

**COMMUNICATIONS
ALLIANCE LTD**



Consumer Safeguards Review, Paper B
COMMUNICATIONS ALLIANCE SUBMISSION
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About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

INTRODUCTION

Communications Alliance welcomes the opportunity to comment on the Part B Discussion Paper of the Consumer Safeguards Review. We are in agreement with the Department that the current Consumer Safeguards are in need of review, both because they are primarily based around voice services, and also because the current duplicative and complex regulations drive up costs, don't promote consumer choice, and do not provide the most effective protections for consumers.

A new framework should be adaptable, efficient, and promote competition as the most effective way to achieve results for consumers. Best practice regulation, as previously identified by the Government, in combination with agreed principles, is the most appropriate approach to designing a new framework. Best practice identifies regulation as a last resort option, focusing on a competitive market to produce results, with government intervention only when there is a clearly identified market failure.

Designing this new framework must be a multi-stage and consultative process. The complexity and changing nature of the market, structure of telecommunications delivery, and consumer preferences necessitate this for a framework being designed for today, and this becomes even more necessary as we consider that this framework is intended for a future market, for which we cannot precisely predict nor analyse market weaknesses or failures.

We appreciate that the Department has provided the discussion paper as a first step in this ongoing process. Our submission addresses each of the principles outlined by the Department, and then presents a set of targeted proposals from Industry.

Following discussions with the Department, we did not see it as necessary to comment on the detailed proposals in the Part B paper, but it should be noted that a lack of commentary on the Department's specific proposals does not indicate support or agreement with those proposals. We are concerned that a number of those proposals did not include a clear identification of a problem in need of a solution, nor a demonstration that the regulatory actions proposed are optimal – both steps which are required in the development of best practice regulation.

Finally, it is important to note that in a healthy competitive landscape, various Industry members will have differing views. We have presented agreed-upon positions in this paper and addressed some of the varying viewpoints on specific questions. For example, within our membership, there are differing viewpoints on whether the framework should be applicable only to broadband, or be developed as technology neutral. On this and other topics, Communications Alliance encourages the Department to consider submissions from our individual members.

PRINCIPLES AND FRAMEWORK

Agreed consumer safeguards principles

An efficient consumer safeguards framework will need to be well-designed from the ground up, to avoid duplication, gaps, and conflicting regulation – all of which are impacts of the current regulatory framework. Beginning with agreed principles/objectives for the framework is a vital step in this process, to ensure that each decision taken is in the interest of those principles.

To ensure that a future Consumer Safeguards framework is comprehensive and efficient, it would be best approached using the same principles across all Parts, both during the review and in the ultimate execution of any outcomes. We hope the Department will take the below principles, proposed by Communications Alliance in [our submission](#) to Part A, under serious consideration, and will work with Industry and other stakeholders on establishing agreed principles across all parts of the Consumer Safeguards Review before proceeding with next steps.

Access

- All Australians should be able to access telecommunications to enable participation in a digital society;
- A ‘basic essential service’ should be available to all Australians; and
- Communications infrastructure should be functional and reliable.

Choice

- Communications markets should be open and competitive so as to encourage investment, innovation and diversity of choice.

Rights

- Consumers should have access to information to allow them to make informed choices, based on their preferences;
- Consumers should have appropriate avenues for redress; and
- Consumers should be confident that their personal information is protected appropriately.

Achieving consumer safeguards objectives

Policy makers and Industry should collaborate to consider a range of methods to achieve the objectives outlined in the above principles. This would include through a competitive market, self-regulation, co-regulation, and if necessary, regulatory intervention. The current framework has been in place for at least 20-30 years. When designing a new framework for roughly the same period, it should acknowledge that technology is likely to change drastically over this period. Therefore, the framework should avoid being designed in a way that is likely to impose regulatory burdens that would prevent innovation.

Competition and markets provide the best outcomes to consumers. Successive governments have recognised this through reforms directed at enhancing competition in the fixed line retail segment, while separately, the development of the mobile market has demonstrated the success of achieving consumer-focused objectives through competitive market forces.

