



TELSTRA CORPORATION LIMITED

**Department of Infrastructure, Transport, Regional Development and
Communications**

Consumer Safeguards Review - Part C: Choice and Fairness

[Public version]

September 2020



CONTENTS

EXECUTIVE SUMMARY	3
01 Introduction	6
02 Principles should inform the development of consumer safeguards	6
03 Telstra supports a best practice approach to regulatory intervention	7
3.1. The regulatory framework should have a pre-disposition toward co-regulation or self-regulation	8
04 The role of telecommunications-specific consumer protections	9
4.1. Telecommunications-specific rules relating to 'choice' and 'fairness' should be made in response to an identified problem	9
05 An outcomes-based co-regulatory process will reduce complexity and benefit customers	15
5.1. Opportunities to improve the code-making process	17
06 Compliance and Enforcement	18
6.1. Enforcement	19
07 Enduring relevance of Legacy Obligations	19
7.1. Consumer Protections of Enduring Importance	19
7.2. Legacy obligations that are no longer relevant and should be removed	20
08 Telstra's Low Income Measures	23
8.1. It is not appropriate or necessary for Telstra to bear an asymmetric low income obligation	23
8.2. NBN Co must play a key role in supporting offers for low income customers	24
8.3. Government should conduct a holistic review into the needs of vulnerable customers	25
ATTACHMENT A: Consultation Questions	26



EXECUTIVE SUMMARY

Telstra strongly supports the review and revision of the existing consumer safeguards framework. The Consumer Safeguards Review (**the Review**) is a generational opportunity to establish a communications legislative and regulatory framework that is fit for purpose and reflects the ways in which consumers use communications services.

The communications sector has a key role to play in enabling Australians to access the economic benefits of technological advancements and the Review is an opportunity to harness that alignment and agree an optimal longer-term approach to regulation in the communications sector to ensure the delivery of great outcomes for customers.

Telstra supports a principled approach to development of the consumer safeguards framework

Consumer safeguards should be developed with reference to a set of enduring principles to ensure the protection of consumers and the public interest, and to promote digital inclusion. Telstra proposes the following principles to guide decision making:

- All Australians should be able to access telecommunications to enable participation in a digital society.
- Communications infrastructure should be functional and reliable.
- Communications markets should be open and competitive to encourage investment, innovation and diversity of choice.
- Consumers should have access to information and the freedom to make informed choices based on their preferences.
- Consumers should have appropriate avenues for redress.
- Consumers should be confident that their personal information is protected appropriately.

We propose these principles as an alternative to the Department's principles outlined in the Paper.

Outcomes-focussed regulatory interventions should be guided by best practice principles

Telecommunications plays a critical role enabling participation in society and is an essential service. It is appropriate for there to be telecommunications-specific consumer protections, including in the form of regulatory interventions where necessary. The aim of sector-specific rules should be twofold: (1) to clearly set out expectations regarding industry behaviour in a way that reflects the operational reality of that sector; and/or (2) to address **an identified issue** particular to an industry.

Regulatory interventions should be guided by regulatory 'best practice' principles, as these are generally recognised as being in the best interests of customers by providing the most efficient and least distortionary means to achieve policy outcomes.

We consider a future-focussed regulatory framework should preference co-regulation or self-regulation, and it should avoid black letter regulation to the greatest extent possible to achieve the desired outcome efficiently. Black letter or direct regulatory instruments have several shortcomings, including:

- additional cost for Government, as Government's involvement is significantly increased;
- delays in new products and services for customers and, in the worst case, new products and services not being supplied, because of less flexibility or restrictions being placed on industry;
- outcomes being distorted further over time by regulations that are inflexible and out of date with changed circumstances; and,
- additional costs for industry that are ultimately passed on in the prices paid by customers.



Telstra supports an outcomes-based approach to regulatory intervention, whereby Government policy sets high level customer outcomes that industry is required to achieve. In telecommunications-specific matters relating to ‘choice’ and ‘fairness’, self- or co-regulation should be the preferred option and industry should be given the opportunity to develop effective rules. In this model, if industry has a clear understanding of what deliverables are expected from a process it can be tasked with developing solutions to meet those expectations. That is, clear communication and consultation in the initial stages will ensure expectations are set appropriately. This will avoid the cost and complexity of recent experiences whereby industry was required to comply with inappropriately and unnecessarily prescriptive, direct regulatory instruments.

Government regulation should only be applied to a problem or policy objective if Government finds the industry arrangements are manifestly inadequate. This approach gives industry an incentive to develop its own regulatory solutions and ensure they are effective, in order to avoid the additional cost and burden of government regulation, while still giving Government the option of applying such regulation if industry arrangements are ineffective. Once made, industry-developed co-regulation is enforceable by the regulator.

Telstra supports a proportionate approach to compliance and enforcement

Telstra supports a graduated and risk-based approach to compliance and enforcement. The ACMA’s enforcement powers, and its approach to the exercise of those powers, should be flexible. There should be a clear delineation between the powers to determine a breach and the decision about whether to impose a remedy and what that remedy should be. The overarching principle in enforcement should be ‘proportionality’.

If a breach has been established, ‘proportionality’ needs to be considered at two levels: (1) whether any enforcement action is required at all – it should be clear that the ACMA is not required to impose a remedy if it establishes a breach; and (2) the nature of the remedy which is imposed - the focus of enforcement should be on achieving compliance with the relevant regulatory obligation. The ACMA’s ‘tool kit’ could usefully include more incentive-based remedies to provide alternatives to the traditional punitive enforcement model.

Legacy Obligations should only be retained if they have enduring relevance

Telstra supports a responsive regulatory framework which allows Governments and industry to remove or adjust regulatory obligations in response to market or technology developments. As such, we support Principle 5 of the Paper which states: “*Consumer protections should remain in place where they are of enduring importance but be removed or phased out if they no longer serve a purpose*”. This should apply broadly to every revision of regulation, not just in the context of a broad consumer safeguards review.

With respect of the specific legacy obligations considered by the Paper, Telstra agrees with the assessment of the Department that the following regulations should be retained, as they are working well: Emergency Call Service; Calling Line Identification; Number Portability; and Standard Terms and Conditions.

We also agree with the Paper’s assessment that other legacy regulations do not have enduring relevance and should be removed: Untimed Local Calls; Telstra Price Controls; Pre-Selection; Operator Services; and Itemised Billing. In the case of other legacy regulations, such as Directory Assistance, we believe it is an appropriate candidate to review the ongoing relevance of these obligations.

Telstra’s Low Income Measures Obligations should be removed or sunset

Telstra has a long history of providing telecommunications access for vulnerable customers, whether they be on low incomes or fall within a vulnerable category for other reasons. This commitment to vulnerable customers remains a core value of Telstra. We support measures to ensure nbn co meets its expectation to provide wholesale services that support affordable services for all consumers. If it does so, those affordable products and services can be sold on to end customers by all RSPs in competition with each other.

With the rollout of the nbn nearly complete, Telstra considers it is no longer appropriate for the obligation to provide affordable services to rest exclusively with Telstra. To this end, we believe:



-
- Telstra's Low Income Measures Carrier Licence Condition should be removed or sunset;
 - nbn co. should make appropriate low-income products – voice-only and voice/broadband - available to RSPs to provide to eligible customers; and
 - the Government should undertake a broad review of the needs of low-income customers and develop a social policy response to ensure these needs are best served in a way that promotes digital inclusion and addresses the way in which Australians use communications services. This review could include how the industry might continue to consult with consumer stakeholders (in lieu of the Telstra Low Income Measures Assessment Committee, LIMAC).



01 Introduction

Telstra welcomes the opportunity to comment on the Department of Infrastructure, Transport, Regional Development and Communications' (**the Department**) *Consumer Safeguards Review: Part C/Choice and Fairness Consultation Paper (the Paper)*.

Telstra strongly supports the review and revision of the existing consumer safeguards framework. The Consumer Safeguards Review (**the Review**) is a generational opportunity to establish a communications legislative and regulatory framework that is fit for purpose and reflects the ways in which consumers use communications services. A new framework should reflect increased competition in the retail service provider (**RSP**) market and the move away from legacy PSTN services.

The communications sector has a key role to play in enabling Australians to access the economic benefits of technological advancements. It is imperative that the outcome of the Review does not inhibit competition and innovation via the introduction of unnecessary and costly regulation. Rather, the new framework must strike the appropriate balance between the promotion of a competitive market and the protection of customers. It should be flexible, adaptable to ongoing change and create the right incentives for industry participants.

Common to all within the telecommunications industry – providers, regulators, customers and Government – is a desire for better outcomes for customers and more efficient regulatory processes (albeit there has sometimes been disagreement about the best way to deliver on that desire). The Review is an opportunity to harness that alignment and agree an optimal longer-term approach to regulation in the communications sector to ensure the delivery of great outcomes for customers.

