

**COMMUNICATIONS
ALLIANCE LTD**



**Consumer vulnerability: expectations for the
telecommunications industry**

Draft for consultation from the ACMA

COMMUNICATIONS ALLIANCE SUBMISSION

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EXECUTIVE SUMMARY

This submission sets out Communications Alliance's RSP member views on the Statement of Expectations (the Statement). Industry supports the intentions of the Statement, but the ACMA should clearly set out the Statement's regulatory role, and offer further guidance on the balance between privacy, equitable access and consumer protection.

Contextually, it is important to note that there are extensive existing obligations to provide consumers with accurate and understandable information at the point of sale, and telecommunications plans are typically simpler and more flexible than ever before. Additionally, the evolution of digital customer service offerings is supporting increased and easier customer access to assistance.

We have some concerns with the structure used in the consultation paper, in particular that unnecessary information may dilute the impact of the Statement. We recommend, therefore, that the Statement be edited to facilitate comprehension and application, with distinct sections for "Background and Scope" and "Expectations."

Goals and Outcomes should be directly tied to existing obligations, and it must be clearly set out that Examples are informative, but not mandated.

Under "Background and Scope," we encourage the ACMA to work with other relevant regulators to determine the scope of each of their activities and set out a clear regulatory role for the Statement. We also suggest that vulnerability should be considered based on how it impacts a consumer's access to or experience of telecommunications.

Expectations should be outcomes-based, reasonable, and should take into account the complexity of vulnerability, while the Statement should address the roles and responsibilities of both RSPs and consumers and the ACMA should engage in consumer education to support this goal.

The concept of proactive identification of vulnerability is a focus point for further consideration. RSPs should be expected to proactively respond to indicators of vulnerability, and to facilitate customers expressing their needs. The ACMA should provide guidance on how to do this, including balancing privacy and discrimination considerations.

Capturing information is another matter that should get further consideration in the Statement. RSPs should capture information directly relevant to a customer's needs, and not a 'consumer's vulnerability,' and the ACMA should work with the OAIC to provide certainty about how these expectations align with the Australian Privacy Principles.

We generally support the identified priority areas. One specific concern is that while we are supportive of the stated Goal on Selling and Contracting, the risks of discrimination in sales means this section requires more nuanced guidance.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

INTRODUCTION

Industry supports the intentions of the Statement of Expectations. However, the ACMA should clearly set out the Statement's regulatory role, and offer further guidance on the balance between privacy, equitable access and consumer protection.

Communications Alliance welcomes the opportunity to provide this submission in response to the ACMA's Draft for consultation, *Consumer vulnerability: expectations for the telecommunications industry*, as the ACMA works towards publishing a Statement of Expectations (the Statement) for the industry.

As laid out in the ACMA's paper, Retail Service Providers (RSPs) already have extensive consumer protection obligations – and these extend beyond the obligations in the ACMA-enforced *Telecommunications Consumer Protections (TCP) Code*, to include the Australian Consumer Law (ACL) and Disability Discrimination Act (DDA). We fully support the intention of the Statement to ensure consumers experiencing vulnerable circumstances receive appropriate support and assistance, but in light of this complex regulatory environment, it is important to ensure that the Statement has a clear regulatory purpose and that it effectively describes and applies the existing obligations.

The lack of clarity on the Statement's regulatory purpose is one of Industry's primary concerns at this stage in its development, and we strongly encourage the ACMA to more clearly set out its intentions. Additionally, for some of the Priority Areas, we consider more nuanced guidance is required to assist RSPs to walk the balance between privacy, equitable access and consumer protection.

Context

While the remainder of the submission sets out what we consider the ACMA should include in its Statement, we would like to begin by offering some comments on the broader context.

There are extensive obligations to provide consumers with accurate and understandable information at the point of sale, and telecommunications plans are simpler and more flexible than ever before.

In laying out the context for the Statement, the ACMA raises concerns about the complexity of technical and pricing information, and that “consumers may lack the necessary information to make informed decisions.”¹ This section sets out that an information asymmetry is one of the reasons that additional protections may be required.

