

# **Telecommunications Consumer Safeguards**

International and sectoral  
comparisons of consumer  
protections for choice and  
fairness in the retail  
relationship between  
customers and their providers

Department of Communications and the Arts

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# 1. Introduction

## 1.1 Context

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

While many safeguards are already delivered through broader consumer protection provisions under the Australian Consumer Law, some form of telecommunications-specific safeguards may remain necessary. In this context, the 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.

Over the past 20 years, the telecommunications industry has evolved significantly. The proliferation of technology, combined with decreasing costs (for both consumers and service providers), has led to widespread adoption and use of telecommunications. The development of new services and technologies has generated significant benefits for consumers, but it has also introduced greater complexity. Consumers are faced with a large number of choices when making decisions about services that best meet their needs; including (but not limited to) contract terms, inclusions and exclusions, bundling and multi-product offerings, as well as data and connection speeds.<sup>1 & 2</sup> It is important that Australia's consumer safeguards framework continues to protect consumers in this growing and changing market.

The companion background paper *Current telecommunications safeguards and regulatory environment* describes the broader telecommunications consumer protection regulatory framework. This paper is designed to assist stakeholders to contextualise issues against which Part C of the Review – Choice and fairness in the retail relationship between customers and their providers – is seeking comment, by providing information about the current mechanisms in Australia that facilitate this for consumers in the telecommunications market. Mechanisms in comparable countries around the world and other industries in Australia are also discussed.

Telecommunications-specific protections can be categorised as either:

**Government-mandated protections** – these include protections in primary legislation, as well as those set out in other regulation such as directions, determinations, standards, etc.<sup>3</sup>

**Industry developed rules** – rules developed by industry bodies representing service providers that may or may not be enforceable by the regulator.

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<sup>1</sup> ACCC (2018) Communications Sector Market Study, available at: [https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018\\_0.pdf](https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018_0.pdf)

<sup>2</sup> OECD (2008) OECD Policy Guidance for Protecting and Empowering Consumers in Communications Services, available at: <http://www.oecd.org/sti/consumer/40878993.pdf>

<sup>3</sup> Note that not all service providers are required to follow conditions/standards.

Comparative countries included in this paper are:

- Canada
- France
- Germany
- New Zealand
- Singapore
- South Korea
- United Kingdom (UK)
- United States of America (USA).

For comparative purposes, the energy (electricity and gas) and banking sector in Australia were also examined.

It should be noted that due to the variance in definitions and applications across countries and industries, there are additional nuances that cannot be captured using only information gathered in a desktop review. The purpose of this paper is to provide a baseline level of information to inform consultation on mechanisms for choice and fairness in the Australian telecommunications market; it should not be considered exhaustive or used in isolation for decision making.

## 1.2 Telecommunications consumer protections in Australia

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.

Australia’s framework for addressing choice and fairness is fairly unique in that more than one type of instrument is often used to address an issue. Most other countries have a combination of instruments to address choice and fairness, but use a single approach for each category. Canada and South Korea are the only exceptions, and they both do so to a lesser extent than Australia. For this reason, the following section has been structured according to the type of regulation used to facilitate choice and fairness, rather than the category of the issue.

**Table 1 Choice and fairness protections in Australia, by category**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Australia	<b>R I</b>	<b>I</b>	<b>L I</b>	<b>L I</b>	<b>I</b>	<b>L R I</b>

Note: **L** = legislated, **R** = set by Regulator, **I** = Industry-led, **N** = no telecoms specific provisions.

The table above considers the body which sets the most stringent regulations.

The Australian Competition and Consumer Commission (ACCC) facilitates choice and fairness through general consumer law. The ACCC is an independent statutory authority, responsible for administering the Competition and Consumer Act 2010 (‘CCA’) and enforcing the Australian Consumer Law.

In terms of industry-specific responsibilities, the Australian Communications and Media Authority (the ACMA) has primary responsibility for the regulation of the Australian telecommunications industry. The ACMA seeks to regulate the market in a way that enables fair outcomes and supports consumers to make informed choices about their telecommunications services.

Telecommunications-specific consumer protections in Australia are contained in the *Telecommunications Act 1997* (Telecommunications Act) and the *Telecommunications Consumer Protection and Service Standards Act 1999* (TCPSS Act).

### 1.3 Government mandated protections – legislative and regulatory

Many of the legislated protections provided under the Telecommunications Act and TCPSS Act are intended to set a baseline in terms of accessibility, reliability and functionality for a standard telephone service (STS). But some also operate to provide choice and fair outcomes for consumers. Provisions contained in the Telecommunications Act include:

- **Itemised billing:** a service provider who supplies a standard telephone service must provide itemised billing for each of its customers of such a service (schedule 2).
- **Pre selection:** the ACMA may require certain carriers and carriage service providers to provide pre-selection in favour of carriage service providers in relation to calls made using a standard telephone service (part 17).
- **Number portability:** carriage service providers are required to provide number portability (ability to port phone number to a new provider) when their customers decide to change (subdivision A Number Plan).
- **Standard terms and conditions:** contract terms and conditions are to be included as standard unless excluded (part 23).<sup>4</sup>

The ACMA is responsible for enforcing these consumer protections. In cases where service providers breach the rules, the ACMA may give a provider a remedial direction, that is, a written direction requiring the provider to take a specified action to ensure the provider does not contravene the rule in the future. The ACMA may also issue a formal warning. This places the service provider on notice, thereby providing them with an opportunity to address those issues before a stronger enforcement action may be taken by the ACMA if the non-compliance is not rectified or it recurs.<sup>5</sup> Where a carrier has contravened the conditions of its licence, the ACMA may issue a remedial direction, a formal warning or cancellation of the licence.

### Industry standards

Choice and fairness consumer protections are also set out in subordinate legislation, particularly industry standards. The Telco Act provides for the ACMA to make industry standards. The Minister can direct the ACMA to determine an industry standard. The ACMA can also make an industry standard where there is no industry code or the ACMA determines that a code is deficient. Compliance with industry standards is mandatory for service providers. Industry standards currently registered under the Telecommunications Act include:

- Telecommunications (International Mobile Roaming) Industry Standard 2013.
- Telecommunications (NBN Continuity of Service) Industry Standard 2018.
- Telecommunications (NBN Consumer Information) Industry Standard 2018 (effective from 21 September 2018).

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<sup>4</sup> *Telecommunications Act 1997* (Cth).

<sup>5</sup> ACMA (2017) ACMA compliance and enforcement policy, available at: <https://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/compliance-enforcement-policy>

The new NBN Consumer Information Standard also provides protections for consumers relating to choice and fairness. This Standard aims to ensure that consumers receive the appropriate pre-sale information and advice from carriage service providers on NBN services to help them make informed choices about those services. The information must be provided before the consumer enters a contract and includes typical busy period speed, technical limitations and guidance on the level of online usage the plan supports.<sup>6</sup> The Standard commences on 21 September 2018.

The International Mobile Roaming Standard is of particular relevance to promoting consumer choice and fairness. The Standard requires that all Australians travelling overseas will receive an SMS alert advising them when they start roaming and a warning that significantly higher charges may apply. Additionally, customers of Optus, Telstra, and Vodafone receive an SMS outlining the costs of using roaming services in each country visited. In addition, it also includes ability to stop roaming and opt-out of receiving roaming usage alerts.

## 1.4 Industry-developed rules

### Industry codes

In addition to these protections, Part 6 of the Telecommunications Act provides for industry co-regulation. In particular, it contains a framework that enables industry to develop codes in relation to a range of consumer matters such as the provision of information to consumers and internal handling of consumer complaints.<sup>7</sup> Industry codes may be registered with the ACMA, and compliance is voluntary, unless a participant is directed to comply by the ACMA.

The key telecommunications-specific industry codes relevant to promoting choice and fairness for consumers include:

- **Telecommunications Consumer Protections (TCP) Code** – 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** – Sets out rules for advertising and providing mobile premium services (examples include mobile ringtones, chat services, SMS).
- **Connect Outstanding Code** – Defines principles and processes for the disconnection of a previous service, the connection of a new service and a process for reversals for invalid connections.

The TCP Code regulates the relationship between consumers and their providers, and as such contains broad protections for consumers in relation to choice and fairness in the supply of telecommunications services. The TCP Code was developed by the peak industry body, the Communications Alliance. It is registered with and enforced by the ACMA. The TCP Code sets minimum standards for all telecommunications providers (providing mobile, landline and internet services) in their interactions with consumers.<sup>8</sup> The main areas covered by the TCP Code include:

- **Critical Information Summary** – a short document that each telecommunications provider must have setting out essential information about every product they offer.
- **Informed choice** – rules relating to communication and the provision of information between service providers and consumers.

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<sup>6</sup> ACMA (2018) Consumer Information Standard: your obligations, available at: <https://www.acma.gov.au/theACMA/consumer-information-standard-your-obligations>

<sup>7</sup> Telecommunications Act 1997, Part 6, s113.

<sup>8</sup> Department of Communications and the Arts (Accessed June 2018) Consumer safeguards, available at: <https://www.communications.gov.au/policy/policy-listing/consumer-safeguards>

- **Customer service** – rules relating to how service providers interact with consumers (eg dealing with consumers in a fair and courteous manner or providing sufficient training for staff to effectively interact with their customers).
- **Contracts** – rules that outline requirements relating to contracts between service providers and their consumers (eg information requirements and minimum terms).
- **Billing** – rules relating to bills and billing including information provided in bills and charges to consumers for the supply of telecommunications products and services.
- **Credit and debt management** – rules relating to the provision and management of credit and debt in connection with the supply of telecommunications products.
- **Switching providers** – rules relating to consumer rights and provider obligations when consumers wish to change their service provider or a consumer's service is transferred as the result of a sale or restructure of the service provider.<sup>9</sup>

The TCP code is currently undergoing review. The consultation draft includes a new chapter on financial hardship.

Compliance with the TCP Code is monitored by Communications Compliance Limited (CommCom), an independent compliance monitoring body established under the TCP Code. All telecommunications service providers, are required to comply with the requirements of the TCP Code, as well as lodge annual compliance documents with CommCom.<sup>10</sup> If a provider does not supply the required documents and/or CommCom is not satisfied with the actions and plans of a provider, the provider is reported to the ACMA.<sup>11</sup>

Compliance with a registered industry code is voluntary for industry participants. However, the ACMA has safety net powers under the Telecommunications Act to direct compliance with registered codes. These powers enable the ACMA to issue formal warnings in relation to a breach of a code and also direct industry participants to comply with the provisions of a code where the code has been, or is being, contravened.<sup>12</sup> A breach of an ACMA direction to comply with a code may result in civil penalty proceedings.

Under the TCP code, the Telecommunications Industry Ombudsman (TIO) is also enabled to investigate breaches of the code. This provides an avenue for consumers to resolve complaints regarding areas covered by the code.<sup>13</sup>

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<sup>9</sup> Communications Alliance Ltd (2017) Industry Code: Telecommunications Consumer Protections Code, available at: [http://www.commsalliance.com.au/data/assets/pdf\\_file/0005/58595/TCP-C628\\_2015-2017-Variation.pdf](http://www.commsalliance.com.au/data/assets/pdf_file/0005/58595/TCP-C628_2015-2017-Variation.pdf)

<sup>10</sup> Communications Compliance (Accessed June 2018) About Us, available at: <http://commcom.com.au/compliance/compliance-framework-overview/>

<sup>11</sup> Communications Compliance (Accessed June 2018) ACMA Referrals, available at: <http://commcom.com.au/compliance/acma-referrals/>

<sup>12</sup> ACMA (2015) Register of telco industry codes & standards, available at: <https://www.acma.gov.au/theACMA/Library/Corporate-library/Forms-and-registers/register-of-telecommunications-industry-codes-and-standards#register>

<sup>13</sup> Communications Alliance Ltd (2017) Industry Code: Telecommunications Consumer Protections Code. Section 1.7, available at: [http://www.commsalliance.com.au/data/assets/pdf\\_file/0005/58595/TCP-C628\\_2015-2017-Variation.pdf](http://www.commsalliance.com.au/data/assets/pdf_file/0005/58595/TCP-C628_2015-2017-Variation.pdf)

## 2. Comparison to other countries

This report considers how the relationship between consumers and service providers is regulated to promote choice and fairness. This section compares regulatory approaches across different countries and industry sectors. It identifies that the tools for promoting choice and fairness vary across countries, where frequently more than one approach is used to set requirements on, or to establish commitments, with service providers.

