

# ACMA submission to DoCA Consumer Safeguards Review

## Part B: Reliability of Services

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# Contents

<b>Introduction</b>	<b>1</b>
<b>Context</b>	<b>3</b>
The Customer Service Guarantee Standard	3
The Network Reliability Framework	8
Priority Assistance	9
Emergency Call Service	10
<b>Proposal 1 and Proposal 2</b>	<b>12</b>
Introduction	13
Types of regulatory interventions	13
Cost impact of regulation	14
New consumer safeguards	14
Timeframes	15
Penalties	15
Consumers with diagnosed life-threatening conditions	16
Exemptions	16
Continuity of service solutions	17
Different service offerings	17
<b>Proposal 3</b>	<b>18</b>
Introduction	18
Network reliability principles	19
<b>Proposal 4</b>	<b>20</b>
Introduction	20
Benefits of data transparency	21
Collection and use of industry data	21
Types of data to be collected by the ACMA	22
Other considerations	22



# Introduction

The Australian Communications and Media Authority (ACMA) is Australia's regulator for telecommunications, radiocommunications, broadcasting and some online content. Our strategic purpose is to maximise the economic and social benefits of communications and media for Australia. The ACMA's priorities and strategies include:

- > public confidence in communications and media services through the provision of safeguards, information and advice
- > spectrum arrangements that benefit all Australians through efficient and effective management
- > a regulatory framework that anticipates change through monitoring our environment and influencing regulatory responses<sup>1</sup>.

The ACMA is the primary sector-specific regulator for communications, with responsibility for industry codes and standards and oversight of several important consumer safeguards, as well as reporting requirements under the *Telecommunications Act 1997*. The ACMA is therefore well placed to comment on the regulatory and practical implications of any proposed changes to Australia's telecommunications consumer safeguards regime.

The ACMA welcomes the opportunity to comment on the second of three consultation papers for the Consumer Safeguards Review (Review) and looks forward to engaging with the Department of Communications and the Arts (DoCA) to implement new consumer safeguards that are fit-for-purpose in a contemporary telecommunications environment.

In summary, our submission:

- > is supportive of modernising consumer safeguards to reflect new industry structures and technologies and in keeping with changes to community expectations about contemporary telecommunications services
- > outlines the existing role of the ACMA in relation to reliability safeguards, with a focus on the Customer Service Guarantee, Network Reliability Framework, Priority Assistance and the Emergency Call Service
- > supports the continued need for public interest objectives (such as the reliability of access to emergency services and enhanced reliability of services for Australians with a diagnosed life-threatening medical condition) to be addressed through direct regulation
- > reinforces the importance of accountability and transparency for both wholesalers and retailers and the need for them to cooperate in order to effectively and efficiently supply telecommunications services to consumers
- > notes that data collection and publication are important mechanisms to help promote improved performance and accountability across the telecommunications industry
- > considers it desirable that the ACMA be given legislative authorisation which permits it to freely publish information identifying providers.

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<sup>1</sup> [https://www.acma.gov.au/-/media/mediacomms/Information/pdf/Corporate-plan-on-a-page-2018\\_19-pdf.pdf?la=en](https://www.acma.gov.au/-/media/mediacomms/Information/pdf/Corporate-plan-on-a-page-2018_19-pdf.pdf?la=en)

There are also four key themes which run throughout our submission:

**1. Consumer safeguards have benefits and costs**

For example, the imposition of tighter retail connection and/or fault repair timeframes are good for the consumers concerned. However, stricter regulation is generally costlier for industry and could result in additional costs for consumers in the form of increased prices.

**2. Wholesale and retail obligations must be aligned**

Current regulatory arrangements assume a vertically integrated supply chain for fixed-line services. It is important that wholesale and retail consumer safeguards in today's more complex supply chains are aligned and work effectively together. This will provide clear lines of responsibility for industry, clarity of regulatory oversight, and support positive consumer outcomes.

**3. Consumer safeguards should be relevant and fit-for-purpose**

Each regulatory intervention should be commensurate with the risks and benefits to the community and align with contemporary consumer expectations and usage of telecommunications services. The type of regulatory tool used, the degree of specificity of the rules, any exceptions to those rules, the required measures and reporting obligations, and the consequences of non-compliance are important components for the government to consider.

**4. Data collection should be purposeful and adaptable**

Data collected by the ACMA should enable it to achieve its regulatory objectives, including the facilitation of analysis to inform its regulatory activities. There should also be flexibility so that the data collected can be adapted as the ACMA's needs change over time.

# Context

The ACMA oversees a range of telecommunications consumer safeguards which are largely aimed at retail providers or Telstra (as the former vertically integrated retail and monopoly wholesale operator). In our regulatory role, we note that the National Broadband Network (NBN) rollout and market changes are putting increasing pressure on traditional consumer safeguards, particularly around network reliability.

The range of consumer safeguards currently within the ACMA's remit, and some observations on these, are set out below.

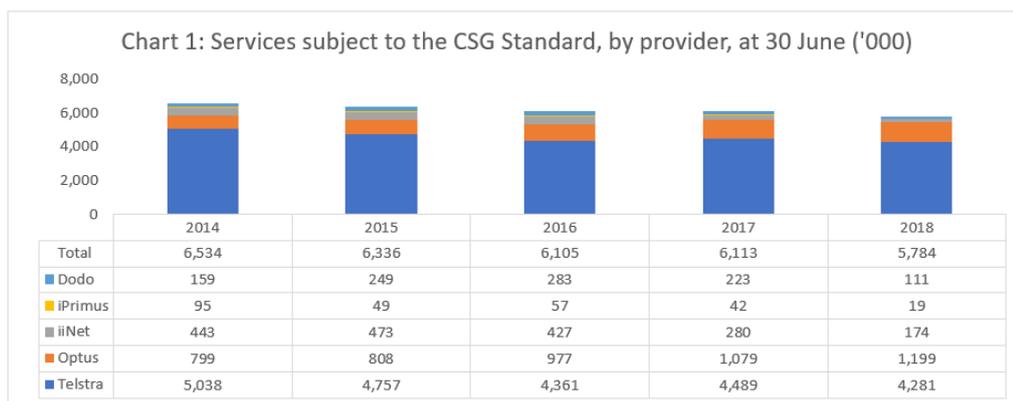
## The Customer Service Guarantee Standard

The Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard) sets minimum retail service standards for carriage service providers (CSPs) to install, repair and attend appointments for standard telephone services for residential and small business customers with five or less fixed-lines. However, the CSG does not apply to broadband internet services or to mobile phone services (given the focus of the CSG is on standard telephone services), which are the dominant types of services currently being adopted by consumers.<sup>2</sup>

Notwithstanding these restrictions, Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* already:

- > is not limited to voice services but can apply to any carriage service
- > makes provision for wholesale performance standards to be made.

