Creating a more dynamic and resilient economy Interim Report

Submission to the Productivity Commission

15 September 2025

Recommendations

This submission recommends that the Productivity Commission's final report advise the Australian Government to:

1. Prioritise regulatory reform that provides the greatest net benefit to Australian businesses and consumers.
2. Ensure that there is a strong focus on establishing effective, efficient and 'right-sized' regulatory frameworks, which promote effective protections for consumers at least cost to businesses.
3. Undertake a regulatory review of the telecommunications sector as a matter of priority. This should re-examine the case for the application of self-regulation in telecommunications consumer protections and respond to outstanding reviews of the sector. We also recommend the Government adopt a systematic approach to regulatory review of the sector to reduce fragmented, duplicative and inconsistent regulations.
4. Introduce greater regulatory accountability measures through stronger and more transparent regulator performance frameworks.
5. Review its existing Regulator Management Guidelines and introduce clear, practical guidance on developing best practice performance metrics.
6. Establish an independent Office of Impact Analysis and a panel of independent Impact Analysis Commissioners that includes a representative with consumer expertise.
7. Reform impact analysis to consider the consumer costs of ineffective regulation.
8. Provide appropriate funding for consumers and their representatives to participate in policy and regulatory development.

About this submission

ACCAN is pleased to provide this submission to the Productivity Commission on its interim report to Pillar 1: Creating a more dynamic and resilient economy. This submission provides feedback regarding the Productivity Commission's recommendations on regulatory reform to promote business dynamism.

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ACCAN is the peak national consumer organisation advocating trusted, accessible, inclusive, affordable and available communications and digital services.

1. Introduction

ACCAN welcomes the opportunity to submit to the Productivity Commission (**PC**) on its interim report (**the Report**) to Pillar 1: Creating a more dynamic and resilient economy.[1] This submission addresses the PC's draft recommendations on regulating to promote business dynamism. We welcome the Report's focus on regulatory reform and recognise the role of regulation in promoting or hampering productivity.

This submission offers the consumer perspective on regulatory practice that balances policy objectives and the cost to businesses within the context of the telecommunications sector. Regulation plays many important roles, including to address a range of market failures which detract from an efficient and competitive market economy and to safeguard the interests of consumers and society. A significant regulatory policy challenge is how to balance the need for regulation against its costs, to ensure intervention promotes competitive markets that work in the interests of and produce fair outcomes for consumers.

Fit for purpose regulation is that which provides the greatest net benefit to Australians.[2] The Department of Finance's whole-of-government Regulatory Policy, Practice and Performance Framework[3] states fit-for-purpose regulation 'drives competition, productivity, and investment, and protects Australia and its people from harm now and into the future, creating certainty, building trust, and facilitating growth'.[4] We support this objective to ensure policy and regulatory intervention is most effective in achieving its policy objectives at least-cost to deliver net benefits to Australian businesses and consumers.

ACCAN is concerned that the Report almost exclusively focuses on the increasing regulatory burden to businesses that necessitates economywide reform. The PC identifies social regulation as the primary contributor to increasing regulatory burden[5] yet there is little in the Report that meaningfully considers whether these regulations are legitimately required, or the social and economic benefits that justify the costs they impose on businesses.

The rigorous assessment of the potential and actual benefits is empirically difficult, but the failure to invest in the measurement of these benefits does not imply that they do not outweigh the potential costs of regulation. In contrast, the potential costs associated with complying with regulatory requirements is comparatively easy to assess.

Rigorous, evidence-based policy demands the assessment and measurement of both in order to inform the development of effective, welfare enhancing regulation that promotes the interests of Australian society. Anything less diminishes the reputation of the institutions that undertake these assessments and the confidence of society in regulatory reforms.

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[1] Productivity Commission, *Interim Report - Creating a More Dynamic and Resilient Economy* (Report, 31 July 2025) <https://www.pc.gov.au/inquiries/current/resilient-economy/interim>.
[2] The Office of Impact Analysis, *Australian Government Guide to Policy Impact Analysis* (17 February 2023) <https://oia.pmc.gov.au/resources/guidance-impact-analysis/australian-government-guide-policy-impact-analysis>.
[3] Department of Finance, *Regulatory Policy, Practice & Performance Framework* (6 August 2024) <https://www.finance.gov.au/about-us/news/2024/whole-government-regulatory-policy-practice-performance-framework>.
[4] Ibid 7.
[5] Productivity Commission (n 1) 30.

In ACCAN's view, the lack of rigorous regulatory impact assessments that take into account the material impacts of regulation on consumer outcomes, reflecting the demand side of the economy, has undermined welfare enhancing reforms, and stymied genuine reform efforts.

