



Law Council
OF AUSTRALIA

Office of the President

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Digital Inclusion Section
Communications Infrastructure Division
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

Dear First Nations Digital Inclusion Advisory Group,

First Nations Digital Inclusion Roadmap

1. The Law Council of Australia thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**) for the opportunity to make a submission in response to the Discussion Paper issued by the First Nations Digital Inclusion Advisory Group (**Advisory Group**) entitled *First Nations digital inclusion roadmap*.¹
2. The Law Council is grateful to its Rural, Regional and Remote (**RRR**) Committee and the Australian Consumer Law Committee of its Legal Practice Section for the input they provided to this submission.
3. Historical and contemporary policies that impact development within First Nations and RRR communities in Australia often mean that people living in remote areas do not receive the same benefit from digital technologies as the rest of the population. Digital exclusion affects the capacity of First Nations people to, amongst other things, access education and support services, safely and effectively manage their finances, follow news and media and effectively participate in political and public life.
4. The Discussion Paper covers a wide range of issues relating to digital inclusion. This submission, informed closely by the experience of legal practitioners in RRR areas, focusses on the following aspects:
 - digital infrastructure in RRR Australia is lacking, undermining the stability of communities and their ability to participate in the contemporary economy;
 - investment in this infrastructure could promote rights to health, education and work, and contribute to economic self-determination for First Nations Australians in particular, while maintaining their connections with land and community;²

¹ Discussion Paper accessed at: <<https://www.infrastructure.gov.au/sites/default/files/documents/roadmap-discussion-paper.pdf>>.

² See recent Law Council submission on economic self-determination (forthcoming) and Law Council *Submission to IP Australia on its interim report on standalone legislation to protect and commercialise Indigenous knowledge* (10 November 2022): <<https://lawcouncil.au/resources/submissions/response-to-consultation-on-the-interim-report-on-stand-alone-legislation-to-protect-and-commercialise-indigenous-knowledge>>.

- appropriate investment in both infrastructure and digital literacy to facilitate its use could also assist with meeting relevant Closing the Gap targets (for example, targets 5, 6 and 17);
- consumer protections for First Nations telecommunications consumers, particularly those in situations of vulnerability or precariousness, need to be strengthened; and
- legal work in RRR areas of Australia is currently hampered by this unreliable infrastructure, which holds residents back from accessing relevant services on an equal basis with those in metropolitan areas.

Specific concerns with digital infrastructure

5. The Law Council, through the experience of practitioners in locations ranging from Kununurra to the Torres Strait, is aware of pressing digital inclusion issues such as limited mobile coverage, network outages without appropriate backup connectivity, cost and other barriers to existing private services, including both internet and Viewer Access Satellite Television (**VAST**) broadcasting services.
6. The NBN's Sky Muster geostationary satellites are due to come to the end of their operational lives in the early 2030s, and NBN Co has suggested that Low Earth Orbit (**LEO**) satellites could be part of the mix to replace this key element of RRR digital service provision.³ Given current trends in satellite technology and benefits to the consumer from LEOs (including lower latency and higher resolution in satellite imaging), the Law Council is supportive of this position and encourages the Government to ensure continuity (and continual improvement) of service in RRR areas using such technologies.

Human rights implications

7. Digital inclusion for First Nations and other people living in RRR areas is, in 2024, crucial to support the fulfilment of many economic, social and cultural rights, in relation to which Australia has obligations under a range of United Nations treaties, including the *International Covenant on Economic, Social and Cultural Rights*⁴ and the *Convention on the Rights of the Child*.⁵ These include rights to health,⁶ education,⁷ work⁸ and self-determination.⁹ A full analysis of the human rights implications of digital inclusion (or exclusion) is beyond the scope of the present submission. However the Law Council would be happy to consult further on this issue.

Consumer rights implications

8. At the core of First Nations digital inclusion is ensuring that appropriate telecommunications products are being sold to First Nations people. First Nations people have experienced predatory sales practices in relation to telecommunications products, and indeed other consumer products more generally.¹⁰ This is due to a complex range of factors, including remoteness, as well as generational trauma, language, literacy, financial literacy and/or cultural differences. For example, many First

³ *Better delivery of universal services Discussion paper – NBN Co Submission, 1 March 2024:* <<https://www.infrastructure.gov.au/sites/default/files/documents/bdus2024-nbn-co.pdf>>, 3-5.

