

## **Taking Advantage of Disadvantage:**

Case studies of refugee and new migrant experiences in the communications market



March 2011

### **About the Footscray Community Legal Centre**

The Footscray Community Legal Centre (FCLC) is a community-based non-profit agency which aims to address systemic injustice by providing free legal and financial counselling services, community education, law reform and advocacy to the people of the City of Maribyrnong and Western Suburbs of Melbourne.

### **About ACCAN**

As the peak body that represents all consumers on communications technology issues including telecommunications, broadband and emerging new services, ACCAN conducts research that drives the fulfillment of its vision for available, accessible and affordable communications that enhance the lives of consumers. ACCAN's activities are supported by funding from the Commonwealth Department of Broadband, Communications and the Digital Economy. Visit [www.accan.org.au](http://www.accan.org.au) for more information.

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## About this Project

In the course of their legal and financial counselling work with vulnerable consumers, Footscray Community Legal Centre (FCLC) found that many of their refugee and new migrant clients were seeking advice on financial issues related to telecommunications. This report is a joint effort by the Footscray Community Legal Centre and ACCAN to document the experiences of these consumers and to analyse them in the context of relevant consumer protections.

16 case studies are presented, describing the experiences of a diverse group of refugee and migrant consumers with phone and broadband products. Data was collected over a period of 6 months in the normal course of drop in legal and financial counselling services. Drop-in telecommunications clinics were also held for clients, facilitated by the FCLC, where they could directly interact with representatives of the Telecommunications Industry Ombudsman (TIO), the Energy and Water Ombudsman Victoria (EWOV), Department of Human Services Concession Unit, and ACCAN. Many cases have been referred to the Telecommunications Industry Ombudsman. All consumer participants signed a privacy authority and all names are withheld.

The issues documented in the case studies are not unique to the telecommunications sector. In 2009, in response to a trend in the legal and financial issues presented by clients, the FCLC completed a case study analysis of the experiences of African consumers accessing the contestable energy market in west Melbourne<sup>1</sup>. The study led to engagement with providers and regulators, as well as a consumer education program.

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<sup>1</sup> Footscray Community Legal Centre 2009. *The African Consumer Experience in the Contestable Energy Market in the West of Melbourne*.

## Summary

The case studies collected in this report add to the growing body of evidence that consumers are not well served under the current consumer protection regimes in place in the communications industry. Specifically, the case studies show that the market is not working for refugee and migrant consumers, who are among the most vulnerable and disadvantaged consumers. Systemic failures in consumer protection mechanisms and practices are effectively allowing telecommunications service providers to take advantage of the disadvantage faced by these groups of consumers.

Complexity of contracts, bundled deals, capped plans, and confusing sales practices have led many of the consumers described in the case studies into agreements where they are obligated to pay more than expected. Additionally, as a result of issues in customer service, billing, and complaint resolution processes, these consumers have then been exposed to bill shock, debt, and stress while they try to interpret and resolve charges. Refugee, migrant and consumers on low incomes are especially vulnerable to hardship and a small unexpected charge can have serious consequences.

## Context

Communications are becoming increasingly essential to participation in society, and communications consumers are entitled to rights drawn from the principles of consumer and human rights<sup>2</sup>.

Telecommunications connectivity plays a particularly critical role in the lives of refugees and new migrants. The settlement process involves building an identity within new communities in Australia, while maintaining contact with family, culture, and community overseas. It also involves accessing and navigating a suite of essential services. Mobile and internet connectivity enables social inclusion in refugee and migrant communities, and much is at stake if these families and individuals are not connected in an accessible and affordable way<sup>3</sup>.

Refugee and migrant consumers also face a number of challenges across life during their settlement process in Australia, making them particularly vulnerable in a complex market such as the communications market:

*All these things [tenancy, utilities, job seeking, bank loans] are very new things to a refugee especially an African refugee. Most of my community would not understand what a contract is, but in Australia almost everything requires a contract...I have also had difficulty with understanding telecommunications products and the complex contracts that I had to sign, being led to believe the amount quoted was the maximum I would pay per month but finding out it was really the minimum.*

*[Atem, African refugee – see Appendix , page 41 for his story].*

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<sup>2</sup> See ACCAN, 2009 *Future Consumer: Emerging Consumer Issues in Telecommunications and Convergent Communications and Media*. Available at [www.accan.org.au](http://www.accan.org.au)

<sup>3</sup> See National Ethnic Disability Alliance 2010, *Communicating Difference: Understanding Communications Consumers from Non English Speaking Backgrounds (NESB)*. Available at [www.accan.org.au](http://www.accan.org.au)

## ***Findings***

The case studies presented in the report show that:

- **‘Capped plans’ and complex bundles of products are needlessly confusing and create significant difficulties for refugee and migrant consumers.**

The use of ‘caps’ in the marketing and billing practices of service providers creates a troubling gap between what consumers reasonably expect out of capped products based on the information they are provided with, and their actual experience with the product. Roughly 75% of the cases in the report tell the story of refugee and migrant consumers signing up for capped plans believing that the quoted price refers to the maximum amount they will be obligated to pay, and that the service will prevent them from going over that limit.

- **There are often limited considerations of the language and cultural barriers facing refugee and migrant consumers, including the need for interpreting services and use of Authorised Agents or Advocates.**

Most of the cases show that service providers do not generally meet the need for interpreting and culturally tailored services that refugees, migrants, and other culturally and linguistically diverse consumers require. If a client requires an interpreter to make a complaint about their service, surely they would require an interpreter at the point of sale. Many of the consumers represented here required the help of a friend or family member with stronger English language skills to purchase a service<sup>4</sup>.

There is also limited or no information available in languages other than English. An informal survey of 7 telecommunications outlets in the Footscray area revealed no retail materials available in languages other than English.

Related to this point is the difficulty illustrated in utilising Authorised Representatives. The Telecommunications Consumer Protection Code acknowledges both that some consumers will need representatives and that using representatives should not be a difficult process. This makes sense as those most likely to need representatives are those most likely to be vulnerable and unable to fight their way through bureaucracy. However, as the case studies show, consumers still have trouble using Authorised Representatives to help facilitate interaction with suppliers.

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<sup>4</sup> For more on understanding the context of communications consumers from non-English speaking backgrounds, see National Ethnic Disability Alliance 2010, *Communicating Difference*, ACCAN: Sydney. Available at [www.accan.org.au](http://www.accan.org.au)

- **Poor sales and customer service practices can result in increased hardship and opportunity cost of lost time for refugee and migrant consumers.**

Complexity of contracts paired with inappropriate sales practices are elements of the difficulty faced in navigating the market. The case studies demonstrate that sales representatives are often prepared to skip over consumer protection measures in order to make a sale. They also show that poor performance in basic customer service areas such as a genuine desire to assist consumers with complex circumstances can seriously affect vulnerable consumers.

In some cases, clients were approached by a sales person at their door, and encouraged to sign up, but the contract signed was not complete. In one case, the client had been using a prepaid internet service because it allowed her to control her usage. When she telephoned the telco to recharge she was encouraged to sign up for a complicated bundle that included several other services. She was assured that a 'cooling off' period would allow her to change her mind if she wished. This case demonstrates exceptionally poor customer service in that each time the client made contact with the telco she was signed up for another service without her explicit consent.

