



INTERNET ASSOCIATION OF AUSTRALIA LTD
ABN 71 817 988 968
ACN 168 405 098
PO Box 8700
Perth Business Centre WA 6849
Phone: 1300 653 132

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The Australian Communications and Media Authority

PO Box 13112
Law Courts
Melbourne VIC 8010

By submission: <https://www.acma.gov.au/consultations/2023-10/proposed-telecommunications-financial-hardship-industry-standard>

CC: The Hon Michelle Rowland MP

By email: minister.rowland@mo.communications.gov.au

RE: Proposed Telecommunications Financial Hardship Industry Standard

INTRODUCTION

The Internet Association of Australia (**IAA**) thanks the Australian Communications and Media Authority (**ACMA**) for the opportunity to respond to the proposed draft *Telecommunications Financial Hardship Industry Standard 2024* (**Standard**) and accompanying Consultation Paper.

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet Service Providers, many of whom would be considered carriage service providers (**CSPs**) for the purposes of the Standard. This response is primarily in representation of these members, as well as for the general wellbeing of the telecommunications industry.

We understand that the Standard has been drafted in response to the *Telecommunications (Financial Hardship Industry Standard) Direction 2023* (**Minister Direction**) and that this is intended to replace Chapter 7 of the *C628:2019 Telecommunications Consumer Protections Code* (**Code**) which currently governs financial hardship provisions for the telecommunications industry. We also understand that in drafting the Standard, the ACMA has taken into account, amongst other things, various papers published by the ACMA including the 'Financial hardship: telco and other essential sectors' (**Quantitative Research Paper**), 'Consumers' experiences with telco financial hardship' (**Qualitative Research Paper**), and the 'Financial hardship in the telco sector: Keeping the customer connected' report (**ACMA Report**) (together, the **ACMA Materials**). Accordingly, in preparing our response, we have also considered and make reference to these ACMA Materials.

From the outset, IAA and our members recognise the importance of telecommunications to everyday life, and thus the impetus to ensure Australians are able to access telecommunications for daily living. We also acknowledge the rising cost of living that has resulted in greater concerns and/or difficulties with regards to payment of telecommunications bills.

However, we also believe that this is a wider social-economic issue, and is not specific to telecommunications services and bills. Indeed, we consider that of all the cost of living pressures, telecommunications bills represents only a small portion. While this does not make the difficulties faced by financial hardship customers insignificant, we believe that the government and ACMA's response to be disproportionate. Moreover, we strongly believe that it fails to take into account the broader implications of introducing the Standard that will ultimately, result in higher costs across the telecommunications sector as CSPs will have to push the costs of regulatory burdens onto customers, which will further increase the cost of living pressures for all Australians, including financial hardship customers. Therefore, the overall result will be contrary to the objectives of both the Minister's Direction and Standard, and is not in the long term interests of neither CSPs nor Australian consumers. Thus we respectfully urge the ACMA to reconsider the implementation of the Standard in replacement of Chapter 7 of the Code, and to discuss this issue in depth with the Minister, industry, consumer advocacy groups and other stakeholders to consider alternative solutions that will not require a new Standard.

This response will go into greater detail, our general concerns in response to the Consultation Paper and the ACMA Materials, as well as provide our responses to the questions and issues set out in the Consultation Paper.

GENERAL CONCERNS

Towards a genuine landscape of financial hardship experienced with telecommunications bills

We note that the ACMA Materials make statements or come to conclusions that we do not believe are a fair or reasonable depiction of consumers' experiences with the telecommunications sector.

For example, the first Key Finding set out in the ACMA Report¹ suggests that the industry's records of financial hardship customers (4,388 residential financial hardship customers) grossly understates the number of Australians experiencing financial hardship with respect to telecommunications bills according to research commissioned by ACMA (approximately 2.4 million Australians).

However, we believe this to be alarmingly misleading. Firstly, the calculation relied upon by ACMA is based on a limited consumer research of only 1,342 survey respondents. While this is not an insignificant number, to make such a statement suggesting the under-reporting of financial hardship customers as part of ACMA's 'Key Findings' without explaining the circumstances of the survey is unfair.