However, the industry is required to provide a Critical Information Summary (CIS), a Key Facts Sheet (KFS), and has strict rules on the advertising of broadband speeds, provided by the ACCC. While we agree that the existing information could benefit from simplification, when Industry has proposed any streamlining or simplification of these requirements – in particular the CIS or KFS – this has been pushed back on by both the ACMA and consumers. We would strongly support further work to simplify the information to be provided before and at the point of sale.

Additionally, plans are becoming less complex, with an increasing number of month-to-month and unlimited call and data plans on offer.

While these facts do not negate the appropriateness of the Statement, they should be noted when considering the priorities for this work.

The evolution of digital customer service offerings is supporting increased and easier access to assistance.

¹ Consumer vulnerability: expectations for the telecommunications industry, Draft for consultation (Consultation Paper). ACMA. July 2021. p 3

RSPs are offering innovative methods of customer assistance, such as asynchronous messaging, live chat, and more online self-service tools (for example, add data, automatically request a payment extension, or pause a service).

These offerings support people experiencing a range of vulnerabilities, whether they are time poor, prefer to communicate in writing so they can have additional time to consider information or access translation, or are hard of hearing.

In fact, "The Money and Mental Health Policy Institute recommends essential services offer text messaging, mobile apps and web-based interactions, which generally cause less stress for people with and without mental health problems."²

There are also broader benefits to customers from digital communication, which include more consistent identification of urgent complaints (via key-word recognition technology) and smoother hand-offs to relevant teams because the full transcript is included.

Implementation

The ACMA should offer support and further guidance to RSPs as they work to ensure they are meeting the Outcomes.

Vulnerability is complex and diverse, and the ACMA should consider how it can further support RSPs as they come across questions and situations not addressed in the Statement, whether by a public email address where RSPs can contact the ACMA or the provision of information such as Frequently Asked Questions.

One example of helpful guidance on a similar topic is the work AUSTRAC has done to help banks understand how they can comply with their obligations while still assisting customers who don't have conventional forms of ID.³

Future review

The ACMA should set its intentions for the future of the Statement.

The minimum standards and better-practice for appropriately supporting vulnerable consumers is a constantly evolving space. The Statement should not be a 'set and forget' document, but instead should include a clear statement of a future review (particularly if any of the regulatory instruments it is related to are revised, such as the TCP Code, ACL or DDA), along with the consideration of the circumstances in which it would no longer be necessary – for example, if there was sufficient guidance provided in a TCP Code-adjacent document such as an Industry Guidance Note.

² [Exploring regulatory approaches to consumer vulnerability: A report for the AER. Consumer Policy Research Centre \(CPRC\). February 2020. p 46](#)

³ [Identifying Customers who don't have Conventional Forms of ID. AUSTRAC.](#)

STRUCTURE OF THE STATEMENT OF EXPECTATIONS

The Statement of Expectations should be simple and direct to facilitate comprehension and application, with distinct sections for “Background and Scope” and “Expectations.” Goals and Outcomes should be directly tied to existing obligations, and it must be clearly set out that Examples are informative but not mandated.

Communications Alliance is aware that the ACMA is still considering what information in the consultation paper will be carried over to the final Statement of Expectations. In light of that, we have offered some input on what we consider would be a helpful and informative structure for the Statement.

Telecommunications providers are subject to a range of customer protection obligations. To support telcos to understand and implement those obligations, it is preferable for any guidance to be presented in a way that is as straightforward and simplified as possible.

The consultation paper includes a number of sections that would not contribute to helping RSPs understand their obligations. For example, while information on the steps other industries or countries are taking are helpful background for this consultation process, they would not facilitate a clear understanding of the ACMA's expectations.

We do understand that some of the background or contextual information may be useful for further learning or other purposes. It may be appropriate for the ACMA to publish such information on its website or a separate companion paper to communicate it without diluting the Statement.

We've set out a proposed structure for the Statement in Appendix 1, and this is also the structure we have used to present comments in the remainder of this submission. In summary, we view the Statement should be split into 2 overall sections – “Background and Scope” and “Expectations” (could also be titled “Guidance” or “Outcomes,” depending on the final intentions for the Statement).