The ACCC has previously recognised the success of competition in developing a strong mobile market for consumers in a range of fora, including decisions, reviews, and speeches by the Commissioner. Competition has resulted in “networks that differ from each other in terms of coverage, technology and quality provide more choice for consumers and more

competitive tension between operators,”¹ and “if Australians are to keep the high standards of mobile services that they currently enjoy, competition is the only way to achieve that. We cannot become complacent.”²

In addition to the established benefits of competition, the Telecommunications Act established the following intention:

Telecommunications Act 1997, Section 4: Regulatory policy

The Parliament intends that telecommunications be regulated in a manner that:

- (a) promotes the greatest practicable use of industry self-regulation; and
- (b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.

This has been quite successful, as self-regulation and co-regulation have supported innovation and quick adaptation to consumer preferences in a range of ways. For example, by encouraging providers to work together on vital technical and operational coordination such as mobile number portability, but allowing for light-touch regulation and encouraging competition, co-regulation has struck a balance which benefits consumers. The Internet of Things Alliance (IOTAA) is, without regulatory intervention, bringing together industry players to increase consumer security and grow the industry - an example of an industry of which Australia is on the forefront. Australia was recently recognised as one of the top 16 countries in the world for innovation by the US Consumer Technology Association,³ and we contend that the use of self and co-regulation to encourage adaptability and innovation contributed strongly to this recognition.

This success can also be seen in the significant decline in complaints following the 2012 revision of the Telecommunications Consumer Protections Code. As providers are most connected to their customers preferences and knowledgeable about their technical and operational capabilities, they are best able to identify the appropriate methods – that will allow for small and mid-size operators to continue innovating and offering varied products to their customers – for consumer protection.

The Telecommunications Act has established the intention that telecommunications 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, but without compromising regulation's effectiveness of achieving the Telco Act's objectives.

We do recognise that there may be areas where regulatory intervention is necessary as a ‘safety net’ due to market failure. When this occurs, it should be through established best practice regulatory principles, discussed in the next section.

An efficient consumer safeguards system will use a combination competition, self- and co-regulation, and regulatory intervention – with an intentional and analytical approach to any actions beyond reliance on a healthy and competitive market, utilising the first principle in the Australian Government Guide to Regulation: “Regulation should not be the default

¹ ACCC, ACCC, 2017, Domestic mobile roaming declaration inquiry, Final Decision, October, p.2

² ACCC Chair, Rod Sims, “Competition & the 5G spectrum”, ACMA Radcomms 2018, 30 October 2018, <https://www.accc.gov.au/speech/competition-the-5g-spectrum>

³ Communications Day, 14 January 2019

option for policy makers: the policy option offering the greatest net benefit should always be the recommended option."⁴

Best practice regulation

When regulation is clearly identified through a transparent and consultative process as necessary, it should be appropriately targeted, proportionate, and intentional. The first step in developing such regulation is to identify and analyse a specific problem for which a regulatory solution needs to be designed.

Any government or regulator must be able to clearly identify the problem that is being addressed through regulation. Good regulation should only address a problem the market has been given a reasonable chance to address but has failed to provide sufficient protections to consumers, and should be developed through consultation "in a genuine and timely way with affected businesses, community organisations, and individuals...and avoid creating cumulative or overlapping regulatory burdens."⁵

In an evolving market such as telecommunications, with rapid rates of innovation and change, it will be vital for the development of regulation to include significant consultation with market participants – including small businesses and innovators – with specific care to identify unintended consequences of regulation.

As was also discussed in our submission to Part A, and recognised by the *Guide to Regulation*, it is important to have a straightforward regulatory structure with a clear delineation of responsibilities and lack of duplication. The duplication of instruments such as record keeping rules, and requirements to provide compliance information on overlapping instruments to different regulatory bodies, creates significant compliance costs for providers, which are ultimately passed on to customers, and create a focus on process and documentation. This focus on process and documentation means compliance is not focused on how best to assist customers, but on how to comply with often confusing and at times conflicting rules.

The regulatory framework must also be crafted in a way that will be adaptable over the coming years, with straightforward expectations and ongoing reviews to test the continuing relevance of any instruments. The regulatory framework should be reviewed with sufficient frequency so that any regulation remains relevant and where competition creates an impetus for improving service levels and reliability, prescriptive regulation can be relaxed (or moved into co-regulatory instruments), and direct intervention targeted to areas where this remains appropriate.