⁴ ICESCR, 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976).

⁵ CRC, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁶ ICESCR article 12; CRC article 24.

⁷ ICESCR article 13; CRC article 28.

⁸ ICESCR article 6.

⁹ ICESCR article 1.

¹⁰ See eg ACCC, *Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers:* <<https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>>.

Nations people are sold extended phone plans that do not fit their needs, and remain in debt well after their phone has been damaged or stolen. While *ACCC v Telstra*¹¹ highlighted particularly egregious instances of this conduct in remote communities, it is understood that this is a common occurrence for First Nations people across Australia more broadly.

9. As part of the Digital Inclusion Roadmap, the Law Council recommends a thorough review of telecommunications products supplied to First Nations people to ensure appropriateness, affordability and informed decision-making by customers (including through responsive and tailored customer support). Specialist First Nations teams should also be introduced at major telecommunications providers (**telcos**), to assist in product design and the provision of appropriate support to First Nations consumers.
10. Further, many First Nations people in remote communities do not have access to the devices (such as phones, tablets or modems) necessary to access essential telecommunication services, such as the internet. Consumers may resort to expensive consumer lease providers to fund these purchases. The serious and widespread problems with consumer lease providers in First Nations communities are well-known,¹² and continue to create significant financial hardship for these consumers.

Case study: Client A

Client A¹³ is a young First Nations mother with a 9-month-old baby. Her only income is the Centrelink Parenting Payment and family tax benefit (about \$900 per fortnight). She is living with a friend, but this is not stable and she considers herself homeless. Client A was struggling with debts to two payday lenders, one a major telecommunications company and the other a consumer lease company. She was paying off a Centrelink advance as well. The telco was pressuring her to commit to a \$150/fortnight payment which she could not afford. Client A had no money for food for her and her baby. She was regularly paying overdraft fees to her bank because of all the direct debits going towards her debts. Client A also had two unaffordable consumer leases for phones, one for her and one for her mother. In reviewing her bank statements, which were provided to the consumer lease provider, it was clear that a lot of her money was being lost to overdraft fees.

11. In addition to the measures recommended above, the Law Council also recommends close monitoring of the efficacy of the Small Amount Credit reforms¹⁴ in relation to consumer leases (a) sold in First Nations communities, and (b) relating to telco devices specifically, to ensure that unaffordable leases for these products are not provided to these consumers. Further measures, such as targeted enforcement strategies from regulators, may need to be considered if these problems persist.

Telecommunications (Financial Hardship) Industry Standard

12. In response to a direction from the Minister for Communication,¹⁵ the Australian Communications and Media Authority (**ACMA**) developed the *Telecommunications (Financial Hardship) Industry Standard 2024*, which came into effect on 29 March 2024. The new rules replace the financial hardship measures set out in the Telecommunications Consumer Protection Code (**TCP Code**). They require telcos to

¹¹ *Australian Competition and Consumer Commission v Telstra Corporation Limited* [2021] FCA 502.

¹² Paul Ali, Steve Kourabas, Cosima Mcrae, And Ian Ramsay, *Consumer Leases and Indigenous Consumers*, 2017 <<http://www.austlii.edu.au/au/journals/AUIndigLawRw/2017/7.pdf>>.

¹³ Names have been removed for privacy reasons.

¹⁴ The changes are effective from 12 June 2023 and form part of the *National Consumer Credit Protection Act 2009* (Cth).

¹⁵ In September 2023, the Minister for Communication issued a direction to the ACMA to make an enforceable industry standard to improve protections for telco customers experiencing financial difficulties.

establish clear financial hardship policies and prioritise keeping consumers that are in financial hardship connected to telecommunication services. While this Standard enhances previous financial hardship measures, there are certain issues impacting vulnerable consumers, including vulnerable First Nations consumers, which require further consideration. In particular, the Standard could include further protections for persons experiencing family or domestic violence, and persons in remote communities where access is already limited. For example, telcos could be required to investigate mis-selling and provide relief such as debt waivers. They could also be prevented from restricting services to vulnerable consumers (e.g. those experiencing domestic and family violence) in RRR areas. Finally, they could be prohibited from selling the relevant debts of such consumers to collection agencies.