In contrast, the consultation paper includes references to expectations throughout, such as in “Our Role” (pg 4), while “Our expectations” on pg 11 is under a broader section on “Protecting Vulnerable Consumers” which contains background information. Capturing the expectations in one distinct section will facilitate understanding.

In the “Expectations” section, we recommend more closely tying the stated Goals and Outcomes to existing obligations, to help RSPs better understand how this guidance is related to those obligations.

Examples

While we agree with the setting out of Goals, Outcomes and Examples, there needs to be further clarification on the exact role of the “Examples.”

The Statement must clearly set out that while the Examples are steps that RSPs could potentially take towards the expected Outcomes, they are not the only methods by which these Outcomes can be achieved, and are not mandated. This is not currently clear, as the Draft statement says that “telcos should not feel limited by these examples,” but does not state that RSPs are encouraged to develop other methods by which to satisfy the Goals and Outcomes.

There is regulatory precedent for such a methodology. The National Construction Code sets out “Performance Requirements,” which can be satisfied by following a “Deemed to Satisfy”

solution (i.e., Examples), or a “Performance Solution” (developing another methodology which satisfied the Performance Requirements) or a combination of the two.⁴

Additionally, an outcomes-based methodology is supported in the Consumer Policy Research Centre's (CPRC) report for the Australian Energy Regulator (AER) on regulatory approaches to vulnerability, which states “A focus on customer outcomes, rather than strict rules and regulatory box-ticking, might be able to better deliver the support people actually need, provided it is accompanied by clear and enforceable minimum standards of conduct.”⁵

Finally, implying that RSPs should focus on the steps set out in the Examples could discourage the implementation of methods used in other industries (most relevantly, energy and water) or those that result from work in other countries, including the upcoming ISO standard on “Inclusive service – Identifying and responding to consumers in vulnerable situations.”⁶

Clarifying the intention of the Examples (particularly in contrast to the intention for the expected Outcomes) will also be helpful in resolving the current confusion about the intended regulatory role of the Statement, addressed in the next section.

⁴ [Handbook: Performance Solution Process \(abcb.gov.au\)](#), p 4

⁵ [CPRC](#), p 54

⁶ [ISO - ISO/PC 311 - Vulnerable consumers](#)

BACKGROUND AND SCOPE: PURPOSE

Current obligations

The Statement should identify all relevant obligations, including those outside the purview of the ACMA.

There are extensive consumer protection obligations RSPs must comply with. From an industry education perspective, a key priority of the Statement should be to help telcos understand and comply with their existing obligations. While the ACMA is not the regulator for all of these obligations, it would be appropriate for the ACMA to work with all relevant regulators to create clear and practical guidance that takes into account the complex network of rules and laws to be considered.

As outlined in the consultation paper, many of these obligations are set out in the TCP Code. However, there are also obligations in the ACL relating to unfair contract terms, unconscionable conduct, misrepresentations, misleading and deceptive conduct, consumer guarantees and unsolicited selling. Many of these directly relate to vulnerable consumers, as the ACCC has made clear in its guidance currently titled "Don't Take Advantage of Disadvantage." Additionally, RSPs must comply with the Disability Discrimination Act (DDA), which makes it unlawful to discriminate in the provision of goods and services, such as...telecommunications services."⁷

The Statement is an opportunity to clarify how the TCP Code and the ACMA's enforcement role fit and interact with these other obligations, which is discussed in the following sections, and it would be extremely helpful to set out all of these related obligations in one location.

Role of the ACMA

The ACMA should work with other relevant regulators to determine scopes of each of their activities, and coordinate on priorities.

Telecommunications is a sector with multiple regulators and a complex set of regulatory obligations. Most relevant to this consultation, in addition to the ACMA, is the ACCC and its enforcement of the ACL, but the Office of the Australian Information Commissioner and the Human Rights Commission also enforce various relevant obligations, such as the DDA and the Privacy Act.

