



## **ACMA Compliance Priorities 2022–23**

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

28 March 2022

## **About ACCAN**

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

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

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# Introduction

ACCAN thanks the ACMA for the opportunity to provide input into its 2022-23 Compliance Priorities. The essentiality of communications services continues to be evident as the Australian public navigates COVID-19 lockdowns and isolation, natural disasters and emergencies, and the increasing digitisation of goods, services, and participation in society. Consequently, the rules that determine the provision of communications services continue to be essential. The ACMA's compliance and enforcement activities are critical in making sure consumers are protected by these rules, and that carriers and carriage service providers follow them.

ACCAN has identified a number of areas that the ACMA should consider when setting its 2022-23 Compliance Priorities. We have identified these based on the impact these issues have on consumers, the risk and severity of consumer harm caused by non-compliance, and evidence of existing non-compliance. These areas include:

- Customer service, contactability and complaints handling;
- The treatment of consumers experiencing vulnerability, including financial hardship and domestic and family violence;
- Scams and fraud prevention;
- Accessibility and inclusion; and
- Compliance with the Statutory Infrastructure Provider (SIP) regime.

## List of recommendations

**Recommendation 1:** The ACMA should direct its enforcement efforts towards telcos' compliance with customer service and complaints handling record-keeping rules.

**Recommendation 2:** The ACMA should undertake qualitative and detailed audits of telco compliance with customer service and complaints rules by examining excerpts of telcos' communications with customers across communication channels.

**Recommendation 3:** The ACMA should proactively investigate telcos' compliance with provisions in the TCP Code and Complaints Handling Standard, with a focus on customer service and the way in which telcos identify and escalate complaints.

**Recommendation 4:** In anticipation of greater utilities convergence in the future, the ACMA should work with the Australian Energy Regulator to advise consumers and the telecommunications industry on how consumer protections and dispute resolution rules should apply to joint energy and telecommunications services.

**Recommendation 5:** The ACMA should investigate the prevalence of consumers accessing Buy Now Pay Later services to afford their telecommunications bills, and clarify whether this is compliant with TCP Code rules regarding payments and billing.

**Recommendation 6:** Protecting vulnerable telecommunications consumers should remain a compliance priority for the ACMA.

**Recommendation 7:** Through qualitative and detailed investigation, the ACMA should monitor the telecommunications industry's adoption of the impending Statement of Expectations on Vulnerability.

**Recommendation 8:** The ACMA should continue to publish its yearly Financial Hardship report and take enforcement action against any TCP Code non-compliance uncovered in the reporting process.

**Recommendation 9:** The ACMA should conduct an audit into the telecommunications industry's response to consumers experiencing domestic and family violence.

**Recommendation 10:** Preventing phone scams should remain a compliance priority for the ACMA.

**Recommendation 11:** The ACMA should measure the telecommunications industry's adoption of recently introduced scam prevention rules, and take steps to measure the impact of these instruments on reducing scams.

**Recommendation 12:** The ACMA should closely monitor TV licensees' compliance with captioning rules and undertake research to clarify the quality and efficacy of real-time captions.

**Recommendation 13:** The ACMA should investigate and take action against non-compliance with the SIP regime, particularly where a SIP has refused to connect a premises and supply an eligible service to consumers, or failed to publish its terms and conditions online.

ACCAN's submission has been endorsed by:



Consumer Action Law Centre



WEstjustice

# Customer service, contactability and complaints handling

The availability and quality of customer service and complaints handling remains one of the biggest sources of frustration for communications consumers. At best, unavailable or poor-quality customer service and complaints handling can lead to irritation and delay in resolving disputes and service problems. At worst, it can lead to serious and immediate consumer detriment.

Access to customer service and complaints handling are fundamental premises upheld by the current consumer protections framework. It remains ACCAN's view that poor customer service and complaints handling – both through retail service providers' (RSPs) insufficient resource allocation of teams and ICT systems, and through inadequate policies, procedures, and employee conduct – is at the heart of a significant proportion of consumers' phone and internet problems.