02 Principles should inform the development of consumer safeguards

Regulatory intervention should be guided by objectives to inform policy makers where consumer safeguards are needed. The default should not be that policy objectives are always best achieved via regulation. There are a range of tools for agencies to promote the public interest, not least of which is a competitive market.

Enduring principles should inform the development of public policy and, if necessary, regulatory interventions. Consumer safeguards should be developed with reference to these principles to ensure the protection of customers and the public interest, and to promote digital inclusion.

Consistent with our previous submissions to the Consumer Safeguards Review, Telstra proposes the adoption of a set of principles to guide the development of appropriate policy outcomes. The following public policy objectives or principles are likely to remain relevant, regardless of future changes in the market structure, technology and communications use, to inform where regulation is likely to have an ongoing role.

- All Australians should be able to access telecommunications to enable participation in a digital society.
- Communications infrastructure should be functional and reliable.
- Communications markets should be open and competitive to encourage investment, innovation, and diversity.
- Consumers should have access to information and freedom to make informed choices based on their preferences.



-
- Consumers should have appropriate avenues for redress.
 - Consumers should be confident that their personal information is protected appropriately.

Regulatory interventions guided by policy principles have the benefit of enabling the regulatory framework to keep pace with technological change over time. As stated by the Chair of the ACMA:

“... the role of policy and regulatory principles are critical. If those principles are clear and uncontested, then they can be a constant guide to regulatory practice. Indeed, it may be that only principles can keep up with the pace of change in a sector such as this one. And our practice needs to be constantly directed towards them.”¹

03 Telstra supports a best practice approach to regulatory intervention

Telstra supports a best practice approach to regulation in which the most efficient and least market-distorting approach is adopted to resolve clearly identified problems. This approach requires an assessment of the problem to be addressed by all relevant stakeholders, and consideration of all the relevant non-regulatory and regulatory options (including their costs and benefits) to ensure that an effective solution with the least cost is introduced.

A range of regulatory and non-regulatory options can be used by regulators and/or industry to address various types of policy issues and market failures. Examples of these options include market-based solutions, education campaigns, self-regulation, co-regulation and direct government or statutory regulation.

In the telecommunications sector, a key intent of policy reflected in legislation is that the sector be regulated in a manner that *‘promotes the greatest practicable use of industry self-regulation’* and *‘does not impose undue financial and administrative burdens on industry participants’²*. These intentions remain relevant.

The way in which regulation is imposed on business impacts the compliance costs incurred which are, in turn, borne by customers. That is, the rules, and the way they are developed, matters. Rules that are too prescriptive and restrict methods of achieving compliance stifle innovation, increase compliance costs and ultimately do not benefit customers.

The following steps represent a best practice process for developing and implementing regulatory solutions:

- Problem identification – including consultation with all relevant stakeholders to be clear on the issue and the outcome to be achieved
- Option analysis of regulatory and non-regulatory interventions
- Decision on the preferred regulatory intervention (if warranted)
- Draft regulatory instrument
- Implement regulation
- Review regulation

¹ O’Loughlin, N., Telecommunications and Media Forum, IIC, 2018 <https://www.acma.gov.au/publications/2018-07/nerida-oloughlin-international-institute-communications-telecommunications-and-media-forum-2018>

² Telecommunications Act 1997, Section 4 http://classic.austlii.edu.au/au/legis/cth/consol_act/ta1997214/s4.html



These steps in the process should be applied to all situations where consideration is being given to solving a problem through regulation – whether it be Government, a regulator or industry making the decision.

3.1. The regulatory framework should have a pre-disposition toward co-regulation or self-regulation

When deciding on the preferred option for intervention, a future-focussed regulatory framework should have a built-in requirement or predisposition toward co-regulation or self-regulation, and it should avoid black letter regulation to the greatest extent possible to achieve the desired outcome efficiently.

Efficiency in the choice of regulation is a critical step for ensuring customers and industry gain the most benefits from regulation. Choosing a regulation that is too 'strict' for the circumstances results in:

- additional cost for Government, as Government's involvement is significantly increased;
- delays in new products and services for customers and, in the worst case, new products and services not being supplied, because of less flexibility or restrictions being placed on industry;
- outcomes being distorted further over time by regulations that are inflexible and out of date with changed circumstances; and,
- additional cost for industry that are ultimately passed on in the prices paid by customers.

To support this approach, Government policy should set high level customer outcomes that industry is required to achieve in response to the problem identified. As noted by the ACMA:

*"Whether the objectives are clearly defined by the government, legislation or the regulator. The research suggests it is optimal that policymakers and regulators are clear about what objectives, outcomes and behavioural change they are trying to effect through co-regulatory arrangements. A consistent process for identifying scope, development, enforcement and review is required."*³

The benefits of outcomes-based regulation are innovative approaches which best serve customers while avoiding costs and effort of complying with prescriptive rules. The UK's Department of Business describes this approach as follows:

A key attribute of the GBR approach is that it shifts the focus away from the detail of individual rules, which seek, in combination, to achieve a regulatory outcome, to the goal or outcome itself.

...

*The flexibility of the GBR approach is also argued to create incentives for regulatees to experiment and seek out better and more innovative methods of achieving a regulatory goal. To the extent to which this reduces costs, this can have impacts on competition, as each regulatee seeks out methods and practices which can reduce compliance costs and improve its position relative to its competitors.*⁴

The Australian Government has endorsed this approach in its Statement of Expectations – Australian Competition and Consumer Commission:

*"The Government's preference is for principles-based regulation that identifies the desired outcomes, rather than prescribing how to achieve them. An outcomes-based approach is more likely to accommodate change within the economy, allow for innovation and enterprise and reduce compliance costs by allowing regulated entities to determine the best way of meeting regulatory objectives."*⁵

³ <https://www.acma.gov.au/sites/default/files/2019-08/Optimal%20conditions%20for%20effective%20self%20and%20co%20regulatory%20.pdf>

⁴ Department of Business, Energy and Industry Strategy - 'Goals-based and Rules-Based approaches to regulation' 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714185/regulation-goals-rules-based-approaches.pdf

⁵ https://www.accc.gov.au/system/files/ACCC_Statement_of_expectations.pdf



Despite the benefits of this flexibility, we acknowledge the tension between outcomes-based goals and the need for (1) suppliers to have certainty as to what ‘compliance’ with an outcome looks like; and (2) a regulator’s need to be able to enforce non-compliance with regulatory obligations.

As such, we consider that, in most areas of consumer protection dealing with concepts of ‘choice’ and ‘fairness’, it is possible for Government to set the objectives and for industry to then develop code-based rules or guidance as to how the objectives can be achieved.

We discuss how this might work practically for essential matters relating to ‘choice’ and ‘fairness’ at Section 5.

04 The role of telecommunications-specific consumer protections

Currently, the telecommunications sector operates under a broad range of regulations, from direct regulation to self-regulatory arrangements, with the type of regulatory (or non-regulatory) intervention varying according to the issue being addressed. This adds complexity to the regulatory framework.

Consumer protections are delivered via a mix of broad consumer protection rules as well as sector-specific obligations which apply to RSPs. General consumer protections are provided by the Australian Consumer Law (ACL).⁶ The ACL applies equally to all sectors and covers general standards of business conduct, provides basic consumer guarantees for goods and services, and regulates the safety of consumer products and product-related services.

To supplement these rules, the telecommunications sector has an additional set of obligations aimed at safeguarding customers in the supply of telecommunications goods and services. Telstra considers the aim of sector-specific rules should be twofold: (1) to clearly set out expectations regarding industry behaviour in a way that reflects the operational reality of that sector; and/or (2) to address **an identified issue** particular to an industry.

The rationale for telecommunications-specific rules is that they represent an efficient regulatory incentive in the context of telecommunications. If industry-specific obligations are unnecessary or inefficient, then their reform or repeal is justified, because general consumer protections already exist in the ACL. As such, it is necessary to demonstrate that the telecommunications sector is fundamentally unique in ways that are relevant for policy towards the sector before sector-specific rules are made.

Targeted industry regulations tend to exacerbate regulatory burdens and the costs of imposing these upon industry must be weighed against any benefits. That is, industry-specific regulations must have the effect of enhancing the protection of customers in the sector than general rules under the ACL and should not place unnecessary burdens on industry, which ultimately are shared by customers.

4.1. Telecommunications-specific rules relating to ‘choice’ and ‘fairness’ should be made in response to an identified problem

The Paper’s first proposal recommends that telecommunications-specific consumer protection rules should cover ‘essential matters’ between customers (including small business) and their communications providers. While this may be the case, it is important to have a principled, best practice regulatory approach to determine what constitutes an ‘essential matter’ in the context of the policy outcome to be achieved.

The Proposal is informed by two ‘principles’ relating to ‘choice’ and ‘fairness’. In our view neither principle adequately reflects an outcomes-based approach to regulation or the current market reality.

⁶ Competition and Consumer Act 2010, Schedule 2



4.1.1. Principle 1 assumes a market failure without undertaking a best practice analysis to identify the problem

Principle 1 – Rules are needed to drive customer-focussed behaviour where market/commercial incentives are weak.

