

14 September 2020

Department of Infrastructure, Transport, Regional Development and Communications
Consumer Safeguards Review
GPO Box 2154
Canberra ACT 2601

via email: consumersafeguardsreview@communications.gov.au

Dear Sir/Madam

Consumer Safeguards Review Part C / Choice and Fairness

My office has previously made submissions to the Department of Communication and the Arts regarding part A and part B of the consumer safeguard review. Our position is that all consumer safeguards need to be strengthened through greater powers of enforcement by the regulatory body, the Australian Communications and Media Authority (ACMA).

ACMA and mandatory consumer protection rules

We recommend that telecommunications-specific consumer protection rules become mandatory and that ACMA be required to assess each community safeguard protection, not just assess the Code as a whole. Testing each Code protection for balance would ensure small businesses are treated fairly and ethical sales practices are adhered to instead of predatory and commercially incentivised sales practices. Self-regulation can lead to outcomes that favour industry participants and not consumers. Regulating protections would also cover small business interactions with sub-agents, not just the service provider, and would require sub-agents to be adequately trained by service providers to offer the best choice of services that suit small businesses and deal with them fairly.

Stronger enforcement power for ACMA

We recommend that ACMA be given greater powers of enforcement and that any issued directions to comply with the Code do not reset when a new version of the code comes into force. The current mechanism of enforcement does not encourage compliance as ACMA must first issue a formal warning or direction to comply and then, if that is ignored, apply through the Federal Court to seek an infringement notice or pecuniary penalties. This is not conducive to improved compliance and systemic change to address the concerns of small businesses.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Rowen Murphy on [REDACTED] or at [REDACTED].

Yours sincerely

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Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman