

TELECOMMUNICATIONS CONSUMER SAFEGUARDS PART C

Choice and Fairness



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Consumer Action Law Centre (**Consumer Action**), WEstjustice, Victorian Aboriginal Legal Service (**VALS**), Financial Counselling Victoria (**FCVic**) Hume Riverina Community Legal Service (**HRCLS**), Barwon Community Legal Service (**BCLS**) and Housing for the Aged Action Group (**HAAG**) welcome the opportunity to provide a submission to Consumer Safeguards Review – Part C - Choice and Fairness (**the Review**).

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

Information about the contributors to this submission is available at **Appendix B**.

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Introduction

Telecommunications are an essential service

1. Consumer Action, WEStjustice, VALS, FCVic, BCLS, HRCLS and HAAG consider it beyond dispute that telecommunications services, including internet services and mobile phones, are necessary for social inclusion and daily participation in essential activities. The ongoing COVID-19 emergency and associated social distancing, border closures, office and school closures, and quarantine requirements have made this painfully obvious. But telecommunications have been an essential service for years.
2. Mobile phone use in Australia is ubiquitous: 95% of adults use mobile phones (of which 80% are smartphones).¹ In 2017, FCVic (then known as Financial & Consumer Rights Council) stated in the *Rank the Telco* report that:

*'basic phone and internet services are essential for financial inclusion, particularly in times of crisis or hardship... when people in hardship are disconnected from phone services, it becomes virtually impossible to meet their other critical needs.'*²

3. Access to telecommunications is essential for people to engage with Government services. Leading the 2020 ranking of the 193 United Nations Member States in terms of digital Government, which captures the scope and quality of online services, status of telecommunication infrastructure and existing human capacity, are Denmark, the Republic of Korea, Estonia, Finland, followed by Australia.³ This, along with Australia's Digital Transformation Strategy,⁴ heralds an expectation that people in Australia will access public services through digital means, particularly through the central myGov online portal.⁵ Even where design performance indicators require inclusivity of people without internet access, measures of success in providing a non-internet alternative rely largely on improvements to services delivered over the phone (e.g. improvements to call waiting times, reduction in call transfers).⁶
4. Mobile phones and the internet are now also necessary for work. In June 2020, South Australian Council of Social Services (**SACOSS**) reported in *Connectivity Costs II: Telecommunications Affordability and Waged Poor Households (SACOSS Report)* that more than two thirds of respondents to their research used their personal devices and plans for work. Significantly, the relevant survey data was captured six months prior to the COVID-19 emergency that has seen vast swathes of Australia move to working from home.⁷
5. The Department's own research body, the Bureau of Communications and Arts Research (**BCAR**), has also already found that *'communications services are essential for everyday activities'* and that *'telecommunications services have become a "necessity good" for households—along with other goods and*

¹ Australian Government, *Australia's Tech Future: Delivering a strong, safe and inclusive digital economy*, (December 2018) 21, <https://www.industry.gov.au/data-and-publications/australias-tech-future>.

² Financial and Consumer Rights Council (now Financial Counselling Victoria [FCVic]), *Rank the Telco: Victorian financial counsellors rank the financial hardship policies and practices of telecommunications providers* (ACCAN, April 2017) 3, <https://accan.org.au/files/Grants/Rank%20the%20Telco%20Report.pdf>.

³ United Nations Department of Economic and Social Affairs, *United Nations E-Government Survey 2020: Digital government in the decade of action for sustainable development* (New York, 2020), 12, available at <https://publicadministration.un.org/en/Research/UN-e-Government-Surveys>.

⁴ Australian Government Digital Transformation Agency, *Digital Transformation Strategy 2018 – 2025*, available at: <https://www.dta.gov.au/digital-transformation-strategy>.

⁵ My.gov.au, which includes access to: Australian JobSearch, Australian Taxation Office, Centrelink, Child Support, Department of Health Applications Portal, Department of Veterans' Affairs, HousingVic Online Services, Medicare, My Aged Care, My Health Record, National Disability Insurance Scheme, National Redress Scheme, State Revenue Office Victoria.

⁶ Australian Government Digital Transformation Agency, *Digital Transformation Strategy: Objective 4 – You will have access to alternatives if you are unable to access service in a digital way*, available at: <https://www.dta.gov.au/digital-transformation-strategy/digital-transformation-strategy-dashboard/objective-4-you-will-have-access-alternatives-if-you-are-unable-access-services-digital-way>.

⁷ Ogle, Greg and Rebecca Law, SACOSS, *Connectivity Costs II: Telecommunications Affordability and Waged Poor Households* (June 2020) 3, 18 <https://www.sacoss.org.au/waged-poverty>.

services such as rent and food' in its 'Affordability of communications services for low income households' Working Paper (BCAR Working Paper).⁸

6. The Government's *Australia's Tech Future* strategy states:

'exclusion from the digital world can exacerbate other forms of social exclusion such as unemployment, low education and poverty... Governments, business and the community all have important roles to play to address the digital divide'.⁹

7. The Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP stated in April 2020:

'Telecommunications services are essential to keeping Australians connected to friends, family and essential services such as telehealth, and enabling us to stay productive for work or study as we spend more time at home in response to social distancing measures'.¹⁰

8. As the Government moves to increase digital inclusion across industries and government services, including increased NBN coverage and telehealth funding, for example, it must ensure people have choice and are treated fairly in their engagement with the digital economy through telecommunications providers.

9. The SACOSS Report shows that waged poor households generally use smart phones and internet at a similar rate and in the same way as average households, including for social networking, as well as regular economic participation activities such as online banking and paying bills.¹¹

10. Even the CEO of the peak industry body, Communications Alliance—which writes the rules for telecommunications in Australia—has acknowledged the centrality of telecommunications to 'everyday life'.¹² As such, telecommunication is not an optional service that people can 'choose not to choose'; this fact necessarily changes the policy and regulatory environment overseeing these services.

11. We are regularly contacted through our advice services about the devastating results of unaffordable telecommunications debt, sometimes the result of poor and unfair selling practices, and poor responses to vulnerability. The numbers tell a similar story, where telecommunications are an increasingly unaffordable percentage of a person's budget.

12. For example, the BCAR Working Paper states that the bottom 10% of households by adjusted annual income spend the most on communications relative to disposable income¹³: 8.3%, versus 3.3% of for an average household.¹⁴ For mobiles, specifically, the divide increases: 6.5% of disposable income for the bottom 10% of households, versus approximately 2% for an average household. Approximately one third of households with smart phones surveyed in the SACOSS Report stated they 'usually' or 'always' experienced difficulty paying for their ongoing phone costs. That number rose to 50% of households when including those that 'sometimes' had trouble paying.¹⁵

⁸ Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Bureau of Communications and Arts Research, *Affordability of communications services for low income households* (Working Paper, 30 April 2020) 7 - 8, <https://www.communications.gov.au/publications/affordability-communications-services-low-income-households>.

⁹ Australian Government, *Australia's Tech Future*, above n 1, 18.

¹⁰ 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>.

¹¹ Ogle, Greg and Rebecca Law, SACOSS, above n 7, 2.

¹² Communications Alliance, *Upgraded protection for Australia's Telecommunications Consumers* (Media Release, 1 July 2019), <https://www.commsalliance.com.au/Documents/releases/2016-media-releases/2019-media-release-14>.

¹³ Income of all members of household minus tax obligations.

¹⁴ Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Bureau of Communications and Arts Research, above n 8, 5–6, 8.

¹⁵ Ogle, Greg and Rebecca Law, SACOSS, above n 7, 3.

13. The data available on mobile phone plans has increased while the price for data has decreased; however, the BCAR found 'these changes have not necessarily led to services being more affordable for low income individuals' because the cost per gigabyte is more expensive on cheaper, low data plans.¹⁶ We have seen from our clients that it is easy and expensive for people to go over their data limits.
14. Financial counsellors surveyed in late 2016 for *Rank the Telco* said post-paid mobiles on 2-year contracts made up the largest portion of their clients' telecommunications debt.¹⁷

But the telecommunications industry is not regulated like an essential service

15. Despite telecommunications being an essential service, there is little choice and even less fairness in the retail relationship between telecommunications providers and consumers.
16. Throughout this submission, we argue the case for direct regulation of the telecommunications sector by an empowered regulator. Such regulation must be developed through a process that is truly a transparent, consultative and has consumer interests at its core.
17. Much of the current regulatory framework is based on the premise that competition within the market will sufficiently incentivise industry to meet community expectations. However, as we set out in our response to Question 1 of this review, this contention has been comprehensively disproved in relation to core essential consumer protection matters, including fairness in selling practices, hardship responses and dispute resolution. These shortcomings have led, and continue to lead, to very significant consumer harm, particularly for people experiencing vulnerability.
18. The current framework of industry-drafted Codes and acutely limited regulator powers has hobbled the regulator's ability to take strong enforcement action. Paltry 'infringement notice penalties' are the cost of doing business for an industry dominated by some of Australia's largest corporations. In our submission, this is at odds with comparable essential service sectors, fails to align with community expectations, and facilitates continued consumer harm.
19. The requirement for direct regulation of the telecommunications sector is now irrefutable. Voluntary industry codes have failed for over 20 years to deliver adequate consumer protection, a shortcoming exacerbated by the practical elevation of telecommunications to essential service.
20. It is time for an overhaul of telecommunications regulation, to create a framework where rules are meaningful, compliance is expected, and sufficient enforcement is available when telecommunications providers treat people unfairly.
21. As well as providing evidence of types of consumer harm arising in the current regulatory framework via snapshots of examples from our casework, this submission makes recommendations in relation to the reforms required to appropriately protect people in the dynamically evolving telecommunications environment.
22. In summary, we argue for the following reforms:
 - Modernise the telecommunications regulatory framework to put consumer interests at the centre of this essential service.
 - Revise section 4 (Regulatory Policy) and Part 6 of the *Telecommunications Act 1997* (Cth) (**the Telecommunications Act**) to remove industry 'self-regulation', in favour of direct regulation through independent standards.

¹⁶ Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Bureau of Communications and Arts Research, above n 8, 19.

¹⁷ FCVic, above n 2, 13.

- Direct regulation should mean that there are directly enforceable rules in the form of independent standards developed by the Australian Communications and Media Authority (**ACMA**) through a robust and comprehensive consultation process.
- Ensure sufficient powers for the regulator to enforce the rules, and an increase in civil penalties to properly incentivise the industry to play fair.
- A licensing regime for all telecommunications providers.

RECOMMENDATION 1. Modernise the telecommunications regulatory framework to align with other essential services regulatory regimes, with direct regulation through independent standards developed by ACMA, licensing and an increase in civil penalties.

Proposal 1 – Telecommunications-specific consumer protection rules should cover essential matters between consumers (including small businesses) and their communications providers¹⁸

General comments on this proposal

23. We strongly support this proposal and principles 1 and 2 upon which it is grounded. For too long, people have suffered detriment because telecommunications companies' commercial incentives have undermined existing consumer safeguards—particularly in relation to pushing expensive and unsuitable products, and failures to prioritise customer service and dispute resolution. Our casework experience in other essential service sectors, such as energy and finance, have shown that clearly enforceable rules are required to drive customer-focussed and fair behaviour in customer dealings, and that compliance with these rules must be monitored and enforced by an empowered regulator. For example, Commissioner Hayne, during the 2018 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission**), highlighted the difficulties with unclear and unenforceable industry codes.¹⁹
24. Furthermore, unfairness has been a problem in the telecommunications sector for more than a decade. As indicated in our response to Question 1 below, there has been little improvement to consumer

Hannah's story

Hannah (name changed) is 72 and is receiving the Aged Pension. She told Consumer Action the following:

When NBN became available in her area, Hannah joined Optus in an Optus store in approximately September 2019. 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. Hannah 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.

Hannah 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. Hannah was also being charged \$10 for every GB she was over and was not advised about this. Hannah 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.