ACCAN concurs with the broad principles that regulation must be effective, fit for purpose and achieved at least-cost. However, we consider that there is a need to reframe the problem, so the emphasis is placed on ensuring an effective, efficient and 'right-sized' regulation that promotes effective intervention and minimises regulatory burden on business. A narrow focus on regulatory burden risks de-regulating too far. When problems inevitably arise from insufficient oversight, typically new regulations are introduced. This cycle of deregulation followed by re-regulation often results in more complex and burdensome regulatory frameworks over time than if appropriate regulations had been established from the start.

2. Industry self-regulation

This submission considers the application of industry self-regulation models to minimise regulatory burdens. Industry self-regulation gained popularity as a policy approach between the 1980s-2000s as governments explored less interventionist ways of regulating to reduce the regulatory burden on businesses.[6] Today, industry self-regulation exists in different forms across many industries; but there are clear signs that self-regulation is not working as originally anticipated.

2.1. Self-regulation in telecommunications

The regulatory policy outlined by the *Telecommunications Act 1997* (Cth) (**the Act**) intended to minimise regulatory burden in what was a newly deregulated sector after the privatisation of Telecom Australia.[7] Section 4 of the Act explicitly prioritises self-regulation as the default approach to regulatory policy.

The self-regulatory approach is reflected in Part 6 of the Act which instituted a process for the development and administration of industry codes and industry standards. The Act provided the Australian Communications Authority (**ACA**) (a body that was subsequently merged with the Australian Broadcasting Authority to become the Australian Communications and Media Authority (**ACMA**)) limited 'safety net powers which may be used if self-regulation in an industry section has serious failings'.[8]

Telecommunications consumer protections have existed under this self-regulatory regime since it was instituted. Obligations on industry to protect consumers are set out in the Telecommunications Consumer Protections (**TCP**) Code and cover a range of matters including sales, credit assessments, and billing.[9]

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[6] Karen Lee, 'Counting the Casualties of Telecom: The Adoption of Part 6 of the Telecommunications Act 1997 (Cth)' (2009) 37(1) *Federal Law Review* <https://www.austlii.edu.au/au/journals/FedLawRw/2009/2.html> ('Counting the Casualties of Telecom').
[7] Explanatory Memorandum, Telecommunications Bill 1996 (Cth) Volume 1.
[8] Explanatory Memorandum, Telecommunications Bill 1996 (Cth) Volume 1.
[9] Australian Telecommunications Alliance, 'TCP Code Review 2024-2025' (Web Page) <https://www.austelco.org.au/news-and-resources/reviews-and-consultations/tcp-code-review-2024/>.

2.2. Self-regulatory failure in telecommunications

The telecommunications industry has persistently demonstrated that it is unwilling to uplift self-regulatory codes in instances of demonstrable consumer detriment, leading to compliance costs to business and insufficient consumer protections.

In 2011, despite four years of rising consumer complaints, the peak telecommunications industry body (now known as the Australian Telecommunications Alliance (**ATA**)) had taken no action to amend the TCP Code (C628:2007). The ACMA then conducted an inquiry into code deficiencies and issued a notice under section 125 of the Act compelling ATA to uplift key areas of consumer concern including advertising, complaints, customer information, and spend management tools.[10] This led to the revised TCP Code in 2011-12, a process that was 'protracted, costly and fraught'.[11]

In more recent years, the TCP Code has failed to address key areas of consumer harm, resulting in the Minister for Communications directing the ACMA to make an industry standard to cover complaints handling,[12] financial hardship[13] and domestic and family violence (**DFV**) protections.[14]

Prior to the recent introduction of the industry standard,[15] telecommunications DFV protections were set out in an industry guideline[16] produced by ATA. For many years, consumer groups routinely raised alarm over inappropriate and unsafe provider conduct.[17] A review of case management data by a major community legal centre identified that 15.8% of individuals experiencing telecommunications financial difficulties in the 2023 financial year reported that they also were experiencing family violence.[18]

These cases included reports of complaints from customers who have said that their telco provider insisted they obtain consent from, have a three-way call with, or even attend a store with the violent perpetrator in order to separate services on their account.[19] In another case, a woman with an intervention order against her ex-partner discovered he had purchased three handsets under her account.[20] Despite informing the telco of her family violence circumstances, she was told she must attend a store with her ex-partner to change the contract ownership.

