JULIE McCROSSIN: I have a lovely pleasure now, I'm handing over to my fearless leader, CEO of ACCAN Teresa Corbin and let me say she's the cofounder and now CEO of ACCAN for those who may not know, ACCAN of course is Australia's peak body for communications consumers and for many years she's been active at both a national and international level on telecommunications policy. She's a director of the board of the international telecommunication user group, she sits on a range of bodies that are all in the program and she chairs the Consumer Policy Committee of Standards Australia, so please welcome fearless leader, Teresa.

TERESA CORBIN: We're going to have a session with two regulators. I know we're set to cover scams later, but we've already covered a lot of that which is good, because we have a tight session now. What I really wanted to start off with was to introduce Nerida O’Loughlin from ACMA, from the Communications and Media Authority and Delia Rickard from the Australian Competition and Consumer Commission, so thank you very much for joining us and their full bios are in the program. I wanted to start off with the ACMA, because there's been a lot of changes to regulation in the last 12-18 months and I thought it might be good for you to talk about changes and how these are impacting.

NERIDA O'LOUGHLIN: Thank you for the invitation to come along today. I think where we've been looking since across 2017 and 18 is really looking at what are the regulations that need to be put in place to assist consumers to migrate to services delivered over the nbn. We started looking at the issues back in '17, even before I joined the ACMA and did quite a lot of research so we could better understand what the pain points were for consumers in that migration pathway and over the period of time we developed a number of regulatory rules around three key areas. One, making sure that consumers got the right information from their telcos about the services that were best for them. Secondly, is making sure that consumers including small business didn't lose their service as they were moving across to nbn and our research showed alarmingly quite a number of small businesses and businesses were losing services for two to three months and you can understand for individuals, but also small business how damaging that could be for their business so we wanted to smooth that pathway to address that issue and finally, we wanted to improve complaints handling by the industry. That wasn't necessarily specifically related to nbn. As services were moving, it was a much more complex environment for consumers to navigate so we thought it was time that the telcos needed to lift their game in terms of complaints handling. The final thing we did, was to ask the industry to provide the ACMA with significant information and what we asked them to provide us with was details on the complaints they received. So, we had a mixture of data from the TIO about escalated complaints to the TIO. We would have the complaints that we were seeing, but we would also have the raw data from the RSPs about what they were seeing, as well. They're the things that we've put in place over the last little while. We're reviewing those rules at the moment. We are seeing encouraging signs in terms of develops in complaints and a smoother consumer experience. Obviously next year is peak nbn roll-out, so we want to keep the pressure up on making sure those things are resolved for consumers as they migrant across.

TERESA CORBIN: Just while we're on the new regulation, one of the things that has come up in the past is that people have done a lot of comparisons between the ACCC and the ACMA which are very different organisations of course, with very different legislation, but we've also seen a real uptick since you've been the chair in the amount of enforcement action that's been taken. NERIDA O'LOUGHLIN: I think I share that glory with my fellow members, but I think partly it was because we put in place those new rules and one of the things we did was to take what were existing rules in the telecommunications consumer protection code, which many of you will know about, and lifted that up into an industry standard. So, we were saying that that would be directly enforceable by the ACMA rather than the co-regulatory code and that sort of demonstrated we didn't think the code was working in that area. So, I think those new rules have lifted our enforcement action. We were also pretty clear very much upfront with the industry that we were going to be enforcing those rules early and often, putting in place new regime and the time that we were in with nbn being almost peak roll-out, it was really important for us to move very quickly. So, we have done a significant amount of formal warnings, remedial directions, infringement notices over the last 12 to 18 months and that's really around those nbn rules. I'd have to say, though, that we haven't stopped enforcing the existing rules. We've also taken action recently around non-compliance of the TCP code and also around priority assistance. One of the other things that the ACMA and the authority has been very focused on is greater transparency in how we're going about our business and faster decision making and with a new fairly full-time authority that's been much easier to do. We can make decisions much more quickly. Very much the model that our colleagues at the ACCC have. We also in April this year as part of that transparency push announced our compliance priorities for 2019-20 and that's the first time that the ACMA has publicly announced what it will be focusing on in terms of compliance over the next 12 months. I think you'll be pleased to see there's a number of telco issues which are priorities for us this year. The nbn rules being the first one, but also looking at complaints handling and looking also at EME, which we might get to later.

TERESA CORBIN: We might go to the ACCC now. You also do a lot in relation to the nbn, some of it is in the wholesale area, but in other areas, as well. Maybe you could explain what you regulate as far as nbn goes.

