

Submission to the Consumer Safeguards Review Part C: Choice and Fairness

24 September 2020

Department of Infrastructure, Transport, Regional Development and Communications
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By email: consumersafeguardsreview@communications.gov.au

Dear Secretariat,

We thank the Department for the opportunity to provide a submission to the Department's Consumer Safeguards Review Part C – Choice and Fairness consultation paper. The Consumer Policy Research Centre (CPRC) is an independent, non-profit, consumer think tank. Our mission is to protect and improve the experiences and welfare of consumers, by producing evidence-based research that drives policy and practice change.

This submission draws on CPRC's commissioned and collaborative research with academics across different complex and essential service markets, highlighting key aspects that relate to choice and fairness in the telecommunications sector. In this submission we cover the following key topics:

- The importance of telecommunications
- Market stewards need to facilitate an effective marketplace
- Comprehension testing and clear advice
- Improving the quality of service through regulation and competitive tension
- Inclusive design and consumer vulnerability

An essential service

Even before the pandemic, markets and public facing government services were increasingly moving online. CPRC's research from 2019 found 97% of Australians surveyed were shopping online at least occasionally or browsing for products online.¹ Government reforms such as the Consumer Data Right intend to improve market efficiency through reduced comparison and switching costs, facilitating bespoke service offerings based on individual consumption data, all through online gateways. The digital transformation of government and the expectation that citizens will access a variety of services online through MyGov also highlights the importance of access to telecommunications services.²

The COVID-19 pandemic has definitively established telecommunications as an essential service that is vital to the economy and our daily lives. Social distancing measures have seen a rapid uptake of online shopping for virtually all consumer goods, pushing businesses to pivot online as well. Video calling and cloud-based servers has enabled many of those

¹ Ben Martin Hobbs, *Online Reviews: A guide not a gospel*, (Consumer Policy Research Centre, 2019).

² Australian Government Digital Transformation Agency, *Digital Transformation Strategy 2018 – 2025*, available at: <https://www.dta.gov.au/digital-transformation-strategy>.

living with restrictions to work from home, remote learning for school aged children, and has become a staple part of social contact for those unable to socialise outside their homes.

This increasing dependence on a multiple telecommunication services has resulted in a significant increase in the cost as a percentage of a household budget, and research (from before the pandemic) suggests telecommunications now cost average households more than energy.³ The consequences of inadequate or unaffordable telco services are severe, hindering people's ability to communicate with social and support networks, access government and social services, work or learn from home, engage with markets and access consumer products, and use assistive and mobility technology.

Adopting a market stewardship approach

Telecommunication policymakers and regulators can take a stronger, clearer role in market stewardship, which involves 'steering' or shaping markets to ensure they deliver good outcomes for consumers.⁴ It involves shifting the focus from solely competition policy to a more considered and evidence-based view of how people are likely to engage with markets and make choices. This approach was advocated by the Harper Review with regard to quasi-markets but should be extended to complex markets where there is evidence or risk of poor consumer outcomes.

CPRC proposes a hierarchy of priorities for policymakers and regulators governing essential service markets:

