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By email: TelcoPerformanceRegulation@acma.gov.au

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Dear Ms Campbell

ACMA Statement of expectations – consumer vulnerability

1. Thank you for the opportunity to provide feedback on the Australian Communications and Media Authority (**ACMA**) Statement of Expectations – Consumer Vulnerability (the **Statement of Expectations**). This is a joint submission made on behalf of Consumer Action Law Centre (**Consumer Action**), **WEstjustice**, Victorian Aboriginal Legal Service (**VALS**) and Hume Riverina Community Legal Service (**HRCLS**). As community legal centres, our organisations are experienced with supporting clients in 'vulnerable circumstances' or experiencing 'vulnerability'. We hold particular expertise in telecommunications consumer protection legislation and regulation, largely informed by the lived experiences of the clients we assist through free financial counselling and legal advice services. We regularly interact with telecommunications services providers (**telcos**) when representing our clients in disputes and as advocates for the purpose of improving outcomes for consumers more broadly. **WEstjustice** also represents consumer views on the ACMA Consumer Consultative Forum.
2. Broadly, we are pleased to see the ACMA taking steps to ensure the needs of people experiencing 'vulnerability' are reflected in the regulation, policies and practices of a sector as essential as the telecommunications sector. This is in line with the ACMA compliance priority to 'protect vulnerable telco consumers', which we welcomed. It also aligns with other essential service regulators, such as the Australian Energy Regulator, and the recently launched 'Getting to Fair' Strategy and Decision Paper from the Essential Services Commission (**ESC**) in Victoria.¹ Our organisations were involved in the consultation process for the latter strategy, and our response to this consultation is informed by that experience.
3. We note that our submission provides commentary on the appropriateness of the expressions 'vulnerable' and 'vulnerability', and offers guidance on what we consider to be more appropriate language and framing for describing the 'vulnerable consumer'. Despite this, and with a view to providing clarity of reading, we have made references throughout our submission to clients/consumers experiencing 'vulnerability' in our responses to the questions for consultation.
4. A summary of our recommendations is available at the end of this submission.

¹ See: <https://www.esc.vic.gov.au/other-work/regulating-consumer-vulnerability-mind>.

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Practical impact of the statement of expectations

5. Our immediate and overarching concern in respect of the Statement of Expectations is that the proposed document is not enforceable.
6. This, coupled with the continued inadequacy of telco compliance with rules and regulation²—which appears to have been normalised in the industry culture—leads us to question the practical impact of the document and its feasibility as a tool to ‘improve outcomes for vulnerable consumers buying telecommunications products and accessing telecommunications services’.
7. We appreciate that the ACMA is considerably constrained by its authorising legislation in respect of the creation of Industry Standards (*Telecommunications Act 1997*, ss 123 – 135A). However, as we argued in our submission to the ACMA on its 2021 compliance priorities, we consider that there is already sufficient evidence of consumer harm to warrant the creation of an Industry Standard in respect of a range of consumer protections where the TCP Code is demonstrably deficient.
8. While the TCP Code is not scheduled for review until July 2024,³ there is no legislative limitation on the ACMA conducting its own assessment as to the threshold s 125 matters—that is, whether the TCP Code is deficient either by failing to provide appropriate community safeguards, or by failing to adequately regulate industry. If the ACMA is not yet convinced of this need, we suggest that adequate monitoring and audit of industry uptake and/or compliance with these Expectations (that goes beyond industry self-report) will be critical to forming an independent and considered view.
9. We reiterate our recommendation that the ACMA should review and assess whether it is satisfied that the TCP Code is deficient as defined by s 125 of the *Telecommunications Act*, and, where deficient, replace the TCP Code with an appropriate Industry Standard informed by robust consultation across an even balance of consumer and industry representatives.
10. This Statement of Expectations must not delay regulatory improvements through TCP Code reviews or the development of Industry Standards. While we support voluntary, industry driven improvements for consumers that might result from this Statement of Expectations, we consider that a mandatory Industry Standard will still be needed to create enforceable obligations that apply across the industry. We urge the ACMA to be proactive in its approach to tracking and measuring ‘uptake’ or ‘compliance’ with Expectations. In doing so, we recommend the ACMA develop clear protocols for how this data will guide future decision making where Expectations are not met (see Monitoring and Audit, and Outcomes sections below).
11. It is also critical that the development and implementation of the Statement of Expectations does not replace or delay any reforms recommended by the Department of Infrastructure, Transport, Regional Development and Communications’ ongoing ‘Consumer Safeguards Review’.

Enforceability

12. While we appreciate the content of the Statement of Expectations as a ‘good first step’, we are concerned that the Statement will not amount to any significant change in telco practices.

² E.g. TIO, “Helping telco consumers sign up to the right phone and internet products” (17 May 2021) available at: <https://www.tio.com.au/news/investigation-finds-poor-sales-practices-hidden-costs-and-unclear-information-affecting-telco>; e.g. TIO, “Sales practices driving consumer debt” (28 February 2019) available at: <https://www.tio.com.au/reports/sales-practices-driving-consumer-debt>; e.g. ACMA “Telco consumer credit checks: Findings of shadow shopping study” (June 2020) available at: <https://www.acma.gov.au/publications/2020-06/report/telco-consumer-credit-checks-findings-shadow-shopping-study>; e.g. ACCC v Telstra [2021] FCA 502; e.g. Consumer Action Law Centre “The Trouble with Telcos: Stories from 2020” (November 2020) available at: <https://consumeraction.org.au/report-the-trouble-with-telcos-stories-from-2020/>.

³ Communications Alliance, Telecommunications Consumer Protection (TCP) Code (Industry Code C628:2019) at 1.6 and 1.7 (i.e. five years from registration date of 1 July 2019).

