

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
Department consultation
paper

**Consumer Safeguards
Review – Part C: Choice
and fairness**

Public Version

September 2020

EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide comments on the Department of Infrastructure, Transport, Regional Development and Communications' (DITRC) consultation paper on Part C of the Consumer Safeguards Review, examining choice and fairness.
2. Optus agrees with the focus of the report on the fixed-line market post the completion of the NBN and full structural separation of the fixed-line market. Optus observes that the NBN project was designed to address the legacy structural problems in the fixed-line market due to a vertically-integrated national monopoly provider. The associated competition problems and consumer harm due to this legacy structure will be largely addressed through the structural separation of the industry.
3. That is not to say that there are no new challenges in a structurally separated industry. Experience of the NBN journey so far has clearly demonstrated there are costs as well as benefits to the NBN policy reforms.
4. However, we are concerned that the consultation paper appears to jump straight into assessing regulatory options without first identifying specific problems that require Government action. The paper fails to ask the very first question required by regulatory best practice – namely, is Government action required? The consultation paper makes no reference to market failure, regulatory failure, or unacceptable risk or hazard – the three conditions precedent for Government intervention in a market.¹
5. Optus is concerned that much of the paper appears focused at providing the ACMA with greater rule-making power and at removing the long-standing co-regulatory arrangements. This approach gives inadequate weight to the regulatory policy statement at section 4 of the Telecommunications Act, which outlines Parliament's intention that telecommunications should be regulated in a manner which promotes the greatest practicable use of self-regulation. We see no basis for change to this fundamental tenet of regulatory policy.
6. While the consultation paper contains four reform proposals and six associated principles, there appears little value in addressing these at this stage due to the presumption for the need of direct regulation and greater regulatory powers without first identifying policy problems; or asking whether Government action is required.
7. Optus looks forward to engaging with the Department in further discussions on identifying any need for further changes. We acknowledge that the post-migration environment requires a different regulatory approach to legacy networks. Optus submits that:
 - (a) Any assessment of policy options should look to appropriately allocate risk and responsibility across the different levels of the industry for service delivery and consumer outcomes;
 - (b) The ACMA and ACCC have sufficient powers to regulate the industry;
 - (c) Choice and fairness are already central to existing regulations and does not create an a priori justification for regulatory change;

¹ Australian Government Guide to Regulatory Impact Analysis, 2nd Edition, 2020, p. 21.
<https://pmc.gov.au/regulation/guidance-policy-makers>

- (d) There continues to be material benefits to a co-regulatory framework; and
- (e) Regulatory best practice is key to ensure any future intervention maximises public benefits and is proportionately targeted to specific problems

8. With regards the proposal to reform legacy obligations, Optus considers:

- (a) Free access to emergency services, number portability, emergency services, call line identification, and standard terms and conditions should remain in place in direct regulation. They continue to serve as a relevant safeguard to consumers.
- (b) With pre-selection, while the Determination was adjusted in 2014 so that it only applies to legacy services, it will diminish over coming years because of the NBN migration. It must remain in place to allow for further consideration when the ACCC's Fixed Service Final Access Determination on Wholesale Line Rental expires on 30 June 2024. Revoking it before then would be disruptive to customers utilising these services and remove competition from the market.
- (c) The relevance of mandating the provision of directory assistance, operator services, itemised billing and untimed local calls in primary legislation has diminished in today's market. The Department should look at removing these requirements from the Telecommunications Act.

POST-MIGRATION ENVIRONMENT REQUIRES DIFFERENT REGULATORY APPROACHES

9. Optus understands that the focus of the current inquiry focuses on the changing fixed line communications environment post completion of the NBN. Many of these changes arise from the underlying industry structural changes that took place as the rollout of the NBN achieves vertical separation in the industry.
10. In this section, Optus addresses the following:
 - (a) The approach to allocating risk and responsibility across different levels of the industry for service delivery and consumer outcomes;
 - (b) The ACMA has sufficient powers to regulate the industry;
 - (c) Choice and fairness are already central to existing regulations and does not create an a priori justification for regulatory change;
 - (d) There continues to be material benefits to a co-regulatory framework; and
 - (e) Regulatory best practice is key to ensure any future intervention maximises public benefits and is proportionately targeted to specific problems.