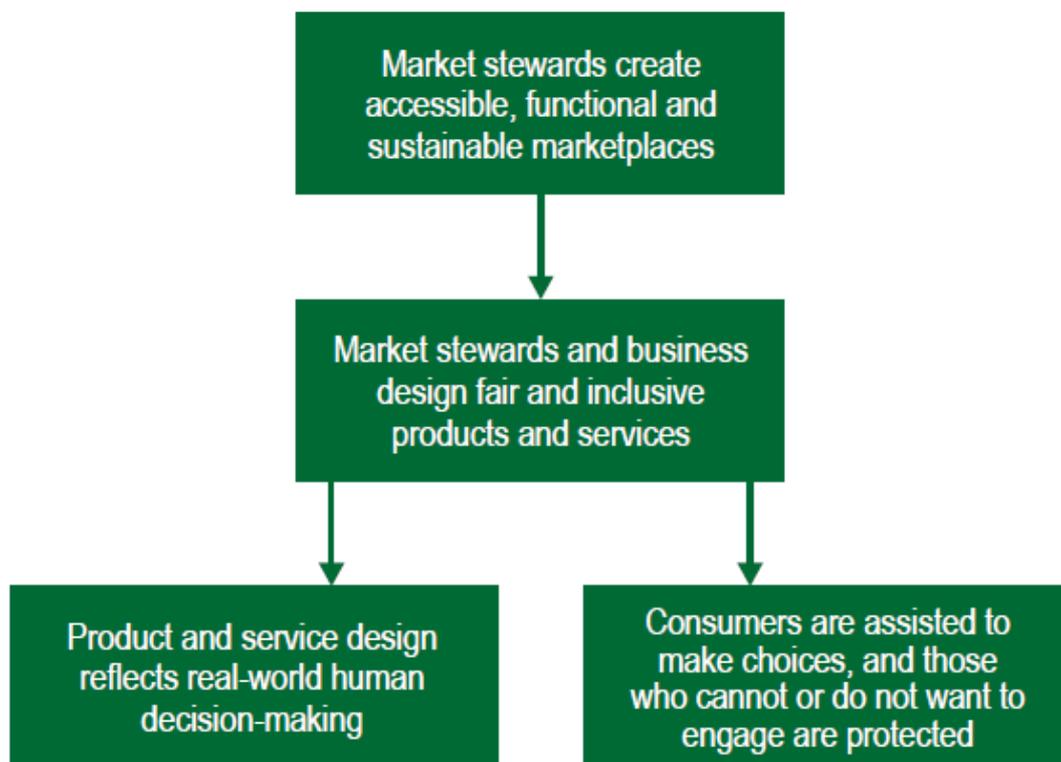


Figure 1: CPRC's *Hierarchy of Stewardship Priorities*

³ Greg Ogle, *Telecommunications Expenditure in Australia*, (Australian Communications Consumer Action Network, Sydney; 2017).

⁴ Ben Martin Hobbs and Emma O'Neill, *The experiences of older consumers: towards markets that work for people* (Consumer Policy Research Centre, July 2020).

An effective marketplace

Well-functioning consumer markets – enabling informed choice of different products and providers – require an accessible and navigable *marketplace*. A *marketplace* provides a particular location where people can access key information about a range of goods or services, compare this range of suppliers, and choose/purchase a good or service – in effect this brings into being the abstract concept of a market.⁵ Where marketplaces are inaccessible, hard to navigate or incomplete (due to limited or imperfect information disclosure, or lack a whole of market view), search and switching costs increase, resulting in poor consumer outcomes.

As noted in our report, *The experiences of older consumers: towards markets that work for people* (July 2020), few comprehensive marketplaces exist in essential and complex services.⁶ Where ‘market stewards’ (such as regulators and government departments) rely on commercial entities to provide the marketplace (e.g. switching sites and digital aggregators), the incentives of these intermediaries may not be aligned with those of consumers, resulting in limited, skewed or misleading comparisons of available products.⁷

While there are a range of commercial comparators offering comparisons mobile, NBN or bundled plans with handsets and tablets, an accessible independent marketplace providing whole of market coverage is lacking in the telecommunications sector. By comparison, in the residential energy market, government comparison websites provide an independent, whole of market view, with a mechanism that enables direct comparison of different plans pricing. Requirements that all retailers submit new energy plans to the regulator/department run comparator websites ensures the regulator has full view of the market and consumers can compare all market offers. The independence of these websites is highly regarded by consumers, who report distrust of commercial comparator websites due to sales practices.⁸ Though these government comparison websites do not yet facilitate switching directly, a variety of recent energy market reforms in Victoria and the National Energy Market have sought to improve the comparability of different plans through standardisation of key information, and the introduction of different kinds of reference prices to improve comprehension.⁹

In our *Five Preconditions of Effective Consumer Engagement* report, we outline the key “infrastructure” required for an effective marketplace.¹⁰ Market stewards need to ensure consumers can easily **access** and **assess** comparable information about the price, quality, features and terms of service of different plans, providers and products, and to **act** on this

⁵ Ben Martin Hobbs and Emma O’Neill, *The experiences of older consumers: towards markets that work for people* (Consumer Policy Research Centre, July 2020), 21.

