

Telecommunications Consumer Safeguards

Current telecommunications safeguards and regulatory environment

Department of Communications and the Arts

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1. Background and evolution of the Australian telecommunications industry

The telecommunications industry has seen constant change over the past 20 years – evolving from a largely fixed-line voice telephone network, provided end-to-end by a single provider, to now include the rollout of the National Broadband Network (NBN) and a range of new service offerings such as next-generation mobile services.

Alongside this, deregulation of the industry between 1991 and 1997 saw the market transition from sole provision by Telecom (now Telstra) as a government business enterprise, to an open, competitive market consisting of numerous players.

Some key dynamics shaping the market today are:

- **Changing market structures** – In the past, the copper telephone network was owned by Telstra, which provided services directly to consumers and also charged retail providers wholesale rates for use of its network infrastructure. Telstra is now structurally separated, with the majority of its fixed line network being progressively acquired by NBN Co Limited, which operates the NBN solely on a wholesale basis and charges retail providers for access to the network. Other wholesale providers of telecommunications services have also emerged.
- **Increased choice** – The focus in fixed-line telecommunications has shifted to broadband packages, with increasing numbers of ‘unlimited’ plans, and bundled plans including voice, broadband, and entertainment. Consumers also have more choice around broadband speed, for example, different plans/speed tiers offered on services provided over the NBN. In the mobile market, competition is increasingly focused on data allowances, with features such as data sharing and data rollover being introduced. Unlimited voice and SMS inclusions now feature in most post-paid mobile plans, with some mobile providers starting to offer unlimited (but throttled) data on pre-paid mobile plans.
- **Increased competition** – Today there are three mobile network operators (Telstra, Optus and Vodafone) with a fourth shortly to launch (TPG), and around 780 fixed line and mobile service resellers and mobile network virtual operators¹ – though it should be noted that the three current network operators dominate the mobile market. There are currently approximately 550 internet service providers operating in the Australian market²; however, Telstra remains the dominant internet service provider with an approximate 65 per cent market share.
- **Innovative technologies** – New services that operate over an internet connection have also emerged. Examples of these include voice and messaging services like Skype and WhatsApp. This has added an additional layer of complexity to the telecommunications market – these are third-party services that run over internet or mobile networks, and network owners have limited visibility or control over those services.
- **This transformation of the market has changed the way that the industry operates, how it interacts with customers, and in turn, the standards of service that consumers expect to receive from their providers.**

¹ IBISWorld (May 2018) Industry Report J5803 - Telecommunications Resellers in Australia.

² IBISWorld (December 2017) Industry Report J5911 - Internet Service Providers in Australia.

The expansion of mobile and online services has made for a more efficient and accessible market, but consumers have also become increasingly reliant on the telecommunications services – for everything from critical business transactions to everyday activities. And while a more competitive and open market has improved consumer choice, it has also introduced greater complexity. Consumers are faced with the challenge of navigating a larger, more sophisticated market when making decisions about the services that best meet their needs. Consumer safeguards play an important role in providing a safety net for consumers in the context of these dynamics.

On 17 April 2018, the Minister for Communications, Senator the Hon Mitch Fifield, released Terms of Reference for a Consumer Safeguards Review that will develop the next generation of consumer safeguards for the telecommunications industry in Australia.

The Consumer Safeguards Review will be undertaken in three parts:

- 1 Consumer redress and complaints handling
- 2 Reliability of services
- 3 Choice and fairness in the retail relationship between the customer and their provider.

While many safeguards are already delivered through broader consumer protection frameworks such as the Australian Consumer Law, some form of telecommunications-specific safeguards may be necessary. In this context, the Government's Consumers Safeguards Review will have regard to:

- the need for regulatory or institutional reform
- existing consumer protection frameworks
- the form safeguards should take
- where in the supply chain they should be applied
- the regulatory approach to be taken.

The Department of Communications and the Arts will undertake stakeholder consultations in relation to each part of the Review. This paper is intended to support those consultations by providing interested stakeholders with a background understanding of the current consumer safeguards framework and regulatory environment.

2. Consumer safeguards

2.1 What are consumer safeguards?

Consumer safeguards are mechanisms that provide protection for consumers when purchasing or using goods or services. The application of consumer safeguards varies by industry sector, based on the degree and type of protection required.

