Provision of information to consumers in the telecommunications sector

Supplementary response by the Australian Communications Consumer Action Network to the Government review of telecommunications regulation.

March 2014

About ACCAN

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

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

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Appendix 1: Telecommunications Specific Requirements on Provision of Information to Consumers Showing Timing of Requirement

**Appendix 2: Requirements of Provision of Information to Telecommunications Consumers showing Overlap in Information Requirements; General and Situation Specific Requirements**

# Executive Summary

Discussion about consumer information requirements in the telecommunications sector is not new. In 2009, the Productivity Commission *Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* noted that a piecemeal approach to consumer information has resulted in an uncoordinated set of requirements that are a burden to industry, and fail to effectively inform consumers.

##### Industry and consumers will benefit from reforming consumer information requirements

There is wide agreement that timely, clear and accurate information is critical to enable consumers to make informed choices about products and services. Informed consumers underpin an effectively functioning market. However, consumer information in telecommunications may be failing to meet this objective. Research has shown that too much information, or information presented in a complex way, can confuse and be unhelpful to consumers.

A more constructive approach was recommended by the Productivity Commission in 2008. Information should be tested for clarity and comprehensibility so that it helps good consumer decision making processes, and be layered so that key information is given up front with further details readily available.

Both industry and consumers stand to benefit from reforming industry requirements for consumer information

##### Minimum standards for effective and efficient information disclosure

Building on the work of the Productivity Commission, ACCAN’s view is that the following elements must be met at a minimum for effective and efficient information disclosure:

* Clarity and simplicity
* Timeliness – information must be provided when it is needed
* Accessibility – communication strategies must take account of the different ways in which consumers access information.

##### Review of current information disclosure requirements

Our recent review of regulatory requirements on the telecommunications industry has involved a review of information disclosure requirements. Our findings are:

* There is some overlap and duplication
* There are areas where the requirement is to ‘inform’ without indication as to how and when. This does not sufficiently take account of ‘information overload’. Consumers and industry would be assisted by better identification of when information is required, and whether it should be provided or simply made available
* Requirements are scattered across multiple legislative instruments and codes, making it difficult for industry and consumers to check whether sufficient information is being provided when it should be
* There are inadequate mechanisms to review and update information requirements

In conclusion, ACCAN supports calls for a review of information requirements, as better, clearer and more timely provision of information will ensure a better informed, fairer marketplace for all.

# Regulatory Burdens on Telecommunications Providers

Telecommunications providers used the Productivity Commission’s 2009 *Review of Regulatory Burdens on Business: Social and Economic Infrastructure Service* to identify particularly onerous regulatory requirements they face under the telecommunications framework. Telstra’s submission listed numerous requirements in Parts XIB and XIC of the *Competition and Consumer Act 2010* (then the *Trade Practices Act 1974*), plus additional requirements under its network reliability framework and the universal service regime. (Telstra 2009, 21-72) Vodafone named particular burdens under Part XIC, and prepaid mobile identity checks requirements. It also listed the many requirements to provide reports to Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC) and the Australian Bureau of Statistics (ABS). (Vodafone 2009, 7-11) Optus discussed Parts XIB and XIC, requirements for prepaid mobile identity checks and reporting requirements to regulators as regulatory burdens. (Optus 2009, 6-51)

Optus added the provision of information to customers as another burden not mentioned by Telstra or Vodafone. (Optus 2009, 41-44) Those requirements were ‘poorly developed and inflexible’ and ‘in many cases increasingly irrelevant to consumers’. (Optus 2009, 4) The Commission agreed:

*It appears that the development of information requirements has occurred on a piecemeal basis. While each individual requirement may be reasonable by itself, the cumulative effect has been to create a web of uncoordinated requirements which is duplicative, burdensome to industry, and does not meet its objective of informing customers. (PC 2009, 147)*

If a product is well designed, it relieves the regulatory burden. History shows that the remedy of information has been used on occasion as an alternative to rethinking product or service design to enhance consumer usability[[1]](#footnote-1). This can result in an unsatisfactory situation where the consumer is overloaded with information yet remains unclear about aspects of the nature of the service or product, while the industry is bound by a patchwork of obligations.

Recent market developments have demonstrated the impact of good design, with Optus’ simplified mobile plans introduced in mid-2013, contributing to a corresponding reduction in complaints to the TIO by nearly 30% in the subsequent quarter[[2]](#footnote-2). Recent ACCAN commissioned focus group research also points to the benefit of good design, with preference by participants for simplified advertising and uncomplicated mobile phone plans identified in the study[[3]](#footnote-3).

