REVIEW OF THE ACL

1 Do the national consumer policy framework's overarching and operational objectives remain relevant? What changes could be made?

The Telecommunication Industry is an example of an industry not covered by this legislation.

Whenever consumers contact consumer affairs organisations with a query about a telecommunication matter, the comment is always the same, nothing to do with us, go to the Telecommunication Industry Ombudsman.

The same applies with the ACCC, "not interested as this is not our problem unless you can prove unconscionable conduct"

ACMA, the regulator of the industry and enforcer of the legislation which all other bodies use the excuse it is not their problem, refuse to regulate, enforce or take complaints on telecommunication matters.

Yet the TIO is unable to make decisions in certain complaints in relation to the industry, as it is not within their jurisdiction.

The TIO bases its decisions on the understanding that certain items are approved by ACMA, so they do not check their validity or compliance, despite ACMA clearly stating they do not approve these documents.

Some examples for which no one is taking responsibility for-

a) Overcharging by Telecommunications providers, above the amounts displayed in critical impact statements. ACMA review CIS and advise high compliance levels, yet refuse to accept or investigate complaints of overcharging above the CIS. The ACCC initially refused to accept a complaint on the matter, but on the third attempt has recorded the complaint (September 2015) for which no response or action has been taken to remedy or require compliance. TIO has been aware of the issue since August 2015 but due to staff limitations has not produced the report into the investigation, which was completed in December 2015. TIO also states it has recorded the matter to see if anyone else makes the complaint and it will look at it if it becomes a systemic issue.

This overcharging affects a significant number of consumers yet; no action is being taken by ACCC, TIO or ACMA.

If Telecommunications were included in the jurisdiction of the ACL, then the ACCC may be able to act.

b) Mass service disruption notices. Notices issued which are not valid and not compliant are ignored by ACMA. ACMA has conceded that upon investigating five examples, compliance issues existed and notified the issuer.

ACMA asked me to monitor the notices and advise if there were continued breaches.

This was done after a three-month period and showed continued non-compliance.

ACMA response that they will do nothing about these non-compliance issues and invalid exemptions.

ACCC have advised they will not do anything unless the advertising is misleading, as this is the only action they can do under the ACL.

ACMA have refused to act despite being the regulator and enforcer, stating the Federal governments intention is to deregulate further, so they will not regulate and enforce the current legislation.

TIO have had a complaint before them for 13 months, but have done no investigation.

The TIO base their decisions on the belief that ACMA have approved the notices and have not reported any non-compliance to the TIO. The TIO has based decisions since 2011 on the current legislation and would have to acknowledge basing decisions on incorrect advice and review all decisions affecting mass service disruptions since that date, which may explain the reluctance of the Ombudsman to acknowledge and investigate the issue.

This matter affects all Australian consumers and businesses with five or less services, who currently have or have had a landline since 2011, yet the ACL does not cover these consumers. I understand the current figure is over 7 million affected customers, yet the ACL does not provide protection for these customers.

c) Telecommunications provider advises customer they will get a rental rebate but does not pay the rebate.

It appears to be a standard practise of landline providers that if asked they would provide a customer with a rebate of their line rental for the duration of a fault. This is irrespective of any compensation that may be payable under the customer service guarantee standard and is not covered by the standard and is offered even when an exemption from the customer service guarantee is claimed. This "goodwill" payment is not covered by the standard and is not covered by the ACL as the ACCC and consumer affairs organisations say that all Telecommunications matters are the responsibility of the TIO.

The TIO cannot enforce the offer if it is subsequently not paid, as it is not a component of the customer service guarantee standard or any other Telecommunications legislation.

The TIO is limited in that it can only make a request that the payment offered should be paid.

Similarly, if a customer requests line rental rebate and the provider refuses to offer or pay, it is not within the jurisdiction of the TIO and the ACCC and consumer affairs organisations will not pursue as it is the "role of the TIO".

7 Is the ACL's treatment of "consumer" appropriate? Is $40,000 still an appropriate threshold for consumer purchases?

The $40,000 figure should be increased.

