



Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities

Loans & Phones Project Phase 3

Final Report

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November 2020

Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities: Loans & Phones Project Phase 3

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Published in **2020**

This project was funded by a grant from the Australian Communications Consumer Action Network (ACCAN).

The operation of the Australian Communications Consumer Action Network 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.

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This work can be cited as: Cartwright, C. & McAuliffe, C. 2020, *Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities: Loans & Phones Project Phase 3*, MoneyMob Talkabout.

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Acknowledgement

We would like to acknowledge that we live and work on Arrernte, Pitjantjatjara and Yankunytjatjara Land, and we thank the community members for their participation in and support for our work. We pay our respects to the elders past, present and future, and recognize that sovereignty to this land was never ceded.

About Us

MoneyMob Talkabout is a not-for-profit organisation with a vision to empower Aboriginal people and communities to achieve economic wellbeing and self-determination. Our programs include the APY Lands Money Support Hub, coordination of the Mimili Family Wellbeing Centre and the Pawa Atunmankunytjaku program, supporting Anangu with energy efficiency education. Please see our website for further information about our organization www.moneymob.org.au

Executive Summary

This report examines telecommunications debt in regional and remote Indigenous Central Australian communities; specifically, how mis-selling by telecommunications service providers and regulatory weaknesses led to widespread systemic debt for Indigenous telco consumers. Our work over the last two and a half years has found hundreds of Indigenous telco consumers in Central Australia (and some consumers in other parts of the country) with large mobile phone debts. Almost all were unaware that the manner in which they had been sold plans did not meet appropriate consumer protection standards, and in fact suggests a culture of cavalier behaviour existed where telcos were pushing sales at the expense of meeting a consumer's needs.

For the remote Indigenous consumers we talked to for the purpose of this work, a pattern of sales practices bordering on predatory was revealed, with significant numbers of people sold mobile devices, accessories and plans that they neither needed nor could afford, on contracts that they did not understand. Amongst the hundreds of cases we have documented are some confronting examples of indifference to a generally vulnerable cohort; consumers with severe mental illnesses, in situations of homelessness and where there was clear evidence that the purchaser was not going to be the end user of the phone. In some cases, salespeople manipulated the sales interaction to sell more products - for example, by using the family members listed on a Medicare card to persuade a consumer they needed more devices. The substantial majority of cases we reviewed were people who were in receipt of government benefits only. Many reported that contract obligations and additional costs were not explained to them at the point of entering into the contract. Nor did most have any idea of the existence of financial hardship schemes. New mobile phone technology which should have paved the way for bridging the communications gaps in remote communities instead became yet another area of financial burden and stress for too many Indigenous people.

This project took place in challenging times. The work was restricted by deaths in the remote communities we visited (including a death in custody) and constrained by the onset of the COVID-19 pandemic which required us to suspend outreach visits for a number of months. Despite these challenges, another \$108,273 worth of telco debt was documented during our outreach trips in Northern Territory remote Indigenous communities; enough to suggest that if the resources to intensively canvass this issue existed, a lot more historic debt might be out there. In total, over the last two and half years, we have now (including some cases of interstate sales to vulnerable consumers) recorded a total of \$1,123,297.09 where the circumstances of the sales raise concerns.

Most of our findings relate to Telstra, which is the sole service provider in many remote Indigenous communities. However examples of poor practice from other telcos were also found. Perhaps unsurprisingly, there is evidence that the arrangements between Telstra and its licensees exacerbated this problem. Telstra itself has acknowledged this and taken a range of actions since 2019 to mitigate the issues that were uncovered. These have included the separation of handset contracts from data contracts; simplification of plans from many hundreds down to 20; the introduction of "Peace of Mind" month to month plans which prevent consumers from accruing excess data charges and prominently displaying the total cost of handsets in some stores so vulnerable consumers immediately understand this information. These actions will likely address the issues seen up to mid-2019, where many debts were accrued with a large component of excess

data charges. However, our analysis suggests the structure of business arrangements between Telstra and its licensees retains some elements which could still in future result in sales staff minimising vulnerability or affordability concerns in favour of making a sale.

