

**COMMUNICATIONS  
ALLIANCE LTD**



**Response to the ACMA Discussion Paper:**

**Post-implementation review of the  
NBN Consumer Experience Rules**

COMMUNICATIONS ALLIANCE SUBMISSION

5 September 2019

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## INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the ACMA Discussion Paper Post-implementation review of the NBN consumer experience rules.

Communications Alliance and our Carriage Service Provider (CSP) members engaged extensively and collaboratively with the ACMA during the first half of 2018, in an attempt to ensure that the planned new rules were operationally practicable, proportionate and targeted to achieve the stated objective of improving the experience of consumers migrating to NBN-based networks.

We agree it is now timely to examine whether the rules are achieving their objectives and whether their efficiency and effectiveness can be improved.

Given that the majority of the rules are focused on consumer experience during the roll-out phase of the NBN – a task that is scheduled to be largely completed during 2020 - we believe it is also prudent to consider the process and schedule for 'sunsetting' some of the instruments once their relevance is diminished by the passage of time and network migration.

In the case of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (Complaints Handling Standard), which was substantially uplifted from Industry's *Telecommunications Consumer Protections (TCP) Code, C628:2015*, Industry believes there is a case for folding the Standard back into the co-regulatory Code at the earliest convenient time (the relevant chapter of the Code having been excised upon the making of the Standard).

### **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>.

# 1. Complaints Handling Standard

## Service Provider Complaints Handling Policies

It appears that most, if not all, large CSPs have compliant complaint handling policies in place. It is notable that the ACMA had only one investigation result in a finding of a failure to meet the Complaints Handling Standard in the most recent quarter.

In addition to the high levels of compliance, the ongoing decreases in complaints being escalated to the TIO (shown both by the ACMA's Telecommunication complaints handling report<sup>1</sup> and the quarterly Complaints in Context report<sup>2</sup>) demonstrate that consumer's complaints are increasingly being appropriately handled by their providers. With this in mind, it is an appropriate opportunity to review the Complaints Handling Standard.

This is particularly important, because the level of prescription contained in the Standard is considered less than ideal from an operational perspective, as discussed later in this submission, and this can create negative impacts on consumers.

Communications Alliance is in the process of developing a Complaints Handling Policy template, designed to be of particular assistance to smaller CSPs. We expect to complete this task during September.

## Timeframe Provisions

Industry understands the ACMA's desire to enshrine clear timeframes in the Standard, to give consumers greater clarity and certainty as to when and how they will receive acknowledgment and responses from service providers after lodging a complaint.

The level of prescription in the Standard does not always, however, match well with the way that some complaints are successfully handled by providers, given the vast array of different factors and circumstances that can lie behind different complaints.

Given the laudable emphasis placed on 'outcomes-based regulation' by the ACMA in recent commentary, it would be helpful to see the regulator acknowledge that there will be cases where an alternative approach to resolving the issues behind a complaint will be deemed to be compliant with the Standard, even if the actions taken do not precisely follow the dictates of the Standard.

## Cooperation Among Supply Chain Participants

During the period since the making of the Standard, CSPs and nbn have on numerous occasions made use of the provisions calling for reasonable assistance to be rendered by wholesalers, to help resolve consumer complaints.

Some CSPs maintain that the provisions are, however, compromised by the fact that nbn is not subject to the same timeframe requirements as are CSPs.

nbn contends that it continues to actively engage with its CSP partners to effect ongoing improvements that will further consumers' experience under the framework of the Standard, but believes any greater prescription to the reasonable assistance provisions would be likely to have unintended negative consequences on the timeframe in which retail CSPs themselves would have to react within.

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<sup>1</sup> [https://www.acma.gov.au/theACMA/telecommunications-complaints-handling?utm\\_medium=email&utm\\_campaign=Telecommunications%20complaints%20handling%20report%20Research&utm\\_content=Telecommunications%20complaints%20handling%20report%20Research&utm\\_term=Telecommunications%20complaints%20handling%20report](https://www.acma.gov.au/theACMA/telecommunications-complaints-handling?utm_medium=email&utm_campaign=Telecommunications%20complaints%20handling%20report%20Research&utm_content=Telecommunications%20complaints%20handling%20report%20Research&utm_term=Telecommunications%20complaints%20handling%20report)

<sup>2</sup> <https://www.commsalliance.com.au/Documents/Publications-by-Topic/CiC-Reports>

## **Definition of a Complaint**

We have two proposals in this regard:

- i) Replace 'dissatisfaction' with 'grievance' in the definition of a complaint.