⁴ Australian Government Guide to Regulation, Page 2,
https://www.pmc.gov.au/sites/default/files/publications/Australian_Government_Guide_to_Regulation.pdf

⁵ Ibid.

COMMENTARY ON PRINCIPLES PROPOSED BY THE DEPARTMENT

Principle 1

Telecommunications is an essential service, and the entire industry needs to be responsible for keeping consumers connected.

Industry agrees with this important principle, with one important qualification.

We certainly agree that the entire industry needs to be responsible for keeping customers connected and that there needs to be a continuing framework of cooperation and coordination between industry players in pursuit of ensuring a positive customer experience.

It is, however, equally important to ensure that industry participants at the different levels of the supply chain are expressly responsible and accountable for the customer solution elements that are within their control.

Where there is a retail relevant issue, regarding the relationship with the customer, the RSP is the responsible party. Where there is a network issue at the wholesale level, then the relevant network provider is the responsible party.

In the context of services provided over the **nbn**, for example, there are multiple parties involved in providing the end-to-end service. At the operational level, industry has put in place a number of important inter-operator Codes and Guidelines to facilitate such coordination during the customer migration process and thereafter.

It is important to note that with respect to any issue the end user has, the first step should involve the end user identifying and reporting the issue to their RSP, with whom they have a contractual relationship. The RSP is the entity that has a direct relationship with the customer and will be able to effectively resolve some of the end user's issues. To the extent that an RSP needs to liaise with a wholesale provider to address the end user's issue, then it should do so.

Any related rules or regulations must incorporate these concepts.

While Industry will generally not be commenting on the specific Department proposals in our submission, Communications Alliance members see it as vital to address two concerning suggestions in the Department's Proposal 2:

- Keeping consumers connected at no additional cost: By implementing this proposal, the Department would drive all NBN service only providers out of business, minimising the market through concentrating it on telcos who also supply mobile services. Keeping a consumer connected in the methods suggested should be a point of commercial differentiation (as it already is). The market has already evolved to address this problem, and it does not require regulation.
- Consumers in need of 'Priority Assistance' services: Industry acknowledges that the current Priority Assistance arrangements are in need of reconsideration, and that there will need to be protections offered for consumers with a diagnosed life-threatening medical condition. However, the challenges of how to best support these consumers while ensuring a competitive market are complex, and Communications Alliance strongly recommends a separate consultation process to consider this specific question.

Principle 2

Consumer safeguards are best delivered through direct regulation to support public policy.

Industry strongly disagrees. As discussed previously in this paper, **Consumer safeguards are best delivered through competition, and regulation should only be used where competition is not delivering.**

Regulatory interventions must be evidence based and proportionate. There is little evidence in the Consultation Paper to support the Department's position in this principle, or the measures proposed throughout the Paper.

As per the 'Australian Government Guide to Regulation', "*the Government's rigorous approach to policy making seeks to ensure that regulation is never adopted as the default solution, but rather introduced as a means of last resort*"⁶. When it is necessary, regulation must be designed to directly address an identified issue, with as narrow a scope as possible to avoid unintended consequences.

The Department of Communications 'Review of the Australian Communications and Media Authority' noted that:

*"the role of government is to facilitate competitive market environments as the primary mechanism for achieving public policy goals and then to intervene further only where clear evidence exists of market failure, or if a public policy goal is unlikely to be delivered by the market"*⁷

Industry also disagrees with the blanket statement that "rules should be enforceable by the ACMA rather than rely on commercial agreements that are subject to constant change." As discussed in the Principles and Framework section of this submission, an appropriate consumer safeguards framework will be constituted of a range of tools. Regulation, co-regulation, and fairly constituted commercial agreements all have appropriate parts to play.

Principle 3

Consumers should get what they pay for.

Industry supports this principle and directly addresses it in our Industry Proposal 2.

In addition to the Industry Proposal, Communications Alliance would like to raise the concern that this Principle is covered under the Australian Consumer Law (ACL). One of the most significant benefits of this review – for consumers and industry – will be to identify and remove duplication between the ACL and telecommunications regulations. This will prevent confusion for consumers on their rights, significantly decrease compliance costs (thus lowering costs for consumers), and encourage innovation by making it easier for small businesses to understand and implement their obligations.

