



Response to the Reconnecting the Customer Draft Report

Submission by the Australian Communications Consumer
Action Network to the Australian Communications Media
Authority



July 2011



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 activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Introduction

ACCAN broadly welcomes the ACMA's *Reconnecting the Customer ('RTC') Draft Report* recommendations that follow the lifecycle of a consumer's relationship with a telecommunications service provider from advertising, to point of sale, through to customer service, credit management and complaints-handling.

ACCAN strongly believes these recommendations should be viewed within a human rights framework.

Australia's human rights record was reviewed for the first time before the United Nations Human Rights Council under the Universal Periodic Review in Geneva in January 2011. Several of the recommendations made, which Australia has accepted in part, called for the development and/or strengthening of a comprehensive poverty reduction and social inclusion strategy.¹ Ensuring Australians have accessible, affordable and available communications services that meet their needs is an important part of such a strategy.

Industry, regulators, the TIO, government, consumer advocates and consumers themselves all have a role to play in achieving this strategy.

ACCAN's support for the RTC recommendations is dependent upon the ACMA's *RTC* proposals being incorporated into the new *Telecommunications Consumer Protection (TCP) Code* ('the *TCP Code*') with adequate monitoring, compliance and enforcement mechanisms within the Code and the Code meeting best practice with respect to independent oversight with equal industry and consumer representatives, an independent chair, external auditing and public reporting. This must all occur in a timely manner.

In order to begin promoting a culture of compliance ACCAN submits it is vitally important that carriage service providers sign onto *the TCP Code*.

ACCAN also calls for a set of 'measureables' which will be used to assess the success of a new *TCP Code*. These measureables are outlined below in section 1.2.

¹ See: United Nations Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review Australia A/HRC/WG.6/10/L. 8*, 3 February 2011, Recommendations 86.32, 86.33, 86.63 accessed on 30 March 2011 at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf ; and Australia's formal Response to the UPR Recommendations, 8 June 2011 accessed on 12 July 2011 at: [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(689F2CCBD6DC263C912FB74B15BE8285\)-OIL+-+UPR+-+Australia+s+response+-+FINAL+RESPONSE+-+27+May+2011+\(2\).pdf/\\$file/OIL+-+UPR+-+Australia+s+response+-+FINAL+RESPONSE+-+27+May+2011+\(2\).pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(689F2CCBD6DC263C912FB74B15BE8285)-OIL+-+UPR+-+Australia+s+response+-+FINAL+RESPONSE+-+27+May+2011+(2).pdf/$file/OIL+-+UPR+-+Australia+s+response+-+FINAL+RESPONSE+-+27+May+2011+(2).pdf)



There are some issues for which consumer detriment has been far too great and immediate introduction of standards or service provider determinations are required. This is particularly in the areas of false and misleading advertising, complaints-handling and spend management.

We have highlighted our overarching recommendations here. However, we submit that to adequately address customer care and ongoing consumer detriment all our recommendations need to be implemented.

We thank you for the opportunity to provide a submission and acknowledge the valuable input of our members which is incorporated throughout the submission.

Response to the Reconnecting the Customer Draft Report

1.1 Customer care research

The findings of the *RTC Draft Report* and accompanying research, which are discussed throughout this submission, are damning. As the Australian Communication Media Authority ('the ACMA') states: 'consumer complaint levels in the Australian telecommunications industry are far too high.'²

Continuing high level of complaints to the TIO

It is significant that during the course of the RTC inquiry, an inquiry which the ACMA Chair warned would 'shine a strong light on complaints-handling and the unresponsiveness of the industry to its customers'³ and require significantly improved consumer protections,⁴ complaints to the TIO have remained very high. In fact, 2010-2011 is shaping up to include one of the highest annual complaints statistics in the history of the TIO.⁵ The complaints statistics certainly appear higher than they were in the lead up to the TIO's important *connect resolve* campaign, a campaign designed to increase industry's awareness about the urgent need for improvements in customer care.⁶

² ACMA. *Reconnecting the Customer Draft Report*, June 2011 at 1.

³ Chris Chapman, *Reconnecting the Customer*, CommsDay Summit, 20 April 2010 at 16 accessed on 12 July 2011 at http://www.acma.gov.au/webwr/assets/main/lib311407/c_chapman_speech_commsday_summit.pdf

⁴ Chris Chapman, *Reconnecting the Customer*, Note 3 at 18

⁵ Based on the trend of a 31.5% increase in complaints during the January-March 2011 reporting period, *TIO Talks* No 2, 2011 at 3.

⁶ 2007-08 the TIO reported 149,742 new complaints, further advice and investigations. See *TIO 2010 Annual Report*, Year at a glance. The *connect resolve* campaign was launched in November 2008; July 2010 – March 2011 the TIO reported 161,637 new complaints and Level 2-4 investigations. See *TIO Talks* No 2 2011 at 3.

Consumer Survey 2011

Additionally, shortly after the release of the *RTC Draft Report*, the *Consumers 2011 Survey* was launched by the Commonwealth Government.

This survey found that:

- 40% of consumer respondents have experienced a problem within the last 2 years related to their mobile phone. On average respondents who took action invested approximately 23 hours and \$152 to try to resolve the issue.⁷
- 39% of consumer respondents have experienced a problem within the last 2 years related to their internet service provider. On average, respondents who took some type of action invested approximately 16 hours and \$64 to try to resolve the issue.⁸

This is very concerning as it not only highlights the number of consumers who are experiencing problems and the length of time to resolve the issue, but also the direct financial cost for what is supposed to be a free complaints-handling service. Significantly, this research does not capture the indirect costs either on consumers or businesses.

It is therefore fitting that the ACMA concludes in the *RTC Draft Report*:

*neither action by individual service providers nor enhanced code rules are of themselves likely to be sufficient to drive the necessary change to regain consumers' trust and confidence and to encourage competition and innovation in customer care in the Australian market.*⁹

For far too long consumers have suffered significant detriment. This must be urgently and adequately addressed.

⁷ Australian Government, *Australian Consumers Survey Report 2011*, June 2011 at 68 accessed on 27 June 2011 at:

http://www.consumerlaw.gov.au/content/consumer_survey/downloads/Australian_Consumer_Survey_Report.pdf

⁸ *Australian Consumers Survey 2011*, Note 7 at 70.

⁹ *RTC Draft Report*, Note 2 at 2.

1.2 Response required to the RTC Inquiry

ACCAN broadly welcomes the ACMA's *RTC Draft Report* recommendations that follow the lifecycle of a consumer's relationship with a telecommunications service provider from advertising, to point of sale, through to customer service, credit management and complaints-handling.

Adequate monitoring, compliance and enforcement mechanisms

ACCAN's support of the RTC recommendations, however, is dependent upon the ACMA's *RTC* proposals being incorporated into the new *TCP Code* with adequate monitoring, compliance and enforcement mechanisms within *the Code* and *the TCP Code* meeting best practice with respect to independent oversight with equal industry and consumer representatives, an independent chair, external auditing and public reporting. This must all occur in a timely manner.

Promoting a culture of compliance

It is vitally important that carriage service providers have a culture of Code compliance. This means that senior management and/or the CEO have read the *Code*. The *TCP Code* should also be promoted on carriage service providers' websites; it can and should be part of conversations service providers have with their customers. Organisations that do comply with the *Code* will stand out.

For *the TCP Code* to be considered a success ACCAN expects the following to be achieved:

- 100% inclusion of content proposed by ACMA in the *RTC Draft Report*

Within 12 months of the registration of *the Code*:

- At least 50% of carriage service providers have met *the Code* compliance monitoring requirements;
- There is a significant decrease in the number of consumer complaints, particularly in the areas of credit management; complaints-handling; customer service. For example following the introduction of the MPS determination, combined with *the TCP Code*, there was a 70% reduction in complaints to the TIO regarding Mobile Premium Services (MPS).¹⁰

¹⁰ TIO, *TIO Annual Report 2010* at 13 accessed on 30 June 2011 at: http://www.tio.com.au/publications/annual_reports/ar2010/pdfs/TIO_2010AR_ComplaintsLandscape.pdf



Within 24 months of the registration of *the Code*:

- 100% of carriage service providers have met *the Code* compliance monitoring requirements; and
- 70% reduction on 2011 TIO complaints levels.

If these measureables are not met within the reasonable time frame as outlined above, ACCAN will call for additional enforcement mechanisms, including service provider determinations and/or additional industry standards.

Recommendations:

- 1. That the ACMA's *RTC* proposals be incorporated into the new *Telecommunications Consumer Protection (TCP) Code* with adequate monitoring, compliance and enforcement mechanisms within *the Code* and *the Code* meets best practice with respect to independent oversight with equal industry and consumer representatives, an independent chair, external auditing and public reporting.**
- 2. That the ACMA's *RTC* proposals must be incorporated into the new *Telecommunications Consumer Protection (TCP) Code* in a timely manner.**
- 3. That carriage service providers must meet *the TCP Code* compliance monitoring requirements within a reasonable timeframe.**

1.3 Accessibility issues

ACCAN notes that many submissions to the RTC inquiry raised accessibility issues.¹¹

The ACMA in the *RTC Draft Report* notes they are aware of the difficulties consumers have in contacting their provider.¹² The ACMA acknowledges this is very difficult for persons with disability or for people whose primary language is not English.¹³ The ACMA further comments that their proposals do not specifically address these problems, but that ‘the way in which a service provider interacts with its customers is a fundamental part of its branding and ‘personality’.¹⁴

ACCAN submits that in order to promote social inclusion and access for all, the final RTC recommendations must include details that promote and protect the right of accessibility for all, including persons with disability, consumers with low literacy levels, and consumers with a first language other than English.

A number of organisations whom ACCAN has consulted about the *RTC Draft Report* have shared their ideas regarding issues of accessibility in Boxes 1 and 2 below.

Box 1: Accessibility issues for persons with disability

With reference to the ACMA Proposals 1 to 5 in particular our overwhelming issue is that the telcos or ACMA or another body needs to maintain a profile that contains the preferred method of communication that is selected or specified by the individual AND that this preference is used for all interactions.

The table below provides some examples to illustrate the need. Please note this table is not intended to be an exhaustive list.

Person who:	Receiving information	Sending information
Can hear but not see (blind)	Voice or text file that can be spoken by a computer or read by a braille reader	Voice

¹¹ Deafness Forum Australia, *Reconnecting the Customer Inquiry*, September 2010; Women with Disabilities Australia, *Reconnecting the Customer Inquiry*, September 2010;

¹² *RTC Draft Report*, Note 2 at 99.

