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Australian Communications Consumer Action Network (ACCAN)

ACCAN Communications Consumer Congress

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ANDREW WILLIAMS: OK, we might get back under way, please. As we said at the start, one of the main objectives was to stimulate some conversations, and from my perspective I think we're off to a cracking start on that front. So, let's keep going. And fantastic to see everybody connecting as well, so I think bringing us all together has been a good outcome.

So, welcome to the next session. We have a panel on Consumer Protection and Enforcement. And I'm very privileged to be joined on stage again by three people who don't need a lot of introducing. So, I will keep this brief. Immediately on my right, we have Nerida O'Loughlin, who's the Chair and Agency Head of the Communications and Media Authority. We have Catriona Lowe, who's the Deputy Chair of the Australian Competition and Consumer Commission. And on the far right, we have Cynthia Gebert, who is the Telecommunications Industry Ombudsman. And we all know that. So, the way this panel is going to run, in a second I will hand over to Nerida, and then we will work our way down to my right. Each of the panellists will give an overview of their perspectives on the topic at hand, and then we've got plenty of time for questions from the floor afterwards as well. So, again, let's get a good, solid conversation going. So, with no further ado, I'll hand over to Nerida. Thank you.

NERIDA O'LOUGHLIN: Good morning, everyone. And thank you to ACCAN for the invitation to talk to you all today, and it's great to see so many familiar faces. Before I start, I might just introduce some new Authority members for the ACMA. Adam Suckling down the front here, who's our Authority lead on spectrum matters, and Samantha Yorke, who's recently joined us and will be our Consumer Lead on the Authority as well. So, they'll be here for the day and I hope you take the opportunity to introduce yourself.

The ACMA, we have been a bit busy over the last few months. But, really, some of the work we started, particularly around financial hardship, started about four years ago when we started doing some initial analysis and research. That's built up over time, and in July this year we put out a quite comprehensive paper called What Consumers Want, and it really built on the research analysis that we had done, compliance histories, our enforcement activities over the last few years, to pull that all together and give some guidance and direction to the industry about what we - as the regulator - would expect them to do in improving the Telecommunications Consumer Protection Code. That code is up for review by the end of next year but we thought it was useful to get something out early and something that was comprehensive and really pointed out to industry where we thought there were areas of the code that needed to be improved. We also went a little further to say that we thought those areas of the code needed strengthening to the degree that, if industry wouldn't lift their obligations, we would move to direct regulation. Now, as many of you know, who have been around this space for many years, most of the obligations in the telecommunications industry are done under co-regulatory codes. Industry develops the codes, we as the regulator register them, and then we enforce them. We think that the industry now needs to step up further. We think that the world has changed since 1997, when the Act was introduced, and it was very much, as I said at my Comms Day speech earlier this year, very much about industry development, competition and growth - and they are all very good things. But we now have an environment where telecommunications is considered by people as an essential service. They can't do their work, they can't engage with government, they can't socialise communicate with each other if their phone is disconnected or they don't have access to the internet. So, I think the world has changed,

and we think that the process we're going through will cause a step-change in the industry of what they provide to Australian consumers.

So, we're taking quite strong action in that area and have said to the industry we'd like them to step up and come back to us in the next couple of months about what they're going to do. And if we don't think that it's strong enough, then we will move to direct regulation as well. Many of you will also know that the Minister has also given us a formal direction to develop a Standard, a formal Registered Standard around Financial Hardship. That, again, it based on the work and research that we've done previously. So, we're moving away from co-regulation a little in that space, potentially, but I would just say that - on some other aspects - we see that co-regulation has been working quite well. And the one I would point to is the reducing scam calls and SMS scams code that we registered last year. And that's very much a directive of the telcos for preventing, proactively identifying and preventing scams on their network. We have seen huge results out of that, with more than a billion scam calls blocked in the first nine months of its operation, and about over half a million - sorry, over half a billion SMS blocked within the first six months of its operation. We're looking at, right across our tool kit, what is the best regulatory instruments to encourage innovation and growth in the market, but fundamentally to make sure consumers are protected across the board from what they get from telecommunications networks? And I might draw breath at that.

ANDREW WILLIAMS: Thank you, Nerida. And over to Catriona.

CATRIONA LOWE: Thanks, Andrew, and it's also lovely to look around the room and see some faces that I haven't seen for a very long time, and to see that there's some real continuity in the people that are engaging in

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this important sector. In preparing for today, I asked our team to put together for me a bit of a history of the enforcement action that the ACCC has taken in the telecommunications sector, and as Nerida has mentioned, one of our key motivations for doing so is the recognition that telecommunications is very much an essential service and arguably has been for quite some considerable time.