- **There is limited awareness of financial management tools such as data usage monitoring among refugee and migrant consumers, and even when in use these tools do not appear to be helping consumers manage their spend.**

The nature of client complaints presented suggests that monitoring tools and the details of how to access them are not always explained at the point of sale. In some cases this information is only supplied as a response to a consumer complaint. In some of the cases, even when consumers are aware of usage monitoring tools, customer service officers are not always forthcoming with the information necessary so the consumer can make use of them. In more than one case, even when consumers were using the tools, they still incurred excess charges despite even disconnecting their devices.

- **The majority of the consumers mentioned in the cases had little or no knowledge of the TIO and the service they provide prior to coming to FCLC for assistance.**

The cases presented indicate that refugee and migrant consumers have low awareness of the Telecommunications Industry Ombudsman (TIO) Scheme and require assistance to access it. They also can find it difficult to navigate through a complaint once it has been initiated, indicating that the system is not a great match for many vulnerable consumers. Although the TIO dispute resolution system can result in good outcomes for consumers, in some cases clients have incurred extra costs and stress in pushing through the process of contacting and negotiating with the telco first before lodging a complaint with the TIO.

- **On a broad level, the majority of the cases presented show a poor level of informed consent given by refugee and migrant consumers when entering into agreements with service providers.**

The collection of informed consent from consumers is essential in the communications market. However, there is no single location for a definition of consent – and consent requirements are scattered throughout a mix of common law, generic consumer laws, specific telecommunication laws and industry codes of conduct<sup>5</sup>. This is a systemic problem. Though this is a complex area to address, practices relating to informed consent, such as intentional product complexity, intentionally confusing marketing, sales practices and customer service must be addressed in order to facilitate better forms of informed consent.

## Solutions:

A number of complementary solutions to the issues presented in the case studies must be investigated. It is important to note that it is in the best interests of all parties, including service providers, to improve the experience of refugee, new migrant and other vulnerable consumers in the communications market. Areas of potential solutions include:

- **Better consumer protections and standards**

The current self regulatory framework for the telecommunications sector is not serving consumers well, especially vulnerable consumers who are falling through the cracks. The communications market needs to work for consumers. The industry clearly needs its game lifted. The Australian Communications and Media Authority's *Reconnecting the Customer Inquiry* and the review of the *Telecommunications Consumer Protection Code (TCP)* are two key avenues through which better outcomes for vulnerable consumers and all consumers can be forged.

- **Improvements to customer service and approaches to servicing vulnerable consumers**

There is a precedent for moving towards 'cultural competence' in essential service industries<sup>6</sup>. Cultural competence involves working effectively with individuals while discovering, recognising and understanding the influence of culture on practice, and involves organisations and their personnel having the capacity to: value diversity; conduct self-assessment; manage the dynamics of difference; acquire and institutionalize cultural knowledge; and adapt to the diversity and cultural contexts of the individuals and communities served.

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<sup>5</sup> See ACCAN 2009. *Informed Consent Research Report*. ACCAN: Sydney. Available at [www.accan.org.au](http://www.accan.org.au).

<sup>6</sup> See National Ethnic Disability Alliance 2010, *Communicating Difference: Understanding Communications Consumers from Non English Speaking Backgrounds (NESB)*. Available at [www.accan.org.au](http://www.accan.org.au).

A prime example of this involves products being more carefully matched at the point of sale to the circumstances and needs of consumers. The telecommunications sector largely does not provide access to interpreters, and some consumers must therefore depend on family and friends who may only have slightly stronger English language skills, or a small amount of personal experience with connecting up. Radical simplification of information, contracts and explanatory brochures, as well as making these available in other languages would also facilitate a better understanding of products and services by non English speaking customers.

- **Consumer education and empowerment**

Consumers need to be equipped to effectively navigate the market. Industry, government and community all have roles to play here. Strategies and mechanisms need to be in place for consumers to be able to effectively navigate the information available to them in the market so they can make informed decisions. Product complexity and marketing strategies that create confusion must be addressed. Similarly, tools like usage monitors are sometimes in place but their importance is not explained to consumers when they sign up. Sales agents should be responsible for ensuring consumers have the proper information to use these tools. Finally, more can be done to resource and support community groups to provide training and education to vulnerable consumers and communities.

- **Making the Telecommunications Industry Ombudsman's scheme more user friendly for vulnerable consumers**

Many consumers are unable to navigate the often layered and roundabout internal complaints processes of service providers at the moment. Steps can be taken to improve the accessibility of the Scheme for refugee, migrant and other consumers who face significant barriers to navigating bureaucratic systems. One potential modification is to allow vulnerable or disadvantaged clients to go directly to the TIO (rather than be first required to attempt to resolve a complaint with a retailer as is currently the situation).



## Case Study 1

<b>FCLC Case Number:</b>	16111005
<b>Gender:</b>	Female
<b>Age:</b>	40
<b>Country of Origin:</b>	Somalia (Refugee)
<b>Date of Arrival:</b>	1992
<b>Language:</b>	Somali, English, Interpreter not required
<b>Literacy:</b>	Not disclosed
<b>Accommodation:</b>	Private rental
<b>Income:</b>	Centrelink, Parenting allowance
<b>Company:</b>	Dodo
<b>Type of Service:</b>	Bundle

### PROBLEM:

Client initially had Dodo prepaid broadband. When Client recharged, the dealer promoted Dodo mobile. Client later received a call from Dodo reiterating the product. Client agreed to post paid mobile. Dodo then persuaded client to sign up post paid landline, internet, VOIP.

Client hesitated, but was told by Dodo that it will send the offer in writing and that client has 10 days cooling off period to cancel the deal if she changes her mind.

5/10/10 received paperwork from Dodo.

8/10/10 called Dodo to cancel all services except mobile.

Dodo acknowledged the request, at the same time signed client up for an additional mobile service. Client was not issued with any reference number for the cancellation. 26/10/10 received a letter from Dodo about her additional mobile.

Client called Dodo to confirm her cancellation request. Dodo advised it did not receive any call from the client, and declined to assist further since client has no record of cancellation reference number.

Client claims she found that Dodo direct debited \$152.60 from her bank account on 14/10/10 for the 4 services. Client has called bank to block further direct debit.

## RESOLUTION SOUGHT:

Client wants to cancel all services with Dodo without charges. Client wants charges for – other service other than mobiles – refunded. This complaint was lodged directly with TIO on 16/11/2010.

As of 14/01/2011 Client claimed that she has received a refund for the disputed charges. Client is arranging to transfer her service to another provider now. TIO has asked client to contact the TIO again if she experiences any delay or other issues with the transfer.

## ISSUES:

- **A 'cooling off period' does not appear to have been respected**

s. 8.1.7 provides that “[a]n Authorised Customer may rescind a contract before any relevant cooling off period expires, without giving the Gaining Supplier reasons other than those required by law.” Client tried to validly rescind and was told she rescinded only to later learn the contract remained in effect.

- **Appropriate and systematic records do not appear to have been kept**

In relevant part, s. 9.1.1 requires “providing appropriate and systematic record keeping of Complaints and their outcomes, including those resolved at first contact” and “recording, actioning and monitoring undertakings made to a Customer to resolve a Complaint.” In this case, Client cancelled some of her services while signing her up for others, yet Supplier only has records for the new service, even though an appropriate and systematic record keeping of complaints would include her request to cancel various services.

