



# **Proposed measures for the Telecommunications Deregulation Bill No.1 2014**

Response by the Australian Communications Consumer Action  
Network to the Government review of communications regulation

5 May 2014

## About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all 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 availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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# Contents

Introduction	Page 4
1. Pre-selection	Page 5
2. Confidentiality of Telecommunications	Pages 5-9
3. Part 9A of the Telecommunications (CPSS) Act	Pages 9-10
4. Customer Service Guarantee	Pages 10-12
5. Priority Assistance	Pages 12-14
6. Retail Price Controls	Pages 14-15
7. Local Presence Plan	Page 15
Conclusion	Pages 15-16

## Introduction

ACCAN thanks the Government for the opportunity to put forward the consumer perspective on the proposed measures for the *Telecommunications Deregulation Bill No.1 2014*.

As the peak organisation representing consumers in the communications market, our priority is to ensure that consumer and small business interests are taken into account in any regulatory revisions contemplated by the Government. The long term interests of end users are of course a key tenet of the Telecommunications Act, and experience has demonstrated that the delivery of sustainable outcomes for the community is underpinned by effective consumer consultation.

In our previous submission to the Government on deregulation we acknowledged that there is a need for an audit and regulatory review in a rapidly changing sector such as communications. We noted that regulations developed for one set of circumstances can become obsolete as new products come on the market and consumer behaviour changes.

Consumer protections play an important role in supporting a fair market that is sustainable in the long term. Accordingly, we urge the Government to continue to take account of the broader remedial costs to the community as a whole when markets fail consumers. For example, costs to individuals and small businesses associated with complaints resolution, costs to industry in internal complaints handling, costs of TIO complaints resolution, inquiry and regulatory costs for government.

It is more imperative than ever that the Government ensure the cost of impacts from regulation remain broad and consistent with the objectives of communications policy, in particular fostering the interests of end-users, balanced with delivering an efficient and competitive market, while promoting the availability and affordability of services. Any rationalisation of regulatory provisions impacting consumer protection must ensure that consumer confidence in a fair market is maintained, while delivering savings to industry. This approach can benefit both the demand and supply side, and ensure a more productive market place overall.

It is with these parameters in mind that we have prepared a response to the most recent consultation paper on deregulation proposals from the Department of Communications.

## Methodology

ACCAN has appointed an Expert Advisory Group to assist in assessing all proposals for deregulation. To date we have:

- Reviewed of all relevant consumer protection legislation, regulations, determinations, codes and guidelines, to identify the source of the protection and its coverage.
- Identified instances of overlap and duplication in consumer protections.
- Identified protections of fundamental importance to consumers, what protections should be retained, and in what form, what protections might be changed and what protections are no longer necessary in the new communications environment.

ACCAN members have been informed of developments regarding deregulation and encouraged to participate where ever possible and our responses are informed by direct and on-going consultations with these stakeholders. Additionally, our response is informed by ongoing discussions with the telecommunications industry.

## **1. Pre-Selection – Part 17 Telecommunications Act (TA)**

ACCAN supports the amendment of pre-selection obligations in Part 17 of the *Telecommunications Act 1997* to only apply to Standard Telephone Services (STS) delivered over the Public Switched Telephone Network (PSTN).

This requirement assisted in the introduction of competition in telecommunications and according to ACMA reports, is now rarely used by consumers. We note pre-selection will not be appropriate in an NBN environment, but are aware that a small percentage of business customers still use this facility. For this reason, we agree that the application be limited to areas where the PSTN is delivered over the copper network. This proposal was made in our previous submission to the Government on deregulation.

There will be no impact on consumers, as the small percentage of business customers will still be able to pre-select while connected via the copper network. We understand that this represents substantial future savings to industry as it avoids having to configure pre-selection to an NBN environment.