Unfortunately, it does remain the case that many of the issues about which we have taken enforcement action in the past remain the contemporary consumer protection issues. So, just to give some examples, we've taken action in relation to mis-selling, making false or misleading representations when promoting certain NBN internet plans - and there's been action against Telstra, Optus and TPG, respectively - we've taken action in relation to false and misleading representations in the context of unsolicited telemarketing sales. We've taken action against false and misleading representations in relation to speed claims, disconnection claims, requirements to transfer to the NBN, digital purchases, and unlimited claims, and, of course, we've taken action in relation to unconscionable conduct involving sales practices and vulnerable consumers. And that is, unfortunately, just a small sample of the action that we have taken. And this has all occurred during the life of the Telecommunications Protection Code and we are therefore greatly welcoming of the new approach that Nerida has signalled and consider that to be essential, if I could overuse that word, given the list of actions that I have just outlined.

It is, of course, too early to say how the current TCP process, whether or not that will yield results. There has only been certainly one meeting that I've participated in, in terms of the review group. But that set of surrounding circumstances, I think, does place appropriate pressure on that industry co-regulatory process to really come up with meaningful

reforms that are very much in the consumer interest. And we would also like to see a focus not on compliance with the code obligations but enforcement of the code obligations, where they are not being met. Critically, this is going to require, on the part of industries, a sufficient investment in systems and processes and procedures to make sure that the outcomes that are set out in the TCP Code, should that be the ultimate landing point, are actually able to be delivered in practice. And I have to say that all too often we see an absence of those effective systems and processes to support what are obligations that organisations have at least, in theory, signed up to uphold and promote. And that is a critical area of action even above the landing point in terms of what the substantive obligations in that code actually deliver for consumers. So, I think it is fair to say that all eyes and expectations are on that process and what it will deliver for consumers.

The other point, again, just to touch on a very key and contemporary issue, is around scam detection and prevention, and, of course, telcos, as a key part of the scam ecosystem, have a very significant role to play in this space. We do note the significant outcomes that have been achieved under the code but there is more work that needs to be done. We welcome, for example, ACMA's formal warning of Symbio in June 2022 and their direction to comply to burst SMS in August 2023, and we expect there will need to be further action as scam calls and texts continue to make their way to consumers. Indeed, it remains the case that they are the most common contact method for consumers in relation to scams. So, whilst there has been significant disruption, we also know that there are still plenty of those messages getting through.

We also consider that there will need to be work in relation to identity verification, to really stop actors getting access to the system. And we also consider very much that whilst there is a great deal that can

be achieved through the National Anti-Scam Centre and cooperative endeavours, that are going to ensure there aren't weak links in the system. We know that the SMSes and the calls that still come through to consumers are evidence that weak links in the system are very, very effectively exploited by the scammers, and those weak links remain in the system, and that is part of the work that is ahead of us, is really finding ways to take effective action against those weak links in the system.

And there will be much more to say about that work in the years ahead. I'll stop there. Thank you.

ANDREW WILLIAMS: Thanks, Catriona. And, Cynthia.

CYNTHIA GEBERT: Hi, everyone. And thank you very much for the opportunity to speak with you today. I, as you're aware, play a slightly different role to Catriona and Nerida. For those of you that want a little bit more context around what we do do, we are the independent dispute resolution organisation so, we're clearly not a regulator, but as you would have observed, we have plenty of views on what's working and what's not, based on the complaints that we see coming into our organisation. And I just want to emphasise, if Cynthia has a lot of views, the Ombudsman doesn't have any. All of the views that we express in our submissions are based in the complaints that we see, the trends we observe, and the opportunities to prevent complaints. Because ultimately we're part of the consumer protection ecosystem, we're not a regulator, but we're part of working to ensure that we have the right settings that are fit-for-purpose, that are actually going to prevent detriment in the long term. Part of our purpose is to independently and efficiently resolve complaints, and the other part of our purpose is actually to drive improvement in the industry. So, we're very keen so ask the questions

and challenge the issues that actually provide opportunity for industry to continue to improve. And that's been very much why we've been asking the question around whether or not the co-regulatory environment is still fit-for-purpose for the current way we use phone and internet services, the essentiality of the phone and internet services, and importantly, as Gerard mentioned before, the community expectations of phone and internet service providers. So, when you see submissions that we put in, that's what's sitting behind it. "Is it still working?" You know, we've pointed out a number of times our concerns about the enforcement regime that underpins the current TCP Code, and I'm pleased the Comms Alliance are taking steps to take out one of those steps that currently exists there. But we do still ask the question of whether or not it's good enough in an environment where there are other options that are available, like the Standard that's coming forward for Financial Hardship, that will better reflect what communities expect of an essential services provider.

What we've produced in reports that we've seen is things that have been tackled in other industries. You know, previously, I was in the Energy and Water sector - they had the exact same scenarios around inconsistent treatment of consumers experiencing vulnerability, inconsistent treatment of consumers who were experiencing payment difficulties. Options were presented to deal with it through direct regulation that has meant that there are less of those issues coming forward. We continue to see issues, like Gerard mentioned as well, around cancellation being hard, and needing to jump through a lot of hoops to exercise your right to be able to cancel a service. We question whether that's good enough and whether that actually builds trust and confidence in the telecommunications industry. It was April this year that Roy Morgan put out the survey results for the first time - telcos more distrusted than

social media platforms. I don't think that's the environment that the telco industry wants to be continuing to build a relationship with consumers in the essential services market. So, you know, we will continue to ask the questions. We don't necessarily know all the answers, but we want to continue to work with regulators, with the consumer sector, and particularly with industry to make sure that we have the right settings there to prevent further detriment, to prevent further complaints, and actually rebuild a level of confidence in the telco industry that the results - Roy Morgan, for example - don't suggest is currently there.