## Record-keeping and issue escalation

Telcos received 1,089,608 complaints in the 2020-21 financial year, which took an average of 12.2 days to resolve.<sup>1</sup> The average telco had a TIO escalation rate of roughly 1 in 4 complaints.<sup>2</sup> In the first half of 2021, 11 major telcos reported that their consumers had made a total of 23,074,997 customer service enquiries.<sup>3</sup>

Complaints handling data published by the TIO and the ACMA is essential for the identification of systemic consumer issues and to guide the ACMA and ACCC's compliance and enforcement activities. ACCAN has concerns about the quality of industry's self-reporting of customer service and complaints handling data. There are a number of reasons for this, including:

- Complaints and customer service data gathered by the ACMA is generally self-reported by industry and does not capture the breadth of industry members.
- The ACMA's Telco Contactability Report uncovered significant non-compliance regarding telcos' record-keeping of first-contact issue resolution.
- There is evidence that telcos do not always treat or flag customer service enquiries as complaints where appropriate, and often fail to escalate complaints to the TIO in appropriate circumstances.<sup>4</sup>

More detailed, qualitative audits are needed to ensure that telcos are addressing, escalating, and recording consumer complaints in line with their regulatory obligations: for example, the ACMA should proactively request and review excerpts of communications with customers.

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<sup>1</sup> ACMA 2021a, *Telco complaints-handling performance*, <https://www.acma.gov.au/publications/2021-04/report/telco-complaints-handling-performance>

<sup>2</sup> Ibid.

<sup>3</sup> ACMA 2022a, *Telco contactability report 2022*, <https://www.acma.gov.au/publications/2022-01/report/telco-contactability-report-2022>

<sup>4</sup> ACCAN 2020, *Consumer Safeguards Review Part C / Choice and Fairness*, <https://accan.org.au/our-work/submissions/1804-csr-partc>

**Recommendation 1:** The ACMA should direct its enforcement efforts towards telcos' compliance with customer service and complaints handling record-keeping rules.

**Recommendation 2:** The ACMA should undertake qualitative and detailed audits of telco compliance with customer service and complaints rules by examining excerpts of telcos' communications with customers across communication channels.

## Compliance with customer service and complaints handling rules

In addition to the issues raised above, ACCAN has concerns about the extent to which industry members comply with customer service and complaints handling rules outlined in clauses 3.3 and 4.7 of the Telecommunications Consumer Protections Code (**TCP Code**), and in the ACMA Telecommunications (Consumer Complaints Handling) Standard (**Complaints Handling Standard**).

Concerningly, the ACMA's Telco Contactability Report found that seven out of 11 telcos were not consistently meeting the requirements to acknowledge complaints within minimum timeframes. Additionally, not all telcos were able to provide complaints data from the range of communication channels they make available to consumers, suggesting that not all telcos are keeping accurate records about all enquiries and complaints that have been received.

Over the past 12 months, ACCAN has been made aware of numerous examples of potential industry non-compliance, including:

- Failure to be contactable and responsive as per the Complaints Handling Standard and the TCP Code,
- Failure to resolve complaints as per the rules in the Complaints Handling Standard,
- Failure to abide by TCP Code selling practice obligations,
- Failure to resolve complaints about debts that have been sold in the legislated timeframe, and
- Failure to comply with the ACCC/ASIC Debt Collection Guidelines, particularly in relation to recording communications with customers about disputed debts; retaining and providing documentation about debts to debt collectors in a timely manner; and not imposing undue administrative barriers to appointing an authorised representative.

**Recommendation 3:** The ACMA should proactively investigate telcos' compliance with provisions in the TCP Code and Complaints Handling Standard, with a focus on customer service and the way in which telcos identify and escalate complaints.

## Increasing payment and billing complexity

ACCAN acknowledges that as part of this consultation, the ACMA has welcomed views on technological or market developments that test the effectiveness of the telecommunications regulatory framework. The way in which telcos bill for, and consumers pay for, communications services is undergoing rapid transformation. Of concern to ACCAN is the convergence of telecommunications and energy sectors, and the expansion of Buy Now Pay Later (**BNPL**) into the telecommunications sector.

A number of retailers, including Telstra, AGL and Origin, are expanding into joint communications and energy service provision. Under this model, a consumer can bundle their energy service with a home broadband service under the same account. While combined telco and energy accounts may suit the needs and preferences of some consumers, ACCAN has concerns about the way in which the telecommunications consumer protections framework will apply in these instances. ACMA guidance on how the regulatory framework should apply would be beneficial to industry and consumers alike. Energy and telecommunications industries have vastly different jurisdictions, arrangements and regulatory frameworks for internal and external dispute resolution and consumer protections. As such, it is unclear how payment and billing rules will apply where bills are not separate, or a consumer is experiencing financial hardship with one or more services.

**Recommendation 4:** In anticipation of greater utilities convergence in the future, the ACMA should work with the Australian Energy Regulator to advise consumers and the telecommunications industry on how consumer protections and dispute resolution rules should apply to joint energy and telecommunications services.

