

24 September 2020



Consumer Safeguards Review
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601

By email: consumersafeguardsreview@communications.gov.au

Dear Sir/Madam

Telecommunications Consumer Safeguards Review Part C

We welcome the opportunity to provide a submission to the Consumer Safeguards Review - Part C - Choice and Fairness Consultation Paper (the Consultation Paper). Our response is limited to matters which impact on customers who experience domestic and family violence (DFV), which includes economic abuse.

This submission:

- calls upon government to acknowledge telecommunications as an essential service;
- outlines some of the problems for victim survivors of DFV resulting from a lack of proper regulation of the telecommunications industry (including examples and case studies); and
- supports Proposals 1, 2 and 3 in the Consultation Paper.

We recommend:

- improved consumer protection rules and regulation of telecommunications providers;
- legal obligations which require telecommunications providers to have in place appropriate processes to respond to DFV, including requirements to vary liability where a debt is incurred as a result of DFV; and

- regulation which ensures that telecommunications providers can separate a victim survivor's number from a perpetrator's account, and which requires that all providers have a process in place to facilitate separation.

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is a network of community organisations throughout Australia, which influences government and industry responses to the financial impact of domestic and family violence (DFV). Members include family violence services, community legal services, financial counselling services and women's services. See www.earg.org.au

EARG regularly engages with government, industry and regulators, and has produced guiding principles for use by industry and has provided input to draft industry codes, guidelines and legislation. EARG is funded by the Ecstra Foundation.

DFV and Economic Abuse

People who experience DFV suffer financially as a result of the abuse (for example due to resulting health issues or the need to escape their home quickly), and often need assistance for financial hardship. Economic abuse is a form of DFV,¹ which further exacerbates financial harm. Economic abuse includes coercion to sign for debts, denying access to household funds, refusing to pay for household bills, incurring fines and debts in the other person's name and hiding assets in family law disputes.

DFV and the telecommunications sector

A number of practices in the telecommunications sector impact on the safety of victim survivors and contribute to the risks of economic abuse and other financial hardship arising from DFV.

- The practice of contracting with someone (the account holder) who is not the user of the service;
- Inadequate assessment of affordability for customers at the point of sale;
- Easy approval (and sometimes push selling) of multiple contracts under one name;
- Lack of adequate internal alert systems to notify staff of financial hardship or other issues, even when these have previously been raised by the customer;
- Poor responses to DFV and financial hardship in some cases; and
- Inadequate responses to technology-facilitated abuse.

The experiences of Victorian advocates working with victim survivors were shared during interviews with 16 advocates (mainly family violence financial counsellors) in early 2019. The experience of advocating with telecommunications providers was mixed, and very disappointing in some cases.

¹ Commonwealth legislation identifies economic abuse as family violence, as do the laws in most states.

Responses included:

- Sale of unaffordable phone plans is part of the cause of problems
- In one case, the perpetrator wasn't working, and he forced her to get account in her name – he destroyed her phone – she had family violence order and he was in prison – telco wouldn't waive debt unless she returned the phones. Financial counsellor felt the telco didn't believe what the financial counsellor was telling them
- A 19-year old woman signed up a number of telco contracts as a result of abuse – it took a long time to get an outcome, in the end telco agreed not to pursue the debt but insisted on listing on credit report
- Telcos insist on payment plans clients can't afford, often with no options for more affordable plans
- Long delays, telco contacted client even though the advocate was acting- advocate had to tell them to stop harassment – these cases take a lot of time
- Got good result from telco eventually but took a lot of work – and it was case of extreme hardship – client had family violence order, financial counsellor was trying to allow client to keep phone and pay debt on repayment plan
- 'Telco X' doesn't understand at all, although it can be OK if you call a particular person.

There was however indication that some providers responded well in some cases:

- There were some comments on good specialist [hardship] teams at major providers
- Financial counsellor mentioned family violence, telco asked for a statutory declaration and the debt was waived. Financial counsellor felt she'd got onto the right person at provider who seemed to have an understanding of family violence.

Telecommunications is an essential service

Telecommunications is an essential service, and this is particularly the case for people who are experiencing, or have escaped, family violence. The COVID19 pandemic has highlighted how necessary telephone and internet services are, in most cases being the only way victim survivors can seek help. For people who have left a DFV situation, telecommunications services are needed to access housing, welfare services and Centrelink, as well as to maintain contact with friends and support. Some products & services are essential for children's education, which is also even more crucial during COVID19. Retaining a device such as a specific phone can be important as it may retain important information.

Point of sale issues

Unlike bank loans and other forms of credit, there is no requirement to ensure that the person who has the contractual obligation receives any direct benefit. Some victim survivors have been coerced or pressured to take out accounts in their name for the benefit of other people.

We are concerned that sales incentive structures can work against recognising, and responding to, the ‘red flags’ of abuse at the point of sale. By incentivising bundle sales or multiple contract sales, the salesperson is, in fact, incentivised to dismiss early warning signs, for example a couple who already appear to have a mobile phone service coming into a store requesting multiple mobile phone contracts, smart watches and other services. See Case Studies below.

Debt incurred due to DFV

The Victorian Royal Commission into Family Violence made some recommendations regarding amendments to the Telecommunications Consumer Protections Code (R.108). The Code was amended to make family violence an express eligibility criterion for hardship programs. However, two recommended changes related to “joint accounts”, including one to include “grounds for splitting jointly held debt and removing an account holder’s name if family violence has occurred”. That recommendation recognised that victim survivors are often liable for debt incurred as a result of DFV and that regulation should allow their liability to be varied or waived. However, as telecommunications accounts are rarely held in joint names, and the liability is often held by the victim survivor alone, it was not practical – or effective – to adopt that recommendation.

