

28 March 2022

By email: haveyoursay@acma.gov.au

General Manager, Content and Consumer Division
Australian Communications and Media Authority
PO Box 78
Belconnen ACT 2616

Dear General Manager,

ACMA Compliance Priorities 2022 – 2023

Thank you for the opportunity to provide input to the Australian Communications and Media Authority (**ACMA**) compliance priorities for the 2022-23 financial year. ACMA's compliance and enforcement work is integral to protecting users of telecommunications services—essential services. The impact of COVID-19 and lockdowns during 2021 underscore the essential nature of telecommunications, as well as the effect of poor telecommunications practices on people experiencing vulnerability, including financial disadvantage.

Consumer Action Law Centre (**Consumer Action**) and WEstjustice have had the opportunity to review the submission from the Australian Communications and Consumer Action Network (**ACCAN**), and endorse ACCAN's recommendations. In particular, we support ACCAN's recommendations on complaints handling; bundling of telecommunications with other essential services like energy; the sale of telecommunication products via unregulated buy-now-pay-later credit; telecommunications consumers experiencing vulnerability; financial hardship; family violence; and scam prevention.

Furthermore, rather than repeating [our submission for the 2021-22 financial year \(attached\)](#),¹ we ask the ACMA to review and consider that submission again this year, as these issues continue to result in consumer harm.

We also remain concerned about the comparatively lax consumer protection framework for telecommunications.² Given this, it is important that the ACMA not only utilises the compliance and enforcement tools available to it but also considers whether the current Telecommunications Consumer Protection (**TCP**) Code is sufficiently protecting consumers, or whether it is deficient.³

For ease of reference, we have copied our specific recommendations from 2021-22 to this submission as well, which are available at **Appendix A**.

Protecting telecommunications consumers:

We draw ACMA's attention to the following unfair sales tactics, which may not constitute technical breaches of the TCP Code but which are designed to result in mis-selling and overselling to consumers, causing significant harm. The inability of the ACMA to take enforcement action within the framework of the TCP Code requirements is concerning—particularly when the conduct approaches or arguably reaches (such as in conduct similar or the same to that in *ACCC v Telstra*⁴) the threshold for unconscionable conduct under the Australian Consumer Law.

¹ Available at: <https://consumeraction.org.au/australian-communications-media-authority-compliance-priorities/>

² E.g. in comparison to the energy sector and banking sector.

³ As per s 125 of the *Telecommunications Act 1997* (Cth).

⁴ [2021] FCA 502.

The consumer safeguards in the TCP Code, which potentially create loopholes for conduct that could be and has been considered unconscionable, demonstrate a clear deficiency in the code. At the very least, the ACMA should interpret the provisions of the Code in a way that is intended to provide consumer safeguards. For example, the technical credit assessment provisions in Chapter 6 should be interpreted as a means to fulfil the requirement for responsible selling in section 4.5.1. Relevant conduct includes:

- Overselling to an existing customer who has on-time payment history but who would be unable to afford the additional plans or devices.
- Suggesting devices or contracts are put in another person's name (such as a relative or roommate) because that person is an existing customer (i.e. the credit assessment is less rigorous for that person).
- Adding on additional accessories, devices, services or insurance-like products that were not sought by a customer and make the entire plan unaffordable for them.
- Being unclear about early termination fees for devices despite advertising no lock-in contracts for services (when services are sold alongside devices).

Financial hardship and disconnections:

The case studies in our joint [submission to the ACMA Statement of Expectations consultation](#),⁵ along with the findings of the April 2021 Financial Counselling Australia report ([Telcos and Financial Hardship: Feedback from the Frontline](#)),⁶ and the low numbers of people in hardship arrangements in the [ACMA's February 2022 Financial Hardship State of Play Report](#) all point to one conclusion: consumers are not being identified as needing hardship support effectively by telecommunications suppliers.

The numbers in the ACMA report are revealing—only 28,332 consumers nationally were assisted with financial hardship arrangements by their telecommunications provider in 2020-21,⁷ while approximately 60,000 consumers in Victoria alone received assistance under the energy Payment Difficulty Framework.⁸ The gap in support between the two different industries does not marry with the need our financial counsellors hear about from callers to the National Debt Helpline. When a person is experiencing financial disadvantage, it is likely they are struggling to pay both energy and telco bills.

Furthermore, we're concerned about the disconnection numbers revealed in the ACMA report, showing 242,246 residential consumers had their telecommunications services disconnected due to non-payment or being uncontactable.⁹ In comparison with energy in Victoria, where there were around 7000 electricity and 2500 gas disconnections during the same period.¹⁰ Telecommunications disconnections should not be taken lightly – particularly when people are experiencing vulnerability. It may affect their ability to access medical help, their ability to work and their safety.

We highly recommend the ACMA continue to focus on the protection of vulnerable telecommunications consumers in relation to unfair sales and financial hardship, and whether appropriate arrangements are being offered to consumers experiencing financial disadvantage, or whether the telecommunications industry is instead:

- simply restricting or suspending a consumer's service (i.e. cutting them off),
- offering unaffordable payment plans,

⁵ Available at: <https://consumeraction.org.au/acma-statement-of-expectations-consumer-vulnerability/>.