The total number of services subject to the CSG Standard has declined by 11.49 per cent from 6.53 million services at 30 June 2014 to 5.78 million services at 30 June 2018 (see Chart 1).



Note 1: In relation to iiNet's 2016 figure of 427, TPG acquired iiNet in September 2015.

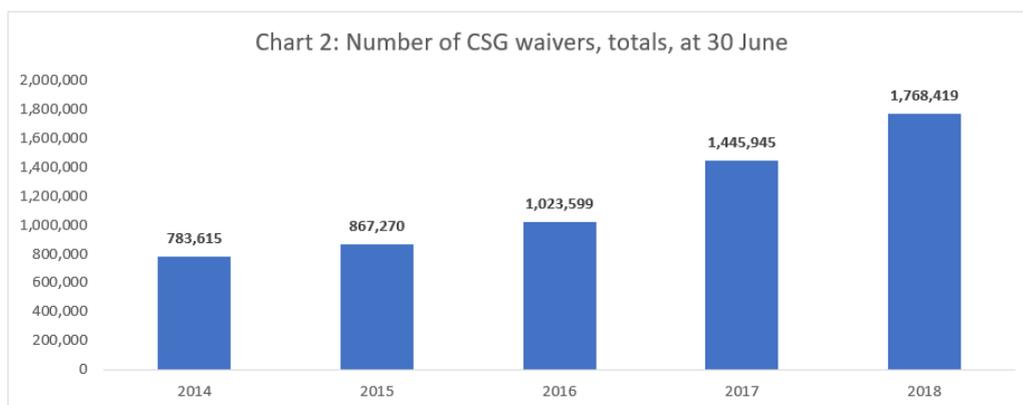
Note 2: In relation to iiNet's 2017 figure of 280, this was revised due to iiNet submitting updated data. This followed the ACMA requiring iiNet to commission an independent audit of its 2016–17 compliance report under the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011*.

Source: ACMA Communications Report 2017–18

<sup>2</sup> At 30 June 2018, the mobile phone was the most popular and most frequently used device to go online; 7.70 million Australian adults had a mobile phone and no fixed-line telephone at home. Further, at 30 June 2018, there were 8.16 million total fixed internet subscriber lines.

## Waivers

Customers of service providers other than Telstra can waive their rights under the CSG Standard and many of these providers have encouraged their customers to do so. Between 2013–14 and 2017–18 there were 5.89 million CSG waivers, and the provision of waivers has increased over this time (see Chart 2).



Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

The ACMA understands that some providers only offer services to customers if they waive their CSG rights. While this may not be the sole reason for the growth in the use of waivers, the ACMA is concerned that an ever-increasing number of consumers are choosing to opt out of important CSG consumer safeguards.

With the increasing encouragement of CSG waivers by industry and the application of the CSG only to standard telephone services, the CSG is becoming less relevant.

## CSG performance

CSG performance benchmarks are specified in the Telecommunications (Customer Service Guarantee—Retail Performance Benchmarks) Instrument (No. 1) 2011 and apply to those CSPs (qualifying CSPs) that have 100,000 CSG services or more, as at the last day of the preceding financial year.

The CSG performance benchmarks set minimum compliance levels with the CSG Standard timeframes, which relate to the following activities:

- > installing new connections in urban, major rural, minor rural and remote areas
- > installing in-place connections in all areas
- > fault rectifications in urban, rural and remote areas
- > appointment-keeping in all areas.

The CSG Standard timeframes vary according to the location of the customer and, in the case of connections, whether infrastructure is readily available and whether there is an existing in-place connection. There are nine annual CSG performance benchmarks for connections, fault repairs and appointment-keeping where qualifying CSPs must meet a minimum 90 per cent benchmark.

The ACMA closely monitors compliance with the CSG. If a qualifying CSP fails to meet any of the annual CSG performance benchmarks, the ACMA may take compliance action, which includes the option of issuing an infringement notice to the CSP.

In recent years all qualifying CSPs have met the CSG performance benchmarks for connections (see Table 1), fault repairs (see Table 2) and appointment-keeping (see Table 3).

**Table 1: Percentage of in-place and new service connections provided within CSG Standard timeframes**

			2013–14	2014–15	2015–16	2016–17	2017–18
Telstra	In-place service		95.4%	95.8%	94.3%	96.6%	95.4%
	New service	Urban	93.7%	94.5%	90.9%	94.4%	93.0%
		Major rural	95.6%	95.8%	95.1%	95.0%	95.5%
		Minor rural	95.1%	95.2%	92.9%	94.1%	94.3%
		Remote	94.3%	93.0%	92.6%	92.6%	92.9%
Optus	In-place service		n/a	n/a	n/a	n/a	n/a
	New service	Urban	98.0%	97.8%	98.5%	98.0%	97.7%
		Major rural	99.5%	98.4%	98.8%	99.4%	98.5%
		Minor rural	96.6%	99.1%	98.1%	99.4%	98.3%
		Remote	n/a***	n/a***	n/a***	n/a***	n/a***
iiNet*	In-place service		95.1%	96.9%	95.4%	99.0%**	99.4%
	New service	Urban	91.9%	94.8%	96.7%	98.2%**	99.7%
		Major rural	97.3%	97.2%	98.8%	99.2%**	99.3%
		Minor rural	95.6%	96.4%	98.0%	99.6%**	100%
		Remote	94.7%	96.5%	100%	100%**	100%
Dodo	In-place service		100%	100%	100%	100%	100%
	New service	Urban	100%	100%	100%	100%	100%
		Major rural	100%	100%	100%	100%	100%
		Minor rural	100%	100%	100%	100%	100%
		Remote	n/a***	n/a***	n/a***	n/a***	n/a***

n/a = not applicable

\*TPG acquired iiNet in September 2015.