Allocating risk and responsibility in a structurally separated industry

11. One of the key regulatory challenges in a vertically separated industry is the allocation of risk and responsibility spread across different parties in the supply chain.
12. Unlike in a vertically integrated industry, it can no longer be assumed that regulation aimed at the retail level can be delivered by retail service providers (RSPs). The new industry structure requires that any specific regulatory obligations at the retail level, must be adequately supported at the wholesale level, either in contractual arrangements or by new regulatory requirements.
13. Unfortunately, most – if not all – legacy consumer regulations were made, and continue to be applied, for a vertically integrated industry. Optus submits changing this approach is the largest challenge when updating the current suite of consumer regulations.
14. Achieving an appropriate allocation of risk and responsibility across NBN Co and RSPs has been acknowledged as important by the ACCC in its recent consultation paper on NBN Co's access pricing and wholesale service standards inquiry. To date, Optus does not consider that risk and responsibility have been appropriately balanced, and recent regulation introduced into the sector in the last few years (e.g. the ACMA's suite of NBN rules) has failed to take this into account and has placed the risk and responsibility of compliance with the retail sector.
15. Reflecting this new industry structure, and the requirement to allocate risks and responsibilities, regulators should take into account arrangements and obligations at all levels of the market when assessing regulatory options.
16. Optus understands there is an informal arrangement between the ACCC and ACMA that the ACCC will focus on 'wholesale level' and the ACMA will focus on 'retail level'. Optus is not aware of any legislative authority for such an arrangement – especially given the

ACCC's role in enforcing Australian Consumer Law, which sits solely at the retail sector. Optus considers such arbitrary decisions create risk that regulatory arrangements may fail to take into account relevant considerations at all levels of the industry and could result in risks and responsibilities not being spread fairly across industry.

17. The approach to regulation should also recognise the impact that the post-roll out industry structure is to have on retail competition by providing a ubiquitous access network and supplying products on an open access, wholesale-only basis. As a result, retail competition would increase as RSPs could compete on equal footing and it would be simple for consumers to switch providers. Currently, there are approximately 180 RSPs listed on NBN Co's website as providing NBN services (although not all providers may service all technologies or all areas).² Consumers have never had more choice for their fixed-line communications services.
18. The market has seen an increase in more competitive offerings over the last few years with more contract flexibility and increased inclusions. Consumers have greater choice, with most providers offering a range of no lock in month-to-month plans. Many providers allow customers to bring their own modems (although this can limit the technical support an RSP can provide or may limit the speeds a customer can achieve). The days of lengthy lock in contracts, with early cancellation fees are gone. If customers don't like the contract terms, pricing or customer service, they have a genuine option to leave and can easily switch to another of the over 100 NBN RSPs.
19. Optus considers that efficient and effective regulation requires policymakers and regulators to take a holistic view of the vertically separated industry, to understand the incentives and obligations that exist at the different levels of the market, and to have an understanding of what is achievable at each segment of the industry.
20. In a vertically separated industry, policy makers and regulators should ensure that any regulation focused at driving retail outcomes can be supported by existing wholesale arrangement with the upstream wholesale provider. Where such arrangements do not exist, or are deemed insufficient, regulations should be imposed on the wholesale sector *before* any subsequent retail obligations are imposed.

ACMA has sufficient regulatory powers

21. The consultation paper appears to make the position that a high volume of TIO complaints means existing regulation is inadequate; and therefore, the ACMA needs more powers.
22. Optus does not consider that this is the case.
23. Examining TIO complaints is not a reliable indicator of issues within a structurally separated industry, nor can it be used to indicate where in the supply chain a potential problem lies. TIO statistics are simply a record of whether a complaint was made or not and the TIO primarily exists to deal with complaints related to RSPs. TIO statistics do not reflect where performance, connection or fault issues may be impacted by the actions of, or which are the responsibility of, NBN Co.
24. Optus submits that if there is concern about the volume of industry complaints, there should be greater analysis being done to understand what is driving those complaints. As noted, simply looking at volume shows little if anything about the underlying cause and fails to take into account the separated structure of the industry and that there is no place other than the TIO for consumers to raise issues about NBN and NBN Co. There should also be further examination to determine whether any identified conduct which might be occurring is influenced by wholesale arrangements. For example, where an

² <https://www.nbnco.com.au/residential/service-providers>

issue is being observed cross multiple RSPs, this could be an indication the issue lies in the wholesale rather than retail sector.

