



Consumer vulnerability: expectations for the telecommunications industry

Australian Communications and Media Authority

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Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia.

About Financial Counselling Australia

FCA is the peak body for the financial counselling profession in Australia. It is a not-for-profit organisation that:

- Provides resources and support for financial counsellors;
- Advocates for a fairer marketplace;
- Works to raise the profile of financial counsellors;
- Advocates to increase access to financial counselling; and
- Works to improve hardship processes for people in financial difficulty.

What Financial Counsellors Do

Financial counsellors support people in financial difficulty providing advice and advocacy. Working in community organisations, their services are free, independent and confidential. Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks.

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Executive Summary

FCA welcomes the opportunity to provide feedback on the Australian Media and Communications Authority (ACMA) draft “Consumer vulnerability: expectations for the telecommunications industry” and the Statement of Expectations (SoE) contained therein.

While congratulating the ACMA on this initiative, we note that the reason it is necessary is that the telecommunications industry is not meeting community expectations to behave fairly.

Regrettably, as evidenced by over a dozen reviews of the telecommunications sector in the last three years, and the ACMA’s own regulatory compliance reports, there is very little will within the industry to change.

Telecommunications is an essential service, and all Australians accessing telco services need to be treated fairly. We would therefore welcome the SoE being an enforceable regulatory instrument.

1. SUMMARY OF RECOMMENDATIONS

1	The acknowledgement that telecommunications services are essential services should be reflected throughout the document, not just in the context section.
2	ACMA should either make this statement an enforceable regulatory instrument or use its powers to direct a specific review of the TCP code within the next 12 months to incorporate the expectations in the SoE, rather than waiting for its planned review in 2024.
3	In the SoE, ACMA should not exclusively focus on characteristics of a 'vulnerable' consumer but also on the barriers to accessing basic essential telecommunications services for all consumers.
4	There needs to be an additional, or overarching priority: the requirement that every telco conducts an annual review of their policies, practices, and complaints to identify the barriers that exist for vulnerable customers to access their products, seek timely customer support or hardship assistance, and remedy inappropriate contract arrangements.
5	The outcomes in priority one should focus on identification, interaction, and assistance of vulnerable customers. Production of policies, training and oversight are important inputs, but are not outcomes.
6	The outcomes in priority two should be measurable and include the production of regular reports about reduction in the number of reported instances/complaints of mis-selling and evidence of the generation, marketing and uptake of low-cost affordable plans that are easy for consumers to switch to.
7	The outcomes in priority three should include evidence of multi-channel customer support options – online, telephone and chat services provided for extended hours with translator support services available and metrics around time taken to respond to direct customer queries.

2. AN ENHANCED TELECOMMUNICATIONS CODE IS A PRIORITY

Key Points

- The acknowledgement that telecommunications services are essential services should be reflected throughout the document, not just in the context section
- In the absence of a robust Telecommunications Consumer Protections (TCP) Code, ACMA's initiative to issue a statement of expectations is welcomed
- While a strong statement, our concern is that the outcomes articulated in the SoE are not enforceable. ACMA should therefore seek to make the SoE an enforceable regulatory instrument or direct an early revision of the TCP Code to incorporate the expectations articulated in this statement.

2.1 Telecommunications are essential services

We fully support the acknowledgement by ACMA that telecommunications services are essential services and its admission that 'individual experiences in accessing and using telecommunications services can be uneven...' ¹ We would like to see, however, the statement being more reflective of the role telecommunication plays in everyone's lives throughout each of the priorities in the SoE, not just in its context statement.

Recommendation: The acknowledgement that telecommunications services are essential services should be reflected throughout the document, not just in the context section.

We surveyed financial counsellors in April 2021, and it was very clear from their feedback that their clients rely on having accessible and appropriate telco services to meet their everyday needs. This point is illustrated in some examples below of direct feedback provided from survey participants:²

'The impact of telco debt on a client is more than financial. Without a phone or internet, clients are unable to perform most functions (banking, Centrelink reporting, job applications, etc). Telcos have very little care for people on a low income and do not understand the impact of telco debt.'