In the Australian telecommunications sector, consumer safeguards are designed to protect the ability of Australians to make informed choices when selecting a service, ensure these services are reliable and provide avenues for complaints and redress when things go wrong. Consumer safeguards are intended to protect consumers and manage unacceptable practices that would result in consumer detriment – for instance, the use of confusing terminology in a binding contract may result in a consumer signing up to a service they do not fully understand and have limited ability to withdraw from.

As reliance on telecommunications becomes increasingly embedded in our day to day lives, consumers become more exposed to this risk, and conversely, less able to understand the complexity of the system. As the range of telecommunications products and product packages offered by service providers continue to grow, consumers' purchasing decisions have become more difficult.

There are a number of intersecting factors that can make it particularly challenging for some consumers to compare and make decisions about products, including but not limited to:

- technical understanding
- levels of digital literacy
- English language proficiency
- levels of education.

The Australian Government has a role to play in ensuring that consumers have access to information and support to exercise informed choice in:

- selecting a service which best suits their needs
- comparing offers from different providers
- understanding the terms and conditions they are contracting into.

Many people – businesses and individuals alike – rely on telecommunications networks for a range of reasons. For instance, the vast majority of Australians rely on mobile phones for social connection, small businesses rely on the internet for business transactions, and consumers may need to access communication services to seek help in the case of natural disasters or medical emergencies. It is important that these services work when they are required and that consumers have appropriate avenues for recourse when they do not. The availability, reliability and performance of the underlying telecommunications networks and the retail services operating over those networks are fundamental to ensuring the quality of service.

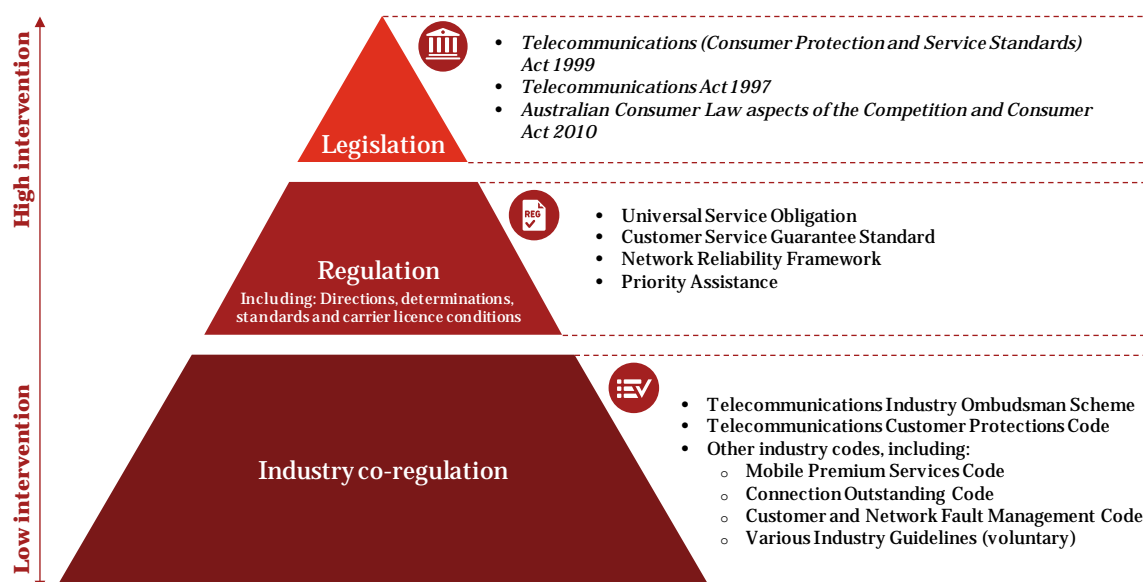
Consumer safeguards also play an important role in protecting consumers where it may not otherwise be commercially viable or attractive for telecommunications providers to do so (for example, connecting and repairing services and infrastructure in rural areas versus in locations where there are more premises per geographic area). Safeguards can also be implemented to prevent industry participants from engaging in conduct that may otherwise cause detriment to consumers – for example, delays to fault repairs, lack of clarity in the information provided, or poor customer service and/or sales practices.

2.2 Existing consumer safeguard measures

In Australia, general consumer protections are outlined in the Australian Consumer Law with industry-specific consumer safeguards that apply to telecommunications comprising a range of instruments – legislative, regulatory, industry-based and others.

Below is a summary of legislative, regulatory and co-regulatory instruments currently in place.

