Australian Consumer Law Review

Submission by the Australian Communications Consumer Action Network (ACCAN)

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Australian Communications Consumer Action Network (ACCAN)
Australia's peak telecommunications consumer organisation
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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Introduction

The Australian Communications Consumer Action Network (ACCAN) welcomes the review of the Australian Consumer Law (ACL). In the five years that have passed since it came into effect there have been a number of developments in the market, especially in the use of technology enabled 'disruptive' business models, such as Uber and Netflix. Given the reliance of most of these services on an underlying telecommunications service they raise a number of issues about the adequacy of existing consumer protections. ACCAN has provided feedback on a number of these emerging and ongoing issues.

List of recommendations

Recommendation 1: That the ACL Review further investigate the merits of a retail ombudsman.

Recommendation 2: Where a gap exists government and regulators should look to fund the provision of comparator websites. ACCAN recommends that broadband performance monitoring is an ideal candidate for this type of comparison.

Recommendation 3: Improve the deterrent effect of financial penalties by increasing caps, allowing judicial consideration of revenue earned and inflationary pegging.

Recommendation 4: That the exemption for insurance contracts from the ACL Unfair Contract Term provisions be repealed.

Recommendation 5: That Unfair Contract Term protections be extended to allow for entire contracts to be deemed 'unfair'.

Recommendation 6: That businesses offering extended warranties be required to provide clear, accessible information on how these warranties differ from statutory guarantees to aid consumer decision making.

Recommendation 7: That businesses selling add-on warranties be required to provide 'cooling off' periods.

Recommendation 8: That the ACL Review investigates the adequacy of definitions of 'supply' under the ACL in the context of digital 'marketplaces'.

Recommendation 9: That the ACL Review investigates the adequacy of the ACL consumer guarantees in relation to hybrid digital/physical goods and services.

Recommendation 10: That guidance notes and tribunal decisions be published to help consumers better understand their consumer guarantee rights in relation to specific services.

Recommendation 11: That the ACL review further investigate the value of section 65.

Retail ombudsman

The Telecommunications Industry Ombudsman (TIO) is a free and independent alternative dispute resolution (ADR) service for unresolved complaints to telecommunications service providers. In ACCAN's experience it is an effective dispute resolution scheme, however its jurisdiction is limited. For example, the TIO will not hear complaints about faults with 'over the top' telecommunications services like video on demand or third party Voice over Internet Protocol (VoIP). In addition, issues with equipment such as mobile handsets not purchased as part of a telecommunications service bundle are not within its jurisdiction.

Many consumers who fall outside of the TIO's remit are likely to fall within the jurisdiction of the state based tribunals. These consumers face a number of barriers to justice not experienced within the TIO scheme. For example, to bring an action in a tribunal consumers are liable to pay a fee, which in some cases may exceed or form a significant part of the amount claimed. In addition, consumers are usually required to prepare a case and appear before the tribunal, which often means taking time off work. Compared to the TIO process, tribunals are more adversarial in nature with consumers potentially having to put their case to an opposing lawyer. This is a large barrier to any consumer, let alone those with low levels of education or language skills.

So long as independence is preserved, mandatory industry-funded ombudsman schemes have the added benefit of driving a culture of compliance. For example, the TIO funding model requires industry players to pay fees based on the number of complaints they generate. This encourages a culture within individual businesses to improve practices or face increased costs due to high complaint levels.

ACCAN supports calls for further discussion on the merits of a retail ombudsman, especially to improve access to justice for consumers with issues that fall outside of the TIO's jurisdiction.

> **Recommendation 1:** That the ACL review further investigate the merits of a retail ombudsman.

Comparator websites

Comparator websites are playing an increasingly important role in guiding consumer decision making. The telecommunications sector has two main comparator websites serving consumers, whistleOut and Finder.[1] As discussed in the issues paper, ACCAN is concerned that the benefits of these services may be undermined if providers fail to act appropriately. For example there may be a number of 'behind the scenes' factors that influence how products and services are presented, such as:

- Inducements
- Preferential treatment
- Algorithms

[1] whistleOut, 2016, available at: https://www.whistleout.com.au/ ; Finder.com.au, 2016, available at: http://www.finder.com.au/

- Sales quotas
- Commercial relationships between comparator websites and telco service providers.