13. We have seen no evidence through the National Debt Helpline in Victoria or our legal advice services that telcos have reduced disconnections or debt collection since the release of the joint Industry and Government Statement of Expectations for hardship during Covid-19,⁴ nor that financial hardship options are offered more frequently. Moreover, we have observed that in circumstances where financial hardship options are offered, they are frequently inappropriate or unaffordable.⁵ The recent history industry non-compliance with these expectations, TCP Code requirements, and legislation⁶ gives us little reason to believe telcos will voluntarily meet a further set of unenforceable guidelines.
14. Moreover, the telecommunications industry peak body, Communications Alliance, has shown there is little appetite for consumer safeguards that are designed for people experiencing disadvantage or vulnerability, stating:

While we absolutely support the importance of protecting vulnerable consumers or preventing a problem from recurring that is only impacting a small number of consumers, there is concern consumer advocacy focused on the needs of specific groups will not give sufficient weight to the needs of the vast majority – the ‘average’ consumer.⁷
15. This is an astonishing lack of understanding for the peak body of an industry that delivers an essential service. Essential services are just that: **essential for everyone**. There is obvious financial benefit in selling something that everyone needs. But there is also an ethical mandate and social licence to deliver the services in a way that is accessible and appropriate for all consumers—including those in vulnerable circumstances.
16. Moreover, the Communications Alliance’s statement belies a view that ‘vulnerability’ is a characteristic of individuals, rather than recognising vulnerability is caused by barriers to accessing or engaging with essential services, resulting in economic and/or social exclusion or harm. Vulnerability is an experience that can happen to anyone, due to a life circumstance, systemic factors or features of the market. It is inaccurate and unhelpful to distinguish ‘vulnerable’ and ‘average’ consumers.
17. The Communication Alliance’s statement is a clear example of the telco industry’s continued fundamental failure to grasp its mandate, and is a manifestly unfair approach to consumer safeguards. The impacts of the COVID-19 pandemic over the past 18 months have shown how easily an experience of vulnerability can occur. Protections for ‘vulnerable’ consumers are potential protections for all consumers.
18. Unfortunately, with this background, we consider that it is unlikely the non-enforceable Expectations will be met, or that any meaningful culture change will occur.

Monitoring and audit

19. The consultation paper is silent on how the ACMA will measure or monitor provider engagement with the Expectations. There is also no timeframe proposed by which the Expectations are ‘expected’ to be met.
20. While we appreciate that the Statement of Expectations document is aspirational, we do not consider it sufficient to merely release the document with the hope of engagement by providers.

⁴ See: <https://www.communications.gov.au/covid-19-update#telecommunications-sector-response>.

⁵ E.g. TIO “Responding to consumers in financial hardship” (September 2021) available at: <https://www.tio.com.au/reports/responding-consumers-financial-hardship>; E.g. Financial Counselling Australia “Telcos and Financial Hardship: Feedback from the frontline” (April 2021) available at: <https://www.financialcounsellingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/>; e.g. Consumer Action Law Centre “The Trouble with Telcos: Stories from 2020” (November 2020) available at: <https://consumeraction.org.au/report-the-trouble-with-telcos-stories-from-2020/>.

⁶ Examples of which include the recent ACCC v Telstra case, and the examples discussed in Consumer Action’s [Trouble with Telcos: Stories from 2020](#) report released late last year.

⁷ Communications Alliance, Submission to the Consumer Safeguards Review Part C: Choice and Fairness, (September 2020) p 9, available at: <https://www.communications.gov.au/sites/default/files/submissions/csr-part-c-communications-alliance.pdf>.

21. Moreover, even if the Statement has limited voluntary industry uptake, it may still prove valuable to consumers in providing the ACMA with evidence of industry failure to appropriately address consumer harm. But for the document to perform such a function, it must be capable of producing concrete data on whether or not providers have actually met the Expectations.
22. To this end, we recommend that the Expectations be revised with a view to metrics and measurability. Our specific submissions in respect of the individual proposed Expectations are set out later in this document.
23. We also recommend that the ACMA clearly indicates the time by which it expects providers to comply with the Expectations. In our submission, a period of six months from the date of the release of the document would be an appropriate timeframe, with ongoing six-monthly reviews.
24. Further, we strongly recommend the ACMA use a range of techniques to monitor industry uptake of the Expectations, including: proactively seeking complaints from consumers and consumer representatives in circumstances where a provider appears to have failed to meet an Expectation; investigation of individual consumer complaints; analysis of TIO data; industry self-report; desktop review of provider policies; and 'mystery shopping' exercises. Critically, we do not think that industry self-report alone is sufficient to accurately audit engagement with the Expectations, or the practical impact that that engagement has had on consumers.
25. Our experience in representing clients in disputes with telcos is that even when telcos admit to a lack of compliance, they are quick to brush this aside as a one-off mistake. Until the findings of the Federal Court in *ACCC vs Telstra*⁸, after which Telstra undertook a number of activities to fix the systemic mis-selling to its customers,⁹ there was limited evidence of telcos transparently reviewing their practices to identify and address systemic issues.
26. We also suggest that it would be in the interests of transparency and fairness to both industry and consumers for the ACMA to publish details of how it will monitor, measure, and evaluate industry uptake of the Expectations and associated Examples.
27. Finally, in consideration of the above, it is critical the ACMA identify and publish a clear proposal for next steps if the Expectations in this document are not met. For example, if robust monitoring and auditing reveal a failure to meet the Expectations, will this be seen as evidence of systemic issues that will lead to further investigation? Or potential recommendations that the TCP Code is deficient in particular areas as per s 125 of the legislation? Or that there is a market failure?¹⁰

RECOMMENDATION 1. We recommend that failure to meet these Expectations trigger a review of the adequacy of the current regulation in the telecommunications sector, including: an earlier review of the TCP Code and/or the creation of Industry Standards where the TCP Code is deficient.

Issue 1: Identifying consumers in vulnerable circumstances

Question 1 –

The 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 telecommunications market. Do you agree with this approach? If not, please explain and provide alternative thinking.

