

09 March 2021

By email: haveyoursay@acma.gov.au

Linda Caruso
General Manager
Communications Infrastructure Division
PO Box 78
Belconnen ACT 2616

Dear Ms Caruso

ACMA Compliance priorities 2021 – 22 (consultation 02/2021)

Consumer Action Law Centre (**Consumer Action**) and WEstjustice welcome the opportunity to contribute to the development of ACMA compliance priorities for 2021 – 2022.

The past year has confirmed beyond any doubt that telecommunications services are essential services. During significant and lengthy lockdown periods, telecommunications services, including mobile services, were lifelines to friends and family, often the only means for attending a medical appointment, and required for remote work and school during government-issued stay-at-home orders. However, the data collected and published this year has shown that people's experiences with their telecommunications service providers was far from adequate. It is critical that ACMA continue to focus on telecommunications consumer protections—both in compliance with the Telecommunications Consumer Protection (**TCP**) Code and in assessing whether the Code is deficient at providing community safeguards.

A summary of recommendations is available at **Appendix A**.

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 advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray as well as a 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, law reform, and advocacy.

TABLE OF CONTENTS

About WEstjustice	1
About Consumer Action	1
Case study – Ulka’s storyAbout Consumer Action	1
What are the matters of significant public interest or concern?	3
Protecting telco consumers	3
Assessment of deficiency of the TCP Code	4
Compliance with the Complaint Handling Standard	4
Aboriginal and Torres Strait Islander customers	5
Family violence through telecommunications	5
Debt vultures	6
Unsolicited sales	6
What are the potential and actual causes of harm to consumers?	6
Case study – Ulka’s story	7
What are the high level risks of non-compliance, including from technological developments?	7
What are the emerging issues where we can encourage compliant behaviour, deter non-compliance or boost public confidence?	8
What are the technological or market developments that test the effectiveness of the regulatory framework?	8
Digital only formats	8
Direct debit for service contracts	8
Horizontal integration across energy	9
Sales market developments	9
Buy-now-pay-later	9
In what specific areas can we clarify the scope and reach of the law?	9
We’re also interested in your views about whether we should extend any of our 2020–21 compliance priority areas for a further year, and if so, why?	10
APPENDIX A - SUMMARY OF RECOMMENDATION	11

What are the matters of significant public interest or concern?

Protecting telco consumers

ACMA should continue to focus on the protection of telco consumers in 2021-22.

We fervently agree with the Executive Summary of ACMA's Consumer Safeguards Part C submission, which confirms telecommunications services are essential services and describes the expectations that follow as:

"Australians need to:

- be able to find telecommunications services that meet their needs*
- have telecommunications services supplied in an inclusive way if they are disadvantaged or in vulnerable circumstances*
- be treated fairly at the time of sale and throughout the lifecycle of a service or an associated product*
- have telecommunications services that are reliable and reasonably free of faults and interruptions*
- have any complaints addressed promptly and experience reasonable customer service."*¹

Despite the current TCP Code and the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (the **Complaints Handling Standard**) operating well into their second and third year, we have seen and heard evidence from our clients that telcos continue not to adhere to the requirements and therefore are failing to meet the expectations required of an essential service. In particular, we have heard about:

- **unfair sales tactics** including upselling to existing customers,
- **suggestions to people to put their telco contracts in another person's name** with better credit thereby potentially enabling financial abuse,
- **refusal to provide genuine or realistic financial hardship arrangements**
- **debt collection** (including harassment during COVID-19 lockdowns) based on clearly unaffordable but older telco contracts where it is unlikely a credit assessment was undertaken
- **poor dispute resolution practices.**

This has been particularly concerning during a year when connectivity through mobiles, devices and internet were more integral to our lives than ever before. Consumer Action's recent report, *The Trouble with Telcos: Stories from 2020* (the **Trouble with Telcos Report**)² has demonstrated numerous instances of unfair conduct by telcos during the past year. These issues are set out in the Trouble with Telcos Report, which we have attached as **Appendix B** to this submission.

We have assisted many people who have revealed their inability to pay for their mobile devices and services from the outset—services which should have never been sold to them. This has left them struggling to pay their phone bills, with some telling us they have skipped meals or taken on additional debt to pay their bill with a credit card or buy-now-pay-later bill paying service.

ACMA's own data on financial hardship, in particular the qualitative data from financial counsellors, confirmed that people, especially people experiencing vulnerability, have been unable to access realistic hardship payment plans.³ The Trouble with Telcos Report showed that this can lead to disconnection of their service, or effective

¹ ACMA, Submission to Consumer Safeguards Review Part C, page 1, available at: <https://www.acma.gov.au/sites/default/files/2020-10/ACMA-submission-to-Consumer-Safeguards-Review-Part-C.pdf>.

² See: <https://consumeraction.org.au/report-the-trouble-with-telcos-stories-from-2020/>

³ ACMA, "Customer financial hardship in the telco industry: State of play report 2019-20" (February 2021) and appendix "Telco financial hardship programs: views from financial counsellors – Qualitative research".

disconnection through service restriction. Service restriction is said to be a means to reduce charges but is instead an intervention that leaves people without their connections to work, family, friends and medical appointments.⁴ Consumer Action's financial counsellors, who operate the National Debt Helpline in Victoria, have also raised in 2020 and 2021 that some callers have revealed they have been told by a major telco that they must receive assistance from a financial counsellor in order to receive hardship assistance—an unfair practice that, in the energy sector, was recently met with a \$1.125 million fine and 75 penalty notices in Victoria by the Essential Services Commission.⁵

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.

Assessment of deficiency of the TCP Code

Our case work in 2020, as well as data from the Consumer Policy Research Centre (CPRC) COVID-19 surveys⁶ and data from ACMA, the TIO⁷ and even industry⁸ confirms the telecommunications industry is not effectively meeting the qualities of an essential service as listed above.

Therefore, beyond assessing compliance with the TCP Code and Complaints Handling Standard, we recommend ACMA also review and assess whether it is satisfied the TCP Code is, in part or in whole, deficient in the provision of community safeguards or otherwise not operating to adequately regulate service providers, in accordance with section 125 of the *Telecommunications Act 1997* (Cth). We are concerned that in relation to credit assessments and financial hardship in particular, the TCP Code is deficient in providing effective consumer safeguards, which, for an essential service, translates into deficient community safeguards. For example, the TCP Code does little to prevent high pressure sales of unaffordable add-on products to existing customers—only requiring a check of previous payment history. Further specific issues and case studies are detailed in our joint submission to the Consumer Safeguards Review Part C⁹ and our Trouble with Telcos Report¹⁰.

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.

Compliance with the Complaint Handling Standard

The Trouble with Telcos Report also highlighted numerous instances of poor dispute resolution experienced by Consumer Action caseworkers in assisting clients in the last year in disputes with major telcos. Issues included non-response to requests from our lawyers for documents, inability to be assigned a case manager and a non-responses about debt collection harassment, which have been detailed in recent and forthcoming complaints from Consumer Action to ACMA. If this is the experience of telco internal dispute resolution *with* professional advocacy support, it is worrying to think about the experiences of people who are *not* represented by professional advocates.

At Consumer Action and WEstjustice, we have seen consumers achieve acceptable outcomes when represented by a financial counsellor or lawyer, but have difficulties achieving these on their own. For example, some major telcos have instituted escalated complaints departments or special assistance teams that, in our experience, can be helpful when contacted by professional advocates. But, as we operate the National Debt Helpline in Victoria,

⁴ E.g. See Ulka's case study in the Trouble with Telcos report.

⁵ See: <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/company-penalty-notices/alinta-energy-penalty-notices-2020-imposing-conditions-assistance>

⁶ See: <https://cprc.org.au/consumers-and-covid-19-from-crisis-to-recovery/>

⁷ See, e.g.: <https://www.tio.com.au/sites/default/files/2019-05/TIO-Systemic-Insight-Sales-Practices-Driving-Consumer-Debt-f.pdf>

⁸ See Communications Alliance Roy Morgan Research reports, e.g. https://commsalliance.com.au/_data/assets/pdf_file/0018/71415/Comms-Satisfaction-Survey-Jul-2020.pdf which confirms less than half of people who made a complaint to their telco provider were satisfied with how it was handled, which actually an improvement on the previous quarter.

⁹ See: <https://consumeraction.org.au/telecommunications-consumer-safeguards-choice-and-fairness/>

¹⁰ See: <https://consumeraction.org.au/report-the-trouble-with-telcos-stories-from-2020/>

we also assist people to self-advocate. Unfortunately, this has revealed a discrepancy in access, which means that a person advocating on their own behalf can almost never achieve an outcome they would receive if they were represented. This is incredibly problematic for access to justice.

We recommend ACMA focus efforts on ensuring telcos are compliant with the Complaints Handling Standard and investigate any breaches, particularly potential systemic breaches of this standard.

ACMA should use strong enforcement measures to ensure the move to a legislated standard has teeth. For example, ACMA should consider enforceable undertakings and civil litigation where there has been a breach of this standard.

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.

Aboriginal and Torres Strait Islander customers

In the wake of the ACCC's investigation into Telstra mis-selling to Aboriginal and Torres Strait Islander peoples during 2016 – 2018 and the request for consent orders for a \$50 million penalty and enforceable undertaking,¹¹ it is important for ACMA to focus on *current* telco sales practices and customer service conduct involving Aboriginal and Torres Strait Islander peoples, especially with the updated TCP Code and Complaints Handling Standard. It would be remiss to assume these are no longer current problems. This focus should not only be confined to remote areas in northern, western and central Australia, which were the subject of the ACCC enforceable undertaking—it should also investigate sales tactics and customer service provision from a range of telcos to Aboriginal and/or Torres Strait Islander peoples living in regional communities and in urban areas. We have heard about more recent pressure sales, including the upselling of unaffordable add-ons such as Foxtel and smart watches, the prevalence of extra data charges and difficulties experienced by Aboriginal customers in accessing dedicated teams and support through the telcos.

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.

