

25 July 2011

**Manager, Public Inquiry Section**

Australian Communications and Media Authority

PO Box 13112, Law Courts

Melbourne VIC 8010

By email: [reconnectingthecustomer@acma.gov.au](mailto:reconnectingthecustomer@acma.gov.au)

Dear Sir or Madam

***Reconnecting the customer: draft public inquiry report***

The Footscray Community Legal Centre (**FCLC**) thanks the Australian Communications and Media Authority (the **Authority**) for inviting public comment on the *Reconnecting the customer: draft public inquiry report* (**Draft Report**), released in June this year. We also thank the Authority for granting us extra time in which to lodge our submission.

The FCLC strongly endorses the submissions of the Consumer Action Law Centre (**Consumer Action**) and the Australian Communications Consumer Action Network (**ACCAN**). We wish to supplement these submissions by drawing attention to the particular problems encountered by recent refugees, other migrants and culturally and linguistically diverse (**CALD**) people generally, in their dealings with telecommunications service providers.

## 1. About us

The FCLC is a community-based non-profit legal service. We aim to address systemic injustice by providing free legal and financial counselling services, community education, law reform and advocacy to the people of the City of Maribyrnong and the western suburbs of Melbourne. The FCLC has extensive experience assisting refugees and other recent migrants with financial problems related to telecommunications, utilities, insurance and other issues. We frequently refer such matters to the Telecommunications Industry Ombudsman (TIO). Over the last twelve months, the FCLC has coordinated several drop-in telecommunications clinics, providing clients with direct access to representatives of the TIO as well as the Energy and Water Ombudsman Victoria (EWOV), Department of Human Services Concession Unit and ACCAN.

This submission draws on our casework, particularly our cases involving refugees, recent migrants and CALD consumers. For more information and case studies, we refer the Authority to our detailed report, *Taking advantage of disadvantage: case studies of refugee and new migrant experiences in the communications market*, produced with ACCAN in March this year.<sup>1</sup>

## 2. Regulation and governance issues

### a. Need for greater regulatory intervention

We strongly support legislative reform to confer greater regulatory power on the Authority. We note that the *Telecommunications Act 1997* (Cth) emphasises industry self-regulation. We agree with the Authority that this 'no longer suits the diverse and dynamic nature of the industry, at least for consumer matters.'<sup>2</sup> We note the Authority's view that 'there is no widespread culture of... compliance among service providers.'<sup>3</sup> We concur with this observation. In our work with vulnerable migrant and refugee communities, we have seen many instances of non-compliance with the Telecommunications Consumer Protections Code 2008 (**the Code**).

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<sup>1</sup> Australian Communications Consumer Action Network and Footscray Community Legal Centre, *Taking advantage of disadvantage: case studies of refugee and new migrant experiences in the communications market* (2011) ('*Taking advantage*'), available at [http://accan.org.au/index.php?option=com\\_content&view=article&id=287:taking-advantage-of-disadvantage&catid=98:access-for-all&Itemid=234](http://accan.org.au/index.php?option=com_content&view=article&id=287:taking-advantage-of-disadvantage&catid=98:access-for-all&Itemid=234) (accessed 23 July 2011).

<sup>2</sup> Australian Communications and Media Authority, *Reconnecting the Customer: Draft public inquiry report* (June 2011) ('Draft Report') 3.

<sup>3</sup> Draft Report, 26.