25. If the TIO becomes aware of a potential issue affecting one provider or an issue appearing common over several providers, it can refer the matter to the ACMA for further investigation. This should be the standard approach in investigating potentially systemic issues, especially where it is flagged that the issue stems from wholesale arrangements.
26. The ACMA already has a full suite of compliance and enforcement tools at its disposal including:
 - (a) A defined role in legislation under its administration to oversee compliance with the legislative obligations;
 - (b) The ability to issue reasonable requests for access to information, inspection, investigation and audit powers;
 - (c) Option to provide guidance on how to achieve compliance (via advisory notices and other published guidance documents, commission studies and publish reports, initiate own-motion formal investigations, investigation reports, public inquiry reports etc);
 - (d) The ability to intervene and issue remedial directions in cases where there are significant concerns that cannot be addressed through other means (including directions to comply, or directions to do a thing);
 - (e) Other graduated response tools (e.g. formal warnings, accept court enforceable undertakings);
 - (f) The ability to issue penalties for non-compliance (e.g. infringement notices); and
 - (g) The ability to initiate action seeking court-imposed penalties (e.g. civil action in the Federal Court for up to \$10 million, potentially loss of carrier licence, or referral to DPP for prosecution of an offence).
27. Further, where a company fails to comply with a Code the ACMA is able to issue a Direction to a company that they must comply with a Code. The Department seems to view this as an inadequate step. However, Optus considers it to be a reasonable and proportionate step, and an efficient way of immediately addressing the conduct in question. Such a Direction is an appropriate mechanism to provide regulatory guidance given that Codes deal with operational processes and have significant operational impacts. Where there are prescriptive requirements contained in Codes, industry needs to work with the ACMA to ensure the application of these detailed rules addresses the objective set out in the general principle of each section.
28. Furthermore, if a company fails to comply with such a Direction the ACMA can then pursue court proceedings, which has serious consequences.
29. If there are concerns that companies are not complying with existing regulations, Optus considers the ACMA has a sufficient powers and tools available for a proportionate response.
30. The section of the ACMA's web-site which lists compliance action taken on telco consumer protections reveals that over the last two years it has issued 17 directions to comply with the *C628: 2015 Telecommunications Consumer Protections Code* to 17 different companies. None of these directions was issued in the last 12 months. The ACMA's report on actions taken shows that over the twelve-month period after the directions, no follow-up compliance or enforcement action was required against any of

these companies on the matters which were the subject of the direction. This record of compliance action and subsequent conduct does not support the proposition that a direction to comply with a Code is not an effective disciplinary and regulatory tool which should be supplanted or bypassed.

31. Optus considers it would also be open to the ACMA to refer matters to the ACCC for enforcement consideration, where a matter may not be dealt with by existing regulations enforced by the ACMA but would otherwise fall under the broad scope of the ACL. In those cases, the appropriate action is not to consider introducing largely duplicative and prescriptive direct regulation, but for regulators to enforce the regulations already in place. Optus observes the discussion paper does not pay sufficient regard to the impact of the over-arching ACL obligations on the sector.

Choice and fairness are already addressed in existing regulation

32. The consultation paper implies that further regulation is needed for consumer safeguards and that this regulation should focus on 'choice and fairness'. 'Choice' seems to mean adequate pre-contract information and 'fairness' seems to mean honest selling practices, easy to understand contracts & good service and support.
33. Optus considers that existing regulations are comprehensive and are already subject to considerable overlap with other consumer protection obligations. These are matters already addressed in the Competition and Consumer Act, including specific obligations or action the ACCC has taken in relation to: unfair contract terms; unconscionable conduct; misrepresentations regarding goods and services; misleading and deceptive conduct; consumer guarantees, unsolicited goods; telemarketing and door-to-door sales; scams; price displays; credit/debit and prepaid card surcharges; gift cards and discount vouchers; debt collection practices, and in-app purchases.
34. In addition, there is also industry-specific regulation that contains obligations in relation to pre-sale information, sales practices and broader consumer protection, including for example:
 - (a) The TCP Code that largely duplicates many of the obligations in the broader consumer protection framework.
 - (b) The NBN Consumer Information Standard, that contains information requirements be provided to consumers about NBN services in addition to the information requirements under the TCP Code.
 - (c) The Battery Backup Information Ministerial Determination, that is required information to be provided to end-users in relation to NBN services.
 - (d) The Spam Act.
35. It is evident there are already extensive regulations in place targeted at fairness, selling practices and pre-sale information. As noted, the TIO complaints referred to by the Department do not seem to relate to the provision of pre-contract information or nature of customer contract terms. They largely relate to customer service and billing complaints. The Complaints Handling Standard now deals with RSP responses to these types of issues (the relevant provisions have been removed from the TCP Code into an Industry Standard).
36. Further, as NBN Co supplies the same products on the same terms to all RSPs, it is likely that customer service will become increasingly recognised as a point of differentiation amongst providers. For example, Optus has invested significantly in a dedicated NBN Concierge program to assist customers with their NBN migrations.

