



Cooper Mills Comms Law Bulletin

ACMA 'proposals' to increase pressure on telco service providers

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COOPER

Level 4
459 Little Collins Street
Melbourne VIC 3000
Australia
t: (03) 9866 8850
f: (03) 9645 0069
e: peter.moon@coopermills.com.au
www.coopermills.com.au



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Part A – Introduction

The Australian Communications and Media Authority today foreshadowed six telco / ISP action areas it intends to address.

While the six areas are described as ‘proposals’, ACMA is making it very clear that they will become law.

Chairman Chris Chapman is reported in today’s Age Online as follows:¹

Telcos will be given time to implement ACMA's recommendations in their own self-regulatory industry codes but if they do not do so in a satisfactory way ACMA said it would force them to do so with new regulations.

"The outcomes that we are seeking ... are non-negotiable," Mr Chapman said.



There will be a six-week consultation period after which ACMA expects the industry to begin implementing its recommendations.

"The die is cast, we've put it all out there in the report, the 'guidance' has been provided ... the clock is ticking," he said.

Part B – ACMA’s issues

ACMA has homed in on the following issues.²

- Customers find it difficult to compare different products and choose one that is best for them.
- Customers don’t have good information about products and often don’t understand some important features about their product before they sign up.
- Customers find it difficult to have their questions answered or problems resolved in the time they expect.
- Customers often find it hard to contact their telco provider and to get accurate information.
- Customers often receive higher than expected bills.
- Customers don’t know which telcos offer good customer care.

¹ <http://tiny.cc/abr2r>

² <http://engage.acma.gov.au/reconnecting/have-your-say/>



Part C – Summary of ACMA’s solutions

ACMA proposes:³

- Clearer pricing information in advertisements—all providers must clearly disclose pricing information in their advertisements in a way that will make it easier for consumers to compare plans.
- Better information about plans—all providers must give customers a simple, standard explanation of what is included in a plan, how bills are calculated and what other essential information they need to know about the plan (similar to a ‘product disclosure statement’).
- Better complaints management—all providers must have a standard complaints handling process that meets good practice standards and includes timeframes for dealing with a complaint.
- Tools to monitor usage and expenditure—all providers must offer a way to help customers track how many calls they make and how much data they download during a billing period, to help reduce the risk of bill shock.
- Comparisons between providers— industry will be asked to provide more information on how good their customer care is, particularly how quickly they resolve their customers’ enquiries.
- Changes to the Telecommunications Industry Ombudsman Scheme— to bring the scheme up to best practice standards and to make membership compulsory for service providers.

These are outlined in more detail in Part E below.

Part D – Note the TCP Code review

ACMA’s announcement comes as a new version of the Telecommunications Consumer Protection Code is being worked up by Communications Alliance.

In April we notified clients:

Communications Alliance is developing an ‘upgraded’ Telecommunications Consumer Protection Code that it intends to register with ACMA by August 2011. A draft is expected to be available in May 2011 for public comment during June. Based on a pre-release webinar just conducted, telcos and ISPs (‘CSPs’) should anticipate significant changes to their regulatory and operational environment from September 2011 onwards.

Advertising

- Ban on word ‘cap’ except in case of a true hard cap.
- New rules to mirror undertakings of Telstra / Optus / Vodafone regarding terms like ‘free’, ‘unlimited’, etc.

Sales process

³ <http://engage.acma.gov.au/reconnecting/have-your-say/>



- New code rules will reinforce Australian Consumer Law obligations eg supply of cooling off notice and no supply or payment during cooling off period.
- ‘Summary of Offer’ document to be supplied to new customers before they contract, including contract length, early termination payments, plan inclusions and exclusions, key pricing rates.
- ‘Summary of Offer’ must give information links re spend management.

Billing

- No direct debit extraction until 10 days after customer given bill.
- Itemised details of all charges to be available.
- No billing information charges during first 13 months of contract.
- Back billing period reduced from 190 days to 160.