### **Case study 1**

*Mrs A is a 40 year old Somalian woman who came to Australia as a refugee in 1992. She signed up to a prepaid broadband plan with Dodo. One day when she was topping up her account, the dealer asked her if she would like to sign up to a Dodo mobile phone account. She later received a call from Dodo promoting the product. She agreed to set up a post-paid mobile phone account. Dodo's representative also persuaded her to sign up for post-paid landline, internet and Voice over Internet Protocol (VoIP) services. When Mrs A hesitated, the Dodo representative told her that Dodo would send her an offer in writing, and that she had a ten day cooling-off period in which to cancel the deal if she changed her mind.*

*Three days after she received the paperwork from Dodo, Mrs A called Dodo to cancel all the services except the mobile. Dodo acknowledged the request, but at the same time signed Mrs A up to an additional mobile phone service. Dodo did not provide Mrs A with a reference number for the cancellation of the other services. Eighteen days later, Mrs A received a letter from Dodo about her additional mobile service.*

*Mrs A called Dodo again to confirm her cancellation request. Dodo advised that it had no record of Mrs A's previous call and declined to assist further, since she could not provide a cancellation reference number. By this time, Dodo had charged Mrs A \$152.60 for the four services, via direct debit from her bank account.*

*Mrs A lodged a complaint with the TIO and received a refund for the disputed charges.<sup>4</sup>*

In this instance, Dodo appears to have breached several provisions of the Code, including paragraphs 8.1.7, which sets out the 'Customer's right to rescind,' and 9.1.1, which prescribes 'appropriate and systematic record-keeping'.

We believe that such non-compliance is widespread. This points to the need for greater intervention on the part of the Authority.

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<sup>4</sup> Taking advantage, 9-10.

*b. 'Regulatory mechanisms' and 'preferred mechanisms'*

The Draft Report outlines several means of improving consumer protection in the telecommunications industry. Some are contingent on legislative reform. The Draft Report identifies 'regulatory mechanisms,' permissible within the current regulatory model, that might go some way towards improving industry practice. It also identifies 'preferred mechanisms,' which would require legislative change but would allow the Authority to intervene more effectively, to improve industry standards.

Like Consumer Action, we believe that the Authority's 'preferred mechanisms' would be more effective than the 'regulatory mechanisms' in promoting best practice across the industry.

We strongly endorse the Authority's proposal for legislative reform, to invest it with greater investigative, information-gathering and surveillance powers.<sup>5</sup> At the same time, we urge the Authority to review its current enforcement and compliance policies, with a view to more active intervention in the industry, through the issuing of directions and infringement notices and, where appropriate, litigation.

**Recommendation 1:** The Commonwealth Government should amend the *Telecommunications Act 2007* (Cth), to increase the regulatory powers of the Authority, to enable the Authority to implement its 'preferred mechanisms' for industry reform.

**Recommendation 2:** These amendments should increase the Authority's investigative, information-gathering and surveillance powers.

**Recommendation 3:** The Authority should review its enforcement and compliance policies, with a view to more active intervention in the industry, through the issuing of directions and infringement notices and, where appropriate, litigation.

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<sup>5</sup> This would include the power to require a service provider to give information or produce documents to substantiate claims made in the course of promoting products or services. Draft Report, 31-32.

c. *Governance of the TIO*

We agree that the governance structure of the TIO requires significant reform. With its dual governance structure, the TIO is out of step with other national industry-based dispute resolution schemes, most of which have moved to unitary models.

The TIO's outmoded structure is not conducive to independence, transparency or efficiency. In its present form it does not promote public confidence in the independence of the scheme. At present, the TIO is jointly governed by a Council and Board of Directors. The Council includes consumer representatives, but the Board consists solely of industry representatives. The Board has ultimate authority to implement or veto any proposals put forward by the Council. We agree with the Authority that this 'may compromise the independence, or at least the perception of independence, of the TIO scheme.'<sup>6</sup>

Lack of transparency further undermines public perceptions of independence. Without access to the minutes of Board and Council meetings, it is impossible for consumers to know whether or not the Board is giving due consideration to Council recommendations.

The overlapping functions of the Board and Council also lead to inefficiency. Three former Ombudsmen have described the current structure as confusing and unwieldy, calling for a 'more streamlined, more effective governance model.'<sup>7</sup>

**Recommendation 4:** The Telecommunications Industry Ombudsman's Board and Council should be abolished and replaced with a unitary governance structure, involving equal numbers of industry and consumer representatives and an Independent Chair.