⁶ Ibid.

⁷ Ibid., 63.

⁸ Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework*, (Consumer Policy Research Centre, March 2018), 42.

⁹ See the recommendations outlined John Thwaites, Patricia Faulkner and Terry Mulder, *Independent Review into the Electricity and Gas Markets in Victoria*, (August 2017). https://web.archive.org/web/20190118091050/https://www.energy.vic.gov.au/_data/assets/pdf_file/0030/79266/Retail-Energy-Review-Final-Report.pdf; and related Essential Services Commission, *Electricity and gas retail markets review implementation 2018*, <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018>. See also the Australian Competition and Consumer Commission, *Restoring Electricity Affordability and Australia’s Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report* (11 July 2018).

¹⁰ Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework*, (Consumer Policy Research Centre, March 2018).

information (by switching plan or product). Where consumers face heightened issues of access – due to a variety of vulnerabilities including language barriers, digital literacy and disabilities in particular contexts – market stewards need to facilitate access through outreach or targeted assistance. Market stewards also need to ensure consumers are **aware** where to go to access key information (i.e. the marketplace), how to navigate a marketplace and switch providers.¹¹

Comprehension testing and clear advice

Market stewards also need to take an active role in testing the comprehensibility of the key information provided through marketplaces. While disclosure requirements and mechanisms have long been relied on as a key pillar of consumer protection to address information asymmetries, research demonstrates firms' inadvertent or deliberate and strategic use of complexity in information disclosure - often resulting in poor consumer outcomes.¹² ASIC's 2019 report *Disclosure: Why it shouldn't be the default* provides a useful summary of much of this evidence, highlighting in particular the real world context in which disclosure operates, explaining how and why disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour.¹³

In recent years, market stewards in the residential energy market have engaged in behavioural testing to measure consumer comprehension of different disclosure mechanisms provided through the government run websites, on consumers' bills, and as part of a reference price to improve consumer comprehension.¹⁴ Given the complexity of bundled pricing of plans and handsets, as well as the emerging bundling of NBN plans with energy plans, we strongly recommend a similar approach in the telecommunications sector.

The Essential Services Commission has introduced a 'clear advice' entitlement as part of a broader reform package in the Victorian retail energy market – which requires providers to better articulate whether a consumer will be better off switching to another plan or not, and to clearly explain changes in plan pricing, fees and charges in new energy plan agreements.¹⁵ We strongly endorse the outcome based regulation adopted by the Essential Services Commission, and would encourage the Department to adopt a similar approach in the telecommunications sector.

Improving the quality of service through regulation and competitive tension

The Part C consultation paper highlights the issue of poor customer service in the telecommunications sector in recent years. Forthcoming research commissioned by ACCAN suggests it cost Australians \$151million in time foregone to resolve problems with their telco provider.¹⁶ This is consistent with CPRC's monthly COVID-19 consumer survey, which has found a higher proportion of consumers report negative experiences with their telco provider

¹¹ See for example, CPRC's *Energy Simplified* outreach program, providing webinars to consumers explaining key steps to manage their energy bills in light of the new energy reforms in Victoria.

¹² Martin Hobbs and O'Neill, *Towards markets that work for people*, 31-39.

¹³ Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), *Disclosure: Why it shouldn't be the default* (REP 632), (October 2018).

