

31 August 2021

The Manager
Telecommunications Performance and Regulation Section
Australian Communications and Media Authority
By email: TelcoPerformanceRegulation@acma.gov.au

Dear Sir/Madam

Consumer vulnerability: Expectations for the telecommunications industry – Draft for consultation

Legal Aid NSW welcomes the opportunity to provide comments to the Australian Communications and Media Authority (**ACMA**) on the draft statement of expectations for the telecommunications industry on its interactions with consumers in vulnerable circumstances, as outlined in the ACMA's consultation paper dated July 2021.

Legal Aid NSW has extensive experience assisting some of the most vulnerable consumers in our community, including consumers with cognitive impairment, language or literacy issues, low levels of education, young people, Aboriginal and Torres Strait Islander people, and those experiencing domestic and family violence or elder abuse. We also acknowledge research, which is consistent with the experience of our solicitors, that everyone is likely to experience vulnerable circumstances at some point in their lives, due to common, unavoidable and unpredictable life events such as illness, job loss, financial shocks, the death of a loved one and natural disaster. Life events such as having children, ageing and disability can also contribute to consumer vulnerability.¹ Further, the Consumer Policy Research Centre has found that:

Some vulnerable circumstances are transient and people will move through them with the right support; other circumstances will necessitate longer-term assistance. Risks of consumer vulnerability will also change over time, as a result of regulatory, business, technological and social changes, and new understandings of consumer needs.²

Legal Aid NSW welcomes the ACMA's proposed statement of expectations to encourage and promote better practice from the telecommunications industry. The draft statement of expectations is a positive start, and should set a high benchmark for industry when engaging with consumers experiencing vulnerability.

¹ O'Neill, Emma, 'Exploring regulatory approaches to consumer vulnerability: A report for the Australian Energy Regulator', Consumer Policy Research Centre (1 November 2019) 7.

² Ibid.

While it is not regulatory in nature, the statement of expectations builds on the existing ACMA regulatory guides by identifying priority areas and examples to indicate what is expected of the telecommunications industry, and giving practical guidance on how the industry can meet its obligations under the law and the Telecommunications Consumer Protection Code (**TCP Code**).

We consider that, in order to be effective, the ACMA should put in place systems to actively and consistently monitor the telecommunications industry's adherence to the statement of expectations. This could also help to inform any enforcement action that the ACMA may consider.

Our responses to the questions in the consultation paper are set out below.

Issue 1: Identifying consumers in vulnerable circumstances

Question 1: The ACMA proposes that when identifying consumers who may be vulnerable, telcos should consider consumer vulnerability in terms of the circumstances that create risks of harm, detriment or disadvantage in consumers' interactions with the telecommunications market. Do you agree with this approach? If not, please explain and provide alternative thinking.

Legal Aid NSW agrees with the approach outlined by the ACMA when identifying vulnerable consumers and consumers experiencing vulnerability. We reiterate that the list of factors that may contribute to vulnerability is not exhaustive, and a consumer's experience of vulnerability may not necessarily be static.³

Access to telecommunication services and devices is essential, so it is important to have a broad definition of circumstances that create barriers for consumers experiencing vulnerability when engaging with telecommunications service providers (**telcos**).

Issue 2: Setting expectations for telcos – priority areas

Question 2: Are the ACMA's 5 proposed priority areas appropriate? Are there any other priority areas that should be substituted or included?

Yes, Legal Aid NSW considers that the ACMA's five proposed priority areas, as outlined in the consultation paper, are appropriate.

Question 3: Are the outcomes set out under each priority area appropriate? Are there any additional outcomes that should be specified?

Question 4: Are the examples provided in the statement of expectations appropriate and realistic? Are there any additional examples that would assist telcos in understanding how to achieve the objectives?

Yes, Legal Aid NSW considers that the outcomes and examples set out under each priority area in the statement of expectations are appropriate. We make the following suggestions and comments regarding additional outcomes and examples under each priority area.

³ Ibid.

Priority area 1: Internal business practices

Outcomes

As discussed on page 4 of the consultation paper, there is a diversity of factors that may contribute to vulnerability and a substantial proportion of consumers may be affected at any one time. The barriers faced by our clients are illustrated in the below case study. We suggest that telcos ensure that all staff understand the importance of meeting the needs of vulnerable consumers as well as consumers experiencing vulnerability. Regular and specific training should be provided to all staff at all levels (including senior management) who may interact with vulnerable consumers and consumers experiencing vulnerability.

Mary's story⁴

Mary recently arrived in Australia from Iraq and is on a refugee visa. She has no English language skills.

Mary attended a large telco retail store with a recent acquaintance from her community who spoke English well. Mary's acquaintance had persuaded her to place the mobile phone contract in her name and said he would use the phone and pay the associated bills. Mary's acquaintance was the sole communicator with the telco staff member.

The telco staff member did not arrange an interpreter in order to communicate with Mary. As a consequence, the terms and conditions of the contract were not explained to Mary, she did not understand the implications of having the contract in her name, nor was she made aware of the costs of the contract or when she was required to pay. Mary was not asked to provide any documents verifying her income or confirm that the phone was for her use. The staff member pointed to the place where Mary was required to sign, and she signed the contracts.

After this, Mary's acquaintance left the store with the mobile phone. Mary never had any use of the phone but she incurred a debt of approximately \$2,500.

