

Submission

22 March 2024

Authority Secretariat
Australian Communications and Media Authority
PO Box 78
Belconnen ACT 2616

Re: ACMA Compliance Priorities 2024-2025

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Communications and Media Authority (**ACMA**) for the opportunity to provide comment on the compliance priorities 2024-2025 consultation paper (**the Consultation Paper**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

ACCAN has identified several areas the ACMA should consider when developing its compliance priorities for 2024-2025. These areas include:

- Protecting telecommunications consumers from being sold telecommunications products and services that do not fit their needs.
- Compliance with the Financial Hardship Industry Standard and Telecommunications Consumer Protection Code (**TCP Code**).
- Supporting consumers in navigating and adapting to the upcoming 3G network shutdown.
- Improving quality captioning for all telecommunications consumers.

ACCAN considers that the following 2023-2024 compliance priorities should be maintained and expanded as part of the ACMA's 2024-2025 compliance priorities:

- Protecting telco customers experiencing financial hardship.
- Supporting telco customers experiencing domestic and family violence (**DFV**).
- Combatting SMS scams.

Please see **Attachment A** for our response to the questions set out by the Consultation Paper.

We thank the ACMA for the opportunity to provide our views on the Consultation Paper. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at con.gouskos@accan.org.au.

Yours sincerely,

Con Gouskos

Policy Officer

Attachment A

Question: What have you identified as matters of significant public interest or concern?

The upcoming 3G network shutdown is a matter of significant public interest which ACCAN has consistently seen raised as an issue of importance by consumers and community groups. Our engagement has noted that many telecommunications consumers are unsure as to the full impact of the 3G shutdown on their ability to access household medical devices, EFTPOS machines and emergency services. ACCAN supports the ACMA taking an active role in ensuring that telecommunications providers are adequately managing the 3G network shutdown.

ACCAN encourages the ACMA to pursue a trial of a captions quality measurement model, specifically the Number Edition Recognition model and to continue to take an active role in the monitoring of captions quality.¹

Consumers have demonstrated preferences to have access to a variety of flexible telecommunications payment options consistent with a competitive market. The offering of direct debit as the default or only option for payment for telecommunications services creates issues for low income and vulnerable consumers.² ACCAN supports the ACMA's calls for greater freedom of choice with regard to the fee free telecommunications payment options available to consumers.³

Question: What do you see as being potential and actual causes of harm to consumers?

ACCAN continues to observe ongoing issues relating to the supports offered to victim survivors of DFV by telecommunications providers. We acknowledge the ACMA's effort in undertaking a compliance audit of how telecommunications providers assist customers experiencing DFV and support the ACMA undertaking further work in this space. ACCAN considers that the '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'.⁴

Telecommunications debts that arise due to mis-selling can cause material harm to consumers.⁵ Consumers may experience financial hardship and go without certain essentials to service their telecommunications debts.⁶ ACCAN notes the ACCC's comments regarding the Draft TCP Code Package's provisions on responsible selling. The ACCC noted that:

- 'Misleading advertising and commission-based remuneration schemes drive aggressive sales behaviour and encourages agents to adopt tactics that are not compliant with the TCP Code'.⁷

¹ ACCAN. 2024. ACCAN Submission to the Australian Communications and Media Authority consultation on draft captioning quality guidelines. p.1. Available at: <https://accan.org.au/accans-work/submissions/2276-captioning-guidelines-acma>.

² ACCAN. 2023. Direct Debit in Telecommunications. Available at: <https://accan.org.au/accans-work/research/2121-direct-debit-in-telecommunications>.

³ ACMA. 2024. Correspondence from the Chair ACMA to CEO Communications Alliance 1 February 2024. p.3. Available at: <https://www.acma.gov.au/what-consumers-want-consumer-expectations-telecommunications-safeguards>.

⁴ ACCAN. 2023. Domestic and Family Violence Policy Position. p.1. Available at: <https://accan.org.au/accans-work/policy-positions/2253-domestic-and-family-violence>.