“Market/commercial incentives are likely to be weak where a customer has already signed up to a contract. In areas like sales practices, financial hardship and customer transfers, commercial incentives and/or competitive pressures are not always aligned to customer needs.”

This principle identifies circumstances in which regulatory intervention may be needed, rather than providing any guidance regarding the outcome to be achieved to ensure consumers are protected. The principle does not recognise that a regulatory intervention – or rule – should support a broader policy outcome. We do not dispute that rules may provide necessary consumer protections, but it is problematic to conclude that there are weak commercial incentives – and therefore rules are necessary - for all customer-focussed interactions that occur subsequent to a customer signing up for a service.

It is not only regulatory intervention that will drive customer-focussed behaviour in a competitive market. Changes to developments in the market, both structurally and in product design, must be reviewed regularly to ensure the enduring relevance of rules.

In fact, recent market developments have resulted in consumers having more choice and control than ever regarding their plans as well as their service provider. Telstra’s T22 transformation strategy is focussed on reinventing telecommunications products and services and delivering simplicity and transparency for our customers. As part of this strategy, we have moved away from lock-in contracts to month-to-month plans. While there may be some longer-term commitment associated with a device, this can be paid out with no penalty. An outcome of this strategy is that customers have a greater choice than ever to change their plans, or provider, as often as they desire.

The outcome of this market-leading change in the approach to customer contracting should not be underestimated. The barriers for customers to easily switch between providers have been removed which enhances the competitive landscape and, in turn, increases the incentives for RSPs to ensure their customers are satisfied. While Principle 1 is not wrong, it is increasingly irrelevant and should not be used to justify intervention in parts of the market in which it clearly does not apply.

Telstra is also currently undertaking to improve affordability testing at the point of sale. This involves improving the customer experience regarding credit assessment, data and IT systems developments, staff guidance and other processes to achieve improved outcomes.

Other examples of the way in which Telstra address customer needs is evidenced by our response to the COVID-19 pandemic. During this time, some of the initiatives we took to help our customers included: providing unlimited data at no additional charge to home broadband customers; offering additional data to our pre-paid and post-paid mobile customers; providing eligible pensioners with unlimited local, national and 13/1300 calls, and calls to Australian mobiles from their home phone; and pausing disconnections and encouraging customers in need to take up our financial hardship offerings. This response did not need to be directed by a regulatory intervention but was the right thing to do for our customers.

Finally, matters such as sales practices are found within generic consumer protections as well as telecommunications-specific rules such as the TCP Code. While we have not always got it right, we consider it appropriate that there is a single set of rules and a single regulator when dealing with this important consumer protection.



4.1.2. Consumers should be treated fairly and in good faith, but regulatory interventions should be guided by market failures

Principle 2 – Consumers should be treated fairly and in good faith by providers

“Consumers should be able to exercise informed choice and consent; products and services should perform as promised; issues should be resolved quickly; and all parties in the supply chain should work together and individually to deliver consumer outcomes”

It is irrefutable that consumers should be treated fairly and in good faith by providers. In fact, generic consumer protections relating to this principle apply across all industries. In addition, there are telecommunications-specific rules in place to ensure that consumers are treated fairly, and the telecommunications sector funds an external dispute resolution body, the Telecommunications Industry Ombudsman (TIO), to enable dissatisfied customers to lodge complaints against providers and independently resolve disputes.

Many of the telecommunications-specific consumer protections, including most listed under Principles 1 and 2, are found in the Telecommunications Consumer Protections Code 2019 (TCP Code). The interaction of the CCA and the TCP Code was described by the Australian Competition and Consumer Commission (ACCC):

*“The TCP Code, as it is now in force, contains significant consumer protections and imposes obligations on carriage service providers in response to **identified problem areas** in the telecommunications industry.*

...

In contrast, the ACL is a national framework for consumer transactions and contains economy-wide prohibitions, such as the prohibition against a person in trade or commerce engaging in conduct that is misleading and deceptive (CCA, Schedule 2, clause 18).⁷

Importantly, the sector-specific regulation should be targeted to identified problem areas and provide useful enhanced protections. Telecommunications-specific regulation over and above the CCA has been found to be of benefit:

“It is widely accepted that an effective industry code will address specific industry issues and consumer problems not covered by legislation, or elaborate on legislation to deliver additional benefits to consumers or clarify what needs to be done from the perspective of a particular industry to comply with legislation. The ACCC considers that the current TCP Code meets each of these objectives and is an essential component of the consumer protection framework in the telecommunications sector.”⁸

The safeguards contemplated by the Paper relate to ‘choice’ and ‘fairness’ and it is appropriate to consider whether the outcomes associated with these principles are being met by the market. If there is clear evidence that the market is not meeting these expectations, it is likely that any identified issue is an ‘essential matter’ that requires regulatory intervention. That is, Governments must consider the policy objectives of enduring importance and, in turn, identify the most appropriate regulatory intervention to achieve the desired result.

The Paper describes ‘choice’ and ‘fairness’ as:

‘choice’ - consumers need accurate, relevant and usable information about products and services so they can confidently choose those that meet their needs” and

⁷ ACCC submission on the draft revised Telecommunications Consumer Protections Industry Code, <https://www.accc.gov.au/system/files/MACE%20-%20Submission%20to%20CA%20on%20proposed%20changes%20to%20the%20TCP%20Code%20-%205%20Nov%202014.pdf>

⁸ ACCC, <https://www.accc.gov.au/system/files/MACE%20-%20Submission%20to%20CA%20on%20proposed%20changes%20to%20the%20TCP%20Code%20-%205%20Nov%202014.pdf>



'fairness' - consumers should be treated honestly and reasonably by their provider. This includes ethical selling practices, even-handed and easily understood contracts, accurate and timely billing, services that perform as described, and providers who respond promptly and effectively when a consumer experiences problems with the product or service, or financial hardship.

The content outlined in the 'choice' and fairness' principles is a reasonable starting position. In many cases it is not what has been regulated that is problematic, it is how it has been regulated. That is, the complexity of prescriptive rules across various instruments which makes the telecommunications regulatory landscape difficult to navigate.

4.2. Direct regulatory instruments are inflexible and do not deliver the best outcomes for consumers

In recent years, the pendulum has swung to preference the use of direct regulatory instruments to 'buttress' the consumer protections found in co-regulatory instruments, such as codes.

Our recent experience of the introduction of subordinate regulation such as industry standards, is that the process has several shortcomings, not least of which is the difficulty and costs associated with complying with the prescriptive obligations. In our view, the shortcomings of this type of regulatory intervention include:

- inadequate consultation;
- the use of prescriptive rules, rather than outcomes-based obligations;
- a lack of education regarding how to comply; and
- the lack of responsiveness, including the fact that legislative instruments are difficult to repeal, even when their ongoing relevance has diminished.

These shortcomings are each explained further below.

4.2.1. Inadequate consultation leads to poor outcomes

Government/regulators should spend additional time up-front, and prior to drafting an instrument, consulting with stakeholders to understand the operational realities of the industry and work collaboratively to define the problem and the consumer protection outcome.

The Paper highlights the speed with which the ACMA was able to respond to NBN consumer experience issues via the introduction of direct regulatory intervention as a measure of success, stating "*recent experience making the NBN consumer experience instruments... demonstrate how quickly these instruments can be made. Both were made by ACMA within six months of the Minister directing it to do so.*". However, if the regulation does not meet the policy objective as intended, or results in a disproportionate burden on industry, timeliness is not a true measure of success.

The Paper suggests recent reviews and amendments of the instruments illustrates that direct regulation can be responsive. However, significant time, effort and resources were required during the initial consultation on the instruments, the subsequent implementation of the instruments and the ongoing review of the instruments to amend the rules. Some of these efforts would have been unnecessary if there was better consultation prior to drafting.

We note that there is often pressure to move quickly to solve problems being experienced by customers and time is not always available.

"A lot of time is often spent trying to perfectly understand the problem rather than getting anything done about it. At some stage we have to act, working with the tools that we have at hand while still vigorously



pursuing reform where it is needed. Even if our regulatory tools can only be 80 per cent effective, that is 80 per cent better than nothing. And consumers do not want to wait until the perfect regulatory solution is available. They expect us to act quickly on their behalf.”⁹

However, the Government’s Statement of expectations – Australian Communications and Media Authority states that “... Where the exercise of its powers may have significant implications for regulated entities or the markets in which they operate, the ACMA will consult with industry, the Government and other relevant stakeholders”¹⁰. We consider that it is just as important to consider when to consult with industry as to how long the consultation will take. Working together with industry in the early stages will enable the sector to innovate and develop solutions in a more timely way.