Further, s. 3.2.1 requires that “[a] Supplier must ensure that information provided to its Customers is accurate, relevant, current and timely.” The Supplier acknowledged her intent to cancel, but then failed to cancel her service. Hence, the information provided by the Supplier about the cancellation of her service was inaccurate.

## Case Study 2

<b>FCLC Case Number:</b>	241110002
<b>Gender:</b>	Male
<b>Age:</b>	49
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2008
<b>Language:</b>	Burmese/Chin
<b>Literacy:</b>	Some
<b>Accommodation:</b>	Rental
<b>Income:</b>	Centrelink – Carers
<b>Company:</b>	Optus
<b>Type of Service:</b>	Broadband

### PROBLEM:

Client's wife was in a traffic accident. She was hit by a hit run driver and was in a coma for six months. She is now undergoing rehabilitation but will not be able to return home to live.

Client is bringing up two daughters and goes each day to visit his wife. Client is extremely good at managing his money but any unforeseen financial problem can cause him stress.

Client came to the service, because his Optus account for October was \$322.87. Client's previous accounts had been \$112.50 per month. Client had agreed to a 'yes' Fusion plan of \$109 per month and believed he was on unlimited broadband.

The accounts for October showed that Client had gone over the data for the month. Client had no idea that he was on a restricted amount of data each month. He spoke to his daughter but they could not understand why the data usage was high.

The extra \$210.37 that he will have to pay will put Client in financial difficulties.

## ISSUES:

- **Capped plans can be considered “likely to mislead or deceive”**

Chapter 4 of the Code includes the following objectives:

To “eliminate practices which deceive, mislead or confuse” and “to provide sufficient, accurate and relevant information to enable Customers to make an informed purchasing decision.” Although there is no outright prohibition against capped internet plans, they still clearly confuse at least some consumers—particularly those whom are not familiar with the Australian communications market. Indeed, if one does not understand the way in which capped internet plans work, it is difficult to see how one can make an informed purchasing decision involving a capped plan. That Supplier did not account for this informational asymmetry by ensuring that Client understood the nature of a “capped” internet plan is contrary to the objectives of Chapter 4.

Further, Section 52 of the Trade Practices Act (TPA) prohibits corporations from “engag[ing] in conduct that is misleading or deceptive or is likely to mislead or deceive.” Given that certain vulnerable sections of the population may be likely to be unintentionally misled as to the nature of capped internet plans, such plans likely breach Section 52 of the TPA as well.

### ***Case Study 3***

<b>FCLC Case Number</b>	010410004
<b>Gender</b>	Male
<b>Country of Origin</b>	Burma (Refugee)
<b>Language</b>	Hakha Chin, limited English
<b>Literacy</b>	Illiterate
<b>Accommodation</b>	Renting
<b>Income</b>	Centrelink
<b>Company</b>	Optus
<b>Type of Service</b>	Home Phone & Broadband bundle

#### **PROBLEM:**

Client was approached by an Optus door knocker in February 2010. He agreed to a plan of \$109 per month. The copy of Client's contract is difficult to read with writing over parts of it which makes it difficult to understand. The home phone and Broadband Customer Confirmation of Understanding paper work does not have any sections completed other than Client's signature on the bottom.

When Client received paper work from Optus in the mail they indicated a higher plan of \$ 129 per month.

Client came to the FCLC in April 2010 because he was unhappy that he was now being charged \$129 per month when he had agreed to a \$109 plan per month.

The FCLC contacted Optus on the day with the help of interpreter negotiated that they will be reinstated on original plan of \$109 per month.

To date Optus have not reimbursed the extra charges even though they have been contacted a number of times by telephone and email.

#### **ISSUES:**

- **Client's Consumer Contract is unclear and not easy to follow**

Code section 5.2.2 states that "[a] Supplier must ensure that the terms of a Consumer Contract and any document which contains the material terms of the Consumer Contract, are available in writing, are legible and are easy to follow." If the contract had been modified during negotiation, or if writing over the text of the contract obscured important sections, and it became difficult to read or

comprehend, then there appears to be a Code violation, as this would make the material terms of the Consumer Contract other than easy to follow.

That Client's contract was incomplete raises the question of whether his explicit and informed consent was obtained. Client's signature is clear, however the fact that the material terms of the contract are unclear suggests that this consent was uninformed.

## ***Case Study 4***

<b>FCLC Case Number:</b>	240910001
<b>Gender:</b>	Male
<b>Age:</b>	31
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2009
<b>Language:</b>	Chin/Tedim, does not speak English, interpreter needed for interviews
<b>Literacy:</b>	Illiterate
<b>Accommodation:</b>	Private Rental
<b>Income:</b>	Working
<b>Company:</b>	Vodafone
<b>Type of Service:</b>	Mobile cap plan

### **PROBLEM:**

Client had been told by his immigration agent that he needed proof that he had contact with his wife in Malaysia. A friend told him he would need to purchase a mobile phone with a post paid plan to be able to do this. Client previously had a prepaid mobile.

Client's friend took him into the Vodafone retail outlet in Altona, where he purchased a new phone on what he believed was a \$49.95 plan per month. At the time of purchase Client was told that he had \$450 worth of calls under the plan per month. Client believed that he could then ring overseas as many times as he liked and all of his calls would be covered under \$49 per month.

Client initially paid the first small amount which was received just after he had connected the mobile. Over the next few weeks Client made calls overseas several times a week to speak to his wife.

Client contacted the FCLC's Financial Counsellor on 24/9/10 because he became concerned that the mobile was not working and sought assistance to attend the Vodafone retail outlet to try to find out why. When they went to the retail outlet they found that Vodafone had placed a ban on the mobile as Client had run up nearly \$1,000 of calls to Burma over a couple of weeks.

The FCLC then contacted the TIO and was given contact details for the Vodafone Customer Liaison Team. They were contacted and after discussion agreed to waive the \$1,000 off the account providing the client cancelled the plan and converted back to a prepaid mobile.

Vodafone stated that they wanted to be sure that the client understood the agreement so the FCLC then organised for the client to come in for an appointment to discuss and explain the terms of the refund. When the client came for the appointment the FCLC tried contacting Vodafone on the number which had been provided. They received a message that the service was temporarily unavailable. They continued to try to contact Vodafone while the client was in attendance; it took over 30 minutes and quite a number of attempts to dial it before they got through to a person. When the FCLC finally managed to get through to the Customer Liaison Team it was told that as it was 4.20 p.m the Customer Liaison Team would not attend to the call now as it was close of business for the day.

The FCLC had to stress to Vodafone that it was their Customer Liaison team who had requested to be assured that the client was fully informed of the decision, and the difficulty that was caused by their phone system, as the FCLC and Client had had to arrange the meeting. After much persuasion Vodafone finally agreed to talk to the FCLC. The operator at Vodafone was extremely rude and in the end hung up the phone at 4.30 p.m.

Before the call ended the FCLC requested that it receive confirmation of the agreement by email. This was not forthcoming. After further follow-up the FCLC finally received an email in confirmation of the negotiations.