⁵ ACCAN. 2023. Response to the TCP Code Discussion Paper. p.7. Available at: <https://accan.org.au/accans-work/submissions/2147-tcp-code-discussion-paper-2023?highlight=WyJOY3AiXQ==>.

⁶ Ibid.

⁷ ACCC. 2024. ACCC response to 17 November 2023 Drafting Committee package – Review of the Telecommunications Consumer Protections Code. p.7. Available at: <https://www.accc.gov.au/inquiries-and-consultations/accc-submissions-to-external-consultations#toc-communications>.

- ‘The tension between achieving sales targets or commissions and servicing the consumers’ interests can lead to adverse outcomes’.⁸
- ‘The best practice approach for CSPs [carriage service providers] is to ensure that consumers do not enter into a sale or contract that is not suitable for them’.⁹

The Telecommunications Industry Ombudsman’s 2023 Systemic report noted:

- ‘We see systemic issues involving one-size-fits all processes and poor sales practices that disproportionately impact consumers with vulnerabilities’.¹⁰
- ‘Providers mis-selling to consumers with vulnerabilities can lead to severe consequences’.¹¹
- ‘The current framework does not provide appropriate protection to consumers with vulnerabilities from mis-selling’.¹²
- ‘Direct regulation should be front and centre to protect consumers with vulnerabilities who may otherwise fall through the cracks’.¹³

ACCAN would support the ACMA further investigating the negative impacts of telecommunications sales incentives on consumers in light of these reports. ACCAN strongly supports the use of direct regulation with regard to telecommunications sales and credit assessments, noting the significant potential for consumer harm resulting from telecommunications consumers from being sold telecommunications products and services that do not fit their needs.

ACCAN supports the work of telecommunications industry participants in blocking scam calls and texts, however we note that telecommunications consumers in Australia still receive billions of scam calls and texts every year.¹⁴ ACCAN supports the work undertaken by the ACMA in enforcing the existing anti-scam code and would encourage the ACMA to seek expansions to its regulatory powers to more effectively incentivise compliance with anti-scam legislation. ACCAN considers that mandatory telecommunications scam codes, supported by a strong penalty regime, are critical to providing effective incentives for industry participants to address the scam activity experienced by consumers.¹⁵

ACCAN considers that the upcoming 3G shutdown should be an area of focus for the ACMA in 2024-2025. Many Regional, Rural, and Remote (RRR) telecommunications consumers have expressed concern that the upcoming 3G network shutdown will impact their day-to-day life and access to emergency services. The recent announcement of a “mobile industry working group to support 3G switchover” highlights the concerns of government and consumers surrounding this issue. These include that consumers may ‘mistakenly believe their mobile device is unaffected post-switchover as the handset could continue to operate normally for voice and data, except when trying to call Triple Zero.’¹⁶ Additionally, some consumers have raised concerns that telecommunications providers do not have the 4G infrastructure in place to effectively transfer previously 3G services. ACCAN

⁸ ACCC. 2024. ACCC response to 17 November 2023 Drafting Committee package – Review of the Telecommunications Consumer Protections Code. p.8. Available at: <https://www.accc.gov.au/inquiries-and-consultations/accc-submissions-to-external-consultations#toc-communications>.

⁹ Ibid. p.7.

¹⁰ TIO. 2023. A time for change – Three years of systemic investigations in review. p.18. Available at: <https://www.tio.com.au/reports/time-change-three-years-systemic-investigations-review>.

¹¹ Ibid. p.19.

¹² Ibid. p.19.

¹³ Ibid.

¹⁴ Consumer Action Law Centre. 2024. Scams – Mandatory Codes Submission. p.11. Available: <https://consumeraction.org.au/scams-mandatory-industry-codes-consultation-paper/>.

¹⁵ Ibid. p.11.