### 2.1 Framework for choice and fairness protections

A summary of the approaches taken in different countries for promoting each of these areas is provided in Table 2.

**Table 2: Approach to choice and fairness protections in different countries and Australian industries**

	Australia	Canada	France	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian energy	Australian banking
Legislated protections	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Protections through conditions/ standards set by regulator	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓
Industry code or other industry-led protections (co-regulation)	✓	✓	✗	✗	✓	✗	✗	✗	✓	✗	✓

Note: (✓) represents where a system appears to use a particular approach to provide consumer protections across any of the areas of the consumer/service provider relationship considered in this report. Differences in the scope or application are discussed in the text below. (✗) represents where the use of an approach did not appear to be used by a particular system.

In all of the countries considered, there are general consumer protections applicable to transactions across all industries. Beyond these general protections, all countries have some form of telecommunications-specific protections.

Within these telecommunications-specific protections, countries use a range of different tools and approaches for promoting choice and fairness among consumers. Approaches consist of legislated protections, regulator-set requirements and industry-led commitments to consumers. Countries may use all or some of these tools in combination.

Less than half of the countries examined in this paper take a co-regulatory approach to facilitating choice and fairness between consumers and service providers, including Australia. Under co-regulatory arrangements, industry develops requirements for service providers, which are then registered with, and enforced by, the regulator. In cases where industry codes do not exist or are deficient, the regulator is able to set industry standards.

The other common approach to consumer protection and promoting choice and fairness is a regulator-led approach whereby the telecommunications regulator sets specific conditions or requirements on providers relating to their relationship with consumers. This approach is used in the UK and Canada where the regulators set conditions that must be followed by all service providers operating in the industry. Compliance with the conditions is enforceable by the regulator. A similar model is used in the USA and South Korea, where the regulator has the power to set rules in relation to the communications industry that are applicable to all providers to which the rule relates. In Singapore, the regulator also sets rules for service providers, however, the requirements are placed on providers through conditions on their licence. Co-regulatory and regulator-led approaches operate alongside legislative instruments and are sometimes given their mandate through legislation.

Choice and fairness protections are also provided through self-regulation in some countries. This is where industry voluntarily develops, administers and, in some cases enforces, its own rules and standards. These codes and commitments typically are not enforceable by the regulator. In Australia, however, ACMA can direct an industry participant to comply. This is the main form of regulation for consumer choice and fairness in New Zealand. Industry codes relating to product disclosure, complaints handling and transfer of services are set and governed by the peak industry organisation. In other countries, such as the USA and Canada, self-regulation is used in addition to regulated requirements. In these countries, there are peak industry bodies that have developed industry codes containing commitments from service providers relating to information provision and consumer protections. The codes are only applicable to members of the industry body and cover only a particular section of the telecommunications sector (eg wireless services). Therefore, the codes do not replace the need for sector-wide requirements to be set by the regulator.

## 2.2 Choice and fairness protections

A summary of the approaches taken in different countries for promoting each of these areas is provided in Table 3.

**Table 3: Choice and fairness protections across different countries and Australian industries, by category**

	Australia	Canada	France	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian energy	Australian banking
Informed choice	<b>RI</b>	<b>RI</b>	<b>L</b>	<b>LR</b>	<b>I</b>	<b>LR</b>	<b>L</b>	<b>R</b>	<b>LR</b>	<b>L</b>	<b>LI</b>
Customer service	<b>I</b>	<b>RI</b>	<b>N</b>	<b>R</b>	<b>I</b>	<b>LR</b>	<b>LR</b>	<b>R</b>	<b>I</b>	<b>L</b>	<b>I</b>
Contracts	<b>LI</b>	<b>R</b>	<b>L</b>	<b>L</b>	<b>N</b>	<b>L</b>	<b>LR</b>	<b>R</b>	<b>I</b>	<b>L</b>	<b>IR</b>
Billing	<b>LI</b>	<b>N</b>	<b>L</b>	<b>L</b>	<b>I</b>	<b>R</b>	<b>L</b>	<b>R</b>	<b>LR</b>	<b>L</b>	<b>LI</b>
Credit and Debt Management	<b>I</b>	<b>R</b>	<b>N</b>	<b>N</b>	<b>IL</b>	<b>N</b>	<b>N</b>	<b>R</b>	<b>I</b>	<b>R</b>	<b>LI</b>
Switching providers	<b>LR</b> <b>I</b>	<b>R</b>	<b>L</b>	<b>LR</b>	<b>L</b>	<b>R</b>	<b>LR</b>	<b>LR</b>	<b>LR</b>	<b>LR</b>	<b>R</b>

Note: **L** = legislated, **R** = set by Regulator, **I** = Industry-led, **N** = no telecoms specific provisions.

### **2.2.1 Informed choice**

All of the countries considered have protections for consumers that promote informed choice. In the majority of countries these are provided directly through legislation and/or set by the regulator. In the Australian telecommunications industry, however, protections are contained in both industry standards set by the regulator and industry-led codes. In New Zealand these protections are predominantly contained in an industry-led code.

Most of the safeguards for informed choice require providers to ensure information about their services is available and accessible to their consumers (ie can be easily found and is in plain, easy to understand language). A key difference between countries is whether the information provisions applied to all service providers, such as in Australia, South Korea and France, or whether the requirements only apply to specific services such as broadband or wireless services. In Canada and New Zealand, the information provision protections do not appear to be sector-wide, but apply to wireless services and broadband respectively. In addition to its general requirements on service providers, Australia also has specific information provision requirements that apply to international roaming services and information regarding the NBN.

### **2.2.2 Customer service**

Customer service requirements, providing assistance and advice to meet the customer's needs, are present across all countries and sectors, except France. But whether they are contained in legislation, set by the regulator, or industry-led varies significantly between countries. In a number of countries, requirements such as those providing ready access to customer support services are included in industry-led commitments and applied only to a specific type of service. New Zealand appears to have the most extensive obligations in relation to customer service, with a series of industry codes that set obligations on providers regarding the customer experience. The Australian energy sector also has general provisions designed to ensure fair and honest dealings between a consumer and a retailer.

### **2.2.3 Contracts**

Requirements relating to telecommunications consumer contracts exist across all countries, except New Zealand. Each of the other countries have minimum requirements for certain terms and conditions to be included in consumer contracts. These are generally applicable to all service providers, except in Canada where requirements for consumer contracts are specifically applicable to wireless providers. In France, there are legislated requirements for consumer contracts relating to mandatory provisions, length of contract, modification, and termination. In the USA, requirements to provide consumers with contract terms and inform them of changes in service are set by the industry body and are not enforceable by the regulator.

The Australian energy sector has a different approach to consumer contracts, requiring retailers to offer consumers either standard or market contracts. Standard contracts have set terms and conditions that cannot be changed by the retailer and are offered to customers on a take it or leave it basis.

### **2.2.4 Billing**

All countries, except Canada, have specific requirements on providers in relation to billing. In general, most countries set requirements to ensure particular information is included in bills provided to consumers and to ensure the provider is accurately billing the consumer. These rules are generally applicable to all service providers, except in the USA where the billing rules identified are only applicable to providers of telephone services.

## 2.2.5 Credit and debt management

Regulatory requirements for credit and debt management are less common than requirements in the other areas considered, for the countries examined in this paper. In Canada, the UK and the USA, telecommunications-specific requirements are used to address credit and debt management, while all other countries rely on general protections. In the UK if a consumer has problems with their bill, the provider must act fairly and reasonably when taking action to secure payment. Providers must publish details of the measures they will take to effect payment or disconnection in the case of non-payment.

Of the countries considered, Australia appears to have the most comprehensive regulation relating to credit and debt management by telecommunications providers. Similarly, in the energy sector, there are specific requirements which mandate providers to establish customer hardship policies that include flexible payment options, identification and notification of financial counselling services, and reviews of the consumer's contract.

## 2.2.6 Switching providers

All of the countries and sectors considered have requirements to enable consumers to quickly and efficiently switch providers. These obligations on service providers are typically contained in legislation or set by the regulator.

Requirements placed on service providers are generally focussed on the ability to transfer service providers while keeping the same phone number (ie number portability). In most countries, the requirement is for providers to ensure number portability is available to consumers for a reasonable fee and within a reasonable or specified timeframe. In the USA in particular, providers must enable a consumer to transfer their number and cannot ignore the request to transfer a number simply because a consumer has not paid a bill.

In Australia, there is a regulatory framework for number portability. It includes a combination of legislated requirements, formal government regulation and industry co-regulation. The Telecommunications Act in Australia sets out the responsibilities of the ACMA and the ACCC in relation to portability of numbers. ACCC directions outline the services for which number portability must be provided, including local number and mobile numbers. The *Telecommunications Numbering Plan 2015* set by the ACMA ensures that service providers have the capability to port numbers and allow the consumer to do so. The ACMA enforces complaints with this plan. In addition to these requirements, there are also industry codes, such as the TCP code, which set out procedures for transferring phone numbers and timeframes for portability transactions.<sup>14</sup>

In some countries, measures to enable consumers to switch providers are also identified for other types of telecommunications services. For example, in Canada, all service providers, internet providers and resellers are required to follow customer transfer and service cancellation requests. Additionally, New Zealand has multiple mechanisms for helping consumers switch providers and has specifically developed a guide for the transfer of fibre service providers to assist consumers as the use of fibre connections for broadband has become more common.<sup>15</sup>

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<sup>14</sup> ACMA (2018) Number portability overview, available at: <https://www.acma.gov.au/Citizen/Phones/Numbers/Keeping-your-number/number-portability-overview>

<sup>15</sup> NZ Telecommunications Forum Inc, *Getting Connected to Fibre*, available at: <https://www.tcf.org.nz/consumers/internet/fibre/connecting-to-fibre/#whats-fibre>

# 3. Choice and fairness protections in other countries

## 3.1 Canada

**Table 4 Approach to choice and fairness protections in Canada**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Canada	T I	T I	T	T	T	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.1.1 Framework for consumer safeguards

#### Federal protections

In Canada, both the federal and provincial governments share responsibility for consumer protection. Typically, the federal government focuses on creating a safe, fair and competitive market place for consumers. It also exercises oversight of consumer transactions for some telecommunications services.<sup>16</sup> At a federal level, the main government body responsible for telecommunications consumer protection is the Canadian Radio-Television and Telecommunications Commission (CRTC).

The CRTC issues decisions, notices and orders with respect to regulation of telecommunications providers in Canada. The CRTC also has the power to set conditions on the offering and provision of telecommunications services by carriers and non-carriers.<sup>17</sup> A fundamental decision of the CRTC, relevant to consumer safeguards, is Telecom Regulatory Policy CRTC 2017-11 which sets out the application of regulatory obligations to non-carriers (retailers or resellers) offering and providing telecommunications services. The policy sets out the existing consumer safeguard obligations applicable to these service providers.<sup>18</sup> Through the decision, the CRTC directs all non-carriers, as a condition of providing services, to abide by all applicable consumer safeguard obligations including the requirement to register.<sup>19</sup>

The Appendix to Telecom Regulatory Policy CRTC 2017-11 contains the current consumer safeguard obligations that must be complied with by telecommunications providers. These include safeguards in the areas of accessibility (particularly in relation to information for persons with a disability); privacy obligations; customer transfer obligations; internet traffic management practices; the Wireless Code; Service cancellation; the National Do Not Call list and Registration.<sup>20</sup>

<sup>16</sup> Stikeman Elliott LLP (2017) Canada: Consumer Protection Law Overview.

<sup>17</sup> *Telecommunications Act 1993* s24 and 24.1.