While it would be ideal if RSPs could rely on a principle that by abiding by one regulator's set of rules or guidance they would be fully compliant with the full set of obligations, this is unfortunately not the case. Even slight differences in definitions or interpretations can cause – at minimum – confusion and additional regulatory burden, and in extreme cases, can set regulated entities up for failure. This risk is particularly exacerbated for smaller RSPs who do not have extensive legal and regulatory resources. All parties – RSPs, consumers and regulators – benefit from clear, aligned regulations and guidance and efficient use of resources.

At this point in time, we are unclear on what the ACMA's overall consumer vulnerability strategy and scope is, and how this Statement is intended to interact with the previously identified range of obligations.

One solution to this would be a joint statement with the relevant regulators setting out each regulator's relevant scopes and how they will work to prevent duplication. It would be preferable for this go to into detail – for example, setting out that if RSPs are achieving the Goals and Outcomes set in the ACMA's Statement of Expectation, they will be considered to

⁷ [Disability discrimination \(humanrights.gov.au\)](https://www.humanrights.gov.au), p 5

have appropriately fulfilled the expectations set out in the ACCC's Don't Take Advantage of Disadvantage Guidance (or, if not – what parts of the ACCC's Guidance are addressed by the Statement, and what parts would still need to be considered). Some of this may be resolved by what is set out in a Memorandum of Understanding between the ACCC and the ACMA, but we have not been able to locate such a document.

As further discussed in the section on Priority Area 2: Selling and Contracting, we also have concerns that some steps suggested by the Statement may come into conflict with the DDA. Clarification issued jointly by the Human Rights Commission and the ACMA on these issues would help both RSPs and consumers understand the balance of rights and responsibilities here.

Additionally, coordination between these regulators on priority setting for compliance and enforcement going forward would be beneficial. If all parties were to collaborate to identify specific areas of concern, this would allow industry to appropriately direct resources in a practical and manageable way. Prioritisation is important – the CPRC report states that “Although anyone can experience vulnerability at some point in their lives, regulators need to be able to prioritise their vulnerability work using data analysis and other tools, to ensure expectations are clear and their work is manageable and impactful.”⁸

Finally, we recommend the ACMA communicate with the AER as they work through their vulnerability strategy. While not directly relevant for this Statement of Expectations, the growing number of RSPs who also offer energy services means that consideration should be given to alignment between these industries.

Intention of the Statement

There should be a clear regulatory role for the Statement.

While industry supports the ACMA setting out its expectations of RSPs as regarding vulnerable consumers, there is significant confusion within industry at this point on the exact status of the Statement of Expectations – that is to say, what regulatory function the ACMA intends.

Part of this confusion comes from language used in the draft Statement, which ranges from referencing “better practice,” to “expectations,” and includes language such as “should” and “at a minimum.”

If the Statement has two intentions – one being to set out how the ACMA interprets RSP's legal obligations (and therefore will enforce those obligations), and the other being on educating and encouraging industry to adopt best practice, then the relevant information for each of those must be clearly identified and set out in distinct sections or sub-sections.

The ACMA should also clarify the Statement's relationship with the TCP Code (and, where possible or relevant, the other regulatory obligations addressed in the previous section). Is the Statement intended specifically as guidance on how to comply with the obligations in the Code? Or is it intended to provide guidance on obligations set in the Code and other instruments? In either case, as discussed in the section on the structure of the Statement, setting out direct connections between existing obligations and the Goals and Outcomes would be helpful.

Scope of application

The Statement should set out its scope as regards small business consumers. If it is also intended to apply to small businesses, specific guidance needs to be developed and included. It might also address questions of what telecommunications services are captured.

⁸ [CPRC](#), p 8

The TCP Code and many of the other relevant legislation and regulations apply to both residential and small business consumers (noting that each instrument likely uses different definitions of small business).

It is currently unclear if the Statement is intended to apply to both residential and small business consumers, or only residential consumers. Assisting small business customers can include additional levels of complexity because of the nature of the contracts or services required. The scope should be clearly set out, and if it does capture small business consumers, there should be some consideration of what specific challenges or further guidance would be appropriate.