¹⁶ Minister for Communications Michelle Rowland. 2024. New mobile industry working group to support 3G switchover. Available at: <https://minister.infrastructure.gov.au/rowland/media-release/new-mobile-industry-working-group-support-3g-switchover>.

supports the ACMA taking an active role in driving collaboration between telecommunications providers regarding the consumer impacts of the 3G shutdown.

Question: What are the high-level risks of non-compliance that you have identified, including from technological developments?

A high-level risk of non-compliance with existing telecommunications consumer protections frameworks is the perpetuation of consumer harm, including DFV being facilitated through traditional and digital communications technology. Non-compliance and a lack of uniformity in the protections offered to consumers may result in vulnerable consumers experiencing physical and emotional harm. Technology-facilitated abuse is estimated to involve 8% to 48% of all DFV cases, with 27% of children in Australia experiencing technology-facilitated DFV.¹⁷ The cost of DFV to the Australian economy is approximately \$26 billion annually.¹⁸

Non-compliance with voluntary consumer protections legislation presents a risk for consumers, who are very likely to be unaware of the protections which providers must offer them. With respect to critical consumer protection areas such as sales incentives, credit assessments, scam protections and the provisioning of financial hardship assistance, non-compliance can result in underreported and unreported consumer harm.

Question: What are the emerging issues where we can encourage compliant behaviour, deter non-compliance, or boost public confidence?

ACCAN considers that as major carriage service providers are shutting down their 3G networks in 2024, the ACMA may boost public confidence and encourage compliant industry behaviour by establishing 'Supporting consumers navigate and adapt to the 3G network shutdown' as a 2024-2025 compliance priority and consider publishing a statement of expectations (SOE) for the telecommunications industry to cover the 3G shutdown.

ACCAN considers that there is merit in this approach due to the fixed nature of the 3G shutdown's duration, this priority is highly unlikely to be extended for a further year, allowing for the ACMA to concentrate on alternative priorities. Establishing an SOE to cover the 3G shutdown would allow the ACMA to effectively respond to an upcoming issue of critical consumer importance and pre-empt significant consumer harm, should aspects of the 3G shutdown not be adequately administered.

The ACMA establishing a 3G shutdown SOE would reflect the concerns and expectations of many RRR telecommunications consumers. A 3G SOE would improve outcomes for consumers and provide greater guidance to industry, especially regarding consumer cohorts that live in RRR areas and have limited digital ability. The content that the ACMA should consider in its 3G shutdown SOE should include, but not be limited to:

- Consumers' access to emergency services through telecommunications devices.
- Ensuring that telecommunications providers reasonably make consumers aware whether the devices (including medical devices) they may be using will be impacted by the 3G shutdown.
- The needs of consumers with 3G devices and services who may have limited digital ability and unreliable internet connectivity.

¹⁷ ACCAN. 2023. Domestic and Family Violence Policy Position. p.1. Available at: <https://accan.org.au/accans-work/policy-positions/2253-domestic-and-family-violence>.

¹⁸ Ibid.

- How small businesses and sole traders may be impacted by the 3G shutdown.
- How providers should communicate with consumers who are likely to be wary of communications appearing as scams.
- Ensuring the continuity of the Priority Assistance service.¹⁹

Question: Are there any technological or market developments that you think are testing the effectiveness of the regulatory framework?

ACCAN considers that Low Earth Orbit Satellites (**LEOSat**) are testing the effectiveness of existing regulatory frameworks regarding the provisioning of broadband for RRR telecommunications consumers in Australia. ACCAN continues to receive complaints from telecommunications consumers regarding existing LEOSats and would support the ACMA in clarifying how existing telecommunications consumer protections can be delivered through LEOSat format.

ACCAN considers that there is value in the ACMA undertaking a review of the use of LEOSats in RRR Australia and take into consideration how this technology can best be regulated in the public interest.

Question: In what specific areas can we clarify the scope and application of the law?