A regulatory environment that also fails to connect with Indigenous consumers or their experience contributes substantially to the problem. Some of the case studies that we have documented – from here and around Australia - suggest that even though the Telecommunications Industry Ombudsman knew after its October 2018 systemic issues investigation that questionable sales practices were an issue, this knowledge did not flow through to their complaints resolution area. Certainly, financial counsellors were submitting cases to the TIO during 2019 which should have been recognised as unfair sales. However frontline TIO complaints staff seem rarely to have acknowledged the possibility of unconscionable conduct in the sales practices before them. Instead, some of the case studies we have collected suggest they preferred to push financial counsellors and community lawyers down the path of a financial hardship claim in resolving complaints (and at times to take a personal or moral position rather than reaching resolutions commensurate with breaches of rules and obligations by the industry, including potential breaches of Australian Consumer Law). The result is a continuing perception that the TIO takes a fairly meek line with the telco industry.

We conclude with recommendations for better engagement between telcos and Indigenous consumers especially in remote communities, improved clear and easy to understand consumer information, and legislative and regulatory reform.

Recommendations

Recommendation 1: That Telstra fund a financial counsellor/s to go to all Northern Territory and Western Australian remote communities over a period of time to ensure outstanding debts are identified and resolved. Scope of funding to be defined based on outstanding debt data provided by Telstra and consultation with financial counselling agencies servicing affected communities.

Recommendation 2: That telcos use clear, unambiguous language when resolving complaints with consumer advocates. Well established terminology such as partial or complete waiver or write off is preferred.

Recommendation 3: That Telstra undertake a gender analysis of its debtors to understand why (particularly Indigenous) females are over-represented in mobile phone debt, and undertake a social marketing and education campaign to raise awareness amongst women of potential telco vulnerability.

Recommendation 4: That telcos be required to undertake full affordability assessments along the lines of those required for licensed credit providers in the National Consumer Credit Protection Act.

Recommendation 5: That telcos prominently feature a phone number to call to discuss financial hardship and use simple language to describe this such as: “call this number for help when you are having a hard time paying your bill”.

Recommendation 6: That telcos require - through their procurement or other contracts with debt collectors or buyers - a prominently displayed, plain English statement on any debt collection correspondence advising “You will not go to jail if you cannot pay this bill”.

Recommendation 7: That Telstra’s Customer Advocate review Telstra’s debt collection process to:

- Ascertain the extent of cases where multiple debt collection agencies are involved.
- Ensure that the multiple agencies contacting clients are not engaging in conduct which may be misleading or detrimental to consumers: for example, by leading consumers into thinking that they may need to pay – or actually paying - multiple agencies for the one debt.
- Ascertain the extent to which Telstra may have operated in breach of its TCP Code obligations.

Recommendation 8: That ACMA report on the national number of mobile phone accounts that have gone into credit management and then disconnection, including the total national value of the debt.

Recommendation 9: That the TIO undertake intensive training with first point of contact staff to ensure that they can identify and appropriately deal with complaints involving evidence of

unconscionable/unfair practices. Also that first point of contact staff are required to make it clear to financial counsellors that they can request a review of an initial decision by a senior dispute resolution specialist.

Recommendation 10: That the TIO add “vulnerable” to its list of complaint keywords under the “making a contract” category and ensure that all staff receive adequate training in the range of factors which can make a consumer vulnerable. Staff should also receive training in identifying their unconscious biases and differentiating between the moral and legal basis for a decision.

Recommendation 11: That Financial Counselling Australia and state financial counselling peak bodies ensure financial counsellors can access continuing professional development in how to appropriately frame telco complaints and ask for a review of decisions, including referencing relevant legislation.

Recommendation 12: That the TIO Consumer Panel schedule regular annual dialogues with financial counselling and community legal services working in remote communities, to gather intelligence about telco issues affecting remote Indigenous consumers.

Recommendation 13: That Telstra’s LIMAC’s focus be expanded to include all new relevant product offerings and their potential to impact low income Indigenous consumers. That they are guided by Telstra’s Indigenous Advisory Committee in this work.

Recommendation 14: That Telstra be required to explicitly report on any such considerations by LIMAC in its Annual Sustainability Report.

Context – Indigenous People and Money, Technology and Telecommunications

For many Indigenous Australians, connection to their country, elders, culture and law is paramount. Law, cultural practices and kinship relationships are practiced and maintained across vast distances. In contemporary times, technology has become a valued tool to facilitate these elements of Indigenous life. Moreover, technology is now critical - almost essential - to sustaining a basic livelihood in a remote community, with banking, social services and online shopping transactions all increasingly conducted through digital platforms. A rapid and challenging change when you consider that it is just 53 years since Indigenous people fought for, and were accorded, citizenship in Australia. Just over half a century, therefore (and for many communities even less) since Indigenous people were able to receive and manage their own money - let alone use computers and mobile phones.