ACCAN has been supportive of and provided feedback on the ACCC guidance to comparator website operators. This was centred on greater transparency around how comparisons were conducted and commercial relationships that may exist. Poor practice in this area may be picked up by existing consumer protections which prevent misleading and deceptive conduct. However, the arm's length relationship between comparator websites and the services compared, as well as limited information about how comparisons are conducted, creates barriers for adequate enforcement.

Traditionally product comparisons have been the core business of consumer organisations, with standards in place to maintain independence and transparency. However, the current business model for comparator websites is reliant on advertising and commission based selling. This can come into direct conflict with the interests of consumers. To avoid these problems in the energy sector the regulator maintains its own comparator website called 'Energy Made Easy'.[2]

ACCAN believes that in industries with a lack of adequate comparators or where comparators have demonstrated poor practice, regulators and government should look for ways to address this gap in the market. When done right, comparator tools can be an important 'early intervention' measure to help consumers avoid costly mistakes, misleading advertising or unsafe products. For government and regulators, investment in comparator tools can save money down the track through decreased spending on enforcement action.

Comparator tools are particularly important in relation to essential services, such as telecommunications, as all consumers need to make these purchases. Making better purchasing decisions can lead to sizable productivity gains across an economy. QUT research found that the economy wide savings from consumers having switched their internet services in the last 5 years is at least $136,471,044 and for mobile phones at least $326,937,600.[3]

This could be achieved through directly providing these services or funding consumer organisations which adhere to strict guidelines on independence to provide comparisons.

One area where such a gap exists in telecommunications is in broadband performance monitoring. Broadband plans are commonly advertised on headline speed claims which may only be achievable in ideal test conditions and are not what consumers should expect in real world everyday use. Claims are qualified with an elusive list of factors that can affect performance, but this is difficult for consumers to engage with or apply to their service. ACCAN research found that quality is the third most important factor for consumers in choosing a broadband service, behind price and monthly data allowance.[4] However, consumers appear to be confused by the market. Respondents were split in their opinion on whether providers differ in the level of quality they offer, with 58 per cent of

[2] Energy Made Easy, 2016, available at: https://www.energymadeeasy.gov.au/

[3] Silva-Goncalves, J, 2015, 'Australians' switching behaviour in banking, insurance services and main utilities', QUT and Heritage Bank.

[4] Galaxy research, 2016, 'broadband literacy' prepared for ACCAN, available at: https://accan.org.au/files/Reports/Broadband%20literacy%20Jan%202016.pdf

participants agreeing with the statement "You get the same speeds at home as advertised in your plan."

This confusion and lack of information inevitably leads to disappointment with services, as demonstrated by nearly 70 per cent of respondents saying they had unsatisfactory experiences with their broadband services. This issue is heightened with National Broadband Network (NBN) and the promise of faster and better technologies and services.

Information is needed on broadband performance across networks, geographies and providers, which is independently tested, reflective of real consumer experience and produced in an easy to understand format. This will allow consumers to make informed choices on their broadband services.

> **Recommendation 2:** Where a gap exists government and regulators should look to fund the provision of comparator websites. ACCAN recommends that broadband performance monitoring is an ideal candidate for this type of comparison.

Deterrent effect of financial penalties

The maximum financial penalties currently available under the ACL ($1.1 million for companies and $220,000 for individuals) were set when the law was introduced in January 2011. They apply to breaches of false or misleading representations, unconscionable conduct, pyramid selling and product safety. Based on the circumstances it is up to the courts to determine the penalty amount up to these maximum limits.