While the industry developed a voluntary guideline² which refers to the possibility of a telecommunications provider waiving “part or all of a debt” if the debt arises as a result of DFV, there is no recognition in the TCP Code that there should be processes to vary liability in DFV circumstances.

The legal obligations of telecommunications in relation to DFV should be expanded, beyond a requirement to consider DFV as a cause of financial hardship, to require telecommunications to have in place appropriate processes to respond to DFV, including requirements to vary liability where a debt is incurred as a result of DFV.

Separating a victim survivor’s phone number from the perpetrator’s account

While problems often arise where a victim survivor is the account holder and therefore liable for charges incurred under the perpetrator’s service, problems can also arise where the victim survivor’s service is under the account of the perpetrator. A victim survivor may lose access to their phone number in these circumstances. Refusal of an account holder to approve transfer of the number to a family member, or ex-partner, who is the end user could be an indication of DFV (which can include being coercive or economically abusive).

² https://www.commsalliance.com.au/__data/assets/pdf_file/0003/61527/Communications-Guideline-G660-Assisting-Customers-Experiencing-Domestic-and-Family-Violence.pdf

While in, or leaving, a violent relationship, access to a phone to contact support services, friends and family is vital. However, if the victim survivor's phone is on an account held by the perpetrator, access can be at risk. We understand that some providers have introduced processes which enable them, in some cases, to separate the phone for the victim survivor in line with the voluntary industry guideline on family violence. However, we believe the current regulatory framework is an impediment to implementing these processes across the telecommunications industry (see Chapter 9 of the industry DFV guideline).

Regulation should ensure that telecommunications can separate a victim survivor's number from a perpetrator's account (and conversely, separate a perpetrator's number from a victim survivor's account) and should require a provider to have processes in place to enable separation.

Clearer obligations to respond fairly to customers in vulnerable circumstances

Unlike other industries,³ current telecommunications regulation does not oblige providers to undertake any specific measures to identify vulnerability or practices when interacting with customers in vulnerable circumstances. Our comments above are reflective of poor industry responses to vulnerability, such as putting a family violence victim on an unaffordable payment plan.

Better regulation needed

Telecommunications should be regulated like other essential services.

There should be improved protections to deal with mis-selling issues, affordability, hardship responses, responses to vulnerable consumers, cultural competency, dispute resolution, family violence. In Victoria, for example, utility businesses have a legal obligation to have processes in place to respond appropriately to customers experiencing domestic and family violence.

ACMA's rule-making powers should be enhanced to replace the current self-regulatory regime with enforceable standards set by the regulator, and there should be increased penalties for non-compliance with consumer protection rules, and ACMA's resources should be increased to better enable it to monitor and enforce compliance.

³ E.g. Australian Banking Association, "Banking Code of Practice" ch 14, <https://www.ausbanking.org.au/campaigns/new-banking-code/#The%20Banking%20Code%20of%20Practice>.

Contact

Please contact Carolyn Bond on [REDACTED] or [REDACTED] if you have any questions about this submission.

Yours faithfully,

[REDACTED]

Carolyn Bond AO
On behalf of the EARG

Case Studies

Case Study (Uniting)

Family of mother, father and 4 children (ages 6 months – 9 years), arrived in Australia in 2004. English is their second language. Husband lost his job, income is from Centrelink and financially struggling.

The mother went to telco shop at a shopping centre and entered into the new contract. She thinks it was for internet and land line. She never received modem, or stationary phone by Telstra. The charges for Bundle kept coming, but client doesn't understand bills, she can't read or write. Recently she has been receiving messages from a debt collector chasing money for the internet usage, which she saying she never used. (approx. \$1,500)

She was also given a mobile on the plan for \$199 per month. Mobile phone bills, currently \$633.42 outstanding, mobile service stopped, sister paid \$450 last week, mobile service still not re reinstated

Excess data charges on mobile bill exceed \$2,000.

Following advocacy from a financial counsellor, the mobile phone was returned and both debts were removed fully. As well as pointing out that the bundle was never received, the financial counsellor claimed that there were concerns about the way the contract was entered, that English was the client's second language, that the contract wasn't explained to the client.

Case Study (Redfern Community Legal Service).

Sara (name changed) attended a phone service provider store with her then-husband, where he coerced her to enter into two phone plans in her name, one of which included an expensive phone handset. The employee primarily spoke to Sara's then-husband and Sara only provided her identification documents when required. Sara had no understanding of

the contractual terms, particularly because she speaks limited English, which should have been detected in-store at the time of entering into the contracts. Sara received no benefit from the contracts – her then-husband had exclusive possession of both SIM cards and the phone handset.

When the relationship ended, Sara was left in possession of the phone but continued to be billed for her ex-husband's usage of the other SIM card. Sara was in severe financial hardship and unable to keep up the repayments since her ex-partner stopped paying the bills. As a result, the phone company restricted her phone service which severely impacted her ability to communicate with her case worker and access legal assistance and critical services for herself and her children.

When Sara's case worker sent the phone company a letter requesting information about her account and disclosing that she was experiencing family and domestic violence, the phone company replied with a standardised response requesting information that had already been provided. Despite multiple requests, Sara's service was not unblocked (and her ex-partner's service wasn't blocked to prevent further charges) until a lawyer from a community legal centre became involved. Despite the lawyer sending a detailed letter explaining Sara's financial hardship and the domestic and financial abuse, the matter was bumped between multiple employees in the financial hardship team who apparently had not read the letter and insisted on Sara completing an onerous pro-forma statutory declaration and proving her "claim of being subject to domestic/family violence". It was not until the lawyer reached a senior member of the customer service team that the matter was resolved, with Sara's ex-partner's service disconnected and removed from her account, and all outstanding bills and handset fees waived in recognition of Sara's circumstances.