Family violence through telecommunications

Family violence perpetuated through telecommunications products and charges continue to be an issue. The Communications Alliance released an industry guideline in 2018, "Assisting Customers Experiencing Domestic and Family Violence", which is currently under review.¹² The TIO has also recently released a systemic issues report on family violence.¹³ We have heard of a number of instances of abuse facilitated through telecommunications contracts in the past year, including where:

- the person is signed up as an account holder in line with clause 6.1.3 of the TCP Code and is stuck with the phone debt of the perpetrator or
- the person is unable to extract their phone from the perpetrator's account and has difficulty dealing with the telco because they are not the named account holder (even where the phone contract is charged to the victim's payment details).

¹¹ See: <https://www.accc.gov.au/media-release/telstra-in-court-over-unconscionable-sales-to-indigenous-consumers>

¹² Communications Alliance, Industry Guideline G660:2018 "Assisting Customers Experiencing Domestic and Family Violence" (22 October 2018), available at: <https://www.commsalliance.com.au/Documents/all/guidelines/G660>.

¹³ See: <https://www.tio.com.au/reports-updates/meeting-needs-consumers-impacted-family-violence>

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.

Debt vultures

We have recently spoken with ACMA about debt management firms (also referred to as 'debt vultures') and their unscrupulous practices, causing consumer harm through huge fees and charges and limited effectiveness in assisting consumers with challenging default listings on their credit reports (so-called 'credit repair'). The Government is undertaking reforms of this sector through a limited licensing regime; however, activities such as debt negotiation, budgeting services, hardship applications and credit repair relating to *telco* products will likely be excluded from the reforms. Many stakeholders across consumer and industry groups, ombudsman schemes, regulators and academia have long held concern about credit repair and debt management activity.¹⁴

Our recent research also found that people would feel much more confident in the debt management sector if protections and regulations are introduced for all debt management services, including telco debts and credit repair (see page 17 of our [report](#)).

There is a place for ACMA to collect data on debt management firm activity related to telco debt to confirm that further reform is needed to effectively regulate the debt management firm sector.

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.

Unsolicited sales

We have been pleased unsolicited sales through telemarketing and e-marketing have been included in ACMA's priorities in 2019-20 (especially in relation to solar industry) and in 2020-21 (in relation to financial services) and recommend that resourcing in both of these areas continue.

Unfortunately, unsolicited sales, telemarketing and e-marketing continue to be problematic for consumers. These tactics are unfortunately still problematic in the solar industry, for example, with proposed energy sector reforms in Victoria banning unsolicited sales likely to be limited to standard energy products.¹⁵ In relation to financial products, we are aware of payday lenders making unsolicited contact in 2020, preying on people during a difficult year. We are also concerned that debt management firms, offering debt 'solutions' to people struggling to make ends meet, might also ramp up unsolicited contact over the next 12 months. This sort of pushy and predatory behaviour requires continued monitoring and regulatory action where it is unlawful.

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.

What are the potential and actual causes of harm to consumers?

Each of the priority areas highlighted above have resulted in actual harm (including financial and non-financial harm, such as distress) to consumers, much of which has been highlighted in our joint Consumer Safeguards Review Part C submission, Consumer Action's Trouble with Telcos: Stories from 2020 report, CPRC COVID-19 Updates and ACMA's published financial counselling qualitative data. The potential harm will be the continuation of these practices, leading to consumers being signed up to inappropriate plans, being unable to appropriate

¹⁴ See: <https://consumeraction.org.au/debt-management-firms-comm/> p 17.

¹⁵ See: <https://consumeraction.org.au/victorias-energy-reforms-positive-but-enforcement-needed-report/>

address situations of genuine hardship incurring further unaffordable debt, and experiencing disconnections from an essential service. The following comments from financial counsellors in ACMA's Views from Financial Counsellors data underscores this point:

"One counsellor described telco services as being in the top 3 priorities for clients, along with housing and medication."¹⁶

Telco services are far too critical to our everyday lives to be largely self-regulated; it is important ACMA utilise its powers to the extent possible to ensure compliance with current rules and to effect changes in the regulatory environment where necessary.

What are the high level risks of non-compliance, including from technological developments?

The high-level risks of non-compliance include financial distress, and disconnection from essential telco services. This was shown to be problematic during 2020, despite a joint industry and government 'Statement of Principles'¹⁷ committing to not disconnect people in specific circumstances. The prevalence of: telco disconnections, threats of disconnections and restrictions of service (effective disconnections); refusals of hardship or unhelpful offers of unrealistic options; debt collection harassment for people in lockdown; and poor dispute resolution conduct during a year where other essential service industries stopped disconnections and provided deferrals is telling. The risks of telco industry non-compliance and the impacts on people can be devastating.

Having mind to the divergent responses between the telco industry and other

Case study – Ulka's story

Ulka (name changed) called the National Debt Helpline (NDH) in September 2020 during Melbourne's Stage 4 COVID-19 lockdown. This is what she told us:

Ulka lives in metropolitan Melbourne. She has been experiencing mental ill-health and is pregnant. She is currently living on the Youth Allowance and COVID supplement.

In July 2019, Ulka signed up to a major telco provider for mobile service and a handset on a 36-month contract, for approximately \$115 per month (including monthly warranty costs). She was working full time at that time.

Ulka said she tried to call her doctor for some test results before contacting the NDH, but she couldn't make any outbound calls. She contacted her provider and found out her service had been restricted. When she advised the provider that she was out of work and was pregnant, and needed to be able to call the doctor, the customer service representative told her she would need to pay her nearly \$1000 phone debt in full to remove the restriction on her phone service.

Ulka said she couldn't afford the debt but was willing to go on a fortnightly payment plan. The provider rejected this offer. She had to ring the provider back (and re-tell her story) a number of times as she said they kept hanging up on her.

Ulka said she was very upset so decided she wanted to cancel her service with the provider. She was advised that if she cancelled, she would have to pay out the handset and her current debt. The provider referred her to the NDH, but said her service would soon be cancelled.

Ulka told us she was feeling overwhelmed and could not pay the phone bill and pay rent. She said she may end up homeless.

After speaking with our NDH financial counsellor who has referred her to our solicitors, Ulka spoke to her telco provider again and mentioned that she would be getting legal advice. She said it sounded like they may have spoken to a manager, and that they could potentially organise a payment plan for her.

¹⁶ ACMA, "Telco financial hardship programs: views from financial counsellors – qualitative research" (February 2021) p4, available at: <https://www.acma.gov.au/publications/2021-02/report/customer-financial-hardship-telco-industry-state-play-report-2019-20>.

¹⁷ See: <https://www.communications.gov.au/covid-19-update>

essential service sectors over the past twelve months, we consider it worth asking whether the TCP Code as it stands is operating to provide what would be considered “appropriate community safeguards” for the purposes of s125(7) of the *Telecommunications Act 1997* (Cth).

What are the emerging issues where we can encourage compliant behaviour, deter non-compliance or boost public confidence?

The telecommunications sector has enjoyed the benefit of industry-written rules for over two decades. Unfortunately, the conduct revealed in our Consumer Safeguards Submissions and Trouble with Telcos Report has shown the industry continues to, at best, skirt and, at worst, ignore these rules. This is particularly problematic when the industry-written rules are already unfit for the regulation of an essential service. Therefore, encouraging compliant behaviour and boosting public confidence in an industry riddled with low expectations and poor experiences¹⁸ will be best achieved through enforcement measures such as penalty notices and enforceable undertakings.

Furthermore, and as discussed on page 6, ACMA can assist in boosting public confidence in relation to the management of telco debt by collecting evidence on debt management firms that will form the basis of their regulation. Similarly, we urge ACMA to maintain a focus on debt collection practices generally, including the practice of telcos selling large amounts of debt to third party collectors which sometimes engage in harsh collection strategies including court action and bankruptcy. We expect debt collection activity to increase as Australia recovers from the COVID-19 recession.

What are the technological or market developments that test the effectiveness of the regulatory framework?

Digital only formats

Digital-only provider formats, such as Belong, have resulted in a high proportion of calls to the National Debt Helpline when people were unable to access any assistance from their provider for much of 2020. We, and other consumer advocates, have concerns about these provider formats and whether they provide sufficient customer service to meet the needs of an essential service.

Direct debit for service contracts

The move by major phone companies to a pre- or upfront-pay direct debit model provides far less flexibility for customers. Our case workers are justifiably concerned this will inevitably lead to more people being disconnected or effectively disconnected through service restrictions, before they are even offered the opportunity to access realistic financial hardship arrangements. For example, Telstra’s Standard Terms for its new upfront payment system specifies that customer’s services may be restricted after a grace period of 5 working days, and disconnected after an additional 5 working days.¹⁹ Any moves toward direct debit should be accompanied by a lengthy grace period that allows for at least two pay periods prior to restriction or disconnection of this essential service.

¹⁸ See: https://cprc.org.au/app/uploads/2020/09/Consumers-and-COVID-19_AUGUST-RESULTS-SNAPSHOT_21Sept2020.pdf.

¹⁹ See: <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/consumer/telstra-standard-terms-general-terms-27102020.pdf> at 6.10 - 6.13.

Horizontal integration across energy

An increasing number of telecommunications and energy companies are expanding across sectors, merging operations or developing new providers. Hopefully, this will be positive for telecommunications consumers as many energy requirements are more stringent than those of the telco sector, which may lift the bar. However, it is important to be cognisant of these cross-sector moves to ensure they do not result in poor consumer outcomes. This is especially likely to occur when a company offers bundles across its telecommunications and energy services. For example, energy providers are not required to undertake credit assessments; however, telcos are required to do this for new customers for contracts totalling more than \$1000. Will 'energy costs' contribute to this amount if bundled in a telco contract? This growing horizontal integration will be important to monitor for compliance by ACMA and the Australian Energy Regulator and the Essential Services Commission, with regular collaboration between regulators.

Sales market developments

With the increasing push from telecommunications providers for consumers to package add-on tech products such as drones, smartwatches and smart speakers, the TCP Code needs to do more to protect existing customers from questionable upselling practices. This includes add-on phone insurance and insurance-like products that exploit loopholes to avoid insurance regulation, such as the incoming deferred sales model for add-on insurance.²⁰

Buy-now-pay-later

We are aware that telephone companies are now offering 'buy-now-pay-later', which is unregulated credit, for phones.²¹ This development must be watched as it could be a mechanism for avoidance of the already meagre credit assessment requirements of the TCP Code.

In what specific areas can we clarify the scope and reach of the law?