Using the Reserve Bank Of Australia inflation calculator, $40,000 in 1986 would at the end of 2015, be $100,689.66, so by the time the ACL review is complete in 2017, the $40,000 protection level of 1986 would be around $104,000.

$15,890 in 1986, when the benchmark was set, equates to $40,000 in 2015 using the RBA inflation calculator.

Consumer protection should be increasing and improving as time passes.

There is no point saying that better education and information of consumers will solve problems, when the legislation itself is removing protections, by not allowing for inflation.

The failure to review the $40,000 limit has reduced the effectiveness of the protection.

The figure should be increased to $110,000 or greater to allow for maintenance of the 1986 benchmark and there should be justification for a further increase on the basis that protection should be getting stronger not weaker.

9 Are there any changes that could be made to improve their effectiveness, or address any of the issues raised in Section 2.2? Are there any gaps that need to be addressed?

Misleading conduct and unconscionable conduct is a significant problem not fully covered by the ACL.

I again refer to the Telecommunications Industry and their misleading conduct in regard to their legal requirements under the Customer Service Guarantee standard 2011.

The leading provider has been advised in 2015 that there are issues with their Mass Service Disruption exemption notices in that they are non compliant. The ACMA has determined they were not compliant yet refuses to advise the Australian consumers or the TIO that these notices are not valid and the exemptions do not apply.

Despite claiming exemptions for circumstances that do not exist, where specific circumstances are defined within the legislation, the providers continue to place misleading, erroneous and false advertisements in Australian newspapers and online, claiming that they do not have to comply with the legislation for a period of time.

If a customer asks about their entitlements they are also advised that the provider is not required to pay, even after the provider has been advised by the ACMA the notices are non compliant.

Who takes responsibility for the misleading conduct that denies Australian consumers the compensation described with the legislation?

The regulator and enforcer, the ACMA, refuses to act and has now stated that they will not take any action in relation to these notices unless the notices do not appear online (March 21 2016) or is not displayed within the timeframes for notification.

The legislation requires the notices to be placed in a newspaper for which I have shown is not occurring.

The ACMA have made it very clear that, despite it being their role as regulator and enforcer of the legislation, they will not act on any instances where the notice is not legal because it is claimed for an event that did not occur.

The TIO maintain that as ACMA approve these exemptions they do not question them.

The ACCC say it is not within their jurisdiction, despite the advertisements being misleading as they are claiming an event occurred that did not and the exemption is not valid due to being non compliant with the legislation.

Another area where the ACL needs to improve is where protection is provided to a business but not the consumer.

In Western Australia in the energy sector, the code of conduct has a set of parameters for the supply of services. It also has penalties for non-compliance.

For example, if a consumer has had their electricity disconnected due to non payment, there is a requirement that once they satisfy the arrears (and any bond imposed, if applicable) the provider must reconnect within a time period (based on urban, rural and remote). If the provider does not comply there are penalties payable to the consumer.

The penalties are time limited, for example, to five days. The provider must pay a penalty for the first five days of non-connection, but beyond that, there is no penalty. If the reconnection does not occur for 10 working days the consumer only receives 5 days of compensation.

However, there are also compensation amounts payable by the consumer in certain circumstances. These however are not time limited.

So the provider is only required to pay five days compensation whereas the consumer could pay 20 days.

There should be no circumstances whereby a consumer's compensation is limited by time, but the provider's entitlement to compensation is unlimited.

The same document also raises another issue about appropriate standards.

As mentioned earlier the Code of conduct states timeframes for actions, such as new connections, reconnections and customer changeovers.

A customer has until 2pm to notify or pay the required sums or lodge forms, which is the trigger for the action, such as reconnection. The reseller has a time frame in which to comply.

The reseller has until 2pm to notify the wholesaler or supplier of the trigger event. The reseller can be the provider, or there can be multiple parties between the reseller and the provider.