#### **ISSUES:**

- **Client’s service was apparently suspended without notification**

The client’s service was apparently suspended without notification. As per s. 7.4.8, a service can only be suspended without notice if the Supplier “asses that the Customer or the account status presents an unacceptably high credit risk” or “reasonably suspects Fraud or attempted Fraud.” Given that the calls took place over several weeks, the Supplier had time to act pursuant to s. 7.4.7, which requires a Supplier, at least seven days prior to suspension, to make reasonable attempts to inform a customer of the intention to suspend service.

- **Capped plans can be considered “likely to mislead or deceive”**

The Client needed the support of a friend in purchasing a mobile account, and was acting in response to other pressures of resettlement (i.e. what he understood to be a visa requirement). This case highlights the information asymmetry experienced by refugee and new migrant consumers, especially those who do not speak English.

Chapter 4 of the Code includes the following objectives:

To “eliminate practices which deceive, mislead or confuse” and “to provide sufficient, accurate and relevant information to enable Customers to make an informed purchasing decision.” Although there is no outright prohibition against capped internet plans, they still clearly confuse at least some consumers—particularly those whom are not familiar with the Australian communications market. Indeed, if one does not understand the way in which capped internet plans work, it is difficult to see



how one can make an informed purchasing decision involving a capped plan. That Supplier did not account for this informational asymmetry by ensuring that Client understood the nature of a “capped” internet plan is contrary to the objectives of Chapter 4.

- **Customer service systems presented extra challenges to Client**

While the outcome was positive in that Vodaphone agreed to waive \$1000, the systems in place for communicating with the Customer Liason Team were particularly problematic for the Client, who had to arrange an appointment with the FCLC and an interpreter in order to resolve the issue. Vodaphone’s approach to customer service is particularly problematic for consumers who may not be able to afford the opportunity cost of scheduling time away from work or family responsibilities.

## ***Case Study 5***

<b>Case Number:</b>	161110001
<b>Gender:</b>	Male
<b>Age:</b>	30
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2006
<b>Language:</b>	Burmese, Interpreter required
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Private Rental. Has lived there for 1 year, and had 3 previous residences in Australia.
<b>Income:</b>	Employed, Part time
<b>Company:</b>	3
<b>Type of Service:</b>	Wireless Internet Cap Plan

### **PROBLEM:**

Client Signed up for 3 wireless internet in February 2010, understanding that his monthly charge would be \$49, with 12 months fixed term contract. Client did not understand what a 'cap' plan was. Client believed that the internet would stop working once the 7GB limit was reached.

Monthly bill has always been between \$42.12 - \$49.

Client claims he and his wife closely monitor their usage with the provided usage meter. In Sep 2010 Client received an unusually high bill of \$324.68. Client paid his bill in full and started taking note of his daily usage. Client claims he received no prior warning about the high charges.

On 21/10/2010 the usage meter indicated that Client had used \$98. Client decided to remove the modem from his computer and stopped using the service altogether from 21/10/2010.

Client's wife called 3, unable to get through the IVR after she entered her user ID. After waiting for 30 mins, Client's wife decided to hang up. Client repeated this action daily until 25/10/2010 with the same result.

Client checked and recorded his usage meter every day; found that the amount generates this bill even when he doesn't use the service.

22/10/2010: \$119

23/10/2010: \$156.68

23/10/2010: \$157.31

25/10/2010: \$159.10

Client recently received a bill dated 25/10/2010 for \$208.24. Client has not paid this bill.

Client requested waiver of the last two bills:

- 25/10/2010 (\$208.24)
- 25/9/10 (\$324.68)

Client contacted the FCLC on 16/11/10. This complaint was lodged directly with TIO on the day. The resolution sought was that charges above \$49 be waived.

As of 21/12/2010, Client claimed that 3 declined to provide an interpreter for him, and discussed the matter further. Complaint has been escalated for formal investigation, client has appointed FCLC to act as representative

#### ISSUES:

- **Capped plans can be considered “likely to mislead or deceive”**

Chapter 4 of the Code includes the following objectives:

To “eliminate practices which deceive, mislead or confuse” and “to provide sufficient, accurate and relevant information to enable Customers to make an informed purchasing decision.” Although there is no outright prohibition against capped internet plans, they still clearly confuse at least some consumers—particularly those whom are not familiar with the Australian communications market. Indeed, if one does not understand the way in which capped internet plans work, it is difficult to see how one can make an informed purchasing decision involving a capped plan. That Supplier did not account for this informational asymmetry by ensuring that Client understood the nature of a “capped” internet plan is contrary to the objectives of Chapter 4.

Further, Section 52 of the Trade Practices Act (TPA) prohibits corporations from “engag[ing] in conduct that is misleading or deceptive or is likely to mislead or deceive.” Given that certain vulnerable sections of the population may be likely to be unintentionally misled as to the nature of capped internet plans, such plans likely breach Section 52 of the TPA as well.

Indeed, Graeme Samuel, the Chairman of the ACCC, has stated that “[c]ompanies advertising mobile phone plans should be particularly cautious when using absolute terms such as ‘unlimited’ for plans to which some limits do apply. To avoid misleading consumers, any qualifications of an offer of ‘unlimited’ calls or text must be prominently stated and not so significant that they negate the headline message.”<sup>7</sup> Although Mr Samuel was referring to mobile phone plans, a cap that is not a cap negates the headline message that a plan has a cap. As such, the practice likely violates Section 52 of the TPA.

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<sup>7</sup> Graeme Samuel, 11 February 2009. <http://www.accc.gov.au/content/index.phtml/itemId/860294>

## ***Case Study 6***

<b>FCLC Case Number:</b>	280510001
<b>Gender:</b>	Male
<b>Age:</b>	41
<b>Country of Origin:</b>	Burma
<b>Date of Arrival:</b>	2008
<b>Language:</b>	Hakha Chin, does not speak English
<b>Literacy:</b>	Illiterate
<b>Accommodation:</b>	Private rental
<b>Income:</b>	Centrelink
<b>Company:</b>	Telstra
<b>Type of Service:</b>	Home Phone & Broadband

### **PROBLEM:**

Client came to the FCLC because, after moving into a new rental property three months previously, he had received no accounts from any company. Client believed that he had signed an agreement with the real estate agent for them to organise the connection of all the utilities through Direct Connect, a company who arranges utilities to be connected for clients who move into new rental properties. The real estate agent had not kept correct paper work and didn't have a reference number from Direct Connect. The Centre contacted Direct Connect who also had no record of Client.

Client had previously been connected with a home phone and broadband with Telstra. When he came to the Centre on 28 of May 2010, Client had been receiving and paying his Telstra account which was still being sent to his previous rental address.

The FCLC tried to contact Telstra several times but was unable to navigate the phone system. Finally when the Financial Counsellor spoke to a representative from Telstra, they refused to accept a privacy authority from the FCLC. The case was referred to the Telecommunication Industry Ombudsman on 28 of June 2010.

On 28 of June, in response to an email from TIO asking Client to contact the Telstra Resolution Team, the FCLC on that day faxed through a letter setting out details of the case, a privacy authority, details of client's Centrelink health care card, copies of the last two Telstra bills which had been sent to his previous address and a copy of his rental agreement. The fax and the letter had the name of a representative from Telstra plus their reference number. The FCLC was told by Telstra Resolution Team member that someone would reply in the next couple of days.