Hannah said she was then charged \$350 for breach of contract, and received an Optus bill for \$495 the day before calling the National Debt Helpline. Hannah told us that she has since moved to a different provider.

Hannah 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.

Hannah has been trying to pay for the tablet, but is 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. Hannah said she had \$90 to last her the following week.

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

Case study provided by Consumer Action Law Centre

¹⁸ Note Consultation Paper Principle 1: Rules are needed to drive customer-focussed behaviour where market/commercial incentives are weak and Principle

2: Consumers should be treated fairly and in good faith by providers.

¹⁹ Financial Services Royal Commission, *Final Report* (February 2019) 105 – 107.

outcomes since CHOICE published its 2008 'Consumer Protection in the Communications Industry: Moving to best practice' report (**CHOICE report**), which was triggered by ongoing 'frustrat[ion] by the poor overall standard of consumer protection outcomes delivered in the telecommunications industry'.²⁰ **Hannah's story** (on the previous page) is just one example of the continued poor treatment people are receiving from their telecommunications providers.

Question 1. *What are the essential consumer protection matters that should be covered by the rules? Part 6 (section 113) of the Tel Act lists a range of matters that may be dealt with by industry codes and standards. The TCP Code covers some but not all of those matters. Are these the right starting points?*

25. The examples listed in section 113 of the Telecommunications Act cover some important starting points that we argue belong in the foundation of direct regulation (rather than industry codes); however, some gaping holes remain. As detailed further in response to Proposal 2 Question 1, we suggest that section 4 and Part 6 of the Telecommunications Act require revision and reframing to appropriately underpin the critical consumer protections of an essential service.

Additional matters that should be covered by consumer protection rules

26. In addition to the matters already listed in section 113 of the Telecommunications Act, we consider the following to be necessary areas for consumer protection regulation:

- Selling practices, including affordability assessments and matters related to unsolicited selling;
- Interaction with vulnerable customers, and efforts that should be taken to ensure these interactions are fair and engaged in with care;
- Cultural competency and safety, including with Aboriginal and/or Torres Strait Islander peoples in particular;
- Family violence, including responding to the common ways phones and phone accounts are used to contribute to family violence;
- Financial hardship, including a consumer's right to an affordable payment plan;
- Measures to keep customers connected to this essential service, including assistance to avoid disconnection and/or service restriction, and compensation for wrongful disconnection;
- Matters relating to complaints handling, including both internal dispute resolution and external dispute resolution;
- Service disruptions;
- Interaction with contract law and the Australian Consumer Law, including misleading or deceptive conduct, consumer guarantees, unfair contract terms, and debt collection rules;
- Interaction with insurance-like products that may avoid protections under insurance laws due to their subscription design;²¹

²⁰ Galexia for CHOICE, 'Consumer Protection in the Communications Industry: Moving to best practice' (Report, October 2008) p 5.

²¹ E.g. Telstra's 'StayConnected' product, which is the recent new iteration of its previous device replacement scheme offered at point of sale. Telstra states it is not insurance because it does not require an 'event' and it includes data backup. It can also only be added at the time of purchase (not later) which will result in pressure sales, there is no cooling off period, and it requires a monthly fee of \$15/month as well as a replacement or screen fix fee when used. See <https://crowdsupport.telstra.com.au/t5/Mobiles-Tablets/Stay-Connected-FAQ-s/ta-p/386601> and <https://www.telstra.com.au/mobile-phones/mobiles-on-a-plan/stayconnected>.

- Interaction with the Privacy Act, including protections related to telecommunications providers' access to and use of credit reporting;
- A clear right to representation, including rules requiring telecommunications providers to accept client authorities and deal directly with a customer's lawyer or financial counsellor;
- Compliance and enforcement provisions.

Content of consumer protection rules

27. The robustness of consumer protections rules is critical to their effectiveness. Unlike the current provisions, the rules must be developed through a process of thorough public consultation with the core purpose of improving consumer protections.
28. The industry-drafted code, the Telecommunications Consumer Protection Code 628:2019 (**TCP Code**) by which most of the matters in section 113 are currently regulated, has failed to protect consumers as its provisions lack scope, clarity, and enforceability.
29. It is beyond the scope of this submission to provide comprehensive feedback on the TCP Code's deficiencies. The following sections of this submission briefly spotlight some of the most critical failings, as examples of the inadequacy of the TCP Code and its drafting processes. The failings covered in these sections highlight key areas where additional consumer protections are needed.

Selling practices

30. Expensive and confusing phone products and plans continue to be mis-sold to people who cannot afford them or who never wanted them. In many cases, target-driven and commission-based selling creates perverse incentives for irresponsible sales practices. Our organisations routinely receive calls from people who have entered a telecommunications shop intending to purchase a single, basic device and instead come out with a plethora of expensive devices that they are unable to afford.²²
31. Research published by the Australian Communications Consumer Action Network (**ACCAN**) in 2019 in the 'Spotlight on Telco Commissions and Targets' Report (**Spotlight on Commissions Report**) showed that telecommunications salespeople and store managers agreed '*almost unanimously... that the main function of their role was to successfully sell, upsell and cross-sell*'.²³ Unsolicited offers of phone upgrades or 'free gifts' are frequently used to push products that can cause further financial harm. This was the case for Hayley and Max (case study on page 12).
32. We have highlighted our concerns about unfair selling practices by telecommunications providers and advocated for robust affordability assessment rules for years.²⁴ And yet, while the 2019 TCP Code includes more detail than its predecessor on the requirements of credit assessments, telecommunications providers are still not obliged to undertake genuine affordability assessments before selling expensive post-paid contracts and devices.

²² E.g. 'Sharee's story', Consumer Action Law Centre and Victorian Aboriginal Legal Service, *Consumer Issues in Victorian Aboriginal Communities: Integrated Project Final Report 2020*, (February 2020) 21, <https://consumeraction.org.au/consumer-issues-in-victorian-aboriginal-communities-integrated-practice-project-report-2020/>.

²³ Lonergan Research for ACCAN, *Spotlight on Telco Commissions and Targets: Exploring Telecommunications Providers' Sales Incentive Practices* (27 March 2019) 14, available at: <http://accan.org.au/our-work/research/1584-spotlight-on-telco-commissions-and-targets>.

²⁴ See for example our submissions to the 2018 TCP Code Review available at <https://consumeraction.org.au/draft-tcp-code/>, Submission to Part A of this Consultation, available at: https://www.westjustice.org.au/cms_uploads/docs/westjustice-and-consumer-action-submission-to-part-a-consumer-safeguards-review.pdf

Hayley and Max's story

Hayley and Max (names changed) are an Aboriginal couple living in a Melbourne suburb and reliant on the aged pension. They were Telstra customers for approximately 30 years and had their home internet bundle, a mobile phone each, and a shared tablet on Telstra plans.

Hayley and Max told us they attended their local Telstra shop in-person every two years to renew their home internet. When they did so in early 2019, they were also offered upgrades to each of their mobile phones as part of a "Manager's deal" and two additional tablets, which they understood to be gifts for their continued loyalty as Telstra customers renewing their plans. They didn't realise they were being signed up for two additional plans that they didn't require and were not given any opportunity to examine the terms of the contracts. The new tablets and tablet plans increased their monthly bills by approximately \$50 per month.

After they made their own dispute resolution attempt but were told by Telstra they were locked into the tablet contracts, Hayley and Max engaged the services of Consumer Action. Telstra initially also refused our lawyer's request to refund the amounts Hayley and Max had paid towards the tablets, citing that they had been used (albeit minimally), and continued to charge Hayley and Max for the tablets during the dispute resolution process. After continued internal dispute resolution in which we raised concerns that Telstra's conduct was misleading or deceptive (amongst other matters), Hayley and Max were eventually released from the tablet contracts and received a refund for all amounts paid towards them.

Case study provided by Consumer Action Law Centre

33. Since August 2019, as per the TCP Code, telecommunications providers are required to undertake a minimal credit assessment—obtaining details about the how a person will afford the contract on their income, their employment circumstances, and an external credit check.²⁵ There is no requirement to use this information in any meaningful way, or assess real affordability through a concurrent review of expenses and liabilities.
34. Furthermore, this requirement is only for new post-paid customers purchasing phone products valued at over \$1,000 for a term of greater than one month.²⁶ Even with these qualifications, ACMA found that 16% of all shadow shopped telecommunications sales and 22% of those completed 'in-store' did not fulfil these scant requirements.²⁷ **Elan's story**, in which he was signed up to an unaffordable and expensive phone bundle since the implementation of the current TCP Code, despite being in a Part IX debt agreement, is an example of poor selling practices continuing despite the current credit assessment obligations of the TCP Code.

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.

Case study provided by Consumer Action Law Centre

²⁵ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.1.1(b).

²⁶ Ibid.

²⁷ ACMA, *Telco consumer credit checks: Findings of shadow shopping study* (30 June 2020) 6, 7, <https://www.acma.gov.au/publications/2020-06/report/telco-consumer-credit-checks-findings-shadow-shopping-study>

35. Existing telecommunications customers also remain largely unprotected by the current credit assessment rules. For existing customers, phone providers are only obliged to check an existing customer's previous payment history with that company for future sales,²⁸ regardless of how expensive the next product is. Suzie's story, below, illustrates how problematic this can be.

Suzie's story

Suzie (name changed) is a single mother who identifies as Aboriginal and who has recently transitioned to the Disability Support Pension. Suzie was previously casually employed but has always been on a low income. She lives in public housing with her teenage children.

Suzie has been a long-term customer of her internet and phone provider. Over the years she has added on more products which now include home internet, two phone plans with high end phone leases (one for her teenage daughter), premium Foxtel package and Xbox gaming package. The minimum cost for all these items each month was \$480 per month. This amount did not include extra data charges which were sometimes incurred by her teenage daughter. Suzie did not know how much her bill was every month and was surprised to know it had crept up to the \$400 mark. The amount of \$480 per month was clearly unaffordable and Suzie quickly ended up with large debt of \$1,800.

With the assistance of the Victorian Aboriginal Legal Service, Suzie was able to negotiate with her provider to waive a substantial portion of the bill. Suzie now understands that she can't afford the current bill herself and she has made arrangements for her children to contribute to the costs along with moving to prepaid plans for her mobile once her contract expires.

Case study provided by Victorian Aboriginal Legal Service

36. Compliance with the meagre telecommunications credit assessment requirements (as regulated through the TCP Code) has never been adequate. The Rank the Telco Report showed financial counsellors in 2016 gave an average rating of 1.87 out of 5 to the three biggest telecommunications providers (at the time) for adherence to the credit assessment requirements of the previous TCP Code.²⁹
37. Even when telecommunications providers do conduct a compliant affordability assessment, the TCP Code provides little detail about the effect of that assessment, other than a requirement to tell the person it has been assessed as unaffordable and to tell them about cheaper products. There is no explicit prohibition on selling the unaffordable plan and products.³⁰ Whether or not to sell unaffordable contracts appears to have been left to the discretion of telco providers, who balance the risk of payment defaults (as well as, in the more extreme cases, prospective enforcement proceedings) against the financial benefits of increased sales. Reputational damage has done little to improve industry behaviour in this regard.
38. The harm arising from mis-selling is significant. Our clients have told us about diverting money from food or rent to make expensive phone payments, and relying on credit or borrowing from friends and family (such as **Elan's story**) to pay their phone bills and stay connected. And yet, telecommunications providers are able to disconnect people from this essential service with little restriction, and can mark a person's credit report despite never conducting a legitimate affordability assessment. An adverse credit report listing can have far reaching effects, including the effective exclusion of a person from access to mainstream credit, gas and electricity providers, or a more appropriate phone service with a different

²⁸ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.1.1(a).

²⁹ FCVic, above n 2, 13.

³⁰ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.1.2.

provider. For example, Consumer Action was recently contacted by a person who was unable to switch his electricity to a more affordable provider because of a disputed telecommunications default listed on his credit file.

