there any additional outcomes that should be specified?

¹³ Essential Services Commission, Getting fair: Breaking down barriers to essential services, 2021.

¹⁴ ACCAN response to consumer Vulnerability: Expectations for Telecommunications Industry. Draft for Consultation. 10 September 2021.

Priority area 1: Internal business practices

The outcomes listed include ensuring staff who **may** interact with consumers facing vulnerability understand the importance of meeting their needs and receive regular training. All staff working at a telco should understand these issues and receive training if systemic change is to be achieved.

Telcos should outline how they will keep consumers' data, especially those experiencing vulnerability, safe and secure. This is particularly important for victim-survivors of family violence, where telco devices can be used to harass, target and track victims, or where abusive partners have joint access to an account and can find where a victim-survivor has moved to. This should be facilitated by the telco industry and ACMA developing a clear framework for the handling of data, as described in CPRC's report on Vulnerability, capability, opportunity – understanding consumer vulnerability as a key to unlocking benefit from the Consumer Data Right.

...in the design of internal processes to collect, analyse and communicate data that evidences the effects of the reform in terms of accessibility, usability, safety, and fair outcomes for consumers. Agreed terminology is important to be able to meaningfully compare effects in and across different sectors: to predict and detect problems, to outline desired outcomes, to perceive successes, and to clarify requirements or expectations incumbent on industry participants who want to make use of consumer data under the scheme¹⁵.

This will also be important if the Statement expects telcos to develop and track indicators on consumers who are experiencing vulnerability and their experience with a provider, to ensure these consumers are not put at further risks.

Priority area 2: Selling and contracting

The Statement should set clear expectations that telcos discourage poor selling practices and discourage commissions for upselling of products; these efforts need to be monitored to ensure compliance. Many of the factors that contribute to someone experiencing vulnerability are those that could lead them to being more susceptible to upselling or mis-selling of products.¹⁶

Providers should be required to clearly articulate whether a consumer would be better off switching to another plan and the related changes in plan pricing, fees and charges. This requirement was recently introduced by the ESC.¹⁷ In 2017, energy retailers across the National Energy Market were required to write to consumers to notify them when their discount offers, or contracts were due to expire and provide them information on how to find a cheaper offer. Telcos should commit to notifying consumers if they could be on a better offer.

The ACMA should investigate the feasibility of developing a telco service and price comparison website like Energy Made Easy and Victorian Energy Compare. These websites are run by the regulator or State Government and all retailers must submit up to date plans

¹⁵ Lewis, Nina, 2021, Vulnerability, capability, opportunity – understanding consumer vulnerability as a key to unlocking benefit from the Consumer Data Right, Consumer Policy Research Centre

¹⁶ Financial Counselling Australia, Telcos and Financial Hardship. Feedback from the Frontline. April 2021.

¹⁷ CPRC submission to the Consumer Safeguards Review Part C: Choice and Fairness, 24 September 2020.

and tariffs to these websites. This provides trusted information for consumers and allows regulators to have visibility over energy prices.

Priority area 3: Consumer service

As more providers rely on chat bots/AI as a primary contact point, businesses must outline how the use of chat bots and AI will not become a further barrier to accessing help and outline alternative pathways for consumers to access support.

Telco businesses need to clearly promote a general consumer support number for consumers to be able to call for support or remediation when issues arise. CPRC is about to publish a Sector Scorecard which measured consumers' experience of business conduct across key sectors from May to December 2020. We found the telco sector had the worst user experience and accessibility score out of the six industries assessed.¹⁸ When we spoke to consumers as part of qualitative research¹⁹ conducted by between June and August 2021 about life as a consumer today. They expressed frustration by the inability to be able to contact businesses and often feel forced to resolve issues online or via email when a phone call might be the easiest or preferred approach.

“What I’ve been finding is that we’re being pushed to go online to contact companies. I’ve noticed in the last six months this has escalated more, companies saying ‘there’s a website, contact the website, or send an email’. You can’t talk to a company there and then. And that is frustrating.” Regional NSW

“... is that certain companies now are actually cutting off the ability to speak to agents and you can only resolve a consumer service queries through a digital interaction. The fact that voice has been cut off is frustrating” Melbourne, Victoria²⁰

An inability to contact a service provider and speak with someone causes unnecessary stress and makes it more difficult for people to seek help or make a complaint.²¹

Priority area 4: Financial hardship

The ACMA publishes an annual ‘state of play’ report using financial hardship data from selected telcos which found that only 46.7% of consumers exiting a financial hardship arrangement did so successfully²². This data is only from nine telcos, so the problem may be underrepresented and could be much worse. In addition, the ACMA reported that “over 2019-20, 4,080 residential financial hardship consumers were disconnected, and 5,515 consumers were subject to debt collection activities.”²³ The Statement should establish concrete targets that direct the telcos to:

- reduce the number of consumers being disconnected
- reduce the total debt being held
- increase the number of people exiting hardship arrangements successfully.