⁸ [2021] FCA 502

⁹ See: <https://www.accc.gov.au/public-registers/undertakings-registers/telstra-corporation-limited>.

¹⁰ *Telecommunications Act 1997* (Cth) ss 106, 112 and 125.

28. Firstly, we commend the ACMA for highlighting the need to use different language when it comes to consumer vulnerability, as it is something that many of the communities we assist have told us is stigmatising and disempowering.
29. We also commend the ACMA for identifying the need for industry to take a different approach when it comes to assisting consumers who are experiencing difficulties and disadvantage, whether it be temporal or long-term.
30. Indeed, if sufficient weight is given to the needs of the most marginalised consumer in our community, then all consumers benefit; a more responsive and inclusive service system and industry will mean all consumers are better off.

The use of the term 'vulnerable'

31. In the recent stakeholder roundtable organised by the ACMA, many consumer advocates highlighted the problematic usage of the word 'vulnerable'.
32. A 'vulnerable consumer' has often been identified as such in relation to systemic factors such as "ageing, poor mental health, social isolation, disability, language barriers, regional limitations, digital and financial literacy, siloed services".¹¹ This term is also often applied to First Nations communities and Culturally and Linguistically Diverse (**CALD**) communities.
33. Recent climate-based events, such as the devastating Australian bushfire seasons, and the current COVID-19 pandemic, have resulted in many more consumers experiencing financial hardship and requiring assistance through 'vulnerability' frameworks.
34. The recognition that nearly anyone can become vulnerable in the current global climate has arguably accelerated this 'vulnerability' discourse in many different industries. Indeed, the ESC's 'Getting to Fair' Decision Paper referred directly to the bushfires and COVID 19 as highlighting "...the importance of having a comprehensive and coherence strategy for the longer-term" and requiring "...us to urgently adopt a comprehensive approach across our regulatory and administrative functions."¹²

Reframing the 'vulnerable' consumer

35. The United Kingdom and the European Union have been at the forefront of the contemporary understanding of consumer vulnerability and its causes and impacts. Our own thinking on consumer vulnerability has been informed by the definition developed as part of a large research project by the European Commission, which is as follows:

"A consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment:

- *Is at higher risk of experiencing negative outcomes in the market;*
- *Has limited ability to maximize his/her well-being;*
- *Has difficulty in obtaining or assimilating information;*
- *Is less able to buy, choose or access suitable products; or*
- *Is more susceptible to certain marketing practices.*"¹³

¹¹ Getting to fair: breaking down barriers to essential services – decision paper, Essential Services Commission, August 2021, p8.

¹² Ibid, p5.

¹³ Consumer vulnerability across key markets in the European Union [2016] OJ L/22, available at https://ec.europa.eu/info/sites/default/files/consumers-approved-report_en.pdf.

36. In the Australian context, the ESC have also addressed the use of the word 'vulnerable', in the context of essential service delivery. Prior to publishing their 'Getting to fair' decision paper, the ESC consulted directly with consumers as part of their research, and noted that "the term 'vulnerability' does not capture the unique circumstances people face, or the dynamic and complex nature of vulnerability".¹⁴ It also "deters consumers who do not associate themselves as vulnerable from seeking support" which comes into direct conflict with the ultimate objective identified by key stakeholder groups as being consumer wellbeing.¹⁵
37. From our experience of working with consumers on the ground as frontline advocates, we agree with this sentiment—individual consumers are not vulnerable; they are resilient in the face of systemic failings.
38. First Nations communities do not see themselves as vulnerable people, but rather as resilient and strong communities that have survived invasion. Requiring people to self-identify as vulnerable when they do not see themselves this way creates an unnecessary barrier to accessing assistance. The result is that individual consumers' wellbeing and mental health is often impacted, and the problems underlying 'vulnerability' are further exacerbated.
39. Despite these sentiments, we do acknowledge the terms 'vulnerable' and 'vulnerability' are currently used throughout consumer protection legislation and regulation in Australia. This is the legislative framework in which the ACMA must operate, and while the term remains legislatively embedded, some degree of usage of the expression is unavoidable. We appreciate that the cultural shift towards reframing notions of individual 'vulnerability' towards a recognition of historic and systemic inequities and oppression will be slow and contentious, and that the expression 'vulnerability' will likely be used for many years to come.
40. Moving forward, we encourage the ACMA to adopt a 'hybrid' approach to the expression 'vulnerability'—continuing to use the term insofar as it is a statutory expression, but where possible, phasing out the expression in favour of language that instead reflects the systemic and structural barriers to access and fairness which cause and create the 'vulnerable consumer'.

Feedback on ACMA's approach

41. The current outline of 'vulnerability factors' suggested by the ACMA includes most of the points identified by the European Commission and the Essential Services Commission. However, we suggest that having a definition that clearly reframes vulnerability as the consequence of systemic problems would be more useful.
42. In the 'Getting to fair' decision paper, the ESC defined consumer vulnerability by identifying barriers, rather than individual characteristics, "as the biggest contributing factor in preventing access and engagement with essential services."¹⁶ They then proposed a definition which aims "to highlight the role of regulators and business practice in supporting consumers".¹⁷
43. The ESC has defined consumer vulnerability as:

*"A person experiencing, or at risk of experiencing, vulnerability is someone who experiences barriers to accessing or engaging in the essential services we regulate or administer. As a result of those barriers, that person experiences economic and/or social exclusion or harm. Barriers can include event-based circumstances, systemic factors, and market-based factors"*¹⁸
44. In the ACMA's draft Statement, there is no specific definition of vulnerability provided. Instead, the document provides a broad characterisation, entitled 'Identifying vulnerability':

¹⁴ Getting to fair: breaking down barriers to essential services – decision paper, Essential Services Commission, August 2021, p59.

¹⁵ Ibid, p59-60.