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<sup>6</sup> Draft Report, 114.

<sup>7</sup> Simon Cleary, Deirdre O'Donnell and John Pinnock, *Submission to Australian Communications and Media Authority's 'Reconnecting the customer' public inquiry* (2011), available at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_312279](http://www.acma.gov.au/WEB/STANDARD/pc=PC_312279) (accessed 23 July 2011) 2. See also Footscray Community Legal Centre's submission to the Department of Broadband, Communications and the Digital Economy's review of the TIO scheme, dated 27 April 2011, available at [http://www.dbcde.gov.au/\\_data/assets/pdf\\_file/0016/134071/Footscray\\_Community\\_Legal\\_Centre.pdf](http://www.dbcde.gov.au/_data/assets/pdf_file/0016/134071/Footscray_Community_Legal_Centre.pdf) (accessed 23 July 2011).

### 3. Preventing ‘bill shock’

#### *a. Clearer advertising, better product disclosure and standard pricing*

The FCLC strongly supports measures to improve the clarity of advertising in the telecommunications industry. We frequently advise clients suffering from ‘bill shock,’ or sudden, exponential increases in their bills. Such experiences are extremely widespread, and suggest that the industry should do much more to inform customers of the potential costs associated with their products and services.

We agree that terms such as ‘cap,’ and claims about the ‘value’ of particular plans, lead to frequent confusion over customers’ entitlements and the real cost of services.<sup>8</sup>

#### **Case study 2**

*Mr B’s friend took him into the Vodafone retail outlet in Altona, where he purchased a new phone on a \$49.95 monthly plan. At the time of purchase Mr B was told that he had \$450 worth of calls under the plan per month. He believed that he could then ring overseas as many times as he liked and all of his calls would be covered for \$49 per month.*

*Mr B contacted the FCLC’s financial counsellor because he became concerned that his mobile was not working. He sought assistance to attend the Vodafone retail outlet to try to find out why. When they went to the retail outlet they found that Vodafone had placed a ban on the mobile as Mr B had run up nearly \$1,000 of calls to Burma over a couple of weeks.*

*The FCLC then contacted the TIO and the Vodafone Customer Liaison Team. After some discussion, Vodafone agreed to waive the \$1,000 debt, on the condition that Mr B cancelled his plan and converted to a pre-paid mobile.<sup>9</sup>*

Although this matter was successfully resolved, we believe there are many other vulnerable consumers who never access legal or financial counselling services, but instead attempt to pay these unexpectedly high bills. For some customers, this causes extreme financial hardship and in some cases may lead to bankruptcy.

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<sup>8</sup> Draft Report, 82.

<sup>9</sup> *Taking advantage*, 15-16.

**Recommendation 5:** The Authority should develop an industry standard regulating advertising, product disclosure and pricing structures. This standard should prohibit the use of misleading or confusing terminology, set benchmarks for product disclosure and require service providers to include a standard unit of pricing in all advertisements and product disclosure documents. The *Telecommunications Act 2007* (Cth) should be amended, to empower the Authority to develop and enforce this standard.

*b. Simple and effective usage monitoring*

Consumers' inability to monitor their usage is another major cause of bill shock. While many providers offer online tools for monitoring usage, these tools are often complex, unreliable and difficult to access. We strongly endorse the Authority's view that this as an especially serious problem for disadvantaged consumers.<sup>10</sup>

**Case study 3**

*Mrs C is a 30 year old Burmese woman who came to Australia as a refugee in 2007. She speaks no English and relies on an interpreter to deal with service providers.*

*In June 2009 Mrs C signed up for Optus Fusion plan. She received regular bills of \$102.50 per month. In September 2010 she received an unusually high bill for \$404.50. Mrs C paid her bill in full, but decided to turn off power to the computer and modem.*

*In early October, Mrs C received another high bill for \$402.36. Mrs C complained to the TIO and the matter was eventually resolved, with Optus offering her a refund of \$300 as a goodwill gesture.*

*Mrs C says she is aware that an online usage meter is available, but she has not been given a password to access it. She says Optus did not explain how to use the usage meter, either before or after the billing dispute.<sup>11</sup>*

Many consumers have limited computer literacy, particularly older people and people with disabilities. Others speak little or no English, making it very difficult for them to understand

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<sup>10</sup> Draft Report, 96.

