Submission to Consumer Safeguards Review—Part C: Consultation Paper

The National Rural Health Alliance (the Alliance) welcomes the opportunity to respond to the issues and proposals contained in the Department of Infrastructure, Transport, Regional Development and Communications *Consumer Safeguards Review—Part C: Consultation Paper* (the Review). The Alliance represents 44 member organisations encompassing health care and allied health professionals, health service and educational providers and consumers located in or servicing rural and remote Australia (see Attachment A). The Alliance is committed to improving the health and wellbeing of Australians living in rural and remote communities.

The Review

Access to reliable and affordable telecommunications infrastructure is crucial to the economic prosperity and wellbeing of Australians living in rural and remote communities. Further, it is apparent now more than ever that connectedness is critical to the accessibility and delivery of individualised and comprehensive health care solutions throughout the country. Indeed, the rollout and extension of telehealth services and rebates, following COVID-19-related restrictions on movement, underscores the importance of digital solutions in overcoming the combined effects of health crises and physical isolation. While, in the context of COVID-19, the consequences of physical isolation have been felt across Australia, it is important to remember that isolation and inadequate access to health care are challenges which are faced by rural and remote communities on a daily basis.

All too frequently digital exclusion coincides with physical isolation.[1] While some inroads have been made, rural and remote Australians continue to fare worse on measures of digital inclusion (access, affordability and digital literacy) than their city counterparts.[2] Taken together, physical isolation and digital exclusion exacerbate city–country inequity; digital inclusion on the other hand is linked to improved health and wellbeing in rural and remote communities.[1,3,4] In the health space, investment in telecommunications infrastructure in rural and remote areas is known to have the capacity to improve access to health care.[5,6] However, whether these improvements are actualised is intricately linked to issues around service suitability, reliability, and affordability. Again, on these measures, rural and remote Australians continue to face significant disadvantage.[2,7]

Considering these factors, it is unsurprising that rural and remote Australians are overall less digitally connected[8] and more heavily reliant on outdated technologies such as landline services delivered through the copper wire network.[9]

The Alliance notes that the abovementioned barriers affect not only consumer access to (and demand for) health services, but also the willingness and ability of medical and allied health providers (many of whom operate within sole trader, partnership or small business arrangements) to supply digital health solutions to rural and remote communities. For example, Alliance members have previously indicated that Sky Muster services have been inadequate for telehealth delivery. Additionally, bandwidth limitations in rural and remote areas mean that concurrent access to internet and videoconferencing is not possible. These factors significantly hamper the ability of

providers to utilise digital solutions as a component of service delivery in rural health care settings. Further, the Alliance understands that up-front and ongoing access costs are high. Unless suitability, reliability and affordability issues are addressed in rural and remote areas, the widespread rollout of digitally delivered solutions as a feature of health service provision is unlikely. The Alliance notes the Australian Government's recently announced Regional Broadband Scheme[10] which may go some way to remedying issues surrounding digital quality and cost in rural and remote communities.

Against this background, the Alliance makes the following observations:

- The regulatory framework that underpins the future delivery of telecommunications infrastructure and service offerings must incentivise wholesale and retail providers to offer rural and remote consumers suitable, reliable services, and at an affordable price.

- Competitive forces alone are unlikely to provide sufficient impetus for regulatory compliance in rural and remote areas; active compliance and enforcement is likely to be required, within a regime in which remedies and penalties are set at a level which incentivises compliant behaviour.

- Importantly, the continued provision of protections for basic services, fault reporting, and swift response and resolution timeframes for rural and remote communities must be captured within any redesigned regulatory framework.

- In recognition of the high cost of infrastructure provision in rural and remote communities and the consequential barriers to market-based competition, the telecommunications regulatory framework should be designed so that service continuity for rural and remote consumers is a priority. On this issue, the Alliance notes that, due to their physical isolation, consumers in rural and remote communities are often heavily reliant on the connectivity afforded by a single telecommunications service offering. This makes reliability and continuity of access to that service of paramount importance, particularly in health emergency and crisis situations.

Proposals for reform and issues for comment

Proposal 1: Telecommunications-specific consumer protection rules should cover essential matters between consumers (including small businesses) and their communications providers.

1.1 What are the essential consumer protection matters that should be covered by the rules? Part 6 (section 113) of the Tel Act lists a range of matters that may be dealt with by industry codes and standards. The TCP Code covers some but not all of these matters. Are these the right starting points?