\*\*Figure revised due to iiNet submitting updated data. This followed the ACMA requiring iiNet to commission an independent audit of its 2016–17 compliance report under the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011.

\*\*\*CSP has less CSG services in this region than the location-specific threshold and hence is not a qualifying CSP.

Note 1: Location-specific thresholds are met if a qualifying CSP supplied 10,000 or more CSG services in urban areas, 1,000 or more CSG services in major rural areas, 1,000 or more CSG services in minor rural areas, 500 or more CSG services in remote areas.

Note 2: Urban areas are urban centres with a population equal to or greater than 10,000 people. Major rural areas are urban centres or other recognised community grouping with a population greater than 2,500 but less than 10,000 people. Minor rural areas are an urban centre, locality or other recognised community grouping with a population of greater than 200 but not more than 2,500 people. Remote areas are geographic areas which are not urban areas, major rural areas or minor rural areas.

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

**Table 2: Percentage of fault repairs performed within CSG Standard timeframes**

		2013–14	2014–15	2015–16	2016–17	2017–18
Telstra	Urban	92.5%	93.4%	91.5%	93.3%	92.8%
	Rural	93.1%	93.4%	92.0%	92.1%	91.7%
	Remote	92.5%	95.2%	92.6%	92.5%	92.0%
Optus	Urban	94.6%	97.0%	92.7%	96.2%	94.3%
	Rural	97.9%	95.5%	93.2%	95.8%	97.2%
	Remote	n/a***	n/a***	n/a***	n/a***	n/a***
iiNet*	Urban	99.6%	98.1%	100%	97.6%**	98.7%
	Rural	99.7%	97.4%	100%	97.2%**	99.1%
	Remote	100%	97.5%	100%	100%**	100%
Dodo	Urban	100%	100%	100%	100%	100%
	Rural	100%	100%	100%	100%	100%
	Remote	n/a***	n/a***	n/a***	n/a***	n/a***

\*TPG acquired iiNet in September 2015.

\*\*Figure revised due to iiNet submitting updated data. This followed the ACMA requiring iiNet to commission an independent audit of its 2016–17 compliance report under the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011.

\*\*\*CSP has less CSG services in this region than the location-specific threshold and hence is not a qualifying CSP.

Note 1: Location-specific thresholds are met if a qualifying CSP supplied 10,000 or more CSG services in urban areas, 1,000 or more CSG services in rural areas, 500 or more CSG services in remote areas.

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

**Table 3: Percentage of CSG Standard appointments kept**

	2013–14	2014–15	2015–16	2016–17	2017–18
Telstra	96.4%	96.7%	96.3%	96.2%	97.0%
Optus	98.7%	98.6%	99.2%	99.2%	97.6%
iiNet*	99.8%	99.7%	100%	100%**	100%
Dodo	100%	100%	100%	100%	100%

\*TPG acquired iiNet in September 2015.

\*\*Figure revised due to iiNet submitting updated data. This followed the ACMA requiring iiNet to commission an independent audit of its 2016–17 compliance report under the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011.

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

### CSG Standard payments

If CSPs fail to meet CSG Standard timeframes they are required to make compensation payments to customers (see Table 4 for details of payments made in recent years).

**Table 4: Volume and value of CSG compensation payments CSPs made to customers**

		Telstra	Optus	iiNet	Primus	Dodo	Total
2013–14	Volume	106,038	19,944	11,740	2,273	3,030	143,025
	\$ (million)	5.65	1.10	1.12	0.08	0.12	8.07
2014–15	Volume	56,114	19,712	35,247	1,563	7,459	120,095
	\$ (million)	2.81	1.36	1.33	0.05	0.31	5.86
2015–16	Volume	153,310	32,093	18,434	1,678	16,038	221,553
	\$ (million)	9.29	4.88	1.22	0.09	0.69	16.17
2016–17	Volume	198,514	27,625	11,964	2,692	13,934	254,729
	\$ (million)	14.58	4.1	1.11	0.12	0.91	20.82
2017–18	Volume	84,156	30,307	5,462	524	5,244	125,693
	\$ (million)	9.37	4.64	0.34	0.04	0.27	14.66

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

CSG benchmarks and compensation data only captures those customers who did not waive their CSG rights. No equivalent information about the 5.89 million customers who waived their CSG rights between 2013–14 and 2017–18 is available (see Chart 2).

### Exemptions to the CSG Standard

When a CSP claims an exemption, the CSG timeframes are extended by the period of the exemption. Circumstances for claiming an exemption include denial of access to premises or circumstances beyond the control of the CSP.

Mass service disruptions can constitute the basis of an exemption to the CSG performance standards (and CSG benchmarks) where the disruption is caused by circumstances beyond the control of the CSP. For example, this may include damage to facilities caused by a third party, natural disasters or extreme weather conditions that cause mass outages of services and restrict the CSP's connection and fault rectification activities. Mass service disruptions are self-declared by CSPs within the bounds of certain provisions of the CSG Standard. Between 2013–14 and 2017–18 there were 1,182 disruptions declared by the major CSPs (see Table 5).

**Table 5: Number of mass service disruptions declared by the major CSPs**

	2014	2015	2016	2017	2018
Telstra	60	80	60	59	45
Optus	56	79	60	59	45
iiNet	60	80	58	50	43
Vocus Communications†	58	78	50	58	44
<b>Total</b>	<b>234</b>	<b>317</b>	<b>228</b>	<b>226</b>	<b>177</b>

† Formerly M2 Group. Exemption notifications for iPrimus, Dodo, Eftel, Commander, aaNet and engin have been included in Vocus Communications notifications.

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

## The Network Reliability Framework

The Network Reliability Framework, which complements the CSG, is a safeguard for Telstra's residential and small business customers who have up to five fixed telephone services. The framework provides for network reliability and remediation across Telstra's copper network, particularly in regional and rural Australia, and reflects a pre-NBN construct of the sector.