¹⁶ Ibid, p3.

¹⁷ Ibid, p3.

¹⁸ Ibid, p8

"A consumer is vulnerable where circumstances affect their ability to engage productively with the market to buy telecommunications products, and access and maintain telecommunications services, that are suited to their needs."

45. This characterisation is then followed by a list of examples and factors that may contribute to vulnerability. While this is useful in identifying various contexts in which 'vulnerability' can occur, we submit that a clearly stated definition would provide a more robust framework, in which the examples provide supplementary information.
46. While we are aware that any definition needs to be kept high-level in order to remain workable, it is important for the definition to specifically identify these barriers so they do not go overlooked, including the ways in which markets and essential service providers themselves can contribute to consumer vulnerability.
47. We believe that a best practice definition would be written in language that moves away from the 'vulnerable consumer' terminology and instead focuses on industry obligations to help people overcome barriers. In fact, we would like to see a change in language throughout the document to embed a strength-based framework, in which consumers are empowered and respected, rather than always being couched in negative language, such as "less able to...", "limited ability..." and "has a higher risk..."
48. For example, the current ACMA draft states the following:

"We consider that vulnerability can occur where a consumer:

- *has a higher risk of experiencing negative outcomes when acquiring goods or services*
- *is less able to access telecommunications goods or services that are appropriate for their needs*
- *has limited ability to maximise or advocate for their wellbeing*
- *has difficulty in finding information or making informed decisions about telecommunications goods or services*
- *is more susceptible to certain marketing practices such as upselling or cold calling."*

49. We suggest this could be drafted to the effect:

We consider that consumers can face significant challenges when industry policies, procedures and practices fail to:

- *promote positive outcomes for consumers when they acquire goods or services*
- *identify and assist consumers to access telecommunications goods or services that are appropriate for their needs*
- *encourage and support consumers to maximise or advocate for their wellbeing*
- *provide clearly accessible information for consumers to be able to make informed decisions about telecommunications goods or services*
- *regulate marketing practices such as upselling or cold calling.*

50. This relatively simple rewording may seem like an exercise in semantics, but language is incredibly important and has far reaching consequences. As the ESC discovered through consulting directly with

consumers, "there is significant stigma attached to the term 'vulnerability'... and we must acknowledge that the term 'vulnerable' is a clear barrier for consumers in essential services markets."¹⁹

51. We strongly encourage the ACMA to consider including a clearly identified definition as part of the Statement of Expectations, which draws on direct consultations with individual consumers in conjunction with community advocate consultations, and independent research.
52. Moreover, we encourage the ACMA to adopt a definition in line with the most progressive national and global discourse around 'vulnerability', which seeks to promote "inclusive front-end product and service design, rather than relying almost exclusively on back-end vulnerability measures that seek to address harm after the fact, once it is more entrenched or advanced."²⁰ In our view, the purpose of discourse around vulnerability is to promote services that are inclusive and fair for everyone.
53. This would not only provide clearer guidance to industry, but also assist the ACMA in their regulatory function, as well as empower consumers to seek out and access assistance when they need it. Furthermore, it would position the ACMA as a leader in regulatory practice at an international level.
54. We support the ACMA's proposed Expectations of telcos to:
- *be proactive in identifying and responding to consumers in vulnerable circumstances;*
 - *have better practice policies and processes in place to assist 'vulnerable consumers' to gain and maintain access to telecommunications services that met their needs and circumstances*
 - *consider how best to support 'vulnerable consumers' in their business improvement or business strategy decisions.*
55. Our submissions on the specific priority areas are set out below. Given the openness of the consultation paper, and the diversity of views expressed at the industry and consumer sector roundtables, we encourage the ACMA to engage in further consultation prior to releasing a finalised statement, including with consumers directly.

Issue 2: Setting expectations for telcos – priority areas

Proposed priority areas

Question 2

Are the ACMA's 5 proposed priority areas appropriate? Are there any other priority areas that should be substituted or included?

56. Despite our significant concerns about enforcement and overarching reference to vulnerability discussed in the preceding sections, we do agree that each of the proposed priority areas are appropriate. In addition, we recommend the following areas also be incorporated into the Statement of Expectations as priority areas due to their significant impact on consumers in vulnerable circumstances.

Credit management and debt collection

57. Aggressive and/or inappropriate 'credit management' and debt collection by telcos or their agents are significant stressors to people experiencing both temporary and long-term barriers. While many of the negative 'credit management' experiences of our clients already constitute breaches of TCP Code provisions (including, in particular, failure to comply with the ACCC/ASIC Debt Collection Guideline, applied through cl. 6.10.1) or breaches of the *Telecommunications (Consumer Complaints Handling) Standard 2018*, we consider

¹⁹ Getting to fair: breaking down barriers to essential services – decision paper, Essential Services Commission, August 2021, pg.

²⁰ 'Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator - Emma O'Neill, February 2020, p44

that there are a number of measures that could improve the experiences of consumers which may form appropriate Expectations for the purpose of this document.

58. Moreover, the attitude of providers in relation to 'historic debts' (outstanding debts for services and bundled products that have since been cancelled/disconnected) impedes people from recovering from hardship and moving on with their lives. One example of this attitude was the absence of any measures in relation to 'historic telco debt' from the joint Industry and Government Hardship Principles during COVID-19. Our financial counsellors and lawyers have spoken to people across Victoria who said they were being harassed

Case Study – James' story

James is a young Aboriginal man living in Melbourne. He was referred to the National Debt Helpline in April 2020, during the COVID-19 pandemic. He is studying for a Cert III and was receiving the JobSeeker payment.