We recommend that as the review progresses, and a firmer set of principles are agreed upon, the relationship between the ACL and a telecommunications specific consumer safeguards framework should be a point of ongoing consultation and discussion.

⁶ <https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>

⁷ Department of Communications, Review of Australian Communications and Media Authority, Final Report, October 2016, <https://www.communications.gov.au/what-we-do/television/media/acma-review/acma-review-final-report>

In regards to the specifics of the Department's paper, it will be important to avoid the terminology that a customer cannot be "billed," but instead that a customer cannot be "charged."

This is because it is not always possible to align or update billing systems in real-time, and thus the bill may show a charge, but the goal of the rule should be on the customer's experience – i.e., that they do not need to pay for those charges. Many end-user plans are currently billed on pro-rata basis and therefore some charges would have already been issued in part. Further, faults, and other events (e.g. loss of service) must be allowed to complete before the extent of the event and impact to the consumer is determined. This can only be reasonably assessed after the fact.

Principle 4

Network reliability is an important purchasing consideration and should be transparent.

While industry agrees with this principle, it is important to ensure the application is appropriate.

The market is already supplying information on network reliability, and as addressed previously in this submission, it is important that regulation only be applied where there is an identified problem. Competition delivers the best results for consumers, and regulation should only intervene in cases of market failure, which has not been identified.

Communications Alliance notes its members have varying viewpoints on the specific inclusion of mobile network operators (and other technologies) in the consumer safeguards framework.

One perspective is that the consumer safeguards framework should only apply to fixed-line services, and including mobile services is unnecessary as these are being provided in a competitive market with infrastructure competition. The Australian Mobile Telecommunications Association (AMTA) will be providing a submission regarding that viewpoint.

An alternative perspective is that as mobile networks are being used to complement fixed line services, and in some cases to replace them, consumers should be informed equally about all technologies, and there should be greater availability of information on network reliability across the entire sector.

We encourage the Department to consider the various submissions provided on this topic.

Principle 5

Arrangements should incorporate public accountability and transparency.

Principle 6

Data collection, analysis, and reporting should drive improved outcomes.

While Industry agrees with principles 5 and 6 – as demonstrated by Proposal 1, below - we do not want to see the current CSG framework replicated in a future system. The extensive reporting requirements currently on Industry overlap, often without providing useful information to consumers or regulators, and create unnecessary compliance costs.

The application of this principle is an opportunity to review the range of reporting requirements on industry – including considering the overlap between different regulators. The current duplication and overlap in reporting requirements is unnecessarily resource

intensive, driving up compliance costs and requiring extensive staff time, without clear benefits.

RSPs contend that the extensive transparency inherent in Industry's Proposal 1 should ensure consumers are provided with the relevant information they need to make decisions.

We discuss this in further detail in Industry Proposal 3, below.

INDUSTRY RECOMMENDATIONS

Identifying the problem

Designing best practice regulation first starts with a clear understanding and analysis of the problem.

We appreciate the Department's 'blank slate' approach to this review, and strongly recommend that the conversation not focus on what problems exist with the current framework, but instead examine:

- What does the consumer experience and market look like if there is **no** regulation at all?
- Where can – from experience and knowledge of the future technology and market – we identify likely market failures?
- What problems/market failures are present in this case that require regulation?

While consultations and workshops on the above questions will be helpful to the Department in developing an appropriate framework, we also consider that it will be important not to put in place strict regulations based on anticipated problems that may not eventuate.

It is important to not allow the challenges being faced during the peak of the NBN roll-out to skew our perception of the future and thus impact any proposals, as many of the current issues are unlikely to continue.

It would be more appropriate to develop a principles-based framework to guide the set of public policy objectives in relation to communications. Once agreed, and at a time that is closer to complete migration, policy makers can turn their minds to the best method of achieving these objectives and ensure these are not designed with reference to current challenges.

This examination should take place via an evidence base. Industry would be happy to cooperate with the Department to develop key indicators that would contribute towards this evidence base.

Targeted proposals

While it is impossible to predict what problems will arise in a post-migration market, we understand that the Department is interested in pre-establishing a framework to ensure continuous consumer protection. Thus, Industry has developed the below Industry Proposals as alternatives to the proposals contained in the Department's discussion paper.