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[10] Australian Communications and Media Authority, *Regulation Impact Statement Telecommunications Consumer Protections Code C628:2012* (June 2012) 4 <https://oia.pmc.gov.au/sites/default/files/posts/2012/07/tcp_code_ris1.pdf>.
[11] Department of Communications, *Regulating Harms in the Australian Communications Sector Policy Background Paper No.2* (Report No 2, Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, May 2014) 13 <https://www.infrastructure.gov.au/department/media/publications/regulating-harms-australian-communications-sector-policy-background-paper-no2>.
[12] *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (Cth).
[13] *Telecommunications (Financial Hardship) Industry Standard 2024* (Cth).
[14] *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections) Industry Standard 2025* (Cth).
[15] Ibid.
[16] Australian Telecommunications Alliance, *G660:2023 Assisting Consumers Affected by Domestic and Family Violence* <https://www.austelco.org.au/publication/g660-2/>.
[17] Australian Communications Consumer Action Network, *Domestic and Family Violence* (Policy Position) <https://www.accan.org.au/accan-s-position-papers/domestic-and-family-violence>; Consumer Action Law Centre, *Consumer Advocates Call for Improved Domestic Family Violence Protections* (Media Release, 8 May 2024) <https://consumeraction.org.au/consumer-advocates-call-for-improved-domestic-family-violence-protections/>.
[18] Australian Communications Consumer Action Network (n 17).The community legal centre also reported that the percentage could be higher due to the under-reporting of family violence.
[19] Australian Communications and Media Authority, 'Speech by Nerida O'Loughlin PSM, ACMA Chair, CommsDay Summit – 1 May 2024' (1 May 2024) <https://www.acma.gov.au/publications/2024-04/speech/speech-nerida-oloughlin-psm-acma-chair-commsday-summit-1-may-2024>.
[20] Ibid.

While DFV protections were drafted in the most recent TCP Code review, the protections proved inadequate, ultimately requiring intervention from the Minister to direct the ACMA to establish a mandatory industry standard to protect consumers.

The most recent TCP Code submitted to the ACMA for registration also fails to appropriately address consumer harm arising from irresponsible sales and credit assessment practices.[21] This is despite landmark cases brought against the sector's two largest operators – Telstra and Optus – in recent years for unconscionable sales conduct, which involves the most egregious breaches of consumer law.[22]

The repeated ministerial interventions necessitated by industry self-regulation failures have created a fragmented and inconsistent consumer protection framework.[23] This undermines the effectiveness of the protections and compounds the regulatory burden to business.

2.3. Self-regulation is no longer appropriate for telecommunications consumer protections

Effective self-regulation requires certain market conditions to be in place.[24] The ACMA identified optimal conditions for self-regulation in a 2015 paper[25] and subsequently concluded in 2020 that 'it is apparent… these conditions no longer exist' in the current telecommunications market.[26]

First, self-regulation is appropriate for markets with low or moderate public interest concerns.[27] Telecommunications is now an essential service, with reliable connectivity needed to facilitate access to employment, education, health and government services. The extent of consumer dependence on telecommunication services warrants high public interest concerns. Certainly, in some instances unreliable connectivity can threaten lives.[28]

Second, self-regulation is suited to markets with product homogeneity and a small number of participants.[29] The telecommunications market today is diverse and consists of over 1,500 carriage service providers. Telecommunication products have also become increasingly complex due to network evolution, integration of digital services, and the proliferation of product bundling.

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[21] ACCAN, *Telecommunications Sales Practices* (Policy position, May 2025) <https://www.accan.org.au/accan-s-position-papers/telecommunications-sales-practices>. ACCAN, *Telecommunications Credit Assessments* (Policy Position, May 2025) <https://www.accan.org.au/accan-s-position-papers/telecommunications-credit-assessments>.
[22] Australian Competition and Consumer Commission, *Optus Agrees to $100m Penalty, Subject to Court Approval, for Unconscionable Conduct* (Media Release No 63/25, 18 June 2025) <https://www.accc.gov.au/media-release/optus-agrees-to-100m-penalty-subject-to-court-approval-for-unconscionable-conduct>; Australian Competition and Consumer Commission, *Telstra to Pay $50m Penalty for Unconscionable Sales to Indigenous Consumers* (Media Release No 67/21, 13 May 2021) <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>.
[23] Regional Telecommunications Independent Review Committee, '2024 Regional Telecommunications Review' (13 December 2024) 76 <https://www.rtirc.gov.au/>.
[24] Australian Communications and Media Authority, *ACMA Submission to Consumer Safeguards Review Part C: Choice and Fairness* (Submission, 25 September 2020).
[25] Australian Communications and Media Authority, *Optimal Conditions for Effective Self- and Co-regulatory Arrangements: 2015 Edition* (Report, Australian Communications and Media Authority, 1605759327) <https://www.acma.gov.au/publications/2015-06/report/optimal-conditions-effective-self-and-co-regulatory-arrangements-2015-edition>.
[26] Australian Communications and Media Authority, 'ACMA Submission to Consumer Safeguards Review Part C: Choice and Fairness' (n 24) 3.
[27] Australian Communications and Media Authority, 'Optimal Conditions for Effective Self- and Co-regulatory Arrangements: 2015 Edition' (n 25) 13.
[28] Carol Bennett, 'Mobile Phone Overhaul Literally a Matter of Life and Death' (online, 19 August 2024) <https://www.canberratimes.com.au/story/8731218/telstra-optus-delay-3g-shutdown-amid-safety-concerns/>.
[29] Australian Communications and Media Authority, 'Optimal Conditions for Effective Self- and Co-regulatory Arrangements: 2015 Edition' (n 25) 12, 13.