13. In the Law Council's view, the Digital Inclusion Roadmap should provide for the ongoing review and monitoring of the Standard, with engagement from First Nations organisations and communities. The measures identified above, and any additional measures concerning First Nations people identified as part of this review, could be proposed as potential amendments to the existing Standard. This review may also identify other measures (in addition to the Standard), such as legislative intervention, which are necessary to enhance First Nations people's access to essential telecommunication services and ensure that they are safe from domestic and family violence.¹⁶

Telecommunications Consumer Protections Code review

14. The TCP Code is a registered, enforceable code that sets minimum consumer protection requirements for the interactions between telcos and their residential and small business mobile, landline and internet customers. The TCP Code was registered in 2019 and a review is currently underway. A draft revised TCP Code was submitted to the ACMA in May 2024, and public consultation is expected to follow.¹⁷
15. The Law Council considers that the ongoing development and implementation of the TCP Code should involve meaningful consultation with First Nations communities and organisations, so that it is better able to address their specific needs and cultural considerations. The Digital Inclusion Roadmap should include provision for resources to assist with this consultation. Particular issues of relevance for First Nations people include sales practices, payment options and domestic/family violence-specific provisions aimed at maintaining access.

Industry-specific protections—insurance and financial services

16. As financial services sectors become increasingly digitised, it is important to consider industry-specific consumer protections with respect to the use of telecommunications, including their adequacy for First Nations consumers.
17. One such sector, which is of particular relevance to First Nations people, is insurance. Insurance sales and claims handling services are becoming increasingly reliant on digital communication pathways, which disproportionately disadvantages consumer groups with limited access to these services. Inappropriate insurance sales to First Nations consumers have been exposed by the Banking Services Royal Commission, the Courts and in numerous publications. These issues have arisen in relation to a wide range of insurance sales, including funeral and life insurance, and add-on consumer credit and gap insurance in relation to motor vehicle sales.

¹⁶ See in particular Targets 13 and 17 of the Closing the Gap agreement.

¹⁷ <https://commsalliance.com.au/hot-topics/TCP-Code-Review-2024>

18. First Nations people with limited access to telecommunications services, particularly those in remote communities, face unique challenges in this context. Consumers with limited digital connectivity may not be able to receive documents in relation to the insurance being offered in a timely way, which limits their ability to make informed decisions at the point of sale. These consumers are also likely to experience difficulties throughout the claims process. It may not be possible for them to access the online systems required for their claims to be processed, for example to upload multiple documents or multimedia files or to navigate specialised insurance portals. Low connectivity also creates a poor communications environment, which may further limit the information that consumers are able to provide about their claim so that it can be properly (and swiftly) processed. Other factors may also exacerbate these communication challenges, including language, literacy, financial literacy and cultural differences. Further, First Nations households may also share one device or may need to borrow a device from another person. Again, this makes it more difficult for these consumers to make calls and access information online about their policies or claims. In circumstances where First Nations consumers become reliant on other people to access a device, there is an increased risk of financial abuse, particularly if they become entitled to a claim payout.
19. Another concern that has arisen in the context of consumer law practice is that First Nations consumers who have limited access to, or understanding of, digital communication platforms may be susceptible to dark patterns built into these user interfaces. Dark patterns are techniques or practices that make it more difficult for consumers to make certain choices which align with their own interests or needs. These include 'confirm-shaming', where specific language is used to suggest that a particular choice is inappropriate or shameful; restriction of legitimate choices; including costly add-ons by default; disguising advertisements and creating an unnecessary sense of urgency or scarcity to elicit early or even unnecessary payments.
20. The Law Council recommends that the Digital Inclusion Roadmap propose a number of insurance industry-specific protections to ensure that First Nations consumers are able access these financial services in a fair and informed way. Such measures should include:
 - (a) ensuring that sophisticated digital communication pathways are not prioritised over other consumer contact channels, both at the point of sale and during claims handling. In particular, the insurance industry should commit to providing First Nations consumers with a choice of communication channel that is suited to their needs, and meeting that communication preference;
 - a. introducing and appropriately resourcing specialist First Nations assistance teams within insurance companies to resolve problems for customers and disputes on the spot as often as possible; and
 - b. prohibiting the use of dark patterns in digital communication pathways for insurance-related services, so that consumers with limited access to and/or experience with these platforms are not inappropriately influenced when being offered, or making claims on, insurance products.