## **2. Confidentiality of Telecommunications – Part 13 TA**

Communications data is particularly sensitive information, and as such deserves special protection. This is because information obtained by service providers uniquely not only includes customer contact details, such as telephone numbers and addresses (identified as personal information in the Privacy Act), but can also include the content of communications, and metadata such as internet browsing history. Telecommunications service providers hold information about when, how and with whom individuals communicate, and the content of those communications. Therefore, service providers have access to and receive information about other members of the general public, who are not their customers.

### **Importance of privacy protections for consumers**

Privacy protection, particularly on-line privacy, is of increasing importance to consumers. In the recent OAIC Report *Community Attitudes of Privacy Survey 2013*<sup>1</sup>, of the 26 categories of privacy risks, the top three areas identified as of concern across all age groups were about the internet and online services. A number of significant breaches have occurred in recent years involving telecommunications providers or online services, impacting on a large number of end users in each

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<sup>1</sup> <http://www.oaic.gov.au/privacy/privacy-resources/privacy-reports/oaic-community-attitudes-to-privacy-survey-research-report-2013>

instance. In 2012, AAPT's servers were attacked by the group "Anonymous".<sup>2</sup> In late 2011, over 700,000 Telstra customer records were made publicly accessible over the internet.<sup>3</sup> In early 2011, the Sony Playstation Network was compromised, with approximately 77 million customers affected worldwide.<sup>4</sup> In late 2010, a mailing list error resulted in 220,000 letters with incorrect mailing addresses being mailed to Telstra customers.<sup>5</sup> In 2009, a design flaw resulted in the online chat transcripts of a depression counselling service being made publicly accessible.<sup>6</sup> Most recently, almost 10,000 Telstra customer records were made public on the internet, in circumstances similar to the 2011 incident.<sup>7</sup> Incidents such as these expose individuals' personal information, contact details, passwords, credit card numbers, health information, and other sensitive information, and subject people to risks of reputational, financial, and physical injury.

### **Importance of privacy protections for government and commerce**

There is overwhelming evidence that trust is essential for electronic commerce and e-government to flourish. Recent concerns about the security of [www.my.gov.au](http://www.my.gov.au) point to the critical importance of secure telecommunications systems in protecting consumer information, so that users can be confident that their data will not be easily compromised.<sup>8</sup> Failure to ensure robust protections are in place risks compromising the Government's investment in online service provision, and exposes the Government's online initiatives to reputational risk.

### **Positive initiatives for reform – an industry specific section of the *Privacy Act***

ACCAN believes that, with the amended Privacy Act taking effect in March 2014, it is timely to have a comprehensive review of all of the various privacy protections in telecommunications, including provisions for privacy protections, and the transparency and accountability for those protections<sup>9</sup>. There may be overlaps and duplication of regulation where rationalisation would benefit all stakeholders. However, the review is complex, and must include an evaluation of the effectiveness

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<sup>2</sup> Office of the Australian Information Commissioner, *AAPT Anonymous hack*, 6 August 2012, <[http://www.oaic.gov.au/news/statements/statement\\_120806\\_aapt\\_melb\\_it.html](http://www.oaic.gov.au/news/statements/statement_120806_aapt_melb_it.html)>.

<sup>3</sup> Office of the Australian Information Commissioner, *Telstra Corporation Limited*, June 2012, <[http://www.oaic.gov.au/publications/reports/own\\_motion\\_telstra\\_bundles\\_June\\_2012.html](http://www.oaic.gov.au/publications/reports/own_motion_telstra_bundles_June_2012.html)>.

<sup>4</sup> Office of the Australian Information Commissioner, *Sony PlayStation Network/Qriocity*, 29 September 2011, <[http://www.oaic.gov.au/publications/reports/own\\_motion\\_sony\\_sep\\_2011.html](http://www.oaic.gov.au/publications/reports/own_motion_sony_sep_2011.html)>.

<sup>5</sup> Office of the Australian Information Commissioner, *Telstra Corporation Limited (Telstra)*, 7 July 2011, <[http://www.oaic.gov.au/publications/reports/own\\_motion\\_telstra\\_May\\_2011.html](http://www.oaic.gov.au/publications/reports/own_motion_telstra_May_2011.html)>.