# Importance of Information to Telecommunications Consumers

The provision of timely, clear and accurate information is critical for consumers. An efficient, competitive telecommunications market place should ensure that consumers are sufficiently informed to make a choice of products and services that meet both their communications needs and their budget. As OFCOM’s recent research on customer information observed:

*Our opening proposition is that confident and knowledgeable consumers, provided with the right kind of information, have a crucial role to play in ensuring the effective functioning of markets….*

*Information remedies – whether used on their own or alongside other approaches – may be a proportionate and efficient way to make markets work, because they function by empowering consumers rather than directly constraining product and service providers. (OFCOM 2013, 5)*

However, both consumers and industry, albeit from different perspectives, agree that existing information requirements in telecommunications may not have achieved that aim.

Recent research into consumer decision-making in telecommunications concluded that they face ‘challenges, detriment, and confusion as they decide what products to buy’. (CSaRO and ACCAN 2011, 10) Specifically:

* *Participants expressed a broad frustration and disappointment with the way in which the telco sector communicated to them. Some simply felt that the sector relied on ‘information overload’ as part of its business model.*
* *All participants experienced confusion as a result, amongst other factors, of the jargon used by telcos.*
* *Many of the participants expressed difficulty in comparing telecommunications products; some used strategies to avoid actually comparing (and purchasing) products, such as postponing purchases. Other participants were happy to rely on recommendations from telco salespeople simply because they wished to avoid the effort in processing the copious amounts of information provided to them.(CSaRO and ACCAN 2011, 12)*

In a more recent report on consumer information, the UK regulator OFCOM found much the same thing.

*In summary, our work found that although information can be a powerful tool it is neither failsafe nor costless. When presented to consumers, many of the pieces of information from our case studies were not having the desired outcomes. Consumers rejected much of the information because there was too much of it and because it was presented in a complex and unappealing format. Whether the 52 safety warnings on a toaster or the consumer credit agreement that required 55 minutes to read, consumers did not find the information being provided helpful. Some of the more vulnerable groups we spoke to found overly complex information not only difficult but also humiliating. (OFCOM 2013, 7)*

The Productivity Commission’s report on Australia’s Consumer Policy Framework recommended a more productive approach to information disclosure:

*Where a need for mandatory information disclosure requirements has been established, the regulator concerned should require that:*

* *information is comprehensible, with the broad content, clarity and form of disclosure consumer tested prior to and/or after implementation, and amended as required, so that it facilitates good consumer decision-making; and*
* *complex information is layered, with businesses required to initially provide only agreed key information necessary for consumers to plan or make a purchase, with other more detailed information available (including by electronic means) by right on request or otherwise referenced.*

*Also, the respective roles and responsibilities of regulators and businesses in regard to such matters as consumer testing, content and amendment should be understood and agreed at the outset. (PC 2008, 75)*

In his latest Annual Report, the Telecommunications Industry Ombudsman suggests that recent new information requirements for a clear, short statement to new customers about the product/service contributed to the reason for the significant drop in consumer complaints.

*This is a reduction of 18 per cent from the previous year, and you need to go back five years to find a period when fewer new complaints were made to the TIO. In a telecommunications market where mobile services grew more than 30 per cent in five years, this is a marked turnaround.*

*My view is that this reduction can fairly be connected to a publicly- stated focus by telecommunications industry leaders to do better by their customers. Clear evidence is also emerging that the stronger rules in the 2012 Telecommunications Consumer Protections Code are working. Third, the regulatory focus on compliance with the new rules is having an effect. (Message from the Ombudsman, TIO, 2013,4)*

# Elements for Information Disclosure

Both industry and consumers will benefit from reforming industry requirements for information provision to consumers. However, if the information is to achieve a fair and informed market place, it must meet minimum standards. The Productivity Commission’s report on Australia’s Consumer Policy framework, cited above, lists the elements for effective and efficient information disclosure.

##### **Clarity and Simplicity**

Research on consumer decision-making suggests that information needs to be simple so that the ‘average person-in-the-street’ has no difficulty in interpreting. It should consider ‘consumer processing capacity in its construction’(CSaRO, Deakin University and ACCAN 2011, 15). And from British research:

*Across society our research found a desire for simple, succinct information. Decision-trees and other tools that helped people navigate through the process of making choices were preferred to text which was often written by lawyers. (NCC 2007, 7)*

##### **Timeliness**

Timeliness is about providing information when it is needed. In Commission terms, it is ‘layering’ information, providing enough clear information up to the point of sale to ensure the consumer is making informed choices. Further information is provided when a particular situation or customer circumstance requires it.

##### **Accessibility**

Many consumers may not find information accessible. They include people from a non-English speaking background, people with low literacy skills, people with a disability, people who are not skilled in accessing information online, people without access to the Internet, or people without access to higher speed broadband sufficient to download information required. If customers are to be ‘informed’, communications strategies must recognise the different ways in which consumers may (or must) access the information.