Therefore, competition is likely to drive improved outcomes for consumers in relation to customer service.

There continue to be benefits to a co-regulatory framework

37. The consultation paper also appears to take the position that direct regulation leads to better consumer outcomes. However, it simply doesn't follow that direct regulation means there is greater compliance.
38. Optus submits that it is the development and design of regulatory instruments that impacts the efficiency and efficacy of such rules. Poorly drafted and implemented regulations typically do not achieve desired outcomes, even where it is direct regulation. Where regulation, including direct regulation, does not have a clear objective, is overly prescriptive and/or is rushed, it can lead to compliance issues regardless of if it is direct regulation or an Industry Code.
39. Optus submits that the existing and long-standing co-regulatory framework (where Industry Codes are backed by legislation and enforcement mechanisms), continues to be relevant in a sector where operational processes can be technical and dynamic.
40. The benefits of a co-regulatory Industry Code model include that it:
 - (a) Provides a structured approach to engaging industry, enabling codes to reflect current industry practices and may better provide for more cost-effective compliance models;
 - (b) Retains legislative backing which provides greater confidence than self-regulation only;
 - (c) Consensus approach can be useful in building industry buy-in to addressing the problem; and
 - (d) May be able to move more quickly than development of black letter law and deal with rapidly changing technologies and issues.³
41. Optus considers there is still place for the existing co-regulatory model and Industry Codes within the telecommunications industry.
42. The Department notes a number of concerns with the existing Code-making process, including:
 - (a) The current Code development process appears to be better suited to managing existing problems rather than emerging ones, as the ACMA can only request that industry develop a code if it is satisfied that development of the Code is necessary or convenient to provide appropriate safeguards. Industry can also create a code of its own volition without being directed by the ACMA. Further, direct regulation may be required to complement or enhance what is in the Code;
 - (b) The current Code development process is slow, noting how long TCP Code development processes can take, and can be outpaced by technological changes. In addition, it appears to suit matters that require cooperation across industry, rather than consumer issues;

³ Department of Communications, Regulating harms in the Australian communications sector – Policy Background Paper No. 2, May 2014, p. 11.

- (c) Codes can use 'unclear and ambiguous' rules, such as 'take reasonable steps' or 'use reasonable endeavours';
 - (d) The test for registering Codes is 'low and subjective'; and
 - (e) Current enforcement is a two-step process.
43. In relation to these points above, Optus has the following comments:
- (a) There are challenges for industry in identifying what may, in hindsight, be called 'emerging issues' because individual RSPs do not have visibility over other RSP's issues. A common-sense approach would be if the TIO or ACMA identified an issue related to one provider, they raise this with the provider in question so that the provider can investigate it. Or if the TIO or ACMA identified an issue that appeared to be occurring across industry more broadly, engage with industry more broadly on concerns and potential solutions (as per the steps involved in best regulatory practice discussed below).
 - (b) Codes can be more easily amended to take into account changing technology, than direct regulation.
 - (c) Delays in the Code approval process can be caused by delays in settling on the potential content of the proposed Code and, in recent experience, due to delays in the ACMA registering the Code. There may be delays settling on content where a proposed Code contains more prescriptive interpretation of other laws, such as how the TCP Code contains many prescriptive requirements that address conduct that otherwise would fall under the Australian Consumer Law. Optus notes this goes to the broader issue of regulatory overlap and lack of clear coordination and roles between the ACCC and the ACMA. Further, it is unclear to Optus why there have been delays in registering Codes where the ACMA has been part of the Code development process.
 - (d) The language contained in Codes is little different to language contained in direct regulation, such as the ACMA's NBN rules that require RSPs to take 'all reasonable steps' or requires NBN Co to provide 'reasonable assistance'.
 - (e) A two-step enforcement process of Codes is appropriate, given that a Direction to comply with Codes is an efficient mechanism for addressing compliance issues. (Discussed further).
44. Whether the industry code processes are well suited to dealing with 'consumer issues' may depend on what consumer issues are being considered – for example, number portability (which allows consumers to take their number with them when switching providers) seems to work well (for the most part) as a Code. In these cases, Codes are often backed by contractual and commercial arrangements between providers. Industry codes that do not reflect underlying wholesale arrangements appear to operate less effectively.
45. Optus considers that challenges can arise where 'consumer issues' are simply a more prescriptive interpretation of the Australian Consumer Law. For example, a number of requirements in the TCP Code or other ACMA regulations are simply a prescriptive interpretation that could be dealt with under the ACL.
46. Unnecessary duplication of regulation is costly, inefficient and leads to confusion in implementation and specifying prescriptive requirements in black letter law leads to inflexible outcomes and an inability to adapt to changing conditions.