Additionally, RSPs provide a variety of services beyond essential telecommunications services such as streaming, music and loyalty programs. In some cases, a distinction should be made between the expectations for these services – for example, restricting a streaming service in the case of non-payment is a substantively different action than restricting a phone or broadband service. It would be helpful if the ACMA noted an understanding of these differences.

BACKGROUND AND SCOPE: VULNERABILITY AND TELECOMMUNICATIONS

Background

The Statement should include a short explanation on the importance of considering vulnerability when providing telecommunications services.

As previously noted, the extensive information included in the consultation paper would likely dilute the effectiveness of the Statement – however, we do agree that it would be appropriate to include a short section explaining the importance of considering vulnerability when providing telecommunications.

What is vulnerability?

Vulnerability should be considered based on how it impacts a consumer's access to or experience of telecommunications.

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.

While we agree with the ACMA's approach to focus specifically on the risks of harm, detriment or disadvantage, we think there could be further focus on the specific impacts of a consumer's access or experience, and less focus on the circumstances themselves.

Using this framing in the Statement would set out the actual impacts on both the consumer and the RSP as directly related to their interactions, and not the nature of the vulnerability itself.

For example, someone may need to be communicated with only in writing – this could be because they are deaf or hard of hearing and don't have access to TTY, or because they have memory impairment. The reason for the need is less relevant than the action that needs to be taken.

Conversely, this also allows an RSP to accurately adapt to a person's needs, instead of making assumptions based on a vulnerability. For example, often people experiencing domestic and family violence face financial challenges and may need financial hardship assistance. However, that may not always be the case – someone fleeing such a situation may have full access to their financial resources and wish to access a new or additional service to stay connected, but they may need additional security provisions placed on their account. By discussing vulnerability in the Statement in light of the steps RSPs need to take, this will facilitate appropriate assistance and recording of such needs (further discussed in the section on Priority Area 3: Customer Service).

Additionally, both the ACMA and RSPs taking this approach could help prevent risks of discrimination or inappropriate assumptions.

There are many cases where technology is helpful to people with vulnerabilities – whether that be someone from a CALD community having access to instant translation, or someone with limited mobility using technology to attend work meetings – and facilitating access to appropriate products and services is important.

However, the draft Statement could be interpreted as expecting RSPs to limit their selling to vulnerable consumers – despite the fact that a vulnerability does not necessarily mean someone has limited financial means, or that they have limited ability to understand contracts or technology.

Focusing on the specific recommended adaptation (e.g. – for someone who is vision-impaired, ensure all correspondence is sent electronically so it can be read with a screen-reader) would help avoid the misunderstanding that a circumstance identified as a vulnerability in the consultation paper should create barriers to access (e.g. – a salesperson assuming that because someone is vision-impaired, they need to ask them additional questions about their income).

The CPRC report sets out how this approach can work better for consumers as well, as “Customers may be able to communicate their needs in other ways; for example, by identifying the type of support they need, such as more time to pay, some breathing space, or communication via a third party or a particular mode of communication.”⁹

The Statement should not only educate RSPs on the diversity of vulnerability, but help them consider it in a way that translates directly to what steps they should take.

⁹ [CPRC](#), p 52

EXPECTATIONS: OVERVIEW

Expectations should be outcomes based, reasonable, and take into account the complexity of vulnerability.

As addressed in the section on "Structure," expectations are set out in multiple locations. The consultation paper/draft Statement appears to set out two overarching statements:

"We expect vulnerable consumers to receive a level of customer care that is appropriate to enable them to effectively select telecommunications products and services suited to their needs, and to manage these services efficiently,"¹⁰ and;

"We expect telcos to:

- > be proactive in identifying and responding to consumers in vulnerable circumstances
- > have better-practice policies and processes in place to assist vulnerable consumers to gain and maintain access to telecommunications services that meet their needs and circumstances
- > consider how best to support vulnerable consumers in their business improvement or business strategy decisions."¹¹

Overall, we support the intention of these expectations, but recommend that these statements be combined (or only one of them used) for clarity.