While fixed caps give some certainty to business, the deterrent effect can be undermined if profit from breaching behaviour outweighs the penalty. The Federal Court identified this as an issue in unconscionable conduct proceedings brought by the ACCC against Coles Supermarkets.[5] For a company with annual revenue in excess of $22 billion, a $1.1 million penalty may be insufficient to change behaviour. The same could be said of large telecommunications operators, such as Telstra which has annual revenue in excess of $26 billion.[6]

In 2014 Telstra was issued a $102,000 penalty by the ACCC for advertisements which misrepresented the price of a new iPhone 6 phone plan bundle.[7] According to Telstra's 2014/15 Annual Report "Mobile hardware revenue grew by 26.3 per cent to $1,886 million due to an increase in average revenue per post-paid handset (higher average recommended retail price), together with an increase in handset recontracts as a result of the iPhone 6 launch during the year".[8] In the context

[5] *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 (22 December 2014)

[6] Telstra Annual Report 2015 page 4

[7] ACCC, 2014, 'Telstra pays $102,000 penalty following ACCC infringement notice for iPhone 6 advertisement', available at: https://www.accc.gov.au/media-release/telstra-pays-102000-penalty-following-accc-infringement-notice-for-iphone-6-advertisement

[8] Telstra Annual Report 2015 page 23

of more than a $400 million increase in revenue, largely attributed to increased sales of the iPhone 6, the same product which was found to have misleading advertising, the deterrent effect of a $102,000 penalty is questionable. It should be noted that the ACCC did not seek the maximum penalty in this case. However, the ACL review is considering an approach to penalties which better reflects the revenues of an offending business.

> **Recommendation 3:** Improve the deterrent effect of financial penalties by increasing caps, allowing judicial consideration of revenue earned and inflationary pegging.

Insurance and unfair contract terms

The major carriers and some major electronics retailers offer insurance over mobile phone devices. ACCAN's preliminary research indicates this insurance may be poor value. It may duplicate cover in a consumer's home and contents insurance, travel insurance and contain high premiums and excess payments relative to the amount of cover offered. ACCAN's research also found that a number of the terms within these insurance contracts may be considered 'unfair'.

UCT exemption for insurance

Unfair Contract Term (UCT) protections were introduced to the ACL to protect consumers in circumstances where they have little or no opportunity to negotiate with businesses, such as with standard form contracts. These types of contracts are common in the insurance industry. Currently insurance is regulated by the *Insurance Contracts Act* (ICA) and is exempt from the UCT protections within the ACL.[9] ACCAN believes this exemption is leading to poor consumer outcomes and is not needed to protect the legitimate interests of insurers.

> **Recommendation 4:** That the *Insurance Contracts Act* exemption from the ACL Unfair Contract Term provisions be repealed.

ACCAN assessed the device insurance contracts of Vodafone, Optus and JB HiFi and found instances of terms in each which may be considered 'unfair' if the UCT protections applied.[10] A contract term is considered unfair if:

1. It would cause significant imbalance in the parties' rights and obligations arising under the contract; and
2. It is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and

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[9] *Insurance Contracts Act 1984* section 15

[10] Optus 'Yes' Cover, available at: http://smb.optus.com.au/opfiles/OnePortal%20Shared%20Content/IMM1410W45101_Insurance.PDF ; JB HiFi 'DevicEnsure' available at: http://www.lumleyretailwarranty.com.au/devicensure ; Vodafone Cover me Mobile Insurance, available at: https://www.vodafone.com.au/insurance ;Telstra no longer offers residential consumers device insurance.

3. It would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

ACCAN believes the following clauses may be considered unfair if the ICA exemption were repealed:

Right to claim under another insurance policy

The JB HiFi insurance policy barred consumers from being able to make a claim if they were capable of making a claim under another insurance policy. If the other policy in question had a similar clause a consumer could be left in the perverse situation of not being able to claim under either. This is blatantly unfair and it is difficult to see how such a clause is necessary to protect the legitimate interests of the insurer. Consumers potentially lose out by having paid for double coverage but have no right to claim against either policy.

Exemption for non-Australian citizens or permanent residents

Vodafone's insurance contained a term which barred cover unless the policy holder is an Australian citizen or an Australian permanent resident. This is despite one of the key terms of the offer giving 'worldwide cover'. This clause renders the entire policy useless if taken up by a consumer on a temporary visa. It also seems unnecessary to protect Vodafone's interests given the offer is designed to provide 'worldwide cover'.

Exemption if a nominated SIM card is not present

Both the JB HiFi and Vodafone policies prevent claims for a mobile phone if the claimant's 'nominated' or 'usual' SIM card is not present in the device. Given it is common practice, particularly while travelling, for consumers to swap in a different SIM card this may lead to many consumers voiding their insurance without realising. In a claim for a damaged phone, this clause appears arbitrary and unnecessary to protect the legitimate interests of the insurer.