These conditions create barriers to achieving consensus about obligations in self-regulatory codes.

Reviews of the Telecommunications Consumer Protection (**TCP**) Code have adopted a 'lowest common denominator' approach, in which code obligations are negotiated to apply to all market participants, regardless of their size or dominance.[30] This has led to sluggish reviews and material delays to implementing essential consumer protections. The most recent code review process has taken more than two years and is ongoing.[31]

Third, self-regulation is appropriate where there is 'collective will or genuine industry incentive to address the problem or enhance existing provisions'.[32] As the above analysis shows, the telecommunications industry has persistently failed to uplift the TCP Code to protect consumers. Serious and repeated cases of industry misconduct further exacerbate these concerns.

Finally, effective self-regulation relies on sufficient incentives for industry to participate and comply.[33] Part 6 of the Tel Act was reflective of the self-regulatory focus of the Act[34] and constrained the ACMA's intervention and enforcement powers to set industry standards to address consumer harm. Critically, the Act established a two-step enforcement regime whereby the ACMA cannot penalise carriage service providers (**CSPs**) for breaches of industry codes without first issuing a direction to comply. Where a breach is found, the ACMA can only lodge penalties to the magnitude of $250,000.

This weak enforcement framework has been one of the major shortcomings of the telecommunications self-regulatory regime. As Commissioner Hayne expressed in the context of the Royal Commission Financial Services into Misconduct in the Banking, Superannuation and Financial Services Industry:

> '*If industry codes are to be more than public relations puffs, the promises made must be made seriously. If they are made seriously (and those bound by the codes say that they are), the promises that are set out in the code, and are intended to govern the particular relations between the provider and the acquirer of a financial product or financial service must be kept. This must entail that the promises can be enforced by those to whom the promises are made*'.[35]

While the telecommunications enforcement framework will be significantly strengthened under the *Telecommunications Amendment (Enhancing Consumer Safeguards) Bill 2025*, there is an inherent conflict of interest in industry drafting its own rules to protect consumers. Mandatory and enforceable codes also incentivise industry to draft weak obligations so that they are less exposed to the risk of enforcement.

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[30] Department of Communications, *Regulating Harms in the Australian Communications Sector Policy Background Paper No.2* (Report No 2, Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, May 2014) 16. <https://www.infrastructure.gov.au/department/media/publications/regulating-harms-australian-communications-sector-policy-background-paper-no2>.

[31] Australian Telecommunications Alliance (n 9).

[32] Australian Communications and Media Authority, 'Optimal Conditions for Effective Self- and Co-regulatory Arrangements: 2015 Edition' (n 25) 13.

[33] Ibid 13.

[34] Explanatory Memorandum, Telecommunications Bill 1996 (Cth) Volume 1.

[35] *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Final Report No vol 1, 4 February 2019) 12 <https://www.royalcommission.gov.au/banking/final-report>.

2.4. Stronger self-regulatory frameworks still suffer significant deficiencies

The failures of self-regulation in telecommunications to address consumer concerns are not isolated. The financial services sector has operated within a self-regulatory framework since the first major industry-wide code was introduced in 1993[36] and now consists of five main codes. In many ways, the self-regulatory framework in the financial services sector is more established, evolved and transparent than telecommunications; however, industry self-interest still produces complications for the effectiveness of self-regulation.

Financial services sector codes supplement regulation under the *Corporations Act 2001* (Cth) by the Australian Securities and Investments Commission (**ASIC**). In comparison with the telecommunications sector, the regime is more structured and independently overseen, with some financial services sector codes legally enforceable. Each financial services sector code is overseen by a code governance committee that typically includes three key members:

- An independent Chairperson, appointed jointly by the Australian Financial Complaints Authority (**AFCA**) and the relevant industry body.
- A consumer representative, appointed by consumer groups or AFCA.
- An industry representative, appointed by the relevant industry association.