The rationale for this proposal is that it will improve the degree of uniformity with which providers classify 'complaints' – the differing methodologies among different providers at present distort the comparability of data captured by the Record Keeping Rules (RKR). Using the term 'grievance' will better keep initial customer concerns, that are not complaints, away from cluttering complaints data.

- ii) Remove paragraph 8 (1)(k) in Part 2 – Complaints handling process.

The rationale here is that, if it has not become clear to the agent that the nature, content and/or tone of the conversation constitutes a complaint then, in all probability, it does not meet the definition of a complaint. The definition already contains "...unless a consumer advises that they want that call treated as a complaint...". It is human nature that if a customer is asked if they want to have the issues classified as a complaint, they will usually agree to do so. This paragraph has the potential to skew the complaints data by adding records that should not be included.

## **Restoring the Complaint Handling Standard to the TCP Code**

A revised and strengthened TCP Code was registered by the ACMA on 1 July 2019, following a successful revision process involving consumer representatives, the ACMA, the ACCC, Industry, the Department of Communications and the Arts and the general public. There is an obvious hole in the revised Code – the Complaint Handling chapter – which was removed to avoid any risk of conflict with the respective Standard.

To make it easier for Industry players to work on compliance with a single, comprehensive set of consumer protection provisions, we recommend that the Standard be reintegrated with the Code at the next available opportunity – such as in conjunction with an amendment to the Code, which is often required between major revisions of the instrument. This action would in no way reduce the enforceability of the complaint handling rules.

## 2. Consumer Information Standard

Consumers need to have access to appropriate and relevant information about their telecommunications products and services, already largely provided through strict rules about advertising and Critical Information Summaries in the TCP Code and the Australian Consumer Law (ACL). However, Industry acknowledges that additional information may be needed during the adoption of new technologies such as during the migration to the NBN.

Industry appreciates that many of the recommendations raised in our [May 2018 submission](#) were adopted, but does retain the view that the Standard should have been outcomes-based, allowing CSPs to engage with their customers in the most efficient and effective manner.

However, the work – accompanied by significant costs – that has already been undertaken in the development of Key Facts Sheets means that it is more appropriate for our submission to focus on specific changes which would allow for a more outcomes-based approach, while not requiring specific changes to Key Facts Sheets that would not otherwise be changed.

### Recommended changes

#### Alignment with ACCC Broadband Speed Claims Industry Guidance:

In August 2017, the ACCC published its Broadband Speed Claims Industry Guidance and many CSPs have already altered their advertising accordingly to follow the ACCC Guidance, to reduce the risk of enforcement action on the basis that their advertising could be deemed misleading. Consequently, with respect to speed claims, it is important to ensure that the Consumer Information Standard does not introduce additional or, worse, contradictory or conflicting requirements. It is key that CSPs complying with the Standard are not adjudged to have fallen short of the Guidance, and vice-versa, where the requirements of the Standard and the Guidance relate to essentially the same matters e.g. regarding statements around speed tiers and typical busy hour speeds.

Against this background, we note that paragraph 8(a) of the Standard requires CSPs (if they are using speed tier information to describe NBN consumer plans in their advertising) to state that “actual speeds experienced are likely to be lower”. However, item 5.9 of the ACCC Guidance indicates that CSPs are acting in line with the principle of not misleading consumers where they include “a statement that this [the maximum attainable line speed of the underlying wholesale access network] is an ‘off peak’ measure only” (and a numerical representation of typical busy period speed). The two requirements are not the same as the ACCC Guidance is contingent on CSPs advertising speed tiers whereas paragraph 8(b) of the Standard is not. As many CSPs have implemented measures to comply with the ACCC Guidance in their advertising and to avoid confusing consumers by changing established advertising practices, we request that the Standard adopt the same language as the ACCC Guidance i.e. only where CSPs use speed tiers to describe the consumer plan in their advertising should they be required to indicate that this is an off-peak measure only and provide a typical busy period speed in accordance with the ACCC Guidance.