Requirement of proof of purchase

Optus excludes claims over Insured Equipment without proof of purchase. This is despite the fact that Optus only allows insurance to be taken out at the time a customer purchases a new device from the supplier. This may be particularly problematic for a consumer paying in cash who would be forced to retain a receipt in order to make a claim. This seems unnecessary for Optus to protect its legitimate interests given it only offers cover to consumers it has sold a device to in the first place.

Exemption for unexplained disappearance, damage or malfunction

All three of the contracts exclude situations where a consumer cannot identify the event that lead to the loss or damage. This places a difficult evidentiary burden on a consumer. It is often impossible to

determine if a mobile phone has been stolen or the whereabouts simply forgotten. Each contract also has a general prohibition on fraud which seems sufficient to cover instances where a consumer has not been truthful about the cause of the damage or loss.

Extending UCT protections to whole of contract

When considered as a whole, many insurance contracts appear to be unfair on consumers. These products appear to rely on consumer confusion about the level of cover provided. This is better understood when the cost of insurance is compared to the cost of self-repair for device damage.

Repairs versus insurance costs case study

Apple currently charges $188.95 to fix a broken iPhone 6 screen.[11] The excess for a similar repair on the three insurance policies compared ranges from $50 to $125. Vodafone at $125 with a $15/month premium would require a consumer to make a claim every 4 months to 'break even'. The Optus breakeven point is slightly better at 10 months and JB HiFi's is at 8 months. Each of these policies requires a high number of claim events to break even on the combined costs of the premium and excess.

Vodafone limits the policy to three claim events per 12 months. This means a consumer can never move beyond the breakeven point and would be equally well off without insurance.

The context of an insurance sale is also an important factor in deciding if the contract is unfair. This type of device insurance is often sold as an add-on when a consumer purchases a mobile phone. At the time of purchase, consumers are usually focussed on the features of the device rather than any add-on. As such it is unlikely they will have the ability to adequately weigh up the premium, excess and likelihood of making a claim. In this context, combined with the exclusions outlined above, consumers are left with a contract of such poor value that it could in its entirety be considered unfair. ACCAN supports the extension of UCT powers to protect consumers not only where a particular unfair term exists, but to a contract that is unfair as a whole.

Clarity of add-on insurance information case study

A client of the Salvation Army in Adelaide was sold mobile handset insurance when he purchased a new Samsung handset. The client subsequently broke the screen on the handset and made an insurance claim. He then discovered he had to pay a $50 excess, which he could not afford. The total repair cost outside of the insurance policy was $400, so he was left with an unusable phone.

[11] Apple, 2016, 'iPhone screen repair costs', available at: https://support.apple.com/en-au/iphone/repair/screen-damage

The case study above is a common experience for consumers who tend to only focus on the terms of a contract for add-on insurance when they attempt to make a claim. The ability to deem an entire contract unfair is an important regulatory tool in ensuring consumers can get remedies when they unwittingly sign up for this type of junk add-on insurance.

> **Recommendation 5:** That Unfair Contract Protections be extended to allow for entire contracts to be deemed 'unfair'.

Extended warranties

Many manufacturers and retailers attempt to sell extended warranties, especially over electronic goods like mobile phones. In some cases these warranties offer little more than what a consumer would be automatically entitled to as part of their consumer guarantee rights under the ACL. The ACCC has undertaken legal action to curb this practice as recently as December 2015;[12] however it appears to be an ongoing practice.

Part of the problem is that there is little awareness by consumers of what they are entitled to under consumer guarantees. New Zealand has come up with two innovative ways to deal with this problem. Firstly, NZ consumer law requires than any advertised offer of an extended warranty be accompanied by a statement of how it differs from the automatic consumer guarantees. Secondly, extended warranties are subject to a cooling-off period, so a consumer has time to reconsider their need for the purchase away from the 'heat' of the sales process. ACCAN believes that both of these measures strike a better balance than the existing law.

As an example, online retailer Kogan sells 'Freight Guarantee/Freight Protection' on the delivery of anything purchased through its store.[13] Starting at $1.99 and increasing based on the value of the goods purchased Kogan offers cover for 'loss or damage to your order that occurs during delivery'. However it is not clear how this cover differs from what a consumer would be entitled to under the ACL. The ACL contains a statutory right in the form of a consumer guarantee which would cover a postal service and in most circumstances entitle a consumer to compensation for damages and loss.