39. Unsurprisingly, the Spotlight on Commissions Report shows that sales staff responded to researchers' questioning about who is easiest to sell to with answers about older people, young people, people from culturally and linguistically diverse backgrounds, and people with a disability.³¹ Members of these groups are often amongst the most financially marginalised in our community, and least able to buffer the detrimental financial consequences of an unaffordable product.
40. A directly enforceable and genuine affordability assessment requirement should be based on the responsible lending requirements for providers of consumer credit, as per the *National Consumer Credit Protection Act 2009* (Cth). This would require the telecommunications provider to undertake reasonable inquiries into a person's financial situation and verifications to assess:
 - Whether the proposed post-paid product meets the consumer's requirements and objectives; and
 - Whether the consumer would be able to meet their payment obligations without substantial hardship.³²
41. It would also prohibit the provider from selling expensive post-paid products where the product failed the above suitability assessment for the relevant consumer.

Poor responses to vulnerability

42. Telecommunications providers continue to provide poor responses to consumers who are experiencing vulnerability. We regularly hear about outrageous conduct from both major and smaller providers, as recently as days before submitting this response to the consultation. **Margaret's story**, on the following page, and **Ulka's story**, on page 18, is an example of this.
43. ACCAN reported in 2018 in the 'Can You Hear Me? Ranking the customer service of Australia's phone and internet companies' Report (**Can You Hear Me Report**) that more than 40% of over 1300 consumers surveyed suggested improvements were necessary to customer service/communication/attitude of staff.³³ Similarly, data from the Consumer Policy Research Centre's (CPRC) August 2020 COVID-19 stress survey results, show that

*'for the fourth month in a row, consumers have reported telecommunications providers as delivering the worst customer service of all essential service providers...[with] disproportionate challenges facing people living with disabilities.'*³⁴

³¹ Lonergan Research for ACCAN, above n 23, 29 – 30.

³² *National Consumer Credit Protection Act 2009* (Cth) Ch 3.

³³ Colmar Brunton for ACCAN, *Can you hear me? Ranking the customer service of Australia's phone and internet companies* (23 July 2018), 46 <https://accan.org.au/our-work/research/1523-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>.

³⁴ Consumer Policy Research Centre (CPRC), *Consumers & COVID-19: August results snapshot* (21 September 2020), <https://cprc.org.au/consumers-and-covid-19-from-crisis-to-recovery/>.

Margaret's story

Margaret* (name changed) engaged a large service provider for a low to mid-range post-paid service. Margaret's income was low, but she was able to afford the plan.

Margaret has serious and ongoing mental health problems. In about 2017 she was hospitalised in relation to her mental health. Margaret was placed in a secured psychiatric ward. She was not permitted to leave the ward and was heavily medicated with psychiatric drugs. While an inpatient in the secured ward, Margaret was cold-called by her provider and apparently offered an upgrade on her mobile phone plan. Margaret has only a vague memory of this phone call: she remembered being called by her provider, but could not recall the reason why, or the content of the conversation. Her provider asserted billing authority from an upgraded plan from this date.

Sometime after she was released from hospital, Margaret contacted her provider to find out why she was being sent large bills. When Margaret's provider told her that she had agreed to upgrade her plan, Margaret explained to her provider that she had been in a secured psychiatric ward at the time of the telesale, that she had very little memory of her time in that ward as she had been very heavily dosed on psychiatric drugs, that she had no recollection of the telesale and no capacity to pay. Margaret asked if the plan could be cancelled and her provider refused.

Margaret, whose mental health was already fragile, was extremely upset, embarrassed, and agitated by the situation. She contacted WEstjustice for assistance in considerable distress.

Case study provided by WEstjustice

44. As stated in our submission to Part A of this consultation:

We agree with [FCVic's] observation that 'the telecommunications sector is out of step with community standards in its treatment of consumers' and suggest that these failings are a direct result of self-regulation by an industry which has demonstrated a persistent reluctance to assist or prioritise its customers.³⁵

Family violence and economic abuse, including end users who are not the account holder

45. It is vital that any consultation on telecommunications regulation include robust engagement with organisations that advocate on behalf of people experiencing family violence, such as the [Economic Abuse Reference Group](#), which focuses on the financial impacts of that abuse. The failure of Communications Alliance to adequately consult or listen to family violence and consumer advocates has resulted in a TCP Code that fails victim survivors across a range of provisions.
46. An example of such a failure is Clause 6.1.3 of the TCP Code, which relates to the telecommunications provider's responsibilities when they are aware there is an account holder who is not the end user of a service. This clause obliges the provider merely to tell the account holder that they remain liable for the use of the service, regardless of whether they receive a benefit from it.³⁶ The victim is then left with the telecommunications costs or debt of the perpetrator. This clause is at odds with attempts to reduce financial abuse across other sectors, such as Chapter 17 of the Banking Code of Practice, which requires Australian Banking Association (ABA) members to enquire about the reasons for and to be satisfied that a co-borrower on a loan who will not receive a substantial benefit from that loan is not experiencing financial abuse.³⁷ In contrast, Clause 6.1.3 of the TCP Code enables a perpetrator of abuse to more easily

³⁵ Consumer Action Law Centre and WEstjustice, Submission to the Consumer Safeguards Review Part A (7 August 2018) 6, (emphasis added) <https://consumeraction.org.au/submission-telecommunications-consumer-safeguards-review-part-a-consumer-redress-and-complaints-handling/>

³⁶ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.1.3.

³⁷ E.g., ABA, *Banking Code of Practice*, ch 17, available here: <https://www.ausbanking.org.au/campaigns/new-banking-code/#The%20Banking%20Code%20of%20Practice>.

put telecommunications services in the name of their victim, through pressure, fraud or coercion, setting up their victim with financial liability for their bills. **Katy's story** illustrates this point.

47. Other issues include: the insistence of some providers in listing a credit default on a victim's credit report even though the debt was incurred as part of abuse, the poor responses to financial hardship for victims of family violence despite explicitly including 'family violence' as a reason for accessing financial hardship in the 2019 TCP Code³⁸ (as shown through **Katy's story**), and the claimed inability of the sector to address the each of the relevant recommendations of the Victorian Royal Commission into Family Violence.³⁹

Deficient financial hardship protections

48. The telecommunications regulatory framework lags far behind other essential services in financial hardship protections. In 2017, the Rank the Telco Report showed significantly worse financial hardship performance by telecommunications providers than by banks or energy retailers:⁴⁰

*'Financial counsellors report that, when dealing with customers in financial difficulty, providers focus on retrieving debt, rather than negotiating fair and reasonable arrangements that can keep people connected to essential telecommunications services.'*⁴¹

49. The recent (but pre-COVID-19) Australian Communications and Media Authority (ACMA) 'State of Play' report indicated that just 0.07% of residential telecommunications customers were in financial hardship arrangements with their provider at 30 June 2019, compared with more than 1% for electricity customers.⁴² This result indicates that 15 times more people in financial difficulty are being helped by their electricity provider compared to their

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 poor credit history with Telstra, despite 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.

Case study provided by Consumer Action Law Centre

³⁸ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 2.1.

³⁹ Recommendation 108 states the TCP Code should "include grounds for splitting jointly held debt and removing an account holder's name if family violence has occurred", available at <https://www.vic.gov.au/family-violence-recommendations/amend-national-credit-code-and-telecommunications-consumer>. The voluntary industry guideline suggests this is not feasible and instead provides loose guidelines that 'may help providers consider how they can assist' (Communications Alliance, "Assisting Customers Experiencing Domestic and Family Violence" (Industry Guideline G660:2018 [22 October 2018], part 2.3 and 9.2, <https://www.commsalliance.com.au/Documents/all/guidelines/G660>).

⁴⁰ FCVic, above n 2, 3, 5.

⁴¹ Ibid 5.

⁴² Australian Communications and Media Authority (ACMA), *Customer financial hardship in the telco industry: state of play report 2018-19*, (March 2020) 5, <https://www.acma.gov.au/publications/2020-03/report/financial-hardship-telco-industry>.

telecommunications provider. **Axel's story**, on pages 22-23, illustrates the difficulties encountered by our clients in accessing effective dispute resolution or appropriate financial hardship assistance, including where hardship arises in the context of mis-sold telecommunications products.

50. The current TCP Code still falls well short of the financial hardship protections in the energy sector. For example, Victorian energy providers must offer tailored assistance to customers who fall behind, including an affordable payment plan proposed by the customer (so long as the customer can repay the debt in two years—or longer if the energy retailer agrees).⁴³ The TCP Code, rather, obliges telecommunications providers to include at least three of the options below in its financial hardship policy. The provider can then choose which option to offer an individual customer, '*depending on what is most appropriate in the circumstances*'. To be clear, the rules specify the choice does not lie with the consumer:⁴⁴

(i) Temporarily postponing or deferring payments (for a longer period than would typically be offered to Customers requesting an extension outside of Financial Hardship arrangements);

(ii) Agreeing on an alternative arrangement, plan, or contract, including discussing Pre-Paid Services;

(iii) Discounting or waiving of debt;

(iv) Waiving late payment fees;

(v) Waiving cancellation fees; or

*(vi) Incentives for making payments, for example payment matching.*⁴⁵

51. There is no current requirement for telecommunications providers to offer an affordable payment plan or hardship arrangement for this essential service.

52. Even more perplexing are the current TCP Code hardship options for providers as a means to '*keeping the Customer connected*', which include '*restriction of service, in respect of overall or specific services*'.⁴⁶ In practice, this means a telecommunications provider can restrict a phone service, such that their customer cannot make any calls or use any internet data, as a means of '*Keeping the Customer connected*'. Effectively disconnecting a consumer as a means of '*staying connected*' is Orwellian at best, and leads to consumer confusion and harm, as shown in **Ulka's story**. A much fairer hardship measure would be to 'right size' the customer's plan based on the individual customer's needs, to ensure the contract the customer is on is the 'best offer' for them, for example, moving to a smaller data plan if their current plan is significantly larger than their usage requirements. While this could be covered by (ii) above, it should be available as an option to all customers in hardship, and must not result in early termination fees for changing plans or any foreseen excess data fees. This would be similar to the recently extended obligation for energy retailers in Victoria to ensure that a customer in hardship is on the most competitive tariff.⁴⁷

53. These rules do not oblige telecommunications providers to offer people experiencing financial difficulty (and, often, other vulnerabilities):
- affordable or suitable hardship arrangements; or
 - effectively keep customers connected to this essential service.

⁴³ Essential Services Commission, *Energy Retail Code*, (Version 16, 1 July 2020) cl 81

⁴⁴ Communications Alliance, *TCP Code C628:2019*, (July 2019) 7.2.1 (Guidance).

⁴⁵ Ibid 7.2.2(b)

⁴⁶ Ibid 7.2.2(a)

⁴⁷ Essential Services Commission, *Supporting energy customers through the coronavirus pandemic: final decision* (24 August 2020), <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/supporting-energy-customers-through-coronavirus-pandemic-2020>.

54. Even in the context of COVID-19, and despite the publishing of the Government and industry 'Joint statement of principles'⁴⁸ our clients have experienced the following failures to provide meaningful hardship assistance:
- refusals to offer hardship arrangements altogether;
 - attempts to offer only clearly unaffordable hardship arrangements; and
 - threats to disconnect, effective disconnections (i.e. restriction of service so no calls can be made) or actual disconnections from telecommunications services.
55. August 2020 survey results from the CPRC, in relation to telecommunications providers, showed that *'three-quarters of people who sought payment assistance... reported having negative experiences. People are reaching out for help, but something is going very wrong in terms of companies delivering support.'*⁴⁹ **Ulka's story** (below) is one example of this.

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... but 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.

Case study provided by Consumer Action Law Centre

56. These ongoing failures recall the 2016 comments of financial counsellors about their interaction with telecommunications providers:

⁴⁸ Joint Statement – Government and telecommunication companies agree measures to help keep people connected through COVID-19

⁴⁹ CPRC, 'Telco woes plague nation – Australians living with disability experiencing worst service from providers during COVID stress' (Media Release, 21 September 2020).