Moreover, the survey results were post-weighted to represent an *estimated* 25% of the Australian population. The fact that this figure is a post-weighted, and therefore estimated amount, is not

¹ ACMA Report, page 2.

mentioned in the ACMA Report, nor does the Qualitative Research Paper provide details on the post-weighting strategy to ensure transparency and reliability of its calculations.

Finally, ‘experiencing difficulty or having concerns about paying a bill or expenses’ is not the same as ‘financial hardship’ as that term is defined under the Code or the Standard, nor should they be conflated as such. Especially given that the overwhelmingly relevant factor contributing to such difficulty or concern being the result of increased living costs (88%)², using the survey findings without applying appropriate distinctions and definitions is grossly unfair and misleading.

While we accept that the industry report of financial hardship customers may under-represent the number of Australians who should be considered financial hardship customers which may be the result of a number of factors, we do not accept the figure stated in the ACMA Report. In addition, we consider the suggestions made by ACMA with respect to this matter to be a gross misrepresentation of the landscape of consumers experiencing financial hardship in relation to telecommunications bills.

We believe this to be relevant as it relates to our view that the Standard is not necessary, and the Code is sufficient in protecting consumers. To the extent that ACMA and the government believe that the Code does not provide adequate consumer safeguards, including its inability to provide assistance under a financial hardship program to all those who should be so provided assistance, we do not agree that the statements made or relied upon in respect of the ‘true number’ of Australians facing financial hardship is a genuine representation of the circumstances.

Telecommunications as an essential service

We also raise our concern with the continued use of the term ‘essential services’ with respect to telecommunications services in the Consultation Paper, the ACMA Materials and the Standard itself. Notwithstanding paragraph 7(1)(c) of the Minister Direction which sets out recognising the “essential nature” of telecommunications services as an objective of the Standard, we note that the term ‘essential services’ has a particular meaning with legislative implications and as such, is not an appropriate term to be used with respect to telecommunications services.

Currently, with respect to state legislation governing or in relation to essential services in Queensland, New South Wales, Victoria, South Australia and the Northern Territory, only the Queensland legislation explicitly specifies telecommunications as an essential service and each legislation has a different definition of ‘essential services’, while no Commonwealth legislation or definition on the matter exists.

We recognise the increasingly important role that telecommunications play in Australians’ daily lives, and that telecommunications may be capable of being considered essential for the purposes of legislation in other states. To that end, we do not dispute the integral nature of telecommunications services.

² Qualitative Research Paper, Figure 3.

However, this is an area that clearly requires further consideration, not only with regards to consumer protections, but with respect to broader legislative concerns and implications. Deeming a service as ‘essential’ can carry other consequences, such as minimum service level requirements.

Therefore, insofar as telecommunications as an ‘essential service’ is not consistently reflected across relevant legislation, we do not consider use of this term in the Standard to be appropriate. Nor do we consider this Standard to be the appropriate legislative instrument to settle this matter. We believe it is possible to note the integral and essential nature of telecommunications, without explicitly referring to it as an ‘essential service’ to comply with the Minister Direction while avoiding confusion due to the legislative implications associated with the term.

Necessity and expediency

With all due respect, we do not view the Standard as necessary, nor favourable for the objectives it seeks to achieve.

We recognise that Australians are increasingly struggling with cost of living pressures which includes telecommunications bills, amongst other things. We understand that the Standard is cognisant of this rising pressure and seeks to provide consumer safeguards to those experiencing financial hardship. IAA and our members similarly acknowledge the importance of having a robust framework that will protect financial hardship customers, so that all Australians can have access to telecommunications services in the modern world where such services are necessary for daily life.

However, we view that the Standard will not achieve its objectives, and in fact, we raise our concerns that it will result in outcomes that are fundamentally contradictory to its objectives.

Firstly, we do not consider the Standard necessary and firmly believe that the Code provides sufficient safeguards for consumers. As noted in the Consultation Paper, telecommunications bills are not the main contributor to the increased cost of living in Australia. In fact, consumers have generally enjoyed stable, if not relatively falling, prices for telecommunications services in recent years. While prices are most likely to increase, particularly due to the increasing cost of NBN as a result of the recently accepted revised NBN Co Special Access Undertaking, ultimately telecommunications is not the sector that government should be focusing on to alleviate cost of living pressures for Australians.