Figure 1: Summary of legislative, regulatory and industry co-regulatory instruments



Many existing safeguards were developed when the services were primarily provided over the fixed-line copper telephone network solely by Telecom (now Telstra). Telstra continues to be responsible for providing universal access to phone services. The Australian Communications and Media Authority (ACMA), which is a regulatory body of the Australian Government, has prescribed powers to enforce telecommunications safeguards. Some protections, such as the Telecommunications Consumer Protections (TCP) Code 2015, apply across all services and network technology types, but the majority of measures apply solely to the standard telephone service.

2.2.1 Legislation and regulation

Telecommunications regulation is complex, with multiple layers of regulation and multiple regulators. This has resulted in obligations being duplicated in some areas while leaving gaps in others.

The *Telecommunications Act 1997* (the Act) promotes industry self-regulation in the first instance but allows more direct regulation where required. This has contributed to the hierarchical framework of consumer protections which exists today:

- **Legislation** - the Telecommunications (Consumer Protection and Service Standards) Act 1999, certain provisions of the Act, and the Australian Consumer Law aspects of the Competition and Consumer Act 2010.
- **Other regulation** - the Customer Service Guarantee and Telstra-specific carrier licence conditions including those such as Network Reliability Framework, and Priority Assistance (which relate to connection, repair and reliability of standard telephone services); industry Standards made by the ACMA such as the Telecommunications (Consumer Complaints Handling) Industry Standard 2018.

- **Co-regulation** - industry codes such as the TCP Code, the Mobile Premium Services Code 2011, and the Customer and Network Fault Management Code 2015 – and (voluntary, non-enforceable) industry guidelines and guidance notes.
- The key telecommunications-specific consumer safeguards established through legislation and regulation, as relevant to the Consumer Safeguards Review, are:
- **Standard terms and conditions (Australian Consumer Law)** – Requires that contracts clearly state all of the terms and conditions (in compliance with the Australian Consumer Law that governs consumer protection and fair-trading in Australia and incorporates the national unfair contract terms).
- **Universal Service Obligation (USO)** – Provides reasonable access, on request, to a standard telephone service for all people in Australia.
- **Customer Service Guarantee Standard (CSG)** – Establishes connection, fault remediation and appointment keeping standards (including maximum timeframes and compensation) for eligible standard telephone services.
- **Network Reliability Framework** – Provides a reporting and repair framework, including obligations in relation to poorly performing parts of Telstra’s copper network.
- **Priority Assistance (PA)** – Requires Telstra to take steps to prioritise connection and fault repair for telephone services of people with a diagnosed life-threatening medical condition.
- **Telecommunication Industry Ombudsman Scheme (TIO scheme)** – Provides a complaints handling and dispute resolution scheme for telecommunications services.

3. Industry co-regulation

Representative industry bodies are able to develop voluntary industry codes dealing with matters between providers and consumers, which may be registered by the ACMA. The key telecommunications-specific co-regulatory consumer safeguards as relevant to the Consumer Safeguards Review, are:

- **Telecommunications Consumer Protections (TCP) Code 2015** – Establishes a retail level code of conduct for the telecommunications industry which provides a range of protections for mobile, fixed-line and internet customers.
- **Mobile Premium Services Code 2011** – Sets out rules for advertising and providing mobile premium services (examples include mobile ringtones, chat services, SMS voting/competitions, horoscopes).
- **Connect Outstanding Code 2017**– Defines principles and processes for the disconnection of the previous service, the connection of a new service and a process for reversals for invalid connections.
- **Customer and Network Fault Management Code 2015**– Outlines the process of recording, managing and resolving customer faults and network faults between carriers and carriage service providers in an efficient manner.

By registering codes with the ACMA they become enforceable by the regulator. Failing to comply with those codes can attract penalties. The ACMA has the power to establish an industry standard where an industry code is deemed deficient but has not done so to date. While the ACMA has made standards in the past, these have generally been in response to a legislative requirement (e.g. Telemarketing Standard, Customer Service Guarantee Standard) or a Ministerial Direction (International Mobile Roaming Standard and, from mid-2018, standards to improve the NBN consumer experience, including dealing with service continuity during NBN migration and the recently made Complaints-Handling Standard).

Below is a summary of legislative, regulatory and co-regulatory safeguards currently in place.