Each committee monitors code compliance, investigates breaches, and undertakes thematic inquiries on emerging and systemic issues. Committees are supported by a team of staff that are employed by the Australian Financial Complaints Authority (**AFCA**). The 'code team' at AFCA that supports the five financial services industry codes has over 30 staff.

Each committee is empowered by their respective codes to collect data from code subscribers about their compliance with code obligations. The data is analysed and published in an annual industry data report setting out the industry's compliance with the code, thereby permitting public scrutiny of the industry's code compliance performance. Committees are also empowered to investigate significant and standard breaches of the code, which industry participants must report to the committee within defined timeframes.[37] Code committees usually have varying powers to impose sanctions for code breaches. Sanctions can include a requirement to take remedial action, undertake audits, pay penalties or to publicly advertise breaches.

In contrast, telecommunications self-regulatory codes often rely primarily on industry-led committees or working groups formed by ATA. The ATA appointed an 'independent' advisor to the recent TCP Code review and set the advisor's terms of reference.[38] Both decisions involved no consultation with consumer advocates.

Monitoring and compliance with the TCP Code is reviewed by Communications Compliance (**CommCom**), an industry organised group that assesses providers' annual compliance attestations. CommCom undertakes annual compliance reviews but historically, has not made

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[36] Australian Banking Association, *1993 Code of Banking Practice* (1993) <https://www.ausbanking.org.au/banking-code/1993-code-of-banking-practice/>.

[37] We note that there is no equivalent obligation on carriage service providers in the TCP Code.

[38] Australian Telecommunications Alliance (n 9).

these reports available to the public. CommCom did provide ACCAN with a copy of its 2023-24 compliance report which indicated that its one staff member reviewed compliance assessments from 329 carriage service providers, representing only approximately 20% of the telecommunications market.[39]

While the financial services sector code framework appears to be more robust in comparison with the telecommunications self-regulatory framework, self-regulation has remained problematic. A recent submission from Financial Rights Legal Centre (**FRLC**) highlights persistent flaws in financial services self-regulation, many of which stem from the fact that industry codes are owned and developed by the industry and their interests do not inherently align with those of consumers:

- Code monitoring is limited by the amount of resourcing provided and controlled by industry.
- The ability for consumers to individually enforce code commitments varies.
- Lifting consumer protections via self-regulation is lengthy (in most cases, taking more than three and up to six years).
- There continue to be instances where reviews are conducted without independence
- Sanctions powers vary and have not had a real deterrent effect.
- The standards set may not be adequate because it is not mandatory for codes to be approved by ASIC. Only one code – the banking code – has sought and received approval from ASIC.
- There is a lack of any requirement to have compliance systems in place to meet code requirements.
- There is an over-reliance on vagaries and weasel words.[40]

The increasing frequency of code breaches in financial services represents the most significant concern regarding the effectiveness of industry self-regulation. As FRLC has noted, this is a sign that there is a lack of universal adherence (or buy in) to self-regulation and the promises made in codes, and a lack of resources being directed by subscribers to ensuring they comply with code obligations.[41]

As demonstrated by the above analysis, it cannot be assumed that self-regulatory frameworks, as desirable as they may be in a deregulation context, will be sufficient to ensure adequate consumer protections. Indeed, the failure of self-regulatory processes to achieve timely and adequate protections in the telecommunications sector has resulted in the need for enforceable, regulator-drafted industry standards.

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[39] CommCom provided the unpublished report to ACCAN via email.

[40] Financial Rights Legal Centre, *Consultation on Proposed Update to RG 183 on Approving Codes of Conduct* (Submission, August 2025) <https://financialrights.org.au/wp-content/uploads/2025/09/250901_rg183update_submission.pdf>.

[41] Ibid.

3. Telecommunications regulatory reform must be a priority

Telecommunications regulatory reform should be an immediate priority considering the universal dependence of businesses and consumers on reliable communication services. Reform of telecommunications should modernise the regulatory framework and lead to significant economic productivity uplift. The 2024 Regional Telecommunications Review (**RTR**) argued 'access to reliable telecommunications services is critical for businesses across all sectors to connect with global markets, access essential online resources, streamline their operations and expand customer bases… By embracing [digital] technologies, businesses of all sizes can enhance productivity and improve decision-making competitiveness in an increasingly dynamic economy'.[42]

Despite several sector-wide reviews, the regulatory policy underpinning telecommunications has not undergone significant reform since it was written in 1996. In 2014, the Department of Communications concluded that 'there appears to be an urgent need to reconsider the role of co-regulation in the current regulatory framework'. In 2020, submissions to the Government's Consumer Safeguards Review further echoed this sentiment.[43] Eleven years after the Department's report, the need for reform is ever more pressing and remains unchanged.