# Current Information Disclosure Requirements

ACCAN has recently reviewed regulatory requirements on telecommunications providers to identify areas where requirements overlap or duplicate each other, or where the requirements are no longer necessary. As part of that review, ACCAN reviewed requirements on industry to disclose information to consumers. Those requirements are found in general and specific legislation, determinations and standards, codes registered with the ACMA, and voluntary industry codes or guidelines.

In summary:

* There is some overlap in disclosure requirements. There are clear instances of duplication within telecommunications requirements and some duplication between telecommunications specific requirements and at general law
* There are instances in telecommunications requirements when the rule is simply to ‘inform’ without further indication as to how
* Information requirements do not always indicate when information should be provided, including whether the information provision is specific to a situation or more generally required
* Information requirements are scattered between the legislation, determinations and standards and codes; there is no one place where either industry or consumers could check to be sure sufficient information is provided when it should be
* There is no mechanism to review and update information requirements to identify information needs that have arisen because of new technologies and services, or that are no longer necessary.

# Information Requirement Duplication or Overlap

* Both legislation and the Priority Assistance Code require carriage service providers that do not provide a priority assistance service to ‘inform’ their customers of that fact. (TA Sch2, Pt 6/PA s. 2.4.8)
* The Telecommunications Consumer Protection Code requires carriage service providers to give customers a range of information about the service to be provided; requirements that are replicated in legislation and the determination on the standard form of agreement (SFOA ss. 7-9/TCPC ss 4.1.2-4.1.3)
* The ALRC Report on Privacy[[4]](#footnote-4) highlighted the potential contradictions, duplication and possible overlap in telecommunications specific privacy protections (TA Pt 13 and Sch 2, Pt 4) ) and privacy protection under general privacy law. Under both regimes, there are requirements to tell customers about their policies regarding the use and disclosure of the customer’s personal information
* The Telecommunications Consumer Protection Code rules on advertising and promotion of industry products arguably replicate requirements under the Australian Consumer Law (TCP esp Pt 4 and CCA Sch 2). However, in most cases, Code provisions are more detailed than general law, covering telecommunications specific issues.

# Requirements to ‘Inform’

Some codes require providers to ‘inform’ their customers, without any further guidance on how that is to occur, or when.

* CSPs receiving CLI (CND s. 5.2.3)
* Availability and coverage of emergency numbers (ECS s. 4.5.1)
* Choice of entry, disclosure of personal information, etc (IPND ss. 4.1, 4.3, 4.5)
* Accessibility features of equipment (AF ss 3.1.1-3.1.4)
* Critical Information Summary and additional information (TCP s. 4.1.2-4.1.3)
* Nature and effect of credit assessment (TCP s. 6.2.1, 6.12.1)
* Financial hardship policy (TCP s. 6.13.1)
* How to minimise spam (SC s. 4.1)

# Suggested ‘Life Cycle’ Timeliness

The current telecommunications information requirements do not sufficiently acknowledge the ‘information overload’ that consumers experience, as discussed above. What would assist consumers and industry is to better identify when in the life cycle of a consumer/provider information is required and whether it should be ‘provided’ or simply ‘made available/accessible’.

Information obligations should be very clear as to when in the provider/customer life cycle the information is required. It may be the case that the information is provided in more than one stage of the cycle, which should also be made clear.

Clarity is also necessary on what is meant by a requirement to ‘provide’ the information as against a requirement to ‘make the information available’. Arguably, a requirement to ‘provide’ should mean that the information is actually given to the customer without a customer’s request. That provision could be in hard copy or, if the customer has agreed, in soft copy form. If the customer has special needs for accessible information, it should be provided in a way that meets those needs. If a requirement is only that it is ‘made available’, it should be available on a website and in other formats (such as being able contacting the provider directly using a freephone or local rate number) so that those without access to the internet, or with special needs, can access the information.

Below are suggestions as to when in the ‘lifecycle’ of a provider/customer relationship information should be provided. This includes when requirements should be available for the general public and when they can be seen as ‘situation specific’ - outside of the normal life cycle but necessary when a particular situation arises.

##### **Pre-sale**

At this point in the life cycle, the contents of the advertising and promotions will determine whether a consumer can make an informed decision on acquisition of the product or service. The sorts of information needs that should be addressed include an accurate description of the product or service, elements of bundled products, eligibility for the product, service coverage, pricing information (and the ability for price comparisons), and limitations on an offer.