Case Study – Telecommunications (NBN Continuity of Service) Industry Standard 2018

From April-December 2017, the ACMA conducted a program of work to gather information regarding problems experienced by consumers migrating to the NBN. In December 2017, the Minister issued the Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017, for the ACMA to produce a set of industry Standards within 6 months and for those instruments to commence within 3 months of being made. There was no industry consultation prior to the Minister issuing the Direction and the timeframes to develop and implement the Standards were unworkable.

From January to April 2018, the ACMA commenced consultations with Telstra and industry participants, including Communications Alliance. While this engagement was useful, it would have been much more useful to conduct this prior to issuing the Direction.

In April 2018 the ACMA began formal consultations on the draft instruments, including the Service Continuity Standard, four months into the six-month timeframe provided by the direction. The ACMA imposed the statutory minimum consultation period of 30 days for industry to respond.

The draft instrument contained several complex and difficult issues which needed careful consideration, including of the specific timeframes and processes to comply with the proposed obligations. Elements of the final Standard – i.e. what became section 23 of the final NBN continuity standard requiring us to prepare and send a remedial plan after 20 days and perform a technical audit after 40 days of a failed migration – were not included in the consultation draft.

Telstra – and other industry participants – raised several concerns with the prescriptiveness of the Standard and the proposed timeframe to implement the obligations in the draft Standard. We noted that there were many ways to achieve the stated objective “*The SC Standard should acknowledge that CSPs have a number of options to achieve this objective, and should incentivise them to adopt the option that best suits the customer and delivers service continuity most quickly, smoothly and cost effectively.*”¹¹ and also noted that “*The changes proposed by the current draft SC Standard to the industry’s existing migration arrangements are very significant. If the making of the SC Standard is rushed, there is significant risk of poor outcomes for consumers. Adequate time for implementation must also be allowed, noting that this will require extensive work to be done to develop new industry processes and potentially to negotiate changes to current commercial and regulatory arrangements.*”¹²

On 8 June 2018 Telstra was provided with a revised draft Service Continuity Standard which, for the first time, included a new Section 23 requirement. Telstra provided feedback on this new proposed obligation, advising that is unnecessarily prescriptive and will result in substantial additional cost and work for little or no consumer benefit.

On 21 June 2018 the ACMA issued the Service Continuity Standard with an implementation timeframe of 3 months, including the Section 23 requirements.

⁹ O’Loughlin, N. <https://www.acma.gov.au/publications/2018-07/nerida-oloughlin-international-institute-communications-telecommunications-and-media-forum-2018>

¹⁰ <https://www.communications.gov.au/documents/statement-expectations-australian-communications-and-media-authority#:~:text=The%20Statement%20of%20Expectations%20sets%20out%20the%20Government%E2%80%99s,published%20its%20Statement%20of%20Intent%20on%20its%20website.>

¹¹ <https://www.acma.gov.au/consultations/2019-08/nbn-rules-consumer-information-service-continuity-consultation-72018>

¹² *ibid*



The prescriptiveness of the obligations set out in the Standard were particularly difficult to implement operationally. For example, the remedial plan in section 23 had to be prepared and sent within a 4-day window but could not be sent until a 20-day window had expired and required processes that did not easily align to our operations. In addition, this and other numerous provisions (including those relating to interims), were similarly referenced in the Service Migration Determination which added further levels of complexity and meant solutions to meet these obligations were not simple.

Telstra had established systems and processes to meet the changing nature of the nbn technology mix. The Standard was inflexible and did not consider processes Suppliers had in place to communicate to customers experiencing difficulties migrating to the nbn. For example, Telstra already had comprehensive customer communications around the migration journey in place, keeping the customer updated if there were any delays and ensuring they were informed on progress through emails and phone calls.

[c-i-c] [end c-i-c]

4.2.2. Prescriptive rules are costly and stifle innovative solutions to problems

There is an inherent tension between prescriptive regulatory interventions and innovation. While the goal of regulatory interventions is to protect consumers, innovation and technology can be used to find better ways to serve customers. If regulations are not appropriately outcomes-based, then innovative solutions may not be 'compliant' with prescriptive rules. That is, while it is important to know what 'compliance' with an obligation looks like, defining a single, "one size fits all" method of achieving compliance is problematic.

In a world where technology changes rapidly, adaptive regulations and a more responsive approach must be reflected in the regulatory framework. If not, industry is required to maintain legacy processes at the same time as introducing new ways of serving customers.

For example, the Telecommunications (Consumer Complaints Handling) Standard 2018 is a prescriptive set of rules which sets out every step of the complaints handling process. It details what should be in a complaint handling policy, how a supplier must detail its internal escalation pathways and the ways in which consumers must be able to make complaints. Incorporating all the prescriptive elements into provider processes is complex, costly and, most importantly, unnecessary for delivering good customer outcomes.

Case Study: Telecommunications (Consumer Complaints Handling) Standard 2018

In 2018, the ACMA removed the 'comprehensive set of rules for carriage service providers' from Chapter 8 of the TCP Code and moved these to a Standard. This was to address "*gaps in complaints handling processes, including as a result of supply chain complexities.*"¹³

An example of the level of prescription is at section 8(h), which states that a consumer must be permitted to make a complaint "by telephone, letter, email and online". However, it is much more ambiguous in addressing supply chain issues, suggesting at Section 24 that other carriers must provide 'reasonable assistance'.

Alternatively, an outcomes-based objective could require providers to, for example: ensure customers are able to – and have information about how to – make complaints; know the status of their complaints; have certainty regarding the timeframes for resolution; how to escalate a complaint; and allow vulnerable customers or those with disabilities to make a complaint.

During the COVID-19 pandemic, Telstra introduced a new way for customers to lodge a complaint with us via our MyTelstra app, known as asynchronous messaging. For customers that were able to use this channel, it enabled them to carry on a conversation with our agents at a time that suits them, and we have found it to be a very successful way to engage with customers.

¹³ Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017
<https://www.legislation.gov.au/Details/F2017L01711/Explanatory%20Statement/Text>



We understand that this method will not suit all of our customers and we would not suggest that this should be the only method available. In particular, this method would not suit some of our most vulnerable customers. However, the issue with the CHS is that it is so prescriptive, there is no opportunity to replace **any** of our complaint handling channels with a new technology. That is, it does not allow for innovation and these new channels must be in addition to the several other ways customers can lodge a complaint. So long as the outcome ensures that all customers will be able to lodge a complaint, via as many methods as necessary, there should be no need to dictate what those methods must be.

4.2.3. Guidance on complying with direct regulation is not always adequate

In circumstances where new regulation is introduced, the ACMA has a role to encourage and promote compliance through education, including ways in which industry can comply with the regulations. The Paper suggests that direct regulation is beneficial as it is clear and unambiguous. This is not always the case. When industry has not been involved in the drafting of the rules, the intention and effect of the drafting may not be clear.

Case Study: The Telecommunications (Consumer Complaints Handling) Record Keeping Rule 2018

Clause 4.7.3(b) of the TCP Code requires several suppliers to provide details of their services in operation to Communications Alliance no later than 30 days after the end of each quarter. For the purposes of this clause, services in operation uses the definition in the Telecommunications (Consumer Complaints Handling) Record Keeping Rule 2018.

Using the RKR definition was intended to ensure consistency across providers to, in turn, ensure an accurate comparison of complaint performance. However, in practice, the definition of service in operation in the RKR was open to interpretation. There were several services which, depending on interpretation, may or may not be included within the definition.

[c-i-c]. [end c-i-c]

In response, industry—via Communications Alliance—had to develop its own interpretation of services in operation for the purposes of the Complaints in Context report.

4.2.4. Direct regulation is difficult to repeal

Direct regulation is inflexible and, once in place, is very difficult to repeal. Even in circumstances where the consumer benefit has diminished over time, there is often political pressure to maintain regulation to ensure there is no perceived risk of adverse impact to customers. It is only necessary to look at the Government's deregulatory agenda and its various red tape reduction strategies to understand how these burdens build up over time and take effort and political will to reform.

To remove any regulatory obligation, Governments and policy makers must be willing to consider the counterfactual. That is, what would have happened if the intervention did not occur and what will happen if it is removed. These things are often difficult to quantify, but it is not beyond us to make these assessments, and is necessary especially when products and technologies, and/or market structure, has changed significantly.

05 An outcomes-based co-regulatory and self-regulatory process will reduce complexity and benefit customers

Telstra recommends developing industry co-regulation and self-regulation options, so they become more attractive alternatives to black-letter regulation for policy makers, regulators, industry and customers.

The Paper suggests that the indirect enforcement of industry codes is problematic and that it '*arguably does not create strong compliance incentives* p15'. We disagree that there is a decreased incentive to comply with



codes because of the two-step enforcement process. It is incorrect to imply that compliance with codes is not mandatory, nor that industry will take a different approach to compliance with codes because of the enforcement pathway.

It is not the instrument, in and of itself, that guarantees compliance levels. That is, setting out rules in a directly enforceable Standard is not the solution to achieving high levels of compliance. For example, the ACMA recently announced that it found several large providers, including Telstra, had breached the obligations set out in the Service Continuity Standard¹⁴.