We offer the following suggestions:

- Is the TCP Code deficient in providing community safeguards, either in part or in whole, such that a Standard is justified per s 125(7) of the Telecommunications Act 1997 (Cth)?
- How are telco 'insurance-like' products that claim they are not insurance, such as Telstra StayConnected regulated?
- How do upfront or pre-pay service contracts fit with the financial hardship requirements of the TCP Code?
- Does the TCP Code form part of the contractual relationship between the telecommunications provider and customer (as codes in other sectors do)?
- Are the Key Commitments to Consumers (part of the Introductory Statement to the TCP Code) enforceable under the Code?
- Remedies for telecommunications providers breaching the code by providing unaffordable phone contracts.
- Crossover with relevant general laws and regulations and their regulators, such as the consumer law and privacy law.

²⁰ Financial Sector Reform (Hayne Royal Commission Response) Act 2020 (cth), Schedule 3 to amend the *ASIC Act 2001* (Cth) commencing from 5 October 2021.

²¹ E.g. OptusPay see: <https://www.optus.com.au/mobile/phones/samsung/galaxy-s21-plus-5g?contractLength=36#optus-pay-overlay>

We're also interested in your views about whether we should extend any of our 2020–21 compliance priority areas for a further year, and if so, why?

Yes, telecommunications consumer protections and a focus on unsolicited sales should remain priorities for 2021–22 for the reasons set out in the previous questions.

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

WESTJUSTICE



Melissa Hardham | CEO

APPENDIX A - SUMMARY OF RECOMMENDATION

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.

A woman with blonde hair, wearing a purple face mask with a black and white pattern, is looking down at a smartphone she is holding in her hands. The background is blurred, showing what appears to be a window or a wall.

NOVEMBER 2020

THE TROUBLE WITH TELCOS

STORIES FROM 2020

ABOUT

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.

ACKNOWLEDGEMENTS

We would like to acknowledge the people who have shared their stories with us, which have formed the basis of this report. This has taken courage, a value that is core to Consumer Action. The stories in this report are critical to demonstrating the inadequacy of telecommunications regulation, from the lens of experiences during 2020. These stories are a sample of the ones that have been shared with us—we consider this is indicative of a systemic failure.

We would also like to acknowledge the case workers, both financial counsellors and lawyers, who have assisted the people whose stories are described in this report and many others with similar experiences.

Consumer Action would like to thank and acknowledge the **Consumer Policy Research Centre (CPRC)** for providing survey data for this report on the experiences of consumers during COVID-19 and their interactions with telecommunications and energy providers. This data is part of CPRC's ongoing research initiative, *Consumers and COVID-19: from crisis to recovery*, which includes a monthly nationwide consumer survey of over 1000 people, examining the experiences, behaviours, expectations and challenges of Australian consumers from May to December 2020.

This report was written and compiled by Brigitte Rose, with support from colleagues across Consumer Action.



Consumer Action is located on the land of the Kulin Nations. We acknowledge all Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities. We pay our respect to cultures; and to Elders past, present and emerging.

FOREWORD FROM GERARD BRODY - CEO

In March of this year, as the impact of the COVID-19 pandemic and associated stay-at-home orders became apparent, Consumer Action Law Centre (**Consumer Action**) launched our “Keep Connected” campaign in order to keep people linked to essential services. Connectedness with essential services has been challenging, both for people who have experienced vulnerability or lived on low incomes for many years, and for people who have experienced financial vulnerability for the first time during 2020.

Our reliance on essential services in our own homes has been amplified in 2020, particularly in Victoria, where millions of people have lived through lockdowns that were significant in measure and in duration. The COVID-19 crisis has confirmed, without a doubt, that telecommunications services are essential. The Minister for Communications, the Hon. Paul Fletcher MP, agreed in April 2020.¹ Yet the telco industry continues to fall short of community expectations of essential services providers and is still not regulated as an essential service.

The stories in this report, which have come from callers to our legal advice lines and the National Debt Helpline, are accompanied by our own data and that of the Consumer Policy Research Centre (**CPRC**), which has been conducting an in-depth survey of COVID-19’s effect on people’s household finances. These figures and the experiences of the people who call us are indicative of systemic problems with the telco sector as it is currently regulated.

This report shines a light on the conduct we have seen from telcos throughout 2020, while the industry continues to operate under a scheme of self-regulation. The telco industry response to financial hardship during the pandemic was inadequate. We have seen

telcos raise barriers rather than offer reasonable and appropriate payment arrangements to those who have needed it this year.

The evidence in this report shows the need for better, modernised regulation of the telco sector to adequately protect people. Without directly enforceable rules developed by the independent regulator, people are being left with unaffordable debt, poor or no financial hardship responses, the stress of unprofessional dispute resolution and disconnections. During the COVID-19 emergency, it is clear that this lack of connectedness just won’t do—it denies people access to family, medical care, education, work and government services.

We have highlighted telco systemic issues previously in our report ‘Consumer Issues Impacting Victorian Aboriginal Communities’ in February 2020, and in submissions to the Department of Communications, the industry peak body (**Communications Alliance**), the Telecommunications Industry Ombudsman (**TIO**) and in our continuing advocacy work. Of course, previously identified systemic issues in the telco sector have been exacerbated in 2020 by the increased reliance on telecommunications for work and school and keeping in touch with family necessary during the COVID-19 emergency.

Current telecommunications regulation falls far short of that for other essential services. It is time to lift these standards to ensure adequate protections for people across Australia.

Gerard Brody

CEO

Consumer Action Law Centre



CONTENTS

ABOUT US	2
ACKNOWLEDGEMENTS	2
FOREWORD FROM GERARD BRODY, CEO	3
KEY FINDINGS	5
01 Consumer action statistics	6
02 CPRC survey data	7
03 Telcos have simply not been contactable	9
04 Telcos frequently refusing appropriate hardship arrangements	11
05 A lack of hardship assistance leads to increased debt	15
06 Reducing services or switching plans	17
07 Telcos fail people struggling financially prior to the COVID-19 emergency	20
08 Telcos continue to disconnect or restrict people's services during the COVID-19 emergency	21
09 Poor telco dispute resolution practices cause further detriment to people during the COVID-19 emergency	24
10 Conclusion: what needs to change	27
RECOMMENDATIONS	28
ENDNOTES	29



KEY FINDINGS

Telecommunications, including phone and internet, are an essential service.

- People suffered detriment, including disconnection, as a result of being unable to contact their telco provider during 2020.
- People in financial difficulty have reported being denied appropriate financial hardship from their telco providers in 2020.
- Many people have turned to debt or borrowing from family and friends to try to pay their telco bills in 2020.
- Some people have been hit with fees for attempting to reduce or switch their telco services in order to better afford their bills, causing further hardship for them in 2020.
- Some people on low incomes have reported being contacted by debt collectors in relation to telco debt, including during Melbourne's Stage 4 lockdown in 2020.
- Telco disconnections have continued throughout 2020. Some people have also had their service restricted so they couldn't contact necessary services during lockdown.
- Many people have been burdened with added stress by poor telco dispute resolution practices in 2020.

01

CONSUMER ACTION STATISTICS

Consumer Action operates the National Debt Helpline (**NDH**) in Victoria, which receives the majority of calls from people living in Victoria. Our financial counsellors provide free, confidential and independent advice to Victorians experiencing financial difficulty.

We also operate free specialist consumer legal advice lines, including a consumer advice line, a worker advice line and a Koori help line.

Each month, Consumer Action's lawyers and financial counsellors receive calls about telco issues through our legal advice lines and the NDH. These statistics, and a sample of the upsetting stories behind them, have informed our calls for modernised regulation of the telco industry with directly enforceable protections, and appropriate penalties for breaking the rules that are more than just 'the cost of doing business'.

2020: NUMBER OF **CALLS TO NDH** WHERE TELCO DEBT WAS IDENTIFIED AS A FINANCIAL DIFFICULTY



JANUARY	29	JUNE	24
FEBRUARY	33	JULY	37
MARCH	29	AUGUST	19
APRIL	33	SEPTEMBER	39
MAY	39		

2020: NUMBER OF **LEGAL ADVICE LINES** FILES WITH TELCO ISSUE IDENTIFIED



JANUARY	15	JUNE	12
FEBRUARY	12	JULY	10
MARCH	4	AUGUST	3
APRIL	13	SEPTEMBER	16
MAY	10		

02

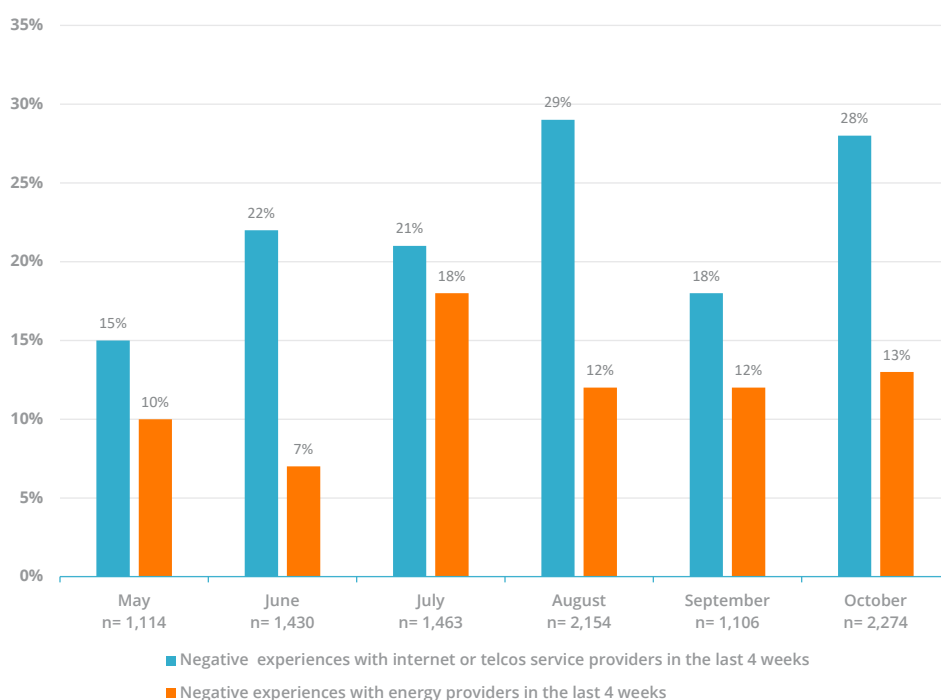
CPRC SURVEY DATA

Consumer Policy Research Centre (CPRC) is conducting an ongoing research initiative, *Consumers and COVID-19: from crisis to recovery*, including a monthly nationwide consumer survey, collecting and analysing the experiences, behaviours, expectations and challenges of Australians from May to December 2020.² This has included data on people's interactions with telecommunications services.