James has a disability, for which he receives the Mobility Allowance. James also told us about family violence he has experienced from his father. James said he was being contacted by debt collectors for multiple debts, including: buy-now-pay-later, a payday loan, a consumer lease and a telco debt of nearly \$3000, from 2017. James told us the following about his telco debt:

In 2017, when he was approximately 20 years old, James entered a 24-month contract for a smartphone, which included an insurance policy, in-store at an electronics retailers. The salesperson conducted a credit check and was aware James was on Centrelink. The monthly cost was \$80, which James felt was affordable at the time.

James lost the phone two months later and his insurance claim was declined. James said he was requested to pay out the contract. James complained to the Telecommunications Industry Ombudsman (TIO), but said the TIO responded that the claim had been denied due to the SIM still being active in another phone, and the account remaining active with a usable number. James said the nearly \$3000 telco debt is on his credit file as a default. James updated us in October 2020 that a debt collector has been harassing him about the telco debt and that he has been receiving more calls about it during the COVID-19 emergency in Victoria, which has been adding to his stress in what is already a very difficult time.

Case study provided by Consumer Action Law Centre

by debt collectors during Victoria's most restrictive lockdowns for historic telco debt, leading to significantly increased stress and pressure on them in a time of very difficult and extenuating circumstances.

59. Moreover, for some providers, even where the provider has agreed 'not to pursue' a consumer debt on the basis of hardship submissions made by a consumer or their advocate, the provider nonetheless elects to 'blacklist', 'whitelist', or otherwise preclude the consumer from purchasing further post-paid services from the provider, until the consumer has repaid the alleged historic debt. This approach is deeply problematic in the context of provision of an essential (or at times, emergency²¹) service, especially where only one provider services the consumer's geographic area.

60. We suggest the following Outcomes be added to this new Priority Area, which have been implemented in relation to credit management for other services:²²

- not selling debts while considering the customer's financial situation, working with the customers to find a suitable solution to payment difficulties or when customer in a hardship arrangement;
- not selling a debt that is statute barred or that the customer is disputing that they owe;
- implementing specific requirements for selection and monitoring of debt buyers;

²¹ For example, natural disaster and family violence circumstances where necessary calls are not only to 'emergency services' but also to family members, crisis support, and social work services.

²² E.g., the Australian Banking Association "Industry Guideline on the Sale of Unsecured Debts" (November 2019), available at: <https://www.ausbanking.org.au/wp-content/uploads/2019/11/Industry-Guideline-on-the-Sale-of-Unsecured-Debt-November-2019.pdf>.

- committing to not selling debts where the customer is in a family violence situation
- committing to not selling debts where the customer is experiencing ongoing vulnerability and the debt unlikely to be recovered.

RECOMMENDATION 2. We recommend that the AMCA include a priority area titled 'Credit management and debt collection' with a goal to the effect that, *'Telcos will approach credit management and debt collection with sensitivity to the extenuating circumstances that may be facing consumers who have fallen into debt; they will require the same approach by any agents (including third party debt collection companies) that they engage for debt collection purposes; and they will approach debts related to disconnected services with a view to allowing consumers to recover from historic periods of hardship'*. We recommend including our suggested Outcomes to give effect to this section.

Product design

61. Overarching product affordability (or lack thereof) continues to be an issue in the telco sector. While the cost of data has decreased, in real terms, the Australian Government Bureau of Communications and Arts Research (**BCAR**) found in 2020 that *"these changes have not necessarily led to services being more affordable for low income individuals' because the cost per gigabyte is more expensive on cheaper, low data plans."*²³ This reflects issues we have seen in Victoria.
62. While the number of people who rely on landlines is decreasing, their use increasingly overlaps with an older population and people who require priority assistance for medical issues. However, our intel in Victoria suggests that some people are losing access to their landlines when they are forced to move to NBN plans to keep access. These bundles with NBN services can be expensive with little added benefit to people who only wanted to keep access to a landline. Where this leads to financial hardship, there should be flexibility shown by telcos in an effort to keep people connected to their landline.

RECOMMENDATION 3. We recommend that the ACMA include a priority area in relation to product design focussed on affordability. This area should also include reference to landlines, bundling and priority assistance.

Outcomes and examples

Question 3

Are the outcomes set out under each priority area appropriate? Are there any additional outcomes that should be specified?

Question 4

Are the examples provided in the statement of expectations appropriate and realistic? Are there any additional examples that would assist telcos in understanding how to achieve the objectives?

63. We have responded to Questions 3 and 4 under the headings for each priority area.
64. In general, we consider that many of the outcomes constitute appropriate interpretations of the TCP Code which relate to consumer vulnerability. However, as indicated above (under Monitoring and Audit), we are concerned that the level of generality of several of the outcomes will make it difficult to measure and assess uptake.

²³ Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Bureau of Communications and Arts Research, Affordability of communications services for low income households (Working Paper, 30 April 2020) 19, <https://www.communications.gov.au/publications/affordability-communications-services-low-income-households>.

65. We note that we address these points as consumer advocates with experience in individual client representation. We approach industry best practice guides with a view to how those guides can support outcomes for our clients in their individual matters. We do not collect industry-wide data on industry trends. Nor are we privy to internal business complaints data, or policy documents (unless these are publicly released). To us, a useful 'best practice guide' is one in which an individual consumer can point to a clear failure to comply as a basis for complaint (even if that complaint is not one where the ACMA can currently take regulatory action).
66. While we appreciate that this document has been created as a guide 'for Industry', we urge the ACMA to bear in mind that its audience is also consumer advocates or representatives, and the TIO. Consumers are not just passive beneficiaries of best practice guides. The TIO should be actively applying the Expectations to consumer disputes, and advocates should be empowered to use the Expectations in their casework to get outcomes for their clients. As active agents in the telecommunications market, individual consumer complaint data (whether directed to the ACMA or the TIO) is a valuable source of data to the regulator. Where Expectations are vague, or limited to general trends (e.g. 'minimising' disconnections within a provider) consumers or their representatives are not empowered to assert a failure to meet best practice, and so are excluded from engagement with the TIO or regulator in this 'best practice' process.