The Alliance considers that, generally, the consumer protection matters covered in existing regulatory instruments are a good starting point for regulatory design into the future. The Alliance notes, however, the recognition that despite telecommunications markets generally affording consumers a wide range of cost-effective products and services, '… there are areas where commercial incentives may be weaker … or where there are limits to the market mechanism.'[p1, 11] The Alliance considers this particularly pertinent in the context of considering the needs of rural and remote Australians.

The competitive dynamics which have to date driven innovation and price competition in metropolitan and regional markets are largely absent from rural and remote areas. Furthermore, the significant infrastructure costs associated with the delivery of telecommunications services to vast

parts of rural and remote Australia mean that the capacity for competition to drive improvements in products, services and affordability is likely to continue to be limited into the future. The distinct lack of competition in rural and remote landscapes, and its effect on consumer choice and affordability, have been recognised elsewhere.[12]

The Alliance recommends that, in designing a consumer protection framework into the future, the specific needs of consumers in rural and remote areas—including medical and allied health providers—should be acknowledged. In these areas, the threat of switching to another provider is unlikely to be enough incentive to drive regulatory compliance. For this reason, in scenarios where there are few (or no) alternative suppliers for voice or data services, it may be appropriate to place additional requirements on providers regarding, for example, response and resolution timeframes for service interruptions, quality issues and faults. Such measures would likely enhance both the willingness and ability of medical and allied health providers to offer digitally delivered services as a component of their health service offering in rural and remote communities.

The Alliance notes that with wider mobile voice and data coverage, the rollout of the national broadband network (nbn) and the movement away from copper wire delivery of services, telecommunications markets are in a state of transition. It is also noted that, in the mobile space, '… flat rate voice plans with unlimited local and national calls have become the norm.'[p5, 11] While healthy competition between mobile service providers has driven this movement, this is not necessarily true of the offerings which many rural and remote consumers continue to rely on. The Alliance notes that the existing regulatory framework acknowledges the need for the provision of a suite of products to meet the needs of low-income households and considers that the provision of such offerings is necessary to establish digital equity. The Alliance considers that a similar suite of products, targeted to the specific needs of rural and remote communities where there is limited market-driven competition, would be well received.

Finally, in light of the state of transition of telecommunications markets and ongoing questions about how this will affect rural and remote communities, the Alliance recommends that providers should furnish information to regulatory authorities about consumer complaints, service quality, interruptions and reliability, and fault response and resolution timeframes on a geographical or remoteness basis. The provision of such information—and publication by the Australian Communications and Media Authority (ACMA) or the Telecommunications Industry Ombudsman, as appropriate—would shed light on whether those in rural and remote areas are able to, in a practical sense, take advantage of advances in telecommunications markets. It would also highlight issues around choice, fairness and the persistence of digital disadvantage. Furthermore, such a requirement would both assist consumer decision-making and inform public policy design into the future, in relation to such things as use of—or switching away from—the copper wire network.

1.2 Do the existing consumer protection rules governing the retail relationship e.g. in the TCP Code and various standards and service provider determinations need to be redesigned, or are new rules required, to address increasingly complex supply chains? If so, why?

The Alliance makes no specific comment on this issue.

1.3 To what extent should third parties such as communication 'apps' providers be captured by any new rules, and why?

The Alliance makes no specific comment on this issue.

> *Proposal 2: The telecommunications consumer protection rule-making process should be reformed to improve its effectiveness.*

2.1 What role should direct regulation, industry codes and guidelines play in a revised safeguards framework?

The Alliance agrees with the view that 'Rules that support choice and fairness should be clear, effective, directly enforceable and actively enforced.'[p7, 11] The Alliance notes the acknowledged inconsistencies in compliance and enforcement processes, and available remedies and penalties.[11] The Alliance considers that a regulatory framework which achieves greater consistency on these matters is desirable.

The Alliance notes the Department's acknowledgement that the rules should focus on '… provider behaviour where commercial and other market incentives for good service and fair treatment are lacking.'[p24, 11] As discussed above, the Alliance considers that, given the uncompetitive environment characteristic of rural and remote Australian telecommunications markets and thus the limited ability of competition to drive regulatory compliance, self-regulatory models are unlikely to adequately address issues of consumer choice and fairness in these areas. The Alliance supports a movement toward direct regulation, particularly on priority matters relating to affordability, service coverage, reliability, information provision, and complaint and fault response and resolution timeframes.

2.2 How could the code-making process be strengthened to improve consumer outcomes and industry compliance?

The Alliance makes no specific comment on this issue.

2.3 Are current constraints on ACMA's power to make industry standards regulating consumer safeguards appropriate?

The Alliance makes no specific comment on this issue.