<sup>6</sup> Sophie Scott, *Probe into depression chat leaks*, ABC News, 11 December 2009, <<http://www.abc.net.au/news/2009-12-11/probe-into-depression-chat-leaks/2572248>>.

<sup>7</sup> Grubb B, *Oops: Google search reveals private Telstra customer data*, Sydney Morning Herald, 16 May 2013, <<http://www.smh.com.au/it-pro/security-it/oops-google-search-reveals-private-telstra-customer-data-20130516-2jnmw.html>>. This incident was also reported on Telstra's blog; see Jamieson P, *Customer information and the importance of privacy*, Telstra Exchange, 16 May 2013, <<http://exchange.telstra.com.au/2013/05/16/customer-information-and-the-importance-of-privacy/>>.

<sup>8</sup> <http://www.smh.com.au/it-pro/government-it/australians-private-government-details-at-mercy-of-hackers-say-it-security-experts-20140428-zqzkg.html>

<sup>9</sup> ACCAN submission [http://accan.org.au/Response\\_to\\_Govt\\_consultation\\_2013.pdf](http://accan.org.au/Response_to_Govt_consultation_2013.pdf), p.10.

of the new Act in order to result in no overall diminution of privacy protections for the Australian community.

It has previously been suggested that aspects of Part 13 could be moved into the *Privacy Act* as an industry-specific section of the Act. In its 2007 submission to the Office of the Privacy Commissioner, Optus supported this position and argued that if Part 13 were incorporated into the *Privacy Act* the same protections regarding the primary and secondary uses and disclosure of content currently available in the *Telecommunications Act* should remain.

Abolishing Part 13 of the *Telecommunications Act* and incorporating an industry-specific section in the *Privacy Act* would ensure other important differences between the two Acts are not lost, while at the same time producing one coherent reference point for telecommunication service providers. Areas for inclusion are listed below.

- Secondary disclosure prohibitions.

As noted in the Department of Communications Discussion Paper, there is currently no equivalent of this protection in the Privacy Act (PA). It is unclear why the Government would consider it desirable to lessen this protection. It is inconceivable that customers would consider any lesser protection than that currently offered by Part 13 to be in their best interests.

- Broader scope of Part 13 than Privacy Act.

The Privacy Act covers personal information. It does not cover statistical data or metadata. There is evidence that metadata can be highly intrusive, and reveal a significant amount of information about a person's identity<sup>10</sup>. There is heightened public awareness following revelations of NSA activities in the USA, and a corresponding increase in consumer concerns about privacy protections over telecommunications networks.

The Privacy Act applies to 'entities' not to employees, and only indirectly to contractors. By contrast, Part 13 applies directly to all organisations and individuals handling telecommunications information so has a broader scope. It therefore offers greater privacy protections for customers, and these should be maintained.

- Businesses with turnover of less than \$3m are exempt from the Privacy Act

Telecommunications providers with a turnover of less than \$3m are currently covered under Part 13, but not the Privacy Act. This is of serious concern as an audit of telecommunications providers by Communications Compliance conducted in 2012-13 has established that there are a large number of smaller carriage service providers in the market selling telecommunications services to the public<sup>11</sup>. At the same time, there have been an increasing number of general complaints recorded against 73 smaller providers, contradicting the general downward complaint trend. Complaints against smaller

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<sup>10</sup> <http://webpolicy.org/2014/03/12/metaphone-the-sensitivity-of-telephone-metadata/>

<sup>11</sup> <http://commcom.com.au/compliance/csp-compliance/>

providers increased by 30.5% during 2012-13 and accounted for nearly 8% of all TIO complaints<sup>12</sup>. While we acknowledge that these complaints are not related to privacy matters, these figures indicate that smaller providers are a significant part of the telecommunications market, and should be encompassed by the existing protections offered under Part 13. An alternative approach is to define the area of protection by type of information, rather than by annual turnover, so that all providers selling telecommunications services to the public are included.