Industry Proposal 1: Reliability

Taking into account the agreed principles' focus on transparency, the Customer getting what they pay for, and our recommended principle regarding competition, Industry has developed the below proposal regarding timeframes and keeping the Customer connected. **Providers should publish and provide their key reliability commitments to customers, provided these are supported by commitments at the wholesale level.** This information will then form a part of consumer choice (along with network reliability, as recommended by the paper).

At a retail level, RSPs should have responsibility for providing consumers with the information they need to assist their decision making. This may include service quality commitments. This would provide consumers with the information to make the right price/quality trade off to suit them. These would need to be underpinned, where appropriate, by wholesale service level commitments and information between wholesale providers and RSPs.

This would support consumer choice, ensuring that the market provides a range of value for money and premium products. This variety of options is vital for a product as fundamental as telecommunications, ensuring Australians are able to choose the service which works best for their preferences and budgets.

Premium services could provide speedier connection/re-connection times for those who prioritise that area of their service, while value focused options could fit a variety of budgets. Imposing mandatory product features for all consumers regardless of need, and removing the flexibility to manage associated costs may unnecessarily drive higher end user costs, even for those end users who do not value these features.

It also ensures that RSPs are able to identify exactly what factors in a connection they can guarantee, and what factors are reliant upon other parties, which they may not be able to influence considering the vertically separated nature of the fixed network.

This proposal supports Customers getting what they pay for, and puts the power in their hands.

Industry Proposal 2: Consumers should get what they pay for

As noted above, Industry supports the principle associated with this proposal. However, it is important that it is implemented in a functional manner.

Consumers should be appropriately compensated when reliability commitments are not met but, in the competitive retail market, compensation arrangements should not be prescribed.

Prescribing the way in which RSPs should compensate their customers will have the impact of impeding their incentive to differentiate on service.

There are different ways to bestow compensation on customers and this requires a relationship with the customer to manage appropriately. Examples include not being charged, having a credit provided, or other options including the provision of alternative services. We also note that those preferences may differ between customers, and providers should have the flexibility to work with their customers to determine what is most appropriate, and that the level, speed, and type of compensation is an important commercial differentiation.

Instead of focusing on prescriptive rules that would be complex for providers and consumers, there should be a focus on creating incentives for the whole supply chain to deliver, and accountability if they do not deliver.

Industry Proposal 3: Consumers should have access to appropriate regulatory information

In addition to the information provision in Industry Proposal 1, Industry supports Consumers having access to appropriate information gathered by regulators, but this principle must be implemented appropriately to ensure unnecessary compliance costs do not drive higher costs for consumers.

Reporting should never be duplicated between regulators. We welcome ACCC and ACMA coordination on the results of reporting, but it is not reasonable or necessary for both regulators to demand slightly different information in different formats, duplicating compliance costs unnecessarily.

Information should only be required/published that is relevant to consumers. If reporting is required from both retail and wholesale providers, the published data must clearly distinguish between the different supply chain elements for which each provider is responsible.

Next Steps

The current duplicative and confusing regulatory structure creates slow outcomes and high costs for consumers. The design of an appropriate regulatory framework – including differentiation between the ACCC and ACMA – will be a vital part of designing a successful range of consumer safeguards. We strongly recommend that the regulatory framework be considered in another round of consultations, once there is a clearer path forward for the framework.

Additionally, as this submission makes clear, industry has concerns with elements of the principles set out by the Department in its Consultation Paper. We support additional consultation, potentially through a joint industry and government working group, on the principles which should underpin any future consumer safeguards framework.

Specific regulations to be considered

While we appreciate that the Department is approaching these questions from a 'blank slate' perspective, Industry feels it would be valuable to specifically identify the range of current regulations and requirements which should be repealed, removed, or revised in light of implementing an entirely new scheme.

The below is an initial list for consideration, and we look forward to further discussing how best to streamline compliance requirements.

- Telecommunications (Customer Service Guarantee) Standard 2011
- (Customer Service Guarantee Record-Keeping) Rules 2011
- Network Reliability Framework
- Priority Assistance for Life Threatening Medical Conditions Code 2007
- The USO/USG and proposed Statutory Infrastructure Provider legislation will need to be taken into account
- ACMA migration instruments put into place during 2018
- All Record Keeping Rules – those implemented by the ACMA and the ACCC



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