Common sense would state that these two times should be different, as a customer could notify the reseller at 1.50pm, thereby setting of the first trigger, but the reseller may not be able to notify the wholesaler or provider by 2pm of this information.

The customer may get a few dollars compensation for the delay in a working day caused by this, but it would be better if they had their electricity on over the weekend.

Consumer legislation and codes should provide mechanisms that work in practise, not just in theory.

Late fees

Late fees in most cases are not justifiable.

For example why does it cost $15 for a phone provider to issue a late notice by email when it is a computerised system, which generates the notice, just as it does for the original invoice?

Why does it cost $15 to post an invoice, which incurs postage, an envelope and paper, whereas an email does not incur these costs?

If the service costs $23 a month to provide then surely it cannot cost $15 to issue the monthly statement?

Late fees on invoices that are not permitted by law or industry codes, to be issued.

In Western Australia, the code also refers to where a bill is estimated, and information is received subsequent to the issue of the bill, which would update the bill, a new invoice cannot be issued, the charges must be placed on the next bill with amendments.

This arises with self meter reading, where a customer does not supply the reading by mail or online. It also arises when an annual reading is made by the reseller and provides a mid term reading.

Contrary to the standard and legislation, the supplier will issue an invoice with a new payment date including the amount from the original estimated bill.

The invoice is not permitted to be issued.

If the consumer pays on the new bill believing it supersedes the original bill, they will be charged a late fee for the missed payment.
If the consumer is late with the revised bill, they receive a late fee.

As such they are receiving a late fee on a bill that cannot be legally issued.

Also they are required to pay an amount of money to the provider which is not due, as the invoice cannot be issued.

Late fee escalation during periods of financial hardship.

Where late fees are applied, the number of late fees that can be incurred should be limited.

For example if a phone bill were due every three months, the consumer would receive four bills and could only incur four late fees if they do not pay each one on time.

However, if they claim hardship, the provider can increase the frequency of the bills, to make the payments easier for the consumer (and reduce the risk to the provider by not having three months owing).

This is commonly monthly, fortnightly or weekly, depending on the circumstances of the consumer and the systems available to the provider.

However, this change from four bills a year with a maximum of four late fees, can increase to 12, 26 or 52 late fees where the consumer has claimed financial hardship.

The ACL should provide protection from late fees where consumers have claimed financial hardship, to the extent that there is a limit on the number of late fees that can be charged in a 12 months period, so these fees do not continue to exacerbate the problem.

All ate fees should be reviewed and put under control by legislation so that the fee only covers the cost of issue of the revised notice rather than as a pure revenue stream for the provider.

11 Are there any changes that could be made to improve their effectiveness, or address any of the issues raised in section 2.3? Are there any gaps that need to be addressed, or overseas models that could provide a useful guide?

Gaps exist in the ACL in that it provides convenient excuses not to provide consumer protection, where other legislation is purported to provide consumer protection.

If the ACL covered all consumers for all transactions under the financial limit, including those covered by other legislation such as Telecommunications and energy, then there is likely to be some protection actually put in place.

If the ACL covered Telecommunications, so that the ACCC could act, where the TIO and ACMA fail to or refuse to regulate, enforce and protect consumers, then consumers would have protection and recourse.

The coverage of these areas by the ACL may lead to the TIO and ACMA being more responsive to regulation, enforcement and consumer protection if they knew that action could be taken by consumers through the ACCC and state consumer affairs organisations.

The current attitude of regulators and enforcers that since the government is trying to deregulate certain industries, they do not have to do their role of enforcing and regulating the current legislation, is unacceptable.

This is like saying you don't think there should be a stop sign at the end of the street, so you just drive through it. Whilst that stop sign is there you must comply with the law. If you can lobby to get the stop sign removed or changed to a give way sign, good, but until then the law says you must stop.

ACMA however have stated (21 March 2016) that regardless of the illegal activity under the CSG standard, they will only act in two instances.

12 Does the ACL need a "lemon laws" provision and, if so, what should it cover?

I agree that such a provision should exist, but how does a consumer claim this. If you have a fridge and you complain it is not keeping to a set temperature, does the lemon law apply to having for example six reports, six reports on the same result (not keeping temperature) or six reports on the thermostat switch?