The greatest advantage of the code-making process is that it draws upon industry expertise to develop rules that are workable and, as a result, reduce the implementation impost. This benefit cannot be overstated. It is particularly important to draw upon this expertise in the development of technical codes which requires specialist insight into the operations of telecommunications equipment and operations, but it is true of all rules including consumer protection rules.

It is incorrect to assume that any current regulatory intervention is needed in perpetuity or that the ongoing relevance of the rules should not be subject to regular review. That is, the telecommunications landscape changes over time as technology advances and products on offer change, and market structures adapt over time. It is important to have a regulatory framework that allows for flexibility and review over time as well as regulations that can be amended and responsive.

Any review of regulation should not simply build upon current regulation as this increases complexity. For example, the TCP Code is a lengthy document that covers a wide range of topics. Each review of the TCP Code builds on this complexity. An outcomes-based review of the TCP obligations with an aim to simplifying requirements would be of great benefit.

One issue with the review of current regulatory interventions is that any assessment must be of the counterfactual, that is, what would industry's behaviour be if this regulation did not exist. This is another benefit of outcomes-based regulation, whereby the rules are simpler and the way in which industry achieves an outcome can change over time.

Case Study: Industry Code for Reducing Scam Calls

Since mid-2017, Telstra had processes in place to reduce scam activity affecting our customers by blocking scam call traffic from 'spoofed' telephone numbers. Despite this, Telstra noticed that the incidence of scam call activity was increasing and causing considerable harm to customers.

Telstra recognised that to eliminate scam calling requires coordination between industry and regulators. To address this, in January 2019, Telstra initiated a program of work with Communications Alliance to develop an Industry Code for Reducing Scam Calls. Industry participants, through Communications Alliance, worked with the ACMA and ACCC to agree a way forward to reduce scam calling activity via a common set of code rules. The Code addresses scam calling by formalising processes to share data and information between regulators and industry. It also imposes obligations to monitor networks for scam calls, block and trace the origin of identified scam calls with a view to disrupting scam traffic.

Telstra has been distributing data analysis, using information provided by the regulators, to other carriers. This has been key to kickstarting traceback efforts on scam call activity. That is, the data distributed by ACMA and ACCC allows carriers to trace the path of scam calls closer to the origins. The evidence has also been used to facilitate discussions with upstream carriers carrying the scam traffic, so that these upstream carriers may implement measures to reduce scam calling.

The Code is undergoing registration with the ACMA, after which compliance with the Code will facilitate timely sharing of information related to suspected scam calls. This will encourage more immediate blocking of verified scam

¹⁴ <https://www.acma.gov.au/articles/2020-08/telstra-optus-tpg-and-dodo-breach-nbn-service-continuity-rules>



calls, and importantly, traceback processes so that scam calls can be traced closer to the origins and addressed more effectively.

This is an example of industry working with regulators to determine an appropriate solution to a problem.

5.1. Opportunities to improve the code-making process

Telstra considers there are opportunities to strengthen the code-making process to achieve better outcomes by setting clear, outcomes-based objectives of intervention at the commencement of any development or review process. Many of the observations made within the Paper, such as the time it takes to develop codes, reflect the challenges of the current process. However, these are not insurmountable. We consider when Government is clear about what must be delivered and when, industry will meet the challenge, and will be incentivised to do so knowing that, if it fails, regulators will step in.

Regulatory Step	Process	Example
Problem Identification and Outcome Setting	Government should identify a problem or market failure with supporting evidence that there is an ongoing issue causing consumer harm. This should also relate to the set of telecommunications principles to ensure that it is an 'essential matter'. Proposals for regulation should be accompanied by a clear policy objective that is formulated after a substantive and transparent review, in accordance with the best practice process discussed above. Governments should engage with all relevant stakeholders – industry, regulators, consumer groups and the TIO - to clearly identify the problem, how it relates to telecommunications principles and what outcome must be achieved.	Government/regulators are aware of an issue with customers migrating to NBN. This relates to principles regarding 'access' to telecommunications as well as the 'reliability' of telecommunications. It is an essential matter which calls for regulatory intervention. In defining the high-level outcome to be achieved, we can look to the ACMA summary: Service Continuity Standard - " <i>CSPs and carriers to ensure that consumers are not left without a working telecommunications service for an unreasonable period when migrating to the NBN</i> " ¹⁵
Option Analysis	Understanding the outcome to be achieved, consideration should be given to how this can be achieved. In telecommunications-specific matters relating to choice and fairness, self- or co-regulation should be preferred and industry should be given the opportunity to develop effective rules.	For consumer safeguards such as service continuity, industry should be given an opportunity to solve a defined problem. If industry chooses not to introduce self- or co-regulation to solve for the problem, or if these measures do not achieve the outcome, the Minister or regulator could then decide to use black-letter regulation.
Draft Regulatory Instrument	Industry needs a clear understanding of what deliverables are expected from a process to ensure that the solutions meet those expectations. That is, clear communication and consultation in the initial stages will ensure expectations are set appropriately. Industry should be tasked with developing outcomes-focussed obligations in a way which reflects the operations of their businesses and, if appropriate, offer alternative ways to comply with outcomes-based obligations.	Industry could be tasked with developing a set of outcomes-focussed solutions to the identified problem. For example, guidance could state: - Industry must devise a set of options to ensure service continuity in the process of migrating to the NBN. This can include alternative methods for RSPs to deliver this outcome for consumers if each outcome means that a consumer is not left without a working service for X days... - Rules and options will capture all RSPs equally and will apply to wholesale providers to support RSPs as necessary

¹⁵ <https://www.acma.gov.au/consultations/2019-09/post-implementation-review-nbn-consumer-experience-rules-consultation-282019>



	<p>The role of other stakeholders needs to be clear. The current code development process involves lengthy negotiations between consumer representatives, regulators and industry over the wording of code clauses. This is unsatisfactory and results in extensive delays.</p> <p>Once the obligations are drafted, in the case of co-regulation, these could be submitted to the ACMA for registration. The ACMA should commit to registering codes within a specified period.</p>	<p>Industry has X months to submit a draft to the ACMA</p> <p>If the options submitted by industry are not appropriate, the ACMA will develop a set of standards in a manner which address the public interest considerations appropriately and in a way that does not impose undue burdens on the industry.</p>
Implement Regulation	<p>Industry should be given adequate time to transition and implement any changes and time to allow the solutions implemented to take effect to determine if they have resulted in the intended consumer outcomes.</p>	<p>The Code of Practice should outline the timeframe for implementation which would be agreed by industry during the development of the rules and reflect the operational reality of any system or IT changes needed to implement process change.</p>
Review Regulation	<p>Code reviews should be flexible and responsive and focus on the original outcome.</p> <p>The review process should focus on changes in relation to those aspects of customer demand or industry behaviour that gave rise to the problem identification in the first step of this process. That is, a review should consider the ongoing relevance with respect of the original outcome, not simply build upon the regulation.</p>	<p>A review should consider whether consumer detriment is ongoing.</p> <p>Any review of the Service Continuity Standard should have regard to whether it is necessary to retain obligations in relation to migrations.</p>

06 Compliance and Enforcement

Telstra supports a graduated and risk-based approach to compliance and enforcement. As part of this approach, a regulator can take a ‘carrot’ or ‘stick’ approach to compliance. In the first instance, a culture of compliance across the sector should be encouraged via education.

To promote a culture of compliance within an industry, the regulator has a role to guide, advise and educate organisations about the rules. The ACMA’s Compliance and Enforcement Policy states that:

“A significant amount of our work is aimed at encouraging voluntary compliance. Our broad range of activities in this area include the publication of guidance documents and the use of formal and informal consultation mechanisms such as discussions, seminars, consultation papers and advisory committees. We may also publish the outcome of investigations to explain our response to issues and thereby provide guidance on compliance to industry.”¹⁶

This approach is particularly important considering the diversity of the telecommunications industry, with providers of all sizes operating in a competitive market. Given the different sizes, providers have varying resources to dedicate to compliance and the regulator has an important role in ensuring all participants are aware of the rules and understand what compliance with those rules looks like.

¹⁶ ACMA Compliance and Enforcement Policy <https://www.acma.gov.au/compliance-and-enforcement-policy>, <https://www.acma.gov.au/compliance-and-enforcement-policy>



Within an organisation, it is easier to promote compliance when there is clear guidance on what is required. Compliance within an organisation requires investment in process development, training, and developing controls to measure compliance with those processes. This culture is more easily engendered when the rules are clear and there is appropriate support provided by the regulator.