ACCAN would like to seek further clarity on the scope and application of Section 117 of the Telecommunications Act 1997 (**the Act**) from the ACMA.²⁰ ACCAN specifically seeks clarification from the ACMA on their interpretation of “appropriate community safeguards” as mentioned in its letter to the CEO of Communications Alliance.²¹

ACCAN considers that there is merit to further clarifying the ACMA’s approach to interpreting s. 117. While understanding that the matters identified by the ACMA reflect relevant considerations for the application and exercise of discretion under s. 117, we consider that an ordinary reading of “appropriate community safeguards” requires further consideration and weight should also be given to the views of the community on the appropriateness of the proposed safeguards.

Community expectations, and consequently what constitutes appropriate community safeguards do not exist in a vacuum. Rather, community safeguards and consumer protections should evolve along with community and social attitudes. For example, community expectations of comprehensive protections for individuals facing domestic and family violence underpinned by immediately enforceable and effective protections are well established, and exist in comparable sectors, yet consumer protections lag materially behind in these critical areas.²²

ACCAN considers that clarifying the approach to interpreting s. 117 is critical to understanding its effective operation, and to determine whether there is a need for broader law reform to ensure that consumers are afforded effective consumer protections that reflect their needs, rather than an abstract standard of protections unlinked to contemporary consumer expectations.

¹⁹ Telstra. Priority Assistance. Available at: <https://www.telstra.com.au/consumer-advice/customer-service/priority-assist>.

²⁰ Telecommunications Act 1997 (Cth) Section 117 (1)(d)(i).

²¹ ACMA. 2024. Correspondence from the Chair ACMA to CEO Communications Alliance 1 February 2024. p.3. Available at: <https://www.acma.gov.au/what-consumers-want-consumer-expectations-telecommunications-safeguards>.

²² ACCAN. 2023. Domestic and Family Violence Policy Position. Available at: <https://accan.org.au/accans-work/policy-positions/2253-domestic-and-family-violence>.

Question: We're also interested in your views on whether we should extend any of our 2023–24 compliance priority areas for a year or more – and if so, why?

ACCAN considers that the ACMA's 2023-2024 priority 'Protecting telco customers experiencing financial hardship' should be maintained into 2024-2025 and adapted to reflect the changing nature of the regulation of financial hardship supports under the Financial Hardship Industry Standard. Updating this priority should include altering the content of the priority to reflect the ACMA's role in promptly monitoring and responding to non-compliance with the Financial Hardship Industry Standard. ACCAN considers that this priority should focus on key provisions of the Financial Hardship Industry Standard which are of material importance to consumers. These include the requirements for telecommunications providers to:

- 'Take all reasonable steps necessary to identify financial hardship customers for the purpose of advising on options for assistance as early as possible'.²³
- 'Make available, options for assistance to help financial hardship customers that are realistic, appropriate and tailored to suit the needs of the customer'.²⁴
- 'Account for the customer's individual circumstances and capacity to pay, including by considering options appropriate to the ongoing management of payments for a customer who is a victim survivor of domestic or family violence'.²⁵

Extending this priority area for an extra year will provide coverage for the ACMA to effectively oversee industry adaptation to the Financial Hardship Industry Standard.

ACCAN considers that the ACMA's 2023-2024 priority 'Combatting SMS scams' should be maintained into 2024-2025 and adapted to acknowledge the broader telecommunications scams landscape. The ACMA should consider altering this priority to 'Combatting call and SMS scams' in recognition of the multiple vectors through which scam activity can lead to consumer detriment. This priority should be maintained into 2024-2025 as a response to the significant and increasing number of consumers who experience financial losses as a result of scam activity.

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.

ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)

²³ Australian Government. 2024. Federal Register of Legislation - Telecommunications (Financial Hardship) Industry Standard 2024. Section 14. Available at: <https://www.legislation.gov.au/F2024L00133/asmade/downloads>.

²⁴ Ibid. s18(1).

²⁵ Ibid. s18(2).