If retailers were forced to provide additional information about how a warranty differed from a statutory guarantee at point of sale a consumer would be in a position to adequately assess the value of the additional warranty, if any.

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[12] ACCC, 2015, 'ACCC takes action against LG for alleged false or misleading representations relating to consumer guarantees', available at: https://www.accc.gov.au/media-release/accc-takes-action-against-lg-for-alleged-false-or-misleading-representations-relating-to-consumer-guarantees

[13] Kogan, 2016, available at: https://www.kogan.com/au/help/what-is-the-freight-guaranteefreight-protection-option-at-checkout/

Recommendation 6: That businesses offering extended warranties be required to provide clear, accessible information on how these warranties differ from statutory guarantees to aid consumer decision making.

Recommendation 7: That businesses selling add-on warranties be required to provide 'cooling off' periods.

Consumer protection in relation to digital 'marketplaces'

ACCAN is concerned by the way digital marketplaces (e.g. app stores) appear to be structuring transactions to avoid liability under the ACL. For example, Google does not exclude consumer guarantees altogether, but it appears to seek to modify its obligations. For apps purchased and downloaded from the 'Play Store', Google automatically offers a full refund within 2 hours; otherwise consumers are directed to the app developer for a refund.[14] ACCAN is concerned that this is out of step with the ACL which prevents a supplier from refusing to help a consumer by referring them to a manufacturer.

ACCAN has discovered a similar issue in relation to the practice of 'direct carrier billing' in telecommunications. Direct carrier billing is where mobile providers allow third party businesses to bill customers for services via the customer's phone bill. Like the Google and iTunes stores, these tend to be for mobile apps and games. When a customer seeks a refund for a faulty service or incorrect charge the mobile provider will direct the customer back to the third-party service. This is a confusing process for consumers; especially given these charges appear on their mobile bill. From a consumer perspective these marketplaces appear to be akin to a retail outlet.

ACCAN is concerned that these digital 'marketplace' business models are avoiding their obligations under the ACL by claiming to just handle transactions and are therefore not suppliers in the traditional sense. This is out of step with the policy objectives of the ACL and leads to poor outcomes for consumers. ACCAN has evidence of poor sales practices and difficulty in contacting some of these third party service providers, many of which are based overseas. Given the charges for these services are often small (for example an app may only cost a few dollars), we fear consumers are absorbing the costs rather than going to the added hassle of seeking refunds. Consumer outcomes would be greatly improved if these marketplaces were held liable as suppliers under the ACL.

Recommendation 8: That the ACL Review investigate the adequacy of definitions of 'supply' under the ACL in the context of digital 'marketplaces'.

Internet of Things (IoT)

Consumers are buying more hybrid digital/physical products. Examples include IoT hardware devices, such as such as smart thermostats, smoke detectors and security systems which are reliant

[14] Google, 2016, 'Replacements, warranties, & product guarantees', available at: https://support.google.com/store/answer/6160400?hl=en-AU&ref_topic=3244667

on an underlying service and interoperability. A consumer's ongoing enjoyment of these products often depends on paying a subscription fee to use the product they have 'purchased'. For example, the hardware device may only continue to operate if supported by access to a cloud server. Nest, a subsidiary of Alphabet (formerly Google) is one of the largest producers of home IoT devices. It also has a series of 'Works with Nest' compatible products, such as washing machines, locks, lights, fitness trackers etc. One of the big issues for consumers is ongoing interoperability and support of these devices.