- Criminal breaches under Part 13, civil offences under Privacy Act

While recognising the potential deterrent effect of criminal sanctions under Part 13, generally breaches of privacy provisions by service providers have been due to carelessness and a lack of robust procedures<sup>13</sup>. In these circumstances, criminal sanctions are not always appropriate. The lower burden of proof required for civil sanctions is less onerous, increasing the likelihood of successful action against a service provider and potentially delivering greater consumer protections as a consequence. ACCAN contends that the level of civil penalties needs to be sufficient to act as a deterrent, and be supported by an escalated scale with criminal penalties available as a last resort.

ACCAN submits that this deterrent could be readily integrated into the existing range of redress options currently available to the Information Commissioner under the Privacy Act. Two particular provisions of the Privacy Act suggest that incorporating criminal sanctions as part of an escalated response system would be an appropriate extension of the legislation:

1. Criminal offences for disclosure of information in certain circumstances already contemplated: Section 80Q provides for imprisonment for one year for individuals who disclose personal information they have received in emergency and disaster situations
2. Criminal proceedings after civil proceedings already contemplated: Section 80ZF directly anticipates criminal proceedings being brought against entities for the same conduct that would otherwise attract a civil penalty

Given the scope for criminal proceedings outlined above, ACCAN submits that criminal sanctions could ultimately be included as a 'last resort' option for the Commissioner in the scheme of a 'three strikes'-style escalated response system. Where the Commissioner has previously sought a number of civil penalties against an entity (under section 80W), then the Commissioner might finally bring criminal action in the courts for serious and repeated breaches of privacy. This reform would remove legislative redundancy from the Telecommunications Act whilst simultaneously retaining that desired deterrent effect. It would increase the effectiveness of the OAIC as a privacy enforcer, subject to the OAIC being sufficiently resourced to fulfil this important role.

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<sup>12</sup> [http://annualreport.tio.com.au/data/assets/pdf\\_file/0010/138961/TIO-2013-Annual-Report.pdf](http://annualreport.tio.com.au/data/assets/pdf_file/0010/138961/TIO-2013-Annual-Report.pdf), p.29

<sup>13</sup> For example

## Complaint handling

Research funded by ACCAN, titled *Communications Privacy Complaints: In Search of the Right Path*<sup>14</sup> published in 2010, suggested that the OAIC handles fewer privacy complaints than the TIO or the ACMA, takes longer for complaints to be handled and does not have the range of remedies that are available to the TIO. Recent amendments to the Privacy Act, a consolidation of important industry specific telecommunications privacy arrangements in the Privacy Act, and arrangements between the OAIC and the TIO whereby the TIO will handle telecommunications privacy complaints should alleviate these problems. ACCAN welcomes these initiatives that simplify complaint processes.

## Integrated Public Number Database (IPND)

We note that the Government is currently reviewing arrangements in relation to the IPND, and support retention of existing arrangements until this is completed. Any changes before the review is complete would be premature and ill-considered.

## Over the Top services and competition

Telecommunications service providers are infrastructure providers in a highly sensitive area, as already indicated. Our concern is that the detriment to consumers, government and the e-economy is high when confidence in the privacy of our communications infrastructure is compromised. Insofar as possible, over the top services should be subject to similar obligations to maintain a consistent level of protection of personal data, so that all businesses in the same market are on a level playing field. ACCAN contends this is preferable to a lessening of protections overall which can result in the adoption of lower standards as competitors cut costs to maintain and increase market share.

## Record keeping obligations

In general, ACCAN is supportive of accountability and transparency of the telecommunications industry, so we urge the Government to adopt a cautious approach to a reduction in the record keeping and reporting requirements for industry under Part 13 to ensure that these important principles are not compromised. We note that the blanket removal of record keeping obligations is at odds with proposals under consideration by the Attorney General's Department in the area of data retention, and suggest that the general community will be best served by a more considered approach, that is likely to result in a better co-ordinated policy response by the Government overall.

