

Domestic and Family Violence

Summary

Telecommunications are a vital service for victim-survivors of Domestic and Family Violence (DFV), who often need assistance from their provider to retain a safe and affordable service. In contrast, communication services can also be used to facilitate DFV, which can lead to considerable consumer detriment. Current codes and guidelines do not effectively support and protect consumers or promote uniformity in the communications industry.

The Australian Communications Consumer Action Network (**ACCAN**) recommends the Minister for Communications implement direct regulation via a service provider determination to support consumers affected by DFV.¹ Protections for consumers experiencing or at risk of DFV must be enforceable via direct regulation noting the material risks to personal safety that consumers affected by DFV may face when their access to essential communications services is disrupted or interfered with.

Background

In Australia, DFV is a pervasive social problem, with 27% (2.7 million) of women and 12% (1.1 million) of men experiencing violence by an intimate partner or family member since age 15.² Technology-facilitated abuse is estimated to involve 8% to 48% of all DFV cases, with 27% of children in Australia experiencing technology-facilitated DFV.³ The cost of DFV to the Australian economy is approximately \$26 billion annually.⁴

DFV poses material risks to public safety. It intersects with various topics, such as financial hardship, economic abuse, compromised security and privacy, and vulnerable populations.⁵ ACCAN's stakeholders have consistently provided concerning reports regarding the experiences of communications consumers affected by DFV.

The Telecommunications Industry Ombudsman (**TIO**) noted in the 2021-2022 financial year they had received approximately 300 complaints from people experiencing DFV.⁶ Noting low historical rates

¹ *Telecommunications Act 1997* (Cth), s. 99(1A).

² Australian Bureau of Statistics 2021-22, Personal Safety, Australia, ABS, viewed 16 March 2023, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

³ Molly Dragiewicz 'How children are involved in technology-facilitated coercive control' (Lecture, British Society of Criminology Annual Conference, online, 8 July 2021) 6.

⁴ KPMG 'The cost of violence against women and their children in Australia' (KPMG, May 2016).

⁵ Telecommunications Industry Ombudsman 'Phone or internet complaints impacted by family violence' (Web Page) <https://www.tio.com.au/guides/family-violence/phone-or-internet-complaints-impacted-family-violence>.

⁶ TIO, 2023, Better consumer protection rules are needed for telco consumers suffering from family violence, Available at: <https://www.tio.com.au/news/better-consumer-protection-rules-are-needed-telco-consumers-suffering-family-violence>.

of complaint escalation to the TIO, and that many victim survivors are unlikely to self-identify, the number of communications consumers experiencing DFV is likely to be materially higher.⁷

A recent review of case management data by a major community legal centre identified that 15.8% of individuals experiencing telecommunications financial difficulties in the 2023 financial year reported that they also were experiencing family violence.⁸ The community legal centre also reported that the percentage could be higher due to the under-reporting of family violence. Similarly, research by the ACMA indicated that ‘family or relationship violence or abuse’ was identified by 5% of consumers as a factor contributing to experiencing ‘bill payment or difficulty in the previous 12 months’ across the essential service sectors of communications, energy and water.⁹

Existing DFV arrangements do not adequately protect consumers

The Telecommunications Consumer Protections Code (**TCP Code**) does not impose specific requirements to protect consumers experiencing DFV. Compliance with the TCP Code is voluntary unless the ACMA directs a participant to comply with the code.¹⁰

The TCP Code is accompanied by a guideline that assists Carriage Service Providers (**CSPs**) in recognising, assisting, and protecting consumers experiencing DFV.¹¹ However, the guideline and code does not place any enforceable obligations on CSPs to safeguard people experiencing DFV, which is leading to inconsistent responses and poor outcomes for victim-survivors.¹²

The minister for communications should establish a service provider determination to assist consumers affected by DFV.

ACCAN recommends the Minister for Communication make a service provider determination setting out the rules that apply to service providers when assisting people affected by DFV. Consumers should have access to uniform, best practice support when experiencing or at risk of DFV.¹³ This should also include adequate support for victim-survivors recovering from DFV. A service provider determination is vital to protecting vulnerable communications consumers by improving the protections afforded to victim-survivors of DFV.

ACCAN considers that enshrining DFV protections through a self-regulatory consumer protections code framework is inconsistent with best practice in other essential services sectors. Direct regulation is an appropriate and proportionate response to address the material risks to the personal safety of consumers experiencing or at risk DFV.

⁷ ACCAN's 2018 'Can you hear me' Research noted that only 3% of surveyed consumers escalated their query body lodging a complaint with the TIO, ACCAN, 2018, *CAN YOU HEAR ME? Ranking the customer service of Australia's phone and internet companies*, p.40, Available at: <https://accan.org.au/our-work/research/1523-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>.

⁸ Consumer Action Law Centre 2023, extract of case management system data.

⁹ ACMA, 2023, Financial hardship: telco and other essential sectors Quantitative research May 2023, p.12, Figure 3, Available at: <https://www.acma.gov.au/publications/2023-05/report/telco-financial-hardship-quantitative-and-qualitative-research>.