To ensure fit-for-purpose regulation, essential consumer protection matters should be moved from self-regulation to direct regulation.[44] Fit-for-purpose regulation should consolidate the fragmented consumer protections framework to ensure consistency and promote effective safeguards at least-cost to the telecommunications industry. Self-regulation should be retained for technical regulation, as they have remained largely effective, due to the mutual interest among industry participants to maintain common infrastructure and standards.[45]

4. Discussion on Report recommendations

ACCAN is supportive of regulatory reform that ensures consistent, clear and fit-for-purpose regulation that produces net benefits to Australian businesses and consumers. Better regulatory practice is needed in the telecommunications sector to modernise the framework, reduce unnecessary compliance burden, and promote all Australians access to reliable and affordable telecommunications services.

4.1. There is a need for regulatory accountability and better performance frameworks

Regulators must be held accountable for the development, enforcement and outcomes of the regulation they oversee. ACCAN supports the PC's position that 'regulators and policymakers should more proactively manage regulations and better consider the trade-offs between their regulatory objectives, risk tolerance, compliance costs, and broader economic growth. They

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[42] Committee (n 23) 15.
[43] Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Consumer Safeguards Review Consultation—Part C: Choice and Fairness' (15 September 2022) <https://www.infrastructure.gov.au/have-your-say/consumer-safeguards-review-consultation-part-c-choice-and-fairness> ('*Consumer Safeguards Review Consultation—Part C*').
[44] Australian Communications and Media Authority, 'ACMA Submission to Consumer Safeguards Review Part C: Choice and Fairness' (n 14) 14. We support ACMA's minimum list of essential consumer protections matters.
[45] Department of Communications (n 11) 17.

should be empowered to regard themselves as stewards of the regulatory systems they manage and be accountable for delivering outcomes'.[46]

Telecommunications regulatory policy failure continues to constrain the power of the ACMA to enforce consumer safeguards even in cases of considerable consumer detriment. According to public information, a report found from January 2010 to June 2023 the entire telecommunications sector may have paid $6,143,160 in infringement notices and $1,077,625 in civil penalties.[47]

It is important to note that during this time, recent Federal Court action by the Australian Competition and Consumer Commission (**ACCC**) found serious harms to vulnerable consumers were being perpetrated by Telstra and Optus due to unconscionable sales practices.[48] Despite the conduct involving likely breaches of the TCP Code, the ACMA did not make public any investigations, nor did it direct Telstra or Optus to comply with the sales and credit assessment obligations outlined in the TCP Code.[49] Instead, the ACCC pursued the allegations of misconduct under the Australian Consumer Law and lodged significant penalties of $50 million and $100 million respectively.[50] The absence of action by the ACMA may reflect its own view of what is expected of its compliance monitoring function under a self-regulatory framework, which includes 'the flexibility to not intervene'.[51] In any event, it highlights the problems with outdated regulatory policy, as well as the role of regulatory powers and culture to promote effective regulatory practice.

Regulatory accountability can be enhanced through a greater focus on relevant and transparent regulatory performance frameworks. Relevant and targeted key performance indicators (**KPIs**) are critical to regulator performance as 'what gets measured gets done'.[52] The PC recommends public servants be accountable for 'delivering growth, competition and innovation through regulatory systems'.[53] Rather than a narrow stewardship focus on regulation promoting productivity, public servants should be held accountable against relevant KPIs that measure the effectiveness of regulators in achieving targeted policy objectives.

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[46] Productivity Commission (n 1) 1.

[47] Karen Lee et al, *The Enforcement of Telecommunications Consumer Protections* (University of Technology Sydney, February 2024) <https://www.uts.edu.au/research/centres/centre-media-transition/projects-and-research/enforcement-telecommunications-consumer-protections>.

[48] Australian Competition and Consumer Commission, 'Telstra to Pay $50m Penalty for Unconscionable Sales to Indigenous Consumers' (n 22); Australian Competition and Consumer Commission, 'Optus Agrees to $100m Penalty, Subject to Court Approval, for Unconscionable Conduct' (n 22).

[49] Telstra and Optus perpetrated unconscionable sales conduct between January 2016 to August 2018, and August 2019 to July 2023, respectively. Since January 2016, the ACMA has not directed Telstra or Optus to comply with the TCP Code sales and credit assessment obligations. See Australian Competition and Consumer Commission, 'Telstra to Pay $50m Penalty for Unconscionable Sales to Indigenous Consumers' (n 6); Australian Competition and Consumer Commission, 'Optus Agrees to $100m Penalty, Subject to Court Approval, for Unconscionable Conduct' (n 6); Australian Communications and Media Authority, 'Investigations into Telco Providers' <https://www.acma.gov.au/investigations-telco-providers>; Australian Communications and Media Authority, 'Directions to Comply with the Telecommunications Act' (Web Page) <https://www.acma.gov.au/directions-comply-telecommunications-act>.