ANDREW WILLIAMS: Thank you. We'll kick into question time now. And I'll just lead off. So, starting with Nerida, and you touched on your position paper for the TCP Code and it does identify a number of areas, which you've touched on, for industry improvement. We put you on the spot for one of the - if you had to pick one, the greatest need for action, what would it be?

NERIDA O'LOUGHLIN: I think it would be around financial hardship. The analysis that we undertook leading up to our What Consumers Want paper estimated that there around 2.4 million Australians who are in financial difficulty and are unable to pay their telco bills. But when we look at the industry, they only reported to us just over 4,000 customers were on financial hardship arrangements. And then the other stat from that which I found quite frightening is 30% of people - and, actually, much higher for younger people, around 50% - were not aware that they could ask for their telco for assistance if they were in financial difficulty. So, I think those statistics were quite alarming to us and that really is even brought into starker - sharper relief when we consider the cost-of-living crisis that we're going through at the moment. So, I think

that's where - and with the Minister's Standard - I think that's where some very early work needs to be undertaken. We also need to work with industry to understand that discrepancy in statistics, to make sure that they're making their financial hardship policies obvious to people and they don't have to go through 10 clicks to get to them, and to make sure that they're delivering on those financial hardships, and thinking more laterally. Gerard, your point about direct debit is absolutely right. Direct debit is fantastic when things are going well for you, but you only need one bill to come in that throws you out of your direct debit and you end up in all sorts of difficulties. So, we think there's lots of work for the industry to do in that area and that's what we'll be working with them on as we develop the Standard.

ANDREW WILLIAMS: Thank you very much. And moving down to Catriona. You've obviously given us a really good overview and summary of some of the enforcement of consumer protections and dovetailing in with Gerard's presentation earlier about actions to address unconscionable sales and misleading and deceptive conduct. Taking that a step further, what opportunities do you see to improve these existing protections and provide clarity for industry participants about how they engage with, and sell devices and services?

CATRIONA LOWE: Thanks, Andrew. That's a big question.

ANDREW WILLIAMS: It is, sorry!

CATRIONA LOWE: It was great to be here to hear Gerard's presentation around unfair trading and prohibition. And we very much are on the record as supporting that reform, and that is one of a number of general

law reforms that are incredibly important in providing coverage across the range of issues, it complements very much the unfair contract terms law and the existing rules we have around misleading and deceptive conduct and unconscionable conduct. So, I would join with Gerard in encouraging you all to actively participate in that process. Importantly, we've also recently seen the introduction of penalties for breaches of unfair contract terms regulation, and we see that as really an important adding of heft to those regulations, and hopefully providing greater incentives to businesses to avoid those sorts of terms. And we remain of the view that it is also important to introduce penalties for breaches of consumer guarantee rights - that one is perhaps a little further away from us but it does remain incredibly important. I would add, though, that I very much agree that there is an opportunity - an essential opportunity - for the industry to take in relation to the current TCP Code reform to address what are some really long-outstanding issues. And people have mentioned payment options and assistance to vulnerable consumers, but I would add the contract cancellation, notice of contract expiry, but also - critically - engaging with the issue of the incentives that are provided in relation to sales practices and the behaviour that that is driving and how to address it. These are all incredibly important issues that sit behind what we see, unfortunately, leading to - again and again - breaches of some pretty fundamental provisions.

ANDREW WILLIAMS: Thank you. And not to exclude Cynthia, one for you. In your presentation, you raised some issues in the way industry has been engaging with vulnerable consumers, including those experiencing domestic and family violence. Not wanting to - hopefully I'm not compromising yesterday's Chatham House Rules - but that didn't go unmentioned. We had some great conversations on the domestic and

family violence issue. I think you bring some great cross-sector experience to your role in the TIO, or as the TIO. So, what are some of the opportunities for telcos to learn from some of the approaches to engage with vulnerable consumers that you've seen from other sectors?

CYNTHIA GEBERT: Thanks, Andrew. I think the key thing that I would emphasise is, yes, telcos are unique, but you're not that unique. You know, this was an issue that was tackled - and had to be tackled... I'm from Victoria. We had a Royal Commission into Family Violence that was released in 2016, at which point the Essential Services Commission, the Energy and Water Ombudsman, where I was previously, had recommendations directed at us to do better in terms of ensuring that the energy and water businesses, and my service, were better supporting consumers experiencing domestic and family violence. The energy and water sector in Victoria have had to tackle this. They've had direct regulation of domestic and family violence obligations, and one of the major water businesses in Melbourne recently had an enforceable undertaking in relation to a failing on their behalf. So, you're tackling something in this environment that might be new to you, it might be different, it might be asking more of you than the guideline - which I'm pleased to see has been updated recently - but you're not alone in tackling it. But the community, your consumers are the same consumers who have now expectations of their energy business, their water business, their financial services provider, and yet they can't - we see examples where they can't rely on getting a fair treatment from their telco. And so my question to you is, "Why are you not talking to those that have already tackled the issue? Are you talking to those that have already tackled the issue?" We can introduce you, if you don't know who to talk to, to start having these conversations. Because it's a tough issue