<sup>18</sup> CRTC (2017) Telecom Regulatory Policy 2017-11, available at: <https://crtc.gc.ca/eng/archive/2017/2017-11.htm>

<sup>19</sup> CRTC (2017) Telecom Regulatory Policy 2017-11, available at: <https://crtc.gc.ca/eng/archive/2017/2017-11.htm>

<sup>20</sup> CRTC (2017) Telecom Regulatory Policy 2017-11, available at: <https://crtc.gc.ca/eng/archive/2017/2017-11.htm>

In addition to these general obligations, the CRTC has imposed specific consumer safeguard obligations in relation to wireless services (ie retail mobile phone voice and data services). Under the consumer safeguard obligations, where applicable, providers are to comply with the Wireless Code. This is a code created by the CRTC for the purpose of ensuring consumers of retail mobile services are better informed of their rights and obligations contained in their contracts with wireless service providers. It is a mandatory code of conduct for all providers of retail mobile wireless voice and data services.<sup>21</sup>

Although there are specific requirements for mobile wireless services, the CRTC's position in relation to fixed line internet services, is that there are a sufficient number of companies providing these services to ensure competition, pricing discipline, innovation and buying options. The CRTC does not intervene in the rates, quality of service issues, or business practices of internet service providers as they relate to retail customers.<sup>22</sup> The CRTC does not regulate retail internet service prices, except in specific territories.<sup>23</sup>

### State protections

Consumer issues that generally fall under provincial and territorial governments include consumer contracts and the terms on which businesses transact with consumers. For example, consumer protection statutes in Alberta, British Columbia, Ontario and Quebec set out requirements for specific types of consumer agreements, and prohibit a range of unfair practices in consumer transactions.<sup>24</sup> Some provinces also have legislated consumer rights with respect to telecommunications services. For example, Ontario has a *Wireless Services Agreement Act 2013* that is applicable to consumers of Wireless Services located in Ontario.<sup>25</sup>

### Industry-led protections

In Canada there is also an industry body that provides additional information and protections to consumers of wireless services. This body is called the Canadian Wireless Telecommunications Association (CWTA). The purpose of this body is to represent industry before all levels of government and various regulatory bodies to promote the industry and ensure continued growth of the wireless sector in Canada.<sup>26</sup>

The CWTA has developed a Code of Conduct for Wireless Service Providers in Canada which commits members of the CTWA to a number of consumer safeguards.<sup>27</sup> Under the Code, the members of CWTA have made a number of promises that add to the consumer safeguards in the industry.

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<sup>21</sup> CRTC (2017) Telecom Regulatory Policy CRTC 2017-200, available at: <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>

<sup>22</sup> CRTC (2017) Internet: Our role, available at: <https://crtc.gc.ca/eng/internet/role.htm>.

<sup>23</sup> CRTC (2017) Understanding Internet Billing Practices and Pricing, available at: <https://crtc.gc.ca/eng/internet/facbill.htm>

<sup>24</sup> Stikeman Elliott LLP (2017) Canada: Consumer Protection Law Overview.

<sup>25</sup> Wireless Service Agreement Act, 2013 (Ontario).

<sup>26</sup> CWTA (Accessed June 2018) About CTWA, available at: <https://www.cwta.ca/about-cwta/>

<sup>27</sup> CWTA, Code of Conduct, available at: <https://www.cwta.ca/for-consumers/code-of-conduct/>

## 3.1.2 Consumer protections

### Informed choice

There do not appear to be any general obligations on all telecommunications providers in Canada in relation to informed choice. However, there are provisions in the Wireless Code applicable to wireless service providers. Under the Code, providers are obliged to provide clarity in communication, and ensure contracts with consumers are presented in a clear and simple manner. Prices must also be clearly presented and indicate whether tax is included.<sup>28</sup> The Code also places a requirement on providers to provide a Critical Information Summary which provides information on important elements of the contract for the consumer. The Code sets out minimum requirements for information to be included in this summary.

Additionally, members of the CWTA commit to provide consumers with complete details on the rates, terms and coverage offer in each of their plans.<sup>29</sup>

### Customer service

The Wireless Code contains some provisions relevant to customer service of wireless service providers. For example, the Code contains a range of requirements in relation to 'Mobile Device Issues' including unlocking of phones, warranties, lost or stolen devices and repairs.

Under the CWTA Code of Conduct, members have committed to communicate with customers in a way they understand (ie using plain and simple language) and to provide ready access to customer service.<sup>30</sup>

### Contracts

Although the CRTC has the power to set conditions on all telecommunications providers with respect to service terms and conditions in contracts with users of telecommunications services, there currently does not appear to be any minimum requirements for contracting applicable to all providers. The Wireless Code, however, has specific requirements for Wireless providers. This includes provisions for key contract terms and conditions that must be included in consumer contracts. For example, clearly setting out the minimum monthly charge and the commitment period including the contract end data. There are specific requirements for both post and prepaid contracts.<sup>31</sup>

The Wireless Code also covers changes to key contract terms and conditions requiring the provider to get information and express consent from the account holder or consumer before making any changes.<sup>32</sup> The code also outlines how fees should be charged in relation to contract cancellation or extension.<sup>33</sup>

In addition, Wireless Service Providers that are members of the CWTA have committed to helping consumers understand the terms of their contracts, and protect consumer rights when they change the terms of the consumer's contract.<sup>34</sup>

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<sup>28</sup> CRTC (2017) Wireless Code, simplified. Part A.

<sup>29</sup> CWTA (2009) Code of Conduct, available at: <https://www.cwta.ca/for-consumers/code-of-conduct/>

<sup>30</sup> CWTA (2009) Code of Conduct, available at: <https://www.cwta.ca/for-consumers/code-of-conduct/>

<sup>31</sup> CRTC (2017) Wireless Code, simplified. Part B.

<sup>32</sup> CRTC (2017) Wireless Code, simplified. Part D.

<sup>33</sup> CRTC (2017) Wireless Code, simplified. Part G.

<sup>34</sup> CWTA (2009) Code of Conduct, available at: <https://www.cwta.ca/for-consumers/code-of-conduct/>

## **Billing**

There appear to be minimal consumer safeguards in relation to billing by telecommunications providers in Canada. The primary safeguards provided under the Wireless Code include the requirement for wireless providers to give consumers notifications regarding international roaming, as well as requirements to set caps on data roaming charges, coverage charges, and charges for unsolicited services and mobile premium services.<sup>35</sup>

## **Credit and debt management**

It is unclear whether there is any general obligation on all telecommunications providers in Canada in relation to credit and debt management. There are however requirements on wireless service providers under the Wireless Code. This requires all wireless service providers to make reasonable attempts to notify customers before disconnecting their wireless service. The customer must be made aware of the specific terms leading to further suspensions and disconnection should the customer not pay according to the terms in their promise-to-pay agreement. If the customer fulfills the terms of the promise-to-pay agreement, the disconnection cycle is to be considered complete and any future non-payment would start a new disconnection cycle.<sup>36</sup>

## **Switching providers**

Requirements on telecommunications providers relating to switching providers are included as part of the general conditions imposed on all telecommunications providers. The CRTC requires that all providers of local exchange services are required to release telephone numbers for porting where consumers wish to move to other providers. All telecommunications service providers, internet service providers and resellers are required to follow customer transfer and service cancellation requests from a prospective new service provider acting on behalf of a customer.<sup>37</sup>

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<sup>35</sup> CRTC (2017) Wireless Code, simplified. Part E.

<sup>36</sup> CRTC (2017) Telecom Regulatory Policy CRTC 2017-200, available at: <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>

<sup>37</sup> CRTC (2017) Telecom Regulatory Policy 2017-11, available at: <https://crtc.gc.ca/eng/archive/2017/2017-11.htm>

## 3.2 France

**Table 5 Approach to choice and fairness protections in France**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
France	T	N	T	T	C	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led, **N** = no specific provisions.

The table above considers the body which sets the most stringent regulations.

### 3.2.1 Framework for consumer safeguards

The Authority for Regulation of the Electronic Communications and Postal Sectors (ARCEP) is the regulator responsible for overseeing the electronic communications industry in France. ARCEP is an independent administrative body that regulates the industry on behalf of the State.

The roles and responsibilities of ARCEP are outlined in the Code on Post and Electronic Communications (the Communications Code). Under the Communications Code, ARCEP regulates all electronic communications including fixed line services, mobile services and the airwaves that wireless devices use to operate.<sup>38</sup>

One of ARCEP's main objectives is to regulate the market such that consumers are provided with transparent, high quality services at reasonable rates. ARCEP does so in collaboration with other administrations, specifically those overseeing consumer protection.<sup>39</sup>

The Communications Code provides for a number of measures for regulating the telecommunications industry. In particular it contains a range of rules designed to protect consumers and their personal data.<sup>40</sup> Measures include:

- requirements to include certain mandatory terms in consumer contracts
- conditions relating to the term and termination of contracts
- requirements to make certain information available to the consumer, including a description of the services offered and standard tariffs
- requirements for number portability
- restrictions on sales and marketing activities.<sup>41</sup>

<sup>38</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?t=laws&c=FR>

<sup>39</sup> ARCEP (2010) The French regulator of the electronic communications and postal sectors, available at: <https://www.arcep.fr/fileadmin/reprise/presentation/plaquette-insti/plaquette-insti-eng-june2010.pdf>

<sup>40</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?t=laws&c=FR>

<sup>41</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?t=laws&c=FR>

In addition to the consumer protection measures contained in the Communications Code, there are also provisions in the general consumer law, in addition to general unfair contract terms, that are applicable specifically to the telecommunications industry.<sup>42</sup> For example, there is a section of the French Consumer Code that specifically regulates the offer of telecommunications services to consumers.<sup>43</sup>

Additionally, EU level protections exist however they are focussed on promoting market opening and creating equal competition conditions.<sup>44</sup>

## 3.2.2 Consumer protections

### Informed choice

One of the objectives of ARCEP, through its powers under the Communications Code, is to ensure consumers have access to transparent information from service providers in relation to services offered and rates charged. Measures to enable this under the Communications Code include the requirement to make certain information available to the consumer, including a description of the services offered as well as the standards tariffs for that service.

### Customer service

Beyond the restrictions on sales and marketing activities of service providers under the Communications Code, it is unclear whether there are additional requirements or standards for customer service placed on French telecommunications providers.

### Contracts

The Communications Code includes requirements for service providers to include certain mandatory terms in consumer contracts. In particular, it refers to articles of the French Consumer Code that outline information that providers must give to a consumer. Contracts must include:

- information about the service provider (identity and address)
- services offered (including service quality and time in which they will be made available)
- details of the schedule of charges and where updated information may be found
- arrangements for compensation and reimbursement if service quality outlined in the contract is not achieved
- contract term and conditions for renewal and interruption of services
- dispute resolution arrangements.

There are also rules in relation to the modification of contract terms. If a provider wishes to modify contractual terms, the consumer must be notified at least one month before the changes take effect and consumer must be able to terminate the contract without charge until four months after the implementation of the new conditions, or the consumer has expressly accepted the new terms.<sup>45</sup>

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<sup>42</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?t=laws&c=FR>

<sup>43</sup> Pinsent Masons LLP (2018) Communications: regulation and outsourcing in France: overview, available at: [https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

<sup>44</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2394&from=EN>

<sup>45</sup> Pinsent Masons LLP (2018) Communications: regulation and outsourcing in France: overview, available at: [https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

Protections provided by the Communications Code also relate to the term of contracts and termination. For example, contracts between a provider and the consumer cannot be for more than 24 months. Where a provider offers a contract for more than 12 months, it must offer the same contract for a shorter term (less than 12 months) at a price that is not prohibitive. The provider must also allow the consumer to terminate the contract after 12 months, with the consumer only being required to pay one quarter of the total amount due to the expiration of the term.<sup>46</sup>

### **Billing**

Under the French Consumer Code there are some provisions in relation to billing for telephone services. For example, providers must give clear information on the billing system applied to calls before a consumer subscribes to a service, regardless of the payment method chosen.<sup>47</sup>

### **Credit and debt management**

Beyond general consumer law, specific measures in relation to credit and debt management could not be identified through a desktop review of publicly available information in English.