¹ ACMA, Consumer vulnerability: expectations for the telecommunications industry. Draft for consultation. July 2021 p.7

² Financial Counselling Australia (FCA), Telcos and Financial Hardship: Feedback from the Frontline, April 2021. <https://www.financialcounselingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/>

‘A phone is an ESSENTIAL service in today’s modern world. The ability to just cease service provision by the telcos, often leaves our clients with their hands tied when it comes to negotiating a reasonable hardship plan directly with the telcos. When a financial counsellor intercedes the clients always say, “why wasn’t I able to get that arrangement?”’

2.2 A Statement of Expectations in the absence of a viable Code of Practice

We welcome the impending release of the SoE by ACMA but are concerned that the priority outcomes within it are unenforceable. How will the expectations for the telco industry’s support of vulnerable consumers be monitored or audited by ACMA and will evidence of non-compliance be reported publicly?

More fundamental however, is the fact that this Statement will join the ever-growing body of evidence about issues in the telco industry reported in the last three years (see Appendix 1), and despite the evidence and calls for change, organisation-wide responses to financial hardship assistance by the sector have remained largely cosmetic.

We are not confident that the SoE, no matter how well constructed, will influence demonstrable change. What is needed is a stronger Telecommunications Consumer Protections (TCP) Code; one that is more specific about consumer protection practice and outcomes than currently exists. Moreover, ACMA’s powers to enforce the Code should be more explicit and regular reporting on code compliance more prominent.

Given the number of continuing and recent reports about concerning practices in the telecommunications industry, ACMA should use its powers to direct a specific review of the code within the next 12 months, rather than waiting for the code’s planned review in 2024 and the inevitable industry-driven slow phasing in of recommended changes over subsequent years.

Recommendation: ACMA should either make this statement an enforceable regulatory instrument or use its powers to direct a specific review of the TCP code within the next 12 months to incorporate the expectations in the SoE, rather than waiting for its planned review in 2024.

3. IDENTIFYING VULNERABILITY

Key Points

- The Statement’s description of vulnerability is generally sound; however we encourage ACMA to not exclusively focus on characteristics of a ‘vulnerable’ consumer and more on the barriers to accessing basic essential telecommunications services for all consumers. This would present a richer focus on outcomes under each of the priority areas in the SoE.

ACMA proposes that when identifying consumers who may be vulnerable, telcos should consider consumer vulnerability in terms of the circumstances that create risks of harm, detriment, or disadvantage in consumers’ interactions with the telecommunication market. Assessing vulnerability in this way is consistent with other industries and regulators and we are broadly supportive of this approach but raise the following issues for consideration.

While the description of vulnerability in the Statement is sound, it is a ‘deficit’ list setting out the sorts of problems a consumer might have, rather than a telco considering whether its practices present barriers for a customer to access essential telecommunication services in the first place.

Like many at the ACMA hosted consumer roundtable, we consider it worthwhile to emulate the approach/language around vulnerable consumers taken by the Essential Services Commission in Victoria in developing its Getting to Fair strategy.³ That strategy recognises that vulnerability is not a static state and rather than focusing on the characteristics of an individual, it focusses on minimising the barriers to accessing an essential service.

‘A person experiencing, or at risk of experiencing, vulnerability is someone who experiences barriers to accessing or engaging in the essential service.... As a result of those barriers, that person experiences economic and/or social exclusion or harm. Barriers include event-based circumstances, systemic factors and market-based factors.’⁴

We also know that describing support as being for vulnerable customers can discourage people from identifying as vulnerable and/or accessing help that is

³ Essential Services Commission, ‘Getting to fair’ strategy, August 2021, <https://www.esc.vic.gov.au/other-work/regulating-consumer-vulnerability-mind>

⁴ Ibid. p.7

available to them.