*'Providers... see their services as a luxury, rather than something essential to employment, service access and social participation. As a result... they see no obligation to supply and take an inflexible approach: "pay up or lose it".'*⁵⁰

Keeping customers connected to this essential service

57. Telecommunications sector regulation must address disconnections for what they are—disconnections from an essential service. However, the TCP Code allows an exception for suppliers to restrict, suspend or disconnect a telecommunications service without notice when *'the Supplier assesses that the Customer or the account status presents an unacceptably high credit risk to the Supplier'*.⁵¹ As raised in our submission to Communications Alliance in the last TCP Code public consultation, we question whether this provision is consistent with the unfair contract provisions⁵² of the Schedule 2 to the *Competition and Consumer Act 2010* (Cth), known as the Australian Consumer Law ('**ACL**').
58. Disconnection of an essential service without notice, on the basis of a provider's own, undefined assessment of credit risk, presents a significant imbalance in the parties' rights and obligations, that is not reasonably necessary, and is capable of causing severe detriment to an individual reliant on the telecommunications service. In contrast, in Victoria, energy retailers can only disconnect energy customers as a last resort, after meeting obligations contained in the Essential Services Commission's (ESC)'s Payment Difficulty Framework, and after following stringent notification requirements. Where a Victorian energy consumer is disconnected in circumstances where a retailer has failed to meet these requirements, the retailers must make a substantial payment to the person for every day that the person was 'wrongfully disconnected'.⁵³
59. The data in ACMA's State of Play report shows that nearly a quarter of people who entered into a financial hardship arrangement had their telecommunications services disconnected due to non-payment.⁵⁴ This suggests that the 'assistance' telecommunications providers are offering is not helping a large proportion of their customers.

Debt and debt collection

60. Debt collection practices are listed in section 113 of the Telecommunications Act, but the content of these provisions is not enough to deter poor practice. The 2019 TCP Code incorporates the Australian Consumer and Competition Commission (ACCC) and Australian Securities and Investments Commission (ASIC) Debt Collection Guideline (**Debt Collection Guideline**)⁵⁵ for providers. However, debt collection practices that breach this Guideline remain commonplace, as in **Jordan's story**, on the following page. It is time for the Debt Collection Guideline to be made directly enforceable through direct regulation.

⁵⁰ FCVic, above n 2, 16.

⁵¹ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.7.1(a)(i).

⁵² *Competition and Consumer Law Act 2010* (Cth) sch 2 ('Australian Consumer Law') s 24(1).

⁵³ Electricity Industry Act 2000: Order Under Section 36, Victoria Government Gazette, S 315, 25 November 2008, p5; Also see: <https://consumeraction.org.au/submission-review-of-victorias-wrongful-disconnection-payment/>.

⁵⁴ ACMA, *Customer financial hardship in the telco industry*, above n 42, 1 and 9.

⁵⁵ Communications Alliance, Telecommunications Consumer Protection Code C628:2019 (at July 2019) at 6.10.1.

Inadequate dispute resolution

61. Telecommunications providers have wildly variable and frequently poor responses to consumer complaints—highlighting the need for better enforcement powers, including powers to impose licence conditions or to suspend or revoke a licence, to ‘give teeth’ to the Complaints Handling Standard. August 2020 data from the CPRC showed that ‘5.7 million Australians reported having a recent negative experience with their telecommunications provider’.⁵⁶ Communications Alliance’s own commissioned data shows abysmal results in complaint handling—less than 50% of consumers who complained to their provider in the first half of 2020 were satisfied with the provider’s response to their complaint.⁵⁷ This does not appear to be an anomaly related to the COVID-19 emergency, as results have been consistently around the 50% mark in previous reports.⁵⁸
62. These results, along with the continued high levels of complaints escalated to the Telecommunications Industry Ombudsman (TIO),⁵⁹ align with our client’s accounts—that many telecommunications providers do not meet a fair or acceptable standard when considering customer complaints or disputes.
63. More work must be done to ensure staff are trained appropriately to recognise complaints and to recognise vulnerability, so that complaints from people experiencing vulnerability or disadvantage are resolved appropriately. Dispute resolution standards must also be directly enforceable by the regulator through the broad range of enforcement tools available (see our comments in Proposal 3 Question 1 about risk-based enforcement), and comply with international standards for complaints handling in organisations.⁶⁰
64. We regularly see telco companies fail to recognise complaints about their initial contracting or selling practices (for example, where an alleged debt has arising in the context of mis-selling, as described above).

Jordan’s story

Jordan (name changed) is in her 70s and battling terminal cancer, as well as complications from surgery. She also suffers from depression and anxiety and is unable to leave her home without significant effort. Jordan lives in public housing and her sole source of income is from Centrelink. She was a customer of her telecommunications/internet provider for decades. In early 2017, Jordan contacted her provider to ask about internet plans so that she could be more connected to services and support.

In mid-2017, Jordan made a complaint to the TIO based on unresolved issues with her internet connection and landline. As part of the resolution, the provider offered to give Jordan credit; however, they refused to provide proof of the credit in writing. Soon after, Jordan started receiving overdue notices from the provider. By the time she reached our service, she apparently owed over \$800.

During this time, the provider and/or their collection agencies repeatedly harassed Jordan, continuing to contact her even after Consumer Action was on the record as her representative, and after we told them that they were breaching Victorian debt collection laws by contacting Jordan directly. The phone provider’s harassment caused her significant distress.

Ultimately, in around December 2018 the provider sold the debt to a debt collection agency.

The matter has now been resolved.

Case study provided by Consumer Action Law Centre

⁵⁶ CPRC, above n 34.

⁵⁷ Roy Morgan for Communications Alliance, *Telecommunications Customer Satisfaction: Results of polling undertaken by Roy Morgan Research for Communications Alliance Ltd*, Wave 27, (July 2020) 27;; Also e.g. Wave 25, (January 2020) 27; e.g. Wave 21, (January 2019) 27; https://www.commsalliance.com.au/Documents/Publications-by-Topic/Roy_Morgan_Reports.

⁵⁸ Roy Morgan for Communications Alliance, *Telecommunications Customer Satisfaction: Results of polling undertaken by Roy Morgan Research for Communications Alliance Ltd*, Wave 27, (July 2020) 27, https://www.commsalliance.com.au/Documents/Publications-by-Topic/Roy_Morgan_Reports.

⁵⁹ TIO, *Annual Report 2018-19*, (25 September 2019) 14, <https://www.tio.com.au/reports-updates/annual-report-2018-19>.

⁶⁰ International Standards Organization, *ISO 10002:2018 Quality management – Customer satisfaction – Guidelines for complaints handling in organizations*, (July 2018), <https://www.iso.org/standard/71580.html>.

Instead, the telco passes a consumer on to its financial hardship team or offers no options to help at all. Typically, such matters are then further exacerbated by ineffective hardship provisions, as above. The following sections are brief examples of specific aspects of poor dispute resolution rules and enforcement that require improvement:

Refusal to accept professional authority documents

65. We are frustrated by the ongoing practice of some telecommunications providers in placing onerous and unnecessary obstacles in the way of authorised representatives attempting to provide 'authority to act' documents. In our view, these practices also constitute a breach of the debt collection guideline, despite consumer groups raising this issue for years and the creation by industry of an unhelpful *Authorised Representatives and Advocates* Industry Guidance Note.⁶¹

Excessive response times

66. People continue to be plagued by an inability to access a timely or any response from their telecommunications provider—a problem which has only worsened during the COVID-19 emergency. ACCAN's 'Can You Hear Me' Report⁶² and FCVic's 'Rank the Telco' reports⁶³ highlighted this issue years ago.
67. While timeframes were implemented for financial hardship assessments in the most recent TCP Code, these timeframes do not cover the entire range of customer service contact points. For example, important indicators like call waiting times, provision of documents, provision of information, and complaint resolution timeframes are not covered. It is essential that telecommunications providers are required to adhere to customer service response timeframes, similar to those required for consumer credit providers under the National Credit Code.⁶⁴

Record keeping and information provision

68. Consumers should have access to call recordings, client interaction notes and contracts without an administrative fee, which can be prohibitive to people accessing dispute resolution when things go wrong. **Axel's story**, on pages 22-23, demonstrates this point.
69. It is also important that adequate records are kept so that people do not have to repeat their story over and over again. ACCAN found that more than 50% of consumers⁶⁵ who had to contact their provider more than once about an issue had to also repeat details of their complaint each time.

⁶¹ Notably, this Guidance Note was developed without public consultation. Separate to its lack of guiding content, the development of this document provides an example of the lack of genuine consultation from the telecommunications industry despite the known impact guidance of this kind would have for consumers: the first version of this Industry Guidance Note was published 30 July 2019. However, the Communications Alliance revealed in the published document its intention 'to review the IGN in September 2019, after Suppliers have begun implementing the ideas in the IGN and Suppliers and consumer groups have received feedback on the efficacy of its recommendations'. Consultation after, rather than prior to, implementation is ineffective and easily leads to the current situation, where the Industry Guidance Note has remained unchanged despite attempts from consumer organisations. Communications Alliance, *Industry Guidance Note IGN 017 Authorised Representatives and Advocates* (30 July 2019), i, 3, https://www.commsalliance.com.au/_data/assets/pdf_file/0020/65306/Communications-Alliance-IGN-017-Authorised-Representatives-and-Advocates-July-2019.pdf.

⁶² Colmar Brunton for ACCAN, above n 33.

⁶³ FCVic, above n 2, 5.

⁶⁴ *National Consumer Credit Protection Act 2009* (Cth) Sch 1, e.g. s 185.

⁶⁵ Colmar Brunton for ACCAN, above n 33, 7.

70. When complaints are resolved at an internal level, or through the TIO referral process back to the telecommunications provider, the resolution offered should be put to the consumer in writing. Failure to do so has resulted in further significant confusion and harm for our clients, who have had to re-navigate complaints they thought were resolved based on what they had been told verbally. Written offers will also enable people to access informed advice and representation through community legal centres, like WEStjustice, Consumer Action, VALS, BCLS and HRCLS.

Axel's story

Axel (name changed) is in his early twenties. He has worked intermittently, but his employment was impacted for periods after a workplace injury. Axel has lost a significant part of income and received the Centrelink Jobseeker payment for most of the COVID-19 pandemic. He contacted the National Debt Helpline in October 2019 about an unaffordable car loan and a debt agreement from 2018 that he was struggling to pay. Consumer Action lawyers have been representing him in his dispute in relation to the debt agreement, which included an Optus debt from phone and broadband contracts taken out when he was 18 and 19 years old.

Axel contracted with Optus for a '\$60 per month' phone plan in early 2016 and a '\$50 per month' mobile broadband plan in early 2017. Consumer Action has never received any evidence of the details of any credit assessments undertaken before the sales. At the time of entering the mobile broadband plan, Axel was overdue in his repayments on the phone plan.

Axel's bills included charges well in excess of what he expected:

- recurring charges of over \$20 per month more than the advertised plan cost (for e.g. insurance cover, mobile bundling charges, etc.), which increased his standard monthly phone payment to \$80; and
- extra data charges of over \$1000 across the 14-month period before the contract was cancelled; and
- payment processing fees and late payment fees; and
- an unexplained 'recurring charge' issued once for the mobile broadband.

In total, on our calculations, the additional charges were \$1350 more than the projected costs based on the advertised prices of the phone plan and mobile broadband plan. Axel said he contacted Optus for an explanation of the higher bills but was not provided one.

Soon after entering the Optus contracts, Axel experienced substantial financial hardship.

Axel told us his overdue bills mentioned the option to contact Optus if he had problems paying his account—so he contacted Optus in 2017 to request alternative payment arrangements. However, Axel said that Optus refused to grant him a payment plan (and agree to remove the suspension on his service) unless he could make a sizeable upfront payment (approximately \$200). As he was suffering financial hardship and unable to do so, Axel was not granted this payment plan.