### **Switching providers**

A requirement for number portability is provided for in the Communications Code.<sup>48</sup> This rule states that providers are required to offer their consumers the ability to keep their numbers for a reasonable price. Providers are also required to ensure that the delay in service provision when transferring from one provider to another is not greater than one day.<sup>49</sup> This rule is consistent with the European Union Directive that requires countries within the EU to ensure that all consumers who request to keep their telephone number may do so.

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<sup>46</sup> Pinsent Masons LLP (2018) Communications: regulation and outsourcing in France: overview, available at: [https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/3-619-2685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

<sup>47</sup> French Consumer Code, Article L113-4.

<sup>48</sup> Article L44 of the Post and Electronic Communications Code.

<sup>49</sup> Article L44 of the Post and Electronic Communications Code.

### 3.3 Germany

**Table 6 Approach to choice and fairness protections in Germany**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Germany	T	T	T	T	C	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

#### 3.2.1 Framework for consumer safeguards

The German *Telecommunications Act 2004* ('German Telco Act') grants significant powers to the Bundesnetzagentur. This is a regulatory body with regulatory authority over electricity, gas, telecommunications, post and railways.<sup>50</sup> Additionally, EU level protections exist however they are focussed on promoting market opening and creating equal competition conditions.<sup>51</sup>

The Bundesnetzagentur has regulatory authority over certain market components delegated to it under the German Telco Act. This includes numbering and transfer regulation, frequency controls, and emergency call regulation.

Other legal instruments impact upon the functioning of the German telecommunications market. For example, with regard to the fair competition protections governed by the Federal Cartel Office the Bundesnetzagentur must make decisions with them, however, do not have to adhere to the Cartel Office's proposed remedies.<sup>52</sup>

#### 3.2.2 Consumer protections

##### Informed choice

Service providers are required to provide specific information and other provisions in the contracts they have with consumers. Additionally, there are general publication requirements on service providers designed to enable objective decision making by consumers.

The regulator has the power to conduct studies to measure the difference between contractually agreed data transmission rates and the data transmission rate actually provided.<sup>53</sup>

<sup>50</sup> Bundesnetzagentur (2018) About the Bundesnetzagentur, available at: [https://www.bundesnetzagentur.de/EN/General/Bundesnetzagentur/About/AboutTheBundesnetzagentur\\_node.html](https://www.bundesnetzagentur.de/EN/General/Bundesnetzagentur/About/AboutTheBundesnetzagentur_node.html)

<sup>51</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?c=DE&c2=&t=laws>

<sup>52</sup> Heuking Kühn Lüer Wojtek (2011) Germany, telecommunications laws, available at: [https://www.heuking.de/fileadmin/DATEN/Dokumente/Veroeffentlichungen/2011/096\\_Tel12\\_Chapter-11\\_Germany.pdf](https://www.heuking.de/fileadmin/DATEN/Dokumente/Veroeffentlichungen/2011/096_Tel12_Chapter-11_Germany.pdf)

<sup>53</sup> Bundesnetzagentur (2013) Measures aimed at promoting transparency for consumers and on measuring procedures, available at: [https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/Areas/Telecommunications/Companies/TelecomRegulation/TransparencyForConsumers/DocTransparencyForConsumers.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/Areas/Telecommunications/Companies/TelecomRegulation/TransparencyForConsumers/DocTransparencyForConsumers.pdf?__blob=publicationFile&v=2)

## Customer service

The German Telco Act enables regulations to be issued which govern the interactions that a customer has with their service provider, as well as redress options in the event of disputes. Areas considered include:

- the liability of providers and damage claims
- unbundling services
- conditions for network access on fair and equal grounds
- general terms and conditions
- information requirements
- time limits on offers
- billing and rate level verification
- alternative dispute resolution.<sup>54</sup>

## Contracts

Under the German Telco Act the regulator has the ability to impose certain requirements upon service providers to protect consumers. The German Telco Act distinguishes 'end users' from networks and service providers that are customers of the network wholesalers). Additional protections also include:

- the inclusion of certain minimum terms within their contracts
- the initial minimum contract term may not be more than two years.<sup>55</sup>

## Billing

Billing is one of the core service provider obligations which the regulator considers. These protections are issued under the German Telco Act. There are numerous requirements placed upon service providers to ensure bills are accurate and align with expectations. Protections include:

- free itemised billing upon request to ensure consumers can monitor their accuracy
- safeguards to prevent customers from inadvertently exceeding their usage limits and thereby triggering excess usage charges
- clearly organised and highlighted changes of services on bills
- providing clear descriptions of all charges and services offered by the service provider.<sup>56</sup>

The regulator has also issued regulations within the scope of the German Telco Act to govern the internal processes of service providers to ensure that the billing tools meet public expectations.<sup>57</sup>

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<sup>54</sup> S 45 TKG.

<sup>55</sup> DLA Piper (2016) Telecommunications Laws Of the World – France, available at: <https://www.dlapiperintelligence.com/telecoms/index.html?c=DE&c2=&t=laws>

<sup>56</sup> OECD (2004) OECD Reviews Of Regulatory Reform, Regulatory Reform In Germany, Regulatory Reform In Telecommunications, available at: <https://www.oecd.org/regreform/32408088.pdf>

<sup>57</sup> Bundesnetzagentur (2018) Billing accuracy, available at: [https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/ServiceProvider/Obligation/BillingAccuracy/BillingAccuracy\\_node.html](https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/ServiceProvider/Obligation/BillingAccuracy/BillingAccuracy_node.html)

### **Credit and debt management**

Within the German system of telecommunications regulation there do not appear to be specific provisions for debt management and credit collection. The general provisions which govern debt collection procedures are contained within the general Civil Code.<sup>58</sup>

### **Switching providers**

In Germany, there are provisions to ensure that consumers are able to port their fixed line and mobile numbers across providers. There are price control mechanisms for the porting process as well as regulatory oversight, and the ability to suspend the porting process contained within the German Telco Act.<sup>59</sup> This rule is consistent with the European Union Directive that requires countries within the EU to ensure that all consumers who request to keep their telephone number may do so.

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<sup>58</sup> Euler Hermes (2017) Collection profile, Germany, available at: [http://www.eulerhermes.com/mediacenter/Lists/mediacenter-documents/Collection\\_profiles\\_2017/Germany.pdf](http://www.eulerhermes.com/mediacenter/Lists/mediacenter-documents/Collection_profiles_2017/Germany.pdf)

<sup>59</sup> S5 Telecommunications Act 2001.

## 3.4 New Zealand

**Table 7 Approach to choice and fairness protections in New Zealand**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
New Zealand	I	I	C	I	C	T

Note: **C** = general consumer law, **T** = telecommunication- specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.4.1 Framework for consumer safeguards

To ensure consumers are able to make informed choices and are treated fairly by their provider, the New Zealand regulatory system employs a variety of key instruments. These include:

- codes set by an industry body, the Telecommunications Forum (TCF), that members must abide by
- general instruments which cover the entire market.

This reflects a co-regulatory approach where the regulator allows the industry body to set codes by which members must abide. Key codes include:

- the broadband product disclosure code
- customer complaints and dispute resolution
- customer transfer code for regulated services.

The TCF has powers of sanction which include public notice of a breach and notification to the Commerce Commission where a regulated code is breached.<sup>60</sup>

There are different types of codes which are issued by the TCF, these include mandatory codes (compulsory for all members), regulated codes (enforced by the Commerce Commission) and self-regulated codes (binding if signed with enforcement mechanisms).<sup>61</sup> Under the NZ *Telecommunications Act 2001* (NZ Telco Act), the only regulated codes are those which apply to access agreements for Designated and Specified Services (particular services provided, as identified in the NZ Telecommunications Act.<sup>62</sup>

The New Zealand telecommunications regulator is the Commerce Commission. The Commission is a broad regulatory body with responsibilities for a variety of industries. Its core focus is on competition policy and consumer protection. It sets rules related to key activities including number portability. Most of its powers relevant to the telecommunications industry are granted by the NZ Telco Act. This includes the power of review granted to the Commission. This power has been exercised in its review of unfair contract terms.

There are additional broad regulations which cover telecommunications, as well as other industries. For example, the *Consumer Guarantees Act 1993* and the *Fair Trading Act 1986* set restrictions on trading practices. These general provisions include limits on debt collection practices and fair contracting.

<sup>60</sup> New Zealand Telecommunications Forum (2012) Code Compliance Framework, available at: <https://www.tcf.org.nz/assets/codes/tcf-code-compliance-framework-endorsed-march-2012.pdf>

<sup>61</sup> New Zealand Telecommunications Forum (2016) Code Types, available at: <https://www.tcf.org.nz/industry/standards-compliance/about/code-types/>

<sup>62</sup> Seth Eeles (2002) An Overview of New Zealand's New Telecommunications Regulatory Regime, available at: <http://www5.austlii.edu.au/au/journals/CommsLawB/2002/9.pdf>

## 3.4.2 Consumer protections

### Informed choice

A fundamental element of informed choice is the ability to compare similar information across providers. The TCF sets a code for members which outlines the requirements for disclosure for broadband services. Within the *Broadband Product Disclosure Code* there exist multiple information provision requirements to enable consumers to accurately compare providers. These include service description, availability; service charge, additional data, set up charge, performance, access type (technology), and other information about the contract.<sup>63</sup>

### Customer service

The TCF sets a series of obligations on its members regarding customer experience<sup>64</sup>. The relevant codes are:

- Broadband Product Disclosure Code 2013
- Customer Complaints and Dispute Resolution 2016
- Customer Transfer Code for Fibre 2016
- Customer Transfer Code for Regulated Services 2013
- Disconnection Code 2013.

These govern the interactions between providers and their customers. These codes are mainly designed to consider disputes around topics outlined in codes or when consumers change providers to ensure appropriate conduct by the providers. Some of the codes are voluntary, while others are regulated.

### Contracts

The Fair Trading Act contains provisions which relate to unfair contracting and were introduced as amendments to the law in 2015. As the regulator, the Commission released a series of guidelines which relate primarily to contracts offered on a 'take it or leave it' basis to consumers for personal use.<sup>65</sup> The central elements of the provisions are that the relevant terms must not:

- cause a significant imbalance between the parties
- be unnecessary to protect the legitimate interests of the business
- cause detriment to the consumer.

If a consumer believes that these conditions are have been breached, complaints may be issued to the Commission.<sup>66</sup>

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<sup>63</sup> New Zealand Telecommunications Forum (2013) Broadband Product Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/broadband-product-disclosure/broadband-product-disclosure-code.pdf>

<sup>64</sup> New Zealand Telecommunications Forum (2018) Industry Standards & Guides, available at: <https://www.tcf.org.nz/industry/resources/publications/industry-standards-guides/#customer-experience>

<sup>65</sup> New Zealand Commerce Commission (2015) Unfair contract terms guidelines, available at: <http://www.comcom.govt.nz/fair-trading/guidelines/unfair-contract-term-guidelines/>

<sup>66</sup> New Zealand Commerce Commission (2015) Unfair contract terms guidelines, available at: <http://www.comcom.govt.nz/fair-trading/fair-trading-act-fact-sheets/consumers-and-unfair-contract-terms/>

Following the introduction of these fair contracting amendments the Commission has, and is continuing to, release reports on the level of compliance within various industries in relation to the terms. The first of these consumer reports was issued in February of 2016 for the telecommunications industry. The results were generally positive and most providers are endeavouring to comply with the regulations.<sup>67</sup>

## **Billing**

Codes of conduct for billing are set by the TCF members. Areas covered include:

- making all reasonable efforts to ensure billing accuracy and in the event that an error occurs, members will use reasonable efforts to correct any billing inaccuracies in a timely manner
- making corrections for over- and under-charging
- ensuring separation of fixed and variable charges.<sup>68</sup>

This sets both the limits regarding how a provider must act in the process of billing to ensure accuracy, and the limitations and requirements for their subsequent actions in the event of an error. This code is a TCF self-regulated mandatory code.