¹⁴ See for example BI Team, *BIT review of Basic Plan Information Document – Final Report*, (Australian Energy Regulator, 2018), https://www.aer.gov.au/system/files/Review%20of%20Basic%20Plan%20Information%20Document%20-%20Final%20Report%20-%20April%202018_0.pdf; BI Team, *Testing the presentation of energy price information – final report*, (Essential Services Commission, December 2019), <https://www.esc.vic.gov.au/sites/default/files/documents/academic-report-4A-market-design-20191210.pdf>

¹⁵ Essential Services Commission, *Building trust through new customer entitlements in the retail energy market*, October 2018. https://www.esc.vic.gov.au/sites/default/files/documents/building-trust-through-new-customer-entitlements-in-the-retail-energy-market-retail-markets-review-final-decision-20181030_0.pdf

¹⁶ ACCAN, *The Cost of Still Waiting*, (forthcoming research)

than any other sector in our survey – a consistent trend since the start of the survey in May 2020. Moreover, our most recent data (see attachment) shows there was a significant jump in the proportion of consumers reporting negative experiences, up from one in five in July (21%) to nearly one in three in August (29%). Our data shows an increase in the proportion of consumers experiencing a range of difficulties, including the proportion of consumers:

- who could not understand how to contact their provider or resolve an issue (7% up from 4% in July)
- who could not navigate websites or phone systems (8% up from 4% in July)
- reporting long wait times on the phone or via email (17% up from 12% in July)
- reporting unhelpful or poor service (9% up from 6% in July)
- feeling misled by information provided by their provider (6% up from 3% in July)
- reporting unfair terms in their contract or agreement (4% across July and August).

Our survey data adds to the evidence that general customer service standards in the telecommunications sector need to be regulated by ACMA in consultation with industry, consumers and other relevant stakeholders as appropriate, rather than left to industry to develop and self-regulate. We suggest the Department give consideration to the principle-based regulation approach adopted by energy regulators such as the Victorian Essential Services Commission, which is focused on achieving good customer outcomes, allows service providers some flexibility in how they tailor and deliver supports to best meet the needs of customers, and enables enforcement and monitoring of consumer service standards by an independent regulator.

Aspects of this principle-based regulation can benefit from competitive tension between suppliers to improve outcomes for consumers. As first articulated in George Akerlof's 1970 seminal paper *The Market for "Lemons"*, if consumers cannot distinguish high quality from low quality products, higher quality providers may exit the market.¹⁷ The issue of information asymmetry as it applies to essential services is explored in our 2018 report "*But are they any good?*". Our paper also served as a literature scan to inform our collaborative partnership project with RMIT's Behavioural Business Lab to develop and test a prototype measure of service quality in the residential energy market. This research - a series of iterative consumer research stages - is summarised in our recent report (August 2020) *Picking Peaches: Service Quality in the Victorian Energy Market – a summary report*, which identified key aspects of customer service consumers are willing to pay for and developed a prototype accordingly. Our research empirically tested the effect of service quality information on consumers' choices in an experimental setting, mimicking a comparator website. We found those consumers provided with service quality information choose higher quality energy retailers, even when they are lesser known, or were more expensive.

This research provides evidence that the quality of customer care can be improved through this kind of "sunlight remedy", in which the market steward develops a public facing measure of service quality to inform consumer choice, enabling competitive pressure to improve quality. Voluntary and commercial approaches to this kind of information disclosure have a range of limitations, such as limited market coverage, biased or incomplete information, and so independent service quality information should be a priority for market stewards.¹⁸ Again, this information needs to be easily accessible in the marketplace to enable consumers to compare all providers.

¹⁷ George A. Akerlof, "The Market for "Lemons": Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics* 84, no. 3 (August 1970): 500.

¹⁸ Marin Hobbs and O'Neill, *Towards markets for People*, 32.