Telstra was contacted on the 5<sup>th</sup> of July 2010 and Client was told to contact another Telstra number: 1800 814 242. Telstra said at this time, they had no record of the fax sent to them. The details were again faxed to Telstra who said someone from Telstra would phone back in the next couple of days. On 16<sup>th</sup> June, there had been no reply from Telstra. They were again contacted by the FCLC who again were told that Telstra had not received the fax or information.

The information was faxed again and Telstra were informed unless someone telephoned that afternoon to resolve the problem the case would again be referred to the TIO.

Telstra called back that afternoon and the client's problem was then resolved. Telstra offered a \$40 refund to the client due to the time it had taken for them to respond.

#### **ISSUES:**

- **Client experienced difficulty nominating an Authorised Representative/Advocate**

In s. 9.2.3 the Telecommunications Consumer Protection Code (the Code) requires that "Suppliers must ensure Customers can use an Authorised Representative and/or Advocate to make a Complaint, if a means of authorisation can be easily established and verified." Based on the facts, it appears a means of authorisation could have potentially been easily established and verified, though it is not entirely clear what information was provided to Telstra at the first point of contact.

Similarly, in s. 3.6.2, the Code requires that "A Supplier must ensure that a Customer can easily use an Advocate to communicate with the Supplier, if the Customer requires." In this case, the customer did need to use an advocate, but the process to make use of that Advocate required a substantial length of time and a threat to escalate the issue to the TIO.

- **Appropriate and systematic records do not appear to have been kept**

Further, Telstra appears to have lost the complaint information multiple times, which may indicate a violation of s. 9.1.1, which requires, in relevant part, "appropriate and systematic record keeping of Complaints and their outcomes" and "recording, actioning and monitoring undertakings made to a Customer to resolve a Complaint." Telstra was faxed appropriately addressed information, and yet twice Telstra had no record of it; this is not indicative of an appropriate and systematic record keeping of Complaints and their outcomes.

In relevant part, s 9.2.6 requires that "Suppliers must keep Complainants advised of timeframe delays and the Complaint's progress." In this case, the FCLC was told that someone from Telstra would be in contact within a few days, and yet contact was not forthcoming. If there was delay of some sort, the FCLC should have been notified.

## ***Case Study 7***

<b>FCLC Case Number</b>	010410005
<b>Gender</b>	Male
<b>Age</b>	Unknown
<b>Country of Origin</b>	Burma (Refugee)
<b>Date of Arrival</b>	Unknown
<b>Language</b>	Hakha Chin, does not speak English
<b>Literacy</b>	Illiterate
<b>Accommodation</b>	Renting
<b>Income</b>	Centrelink
<b>Company</b>	Telstra

### **PROBLEM:**

Client came to the FCLC with a Telstra account. The account name was just Ting (which is only one of four sections of his full name). Telstra were contacted and they refused to apply the concession amount to his account because Client's full name was on the concession card.

The FCLC then telephoned the Telstra complaints line but they also declined to record the concession details because of differences between the name on the account and the name on the concession card. They were advised the client did not speak English and would have had difficulties communicating his full correct name and details via the telephone which may have led to incomplete information being recorded by Telstra. Telstra still refused to record his full name on their account or his concession details.

### **ISSUES:**

- **Customer service systems presented extra challenges to the Client**

Generally, telecommunications providers make decisions regarding the application of concession details based on their own internal policies and procedures. If a consumer has a complaint about this, they must contact the Telecommunications Industry Ombudsman.

In this case, the service provider was unwilling to amend the account details even when working with an Authorised Representative/Advocate and even when it was explained that the consumer did not speak English. This appears to be an unreasonable stance which will cause the consumer difficulties in paying the account and cause the service provider further difficulties regarding the account in the future. It is also unclear if interpreting services were provided at the point of sale, or other support was given by the service provider to ensure the consumer gave their informed consent and was able to provide their full details for the account.

## ***Case Study 8***

<b>FCLC Case Number:</b>	16111002
<b>Gender:</b>	Female
<b>Age:</b>	30
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2007
<b>Language:</b>	Chin and Burmese (Halcha), Interpreter required
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Private rental
<b>Income:</b>	Centrelink, Parenting payment
<b>Company:</b>	Optus
<b>Type of Service:</b>	Fusion Plan Wireless Internet

### **PROBLEM:**

Client signed up for Optus Fusion plan in June 2009. In May, June, July 2010, Client was charged 102.50 per month. In September 2010 Client received an unusually high bill for \$404.50. Client paid her bill in full, but decided to turn off power to the computer and modem.

On Oct 2 2010, Client received another high bill for \$402.36. Client paid \$101 and decided to contact Optus. Client spoke to Justin at Optus, and was advised that Optus recorded internet usage at around 2:50 am every night. Optus referred client to Netgear setup wireless password. Client claims she tried to call the number provided by Optus, but couldn't get through.

Optus offered to reduce to \$252.36 and promised to send another bill. Client made no payment for the balance of the account while she waited for the amended bill.

Client claims she is aware an online usage meter was available, but was not given a password to access it. Client claims she hasn't received any assistance to use the usage meter before or after the issue. Client sought explanation from Optus, and cancellation of the plan without any penalty. Client wanted to change to a REAL unlimited account.

This complaint was lodged directly with TIO on 16/11/10.

Client claims she was eventually promised a partial refund on \$150 but as of 13/1/2011 had not received the cheque. On 14/1/2011 the TIO clarified the resolution with Optus. The outcome was a

goodwill gesture of a \$300 refund, plus waiving of all outstanding charges. Client was satisfied with the outcome.

## ISSUES

- **Client did not have easy access to usage monitoring tools**

This case represents a positive outcome for Client, with a significant refund and the waiving of outstanding charges. It does however illustrate that customer service procedures are not highlighting and explaining the importance of usage monitoring tools to consumers. Had Client been able to access this information and assisted in understanding its use, her complaint might have been more easily resolved, or even avoided.

- **Client experienced delays in resolving the complaint**

Section 3.2.1 of the Code provides that “[a] Supplier must ensure that information provided to its Customers is accurate, relevant, current and timely.” If there has been a delay in writing off the charges, then Supplier is in violation of s. 9.2.6, which provides that “Suppliers must make every reasonable effort to advise Customers within 5 Working Days of receiving Complaints, of their complexity and a possible timeframe for finalisation” and that “Suppliers must keep Complainants advised of timeframe delays and the Complaint's progress.”

Further, s. 9.2.5 provides that “Complaints must be finalised within 30 days or as soon as practicable in all the circumstances.” It is difficult to understand how waiving an excess fee could take multiple months, so Supplier is likely in breach of its s. 9.2.5 obligations.



## ***Case Study 9***

<b>FCLC Case Number:</b>	16111003
<b>Gender:</b>	Female
<b>Age:</b>	44
<b>Origin:</b>	Africa (Refugee)
<b>Date of Arrival:</b>	2008
<b>Language:</b>	Speaks English well
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Private Rental
<b>Income:</b>	Centrelink Newstart, Casual Work
<b>Company:</b>	Telstra, AGL
<b>Type of Service:</b>	Mobile
<b>Disputed Amount:</b>	\$556.67

### **PROBLEM:**

Client claims her average charges up to May 2010 were approximately \$100/month. In June 2010 Client received a higher charge of \$262.21.