¹³ *RTC Draft Report*, Note 2 at 99.

¹⁴ *RTC Draft Report*, Note 2 at 99.



	websites fully accessible to screenreaders	
Has low vision	Print with font size greater than, say 16 point with contrasting colours Ability to adjust font on websites	Voice
Can type, cannot speak but can hear	Via voice Instant messaging Via NRS (if NRS user)	SMS or text Via NRS (if NRS user)
Is a quadriplegic - Speech only	Voice or print	Voice
Is Deaf, hearing-impaired or speech-impaired	Via the NRS (National Relay Service) if NRS user Via VRS (Video Relay Service) if Auslan user Email SMS Instant messaging Fax	Via the NRS (National Relay Service) if NRS user Via VRS (Video Relay Service) if Auslan user Email SMS Instant messaging Fax
Is deafblind or has both vision impairment and hearing impairment	Via the NRS (if NRS user) Email SMS (for some) Instant messaging Fax (for some)	Via the NRS (if NRS user) Email SMS (for some) Instant messaging Fax (for some)

<p>People with cognitive disabilities (eg intellectual disability, acquired brain injury, dementia, psychiatric disability)</p>	<p>Written information (eg contracts, information on websites) in plain English and Easy English</p> <p>Websites easily navigable</p> <p>Wherever possible people should receive the correct information in the first instance themselves. If this does not occur, assistance from an advocate or trusted person or network would be the next best option</p>	<p>By self or via/with assistance from an advocate or trusted person or network</p>
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Please note that the individual preferences may need to contain two modes of communication, one for sending the info and a second for receiving the information. And it might be a prioritised list of preferences for both.

E.g. often people with complex communication needs can hear and see text, cannot speak but can type (SMS/Email/TTY/IM/etc.)

The modes of communication must be specified by the end user and available for all telecommunication related issues and including:

Proposal 1: Improved advertising practices; and

Proposal 2: Improved product disclosure; and

Proposal 3: Performance reporting and customer service charters; and

Proposal 4: Expenditure management tools; and

Proposal 5: Internal complaints-handling; and

interactions with the TIO.

This approach is likely to mean that it will, in some cases ‘**Connect the Customer**’ for the first time.

In addition, we would like to see all telcos using the same or standard symbols when advertising the features of the product. Eg Bluetooth, Touch screen, Wi-Fi, etc. This will decrease or lessen the confusion for an end user needing a product with particular features. An example of this that is already in place is the logo associated with the operating system e.g. Windows, Apple, IOS, Android.

Source: Rob Garrett and Toan Nguyen, Novita Children’s Services, SA; Brain Injury Association; Council of Intellectual Disability, NSW; SANE Australia.

Box 2: Accessibility issues for people who are blind or have low vision

People who are blind or have low vision experience significant barriers when attempting to access information about mobile phone plans, charges and services. There are no regulatory requirements for the provision of this information in standardised, accessible formats, and the result is that the information is difficult to access at best, and often completely inaccessible at worst. The market has not provided equal and independent access to this information, and we believe that it is now time for ACMA to develop an industry Code of Practice that would establish accessibility standards for the provision of information related to telecommunications products and services, including mobile phones.

Source: Vision Australia

ACCAN notes that Ofcom, the independent regulator and competition authority for the UK communications industries, has done a considerable amount of work in the area of accessibility, including shadow shopping exercises. ACCAN refers the ACMA to Ofcom's report.¹⁵

ACCAN believes the strength of the final RTC recommendations made will only be as good as their implementation, compliance and enforcement mechanisms allow them to be and details need to be provided as to how this will apply for the benefit of all consumers. The success of the RTC recommendations will also be very reliant upon the willingness of regulators to use the suite of enforcement tools that they will have at their disposal.

ACCAN commends the ACMA for holding public hearings in regional Australia to seek to hear the issues raised by a variety of organisations and individuals. ACCAN further commends the ACMA for co-hosting an upcoming RTC Consumer Summit to hear especially from low income and vulnerable consumer representative organisations, and community groups who may not have participated in the review to date. It will be important to include what is raised in these discussions in the detail of the RTC recommendations.

¹⁵ Continental Research, *Disabilities Mystery Shopping*, Ofcom, London, October 2010 accessed on 8 July 2011 at: <http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/services-for-disabled-users/>.

2. The ACMA RTC Proposals

2.1 Proposal 1: Improved Advertising

Many submissions to the RTC Inquiry raised concerns about confusopoly, including the promotion of complex products which are very difficult, if at all possible, to compare across service providers and the use of confusing terms.¹⁶

In research commissioned by ACCAN and undertaken with refugee communities, Linda Leung proposes a consumer education component to develop refugees' communications technology literacy. In evaluating the educational component, case workers commented: 'it is redundant to attempt to simplify the key concepts of mobile phone plans, as they are often intentionally deceptive and misleading.'¹⁷

This is further supported by the Federal Court's recent judgment in the case of the *Australian Competition & Consumer Commission and Singtel Optus Pty Ltd*. The Court found Optus' 'Think Bigger' and 'Supersonic' broadband internet plan advertisements to be misleading. Optus represented that for a monthly payment, a consumer would receive a headline data allowance of broadband which was then split into peak (midday to midnight) and off-peak (midnight to midday) data allowances. If consumers did not use their off-peak data before they had used all their peak data, any unused off-peak data would no longer be available at a broadband speed. This was not sufficiently disclosed. The Federal Court fined Optus \$5.26 million.¹⁸

ACCAN welcomes this decision and congratulates the ACCC on exercising its powers to bring this matter to the Federal Court. Significantly, the advertisements in question first appeared on 25 April 2010, only days after the ACMA launched its *Reconnecting the Customer* Inquiry. Even with the spotlight on telcos' customer care, service providers have continued practices which often cause significant consumer detriment.

Similarly, the ACMA in its *RTC Draft Report* states it is aware that the 'advertising practices that confuse consumers about charging arrangements within the included value plan are widespread.'¹⁹ ACCAN is concerned that in attempting to improve customer care, including advertising, one confusopoly is not replaced with another.

¹⁶ For example, ACCAN, *Submission to Reconnecting the Customer*, September 2010 at 14; Brotherhood of St Laurence *Submission to Reconnecting the Customer*, September 2010 at 5.

¹⁷ Linda Leung, *Mind the Gap: refugees and communications technology literacy*, ACCAN Sydney, 2011 (forthcoming) at 28.

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ACCC, 'Optus penalised \$5.26 million for misleading broadband advertising', 7 July 2011 at:

<http://www.accc.gov.au/content/index.phtml/itemId/996058/fromItemId/2332>

¹⁹ ACMA, *Reconnect the Customer Public Inquiry, Summary of Proposed Solutions*, June 2011 Proposal 1



It is for these reasons that ACCAN supports the RTC proposal of an advertising standard discussed further below and also calls for the eradication of flagfall and the regulator to play a more proactive role.

Eradicating flagfall

ACCAN believes that there are three important reasons why flagfall should be abolished:

1. *Consumer clarity*

Service providers need to clearly outline the costs involved, for example, in making a call from a mobile phone. With the introduction of unit pricing discussed below, flagfall will add an extra and unnecessary layer of complexity.

2. *Fairness*

There is no proportionality in the use of flagfall. Whether someone makes a 2 second call or a 20 minute call, they generally pay the same flagfall fee.

Significantly, it would appear that flagfall is not charged in all jurisdictions. We refer, for example, to some of the key telecommunications websites in the UK where flagfall appears not to be charged.²⁰

3. *Overall trend of component pricing not including hidden fees and charges*

Australian Consumer Law provides that the advertised price includes all components of the cost incurred and this be presented as a single price. Members report this has been very successful in providing consumers with greater clarity, assisting with budgeting and is an area in which it is time the telecommunications industry catches up.

Prohibition on confusing terms

ACCAN, its predecessors and other consumer advocates have long advocated for an end to confusing and misleading advertising. ACCAN notes the ACMA's RTC Inquiry findings that 'cap', 'unlimited', 'no exclusions' and 'free' were identified as 'common causes of confusion.'²¹ ACCAN further notes the ACMA's finding that this confusion is not limited to a particular group, but is widespread.²² Significantly, two reports recently commissioned by ACCAN highlight the confusion is still continuing.

²⁰ See for example: O2 accessed on 11 July 2011 at: <http://www.o2.co.uk/tariffs/paymonthly> ; Orange accessed on 11 July 2011 at: <http://shop.orange.co.uk/mobile-phones/sim-only/pay-as-you-go> ; Talk Talk mobile accessed on 11 July 2011 at <http://m2.ttxm.co.uk/sites/mobile/images/pdf/ratecard-050711.pdf> ; T-Mobile accessed on 11 July 2011 <http://www.t-mobile.co.uk/shop/pay-as-you-go/costs-rewards/>

²¹ ACMA, *Reconnecting the Customer Progress Report*, December 2010 at 33. See also discussion at 5.4

²² See also, for example: Brotherhood of St Laurence *Reconnecting the Customer Submission*; Top End Legal Centre *Reconnecting the Customer Submission*; Redfern Legal Centre *Reconnecting the Customer Submission*;

See Boxes 3 and 4.

Box 3: Ongoing use of confusing terms

The report, *Taking Advantage of Disadvantage*, outlines 16 case studies collected by the Footscray Community Legal Centre describing the experiences of a diverse group of refugee and migrant consumers with phone and broadband products over a period of six months.²³ Significantly this six month period began after the launch of the *Reconnecting the Customer Inquiry*, with about 75% of clients entering agreements with telcos after the launch of the Inquiry.

About 75% of the cases related to bill shock largely caused by the use of confusing terms such as 'capped plan'.²⁴

Another issue identified was that limited or no information was available in languages other than English.²⁵

Both of these issues, in addition to the need for spend management tools, are highlighted in the case study below.²⁶

Mr A signed up for a Vodafone \$49.95 monthly plan. He was told he had \$450 worth of calls under the plan per month. Mr A believed he could ring overseas as many times as he liked and all his calls would be covered under the \$49 per month.

Mr A contacted us because he was concerned his mobile was not working. Upon making inquiries we found out that Vodafone had placed a ban on the mobile as the client had run up nearly \$1000 of calls to Burma over a couple of weeks. In the end Vodafone waived the \$1000 providing the client cancelled the plan and converted back to a prepaid mobile.

Source: *Taking Advantage of Disadvantage*²⁷

²³ Footscray Community Legal Centre Inc, *Taking Advantage of Disadvantage Case studies of refugee and new migrant experiences in the communications market*, ACCAN, Sydney, March 2011 accessed on 1 July 2011 at: http://accan.org.au/research_full.php?id=33

²⁴ *Taking Advantage of Disadvantage*, Note 23 at 5.