Optus terminated the contracts mid-2017, and charged Axel approximately \$585 more for the payout of the phone equipment and accessory, sending him a bill for more than \$1200 allegedly owing on his accounts.

Case study continued on the following page

Axel's story continued...

Axel's hardship with Optus and other lenders led to him entering the aforementioned debt agreement with debts totalling just over \$40k, which included the Optus debt. Although Consumer Action has been representing Axel in relation to his dispute with Optus, Optus attempted multiple times over a period of months to not provide any documentation in relation to the telco account. Reasons given included selling the account to a debt collector and, later, refusing to interact with Consumer Action on behalf of Axel, even though authority to act as his legal representative had been provided. When Optus eventually provided documentation, much of it was deficient and without detail.

Optus has not yet responded to the substantive complaints raised by Consumer Action despite a period of over 6 months passing. Whilst some of the matters raised in the complaint have been resolved, Consumer Action is providing ongoing assistance to Axel in resolving outstanding claims..

Case study provided by Consumer Action Law Centre

RECOMMENDATION 2. The list of matters that should be covered by direct regulation should include the numerous essential consumer protection matters listed in paragraph 26 of this submission, which are not covered by section 113 of the Telecommunications Act.

RECOMMENDATION 3. ACMA conduct robust, independent consultation on the specific consumer protection provisions in independent standards, as the current matters covered by the TCP Code and the current standards are ineffective at protecting consumers.

RECOMMENDATION 4. Incorporate the Debt Collection Guideline as part of independent standards developed by ACMA so that it is directly enforceable by the regulator.

Question 2. *Do the existing consumer protection rules governing the retail relationship e.g. in the TCP Code and various standards and service provider determinations need to be redesigned, or are new rules required, to address increasingly complex supply chains? If so, why?*

71. As argued in our response to Proposal 2 Question 1, it is our strong view that new and re-designed rules as part direct regulation is now required to ensure appropriate consumer protection in telecommunications markets. As a general principle, consumers should not bear the risks or consequences of issues with telecommunication provider supply chains, complex or otherwise. The focus of the regulatory framework should be on ensuring good consumer outcomes, as end users of telecommunications services. Telecommunications providers, and their suppliers, are sophisticated corporate entities that are able negotiate commercial arrangements in relation to supply chains as required.

Question 3. *To what extent should third parties such as communication 'apps' providers be captured by any new rules, and why?*

72. No comment in response to this question.

Proposal 2 – The telecommunications consumer protection rule-making process should be reformed to improve its effectiveness.⁶⁶

Question 1. *What role should direct regulation, industry codes and guidelines play in a revised safeguards framework?*

73. The existing self-regulation framework—a complex web of standards, provider determinations, and industry codes—has failed to appropriately protect consumers for more than twenty years, despite various code reviews being undertaken. It is clear that industry self-regulation through voluntary and unbalanced codes, with standards and directions only available where code provisions have been flagrantly deficient, is not fit for purpose. This regulatory mess has gone on too long, and is unacceptable in an industry that is now considered an essential service.
74. It follows that modernisation of the regulatory framework is necessary to deliver effect consumer protection through direct regulation.
75. To provide a statutory basis for direct regulation, and more fundamentally, to entrench consumer protection as a mandate in the regulatory rule-making process, we recommend the following legislative reforms:

Re-design s 4 and Part 6 of the *Telecommunications Act 1997* (Cth)

76. Amendments to section 4 and Part 6 of the Telecommunications Act would necessarily be required to facilitate the direct regulation of the industry. In our view, such amendments should not only empower the AMCA to set directly enforceable standards, but also set the tone for consumer protection and enable appropriate reform to the consumer protection rule-making process (and therefore, the content and enforceability of those rules). We note that Part 6 is largely the same as it was presented in 1996, far before standard telecommunications use included many of the services that are essential today.⁶⁷
77. Specifically, Part 6 of Telecommunications Act must be amended to properly reflect the Act's primary object (enshrined in section 3), being:

'to provide a regulatory framework that promotes:

- (a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and*
- (b) the efficiency and international competitiveness of the Australian telecommunications industry; and*
- (c) the availability of accessible and affordable carriage services that enhance the welfare of Australians.⁶⁸*

78. Though two of three limbs of this main object refer to the interests or welfare of consumers, this beneficial mandate appears to be absent from the drafting of the part of the Telecommunications Act most practically and directly related consumer outcomes: Part 6. Instead, this outdated legislation permits industry self-regulation⁶⁹ accompanied by a regulator that is bound to only address public interest

⁶⁶ Note Consultation Paper Principle 3: The rule-making process should be timely, efficient, enable a wide range of views to be considered and produce clear, targeted rules.

⁶⁷ Telecommunications Bill 1996 (Cth)

⁶⁸ *Telecommunications Act 1997* (Cth) s 3.

⁶⁹ *Ibid* ss 4 and 112(1).

considerations where these do not impose 'undue financial or administrative burdens' on industry, at the expense of consumers.⁷⁰

79. This unbalanced, upfront focus on industry's 'financial and administrative burdens' sets the sector up for a raft of weak rules for ostensible 'consumer protection' that do little more than protect industry interests, and fails to 'drive customer-focussed behaviour where market/commercial incentives are weak' (Principle 1). While a main aim of telecommunications reform in 1996 may have been to increase competition within the sector with a reliance on industry to 'do the right thing', a generation later, consumers of what has become an essential service wear the consequences of this imbalanced legislative focus.

Empower ACMA to develop directly enforceable industry standards to regulate the telecommunications industry

80. The most appropriate regulatory design is for comprehensive direct regulation through the independent regulator, ACMA, which should be given a clear consumer protection mandate.
81. Specifically, the ACMA should be empowered by legislation to effectively, efficiently, and robustly develop directly enforceable industry standards for all consumer protection matters, *and* technical requirements, in the telecommunications industry. This would replace the complex and ineffective system of industry-written codes in favour of clear standards produced through an independent process in consultation with both industry and consumer representatives. More detail on the role of the ACMA in creating standards is provided in response to Proposal 2 Question 3.
82. Industry codes are no longer suitable for this essential sector due to a history of inadequate obligations on providers, a lack of directly enforceable provisions and meagre consequences for any breaches. There is a real lack of clarity in current telecommunications codes, particularly when there has been limited judicial reasoning (likely due in part to the low value of claims) by which these may be elucidated. As Commissioner Hayne stated in relation to financial services industry codes in the Financial Services Royal Commission Final Report, '*uncertainty of this kind is highly undesirable*'.⁷¹
83. A move to a directly enforceable regulatory framework, developed and enforced by ACMA, would still allow the industry body, Communications Alliance, to develop best practice guidelines for industry on how to meet or exceed mandatory standards. However, a framework of direct, independent regulation would ensure that vital consumer protections and oversight are not developed in the imbalanced vacuum of industry self-regulation.

TIO

84. The *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) should be amended to enable directly enforceable regulation of telecommunications providers, especially in relation to their membership of the TIO external dispute resolution (EDR) scheme.⁷² We recommend this form part of a licensing scheme for all providers, as below.

Institute a licensing regime for all telecommunications providers

85. We also suggest that a licencing requirement for telecommunications providers be introduced via amendments to either the Telecommunications Act or the Telecommunications (Consumer Protections and Service Standards) Act to improve oversight of the industry.
86. The lack of a licensing regime that covers all telecommunications providers is an absurdity that does not align at all with community expectations of a service of this nature. In 2001, the Productivity Commission

⁷⁰ Ibid ss 4 and 112(2).

⁷¹ Financial Services Royal Commission, above n 19, 106.

⁷² *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) s 130.

mentioned the very low regulatory barriers for entry to the telecommunications market.⁷³ The current lack of licensing results in an incomplete understanding about the size of the market, telecommunications providers and services offered to consumers across the country, and gives the regulator the theoretically impossible task of monitoring compliance by service providers of which it is not even aware. Instead, any information about the companies that provide telecommunications services must be gleaned from the possibly incomplete list of TIO Members or from the telecommunications providers who have submitted an Attestation Certificates of self-compliance with the TCP Code to CommCom (in 2019, 318 Carriage Service Providers lodged attestation certificates).⁷⁴ Neither provides a full picture of all telecommunications providers.

87. Without a licensing regime, ACMA (and, hence, consumers) are also robbed of the ability to use an effective enforcement methods for poor conduct—the revocation or placing of conditions on a licence.
88. A licensing regime would also facilitate better enforcement of the requirement to be a member of the TIO as it could be a licensing condition for the provision of telecommunications services. This would improve access to justice and fairness for people who have contracted through a telecommunications provider that is not voluntarily compliant.

RECOMMENDATION 5. Amend Section 4 and Part 6 of the Telecommunications Act so that it more closely reflects the main objects of the Act, with a focus on improving consumer protections through direct regulation.

RECOMMENDATION 6. All current industry codes should be replaced by independent, directly enforceable standards developed by ACMA in consultation with stakeholders. Once the re-designed and rewritten standards have been developed, the industry codes should cease operation.

RECOMMENDATION 7. Institute a licensing regime for all telecommunications providers.

Question 2. *How could the code-making process be strengthened to improve consumer outcomes and industry compliance?*

89. The telecommunications industry that has used the 'code making process' to wield industry power against the best interests of consumers for many years. But, as confirmed in a report for the Australian Energy Regulator, released by the CPRC, '*People's lived experience of markets matters*'.⁷⁵ This submission highlights some of the many unfair consumer outcomes that have occurred because of the imbalanced self-regulatory system of governing the telecommunications industry and market.
90. As such, consumer advocates have no faith that the self-regulatory process can be viably reformed to be fit for a consumer protection purpose. The most recent review of the TCP Code demonstrated this.
91. After years of widespread lack of compliance with telecommunications regulation,⁷⁶ the current version of the TCP Code was drafted by Communications Alliance without an early and transparent public consultation to identify key consumer concerns. Instead, the process was undertaken by the TCP Code Review Working Committee 84, which was unreasonably dominated by industry representatives (there

⁷³ Productivity Commission, *Inquiry into Telecommunications Competition Regulation* (21 December 2001) Appendix A – Regulatory Background, 591 - 592.

⁷⁴ Communications Compliance Ltd, *CSP Compliance*, (2020) Compliance, <https://commcom.com.au/compliance/>.

⁷⁵ O'Neill, Emma, Consumer Policy Research Centre, *Exploring regulatory approaches to consumer vulnerability: A report for the Australian Energy Regulator* (February 2020) 8, <https://www.aer.gov.au/publications/corporate-documents/exploring-regulatory-approaches-to-consumer-vulnerability-a-report-for-the-aer>.

⁷⁶ E.g. In 2004, the Acting Chairman of the Australian Communications Authority (the then regulator) envisioned 'a greater emphasis on industry compliance with the rules', Raiche, Holly, "Looking Forward: Challenges for Telecommunications Regulation", *Communications Law Bulletin* 15, (2004) 23(3), 10.

were four voting industry representatives but only two voting consumer representatives).⁷⁷ This one-sided process led to further years of wasted effort to produce another revised TCP Code that has failed in its apparent main purpose—to 'ensure good service and fair outcomes for all Consumers of Telecommunications Products in Australia'.⁷⁸

92. More than 10 years ago, the CHOICE Report⁷⁹ set out the failures of the current telecommunications complex code network, noting that it was neither effective co-regulation or self-regulation. In order to improve the sector and its consumer protections, the paper offered specific recommendations on how to successfully co-regulate the sector. However, the recommendations were never adopted by the sector or government, leaving consumers in the position they're in today—with weak and limited protections for what is now undeniably an essential service. The time to improve telecommunications code-making processes has well and truly passed with too many people suffering harm as a result of inaction.
93. Despite providing a service that is essential for everyday participation in Australian society, the pervasive culture of the telecommunications industry has been profit driven,⁸⁰ with the minor consequences of non-compliance with existing rules simply seen as a cost of doing business.
94. A Reserve Bank of Australia Board member, Professor Ian Harper, recently said of the financial sector:

"Regulation is a poor substitute for culturally-embedded moral restraint. But when the latter is non-existent, regulation may be necessary to secure the public interest against the worst excesses of self-serving behaviour by those in positions of trust."