*'I work in a very poor area, I see many clients, on pensions that have been up sold to big plans they do not need and most of the time cannot use. I hear regular stories from clients that go into the telco stores just for a pre-paid mobile and walk out with a very expensive mobile with all the extras and an unaffordable plan. I asked one of my clients if she felt comfortable to tell the salesperson she did not want and could not afford the plan or the phone, the client said she felt too shy to say anything.'*⁵

⁵ Financial Counselling Australia (FCA), Telcos and Financial Hardship: Feedback from the Frontline, April 2021. <https://www.financialcounselingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/>
Submission from Financial Counselling Australia

4. PRIORITY AREAS

Key Points

- We consider the five priority areas are appropriate.
- We consider the outcomes should be measurable and focus on actual outcomes to be achieved, rather than the inputs that support their achievement.
- The inputs – policies, training, remuneration frameworks, product design and marketing and so on - should still be articulated in the SoE, but under a separate heading in each priority area.
- We recommend an additional, or overarching priority: the requirement that every telco conducts an annual review of their policies, practices, and complaints to identify the barriers that exist for vulnerable customers to access their products, seek timely customer support or hardship assistance, and remedy inappropriate contract arrangements.

Overall, the priority areas are well constructed, and the expectations and examples are well founded. We make some recommendations about how the outcomes in the SoE could be strengthened, changing the focus of the outcomes to ones that are measurable and auditable and directly relate to impacting and improving customer experience. The outcomes section however could be better flagged as ‘ACMA expectations’ as they primarily contain expected actions and inputs (most of which we support and consider critical), rather than outcomes. Potentially, an additional ‘expected outcomes’ heading could be added with a few targeted outcome measures articulated for each priority area.

We know telcos have a raft of policies, practice statements and checklists that are designed to guide culture, training, sales practice, and organisational and operational behaviours. These are important in any organisation. How often though, do the telcos apply an overarching lens to their suite of policies and procedures to identify the barriers that exist for vulnerable customers to readily access their products, seek timely customer support or hardship assistance, and remedy inappropriate contract arrangements? This would be a reasonable expectation for any sector committed to improving customer experience and exhibiting strong consumer protection values and standards.

Recommendation: We recommend an additional, or overarching priority: the requirement that every telco conducts an annual review of their policies, practices, and complaints to identify the barriers that exist for vulnerable customers to access

their products, seek timely customer support or hardship assistance, and remedy inappropriate contract arrangements.

3.1. Priority area 1: Internal business practices

Telcos embed a culture and operating environment that supports better-practice policies and processes for identifying, interacting with, and assisting vulnerable consumers

The articulated goal of this priority area is good, and we suggest that the outcomes here are structured against those three specific elements in relation to customers who may be vulnerable: identification, interaction, and assistance.

While policies and practice statements are essential aspects, they are precursors (inputs) to assist in achieving outcomes. What is of critical importance is how policies, training and oversight translate into the interactions telco staff actually have with customers. Can they readily identify a customer who is vulnerable? How does the interaction (query, sales, contract, complaint handling) change when vulnerability triggers are identified? Are hardship procedures understood by all customer-facing staff and when activated, are they responsive to customers in need?

In our April 2021 survey, financial counsellors raised numerous issues about failures of telco staff to identify and assist vulnerable customers. Two examples are:

'Lack of consistency and identified procedures within telcos is a significant issue. What reads well as a policy does not always translate into a prompt or clear outcome – often involves an unreasonable amount of correspondence, negotiation and follow up.'

'Many clients have telco contracts they simply cannot afford, and we spend a great deal of time dealing with this. This simply comes down to the lack of affordability assessment at the point of sale.'

'Overall, the whole experience needs to change. If they call up, they are told to go into a shop front. If they go to the shop, they tell you to call. When working remotely it was worse to deal with telcos. A lot of the devices and services that clients had were not suited to what the client needed and their location. Some clients had Wi-Fi services and mobile plans in areas that had no internet. You can tell when dealing with telcos that they are just trying to get a sale, not in the interest of the client at all. The hardship procedure is a nightmare to deal with for all of them. It can be months before you get a response for a client.'