### **3. Prohibition on provision of sex services over the STS unless requirements are met – Part 9A T(CPSS)A**

As outlined in our previous submission, ACCAN considers Part 9A to be ineffective, and should be removed, with the Broadcasting Services Act amended to address commercial content services

delivered over the standard telephone service, either in Schedule 5 (on-line services) or a new schedule. There is no consumer detriment involved in these suggested amendments.

#### 4. Customer Service Guarantee

ACCAN agrees that the existing arrangements for the Customer Service Guarantee (CSG) need an overhaul to ensure that they remain effective into the future. As highlighted in our previous submission on deregulation, quality of service remains important particularly for those with disabilities whose equipment may rely on minimum standards and for consumers living in regional areas whose access to the benefits of a competitive market are limited. Benchmarks for customer service are also vital for the small business sector whose cash-flow and on-going viability are dependent on their communications services remaining in good working order. ACCAN research has found that delays in fault corrections can be catastrophic for small businesses<sup>15</sup>.

The importance that customers place on fault repairs, timely connections for new services and keeping appointments is reflected in the Telecommunications Industry Ombudsman complaints data. While complaints in most other areas showed significant reductions last financial year, the issues logged regarding fault repairs, timely connections for new services and keeping appointments showed increases across the board. While this trend in complaints was partially a result of mass service disruptions due to an increase in natural disasters and bad weather during this period, it highlights how vital customer service is to today's communications consumers.

Currently, there are a range of mechanisms to address the overall customer experience of communications including the following:

- Part 5 T(CPSS)A the Customer Service Guarantee (and *Telecommunications (Customer Service Guarantee) Standard 2011*) on connection and fault repair times
- Ss 12 EB and EC T(CPSS)A that allow the Minister to set standards and benchmarks for the CSG on both retail and wholesale providers
- Clauses 24-28 TLC set extensive requirements on Telstra under its Network Reliability Framework
- ACIF C519 Code on quality standards for the STS. This is now out of date as it applies to circuit switched calls and non IP-based communications

ACCAN has supported the recent changes to the Telstra Licence Condition regarding the notification of Mass Service Disruptions in newspapers and the removal of the requirement for Telstra to have a Universal Service Obligation (USO) Standard Marketing Plan. We also support an update reflecting these changes to references in the CSG Standard in line with the Omnibus Repeal Bill introduced on 19 March 2014. Likewise requirements on enhanced call waiting and calling number display in the CSG are also considered out dated provisions and require an update. We agree that the removal of out dated provisions will assist both consumers and suppliers, and welcome further consultation on any additional changes to the CSG Standard.

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<sup>15</sup> <http://accan.org.au/files/Market-Clarity-Small-Biz-Telecom-Service-Use-final.pdf>

As noted in our earlier submission we agree that once the new framework for the NBN is established the various provisions for service quality should be reviewed to ensure there is a minimum service quality that customers should be able to expect, including expectations for reasonable connection and fault repair times. In this regard we are in agreement with the Department's consultation paper that it is prudent to consider the appropriateness of a retail-level CSG in the long term. It is our view that this consideration must be done in the context of all the regulatory instruments listed above relating to quality of service. Such a review would also take into consideration any ramifications of changes to the CSG on Priority Assistance and the National Relay Service.

The CSG was established in order to address an important concern in the late 1990s about timeframes for fault repairs and connections. These concerns were a result of residual concerns in the aftermath of the Casualties of Telstra (COT) cases and with a view to the potential impact of the privatisation of Telstra and impending implementation of a multi-carrier environment. Consumers living in regional areas where there was (and is) little or no competition were particularly concerned about these timeframes. These sentiments remain strong for rural and remote customers and were raised in the recent Review of Regional Telecommunications<sup>16</sup>.