ACCAN is currently undertaking research into consumers' experiences of utilities payment and billing. Preliminary findings indicate that some consumers are using BNPL providers, either directly or indirectly, to afford their phone and internet bills. Financial Counselling Australia's report into BNPL revealed similar findings.<sup>5</sup> Given the considerable consumer harm caused by improper use of BNPL payment services,<sup>6</sup> ACCAN urges the ACMA to investigate the extent to which consumers are able to access BNPL to afford their telecommunications bills. The ACMA should also clarify how the use of BNPL fits into TCP Code rules regarding payments, billing and financial hardship arrangements.

**Recommendation 5:** The ACMA should investigate the prevalence of consumers accessing Buy Now Pay Later services to afford their telecommunications bills, and clarify whether this is compliant with TCP Code rules regarding payments and billing.

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<sup>5</sup> Financial Counselling Australia 2021, *It's credit, it's causing harm and it needs better safeguards*, <https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/12/FCA-Buy-Now-Pay-Later-Survey-Dec-2021-Final.pdf>

<sup>6</sup> ASIC 2020, Buy now pay later: An industry update, <https://download.asic.gov.au/media/5852803/rep672-published-16-november-2020-2.pdf>



# The treatment of consumers experiencing vulnerability

Through its forthcoming guidance, Consumer vulnerability: expectations for the telecommunications industry (hereafter Statement of Expectations), the ACMA is seeking to improve the way the telco sector supports consumers in vulnerable circumstances. In its 2021 vulnerability audit, the ACMA identified a number of areas where some telcos appeared to not be fully compliant with TCP Code provisions relating to vulnerability, including identifying vulnerability, staff training, and monitoring customer service.<sup>7</sup> The Statement of Expectations is expected to address these areas and lift industry performance relating to fairness and vulnerability.

ACCAN's view is that the telecommunications industry has had extensive opportunities to improve its response to vulnerability, and that all consumer protections rules should be supported through direct regulation, rather than through non-mandatory guidance.<sup>8 9</sup> In the absence of directly enforceable rules, the ACMA must closely monitor industry's adoption of the Statement of Expectations, and identify areas of continued underperformance.

**Recommendation 6:** Protecting vulnerable telecommunications consumers should remain a compliance priority for the ACMA.

**Recommendation 7:** Through qualitative and detailed investigation, the ACMA should monitor the telecommunications industry's adoption of the impending Statement of Expectations on Vulnerability.

## Access to and suitability of financial hardship arrangements

ACCAN continues to receive anecdotal feedback from consumer advocates that both residential consumers and small businesses are often unable to access fair and flexible financial hardship arrangements. Our members report that consumers either aren't always offered financial hardship support when indicating payment difficulty, or are offered arrangements that are inflexible or not suitable for the consumers' circumstance (for example, insisting on an unaffordable repayment instalment). This feedback indicates that current financial hardship rules and obligations are not keeping phone and internet consumers connected or on top of their payments, contrary to the rules' intentions.

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<sup>7</sup> ACMA 2021b, *Assisting and protecting vulnerable consumers Audit of telco approaches to compliance with Telecommunications Consumer Protections Code rules*, [https://www.acma.gov.au/sites/default/files/2021-07/Assisting%20and%20protecting%20vulnerable%20consumers\\_audit%20of%20telco%20approaches\\_0.pdf](https://www.acma.gov.au/sites/default/files/2021-07/Assisting%20and%20protecting%20vulnerable%20consumers_audit%20of%20telco%20approaches_0.pdf)

<sup>8</sup> ACCAN 2021, *ACMA Customer Vulnerability Statement of Expectations*, <https://accan.org.au/accans-work/submissions/1920-acma-customer-vulnerability-statement-of-expectations>

<sup>9</sup> ACCAN 2020, op. cit

ACCAN is concerned about a number of the findings from the ACMA’s 2020-21 Financial Hardship Report, including:

- Alarming rates of consumers continue to be disconnected for non-payment, with financial hardship customers accounting for 4.8% of residential disconnections and 3.1% of small business disconnections.
- Less than 2 in 3 residential and small business consumers in a financial hardship arrangement successfully paid off their debt.
- There continues to be a high level of variability in industry members’ response to and management of financial hardship customers, particularly in relation to pay instalments for repayment plans.<sup>10</sup>

**Recommendation 8:** The ACMA should continue to publish its yearly Financial Hardship report and take enforcement action against any TCP Code non-compliance uncovered in the reporting process.