Figure 2: Summary of legislative, regulatory and industry co-regulatory safeguards

	Availability	Reliability and performance	Dispute resolution	Protection from harms
Fixed line internet and telephone services	Universal Service Obligation	Network Reliability Framework	Telecommunications Industry Ombudsman	Standard Terms & Conditions
	Priority Assistance			
	Connect Outstanding Code	Customer Service Guarantee		
Mobile data and telephone services		Customer and Network Fault Management Code	Telecommunications Consumer Protections Code	
				Mobile Premium Services Code

4. Current reform initiatives

In response to the changes in the telecommunications environment, the Government has set a strategic approach to telecommunications reform that comprises a series of measures in the short, medium, and long-term, including through the NBN rollout, to deliver access to broadband networks across Australia.

The transition to the NBN is also changing industry accountabilities and adding complexity from the consumer perspective. While multi-provider supply chains are not new, the issues related to the transition to the NBN are intensified by the scale of activity involved in migrating millions of consumers, and associated consumer expectations about issues that go beyond network infrastructure. It has always been recognised that the NBN model requires industry parties to take shared responsibility for end-to-end service delivery and to coordinate activities to maximise consumer outcomes. However, from the consumer perspective, the direct service relationship remains with their retail service provider.

4.1 Government initiatives – immediate to short-term

At the retail level, several initiatives have been designed to improve the NBN customer experience, delivering benefits in the immediate to short-term. These include the CEO Forum, which has secured joint industry action to tackle priority migration issues, and a series of regulatory measures announced in December 2017, designed to improve the customer experience before and during their transition to the NBN by providing consumers with additional information, reducing the ‘handballing’ of complaints between providers, and conducting speed and quality tests at the time of NBN connection. Other recent work includes:

- the Australian Competition and Consumer Commission’s (ACCC) Measuring Broadband Australia program to independently test and publicly report real-world NBN speeds being experienced by consumers
- ACCC guidance to retail service providers on how to advertise NBN broadband speeds, particularly in peak periods (7-11pm)
- ACMA research into the NBN consumer experience to inform and guide Government intervention
- a Migration Assurance Framework developed and agreed with industry which sets out the roles and responsibilities of all parties in delivering a smooth transition to the NBN.³

On 30 April 2018, the Minister for Regional Communications, Senator the Hon Bridget McKenzie, announced the commencement of the 2018 Regional Telecommunications Review. The three-yearly reviews conducted by the Regional Telecommunications Independent Review Committee provide a vehicle by which to examine service issues in regional and remote areas of Australia. The Committee is expected to report to government by the end of September 2018.

³ Department of Communications and the Arts (2017) Improving the NBN consumer experience, available at: <https://www.communications.gov.au/departmental-news/improving-nbn-consumer-experience>.

4.2 Government initiatives – medium to longer term

The Government is working to implement a new Universal Service Guarantee (USG), which will ensure all Australians have access to voice and broadband services, regardless of where they live.

In addition, the telecommunications reform package currently before the Parliament includes the following key reforms:

- Creation of Statutory Infrastructure Provider obligations to ensure people in Australia have access to reliable high-speed broadband, regardless of where they live.⁴
- A Regional Broadband Scheme to ensure there are long-term sustainable funding arrangements in place to provide broadband services to Australians in regional and remote areas.⁵

When passed, this will underpin ongoing access to broadband services for consumers at a wholesale level.

The Consumer Safeguards Review is the next step in this process. The review will provide a vehicle by which to examine effectiveness, relevance and ongoing utility of telecommunications consumer protections, and how would they best be delivered in future, including once the NBN rollout is complete.

4.3 Industry initiatives

Industry is currently reviewing its key co-regulatory consumer protection instrument – the TCP Code. The Code is built around the life cycle of the relationship between the retail service provider and the consumer, dealing with advertising, sales, service and contracts, billing, credit and debt management, changing (retail) providers, and complaints handling.

The current TCP Code review commenced in August 2017. The review's terms of reference include adapting the Code so it is more applicable to services provided over the NBN, as well as assessing areas of duplication with the Australian Consumer Law.

An updated TCP Code is expected to be available for public comment in mid-2018 and subject to this, a final draft is expected to be submitted to the ACMA for registration by the end of 2018.

⁴ Department of Communications and the Arts (2018) Telecommunication Reform Package, available at: <https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package>.

⁵ Department of Communications and the Arts (2018) Telecommunication Reform Package, available at: <https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package>.

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