Client claims she is aware that her children were making a lot of mobile and overseas calls. Client says she received no warning about the high unbilled charges before she received the bill in question.

Client called Telstra to discuss a payment arrangement. Client proposed \$25 /fortnight. Telstra advised that it can only set up \$50/fortnight at a very minimum. Client asked Telstra to bar any long-distance calls.

August 2010, the Client received new charges of \$441.89, including charges for some long-distance calls. Client called Telstra to disconnect her service altogether.

Client claims she received further new charges after making this request, although she did not make any calls.

Sep 2010: \$95.90

Oct 2010: \$38.46

Client claims she organised payment of \$50/fortnight through Centrelink (Centrepay Deductions). Client believes all the payments went through. Client is unsure as to why she still received overdue charges of \$556.67 on her October 2010 account.

Client would like Telstra to reduce repayment instalments to \$25/fortnight. Client would like Telstra to clarify whether or not her repayments (made via Centrelink) were successful. Client would like the service to be reconnected for local calls only.

This complaint was lodged directly with TIO on 16/11/2010 with assistance from the FCLC.

Client called TIO a few days after meeting with FCLC and claimed she has received contact from Telstra CRC. The TIO has not heard back from client, and has not been able to contact her on the mobile number provided (i.e. number disconnected)

#### **ISSUES:**

- **Unclear disconnection procedures and notification**

It is unclear whether, once Client disconnected her service, she was receiving bills for long-distance calls made prior to disconnection, or whether Telstra has failed to deactivate her service. If Telstra failed to deactivate her service, then it is in breach of s. 3.2.1, which requires that “[a] Supplier must ensure that information provided to its Customers is accurate, relevant, current and timely.” This is so because the information provided about disconnection will have been inaccurate.

- **Client would benefit from functional usage monitoring tools and tailored repayment arrangements**

The case also highlights the need for functional and user-friendly tools through which consumers can monitor the usage of their services. It also highlights the needs for matching appropriate products to consumers and to considerate and tailored approaches regarding repayment arrangements.

## ***Case Study 10***

<b>FCLC Case Number:</b>	16111004
<b>Gender:</b>	Male
<b>Age:</b>	27
<b>Country of Origin:</b>	Ethiopia (came to Australia under a sponsorship visa)
<b>Date of Arrival:</b>	2009
<b>Language:</b>	Oromo, English, Interpreter not required
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Ministry of Housing. Has lived there for 5 months with 2 previous residences.
<b>Income:</b>	Austudy
<b>Company:</b>	Vodafone
<b>Type of Service:</b>	Wireless internet contract
<b>Disputed Amount:</b>	\$905.59

### **PROBLEM:**

In April 2010 Client signed up for wireless internet and agreed to a 2 year contract for \$19/month for the first 6 months, \$39.95/month after that. Client advised he believed that that his contract of \$19.95 (\$39.95 after 6 months), was the maximum amount he could be charged per month under the contract.

Client claims he didn't receive any advice on credit control tools or excess charges. The first few bills arrived as expected at around \$19 per month. In August 2010 Client received a bill of \$277.94. Client claims he received no warning of the high charges prior to receiving the bill.

Client went to a Vodafone store to seek assistance. Vodafone explained that he has been charged excess charges as he used more than 6GB. Vodafone also suggested that someone else may have accessed his account without his knowledge. Client disagreed, claiming that the equipment is always with him all the time.

In Sep 2010 the Client received new charges of \$706.20.

Client went to Vodafone store again and received the same explanation. Service has now been disconnected due to non-payment.

Client requested waiver of the debt with the exception of the \$19.95 (\$39.95 per month after 6 months), client understands that his obligation is \$39.95 per month.

Case lodged directly with TIO on 16/11/10.

As of 24/12/2010 Client has not received further demand from Vodafone, however he also claimed that he has not received a response. Complaint has been escalated for formal investigation, and Client has appointed FCLC to act as representative.

#### ISSUES:

- **Capped plans can be considered “likely to mislead or deceive”**

Chapter 4 of the Code includes the following objectives:

To “eliminate practices which deceive, mislead or confuse” and “to provide sufficient, accurate and relevant information to enable Customers to make an informed purchasing decision.” Although there is no outright prohibition against capped internet plans, they still clearly confuse at least some consumers—particularly those whom are not familiar with the Australian communications market. Indeed, if one does not understand the way in which capped internet plans work, it is difficult to see how one can make an informed purchasing decision involving a capped plan. That Supplier did not account for this informational asymmetry by ensuring that Client understood the nature of a “capped” internet plan is contrary to the objectives of Chapter 4.

Further, Section 52 of the Trade Practices Act (TPA) prohibits corporations from “engag[ing] in conduct that is misleading or deceptive or is likely to mislead or deceive.” Given that certain vulnerable sections of the population may be likely to be unintentionally misled as to the nature of capped internet plans, such plans likely breach Section 52 of the TPA as well.

- **Client was not kept informed of the Complaint’s progress**

In relevant part, s 9.2.6 requires that “Suppliers must keep Complainants advised of timeframe delays and the Complaint's progress.” In this case, contact was not forthcoming..

Client’s account was disconnected due to non-payment, however s. 9.1.6 provides that “[w]hile a Complaint is being investigated, Suppliers must not demand payment of genuinely disputed amounts that are the subject of the Complaint.” This appears to be precisely what has happened, however, as the client’s service has been disconnected for non-payment of charges that he disputes.

## ***Case Study 11***

<b>FCLC Case Number:</b>	16111006
<b>Gender:</b>	Female
<b>Age:</b>	38
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2007
<b>Language:</b>	Chin (Halcha), Interpreter required, interpreter provided
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Private rental has lived there 3 years. No previous residences
<b>Income:</b>	Parenting payment
<b>Company:</b>	Optus & Telstra
<b>Type of Service:</b>	Fusion Broadband internet, and landline
<b>Disputed Amount:</b>	\$810.50

### **PROBLEM:**

Client's husband signed up for Optus Fusion \$90 plan approximately 1 year ago, in his name.

Prior to September 2010, bill averages were between \$100-\$120 (e.g. the August 2010 bill was \$119.68). Client received higher bills from September 2010:

Sep 2010: \$404.94

Oct 2010: \$405.56

Client claims that she has been charged for internet excess usage (i.e. "Broadband Access Charges 24012MB"). Client has paid all the charges in full (last payment 25/10/1010).

Additionally, client has an issue with her Optus landline. Client claims she has had no dial tone for the last 2 weeks. Claims she does not have a working phone, and that her husband couldn't call out/receive calls during work hours.

Client claims that she was hesitant to query the account and the fault with Optus due to her limited English.

Client would like her plan to be examined properly, landline fixed and excess charges waived. The case lodged directly with TIO at the FCLC clinic on 16/11/2010.

As of 30/11/2010 Optus has provided clients with free internet for 3 months to gauge their usage level, and to establish which plan will be the most suitable for them. Clients are satisfied with the offer.