## **Credit and debt management**

New Zealand provides significant protections for debt collection. These provisions are general in nature and relate to the methods which are available to debt collectors. Debt collectors must comply with all consumer laws such as the Consumer Guarantees Act and the Fair Trading Act. Protections include that debt collectors:

- must only contact a debtor when it is necessary to do so and when the contact is made for a reasonable purpose
- must not:
  - use physical force, pressure, or unreasonably harass or hassle the debtor or their family
  - mislead or deceive, nor threaten legal action without any grounds to do so
  - take unfair advantage of a vulnerability, disability or other similar circumstances
  - tell the debtor's family, friends, employer or others about the debt without their consent
  - provide false information to a credit reporting agency
  - charge unreasonable debt collection fees.<sup>69</sup>

The TCF also considers the relationship between the providers and those who have not paid their bills. This includes the procedure for disconnection should someone not have paid a bill.<sup>70, 71</sup>

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<sup>67</sup> New Zealand Commerce Commission (2018) Unfair contract terms reviews, available at: <http://www.comcom.govt.nz/the-commission/consumer-reports/uct-reviews/>

<sup>68</sup> New Zealand Telecommunications Forum (2016) Consumer Complaints Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>

<sup>69</sup> New Zealand Consumer Protection (Accessed June 2018) Debt Collection, available at: <https://www.consumerprotection.govt.nz/help-product-service/credit-banking-finance/debt-and-debt-collection/debt-collection/>

<sup>70</sup> New Zealand Telecommunications Forum (2016) Consumer Complaints Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>

<sup>71</sup> New Zealand Telecommunications Forum (2013) Disconnection Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/disconnection-code/>

## Switching providers

There are multiple mechanisms established to enable the switching of providers easily within the New Zealand telecommunications market. This includes the Customer Transfer Code for regulated services. This is a regulated code which means that breaches of the code can be enforced by the regulator. Regulated services are the designated access services and specified services which are defined in a schedule in the NZ Telco Act.<sup>72</sup>

As fibre connections for broadband become more common in New Zealand the TCF has defined a code for the transfer process between fibre service providers. This is designed to provide customers a positive experience when they request a transfer as it is not regulated under the NZ Telco Act.<sup>73</sup>

A central element of the ability to switch providers for both mobile and fixed line services is the ability to port numbers between providers. New Zealand has implemented a scheme to address this. It is regulated by the Commission under the NZ Telco Act.<sup>74</sup>

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<sup>72</sup> New Zealand Telecommunications Forum (2013) Customer Transfer Code for Regulated Services, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-transfer-regulated-services/>

<sup>73</sup> New Zealand Telecommunications Forum (2016) Customer Transfer Code for Fibre Services, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-transfer-fibre/>

<sup>74</sup> New Zealand Commerce Commission (2016) Local and Mobile Number Portability, available at: <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/local-and-mobile-number-portability/>

## 3.5 Singapore

**Table 8 Approach to choice and fairness protections in Singapore**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Singapore	T	T	T	T	C	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.5.1 Framework for consumer safeguards

The regulator is the Infocomm Media Development Authority (IMDA) and it exercises the significant regulatory powers granted to it under the *Telecommunications Act 1999* (Singaporean Telco Act). The IMDA has regulatory authority over information technology, telephony and media. In telecommunications its core tools are for controls over its licensees.

The key regulation that relates to the treatment of consumers is the Code of Practice for Competition in the Provision of Telecommunication Services 2012. Depending on their respective classification, each provider has differing levels of duties to their end users as a regular or dominant licensee.<sup>75</sup>

The Competition and Consumer Commission of Singapore is a statutory board under the Ministry of Trade and Industry. It administers and enforces unfair trade practice provisions in Singapore under the *Consumer Protection (Fair Trading) Act 2003*.

The Credit Collection Association of Singapore is an industry body that addresses the lack of general provisions for credit collection processes. There are however a series of laws which are relevant to the industry and are considered below.

### 3.5.2 Consumer protections

#### Informed Choice

The IMDA has broad powers of regulation with regard to the competition within the telecommunications sector. To enable competition within the sector and enable consumers to make informed duties there are a series of duties to end users which are applied to all licencees. These include:

- a duty to comply with IMDA's quality of service standards (unless the parties have contracted out of them willingly)
- a duty to disclose prices, terms and conditions prior to providing any service to an end user, in a readily available, current and easy-to-understand fashion
- service quality information disclosure requirements.<sup>76</sup>

<sup>75</sup> A Licensee will be classified as dominant if: (a) it is licensed to operate facilities used for the provision of Services in Singapore that are sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or (b) it has the ability to exercise Significant Market Power in any market in 13 which it provides Services pursuant to its licence.

Non-dominant Licensees: In the absence of evidence to the contrary, IDA will presume that all Licensees are non-dominant.

<sup>76</sup> Code Of Practice For Competition In The Provision Of Telecommunication Services 2012.

Dominant licencees have additional obligations which include the obligation to both file and have approved by the regulator the tariffs and the terms and conditions on which services are sold to end users. They must disclose:

- the effective tariff for any service
- a service description
- prices (including any discount structures)
- service suspension and termination provisions (including any early termination charges)
- service availability and eligibility requirements.

A primary mechanism for informing consumers that is undertaken by the IMDA is the provision of quality of service reports.<sup>77</sup> Reports are issued for basic telecoms, mobile, internet access and fibre connection services. This allows consumers to compare the performance of various providers across a wide variety of metrics.<sup>78</sup>

### **Customer service**

The IMDA has established various restrictions on the relationship between a telecommunications provider and the end user. A key tool used for assessing the quality of customer service is the Quality of Service metrics collected by the IMDA. The number of complaints received per 1,000 subscribers is reported as a key metric across various technologies. However, it is collected for monitoring purposes only and there are no set obligations or penalties for low performance.<sup>79</sup>

Additionally, providers are obligated to provide information such as breakdowns of bills to enable consumers to identify possible causes of high charges and advice on the management and restriction of premium SMS services. Should a consumer defer payment of a disputed portion of a bill, a telecommunications provider must not demand that consumers pay the disputed charges while the investigation is ongoing.<sup>80</sup>

### **Contracts**

Mandatory contractual provisions are issued by the IMDA under the powers granted to it under the Singaporean Telco Act.<sup>81</sup> Provisions mandated include:

- specification of the billing period
- prices, and the terms and conditions on which a service will be provided must be explicitly stated
- procedures to contest charges
- procedures for private dispute resolution
- procedure for termination by the provider and the basis on which it is undertaken.

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<sup>77</sup> IMDA (2018) Quality of Service Reports, available at: <https://www.imda.gov.sg/regulations-licensing-and-consultations/licensing/licences/licence-for-the-sale-of-telecommunication-equipment/compliance-to-imda-standards/quality-of-service/quality-of-service-reports>

<sup>78</sup> IMDA (2018) Quality of Service, available at: <https://www.imda.gov.sg/regulations-licensing-and-consultations/licensing/licences/licence-for-the-sale-of-telecommunication-equipment/compliance-to-imda-standards/quality-of-service>

<sup>79</sup> IMDA (2018) Quality of Service, available at: <https://www.imda.gov.sg/regulations-licensing-and-consultations/licensing/licences/licence-for-the-sale-of-telecommunication-equipment/compliance-to-imda-standards/quality-of-service>

<sup>80</sup> CASE (Accessed June 2018) General Advice, available at: [https://www.case.org.sg/consumer\\_guides.aspx](https://www.case.org.sg/consumer_guides.aspx)

<sup>81</sup> Code Of Practice For Competition In The Provision Of Telecommunication Services 2012.

## Billing

The Code of Practice for Competition contains multiple provisions which are designed to ensure fair billing practices by providers of retail services. A fundamental element of this is the prohibition on charges for unsolicited services. Service agreements must also commit providers to providing clear and accurate bills. Bills must be provided monthly if nothing else is agreed.

The procedure to contest charges is outlined in the Code of Practice for Competition. If a consumer wishes to contest a bill after paying it, they must do so within one year of having paid it. The provider will then have 30 days to respond.

The IMDA has established a premium rate barring service that stops consumers from sending or receiving premium rate services, which are mobile content services such as ringtones transmitted by SMS and charged to the recipient.<sup>82</sup> Additionally, providers in Singapore are now obligated to require their customers to opt-in to data roaming services while travelling to prevent unexpected bills.<sup>83</sup>

## Credit and debt management

The provisions for debt management in Singapore come from a variety of sources. The broad mechanisms are contained within a series of legislative instruments, including:

- *Banking Act 1970*
- *Bankruptcy Act 1995*
- *Bills of Sale Act 1886*
- *Hire Purchase Act 1969*
- *Personal Data Protection Act 2012*
- *Protection from Harassment Act 2014*.<sup>84</sup>

Singapore has an industry body for credit collection called the Credit Collection Association of Singapore. It issues a code of conduct and requires members to abide by it.<sup>85</sup> It includes provisions for dealing with complaints and appropriate behaviour.

## Switching providers

A series of protections have been developed by the IMDA to enable consumers to move between providers of telecommunications services easily. One of these is issued under the Code of Practice for Competition and protects against disproportionate early termination charges.

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<sup>82</sup> IMDA (2017) Premium Rate Services, available at: <https://www.imda.gov.sg/community/consumer-education/infocomm-regulation/premium-rate-services>

<sup>83</sup> IMDA (2017) IDA's New Regulations for Mobile and Broadband Services Empower Consumers to Make Informed Choices, available at: <https://www.imda.gov.sg/about/newsroom/archived/ida/media-releases/2011/idas-new-regulations-for-mobile-and-broadband-services-empower-consumers-to-make-informed-choices>

<sup>84</sup> Credit Collection Association of Singapore (2013) Code of Conduct & Practice, available at: <http://www.creditcollection.org.sg/files/CCASCodeofEthics.pdf>

<sup>85</sup> Credit Collection Association of Singapore (Accesses June 2018) Code of Conduct & Practice, available at: <http://www.creditcollection.org.sg/commitment.html>

Singapore has full number porting capabilities for mobile and fixed line phones.<sup>86</sup> This both promotes competition and choice in the market.<sup>87</sup> Some providers however charge fees for the service. In response, the IMDA approved appropriate fees for fixed number portability.

The previously mentioned Quality of Service requirements include service activation time as a key metric.<sup>88</sup> The ability to end a service and begin another quickly with a different provider is significant to consumers when seeking to change providers. As with the customer service support measurements, this metric is only measured for the regulator and the public's monitoring purposes.

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<sup>86</sup> IMDA (2017) Number Portability for Fixed and Mobile Services - IDA Determines Inter-Operator Number Portability Charges, available at: <https://www.imda.gov.sg/about/newsroom/archived/ida/media-releases/2000/20061124093320>

<sup>87</sup> IMDA (2017) Singapore To Enjoy Full Mobile Number Portability From 13 June, available at: <https://www.imda.gov.sg/about/newsroom/archived/ida/media-releases/2008/20080416085608>

<sup>88</sup> IDMA (Accessed June 2018) Quality of Service Framework for Retail Fixed-Line Broadband Internet Access Services (ADSL / Cable Broadband Services), available at: <https://www.imda.gov.sg/-/media/imda/files/regulation-licensing-and-consultations/licensing/licenses/compliance-to-ida-standards/page-a---qos-framework-for-adsl-and-cable-broadband-services.pdf?la=en>

## 3.6 South Korea

**Table 9 Approach to choice and fairness protections in South Korea**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
South Korea	T	T	T	T C	C	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.6.1 Framework for consumer safeguards

The South Korean system for consumer choice and fairness in telecommunications services is governed primarily by the regulator, the Korea Consumer Commission (KCC). This body is granted significant powers under its various establishing laws, including most notably the *Telecommunications Business Act 2008 (TBA)*.

Additionally, significant generic powers are granted to the Korea Fair Trade Commission. A notable element of this is the powers granted to enforce breaches of the TBA with respect to regulation of terms and conditions.

It is unclear if there are any protections developed by industry bodies. The co-regulatory approach has not been employed in South Korea, with additional flexibility being given to the regulator through the TBA rather than through explicit legislative instruments or industry codes.

South Korea does not have specific laws governing the collection of outstanding debts in telecommunications. However, generic protections are available under the *Use and Protection of Credit Information Act 2008* (Use and Protection of Credit Information Act).