⁶ Available at: <https://www.financialcounsellingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/>.

⁷ ACMA "Customer financial hardship in the telco industry: State of play report 2020-21" (February 2021) available at: <https://www.acma.gov.au/publications/2022-02/report/customer-financial-hardship-telco-industry-state-play-report-2020-21>

⁸ Essential Services Commission "Victorian Energy Market Report 2020-21" p32, available at: <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report#toc--key-findings>.

⁹ ACMA, above n 7.

¹⁰ Essential Services Commission above n 8, p 39.

- offering one-month extensions rather than hardship and/or
- denying hardship all together.

The ACMA's anticipated Statement of Expectations for Telcos on Consumers Experiencing Vulnerability, and telco's adoption of that statement, should clarify the actual experiences of consumers needing hardship assistance.

First Nations Consumers

Additionally, we note the recent release of the *Interim Report on better corporate engagement with Aboriginal and Torres Strait Islander consumers: an issues paper*, from the House of Representatives Standing Committee on Indigenous Affairs, which confirmed the negative impact of inadequate and/or poor behaviour within the telecommunications sector on First Nations consumers and communities.

Consumer Action's evidence to the Parliamentary Inquiry from early results of our survey of Aboriginal and/or Torres Strait Islander peoples in Victoria demonstrated the unacceptably high rates of: overselling, disconnection, the use of payday loans for telco bills, and an inability to access affordable payment plans from telecommunications providers. Between 20 and 26 percent of respondents experienced these issues.¹¹

Complaints Handling

We note the ACMA has focused on complaints handling for small businesses in 2021-22, and we recommend this be expanded to consumer complaints. The ACMA Contactability report confirms a level of disregard for the Complaints Handling Standard amongst the telecommunications industry, with findings such as 7 of 11 telecommunications providers not consistently meeting the timeframes required in the Complaints Handling Standard.¹² This is disappointing, but not surprising from a caseworker perspective.

We have made complaints to ACMA on behalf of clients about inadequate dispute resolution, and we urge ACMA to investigate the dispute resolution aspects of these complaints and take appropriate compliance and enforcement action. Poor dispute resolution requires ACMA's focus, so that consumer complaints can be resolved effectively and fairly.

Debt Management Firms

The new licensing regime for debt management firms only applies to firms providing services for consumer credit contracts. Therefore, some firms remain unlicensed, if they only provide services in relation to other underlying debts, such as telecommunications debts.

We understand debt management firm services (including credit repair) can be problematic for the telecommunications industry as well as for consumers—and we know through our case work that these firms often do not act in a consumer's best interest. We understand complaints to the Telecommunications Industry Ombudsman from debt management firms are also difficult, particularly because they charge to access a free service, and may not always represent their client's interests.

Unsolicited sales

We congratulate ACMA for its compliance and enforcement work on unsolicited contacts from financial services companies and recommend this continue. Its investigations and enforceable undertakings in relation to short term credit contract providers, in particular, will help to protect people experiencing vulnerability.

¹¹ House of Representatives Standing Committee on Indigenous Affairs, *Interim Report on better corporate engagement with Aboriginal and Torres Strait Islander consumers: an issues paper* (21 March 2022) p 11 – 15, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/Betterengagement/Interim_Report.

¹² ACMA, "Telco contactability: Audit of telco compliance with customer contact and related complaints-handling rules" (January 2022), available at: <https://www.acma.gov.au/publications/2022-01/report/telco-contactability-report-2022?msclkid=53274608ab5511ec9cda7a4471d2e5b9>.

Please contact Senior Policy Officer **Brigette Rose** at **Consumer Action Law Centre** on 03 9670 5088 or at brigette@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

Gerard Brody | CEO

Joseph Nunweek | Legal Director, Economic Justice

APPENDIX A – Summary of Recommendations

RECOMMENDATION 1. ACMA should continue to assess telecommunications service provider compliance with the TCP Code, in particular in relation to responsible approaches to selling, credit assessment and financial hardship.

RECOMMENDATION 2. ACMA should review and assess whether it is satisfied the TCP Code is deficient in the provision of community safeguards or otherwise not operating to adequately regulate consumer protection required of an essential service.

RECOMMENDATION 3. ACMA should focus on telecommunications service provider compliance with the Complaints Handling Standard to ensure telecommunications internal dispute resolution practices meet the requirements, utilising its enforcement powers where required.

RECOMMENDATION 4. ACMA should prioritise investigating recent telco sales tactics and customer service responses to Aboriginal and/or Torres Strait Islander peoples in rural, regional and urban communities, including in relation to the requirements of the revised TCP Code and Complaints Handling Standard.

RECOMMENDATION 5. ACMA should commit to investigating telecommunications used to perpetuate family violence, including financial abuse through phone debt, and to assessing the effectiveness of the industry guideline on actual practice.

RECOMMENDATION 6. ACMA should work to create an evidence base for the effective regulation of debt management firms in relation to telco debts, and liaise with other regulators, including ASIC, on how to do this most effectively.

RECOMMENDATION 7. ACMA continue to prioritise action on unsolicited sales and marketing in relation to energy products and financial products to reduce this predatory conduct.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About WEstjustice

WEstjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.