

8 October 2024

The Manager
National Interests Section
Australian Communications and Media Authority (ACMA)

By email to: national.interests@acma.gov.au

Dear Manager,

Consultation on proposal to amend the ECS Determination

Thank you for the opportunity to comment on the ACMA's draft amendments to the *Telecommunications (Emergency Call Service) Determination 2019*. These reforms are an important part of implementing the Government's response to the Review of the Optus Outage of 8 November 2023. It is vital that Australians can contact Triple Zero in times of crisis. We support measures to ensure all mobile phones used in connection with mobile services in Australia can access the Emergency Call Service.

We offer the following observations for the ACMA to consider when finalising these amendments, based on our experience handling telecommunications complaints.

Some consumers may need active assistance to obtain a mobile phone that is able to call the Emergency Call Service

We encourage the ACMA to consider including broader requirements for telcos to actively assist consumers to obtain mobile phones that can access the Emergency Call Service and meet their other needs.

The approaching deactivation of the Telstra and Optus 3G networks is likely to be a stressful and challenging time for some consumers experiencing vulnerability, or who are less comfortable with mobile phone technology. Following the 3G shutdown and the proposed reforms to the Determination, we anticipate some vulnerable consumers will lose access to their mobile service when using their existing mobile handset. Under the changes to the Determination, we understand such consumers will need to obtain a new mobile phone that is able to call the Emergency Call Service on all of Australia's public 4G mobile networks.

In the months approaching the 3G shutdown, our office has received complaints that show a level of general confusion among some consumers about which mobile phones are compatible with voice calling on 4G networks. Some consumers told us they discovered (or their telco told them) that their existing mobile phone could access 4G voice calling on some mobile networks but not on others. In this context, it is important that vulnerable and less technically minded consumers receive timely and appropriate assistance to obtain new mobile phones. This assistance should be tailored to help consumers get new devices that can access the Emergency Call Service across all relevant networks and meet their other needs.

We welcome the proposed requirements for a series of weekly notifications to be sent (over a four-week period) to end-users whose mobile services will be disabled because their mobile phone is not able to access the Emergency Call Service. We acknowledge the current drafting contains obligations for telcos to provide information (in these notifications and elsewhere) about alternative low and no cost mobile phones that can access the Emergency Call Service. We note also the requirements to update payment assistance policies so they set out at least one method by which 'financial hardship

customers¹ can receive assistance to obtain a low or no cost mobile phone that is able to access the Emergency Call Service.

While we welcome the requirements for payment assistance policies to contain methods to assist financial hardship customers in getting replacement devices, not all consumers who are likely to require assistance are financially vulnerable. Some such consumers are unlikely to satisfy the Financial Hardship Standard's definition of 'financial hardship customer'.

Further, for some consumers experiencing vulnerability, just receiving information about low or no cost alternative devices may not be sufficient to ensure they are able obtain an appropriate replacement device.

The amendments to the Determination would better assist these consumers if they contained a positive obligation for telcos to offer assistance in obtaining low or no cost alternative mobile phones. For example, telcos could be obliged to:

- provide contact channels that affected consumers could use to ask for help;
- refer to these contact details whenever they are obliged to provide information about alternative handsets;
- assist consumers to obtain alternative handsets (including low and no cost options) on request; and
- prioritise complaints from consumers who have lost access to services because their existing device cannot call the Emergency Call Service, and need assistance to obtain an alternative device.

Changes to the Determination should seek to avoid unintended financial consequences for consumers when telcos cease to supply carriage services in connection with a mobile phone that cannot access the Emergency Call Service

The proposed changes to the Determination would require telcos to 'cease to supply any carriage services to the end-user in connection with' a mobile phone that is not able to access the Emergency Call Service, after sending a series of notifications under section 65.² The proposed drafting does not specify what it means to 'cease to supply any carriage services', and telcos may not interpret the requirement consistently. For example, some may bar or otherwise temporarily disable carriage services until a consumer can obtain a new mobile phone that can access the Emergency Call Service. Others may cancel the consumer's services completely.

While the industry has increasingly been moving away from minimum contract terms for mobile services in recent years, there may still be a small number of consumers on mobile plans where they will incur termination fees if their service and associated contract are cancelled early. There may also still be consumers on device repayment plans for mobile phones that cannot connect to the Emergency Call Service on all of Australia's 4G networks. Typically, where a service associated with a device repayment contract is cancelled early, a telco requires the consumer to pay off any remaining device repayments directly as a lump sum.

In our view, it is not fair for a consumer to suffer a financial penalty because their telco has complied with requirements to stop providing services to a mobile phone that cannot access the Emergency Call Service. The amendments to the Determination should seek to avoid scenarios where a consumer is charged termination fees or required to pay out a device repayment contract early, because their telco has ceased to supply services to a mobile phone under section 65.

This may be achieved by specifying in the amendments that telcos must not charge service termination fees because of the operation of section 65. Where the section 65 process results in the

¹ As defined in the *Telecommunications (Financial Hardship) Industry Standard 2024* (Financial Hardship Standard).

² We note the language of subsection 65(4) (which says telcos must 'cease to supply any carriage services') differs from that used in paragraphs 65(2)(a)-(d), which refers to services being 'disabled'.

cancellation of a service associated with a device repayment contact, the amendments could require the telco to keep the consumer's existing device repayment plan in place (rather than charging all remaining payments as a lump sum).

We look forward to learning the outcome of this consultation, and to contributing to discussions about the additional set of amendments to the Determination, to be determined by 30 April 2025.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long horizontal flourish.

Cynthia Gebert
Telecommunications Industry Ombudsman