## Responding to domestic and family violence

Consumers experiencing domestic and family violence need tailored and specialised support from their telcos. In ACCAN’s 2020 submission to the Communications Alliance review of Industry Guideline G660:2018, *Assisting Customers Experiencing Domestic and Family Violence* (hereafter DFV Guideline),<sup>11</sup> ACCAN outlined concerns about the mixed telco experiences reported by domestic and family violence advocates and survivors. These concerns about the ways in which some telcos respond to consumers experiencing domestic and family violence are ongoing.

### Case study 1: Consumer fleeing family violence

In May 2021, a community lawyer reached out to ACCAN with concerns about their client Suzie’s (name changed) recent telco experience. Suzie lives in a regional area and was experiencing significant family violence over a long period of time.

In 2019, Suzie ordered a phone from her telco which was delivered to her violent partner instead of directly to her. Once Suzie got hold of the device, she was unable to access her telco account, and was told by her telco that she was unable to make changes to her plan. Suzie left her abusive partner and contacted her telco while she was in a refuge to cancel her service, as she was concerned that her partner had access to her information and account.

Though initially unwilling, eventually the telco agreed that Suzie could return the handset, and as long as it was undamaged, they would cancel her contract. As Suzie’s abusive partner had damaged the handset this was impossible. It took two years and a TIO complaint for Suzie and her community lawyer to cancel the service

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<sup>10</sup> ACMA 2022b, *Customer financial hardship in the telco industry: State of play report 2020–21*, <https://www.acma.gov.au/publications/2022-02/report/customer-financial-hardship-telco-industry-state-play-report-2020-21>

<sup>11</sup> ACCAN 2020, *Review of G660:2018, Assisting Customers Experiencing Domestic and Family Violence*, <https://accan.org.au/our-work/submissions/1686-dfv-guideline-review>

and negotiate compensation for her telco's lack of consideration of Suzie's circumstance.

Indeed, in their December 2020 systemic investigation, the TIO found a trend of complaints where telcos were not meeting the needs of consumers experiencing domestic and family violence.<sup>12</sup> Given the continuing difficulties people experiencing domestic and family violence encounter when dealing with their telcos, it is essential that the DFV Guideline revision recommences as a matter of urgency.

Furthermore, ACCAN believes that the ACMA should take steps to measure the extent to which telcos are able to adequately respond to survivors of domestic and family violence. Telcos have access to the current DFV Guideline, the TIO's tip sheet for phone and internet providers assisting consumers experiencing domestic and family violence,<sup>13</sup> forthcoming material from the Telco Together Foundation,<sup>14</sup> and a range of resources produced by domestic and family violence support services. If, despite the availability of industry specific guidance and more general information and examples from other industries, the ACMA audit finds that telcos are still not adequately responding to consumers experiencing domestic and family violence, the ACMA should consider further regulatory action.

**Recommendation 9:** The ACMA should conduct an audit into the telecommunications industry's response to consumers experiencing domestic and family violence.

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<sup>12</sup> TIO 2020, *Meeting the needs of consumers impacted by family violence*, [https://www.tio.com.au/sites/default/files/2020-12/TIO%20Systemic%20Report\\_Meeting%20the%20needs%20of%20consumers%20impacted%20by%20family%20violence\\_December%202020.pdf](https://www.tio.com.au/sites/default/files/2020-12/TIO%20Systemic%20Report_Meeting%20the%20needs%20of%20consumers%20impacted%20by%20family%20violence_December%202020.pdf)

<sup>13</sup> TIO 2020, *Tips for phone and internet providers assisting consumers experiencing family violence*, available: <https://www.tio.com.au/reports/meeting-needs-consumers-impacted-family-violence>

<sup>14</sup> To be made available on 31 May: <https://industryimpacthub.org/domestic-and-family-violence/>

## Scams and fraud prevention

Scams are a growing consumer concern, and can be exceptionally difficult for consumers, industry, and government to combat. In recent months ACCAN has received an increasing number of consumer complaints regarding the receipt of scam SMS and calls. Older people, people from culturally and linguistically diverse communities, First Nations people and people with disability disproportionately bear the cost of scams.<sup>15</sup> With Australians losing \$38 million to scams in February 2022 alone, it is more important than ever to have a coordinated and industry-wide response to scams.<sup>16</sup>

ACCAN commends the ACMA's efforts to work with telcos to minimise communications-based scams through introducing and registering a range of recently developed regulatory instruments. For example, with some important amendments, the ACMA's draft Customer ID Verification Determination should reduce the incidence of SIM-swap and other telecommunications-based scams, as seen with the Mobile Number Pre-Porting Determination. Importantly, the ACMA should consider ways to measure the impact of these rules to assess their effectiveness in preventing scams.