6.1. Enforcement

Telstra supports a graduated and proportionate approach to enforcement action. It is appropriate that the regulator considers the nature of the breach and the level of consumer detriment to determine an appropriate response. The ACMA states:

“Where we are of the view that a regulatory breach has occurred, we will take regulatory action commensurate with the seriousness of the breach and the level of harm. We will generally use the minimum power or intervention necessary to achieve the desired result, which, in many cases, is compliance with the relevant obligation.”¹⁷

The ACMA’s enforcement powers, and its approach to the exercise of those powers, should be flexible. There should be a clear delineation between the powers to determine a breach and the decision about whether to impose a remedy and what that remedy should be. The overarching principle in enforcement should be ‘proportionality’. If a breach has been established, ‘proportionality’ needs to be considered at two levels:

- Whether any enforcement action is required at all – it should be clear that the ACMA is not required to impose a remedy if it establishes a breach. Enforcement action may not be a proportional response where the breach is of a minor nature, where the party which was in breach has clearly taken steps to achieve future compliance or where the impact was relatively minor. A clearer, more structured discretion around enforcement action by the ACMA would itself provide an incentive for parties in breach to promptly take remedial steps if they knew there was a possibility of no enforcement action where they took the initiative to fix the problem.
- The nature of the remedy which is imposed - the focus of enforcement should be on achieving compliance with the relevant regulatory obligation. The ACMA’s ‘tool kit’ could usefully include more incentive-based remedies to provide alternatives to the traditional punitive enforcement model.

07 Enduring relevance of Legacy Obligations

Telstra supports a responsive regulatory framework which allows Governments and industry to remove or adjust regulatory obligations in response to market or technology developments. As such, we support Principle 5 of the Paper which states: *Consumer protections should remain in place where they are of enduring importance but be removed or phased out if they no longer serve a purpose.*

7.1. Consumer Protections of Enduring Importance

We consider the following obligations are embedded into current processes and are working well and agree with the assessment by the Paper that these should be retained. In theory, we believe that these obligations would be best placed in industry co-regulatory codes and there is no need for these to be retained in legislative instruments. However, given that these processes are working well, and the effort required to effect this change would distract from other important reforms, we do not object to the retention of these in primary legislation.

¹⁷ *ibid*



7.1.1. Emergency Call Service

Telstra agrees with the Paper's assertions that Emergency Call Services will continue to be important for assisting the safety of individuals and the community.

7.1.2. Calling Line Identification

While Telstra does not consider the provision of calling line identification to be a matter that requires ongoing regulation (as the regulation applies to legacy technology and CLI has now been uniformly adopted for that technology), Telstra does not object to an ongoing regulatory obligation to provide CLI due to the fact that it is already embedded into current processes.

7.1.3. Number Portability

Telstra supports the retention of obligations regarding number portability as these obligations ensure consumers can retain their number when changing providers.

7.1.4. Standard Terms and Conditions

Telstra supports the retention of this obligation in its current form.

7.2. Legacy obligations that are no longer relevant and should be removed

7.2.1. Untimed Local Calls

In accordance with Principle 5, Telstra strongly supports the removal of this obligation. We note that (1) most voice calls no longer relying on the PSTN for interconnection; and (2) where carriers implementing a charging structure based on providing bundled services for a capped fee (i.e. there is no differentiation of local zone call costs from national zone call costs), there continues to be a reduction in the importance of individual call tariffs for consumers.

For example, Telstra's simplified fixed line plan now includes unlimited local calls, calls to standard national numbers and mobile numbers in Australia. Accordingly, there would not be a compelling commercial reason for carriers/CSPs to charge for local calls on a timed basis if this obligation were removed.

Moreover, the price for the Local Carriage Service (LCS) is already regulated at the wholesale level, resulting in a competitive retail market such that this additional retail regulation is unnecessary. Additionally, in the TCPSS Act, the 'standard zone' (used to determine which calls are to be offered on an untimed basis) is defined by reference to terms of supply offered by the 'Australian Telecommunications Corporation' prior to July 1991. That is, the legislative provisions are outdated and are several steps removed from current network technologies and call charging structures.

Local interconnect calls (that traverse one network to another) have been capped (by commercial agreement) to mirror the retail obligation to provide untimed local calls – this adds to billing and IT complexity, as well as validation disputes with interconnecting carriers. Removing the untimed local call obligation will enable the industry to simplify and streamline interconnect billing and validation.

7.2.2. Telstra Price Controls

Telstra strongly supports the removal of Telstra price controls. The reserve power to determine price caps to be set for a range of Telstra's fixed line services is an asymmetrical obligation (i.e., it regulates Telstra alone) and was legislated at a time when Telstra was a vertically integrated provider of (highly-used) fixed line services and competition was weak.



This regulation is no longer fit for purpose due to the following market developments:

- a significant migration away from Telstra's network (to NBN);
- demand for fixed voice services has fallen significantly (as a result of mobile and IP services)
- there remain strong price controls and access obligations in place at the wholesale level (via the declared services regime under the CCA); and
- Telstra is only one of many participants in the competitive retail market.

Further, there has been no regulation under this reserve power to determine retail price controls for 5 years. As the ACCC noted at p. 42 of its *Communications Market Report 2018-2019*, use of traditional fixed voice services continues to decrease as existing voice services on the copper network are migrated over to VoIP on the NBN. As the usage and relevance of fixed voice services continues to decline, so too does the relevance of Telstra price controls in respect of fixed line voice services.

It is also the case that customers of fixed line services are benefitting from a highly competitive market. In order to compete with its wholesale customers (to whom Telstra is required to supply wholesale services at regulated prices) in the retail market, Telstra must offer competitive retail prices.

We do not believe that any price regulation is required in the retail market given competition. If, in future an operator gained monopoly power, then the government has other options for facilitating market competitiveness.

7.2.3. Pre-selection

Telstra supports the removal of pre-selection obligations. Pre-selection was legislated to encourage competition for calls that carriers other than Telstra could provide (long distance, fixed-to-mobile and international), when there was no other competitive constraint on Telstra's pricing of those call types. Without pre-selection, Telstra could leverage its monopoly PSTN network to lock end users into a voice service bundle including the pre-selectable call types.

Pre-selection is no longer necessary, as a result of the following critical developments:

- the declaration by the ACCC of fixed line access services, which allows carriers other than Telstra to offer the full bundle of voice services to end users (based on regulated wholesale prices) such that end users can choose to be a customer of the CSP that best meets their voice service needs (instead of simply pre-selecting to that CSP);
- the migration of a significant amount of voice calling to mobile and fixed IP networks, particularly on the NBN (noting that pre-selection does not apply to mobile or IP networks);
- the minimal demand for pre-selection from end users— when preselection was introduced, pre-selected calls represented 50% of Telstra's interconnection traffic (as at August 2020, pre-selected calls represent only 0.4% of Telstra's interconnection traffic); and
- the structure of retail voice plans, which now include unlimited domestic calls of all types, such that the rates for individual voice calls (such a pre-selectable call types) are no longer a point of competitive difference among carriers.

The *Telecommunications Act 1997* (Cth) (**the Tel Act**) includes an obligation for certain carriers/CSPs to provide over-ride dial codes allowing end users to select alternative CSPs on a call-by-call basis.¹⁸ This obligation is supported by the *Pre-selection Determination 2015*, which includes the provision of over-ride dial codes.¹⁹ Telstra recommends that over-ride dial code obligations are removed entirely from the regulatory framework (i.e. the Tel Act and the Pre-selection Determination), because:

¹⁸ *Telecommunications Act 1997* (Cth), s353.

¹⁹ *Pre-selection Determination 2015*, s7(2) and s8(2).



-
- there are significant costs and complexities involved for carriers when attempting to recover costs from over-ride customers with whom the carrier has no direct billing relationship (and over-ride related defaults are common); and
 - removing over-ride obligations will reduce inter-carrier business processes and industry cost and complexity (e.g. provision of billing name and address processes under Industry Codes).

7.2.4. Directory Assistance

Telstra supports the principle that consumer protections should be removed or phased out when they are no longer of enduring importance. We agree that the current operator directory assistance obligations in Tel Act Sch 2 are an appropriate candidate for review on this basis, given the declining rate of use of regulated directory services and changes to consumer behaviour. We recommend the review extends also to the related obligations in Telstra's Carrier Licence Conditions.

The role of regulated directory services has changed for consumers over the years, due to factors including the rise of online search engines as a popular source for information about phone numbers and addresses, consumer privacy concerns tipping the balance in favour of silent line residential listings, and near ubiquitous use of mobile phones and stored personal contacts.

The directory assistance services obligations in clause 8 of Tel Act Sch 2 were legislated in the early interconnection days, to support market entry by competing carriers/CSPs as competitors would not have access to directory databases (in the same way that Telstra did). In response, an obligation was included to require a carrier/CSP to provide directory assistance services on behalf of another if requested. The service Telstra offers is now in very limited use by other CSPs, with most major landline providers independently providing their own directory assistance services.

In terms of the directory assistance services Telstra provides directly to end-users, we currently offer three main services, accessible by both landline and mobile customers (with the latter form of access not mandated by regulation). All services have continued to see material decline in use over the years. The services Telstra offers commercially (1234 and 12456 call connect) are more widely used than its regulated 1223 service.