DELIA RICKARD: Before I do, I want to say happy 10th birthday to ACCAN. I think it's fantastic. At the ACCC we're basically an economic regulator which means a lot of consultations are to put it mildly "very dry". I could use other adjectives which are less polite. Over the last 10 years, ACCAN has put in around 40 submissions to our inquiries and often you're the only consumer voice we hear from. I wanted to say what a really essential part of a telecommunications landscape ACCAN is and thank you for all the help you give us. We couldn't do it without you. I thought I'd touch on three areas -service standards... I'll get to the rest. When we put in place structural undertaking with the nbn that's an agreement that goes for 40 years and we didn't deal with service standards there, because we had no idea what would be required and reasonable over 40 years. But as we've seen complaints about service standards and the transition to the nbn increase whether to TIO ACCAN or ourselves we felt something more needed to be done at the wholesale level, so we began an inquiry looking into what wholesale standards should be put in place there. That was in... when did we start? 2017. Last year, the nbn came to us with a proposal that they put in place an undertaking which provided rebates of around $25 for missed appointments and rebates for all connection and faults that failed nbn's service commitments. That was a big improvement, because you had to get to the 90%, they had to failed and not met their 90% performance target before rebates kicked in otherwise. At the moment we're preparing a draft decision for that inquiry and our focus is really on ensuring that we've got the incentives in place. So the incentives so that service level commitments are clear and the allocation of risk and responsibilities are appropriate and that the remedy offered by the nbn provides effective incentives and really provides real improvements for consumers and we're hoping that the results of that inquiry will feed into the wholesale broadband agreement number four, which the nbn's currently negotiating with all the retail service providers and one of the things we're thinking about carefully there is the whole issue of rebates and on the one hand we know that RSPs when there's a problem will put in place a range of mitigating things whether it's a 4G back-up modems or credits to the accounts. On the other hand it's the consumers who suffer the harm, though one area of a clear view is that when service appointments are missed, then the consumer wears all the blame there, all the trouble and harm there so we're very much of the view that any rebates should be passed through there.

JULIE McCROSSIN: Could I come in for one sec, when you turn your head away, you're not moving the mic. Hold the mics close to the mouth.

DELIA RICKARD: I will. I apologise. One of the things we'll be monitoring is the rebate process. One thing we've been doing is our monitoring Australian broadband program and we put that in place to help consumers when shopping around to find the best deal in terms of quality and speed. We put out our first report in March 2018. We've now put out six reports and what we've seen is it has engendered competition between providers around performance-based attributes, around speed and capacity and all RSPs are looking to improve results. They want to be like TPG and have that ad on the side of the tram.

TERESA CORBIN: I wondered how you thought about that.

DELIA RICKARD: And it means even the consumers who aren't shopping around are likely to find a better deal. Overall, what we're seeing is that most nbn services are typically providing good speeds including in the evening. There is, however,, though, still a small but not insignificant number of services which never reach their maximum speeds and which are causing problems and we're really, along with the ACMA, calling upon the nbn and RSPs to work together to make improvements here and most of those do tend to be fibre to the kerb where you've got long bits of copper getting to the household and in house wiring problems. So, it's an area that more still needs to be done on. The final quick thing I wanted to talk on was around nbn pricing and Rod who's our chair who many of you will know likes to say he's the only dinosaur who was around when the nbn was first being planned, but part of the whole original vision for the nbn is that when you transition from ADSL to the nbn you'll be paying about the same price as you were beforehand for a similar or better service. Now, the baseline service with the nbn is the 12.1. The way it's priced, however, is meaning fewer providers are offering it. Those providers who are offering it are offering it around about 10 or more than the previous ADSL prices and they're squeezed at the margins. We know the nbn is looking at this. We're certainly talking to them about the need to have an adequate baseline price for the nbn that people can transition to and feel they're getting the same or better service than they had before. If they want higher speeds, then they can pay more for them. But that is what we see as a sort of bottom line requirement in this area.

TERESA CORBIN: I think we'll pick that issue up this afternoon in the affordability panel, but one of the things I would like to explore too is how do the ACMA and the ACCC -looking in the wrong direction there! -work together and how does that actually benefit consumers?