Under Telstra's carrier licence, it is required to monitor and/or remedy network reliability performance at three levels:

- > Level 1—national and geographical area level, based on Telstra's 44 [field service areas](#), which are broad geographic regions in Telstra's fixed telephone network
- > Level 2—local-level cable runs in disaggregated parts of Telstra's network
- > Level 3—individual service level that includes all Telstra services covered by the CSG Standard.

Data corresponding to Level 1 is required to be published on Telstra's website and is designed to inform the public about its overall network reliability performance. Under Levels 2 and 3, Telstra is required to remediate poorly performing parts of its network as a priority. Analysis of Telstra's network reliability performance is included in the ACMA's annual Communications Report.

Level 2 requires Telstra to report to the ACMA each month on its 40 worst performing cable runs. Telstra is then required to remediate the faults on those cable runs and monitor the performance to ensure there is an improvement in those cable runs.

Level 3 requires Telstra to report to the ACMA on individual services which experience repeat faults, above certain limits. Telstra is then required to remediate those faults and monitor the performance to ensure there is an improvement in those individual services.

There are practical impediments to Telstra fulfilling its remediation and monitoring requirements as the NBN is rolled out. While network assets are progressively transferred from Telstra to NBN Co, obligations under the Network Reliability Framework still require Telstra to monitor and remediate its assets. This is particularly challenging where Telstra no longer owns the asset or has direct control of its operation.

Since July 2016, the ACMA has exercised regulatory forbearance in relation to Telstra's requirement to remediate faults and monitor assets which have been transferred to NBN Co, subject to certain conditions. As the NBN continues to be rolled out, and more network assets are transferred from Telstra to NBN Co, regulatory forbearance may continue to be exercised by the ACMA.

At the same time, NBN Co (as the new owner of the network assets) is not subject to any equivalent network reliability obligations. However, the ACMA considers that attention to the reliability of copper-based network assets, whether owned by Telstra or NBN Co, continues to be appropriate.

## Priority Assistance

Priority Assistance (PA) is a special fixed voice service status available to customers with (or have a person living in their home with) a diagnosed life-threatening medical condition and whose life may be at risk if they do not have access to a working phone line service. PA currently covers one home phone line only and does not apply to internet or mobile phone services. Once approved, a customer is registered for PA for up to three years (depending on the circumstances), after which the customer must re-register to be eligible for PA.

PA customers are entitled to priority connection and fault rectification—with the maximum timeframes for connecting or repairing a fault (within 24 hours of receiving a request in urban and rural areas and within 48 hours of receiving a request in remote areas) shorter than those required under the CSG Standard.

Regarding PA, the ACMA notes that:

- > the shorter connection and fault rectification timeframes were originally formulated with an expectation that network remediation was completely within Telstra's control, as a vertically integrated provider
- > when Telstra supplies services over a network it doesn't control (for example, the NBN), it may be dependent on network remediation being undertaken by the relevant infrastructure owner (for example, NBN Co)
- > NBN Co's Wholesale Broadband Agreement specifies service standards for PA connections and fault rectifications, but these are subject to certain qualifications and are not subject to regulatory oversight
- > other CSPs—for example, iPrimus and Fuzenet—have chosen to provide PA services (in accordance with the Communications Alliance code C609:2007 Priority Assistance for life-threatening medical conditions) to their customers, but it is not a condition of their carrier licences
- > under Part 6 of Schedule 2 of the *Telecommunications Act 1997*, CSPs that don't offer PA are obliged to inform a prospective customer that they don't offer PA and provide the names of one or more CSPs that do
- > the ACMA actively enforces compliance with PA. Following an investigation into Telstra's compliance with its PA obligations in relation to two incidents in 2017, the ACMA directed Telstra in July 2018 to commission an independent audit of compliance with its obligations and implement a range of systems, processes and reporting to assure the future reliability and effectiveness of PA.<sup>3</sup>

Between 2013–14 and 2017–18 the total number of Telstra and iPrimus PA customers decreased by 11.6 per cent (see Table 6).

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<sup>3</sup> Information about the investigation can be found at <https://www.acma.gov.au/theACMA/telstra-breaches-priority-assistance-obligations>.

**Table 6: Telstra and iPrimus PA customers**

	2014	2015	2016	2017	2018
PA customers (at 30 June)	204,619	186,745	211,259	240,342	180,897
Requests for PA connections	37,205	36,999	45,615	39,587	4,091
Requests for PA fault restorations	122,557	141,194	134,908	102,490	36,266

Note 1: In 2017–18, Telstra limited its reporting of PA connection and fault restoration requests to only those services provided on the Telstra network and excluded those services provided on the NBN.

Note 2: Telstra is not obliged to meet the PA timeframes where a third-party service provider controls the local access network (e.g. NBN Co).

Note 3: Due to the small number of PA customers, and only recently commencing the offering of PA services, Fuzenet data has not been included in Table 6. However, Fuzenet data is likely to be included in future ACMA Communications Reports.

Source: ACMA Communications Reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

## Emergency Call Service

The Australian emergency service numbers are Triple Zero, the primary emergency service number, and 106 and 112 which are the secondary emergency service numbers. In 2017–18, there were 8.99 million Triple Zero and 112 calls offered and 6.45 million Triple Zero and 112 calls transferred to an emergency service organisation (See Table 7).

**Table 7: Call volumes to emergency service numbers Triple Zero and 112**

	2014	2015	2016	2017	2018
Total number of calls offered	8,481,470	8,377,394	8,350,745	8,580,119	8,995,963
Total calls transferred to an ESO	5,738,061	5,888,050	6,178,484	6,335,601	6,456,103

Note 1: The term 'calls offered' refers to the number of calls received by the emergency call person (i.e. Telstra) after the recorded voice announcement.

Note 2: The difference between the number of calls offered and the number of calls transferred to Police, Fire or Ambulance are those calls which are considered to be non-genuine (and are therefore not transferred).

Note 3: Non-genuine calls are not emergency calls and include: calls to services that are not accessible through the Emergency Call Service (e.g. calls to tow trucks, state emergency services, the Australian Maritime Authority etc.), accidental calls (e.g. pocket dials or misdials), nuisance calls or calls associated with a denial-of-service incident.