to tackle, supporting vulnerable consumers. But you're not alone in tackling it and you would actually do yourself a very good service to be getting on the front foot, not waiting - you know, Nerida said before, "Don't wait until the Standard comes into play. Why not be getting ready now for what you're going to be asked to do?" You know, what we continue to see, and it's come through in a number of our reports, things I touched on before - inconsistent treatment. It shouldn't actually matter which telco you sign up to. You know, at a number of presentations, I've recently talked about the Amiad, with Julio, who goes to bargain basement and his car door falls off when it doesn't pay well. I think it's an AAMI ad. I've said to financial counsellors, get your clients to think carefully about who they are choosing. If they get into financial difficulty, they might not get the support from some of the smaller, cheaper providers that they might get from one of the bigger guys. That's not good enough in the essential services market, that you get a cheaper product and you're not supported when you're trying to access what you're obliged to be able to access in the essential services market. So, I really encourage people to be asking the questions of other industries to lift the standard because it's really not good enough in the essential services market to have such disparity in the way customers are treated.

ANDREW WILLIAMS: Thank you. We'll now throw it over to the floor. We've got to good half-hour to go, so plenty of time for questions. So, we'll open it up to the floor. Who wants to kick it off? Up the back there, Sam. And could you just introduce yourself and where you're from.

ELLE MORRELL: I'm Elle Morrell from the Carlton Neighbourhood Learning Centre down in Melbourne. I wanted to pick up on the financial hardship stuff you raised. I'm just wondering if any preventative work has been

done before people get to that financial hardship. Yesterday, we spent a significant amount of time talking about the experience of the digital divide on a huge population in this country, and also that digital connection is an essential service, so much like electricity. I guess I'm just wondering if there's been any work done on getting a concession on phones and internet connection for people with concession cards? Because that seems to parallel what you were saying about look to the electricity industry or look to the water industry, and it's quite banal that we haven't got that in Australia.

CYNTHIA GEBERT: I think part of what makes it a bit easier in some respects, in terms of energy, is that it's still regulated at a state-based level around the retail component. If you go to every state, you'll find there's a different concessions framework, voucher framework and things like that. It's not even consistent in relation to the energy and the water concessions. So, it's not something that I'm aware of has been tackled in relation to telco. But ultimately it's something that we would need government funding because that's where obviously the concession component comes from.

ANDREW WILLIAMS: Thank you. Do we have any other questions?
Gerard.

GERARD BRODY: I've got a question about the work on scams, Nerida, and your scam code that you mentioned, and particularly the actions you have taken - I think warnings and directions and so forth. I don't know, it feels to me that's, like, a slap on the wrist. I'm wondering if you think that is sufficient in terms of your ability to ensure there's effective deterrence to meet those standards? And do we need penalties?

NERIDA O'LOUGHLIN: So, the way the code framework works is that the first step where there's a breach is directions to comply with the code. If there are further infractions, shall we call them, then we've got a full suite of powers. So, we've got infringement notices, we've got enforceable undertakings, remedial directions and civil penalty provisions. You're right, what we've done in doing those early investigations around the SMS and scam calls code is to really indicate to industry that we're going to be actively looking at their services. Where they're not complying currently, we will be issuing them with directions to comply. But if they continue to be non-compliant, then we'll move to the full suite of our powers. And Comms Alliance, which I think have also raised with government that potentially we get rid of that first step, so then we could move directly to stronger regulatory powers. I think that has great benefit. It also sends a very strong signal to consumers that the regulator will be taking, you know, the strongest action it can when they're facing those harms.

ANDREW WILLIAMS: Thank you.

CATRIONA LOWE: Can I just add to that? We're also on record supporting a single step for regulation in this area, because the reality is that we are continuing to see, and we know through our data that comes to Scamwatch, that there are particular actors in particular sectors that are enabling more than others, and we do think that there is a case, not least in the face of the ever-growing number and ever-increasing amount of losses that consumers are experiencing in this area, that we are able to quickly move to address those issues. So, we do are very supportive of that single-step process.

NERIDA O'LOUGHLIN: I might just add to that as well that where I think there's been also great value with the telcos is there's great incentive for them to actually stop scams on their networks. It reduces the confidence that people have in those networks. So, through our Scam Technology Action Task Force - I got that right, thank goodness! - we're continuing to explore new ways that telcos can disrupt scammers. The other thing I'd note is that, in our view, whether it's a code or a standard should not matter to the industry in terms of the effort they put in for compliance, but that doesn't seem to be understood by some people in the industry.

CYNTHIA GEBERT: Am I allowed to ask questions from up here?