⁷⁷ Communications Alliance, *WC84 Telecommunications Consumer Protections (TCP)*, accessed 15/9/2020 at <https://commsalliance.com.au/Activities/committees-and-groups/wc84>.

⁷⁸ Communications Alliance, *Telecommunications Consumer Protection Code C628:2019* (at July 2019) at i.

⁷⁹ Galexia for CHOICE, above n 20, 18 – 23.

⁸⁰ Loneragan Research for ACCAN, above n 23, 5 - 6.

95. This reflection can easily be transposed to the prolonged poor conduct of the telecommunications industry, as demonstrated by **Angie's story**.

Angie's story

Angie (name changed) spoke to the National Debt Helpline and our legal advice line about poor telco conduct affecting her 80-year-old father, Roger (name changed), who has Alzheimer's and dementia. Angie told us she has power of attorney for her father. This is what she told us:

Roger is an 80 year old man who is unable to speak in clear sentences due to his Alzheimer's and dementia and is on a Centrelink pension. He is a long-time Telstra customer, so when Angie noticed he also had bills from Optus, she wanted to check why this was happening.

Angie discovered that in 2019, Roger accidentally entered an Optus shop, which was next door in the shopping centre to the Telstra shop that he meant to go into. The salesperson at Optus signed him up to a contract for a phone plan and ported his number across. He 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. He was very confused and scared by the bills, he didn't understand what they were for.

Angie went to the Optus store in January 2020 to ask them what her father's bills were for, 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 to anyone 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 he also said words to the effect- 'I can't determine if someone has dementia'. Angie said they refused to refund the amounts paid, so she requested they call the Optus head office while they were there to cancel the contract and provide a refund. This process went on for two hours and during this time Roger collapsed in the store. Optus then promised it had all been fixed- they would cancel the contract and refund Roger the money paid. They also made Angie the third party authority on the account. The next day, Angie received 3 text message notifications saying that the refund requests had been denied because the account was not in credit.

Angie told us that two months later, she went back to the store with recent VCAT Power of Attorney orders in relation to Roger, and was assured again by Optus that the amounts paid by her father would be refunded. However, when Angie reached out to the National Debt Helpline in early July 2020, they had just received a bill and threatening letter for Optus with a termination fee- 6 months after they thought the matter had been resolved. In mid-July 2020, Angie received a letter and telephone call about Roger's account from a debt collection agency engaged on behalf of Optus. They said the debt had increased from \$59 to \$63. She said they were nasty and bullying during the call, and when she explained the situation they just said words to the effect 'you will have to take that up with Optus'. Angie says that this Optus store is close to other aged care centres and she is worried they are treating other elderly people like this.

Case study provided by Consumer Action Law Centre

96. Rather than discussing how the code-making process could be strengthened to improve consumer outcomes and industry compliance, we consider the appropriate question to be: 'how can the *regulatory framework* be strengthened?'

RECOMMENDATION 8. The 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.

Question 3. *Are current constraints on ACMA's power to make industry standards regulating consumer safeguards appropriate?*

97. Neither the constraints on ACMA's power in relation to making industry standards, nor the narrow confines afforded to ACMA when satisfying itself prior to registering an industry code,⁸¹ are appropriate. In fact, they are far from it.
98. A demonstration of this is the current constraint on ACMA's exercise of powers in relation to the development of industry codes or the development of regulated standards, which must be done in a way that:

"enables public interest considerations to be addressed in a way that does not impose undue financial and administrative burdens on... the telecommunications industry".⁸²

99. This must include having regard to:

*"(a) the number of customers likely to benefit...
(b) the extent the customers are residential or small business customers...
(c) the legitimate business interests... of the telecommunications industry; and
(d) the public interest, including the public interest in the efficient, equitable and ecologically sustainable supply" of telecommunications services and goods.⁸³*

100. This current position plainly excludes consideration of the impact on consumers. This exclusion necessarily results in the industry-led creation of rules that disregard negative impacts on people, especially people experiencing vulnerability or who are in marginalised groups.
101. The burden of establishing that an Industry Code is deficient is also too high for the ACMA to be able to promote effective regulation through demanded improvements.⁸⁴ It relegates ACMA to a regulation role on the periphery, rather than central to promoting good consumer outcomes in this essential service sector.
102. The telecommunications industry has also changed dramatically since these provisions were implemented. We no longer live in a world of one (maybe two) providers where their financial sustainability might be a concern—there are tens if not hundreds of suppliers and it is not appropriate to design a market or regulatory framework on the assumption that one should not fail. If there is a concern about failure causing consumer detriment resulting from lack of ongoing supply, then this should be dealt with through supplier of last resort regulations.
103. More generally, and as we have argued above, we suggest that Part 6 of the Telecommunications Act must be revised to give ACMA, as the independent regulator, the power to develop all aspects of telecommunications regulation at first instance, in replacement of the broken system of industry codes. This is a power afforded to other essential service regulators, such as the Essential Services Commission.⁸⁵ The legislation should set out that telecommunications regulation must be developed through an independent, open, transparent and robust consultative processes that prioritises consumer protection. Industry must not control or dominate the process in the making of any standards. For example, if there are decisionmaker roundtables with industry, there must also be decisionmaker roundtables with

⁸¹ As set out in *Telecommunications Act 1997* (Cth) s 117.

⁸² *Ibid* s 123(2) (emphasis added).

⁸³ *Ibid* s 123(3).

⁸⁴ *Ibid* s 125(7).

⁸⁵ Department of Environment, Land, Water and Planning, *Discussion Paper – Victoria-specific regulatory requirements under the National Energy Customer Framework* (9 June 2017), at 2.2, <https://www.energy.vic.gov.au/legislation/national-energy-customer-framework/victoria-specific-regulatory-requirements-under-the-national-energy-customer-framework>.

consumer advocacy groups. Consultation should be across a range of perspectives and not be limited to one representative for consumer or industry perspectives prior to public consultation.⁸⁶ We recommend a Charter of Consultation, similar to that used by the ESC.

104. This will necessarily require full, robust consultation on regulatory standards rather than basing any new standards on the broken and weak protections offered in the TCP Code.

RECOMMENDATION 9. The ACMA must be empowered (through a revision of the Telecommunications Act) to undertake timely action in openly, robustly and independently consulting on and developing standards across all aspects of telecommunications regulation.

⁸⁶ In reference to *Telecommunications Act 1997* (Cth) s 135.

Proposal 3 – The essential telecommunications-specific consumer protection rules should be mandatory and directly enforceable by ACMA, and the enforcement options available should encourage compliance.⁸⁷

Question 1. *What additional regulatory and/or enforcement tools should be made available to ACMA?*

105. It is important across all industries, and particularly so for essential service industries, that the relevant regulator is proactive in clarifying the rules of the game. Regulators must be given the tools and create the appropriate culture to regulate effectively, including through direct enforcement and litigation where appropriate to not only encourage, but ensure compliance.
106. This is not simply to punish telecommunications providers for unlawful conduct, but also an important consumer protection role. Individual consumers encounter obstacles (particularly financial barriers) when enforcing their lawful rights.
107. Although the final report of the Department's review of ACMA was published in 2016, it did not comprehensively address ACMA's role in consumer protection enforcement.⁸⁸ Over the years, ACMA's enforcement action concerning telecommunications has regularly been undertaken through 'soft' action, with ACMA giving formal warnings most often.⁸⁹ Although this strategy may encourage, or rely on, more voluntary compliance, it does not enable ACMA to fulfil its remit to clarify the boundaries of the law.

Regulatory culture and pressures

108. Before discussing the numerous additional regulatory and enforcement tools necessary for ACMA to effectively fill its remit, it is important to acknowledge the culture required for successful compliance and enforcement activity, which can be affected by external pressures. For example, the review of ACMA, published in 2016, recommended a risk-based approach,⁹⁰ which can have the tendency to stifle enforcement culture and activity by focusing only on reactive action, to the detriment of consumers.⁹¹ Notably, ACMA's enforcement action (including 'soft action') dropped dramatically during the financial year in which the review was released.⁹² The ACMA's Compliance and Enforcement Policy clarifies that it takes a '*graduated and strategic risk-based approach*' and that it '*generally, [uses] the minimum power necessary*' to achieve compliance.⁹³
109. We have seen across industries, that not all companies do the 'right thing'. Recent history has shown us the unfair and egregious conduct that occurs when a strong culture of monitoring and enforcement is lacking.⁹⁴ It was not long ago, for example, that the Australian Securities and Investments Commission (ASIC) was heavily criticised by the Financial Services Royal Commission for falling short in its compliance and enforcement activities. ACMA's use of remedial action and infringement notices has significantly increased since the 2017-2018 financial year,⁹⁵ perhaps as part of a shift in expectations following the Financial Services Royal Commission.

⁸⁷ Note Consultation Paper Principle 4: The regulator should have appropriate powers and actively enforce consumer protection rules based on risk.

⁸⁸ Consumer Action Law Centre, *Regulator Watch: The enforcement performance of Australia's consumer protection regulators*, 2nd ed. (February 2020) 20, <https://consumeraction.org.au/report-regulator-watch/>

⁸⁹ *Ibid* 47, 48.

⁹⁰ Department of Communications and the Arts, *Review of the Australian Communications and Media Authority* (Final Report, October 2016) recommendation 18, p.70.

⁹¹ Consumer Action Law Centre, *Regulator Watch*, above n 88, 20.

⁹² *Ibid* 47.

⁹³ See: <https://www.acma.gov.au/compliance-and-enforcement-policy>.

⁹⁴ E.g. as was demonstrated through the Financial Services Royal Commission in 2018.

⁹⁵ Consumer Action Law Centre, *Regulator Watch*, above n 88, 47; e.g. ACMA, *Action on telco consumer protections: October to December 2019*, which states ACMA gave remedial directions to 5 telcos, issued 16 formal warnings, included an infringement notice and began 1 court proceeding; <https://www.acma.gov.au/action-telco-consumer-protections-october-december-2019>.

110. Consumer Action's *Regulator Watch* report, released in 2020, noted in relation to ACMA, 'very little in the way of formal enforcement work compared with other national regulators...', particularly in relation to civil proceedings and enforceable undertakings.⁹⁶
111. In order to effectively regulate the telecommunications sector ACMA must be enabled to cultivate a bold regulatory culture, that is able to independently take proactive action to ensure the conduct of this essential sector aligns with the rules and meets community expectations.
112. We recommend ACMA also be enabled to take on a deeper role in addressing inequity and vulnerability, particularly through the creation of a vulnerability strategy. A recently released report from the Consumer Policy Research Centre states:

*'Regulators increasingly recognise that essential services in particular need to be inclusive of all customers, by being accessible and fairly priced, responding flexibly to common life events, and supporting people in difficult circumstances to engage with markets and access essential services. Equally, regulators also seek to address the role of markets in causing or exacerbating vulnerability, as a result of complex market structures, business practices or pricing, consumer-business power imbalances, the targeted exploitation of vulnerable customers and other actions.'*⁹⁷

113. ACMA will need appropriate funding to support this proactive culture of regulation and enforcement, with a clear consumer protection mandate. Regulators cannot be effective unless they are well resourced and have strong standards to enforce.