In 1998, Telecom Australia, as Telstra was then known, completed a 314km fibre optic cable across the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. In 2008 came the delivery of the Arnhem Land Fibre Project connecting nine Indigenous communities and Nhulunbuy to the nation's fibre-optic backbone in partnership with the Northern Territory (NT) Government and Rio Tinto. And in 2018, Telstra invested in the \$28 million dollar Remote Telecommunications Co-Investment Program with the Northern Territory Government, targeting remote locations, including communities, transport corridors and tourist destinations. Telstra is commonly the only carrier to provide mobile services in remote communities. Hence a large proportion of the cases and discussion in this report relate to that company. However this does not mean that other carriers have an unblemished record in relation to the Indigenous population.

Whilst the installation of telecommunications infrastructure into remote communities in the past two decades has brought many benefits in improved connectivity, it has also gone hand in hand with the proliferation of individuals, small businesses and companies profiting - whether deliberately or otherwise - from the vulnerability of remote Indigenous people. These are some of Australia's most disadvantaged communities. Many residents live below the poverty line, have English as their second or subsequent language and financial literacy skills which reflect the fact that Indigenous people are still playing catch up to the rest of the world, after two and a half centuries of enforced social and economic exclusion.

Antecedents to this Project

Phase One: Loans and Phones Project November 2017 to October 2018

In 2017, MoneyMob Talkabout received funding from the Australian Securities and Investments Commission as a result of a penalty payment made by BMW Finance for non-compliance with the National Consumer Credit Protection Act. With this funding, MoneyMob was able to engage a project officer to undertake community education in relation to phone bills and contracts, as well as the risks of payday loans in the APY Lands.

During the course of the project, large amounts of telco debt were discovered amongst the relatively small population of the APY Lands. Patterns of consumer sales emerged, showing that many Indigenous people on low incomes were being sold multiple mobile devices (handsets, tablets) on premium post-paid contracts with extra services and accessories that were of little to no value to them. Most of the sales pre-dated the introduction of mobile towers on the APY Lands (which occurred in May 2018), meaning that the telcos could not meet the terms of the contracts sold due to the lack of coverage in the consumer's home area.

Further, due to their general lack of commercial literacy, remote Indigenous consumers were rapidly accruing debt through excess data charges when they took phones into areas where there was WiFi coverage; consumers often weren't aware this was occurring - they did not realise that the features that could be pre-loaded or downloaded on their phones were not free - for example YouTube or Facebook - and that they were being charged when they exceeded their data limits. At the end of phase one, \$126,314.14 in debt with 34 consumers had been recorded. MoneyMob's financial counsellors began to advocate to have these debts waived, on the basis that they were unconscionable contracts.

We also began to investigate whether other agencies who worked in remote areas were seeing similar patterns of sales. Conversations with Broome Circle, Anglicare NT, HK Training and Consulting, Lutheran Community Care and North Australian Aboriginal Justice Agency revealed that the problem was mirrored in other areas across remote northern Australia, particularly in Indigenous communities. The ACCC became aware of the extent of the problem and commenced an investigation into possible unconscionable conduct by Telstra.

Phase Two: Loans and Phones Project March to September 2019

The second phase of the project was funded by Telstra, based on discussions which had commenced during phase one. Telstra acknowledged that more education in relation to its products, contracts and billing was needed, and funded MoneyMob to do further education and develop resources to this end. In the course of this work, more debts emerged on the APY Lands, as well as in other remote communities. MoneyMob began compiling a spreadsheet of our client cases, bringing the total debt to \$406,561 at the end of phase two.

A broader call also went out to the financial counselling sector, to see if this issue was affecting other population cohorts. Whilst there was not a significant response, some other agencies did respond, noting that they had seen clients with similar issues outside of the Indigenous community.

Telstra began an intensive national program of action to address many of the issues about which it had become aware through the work of financial counselling agencies, including:

- publicly apologising for the impact of business failings on customers
- waiving significant amounts of consumer debt in high-risk postcodes
- establishment of a regular dialogue and visits between senior Telstra executives and financial counselling agencies
- providing direct access to Telstra's specialist assistance team manager to resolve complaints quickly
- The "T22" project, which reduced and simplified over 1800 fixed line and mobile plans down to 20
- introducing new "Peace of Mind" plans from July 2019, which meant consumers on new plans would not incur excess data charges, but would instead have their data speed capped at a level which was suitable for streaming standard definition on a smartphone
- introducing new "no lock-in" contracts for services (as opposed to handsets)
- cultural awareness training for Telstra staff
- Separating handset purchases from the service contract (call costs etc), so the financial commitment people make when they lease a phone on a plan is more explicit
- changing how licensees are incentivised and removing some frontline staff who had not followed process.¹