ANDREW WILLIAMS: Of course you are - this is a conversation!

CYNTHIA GEBERT: Well, the thing I'm interested to understand - and because we haven't seen complaints coming to us yet where a consumer has gone, "Well, it was the telco system that let me down and consequently I lost however many tens of thousands of dollars out of my bank account," there hasn't been that shunting it back up the line. As I understand it, the Australian Financial Complaints Authority are tackling the bank part of it. Have you had conversations around what that could look like if there is failure to comply with a code, what that might look like for the liability of the telco relative to the bank?

NERIDA O'LOUGHLIN: Perfect question. I will go first and then I will pass over to you. I think where we're focused with the codes is disruption of the scam. So, really getting the telcos to proactively monitor their networks, identify patterns, and then take preventive action. So, I think then we move into the next stage, which I'll pass over to Catriona, on

what happens when somebody is affected by a scam?

CATRIONA LOWE: And the answer, I think, is that there's a supply chain for these. And all elements of that supply chain have a role to play in relation to prevention and disruption. And we are undoubtedly seeing a significant amount of action by at least some entities in some areas of that supply chain but it is not consistent. And that really is the role that the National Anti-Scam Centre will play in bringing people together to ensure the efforts that are currently happening are being pointed in a consistent direction. But that's one of the reasons too that we think the codes are a critical underpinning, because the reality of the matter is that people are incentivised differently to resolve some of these issues, and we do think - and the Minister himself has spoken about this as well - that there is a case where, you know, if the codes set a high bar for what is required in terms of that prevention and disruption, if members of the supply chain are not meeting that bar, there is a question about compensation for failure to meet the requirements that are set out in those codes. Because these scams are becoming increasingly difficult for consumers to even identify as a scam, let alone effectively arm themselves against them.

ANDREW WILLIAMS: And while we're on the scam subject, would it be possible to give the audience an update on the new SMS Register?

NERIDA O'LOUGHLIN: That's me. So, the Government have asked the ACMA to establish an SMS ID Register, which will allow brands - sorry, allow telcos to have certainty about what the alpha numeric systems are using, are actually legitimate brands. And this goes to the Australia Post scam that goes around, the linked scam that's still going around, making

sure that only legitimate users of those alphanumeric codes are actually being carried across networks. So, we're on to that. We did quite a bit of work and consultation over the last few months. We are moving to establish the registry by the end of this year. That will be in a voluntary way. We'll be working with industry. There are a couple of major telcos who have similar registries, so there are things that we can build on, so we want to move to a pilot stage by the end of this year and then we'll be talking to the Government about making it mandatory that all telcos need to use that registry and creating some legislation to give us those powers over the next 12 months.

ANDREW WILLIAMS: Thank you. Back to the floor. I think we've got another question. I think it's David or Bruce - which one? Bruce.

BRUCE: Bruce, individual member of ACCAN from WA. Following on from a question I asked last year, and after 10 months after a complaint, we still don't have an answer. With regard to pre-paid mobiles and the migration, if you have a credit balance, are they required to offer a refund as one of the options? And, secondly, are they allowed to retain part or all of the balance for future use? And should it not be reasonable to expect that you're on a like-for-like plan? In our instance, a \$30 for 180 plan, which they offered \$30 for 186 days. They ended up putting us on effectively over-doubling. Telstra said they had done nothing wrong. Views from the panel?

NERIDA O'LOUGHLIN: Bruce, I'm happy to talk to you afterwards and get your details and we'll look into it and come back to you. I don't have an answer off the top of my head. But as we say in Senate Estimates, "I'm happy to take it on notice!"

CATRIONA LOWE: Look, I guess I'd add - I mean, there's been a bit of a theme that's been raised already about not needing to reinvent the wheel in relation to solving some of these problems - and I would point out that there are rules that apply to other sectors. So, in energy, for example, there are rules regarding what is able to be retained and the circumstances in which it's able to be retained and information that needs to be provided in relation to planned migration, for example. And there are some very useful provisions in that law that could be taken into the telco space. I agree with Cynthia - I don't know that I've ever encountered an industry that doesn't claim, in the sort of opening parts of the discussion, to be unique in some way, and not everyone... You know, that is really the case in my experience. So, I do think there's a good case for industry to look to other places where these problems have been grappled with and see how those solutions can apply in this space.

CYNTHIA GEBERT: And the only thing I would add, Bruce, is what's fair and reasonable requires looking beyond what the laws and codes require. So, if it was a case with the Telecommunications Industry Ombudsman, we would look at what the laws and codes might be, what the contracts might be, but we'd also look at, well, what's the right thing to do in Bruce's circumstance versus Gerard's circumstance versus Keith's circumstance?