DELIA RICKARD: I have to say and I'm not just saying because Nerida and half the members are there. It's a fantastic relationship. We've reinstated cross-membership. Both Nerida and James are cross-members of the ACCC. They can come along to our communications meetings. They might dial into commission meetings when we have a particular telco matter on. By the same token members of the ACMA, Christina will be there if there's spectrum issues on. I turn up or dial in when there's a consumer issue on, but it's actually more than that. At both senior and staff levels we talk a lot, a terrific scam production that Fiona is running, the ACCC and I'm a member on and we're working on. Digital platforms reference, we consulted closely, because we knew our recommendations would have an impact on the ACMA. It's working swimmingly.

TERESA CORBIN: Do you have anything to add?

NERIDA O'LOUGHLIN: I don't think so. I totally agree, but I do think it's actually at any number of levels within the organisations and even looking at things like which of the RSPs or telcos we're looking at and the ACCC are looking at. I think one of the pieces of work that we've commenced on which will be a continuing question between us is what's the flow-through of obligations from wholesale providers to retail service providers? Because, of course, we have a number of rules around retail service provision, but that really needs the back-up and support of those wholesale provisions. So, again, I think it's been working exceptionally well. The associate member arrangements have kicked in since April and in my view having two sets of regulatory eyes on the sector is always better than one.

TERESA CORBIN: For someone who works in regulation all the time, it's quite clear to us that the roles are complementary, but how would you really explain it to a consumer when obviously the telecommunications Consumer Protection Code covers advertising, but so does the Australian consumer law? Maybe you could give examples about how that plays out.

NERIDA O'LOUGHLIN: The Australian consumer law is cross-economy law whereas what we're looking at, what can we bolster those general provisions in the AC L with quite specific regulations in terms of the telco sector, and it's a sector that both consumers have increasing expectations around the telecommunications sector as telecommunications underpins their social lives and their economic lives, those expectations increase and the products are getting more complex. So, I think what provisions like the TCP code can do is really flesh out in quite a lot of detail how telecommunications providers should deliver against community expectations. Be that in information, billing, selling practices. So, I think that's bolstered by the existence of the AC L, but it allows us in the ACMA with the industry develop things that are much more deeper level and to reflect the complexity of the services that consumers are buying.

TERESA CORBIN: Maybe you could give us examples of the enforcement action you've taken under the AC L in the telecommunications area.

DELIA RICKARD: Okay, we've taken quite a bit of enforcement action recently and you can break them into a couple of categories. We've taken a large flush of cases in the last year or so around mis-selling in the transition to the nbn. So, in 2018, the Federal Court ordered Optus to pay $1.5 million for misleading representations to customers about the transition from the Optus HFC network to the nbn and this was telling them they'd be disconnected much sooner than they would be. We're again in court against Optus at the moment for what we allege are more misrepresentations about disconnection of broadband services. In this case, targeted messages to their mobile customers who were already on the nbn with a different carrier about potential disconnection. In July this year, we accepted an enforceable undertaking from Dodo who were making perfect streaming representations, which also applied to plans which had a maximum speed of 12 megabytes per second some of which only included 10 gigabytes of data. You could probably only get one or two movies a month on that.

TERESA CORBIN: Not so perfect.

DELIA RICKARD: Not so perfect. They've agreed to refund about 16,000 consumers. In March, the Federal Court ordered to activate to pay 250,000 in penalties and to refund set-up fees to consumers who were misled about the prices of their plans. They were telling consumers that they could get 100-megabyte plan for $59.95 with no set-up fees. In fact, you only got 12 megabytes per second and you had to contract for 12 months or Mo, otherwise it was going to cost you $99.95 per set-up fee and yesterday, we got two enforcement notices against Be Vivid, who were cold calling consumers and misleading them that they would lose their existing telephone number ASAP creating this false sense of urgency as often happens with cold calling and completing ignoring rights. The other category of litigation has been around third party billing which was a problem we saw across multiple carriers where without telling consumers, they introduced a system whereby third party providers could charge to your telco bill sort of digital content, be it games and ring tones that sort of stuff, that people unknowingly subscribed to and often it was one accidental touch and you could be subscribed. They had as a rule received multiple -and we're talking thousands of complaints -and done nothing about it. Certainly, in the case of Optus and Telstra who each received 10 million civil penalties for their conduct here, were being paid commissions for this and were making many millions, tens of millions, I think both made around 60 million from this conduct. As a result, not only have each carrier paid a $10 million civil penalty they've paid back to consumers in terms of redress, tens of millions in terms of redress and either stopped doing it altogether or have stopped finding subscription services. One of the important things that have come out of that... and also I've had other derivations is something the ACMA approved when it approved the code recently is where you have a problem with a third party it's the responsibility of the telco to resolve that complaint, so consumers don't have to go chasing after some two-bit organisation somewhere in the world that they've never heard of that they've got no contact details for since they've got a contract with the telco it's the telco's responsibility and I think that's a really important consumer protection that will serve consumers well in the decades to come.