However, the use of 'better-practice' in the second bullet point will create significant confusion on what are the obligations and expectations for RSPs, versus what steps they could take if they wished to go beyond those. 'Better-practice' should be removed, or replaced with 'appropriate' or similar.

Additionally, there is some concern that these statements do not take into account what is reasonable and possible for an RSP to do.

For example, the second point may be taken to mean that an RSP must be in a place to be able to provide access to a service that meets a customer's needs and circumstances, even if that is not technically or commercially feasible – for example, an RSP that only provides broadband should not be expected to assist in the provision of a mobile service, or if a consumer (not an existing customer) is in a circumstance where a higher cost plan (such as high data limits) is needed but they are unable to afford it, there should be an acknowledgement that such provision would not be reasonable.

The third bullet point is also concerning in that it appears to apply to commercial decisions, or parts of the business that have no impact on or interaction with customers. That bullet point does not appear necessary, in that it is captured by the first two points, however, if it is retained it would be more appropriate to state "Consider how best to support vulnerable consumers in relevant business decisions."

¹⁰ Consultation paper, pg 4

¹¹ Consultation paper, pg 11

EXPECTATIONS: IDENTIFYING VULNERABILITY

Shared responsibility

The Statement should consider the roles and responsibilities of both RSPs and consumers. The ACMA should engage in consumer education to support this goal.

RSPs can most effectively and appropriately assist customers if they proactively and accurately identify their needs, from point of sale to communication needs and a request for Financial Hardship assistance.

The Statement should set out shared responsibilities for both parties. For example, where there is an interaction at a point of sale, the RSP should inquire after the customer's needs and provide accurate information in response to those needs, while a customer has a responsibility to provide accurate information in response to inquiries about income as part of a credit check.

It would also be helpful for the ACMA to help industry's attempts to educate consumers on these shared responsibilities, such as informing consumers that they should talk to their RSP about specific communication needs, security issues, financial hardship assistance or other relevant matters.

In conjunction, there needs to be consumer education about the fact that they may be asked questions by their RSP they are not used to. For example, we are aware that many consumers objected to the additional questions asked following the introduction of more stringent credit check rules in the 2019 revision of the TCP Code. It is likely that one of the outcomes of this Statement will be more RSPs asking follow-up questions in response to indicators of vulnerability (further discussed in the next section). The ACMA should help educate the public that this is a regulatory expectation, and one designed to assist vulnerable consumers.

Proactive identification

RSPs should be expected to proactively respond to indicators of vulnerability, and to facilitate customers expressing their needs. The ACMA should provide guidance on how to do this, including balancing privacy and discrimination considerations.

Along with clarifying the regulatory role of the Statement, proactively identifying vulnerability is the other key point of concern for industry at this time.

We agree that RSPs have a responsibility to proactively respond to indicators of vulnerability, including being sensitive and aware of those indicators. However, it is important that there is not an expectation that RSPs ask questions of all consumers about the possibility of vulnerability, without any indicator or other reason to do so. This work already requires significant consideration of the balance between privacy and protection, and that further step would be a gross invasion of privacy.

The Statement should provide further information on the balance between privacy and protection, including guidance that has been developed in consultation with the Human Rights Commission, so RSPs can be assured that if they choose to follow the specific examples provided by the ACMA in order to achieve the set outcomes, they will not be in breach of other protections.

Additionally, the ACMA should take into consideration the large number of small and medium RSPs operating who will not have extensive experience or resources in this area. While it may not be appropriate for the Statement itself, the ACMA should develop and provide resources on the types of indicators that may be relevant – and equally as

important, what kinds of questions are appropriate to ask in response. These types of conversations are sensitive and can be challenging for both the consumer and the RSP, and the ACMA has an opportunity to provide guidance to facilitate better outcomes for all parties.

Capturing information

RSPs should capture information directly relevant to a customer's needs, and not a 'consumer's vulnerability.' The ACMA should work with the OAIC to provide certainty about how these expectations align with the Australian Privacy Principles.

Capturing information on a person's vulnerable circumstances is a complex topic, fraught with potential risk. The Statement should provide more guidance on this issue in this overall section, instead of solely within the section on Customer Service.