RECOMMENDATION 4. We recommend that the ACMA incorporate our suggested additional Outcomes and Examples (below in bold) to better capture systemic issues that we see through our case services.

Priority area 1: Internal business practices

67. We generally support the expectations and examples in this section. However, successful culture change must occur across all levels of an organisation. Training focused solely on frontline staff will not change the overall culture of an organisation or industry. The disappointing attitude of the industry peak body (highlighted earlier in this submission) indicates that a seismic shift is needed from board level to frontline workers. Therefore, it is important that all staff, including staff who interact with customers in vulnerable circumstances, managers, executives, board members and other decision makers are included in training requirements.
68. As an essential service, telcos should improve transparency of their policies. For example, family violence policies should be made publicly available online in addition to financial hardship policies, as insurers nationwide are now obliged to publish.
69. **We suggest the following Outcomes be added to this Priority Area:**
- internal policies related to consumers in vulnerable circumstances are made publicly accessible.
 - ensure that customers who self-identify, or are identified by the provider, as experiencing or likely to be experiencing vulnerability, are referred to a specialised team.
 - ensure availability of interpreters for their customers in all client interactions when needed, including in-store.
70. **We suggest the following Examples be added to this Priority Area:**
- telco staff and executives undertake Aboriginal cultural safety training. This could be specific to the local areas in which they operate where relevant, to better reflect local cultural nuances.
 - telco staff and executives undertake family violence training
 - telco staff in customer facing roles undertake training in working with interpreters

- telco staff in specialised teams for consumers experiencing 'vulnerability' undertake training in assisting customers who have experienced trauma.

Priority area 2: Selling and contracting

71. We strongly support the inclusion of this priority area. Our services frequently assist consumers presenting with large alleged telecommunications debts in circumstances where the products sold were inappropriate for our client, or where our client should never have been liable as they derived no use or benefit from the goods and services purchased in their name.

Case Study – Tenzin’s story

Tenzin (name changed) lives in metropolitan Melbourne and is twenty years old. She lives with an intellectual disability and uses her mobile phone to contact her medical supports.

Tenzin contacted the National Debt Helpline (NDH) in 2021 after being cut off by her telco, a major provider. At the time of contacting NDH, she had approximately \$600 in monthly bills overdue. She told our financial counsellor that she'd told the telco she couldn't afford the bills on her Centrelink income.

When contacting the telco to ask why she was cut off, she had been told her account couldn't be reinstated until she paid \$300 as she had already had a 1 month extension. She said she couldn't afford this. The telco eventually reinstated her service and gave her a month-long payment extension.

Tenzin had purchased an iPhone 11 in 2019, when she was 18 years old and living on the Disability Support Pension. She told us she had let the staff know she has an intellectual disability which makes it hard for her to understand things. Tenzin said she has always struggled to pay for it but when she contacted her telco about phone glitches she was upsold an iPhone 12 to give her family member for Christmas.

Tenzin had understood at the time of signing up that she was not locked into the contracts. But after being cut off, when she suggested cancelling her plan and returning the phones, she was told multiple times she would have a cancellation fee for the phones that would not be waived, despite her comments that she could not afford this fee and that she had been told she was not locked in. The telco acknowledged her Centrelink income but told Tenzin she had agreed to this package when she signed up. Eventually she was informed she could cancel and request a payment extension for the termination fee.

Tenzin also asked the telco about a concession rate but was refused, being told the discounted rate was only for landlines.

We spoke to Tenzin about her situation and have referred her to a local financial counselling service.

Case study provided by Consumer Action Law Centre

72. In addition, both WEstjustice and Consumer Action frequently assist people escaping family violence who have large debts incurred against their name by their abusive partner. This is a recognised form of economic abuse and family violence, with lasting impacts on a victim-survivor's ability to move on with their life, such as where adverse credit ratings (from old debts) preclude access to rental accommodation and other essential services. Telecommunications debts are one of the most common, if not the most common, consumer debts in this category.
73. **We suggest the following Outcomes be added to this Priority Area :**
- ensure staff do not sell products or services to consumers in circumstances where consumers will not be able to comply with ongoing payment obligations, or will only be able to comply with significant financial hardship; and

- for all transactions, proactively enquire as to whether the person incurring financial responsibility for the product or service will be the end user of the product or service, and where the person incurring financial responsibility will not be the end user:
 - only sell products to people who directly benefit from the contract (i.e. usually the end-user), unless the end-user is under 18 years of age in which case a parent/guardian could incur financial responsibility on their behalf in appropriate circumstances; and
 - Assess whether the transaction appears to be the result of economic abuse, elder abuse, or other coercion. An example of this may be the suggestion of this arrangement by a person other than the person incurring the financial responsibility. Where this may be the case, do not proceed to finalise the transaction).

74. We consider the examples provided for this priority area are appropriate. **An additional example may be:**

- Design incentive programs rewarding staff for appropriate selling – for example based on customer feedback, with questions assessing the consumer’s satisfaction of the transaction, as well as whether the salesperson considered the customer’s financial circumstances holistically as part of the sale.

Priority area 3: Customer service

75. **We suggest adding an Outcome to the effect:**

- make interpreting services available for consumers in all customer service interactions when needed, including in-store.

76. In relation to the final example (‘Develop and track indicators of vulnerable consumers’ experience...’), we suggest that the ACMA should clarify that these should inform decisions such as internal identification of any systemic issues negatively impacting people experiencing vulnerability. Unfortunately, previous telco conduct as seen in our casework and Australian Communications Consumer Action Network (ACCAN) research with former sales assistants have indicated decisions have been made in the past which have resulted in exploitation of people experiencing vulnerability.²⁴

77. We otherwise support the outcomes and examples provided for this priority area. We reiterate our above comments in response to Question 1 on consumer vulnerability, and identification of ‘vulnerability’ by providers, to the extent that they are relevant to those outcomes and examples.