Source: Emergency call person (Telstra)

Regarding the Emergency Call Service, the ACMA notes that:

- > communications services are critical in certain circumstances, and emergencies are one of the clearest examples
- > the ACMA is responsible for the Telecommunications (Emergency Call Service) Determination 2009, which places obligations on carriers, CSPs and the emergency call person<sup>4</sup>
- > the ACMA actively enforces compliance with the Emergency Call Service Determination. The ACMA's investigation into a disruption of access to Triple Zero on 4 May 2018 found that Telstra contravened a rule that requires telecommunications providers to ensure that calls made to Triple Zero using their networks are carried to the operator of the emergency call service. The ACMA accepted a court enforceable undertaking by Telstra in response to the breach findings (more information can be found [here](#))
- > the regulatory framework for the Emergency Call Service is currently under review by the ACMA and Communications Alliance.

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<sup>4</sup> In addition, the Emergency Call Service is supplied by the emergency call person under contract with DoCA.

# Proposal 1 and Proposal 2

## **Outline of Proposal 1:**

Mandatory rules will cover how consumers and small businesses are connected, and stay connected to fixed telecommunications networks, including appointments.

## **Outline of Proposal 2:**

Providers must focus on keeping customers connected to a service if timeframes cannot be met.

## **Underpinning principles:**

Principle 1: Telecommunications is an essential service, and the entire industry needs to be responsible for keeping consumers connected

Principle 2: Consumer safeguards are best delivered through direct regulation to support public policy

Principle 3: Consumers should get what they pay for

## **ACMA's overarching response to proposals 1 and 2**

The ACMA is supportive of modernising consumer safeguards to reflect new industry structures and technologies in keeping with contemporary community expectations about telecommunications services.

The ACMA supports the intent of Principle 1, including the proposition that the entire industry (that is, not just one provider) needs to be responsible for keeping consumers connected.

Regarding Principle 2, the ACMA considers that regulation should be fit-for-purpose (see 'Types of regulatory interventions' below). However, the continuity of services required for access to emergency services—which is particularly relevant for Australians diagnosed with life-threatening medical conditions—is critical. The ACMA contends that direct regulatory intervention is likely to be most appropriate in fulfilling this principle. Direct regulation may also be desirable where conditions required to support successful co-regulatory approaches are lacking.

The ACMA is supportive of Principle 3: Consumers should get the service they have contracted for or be entitled to a remedy for any loss or ongoing degradation of that service. This is consistent with Australian Consumer Law which provides that if a product or service a consumer buys fails to meet a [consumer guarantee](#), they have the right to ask for a repair, replacement or refund. The remedy they are entitled to will depend on whether the issue is major or minor<sup>5</sup>.

## **The ACMA's overarching commentary on these proposals:**

A) The ACMA supports ensuring service reliability and continuity through direct regulation of fixed telecommunications services that enable consumers to access emergency services, given the consequences of non-compliance can be severe.

B) The ACMA considers it important that any new consumer safeguards recognise current market structures, noting that existing safeguards were formulated when there was a single vertically integrated provider for the provision of most telecommunications services (that is, Telstra).

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<sup>5</sup> <https://www.accc.gov.au/consumers/consumer-rights-guarantees/repair-replace-refund>.

Further, the ACMA is of the view that there needs to be strong alignment between regulators responsible for retail and wholesale regulation, if these continue to remain subject to separate regimes. It would be unhelpful for the ACMA and the Australian Competition and Consumer Commission to take quite different approaches to regulation or develop regulation that is not aligned or complementary.

C) The proposed timeframes for connections and fault rectification are tighter compared to current timeframes for consumers located in rural and remote areas and those without existing infrastructure. While this may be beneficial for the consumers concerned, such a measure may result in a reduction in the range of services offered, an increase in prices and/or a decrease in the number of providers choosing to offer services in those areas.

## Introduction

The ability to communicate with customers, clients and suppliers is essential for most Australian businesses. To facilitate this, businesses need reliable telecommunications services, including working EFTPOS terminals (or other financial communications), internet access (to enable an online presence), security cameras, printers and alarms.

Similarly, consumers rely on telecommunications services for social engagement, commerce, working from home, general communications, making emergency calls, and in some cases, for the operation of medical or security alarms.

The ACMA considers that staying connected and having access to reliable telecommunications services, particularly for vulnerable consumers, is now more important than ever. Further, consumer safeguards need to be modernised to reflect present day industry structures and contemporary uses of telecommunications services by consumers.

## Types of regulatory interventions

As set out in the ACMA's submission to Part A of the Review, the appropriate type of regulatory intervention will be influenced by:

- > the number of market players
- > the degree of competition in the market
- > the degree of homogeneity of products and services in the market
- > the degree of common interest in the industry
- > the incentives for compliance
- > the degree of consumer detriment
- > the speed of change in the environment.<sup>6</sup>

Regulatory interventions to implement consumer protections may take the form of self-regulation, co-regulation or direct regulation, or a hybrid<sup>7</sup> (mixed) regulatory approach. The specific regulatory circumstances, as set out above, are the best determinants of which type of regulatory intervention is most suitable for new consumer protections.

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<sup>6</sup> See the ACMA's occasional paper, 'Optimal conditions for effective self- and co-regulatory arrangements' available at <https://www.acma.gov.au/-/media/Regulatory-Frameworks-and-International-Engagement/Report/PDF/Optimal-conditions-for-effective-self-and-co-regulatory-arrangements-2015-edition.pdf?la=en>.

<sup>7</sup> A hybrid regulatory intervention is where both direct regulatory and co-regulatory safeguards apply to different aspects of the same consumer safeguard (as currently exists in the area of mobile premium services).

For example, for telecommunications services where a failure to ensure reliability and continuity may result in severe harm to consumers (such as when a service is unable to access the Emergency Call Service), the ACMA considers that direct regulation is the most appropriate approach.

On the other hand, the proposed measures relating to network rectification plans and network reliability metrics may better lend themselves to a co-regulatory approach.

## Cost impact of regulation

Each regulatory intervention should be commensurate with the risks and benefits to the community and align with contemporary consumer expectations and usage of telecommunications services. The type of regulatory tool used, the degree of specificity of the rules, any exceptions to those rules, the required measures and reporting obligations, and the consequences of non-compliance are important factors for the government to consider.