As discussed in the section on "What is vulnerability," the relevant information for an RSP to capture is not a customer's circumstances, but instead what specific adaptations to service, communication methods or other areas need to be changed. While some customers may be comfortable with information about their circumstances being recorded, this is unlikely to be true for all customers, and it should not be set out as an example or expectation in the Statement.

The ACMA also needs to make allowances for the circumstances that some consumers may not wish any information to be captured, or that they may discuss a circumstance with an RSP staff but specify that they don't want any different treatment.

Specifically, the two relevant Examples in Priority Area 3: Customer service are not appropriate. If an RSP were to choose to comply with the outcomes by designing a CRM and systems to record specific information, it should not be to record a "consumer's vulnerability," but instead to record their specific needs. The following example to "Develop and track indicators about vulnerable consumers' experience" also raises serious privacy concerns.

Finally, the Statement should include guidance developed jointly with the OAIC (and potentially the Human Rights Commission or other relevant bodies) to ensure that an RSP complying with any Outcomes, or applying any Examples in the Statement, does not then risk breaching other relevant obligations.

EXPECTATIONS: PRIORITY AREAS

We generally support the identified priority areas. Each Goal should be directly tied to existing obligations.

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

We consider the priority areas to be largely appropriate. However, there is some consideration that "Internal business practices" could instead be spread throughout the priority areas (or, alternatively, that references to internal practices such as training in the other priority areas should be moved to internal business practices).

Also, there should be further consideration of both risks at the point of transfer, and security concerns (privacy, cyber-security and fraud). These may not be appropriate as new priority areas, but need to be discussed and potentially addressed within the Statement.

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

Each section on a Priority Area should contain specific information on the related obligations, and explain how the Goal and Outcomes are tied to those obligations. For example, it is reasonable to assume that the Goal and Outcomes under Selling and Contracting are setting out how the ACMA interprets clearly the requirements under 4.5, Responsible approach to Selling in the TCP Code, but there are additional relevant obligations, such as those under the Disability Discrimination Act that should be referenced as well. As another example, the Goal and Outcomes under Priority Area 3, Customer Service, likely relate to a larger list of obligations, and it would be helpful to understand exactly which rules it is referencing.

This will both help RSPs further understand their existing obligations and clarify the regulatory intention of the Statement.

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?

In the following sections, we have commented on any Examples that we consider may not be appropriate or realistic.

Priority Area 1: Internal Business Practices

As noted, we are not entirely clear on the necessity of this Priority Area, as it is largely covered under each of the other Priority Areas canvassing the customer journey.

However, if it is to be retained, the language of the Goal should be amended, as it currently references 'better-practice.' As previously discussed, the Statement should have a clear regulatory intention, and in order to be effective, the Goals and Outcomes should be focused on explaining and setting expectations around obligations. Using language such as 'better-practice' will create confusion on the legal obligations.

For the Examples, we are not objecting to the example of providing training every 12 months, but we would ask if there is evidence or research to support this step as providing positive outcomes. In general, we consider Examples should be evidence-based to ensure that if

RSPs choose to use resources on implementing one, they are using those resources in the best and most effective ways possible.

Priority Area 2: Selling and contracting

While we are supportive of the stated Goal, the risks of discrimination in sales means this section requires more nuanced guidance.

There is a difficult balance to strike between ensuring that a customer is sold a product appropriate to their needs and circumstances and not discriminating against a customer or preventing them from purchasing something they wish to do.

The intersection between the Disability Discrimination Act and these protections is an important consideration. We have raised some specific concerns in the following sections, but we recommend that further guidance be provided in this section of the Statement – potentially via case studies or other methods – to help illustrate how RSPs can comply with both their obligations under the TCP Code and the DDA.

Outcome - Upselling

While we support the set Outcome as it relates to the Goal, there is some concern about the idea of placing a blanket ban on “upselling to vulnerable consumers.” This could be resolved by including the word “inappropriately” in the Outcome (and relevant Example).