ISSUES:

- **A positive outcome: Optus offers a tailored approach to choosing a product**

This case demonstrates the barriers consumers can face in accessing telecommunications services, and highlights the reality that consumers may be facing multiple issues with contracted services at once. Client received two invoices that were much larger than usual, but felt she was unable to query the telco without assistance.

The response from Optus is refreshing in that it is not a one size fits all approach. It is instead an effort to match an appropriate product with the consumer, and to account for some of the information asymmetry that may have led to the complaint.

## ***Case Study 12***

<b>Case Number:</b>	16111007
<b>Gender:</b>	Male
<b>Age:</b>	35
<b>Country of Origin:</b>	Ethiopia (Refugee)
<b>Date of Arrival:</b>	2010
<b>Language:</b>	Amharic, Interpreter required, interpreter provided
<b>Literacy:</b>	Undisclosed
<b>Accommodation:</b>	Private Rental, has lived there 6 months
<b>Income:</b>	Centrelink, Newstart
<b>Company:</b>	Telstra
<b>Type of Service:</b>	Telephone (unclear whether home phone or mobile)

### **PROBLEM:**

March 2010 – Client arrived from overseas and lived in Tasmania in a motel for 9 days. Motel was then vacated due to a gas leak. Client moved in with a friend shortly before he moved to Victoria in April 2010.

Client claimed that he didn't sign a contract and did not set up any phone accounts while he was in Tasmania.

October 25<sup>th</sup> 2010: Client received a letter from CRA: Recoveries Corporation acting on behalf of Telstra demanding payment of \$182.87. Client's mobile with Optus and not Telstra.

Client called the Recoveries Corporation who explained that the charges were related to an account in Tasmania. Client claims he did not set up any phone accounts while he was in Tasmania. Recoveries Corporation advised that it can't assist and can't verify the Client's claim.

Case was lodged directly with TIO on 16/11/2010 through the FCLC clinic.

On 14/1/2011 Client claimed that he had been contacted by someone from Telstra who offered to waive the charges. Client has received a few more documents and bills from Telstra since then, he is unsure if any of them relates to the amount in dispute. Client plans to visit the TIO office with these documents.

## ISSUES:

- **Appropriate Credit Management does not appear to have been carried out**

Whether or not Client signed up for an account while in Tasmania, the issue here relates to Telstra's referral of the case to a debt collection agency. According to s. 7.4.2, Credit Management must be carried out prior to referring customer debt to a collection agency. Section 7.4.3 speaks the requirements for performing Credit Management, including advising customers of certain information, yet Client was not advised or contacted in any way. As Client was not contacted about Credit Management, Credit Management was not carried out, and as Credit Management was not carried out, the debt could not be sent to a collection agency. However, the debt was sent to a collection agency. Therefore Supplier is in breach of ss. 7.4.2 and 7.4.3.



## ***Case Study 13***

<b>FCLC Case Number:</b>	241110001
<b>Gender:</b>	Male
<b>Age:</b>	35
<b>Country of Origin:</b>	Burma (Refugee)
<b>Date of Arrival:</b>	2009
<b>Language:</b>	Burmese Chin
<b>Literacy:</b>	Illiterate
<b>Accommodation:</b>	Private Rental
<b>Income:</b>	Working
<b>Company:</b>	OPTUS
<b>Type of Service:</b>	Yes Fusion Plan

### **PROBLEM:**

Client has signed up to a Optus 'yes' Fusion plan of \$79 per month.

His computer broke down in early August so he therefore had no internet usage during most of August and September.

His account for September was \$383.63. When he rang Optus they said he was still downloading virus protectors over this period this is why he had such a large account.

The broadband charges for the month were \$256.08 extra.

Optus agreed to write this amount off but to date this had not happened.

### **ISSUES:**

- **Client was not kept informed of the progress of his complaint**

Section 3.2.1 of the Code provides that “[a] Supplier must ensure that information provided to its Customers is accurate, relevant, current and timely.” Supplier said it would write off the extra charges in question, but it has not done so. Therefore the information provided to Client was inaccurate, or Optus has encountered a delay in writing of the charges.

If there has been a delay in writing off the charges, then Supplier is in violation of s. 9.2.6, which provides that “Suppliers must make every reasonable effort to advise Customers within 5 Working

Days of receiving Complaints, of their complexity and a possible timeframe for finalisation” and that “Suppliers must keep Complainants advised of timeframe delays and the Complaint's progress.”

Further, s. 9.2.5 provides that “Complaints must be finalised within 30 days or as soon as practicable in all the circumstances.” It is difficult to understand how waiving an excess fee could take multiple months, so Supplier is likely in breach of its s. 9.2.5 obligations.

## ***Case Study 14***

<b>FCLC Case Number:</b>	241110003
<b>Gender:</b>	Male
<b>Age:</b>	59
<b>Country of Origin:</b>	Burma
<b>Date of Arrival:</b>	2008
<b>Language:</b>	Burmese/Chin
<b>Literacy:</b>	Illiterate
<b>Accommodation:</b>	Private rental
<b>Income:</b>	Centrelink
<b>Company:</b>	Optus
<b>Type of Service:</b>	Yes Fusion Plan

### **PROBLEM:**

Client is a single father who is supporting four daughters. He has a 'yes' fusion plan of \$99 and he believed that he had unlimited broadband usage each month.

The last few months his usage was around \$103 per month. In October he received an account for \$210.40. On looking at the account he had been charged \$189.27 for extra data usage over October.

He found it difficult to understand how the account had risen so much over the last month.

### **ISSUES:**

- **Capped plans can be considered “likely to mislead or deceive”**

Chapter 4 of the Code includes the following objectives:

To “eliminate practices which deceive, mislead or confuse” and “to provide sufficient, accurate and relevant information to enable Customers to make an informed purchasing decision.” Although there is no outright prohibition against capped internet plans, they still clearly confuse at least some consumers—particularly those whom are not familiar with the Australian communications market. Indeed, if one does not understand the way in which capped internet plans work, it is difficult to see how one can make an informed purchasing decision involving a capped plan. That Supplier did not account for this informational asymmetry by ensuring that Client understood the nature of a “capped” internet plan is contrary to the objectives of Chapter 4.

Further, Section 52 of the Trade Practices Act (TPA) prohibits corporations from “engag[ing] in conduct that is misleading or deceptive or is likely to mislead or deceive.” Given that certain vulnerable sections of the population may be likely to be unintentionally misled as to the nature of capped internet plans, such plans likely breach Section 52 of the TPA as well.

Indeed, Graeme Samuel, the Chairman of the ACCC, has stated that “[c]ompanies advertising mobile phone plans should be particularly cautious when using absolute terms such as 'unlimited' for plans to which some limits do apply. To avoid misleading consumers, any qualifications of an offer of 'unlimited' calls or text must be prominently stated and not so significant that they negate the headline message.”<sup>8</sup> Although Mr Samuel was referring to mobile phone plans, a cap that is not a cap negates the headline message that a plan has a cap. As such, the practice likely violates Section 52 of the TPA.