DAVID: Current individual member of ACCAN. I'm a bit of a fan of going to legislation, and I've never been able to find the words "co-regulatory" in the legislation. I do find the words "self-regulatory" and I still think that that's the right way to describe the scheme. And equally the Parliament hasn't changed its view. It's OK for the ACMA to change its view, but in

Parliament House, the Parliament hasn't changed its view. I have a question for Cynthia that sort of touches on the stuff that Catriona was also talking about. We have got issues where there are clearly breaches of either the law or the code, which become to the awareness of the TIO. Now, the Act always provided for codes to give powers to the Ombudsman. And those powers could be to just charge a higher fee than normal for resolution of a complaint if it was found that it breached the code. The Ombudsman 20 years ago was always reluctant - more like 25 years ago - was reluctant to take on those powers when we first introduced the TCP Code, or the code that became the TCP Code. What's the view of the Ombudsman today, given these calls for the ability to provide some immediate reaction to mis-selling to the Ombudsman being given power under the Code to take action against telcos on the immediate instance of mis-selling?

CYNTHIA GEBERT: One of the key things - thanks, David - is that we're not the regulator, so our primary role is to resolve individual complaints and drive industry improvement. So, where you mentioned breaches and things like that, we operate on a cost recovery model. So, you know, having the opportunity to charge more for those issues wouldn't actually be recovering our costs, it would be punitive, which is not a function that we have. I know you're suggesting that we could have that provided to us. My view is that an Ombudsman scheme achieves what it achieves not through taking punitive measures but through working through those that have the powers at the moment and are in the position to do it, to be able to make those changes.

DAVID: A cycle where you've gotta wait for ages and ages for the ACCC to mount a case of misleading and deceptive conduct. If you can

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simply - all the other complaints, you can balance the books...

CYNTHIA GEBERT: I appreciate that.

DAVID: And once again, the Parliament, which published the law, envisaged you having this power. So, I don't quite understand how the Ombudsman and the Board of the Ombudsman Scheme, made up of consumers and industry...

CYNTHIA GEBERT: And independent directors too.

DAVID: The only way I ever cleaned up channels when I was working in the industry was by having a procedure which said, "If you have mis-sold on my behalf, I will not only not pay your commission for that mis-selling, I will take away one other commission." The channel cleaned itself up immediately. And you can do that by saying, "I want the power to act on something when we know there's been a breach." No-one else on that panel has that ability. Nerida has got the ability of giving instruction some time after the effect. In the case study you provided on your submission on the Code, you had this mis-selling, and had to wait for ages and ages and ages for the ACCC to take action. If you're not the person who can take action on those immediate ones, what is the channel? Because I don't see it coming from the two people beside you.

CYNTHIA GEBERT: I don't think that it's the channel or the role of the Ombudsman Scheme to be stepping in and becoming, in effect, an enforcement. Because what you're saying is we would be interpreting the law, applying the law outside of the legal system, which is not...

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DAVID: (Indistinct) Parliament gave you the power in the Act.

CYNTHIA GEBERT: But it's not how, as you said, the Board approaches our role.

ANDREW WILLIAMS: OK. We might move on. Is there any other...? Right next to...

JUSTINE HUMPHRY: I'm from the University of Sydney. I've just finished an 18-month project funded by the eSafety Commissioner. We did a national survey of young people's understandings and priorities around online, emerging online safety issues for them. And a really clear message that's come out of this research is that young people really want to be involved in the policy space and have a presence in developing policies and responses by platforms to better meet their needs, and provide safe, you know, online social media environments for them to interact with. And I know the eSafety Commissioner is doing quite a lot of work in terms of developing a Youth Advisory Council. And, Nerida, you mentioned - this is what made me think about this - your figures, concerning statistics around young people's awareness of their digital rights. I'm wondering what - if there's any work or strategies that you're currently doing to engage with young people? And particularly in promoting their participation in the policy space?

NERIDA O'LOUGHLIN: The answer is we're not at the moment. And in that sort of policy space is very much we look to our portfolio department to do that type of engagement with the overarching policy. But I think it's a really good point. We have a consumer consultative forum that provides advice and information to us and gives us the capacity to share advice

back through that. And I have been thinking for a while that it might be time to relook at that forum and make sure that we've got the right people in the room to have the conversations across the board about what expectations are around telcos and the regulator and the industry itself. So, I think it's a really important point for us to consider. Thank you.

ANDREW WILLIAMS: Keith, down the front.

KEITH: Thank you. Keith, a member of the ACCAN Board. Both a comment and a question. First, the comment: I'd just like to express my congratulations to Nerida O'Loughlin and the ACMA for the work on the SMS Directory work with the telcos. That sounds to me like a very timely and remarkably sensible thing to do, so I think that just sounds fantastic, so thank you so much. I hadn't heard of it before. I should clearly pay more attention! But that sounds great.

Related to that, Catriona, when you were talking about scams, you talked about the need for greater identity verification. I presume some of what you meant was what Nerida then spoke to us about, but was there anything else that you had in mind or anything that you think is in development that we might be able to look forward to in this space?