²⁵ *Taking Advantage of Disadvantage*, Note 23 at 5.

²⁶ *Taking Advantage of Disadvantage*, Note 23 at 15.

²⁷ *Taking Advantage of Disadvantage*, Note 23 at 15.

Box 4

In further research commissioned by ACCAN undertaken during 2010-2011 with refugees, Linda Leung found:

Over a third of respondents had experienced unexpectedly costly bills. In some cases, they did not understand the nature of the expense. Others involved excess usage charges for internet.

Source: Linda Leung, *Mind the Gap: refugees and communications technology literacy*²⁸ (forthcoming)

ACCAN warmly welcomes the RTC proposal of a prohibition on ‘cap’, ‘unlimited’, ‘no exclusions’, ‘free’ ‘and any similarly confusing terms.’²⁹ Due to the significant and ongoing consumer detriment as a result of the use of these words, ACCAN advocates for a complete prohibition on these words.

Additionally, ACCAN’s members are particularly pleased that the ACMA recommends the ban extend to include ‘any similarly confusing term’ for ACCAN’s members fear, as the ACMA also expresses concern, that ‘a ban on specific marketing words may cause marketers to substitute other similarly confusing words.’³⁰

Font size

ACCAN notes the font size used in advertisements, particularly the fine print, is generally very difficult to read. The Financial Counsellors Association of Queensland, an ACCAN member, has called for a minimum font size to be introduced for all advertising (including asterisks) and that it be at least 12 font.

ACCAN supports this recommendation as a general rule. However, several of ACCAN members and organisations with disability expertise also recommend an additional requirement to ensure accessibility for all, namely that advertisements be in font size greater than, say 16 point with contrasting colours, for people with visual impairments. See Box 1 above for further information. Additionally, ACCAN strongly supports the proposal by Novita Children, a children’s disability support network, and supported by other disability experts, that the consumer must be the person who selects their preferred mode of communication. See Box 1 for further information.

²⁸ Leung, *Mind the Gap*, Note 17, (forthcoming) at 19.

²⁹ *RTC Draft Report*, Note 2 at 83.

³⁰ *RTC Draft Report*, Note 2 at 83.

Unit pricing

ACCAN and other consumer advocates have long called for clear and simple advertising, particularly regarding the issue of cost. ACCAN has called for an end to advertising that refers, for example, to '\$500 included value'. In its place, ACCAN strongly supports the introduction of a unit pricing approach that provides the unit price, for example, for a phone call, standard text and data download. This will allow consumers to easily compare plans across providers. This is already occurring in the US and Britain.³¹

As discussed above, to ensure clarity and fairness, ACCAN recommends that flagfall be abolished and replaced by phone calls charged by the second so consumers only pay for what they use.

As discussed above, ACCAN is concerned that the current confusopoly is not replaced with a new confusopoly. We acknowledge that unit pricing may not be easy for the service providers to quickly formulate and will require careful thought to get it right for consumers. ACCAN therefore strongly recommends that a working group be established to test three to four unit pricing models. These models must be evaluated with input from consumers and consumer advocates, including low income consumers, Aboriginal and Torres Strait Islander consumers, CALD consumers, consumers with disabilities, consumers from regional and remote areas, women, older persons, youth and small business.

To further ensure clarity, ACCAN further recommends that a post-paid plan be created in which there is a single charge rate per second for a phone call, a single rate per standard text and a single charge rate per data download regardless of the frequency with which the communication device is used. This means this plan would not need to distinguish between what the ACMA refers to as 'effective unit price' and 'stated unit price'.

For the plans which continue to use 'effective unit price' and 'stated unit price', ACCAN recommends that the 'stated unit price' charges not exceed double the amount of the 'effective unit price' and that this be clearly stated. This would ensure consumers clearly understand the costs they incur before they incur them and would go some way to reducing bill shock. It is very important that consumers know when they are incurring additional costs, thus unit pricing should also be complemented by the mandatory provision of spend management tools. The latter is discussed further in Section 2.4.

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Asher Moses, Telcos slugged for misleading mobile plan 'confusopoly' *SMH*, 13 July 2011 accessed on 15 July 2011 at: <http://www.smh.com.au/digital-life/mobiles/telcos-slugged-for-misleading-mobile-plan-confusopoly-20110713-1hcxt.html>

Consumer education

In research commissioned by ACCAN, there is evidence that many consumers do not understand the cost involved in downloading data. See for example, Boxes 5 and 6.

Box 5: Confusion about the cost of downloads

When you've got the mobile it's the cost, cause people aren't frightened to send a text because they think oh well they sorta have an idea of the cost, that's probably under 20 cents so they are not too frightened to do that but then as soon as they press the button that goes into the net people say 'oh no turn it off, it's going to use all my credit, don't do it, don't do it' and they, you know, go into a freak out. So you think all of a sudden they have no concept of how much that is going to cost.

Source: Community workers cited in *Another Barrier? Regional consumers, non-profit organisations and the NBN in the Northern Rivers Region*³²

Box 6: Low literacy rates

Refugees arrive in Australia with base level literacies. Settling in Australia demands higher level literacies that not only include setting up accounts for home phone, mobile and internet service provision, as well as managing spending on communication technologies. That is, both financial and technological literacies are required at the higher end of the hierarchy.

Source: Linda Leung, *Mind the Gap: refugees and communications technology literacy*³³ (forthcoming)

ACCAN therefore strongly recommends that to increase consumers' understanding of the cost of downloads and to assist consumers to monitor their spend management information should be readily made available by carriage service providers at point of sale, on carriage service providers' websites and upon request about the cost of downloading materials. This should include, but not be limited to the cost of:

- Checking emails;
- Checking mobile friendly website;
- Connecting to facebook;
- Checking twitter;

³² ACCAN & Spiral Research & Consulting, *Another Barrier? Regional consumers, non-profit organisations and the NBN in the Northern Rivers Region*, Sydney 2011 at 23.

³³ Leung, *Mind the Gap*, Note 17 (forthcoming) at 20.



- Watching a 2 minute u-tube video;
- Watching a 30 minute television show;
- Making a 5 minute video call using skype on your smart phone.

Proactive regulator and the use of substantiation powers

ACCAN acknowledges the ACMA's focus to date has largely been on education, as the ACMA itself identifies in the *RTC Draft Report*.³⁴ However, as part of the new approach proposed by the ACMA, ACCAN anticipates and expects the ACMA to actively identify and address systemic issues through the full suite of tools available to them.

ACCAN members suggest that some practical ways the ACMA can do this is through shadow-shopping, that is, proactively testing service providers' claims to ascertain whether customers are getting what they paid for. This has proved to be an effective tool in other industries, for example, superannuation.³⁵ Additionally, as discussed above, Ofcom has undertaken mystery shopping exercises regarding services for disabled users.³⁶ Ofcom has also indicated its intention to monitor the *UK Voluntary Code of Practice on Broadband Speeds* through a series of measures, including regular mystery shopping exercises.³⁷

ACCAN supports a three-pronged approach to this testing.

1. Routine spot testing

At regular intervals, test a sample of all service providers, for whether the products achieve what they claim to achieve, for example, with respect to speed and coverage.

2. Risk-based testing

Based on a pattern of previous complaints, for example to the TIO, the ACMA and the ACCC, target service providers identified and test whether the products achieve what they claim to achieve.

3. Complaints analysis

Based on ongoing complaints statistics from the service providers, the TIO,

³⁴ *RTC Draft Report*, Note 2 at 26.

³⁵ ASIC, 'ASIC begins shadow shopping research', 21 March 2011 accessed on 4 July 2011 at: <http://www.asic.gov.au/asic/asic.nsf/byheadline/11-53MR+ASIC+begins+shadow+shopping+research?openDocument>

³⁶ BDRC Continental Research, *Disabilities Mystery Shopping Report*, Ofcom UK, August 2010 accessed on 12 July 2011 at: <http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/services-for-disabled-users/>

³⁷ Ofcom, *2010 Voluntary Code of Practice: Broadband speeds. Version 2.0 dated 27 July 2010, paragraph 47* accessed on 11 July 2011 at: <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop-2010/code-of-practice/>



the ACMA and the ACCC, target service providers identified and test whether the products achieve what they claim to achieve.

ACCAN strongly recommends that where service providers have been found by the ACMA to fall short on providing what they claim to provide, they compensate consumers.

ACCAN submits that the burden should not fall to an individual customer to make a complaint and for the complaint to eventually be identified as a systemic issue before action is taken by the regulator. This takes time and likely results in significant customer detriment,³⁸ customer detriment which could have been limited if identified and addressed at an earlier point in time.

ACCAN also supports the ACMA having the power to require, for example, that carriage service providers' representations about network coverage/broadband speeds be substantiated. ACCAN views this power as a complementary and additional power to the conducting of independent testing and complaints analysis as outlined above.

Summary

To best achieve significant improvements in advertising, ACCAN strongly supports the ACMA's preferred mechanism of a standard on false and misleading advertising. While ACCAN is aware that work is currently underway on the revised draft *TCP Code*, significant customer detriment has been allowed to continue throughout the 12 month RTC Inquiry as discussed above. Immediate action is therefore required. ACCAN strongly recommends the advertising standard include a complete ban on confusing terms and a benchmark for levels of disclosure regarding unit pricing.

Recommendations:

- 4. That the advertising standard includes a complete ban on confusing terms and a benchmark for levels of disclosure regarding unit pricing.**
- 5. That flagfall be abolished.**
- 6. That there be a total prohibition on any confusing terms, including, but not limited to 'free', 'cap', 'unlimited', 'no exclusions' and any similar terms.**
- 7. That there be a requirement that font size in advertising, critical information statements, contracts and any correspondence with a customer generally be no smaller than 12 font, including asterisks.**

³⁸ For example, the ACMA states it is aware that advertising practices that confuse consumers about charging arrangements within the included value of a plan are widespread (Summary of proposals)



- 8. That there be a standard developed that requires that advertisements, critical information statements, contracts and any correspondence with a consumer be readily available in accessible formats and the customer must be the one to select the preferred mode of communication.**
- 9. That information about the cost of popular usages of telecommunications devices be readily made available by carriage service providers at point of sale, on carriage service providers' websites and upon request.**
- 10. That a working group be established to test three to four unit pricing models. These models must be evaluated with input from consumers and consumer advocates, including low income consumers, Aboriginal and Torres Strait Islander consumers, CALD consumers, consumers with disabilities, consumers from regional and remote areas, women, older persons, youth and small business.**
- 11. That a post-paid plan be created in which there is a single charge rate per second for a phone call, a single charge rate per standard text and a single charge rate per data download regardless of the frequency with which the communication device is used.**
- 12. That the 'stated unit price' charges not exceed double the amount of the 'effective unit price' for plans which distinguish between 'effective unit price' and 'stated unit price' and that this be clearly stated.**
- 13. That the ACMA regularly undertakes routine spot-testing and risked based testing and complaints analysis testing of carriage service providers products to test that the products do what they claim to do.**
- 14. That where service providers have been found by the ACMA to fall short on providing what they claim to provide, they compensate consumers.**
- 15. That the ACMA be given substantiation powers.**

2.2 Proposal 2: Improved Product Disclosure

Content of critical information statement

ACCAN warmly welcomes the ACMA's Proposal 2 that before a consumer enters a contract all providers must provide the consumer with a critical information statement that lists key information about their product in plain English. This is vitally important in assisting consumers to make informed decisions.