¹⁸ CPRC, Covid-19 and Consumers: Sector Scorecard (September 2021).

¹⁹ CPRC, Consumer Wellbeing Report, Unpublished

²⁰ CPRC, Consumer Wellbeing Report, Unpublished

²¹ OFGEM. Report; Vulnerable consumers in the energy market: 2019

²² ACMA, Consumer vulnerability: expectations for the telecommunications industry. Draft for consultation. July 2021

²³ ACMA, Consumer vulnerability: expectations for the telecommunications industry. Draft for consultation. July 2021 -page 10

While there is guidance for the requirements for each supplier to develop a hardship policy within the Code, there is little guidance from ACMA on what the policies should include and how they should be applied. Consumers are experiencing different treatment and access to hardship support depending on the telco they are with.²⁴ There needs to be consistency in how the businesses apply hardship policies and they must do so in a fair and flexible manner. The ACMA should also publish the hardship policies of each telco on its website, to increase transparency and accountability for stakeholders and consumers alike, enable comparison of the policies in one place. In addition, hardship policies must be published with 'Easy English' versions to support consumer comprehension of their rights. This is similar to the process under the National Energy Retail Law.²⁵

Priority Assistance (PA) is available for consumers in Australia, however it is limited to those diagnosed with a life-threatening medical condition and Telstra is the only company required to have a PA program. This should be extended to a wider group of consumers and a wider range of services such as broadband.²⁶ Providing PA to wider group of consumers might overcome concern about consumers not self-reporting as 'vulnerable' as this is a more positive framing for consumers to register with a company for further help. It is important that any PA programs ensure data is secure and up to date. This would reduce the need for consumers to be retraumatised by needing to repeat their stories to multiple consumer service agents.

Priority area 5: Disconnection

This section should include an expectation telcos report on the number of disconnections each year and seek to reduce the number of disconnections due to debt or hardship and should only occur as a last resort or where a customer has agreed as part of their hardship arrangement.²⁷

Are the examples provided in the statement of expectations appropriate and realistic? Are there any additional examples that would assist telcos in understanding how to achieve the objectives?

The ACMA should create a Guideline outlining how they will administer the Statement and provide the telcos with the minimum level and type of data that should be collected to audit each telco's response to the Statement. The development of such a guideline would support telco businesses to implement better practices and, if developed with consumers and consumer organisations as a priority, it will reduce the need for each business to consult with time poor organisations, especially where a common standard and approach is necessary such as in the collection of data, reporting, and communication tools. This would then leave more time for tailored conversations between consumers, consumer organisations and businesses.

Other issues

Without better compliance, enforcement powers and a broader framework improving consumer safeguards, the Statement will not be enough. COVID-19 has and continues to place great financial and emotional stress on people, the telecommunications sector should

²⁴ ACCAN response to consumer Vulnerability: Expectations for Telecommunications Industry. Draft for Consultation. 10 September 2021.

²⁵ <https://www.aer.gov.au/retail-markets/guidelines-reviews/customer-hardship-policy-guideline>

²⁶ ACCAN, Priority Assistance Policy Position August, 2021

²⁷ ACCAN response to consumer Vulnerability: Expectations for Telecommunications Industry. Draft for Consultation. 10 September 2021.

be seeking to alleviate those stressors, and our research demonstrates this is clearly not happening.

It is clear from ACMA's audit, recent examples of poor conduct by the sector, and the Telecommunication Industry Ombudsman (TIO)²⁸ and ACCAN²⁹ reports that the telco industry has not been performing to an appropriate standard and have had opportunities to rectify their behaviour but continue to fail in implementing a consumer-centric mindset. The safeguards reforms must be implemented along with sector wide reforms.

CPRC would welcome the opportunity to work with the ACMA further during the development of the Statement and to provide further insights from our consumer research as recommendations are finalised. If you have any queries about this submission please contact Kristal Burry, Policy and Program Director at Kristal.burry@cprc.org.au

Yours sincerely



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²⁸ Telecommunications Industry Ombudsman (TIO), Responding to Consumers in Financial Hardship. Systemic Investigation Report, September 2021

²⁹ C Cartwright and C McAuliffe, Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities, Australian Communications Consumer Action Network website, November 2020.