Digital inclusion and family violence

21. Target 13 of the National Agreement on Closing the Gap outlines that by 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50 percent, as progress towards zero. Target 13 cannot be achieved without a multifaceted response—including a genuine investment in increasing digital inclusion for Aboriginal and Torres Strait Islander people.

Without stable internet connection or mobile coverage, it is difficult for individuals within these communities to maintain contact with their support workers, social workers, therapists or lawyers.

22. Community legal education (**CLE**) initiatives are increasingly available online, via web fact sheets or podcasts. Digital exclusion means those living in remote and regional areas will continue to only have exposure to CLE that is delivered in person. Community Legal Centres and Family Violence Prevention Legal Services are not sufficiently resourced to deliver regular CLE to remote areas. Without the requisite knowledge of the Australian legal system, First Nations people are more vulnerable, at a disadvantage when safety planning or escaping family violence.
23. Family violence is also frequently perpetuated using digital technologies (or taking advantage of a lack thereof). The below case studies outline some common examples observed by practitioners in their work with Aboriginal and Torres Strait Islander consumers:

Case Study: Client B—low levels of digital literacy and ability & elder financial abuse

Client B¹⁸ is an elderly Aboriginal woman living in a remote community in Western Australia. English is Client B's third language. Until the age of approximately 10, Client B lived exclusively in the desert with her family.

Client B now receives an Aged Pension from Centrelink. There is no bank or ATM where Client B lives, and she frequently calls the bank to check her balance. Client B relies on her granddaughter to call the bank and speak on her behalf. Client B's granddaughter knows all of Client B's security questions and will sometimes call pretending to be Client B to transfer money into her own account.

Client B recently learned she had a superannuation account after receiving a letter from her superannuation company in the post. Client B asked her granddaughter for assistance to call the superannuation company for more information. Client B's granddaughter learned that Client B had \$30,000 in a superannuation account that she could withdraw. Client B's granddaughter assisted Client B with the paperwork involved in withdrawing the super as a lump sum. When the money was paid to Client B's account, Client B's granddaughter transferred large portions of the money to her own account and spent it.

Case Study: Client C—poor connectivity preventing access to safety and support services for people experiencing family violence

Client C¹⁹ is an early 20s Aboriginal woman living in a regional community. The only reliable mobile reception in Client C's community is from a lookout point approximately 1 kilometre from her home. The nearest police station is a 1.5-hour drive away.

Client C experiences family violence at home perpetrated by her husband. Client C's social worker comes out every week and finds it difficult to help Client C safety plan or make plans to protect her mental health. Client C cannot easily leave the house to call the police—she worries about leaving her children alone with her husband at home when his violent behaviour escalates. She cannot rely on mental health or family violence phone support services such as 13YARN or 1800RESPECT due to privacy concerns; many other people gather at the lookout when they need reception. There have been several times in the past year her husband has destroyed her phone completely.

¹⁸ Names have been removed for privacy reasons.

¹⁹ Names have been removed for privacy reasons.

24. These cases demonstrate just some of the myriad practical issues presented by the relative digital exclusion of practitioners' First Nations clients.