Credit management

- 5 business days notice of intention to draw down on security.
- More emphasis on spend management tools and information.
- Stronger requirements re Financial Hardship Policy.
- Financial Hardship Policy must be mentioned on disconnection notice and at other points.
- Requirement for internal dispute resolution scheme for billing disputes.
- Debt collection to accord with ACCC ‘best practice’ guidelines.

Customer transfers

- Expect new requirements where customers are acquired by merger / takeover.
- May include contract walk-away rights.

Complaint handling

- Complaints acknowledged within 3 days.
- Normal finalisation period 25 days.
- Refunds / rebates etc to be made within 10 days of resolution.
- Full documentation of Complaint Handling Policy.
- More limits on complaint handling charges.

‘Consumer’

- Under consideration: treating small business as ‘consumer’ if annual spend under \$40,000 (currently \$20,000).

Compliance

- New compliance authority to be established: *Communications Compliance*.
- You will be required to lodge an annual compliance report.
- Compliance report will have to either confirm full compliance, or acknowledge non-compliance and attach a compliance plan.
- Non-compliant CSPs to be ‘named and shamed’ on a web site.
- *Communications Compliance* can investigate compliance via ‘Compliance Monitoring Requests’.



ACMA now says that the new Code will be refused registration if it falls short of its latest requirements. So we expect a delay as Communications Alliance goes back to the drawing board on some issues.

Part E – ACMA’s six ‘proposals’

1. Improved advertising practices

Require carriage service providers (CSPs) to disclose in advertisements about plans that are not subject to a hard cap or shaping, either:

- (a) an effective unit pricing rate and a stated unit pricing rate imposed for each component within the included value of a plan and if that included value is exceeded. The effective unit pricing rate is the amount the consumer actually pays under the plan (e.g. 300 minutes of calls 'within a \$29 plan' would cost 0.10 cents). The stated rate is the rate that is charged for a call (e.g. 80 cents a call plus flag fall). The assumptions on which the effective rate is based must also be clearly disclosed
- (b) the volume of calls, SMS or megabytes a consumer would receive within the included value of a plan and if that included value is exceeded during standard peak times (based on an agreed common unit).

Enhanced rules about advertising practices should also be developed to meet the ACMA's objective.

The comparative rate of charging should also be included in all bills.

2. Improved product disclosure

Require CSPs to provide a critical information disclosure summary to consumers that:

- (a) gives consumers a summary of critical information about their product (e.g. term of the contract, maximum amount payable for early termination, minimum monthly payment)
- (b) is available for different types of products and provides critical information about those products (e.g. voice call costs, SMS costs, data use costs, exclusions)
- (c) provides consumers with non-product specific information (e.g. customer service contact details, access to spend management tools, cooling-off periods, access to internal and external dispute resolution).

3. Performance reporting and customer service charters

Require CSPs that have more than 30,000 (residential/small business) customers to report at regular intervals to the ACMA on:

Customer service performance

- (a) total number of contacts made by existing customers



- (b) number of repeat contacts made by the same customer within a 45-day period and

Complaints-handling performance

- (c) total number of complaints received by a CSP
- (d) total number of that CSP's residential and small business customers.

Encourage CSPs to consider publishing a customer service charter, which includes commitments to a common set of service standards and is presented in a common format by all industry participants. A charter could cover matters such as:

- (e) the channel(s) through which a customer can contact their CSP
- (f) what a customer could expect when making an enquiry using one of those channels, which might include, for instance, timeframes for first response and final resolution
- (g) the format of bills in terms of relevant information and level of detail
- (h) the availability of spend-management tools to enable customers to monitor their usage and financial exposure
- (i) what a customer can expect when they make a complaint (which might include, for instance, when a complaint will be escalated internally for resolution)
- (j) the contact details of the TIO.