### 3.6.2 Consumer protections

#### Informed choice

With respect to the TBA, the KCC requires certain information to be provided to consumers in the marketplace. A unique element of the South Korean telecommunications market is the significant subsidies offered by service providers to consumers for some services. Article 36-4 of the TBA places disclosure requirements on operators in the market to ensure that consumers are able to make informed decisions.<sup>89</sup>

#### Customer service

Under the TBA, service providers are required to have mechanisms to resolve consumer complaints. This can be either internal or external.<sup>90</sup> Breaches of this section can be sanctioned by the regulator.

There are additional requirements with respect to complaints within the TBA. These include:

- a requirement to promptly address the reasonable opinions or dissatisfactions raised by users
- if it is difficult to promptly address complaints, the provider must notify the users of the reasons for the delay and the schedule for the provision of a remedy

<sup>89</sup> *Telecommunications Business Act 2008*.

<sup>90</sup> Kim, Gwangjae (2016) *The Shape and Implications of Korea's Telecommunication Industry: Crisis, Opportunity and Challenge*, available at: <https://telsoc.org/sites/default/files/tja/pdf/75-776-1-pb.pdf>

- losses must be compensated and delays in this can attract further penalties.

Additionally, general provisions for the duty to provide services exist. Operators of telecommunications companies must not refuse to provide a service without a justification. These general provisions also include general standards of fairness, timeliness and accuracy in business.<sup>91</sup>

## Contracts

The KCC requires providers to issue standard terms of use. This includes pricing terms for retail and wholesale services. The KCC requires that the two dominant players in the market, KT Corporation and SK Telecom must have their conditions approved by the KCC.<sup>92</sup>

The regulator will authorise the terms if they satisfy key requirements. These include:

- charges being set with reasonable consideration of the cost of supply and profits
- not unfairly discriminating
- submitting information about the contracts including subscription expenses, basic rates, user fees, additional service charges and actual expenses.

A central part of the telecommunications market is the use of standard contracts for the provision of services. The *Regulation of Terms and Conditions Act 2013* was introduced to limit the power of one contracting party over another (such as the provider of a telecommunications service and a consumer). This is specifically implemented with restrictions on adhesion (ie standard) contracts. There are two types of clauses which are considered unacceptable. These relate to violations of the principle of trust and good faith, and individual prohibitive provisions which are divided into eight categories:

- prohibition of exemption clauses
- predetermination of the amount of indemnification
- restriction on a business owner's right to unfairly cancel or terminate a contract
- performance of obligations
- protecting rights and interests of consumers
- deemed expression of intent
- additional obligations of agents
- limitations on a customer's right to file lawsuits.<sup>93</sup>

## Billing

The combination of the TBA and generic consumer protection acts provide consumers with multiple safeguards with respect to billing. These include protection from double billing, and overpayment from operator errors.<sup>94</sup>

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<sup>91</sup> *Telecommunications Business Act 2008*.

<sup>92</sup> Global Legal Group, *Telecommunications Law and Regulation 2009*, available at: [http://www.kimchang.com/UserFiles/files/ICLG\\_TelecommunicationLawsandRegulations09\[0\].pdf](http://www.kimchang.com/UserFiles/files/ICLG_TelecommunicationLawsandRegulations09[0].pdf)

<sup>93</sup> Fair Trade Commission (Accessed June 2018) Adhesion Contract Review, available at: <http://www.ftc.go.kr/eng/contents.do?key=507>

<sup>94</sup> Kim, Gwangjae (2016) *The Shape and Implications of Korea's Telecommunication Industry: Crisis, Opportunity and Challenge*, available at: <https://telsoc.org/sites/default/files/tja/pdf/75-776-1-pb.pdf>

## **Credit and debt management**

There are general protections regarding credit collection in South Korea. The central protections are contained within the Use and Protection of Credit Information Act. The key limitations are prohibitions on:

- resorting to violence, threat, deceptive means or force
- providing false information on the debt to the debtor or their associates
- informing anyone but the debtor of the existence of the debt
- disturbing the privacy of the debtor
- coercion of any form.<sup>95</sup>

## **Switching providers**

The KCC has mandated the requirements for number porting on both fixed line and mobile services. Service providers must not limit the ability of consumers to transfer their numbers.<sup>96</sup> The KCC may also order the providers to make plans to enable consumers to change between services under the TBA.

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<sup>95</sup> *Use and Protection of Credit Information Act 2008*, available at:  
<http://www.moleg.go.kr/english/korLawEng?pstSeq=47589>

<sup>96</sup> Kim & Chang (2009) *The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009 – Korea*, available at:  
[http://www.kimchang.com/UserFiles/files/ICLG\\_TelecommunicationLawsandRegulations09\[0\].pdf](http://www.kimchang.com/UserFiles/files/ICLG_TelecommunicationLawsandRegulations09[0].pdf)

## 3.7 United Kingdom

**Table 10 Approach to choice and fairness protections in the United Kingdom**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
United Kingdom	T	I	T	T	T	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.7.1 Framework for consumer safeguards

In the United Kingdom, protections for consumers across broad sectors of the economy are provided for in the *Consumer Rights Act 2015* (CRA). The CRA works to ensure fairness in consumer transactions through applying tests of fairness and transparency to all terms in consumer contracts used by traders in transactions with consumers. A term is considered unfair 'if, contrary to the requirement of good faith, it causes significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.' The Competition and Markets Authority has the lead role in relation to unfair terms law, however, it shares its consumer powers with Trading Standard Services and a number of other sector specific agencies including Ofcom.<sup>97</sup>

Ofcom is the telecommunications regulator in the UK. It aims to ensure that consumers in the UK get the best from their communications services and are protected from scams and sharp practices, while ensuring competition can thrive.<sup>98</sup> One of Ofcom's regulatory principles is to operate with a bias against intervention, but with a willingness to intervene in an effective manner when required.<sup>99</sup> As a result, Ofcom uses a range of tools to provide consumer safeguards in the telecommunications industry.

The majority of consumer protections (similar to those set out in the Australian TCP Code) are included in the General Conditions of Entitlement (General Conditions) that all communications providers must comply with to operate in the UK.<sup>100</sup> These conditions are set by Ofcom pursuant to its powers under the *Communications Act 2003* ('UK Comms Act'). Matters that Ofcom may set conditions about are provided in the UK Comms Act and include the power to set conditions that Ofcom considers appropriate for protecting the interest of consumers of communications services.<sup>101</sup> The general conditions for the protection of consumers are, unless stated otherwise, applicable to both communications network and service providers. Areas of consumer protection covered by the General Conditions include sales and marketing, price transparency, contracts, billing, non-payment of bills and switching providers.

<sup>97</sup> Competition and Markets Authority (2015) Unfair Contract Terms Guidance, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450440/Unfair\\_Terms\\_Main\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf)

<sup>98</sup> Ofcom (Accessed June 2018) What is Ofcom, available at: <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

<sup>99</sup> Ofcom (Accessed June 2018) What is Ofcom, available at: <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

<sup>100</sup> Ofcom (2012) Guidance on individual General Conditions, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-authorisation-regime/background>

<sup>101</sup> *Communications Act 2003* (UK) s45.

In addition to these conditions, Ofcom has also developed codes of practice for the industry which typically respond to particular issues it has identified within the sector. Of particular relevance are the Voluntary Code of Practice on Residential Broadband Speeds, and the Voluntary Code of Practice for the Sales and Marketing of Subscriptions to Mobile Networks. These voluntary codes are only applicable to those providers that sign up to the code. Ofcom monitors compliance with the codes, and will typically ask providers to rectify an issue where it identifies non-compliance. In cases of more persistent non-compliance, Ofcom may remove a signatory from the code.

Additionally, EU level protections exist however they are focussed on promoting market opening and creating equal competition conditions.<sup>102</sup>

### **3.7.2 Consumer protections**

#### **Informed choice**

The General Conditions place a range of requirements on providers to enable consumers to make more informed choices regarding communications services. For example, the conditions require providers to produce a basic Code of Practice for its consumers which sets out, at a minimum, where consumers can find specific information in relation to offers and contracts of the provider. The Code of Practice must be in plain English, easy to understand and be provided on request to consumers.<sup>103</sup> Information that must be provided includes clear and up to date information on its applicable prices and tariffs, and on its standard terms and conditions.

Additionally, in relation to the sales and marketing of telephony services, it places obligations on providers regarding information it should be providing at the point of sale, retention of records, training of staff, use of information and sale incentives.<sup>104</sup>

Specific protections for consumers in relation to broadband speeds are provided in the Voluntary Code of Practice on Broadband Speeds. The objective of this code is to increase the overall standard of information on broadband speeds (and other relevant metrics) that should be made available to consumers at point of sale to help them make more informed choices about service products offered in the broadband market.<sup>105</sup> Under this code Internet Service Providers agree to give clear information on broadband speed to consumers when they consider or buy a home broadband service and to provide redress when speed performance is poor.<sup>106</sup> Principles of the code cover training of Internet Service Providers staff, information at the point of sale and after, accuracy of information provided, managing speed related problems, presentation of information on the website and ensuring consumer awareness of Internet Service Provider adoption of the Code.

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<sup>102</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2394&from=EN>.

<sup>103</sup> Ofcom (Accessed June 2018) Consolidated version of General Conditions. Condition 14, available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITION\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITION_AS_AT_28_MAY_2015-1.pdf)

<sup>104</sup> Ofcom (Accessed June 2018) Consolidated version of General Conditions. Condition 23, available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITION\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITION_AS_AT_28_MAY_2015-1.pdf)

<sup>105</sup> Ofcom (2015) Voluntary Code of Practice: Broadband Speeds, available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/85780/Broadband\\_Speeds\\_Code\\_June\\_2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/85780/Broadband_Speeds_Code_June_2015.pdf)

<sup>106</sup> Ofcom (Accessed June 2018) Codes of Practice, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>

## Customer service

In the UK there do not appear to be specific obligations on providers in relation to customer service above those conditions requiring the provision of information and the use of plain language in communications with consumers.

The voluntary Industry Code of Practice for Sales and Marketing of Subscriptions to Mobile Networks however, does include principles of best practice for customer contact. This includes basic principles such as only calling current or prospective customers during an appropriate time of day, and clearly and fully stating the purpose of any telephone call with a consumer.<sup>107</sup>

## Contracts

The General Conditions contain specific requirements in relation to contracts with consumers. In particular, Condition 9 requires providers to offer contracts with a number of minimum terms. For example, the provider must provide the consumer with a minimum set of information about the terms of the contract if requested by the consumer. It must also ensure that the conditions of termination do not create disincentives for consumers to change providers (eg through excessive termination charges). Other requirements include offering at least one 12 month contract for each service on offer, ie landline and broadband services, and giving the consumer at least one month's notice of any changes to their contract that are likely to be of material detriment.<sup>108</sup>

The voluntary Industry Code of Practice for Sales and Marketing of Subscriptions to Mobile Networks also contains some minimum requirements for contracts including taking reasonable steps to ensure the consumer understands key features of the contract and providing the consumer with appropriate information once they have agreed to place an order.<sup>109</sup>

## Billing

Metering and Billing requirements are also included in the General Conditions. This requires the provider to ensure that it is accurately billing the customer, and the bill does not exceed the true extent of the service actually provided to the customer. Additionally, providers must provide customers with a basic level of itemised billing on their request, either free of charge or for a reasonable fee.<sup>110</sup>

## Credit and debt management

Safeguards relating to non-payment of bills by consumers are provided for in the General Conditions. If the consumer has any problems with their bill, the provider must act fairly when it takes action to secure payment. The measures taken by the provider must be proportionate and not unduly discriminatory. Providers are also required to publish details on their websites outlining the measures they may take to effect payment or disconnection in the case of non-payment.<sup>111</sup>

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<sup>107</sup> Ofcom (2007) Code of Practice for the sales and marketing of subscriptions to mobile networks, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/85991/cop.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/85991/cop.pdf)

<sup>108</sup> Ofcom (2016) Ofcom's General Conditions, available at: <https://www.ofcom.org.uk/advice-for-businesses/knowning-your-rights/gen-conditions>

<sup>109</sup> Ofcom (2007) Code of Practice for the sales and marketing of subscriptions to mobile networks, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/85991/cop.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/85991/cop.pdf)

<sup>110</sup> Ofcom (Accessed June 2018) Consolidated version of General Conditions. Condition 11,12, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITION\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITION_AS_AT_28_MAY_2015-1.pdf)

<sup>111</sup> Ofcom (Accessed June 2018) Consolidated version of General Conditions. Condition 13, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITION\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITION_AS_AT_28_MAY_2015-1.pdf)

### **Switching providers**

Number portability is regulated by EU Law and UK Law through Ofcom. Ofcom has included obligations for number portability in the General Conditions. The main obligation on providers is to provide number portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges to consumers who request it.<sup>112</sup> This rule is consistent with the European Union Directive that requires countries within the EU to ensure that all consumers who request to keep their telephone number may do so.