<sup>11</sup> *Taking advantage*, 23-24.

complicated instructions on how to use online usage monitors. For these consumers, ‘hard caps’ and real-time usage alerts are much more effective ways to control usage and reduce the risk of bill shock.

**Recommendation 6:** The Authority should develop an industry standard, setting the benchmark for the provision of effective expenditure management tools to enable consumers to monitor their usage and reduce the risk of bill shock. The *Telecommunications Act 2007* (Cth) should be amended, to empower the Authority to develop and enforce this standard.

#### 4. The specific needs of CALD communities

Many CALD consumers rely heavily on telecommunications services. As we observed in our report, *Taking advantage of disadvantage*:

Telecommunications connectivity plays a particularly critical role in the lives of refugees and new migrants. The settlement process involves building an identity within new communities... while maintaining contact with family, culture and community overseas. It also involves accessing... essential services... Mobile and internet connectivity enables social inclusion in refugee and migrant communities, and much is at stake if these families and individuals are not connected in an accessible and affordable way.<sup>12</sup>

Precisely because they rely so heavily on telecommunications services, CALD consumers are disproportionately affected by bill shock and other consumer problems relating to these services.

Many CALD consumers have great difficulty dealing with communications service providers and the TIO. In recent years, the TIO has made a concerted effort to become more accessible to marginalised groups, but at this stage, the TIO website and other TIO documents are still not available in languages other than English. Perhaps for this reason, CALD communities generally have little knowledge of the TIO.

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<sup>12</sup> *Taking advantage*, 4.



Service providers are even less prepared to meet the needs of CALD consumers. Bills and product disclosure information are never available in languages other than English. Most service providers do not adequately train their staff to deal with CALD consumers, meaning that customer service representatives often fail to offer interpreting services when they are clearly needed. In some cases, representatives do not make enough effort to explain important matters to CALD consumers.

While we applaud the Authority's commitment to improving consumer protections in the industry, we are disappointed that the Draft Report pays very little attention to the specific needs of CALD consumers. CALD consumers often suffer from multiple disadvantages and survive on very low incomes. They are often the most severely affected by serious industry-wide problems such as bill shock and misleading advertising, which the Authority correctly identifies in its Draft Report.

Unless the Authority takes concerted action to address the specific needs of CALD consumers, many proposals in the Draft Report will offer little benefit to the people who are most in need of help.

*a. Product disclosure materials in languages other than English*

CALD consumers often find it very difficult to access or understand information about telecommunications services. The Draft Report suggests that service providers create 'user-friendly guides' for distribution to consumers at the point of sale.<sup>13</sup> We strongly support this idea, but believe that such guides will be of little value to CALD consumers, unless they are at least partly available in languages other than English.

**Recommendation 7:** The Authority should set benchmark standards for user-friendly guides to telecommunications services, to be provided to all consumers at the point of sale. Each guide should include a summary of key points in a range of community languages, and information about the role and powers of the Telecommunications Industry Ombudsman.

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<sup>13</sup> Draft Report, 105.

*b. Making complaints mechanisms more accessible*

CALD consumers often have great difficulty making complaints and navigating internal dispute resolution (IDR) procedures.