¹⁰ *Telecommunications Act 1997* (Cth) s. 106.

¹¹ G660:2023 Assisting Consumers Affected by Domestic and Family Violence Industry Guideline.

¹² The TIO noted that the 'lack of mandatory obligations on telcos leads to uncertainty for customers experiencing family violence in how they will be treated, because how they are treated is based on what protections their telco has chosen to implement. In some cases, a telco may not have any tailored approaches for consumers experiencing family violence'. TIO, 2023, Better consumer protection rules are needed for telco consumers suffering from family violence, Available at: <https://www.tio.com.au/news/better-consumer-protection-rules-are-needed-telco-consumers-suffering-family-violence>.

¹³ The TIO noted that 'it is vital that the expectations on telcos responding to consumers experiencing family violence be written in mandatory, government-made regulation'. Ibid.

Contents of direct regulation for DFV in communications

Subject to consultation with community experts, including people with lived experience, direct regulation must be developed to ensure the safety of all telecommunications consumers. Direct regulation should require CSPs to have policies, systems, and procedures in place that prioritise the personal safety of customers, staff, and others concerning matters of DFV. Direct regulation should be expanded, but not limited to, the following areas.

CSPs must invest in comprehensive, regularly updated staff training on DFV issues

Direct regulation should require CSPs to have policies, systems, and procedures in place that:

- Mandate that CSPs work with a reputable training provider with DFV expertise annually to ensure they have the most up-to-date information on DFV issues.
- Require that CSP staff conduct regular specialist DFV training to ensure they are appropriately trained to assess consumer vulnerability and respond to consumers experiencing or at risk of DFV.
- Require that CSP staff undergo specific training to ensure that they prioritise the safety of consumers experiencing or at risk of DFV, and that this training be developed in cooperation with a reputable training provider with DFV expertise.
- Require that CSPs report to the ACMA on their performance concerning the support they provide to consumers experiencing or at risk of DFV.

Consumers should be supported to access appropriate assistance when experiencing or at risk of DFV

Direct regulation should require CSPs to have policies, systems, and procedures in place that:

- Remove requirements for consumers to provide proof to CSPs when experiencing or at risk of DFV.
- Avoid the need for consumers to repeatedly disclose experience of DFV.
- Require that CSPs have easily accessible information for consumers experiencing or at risk of DFV.
- Effectively support authorised representatives (**ARs**) to assist consumers experiencing or at risk of DFV.
- Require that CSPs identify and provide flexible and tailored assistance to consumers experiencing DFV.
- Require that CSPs provide appropriate assistance to consumers at risk of DFV e.g. safety planning, assisting the victim-survivor in setting up new accounts, splitting up joint accounts, securing their information, even if the violence may have temporarily stopped.

Credit Management processes undertaken by CSPs should account for DFV

Direct regulation should require CSPs to have policies, systems, and procedures in place that:

- Provide for the review of whether expenditure attached to an account can be ascribed to economic abuse or has been exacerbated by DFV, and where this is the case, limit, flag or quarantine the account and provide tailored relief to the consumer as appropriate.
- Require CSPs to undergo a rigorous review process prior to disconnecting a consumer experiencing or at risk of DFV.

- Strengthen the authority of ARs when interacting with CSPs on behalf of consumers experiencing or at risk of DFV.

Telecommunications contracts should be drafted to account for the possibility of DFV

Direct regulation should require CSPs to have policies, systems, and procedures in place that:

- Require CSPs to draft contracts going forward that allow for the severability of accounts, which enable DFV victim-survivors to sever their number from the perpetrator's account (and vice versa).¹⁴

Benefits of direct regulation for people experiencing or at risk of DFV

Direct regulation would help victim-survivors of DFV to protect their personal and financial safety, to re-establish their lives, and to maintain contact with family, friends and support services.

Direct regulation to assist consumers experiencing or at risk of DFV would leverage the expanded investment in DFV responses as part of the *National Plan to End Violence Against Women and Children 2022-2032* by extending benefits to consumers of communication services and reducing technology-facilitated abuse.¹⁵

Conclusion

Victim-survivors of DFV, including technology-facilitated abuse, experience significant harm and require tailored assistance and prevention measures. Current DFV protections in the communications sector are not sufficient to protect consumers and do not drive best practice. Implementing direct regulation via service provider determination for DFV in communications would promote uniformity amongst CSPs assisting consumers affected by DFV.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

¹⁴ ACCAN notes that this would build on recent changes included in the Communications Alliance Industry Code C566:2023 Number Management – Use of numbers by customers under Section 4.3.3. and changes to section 8.5.1 of G660:2023 Assisting Consumers Affected by Domestic and Family Violence Industry Guideline. ACCAN is pleased to see these changes however maintains that these protections should be directly enforceable to drive uniform industry action.

¹⁵ Department of Social Services, 'National plan to end violence against women and children 2022-2032' (Commonwealth of Australia, 2022); Harriet Spinks, 'Women's safety' *Budget Review 2022-23 Index* (Web Page, April 2022) https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/BudgetReview202223/Womens_Safety.