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<sup>112</sup> Ofcom (Accessed June 2018) Consolidated version of General Conditions. Condition 18, available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/86273/CONSOLIDATED\\_VERSION\\_OF\\_GENERAL\\_CONDITION\\_AS\\_AT\\_28\\_MAY\\_2015-1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/86273/CONSOLIDATED_VERSION_OF_GENERAL_CONDITION_AS_AT_28_MAY_2015-1.pdf)

## 3.8 United States of America

**Table 11 Approach to choice and fairness protections in the United States of America**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
United States of America	T	I	I	T	I	T

Note: **C** = general consumer law, **T** = telecommunications-specific regulation, **I** = Industry-led.

The table above considers the body which sets the most stringent regulations.

### 3.8.1 Framework for consumer safeguards

Consumer protection policy in the United States is largely based on the premise that consumers should be empowered to protect their own self interests. As a result, there is an emphasis on requiring sellers to provide full disclosure about their products to enable consumers to make informed choices.<sup>113</sup>

At a federal level, the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) work together to protect consumers from acts and practices that are deceptive, unfair, unjust or unreasonable.<sup>114</sup> General consumer protections, across broad sectors of the economy, come under the jurisdiction of the FTC. Under the *Federal Trade Commission Act 1914* the FTC is empowered, among other things, to set rules defining acts or practices that are unfair or deceptive, seek redress or relief for conduct injurious to consumers, and conduct investigations and make legislative recommendations to Congress.<sup>115</sup>

In the USA, there are also sector specific rules and regulations for protecting consumers. The FCC is an independent US government agency responsible for implementing and enforcing America's communications law and regulations. Under this mandate, the FCC has responsibility for regulating and enforcing a number of consumer protection rules. This includes implementing and enforcing the *Communications Act 1934* (USA Comms Act), which requires all common carrier charges, practices, classifications, and regulations for communication service by wire or radio to be just and reasonable. The USA Comms Act also empowers the FCC to create other protections for consumers of broadband, wireless and wireline telecommunications services.<sup>116</sup> Of particular relevance to this report are the Truth-in-Billing Rules that apply to telephone service providers and the Open Internet Transparency Rules.

Protections for telecommunications consumers are also provided by industry associations such as the Cellular Telecommunications Industry Association (CTIA). The CTIA represents the USA wireless communications industry including carriers, equipment manufacturers, mobile app developers and content creators. The CTIA and the wireless carriers that are signatories to the Consumer Code for Wireless Service have made a voluntary commitment to helping consumers make informed choices when selecting their wireless service. Signatories to the Code have committed to adhere to 12 points, covering areas such as

<sup>113</sup> Corones (2016) Comparative analysis of overseas consumer policy frameworks, available at: [http://consumerlaw.gov.au/files/2016/05/ACL\\_Comparative-analysis-overseas-consumer-policy-frameworks\\_Part5-1.pdf?bcsi-ac-07a6dcb1018c8505=2A32FCCF000001023H/jCMTkrts/sPoy12zHNYFokOQ8AAAAAAgEAAHLdAwCEAwAAAAAACZQAAA=](http://consumerlaw.gov.au/files/2016/05/ACL_Comparative-analysis-overseas-consumer-policy-frameworks_Part5-1.pdf?bcsi-ac-07a6dcb1018c8505=2A32FCCF000001023H/jCMTkrts/sPoy12zHNYFokOQ8AAAAAAgEAAHLdAwCEAwAAAAAACZQAAA=)

<sup>114</sup> FCC and FTC (2015) FCC-FTC Consumer Protection Memorandum of Understanding.

<sup>115</sup> FTC, Statutes enforced and administered by the Commission, available at: <https://www.ftc.gov/enforcement/statutes>

<sup>116</sup> FCC and FTC (2015) FCC-FTC Consumer Protection Memorandum of Understanding.

information provision, contracts and customer service, to empower consumers to make informed choices.<sup>117</sup>

## 3.8.2 Consumer protections

### Informed choice

The FCC's Internet Freedom Transparency Rule requires an Internet Service Provider to publicly disclose information about its network management practices, performance characteristics, and commercial terms of its broadband internet access services. An Internet Service Provider may make a disclosure through its website in an easily accessible form or it can submit a disclosure to the FCC for publishing.<sup>118</sup> The purpose of the Internet Freedom Transparency Rule is to empower consumers to make informed choices about broadband services. It applies to service descriptions, including broadband speed and latency, and to pricing (eg monthly prices, usage-based fees and any additional charges the consumer may be charged).<sup>119</sup>

Wireless providers that are signatories to the CTIA Consumer Code for Wireless Service have also committed to disclose rates and terms of service to consumers at the point of sale and on their website.<sup>120</sup>

### Customer service

Under the CTIA Consumer Code for Wireless Service, Wireless providers have agreed to provide consumers with ready access to customer service.<sup>121</sup> Customers are provided with a phone number to access the carrier's customer service free of charge. Details of customer service contact information are required to be provided to consumers online and on billing statements. Providers have also committed to respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.<sup>122</sup>

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<sup>117</sup> CTIA (Accessed June 2018) Consumer Code for Wireless Services, available at: <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

<sup>118</sup> FCC (Accessed June 2018) Internet Service Provider Disclosures, available at: <https://www.fcc.gov/isp-disclosures#block-menu-block-4>

<sup>119</sup> FCC (2017) Open Internet Transparency Rule, available at: <https://transition.fcc.gov/cgb/consumerfacts/Open-Internet-Transparency-Rule.pdf>

<sup>120</sup> CTIA (Accessed June 2018) Consumer Code for Wireless Service, available at: <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

<sup>121</sup> Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

<sup>122</sup> CTIA (Accessed June 2018) Consumer Code for Wireless Service, available at: <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

## Contracts

Wireless providers have committed to provide contract terms to customers and confirm changes in service under the CTIA Consumer Code for Wireless Services. For example, when a consumer initiates a new service or a change in existing service, the carrier will provide or confirm any new material terms and conditions of the ongoing service with the consumer.<sup>123</sup> Similarly, if the provider wishes to materially modify the contract of its postpaid customer in a manner that is adverse to the customer, the provider must provide reasonable notification of the change and allow the consumer to cancel their contract without incurring an early termination fee.<sup>124</sup>

## Billing

The FTC plays a role in monitoring telecommunications providers and taking action against them for unfair or deceptive practices. Under the law, providers must take steps to ensure that charges to customers' credit cards, debit cards, phone bills and other accounts are authorised. These principles are also applicable to mobile payments.<sup>125</sup>

The FCC has implemented a specific law in relation to billing for telephone services. The Truth-in-Billing Rule seeks to define what constitutes unjust and unreasonable practices by telecommunications providers under the USA Comms Act. The Truth-in-Billing Rule provides broad, binding principles for service providers to promote accurate and fair billing practices.<sup>126</sup> Among other things the rules provide that a telephone company's bills must:

- provide brief, clear, non-misleading, plain language description of the service or services rendered to accompany each charge
- identify the service provider associated with each charge and clearly identify any change in service provider
- contain full and non-misleading descriptions of charges
- identify those charges for which failure to pay will not result in disconnection of the customer's basic local service
- provide a number for customers to call in order to lodge a complaint or obtain information free of charge
- place charges from third parties that are not telephone companies in a distinct section of the bill, and provide a separate subtotal for third-party charges in the separate bill section and on the payment page.<sup>127</sup>

Telephone companies also must notify consumers, on their websites and at the point of sale, of any options they offer to block charges from third parties that are not telephone companies.

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<sup>123</sup> CTIA (Accessed June 2018) Consumer Code for Wireless Service, available at: <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

<sup>124</sup> CTIA (Accessed June 2018) Consumer Code for Wireless Service, available at: <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>

<sup>125</sup> FTC (Accessed June 2018) Payments and Billing, available at: <https://www.ftc.gov/tips-advice/business-center/credit-and-finance/payments-and-billing>

<sup>126</sup> FCC (1999) FCC Adopts Truth-in-Billing Principles and Guidelines to Help Consumers Understand Their Phone Bills, available at: [https://transition.fcc.gov/Bureaus/Common\\_Carrier/News\\_Releases/1999/nrcc9025.html](https://transition.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrcc9025.html)

<sup>127</sup> FCC (2015) Truth-in-Billing Policy, available at: <https://www.fcc.gov/general/truth-billing-policy>

### **Credit and debt management**

Of the consumer safeguard instruments considered, there does not appear to be any specific requirements on telecommunications providers in the USA in relation to credit and debt management. However, under the CTIA Consumer Code for Wireless Service, providers have committed to provide consumers with free notifications for voice, data and messaging usage, as well as notifications for international roaming, so that consumers can monitor their usage and avoid excess charges.

### **Switching providers**

The FCC has implemented rules under the USA Comms Act with respect to porting of telephone numbers. Under these rules, companies are able to charge the customer to port a number, however, they cannot refuse to port a number. The rules also require simple ports, those that do not involve more than one line or more complex adjustments to telephone switching equipment, to be processed in one day.<sup>128</sup>

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<sup>128</sup> FCC (2016) Porting: Keeping your phone number when you change providers, available at: <https://transition.fcc.gov/cgb/consumerfacts/numbport.pdf>

# 4. Consumer protection laws in other Australian industries

## 4.1 Energy sector

**Table 12 Choice and fairness protections in the Australian Energy Sector, by category**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Energy sector	E	E	E	E	E	E

Note: **C** = general consumer law, **E** = energy specific regulation, **I** = Industry-led, **N** = no specific provisions.

The table above considers the body which sets the most stringent regulations.

### 4.1.1 Framework for consumer safeguards

The Australian energy market is somewhat fragmented with a national regulator, the Australian Energy Regulator (AER), being responsible for implementing decisions made by the Australian Energy Market Commission. This is a body established by the Council of Australian Governments to consider market development and make rule changes which impact the national energy market. The AER is established in legislation under the *Australian Competition and Consumer Act 2010*<sup>129</sup>. The AER has an independent board and shares staff, resources and facilities with the Australian Competition and Consumer Commission (ACCC).

The Commonwealth and State governments have established a National Energy Customer Framework which is a collection of legal instruments that govern the sale and supply of electricity and gas to retail customers.<sup>130</sup> This applies differently in each state depending on their passage and implementation of corresponding state laws.

The key instruments which implement the national framework are the:

- National Electricity Law.
- National Energy Retail Law (NERL) – the NERL applies to the Commonwealth, South Australia, New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory.
- National Gas Law.

At the federal level, there are consumer laws which are not specific to energy that have a significant impact upon the functioning of the market. Centrally, the Australian Consumer Law and the Competition and Consumer Regulations are designed to restrict the practices of businesses with the objective of ensuring fair competition.

<sup>129</sup> Australian Energy Regulator (Accessed June 2018) Energy Industry Regulation, available at: <https://www.aer.gov.au/industry-information/energy-industry-regulation>

<sup>130</sup> AEMC (Accessed June 2018) National Energy Customer Framework, available at: <https://www.aemc.gov.au/regulation/energy-rules/national-energy-retail-rules/national-energy-customer-framework>

## 4.1.2 Consumer protections

### Informed choice

Australian consumer law mandates that service providers give all necessary information to consumers. Under the NERL and the related rules, customers are required to provide explicit informed consent when entering into a market contract for the sale of electricity, and in some other situations. This ensures that customers are provided with the information that they need in order to make a decision, and that there is a record of their decision should there be a dispute about whether consent was given.