[c-i-c] [c-i-c ends]

In addition, Telstra offers a 12551 Directory Assistance helpline to registered Telstra customers with a disability or special requirement to access national directory information, receiving over 58,000 calls to this service last financial year. This operator assisted service is distinct from our regulated 1223 directory assistance service.

Telstra has also historically offered a 1225 International Directory Assistance service. However we are closing this service in October due to the low usage of the service and very limited number of international directories now made publicly available as consumer preferences and options for access to such information have changed, and privacy considerations have led to growing volumes of silent listings.

Overall, the importance of CSP supplied directory services to consumers has declined materially since the relevant obligations were included in the Tel Act and in Telstra's Carrier Licence. From a peak of nearly 500 million calls per year to Telstra Directory Assistance services in the late nineties, total volumes are now less than a twentieth of that number and continue to rapidly decline.

7.2.5. Operator Services

Telstra supports the removal of this obligation in accordance with Principle 5. It is a business necessity for CSPs to provide their customers with a facility to report faults and a CSP who failed to do this would not survive within a competitive retail market. On this basis, it is not necessary to mandate the provision of operator services, as the market will dictate a higher standard than the legislation provides in any event. Further, other CSPs do not want the network operator to be a point of contact for their customers and it is inappropriate for the legislation to require this.



Carriers/CSPs already offer a range of fault reporting options to their customers (via generic numbers or online means such as websites, apps and social media). Therefore, this obligation no longer serves a purpose and should be removed.

It is a condition of section 7 of Telstra's Carrier Licence that Telstra must make operator services available to its end users of STS. If the obligation to provide operator services is removed from the Tel Act, Telstra recommends that this obligation be removed as a condition under Telstra's Carrier Licence to avoid an unwarranted asymmetrical regulatory overhang.

7.2.6. Itemised Billing

Telstra strongly supports the removal of this obligation. The obligation to provide itemised bills is already addressed comprehensively in the TCP Code, and it is industry codes (rather than legislation) that are the most appropriate place to specify obligations of this nature. This is because industry codes are more dynamic and flexible than legislation or regulations and are easier and faster to update in response to changes in technology or pricing models (e.g. the move to bundled pricing structures).

The 'unlimited bundle' structure of most fixed voice retail product offerings means that there is far less need for an itemised breakdown of charges. There has been an industry trend towards greater openness and transparency in billing. For example, by moving to new pricing structures such as subscription models with unlimited calls, where customers pay for agreed services in advance and under which there are no rated charges, this negates the need for customers to see itemised charges.

08 Telstra's Low Income Measures

Telstra considers that it is no longer appropriate that the obligation to provide affordable services rests exclusively with Telstra. To this end, we believe:

- Telstra's Low Income Measures Carrier Licence Condition should be removed or sunset;
- nbn co. should make appropriate low-income products – voice-only and voice/broadband - available to RSPs to provide to eligible customers; and
- the Government should undertake a broad review of the needs of low-income customers and develop a social policy response to ensure these needs are best served in a way that promotes digital inclusion and addresses the way in which Australians use communications services. This review could include how the industry might continue to consult with consumer stakeholders (in lieu of the Telstra Low Income Measures Assessment Committee, LIMAC).

8.1. It is not appropriate or necessary for Telstra to bear an asymmetric low-income obligation

Telstra has a long history of providing telecommunications access for vulnerable customers, whether they be on low incomes or fall within a vulnerable category for other reasons. This commitment to vulnerable customers remains a core value of Telstra. It is enshrined in our purpose – “to build a connected future so everyone can thrive” and it is enshrined in the “Digital Futures” stream of our Sustainability strategy²⁰. In view of these ongoing commitments and the markedly changed nature of modern communications services and the Australian market, we support the removal of the Carrier Licence Condition relating to low income measures.

To be clear, the contractual obligations set out in the Telstra Universal Service Obligation Performance Agreement (TUSOPA) relate to the availability of a standard telephone service. This obligation should not be

²⁰ <https://1u0b5867qsn1ez16a1p2vcj1-wpengine.netdna-ssl.com/wp-content/uploads/2020/09/Telstras-Bigger-Picture-2020-Sustainability-Report.pdf>, p51



conflated with a principle of affordable telecommunications, the obligation found within Telstra's Carrier Licence Condition. There is no reason, as the Paper proposes, to create a nexus between these two distinct obligations and extend the low income measures obligations to the end of the TUSOPA contract period.

The repeal of the obligation is necessary for two reasons:

- the current obligation does not reflect the significant structural changes in the market, whereby Telstra is no longer the dominant market player. An obligation that rests solely with one service provider distorts the market and greatly reduces customer choice; and
- the obligation should be reviewed to reflect modern consumer preferences and ensure that affordability protections provide genuine digital inclusion for vulnerable Australians.

Telstra's regulated Low Income Measures do not reflect modern consumer preferences or use. Broadband services are now at least as important to consumers as voice services, and any social policy that focusses on voice fails to acknowledge this shift.

Telstra's Carrier Licence Condition requires us to maintain a Low Income Package ('Access for Everyone'). In addition to our regulated obligations, Telstra provides other products and services for financially vulnerable customers under our program 'Everyone Connected'. We structure the products to sit outside the regulated obligations as this provides us with more flexibility in how we deliver these benefits to our customers.

These product offerings demonstrate Telstra's commitment to serving vulnerable customers, over and above our regulated obligations. This, in our view, further supports the position that it is not necessary to maintain obligations in our Carrier Licence Condition and that we would continue to deliver benefits to customers regardless.

Telstra's commitment is also evidenced by our continuing investment in digital inclusion programs such as Tech Savvy Seniors, Social Seniors, inDigiMOB and Deadly Digital Communities, Mobile My Way, as well as the Australian Digital Inclusion Index research to inform policy and programs. This is further demonstrated in our generous responses to assist customers during COVID-19 and the recent bushfire emergencies. All this is underpinned by our regular consultation with consumer stakeholders.

8.2. NBN Co must play a key role in supporting offers for low income customers

A key objective of **nbn co.** is to *ensure all Australians have access to fast broadband as soon as possible, at affordable prices, and at least cost.*²¹ We support measures to ensure nbn co meets its expectation to provide wholesale services that support affordable services for all consumers. If it does so, those affordable products and services can be sold on to end customers by all RSPs in competition with each other. Accordingly, we consider it is no longer appropriate that the obligation to provide affordable services rests exclusively with Telstra.

Fixed-line voice-only services remains an important communication service for some customers, including vulnerable customers. As such, Telstra has advocated for NBN Co – as the national wholesale broadband provider – to offer a \$10 per month wholesale voice-only service across all technologies to all RSPs on an equal basis. This would allow RSPs to develop competitive retail market offers to these customers and, for the first time, allow these customers to choose their provider and not be obliged to get their communications services from Telstra. NBN Co's current \$22.50 wholesale charge (which applies equally to 12/1 broadband services as to voice-only services) is too high to allow the supply of this service at affordable retail prices without RSPs facing unsustainable margins **[c-i-c] [end c-i-c]**.

²¹ <https://www.nbnco.com.au/content/dam/nbnco2/2018/documents/Policies/soe-shareholder-minister-letter.pdf>



Telstra generally supports the argument of consumer bodies such as ACCAN for **nbn co.** to develop a permanent targeted offer of a \$20 per month wholesale broadband product (at a speed of 50/20 Mbps), enabling RSPs to supply affordable NBN broadband services to eligible low income and vulnerable customers. This would enable RSPs to offer a range of affordable fixed broadband products and services to eligible customers making a vital difference in the ability of these customers to access government, education and health services, as well as employment opportunities and maintaining social connections. This approach would also promote choice and competition in the market. In these circumstances, eligibility would need to be assessed and validated by RSPs but could be based on Service Australia criteria such as holding a Pensioner Concession Card or Health Care Card that can be easily verified at the time of application.

A competitive retail market will ensure that there are low cost options available to consumers to choose from and individuals can choose the plan or package that suits their needs.

A revised and significantly expanded Telephone Allowance could be paid to all eligible low-income customers to enable them to make a choice of service to be subsidised. This would allow eligibility to be determined and assessed by Government agencies.

There may be benefits to this approach, allowing eligible customers choice of product, including mobile services. That is, not all customers need access to fixed broadband services and some customers, if given the option, would prefer mobile communications technologies.

This approach is preferable to regulating low income products for other technologies, such as regulating a low income mobile product. The mobile market is competitive and already offers choice for customers. For example, Telstra has already developed a low income mobile product – \$30 Value Mobile Offer – available to eligible customers. This demonstrates that industry will deliver for these customers without the need for regulatory intervention.

A reinvigorated Telephone Allowance paid directly to customers should enable them to choose the products – fixed or mobile – that suits the needs of an increasing digital population.