47. The ACCC has demonstrated how to successfully apply broadly drafted black letter law in an efficient way, providing guidance documents where necessary and continuing to focus on the objective of the legislation, not on mandating prescriptive operational processes.
48. Optus is concerned that the consultation paper presupposes that black letter law is a better option than Industry Codes.
49. Optus considers there are benefits to having a co-regulatory framework particularly where outcomes can depend on operational arrangements between providers.

Rule-making should follow regulatory best practice

50. The consultation paper implies that further regulation is needed for consumer safeguards. Optus does not see that a case can be made for such a position.
51. While Optus considers that existing regulations are comprehensive, already subject to considerable overlap and the ACMA has the tools to take action for non-compliance with Industry Codes and Standards, if new regulation is considered, policymakers should follow best regulatory practice.
52. The Government has recently updated its guidance to policymakers designed to support the development of regulation.⁴ The updated guidance comprehensively sets out advice to policymakers of a range of matters to be considered when faced with policy concerns.
53. The guidance sets out six principles for policy makers:
 - (a) Policy makers should clearly demonstrate a public policy problem necessitating Australian Government intervention and should examine a range of genuine and viable options, including non-regulatory options to address the problem.
 - (b) Regulation should not be the default option: the policy option offering the greatest net benefit – regulatory or non-regulatory – should always be the recommended option.
 - (c) Every substantive regulatory policy change must be the subject of a Regulation Impact Statement.
 - (d) Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens.
 - (e) The information upon which policy makers base their decisions must be published at the earliest opportunity.
 - (f) All regulation should be periodically reviewed to test its continuing relevance.⁵
54. The guidance sets out the seven questions a RIS should address:
 - (a) What is the problem you are trying to solve?
 - (b) Why is government action needed?

⁴ <https://pmc.gov.au/regulation/guidance-policymakers>

⁵ Australian Government Guide to Regulatory Impact Analysis, 2nd Edition, 2020, p. 9.
<https://pmc.gov.au/regulation/guidance-policymakers>

- (c) What policy options are you considering?
 - (d) What is the likely net benefit of each option?
 - (e) Who did you consult and how did you incorporate their feedback?
 - (f) What is the best option from those you have considered?
 - (g) How will you implement and evaluate your chosen option?⁶
55. The guidance notes that when beginning with defining the problem, there are a relatively small number of situations that justify direct government intervention in the form of regulation – that is, where there is likely one of the following starting points:
- (a) Market failure;
 - (b) Regulatory failure; or
 - (c) Unacceptable hazard or risk.⁷
56. In addition, special consideration should be given to the role of competition when creating new regulations, with regulations subject to additional competition tests where the preferred regulatory option restricts competition.⁸
57. It is not clear to Optus that any such problem-identification process has occurred. We observe that the discussion paper makes no reference to market or regulatory failures, nor has it identified an unacceptable hazard or risk. Put simply, the discussion paper appears to pre-judge the need to regulatory action even before the most basic of best practice processes has been undertaken. Optus is concerned with such a position.
58. Optus would welcome a methodical and analytical approach to whether new policy or regulation is needed, targeting it appropriately to an identified problem and adopting a principles-based approach. Further, any such policy must ensure that the costs to business are minimised as much as practically possible while still addressing the identified policy problem.