ACCAN refers to the ACMA commissioned research which recommends product disclosure information be simple, structured and easily comprehensible.³⁹

ACCAN recommends the critical information statement must, at a minimum, include the information the ACMA proposes. See Box 7.

ACCAN further recommends that any requirement for a Customer Service Guarantee waiver must also be disclosed in the critical information statement.

Box 7: ACMA Proposal 2 – Critical Information Statement

Cover critical information about [carriage service providers'] product that covers the following matters,

including:

- the service provided
- if the service depends on bundling arrangements
- any equipment provided (either included in the minimum monthly payment or as an up-front payment),
- the term of the contract
- the maximum amount payable for early termination
- the minimum monthly payment
- the maximum monthly payment (where calculable).

Be available for different types of products, such as fixed-line, mobile telephone, mobile internet and broadband. Critical information relevant to those specific types of services and products must cover, where applicable:

- voice call costs, which should specify how the costs are calculated and

³⁹ Patrick Xavier, *Behavioural Economics and Customer Complaints in Communication Markets*, ACMA May 2011 at 5 accessed on 11 July 2011 at: http://engage.acma.gov.au/reconnecting/wp-content/uploads/2011/05/Behavioural_Econ_and_Customer_complaints_research-report_FINAL.pdf

indicate the 'comparator' rate discussed in 7.2

- SMS costs
- data use costs (calculated on the basis of the maximum payable for each megabyte)
- exclusions from the plan, such as voicemail, photo-messaging, video calls
- the effective rate of charging for different components of a plan, which includes the rate charged if the included value is exceeded.

Provide consumers with non-product-specific information, including:

- customer service contact details
- instructions on access to expenditure management tools
- cooling-off periods
- information about how to access internal and external dispute resolution processes.

Source: Reconnecting the Customer Draft Report⁴⁰

ACCAN also strongly supports a cooling off period, particularly in circumstances where a consumer enters a contract by phone. This is because sales over the phone may be unsolicited or may occur while a consumer is making an inquiry or making a complaint.

ACCAN further recommends the critical information statement must be in writing.

Many of ACCAN members inform ACCAN that their clients are often either unaware they have entered a contract over the phone, or receive things they did not ask for or deny entering a contract. This is also evident in research undertaken by ACCAN.⁴¹ In the case of Ms S (see Box 8 below), she neither had knowledge nor gave consent for the contract to be entered. Arguably had Ms S received a written contract and a written critical information statement, this matter could have been resolved much earlier and not caused the significant and ongoing distress it has caused.

⁴⁰ *RTC Draft Report*, Note 2 at 87-88

⁴¹ See: ACCAN, *Informed Consent Research Report*, ACCAN, Sydney, 2009.

Box 8: The need for contracts and critical information statements to be in writing

A client, Ms S had recently entered a mobile phone contract for \$29 per month with one of the major Telcos. The Telco rang her a few weeks later, offering a flasher phone for \$59 month, for herself or a family member, because they had a promotion going. Ms S said she couldn't afford it.

The telco asked if any other family member would like it? Ms S replied only her son, but she wasn't sure he could afford it either, because he was unemployed. The Telco said they would ring back and speak to him.

The telco called back that day or the next day, when Ms S wasn't home, and spoke to her 38 year old son. The Telco asked the son for Ms S's credit card details and the son told them his mother wasn't home. The telco then signed the son up for the deal, in the mother's name, without her consent.

Ms S later discovered that her son's mobile phone plan had been put under her account without her permission.

Ms S currently owes \$1,100 on her son's mobile account.

The bills have been sent to the debt collectors and the client is very distressed. This case is currently before the TIO.

Source: Financial Counsellors Association of Queensland

Increase awareness of the TIO

In providing information about EDR processes, ACCAN strongly recommends this includes naming the Telecommunications Industry Ombudsman ('TIO') providing information about the TIO's role and the TIO's contact details in the critical information statement. This is important because many of ACCAN's members inform us that a significant number of their clients are not aware of the TIO. This is further supported by the findings of the *Taking Advantage of Disadvantage* report.⁴² Awareness and accessibility of the TIO is discussed in further detail in ACCAN's submission to the Department of Broadband, Communications and Digital Economy's (DBCDE) review of the TIO.⁴³

⁴² *Taking Advantage of Disadvantage*, Note 23 at 6.

⁴³ ACCAN, *Modernising the TIO*, 31 March 2011 at 10-19.



Incentive to provide critical information statement

ACCAN strongly supports the ACMA's proposal that if a carriage service provider fails to provide a critical information statement before a consumer enters a contract, this should be sufficient grounds to enable a consumer to exit the contract without penalty.

Additional requirements of a critical information statement

ACCAN further recommends the critical information statement be made available in accessible formats. The importance of this is discussed further below in Box 9. See also Boxes 1 and 2 above.

Box 9: The need for accessible formats

Our experience strongly suggests that most of our clients who are blind or have low vision would not know by checking the dialled numbers the rate they will be charged for the call. This is mainly due to the difficulty that people who are blind or have low vision experience in gaining access to mobile plan information in accessible formats. In some cases, the information about plan fees and call charges is not available in any accessible format; in other cases, it is available on a provider's website, but can be hard to find and difficult to read. In any case, the information is rarely available to a user when they are not connected to the internet, and so they cannot check it for numbers that they may want or need to dial in a particular situation. This applies to both pre-paid and post-paid plans.

Source: Vision Australia

Finally, to highlight the purpose and importance of the product disclosure statement, ACCAN strongly recommends it be called a critical information statement.

Recommendations:

- 16. That a critical information statement be provided to the consumer before they enter a contract.**
- 17. That a critical information statement be simple, well structured and easily comprehensible.**
- 18. That at a minimum, the information proposed by the ACMA be included in a critical information statement.**
- 19. That any requirement for a Customer Service Guarantee waiver must also be disclosed in the critical information statement.**
- 20. That a cooling off period be introduced, particularly in circumstances where a consumer enters a contract by phone.**

21. That the critical information statement must be in writing.
22. That the critical information statement includes the contact details and role of the Telecommunications Industry Ombudsman.
23. That in addition to inclusion within a critical information statement, the TIO contact details and role of the TIO be included in bills, late notices and disconnection notices.
24. That if a carriage service provider fails to provide a critical information statement before a consumer enters a contract, this should be sufficient grounds to enable a consumer to exit the contract without penalty.
25. That the critical information statement be made available in accessible formats.
26. That the product disclosure statement is called a critical information statement.

2.3 Proposal 3: Performance reporting and customer service charters

The need for transparency

ACCAN notes that the RTC Inquiry found that a lack of competition in customer service is partly due to a lack of transparency of customer service performance.⁴⁴ ACCAN further notes that giving consumers information about customer care performance is not currently covered in the *Telecommunications Consumer Protection Code*. ACCAN warmly welcomes the introduction of customer service performance metrics as outlined in the ACMA Proposal 3.

Performance metrics

In its submission to the RTC Inquiry, ACCAN referred the ACMA to some performance criteria that could be usefully adopted in the telecommunications industry.⁴⁵ In addition to this, ACCAN members have also expressed interest in the following performance metrics:

- time it takes to answer a call;
- number of transfers during a call;
- average length of the call;

⁴⁴ RTC *Draft Report*, Note 2 at 89.

⁴⁵ ACCAN, *Reconnecting the Customer Inquiry*, 10 September 2010 at 22-23.



- average time it takes to resolve an issue (hours on the phone and days).

Additionally, ACCAN also supports the use of customer service performance metrics that the ACMA proposes as outlined below in Box 10.

Box 10: Customer service performance reporting

Require carriage service providers ('CSPs') that have more than 30,000 (residential/small business) customers to report at regular intervals to the ACMA on:

Customer service performance

- total number of contacts made by existing customers
- number of repeat contacts made by the same customer within a 45-day period

and

Complaints-handling performance

- total number of complaints received by a CSP
- total number of that CSP's residential and small business customers.

Source: *Reconnecting the Customer public inquiry – Summary of proposed solutions*

The need to collect data on the number of contacts made by existing customers and repeat contacts by the same customer within 45 days is one important way to try to capture statistics on whether undertakings are actioned and how quickly matters can be resolved. It seems unlikely, however, to capture the matters which take more than 45 days to resolve. Thus, ACCAN calls for the additional performance metrics as outlined above.

The following case study (see Box 11 below) is important because while it is unlikely to be categorised as a complaint, it highlights the cost of poor customer service.

Not capturing and publishing this information is a missed opportunity to help service providers identify and address systemic issues relating to customer service.

Consumers also have a right to know this information so they can make informed decisions about which service provider to select. For some consumers, customer service is a contributing factor in this decision.

Box 11: Indirect costs of poor customer service not currently captured

Ms H came to us distressed because her iiNet VOIP and broadband were not working as she had expected: the call quality was low and she did not receive voice messages. Ms H decided to switch providers. She surveyed the market, and decided on a home phone and broadband bundle with Optus, since both her daughters had their mobile phone contracts with Optus. Ms H visited the Optus store, completed the necessary paperwork and provided her credit card details, and was informed that her services would be switched over in 8-10 working days.

Two-weeks later, Ms H's home phone and broadband had not been connected, so she called Optus. She received a call back one week later from an Optus representative who provided her with irrelevant information and told her that her paperwork was incomplete. She was told that she needed to fill out more paperwork, which Optus emailed to her and she had to print out and fax back to them.

Still waiting for the phone to be switched over, Ms H was informed that Optus was unable to take over the connection directly from iiNet. Ms H was asked to first switch to Telstra in order for Optus to offer her their services.