***Case study 2 (continued from page 6)***

*Having agreed to waive Mr B's \$1,000 debt, Vodafone said it wanted to be sure that Mr B understood the terms of his new pre-paid plan. The FCLC arranged for Mr B come in for an appointment, to discuss the plan and explain the terms of the refund. When Mr B came for his appointment, we tried to ring Vodafone on the number it had provided. We received a message that the service was temporarily unavailable. We continued to try to contact Vodafone with Mr B in attendance. It took over thirty minutes and many attempts before we got through to a person.*

*When we finally got through to the Customer Liaison Team, we were told that as it was 4:20 pm, the service was closing for the day and no-one could attend to us.*

*We had to stress that it was the Customer Liaison Team that had requested the phone call, in order to assure itself that Mr B was fully informed of Vodafone's decision and the terms of his new plan. After much persuasion, a Vodafone representative finally agreed to discuss the matter.*

*At the end of the discussion, we asked for confirmation of the agreement by email. This was not forthcoming. After further follow-up we finally received an email confirming the outcome of the negotiations.*

We strongly agree with the authors of the Draft Report that '[s]ervice providers should offer additional support to vulnerable and disadvantaged consumers who wish to make a complaint...' <sup>14</sup> In particular, we believe that service providers must do more to make their IDR processes accessible to CALD consumers.

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<sup>14</sup> Ibid 104.

We endorse the Authority's proposal to issue a service provider determination, setting benchmarks for complaints-handling procedures in the industry. To this end, we also endorse the Government's proposal to amend the telecommunications regulations, in order to grant the Authority more wide-ranging powers to issue service provider determinations.<sup>15</sup>

**Recommendation 8:** The Authority should develop a comprehensive service provider determination concerning complaints-handling processes in the telecommunications industry. The determination should require all service providers to address the specific needs of disadvantaged consumers, including culturally and linguistically diverse consumers. It should state clearly that it is the service provider's responsibility to ensure that such consumers can ask questions, lodge complaints and access internal dispute resolution processes. It should include strict penalties for non-compliance.

**Recommendation 9:** The determination should require all service providers to offer interpreting services as a standard feature of their complaints-handling and internal dispute resolution processes.

**Recommendation 10:** The determination should require all service providers to institute cultural awareness training for front-line staff, to improve levels of service for culturally and linguistically diverse consumers.

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<sup>15</sup> Ibid 30.

Thank you again for inviting comments on the Draft Report. If you would like to discuss any aspect of this submission or our recommendations, please don't hesitate to contact Denis Nelthorpe on (03) 9689 8444.

Sincerely



**FOOTSCRAY COMMUNITY LEGAL CENTRE**

### Summary of recommendations

**Recommendation 1:** The Commonwealth Government should amend the *Telecommunications Act 2007* (Cth), to increase the regulatory powers of the Authority, to enable the Authority to implement its 'preferred mechanisms' for industry reform.

**Recommendation 2:** These amendments should increase the Authority's investigative, information-gathering and surveillance powers.

**Recommendation 3:** The Authority should review its enforcement and compliance policies, with a view to more active intervention in the industry, through the issuing of directions and infringement notices and, where appropriate, litigation.

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**Recommendation 5:** The Authority should develop an industry standard regulating advertising, product disclosure and pricing structures. This standard should prohibit the use of misleading or confusing terminology, set benchmarks for product disclosure and require service providers to include a standard unit of pricing in all advertisements and product disclosure documents. The *Telecommunications Act 2007* (Cth) should be amended, to empower the Authority to develop and enforce this standard.

**Recommendation 6:** The Authority should develop an industry standard, setting the benchmark for the provision of effective expenditure management tools to enable consumers to monitor their usage and reduce the risk of bill shock. The *Telecommunications Act 2007* (Cth) should be amended, to empower the Authority to develop and enforce this standard.

**Recommendation 7:** The Authority should set benchmark standards for user-friendly guides to telecommunications services, to be provided to all consumers at the point of sale. Each guide should include a summary of key points in a range of community languages, and information about the role and powers of the Telecommunications Industry Ombudsman.

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