Enforcement and regulatory tools

114. ACMA's ability to fulfil its compliance and enforcement role is still impinged by the lack of regulatory and enforcement tools available to it. There has been little expansion of ACMA's enforcement tools since 1996, when its predecessor, the Australian Communications Authority (**ACA**) was provided with what were then described as 'safety net powers which may be used if self-regulation in an industry sector has serious failings'.⁹⁸
115. As suggested above, a licensing scheme for telecommunications would not only clarify industry parameters but also equip the ACMA with an effective tool for compliance and enforcement. Regulator power to suspend or revoke a licence, or to impose conditions on a licence (such as a condition to provide information to the regulator or to modify a policy that disadvantages any class or all of its customers, as are available in the energy sector)⁹⁹, would provide a significant incentive for lawful and appropriate industry behaviour. In fact, some theories of regulation pinpoint licence-related regulatory tools as the most effective methods of enforcement, stronger than even criminal penalties.¹⁰⁰
116. ACMA must have increased regulatory and enforcement tools to be able to effectively monitor compliance and deter poor conduct, as well as to test and clarify through the law where relevant, including:
- The ability to take direct enforcement action immediately on noncompliance with a telecommunications rule, not just upon non-compliance with a direction.

⁹⁶ Consumer Action Law Centre, *Regulator Watch*, above n 88,48.

⁹⁷ O'Neill, Emma, Consumer Policy Research Centre, *Exploring regulatory approaches to consumer vulnerability*, above n 75, 3.

⁹⁸ Senate Standing Committees on Environment and Communications, Report on the Inquiry on the Telecommunications Bills Package 1996, (5 March 1997), Ch 2 Para 2.32., https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/1996-99/telebills/report/index.

⁹⁹ *Electricity Industry Act 2000* (Vic) ss 23A and 26.

¹⁰⁰ Consumer Action Law Centre, *Regulator Watch*, above n 88, 12, citing *Braithwaite's Regulatory Pyramid*.

- Discretion to use its regulatory and enforcement tools in a non-linear fashion (discussed below) and to act quickly.
- Licence-related tools, including imposing conditions upon licenses, suspensions and revocation.
- Comprehensive information gathering powers, including through the development of performance indicators for provider reporting.
- Litigation, including to test the law.
- Media tools, including a commitment to routinely issue press releases upon both the commencement and conclusion of any litigation or other significant enforcement activity (with providers named).
- Increased civil penalties and infringement notices.
- Increased availability of criminal penalties.
- The ACMA should have capacity to improve information sharing with the ACCC and with state-based consumer goods and services regulators.¹⁰¹
- Formal mechanisms to provide timely and comprehensive feedback and status updates to consumer advocacy bodies that have lodged complaints.

Direct and non-linear enforcement

117. In addition to the above listed tools, more discretion should be given to the ACMA to utilise enforcement tools in non-linear methods where this would be most effective. Currently, legislation limits the ACMA from using its stronger enforcement tools unless it is following the use of other 'softer' tools. For example, formal warnings and infringements must follow directions to comply with a Code.¹⁰² If a telecommunications provider has not joined the TIO scheme as required by legislation, ACMA can initially only direct that provider to join the scheme.¹⁰³ The process of utilising tools that are most powerful, then, takes years—and can easily be simply disrupted by an industry-led change to the rules, which requires the entire process to restart. This does not enable the ACMA to effectively enforce compliance with the rules, even where there appears to be significant breaches. The ACMA must be allowed to utilise the enforcement tools it decides are most effective, including initiating a proceeding without first stepping through a convoluted two-step enforcement framework.
118. An example of the current limitation of ACMA's remit is evident in a recent ACMA media release: '*Repeat non-compliance with the TCP Code can lead to significant consequences for breaking the rules. Telcos face penalties up to \$250,000 for failing to comply with ACMA directions to comply with the TCP Code.*'¹⁰⁴ It is absurd that it requires 'repeat non-compliance' and 'failing with directions to comply' before penalties can be awarded; this does not create a culture of compliance.

The impact of more effective rules

119. The current regulatory framework must be overhauled to enable effective enforcement, even if the ACMA had more tools at its disposal. As we stated in our submission to Part A of this consultation,

¹⁰¹ Note the Financial Services Royal Commission Final Report noted that when two regulators co-regulate a particular service, "failures to share information, co-ordinate approaches and act with a consistent purpose will result in duplication of effort or, worse, regulatory failings." Financial Services Royal Commission, above n 19, 458.

¹⁰² *Telecommunications Act 1997* (Cth) s 5.

¹⁰³ *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) s 130.

¹⁰⁴ ACMA MR 15/2020 (Media release, 02 April 2020) <https://www.acma.gov.au/articles/2020-04/telco-financial-hardship-policies-critical-during-COVID-19-acma>

'The protections offered by the Telecommunications Consumer Protection Code ('TCP Code') fall short of the protections afforded to consumers in comparable sectors that are more directly regulated... The effect of weak or narrow drafting is that there is often no real prospect of effective enforcement action, even where enforcement of provisions is notionally available by registration of the code to ACMA (such as in the case of the TCP Code).'¹⁰⁵

Reporting and information sharing

120. ACMA must also be transparent, including through continued frequent and comprehensive public reporting of its compliance and enforcement activities. Reporting should include narrative detail that explains the nature of conduct in addition to numbers. It should also include (in addition to individual priority area snapshots) reporting of all consumer protection work in one clear picture for an overall view.
121. We recommend the ACMA be empowered to develop more comprehensive and timely data sharing through a register or data cube, to complement its reports, such as the State of Play report. NSW Fair Trading publishes a 'Complaints Register', which lists companies that have received 10 or more complaints in a month, as well as general descriptions of the product or service and issue.¹⁰⁶ Consumer Action noted in a submission to the Productivity Commission that there was a 43% decrease in complaints about businesses who 'were routinely reaching the threshold for reporting on the Register'.¹⁰⁷
122. There are currently some provisions for ACMA to share information with other appropriate services, including regulators and the TIO. We recommend the ACMA retain and have expanded power to ensure relevant information can be shared to its co-regulator, the ACCC, as well as state and territory regulators.
123. We recommend the ACMA be enabled to work with other regulators to implement a standardised reporting framework following the recommendation in Consumer Action's updated 2020 Regulator Watch Report.¹⁰⁸ Consumers have a right to know about enforcement action taken against a provider. Reputational risk can be a powerful deterrent for some companies, but is also a cost of doing business.

RECOMMENDATION 10. ACMA must be enabled to directly enforce telecommunications regulation.

RECOMMENDATION 11. ACMA must be enabled to have a bold culture and approach to regulation, not only to ensure compliance but to help clarify the boundaries of the rules.

RECOMMENDATION 12. ACMA should put in place a vulnerability strategy.

RECOMMENDATION 13. ACMA should be provided further enforcement tools and the ability to use these tools immediately in response to breaches.

RECOMMENDATION 14. ACMA should continue to focus on transparent reporting, including publicly through detailed data sharing and direct pathways with appropriate services.

Question 2. *Are the currently available civil penalty and infringement notice maximums appropriate?*

124. Current civil penalty and infringement notice maximums are insufficient to impose a credible level of deterrence and provide meaningful consequences for industry. Moreover, the 'direction to comply' process¹⁰⁹ is a soft-on-industry procedural hurdle, obscuring effective regulator action.

¹⁰⁵ Consumer Action Law Centre and WEstjustice, Submission to the Consumer Safeguards Review Part A (7 August 2018) 5 – 6, <https://consumeraction.org.au/submission-telecommunications-consumer-safeguards-review-part-a-consumer-redress-and-complaints-handling/>

¹⁰⁶ See: <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/complaints-register>.

¹⁰⁷ Consumer Action Law Centre, Submission to the Productivity Commission Issues Paper, *Consumer Law Enforcement and Administration* (30 August 2016) 8.

¹⁰⁸ Consumer Action Law Centre, *Regulator Watch*, above n 88, 7.

¹⁰⁹ *Telecommunications Act 1997* (Cth) s 106.

125. We have made the case for direct regulation throughout this submission. Essential to regulations' effectiveness are their enforceability, and it is unacceptable for a 'warning' or 'direction to comply' requirement to proceed other compliance activity in the case of an ACMA standard.
126. Penalty maximum are too low: at odds with pecuniary maximums in comparable sectors such as the financial services (regulated by ASIC) or consumer goods and services (regulated by the ACCC).
127. In the financial services sector, pecuniary penalties were increased in 2019 by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*. The effect of that legislation included an increase to the maximum civil penalty for companies to the greater of:
- 50,000 penalty units (currently \$11.1 million)
 - three times the benefit obtained and detriment avoided, or
 - 10% of annual turnover, capped at 2.5 million penalty units (currently \$555 million), a figure (conservatively) over 40 x the \$250,000 maximum that can be sought by the ACMA following a telecommunications provider's contravention of a 'direction to comply'.
128. For consumer goods and services (including telecommunications goods and services insofar as they are regulated by the ACCC), the *Treasury Laws Amendment (2018 Measures No 3) Act 2018 (Cth)* increased the maximum civil penalty for corporations contravening the Australian Consumer Law is the greater of:
- \$10 million; or
 - three times the benefit obtained and detriment avoided, or
 - 10% of annual turnover.
129. Noting that the determination of penalty quantum is ultimately a matter for the relevant court (up to the statutory maximum), we suggest that the statutory maximum pecuniary penalties in Parts 31 and 31B of the Telecommunications Act should be increased to a quantum analogous to those available in the financial services or consumer goods and services sectors. While individual telecommunications disputes may arguably typically result in lower quantum of individual financial loss to affected consumers than disputes arising from contraventions of the Australian Consumer Law, the deterrence objective of pecuniary penalty provisions requires that penalties must be able to have a meaningful punitive impact on players across industry, including the three very, very large companies dominating Australian telecommunications markets.
130. Finally, we consider the infringement penalty maximum is too low in circumstances where the trend in the ACMA enforcement activity suggests that the regulator routinely favours the issuing of such notices over litigation. As documented in Consumer Action's *Regulator Watch*, the ACMA initiated civil proceedings on only one occasion in the five years to 30 June 2019, (comparably issuing 25 infringement notices over this period).¹¹⁰

RECOMMENDATION 15. Increase civil penalties and infringement notice maximums to align with those from other sectors and to incentivise compliance.

¹¹⁰ Consumer Action Law Centre, *Regulator Watch*, above n 88. Note: the ACMA began 1 court proceeding after the period reviewed by Consumer Action in *Regulator Watch*, in the October – December 2019 quarter, see: <https://www.acma.gov.au/action-telco-consumer-protections-october-december-2019>.

Proposal 4 – The legacy obligations of declining relevance should be removed or adjusted as Telstra’s legacy copper network is phased out.¹¹¹

131. We have limited comments on this proposal.
132. However, we assist vulnerable people each year with telecommunications issues related to legacy obligations, such as the universal service obligation and priority assistance. As the discussion paper notes, fewer and fewer consumers in Australia rely on landline communications. However, the people who still rely on these protections often align with more vulnerable populations, such as older people, people with a disability or severe medical condition and people experiencing family violence. To remove these protections would result in disproportionate harm to people experiencing vulnerability, such as **Josie**.

Josie’s story

Josie (name changed) is a 55 year old refugee. She is a single mother to a teenage daughter, as well as legal carer and guardian to two grandchildren aged under 10. Josie came to Australia after spending many years in a refugee camp in Africa. Her knowledge of Australian legal and regulatory systems is low. Her technological literacy is very low. At the time of WEstjustice’s assistance to Josie, a family violence intervention order excluded a person from Josie’s home.

Josie’s telecommunications dispute related to her attempt to transfer from one land-line provider to second land-line provider. Josie did not have a mobile phone prior to attempting to transfer providers. She has low technical literacy and is not proficient with computers. Her landline was her primary mode of communication with service providers, friends, and family.

Josie approached WEstjustice in confusion after two months had passed since her request to transfer, and her original provider was still billing her, despite the second provider also having commenced billing.

WEstjustice called both Josie’s first and second provider seeking an explanation for the double billing. Josie’s first provider told WEstjustice that no port-out request had been received. WEstjustice assisted Josie to make a TIO complaint about the second provider’s failure to port her line and transfer her account, despite commencing and continuing billing. Sometime shortly after, Josie’s first provider disconnected her landline and her phone became unusable.