If the fault is attributed to different components, such as the thermostat switch, the coolant, a coolant pipe or a door seal, is the reporting six times considered the same issue or is it going to be treated by the retailer as six reports for four different faults, therefore does not qualify under a lemon law?

18 Does the ACL promote a proportionate, risk based approach to enforcement?

As it does not cover all consumers for all goods and services below the base amount, it cannot provide a risk-based approach to enforcement, as it is not able to consider all aspects of the supply of goods and services by all providers in the country.

25 Are there any barriers to consumers and businesses enforcing their rights and seeking access to remedies under the ACL? Are there barriers to private action that need to be addressed?

The current accepted practise of not responding to complaints by businesses and government is a barrier to enforcing rights and seeking access to remedies.

Yesterday, whilst trying to speak to a Telecommunications provider about our account, due to changes brought about by the introduction of an NBN service, I was diverted to 11 different people, put on hold for 55 minutes whilst waiting for one transfer and spend over two and a half hours before the call was disconnected by the 11th person.

The website showed the procedure for making a complaint, but the six attempts to speak to a Manager, being the course of action outlined on the website, were refused. Requests to speak to a complaints section were refused, saying they had not complaints section and using the phrase outlined on the website, were fruitless.

How do you lodge a complaint when they refuse to allow you to lodge a complaint?

The current and increasingly widespread practise of getting a complaint and then saying "your allegation" or "your accusation" and that we have investigated the complaint and closed the file, is not a resolution process.

Increasingly federal government organisations such as ACMA, ACCC; state government departments and ombudsman will only allow a one paragraph description of an issue on a web page and do not even allow the attachment of documents such as contracts.

Protection cannot exist when government agencies, regulators, enforcers, industry ombudsmen and businesses are not prepared to collect the data on a complaint and refuse to investigate.

34 Is it sufficient for a business to disclose a total minimum price before making a payment, or should optional fees and charges be disclosed upfront?

All mandatory and unavoidable fees shall be disclosed upfront.

One example we have come across is a bus service between Perth and country towns. You can book online or via an agency.

When you book online the fare applicable to us is $12.00 but there are two options, a $12.00 adult fare on an online saver with a 10% discount making it $10.80.

The online listing should only display the $10.80, as the only way you can purchase is online.

However, the also impose a credit card fee, but there are no other payment methods available online, that is no paypal, direct bank transfer or payment in cash to the driver.

The fee is unavoidable so therefore should be disclosed as the actual price of the ticket because it is mandatory.

As to whether optional fees should be disclosed upfront is affected by many factors. For example with an airline, it would be better if you could find out what the fees were in a simple manner before commencing the transaction.

Some airlines which charge fees for luggage, seats, meals, refreshments, entertainment and early boarding, have this information buried within their site and can be found with effort.

If you could select I want to fly from a to b and I want a seat, a meal and 20kg of luggage, how much will it cost to fly on June 24th, this would be an appropriate ways of displaying the correct price structure.

It is also apparent with some airlines that when booking for more than one person, you can only add luggage, meals and entertainment for all passengers rather than just for one passenger.

This either means you pay unnecessary but effectively mandatory fees for all passengers or you have to do separate bookings so that you do not pay these mandatory unnecessary fees for the extra passengers. However in doing so you reduce the likelihood of sitting together (which is not guaranteed under IATA rules even if you do book together) and you also incur additional booking fees where they are based on each booking rather than on each passenger.

Hire car costs have been improved but still have extras. Registration recovery fee is one that recurs, yet they cannot hire you the car without registration.

35 Are there any changes that could be made to the ACL to improve pricing transparency?

The ACL could require that all mandatory fees are included in pricing and quoting and that where credit card fees or other surcharges apply, that these can be entered at the quoting stage (for an airline, I want to travel from a to b and I am paying by "method", so that the pricing or quoting is representative of the cost.

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