Inclusive design and consumer vulnerability

Given the essentiality of telecommunications, market stewards must ensure services are designed inclusively so they can be accessed by all Australians, particularly those who are especially dependent on telecommunications for health, safety and wellbeing. Consumers are not a homogeneous whole – they differ in their ability and preferences in accessing and navigating digital marketplaces or online information. Research from the Office of the eSafety Commissioner found a larger proportion of older Australians reported a preference not to use the internet for a variety of tasks.¹⁹ In the context of the market for in-home care, CPRC’s own research found older Australians prefer to speak to a trusted intermediary rather than use a website or portal.²⁰ This highlights the importance of ensuring the marketplace and key product or plan information is accessible and comparable through different channels to ensure that all consumers can make informed choices.

Where service mechanisms and systems are not designed with the broader lived experience of *all* consumers in consideration, difficulties may be amplified for consumer segments. CPRC’s August 2020 COVID-19 survey data highlights the experience of consumers with disability, who make up approximately 18% Australians.²¹ Just under half of all consumers with disability (43%) reported a negative experience with their telco provider in August, well above the already heightened proportion of the broader population (29%), including:

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

Research by Yvette Maker and others has highlighted many of these issues and includes a toolkit for service providers, to enable consumers with disability to better access telco and other essential services.²³ We encourage both industry and market stewards to adopt an inclusive design approach to ensure all consumers can navigate the market and access the support they need.²⁴

We also recommend the development of a consumer vulnerability strategy for the telecommunications sector, which can be monitored and enforced by ACMA.

Regulators in Australia are beginning to follow the lead of UK regulators in adopting vulnerability strategies. In 2019, the AER commissioned a CPRC research report, *Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator*, which outlines key findings, lessons and approaches being taken to address

¹⁹ Ipsos, *Understanding digital behaviour amongst adults aged 50 years and over*, (Office of the eSafety Commissioner, 2018), 91-92, <https://apo.org.au/node/174271>

²⁰ Ben Martin Hobbs and Emma O’Neill, *Choosing care: the difficulties in navigating the Home Care Package market*, (Consumer Policy Research Centre, 2020), 33.

²¹ Australian Institute of Health and Welfare, *People with Disability: In brief*, September 2019

²² Consumer Policy Research Centre, *COVID-19 and Consumers: from crisis to recovery - Monthly Insights Report August 2020*, September 2020

²³ Yvette Maker, Jeannie Marie Paterson, Bernadette McSherry, Lisa Brophy, Anna Arstein-Kerslake, Alex Callahan and Eugene Teo, *Thanks a Bundle: Improving Support and Access to Online Telecommunications Products for consumers with Cognitive Disabilities*, (Australian Communications Consumer Action Network, Sydney and Melbourne Social Equity Institute, University of Melbourne; 2018), <https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions/thanks-a-bundle>

²⁴ Martin Hobbs and O’Neill, *Towards markets that work for people*, 62.

vulnerability across different jurisdictions, sectors and regulators. This report recognises that significant work has been done around vulnerability and hardship in other sectors - that everyone is likely to experience vulnerable circumstances at some point in their lives, due to common, unavoidable and unpredictable life events such as illness, job loss, financial shocks, the death of a loved one and natural disaster. Life events such as having children, ageing and disability can also contribute to consumer vulnerability. Vulnerability can arise from personal circumstances, but it can also arise as a consequence of market complexity, poor product and service design, deliberate exploitation of people's behavioural biases, information asymmetry and targeted exploitation of particular communities.²⁵

More recently, the ESC formally launched its vulnerability strategy work program – which follows on from a significant work program of energy reform over recent years.²⁶

Hardship and payment difficulty support

To address consumer vulnerability, a priority action for the Department should be the development of a rigorous, enforceable hardship/payment difficulty framework for telecommunications customers. The current hardship provisions in the industry-led Telecommunications Consumer Protections Code do not allow for timely, regular and systemic enforcement by ACMA. We recommend ACMA be given powers similar to energy regulators to develop regulations on minimum standards of hardship and payment assistance, and to be able to directly enforce these regulations.