CATRIONA LOWE: So, again, it's an ecosystem question, so it's a relevant consideration across all elements of the ecosystem. So, we find online - wholly online financial institutions, for example, there are challenges around the way in which the Know Your Customer provisions are being complied with. And that's being thought about in the context of anti-money laundering reforms currently on foot. But similar challenges in relation to platforms, who they're allowing on in terms of advertisers onto

their systems, for example, as well as the telecommunications. So, it is an issue that manifests itself in slightly different ways but at all points of the ecosystem. And there's, of course, a dimension to this - just picking up the comments that were made around digital divide that are really important to think about as well in terms of access for consumers as we are working through what these reforms look like. Because, of course, what can be a necessary barrier to properly identify a scammer can also have the effect of excluding people that may not have access to the sorts of documentation and identity material that typically are expected in this area. So, it is a complex issue. It's somewhat more easily solved, frankly, where you're talking about commercial actors, but that's still difficult. But once you're at the level of consumers, there are a range of considerations that really need to be carefully thought about. To, on the one hand, make sure that there is enough of a gateway to actually stop the scammers getting through, but without that preventing legitimate access to the system.

ANDREW WILLIAMS: Up the back there, Sam.

>> Hi. How's it going? Adam from UnitingCare in Victoria. I just had a question in terms of the financial hardship standard and commend that move. It's really great. I just wondered, to the panel, in terms of that standard, do you think there is a conversation around? What we know as an agency around financial hardship and with our financial counsellors, sometimes it can be the money and sometimes it can be other things getting in the way. And I think the top five things for us often is around, you know, suicide, self-harm, family violence, mental health, trauma, addiction and increasing homelessness. And so I guess my question is, are those kind of things going to be covered in terms of, you know,

general vulnerabilities and a direction businesses have to work with those vulnerabilities as well? Because sometimes people don't talk about the money first. It might be something getting in the way. They may have the money but not be able to actually get through the complexity of the market, the device, and everything else. So, I guess that was my question: Do you think that will be covered, that businesses need to have their house in order around those things? And the other thing, also just another one, was around the offshoring of financial hardship programs, whether there will be a direction that those need to come onshore? Because as we know, that exists at the moment.

NERIDA O'LOUGHLIN: So, I might take that one. I think we often use financial hardship as a bit of a short cut, and I think that's problematic. The work that we did really talked about consumers who might find themselves in vulnerable circumstances. And many of the examples you've given. And they may come in and out of vulnerable circumstances as well. So, last year, we issued a Statement of Expectations to the industry to put a stamp on where we thought they could improve and lift their game in that area, and that sort of covered the field. So, I think when we're turning our mind to the Standard, we'll be also looking at those people in vulnerable circumstances rather than just purely people who may run into trouble because of a financial situation.

CATRIONA LOWE: And if I could perhaps just add to what seems to be a bit of a theme emerging from this discussion, is that I think there is an opportunity for the telco industry to look at lessons from other markets in these regards, and potentially to leap-frog. Because there do remain real challenges in industries that have been, frankly, years ahead in addressing the issue of financial hardship, in grappling with the

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multiplicity of problems that often are sitting behind financial hardship, and making sure that the provider is not simply looking at their little, tiny slice of the problem. There is also a real imperative around proactive identification rather than waiting for the consumer to say magic words, often which they will not say and are very reluctant to say. So, again, looking at broader circumstances can provide the capacity to start to proactively identify. But whilst there are obligations that exist, for example, in energy in that regard, that continues to be an area of great challenge. So, there is an opportunity for telcos to actually do a bit of a leapfrog here in terms of taking on some of those learnings from other sectors.

ANDREW WILLIAMS: And Gerard.

GERARD BRODY: One more from me, thank you. I just wanted to build on the question earlier about affordability of products. And there was a discussion yesterday about ACCAN's long-standing advocacy for a low-income NBN product. My understanding - and I could be wrong - is that the Special Access Undertaking that the ACCC is currently undertaking is relevant to that question. So, my question is, can ACCC make a decision to require NBN to have a low-income product as part of that process? And if not, what is the barrier for NBN here? Because my understanding is, again, that they'll get their revenue either way - you know, they just charge other people a little bit more to enable this product. So, what is the barrier for them in developing it?

CATRIONA LOWE: Look, that's an excellent question. As you may or may not appreciate, the Special Access Undertaking process, we are not able to require elements, we can accept or not accept a Special Access

Undertaking, which has the somewhat unique feature of really being a regulatory framework within that undertaking. We can, of course, through the process of not accepting, encourage developments in particular areas, and certainly there has been - or will be - should the current Access Undertaking be accepted and finalised a proposal around a low-income forum. Now, that is not... That doesn't have the capacity to bind the NBN but it does require that the NBN respond to the issues that are raised through that forum. That is manifestly not an immediate solution to the question that you are asking but we do consider it's a very important element of taking NBN on the journey that it needs to go on in relation to thinking about these issues for their customers. There can be a reticence for there to be cross-subsidisation, for example, of the type that you've mentioned, but one of the learnings through the energy customer engagement processes is that where energy businesses have engaged with their customer base around these questions, that they have typically found - and in a rigorous way, not just sort of asking carefully crafted questions to get carefully crafted answers - that there actually is a willingness to pay on the part of consumers to help out other consumers that are in difficult circumstances. So, we are certainly hopeful that the measures that are around the low-income committee and the expectations around greater consumer engagement for future Access Undertakings will drive these sorts of really important conversations.