Recommendation: The outcomes in priority one should focus on identification, interaction, and assistance of vulnerable customers. Production of policies, training and oversight are important inputs, but are not outcomes.

3.2. Priority area 2: Selling and contracting

Consumers are sold products appropriate to their needs and circumstances

This priority area in financial counsellors' experience has very poor levels of compliance. 80 percent of the financial counsellors who responded to our survey said they had clients where mis-selling had occurred.

'I had an intellectually handicapped client who was offered a new and additional product every time he phoned in to say that he couldn't afford to pay his monthly account. He ended up with 5 mobile phone numbers and a multitude of products and services that he didn't use. Total account was \$586 per month for a person on a Disability Support Pension.'

'The root cause of many of the problems identified are telco sales practices. There are inadequate affordability checks and mis-selling. Vulnerable people are provided with devices they don't need, don't understand, or can't afford. They then find that telco financial hardship responses are inadequate.'

Contract terms are overly complex, remuneration structures are conflicted when sales volumes commissions incentivise mis-selling, and there is limited proactive marketing of low-cost affordable plan options.

The stated outcomes should be measurable and could include the production of regular reports about reduction in the number of reported instances/complaints of mis-selling and evidence of the generation, marketing and uptake of low-cost affordable plans that are easy for consumers to switch to.

To support the outcomes, there should be a change to the remuneration framework for sales staff with less emphasis on incentives for sales outcomes and a primary focus on incentives for proper affordability assessments of clients and evidence of matching client needs and circumstances to the products provided. There should also be penalties for inappropriate up-selling and mis-selling.

Recommendation: The outcomes in priority two should be measurable and include the production of regular reports about reduction in the number of reported instances/complaints of mis-selling and evidence of the generation, marketing and uptake of low-cost affordable plans that are easy for consumers to switch to.

3.3. Priority area 3: Customer service

An accessible and inclusive telecommunications market where telcos understand, identify and assist consumers who may benefit from additional or specialised support.

There are two key elements of the customer service priority area: accessible customer support channels and clear evidence that staff in any customer facing role can readily identify customers in vulnerable circumstances and take their circumstances into account in their interaction with the customer. In our view, telcos need to assess and consider the barriers they create to delivering both aspects.

In terms of accessible customer support channels, outcomes should include:

- Evidence of multi-channel customer support options – online, telephone and chat services provided for extended hours with translator support services available;
- Metrics around time taken to respond to direct customer queries; and
- Provision of plain English information on websites with links to customer service channels.

Outcomes relating to identifying and assisting more vulnerable customers, could include:

- Evidence that policies, training and oversight are effective in ensuring customer facing staff can identify signs of vulnerability in a customer and reflect that in their sales practice, customer support and hardship arrangements.

Recommendation: The outcomes in priority three should include evidence of multi-channel customer support options – online, telephone and chat services provided for extended hours with translator support services available and metrics around time taken to respond to direct customer queries.

3.4. Priority area 4: Financial hardship

Telcos support those struggling with their bills so they can retain access to their services

Our survey asked financial counsellors to rate the hardship policies and practices of the telcos. Telcos are seen as providing 'much worse' or 'worse' hardship responses compared to the big four banks, non-major banks and electricity retailers.

It was more common than not for financial counselling clients to be:

- contacted by a debt collector (51% of financial counsellors said this happened regularly or all the time, and 30% said it happened sometimes)
- offered an unaffordable hardship arrangement (50% of financial counsellors said this happened regularly or all the time, and 29% said it happened sometimes).

The expectations in this priority area are well expressed and it is appropriate that they go further than the TCP Code in expecting telcos to have flexible contract terms especially around switching contracts, tailored repayment arrangements and having limited reasons to restrict services to customers. Unfortunately, the ACMA will not have the power to enforce compliance with any requirements that are not explicit in the current TCP Code.