An important balance must be struck between the level of any new consumer protections and the associated compliance costs for industry and regulatory costs for the ACMA to administer. In this regard, particular heed needs to be given to: the potential to raise barriers to market entry; causing unintended market or anti-competitive consequences (when some companies are subject to additional regulation and their competitors are not); and/or impacting consumers through reduced product offerings and decreased affordability.

## New consumer safeguards

The ACMA considers it important that any new consumer safeguards reflect current market structures, noting that existing safeguards were formulated when there was a single vertically integrated provider (that is, Telstra). Where the supply chain for telecommunications services is not integrated, retail providers need to be able to secure assistance from wholesale and infrastructure providers to support consumer connections, fault repairs and appointment-keeping. If mandatory timeframes are imposed across all retail providers, then complementary requirements should apply to wholesale and infrastructure providers. Any such rules should also make clear which entity in the supply chain is accountable.

Further, the ACMA is of the view that there is a need for strong alignment between regulators where, as currently, they have separate responsibilities for retail and wholesale service reliability standards. Over time, it may be useful to reconsider these arrangements.

The ACMA also notes that wholesale service standards, or the ability to make standards, is currently being considered as part of:

- > the Statutory Infrastructure Provider (SIP) regime, which forms part of the Governments [Telecommunications Reform Package](#). (The [Telecommunications Legislation Amendment \(Competition and Consumer\) Bill 2018](#) introduces, among other matters, a SIP regime. As at the time of writing our submission, the Bill was before the Senate)
- > the ACCC's [NBN Wholesale Service Standards Inquiry](#), which will determine whether NBN wholesale service standard levels are appropriate, and consider whether regulation is necessary to improve consumer experiences. (The ACMA notes that the ACCC released a [second discussion paper](#) on 7 December 2018 with submissions closing on 15 February 2019).

## Timeframes

The timeframes proposed in the consultation paper are tighter than current CSG connection and repair timeframes for consumers located in rural and remote areas, and those without existing infrastructure. For consumers living outside of urban areas, the reliance on fixed communications services can be more acute and the proposed tightening of timeframes reflects this.

While tighter timeframes would benefit those consumers concerned, the imposition of tighter retail connection and/or fault repair timeframes are generally costlier for industry to administer. This could result in additional costs being passed on to consumers in the form of increased prices or reduced product offerings. It could also cause unintended market or anti-competitive consequences (when some companies are subject to additional regulation and their competitors are not).

## Penalties

The proposed quantum of any penalty and the way in which it is applied (for example, the \$100 per missed appointment that is being proposed) would incentivise providers to avoid missing appointments and for them to deal with the issue—connection or fault repair—when raised or at the initial appointment.

The amount of penalty for a missed appointment should be determined by reference to these incentives as well as to what is reasonable compensation to a consumer for the loss of their time. Further, it should be made clear which entity (or entities)—either at the wholesale or retail level—is responsible for a missed appointment and therefore responsible for payment to an affected consumer.

The government may also wish to consider if a substantially higher penalty amount, or different levels of penalty, should apply where a missed appointment is associated with a higher level of detriment—for example, where a consumer has a diagnosed life-threatening medical condition and no back-up or alternative service is available.

Further consideration should also be given to the appropriateness of remedies applying to consumers when a retail connection timeframe or fault repair timeframe is not met by their retail provider. Fault repairs may not require an appointment and therefore the penalties proposed for missed appointments may not apply.

A similar sort of remedy arrangement should apply between wholesalers and retailers (for example, when wholesale connection timeframes or fault repair timeframes are not met). These remedies should be considered in conjunction with the setting of timeframes to ensure:

- > incentives are in place for faults to be promptly rectified
- > timeframes and penalties are balanced to promote timely and efficient industry processes and to minimise consumer detriment. For example, there is an argument that longer timeframes should lead to higher penalties for non-compliance.

Alternatively, if mandatory performance benchmarks were to apply to connection and fault repair timeframes (with retail and wholesale providers being subject to penalties for breach of a benchmark), then the application of remedies applying to consumers may not be necessary.

## Consumers with diagnosed life-threatening conditions

The timely connection, fault repair and keeping of appointments is considered particularly important for consumers with a diagnosed life-threatening medical condition. This formed the basis for introducing the original PA arrangements. Therefore, the provision of a direct regulatory mechanism which supports a priority response for consumers with diagnosed life-threatening conditions, across the entire telecommunications supply chain, should form part of the new consumer safeguards. In these circumstances, where the consequences of industry non-compliance could be severe, a direct regulatory intervention (rather than a co-regulatory intervention) is considered appropriate.

There also needs to be alignment between retail and wholesale level requirements to ensure consumers' services are promptly connected and repaired. Again, this is particularly important for consumers with diagnosed life-threatening conditions. As noted in our submission to the ACCC's wholesale service standards inquiry, there is currently a misalignment between Telstra's existing PA arrangements and those contained in NBN Co's Wholesale Broadband Agreement.

## Exemptions

The ACMA understands that certain events are beyond a service provider's control and that these events can—and do—impact upon its ability to comply with regulation. For example, a significant weather event (such as flooding) or a bushfire, can significantly hamper a provider's ability to maintain and restore services on a large scale.

The ACMA is therefore supportive of consumer safeguard exemptions continuing to apply but with a narrower focus, increased transparency and on a time-limited basis.

Based on the ACMA's regulatory experience overseeing exemptions due to mass service disruptions, an exemptions regime should adopt the following principles:

- > only apply to affected services (not estimates of potentially affected number ranges)
- > are simple to understand (for example, have a limited number of easily verifiable trigger events)
- > are supported by evidence of the trigger event (which is accessible for the duration of the trigger event and for a fixed duration after the trigger event has ended)
- > are kept up-to-date during the period of the exemption
- > are transparent to the account holder of the affected service and to the general public (to ensure transparency to affected customers and achieve public accountability)
- > are time-limited to the duration of the trigger event (but remain accessible for a fixed duration after the trigger event has ended)
- > where feasible, prioritise the connection and/or fault rectification of PA customers and small businesses (to ensure consumers diagnosed with life-threatening illnesses can contact emergency services and to reflect the cash flow impact to small businesses when their telecommunication services are down).