Case Study – Eamon’s story

Eamon is a fulltime university student. He called the National Debt Helpline in June 2021 about telco arrears from a phone and plan he purchased in 2017, while he was living on Centrelink payments and caring for his mum. Eamon said the plan cost approximately \$90 per month and ended a couple of years ago. He owes about \$1600 in arrears.*

Eamon told our financial counsellors that he had been extending hardship, but he’s now been told that he has run out of extensions and has had plenty of opportunity to pay.

Eamon said he had been offered a payment arrangement of \$200 per fortnight but he couldn’t keep up with this. He said the telco then offered \$150 per month but this amount was still difficult for him to manage.

He said he was being referred from the financial hardship team to debt collections.

**During the COVID-19 emergency and continued related lockdowns and restrictions in Victoria.*

Case study provided by Consumer Action Law Centre

²⁴ ACCAN – Spotlight on Sales - Lonergan Research for ACCAN, Spotlight on Telco Commissions and Targets: Exploring Telecommunications Providers’ Sales Incentive Practices”, 2019

Priority area 4: Financial hardship

78. We strongly support the Expectations and Examples in this section. This interpretation aligns more closely with the expectations in other essential services than what our caseworkers have found in their interactions with telco consumers and telcos directly. These findings were reflected in the Financial Counselling Association's 2021 report, *Telcos and Financial Hardship: Feedback from the frontline*.²⁵
79. Telcos' implementation of these Expectations and Examples would significantly increase tangible protections for people experiencing vulnerability. We consistently hear from our clients that the major telcos

Case Study – Santana's story

Santana (name changed) is an international student who was working in hospitality prior to the COVID-19 emergency. At the time of talking to the financial counsellors on the National Debt Helpline (NDH) in late 2020, she said she had not had any work shifts for more than 6 months. She is not eligible for government income support.

Santana was behind in her rent payments and bills, which her housemates are helping her cover.

She called the NDH about her telco bill after her telco advised her to do so. She couldn't afford the bill and had just over \$100 owing. She told us she had already contacted her provider and been told she needed to pay \$75 per month, which she couldn't afford. Prior to losing her job, she hadn't missed a telco payment.

Santana started a complaint with the Telecommunications Industry Ombudsman (TIO). Santana's bill grew that month and she said she received an email from her telco requesting she submit a letter of authority from a financial counsellor, despite her not being represented by a financial counsellor. The following week, Santana told us the telco emailed her stating that if she didn't have a financial counsellor acting on her behalf, they could no longer provide her with any assistance.

Our NDH financial counsellors referred her to her local financial counselling agency for advocacy support; however, Santana's local agency had a significant waitlist at the time.

Santana contacted us a few weeks later to let us know her telco still refused to help her without a letter of authority from a financial counsellor.

The next month, Santana said her phone and internet had been cut off so she could not attend her online class. Santana said the telco told her they couldn't help until she paid her bills. Santana's friend ended up helping her with her bill, which was then over \$300, but Santana was not sure how to repay her friend or how to pay her next bill.

We understand that as of that month, Santana had not contacted the TIO again to re-open the complaint after it was not successfully resolved with the telco.

Case study provided by Consumer Action Law Centre

are not currently meeting the Outcomes listed, such as in Eamon's and Santana's stories.

80. Furthermore, we are encouraged that the expectations in this section are clearly measurable from a monitoring perspective. For example, the ACMA could monitor engagement with the listed Outcomes and Examples through specific data collection on:

²⁵ Financial Counselling Australia, *Telcos and Financial Hardship: Feedback from the frontline* (April 2021), available at: <https://www.financialcounsellingaustralia.org.au/docs/telcos-and-financial-hardship-feedback-from-the-frontline/>.

- people un/successfully completing hardship arrangements;
- specifics of the hardship plans negotiated (e.g. X payment amount, at X frequency) including successful completion data;
- audits of randomly selected call recordings when hardship was negotiated;
- data showing the percentage of customers who contacted their telco with bill arrears who were then entered into a hardship arrangement; and
- randomly surveying consumers on hardship arrangements about payment methods (e.g. through direct debit, credit card, buy-now-pay-later bill paying services, and/or if additional high-interest loans were used to meet the payments).

81. We suggest the following additional Outcomes:

- that customers who mention an inability to pay in any communication with their provider are proactively offered financial hardship assistance, even if they have not specifically requested it. Many people are unaware this is not only an option, but that financial hardship is a requirement of telco regulation.
- that telcos regularly audit the files for customers in financial hardship to review whether the hardship has been contributed to or caused by poor conduct by that telco, such as mis-selling. Where this has been found to occur, the telco should offer appropriate resolution to address this wrongdoing.
- that services refrain from restricting or suspending the service of anybody who has not suggested restriction/suspension on their own volition, as it has the same practical effect as disconnecting them. In particular, telcos should not restrict or suspend the service of people who have disclosed a history of or who they reasonably suspect may be experiencing family violence. As stated in Australia's Tech Future strategy, 'exclusion from the digital world can exacerbate other forms of social exclusion such as unemployment, low education and poverty... Governments, business and the community all have important roles to play to address the digital divide'.²⁶

Case Study – Charlotte's story

Charlotte (name changed) contacted the National Debt Helpline in late 2020 after she had been unexpectedly cut off by her telco, with \$250 in arrears owing.

Charlotte is a victim survivor of family violence. She experienced homelessness earlier in the year due to the family violence she experienced and was living on her own with income from Centrelink at the time of contacting the National Debt Helpline.

Charlotte told us that due to her service being cut, it was hard to get into contact with her telco. When she attempted, she was sent into a self-service option, unable to speak to someone.

Charlotte was experiencing financial hardship but said that no repayment plan or hardship was offered. In order to get reconnected, she had to pay over the phone – she used the money she had planned to use for rent. She then had to borrow money from her friends to cover her rent payment, which was also in arrears.