With many more people staying at home this year, including those in isolation and

lockdown, people have been reliant on telecommunications services. Research by CPRC shows that a higher proportion of people have had negative experiences with their telco provider than those who have had negative experiences with other essential service providers, such as their energy provider. These negative experiences include long wait times, not being able to contact their provider or resolve their issue and poor or unhelpful services.

2020: NEGATIVE EXPERIENCES IN THE LAST 4 WEEKS

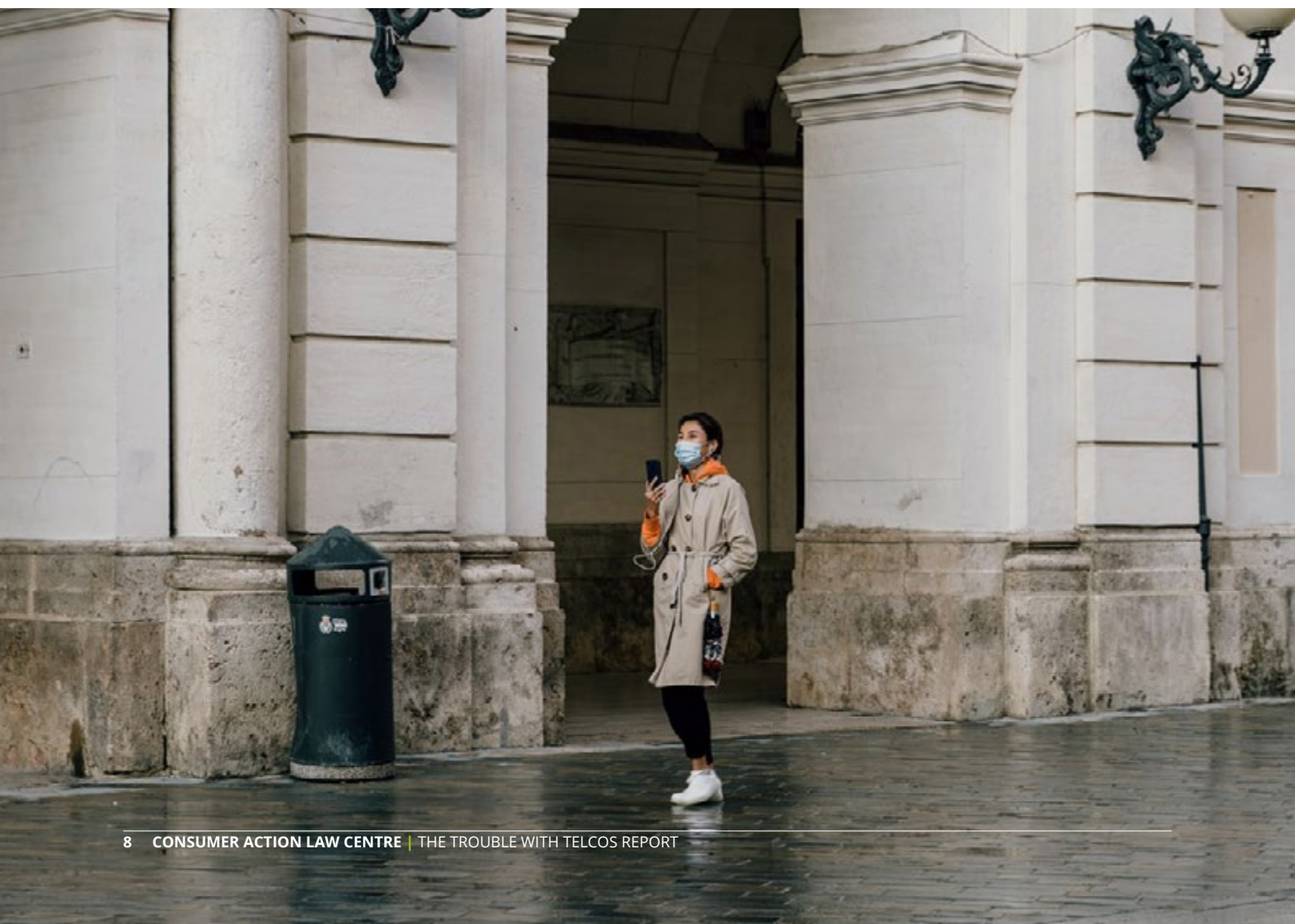


DATA FROM CPRC
Base: Australians aged 18+ (n=)

2020: TYPES OF NEGATIVE EXPERIENCES WITH TELCO PROVIDERS IN THE LAST 4 WEEKS

	MAY	JUN	JUL	AUG	SEP	OCT
n=	1,114	1,430	1,463	2,154	1,106	2,274
Total with negative experiences	15%	22%	21%	29%	18%	28%
Could not understand how to contact them / resolve my issue	3%	6%	4%	7%	5%	8%
Could not navigate the website / phone system	5%	4%	4%	8%	4%	7%
Wait times on the phone / live chat / email were too long	9%	14%	12%	17%	10%	15%
Provider was unhelpful / I received poor service	4%	7%	6%	9%	5%	9%
Felt misled by the information provided by my supplier	3%	4%	3%	6%	3%	6%
There was an unfair term / condition in my agreement (e.g.: exit fees, penalties, hidden costs)	2%	2%	4%	4%	3%	4%
Had other type of negative experience	3%	5%	3%	6%	4%	5%
No negative experience or issues	30%	24%	28%	23%	30%	24%

DATA FROM CPRC
Base: Australians aged 18+ (n=)



03

TELCOS HAVE SIMPLY NOT BEEN CONTACTABLE

Some calls to Consumer Action revealed the difficulties people experienced trying to get in touch with their provider. It is not as simple as that, however. Often, these calls were also related to unaffordable telco bills, whether for the call and data plan service or for the mobile or device payments. Being unable to contact telco providers to request financial hardship assistance, or even to simply change a payment method, resulted in dire consequences for some, with threats of or actual disconnections or restrictions to service. This reflects the findings of the Telecommunications Industry Ombudsman *Systemic Investigation Report: Impacts of COVID-19 on phone and internet complaints*, released in July 2020, where 'Jessica's case study' describes her experience of being threatened with service restriction although she had been attempting to contact her telco online about a bill extension for weeks.³ Leo's story, from a caller to the National Debt Helpline, is similar.

LEO'S STORY

Leo (name changed) contacted the National Debt Helpline in early April 2020 because he was struggling to pay his phone bill under contract with a major telecommunications provider. He was also behind in rent. He had recently suffered a relationship breakdown and had lost his job earlier in the year, and was experiencing mental ill-health due to these events.

Leo was receiving Newstart at the time of his call. He said he had also received a COVID-19-related stimulus payment, which he used to buy food, pay some rent and bills.

Leo said he had already managed to organise affordable payment plans for his gas, water and electricity. He also had organised a payment arrangement with his real estate agent.

Leo said he was more than \$750 in arrears on his phone bill, but that he had been informed that the phone provider's hardship team was not contactable due to COVID-19 related-restrictions. He attempted to visit the provider's retail premises, but this was also closed.

We referred Leo to a financial counsellor to assist in organising a hardship arrangement with the phone provider.

Many telcos were difficult to reach at the start of the pandemic, when overseas call centres were shut down. But this has not improved as much as expected despite onshoring of operations. The Telecommunications Industry Ombudsman Quarterly Report Data from July to September 2020 shows a small increase in complaints about a provider being uncontactable (4,088 complaints) compared to data for April to June 2020 (3,992 complaints).⁴

In particular, Belong (a division of Telstra) has and continues to be difficult to access, with no working phone number available for people to contact the company through at least July 2020. As of November 2020, Belong now lists a phone number within its Complaints Handling Process to request a call-back, but it suggests that customer must have contacted Belong through online methods first.

Between March and July 2020, Consumer Action received contact from 17 different people who said they were unable to reach Belong at all. This included :

- one person who said they were disconnected, while their 3 school-aged children were unable to access remote schooling from home, because they were not able to resolve a simple administrative payment issue
- one person who said their account was direct debited by Belong although they said they have not been a Belong customer for a year, which caused them financial hardship as they had no money in their account to pay for other household expenses including food
- multiple people who said they waited longer than the advertised 24-hour response time⁵ when sending Belong an online request
- multiple people worried about disconnection after they were unable to contact Belong to change their payment details, including people who said they had been trying to get in touch with Belong for days
- one person (who had lost their job due to COVID-19) said they had attempted to call Belong for about two weeks to transfer their home internet when they moved .



04

TELCOS FREQUENTLY REFUSING APPROPRIATE HARDSHIP ARRANGEMENTS

2020 has been a difficult year for many people, including people who were not struggling to pay their bills in previous years. At the same time, people have had to increase their data usage⁶ and increase reliance on telco products and services to ensure connectivity with work, loved ones, school, medical and health services, and government services. Telecommunications services are essential, but the costs of these services and devices are not cheap, with many people unable to afford this essential service.

Despite the rhetoric during 2020 that everyone is pulling together, telcos, on the whole, failed to meet community expectations when it came to assisting people experiencing financial difficulty to stay connected.