The implementation of performance benchmarks was a direct government response to this recent review. As a result transitional arrangements for the removal of the CSG and the performance benchmarks prior to the completion of NBN would be a much more considered approach not just for regional customers but for all those in areas where Telstra has not yet been structurally separated. Removal of the CSG arrangements without equivalent requirements on NBN Co would leave customers vulnerable once more.

While we are very interested in having a further discussion with industry about reforming the CSG Standard to allow Carriage Service Providers (CSPs) to negotiate timeframes and compensation arrangements directly with customers, we believe there are many issues that need to be addressed before concluding that this is the right direction. Paramount among these issues are questions about how this reform will be implemented, monitored and new arrangements communicated to customers. Previous research has shown that individual customers are not well placed to negotiate their own contracts and this is one of the reasons there is a regulated Standard Form of Agreement. This is also the basis for the unfair contract provisions in the Australian Consumer Law.

It is not entirely clear in the current proposal how consumers will be able to negotiate the proposed new customer service benchmarks. For example will the choice be left to individual consumers or will providers have one policy they apply to all their customers? In both cases design of the new policy framework for CSG will need to take into consideration how these new developments may impact on consumers purchasing decisions. It was highlighted by the Productivity Commission

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<sup>16</sup> Regional Telecommunications Review 2011-2012 [http://www.rtirc.gov.au/files/2012/06/Regional\\_Communications-Empowering\\_digital\\_communities.pdf](http://www.rtirc.gov.au/files/2012/06/Regional_Communications-Empowering_digital_communities.pdf)

Inquiry into the Consumer Policy Framework 2008<sup>17</sup> that it is vital to closely monitor the impact of changes to consumer protection policy on vulnerability and disadvantage. It was noted in this Inquiry report that the findings of behavioural economics have highlighted the importance of paying attention to “how vulnerable and disadvantaged consumers are likely to behave in various market situations and what this means for policy measures designed to assist them make better purchasing decisions.” Such matters need to be taken in considering reframing the CSG.

In the current environment focussed on reform, we believe there are many further market opportunities for streamlining customer service and taking advantage of the competitive market place. For example the information for a consumer facing fault repair and connection interface is currently stored on the back end of the system, so that Telstra and the resellers can communicate with one another. Much of the consumer frustration and complaints could be avoided if consumers were able to track the progress of repairs or a new connection e.g. Internode does this now for new internet connections.

If prescriptive regulation on timeframes between consumers and retailers are to be removed, there needs to be some basic “principles-based” requirements applied generically to all providers as well as the default safety net proposed. For example, we should at least make sure providers keep promises for appointments. Optus has informed ACCAN they believe consumers care less about whether technicians show up within 10 days, so long as if they reliably keep to appointment times. So a ‘courtesy’ requirement around setting appointments and keeping them or in the case for rescheduling giving at least 24 hours’ notice would be a start.

In summary we submit it is in the best interests of both the supply and demand side that any proposed default timeframes and compensation rates provide an adequate safety net. At a minimum, timeframes should be put in place for NBN Co (or other wholesalers) to repair faults and install new connections on retail lines. Where available, the redirection of a faulty line (voice and where applicable data) to a mobile connection should also be a possibility. ACCAN supports reform of the CSG but a preferable approach would be to undertake a comprehensive review in the context of the any future reform of the Network Reliability Framework and the earlier listed quality of service instruments. Given that this is an area of great consumer interest with a long history of concerns, it is important that what replaces the CSG Standard is a properly considered mechanism that will support the competitive environment, keep the price for customers affordable and provide an appropriate level of consumer protection.

## 5. Priority Assistance

ACCAN fundamentally supports the maintenance of Telstra’s Priority Assistance (PA) obligations, as these continue to be critically important for consumers with life threatening medical conditions. We understand that there is a need to revisit validation arrangements due to the large number of

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<sup>17</sup> Review of Australia’s consumer Policy Framework – Productivity Commission Volume 1 – Summary April 2008 (p.52) [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0006/79170/consumer1.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0006/79170/consumer1.pdf)

unvalidated customers currently listed as PA. Our comments on each proposal for amendment of Telstra's PA Policy are given below.