In our view, telcos need to be more proactive in identifying people who need hardship assistance, not just reactive when a customer contacts the telco seeking payment relief or when they contact a customer as part of a collection cycle.

To our earlier point, financial counsellors experience a range of barriers in telco practice that make hardship arrangements difficult to negotiate. These include:

- difficulty in contacting hardship teams;
- delays in response to requests for assistance;
- repeated and duplicated requests for evidence from victim/survivors of abusive relationships; and
- reluctance by telcos to offer affordable payment arrangements

3.5. Priority area 5: Disconnection

Disconnection is a last resort and only undertaken after consultation with the affected consumer or as part of an agreed financial hardship arrangement.

The stated goal of disconnection being a last resort is essential, but the outcomes in this priority area do not fully support this statement and are not measurable. In the energy sector, last resort disconnection of a customer on a hardship program is a

requirement and energy suppliers' hardship policies approved by the Australian Energy Regulator must reflect this.⁶

Section 47 of the Retail Law requires that a retailer must give effect to the general principle that disconnection of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

Section 45(3) of the Retail Law provides that, in approving a customer hardship policy, the AER must have regard to the following principles:

- a) the supply of energy is an essential service*
- b) retailers should assist hardship customers by means of programs and strategies to avoid disconnection solely due to an inability to pay energy bills*
- c) disconnection of premises of a hardship customer due to inability to pay bills should be a last resort option*
- d) residential customers should have equitable access to hardship policies and those policies should be transparent and applied consistently.*

ACMA could draw upon the explicit requirements in the energy sector in strengthening the articulated expectations in this priority area of the SoE.

⁶ Australian Energy Regulator, AER Customer Hardship Policy Guideline, March 2019 at <https://www.aer.gov.au/system/files/AER-Customer-Hardship-Policy-Guideline-March-2019.pdf>

APPENDIX 1 – The ever-growing body of evidence about issues in the telco industry

Report or Action	What it was about
2021	
<p>Telecommunications Industry Ombudsman, ‘Responding to consumers in financial hardship’, August 2021</p> <p>https://www.tio.com.au/reports/responding-consumers-financial-hardship</p>	<p>A systemic issues report that reveals while most telcos have robust policies for dealing with financial hardship, the policies are not applied consistently. Consumers in vulnerable circumstances continue to experience barriers when accessing support.</p>
<p>Australian Communications and Media Authority, ‘Expectations for telcos dealing with vulnerable consumers’, July 2021</p> <p>https://www.acma.gov.au/articles/2021-07/expectations-telcos-dealing-vulnerable-consumers</p>	<p>The regulator is “looking to improve the way the telco sector supports consumers in vulnerable circumstances”. The ACMA also released an audit looking at how telcos were supporting this customer group. While this found some positive practices, the areas of concern included inadequate training and the need for more consistent monitoring of sales staff.</p> <p>The fact that the regulator needs to intervene is telling in itself.</p>
<p>Telecommunications Industry Ombudsman, ‘Helping telco customers sign up to the right phone and internet products’, May 2021</p> <p>https://www.tio.com.au/sites/default/files/2021-05/TIO%20Systemic%20Report_Helping%20Telco%20Consumers%20sign%20up%20to%20the%20right_fa_HiRes.pdf</p>	<ul style="list-style-type: none"> • Advertising and point-of-sale information does not always cover key terms • Online information about telco products and services can be difficult to find and understand • Providers do not always responsibly promote or sell telco products and services • Consumers sometimes unknowingly sign up for products or services they do not need
<p>Australian Competition and Consumer Commission, ‘Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers’, May 2021</p> <p>https://www.accc.gov.au/public-registers/undertakings-registers/telstra-corporation-limited and https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers</p>	<p>Telstra was fined \$50 million by the Federal Court for unconscionable conduct in the mis-selling of telco products to First Nations people</p>