Telcos are supposed to offer financial hardship arrangements for people doing it tough—measures loosely defined in the update of the Telecommunications Consumer Protection Code (TCP Code) in 2019.⁷ However, when compared to other essential service sectors, such as energy, the financial hardship requirements for telcos are far less protective and less practical for actually assisting people to stay connected.⁸

Although the rules are clearly deficient, the industry failed to lift standards during 2020. In fact, some of the early and helpful responses to the effects of the COVID-19 pandemic from individual major telcos, such as pausing all disconnections and service suspensions,⁹ were watered down after the

industry and Government Joint Statement of Principles (the COVID-19 joint financial hardship principles) were published on 17 April 2020.¹⁰ The principles offered only murky commitments, and little additional protections for consumers.¹¹

Significantly, the COVID-19 joint financial hardship principles left the decisions on financial hardship and disconnections up to the telcos. The principles state people should not be disconnected, but only if they are compliant with their financial hardship arrangements—but there is no requirement for telecommunications companies to offer fair, affordable or reasonable hardship arrangements with which their customers are able to comply. While industry guidelines were published in 2017, these do not amount to mandatory standards and have not been updated since the release of the current TCP Code in 2019.¹²

Throughout 2020, our financial counsellors and lawyers have heard callers say they have not been offered hardship arrangements by their telcos despite their genuine financial hardship.

The telco industry's lack of effective support for people through the COVID-19 pandemic is evidence of the requirement for a modernised regulatory framework that meets community expectations of an essential service. Luna's story provides an example of this.



LUNA'S STORY

Luna (name changed) contacted the National Debt Helpline in early July 2020, as she and her partner couldn't pay their bills and had used all of their savings. Luna was on the JobSeeker payment. This is what she told us:

Luna and her partner moved house to a Melbourne suburb just as her new postcode went into COVID-19 lockdown (in early July 2020). She and her partner were also required to quarantine for 14 days due to being sick. They had hardly anything, not even a washing machine.

She had accessed a Centrelink advance and assistance for some material aid from the Red Cross.

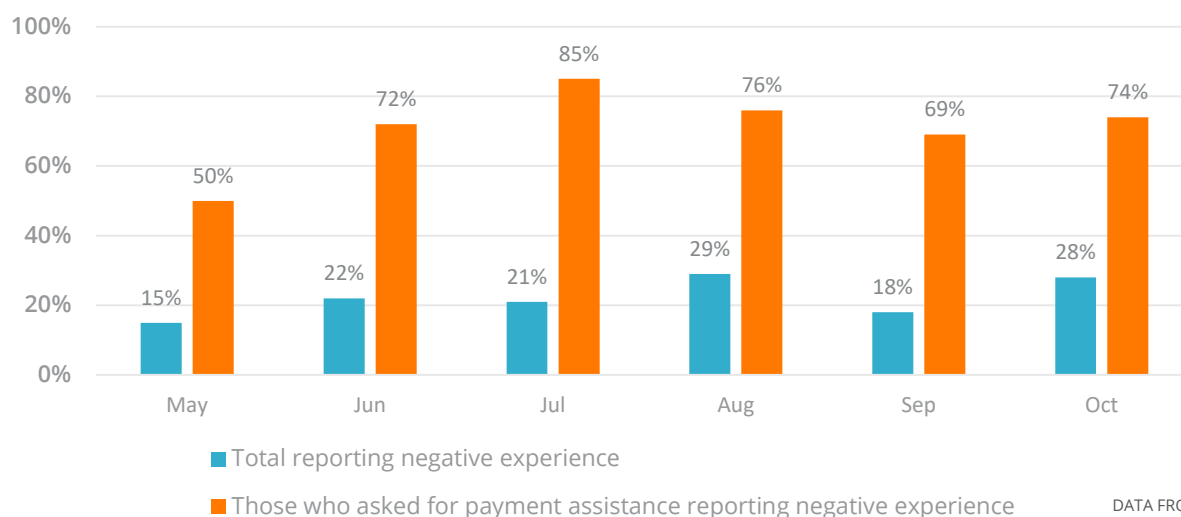
Luna said her phone bill was more than \$1,000 and that Telstra had restricted her service. She said she had called Telstra and was told the matter was 'not exceptional' and to send a message, and the call had hung up. She had also gone into two different branches but was told they couldn't help.

Our financial counsellor provided Luna with information and advice about her rights and options.

CPRC's data shows a dismal response from telco companies to requests for payment assistance, with significantly higher percentages of people having negative experiences when seeking payment assistance from their telco, compared to speaking with their telco about other issues.

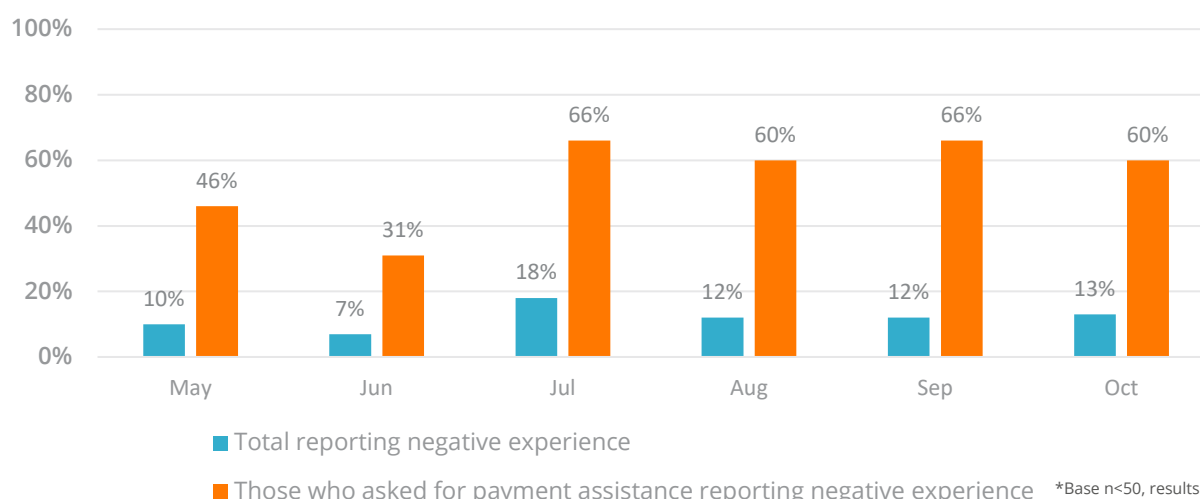
2020: NEGATIVE EXPERIENCES WITH INTERNET OR TELCO SERVICE PROVIDERS IN THE LAST 4 WEEKS *Total vs Asked for payment*

	MAY	JUN	JUL	AUG	SEP	OCT
Base: Australians aged 18+ (n=)	1,114	1,430	1,463	2,154	1,106	2,274
Base: Australians aged 18+ who asked for payment assistance (n=)	22*	44*	81	105	28*	117



2020: NEGATIVE EXPERIENCES WITH ENERGY PROVIDERS IN THE LAST 4 WEEKS *Total vs Asked for payment assistance*

	MAY	JUN	JUL	AUG	SEP	OCT
Base: Australians aged 18+ (n=)	1,114	1,430	1,463	2,154	1,106	2,274
Base: Australians aged 18+ who asked for payment assistance (n=)	36 *	47*	111	101	56	128



Negative experiences when requesting payment assistance appear to be much more common in relation to telcos than energy providers, according to CPRC data, for June, July, August and October 2020. The gap narrowed in September 2020; however, responses about negative experiences when requesting payment assistance in both sectors remained well above 50%, and has widened again in October.

Katy's story below is another example of the telco industry's poor response to hardship.

KATY'S STORY

Katy (name changed) is an Aboriginal woman who lives in regional Victoria and who has recently gained custody of her grandchildren. She called our National Debt Helpline in September 2020 regarding issues she was having with Telstra. This is what she told us:

Katy is currently receiving Centrelink payments because the Covid-19 emergency has impacted her ability to work. Her Telstra bills were about \$400 per month, which she has been struggling to pay now that she is not working. Katy disconnected her Foxtel service, however her bills increased to approximately \$500 per month.

Katy said she has two Telstra bills because Telstra suggested, and, in fact, pressured her to put her daughter-in-law, Silvie's (name changed), mobile and internet bundle in Katy's name. This was because Silvie had no formal ID, and despite the fact that Katy was not using Silvie's services. Silvie intended to get the services for her daughter (Katy's granddaughter).

Silvie is now incarcerated, so Katy is paying for it.

She tried to speak with Telstra's hardship team but she has been getting the 'ring around' and no suitable hardship options have been made available to her.

On the advice of our Financial Counsellors, Katy called the Telecommunications Industry Ombudsman (TIO) to lodge a complaint but was not happy with their response. She is upset and is feeling very anxious about how she will be able to keep paying the huge bills.

Consumer Action lawyers are now assisting Katy.



Consumer Action has received many calls from people during 2020 who told us:

- they were offered only an unaffordable hardship arrangement (such as a \$200/fortnight payment plan), or
- they were not offered any hardship arrangements at all,
- their payment plan proposals were flat-out rejected,
- their service was restricted while they were attempting to organise assistance,
- they were threatened with disconnection,
- they were threatened with pursual by debt collectors, and
- they were spoken to insensitively and were made to feel inferior during their conversations with their telco.

One person told us they were on a 4-year payment plan with a major telco, but the telco suggested a full and final settlement on the basis of them accessing their superannuation. We note that advising a person to access their superannuation early generally requires an Australian financial services licence.

These calls to Consumer Action related to both large and small telcos.

05

A LACK OF HARDSHIP ASSISTANCE LEADS TO INCREASED DEBT

ISABELLE'S STORY

Isabelle (name changed) lives in metropolitan Melbourne and contacted our legal advice line in September 2020, during the COVID-19 Stage 4 lockdown. She lives with intellectual and physical disabilities and mental illness. Isabelle's income comes from the Disability Support Pension and she has a disability support worker.

Isabelle told us she feels she has been financially abused by her former housemate, and felt she had to leave her government rental housing as a result. She has been in hospital for a few months, and is trying to find another place to live.

Isabelle has been an Optus customer for some time. In early August 2020, Isabelle went to an Optus store and signed up for an iPad device plan for herself. Isabelle was still living with the housemate, who then asked Isabelle to sign up for a tablet for her as well, and told Isabelle she'd pay her back.

Three days later, Isabelle entered the same store with the housemate. The housemate picked out the tablet and Isabelle signed up for it, telling the salesperson it was for the housemate. Isabelle said she wasn't told how much the total cost would be—she was just asked for ID and a credit check.

Isabelle said her September bill was approximately \$500. This is not affordable for her.

Isabelle said her former housemate was only paying at most for a bit more than half of the tablet costs but she won't give it back to Isabelle, and the screen was cracked. In October, Isabelle said she has spoken to her former housemate a few times, but each time the conversation ends in abuse.