Acting on this advice, Ms H engaged Telstra. It was only after completing the necessary paperwork to Telstra and providing her credit card details that Ms H was informed that if she subsequently switched from Telstra to Optus, a \$300 early termination fee would be payable.

Ms H complained to Optus and was offered \$6 off her monthly bill, for the first six months of the 2 year contract which she declined. Although not her initial intention, Ms H decided to stay with Telstra, and was told her home phone and broadband would be switched over in 3 – 5 working days.

One week later Ms H's home phone was switched over, but not her broadband. Ms H called Telstra, and was informed that they hadn't switched her broadband, and that it would take two to three days for them to do so. While switching, Ms H was without internet for approximately one week, during which time Ms H's high school children regularly relied on relatives' internet and the local library for school projects and for exam preparation.

Ms H was also distressed because she had little other choice than to make the calls to her carriage service providers at work and the calls often went for over an hour.

Source: Brotherhood of St Laurence

The form of data

To be able to fully understand the depth and extent of complaints, ACCAN strongly recommends that raw figures about complaints, in addition to complaints as a proportion of customers, be provided to the ACMA. To promote transparency, ACCAN recommends that these figures be publicly published.

ACCAN further recommends that performance metrics that are to be provided to the ACMA by carriage service providers be provided on a quarterly basis with statistics being required within 30 days of the end of each quarter.

ACCAN shares the concerns raised in the *Performance Metrics Research* about the integrity of any data sourced from providers on an ongoing basis. ACCAN strongly supports Stewart's and Logan's recommendation that a mandatory independent audit process be established.

ACCAN supports the collection of both behavioural metrics based on actual behaviour and events as well as attitudinal metrics that are based on consumer perceptions as outlined by Stewart and Logan.⁴⁶

ACCAN strongly supports the ACMA's proposal that consumers have a means of comparing customer service performance across carriage service providers, such as through the publication of 'league tables'.⁴⁷

ACCAN also supports the recommendation made by Stewart and Logan that consumer awareness and perceptions of the effectiveness of the ACMA in regulating the telecommunications market be monitored as well.⁴⁸

Timely resolution of complaints

ACCAN does not support the *RTC Draft Report* recommendation that if a complaint is resolved within 2 working days, a service provider will not be required to record this as a complaint, as this may prevent the capturing and rectifying of significant systemic issues which have caused customer detriment. ACCAN does, however, support the publication of an additional category of complaints information, namely complaints resolved in 2 days which will highlight the carriage service providers which resolve matters in a timely manner.

Abolition of lengthy contracts

In the ACMA commissioned research about performance metrics, Stewart and Logan refer to telecommunications plans 'locking' customers into service providers, thus reducing 'switching behaviour', that is, the ability to move from one service

⁴⁶ M Logan & D Stewart, *Performance Metrics Research*, ACMA, Melbourne, May 2011 at 7 accessed on 8 July 2011 at:

http://www.acma.gov.au/webwr/assets/main/lib310013/performance_metrics_research.pdf.

⁴⁷ *RTC Draft Report*, Note 2 at 90.

⁴⁸ *Performance Metrics Research*, Note 46 at 7.



provider to another.⁴⁹ As consumers are 'locked in' to their service provider there is little incentive for carriage service providers to provide good customer service.⁵⁰ The ACMA commissioned research on behavioural economics considers ways of addressing barriers to switching, noting that a continuous service contract can be detrimental for consumers.⁵¹

It is for this reason that ACCAN calls for an end to 12 and 24 month long contracts, preferring month to month contracts.

ACCAN would consider exceptions to an end to lengthy contracts in the case, for example, of smart phones. This is because ACCAN acknowledges that many users of smart phones would only be able to use them if the cost is spread out over time. However, ACCAN would only advocate for this if certain criteria are met, including:

- a) That the phone/equipment component is clearly separated from the call component of the contract.
- b) That the ability to break the contract would be for a wide range of reasons, including, but not limited to, customer service, coverage, speeds.
- c) If a consumer wishes to end the contract early they are only required to keep paying the contract price for the phone component (not the call component).
- d) That there are no exit fees for leaving a contract early.
- e) That there be automatic re-pricing of the contract in some circumstances – e.g. if the provider has another similar offering to new consumers at X percentage discount.
- f) That the warranty length equals the contract length.

Customer service charters

ACCAN has not been a strong advocate for customer service charters. This is largely because the evidence suggests customer service charters are not working because they do not have consequences.⁵² ACCAN does not, however, oppose the development of customer service charters. ACCAN refers to the ACMA commissioned research which states that for a Customer Service Charter to be effective 'it will need to be supported by an enforcement framework with sufficient penalties for non-compliance.'⁵³ The ACMA research also supports compensation

⁴⁹ *Performance Metrics Research*, Note 46 at 5.

⁵⁰ *Behavioural Economics and Customer Complaints in Communication Market*, Note 39 at 69-70.

⁵¹ See *Behavioural Economics and Customer Complaints in Communication Markets*, Note 39 at 79-81.

⁵² See: ACCAN, *Customer Service Research Report*, accessed on 8 July 2011 at:

<http://accan.org.au/files/Reports/Customer%20Service.pdf>

⁵³ *Behavioural Economics and Customer Complaints in Communication Markets*, Note 39 at 7; 68.



payments to customers for breaching the Charter.⁵⁴ ACCAN supports the adoption of this compensation.

Recommendations:

27. That lengthy contracts be abolished.

28. That if lengthy contracts are absolutely necessary, the following be mandatory:

- a. the phone/equipment component of a contract is clearly separated from the call component of the contract.**
- b. If a consumer wishes to end the contract early they are only required to keep paying the contract price for the phone component (not the call component).**
- c. That there are no exit fees for leaving a contract early.**
- d. That there be automatic re-pricing of the contract in some circumstances – e.g. if the provider has another similar offering to new consumers at X percentage discount.**
- e. That the warranty length equals the contract length.**

29. That raw figures about complaints in addition to complaints as a proportion of customers be provided to the ACMA and these figures be publicly published.

30. That performance metrics that are to be provided to the ACMA by carriage service providers be provided on a quarterly basis with statistics being required within 30 days of the end of each quarter.

31. That a mandatory independent audit process of provider supplied data be established.

32. That both behavioural metrics based on actual behaviour and events as well as attitudinal metrics that are based on consumer perceptions be collected.

33. That consumers have a means of comparing customer service performance across carriage service providers, such as through the publication of 'league tables'.

34. That consumer awareness and perceptions of the effectiveness of the ACMA in regulating the telecommunications market be monitored as well.

⁵⁴ Ibid at 7-8.



35. That the ACMA publish an additional category of complaints information, namely complaints resolved in 2 days which will highlight the carriage service providers which resolve matters in a timely manner.

2.4 Proposal 4: Expenditure tools

Bill shock

ACCAN and other consumer advocates have long called for adequate spend management tools in order to reduce the risk of bill shock.⁵⁵ As outlined in previous submissions and as acknowledged by the ACMA, bill shock causes significant social and economic detriment to consumers.⁵⁶ ACCAN members have informed us that telecommunications bill shock is often a significant contributing factor to a client opting to declare bankruptcy. See, for example, Box 12 below. Neither the clients nor carriage service providers benefit when consumers incur debt they cannot afford to repay.⁵⁷ ACCAN warmly welcomes the ACMA's Proposal 4 which ACCAN believes will allow customers to effectively monitor the accumulation of charges during a billing period in real time and reduce the risk of bill shock. ACCAN understands these tools to apply to all communications devices, including, but not limited to, landline, mobile and internet services.

Box 12: Declaring bankruptcy

Ms P signed up for a \$79 cap plan at the age of 18 years. Upon receiving her second bill Ms P discovered she owed \$1,200. She couldn't pay the bill and the phone was eventually disconnected. Ms P experienced some mental health issues. By the time she sought assistance to address her debt, the telco bill was nearly \$3,000. This included the \$1,200 plus the cancellation fee for the headset. Ms P also had some other debts. These debts were all part of her application for bankruptcy.

Source: Financial Counsellor, Mitchell Community Health Service, Victoria

⁵⁵ ACCAN, *Submission to the ACMA's Reconnecting the Customer Consultation*, 2010 at 17-18; Brotherhood of St Laurence, *Submission to the ACMA's Reconnecting the Customer Consultation*, 2010 at 9; Consumer Credit Law Centre, *Submission to the ACMA's Reconnecting the Customer Consultation*, 2010 at 2.

⁵⁶ RTC Draft Report, Note 2 at 57.

⁵⁷ The ACMA cites broadband-related bill shock costing, Telstra, as much as \$90 million in the 2010 financial year, through waiving fees or writing-off debts owed by consumers who cannot pay their bills. See *RTC Draft Report*, Note 2 at 61.

Consumer nominated limits

ACCAN considers consumer nominated limits to be the most important element of spend management tools. The nominated limits must be consumer nominated and not provider nominated as consumer nominated limits would allow the consumer to reflect upon the level of risk they can afford and that is suitable to their specific circumstances. The consumer should also be able to change their nominated limit as required.

ACCAN therefore strongly recommends that every service provider must provide consumer nominated limits at no charge to the consumer, with express consent required to exceed these limits.

In Box 13 below, it was not until Mr F received his first bill, six months into the contract, that he became aware he had incurred a debt of \$6,000. Arguably, had Mr F been able to nominate a limit and not been able to exceed this limit without express consent, he would not have received a bill for \$6,000.

Real time usage and expenditure notifications

ACCAN also strongly supports real time usage and expenditure notifications for both prepaid and postpaid plans and that these be current within at least one hour for standard national voice, SMS and data charges. ACCAN strongly recommends disclosure of the time of delay for any other services and charges incurred by the customer, for example global roaming charges. ACCAN recommends the notifications must be provided at 80% and 100% usage and expenditure at a minimum. ACCAN would also like to see notifications provided at 70% of usage and expenditure.

ACCAN acknowledges that the ACMA commissioned research supports notification by text as 'having the best potential to be useful'.⁵⁸ ACCAN strongly supports text being an option for notification. However, ACCAN strongly advocates options for notification should be in accessible formats nominated by the consumer. See Box 1 for further information.

Box 13: The need for mandatory spend management tools

Mr F called the Credit and Debt Hotline for assistance with a large internet bill from Telstra. He had signed up to get an internet service. After 6 months he received his first bill and it was \$6,000. Mr F immediately cancelled the service and rang Telstra to dispute the bill. He was particularly concerned that Telstra took 6 months to notify him of the massive over usage bill being accumulated without his knowledge. Mr F also could not understand why he was not sent a monthly bill as he was promised when he signed up for the service.