<p>CHOICE, ‘Telstra accused of overselling to seniors’, 12 May 2021</p> <p>https://www.choice.com.au/electronics-and-technology/phones/phone-plans/articles/telstra-accused-of-over-selling-to-seniors</p>	<ul style="list-style-type: none"> • Some senior customers complain Telstra sold them products they didn't want or need • Two former staff members describe an "aggressive" and "competitive" sales culture
<p>Financial Counselling Australia, ‘Telcos and Financial Hardship: Feedback from the Frontline’, April 2021</p> <p>https://www.financialcounsellingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/</p>	<p>This is a survey of financial counsellors. The survey showed that:</p> <ul style="list-style-type: none"> • Overall, telco hardship practices are poor. The survey ranked the hardship responses of the telcos on a scale of 1 – 10 (where 1 was the lowest rating). Telstra scored 6.3, Optus 5.6 and TPG/Vodafone 4.4. • Mis-selling is common, with around 80% of financial counsellors saying they have clients with debts where mis-selling has occurred • Affordability checks are inadequate, which places people under financial stress
<p>Australian Communications and Media Authority, ‘Telco financial hardship programs: views from financial counsellors’, February 2021.</p> <p>https://www.acma.gov.au/sites/default/files/2021-02/Telco%20financial%20hardship%20programs%20-%20views%20from%20financial%20counsellors_qualitative%20research.pdf</p>	<p>Qualitative research with 10 financial counsellors about their experiences with telcos on behalf of clients. Financial counsellors pointed to inappropriate sales practices that meant customers struggled to repay, as well as poor telco hardship practices.</p>
2020	
<p>Consumer Action Law Centre, ‘The Trouble with Telcos Stories from 2020’, November 2020.</p> <p>https://consumeraction.org.au/report-the-trouble-with-telcos-stories-from-2020/#:~:text=The%20telco%</p>	<p>Documented the vital role of financial counsellors in assisting people struggling with telco debt. The report described common problems telco customers were facing including the rejection of payment plans or unaffordable hardship arrangements.</p>
<p>Consumer Policy Research Centre, ‘Consumers & COVID-19 August Results Snapshot’, September 2020.</p>	<p>Quantitative research that estimated 5.7 million Australians had a recent negative experience with their telecommunications provider</p>

https://cprc.org.au/app/uploads/2020/10/Monthly-Policy-Briefing_September-2020.pdf	
<p>Australian Communications and Media Authority, ‘Telco consumer credit checks: Findings of shadow shopping study’</p> <p>https://www.acma.gov.au/sites/default/files/2020-06/Shadow%20shopping%20study%20of%20telco%20consumer%20credit%20checks.pdf</p>	<p>The ACMA conducted a shadow shopping exercise into the credit practices of the three major telcos. This revealed a number of deficiencies, particularly for in-store sales. The sales process focuses on credit risk, not affordability.</p>
2019	
<p>Telecommunications Industry Ombudsman, ‘Systemic Insight: Sales Practices Driving Consumer Debt’</p> <p>https://www.tio.com.au/sites/default/files/2019-05/TIO-Systemic-Insight-Sales-Practices-Driving-Consumer-Debt-f.pdf</p>	<p>The report identified common selling practices driving consumer over-commitment. These were:</p> <ul style="list-style-type: none"> • Credit assessments that focused on the telco’s commercial risk appetite, not the person’s ability to afford the contract • High pressure sales environments including commission-based sales and a lack of care when interacting with people in vulnerable circumstances • Allowing customers to obtain multiple or additional post-paid plans with relatively low barriers, even though these transactions risk people becoming over-committed
2017	
<p>Financial Counselling Victoria, ‘Rank the Telco’</p> <p>https://accan.org.au/files/Grants/Rank%20the%20Telco%20Report.pdf</p>	<ul style="list-style-type: none"> • A survey of financial counsellors ranking the hardship responses of the telcos on a scale of 1 – 10 (where 1 was the lowest rating). • Optus scored 4.0, Telstra 3.7 and Vodafone 3.2.