Isabelle said she called Optus to complain, but was told she would have to pay an \$800 cancellation fee. She has used a buy-now-pay-later provider that charges monthly fees to pay her latest bill as Optus only offered 3 weeks of hardship to pay off the \$500 September bill.

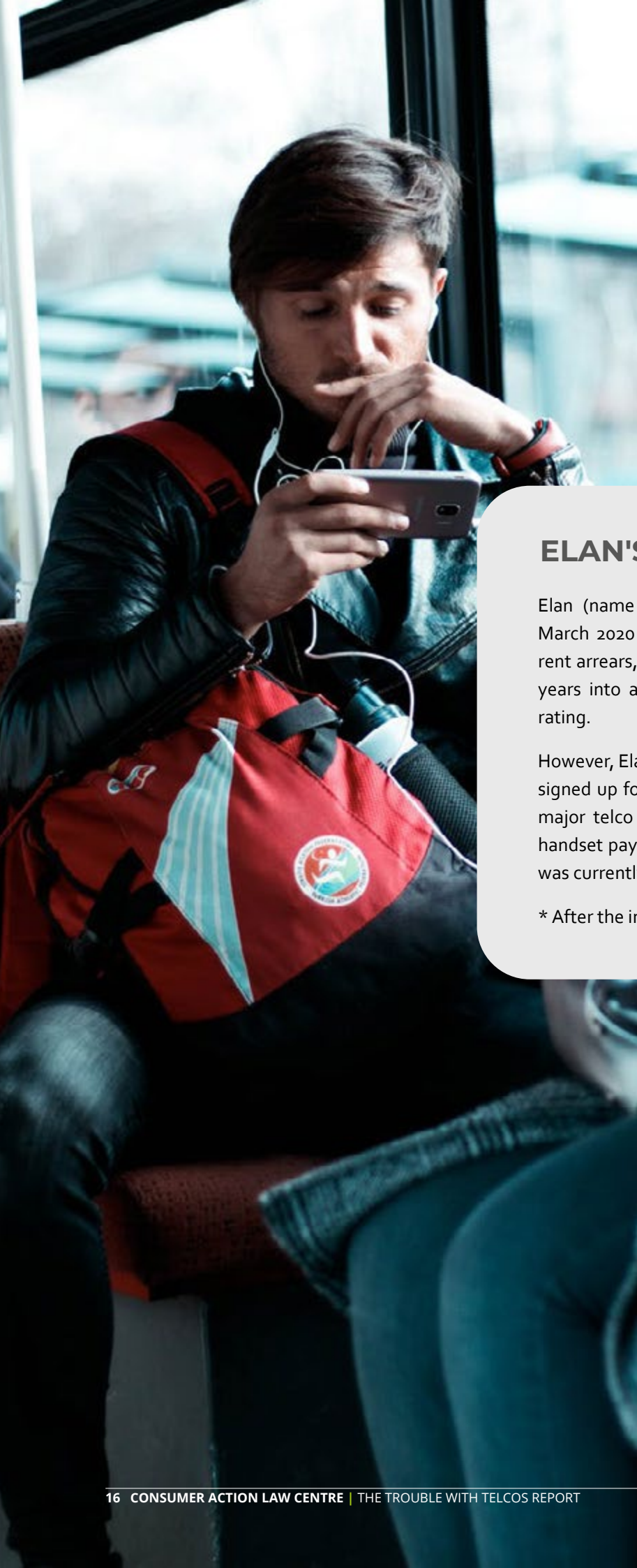
We gave Isabelle advice about her legal rights against Optus, over the phone, while she has been in hospital. We have also referred Isabelle to a financial counselling service for support and advocacy.

Rather than receiving appropriate financial hardship assistance, people have told Consumer Action they are taking on debt or asking friends or family to help them pay their bills.

For example, Isabelle turned to buy-now-pay-later to cover the costs of her bill as she was not offered an effective hardship option from her telco, despite the device not being for her benefit, which was an indication of economic abuse during the contract sign-up process.

CPRC found through their survey data that an increasing percentage of people have been relying on debt (credit cards or buy-now-pay-later) to handle household expenses, rising from 26% of people surveyed in July to 29% of people surveyed in August 2020.¹³

Li's story (on page 23) shows another example of using credit to pay when appropriate hardship assistance was not offered.



ELAN'S STORY

Elan (name changed) called the National Debt Helpline in early March 2020 about a number of payment difficulties, including rent arrears, his phone bill and utilities. He said he was also two years into a Part IX debt agreement, which affects his credit rating.

However, Elan also told our financial counsellor that he had been signed up for a phone and internet bundle in late 2019* with a major telco for approximately \$200 per month, not including handset payments, which is not affordable for him. Elan said he was currently borrowing money from his friends and family.

* After the implementation of the 2019 TCP Code.

Elan's story shows how people have had to rely upon their friends and family to help pay their bills during 2020, including people who likely never could have afforded what was sold to them.

06

REDUCING SERVICES OR SWITCHING PLANS

People across Australia have taken a number of actions to handle the increased pressure of paying their telco bills during 2020. CPRC has captured the following data, indicating the percentage of people that have taken action to help manage the cost of these bills. In August and October 2020, 20% of people surveyed or more

had taken action, including switching plans and/or providers, cancelling services or contracts and asking for payment assistance. This is a significant proportion of people who have taken action to be able to better afford this essential service.

2020: CONSUMER ACTIVITY IN THE LAST 4 WEEKS REGARDING INTERNET, MOBILE AND TELEPHONE BILLS

		MAY	JUN	JUL	AUG	SEP	OCT
	n=	1,114	1,430	1,463	2,154	1,106	2,274
Took action		12%	14%	18%	20%	12%	22%
Switched to a different plan with my current mobile / internet provider		5%	6%	9%	8%	6%	10%
Switched to a different mobile / internet provider		3%	4%	4%	6%	4%	5%
Asked for payment assistance (payment plan, deferral, waiver)		2%	3%	5%	5%	3%	6%
Applied for a relevant government concession		1%	3%	3%	4%	2%	4%
Cancelled service / contract		1%	3%	3%	6%	2%	5%
Had to miss a payment		1%	2%	3%	5%	3%	7%
None of the above		87%	85%	81%	78%	85%	76%

DATA FROM CPRC
Base: Australians ages 18+ (n=)

As the data indicates, the most frequent actions taken by people have been switching plans and/or providers. While switching is generally a good option to save costs, the problem faced by callers to Consumer Action is that many telcos charge hefty cancellation fees, which can sometimes be the equivalent of paying out the contract in full. Charging exit fees where people who switch to a pre-paid option to better manage their money, for example, is problematic, noting the TCP Code financial hardship options include: transferring service (including pre-paid service);¹⁴ agreeing on an alternative arrangement, plan, or contract (including pre-paid service);¹⁵ and discounting or waiving of debt.¹⁶ The charging of early termination fees when a person switches or reduces a service due to financial hardship is a particularly poor response during the COVID-19 emergency, and is another example of why modernisation of the telco regulatory framework is required.

Andrew's story is one such example:



ANDREW'S STORY

Andrew (name changed) is in his twenties and lives in Melbourne.

In approximately October 2019, Andrew entered a \$50/month post-paid mobile plan with Optus, with his own handset. He signed something in the store, but was not provided with a copy of it and says he was not told about any cancellation fees if he chose to end the contract.

Andrew was working in hospitality, but was stood down from his job in March 2020 due to COVID 19. Because he is on a Bridging Visa, he is not eligible for government income support and has no income.

Andrew contacted Optus both in store and online to explain he had lost his job and was unable to pay his bill. He was never offered a hardship plan.

He also contacted Optus through their online live chat to ask if he could switch to pre-paid service and if there would be any fee to do so. He was told he could switch but was not advised of any fees. He also went to the Optus store and was told the same, but that he would have to organise billing issues through the Optus online live chat.

Andrew switched to a pre-paid service. Shortly after this, in July, he received a bill stating that he owed nearly \$90. Andrew went to the Optus store to ask what the charge was for and was told by a staff member that it was associated with changing to a pre-paid plan.

In August 2020, Andrew received a notice from a debt collector demanding nearly \$100 in relation to his Optus account. Andrew contacted the National Debt Helpline because he was unable to pay.

Consumer Action helped Andrew to contact Optus by assisting him to write a letter. Optus responded by offering Andrew 50% off the bill but did not respond to any of his concerns about its failure to inform him of exit charges or potential breaches of the TCP Code.

YING'S STORY

Ying (name changed) is 72 and is receiving Age Pension. She lives in metropolitan Melbourne. She told us the following:

When NBN became available in her area, Ying joined Optus in an Optus store in approximately September 2019 (note from *Consumer Action: after the implementation of the 2019 Telecommunications Consumer Protection Code*). She requested her home phone, mobile, and computer to be all on one account and said she was offered a \$69/month plan. She said the salesperson also offered her a tablet at \$50 per fortnight, which she agreed to.

Ying told us she was not asked about how she would be able to pay for the contracts and that she didn't have a chance to read them; she had trusted what the salesperson had said.

Ying told us that when she got her bills, she saw she had been charged for four mobile phones when she only had one. She rang Optus to advise them of the mistake but was told she should have read the contract and that she had agreed to this. Ying was also being charged \$10 for every gigabyte she was over the plan limit and was not advised about this. Ying paid the \$300 bill she had received and cancelled the contract within a month, with the exception of the tablet contract, which she agreed to keep.

Ying said she was then charged \$350 for breach of contract.

Ying complained to the Telecommunications Industry Ombudsman (TIO), after which Optus contacted her saying she had signed the contract and, as she had cancelled early, she was charged. She said Optus again reiterated she should have read the contract.

Ying said she contacted the TIO again and agreed to pay the balance of the tablet in payments of \$50/fortnight.

When Ying contacted the National Debt Helpline (NDH) in May 2020, she said she has been trying to pay for the tablet, but was finding it hard to keep up. She told us she was unable to pay for one bill because she had to pay for a plumber, and she is now being billed by her new provider and Optus. Ying said she had \$90 to last her the next week. She said she had also just received an Optus bill for \$495.