**Recommendation 10:** Preventing phone scams should remain a compliance priority for the ACMA.

**Recommendation 11:** The ACMA should measure the telecommunications industry's adoption of recently introduced scam prevention rules, and take steps to measure the impact of these instruments on reducing scams.

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<sup>15</sup> ACCC 2021, *Targeting scams: Report of the ACCC on scams activity 2020*, <https://www.accc.gov.au/system/files/Targeting%20scams%20-%20report%20of%20the%20ACCC%20on%20scams%20activity%202020%20v2.pdf>

<sup>16</sup> ACCAN 2021, *Stopping Spam Text Messages*, blog post, <https://accan.org.au/media-centre/hot-issues-blog/1935-stopping-spam-text-messages#!/comment-comment=679>

## Accessibility and inclusion

ACCAN research into the availability and accuracy of live captioning on TV broadcasts indicated that the quality of live captions depends on the provider, the technology used and the personnel, and can vary greatly across both broadcaster and program genre.<sup>17</sup> Quality captioning is essential for many people in Australia, and there are captioning requirements all commercial, national and subscription TV licensees must comply with. The ACMA should research the quality and efficacy of real-time captions created using automated speech recognition software and Auslan avatars.

This should involve desk research (as an initial scoping exercise), user testing and focus groups. The user testing and focus group elements of this research could explore the potential uses of automated speech recognition software in the communications sector – including for telecommunications products and services and the National Relay Service. ACCAN is of the view that this research would be extremely valuable as a precursor to other essential research, such as research into the role that artificial intelligence (AI) may play in creating more accessible video content (e.g. automated captioning, automated/synthetic audio description, Auslan avatars).

**Recommendation 12:** The ACMA should closely monitor TV licensees' compliance with captioning rules and undertake research to clarify the quality and efficacy of real-time captions.

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<sup>17</sup> Ellis, K et al. 2019, *Live Caption Quality Monitoring on Australian Free-to-Air Television*, Centre for Culture and Technology Curtin University, for ACCAN, <https://accan.org.au/Live%20Caption%20Monitoring%20research%20report.pdf>

# Compliance with the Statutory Infrastructure Provider (SIP) regime

The Statutory Infrastructure Provider (SIP) regime establishes obligations for certain carriers to connect and provide basic wholesale broadband services in the areas they service. A carrier must connect a premises to its network and supply an eligible service to consumers where it is the designated SIP. ACCAN is concerned by a report that indicates SIPs may be refusing to connect consumers to a fixed-line network in their designated service areas.

## Case study 2: Consumer was refused a service by a SIP

In November 2021, Julie (name changed) called ACCAN urgently needing help with her phone and internet connection. Julie had a longstanding home broadband and fixed voice service but had received an email from her telco saying that the network was being decommissioned. Julie contacted many telcos to sign up for a new service, but all told her they did not provide fixed broadband services in her area, including Telstra. This is despite her premises being within Telstra's Statutory Infrastructure Provider area on its Velocity network. During her discussions with ACCAN, it was identified that Julie was eligible for Priority Assistance services. This reliance on fixed voice added to Julie's distress at the thought that she would not be able to receive a fixed voice or broadband service.

ACCAN raised the issue with Telstra and worked to get Julie connected to Telstra's Velocity network.

Under the SIP regime, SIPs must publish their terms and conditions for providing wholesale services on their website, including pricing, and connection and fault repair timeframes. In the first week of March 2022, ACCAN undertook desktop research to assess how many SIPs are compliant with their obligations to publish key terms and conditions.<sup>18</sup> Concerningly, we found that only roughly 50% of SIPs have published their terms and conditions online. In some cases, it was very difficult to locate the terms and conditions on the SIP's website. The obligation for SIPs to publish this information is fundamental for establishing both consumers and RSPs' service expectations, and allows consumers to compare the level of service they are receiving with the level of service they should be receiving.

**Recommendation 13:** The ACMA should investigate and take action against non-compliance with the SIP regime, particularly where a SIP has refused to connect a premises and supply an eligible service to consumers, or failed to publish its terms and conditions online.

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<sup>18</sup> ACCAN would be happy to share this preliminary analysis with the ACMA upon request.