As per Figure 2 of the Quantitative Research Paper, of the survey respondents who said they experienced financial hardship with essential services, only 48% responded they experienced difficulties with telecommunications bills. While this is not an insignificant figure, compared to the 3 other sectors (Energy, Banking and Water), the telecommunications sector caused second least concern, with water causing least concern.

It would be remiss not to note that not only were the figures between telecommunications and water very similar (45% of those experiencing financial difficulties had difficulty or concerns with paying water bills), but also, considering that in many cases across Australia, Australians who are tenants may not be responsible for water usage bills which is paid for by landlords, it follows that water bills would not be a concern for many Australians, and is therefore natural that it is the sector that causes least concern.

Moreover, as per Figure 9 of the Quantitative Research Paper, bills relating to all four telecommunications services (mobile, home internet, landline phone, tablet) were seen as the lower priority compared to other bills. According to Figure 8, the factor most important when prioritising bill payments was the service most important to the respondent, followed by the penalties for paying late, the amount of the bill, and the bill(s) for which the respondent can't get an extension or payment plan with the provider.

Consideration of the two Figures indicates that:

- (a) Telecommunications is not considered as “essential” as other services (which has implications for the points raised above with respect to telecommunications being deemed an ‘essential service’);
- (b) Consumers already understand that telecommunications providers offer greater flexibility with respect to bill payments and most CSPs do not charge interest or impose another penalty for late payment of a bill in the first instance; and
- (c) Compared to other services, telecommunications bills are for smaller amounts.

Importantly, paragraph (b) strongly indicates that the consumer safeguards provided under the Code are sufficient.

In addition, we also note that compared to all sectors, more consumers knew of their eligibility for financial hardship assistance³ and less felt embarrassed to ask for help with their telecommunications bills.⁴ This suggests that the Code is being effective in relation to CSPs promoting their financial hardship assistance, which is one of the objectives of the Standard as per the Minister Direction. In particular, the fact that almost 70% of those aware of being able to contact their provider for assistance under a financial hardship program did not do so, and only 18% of those choosing not to do so was because they didn't think they were eligible, implies that the majority chose not to request assistance because of other reasons, which could include simply not wanting to be part of a program, and/or thinking they do not need to be a part of a program.

However, we recognise the limited sample size of the survey which is the focus of the ACMA Materials. Moreover, as discussed above, we acknowledge that reports of financial hardship and the number of financial hardship customers may be under-recorded (although we do not agree with the figure provided by ACMA). Therefore, we understand the concerns by ACMA and the government with regards to ensuring the breadth of consumers requiring assistance are being provided with such appropriate assistance.

To that end, we also note that since 2020, only 6 CSPs have been served with directions to comply with the Code for contraventions of provisions that relate to financial hardship. While we do not consider this to be an insignificant number, and acknowledge the real harm that consumers may have suffered as a result of the contraventions, we do not believe this warrants or indicates the need for the entire financial hardship framework to be overhauled.

³ ACMA Report, p 15.

⁴ Ibid.

Importantly, this will not only result in increased and arguably, unjustified regulatory burden on CSPs, but importantly, the costs associated with these burdens will be passed on to consumers, thereby exacerbating the cost of living issues already felt across Australia.

This move to legislate the Standard instead of administering the financial hardship program under the Code seems to fail to recognise the rising costs for CSPs due to changes with NBN Co, as well as the volume of other regulatory reform that is currently underway, which will ultimately result in higher costs for consumers. This is also in conjunction with inflation and general increase in living costs which means that the average Australian will be facing increased financial difficulties not previously faced prior to the covid-19 pandemic, or perhaps even during the pandemic where there were government and other subsidies or welfare programs to alleviate financial pressures.