⁵⁸ *Behavioural Economics and Customer Complaints in Communications Markets*, Note 39 at 60.

Mr. F continued to dispute the bill over and over again with people in Telstra without any resolution. Telstra then sold the debt to a debt collector who harassed Mr. F for payment. Mr. F again explained the problem and how long he had been disputing the bill without any satisfactory response. The debt collection company threatened court action. Mr. F then rang the TIO who told him he could not lodge as he had been aware of (and disputing the debt) for over 12 months. The TIO told him he should have lodged there earlier instead of trying to continue to resolve the dispute with Telstra.

Mr. F was advised to actually lodge a dispute with the TIO despite the fact that he was told not to by the TIO. Following a complaint to the TIO Telstra finally resolved the dispute. Mr. F remained concerned that the time limit for the TIO is unfairly short.

Source: Consumer Credit Legal Centre NSW

Similarly, had Mr D (see Box 14 below) been able to nominate a limit and not been able to exceed this limit without express consent, arguably he would not have received a bill for \$4,600.

Box 14: The need to reduce the risk of bill shock

Mr D is a single father who works 60 hours a week. He has two teenage daughters. As he works casually, he wasn't able to take time off for the school holidays to look after his girls. Soon after the holidays, he received a bill from his telco for \$4,600 for his home phone.

Thinking it was a mistake, he called the company to try and rectify it. He was then told that all the calls were to the Ukraine, where his family is originally from. Apparently his daughters had been very lonely during the holidays without their mother, and had been calling her back in the Ukraine. They understood it might be more expensive, but didn't really understand exactly how expensive it would be.

The best offer the telco made on the debt was to waive \$100, apparently as a sign of their generosity and understanding. Even with the TIO involved they are proving to be extremely difficult to negotiate with.

As this case demonstrates, further measures need to be in place to prevent consumers from inadvertently finding themselves in a similar situation. Any such changes to the code and practice would make a world of difference to vulnerable consumers.

Source: Financial Counsellor

Similarly, had Ms B (see Box 15 below) been able to nominate a limit and not been able to exceed this limit without express consent, arguably she would not have received a bill for \$1,200.

Box 15: The likely benefits of customer nominated limits not exceeded without express consent

Ms B had a landline account in which she typically spent about \$50 a month. In December 2010 she received a bill from Telstra for \$1,200.

Unbeknownst to Ms B, during the month of November 2010 her 10 year old son was calling a 1900 number to buy Habbo Hotel internet credits for Habbo which is an online children's game run out of the UK. This game is only allowed to be accessed by persons of a minimum age of 13 years and in the UK is limited to 25 euros per week.

The mother did not receive a bill in November 2010. It was not until the following month when the bill had reached \$1,200 that Ms B realised the debt had been incurred. She rang Telstra to find out why the bill was so high and they explained what it was and she immediately de-activated the child's Habbo account. However, further costs were incurred in the interim. The total Habbo costs were about \$1200 altogether.

Ms B eventually contacted the TIO and lodged a dispute. Telstra contacted her and their response was that she should contact Habbo. Habbo has no contact details on their website. Telstra gave her Habbo's email address.

The child also disputes the volume of calls which have 4 calls in 4 minutes at \$2.50 per call. The client has paid the amount owing, less Habbo.

With our assistance, Ms B sought a waiver from Telstra. Over a month later the amount for Habbo was re-credited to the account. Telco claimed it was given on compassionate grounds.

Source: Financial Counsellor, Victoria

In Box 16 below, Ms M requested credit management tools be activated such that when the so called 'cap' on her postpaid plan was reached for internet access, the internet access would be 'stopped'. This did not occur. This case study highlights the need for mandatory spend management tools in the form of a standard or service provider determination.

Box 16: The need for an enforceable standard or service provider determination binding on all

Ms M attended my office earlier this year with a single phone bill. She has four children under ten. Her phone bill was from a small service provider who provided her with home phone and wireless broadband. She had been contracted to them since late last year after they made an unsolicited phone call to her house and advised her they would save her money.

Instead, Ms M recalls that her phone bills had never been higher than since she has been with her new provider. The bill she brought me was for just over \$1,500 – and that was for a single month’s access.

Ms M is a refugee from Sudan and speaks limited English, and as such, she didn’t understand how a bill could possibly be that high considering the few phone calls made, and considering she’d been trying to restrict her daughter’s use of the wifi. After some inquiries, it became clear the excess data charges on the wireless broadband were to blame because despite the size of Ms M’s family, she had been sold a 2GB of wireless broadband per month. The bill is especially concerning as earlier in the year Ms M called her service provider and asked them to ‘stop’ the internet if her daughter reached the ‘cap’ on the wireless broadband. She was apparently advised that would be done. Obviously it wasn’t.

So, a vulnerable client was sold a bundle that was clearly not right for her usage, using a contract she didn’t understand, and the company intended to take advantage of this situation to enforce a very unfair debt. Unfortunately, this is a very familiar story, especially for financial counsellors working with non-English speaking communities.

Source: Financial Counsellor

Mandatory spend management tools

Due to the significant and far reaching detriment of bill shock, ACCAN strongly recommends a service provider determination or standard is introduced immediately which prevents service providers that do not provide credit management tools from offering that product or limits the amount the service provider can recover to a maximum of 30% above the contracted amount.

As stated in previous submissions, ACCAN strongly believes measures like hardship protections are best enshrined in mandatory standards rather than being subject to the code-making process.⁵⁹

⁵⁹ ACCAN, *RTC Submission*, Note 45 at 18.



Disputed bills

Many of ACCAN's members express concern at the way disputed debt is sold off to debt collectors. For examples, see Box 13 above and Box 17 below. This can cause great stress and distress for consumers. ACCAN strongly recommends consumer protections be introduced that expressly prevent a service provider from selling off any disputed debt to a debt collector. Due to the significant detriment of this practice, ACCAN recommends this protection be provided through a service provider determination or standard.

Recommendations:

- 36. That every service provider must provide consumer nominated limits at no charge to the consumer, with express consent required to exceed these limits.**
- 37. That the consumer is able to change their nominated limit if they choose to do so.**
- 38. That there be real time usage and expenditure notifications for both prepaid and postpaid plans and that these be current within at least one hour for standard national voice, SMS and data charges.**
- 39. That there should be disclosure of the time of delay for any other services and charges incurred by the Customer, for example global roaming charges.**
- 40. That usage and expenditure notifications must be provided at 80% and 100% usage at a minimum. ACCAN would also like to see notifications provided at 70% of usage and expenditure.**
- 41. That notifications be provided in accessible formats as nominated by the consumer.**
- 42. That a service provider determination or standard is introduced immediately which prevents service providers that do not provide credit management tools from offering that product or limits the amount the service provider can recover to a maximum of 30% above the contracted amount.**
- 43. That consumer protections be introduced in the form of a service provider determination or standard that expressly prevent a service provider from selling off any disputed debt to a debt collector.**

2.5 Proposal 5: Internal complaints-handling

Significant and ongoing consumer detriment

There has been significant and ongoing consumer detriment as a result of poor complaints-handling practices over an extended period of time. This is evident in the research commissioned by the ACMA⁶⁰ and the results of the Consumer 2011 Survey discussed above in Section 1.1. This is also discussed in ACCAN's submissions to the ACMA's *Reconnecting the Customer* public consultation and the DBCDE Review of the TIO.⁶¹ TIO statistics for January to March 2011 quarter indicate that complaints-handling continues to be one of the top three categories of complaint received by the TIO.⁶²

ACCAN therefore welcomes the Government's intention to amend the *Telecommunications Act 1997* to give the ACMA a more general service provider determination power.⁶³ ACCAN also strongly supports the ACMA's proposed list of subjects of determinations:

- obligation to notify customers about products and services;
- advertising;
- expenditure management;
- complaints-handling processes;
- any other matter ACMA considers necessary or convenient to protect interests of consumers.⁶⁴

Immediate remedy required

The ACMA questions and raises concerns as to whether industry standards should be dependent upon finding a deficiency and allowing time for industry to remedy. In the *RTC Draft Report* the ACMA states: 'In any regulatory framework there are matters that are simply inappropriate for an industry code.'⁶⁵ ACCAN submits complaints-handling is one such matter. It is an area of significant customer detriment which requires an immediate remedy, a remedy that binds all service providers. A service provider determination or a standard is therefore required.

⁶⁰ For example, Behavioural Economics and Customer Complaints in Communications Markets, Note 39 at 39;

⁶¹ ACCAN, *Modernising the TIO*, Note 43 at 20-25.

⁶² TIO, *TIO Talks*, No 2, 2011 at 3.

⁶³ See: Hon Stephen Conroy, CommsDay Summit Address, Sydney, 20 April 2010 accessed on 12 July 2011 at: <http://www.minister.dbcde.gov.au/media/speeches/2010/006>

⁶⁴ *RTC Draft Report*, Note 2 at 30-31.

⁶⁵ *RTC Draft Report*, Note 2 at 30.

See Box 13 above for an example of the current shortcomings of some service providers' internal dispute resolution ('IDR') practices, including significant time delays and the selling of disputed debt to debt collectors. See further Box 17 below for another case study of poor IDR processes.

Box 17

Ms C cancelled a mobile phone contract and went to a pre-paid plan due to the hardship of a sick child. Her mobile and internet were on the one bill previously.

The mobile phone charges dropped off the bill. Ms C was told there would be a cancellation fee. We are still assisting Ms C to try and establish if it was ever put on the bill and paid or not.

Optus opened *another* account with a *different* account number. Ms C says she never received any bills for this account number. Optus then sent the bill to a debt collector where it incurred further fees and the first thing Ms C knew about it was a demand from a debt collector about 4 months after cancelling the contract.

The Optus hardship department will not negotiate. They are insisting negotiations take place with the debt collector. They told me it was rubbish that the internet and mobile were on the same bill, even though I had the bills in front of me.

Ms C has asked us to take this matter to the TIO.

Financial Counsellor, Victoria

Consistent definition of 'complaint'

ACCAN further submits that there is also a real need for a consistent definition of 'complaint' to be used across as many industries as possible as recommended by the Productivity Commission.⁶⁶ ACCAN supports the adoption of the definition of 'complaint' as set out in the Australian Standard for complaints-handling AS ISO 10002-2006. This definition should be included in a complaints handling standard or service provider determination.