#### Formatting and content of information

While Industry views that the Standard was not the most efficient or effective way to provide consumers with the appropriate information, as it is currently in place, we are proposing

specific improvements for the interim period before the end of the rollout and migration period.<sup>3</sup>

The prescriptive nature of the Standard remains a concern, however, and we recommend that there be some additional flexibility – without mandating specific changes that would require re-drafting of current Key Facts Sheets.

The Key Facts Sheet is required to include a significant amount of information. In combination with the font sizing and length specified in paragraph 1 (a) of the Standard, CSPs are prevented from adding any specific information relevant to their customers or the product. This could include information to address the ACCC Broadband Speed Guidelines.

To allow for this, we believe the following options should be considered:

- i) Allowing the Key Facts Sheet to be extended to two pages, with information the CSP “determines would be useful to the Consumer”: this is established language for these circumstances, used in 4.2.4 b) of the TCP Code in regard to the Critical Information Summary.
- ii) Use outcomes-based regulation in regard to the formatting, mandating that the Key Facts Sheet must be legible to the average consumer when printed, instead of specifying the font size.
- iii) Allowing CSPs to provide links to further information for consumers, instead of including all details in each Key Facts Sheet. This could include:
  - o Section 10 should allow for providers to call attention for anyone who uses a medical or security alarms to a link or phone number where they can access the relevant information.
  - o *9(b): state that other factors at the consumer's premises can affect or reduce the speed or performance of their NBN broadband service, **and provide the following information or a link or phone number where the following information can be obtained:** common examples of such factors, ~~and state~~ what actions consumers could take to reduce the impact of those factors.*

This would allow the information to be updated on a regular basis as new information is discovered, information is developed, or new programs become available to consumers to help them with these factors.

## Future plans

The consultation paper outlines that the goal of the Consumer Information Standard is to ensure consumers receive appropriate pre-sale information and advice to:

- a. Prepare for migration to the NBN; and
- b. Make informed choices when choosing a suitable NBN service plan

As addressed in the conclusion to this submission, the Standard should be sunsetted with the end of the migration as the first goal will no longer be relevant. At this time, Australians will be familiar with relevant speed information, and persons with security or medical alert systems will have made appropriate arrangements.

As to the second goal of the Standard, this can be – and largely already is – addressed by other instruments, including the ACL and the ACCC's Broadband Speed Guidelines. The consultation paper also mentions information nbn has made available to consumers, and ongoing educational efforts.

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<sup>3</sup> See pages 6-11 of the 2018 Communications Alliance submission on this topic for our original concerns. Some of these were addressed by the ACMA in the final version of the Standard, and some remain.  
[https://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0017/60209/180511\\_CA-Submission\\_ACMA-Paper-Part-2-Line-Testing-Service-Continuity\\_submitted.pdf](https://www.commsalliance.com.au/_data/assets/pdf_file/0017/60209/180511_CA-Submission_ACMA-Paper-Part-2-Line-Testing-Service-Continuity_submitted.pdf)

If the ACMA identifies any outstanding problems which require regulatory intervention, we recommend considering if those could be resolved through the Critical Information Summary, ensuring that consumers are provided with all information required for their service in one document. For example, the TCP Code already mandates that the Critical Information Summary include information similar to that required by the Standard for broadband services not delivered over the NBN<sup>4</sup> – this could be revised to apply to all fixed broadband services if deemed necessary.

### **3. Service Continuity Standard and Service Migration Determination**

#### **Outcomes and operation**

The consultation paper requests feedback on the efficiency and efficacy of the rules.

Similar to the Consumer Information Standard, Industry retains some of the general concerns originally put forward during the creation of these instruments, but appreciates that the ACMA did take into account many of the recommendations provided by Industry in those consultations.<sup>5</sup> However, the prescriptiveness in the final instruments is creating unnecessary costs – outcomes-based rules would have created better outcomes for consumers with lower resourcing and costs. Additionally, having the rules split into two instruments (with overlap) causes confusion, particularly considering the current churn in the market.