Despite these positive steps, the telco industry as a whole continues to resist calls to introduce a thorough affordability assessment for people entering into mobile phone contracts along the lines of that required for licensed credit providers. Financial counsellors have advised that the standard approach of undertaking credit checks served little purpose for remote Indigenous people, who are generally financially excluded and unlikely to access formal credit, thereby not giving them any credit history. Nor does a credit assessment provide any information about a person's ability to pay for a phone contract. Contrast this with what we do know about Indigenous Australians and telco usage, which is that they have lower incomes and predominantly access the internet through mobile devices, making mobile phone expenditure a much more significant financial commitment for them than for other Australians ²

¹ Telstra, *Challenging Ourselves to do Better for all Customers*. <https://exchange.telstra.com.au/challenging-ourselves-to-do-better-for-all-our-customers/> (accessed 6 May 2020)

² Thomas, J, Barraket, J, Wilson, CK, Rennie, E, Ewing, S, MacDonald, T, 2019, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019*, RMIT University and Swinburne University of Technology, Melbourne, for Telstra. https://www.csi.edu.au/media/2019_ADII_Report.pdf (accessed 2 May 2020)

In May 2020, Telstra introduced a new \$30 post-paid Value Mobile Offer, tailored to low income consumers, and offering 2GB of monthly data, after which data speed is “shaped” so that no excess data charges are incurred. Telstra’s CEO Andy Penn has recently stated that 99% of phone usage is now data, compared to the 3G era.³ During this project, we found approximately 45 cases with Indigenous consumers where the large debts they had accrued were due to excess data charges. The new Value Mobile Offer is a positive step, and should prevent the excess data charges we have seen in the past. However the adequacy of the data allocation for remote, low-income consumers’ usage patterns should be monitored. As should the extent of penetration of product knowledge and product accessibility in remote communities.

Given that Indigenous Australians record an Affordability score of 52.4, some 6.8 points below the national average (59.2), in relation to social and economic aspects of digital inclusion in Australia, there is clearly a digital divide, or income gap between richer and poorer Australians. Indigenous Australians spend a greater portion of their household income on internet connectivity than other Australians, as indicated by their Relative Expenditure component score of 49.7 (4.9 points below the national average of 54.6). They also receive less data for each dollar of expenditure, as indicated by their Value of Expenditure component score (55.1), which is 8.8 points lower than the national average (63.9). In part, these affordability results reflect the prevalence of mobile-only internet access amongst the Indigenous Australian population (36.8% compared to the national average of 21.1%). Mobile data costs substantially more per gigabyte than fixed broadband.⁴

³ Statistic provided by Telstra CEO Andy Penn at a Telstra Indigenous Telco Literacy Forum in Alice Springs on 4th February 2020.

⁴ Thomas, J, Barraket, J, Wilson, CK, Rennie, E, Ewing, S, MacDonald, T, 2019, *Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2019*, RMIT University and Swinburne University of Technology, Melbourne, for Telstra. https://www.csi.edu.au/media/2019_ADII_Report.pdf (accessed 2 May 2020) p.17.

Phase Three: Remote Telco Debt in the NT

Project Objectives

Noting Telstra's statements that the mis-selling observed in remote communities was only a small part of its business, MoneyMob applied for funding from ACCAN, to conduct a short three-month project in the Northern Territory looking at select remote communities and Alice Springs town camps. The aim of this project was to get an indication of how widespread the problem of Indigenous telecommunications debt may be in regional Central Australia and surrounding remote communities. We were successful in obtaining the funding and commenced work in November 2019.

Through collecting data from selected communities, we wanted to explore the extent to which sales practices drove the problems we were seeing. It was intended that our results would inform continued advocacy with industry and regulators, in order to benefit Indigenous consumers. A related aim was to provide education to key services and individuals in these communities about recognising unfair contracts and dealing with debt.

MoneyMob was funded to employ a Project Officer to:

- Engage with community members through as many means possible - informal conversations, community gatherings, working with other service providers and their client groups/base, meetings with families. Interpreters should be used as much as possible, within budget.
- Identify at least one community member in each community who could be trained as a source of knowledge/information and assist with translation and data collection.
- Develop educational resources, media articles and newsletters.
- Provide feedback to communities we visited so that they were aware of what we found.
- Refer clients with phone issues to Financial Counsellors for assistance.