A self-administered notification scheme, such as a network rectification plan which adopts the key principles set out above, would be better targeted, provide improved transparency and better match the duration of trigger events compared to existing exemption arrangements.

## Continuity of service solutions

A general principle should be that any offer of a continuity of service solution (for example, a dual-function modem or alternative service) by a provider must not be a medium to long-term substitute for a fully functional telecommunications service (for example, a fully functional NBN service as described in the consumer's NBN Key Facts Sheet).

The ACMA considers this important because continuity of service solutions generally do not provide a consumer with all the service features they originally requested and paid for. If a continuity of service solution is continually used, it may potentially mask underlying service faults with the consumer's primary telecommunications service.

## Different service offerings

Consumers may benefit from being able to choose between standard and non-standard service offerings and by implication, an increased range of service price points. However, the potential offering of telecommunications services based on different service levels may make it more confusing and challenging for consumers to choose between the different providers and plans offered. Further, increased diversity in service offerings in terms of performance benchmarks may create a more complex compliance landscape.

On balance, the ACMA considers it is better to enable consumers to choose a service offering—and price point—that best suits their needs. However, the ACMA recommends that information should be made available to consumers at the time of purchase so that they are able to easily compare service offerings (see the recent joint ACMA-BETA guide for industry on provision of information to consumers, which is largely concerned with facilitating easier comparisons of service offerings<sup>8</sup>).

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<sup>8</sup> [https://www.acma.gov.au/-/media/Consumer-Interests/Information/PDF/ACMA\\_BETA\\_Better\\_Practice\\_Guide-pdf.pdf?la=en](https://www.acma.gov.au/-/media/Consumer-Interests/Information/PDF/ACMA_BETA_Better_Practice_Guide-pdf.pdf?la=en).

# Proposal 3

## **Outline of Proposal 3**

Network infrastructure providers that support the supply of retail services to consumers will be required to publish network reliability metrics and to report to the ACMA on network performance.

### **Underpinning principles:**

Principle 4: Network reliability is an important purchasing consideration and should be transparent

### **ACMA's overarching response to this proposal**

Public accountability through transparency is a key mechanism to support network performance and reliability. However, the ACMA should have the ability (for example, by creating a reserve power) to direct remediation where appropriate. That is, transparency alone is insufficient to guarantee public policy outcomes aligned with community expectations.

The ACMA is supportive of measures which promote network reliability.

### **The ACMA's overarching commentary on this proposal**

A) The ACMA supports a technology-agnostic approach to regulation which facilitates consistent, reliable and innovative service delivery by providers and ensures that all entities responsible for network performance are held to account.

B) Any extension of network regulation must present clear benefits for consumers and support/encourage ongoing investment in network infrastructure by industry.

## **Introduction**

As noted in our Part A submission to the Review, access to appropriate data and information that provides transparency of telecommunications industry performance is beneficial to regulators, the government, industry and consumers.

In the current telecommunications environment, services provided to a consumer may be provided by several different entities across a supply chain. For an NBN service, a consumer engages directly with a retail service provider, which sources its services either directly from NBN Co, or potentially through a different wholesale service provider which then has a relationship with NBN Co.

At present, most of the consumer safeguards which the ACMA regulates relate to the relationship between a consumer and their retail service provider. However, there are some legacy regulations imposed on Telstra, as the former vertically integrated retail provider and monopoly wholesale network provider, such as the Network Reliability Framework and PA referred to earlier in our submission.

## Network reliability principles

While consumers may not actively consider network reliability at the time of purchasing a service<sup>9</sup>, it becomes important when problems arise later in the consumer lifecycle (for example, constant service interruptions or dropouts when using the service). Therefore, any network reliability obligations imposed on infrastructure providers should, where possible, consider the following principles:

- > appropriate thresholds should be in place which, once triggered, result in root cause analysis, status reporting, and timely and targeted network remediation actions (if directed by the ACMA by using a reserve power). Thresholds could include a number of faults reported within a specified time period or a number of faults reported in a specified geographical area
- > contain metrics which respond to different network types (for example, fixed-line, wireless, satellite and mobile)
- > as proposed in the consultation paper, be transparent with performance periodically reported to the ACMA
- > provide useful information to industry and consumers
- > provide for geographic granularity and variances (upon ACMA request)
- > explicitly identify which entity is responsible for the network infrastructure and therefore the associated obligations
- > recognise that service disruptions can vary in type, duration and frequency, all of which can impact consumers and businesses.

The ACMA notes that, in the case of NBN fixed-line services (and non-NBN fixed-line networks from 2020), a consumer's actual experience of network reliability can be affected by events occurring in any of three different networks—NBN Co's, the retail service provider's and the consumer's home network. The ACMA's commentary above relates to the former two networks.

In relation to the consumer's home network, the ACMA has done some work in this area with the release of three videos focusing on the factors inside a consumer's home that can affect how well a consumer's broadband works (for further information see [here](#)).

It is also worth noting that the ACMA recently commissioned a modem study to undertake performance testing of VDSL2 modems and modem/routers to quantify the variability in performance of those devices and identify potential causes of underperformance.

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<sup>9</sup> Based on the ACMA's recent [NBN consumer experience research](#), the most important factors for choosing a plan or provider differed between households and businesses. Cost was the most important factor for households but was ranked fourth for business. Keeping their phone number was the most important factor for businesses but was third for households. For both groups, speed of internet connection was the second most important factor.

# Proposal 4

## **Outline of Proposal 4:**

The ACMA will be responsible for the collection of data relating to fixed connections, repairs and appointments, with reporting obligations applying at both wholesale and retail level. The ACMA will publish the results.

## **Underpinning principles:**

Principle 5: Arrangements should incorporate public accountability and transparency

Principle 6: Data collection, analysis and reporting should drive improved outcomes

## **The ACMA's overarching response to the proposal**

The ACMA is supportive of Proposal 4 and the principles underpinning it.

However, data collection, analysis and reporting should be supported by the ACMA's ability to publish the data and take appropriate action when anomalies are identified.