WEstjustice also contacted Josie’s first provider, which said that the phone had been disconnected automatically by the first provider’s system, and that it was likely to be because of a port-out request had now been received, however the representative was unable to confirm this

Josie’s phone remained disconnected for over **nine weeks** while Josie and WEstjustice waited for a response from the second provider at various stages in the TIO process. The second provider was on notice that Josie’s phone was disconnected via Josie’s TIO complaint, but no interim or alternative service was provided.

Josie was extremely distressed by this period of disconnection: there was family violence in her home and she was unable to speak friends and relatives. Moreover, she was unable to contact or be contacted by WEstjustice, who were trying to help her resolve the issue.

Josie eventually purchased a cheap mobile phone and prepaid credit to alleviate the situation, but this caused her further distress, as she had difficulty using the phone (she was not accustomed to using a mobile phone at all), and she couldn’t afford to purchase sufficient credit. On occasions when she attended WEstjustice seeking an update, Josie was frustrated and tearful.

Case study provided by WEstjustice

¹¹¹ Note Consultation Paper Principle 5: Consumer protections should remain in place where they are of enduring importance but be removed or phased out if they no longer serve a purpose, and Principle 6: Services should be available, accessible and affordable for all people in Australia.

RECOMMENDATION 16. Genuine consideration must be given to the impact on vulnerable consumers of any dilution or removal of these protections.

Question 1. *Which legacy regulatory obligations should continue to be mandated by regulation?*

133. No specific comment on this question.

Question 2. *If obligations are not mandated, would these services continue to be provided by the market?*

134. No specific comment on this question.

Question 3. *Which obligations/services have, in practice, been replaced in the market by other services?*

135. No specific comment on this question.

Question 4. *Which obligations, if no longer mandated, should be subject to transitional or grandfathering arrangements? What form should such arrangements take and how long should they remain in place?*

136. No specific comment on this question.

Question 5. *Is it appropriate for Telstra to continue to provide low income measures in relation to fixed line phone services for the duration of its contract as the USO provider?*

137. No specific comment on this question.

General issues for comment

Question 1. *Do the proposals in this paper address the major issues of concern around choice and fairness and consumer safeguards?*

138. The proposals in this paper address at a 'high level' many of the major issues of concern around choice and fairness and consumer safeguards. However, we are concerned that direct answers to the consultation questions alone will not present a full picture of the fundamental and far-reaching deficiencies of the current regulatory model, which deny choice and fairness for consumers.

Question 2. *Are there any unforeseen issues or unintended consequences of the proposals?*

139. No comment on this question.

Question 3. *Are there any other issues that should be brought to the Government's attention?*

140. In the context of the broader compliance issues raised throughout this paper, we note our concerns about lack of actual compliance work undertaken by the independent, but industry-created¹¹² TCP Code Compliance body, Communications Compliance Ltd ('CommCom'). As explained in Consumer Action and WEStjustice's joint submission to the TCP Code review in 2018,

¹¹² Communications Alliance, *Stronger Protections for Telecommunications Customers Take Effect Today* (Media Release 18, 1 August 2019), <https://commsalliance.com.au/Publications/releases/2016-media-releases4/2019-media-release-18>.

'An industry code is only as good as its compliance mechanism. In our casework, we consistently see widespread non-compliance with the TCP Code. When raising breaches of the Code in legal correspondence, telecommunications providers generally do not seem concerned about the consequences of breach. We agree with the view that compliance with the TCP Code is "largely premised on industry goodwill."'¹¹³

141. Unsurprisingly (given the unbalanced Code Review process described in our response to Proposal 2 Question 2 above), despite our 2018 submission, the chapter of the TCP Code dealing with monitoring and compliance remained substantively unchanged,¹¹⁴ retaining the vague and weak provision that, the Code Compliance Framework 'aims to: encourage, monitor and enhance industry compliance with this Code...'¹¹⁵ There is no mention of either ensuring or requiring compliance with the Code, resulting in the strong inference that the process lacks teeth.
142. To this end, CommCom relies entirely on self-reported declarations of compliance through an attestation system,¹¹⁶ a stark contrast to Code Compliance organisations in other sectors. In the financial services sector, for example the Banking Code Compliance Committee (BCCC) and the General Insurance Code Governance Committee take on inquiries and investigations.¹¹⁷ This limited scope hinders CommCom from identifying systemic issues within the industry and from amassing a body of evidence from which to recommend improvements to telecommunications provider. We note that although CommCom's activities are meant to be published online for transparency,¹¹⁸ we were unable to locate any public activity report on our basic search.

Conclusion

143. We are pleased to provide this submission to the Department with the aim of significantly improving choice and fairness for people in their interaction with the telecommunications industry. Modernisation of telecommunications regulation to reflect the essentiality of this service, through independent, directly enforceable standards, backed up by an empowered regulator, would reduce the significant consumer detriment facilitated by the current unfair and imbalanced system of self-regulation. A licensing scheme would increase regulator awareness of all telecommunications companies providing this essential service, as well as offering critical tools for managing compliance. It is time for Australia's telecommunications regulatory framework to catch up to the expectations and requirements of that of an essential service.

¹¹³ Consumer Action Law Centre and WEStjustice, Submission on the Draft Industry Code: Telecommunications Consumer Protections Code (13 August 2018) 15, <https://consumeraction.org.au/draft-tcp-code/> citing Financial Counselling Australia, 'Hardship Policies in Practice: A Comparative Study' (2014), 14-16; P Ali, E Bourova and I Ramsay, 'Responding to Consumers' Financial Hardship: An Evaluation of the Legal Frameworks and Company Policies' (2015) 23 Competition and Consumer Law Journal 23, 41, available at: <https://ssrn.com/abstract=2657409>.

¹¹⁴ Communications Alliance, *TCP Code C628:2019: Substantive changes tracked against previous registered Code – C628:2015 (Inc Variation 1/2018)*, (2019), Ch 10, https://www.commsalliance.com.au/_data/assets/pdf_file/0003/64785/TCP-Code-C628_2019-with-Substantive-Changes-Tracked.pdf.

¹¹⁵ Communications Alliance, *TCP Code C628:2019*, (July 2019) 67, emphasis added.

¹¹⁶ Communications Compliance Ltd, *Who is CommCom?*, (2020) About Us, <https://commcom.com.au/about-us/>.

¹¹⁷ Banking Code Compliance Committee, *Our Monitoring Program* (2020), <https://bankingcode.org.au/about/the-committee/our-monitoring-program/>. General Insurance Code of Practice. General Insurance Code Governance Committee, *The Committee*, (2020) <https://insurancecode.org.au/about/about-the-code-governance-committee/>.

¹¹⁸ Communications Alliance, *TCP Code C628:2019*, (July 2019) Appendix 1: Role of Communications Compliance, 75.

APPENDIX A – SUMMARY OF RECCOMENDATION

- RECOMMENDATION 1.** Modernise the telecommunications regulatory framework to align with other essential services regulatory regimes, with direct regulation through independent standards developed by ACMA, licensing and an increase in civil penalties.
- RECOMMENDATION 2.** The list of matters that should be covered by direct regulation should include the numerous essential consumer protection matters listed in paragraph 26 of this submission, which are not covered by section 113 of the Telecommunications Act.
- RECOMMENDATION 3.** ACMA conduct robust, independent consultation on the specific consumer protection provisions in independent standards, as the current matters covered by the TCP Code and the current standards are ineffective at protecting consumers.
- RECOMMENDATION 4.** Incorporate the Debt Collection Guideline as part of independent standards developed by ACMA so that it is directly enforceable by the regulator.
- RECOMMENDATION 5.** Amend Section 4 and Part 6 of the Telecommunications Act so that it more closely reflects the main objects of the Act, with a focus on improving consumer protections through direct regulation.
- RECOMMENDATION 6.** All current industry codes should be replaced by independent, directly enforceable standards developed by ACMA in consultation with stakeholders. Once the re-designed and rewritten standards have been developed, the industry codes should cease operation.
- RECOMMENDATION 7.** Institute a licensing regime for all telecommunications providers.
- RECOMMENDATION 8.** The 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 9.** The ACMA must be empowered (through a revision of the Telecommunications Act) to undertake timely action in openly, robustly and independently consulting on and developing standards across all aspects of telecommunications regulation.
- RECOMMENDATION 10.** ACMA must be enabled to directly enforce telecommunications regulation.
- RECOMMENDATION 11.** ACMA must be enabled to have a bold culture and approach to regulation, not only to ensure compliance but to help clarify the boundaries of the rules.
- RECOMMENDATION 12.** ACMA should put in place a vulnerability strategy.
- RECOMMENDATION 13.** ACMA should be provided further enforcement tools and the ability to use these tools immediately in response to breaches.
- RECOMMENDATION 14.** ACMA should continue to focus on transparent reporting, including publicly through detailed data sharing and direct pathways with appropriate services.
- RECOMMENDATION 15.** Increase civil penalties and infringement notice maximums to align with those from other sectors and to incentivise compliance.
- RECOMMENDATION 16.** Genuine consideration must be given to the impact on vulnerable consumers of any dilution or removal of these protections.

Please contact 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,



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Melissa Hardham | CEO
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Bryanna Connell | CEO
BARWON COMMUNITY LEGAL SERVICE



Sarah Rodgers | Manager & Principal Lawyer
HUME RIVERINA COMMUNITY LEGAL SERVICE



Fiona York | Executive Officer
HOUSING FOR THE AGED ACTION GROUP



Sandy Ross | Executive Officer
FINANCIAL COUNSELLING VICTORIA

APPENDIX B – ABOUT THE CONTRIBUTORS TO THIS SUBMISSION



WEstjustice



Consumer Action Law Centre (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.

WEstjustice (Western Community Legal Centre)

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.

Victorian Aboriginal Legal Service (VALS)

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973. VALS plays an important role in providing referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being Criminal Law, Family Law and Civil Law.

In March 2019, Consumer Action and VALS embarked on an Integrated Practice Project (the IP Project or the Project) as one way of addressing some of the unmet consumer, credit and debt legal needs of Victorian Aboriginal communities. As part of the Project, VALS and Consumer Action work together to participate in regular community engagement sessions with Victorian Aboriginal communities. Community engagement sessions operate in partnership with local ACCOs and other key service providers. The sessions have served to connect these communities with legal advice services, financial counselling, policy work and legal education relating to consumer, credit and debt issues. They also provide a forum for the cross-promotion of services that can support the civil legal needs of Victorian Aboriginal communities.

Financial Counselling Victoria (FCVic)

FCVic is the peak body and professional association for over 250 financial counsellors throughout Victoria. Financial counsellors provide free information, support and advocacy to Victorians in financial difficulty, and assist over 60,000 people annually.

Barwon Community Legal Service (BCLS)

Barwon Community Legal Service is an independent non-profit organisation that is funded by the State and Federal Governments to provide free legal information, advice, and casework to members of our local community. A key part of our work is community education and awareness and contributing to law reform, as well as providing direct legal assistance.

Hume Riverina Community Legal Service (HRCLS)

We provide free legal assistance to people living in North East Victoria and the Southern Riverina of NSW across 17 local government areas. Our service helps people who are disadvantaged or vulnerable, and would not otherwise be able to get legal assistance, particularly those living in regional and remote areas. We prioritise:

- people experiencing family violence
- children and youth
- Aboriginal and Torres Strait Islander peoples
- people with a disability or mental illness
- the elderly
- low income earners
- people from non-English speaking backgrounds.

Our service provides legal assistance on family law, family violence, separation and divorce, youth law, motor vehicle accidents, credit and debt issues, discrimination, consumer complaints, traffic offences, fines, seniors' issues and other everyday legal problems.

Housing for the Aged Action Group

Housing for the Aged Action Group is a community based organisation specialising in the housing needs of older people. The organisation was formed just over 30 years ago and today has over 400 members that actively campaign for housing justice.