> *Proposal 3: The essential telecommunications-specific consumer protection rules should be mandatory and directly enforceable by ACMA, and the enforcement options available should encourage compliance.*

3.1 What additional regulatory and/or enforcement tools should be made available to ACMA?

The Alliance makes no specific comment on this issue.

3.2 Are the currently available civil penalty and infringement notice maximums appropriate?

The Alliance makes no specific comment on the level of penalties. However, the following factors should be considered.

- To the extent that models other than direct regulation are considered appropriate for some matters, consistency between pathways should be maintained in terms of remedies and the timeliness of their application.

- Fines and penalties must be set at a level which shifts the balance to provider compliance. It is noted that the degree of non-compliance and level of consumer complaints are likely to be indicative of whether financial disincentives have struck the right balance. The Alliance reiterates the need for reporting which separately details rural and remote compliance and complaint activity. This should shed light on whether provider compliance in rural and remote areas is consistent with behaviour in markets in which competitive pressures are more robust.

> *Proposal 4: The legacy obligations of declining relevance should be removed or adjusted as Telstra's legacy copper network is phased-out.*

4.1 Which legacy obligations should continue to be mandated by regulation?

The Alliance notes that, especially in areas outside of the nbn footprint or where mobile or satellite services are unreliable, legacy services will continue to be of importance to rural and remote consumers into the future. Such services are likely to continue to fulfill the public interest aims of access, participation, competition and safety (particularly as it relates to health care access). Services of importance include access to directory assistance, untimed local calls, free emergency calling and number portability. The Alliance notes that the ongoing need for some of these obligations may dissipate in the future if viable and reliable alternatives emerge to voice and data services over Telstra's copper wire network. However, it is crucial that these obligations are not removed unless and until there are proven, reliable alternatives available to rural and remote consumers which are delivered at a cost which renders them widely accessible.

4.2 If these obligations are not mandated, would these services continue to be provided by the market?

See comments in relation to 4.1 above.

4.3 Which obligations/services have, in practice, been replaced in the market by other services?

See comments in relation to 4.1 above. The Alliance considers that, to the extent that alternatives have emerged for the services outlined above, they are not necessarily widely geographically available.

4.4 Which obligations, if no longer mandated, should be subject to transitional or grandfathering arrangements? What form should such arrangements take and how long should they remain in place?

See comments in relation to 4.1 above. Transitional and grandfathering arrangements may be appropriate in relation to the services outlined earlier; the details of such arrangements should be considered only when market alternatives are proven in terms of reliability, affordability and accessibility in rural and remote areas.

4.5 Is it appropriate for Telstra to continue to provide low income measures in relation to fixed line phone services for the duration of its contract as the USO provider?

The Alliance considers that continued access to low income measures is important, particularly in geographic markets in which there are few (or no) viable alternatives. In such markets the limited competitive pressure is unlikely to provide sufficient impetus for service offerings which meet the needs of low-income consumers. The Alliance reiterates its earlier comments regarding rural and remote consumers (see 1.1 above).

Ensuring that rural and remote Australians have access to suitable, reliable and affordable telecommunications solutions—and designing a regulatory framework which adequately supports these objectives—will go some way to addressing the digital disconnect and health disadvantage faced by so many in these communities. The Alliance urges consideration of the issues raised in this submission to ensure that those living in, and health providers servicing, rural and remote Australia are not left behind as digital technologies evolve.

Please do not hesitate to contact the Alliance should you have any questions or wish to discuss in more detail any matters raised in this submission.

Yours sincerely
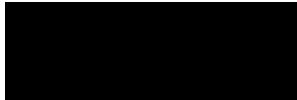
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23 September 2020

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National Rural Health Alliance member organisations

Allied Health Professions Australia

Australasian College for Emergency Medicine — ACEM

ACHSM — Australasian College of Health Service Management

Australasian College of Paramedicine

ANZCA — Australian and New Zealand College of Anaesthetists

Australian Chiropractors Association — ACA

Australian College of Midwives — acm

Australian College of Nursing

Australian College of Rural & Remote Medicine — WORLD LEADERS IN RURAL PRACTICE

Australian Dental Association — ADA

AGPAL

ahha — australian healthcare & hospitals association

AIDA — Australian Indigenous Doctors' Association

Australian Nursing & Midwifery Federation

Australian Paediatric Society

Australian Physiotherapy Association — APA

APS — Australian Psychological Society

ARHEN — Australian Rural Health Education Network

CATSINaM — Congress of Aboriginal and Torres Strait Islander Nurses and Midwives

The Council of Ambulance Authorities — CAA — Est. 1962 — Ambulance Leadership