##### **Point of sale**

The Critical Information Statement required under the Telecommunications Consumer Protection Code (TCP s. 4.1.2) encapsulates basic information requirements that a customer needs at this stage. In addition the consumer may identify particular communications needs they have whether for particular broadband capacity, mobile coverage, or relating to their health or special equipment needs.

Frequently, customers will be changing providers rather than subscribing to a new service, so information on porting their number (local or mobile) should be provided. Other information may include assessment of the customer’s credit, and the processes involved in its assessment.

##### **During provider/customer relationship**

The most obvious information requirements during in the life of the customer/ service provider relationship begin with customer sign on. Obvious information requirements at that stage would be all of the contractual terms of service, plus relevant information on service connection, including service number, warranties, and full information on billing and complaints processes. During the life of the customer/provider relationship, other obvious requirements could be the following:

* Fault repairs – including relevant timelines
* Change in customer circumstance –particularly financial hardship
* Change in services that a customer may want
* Change in either the service(s) provided or the terms and conditions on which it is provided
* Billing information, including any change in billing practice or cost

##### **Transfer**

Prior to making a decision to transfer one or all of their services with a particular provider, customers should have information about any limitations on transferring their service(s) including how to port their number(s) away from their current provider.

# Situation Specific Requirements

In addition to general information requirements, situations can arise where the customer has particular information needs. Examples include the following:

* When a customer receives a life threatening or unwelcome call
* For new customers, when a connect outstanding situation exists
* When a CSP’s network does not support the option of blocking or enabling CND
* When internet service providers have reason to suspect a customer’s computer is compromised
* When a customer indicates they have a disability and need particular equipment features in their communications equipment

Another category of situation specific information relates to provider-specific requirements. Examples include the following:

* Information that mobile premium service providers must provide
* For payphone providers, information they must display on access to emergency services
* Specific requirements on Telstra in the development and approval of a local presence plan

# Conclusion

In 2009, the Productivity Commission’s recommendations included a review of the requirements on the telecommunications industry to provide information to consumers.

*The Australian Communications and Media Authority and the Department of Broadband, Communications and the Digital Economy should conduct a comprehensive joint review of all of the customer information requirements imposed on telecommunications businesses, and the processes used in developing new requirements.*

*Specifically they should:*

*• review all of the current customer information requirements in consultation with industry and consumer organisations, with the aim of streamlining the requirements to remove duplication, reduce the burden on business, and improve the comprehensibility and clarity of information provided to customers, consistent with the principles set out in the Productivity Commission’s Report on its Review of Australia’s Consumer Policy Framework*

*• review the processes for developing new customer information requirements to ensure that such processes take account of the existing requirements and that the new requirements form part of a comprehensive and comprehensible package of customer information. (PC, 2009, 148 Recommendation 4.2)*

More recently, the ACMA Chair acknowledged that, even with recent strengthening of information requirements in the Telecommunications Consumer Protection Code,

*… there is currently a collection of legacy information requirements upon industry whereby rules exist that require carriage service providers to make information available to consumers on a vast array of topics. These requirements often lack specificity about timing or method. As a result, it is not clear that they are effective consumer protection tools and are probably an unnecessary regulatory overhead. (Chapman, 2013)*

ACCAN supports those calls for a review of the customer information requirements on industry. As ACCAN’s own research has found:

*… there are many indicators that the market is not working for consumers and that they face challenges, detriment, and confusion as they decide what products to buy. (CSaRO and ACCAN 2011, 10)*

Better, clearer and more timely provision of information will ensure a better informed, fairer marketplace for all.

# Glossary

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| AF | *Information on Accessibility Features for Telephone Equipment C625:2009* |
| CCA | *Competition and Consumer Act 2010* |
| CND | Calling Number Display C522:2007 |
| CSP | Carriage Service Provider |
| ECS | Emergency Call Service Requirements C536:2011 |
| IPND | Integrated Public Number Database C555:2008 |
| PAC | Priority Assistance for Life threatening Medical Conditions C609: 2007 |
| SC | Spam Code of Practice 2006 |
| TA | *Telecommunications Act 1997* |
| T(CPSS)A | *Telecommunications (Consumer Protection and Consumer Standards) Act* |
| TCP | Telecommunications Consumer Protection Code C628:2012 |

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1. For example, mobile premium services [↑](#footnote-ref-1)
2. http://www.gizmodo.com.au/2013/06/optus-is-shaking-up-all-of-its-plans-but-data-allowances-are-being-slashed/ [↑](#footnote-ref-2)
3. p.70, *Consumer response to unit pricing for mobile telephony*, School of Management and Marketing, ACCAN and Deakin University, 2014 (unpublished at the time of writing) [↑](#footnote-ref-3)
4. Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108) 2008 [↑](#footnote-ref-4)