This means that the number of Australians who will be requiring financial hardship assistance is likely to increase, already increasing costs for CSPs. However, this, coupled with the increased regulatory burden of the Standard which is much more prescriptive than the Code in nature, will greatly increase costs for CSPs. Ultimately, these higher costs will be passed down to consumers in the form of overall higher prices for services. This is also likely to result in a cyclical effect as the increase in prices, will push more Australians into requiring assistance.

We understand the Minister and ACMA's concerns that not all consumers who should or could be receiving assistance under a financial hardship program is accessing this benefit. However, this seems to be more of an education and awareness issue than an indication that the provisions of the Code is not working. We understand that the ACMA has already engaged in an education campaign to raise awareness about the financial hardship regime as of March 2023.

We do not consider ACMA has given enough time to assess whether the education campaign has been successful or not. We recommend that it continues to work with community and consumer groups, but also industry to raise awareness of the financial hardship program. We also recommend that it engages in an education campaign with respect to industry to assist with compliance.

Furthermore, noting that the review of the Code is currently underway, we believe it to be a hasty decision to replace the financial hardship provisions under the Code with the Standard, as opposed to specifying to industry the government's, and ACMA's expectations for the Code with respect to financial hardship provisions.

The creation of yet another legislative instrument creates confusion for industry as well as consumers who have to keep up with the various sources of legislation to understand one's rights and responsibilities.

Therefore, not only do we consider it unnecessary to replace the financial hardship provisions in the Code with the Standard, but more importantly, we consider it inexpedient to do so.

OUR RESPONSE TO THE CONSULTATION PAPER ISSUES

ADEQUATE PROTECTION FOR CUSTOMERS WITH PAYMENT DIFFICULTIES

Please refer to the above discussion about the financial hardship provisions under the Code providing adequate protection for financial hardship customers.

Overall, we understand the intention of ACMA and the government in the introduction of the Standard to ensure consumer safeguards. However, as discussed above, the broader and long-term implications of the Standard is such that consumers will face higher fees for services, as CSPs will have to recuperate their costs associated with the regulatory burdens imposed by the Standard.

FEASIBILITY AND COST

Are the proposed requirements robust and feasible?

What are the likely costs and benefits of implementation?

Do the requirements and processes in the draft Standard impose undue financial and administrative burdens on providers?

We reiterate industry's concerns that the prescriptive nature of the Standard will result in great costs that outweigh the benefits. The Standard will result in regulatory and legal burdens, as well as administrative and technical.

Firstly, we urge ACMA to consider the regulatory burden the Standard will cause for CSPs to:

- interpret yet another legislative instrument in the already complex telecommunications regulatory landscape (or engaging a lawyer to do so and incurring legal fees as a result)
- update their financial hardship policy (again, requiring legal assistance to do so, particularly for CSP entities that do not have in-house legal or regulatory teams); and
- develop other systems and processes to ensure compliance with the Standard.

In addition to the difficulties faced by CSPs in dealing with a new legislative instrument, the requirements set out under the Standard will require CSPs to develop automated systems. For example, in order to identify possible financial hardship customers in accordance with section 14 of the Standard, CSPs will have to ensure technical systems and processes to track and notify the entity of customers who may be experiencing financial difficulties.

There will also be great administrative costs involved with the various requirements. For example, the transition period, particularly in respect of section 35 which requires CSPs to offer current financial hardship customers receiving assistance under the Code to offer assistance under the Standard, would require a great deal of resources, particularly for smaller entities with smaller teams who will have to dedicate a lot of time in identifying existing financial hardship customers, reviewing their financial hardship program, making a new offer, engaging in interactions to assist with and in processing applications under a new offer.

As discussed above, the increased costs arising from the Standard will be ultimately passed down to customers, including those capable of receiving assistance under a financial hardship program, as the baseline of costs for services will have to go up in order to cover CSPs' costs. This does not benefit consumers, including both the general public, nor those already experiencing financial difficulties.

COMMENCEMENT DATE

We understand that the Minister Direction has set out that the Standard must commence by 29 March 2024.

Noting the additional requirements under the Standard, and as discussed above, the amount of work the new obligations would result in for CSPs, including the development of new systems and processes, CSPs should be given more time.