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<sup>8</sup> Graeme Samuel, 11 February 2009. <http://www.accc.gov.au/content/index.phtml/itemId/860294>

## ***Case Study 15***

<b>Case Number</b>	131010002
<b>Gender</b>	Male
<b>Age</b>	21-30
<b>Country of Origin</b>	Iraq
<b>Date of Arrival</b>	2008
<b>Language</b>	Arabic, Interpreter required
<b>Accommodation</b>	Boarding
<b>Income</b>	Centrelink, Newstart
<b>Company</b>	Optus
<b>Type of Service:</b>	Mobile contract

### **PROBLEM:**

Client had a contract with Optus for a mobile phone. Client went to Optus Retailer with friend, he did not understand the details. The friend explained that the contract was for two numbers at Optus (2 mobiles). Optus explained that he would pay \$50 per month for both mobiles. Friend acted as interpreter. He was told he would have mobile for free.

After a time the friend told him he had cancelled the contracts and he would no longer have to pay but would be able to keep the mobile. The friend used the sim cards from the phones and clocked up large accounts.

His friend told him not to pay the company. The friend told him at the beginning he would keep the sim cards and he could have the phones.

The client never used the phones.

- Signatures are different on contract
- Names on contract different

Client sought assistance from the FCLC on 13/10/10. The Optus Resolution Team eventually contacted client 18/10/2010 with a positive outcome: the whole account has been cleared, and Optus agreed to waive \$2700. Client is satisfied with the outcome.

ISSUES:

- **Material terms of the contract were unclear to the Client**

This may be a result of inexperience or the language barrier. It is also likely a result of a failure on the part of the sales person to ensure both parties understood the terms of the contract. The fact that signatures and names are inconsistent on the written contract suggest that the sales person did not go far enough to ensure that explicit informed consent had been obtained.

The case did however result in a positive outcome for Client

## ***Case Study 16***

<b>Case Number</b>	131010003
<b>Gender</b>	Male
<b>Age</b>	41-50
<b>Country of Origin</b>	Iraq
<b>Date of Arrival</b>	2008
<b>Language</b>	Arabic, English
<b>Literacy</b>	Interpreter required
<b>Accommodation</b>	Private rental
<b>Income</b>	Not stated
<b>Company</b>	Optus
<b>Type of Service</b>	Mobile Plan

### **PROBLEM:**

Complaint about difficulties encountered when attempting to change the account holder for an existing service/contract.

Client arrived in Australia in 2008, and was told he could not establish Account as he did not have history in Australia. In March 2009 a friend opened an Optus account in his own name for Client. The friend was told by Optus that if he phoned in six months time, the account could then be changed into Client's name.

Client first made contact with Optus in September 2009, without success. The client called Optus regularly to ask that the account be transferred into his name. Optus confirmed with the friend that it is Client who is paying the account, then repeated that they would send paperwork to transfer the account but paperwork arrived. Client contacted Optus 5 times between September 2009 and October 2010. The client first approached the FCLC for assistance on 13/10/10.

The paperwork eventually arrived on 18/10/2010, with the advice that names on the account would be changed within three weeks of Optus receiving the completed paperwork. The account name was eventually changed in December 2010, and Client was satisfied that the complaint had been resolved.

ISSUES:

- **Customer Service procedures took over a year to process an accounts related request**

Client understood and accepted that he would need 6 months history in Australia to open a telephone account in his name. Client appears to have followed the procedure outlined by Optus, however It took over a year for Optus customer service to being the process of changing the account name, i.e.by sending the appropriate paperwork to Client.



## **APPENDIX 1: Life of an African refugee – Atem's Story**

### **Village life**

Before we left the village in Sudan we depended on cattle products and agriculture. We did not have money so we got our meals from the gardens and cows products and not from the shops. There was no need for gas, electricity and clean water from the taps in the village. More so, there was no awareness about formal education it was simply not undertaken and as a result most Sudanese refugees, do not read and write.

### **My life in Kakuma Refugee Camp, Kenya**

The war in Sudan is the longest running war in Africa reaching over 2 decades, interspersed with relatively short periods of peace under Comprehensive Peace Agreements (CPA), forcing us to become refugees.

The United Nations High Commission for Refugees (UNHCR) took us to Kauma, North Kenya to rescue us and we were given ration cards. I stayed there and commenced my education in English and Kiswahili at a refugee school until I finished my year 12 in 2003.

Kakuma Refugee Camp serves refugees who have been forcibly displaced from their home countries due to war or persecution. It was established in 1992 to serve Sudanese refugees, and has since expanded to serve refugees from Somalia, Ethiopia, Burundi, the Democratic Republic of Congo, Eritrea, Uganda, and Rwanda. The camp population stands at 80,000 refugees. In Kakuma there was no rain, the winds blew nine months a year and eighty thousand war refugees from Sudan and elsewhere lived on one meal a day.

My life unfolded in a semi-arid desert environment As refugees we were unable to support ourselves with income-generating activities. The semi-arid climate of the camp was not good for agriculture or cultivations for some crops to survive. The area has always been full of problems: dust storms, high temperatures, poisonous spiders, snakes, and scorpions, outbreaks of malaria, cholera, and other hardships. The average daytime temperature is 40 degrees Celsius. While the restrictions on employment deferred refugees job-seeking. Those working with the UNHCR received a little incentive for their work.

The Kakuma Camp grew around a small town in a rural area. Housing consisted of thatched roof huts, tents, and mud abodes. Living inside the camp was very similar to being in prison. Refugees do not have the freedom to move about the country but are required to obtain movement passes from the UNHCR and the Kenyan Government. Therefore, the refugees are confined to the Kakuma camp area. We are not allowed to move freely outside of it.

I arrived in Kakuma in 1994 staying until 2003, when the local people, the Turkanas attacked the camp and killed many refugees particularly Sudanese. I felt forced to leave the camp and went to Nairobi because of the clashes between local people and Sudanese refugees. I stayed there with my cousin and immediately sought resettlement in Australia. My application was successful two years later and I moved to Australia in 2006.

## Australia life

Living in Kakuma camp, Kenya was totally different to living in Australia. In Australia, I needed to pay rent, buy my foods and find a job. A couple of years ago my life was a real challenge in Australia due to the new environment. I found it very hard because I had no previous experience with any of the things listed below:

- Tenancy
- Utilities such as gas, electricity, water bills
- Shopping e.g. Foods, clothes etc
- Job seeking
- Bank loans
- Mortgage loans
- Contracts
- Lay by or brokers
- Door to door sellers
- Transport e.g. train, Car, tram and bus
- School fees
- Police fines
- City council fines
- Car accidents
- Contracts
- Television e.g. advertisements
- Lack of information such as legal awareness
- Repayments e.g. bills
- Telecommunications contract and products, internet, phone contracts and what terms meant including caps, unlimited etc.

All these things are very new things to a refugee especially an African refugee. Most of my community would not understand what a contract is, but in Australia almost everything requires a contract. For instance, in 2009 I signed a contract with a real estate agent for tenancy; however, I did not know that I signed the contract. I thought I was simply needed to pay the rent each month for as long as I lived there. I then went and signed another contract for a different property and moved on thinking I had done the right thing, I found myself in a very difficult situation being advised I needed to now pay the rent on both properties until the end of the first lease expired. I have also had difficulty with understanding telecommunications products and the complex contracts that I had to sign. Being led to believe the amount quoted was the maximum I would pay per month but finding out it was really the minimum.