**1. Transition from the current post-validation scheme to a scheme in which most customer –validation is based on pre-registration.**

Telstra is proposing that most people will pre-register for PA by providing relevant medical certification of their condition upfront. However, in situations where pre-registration has not occurred and a PA condition (life threatening) is indicated, then a post facto ratification process can be used.

ACCAN has some concerns about how effective this will be in reality. There could be consumer detriment if new arrangements result in a longer wait for connection or fault repair while the pre-registration process is undertaken. For example, for a new connection, minimum 2 days to get paperwork, minimum 2 days to get medical authorisation, minimum 2 days to return to Telstra, 5 days to process (current timetable) and 24/48 hours to connect the customer. This involves a wait time of close to 2 weeks for a priority assistance connection.

We welcome the continuation of post facto ratification where a PA customer has a life-threatening emergency condition.

**2. Allow Telstra to use a variety of communication methods to contact provisional PA customers about validating their status.**

We note that this is a transition strategy to sort out existing PA customers, and consider Telstra should use the most expeditious method of contacting provisional PA customers to ensure verification of validity is completed as quickly as possible. Telstra should take all reasonable steps to contact provisional PA customers, and be able to show that such steps have been taken.

**3. Allow Telstra to offer customers a choice between an interim or an alternative service if there is likely to be a major delay in their permanent service being connected or repaired.**

This proposal provides greater choice for consumers as currently they are only offered an interim service (not alternative) for fault repair. However, ACCAN submits that any interim or alternative arrangements must not disadvantage PA customers using a medical alert dependent on a functioning landline.

**4. Allow greater flexibility for customers to revalidate their PA status, including online validation and, in certain circumstances, self-attestation by the PA customer that they still meet the eligibility criteria.**

This is a positive change for both Telstra and consumers.

**5. Provide the flexibility to apply an appropriate timeframe depending on the duration of the customer's medical condition.**

This is reasonable approach and will allow for ‘temporary’ PA services, dependent on the medical condition, for example high-risk pregnancy.

**6. Remove the Eligibility Criteria and Eligible Medical Conditions from being an attachment to the PA Policy and incorporate these into the actual policy.**

This could provide greater clarity for consumers and authorised agents attesting to eligibility, and should limit applications from consumers who do not qualify for PA. ACCAN supports this proposal.

**7. Remove the statutory declaration form from the PA application form.**

This is a reasonable proposal as the statutory declaration is apparently ‘overused’ as the primary method of validating eligibility. However, Telstra will need to ensure that the removal of the statutory declaration from the PA application form does not create difficulties for people with disability; home-bound consumers or consumers in regional and remote locations. It should be made clear that the statutory declaration will still be available, and under what circumstances.

**8. Clarify that PA does not apply to a person in a medical care facility, such as an aged care home.**

This seems a reasonable proposal, with no apparent negative impact for consumers.

However, ACCAN cautions that there is a need to ensure that this approach does not apply to assisted living or independent living facilities and is only applicable to nursing homes and hostels with 24 hour care staff.

**9. Clarify that PA may in certain circumstances be provided over a mobile phone or other wireless technology.**

While ACCAN welcomes this proposal as it broadens the scope of PA to include customers who are mobile only (an increasingly greater proportion of the population), within the limitations of current technology, mobile is not an adequate substitute for PA fixed line connection for the following reasons:

- Customers using medical alerts depend on functioning landlines, so mobile is not an acceptable alternative in these circumstances.
- Mobile are inherently less reliable than fixed line connection – batteries can run flat; handsets be mislaid; pre-paid customers can run out of credit; quality of connection can be variable.

**6. Price Controls – Part 2, Division 11 and Part 11 T(CPSS)**

ACCAN supports the amendment of the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance determination No.1 2005* to repeal the Retail Price Controls.