4. Expenditure management tools

Require CSPs to offer measures that allow customers to effectively monitor the accumulation of charges during a billing period, in real time. For products not subject to a hard cap or shaping, this should include:

- (a) an equivalent platform-based notification (SMS for phone, email for internet) that alerts consumers at either consumer-nominated or provider-specified expenditure/usage points (e.g. 80 per cent)
- (b) a consumer-nominated expenditure/usage point that cannot be exceeded without their express consent and includes notification at a particular expenditure/usage point
- (c) details about the expenditure/usage point reached, the consequences of any limitations and unavoidable exclusions (e.g. roaming costs).

As a transitional measure to encourage the development of tools, CSPs that do not offer spend management tools would be restricted from recovering an amount in excess of a specified figure in certain circumstances-e.g. 30 per cent over the minimum monthly payment or 30 per cent over the bill for the preceding quarter.

CSPs would also be required to include the comparable rate of charging on all bills.



5. Internal complaints-handling

Require CSPs to implement complaints-handling procedures that:

- (a) adopt the definition of 'complaint' as set out in the Australian Standard for Complaints-handling, AS ISO 10002-2006
- (b) comply with the guiding principles set out in the Australian Standard for visibility, accessibility, responsiveness, objectivity, charging, confidentiality, being customer-focused, accountability and continuous improvement
- (c) establish benchmarks for ensuring timeliness in handling complaints; documenting procedures; and collecting, analysing and reporting complaints information.

6. Changes to the TIO scheme: governance, best practice standards and systemic issue reporting

Recommend that the regulatory framework and/or governance framework of the TIO be amended to better align it with best practice for EDR schemes by creating a unitary governance model with one overseeing body, which would be responsible for:

- (a) appointing the Ombudsman
- (b) dealing with complaints about the TIO scheme
- (c) monitoring and reporting on trends and issues arising from complaints analysis
- (d) monitoring the reporting of systemic issues to regulators
- (e) monitoring the TIO's capacity to manage caseloads.

Membership of the overseeing body would comprise equal numbers of consumer and industry representatives and an independent chair.

Recommend that legislative amendment be considered to:

- (f) prohibit CSPs (that provide services to residential/small business customers) that are not members of the TIO scheme from operating within the telecommunications market
- (g) require all CSPs that provide communications services to consumers to be a member of an EDR scheme that is approved by the ACMA and covers complaints made by retail customers in connection with a telecommunications product/service. Any such amendment should be considered in consultation with the TIO. The ACMA considers that, in the current environment, consumers are best served by having one EDR scheme (such as the TIO scheme) that deals with telecommunications products/services. Criteria to approve an EDR scheme should reflect the DIST Benchmarks for Industry-based Customer Dispute Resolution Schemes.



Recommend that the TIO improve its systemic issue identification and reporting processes by:

- (h) widening the definition of 'systemic issue'
- (i) removing any restrictions on the TIO's ability to commence and conduct investigations about systemic issues
- (j) requiring regular reporting to the ACMA and/or the ACCC on systemic issues that are identified and confirmed within a particular period, together with details of any member that does not rectify a systemic problem to the satisfaction of the TIO
- (k) reporting on systemic issues in its annual report, including the number of potential systemic issues identified, the number of confirmed and resolved systemic issues, and a broad description of the categories into which systemic issues fell during the relevant period.

Part F – What next?



ACMA is 'seeking comments from interested people and groups about those proposed solutions.' The deadline for comments is 5pm on Friday, 15 July 2011.

There is a facility to leave short comments at engage.acma.gov.au/reconnecting/have-your-say. But detailed comments are better expressed as a formal submission.

Part G – Cooper Mills comment

Time and again when justifying these positions, ACMA's chief weapon is an alleged rise in TIO complaints. Industry has a strong suspicion that TIO figures tell an exaggerated story, and now is the time for the hard evidence of that concern to be publicised. Failing that, these 'proposals' are bound to take effect on whole or major part.

On any case, aspects of the 'proposals' would be very expensive and/or impractical to implement.

For instance, the only way that 'supermarket-style unit pricing' could work is if providers are forced to offer more standardised plans, discouraging product flexibility.

As usual, Cooper Mills will be at the leading edge of analysis and advice on this development.

Peter Moon
Erhan Karabardak
Cooper Mills Lawyers