⁶ Australian Government Guide to Regulatory Impact Analysis, 2nd Edition, 2020, pp. 12-13.
<https://pmc.gov.au/regulation/guidance-policymakers>

⁷ Australian Government Guide to Regulatory Impact Analysis, 2nd Edition, 2020, p. 21.
<https://pmc.gov.au/regulation/guidance-policymakers>

⁸ Australian Government Guidance Note, Competition and Regulation, 2020.
<https://www.pmc.gov.au/sites/default/files/publications/competition-and-regulation.pdf>

LEGACY OBLIGATIONS THAT SHOULD CONTINUE

59. Optus' analysis of the Department's proposal to reform legacy obligations is informed by regulatory best practice principles to ensure government intervention benefits consumers, society and industry. We have applied the principles in the Australian Government's 'Guide to Regulatory Impact Analysis,' which has been detailed in previous sections, to identify:
- (a) The policy problem, be it a market or regulatory failure or an unacceptable hazard to the public, Government intervention attempted to solve when the regulation was first introduced; and
 - (b) Whether the regulation still addresses the policy problem based on new market and consumer trends.
60. Optus supports the Department's analysis that free access to emergency services, number portability, emergency services, call line identification, and standard terms and conditions should remain in place in direct regulation. They continue to serve as a safeguard to consumers.
61. With pre-selection, while the scope of the Determination was adjusted in 2014 so that it only applies to legacy services which will diminish because of the NBN migration, it must remain in place to allow for further consideration when the ACCC's Fixed Service Final Access Determination on Wholesale Line Rental expires on 30 June 2024. Revoking it before then would be disruptive to customers utilising these services and remove competition from the market.
62. As discussed further below, the need for obligations relating to directory assistance, operator services and itemised billing in direct regulation has diminished in today's market. The Department should look at removing these as regulated requirements in headline legislation.

Emergency call services

63. Emergency call service was mandated to enable the community to make calls to Triple Zero (000), an operator-assisted service connecting callers to the police, fire or ambulance service in emergency situations, free of charge. Carriage service providers were required to deliver calls to the emergency service from any fixed or mobile phone with the highest priority. Providers were also required to ensure emergency service calls were prioritised on their network above other calls and allow other providers to roam onto their mobile network if the local network coverage was inadequate. This obligation created a public benefit, with individuals facing life threatening and emergency situations able to access a reliable service to seek assistance from the authorities.
64. Since the regulation was first introduced, the public imperative for providers to make calls to Triple Zero (000) free of charge and to treat them with the highest priority has not changed.
65. We, therefore, support the Department's analysis providers' emergency call obligations will continue to be important in assisting individuals and the community.

Number portability

66. Number portability was mandated to reduce switching costs for consumers wanting to take their fixed or mobile number from one service provider to another. It also removed undesirable barriers to competition and consumer choice by requiring providers to implement number portability across all networks, allowing customers to keep their

number and making it easier for new entrants like Optus to compete with incumbent CSPs.

67. Portability remains as relevant today when providers are responding to the public's growing appetite for contract flexibility and service choice. For instance, consumers with their own device can join Optus' mobile SIM plans, which are month to month plans with no early cancellation fees.
68. We, therefore, support the Department's analysis number portability regulation will continue to be important in facilitating choice for consumers and promoting competition in the market.

Pre-selection

69. Pre-selection was mandated to allow consumers to choose their preferred provider for national long-distance, international and fixed-to-mobile calls and have services supplied over the same network local loop infrastructure. Pre-selection has successfully facilitated competition among fixed-line voice providers and promoted choice for consumers.
70. [CiC]
71. [CiC]
72. [CiC]

Calling line identification

73. This regulation required carriers to share Calling Line Identification (CLI) information to assist routing of calls within and between networks and to facilitate billing. It also provides information to inform Calling Number Display (CND) features, which allows customers to use the capabilities of their devices to see the number of the person calling them if that capability has been allowed. This benefits providers in efficiently routing calls within networks and allows consumers to access information about calling numbers in certain circumstances.
74. The regulation remains relevant today, particularly when industry, the Federal Government, ACMA are working closely to use existing practices in managing call routing between providers (including use of correct CLI) to address the rise in scam calls.⁹

Standard terms and conditions

75. Part 23 of the Telecommunications Act continues to set the framework for providers to formulate standard forms of agreement for their products, including relevant terms, conditions and charges. Standard form contracting is of substantial benefit to consumers as it reduces search and negotiation costs associated with understanding the options available for telecommunications services and establishing a service supply arrangement. Standard form contracting also has efficiency benefits for providers. The on-going recognition in the legislation of the option to use standard form contracting is an important matter for both consumer and carriage service providers and it should be retained.