[50] Australian Competition and Consumer Commission, 'Telstra to Pay $50m Penalty for Unconscionable Sales to Indigenous Consumers' (n 22); Australian Competition and Consumer Commission, 'Optus Agrees to $100m Penalty, Subject to Court Approval, for Unconscionable Conduct' (n 22).

[51] Australian Communications and Media Authority, 'Optimal Conditions for Effective Self- and Co-regulatory Arrangements: 2015 Edition' (n 25) 1.

[52] Australian National Audit Office, *Using Performance Information to Drive Effectiveness* (29 November 2023) <https://www.anao.gov.au/work/insights/using-performance-information-to-drive-effectiveness>.

[53] Productivity Commission (n 1).

There is a clear need for uplift of regulatory performance frameworks to provide accountability and foster a stewardship culture. A recent report by the Joint Committee of Public Accounts and Audit (**Report 512**) reviewed five regulators' performance frameworks and found varying levels of effectiveness and sophistication.[54]

An example of poor performance measuring is found in the ACMA's 2023-2024 Corporate Plan and Annual Report.[55] Target 2.3.1 of the ACMA's corporate plan states 'The ACMA's compliance priorities concerning telecommunications services are on track'.[56] The ACMA provides limited detail on the measurement of this target, stating 'we will assess performance against this target through a case study on one of the priorities each year'.[57] The target and measurement is ambiguous, weak and only relies on a single, limited case study.[58] The ACMA acknowledged the target requires improvement and excluded it from the 2024-25 Corporate Plan.[59] While we welcome improvement to the target, the ACMA's 2024-25 and 2025-26 corporate plans fail to include relevant and targeted measures to evaluate its performance in telecommunications consumer safeguards. Without effective performance frameworks, regulator accountability and transparency are diluted, obstructing public and government scrutiny to the effectiveness of regulatory intervention in telecommunications.

To increase regulatory accountability and foster stewardship, the Department of Finance should review its existing Regulator Management Guidelines (including RMG 128 and 131)[60] and introduce clear, practical guidance on developing best practice performance metrics. This aligns with Recommendation 7 of Report 512.[61] We also support the Report's recommendations for the development of a whole-of-government statement on regulation to set clear expectations on regulatory policy, performance and outcomes. These measures will uplift regulatory accountability, foster a culture of stewardship and ensure fit-for-purpose regulation that promotes positive outcomes for all Australians.

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[54] Joint Committee of Public Accounts and Audit, *Report 512: Report of the Inquiry into the Administration of Commonwealth Regulations* (Report No 512, Commonwealth of Australia, March 2025) 59 <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/CommonwealthRegulations/Report_512_Report_of_the_inquiry_into_the_administration_of_Commonwealth_regulations> ('*Report 512*').

[55] Australian Communications and Media Authority, *Corporate Plan 2023–24* (Report, Australian Communications and Media Authority) <https://www.acma.gov.au/publications/2023-07/plan/corporate-plan-2023-24>; Australian Communications and Media Authority, *Australian Communications and Media Authority and eSafety Commissioner Annual Report 2023–24* (Australian Communications and Media Authority) <https://www.acma.gov.au/publications/2024-10/report/australian-communications-and-media-authority-and-esafety-commissioner-annual-report-2023-24>.

[56] Australian Communications and Media Authority, 'Corporate Plan 2023–24' (n 55) 20.

[57] Ibid 45.

[58] Australian Communications and Media Authority, 'Australian Communications and Media Authority and eSafety Commissioner Annual Report 2023–24' (n 55) 51–53.

[59] Australian Communications and Media Authority, *Corporate Plan 2024–25* (Australian Communications and Media Authority) 39 <https://www.acma.gov.au/publications/2024-08/plan/corporate-plan-2024-25>.

[60] Department of Finance, 'Regulator Performance (RMG 128)' <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128>; Department of Finance, 'Developing Performance Measures (RMG 131)' <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg--131>.

[61] Joint Committee of Public Accounts and Audit (n 54) 512.

4.2. There is a need for a greater role of impact analysis in policy development

ACCAN supports the PC's recommendations to uplift the role of impact analysis in the policy and regulatory development process. Impact analysis should be independent, engaged early, consultative and used throughout the policy development process as decisions are progressed to ensure policy is well-informed.