Examples

Staff training does not focus on consumers self-identifying as vulnerable or experiencing vulnerability.

Priority area 2: Selling and contracting

Outcomes

In our view, a more proactive response is required with respect to selling and contracting by telcos. We suggest that telcos ensure that consumers are made aware of affordable basic products and services, and that telcos actively discourage staff from upselling products and services to vulnerable consumers and consumers experiencing vulnerability. These issues are further illustrated by the following case study.

⁴ All case studies in this submission have been de-identified.

Daisy's story

Daisy, a 20-year-old Aboriginal woman in receipt of a Centrelink Carers Pension, attended a large telco retail store with her 16-year-old sister, Rose. Daisy showed identification documents, but was not asked about her income or required to show any evidence of her ability to afford a mobile phone plan. Instead, she was asked if she thought she could afford the offered plan, which had a minimum monthly charge of \$199, and she said "yes".

Daisy does not recall whether the details of the mobile phone plan were explained to her. She was not made aware that there was a contract for the mobile plan and a separate lease contract for the mobile phone device, and that the mobile plan came with international data roaming, which she did not want or need.

Daisy told the sales representative that the phone was for Rose and Rose actively chose the plan with the most data. Daisy was not offered any alternative or more affordable plans. Rose lost the mobile phone a short time later. Daisy is being pursued by the telco provider for over \$5,500.

Examples

Staff are required to actively inform consumers about affordable, basic products and services upfront, rather than advise consumers of available "alternative or lower-cost options" only once their ability to make payments is established.

Priority area 3: Customer service

Outcomes

While we do not oppose the outcome of training staff to facilitate consumers self-identifying as vulnerable where vulnerability is suspected, we consider that staff training should not emphasise or focus on self-identification, as this approach in itself could be a barrier to such consumers.

Examples

Telcos develop accessible processes to make it easier for consumers to make a request or complaint, and ensure such requests or complaints are directed to a formal, structured internal dispute resolution process. The "consumer interaction channels" include, at a minimum, a telephone number for consumers or their advocates to make a request or complaint. The process does not rely on email only as a means of communication.

As part of the internal dispute resolution process, case managers or customer service specialists are allocated to a consumer's request or complaint, which could include financial hardship requests. This would minimise the challenges faced by vulnerable consumers when they are required to speak with a different person each time they contact their telco.

Reza and Anna's story

Reza and Anna, both clients of Legal Aid NSW's Refugee Service, attended a large telco retail store and each entered into a mobile phone plan, which they were advised would

cost \$68 per month, per phone. They were told by the staff member that the plan would include 4GB of data and unlimited calls on each phone, and that this was a special offer ending that day. However, from the very first bill they received, the amount they owed exceeded the amount that they were told they would be paying.

Reza and Anna accepted the initial explanations of staff at the store that the first bill was high because the cancellation fees of their previous contracts were added, and that the second bill was also high because they had probably gone over their data limit, even though they did not agree that this was the case. When the bills continued to show various amounts exceeding what they were advised, a staff member at the store advised them that they both needed to add additional products to their account to rectify their bills.

Reza and Anna agreed because they trusted the salesperson's advice, but this did not resolve the issue and they continued to receive unexpectedly high bills. Further, they began to notice unknown numbers appearing on their bills. Eventually, they began receiving calls and text messages from the telco provider demanding payment of approximately \$1,570. By this point, staff at the store actively avoided them when they attempted to resolve the issue, and inappropriately advised them not to worry about the calls and text messages, stating "these are just advertisements".

Priority area 4: Financial hardship

Outcomes

We suggest that telcos provide consumers experiencing financial hardship with details of, and referrals to, free financial counselling services.

Bernie's story

Bernie lives in a country town in western NSW. Bernie was experiencing financial hardship and was struggling to pay his contract for his mobile phone handset and the associated plan. Bernie was advised by his telco provider that he was required to pay out his contract for his mobile phone handset in full before the telco would negotiate a payment arrangement for the associated plan.

Examples

Telcos ensure that activating a financial hardship response is not solely dependent on a consumer self-identifying that they are in financial hardship, and avoid reliance on the consumer using "key words" such as "financial hardship". If there is objective evidence of a consumer's financial difficulty, for example, where they have ceased making payments or are enquiring about cheaper plans or products, the telco proactively refers the consumer to specialist staff who can provide assistance with financial hardship. Specialist financial hardship staff form part of the more structured internal dispute resolution process, as discussed above under priority area 3.

Telcos actively make consumers aware of the assistance available from free financial counsellors. These practices are not confined to consumers with special needs or those who express a wish to contact a financial counsellor. That said, the financial hardship

process should be accessible for all consumers, such that consumers should be able to navigate it without an advocate or a financial counsellor.

Priority area 5: Disconnection

Outcomes

To ensure that disconnection is a last resort for vulnerable consumers and consumers experiencing vulnerability, we suggest that telcos ensure that:

- consumers facing disconnection have been offered all appropriate solutions and options, including referrals to free financial counselling, and
- consumers receive confirmation that they will not be disconnected while meeting their obligations under a financial hardship arrangement.

Examples

Telcos provide consumers facing disconnection referrals to free financial counselling.

Thank you for the opportunity to make a submission in response to the consultation paper.

Yours sincerely

Brendan Thomas
Chief Executive Officer