TERESA CORBIN: That's really interesting and big numbers for fines and we certainly got very excited about some of those outcomes, but then it comes back to the ACMA and we look at voluntary codes of practice and we wonder how effective they're going to be. I'm going to throw a Dorothy Dixer to you to tell us, how can you use the TCP codes and other codes that are voluntary to get some good outcomes?

NERIDA O'LOUGHLIN: Terrific. Firstly, I'd clear up that we don't see codes of practice as being voluntary. We have very strong expectations of the sector that they will comply with those codes and the high levels of accountability around investigating potential breaches of those codes. Look, I think the codes play a very valuable role in the telecommunications broader regulatory space. They are backed up by where we need to, standards. But as I mentioned previously, in such an area of such complex products and services, it's very hard often for the regulator to know what are the best rules to apply and then if you put them in legislation, very difficult to change, can't be updated very quickly, may not be representing the technology that is of now. But that said, we don't sit back and just assume that codes will work. We have powers to step in where we think across the board codes are failing or some sections of the code. And I mentioned earlier that recently we did take some part of the existing, the old TCP code and lifted it up into an industry standard so it was directly enforceable and that was the complaints handling chapter, because it reflected the way the industry was going to go about complaints handling, but we could put much more pressure on them to deliver against it. We can do that in other areas. We do have powers to issue to comply remedial directions and where we have systemic issues, we can lift that up and do direct regulation. I think codes play a very valuable role, but there's always flexibility for the regulator to get the industry to step up if those codes aren't working.

TERESA CORBIN: Obviously we'll be watching closely over the next little while as the consumer safeguards review which is the government committed to before the last election and started part A, got halfway through part B and we're expecting a part C to see whether or not there'll be further elevation of any of the sections of what are currently in codes. We've only got a couple of minutes left and I really wanted to ask about EME and the 5G network, because we're getting a lot of consumer contacts about the new base stations being rolled out. Does it have a bad effect on people and exactly what can they do about being consulted? This afternoon we've got Chris Althaus speaking... actually, it might be tomorrow, but from the Australian Mobile Telecommunications Association, but if you could talk about what ACMA does in that space?

NERIDA O'LOUGHLIN: My colleague and I met yesterday about this. It is a complex area, there are a number of people who play a role in 5G and in relation to EME. Probably the major organisation -I had to write it down -is the Australian Radiation and Nuclear Safety Agency. They're a government agency who really set the limits for EME emissions and I'd have to say that they set those limits very well below any limit that would be of danger to human beings. So, they set those limits. Our role at the ACMA is to put in place device standards so they deliver only the EME that are below the standards. I think, though, the roll-out of 5G is going to present a bit of a challenge for the industry and regulators about how do we communicate effectively with consumers about what potential, indeed the lack of health issues that are emerging. EME is existing in all telecommunication services. I think what concerns people is a bit of a ... not quite understanding what the 5G roll-out will mean in terms of infrastructure and then they hear that there'll be lots more infrastructure and, therefore, the assumption is there'll be lots more EME and it will become more dangerous.

JULIE McCROSSIN: Could you unpack EME?

NERIDA O'LOUGHLIN: Electromagnetic emissions. So, we're working very closely with the Department of Communications and the Arts with ARPANSA to come up with very clear advice for consumers about this complex area. There has been some very good coverage I'd have to say on the ABC and the 'Sydney Morning Herald' recently around trying to put forward the facts around 5G roll-out and EME. Unfortunately, there's also been quite a lot of hype in other areas. So, we're very aware of the issue and we're working on it. It's an even longer name, the Australian Centre for Electromagnetic Bioeffects Research, are a really important part of this complex environment who really have quite a lot of data and good factual information around it. But we're going to be stepping up our communications and working with our partners to make sure we can get that information out.

TERESA CORBIN: I think that's really important, because the information sources we've got at the moment are industry sources. Whilst I would not question their veracity, because I've looked at them carefully as well, the reality is consumers don't trust that source. They want the information to come from an independent body.

NERIDA O'LOUGHLIN: And in your pack, which I just found, is a fact sheet we did earlier this year which is a very useful one on the guide to small cells, which is basically 5G roll-out. I encourage you to look at that.

But, more to come.

TERESA CORBIN: Yes, because it's a growing issue. If we could just thank our two panellists. Thank you very much.