⁹ See the latest industry code, *C661: 2020 Reducing Scam Calls Industry Code*.

LEGACY OBLIGATIONS THAT SHOULD BE REMOVED OR ADJUSTED

76. The current *Telecommunications Act* continues to include a set of standard service provider rules at Schedule 2, many of which apply and were relevant to the way the standard telephone service was delivered in the 1990s. The components mandated in Schedule 2 were seen at the time as forming an essential bundle of support for the standard fixed telephony voice service, the main service regulated by the Act. Because at that time the Act was formulated there were no substitute or alternative mechanisms available which offered the functionality these components gave to consumers, the case to regulate the supply of these ancillary services was justified.
77. The propositions which justified regulation in the 1990s no longer hold true in 2020, and the baseline case for continuing to regulate for the ongoing specific supply of several of these functional components no longer stands-up. Three of these items are specifically referenced below as reform opportunities. The regulation could be removed altogether or adjusted to a technology neutral format. For example, if the continued regulation of a fault reporting service is justified for the standard telephone service, in 2020 it should be cast as a requirement to provide one or a choice of functioning and effective means of reporting faults, rather than mandating an operator service for this purpose.

Directory assistance

78. The Directory Assistance service provider rule mandates that providers must offer an operator assisted or automated voice service to all its customers to help them locate the telephone numbers of a business or person where the caller knows the name and wants the number. Unless they already knew the other parties telephone number, there were few ways for consumers to access this information in the pre-internet era 1990s and earlier decades and few alternative communications services to the fixed line voice call were available for customers to make contact with other people. to find directory information customers could either call this service or search the telephone directory. Using this service therefore contributed to the utility of the telephone by facilitating access to information needed by consumers to make calls to family, friends and businesses.
79. [CiC]
80. [CiC]
81. [CiC]
82. [CiC]

Operator services

83. The Operator Services standard service provider rule was mandated when consumers primarily had one way of contacting their provider to report a fault or difficulty with their service. If there was no physical shopfront, their only way of communicating with their provider to get their fault or issue resolved to call to seek help from their provider.
84. [CiC]
85. [CiC]
86. [CiC]

Itemised billing

87. Itemised billing direct regulation was introduced when consumers were on fixed phone plans, which incurred specific charges for each call made depending on whether the call was local, long distance or international. Consumers were able to monitor the number, duration and time of these calls so they could verify and check the accuracy of the charges billed on their account. The need for this mandatory requirement has diminished today when:
- (a) More Australians are using data to carry out everyday activities thanks to better network coverage and data sharing schemes.
 - (b) Providers are now offering unlimited calls made in Australia without charge as an inclusion to data plans; and
 - (c) Providers' obligations to make itemised billing data available to consumers is in the Telecommunications Consumer Protection (TCP) Code, which the ACMA enforces.
88. Optus agrees this regulation is now less important and relevant for consumers and should be removed.

Untimed local calls

89. The untimed local call obligation is an artefact of an earlier era of the telecommunications market, when fixed telephony was the only option and an individual phone call was a relatively expensive item, associated with distance dependant charging. In that context, an untimed local call obligation was judged a reasonable safeguard to address pricing inequities and accessibility issues.
90. In the current market, consumer demand has driven the move to mobile telephony which has no domestic distance dependant charging, and internet-based communications applications are pervasive, there are a myriad of free or low charge communication substitutes to local calls. The case for the pricing structure to be artificially determined by regulation is far reduced.
91. The issues linked to the maintenance of the untimed local call obligation are not just related to the retail cost of a phone call to a consumer, it is the cost and efficiency impacts of sustaining all the regulatory machinery and industry overhead required to support the untimed local call regime in a declining fixed telephony market.
92. To regulate the supply of untimed local calls requires the maintenance of an entire national telephone number system with that purpose in mind. The current numbering plan rules which support this charging structure are deeply rooted in the early 1960's PMG charging zones and continue to form a labyrinthine and complex set of arrangements which need to be transposed into carrier switching and billing systems.
93. Optus recommends the Department should formulate a policy glide-path which articulates how the untimed local call obligation can be removed, releasing the efficiency benefits for industry. The glide path should also identify any adversely affected groups which don't have clear alternative arrangements and who rely on the obligation and describe the best path to remove or soften the impact of the policy change.