Our financial counsellor discussed support options and the Telecommunications Industry Ombudsman with Charlotte.

Case study provided by Consumer Action Law Centre

²⁶ Australian Government, Australia's Tech Future: Delivering a strong, safe and inclusive digital economy, (December 2018) 18, <https://www.industry.gov.au/data-and-publications/australias-tech-future>.

82. We consider the Examples provided for this priority area are appropriate. **An additional Example may be:**
- that telcos should proactively contact consumers who are behind in payments to offer them financial hardship. This is required in other essential service sectors, such as the energy sector in Victoria.²⁷

Priority area 5: Disconnection

83. We support the sentiment of outcomes proposed in relation to disconnections, but are concerned that both proposed outcomes lack clarity about what precisely is expected of providers. Specifically, we consider use of the language expressions "all appropriate solutions" and "minimise..." to be too vague. We suggest tightening this language to ensure the outcomes are measurable.
84. Moreover, we note that per cl 7.7.1 of the TCP Code, a supplier must suspend credit management activity in relation to an alleged debt once a financial hardship arrangement is entered unless: the consumer is failing to meet their obligations under that arrangement; the provider considers it 'reasonable to do so'; or the customer agrees that the arrangement is unable to be completed. Accordingly, we understand that disconnection of a customer participating in a financial hardship arrangement is already prohibited by the TCP Code in most circumstances.
85. We submit that customers in financial hardship arrangements should not be disconnected. If the provider has agreed to a financial hardship arrangement and the customer is complying with that arrangement, it is not appropriate to disconnect the customer.
86. Accordingly, we propose that the second Outcome be reworded to refer only to customers within 12 months of exiting a hardship arrangement.
87. **We suggest the following additional Outcomes:**
- Not disconnect a consumer who is meeting their obligations in respect of a financial hardship arrangement unless the customer voluntarily elects to have the service disconnected.
 - Ensure that consumers who have disclosed that they are at risk of physical harm (for example, customers experiencing or fleeing family violence) are not disconnected, and disconnections are delayed until the customer is safe.
 - All disconnections should be reported, similar to the mandatory reporting of disconnection indicators which Victorian energy retailers make to the ESC.²⁸ That reporting should include data on arrears amount at the time of disconnection, notification of hardship or establishment of hardship arrangements prior to disconnection (yes/no and for how long) and hardship repayment amount details, or extensions that were not classified as 'hardship'. This data should be transparently published by the ACMA, similar to the regular reports of the ESC.²⁹
88. We consider that the examples provided for this priority area are appropriate.

²⁷ See: <https://www.esc.vic.gov.au/electricity-and-gas/information-consumers/having-trouble-paying-your-energy-bills-you-have-rights>

²⁸ See: https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/energy-customer-support-during-coronavirus-pandemic?_cldee=cGFocmljaoBjb25zdW1lcmFjdGlvbisvcmcuYXU%3d&recipientid=contact-8ofbcdb20e8ea11a817000d3acb8949-52822a5363314c88ac20bed318f847b6&esid=7fc58fb5-6bb8-eb11-8236-000d3a6aed8f.

²⁹ Ibid.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1. We recommend that failure to meet these Expectations trigger a review of the adequacy of the current regulation in the telecommunications sector, including: an earlier review of the TCP Code and/or the creation of Industry Standards where the TCP Code is deficient.

RECOMMENDATION 2. We recommend that the AMCA include a priority area titled 'Credit management and debt collection' with a goal to the effect that, *'Telcos will approach credit management and debt collection with sensitivity to the extenuating circumstances that may be facing consumers who have fallen into debt; they will require the same approach by any agents (including third party debt collection companies) that they engage for debt collection purposes; and they will approach debts related to disconnected services with a view to allowing consumers to recover from historic periods of hardship'*. We recommend including our suggested Outcomes to give effect to this section.

RECOMMENDATION 3. We recommend that the ACMA include a priority area in relation to product design focussed on affordability. This area should also include reference to landlines, bundling and priority assistance.

RECOMMENDATION 4. We recommend that the ACMA incorporate our suggested additional Outcomes and Examples to better capture systemic issues that we see through our case services.

Please contact Policy Officer **Brigette Rose** at **Consumer Action Law Centre** on 03 9670 5088 or at brigette@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

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Melissa Hardham | CEO
WEST JUSTICE

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About the contributors

Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About WEstjustice

WEstjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.

About Victorian Aboriginal Legal Service (VALS)

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973. VALS plays an important role in providing referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being Criminal Law, Family Law and Civil Law.

In March 2019, Consumer Action and VALS embarked on an Integrated Practice Project (the IP Project or the Project) as one way of addressing some of the unmet consumer, credit and debt legal needs of Victorian Aboriginal communities. As part of the Project, VALS and Consumer Action work together to participate in regular community engagement sessions with Victorian Aboriginal communities. Community engagement sessions operate in partnership with local ACCOs and other key service providers. The sessions have served to connect these communities with legal advice services, financial counselling, policy work and legal education relating to consumer, credit and debt issues. They also provide a forum for the cross-promotion of services that can support the civil legal needs of Victorian Aboriginal communities.

About Hume Riverina Community Legal Service (HRCLS)

We provide free legal assistance to people living in North East Victoria and the Southern Riverina of NSW across 17 local government areas. Our service helps people who are disadvantaged or vulnerable, and would not otherwise be able to get legal assistance, particularly those living in regional and remote areas. We prioritise:

- people experiencing family violence
- children and youth
- Aboriginal and Torres Strait Islander peoples
- people with a disability or mental illness
- the elderly

- low income earners
- people from non-English speaking backgrounds.

Our service provides legal assistance on family law, family violence, separation and divorce, youth law, motor vehicle accidents, credit and debt issues, discrimination, consumer complaints, traffic offences, fines, seniors' issues and other everyday legal problems.