Ying said she rang Optus to find out how much more she owed on the tablet and she was surprised with the amount they told her—Ying said she was told her \$50/fortnight payments was attributable to the cancellation fee rather than the tablet. She told them that wasn't her agreement. Ying stopped payments once she paid the remaining amounts she calculated she should have owed for the tablet.

In Ying's story, Ying discovered she was being charged for cancellation fees in 2020 that she said she couldn't afford and hadn't agreed to pay at dispute resolution.



07

TELCOS FAIL PEOPLE STRUGGLING FINANCIALLY PRIOR TO THE COVID-19 EMERGENCY

JAMES' STORY

James (name changed) is a young Aboriginal person living in metropolitan Melbourne. He was referred to the National Debt Helpline in April 2020, during the COVID-19 pandemic. He is studying for a Cert III and is receiving the JobSeeker payment.

James has a disability, for which he receives the Mobility Allowance.

James also told us about family violence he has experienced from his father.

James said he was being contacted by debt collectors for multiple debts, including: buy-now-pay-later, a payday loan, a consumer lease and a Telstra debt of nearly \$3000, from 2017. James told us the following about his Telstra debt:

In 2017, when he was approximately 20 years old, James entered a 24-month contract for a Samsung Galaxy S8, which included an insurance policy, in-store at a JB Hi-Fi outlet. The salesperson conducted a credit check and was aware James was on Centrelink. The monthly cost was \$80, which James felt was affordable at the time.

James lost the phone two months later and his insurance claim was declined. James said he was requested to pay out the contract. James complained to the Telecommunications Industry Ombudsman (TIO), but said the TIO responded that the claim had been denied due to the SIM still being active in another phone, and the account remaining active with a usable number.

James said the nearly \$3000 Telstra debt is on his credit file as a default.

James updated us in October 2020 that Panthera Finance has been harassing him about the Telstra debt and that he has been receiving more calls about it during the COVID-19 emergency in Victoria, which has been adding to his stress in what is already a very difficult time.

James' story is indicative of another issue unaddressed by the government and industry COVID-19 joint financial hardship principles—that people who were already in arrears may still be doing it tough. There has been no leniency for people whose telco debts arose prior to March 2020, even though the COVID-19 emergency has negatively affected their lives as well those of everyone else. Debt collection for all arrears, including those accrued prior to 2020 and not just those accrued during the pandemic lockdown, should have been paused for people who could not afford to pay during this emergency.

08

TELCOS CONTINUE TO DISCONNECT OR RESTRICT PEOPLE'S SERVICES DURING THE COVID-19 EMERGENCY

The telecommunications industry and government oversight has done little to protect people from losing access to this essential service, despite it being the only means for people to connect during isolation, lockdown and border closures.

A number of companies, including Telstra, Optus, Vodafone, and Aussie Broadband, initially committed to no disconnections or service suspensions for people struggling to pay.¹⁷ Most of these commitments were set to be reviewed by the end of April 2020. However, the COVID-19 joint financial hardship principles were released

on 17 April 2020, hinging protection from disconnection on people's 'compliance' with their hardship arrangements. The original commitments of those telcos were abandoned.

Callers have told us about numerous threats of disconnection from a number of telcos, with a few actually having their services disconnected or restricted (making it practically unusable) because they couldn't pay. This is a harsh response of an essential service, which has had significant consequences for real people, such as in Ulka's case, below.





ULKA'S STORY

Ulka (name changed) called the National Debt Helpline (NDH) in September 2020 during Melbourne's Stage 4 COVID-19 lockdown. This is what she told us:

Ulka lives in metropolitan Melbourne. She has been experiencing mental ill-health and is pregnant. She is currently living on the Youth Allowance and COVID supplement.

In July 2019, Ulka signed up to a major telco provider for mobile service and a handset on a 36-month contract, for approximately \$115 per month (including monthly warranty costs). She was working full time at that time.

Ulka said she tried to call her doctor for some test results before contacting the NDH, but she couldn't make any outbound calls. She contacted her provider and found out her service had been restricted. When she advised the provider that she was out of work and was pregnant, and needed to be able to call the doctor, the customer service representative told her she would need to pay her nearly \$1000 phone debt in full to remove the restriction on her phone service.

Ulka said she couldn't afford the debt but was willing to go on a fortnightly payment plan. The provider rejected this offer. She had to ring the provider back (and re-tell her story) a number of times as she said they kept hanging up on her.

Ulka said she was very upset so decided she wanted to cancel her service with the provider. She was advised that if she cancelled, she would have to pay out the handset and her current debt. The provider referred her to the NDH, but said her service would soon be cancelled.

Ulka told us she was feeling overwhelmed and could not pay the phone bill and pay rent. She said she may end up homeless.

After speaking with our NDH financial counsellor who has referred her to our solicitors, Ulka spoke to her telco provider again and mentioned that she would be getting legal advice. She said it sounded like they may have spoken to a manager, and that they could potentially organise a payment plan for her.

LI'S STORY

Li (name changed) lives with his partner and two children in a rental home in Melbourne. Li worked as a taxi driver until March 2020 when he lost work due to the COVID-19 emergency.

When Li contacted the National Debt Helpline in May 2020, he said he had applied for the JobKeeper payment but this had not yet started.

Li spoke to our financial counsellor about energy relief and his phone and internet situation. Li said he had been on a payment plan for his energy provider but this was on hold due to COVID-19.

Li told us that his phone and internet provider, TPG, had disconnected him. Li said the first letter he received from TPG was a termination letter. He tried to contact TPG but wasn't able to get through by phone. Li told us TPG didn't respond to email or online chat. When Li finally spoke to TPG, he said he was told he would need to pay to be re-activated, so he used his credit card to pay.

Li said he had approximately \$1,000 in credit card debt at the time of his call to us. Li said there had always been a gap between his income and expenses, and that he had been out of work for two months when he called.

Li said he had not yet paid the current month's phone and internet bill (approximately \$70). We referred Li to a financial counselling service for support and advocacy.

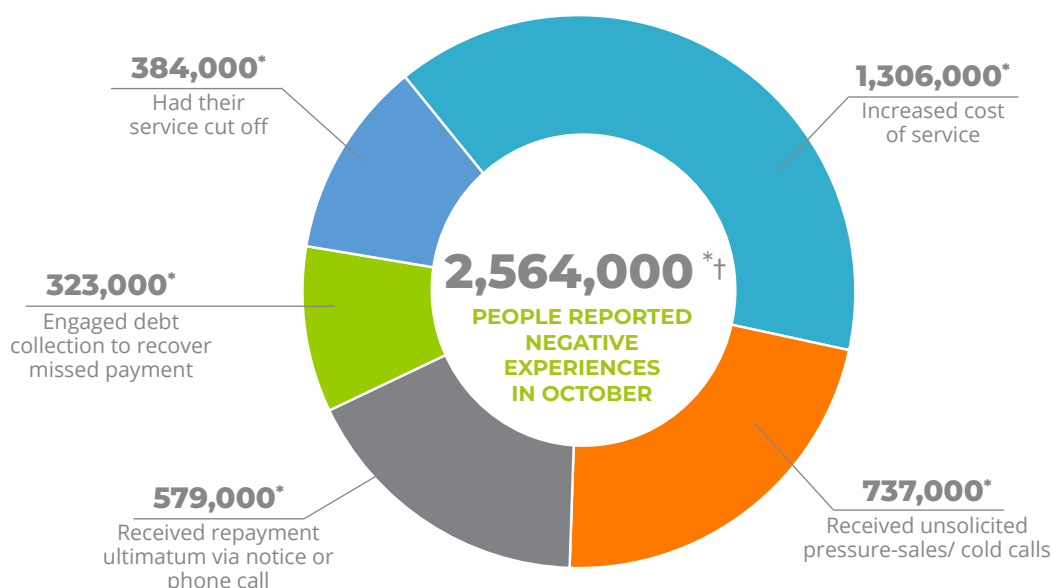
In Luna's example (on page 12), Luna and her partner had their service restricted due to non-payment while they were also dealing with quarantine and a move into one of Melbourne's early 'lockdown suburbs' in July 2020.

Li's story is an example of a family with children being disconnected after loss of income due to COVID-19.

Telcos have not stopped all disconnections or service restrictions during COVID-19, despite providing an essential service. In CPRC's October 2020 survey results, 2% reported that their telco/internet provider had stopped providing them a service. When extrapolating this out to the broader Australian population, it suggests more than 350,000 people were cut off by their telco over this four-week period.

2020: NEGATIVE PROVIDER ACTIONS, OCTOBER

Base: Australians aged 18+ (n=2,274)



DATA FROM CPRC

*Extrapolated to Australian Population from n=2,274

† Discrepancy between this figure and figures relating to type of experience is due to some respondents likely reporting more than one negative experience

09

POOR TELCO DISPUTE RESOLUTION PRACTICES CAUSE FURTHER DETRIMENT TO PEOPLE DURING THE COVID-19 EMERGENCY

Beyond poor responses to people struggling to pay and doing it tough, telcos have continued to cause distress due to poor dispute resolution practices. The following stories are from people being assisted by Consumer Action. These poor responses to dispute resolution, and the further detriment they have caused to people experiencing vulnerability (which has been exacerbated during the

COVID-19 emergency), are examples of greater systemic problems within the telco sector. In order to improve these practices, the Australian Communications and Media Authority (**ACMA**) should be given greater enforcement powers, and should conduct more compliance and enforcement work, to ensure telcos do the right thing by the community.



CHLOE'S STORY

Consumer Action began directly assisting Chloe (name changed), a woman in her 60s, in October 2020 after providing support to Chloe's financial counsellor in relation to Chloe's bank and telco debts. Chloe has been receiving community advocacy support for her issues with Telstra since early 2019.

Chloe lives in regional Victoria with her husband and son. Her husband has early onset dementia and her son has a disability and receives the disability support pension. They both require a reliable data service to send information to their medical devices. Chloe's son requires a landline with priority assistance. Unfortunately, the family has been without this service since 2019 as part of ongoing issues with Telstra.

Chloe told Consumer Action that she has experienced difficulty sleeping because this has been such a difficult time. This is a summary of her experience:

Chloe was sold a Telstra bundle, including priority assistance, a landline, three mobile phones, an iPad, Foxtel and internet. She could not afford them, so she attempted to access hardship assistance. Instead she was contacted by the collections department, so she accessed financial counselling services.