CPRC's COVID-19 survey shows a clear need for comprehensive payment difficulty assistance framework for telco customers, especially at a time of recession and to build consumer resilience into recovery and beyond. Our COVID survey has identified widespread concern about financial wellbeing and ability to pay bills - 65% of the broader population reported they were somewhat or very concerned about their financial wellbeing. Our survey has also found some consumers subgroups are facing increased difficulty paying bills; in August 9% of renters, 9% of young people, and 9% of consumers with disability reported missing a telco payment compared with 5% of the broader population.

Our survey data reveals a similar proportion of telco and energy consumers experiencing difficulties paying bills. Both the proportion of consumers who sought payment assistance (5%) and the proportion reporting they had to miss a payment (5%) are comparable to the energy sector (5% sought payment assistance and 2% missed a payment).²⁷ Yet as noted in the ACMA's most recent *State of Play* report, indicates just 0.07% of residential telecommunications customers were in financial hardship arrangements with their provider at 30 June 2019, compared with more than 1% of electricity customers.²⁸ This disparity in the provision of hardship compared with the reported need among the broader community demonstrates the importance of a regulated hardship framework to help consumers.

Service provision and system design also has a bearing on the ability of individuals facing financial difficulties to seek assistance. Our COVID-19 survey found that three-quarters of people (76%) who sought payment assistance from their telecommunication provider in August reported a negative experience or difficulties contacting their provider. We encourage

²⁵ Emma O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability: A Report for the Australian Energy Regulator*, (Consumer Policy Research Centre, February 2020).

²⁶ ESC, *Building a strategy to address consumer vulnerability – Approach paper*, 17 September 2020.

²⁷ Consumer Policy Research Centre, *COVID-19 and Consumers: from crisis to recovery - Monthly Insights Report August 2020*, September 2020.

²⁸ Australian Communications and Media Authority, *Customer financial hardship in the telco industry: state of play report 2018-19*, (March 2020) 5, <https://www.acma.gov.au/publications/2020-03/report/financial-hardship-telco-industry>.

the Department and ACMA to consider the impact that vulnerability has on decision-making and the ability of individuals to engage, and whether the current hardship arrangements place an excessively onerous burden on individuals to seek assistance.²⁹

In the energy market, both AER and ESC have regulated consumer protection frameworks in place that stipulate a suite of required actions for retailers to engage consumers with payment difficulty early as debt accrues and provide hardship support. The ESC's *Payment Difficulty Framework*, introduced in 2019 goes further, providing a structure to enable genuine customer-led negotiation around repayment of arrears through a staged process. Early intervention to prevent large debts accruing is in the interests of both consumers and industry, particularly in an environment where bad debt provisions pose risks to the viability of some service providers and therefore competition in markets. In our view, there is a significant opportunity for ACMA to draw on the experiences of other regulators who have already produced significant work on payment difficulty.

Consumer protection frameworks in energy markets also include concessions to help low income families manage cost. This includes concessions for ongoing use (e.g. a percentage based concession in Victoria) as well as one off assistance for those facing temporary financial crisis (e.g. Utility Relief Grants in Victoria or Energy Accounts Payment Assistance). The Department might consider adopting similar measures to provide financial relief for telecommunications bills for those facing crisis.

Ensuring consumer protection frameworks deliver the intended outcomes is also a key priority for market stewards. As part of its new compliance and enforcement powers, the ESC has commenced auditing how retailers deliver the *Payment Difficulty Framework*. We note the most recent audit findings identified retailers failing to provide accessible information about payment difficulty assistance on their websites and provided this feedback directly to retailers – an issue identified by our survey regarding telco providers.³⁰ This approach reflects the core work of market stewards to ensure that a consumer protections framework improves the wellbeing of consumers.

If you have any queries about this submission and the attached reports, please contact Ben Martin Hobbs, Senior Research and Policy Manager at ben.martinhobbs@cprc.org.au.

Yours sincerely



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²⁹ Martin Hobbs and O'Neill, *Towards markets that work for people*, 50.

³⁰ ESC, *Payment difficulty framework audit 2019*. <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/compliance-and-auditing-activities/payment-difficulty-framework-audit-2019>