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Access | Justice

A client's rights and obligations when contracting with a telecommunications provider

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LawRight's Community and Health Justice Partnerships

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Acknowledgement of Country

We acknowledge the traditional custodians of the land and waters throughout Australia and pay our respect to Elders past, present and emerging.

We benefit from the gifts of First Nations peoples, acknowledge the historical and ongoing injustices they bear and support their call for power over their destiny.



Today's session

Today's session will cover the following key points:

- the importance of access to a mobile phone and Internet connection for rough sleepers and other people experiencing homelessness;
- the protections offered under the Telecommunications Consumer Protection (TCP) Codes regarding inappropriate contracting;
- TCP Code obligations for dealing with represented customers; and
- Resolving disputes when negotiations fail.



Mobile phones and disadvantage

The rate of mobile phone ownership among people experiencing homelessness

- A 2014 study by the Australian Communications Consumer Action Network found that 95% of Australians experiencing homelessness own a mobile phone;
- This is higher than the rate of mobile phone ownership among the general population (approximately 88%)



“As a woman on the street, your phone is the only safety you have”

- Caitlin

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Recent ACCC Headlines

Optus penalised \$10 million for misleading customers over digital purchases

6 February 2019

Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers

13 May 2021

Amaysim and Lycamobile pay penalties over ads for 'unlimited' mobile plans

15 October 2020

The Legislation, Codes and Guides

- **Telecommunications Consumer Protection Code 2019** (ref C628:2019)
 - Commenced on 1 August 2019 and covers conduct and contracts from this date.
 - Breaches can be raised with the Telecommunications Industry Ombudsman (**TIO**)
- **Telecommunications Consumer Protection Code 2015** (ref C628:2015)
 - For contracts and conduct prior to on 1 August 2019. The version incorporating the ACMA Telecommunications (Consumer Complaints Handling) Industry Standard 2018 relating to Chapter 8 obligations came into force on 1 July 2018.
 - Breaches can be raised with the TIO
- **Australian Consumer Law, Sch 2 of the *Competition and Consumer Act 2010* (Cth)**
 - Usually with regard to misleading or deceptive conduct (s 18), unconscionable conduct (Part 2-3), unfair contract terms (Part 2-3).

The legislation, codes and guides cont.

- ***Telecommunications Act 1997 (Cth)***
 - Legislation enabling the two TCP Codes
- ***Various ACCC and ASIC guides relating to the treatment of consumers and debtors***
 - To be read in conjunction with the relevant TCP Codes:
 - ACCC Debt Collection Guidelines; and
 - ACCC Don't take advantage of disadvantage guide.



Running a Matter Relating to the Conduct of Telco

- *What was my client's financial position when they entered into the contract?*
- *What vulnerabilities does my client face? Were these experienced when they were being provided the contract? (e.g. homelessness, youth, disability)*
- *Was my client the end user of the product/contract and if not, who benefited from the contract?*
- *Did my client understand all the features of their contract? Did they know about add-ons and insurance products in the plan?*
- *Why is my client now unable to afford the contract and how has the Provider responded to this?*



The Provision of Contracts and Completing a Credit Assessment

Both TCP Codes provide a general statement on the responsible provision of Telecommunications Products when providing post-paid services to a customer. This includes rules about credit assessments and explaining liability.

Relevant provisions: Credit Assessments

- **TCPC 2015:** Section 6.2 requires a provider to complete a credit assessment for Post-Paid Services. This is helpfully defined as *“the process by which a Supplier determines the level of credit to be provided by it (if any) to a Consumer.”*
- **TCPC 2019:** Section 6.1 which requires a provider to complete a credit assessment on contracts by either
 - Checking their previous payment history with the provider ; or
 - For new customer seeking contracts **over \$1000**, checking their financial capacity to pay and doing an external credit check.

The 2019 Code states a provider **MUST** offer more affordable options (such as pre-paid services) if a customer fails the credit assessment.



Spend Management and Data Charges

Both Codes provide that Providers must offer spend management tools which usually take place in the form of usage notifications or hard caps.

Relevant provisions:

- **TCP Code 2015:** Section 6.5 requires a provider to have spend management tools and to make them available to the client. Also requires notifications to be sent at 50%, 85% and 100% of their usage allowance. A provider must also make available options for the customer to restrict their service if they reach their spending limit.
- **TCP Code 2019:** Largely the same, see Section 6.4 and 6.5.

Providers that fail to notify a customer that they are reaching their data limit within 48hrs of the data limit being reached are in breach of the Code.

Also consider if a client is continuously going over their data, whether a Telco who is engaging in the responsible provision of telecommunication services should provide spend control measures on the contract. See also Part 7.2.2 regarding options for customers providing financial hardship

Access to documents and rights of advocates

Chapter 3 of The Telecommunications Consumer Protections Code requires that providers must ensure customers can appoint an Authorised Representative to act on their behalf.