Therefore, even if the Standard is drafted to commence by 29 March 2024 as per the Minister Direction, enforcement shouldn't kick in for 6 months from the commencement date. Furthermore, during this grace period, ACMA should prioritise working with industry, and in particular, the whole breadth of CSPs in the industry, to raise awareness, provide guidance materials and otherwise assist CSPs with their compliance before taking enforcement actions (unless a CSP commits an egregious breach of the Standard).

CONTACT REQUIREMENTS

For digital-only CSPs, a workable method could be to allow customers to request discussing their financial hardship over the phone. If a CSP receives such a request, including a digital-only CSP, that provider should comply within a reasonable timeframe.

Thus rather than mandating a phone contact requirement, the provision could be drafted so as to provide that a CSP must comply within a reasonable timeframe, with a request from a customer about discussing financial hardship matters over the phone.

In addition, to ensure customers are aware of their right to request contact via phone, a requirement could be that all communications provided to customers that relate to financial hardship should state that customers may request the CSP to be contacted via the phone.

We believe this to be a reasonable compromise.

TRANSITIONAL ARRANGEMENTS

Are the draft transitional provisions appropriate and workable?

Are there other relevant transitional arrangements that should be included in the draft Standard?

We raise the below concerns with respect to the transitional arrangements.

Section 34 seems to be impracticable, as it would result in inconsistencies, and may lead to unintended consequences and confusion in future dealings.

For example, a customer may make an application for financial hardship arrangements prior to the commencement date of the Standard, that is still not accepted or dealt with by the commencement date. The arrangements in the application may have included an option that for assistance in the form of waived cancellation fees as per clause 7.2.2 of the Code. However, this is not one of the options provided under the Standard. This would mean that it is not possible to deal with the application in accordance with a CSP's new financial hardship policy after the commencement date, due to the inconsistency.

Moreover, this could result in further problems and implications. For example, section 34 is not clear as to whether the application would now be dealt with in accordance with the Standard, or only with respect to the new financial hardship policy that is designed in accordance with the Standard. As such, should the customer then make a complaint to the TIO or ACMA with regards to the financial hardship arrangements, it is not clear whether the complaint should be dealt with in respect of the

Code or the Standard, as these circumstances are not clearly specified in the Standard (section 33 only deals with complaints raised prior to the Standard commencement date).

In order to deal with applications made under the Code to be treated in accordance with the Standard, the CSP and customer would have to re-communicate and discuss the arrangements as per the new regime, and re-make an application so that it reflects the new financial hardship policy and Standard. This would then delay the financial hardship assistance that the customer may receive, causing further financial and other stress and uncertainty.

As such, we recommend that any applications made prior to the commencement date of the Standard, should be dealt with in accordance with the Code, including with respect to any complaints raised in the future, following the commencement date. We believe this is more beneficial as this would at least mean that customers are receiving financial hardship assistance and on clear terms.

We also believe that section 35 would cause unnecessary burdens on CSPs. As noted above, there is a lot of work involved in giving effect to this provision. We believe this provision should be made subject to the following conditions:

- (1) A CSP will only have to comply with the provision to the extent it relates to customers receiving assistance that constitutes long-term assistance under the Standard; and
- (2) A CSP will only have to comply with the provision to the extent that the new arrangement would result in a substantial benefit to the customer compared to the assistance provided under the original agreement.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the proposed draft *Telecommunications (Financial Hardship) Industry Standard 2024*. To reiterate, IAA and our members recognise the importance of providing consumer protections, particularly to those experiencing financial difficulties, and we are empathetic to the Australian public as the cost of living pressures rise. Moreover, we recognise the importance of telecommunications services, and are committed to working with consumers, and other stakeholders to ensure consumers can still remain connected, regardless of their financial circumstances. In that light, we view the Standard to be unlikely to be effective or practicable in achieving its objectives. In particular, we note the costs that will result from this Standard, not only for industry, but also for the general public as the overall cost for telecommunications services will rise, corresponding to the increased regulatory burden placed on CSPs. Thus, we again respectfully urge ACMA to reconsider the Standard, and engage in further deeper engagement about the financial hardship provisions with all relevant stakeholders.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as

social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark
Chief Executive Officer
Internet Association of Australia