Further feedback from RRR legal practitioners

25. Legal practitioners in RRR areas of Australia have experienced the 'digital divide' first-hand. Some describe the lack of access to reliable internet in remote areas as constituting 'technological discrimination'. Discrimination in access to essential services (as the internet has become) on the basis of place of residence is a longstanding challenge for Australian governments—one that appropriately-supported digital inclusion has the potential to address.
26. For example, legal and government services may be available via Teams or Zoom, but without internet coverage and an appropriate device to run the relevant application(s), such remote access possibilities are meaningless.
27. Even if the appropriate devices and communications equipment (for example, satellite connection packages) are able to be supplied to remote communities, there needs to be significant thought given to where it should be housed and how it should be maintained.
28. Practitioners have found that lack of access is particularly problematic when dealing with issues like family violence. There are already significant difficulties faced by anyone in leaving a long-term relationship; difficulties that are greatly amplified if abuse is involved. When one compounds these difficulties with the usual challenges of remoteness and/or familial or cultural issues, the person trying to extricate themselves can be in a precarious position. If the person then faces further barriers associated with technology use/access, the technology becomes useless.
29. In instances where it is not feasible to have lawyers provide services in RRR areas face-to-face, any technology that is set up and maintained for remote access must be highly usable and reliable.

Testimony from a community legal sector practitioner in the Kimberley

[The] majority of our clients are Aboriginal and are all from regional or remote communities. Many of our clients do not have phones or are frequently changing phone numbers because they have lost their phone and a lot of the remote areas in the West Kimberley have limited or no phone reception which often results in us losing contact with our clients.

We travel to remote locations to provide outreach legal services to people and often use these trips to locate people that we have lost contact with. In my experience, if we didn't do this many people would find it too difficult to access legal services and we would have to close off files for those who we are unable to get instructions from.

We have DV safe phones that we are able to provide to clients who are victims of family and domestic violence, but frequently have problems with the clients losing the phones, having them stolen, they do not know how to activate or use the phones or they do not have any money to put credit on them.

There is a Legal Aid virtual office in Fitzroy Crossing where people can get legal advice by video from a lawyer in Perth, but I am not sure how much this is utilised as people need to make an appointment and they need to be able to get into town to use the computer at the education centre for that appointment. Many people live in remote communities outside of the Fitzroy Crossing town centre and do not have a driver's licence or a vehicle to be able to get into town.

30. The Law Council also received feedback from those working with businesses in RRR areas. This feedback indicated that assumptions should not too readily be made about people's motivations—for example, although access to services through technology

may be a priority in some circumstances, other clients indicate that they are wary of the downsides of technology, including internet addiction and the influence of advertising. This is particularly true in the case of parents, who have observed that connections with country and/or culture can suffer if screen time is not regulated.

31. It was noted that there is a range of views concerning community Wi-Fi. Although problems have been observed in some communities (such as Alice Springs and Mount Isa), practitioners' and clients' experience with public Wi-Fi in other places (e.g. in the Torres Strait) has been positive and community-building.
32. The Law Council's feedback indicates that telehealth and education are areas that stand to benefit greatly from better digital access in RRR areas. Telehealth in particular is welcome, as it reduces the need for people to travel, which can generate significant anxiety, as well as the potential to become 'lost in the system'. Clients/patients can remain at home and have locals explain the conversation, rather than, for example, social workers or the Office of the Public Guardian, who may not be familiar with their circumstances and present an increased risk of unjustified substituted decision-making.
33. Practitioners' experience is that equipment provided, usually by Telstra in the past, tends to be ageing and not well maintained in many RRR areas. Simply 'allowing competition' is unlikely to address these issues due to the small populations in many of the places involved. Experiences with Skymesh / Sky Muster have also reportedly been negative, due to a combination of unreliability and high prices. The advent of Starlink in the market has come as a relief to many former Telstra and/or Sky Muster customers.²⁰
34. A final but important consideration is that many communities do not have reliable electricity services, which is a fundamental requirement for reliable digital communications. It has also been the experience of practitioners that power-hungry appliances such as heaters and air conditioners can easily overwhelm inadequate power infrastructure, contributing to the reliability issue.

Contact

Please contact Dr Adam Fletcher, Senior Policy Lawyer, on 02 6246 3708 or adam.fletcher@lawcouncil.au with any questions or comments.

Yours sincerely



Greg McIntyre SC
President

²⁰ NB this is not a universal experience – see eg: <<https://freakdesign.com.au/blogs/news/skymesh-vs-starlink-and-all-things-in-between>>.