With the introduction of competition, the Government imposed a price control regime on Telstra and provided for Ministerial imposition of price controls on any other USO provider. The rationale for price controls was to ensure that Telstra's rebalancing of its prices to address a competitive environment did not impact too severely on consumers. These policy decisions were made at a time when there was less competition and there may now be opportunities for further streamlining.

ACCAN welcomes the Department of Communications' examination of the future of price controls and would welcome a briefing on any research it has received regarding the continued utility of price controls in a competitive environment.

## **7. Local Presence Plan**

Under [Telstra's Licence Conditions](#), Telstra is obliged to maintain a local presence in regional, rural and remote Australia, to the extent that this is broadly compatible with the licensee's overall commercial interests. The local presence plan must set out the range of activities and strategies that Telstra will deploy in regional, rural and remote Australia to fulfil its local presence obligation. However, as the plan itself is part of a heavily qualified obligation on Telstra, in practice it has proved to be largely ineffective.

ACCAN supports the proposal to maintain the requirement for a local presence, but removing the requirement in Clause 32 of Telstra's Carrier Licence Conditions for the development of a local presence plan and annual reporting requirements. The consumer impact of removing the local presence plan requirement is low, however it is vitally important for regional, rural and remote Australia that the requirement for Telstra to have a local presence be maintained. Telstra's local presence has been essential in ensuring a prompt and effective restoration of service in rural and remote areas.

There are a range of issues experienced where there is insufficient local presence and heavy reliance on work flow processes and staff who are located distant from the point of failure (for example call centre operatives based in distant urban Australian locations or even in the Philippines). These include significant challenges endeavouring to obtain geographic information to identify the location of the fault, or to provide realistic information in relation to progress of restoration. In addition, rural and remote areas have experience of excessive reliance on remote testing and delays to technician site visits. These factors have resulted in long delays in restoration, and inaccurate or inadequate progress reports to the affected customer.

### **Alternative proposal – reinvestment of savings in rural and remote areas**

ACCAN suggests that Telstra identify the costs associated with meeting the current local presence plan development and reporting process into the future, and consider contributing equivalent funds to bolstering its administrative and service provision presence in remote areas.

## **Conclusion**

There may be overlaps and duplication of regulation where rationalisation would benefit all stakeholders.

ACCAN supports proposed amendments to arrangements for pre-selection, Part 9A of the T(CPSS)A, retail price controls and the local presence plan. We have identified issues for further consideration around Part 13 TA and the Customer Service Guarantee (CSG), and are generally supportive of changes to Telstra's Priority Assistance (PA) arrangements, although with some qualification.

The complexity of reforms in privacy and CSG, combined with their significant implications for consumers and the general community, necessitates more in depth consideration and consultation. There are a number of longer term industry arrangements that will change as the local infrastructure provider moves from Telstra to the NBN that will impact on the CSG. Once the framework for the NBN is conclusively established, it will be timely to comprehensively review existing arrangements. In the meantime, we welcome continuing involvement in discussion around these important matters.

We have previously noted that ACCAN is not qualified to comment on approaches to measuring the cost impacts of regulation from an industry perspective. However, we urge the Government to assess costs on a broad and long-term basis, rather than focus on short-term expediency with potentially deleterious consequences in the longer term for the community as a whole, including government and business.

### **Need for cost benefit analysis approach**

As identified in our earlier submission, we agree that there is a need to assess the potential and actual benefits of regulation against any cost or complexity. However, a narrow focus on cost only could result in two unintended consequences. Firstly, it could result in overlooking low-cost but pointless regulations, and secondly, high cost but necessary restrictions might be unhelpfully removed. A broad approach is needed to give equal weight to the benefits of removing regulation, as well as the costs to industry.

ACCAN's role is to identify and articulate the value and benefits for consumers when consideration is given to remove or simplify regulation, so that the market can continue to deliver fair, reliable products to end users.