⁶⁶ Productivity Commission, *Review of Australia's Consumer Policy Framework*, Vol 1. No 45, 30 April 2008 at 40 accessed on 13 July 2011 at http://www.pc.gov.au/_data/assets/pdf_file/0006/79170/consumer1.pdf



Effectiveness of service provider determinations and standards

As outlined above, ACCAN submits that additions to a new *TCP Code* to address the issues of complaints-handling is insufficient action. ACCAN advocates that either a service provider determination or a standard is necessary. ACCAN supports the ACMA's comments that the mobile premium services determination is an example of how service provider rules can complement industry codes.⁶⁷ As the ACMA notes, recent TIO statistics indicate the combined effect of *the Code* and determination has resulted in a reduction of MPS complaints to the TIO by 76%.⁶⁸ ACCAN submits a similar course of action is required for complaints-handling.

ACCAN strongly supports the ACMA's proposal that carriage service providers comply with guidelines set out in the Australian standard for: visibility, accessibility, responsiveness, objectivity, charging, confidentiality, being consumer-focused, accountability and continuous improvement. This is discussed in further detail in the ACCAN commissioned research, *Fair Go*.⁶⁹

In developing a service provider determination or standard, ACCAN refers to the Australian Securities and Investments Commission (ASIC) Regulatory Guidance 139, which sets out the criteria ASIC uses when assessing whether a financial services sector external dispute resolution scheme meets the benchmarks for customer based dispute resolution schemes and Regulatory Guidance 165 which sets out minimum requirements for providers' internal complaints processes. ACCAN also strongly support including benchmarks for timeliness in handling complaints, documenting procedures and collecting, analysing and reporting complaints information.

Complaints-handling at no cost

ACCAN has raised earlier in this submission the direct and indirect costs in making a complaint. This is discussed further in previous ACCAN submissions.⁷⁰

ACCAN has also previously raised the issue of the cost of calling 1800 and 1300/13 numbers from a mobile.⁷¹ ACCAN notes that many carriage service providers offer a 1800 or 1300 customer service number. ACCAN acknowledges that some carriage service providers do not charge for calls to their complaints line. However, ACCAN is also aware that many consumers continue to pay substantial sums of money for

⁶⁷ *RTC Draft Report, Note 2* at 24.

⁶⁸ Cited in *RTC Draft Report, Note 2* at 24.

⁶⁹ John Wood, *Fair Go: Complaint Resolution for Digital Australia*, ACCAN, Sydney, 2011 accessed on 12 July 2011 at: http://accan.org.au/files/Reports/Fair_Go_Occasional_Paper.pdf

⁷⁰ For example, see: ACCAN, *Modernising the TIO, Note 43* at 24-25.

⁷¹ *The Cost of a Free call: Accessing 1800 and 13/1300 services from mobile phones.*

ACCAN, AFCCRA and ACOSS Super-complaint to the Australian Communications and Media Authority, 10 September 2010 accessed on 12 July 2011 at:

<http://accan.org.au/files/Campaigns/Super-complaint%20re%201800%20and%2013%20numbers%20FINAL.pdf>



accessing their service provider. For example, see Box 18 below. ACCAN recommends all calls to your carriage service provider, including help desk, inquiries, financial hardship, customer service and complaints should be free calls, even if calling from a mobile.

Box 18: The cost of contacting your telco

One respondent, O3, in attempting to have his home phone connected with Telstra, spent so long waiting on his mobile phone trying to get through that he used his entire \$30 of pre-paid credit.

Source: Linda Leung *Mind the Gap: refugees and communications technology literacy*⁷² (forthcoming)

Consumer Compensation

ACCAN repeats its call to expand the Customer Service Guarantee (CSG) to deliver compensation to consumers for breaches of basic customer service standards. This may simply be a compensation payment for the provider not doing what they said they would do, failing to respond to a complaint within a specified period of time or a material billing error. The expanded compensation arrangements should derive from obligations placed on service providers under mandatory consumer protection standards and codes. ACCAN believes that this would provide an additional impetus to comply. It would also reasonably compensate consumers for the time and resources that they put into asserting their rights in the marketplace. See, for example, Box 19 below. We would welcome a conversation with the ACMA about the suite of compensation payments that could be accommodated under the current CSG or a new compensation framework.

Box 19: Poor complaints handling procedures

AAPT had to reimburse our client \$1,500 under the Customer Service Guarantee for not being able to make their phone service fully operational until 6 weeks after they shifted house.

Resolutions contact left a message asking the client to call back with their bank details to pay the money into the account but did not leave a telephone number. The client decided to fax the bank details to the fax number where they had sent previous material in relation to the claim.

When funds were not received, the client tried to call the number that the contact had called from, but although it was an AAPT number, no one there knew the person and could not assist. Finally the client rang the call centre and found someone who knew

⁷² Leung, *Mind the Gap*, Note 17,(forthcoming) at 11.

who the person was and said they could “run up the stairs” and leave them a message. The client gave this person the bank account details verbally.

The money was never received. The client contacted the TIO and they told the client that the Telco has 6 weeks to pay the money.

When the client’s monthly phone bill arrived they saw that the \$1,500 had been credited to their telephone account instead. As the bill is about \$60 pm, this was not satisfactory.

The next day the client received a letter from the TIO with a letter to the TIO from AAPT attached which was dated 5 days after the bank details had been supplied to AAPT the second time. The letter said they couldn’t pay the money because the client had not given them their bank account details.

The client then rang the call centre again and had a discussion with them about it. AAPT did have the bank account details on file and they did receive them twice prior to the letter being written to the TIO saying they didn’t have them.

From our experience in assisting clients with their telco issues, telcos need to provide a contact number for the person who is resolving the dispute. They also need to improve their competence in dealing with claims.

Other issues of concern which arose in this case included AAPT not taking notes of repeated calls about the service problems being experienced and claiming repeatedly they were “escalating” the matter when nothing was ever done.

Source: Financial Counsellor

Super-complaints power

ACCAN warmly welcomes the recent announcement of an 18 month pilot Super-Complaints project between NSW Fair Trading and consumer group, CHOICE.⁷³

As outlined in our submission to the RTC Inquiry, ACCAN believes that there are features of the telecommunications market in Australia which significantly harm the interests of consumers. A super-complaints power would allow consumer representative bodies like ACCAN to bring complaints about such systemic issues. This mechanism would facilitate the resolution of these issues and thus improve overall consumer welfare. ACCAN strongly recommends that a pilot Super-

⁷³ See: NSW Fair Trading NSW, *NSW Fair Trading to trial an Australian first with CHOICE*, 8 June 2011 accessed on 12 July 2011 at:

http://www.fairtrading.nsw.gov.au/About_us/News_and_events/Media_releases/2011_media_release_s/20110607_nsw_fair_trading_to_trial_an_australian_first_with_choice.html



Complaints project be undertaken by the ACMA. ACCAN would welcome the opportunity to be involved in this pilot project.

It is significant that despite the spotlight on customer care, consumers continue to report long delays waiting to be connected to a customer service operator; several transfers; inefficiencies in having to repeat their story each time they call; long delays in resolving the issues.⁷⁴ This highlights the need for a complaints-handling service provider determination of standard.

Recommendations:

- 44. That the definition of 'complaint' as set out in the Australian Standard for complaints-handling AS ISO 10002-2006 be adopted.**
- 45. That a complaints-handling service provider determination or standard be immediately introduced.**
- 46. That carriage service providers comply with guidelines set out in the Australian standard for: visibility, accessibility, responsiveness, objectivity, charging, confidentiality, being consumer-focused, accountability and continuous improvement.**
- 47. That the complaints-handling service provider or standard include benchmarks for timeliness in handling complaints, documenting procedures and collecting, analysing and reporting complaints information.**
- 48. That all calls to a carriage service provider, including help desk, financial hardship, customer service and complaints be free calls, even if calling from a mobile.**
- 49. That the Customer Service Guarantee (CSG) be expanded to deliver compensation to consumers for breaches of basic customer service standards.**
- 50. That a pilot Super-Complaints project be undertaken by the ACMA.**

⁷⁴ See for example, Mr Peter Semmler's submission to the ACMA *Reconnecting the Customer Draft Report Public Consultation*, June 2011.

2.6 Proposal 6: Changes to the TIO scheme

ACCAN supports the ACMA recommendations relating to the TIO system.

TIO Governance

ACCAN strongly supports the recommendations for a unitary governance structure with equal consumer and industry representatives and an independent Chair. ACCAN's position on this is outlined in further detail in its submission to the DBCDE Review of the TIO.⁷⁵

Power to deal with non-compliant TIO members

In its submission to the DBCDE Review of the TIO, ACCAN outlined some of the difficulties it believes arise from the TIO's inability to deal directly with non-compliant members.⁷⁶ ACCAN warmly welcomes the ACMA's recommendation that the TIO be given the power to deal directly with non-compliant members.⁷⁷ ACCAN supports this occurring through legislative amendment.

Systemic issues

ACCAN refers to the ACMA commissioned research regarding external dispute resolution schemes and systemic issues ('*EDR Research Report*'). While noting Ombudsmen schemes across the different industries are different, the table comparing systemic complaints statistics published by the Telecommunications Industry Ombudsman ('TIO'), Financial Services Ombudsmen ('FOS') and Energy and Water Ombudsman Victoria ('EWOV') are telling. The report indicates that TIO statistics were not available in 2010. In 2009, FOS reported 81 systemic formal investigations, EWOV, which is state based, reported 16 systemic formal investigations and the TIO reported no systemic investigations were undertaken.⁷⁸ This is significant given the number of complaints received by the TIO in that time exceeded 230,000.⁷⁹

The *EDR Research Report* highlights there are significant barriers preventing the TIO from identifying and investigating systemic issues. These barriers include the limited definition of systemic issues,⁸⁰ additional requirements before investigating,

⁷⁵ Modernising the TIO, Note 43 at 7-10.

⁷⁶ Modernising the TIO, Note 43 30, 33.

⁷⁷ RTC Draft Report, Note 2 at 118.

⁷⁸ Calluna Consulting, *External dispute resolution schemes and systemic issues: An examination of the TIO's systemic issues function against best practice*, ACMA, Melbourne, December 2010 at 13 accessed on 12 July 2011 at: <http://engage.acma.gov.au/reconnecting/wp-content/uploads/2011/05/ACMA-Report-Systemic-Issues-Best-Practice.pdf>

⁷⁹ TIO, *TIO Annual Report 2009* at 4, accessed on 13 July 2011 at

http://www.tio.com.au/publications/annual_reports/ar2009/PDFs/AR_09_PartOne.pdf

⁸⁰ *EDR Research Report*, Note 78 at 9.

such as considering whether an investigation would be ‘practical, fair, efficient and effective’⁸¹, that the complaint be unresolved.⁸²

While noting the efforts by the TIO to try to address systemic issues,⁸³ the TIO is constrained by the tools at its disposal.