8.3. Government should conduct a holistic review into the needs of vulnerable customers

It is important that consideration is given to defining the needs of vulnerable customers and what digital inclusion means in a society where access to broadband is increasingly important for participation. There are a range of questions to be determined to develop an appropriate position going forward. For example:

- What are the needs of low income/vulnerable customers?
- How should eligibility be determined?
- How should a subsidy operate and who should administer the subsidy?
- How should consumer stakeholder consultation continue to address issues for low-income consumers?

These are important questions to inform how a low income telecommunications policy should operate. Access to broadband is increasingly important and vital for many Australians to access education and other important services. The Government must determine what appropriate access to communications services looks like.

Telstra will always play a role in delivering these services as per its corporate values and sustainability commitments, but it should not be burdened with an unnecessary asymmetrical regulation to achieve this objective.



ATTACHMENT A: Consultation Questions

Questions:

- 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 those matters. Are these the right starting points?**

We support a regulatory framework that is guided by a set of public policy principles. Regulatory intervention should only be contemplated when there is evidence of market failure. We consider it appropriate that Part 6 provides examples of matters, rather than matters that must be dealt with by industry codes. However, we note that some of the examples in Part 6 are no longer as relevant as they once were. For example, references to fax marketing could be removed from this list.

- 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?**

We support a re-design of the regulatory framework which supports outcomes-based regulation. In doing so, it should be clear which parts of the supply chain play a part in achieving an objective. For example, retail service providers manage the relationship with the customer. The rules to meet outcomes-based objectives should apply to parts of the supply chain as relevant. That is, if a retailer is reliant upon a wholesale provider to meet an obligation, then the wholesale provider should be bound by the rules.

- 3. To what extent should third parties such as communication ‘apps’ providers be captured by any new rules, and why?**

In accordance with best practice regulatory approaches, intervention should only be pursued when there is clear market failure and should be applied in a way to minimise cost and complexity.

The Government should promote competition as the primary way to achieve public policy goals. If there is market failure, intervention should be guided by best practice regulatory principles to ensure that the benefits outweigh the costs, and complexity is minimised. Complexity inhibits the ability of an RSP to deliver a great customer experience. Telstra’s strategy is designed to transform the customer experience by simplifying and digitising our product offerings and customer interactions. It will be important that the new framework does not undermine competitive RSPs’ efforts to simplify, digitise and improve customer experience.

As per any approach to regulatory intervention, rules should only be directed towards third party providers after a clear problem has been identified and intervention is determined to be the only way in which the problem can be addressed. Until such time, it is not appropriate to presume that rules should be broadened to capture other participants in the market.

- 4. What role should direct regulation, industry codes and guidelines play in a revised safeguards framework?**

Telstra supports an outcomes-based regulatory approach whereby Government sets clear expectations and industry is tasked with determining a set of rules or guidance as to how that outcome will be met. A future-focussed regulatory framework should have a built-in requirement or predisposition toward co-regulation or self-regulation, and it should avoid black letter regulation to the greatest extent possible to achieve the desired outcome efficiently. An outcomes-based approach enables industry to develop innovative solutions and provides the necessary flexibility to ensure the regulatory framework can adapt over time.

If industry is given an opportunity in the first instance to develop rules via a code process and fails to develop adequate safeguards that achieve the goals, or the safeguards do not work over time, then it is appropriate that Government develop direct regulatory instruments.



Direct regulation is also appropriate when Governments are regulating a monopoly provider – such as the wholesale reliability standards contemplated under Part B of the Consumer Safeguards Review.

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

Code processes can be strengthened to be more responsive to changes in the market. Industry needs a clear understanding of the policy objective and what deliverables are expected from a process to ensure that the solutions meet those expectations. That is, clear communication and consultation in the initial stages will ensure expectations are set appropriately.

Industry should be tasked with developing outcomes-focussed obligations in a way which reflects the operations of their businesses and, if appropriate, offer alternative ways to comply with outcomes-based obligations.

The role of other stakeholders needs to be clear. Lengthy negotiations between consumers, regulators and industry over the wording of code clauses causes extensive delays during code development and review processes.

Once the obligations are drafted, in the case of co-regulation, these could be submitted to the ACMA for registration. The ACMA should commit to registering codes within a specified period.

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

ACMA can make standards that apply to participants in a section of the industry if: (a) directed by the Minister to do so (section 125AA of the Tel Act); (b) an ACMA request to develop an industry code is not complied with in a timely way (section 123); or (c) ACMA forms a view a code is deficient and issues have not been remedied by the industry (section 125).

Telstra considers that it is appropriate that in response to consumer safeguards relating to 'choice' and 'fairness', industry co-regulation and self-regulation processes should be prioritised to promote more efficient outcomes and that the 'norm' should be that the ACMA should only make standards in (b) and (c) above.

This differs from circumstances in which the ACMA is considering regulatory intervention when there is no competitive market, such as service standards on monopoly wholesale providers.

7. What additional regulatory and/or enforcement tools should be made available to the ACMA?

The ACMA's enforcement powers, and its approach to the exercise of those powers, should be flexible. There should be a clear delineation between the powers to determine a breach and the decision about whether to impose a remedy and what that remedy should be. The overarching principle in enforcement should be 'proportionality'. The ACMA should also focus activities on promoting compliance with obligations across the sector.

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

The currently available civil penalty and infringement notice maximums are appropriate. There is no evidence to suggest that the current penalty and infringement maximums do not act as a deterrent for non-compliance.

9. Which legacy regulatory obligations should continue to be mandated by regulation?

Telstra considers that the following legacy regulatory obligations should continue to be mandated by regulation, for the reasons given in answer to Question 10:

- Emergency call service
- Calling line identification
- Number portability
- Standard terms and conditions



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

- Emergency call services

Telstra considers that the existing regulatory framework in relation to emergency call services is appropriate, and while the market would likely continue to provide emergency call services if the relevant regulatory obligations were removed, these obligations provide clarity and ensure consistency among carriers.

- Calling line identification

If this obligation were removed, Telstra considers that the market would likely continue to provide calling line identification services, as this feature is already well established in respect of standard telephone services; it has been uniformly adopted by carriers and is expected by end users.

- Number portability

Telstra considers that regulatory obligations in respect of number portability services should be retained (as they provide clarity and ensure consistency) – provided such regulatory obligations keep up to date with changes to technology and products.

- Standard terms and conditions

Telstra considers that the market would likely continue to offer products and services on standard terms and conditions, even if these regulatory obligations were removed.

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

Telstra considers that the following obligations/services have been replaced or superseded in the market, and for this reason should be removed from the regulatory landscape.

- Untimed local calls

A significant portion of voice calls no longer rely on the on the public switched telephone network, to which the Untimed Local Calls obligation applies, for interconnection. Additionally, the market has moved to implementing a charging structure based on bundled services for a capped fee such that the length of call does not determine its cost to the customer.

- Telstra price controls

A competitive telecommunications retail market (combined with significant migration from Telstra's network to NBN and regulation of prices at the wholesale level) means that an ability to impose retail price controls solely for Telstra is no longer necessary or appropriate. This is supported by the fact that the power to impose retail price controls has not been used in 5 years.

- Pre-selection

There is minimal market demand for pre-selection (as at August 2020, pre-selected calls represent only 0.4% of Telstra's interconnection traffic), likely as a result of the significant amount of voice calls that have migrated to the NBN (and to which pre-selection does not apply) and fixed to mobile substitution over time. Regulated wholesale prices and the move by industry to a "bundling" price mechanism for voice services means that voice call pricing is no longer a point of competitive difference among carriers.

- Directory assistance services

Telstra supports the principle that consumer protections should be removed or phased out when they are no longer of enduring importance. We agree that the current operator directory assistance obligations in Tel Act Sch 2 are an appropriate candidate for review on this basis, given the declining rate of use of regulated directory services and changes to consumer behaviour. We recommend the review extends also to the related obligations in Telstra's Carrier Licence Conditions.



- Operator services

It is a business necessity in a competitive market for carriers to provide their customers with a means to report faults and service difficulties. Further, in addition to specific operator services facilities, there are currently numerous avenues for end users to report faults and service difficulties (including generic contact numbers, websites, apps and social media).

- Itemised billing

Due to the industry shift towards unlimited bundle/capped pricing structures, and because itemised billing requirements are already comprehensively addressed in industry codes (which are more dynamic and flexible than regulations), there is no longer a need to require itemised billing for standard telephone services at the primary legislation level.

12. 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?

Telstra considers that it is no longer appropriate that the obligation to provide affordable services rests exclusively with Telstra. To this end, we believe:

- Telstra's Low Income Measures Carrier Licence Condition should be removed or sunset;
- nbn co. should make appropriate low-income products – voice-only and voice/broadband - available to RSPs to provide to eligible customers; and
- the Government should undertake a broad review of the needs of low-income customers and develop a social policy response to ensure these needs are best served in a way that promotes digital inclusion and addresses the way in which Australians use communications services. This review could include how the industry might continue to consult with consumer stakeholders (in lieu of the Telstra Low Income Measures Assessment Committee, LIMAC).