Chloe's financial counsellor assisted her to make a TIO complaint in approximately April 2019, when Chloe allegedly owed more than \$2,500 on the account.

After multiple TIO complaints, there was no final resolution and Chloe's file was closed by the TIO in September 2019.

Chloe had already cancelled the iPad and Foxtel, and switched to pre-paid mobile services. Chloe was deflated by Telstra's refusal to accept the payment plan proposed by her financial counsellor, especially after sharing extremely personal medical information with Telstra. Telstra set a date by which it would cancel the internet and landline, along with a debt waiver proposal and a suggestion to look into Belong internet services (a subsidiary of Telstra).

Chloe's financial counsellor negotiated the Telstra debt waiver.

However, Chloe was precluded from accessing post-paid Telstra services after accepting the waiver, including internet and a priority assistance landline, which was problematic because Telstra is the only priority assistance provider in the regional area where Chloe and her family live.

Furthermore, Chloe started to receive overdue notices again from Telstra in May 2020, during the COVID-19 emergency. The Telstra debt had also been listed as a default on Chloe's credit report. Chloe's financial counsellor contacted Telstra, and was told the default listing would be removed and the debt waiver wasn't properly entered into the system. However, the issue remained unresolved.

Chloe again started receiving contact from a debt collector on behalf of Telstra during the COVID-19 pandemic, seeking approximately \$2,000.

Chloe's financial counsellor attempted to complain to the TIO, but the complaint was not accepted.

Chloe still does not have access to priority assistance for her landline, a medical necessity for her son, and has concerns she will continue to be chased for the debt that was supposed to have been waived.

Consumer Action is assisting Chloe to resolve this.

FATIMA'S STORY

Fatima (name changed) contacted the National Debt Helpline (NDH) and our legal advice line in July 2020 about poor telco conduct affecting her 80-year-old father, Roger (name changed), who has Alzheimer's and dementia and who lives in outer Melbourne.

Roger (named changed) is unable to speak in clear sentences due to his dementia. He is on a Centrelink pension. He is a long-time Telstra customer, so when Fatima noticed he also had bills from Optus, she wanted to check why.

Fatima discovered that in 2019, Roger accidentally entered an Optus shop, which was next to the Telstra shop that he meant to go into. The salesperson at Optus signed him up to a phone plan.

Roger continued on his Telstra plan as well, and went back to the correct shop the next week.

Roger received three bills from Optus, which he immediately went into the Optus store and paid. Fatima said he was very confused and scared by the bills; he didn't understand what they were for.

Fatima went to the Optus store in January 2020 to ask, but was told they couldn't deal with her due to privacy. She was forced to drive her elderly and disabled father to the store to get authority, even though it was obvious he had issues communicating. A young Optus staff member told her that he had signed Roger up to the contract, and admitted Roger had looked 'a bit off' but said words to the effect of 'I can't determine if someone has dementia'.

Fatima said the Optus representative refused to refund the amounts paid, so she requested they call the Optus head office while they were present to cancel the contract and provide a refund. This process went on for two hours, during which time Roger collapsed in the store. Optus then promised they would cancel the contract and refund Roger the money paid. They

also made Fatima the third-party authority on the account. The next day, Fatima received 3 text message notifications saying that the refund requests had been denied because the account was not in credit.

Roger went into care in February 2020 and Fatima was granted power of attorney for him soon after.

Fatima told us that she went back to the store in March 2020 with the VCAT Power of Attorney orders and was assured again by Optus that the amounts paid by her father would be refunded.

However, when Fatima reached out to the NDH in early July 2020, they had just received a threatening letter from Optus alleging an overdue final bill of approximately \$60.

A few weeks later, Fatima received a letter and call about Roger's account from a debt collection agency engaged on behalf of Optus. She said they were nasty and bullying during the call, and when she explained the situation they said she would have to take it up with Optus.

Roger was in a locked down dementia ward during Melbourne's Stage 4 COVID-19 lockdown. Fatima told us in August 2020, during the lockdown, that life had 'gone sideways' for him.

She said she was exhausted and that she's fed up with Optus.

Consumer Action lawyers are providing assistance on this matter and, as of November 2020, have experienced difficulty accessing documents from Optus in a reasonable timeframe. Whilst Optus has waived the outstanding balance on the account, this has not resolved Fatima's complaint, including about the payments that Roger had already made to Optus.

CONCLUSION: WHAT NEEDS TO CHANGE

These stories are a sample of those we have heard in 2020. The evidence in this report demonstrates the consumer harm that occurs under the current telco regulatory framework.

This has been a difficult year, which has emphasised the importance of telco services more than ever before. But regulation of the sector in 2020 lags far behind its central role across our lives.

The regulatory framework for telecommunications was created in an era of a single provider providing voice-only services across the country. Today, the telco industry is diverse, with hundreds upon hundreds of different providers offering phone, internet and related services. The regulatory regime of years gone by, which was based in self-regulation, has simply not kept up.

Currently, the industry itself set the primary rules for consumer protection through the TCP. Breach of these rules does not immediately enable the regulator, the ACMA, to take effective enforcement action—it is required to only use 'light touch' directions or warnings in the first instance.

As we and others have argued,¹⁸ it is essential that this regime be modernised with:

- ensuring consumer protections are in direct regulation developed by an independent regulator
- giving the regulator greater power to license providers, and take enforcement action, including through increased civil penalties
- ensuring there is a focus on consumer vulnerability in the new consumer protections and in the regulator's mandate, focused on ensuring access and affordable services for all

This approach would align the telco sector with other essential services, like energy and water.

Modernisation of telco regulation to reflect the sector's role as an essential service will better protect people, including people experiencing vulnerability due to COVID-19 or for other reasons.

RECOMMENDATIONS

RECOMMENDATION 1.

The self-regulatory industry code-making process must be replaced by a more effective system of direct regulation through the ACMA, to provide the much-needed and overdue consumer protections required in the telecommunications sector.

RECOMMENDATION 2.

Modernise the telecommunications regulatory framework to align with other essential services regulatory regimes, where people are protected by independent, directly enforceable standards backed by an empowered and transparent regulator.

RECOMMENDATION 3.

Genuine consideration must be given to the impact of telco services and conduct on vulnerable consumers.

RECOMMENDATION 4.

Implement a licensing scheme, and effective compliance and enforcement powers, to bolster telco compliance with the rules.



ENDNOTES

1. Minister for Communications, Cyber Safety and the Arts, 'Telecommunications hardship principles for COVID-19' (Media Release, 17 April 2020), <https://minister.infrastructure.gov.au/fletcher/media-release/telecommunications-hardship-principles-covid-19>.
2. CPRC, Consumers and COVID-19: from crisis to recovery, contains a foundational report, monthly snapshots and policy briefings, available at: <https://cprc.org.au/consumers-and-covid-19-from-crisis-to-recovery/>.
3. Telecommunications Industry Ombudsman (TIO), Impact of COVID-19 on phone and internet companies: Systemic Investigation Report, (July 2020) 7, <https://www.tio.com.au/reports-updates/impact-covid-19-phone-and-internet-complaints>.
4. TIO, Quarterly Report: Q1 Financial year 2020-21, p 3, <https://www.tio.com.au/reports-updates/quarterly-report-quarter-1-financial-year-2021>; TIO, Quarterly Report: Q4 Financial year 2019-20, p 3, <https://www.tio.com.au/reports-updates/q4-complaints-reflect-pandemics-impact-phone-internet>.
5. "Raise a support request: Let us know what you've tried so far and how we can help. We'll look into it and respond via email or phone within 24 hours." Accessed 16 November 2020 from <https://www.belong.com.au/support/raise-support-request>, which is the only listed option to get help for mobile issues.
6. Some, but not all, telcos offered extra data at no charge during parts of 2020 for their customers or customers who met eligibility criteria (determined by provider). Some of these offers applied automatically but others had to be proactively requested.
7. Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at Part 7.
8. Further detail is available in our joint September 2020 submission to the Consumer Safeguards Review Part C: Choice and Fairness, in the section titled 'Deficient financial hardship protections' starting on page 16, available at: <https://consumeraction.org.au/telecommunications-consumer-safeguards-choice-and-fairness/>.
9. See further detail on section 8 of this report.

10. Initially released by media release through the Minister of Communications, here: <https://minister.infrastructure.gov.au/fletcher/media-release/telecommunications-hardship-principles-covid-19>. The COVID-19 financial hardship principles and updated releases are now available here: <https://www.communications.gov.au/covid-19-update>.
11. These principles have been reviewed twice since, and re-released in mid-July and mid-October 2020. However, there has been little genuine opportunity for feedback on their effectiveness from consumer advocates and community organisations. The review processes have not been public nor transparent.
12. Communications Alliance, Financial Counselling Australia and Telecommunications Industry Ombudsman, 'Assisting and responding to customers in financial hardship: Principles and practice - guide for telecommunications providers' (2nd ed, April 2017), available at: <https://www.tio.com.au/guidance-notes/financial-hardship>.
13. Consumer Policy Research Centre (CPRC), COVID-19 and Consumers: from crisis to recovery, "Monthly Policy Briefing – August Results" (September 2020) 7, https://cprc.org.au/app/uploads/2020/10/Monthly-Policy-Briefing_September-2020.pdf.
14. Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 7.2.2(a)(iii).
15. Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 7.2.2(b)(ii).
16. Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 7.2.2(b)(iii).
17. E.g. <https://exchange.telstra.com.au/getting-through-covid-19-together/>; e.g. <https://www.optus.com.au/about/media-centre/media-releases/2020/03/optus-update-covid-19-coronavirus-at-24-March-2020>; e.g. vodafone.com.au/media/supporting-customers-experiencing-financial-difficulties-due-to-covid-19; e.g. <https://www.aussiebroadband.com.au/blog/aussie-broadband-announced-covid-19-response/>.
18. Consumer Action, WEstjustice, Victorian Aboriginal Legal Service, Financial Counselling Victoria, Hume Riverina Community Legal Service, Barwon Community Legal Service, and Housing for the Aged Action Group, Submission to the Department of Communications "Consumer Safeguards Review Part C: Choice and Fairness", (September 2020); <https://consumeraction.org.au/telecommunications-consumer-safeguards-choice-and-fairness/>.



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