As previously discussed, a vulnerability does not automatically mean someone is necessarily financially vulnerable, and in fact, ‘upselling’ may be providing an appropriate product. For example, some smart phones may have specific features that would increase ease of use for someone with a physical or sensory impairment, and a customer service representative should be able to inform the customer of that availability. Or, with the emergence of managed smart home services, this may be something that would be very useful to someone with limited mobility or a cognitive impairment.

However, sales representatives may choose not to provide this information, or even feel uncomfortable selling to, someone who presents as being in vulnerable circumstances depending on the guidance provided by an RSP. This would mean that someone presenting with a vulnerability may not receive the same service as another individual.

Outcome – Suitable Service or Product

While it is clearly not the intention of this Outcome, an unintended consequence could be that sales representatives are unwilling to sell devices or products that do not seem suitable for someone’s needs, even if that customer is clear on what they are asking for. This could also occur through online sales, if for example a mobile provider were to do an address check to ensure that coverage is available at that person’s location. While it may be helpful to provide that information, someone may wish to obtain a service even if they don’t have coverage at home so they can use it when commuting, at work, travelling, or otherwise.

There should be an acknowledgement that providing a consumer with information about the product or service most suited to the needs they have described is sufficient, and that it would not be appropriate to stop someone from obtaining a service or product.

Example – Plain Language

The extensive legal requirements placed on contracting means it is typically not possible to create standard contracts in plain English. While it may be useful to provide a version of a contract in plain English, this raises questions of if doing so would risk not providing them with the full set of information, and if this could be considered discrimination. This should be further considered by the ACMA before determining if this is an appropriate example.

Additionally, it is worth noting that contracts are subject to sufficient existing regulatory oversight, through the ACCC and various state laws (for example, the NSW law regarding substantially prejudicial terms), and it may not be necessary to include this example.

We would, however, support further discussions with the ACMA on how the Critical Information Summary and the Key Facts Sheet could be simplified – this may result in a better outcome for consumers.

Priority Area 3: Customer service

Once again, we are supportive of this Goal and Outcomes. Our key concerns with this section are addressed in the sections on “Proactive identification” and “Capturing information.”

Priority Area 4: Financial Hardship

We support the Goal and Outcomes set here, and would strongly encourage the ACMA to include a direct reference to Chapter 7 of the TCP Code, which sets out the extensive Financial Hardship obligations and protections RSPs must already abide by.

However, we do note that the ACMA should clarify that its expectations on flexibility of payment and arrangements allow for what is practicable for an RSP to implement. For example, moving to cheaper contracts may not be possible if there is not a cheaper service.

Additionally, some of the examples use language such as “should,” which creates confusion on the status of the Examples. The language used for all examples should clarify their role as optional methods by which to achieve the stated Outcomes.

Finally, we are concerned by the ACMA's reference to Financial Counselling Australia's survey in the background section on Financial Hardship (page 11). This survey was provided to Financial Counsellors with the explicit context of making a case for telecommunications providers to participate in a Government funding model for financial counselling. While we support and continue to engage in discussions about equitable and stable funding for financial counselling, the bias inherent in such a survey means that the ACMA should instead rely on their extensive data on Financial Hardship that they have collected via the regulatory process when considering what improvements need to be made to Financial Hardship practices.

Priority Area 5: Disconnection

We support this Goal, and note that disconnections are always a last resort for providers, with existing protections set out in the TCP Code.

APPENDIX 1 – PROPOSED STRUCTURE

As mentioned on page 5, below is the structure we proposed for the Statement of Expectations, to ensure expectations are clearly captured in a distinct section and that only necessary information is included to facilitate uptake.

BACKGROUND AND SCOPE

Purpose

Current obligations
Role of the ACMA
Intention of the Statement
Scope of application

Vulnerability And Telecommunications

Background
What is vulnerability?

EXPECTATIONS

Overview

Identifying Vulnerability

Shared responsibility
Proactive identification
Capturing information

Priority Areas

Priority Area 1: Internal Business Practices
Priority Area 2: Selling and contracting
Priority Area 3: Customer service
Priority Area 4: Financial Hardship
Priority Area 5: Disconnection



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