We support an independent Office of Impact Analysis (**OIA**) and appointment of independent Impact Analysis Commissioners. Sufficient independence will ensure impact analysis can raise debate or concerns on policy proposals that are problematic, enhancing scrutiny and helping to prevent inappropriate policy and regulatory intervention.

The OIA Commissioners should set thresholds and standards for when impact analysis is required in the policy development process and undertake an educational role to upskill the public service. This will ensure that OIA is consulted throughout the policy and regulatory development process as decisions are made to ensure intervention is well-informed and evidence based.

The OIA should include a commissioner with consumer expertise to ensure consumer impacts and benefits from regulation are rigorously evaluated in regulatory impact assessments. To this end, regulatory impact assessment processes should be reformed to facilitate the consideration of consumer costs from ineffective regulation. For example, the impact analysis of financial hardship in the telecommunications sector considered the costs of maintaining the status quo to the ACMA, Telecommunications Industry Ombudsman and CSPs.[62] The analysis acknowledged that financial hardship causes significant harm to consumers through missed opportunities, reduced access to services, and damage to their credit ratings.[63] However, the cost analysis significantly underestimated this consumer harm. It only calculated reconnection costs for a small portion of the 2.4 million Australians estimated to be experiencing financial hardship, rather than measuring the full scope of damages these consumers face.[64] Impact analysis should therefore meaningfully calculate 'the costs involved in administering an inefficient self-regulatory scheme' that 'results in a poor market outcome for both business and consumers'.[65]

4.3. There is a need for greater scrutiny of regulation

ACCAN supports the Report's assertion that greater 'scrutiny and reviews are key avenues to ensuring that regulatory decisions take into account growth, dynamism and the government's overarching priorities'.[66] Central government agencies should play a stronger role in new regulatory proposals and have stronger regard for principles of good regulation. There is also a role for government to ensure regulatory scrutiny and reviews facilitate a more balanced review process, so desired outcomes are not solely about reducing regulatory burdens to business. This

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[62] The Office of Impact Analysis, *Financial Hardship in the Telco Sector – Enhancing Consumer Protections* (Impact Analysis, 7 February 2024) <https://oia.pmc.gov.au/published-impact-analyses-and-reports/financial-hardship-telco-sector-enhancing-consumer>.
[63] Ibid 19.
[64] Ibid 21.
[65] Department of the Treasury, *Industry Self-Regulation in Consumer Markets* (1 August 2000) 80 <https://treasury.gov.au/publication/taskforce-on-industry-self-regulation-final-report>.
[66] Productivity Commission (n 1).

necessitates appropriate funding for consumers and their representatives to contribute to policy development processes to ensure policy reflects and responds to the lived experiences of Australians affected by relevant harms.

4.4. There is a need for systematic regulatory review and timely action

Regulators should seek to improve regulations through regular reviews, supported by central agencies. The PC should be tasked (although not exclusively) with the role of ongoing regulatory reviews, focussed on sectors or regulatory systems where complex regulation has emerged.

This submission has scratched the surface of the complex and largely outdated regulatory framework that underpins the telecommunications sector. Significant reviews to address long-standing issues in the sector have not produced a government response or are ongoing – this includes the Universal Service Obligation review,[67] Consumer Safeguards Review Part C,[68] and 2024 Regional Telecoms Review.[69] The Government must address these reviews as a matter of priority.

5. Conclusion

Australia needs regulatory reform that addresses current failures and creates fit-for-purpose regulation for today's challenges. Reform focused solely on reducing business costs ignores the genuine economic benefits that social regulation provides by protecting consumers and ensuring markets work efficiently.

The telecommunications sector drives Australia's economic productivity, yet operates under a complex, outdated regulatory system that increases business costs while failing consumers. Self-regulation in telecommunications exemplifies this failure. Making telecommunications regulatory reform a priority is critical to boosting national productivity.

Effective government-wide regulatory reform requires stronger accountability, impact analysis, oversight, and systematic review. This will build a culture of regulatory stewardship across the public service. When implemented through broad consultation with consumers, businesses, and government, these measures will boost economic productivity for all Australians.

ACCAN thanks the Productivity Commission for the opportunity to submit to its inquiry and provide feedback on the Report. Should you wish to discuss any matters raised in this consultation, please do not hesitate to contact [redacted], Policy Officer, at [redacted]

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples.

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[67] Department of Transport, Transport, Regional Development, Sport, Communications and the Arts Infrastructure, 'Modernising Universal Telecommunications Services' (25 February 2025) <https://www.infrastructure.gov.au/media-communications-arts/modernising-universal-telecommunications-services>.

[68] Department of Infrastructure, Transport, Regional Development, Communications and the Arts (n 43).

[69] Committee (n 23).

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