ACCAN therefore warmly welcomes and supports the ACMA’s proposal outlined in Box 20.

Box 20: The ACMA’s Proposal – TIO systemic issue reporting

Recommend that the TIO improve its systemic issue identification and reporting processes by:

- widening the definition of ‘systemic issue’;
- removing any restrictions on the TIO’s ability to commence and conduct investigations about systemic issues;
- requiring regular reporting to the ACMA and/or the ACCC on systemic issues that are identified and confirmed within a particular period, together with details of any member that does not rectify a systemic problem to the satisfaction of the TIO;
- reporting on systemic issues in its annual report, including the number of potential systemic issues identified, the number of confirmed and resolved systemic issues, and a broad description of the categories into which systemic issues fell during the relevant period.

Source: *Reconnecting the Customer public inquiry – Summary of proposed solutions*

Role of the regulator

In addition to the improvements with the TIO system, ACCAN also calls for better monitoring and enforcement on the part of the ACMA. As stated earlier, ACCAN acknowledges the ACMA’s focus to date has largely been on education. However as part of the new approach proposed by ACMA, ACCAN anticipates and expects the ACMA to actively identify and address systemic issues through the full suite of tools available to it.

⁸¹ *EDR Research Report*, Note 78 at 12.

⁸² *EDR Research Report*, Note 78 at 12

⁸³ See *TIO Talks*, No 2 2011 which examines the systemic issue of credit management.



ACCAN further recommends the ACMA publicly maintain a register of systemic issues which includes the following information:

- What is the systemic issue;
- How the systemic issue was identified (eg by the TIO, the ACMA, super-complaint, etc);
- Who is responsible for addressing the systemic issue;
- Progress on addressing the systemic issue.

ACCAN submits that publicly maintaining such a register will increase transparency and build consumer confidence in the regulatory bodies.

Recommendations:

- 51. That the TIO governance structure be amended to include equal representation of industry and consumer representatives.**
- 52. That the TIO governance structure be amended to a unitary governance structure with an independent Chair.**
- 53. That the TIO be given the power to deal directly with non-compliant members and that this occur through legislative amendment.**
- 54. That the TIO widen the definition of 'systemic issue'.**
- 55. That any restrictions on the TIO's ability to commence and conduct investigations about systemic issues be removed.**
- 56. That the TIO be required to regularly report to the ACMA and/or the ACCC on systemic issues that are identified and confirmed within a particular period, together with details of any member that does not rectify a systemic problem to the satisfaction of the TIO.**
- 57. That the TIO report on systemic issues in its annual report, including the number of potential systemic issues identified, the number of confirmed and resolved systemic issues, and a broad description of the categories into which systemic issues fell during the relevant period.**
- 58. That the ACMA actively identify and address systemic issues through the full suite of tools available to it.**
- 59. That the ACMA publicly maintain a register of systemic issues.**

Conclusion

The *RTC Draft Report*, accompanying research and other recent research and events highlight the ongoing significant detriment experienced by consumers as a result of generally poor customer care in the telecommunications sector. There is an urgent need for change. A summary of ACCAN's recommendations is provided below.

Summary of recommendations

1. That the ACMA's *RTC* proposals be incorporated into the new *Telecommunications Consumer Protection (TCP) Code* with adequate monitoring, compliance and enforcement mechanisms within the Code and the Code meets best practice with respect to independent oversight with equal industry and consumer representatives, an independent chair, external auditing and public reporting.
2. That the ACMA's *RTC* proposals must be incorporated into the new *Telecommunications Consumer Protection (TCP) Code* in a timely manner.
3. That carriage service providers must meet *the TCP Code* compliance monitoring requirements within a reasonable timeframe.
4. That the advertising standard include a complete ban on confusing terms and a benchmark for levels of disclosure regarding unit pricing.
5. That flagfall be abolished.
6. That there be a total prohibition on any confusing terms, including, but not limited to 'free', 'cap', 'unlimited', 'no exclusions' and any similar terms.
7. That there be a requirement that font size in advertising, critical information statements, contracts and any correspondence with a customer generally be no smaller than 12 font, including asterisks.
8. That there be a standard developed that requires that advertisements, critical information statements, contracts and any correspondence with a consumer be readily available in accessible formats and the customer must be the one to select the preferred mode of communication.
9. That information about the cost of popular usages of telecommunications devices be readily made available by carriage service providers at point of sale, on carriage service providers' websites and upon request.
10. That a working group be established to test three to four unit pricing models. These models must be evaluated with input from consumers and consumer advocates, including low income consumers, Aboriginal and Torres Strait Islander consumers, CALD consumers, consumers with disabilities, consumers from regional and remote areas, women, older persons, youth and small business.



11. That a post-paid plan be created in which there is a single charge rate per second for a phone call, a single charge rate per standard text and a single charge rate per data download regardless of the frequency with which the communication device is used.
12. That the 'stated unit price' charges not exceed double the amount of the 'effective unit price' for plans which distinguish between 'effective unit price' and 'stated unit price' and that this be clearly stated.
13. That the ACMA regularly undertakes routine spot-testing and risked based testing and complaints analysis testing of carriage service providers products to test that the products do what they claim to do.
14. That where service providers have been found by the ACMA to fall short on providing what they claim to provide, they compensate consumers.
15. That the ACMA be given substantiation powers.
16. That a critical information statement be provided to the consumer before they enter a contract.
17. That a critical information statement be simple, well structured and easily comprehensible.
18. That at a minimum, the information proposed by the ACMA be included in a critical information statement.
19. That any requirement for a Customer Service Guarantee waiver must be disclosed in the critical information statement.
20. That a cooling off period be introduced, particularly in circumstances where a consumer enters a contract by phone.
21. That the critical information statement must be in writing.
22. That the critical information statement includes the contact details and role of the Telecommunications Industry Ombudsman.
23. That in addition to inclusion within a critical information statement, the TIO contact details and role of the TIO be included in bills, late notices and disconnection notices.
24. That if a carriage service provider fails to provide a critical information statement before a consumer enters a contract, this should be sufficient grounds to enable a consumer to exit the contract without penalty.
25. That the critical information statement be made available in accessible formats.
26. That the product disclosure statement is called a critical information statement.
27. That lengthy contracts be abolished.
28. That if lengthy contracts are absolutely necessary, the following be mandatory:
 - a) the phone/equipment component of a contract is clearly separated from the call component of the contract.



- b) If a consumer wishes to end the contract early they are only required to keep paying the contract price for the phone component (not the call component).
 - c) That there are no exit fees for leaving a contract early.
 - d) That there be automatic re-pricing of the contract in some circumstances – e.g. if the provider has another similar offering to new consumers at X percentage discount.
 - e) That the warranty length equals the contract length.
29. That raw figures about complaints in addition to complaints as a proportion of customers be provided to the ACMA and these figures be publicly published.
 30. That performance metrics that are to be provided to the ACMA by carriage service providers be provided on a quarterly basis with statistics being required within 30 days of the end of each quarter.
 31. That a mandatory independent audit process of provider supplied data be established.
 32. That both behavioural metrics based on actual behaviour and events as well as attitudinal metrics that are based on consumer perceptions be collected.
 33. That consumers have a means of comparing customer service performance across carriage service providers, such as through the publication of 'league tables'.
 34. That consumer awareness and perceptions of the effectiveness of the ACMA in regulating the telecommunications market be monitored as well.
 35. That the ACMA publish an additional category of complaints information, namely complaints resolved in 2 days which will highlight the carriage service providers which resolve matters in a timely manner.
 36. That every service provider must provide consumer nominated limits at no charge to the consumer, with express consent required to exceed these limits.
 37. That the consumer is able to change their nominated limit if they choose to do so.
 38. That there be real time usage and expenditure notifications for both prepaid and postpaid plans and that these be current within at least one hour for standard national voice, SMS and data charges.
 39. That there should be disclosure of the time of delay for any other services and charges incurred by the Customer, for example global roaming charges.
 40. That usage and expenditure notifications must be provided at 80% and 100% usage at a minimum. ACCAN would also like to see notifications provided at 70% of usage and expenditure.



- 41. That notifications be provided in accessible formats as nominated by the consumer.**
- 42. That a service provider determination or standard is introduced immediately which prevents service providers that do not provide credit management tools from offering that product or limits the amount the service provider can recover to a maximum of 30% above the contracted amount.**
- 43. That consumer protections be introduced in the form of a service provider determination or standard that expressly prevent a service provider from selling off any disputed debt to a debt collector.**
- 44. That the definition of 'complaint' as set out in the Australian Standard for complaints-handling AS ISO 10002-2006 be adopted.**
- 45. That a complaints-handling service provider determination or standard be immediately introduced.**
- 46. That carriage service providers comply with guidelines set out in the Australian standard for: visibility, accessibility, responsiveness, objectivity, charging, confidentiality, being consumer-focused, accountability and continuous improvement.**
- 47. That the complaints-handling service provider or standard include benchmarks for timeliness in handling complaints, documenting procedures and collecting, analysing and reporting complaints information.**
- 48. That all calls to a carriage service provider, including help desk, financial hardship, customer service and complaints be free calls, even if calling from a mobile.**
- 49. That the Customer Service Guarantee (CSG) be expanded to deliver compensation to consumers for breaches of basic customer service standards.**
- 50. That a pilot Super-Complaints project be undertaken by the ACMA.**
- 51. That the TIO governance structure be amended to include equal representation of industry and consumer representatives.**
- 52. That the TIO governance structure be amended to a unitary governance structure with an independent Chair**
- 53. That the TIO be given the power to deal directly with non-compliant members and this occur through legislative amendment.**
- 54. That the TIO widen the definition of 'systemic issue'.**
- 55. That any restrictions on the TIO's ability to commence and conduct investigations about systemic issues be removed.**
- 56. That the TIO be required to regularly report to the ACMA and/or the ACCC on systemic issues that are identified and confirmed within a particular period, together with details of any member that does not rectify a systemic problem to the satisfaction of the TIO.**
- 57. That the TIO report on systemic issues in its annual report, including the number of potential systemic issues identified, the number of confirmed**



and resolved systemic issues, and a broad description of the categories into which systemic issues fell during the relevant period.

58. That the ACMA actively identify and address systemic issues through the full suite of tools available to it.

59. That the ACMA publicly maintain a register of systemic issues.

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