Statements from companies that:

- A lawyer attend the store with a client/the client must call to authorise their lawyer on the account;
- The client completes a statutory declaration or Power of Attorney to authorise a lawyer; or
- That they cannot provide a lawyer some or all documents.

... are all breaches of the TCPC 2019.

Customers are entitled to access documents relating to their contracts: Part 4.6.3

Records must be kept of interactions between the company and the customer and be made available on request: Part 4.7 (d).

Financial Hardship

- Suppliers MUST have a hardship policy that is easy to access and must provide the appropriate hardship contact point on request (TCP 2019 Part 7.1.1 and 7.1.2).
- A hardship policy must make available at least three of the following options from each list to a client in hardship:

Options to keep connected:

- Transferring to pre-paid service
- Hard caps/shaping
- Low-cost interim options
- Spend controls

Suitable financial arrangements:

- Postponing or deferring payments
- Agreeing on an alternative payment plan
- Discounting or waiving a debt
- Waiving fees
- Incentives for making payments (such as payment matching)

- A Supplier must limit required documentation to that which is relevant to the Financial Hardship assessment and not unduly onerous (TCP 2019 7.4.1).



Fair Credit Management and Debt Collection

- A provider cannot take credit management action against a disputed debt: (TCP Code 2019, Part 6.9)
- **Credit Management** means the process by which a Supplier:
 - helps customers to manage their expenditure on Telecommunications Services;
 - manages any credit risk to the Supplier; and
 - collects outstanding debts from Customers, and former Customers.
- **TCP Code 2019 Part 6.10: Debt collection**
 - Must sell debts to AFCA members (Part 6.10.03)
 - Must comply with the the ACCC and ASIC guideline “Debt collection guideline: for collectors and creditors” issued in July 2017 when collecting amounts due (Part 6.10.01).
 - Must advise the customer in writing within 25 days of the debt being sold that it has been sold (Part 6.10.04).



Violet's Story - TIO Complaint

Violet is a 23 year old woman, with a history of homelessness, abuse and disability, who had leased a phone from a Telco in 2016 and changed her plan in 2018.

Breaches relating to the responsible provision of telecommunication products:

- Part 6.2.1(a) of the 2015 Code in failing to undertake a genuine credit assessment when our client sought a post-paid service from their store in June 2016 and later, for a separate contract, in November 2016; and
- Part 6.2.1(a) of the 2015 Code when the Telco failed to undertake a genuine credit assessment when our client sought a post-paid service in April 2018.



Violet's Story - Making a TIO Complaint

Breaches during our engagement on the file:

- Part 3.5.1 of the 2015 Code when the Telco unreasonably required our client to contact Telstra on her own or go to a store rather than accept our authority as her representative.
- Part 4.5 of the 2015 Code and part 4.6.2 of the 2019 Code, when the Telco failed to provide copies of the relevant contracts, despite written requests made on 3 March 2019, 28 August 2019 and 1 October 2019.
- Part 6.14.1 of the 2015 Code, when the Telco assigned the disputed alleged debt to Charter Mercantile Agency in July 2019 despite being aware of Violet's financial hardship but having not yet provided us with documents requested in relation to her accounts.



Violet's Story - Making a TIO Complaint cont.

- Part 6.12.1 (f) of the 2015 Code, when the Telco failed to provide our client with reasonable and flexible repayment options to meet her individual circumstances, despite being notified by our office of her inability to meet their repayment options.
- Part 7.7.1 of the 2019 Code, when the Telco assigned the disputed alleged debt to Credit Corp Recoveries Pty Ltd in January 2020, despite being aware there was an open complaint in regards to the account.



The Telecommunications Industry Ombudsman



**Telecommunications
Industry
Ombudsman**

- An independent external dispute resolution service for residential customers and small business who have a complaint about their phone or internet service.
- Your complaint should be about a problem that occurred within the last two years, or that the customer became aware of in the last two years.
- The TIO may still be able to help with complaints that are up to six years old, depending on the reason for the delay.



The Telecommunications Industry Ombudsman



Telecommunications
Industry
Ombudsman

- Complaints can be lodged online and the Telco must respond within 10 days. If this does not resolve the complaint it will progress to conciliation or investigation by the TIO.
- Collects and reviews information about complaints and publishes decisions.
- *See: Decision and direction – 26 July 2019 (De-identified for Publication)*
 - This decision concerned the conduct of a Provider when providing three successive contracts to a customer for mobile phone services.
 - TIO made a direction to refund the person \$653.28



Further Resources

There are a number of resources available to provide additional information, and to assist volunteer lawyers to progress these types of matters.

- Australian Communications Consumer Action Network, [Homeless and Connected](#) report;
- Communications Alliance, [Telecommunications Consumer Protections Code](#);
- Communications Alliance, [Assisting Customers Experiencing Domestic and Family Violence](#) guideline

By providing access to the legal protections offered to our clients, we provide access to their legal rights. Through our advocacy, we can have a positive and meaningful impact on a vulnerable person's life.