## **The ACMA's commentary on the proposal**

A) The collection of industry data should be consistent, comparable where possible (between providers and over time), measured in scope, and justifiable in terms of improved consumer outcomes vis-à-vis the cost to industry of providing the data.

B) Any additional data collected by the ACMA should be the minimum required to achieve its data collection objectives (which includes transparency of industry performance and/or effective compliance activities).

C) The specifics of data collection, including type of data, size of providers captured and frequency of collection and publication, should be balanced against the cost of compliance for industry—and the ACMA—and the expected benefits to consumers.

D) The development of suitable data management tools by the ACMA which enable it to efficiently collect, analyse and publish the data is essential to managing and presenting a large volume of information in a way that is meaningful for industry, consumers, the government and other stakeholders.

E) Data collection, analysis and reporting activities should be focused on achieving consumer outcomes by improving industry performance. To ensure the ACMA achieves this outcome, the ACMA would need to significantly bolster its existing data collection, analysis and reporting capabilities.

## **Introduction**

The ACMA has experience in collecting, analysing and reporting on consumer safeguards—the CSG, Network Reliability Framework, PA and the Emergency Call Service. However, these safeguards are at the end of their useful life and new safeguards should reflect current community expectations about transparency of industry performance across a range of measures. The ACMA's [NBN consumer experience rules](#) targeted improvements to data collection for complaints handling and any additional regulations should be underpinned by transparency through effective data collection and reporting.

## Benefits of data transparency

The ACMA considers the benefits associated with collecting and publishing network reliability data are:

- > it can empower consumers by allowing them to make better-informed decisions based on the comparative performance of different providers
- > it should give providers valuable insights into their own—and their competitors—performance, thereby potentially resulting in improved processes, performance and service innovation over time
- > it will enable the ACMA to better target its regulatory and/or education efforts by enhancing its evidence base
- > it should promote competitive tension among providers, thereby potentially resulting in better and more innovative service offerings for consumers
- > it should enable early identification by the ACMA and/or the government of emerging issues in the telecommunications industry
- > it could help to build consumer trust in providers (Roy Morgan's 2018 Net Trust Score found that Australia's telecommunications sector, among other sectors, attracted negative net trust scores<sup>10</sup>).

However, it should be noted that while an important purpose of data collection is to support publication, not all data that is collected needs to be published. Its primary purpose is to facilitate analysis and to inform the ACMA's regulatory activities.

## Collection and use of industry data

In addition to the benefits of data transparency set out above, the collection and use of data relating to telecommunications services, including connections, faults and appointment-keeping, could serve multiple purposes. In this regard, the ACMA supports a data collection framework which broadly accommodates various stakeholders' needs.

### For consumers

The provision of data in an accessible, timely, and meaningful way supports good consumer decision-making, mitigating the risks of a disconnect between services promised and subsequent complaints.

The ACMA considers that this objective necessitates a more effective approach to the delivery of information to consumers. We consider an interactive comparative portal, through which a consumer could obtain performance information for chosen retail providers about network reliability, connection and fault repair time frames met, appointments kept and amount of penalties paid for missed appointments, would be one such approach. It may also be possible to include performance information related to matters other than reliability of services in such a consumer portal.

We consider that any such approaches to delivering information collected by the ACMA to consumers should be informed and tested by behavioural research.

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<sup>10</sup> [Roy Morgan, Net Trust Score, Finding 7521, 27 February 2018.](#)

### **For industry**

Data collection should be streamlined and automated where possible, allowing for the ACMA's timely analysis of the data to potentially identify improvements for industry. For example, the ACMA suggests it would establish a 'Business to Government' portal enabling industry to submit the necessary data to the ACMA in a secure and efficient manner.

### **For government**

In collecting such a large range of data, it is essential that the ACMA be able to maximise the potential for that data being used to support public policy outcomes. Further, the government's data sharing principles would also be factored in to any future collection and use of data by the ACMA.

## **Types of data to be collected by the ACMA**

The ACMA currently collects and reports on an extensive range of data which helps to inform its regulatory activities.

However, we do not consider it appropriate to simply replicate the data collected under the existing consumer safeguards and transfer this to any new consumer safeguards which result from this Review. Instead, based on the proposals contained in the consultation paper, the ACMA considers that data about the following may be relevant:

- > the different types of services offered
- > connections
- > fault repairs
- > appointments
- > payments and remedies
- > network reliability
- > exemptions.

The above data could also be further broken down geographically by retail and wholesale provider, technology type etc. to provide improved granularity. A final listing of data types and breakdowns would be developed alongside any new consumer safeguards that result from Part B of the Review.

## **Other considerations**

### **Legislative authorisation**

Part 7A of the *Australian Communications and Media Authority Act 2005* currently limits the ACMA's ability to publish information reported to it under existing record-keeping rules which identifies providers. In keeping with recommendations 4.6 and 4.7 of Part A of the Review, it is desirable that the ACMA be given legislative authorisation which permits it to freely publish information identifying providers.

# Conclusion

The ACMA appreciates the opportunity to contribute to Part B of the Review and considers itself well placed to comment on the regulatory and practical implications of any proposed changes to Australia's telecommunications consumer safeguards regime.

In summary, the key points raised in our submission include:

- > we are supportive of modernising consumer safeguards in keeping with changes in community expectations about contemporary telecommunications services and new market structures (for example, to also include broadband services)
- > co-regulation can play a continued role in the telecommunications space. However, direct regulation is more appropriate to address certain public interest objectives (such as access to emergency services) where non-compliance can have severe consequences or where conditions for successful co-regulation are lacking
- > consumer safeguards can only be effective when there is co-operation between wholesalers and retailers in the telecommunications supply chain, and their obligations are aligned
- > transparency of a regulated entity's performance improves accountability and provides increased information to consumers to potentially enable better-informed decision making
- > there are benefits and costs associated with new consumer safeguards and these need to be carefully weighed up by the government
- > it is desirable that the ACMA be given legislative authorisation which permits it to freely publish information identifying providers.

The ACMA currently oversees a range of important telecommunications consumer safeguards and actively enforces compliance with these. The ACMA is therefore well-positioned to continue this role for any new consumer safeguards that result from Part B of the Review.