Considering that the rules will not be relevant following the end of the migration period, and that Industry has already invested significantly in creating the required procedures, this submission focuses on specific, clear and easy to implement changes.

#### **Recommendations**

##### Circumstances where an NBN CSP must not charge a consumer for an NBN service

Section 15 of the Determination and Section 21 of the Standard, regarding when a CSP must not charge a consumer for an NBN service, overlap each other and thus create duplication and confusion.

Section 21 of the Standard requires that a CSP does not charge for an NBN service where it supplies a legacy or interim service. However, section 15 of the Determination requires that a CSP cannot charge until an NBN service is operational (and for FTN/B/C lines that line capability notification requirements are met). Neither section is limited in its application, therefore, the obligations in section 21 of the Standard appear to be subsumed by the broader obligations in section 15 of the Determination.

Thus, section 21 of the Standard should be removed, retaining section 15 of the Determination, which contains equivalent protections (with more detail).

##### Service Continuity Standard

Section 23(5)(c) requires technical audits to include “the measures that can be instituted to avoid similar problems in other cases.” There are not many situations in which section 23(5) applies, and these tend to be extreme, and unique circumstances.

If those circumstances are something which offer learnings for future migrations, CSPs will already have identified those measures and be implementing them. This specific requirement is an unnecessary level of detail.

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<sup>4</sup> Telecommunications Consumer Protections Code C628:2019, 4.2.2 b) (iii)

<sup>5</sup> [https://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0017/60209/180511\\_CA-Submission\\_ACMA-Paper-Part-2-Line-Testing-Service-Continuity\\_submitted.pdf](https://www.commsalliance.com.au/_data/assets/pdf_file/0017/60209/180511_CA-Submission_ACMA-Paper-Part-2-Line-Testing-Service-Continuity_submitted.pdf)



### Service Migration Determination

Section 14(3)(b): This requirement is not possible to abide by in some circumstances given changes in the NBN service environment, as there may not always be a lower cost plan available – the provider may either not offer a lower speed plan, or, particularly following the 'Focus on 50' promotion mentioned in the consultation paper, the lower speed plan may be the same cost. We recommend changing this section as follows:

(b) that they may:

- (i) at no cost, move to a lower speed tier plan at a lower price that reflects the maximum attainable speed; ~~and~~  
**or**
- (ii) exit the consumer contract which the NBN CSP has entered into with the consumer, without cost.

Sections 16(2) and 16(5): The specific requirements for communication are overly prescriptive and have caused confusion with some customers, as CSPs are typically in ongoing contact with customers when there is a delay in migration. If the CSP has already explained the situation to the customer in the previous days, a following update can create confusion as a customer may think there are changes in the process.

We recommend the following improvements to the requirements:

- i) If the information has not already been communicated at the 20-day point, it must be communicated at that time; and
- ii) the requirement should be outcomes-focused: to keep in ongoing contact with a customer regarding their migration, noting that the TCP Code and Complaints Handling Standard both have specific requirements for communicating with customers, and for customers having access to records about any customer service interaction.

### Sunsetting

The NBN rollout is scheduled to be substantially complete in 2020, but additional migrations will occur during the following 18 months. Therefore, we recommend the appropriate sunset dates be determined in a process targeted toward an agreed date in 2022, subject to review and confirmation 6 months prior to the targeted date. This should allow sufficient time for any parallel changes to be made (for example, if there need to be any additions to the Critical Information Summary in the TCP Code to account for the sunseting of the Consumer Information Standard).

## **4. Conclusion**

The original final versions of these Instruments benefited from close and fairly intensive consultation and collaborative work undertaken by the ACMA and Industry.

We believe that the proposals outlined in this submission are in keeping with the original intent of the Ministerial Direction of late 2017 – i.e. to create a better migration experience for consumers, while maintaining a workable and reasonably efficient set of working arrangements with consumers and all participants in the service supply chain.

Communications Alliance and its members would be pleased to discuss these proposals further as part of this review process, to answer questions from the ACMA and/or to supply further information where needed.



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