### Customer service

The NERL and regulations developed by the National Energy Regulator set the conditions governing how retailers engage energy consumers. Energy retailers are required to:

- provide fair contracts with clear terms and conditions
- provide printed material on their offer or a one page summary of their offer (an Energy Price Fact Sheet and written product disclosure statement)
- provide flexible payment options
- provide hardship programs that provide assistance such as payment plans, energy efficiency advice or waiving late payment fees
- maintain a 'no contact' list which states that sales people cannot contact nominated consumers at their home
- inform consumers about their right to complain.

There are general provisions designed to ensure fair and honest dealings between a consumer and their retailer. Energy retailers, like all businesses, must comply with laws around advertising and marketing. There also specific rules that door-to-door and telephone salespeople must follow.<sup>131</sup>

There is a specified level of service that energy providers are required to provide when in business. The details of the plans are available in a consumer's contract. However, the core elements are outlined below:

- Limitations on when supply may be disconnected.
- If electricity supply is not connected by a date agreed, the provider must pay the customer at least \$60 for each extra day (maximum \$300).
- Interruption to supply: Providers must give affected customers four days' notice of any planned interruptions to the electricity or gas supply. This does not apply if the work is unplanned or beyond the control of the provider – for example, emergency repairs.
- Repairing street lights by the date agreed to by the provider and the affected consumer. If not, the provider must pay at least \$15 in compensation to the customer.
- Energy providers must provide both a 24-hour emergency line, and a business-hours information line. The service must not cost more than a local call, and must give consumers an option of speaking directly with a person.<sup>132</sup>

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<sup>131</sup> AER (Accessed June 2018) Your energy rights, available at:

<https://www.aer.gov.au/consumers/choosing-an-energy-retailer/your-energy-rights>

<sup>132</sup> Energy and Water Ombudsman NSW (Accessed June 2018) Service Standards, available at:

<https://www.ewon.com.au/page/suppliers/supplier-responsibilities/service-standards>

## Contracts

There are two types of energy contracts offered to consumers in Australia. These are standard and market contracts. The standard provisions of contracting under the Australian Consumer Law apply. The features and requirements of each are outlined below:

Standard contracts:

- have set terms and conditions that can't be changed
- are approved by local states and territories
- prices may be set by state or territory governments.

Market contracts:

- have some set terms and conditions which vary depending upon the contract
- may have lower fees than standard contracts and offer renewable energy or discounts
- sometimes have fixed periods with exit fees that may be charged
- vary significantly among retailers.<sup>133</sup>

## Billing

Under the NERL, requirements may be set for billing. Elements of billing and charging which may be regulated include:

- the way in which tariff structures should be expressed
- the regulation of estimates for the purposes of billing, including information to be provided to customers
- the regulation of critical peak pricing and critical peak rebates
- the provision of information to customers about metering and consumption data on the bill
- requirement to notify the customer if they change a contract including the cost of gas and electricity
- provision of clear information on the bill, including how a consumer electricity usage compares to other households in their area.

## Credit and debt management

Under the NERL there are specific requirements which mandate providers to establish customer hardship policies. These policies are approved by the regulator. Elements of the hardship policies include flexible payment options, identification and notification of financial counselling services, and reviews of the customer's contract.<sup>134</sup>

## Switching providers

There are a number of regulatory instruments which determine the ability to transfer customers between providers. There are the National Energy Rules, the National Energy Retail Rules, Australian Energy Market procedures, and relevant jurisdictional regulatory codes. Switching must occur in five steps.<sup>135</sup> These are:

- customer chooses a new retailer

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<sup>133</sup> AER (Accessed June 2018) Shopping around and changing your electricity or gas offer, available at: [https://www.aer.gov.au/system/files/Shopping%20around%20and%20changing%20your%20electricity%20or%20gas%20offer\\_1.pdf](https://www.aer.gov.au/system/files/Shopping%20around%20and%20changing%20your%20electricity%20or%20gas%20offer_1.pdf)

<sup>134</sup> NERL, NSW.

<sup>135</sup> AEMC (2013) Issues Paper: Review of Electricity Customer Switching, available at: <https://www.aemc.gov.au/sites/default/files/content/e52915c8-8a1a-450b-bb75-09268cacc563/Issues-Paper.pdf>

- new retailer gains information and consent from the customer in order to commence the transfer process
- new retailer uses the largely automated Market Settlement and Transfer Solution (MSATS) business system, operated by the Australian Energy Market Operator, to request meter reading data for the customer
- billing and settlement processes are initiated amongst the various registered participants and the Australian Energy Market Operator
- new retailer begins supply.

## 4.2 Banking sector

**Table 13 Choice and fairness protections in the Australian Banking Sector, by category**

	Informed choice	Customer service	Contracts	Billing	Credit and Debt Management	Switching providers
Banking sector	C I	I	I	C I	C I	C

Note: **C** = general consumer law, **E** = energy specific regulation, **I** = Industry-led, **N** = no specific provisions.

The table above considers the body which sets the most stringent regulations.

### 4.2.1 Framework for consumer safeguards

There are two central authorities with regulatory oversight of the Australian finance sector. These are:

- The Australian Prudential Regulation Authority (APRA): has responsibility for the prudential regulation of deposit taking institutions (banks, building societies, credit unions) as well as life and general insurance and superannuation.
- The Australian Securities and Investments Commission (ASIC): administers and enforces a range of legislative provisions relating to financial markets. It aims to protect markets and consumers from manipulation, deception and unfair practices and, more generally, to promote confident participation in the financial system by investors and consumers. ASIC was established under the *Australian Securities and Investment Commission Act 2001* and carries out most of its tasks under the *Corporations Act 2001*.

The Reserve Bank of Australia and the Department of the Treasury also play a role in the regulation of finance. Representatives of these institutions form the Council of Financial Regulators in Australia.

The Australian Banking Association (the Association) is the industry association for the banking industry in Australia. The Association represents 24 different banks, providing analysis, advice and advocacy for the banking industry.<sup>136</sup> Members voluntarily sign up to the Association's customer charter, the Code of Banking Practice, which sets standards of practice for banks and representatives<sup>137</sup>. This code goes beyond the regulatory framework to define the way in which banks interact with their consumers.

In addition to the Code of Banking Practice, the central regulation which places limitations upon the ability to lend to consumers is the National Credit Code. This was established under the *National Consumer Credit Protection Act 2009* and is administered by ASIC.

<sup>136</sup> Australian Banking Association (2018) What we do, available at: <https://www.ausbanking.org.au/about-us/the-aba/>

<sup>137</sup> Australian Banking Association (Accessed June 2018) Code of Banking Practice, available at: <https://www.ausbanking.org.au/code/code-of-banking-practice/>

## 4.2.2 Consumer protections

### Informed choice

Under the National Credit Code, when making an offer for a credit agreement, an institution must provide certain information which can be used by individuals to compare products. This information is provided in a pre-contractual statement or credit guide. It must include:

- credit provider name and license number
- contact details
- amount of the credit
- repayment terms
- percentage rate
- fees and charges
- details of the consumer's right to complain and access to their External Dispute Resolution Scheme.

The National Credit Code also requires inclusion of a comparison rate by the credit providers when advertising fixed term credit so that consumers are aware of the interest rate, fees and any commissions. This is provided to enable consumers to compare credit products easily.

The Banking Code of Practice sets additional requirements upon its members when offering to provide banking services. This includes limitations on the provision of a service. For example, consumers are required to inform the bank of their situation, and account suitability rules require low income or disadvantaged people to be provided with information on the selection of an appropriate account at a financial institution. Staff are also required to be trained to identify those who may qualify for particular concessional accounts.

Similarly, banks have an obligation under the National Credit Code to make available information to those in remote Indigenous communities about products which may be appropriate to their needs. This includes:

- making general information about appropriate products accessible
- providing details of accounts which may be suitable to the customer's needs, including in a remote location. This may include details of accounts which attract no or low standard fees and charges
- appropriately training staff who regularly deal with those in a remote location to be culturally aware
- considering publicly-announced key Commonwealth, State and Territory government programs, such as income management programs, that may be relevant in providing banking services.

Finally, under the National Credit Code banks must make available some standard information to enable accurate comparisons between providers. In the case of credit products, this includes interest rates and standard fees and charges applicable to a banking service used to compile comparison rates.

### Customer service

Under the Banking Code of Practice the Association has required members to make key commitments of service to their customers. This includes:

- working through the Association to consult widely to continuously work towards improving the standards of practice and service in the banking industry
- promote better informed decisions about banking services through disclosure, explanation and referrals
- providing general information about rights and obligations

- providing information in plain language
- communicating in a timely and responsible manner.

### **Contracts**

The Banking Code of Practice sets standards for terms and conditions in the banks' provision of services to their customers. The main components of the Banking Code of Practice include the expeditious provision of terms and conditions upon request, full particulars of fees and charges, and interest rate information. A fundamental element is that the terms and conditions must be distinguishable from marketing material, in English or other languages as appropriate, and be consistent with other elements of the Banking Code of Practice.

The Banking Code of Practice details the full range of information that will be provided to the consumer when contracting for a banking service. Also noted are the obligations of the banks to comply with other regulatory instruments. This includes the reporting requirements under the ePayments Code (the ASIC electronic payment regulations).

### **Billing**

Much of the billing standards for financial services are determined in the contracting requirements outlined within the Banking Code of Practice. This includes when banks must provide particular assistance to customers experiencing financial hardship. Additionally, under the Future of Financial Advice amendments to the *Corporations Act 2001* there are additional restrictions placed on those providing financial advice.

The key elements of the reforms include:

- a ban on conflicted remuneration structures such as volume based payments
- an opt-in obligation which requires advisors to renew ongoing billing relationships every two years
- an annual fee disclosure statement where, in addition to the bills sent to consumers, a statement is issued to show the fees paid, services received and the services to which they were entitled over the previous 12 months.<sup>138</sup>

### **Credit and debt management**

A fundamental element of the requirements placed upon financial service providers includes the restrictions on the provision of credit and the obligations to debtors. Firstly, the Banking Code of Practice requires banks to engage in appropriate assessments of the borrower to ensure they will be able to repay the debt.

Additionally, those experiencing financial difficulties with credit facilities have rights available under the Code of Banking Practice to seek assistance from external expertise.<sup>139</sup> This also includes protections for the selling of debt and compliance with the ACCC's requirements on debt collection techniques. The National Credit Code similarly requires the provision of financial hardship assistance. However this has legislative force and significant sanctions for non-compliance.

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<sup>138</sup> ASIC (2017) RG 245 Fee disclosure statements, available at: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-245-fee-disclosure-statements/>

<sup>139</sup> Code of Banking Practice (2013), available at: [https://www.commbank.com.au/content/dam/commbank/about-us/download-printed-forms/CodeofBankingPractice\\_ADB2555\\_0604.pdf](https://www.commbank.com.au/content/dam/commbank/about-us/download-printed-forms/CodeofBankingPractice_ADB2555_0604.pdf)

## Switching providers

ASIC has implemented rules to enable consumers to switch between bank accounts easily. Under these rules, should a customer wish to change transaction accounts, their new provider may contact the previous provider to receive a list of the customer's regular direct debits or credits made to or from their previous account in the 13 months prior. These are established under the ePayments Code.<sup>140</sup>

For home loans, creditors are not able to charge break fees to customers who decide to refinance their mortgages. These are fees which are designed to recover the profitability of a lender had a loan run its full course.<sup>141</sup> This regulatory ban has enabled consumers to change lenders more easily and at a lower cost.

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<sup>140</sup> ASIC (2012) 12-139MR ASIC implements new bank account switching rules, available at: <https://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-139mr-asic-implements-new-bank-account-switching-rules/>

<sup>141</sup> ASIC (2010) Rules on exit fees are clear, available at: <https://asic.gov.au/about-asic/media-centre/speeches/rules-on-exit-fees-are-clear/>

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