ANDREW WILLIAMS: And Chris Dodds... Sorry, Nerida.

NERIDA O'LOUGHLIN: I was just going to add to that, and I'll go a bit radical! I think we're at a time where there's a huge amount of opportunity for revising the fundamental policy around telecommunications in this country. And we've put this forward, and my

colleagues here have put this forward before, around whether or not we need a registration scheme so we actually know who's in the industry. And if we know who's in the industry, we can also deal with, more quickly, with players who are absolutely recalcitrant fly-by-nighters, coming into the industry to rip off consumers and get them out of the system. There's things like the Universal Service Obligation, the Customer Service Guarantee - all these constructs that have been in the law for a long period of time which need rethinking. And we would also argue that there needs to be greater alignment between what is fundamentally wholesale regulation of the NBN and retail regulation of the RSPs. So, I think there's an opportunity here to think outside the immediate issues that we have been talking about, about what is the longer-term framework for telecommunications and engaging with government and consumers engaging directly with government about what your expectations would be? And I think that's where you come to these fundamental decisions about, you know, what's the NBN going to provide in the future? What are RSPs gonna do in the future? And what do you want the shape of the industry to look like?

ANDREW WILLIAMS: Thank you. And last question from Chris.

CHRIS DODDS: ACCAN Board member. A quick point. I think in terms of the regulation of NBN, we've also gotta be careful of the economists within the regulator, and certainly in the AER, energy network regulatory area, a South Australian network did propose a low-income tariff and it was the economists in the AER and the regulations that are built around network regulation that stopped that going forward. So, there's gotta be work done within regulators as well as with the NBN to achieve a low-income product. My question actually was going back to the guideline

around vulnerable customers, and it appears to me - I'll put a question mark at the end - that in the work I did, I worked for the Energy Ombudsman and we reported, for NSW, and we reported time and time again - and I must say, I'm really glad some of our reports ended up with one of the major energy companies being fined significant amounts of money for not implementing the legal requirements of the hardship program. So, regulation isn't fully the answer because you'll still get companies, even big companies, failing. And to me, the real question - so, my question to you, Nerida, is: Will the guideline have requirements on staff training, but more importantly staff numbers, in hardship programs? Because that's where they fall, that's where they break down, when there's rearrangements and restructures within a company, they pull experienced people out of the hardship program, they depopulate it. And when your caseload goes from 15 or 20 people you're case-managing to a hundred or 200, then you're unable to provide the assistance that legally you're required to. And the failure in the energy hardship regulation is that there's no requirements of staffing levels or staffing training other than some general wording, and that's where the companies fall down, even though they're, on paper, committed to helping vulnerable customers. And I think if the development of this code needs to look at the back end of assistance, not just the front end of who you should be helping and how you should be helping them.

NERIDA O'LOUGHLIN: I agree. And I think what we'll be looking at is as comprehensive a standard as possible that looks at those issues. And also, as with all our regulatory instrument development, there will be opportunities for public consultation and we would welcome input from all of you into that process about what you're seeing around the people that are in your networks around financial hardship or vulnerability, and what

we should be putting into the standard. Just going back to your first point, and it comes to Gerard's point as well - where economists get worried is cross-subsidisation in businesses. But there are examples of that being handled through things like the Regional Broadband Scheme. So, those things can be overcome if that's a concern. Rather than just leaving it to an economic problem.

CATRIONA LOWE: And perhaps if I could just slightly say in defence of economists! Well, I'm not one but I certainly spend a lot of time with them, and I think that thinking about these problems can, and does, evolve. You know, if I think about our regulatory conference, which is an economically focused discussion that the ACCC holds every year, the theme of that conference this year was "beyond efficiency" and it deliberately invited a conversation around these sorts of issues. And, again, in energy, one of the ways in which that's been grappled with is through the consumer engagement piece, in the sense that where the framework requires things to be delivered in the customer interest, if you've got a process through which the customers get to say what they're interested in, that is a much easier thing to bring within the regulatory framework, and that's certainly happened in subsequent decisions in relation to South Australian network businesses, for example. And, look, lastly, in terms of the staffing differential, to come right back to where I started, frankly, that is one of the reasons that we are such believers in the importance of effective enforcement and deterrence. Because what it does is provide a very clear and direct incentive for businesses to make the investment that they need to make, ongoing, to deliver their obligations.

CYNTHIA GEBERT: That was the \$17 million fine, wasn't it?

CATRIONA LOWE: Which...?

CYNTHIA GEBERT: The one that Chris was referring to, yep.

ANDREW WILLIAMS: OK. We've just run over time, so we'll call it a wrap there. Again, I think that was a very solid, robust conversation, and I really do appreciate everybody's input. So, could you please join me in thanking Nerida, Catriona, and Cynthia? Thank you very much.

(APPLAUSE)

ANDREW WILLIAMS: We will take a minute break while we set up for our next keynote with Commissioner Falk.