Alphabet/Google has acquired a number of innovative IoT start-ups, including Nest and Revolv. Recently it was revealed that Revolv hardware would no longer be supported after June 19, 2016.[15] Consumers who had spent thousands of dollars on hardware to create smart homes were left with useless hardware and were offered no compensation for this loss. Although it is unknown if any Australian consumers purchased Revolv products, the founders of Revolv attempted to deny any rights consumers may have to refund by stating that consumers were not entitled to compensation because the "one-year warranty against defects in materials or workmanship has expired for all Revolv products."[16]

This is a tricky evolving market for consumers to navigate and so far these losses are limited to a handful of early adopters, but it is a warning sign of possible issues to come. Expensive hardware is being offered as a service and is completely reliant on the continued operation of that service. This leaves consumers vulnerable to companies withdrawing support for older devices and can force people into an expensive upgrade cycle or companies going out of business and leaving people with useless hardware. This suggests it may be time to consider what rights and responsibilities consumers should have for hybrid digital/physical products, including whether the current consumer guarantees and unfair contract terms regimes are adequate, or sufficiently tailored to digital content.

> **Recommendation 9:** That the ACL Review investigates the adequacy of the ACL consumer guarantees in relation to hybrid digital/physical goods and services.

Consumer guarantees in relation to broadband and mobile performance

The Regional Telecommunications Review identified the need for a new communications Standard to cover the current gap in protection over mobile and broadband services.[17] Given the increased reliance on these services for personal and business transactions it is increasingly important that they are delivered reliably. There are a number of barriers to getting a new consumer Standard in place, including industry reluctance and a deregulatory focus at the government level. One

[15] Vox, 2016, 'Nest is about to deliberately break one of its own products. That's unfair to customers.', available at: http://www.vox.com/2016/4/4/11364566/nest-revolv-bricking

[16] Revolv, 2016, 'A letter from Revolv's founders', available at: http://revolv.com/

[17] Regional Telecommunications Review 2015, available at: http://www.rtirc.gov.au/wp-content/uploads/sites/2/2015/10/RTIRC-Independent-Committee-Review-2015-FINAL-Low-res-version-for-website.pdf

alternative avenue for achieving adequate consumer protection is through consumer guarantees contained within the ACL. The legislated consumer guarantees require that services:[18]

- be provided with due care and skill,
- be fit for a particular purpose or give the results that you and the business had agreed to,
- be delivered within a reasonable time when there is no agreed end date.

The trouble with relying on the consumer guarantees is there is little guidance on what they mean in the context of delivery of telecommunications services. To date there has been very little case law around how these protections would practically be implemented in telecommunications. This makes it difficult for consumers to understand their rights and remedies under the ACL.

During the recent string of Telstra outages, which impacted landline, mobile and internet services for millions of consumers, there was a lot of confusion about what remedies might be available. Telstra attempted to address this issue by offering 'free data' days.[19] This ad-hoc offer took place on a Sunday and only related to mobile data, which meant many businesses and non or low data users were not adequately compensated for the loss suffered.

ACCAN has played a role in unpacking some of these protections and placing them in a telecommunications context, but could be aided by greater involvement by regulators and tribunals. ACCAN supports proposals that would see guidance notes produced and tribunal decisions published to help consumers better understand their rights in relation to specific services.

> **Recommendation 10:** That guidance notes and tribunal decisions be published to help consumers better understand their consumer guarantee rights in relation to specific services.

Application of consumer guarantees to suppliers of telecommunications

ACCAN is concerned by section 65 of the ACL. This section allows telecommunications to be carved out from the application of the consumer guarantees, subject to a change in the regulations. This carve out option was created in recognition of the crucial nature of telecommunications services, and that disruption can have a substantial impact on consumers.[20] As a result, it was envisioned that standalone legislation that better deals with the issues specific to the supply of telecommunications may subsequently be developed. Such policies have failed to materialise. In fact ACCAN is aware of a number of industry proposals to remove what limited standalone protections exist over voice services.

Leaving the door open for a carve-out via a change to the regulations is unnecessary and potentially dangerous given the fundamental importance of consumer guarantees. If in the future, standalone

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[18] *Competition and Consumer Act 2010* Schedule 2

[19] Telstra, 2016, 'Update on our mobile network disruption and free data day', available at: http://exchange.telstra.com.au/2016/03/18/update-on-our-mobile-network-disruption-and-free-data-day/

[20] *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010,* Explanatory Memorandum, p.193, available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4335%22

protections -which did genuinely extend the consumer guarantees over telecommunications - were created then that may be the time to review whether duplication exists. Until that time section 65 provides a dangerous avenue to remove fundamental consumer protections over a service which is now considered essential.

Recommendation 11: That the ACL review further investigate the value of section 65.