The remainder of this report provides a detailed breakdown in relation to each of the above project areas, as well as the methodologies adopted to achieve them.

Research Methodology

Field work proceeded on the basis of information gathered from MoneyMob contacts, who suggested a number of communities in the NT where telco debt may be an issue. The project officer conducted face-to-face interviews supported by a questionnaire which had been developed by an inter-agency telco debt working group, to ensure that everyone was collecting data in a consistent manner. Although the project was very short in nature and did not undergo formal ethics approval, a project research consent statement was also developed, so that participants understood the purpose of the project and to try to ensure that they gave informed consent when providing information. Permission was sought from Central Land Council (CLC), and relevant governing community bodies such as Shires and Aboriginal corporations prior to visits being undertaken.

We identified and invited local people to work with us as paid research assistants/interpreters. Their role was to help introduce us to residents, ensure that participants understood the consent and authority forms, and to convey interview questions in a culturally appropriate way, including interpreting when necessary. We were able to employ a research assistant in Ltyentye Apurte (Santa Teresa), Yuendumu and from Tangentyere Council to work in three Alice Springs Town Camps. In Ntaria (Hermannsburg) there was significant interest in the project facilitated by the local Central Australian Aboriginal Congress Mental Health Social Worker, but no local researcher was identified.

The Extent of Debt – What We Found

One of the objects of this project was to establish how widespread the extent of debt in remote NT communities may be, through a series of outreach trips to remote communities and Alice Springs town camps. Outreach trips were hampered by a compounding set of challenges from the outset, and whilst MoneyMob took numerous steps to mitigate the obstacles that arose, each was followed by further complications in undertaking the outreach work - described in more detail below.

Despite this, on each visit undertaken, tens of thousands of dollars of telecommunications debt was documented - some of which had been waived, some not. In total in Phase 3 of the project, we recorded an additional \$108,273.96 worth of debt. This strongly suggests that if the issue of telco debt was able to be comprehensively canvassed in every remote community, a much greater quantum of debt could be uncovered, and not all would have been dealt with. As Telstra is generally the only provider available in remote communities, the majority of the discussion in this report relates to Telstra debt and practices. Notwithstanding, instances of poor practice by other providers such as Optus and Vodafone have been documented during the course of our work since 2017.

Recommendation 1: That Telstra fund a financial counsellor/s to go to all Northern Territory and Western Australian remote communities over a period of time to ensure outstanding debts are identified and resolved. Scope of funding to be defined based on outstanding debt data provided by Telstra and consultation with financial counselling agencies servicing affected communities.

Remote Community Outreach and Data Collection

Outreach was conducted in the following remote communities:

- Ntaria Community (Hermannsberg)
- Ltyentye Apurte Community (Santa Teresa)
- Yuendumu
- Amoonguna Community

On the first outreach trip to Ntaria (Hermannsberg) 28/10/19 - 01/11/19, a promising start was made in meeting with numerous community members and groups, however on the second day there was a death in the community, which essentially put a stop to further engagement as the community went into sorry business.

The second outreach trip was to Ltyentye Apurte (Santa Teresa) from 11/11/19 - 14/11/19. Prior to this visit, Northern Territory police shot a young man Kumunjayi Walker at Yuendumu on 9/11/19. This gained widespread attention in Central Australia. Aboriginal families and communities were particularly upset by this incident, the latest in a long line of Aboriginal deaths in custody, and many organized community wide protests in response. This was the case in Santa Teresa, and during the course of the week, many were engaged in preparing for and then travelling to an action outside the Alice Springs Court House where the matter against the police officer was being heard. Community engagement was not as great as originally expected as a result.

The third visit was to Yuendumu from 09/12/19 - 11/12/19, some weeks after the shooting. We checked with local contacts as to the wisdom of undertaking the visit and were assured that it would be OK to proceed. On arrival however, the project officer reported that this was not the case and significant upset lingered in the community about the shooting. She said that local people did not wish to engage with her. A positive meeting was held with Warlpiri Youth Development Aboriginal Corporation, who were keen for us to return early in 2020 and host some community meetings. They were sent the telco advocacy pack we developed for this project.

The MMT project officer resigned in early January effective immediately and did not return to work. After discussion with ACCAN about the merit of the project continuing it was agreed that a project extension until June 2020 was acceptable and a new project officer was appointed at the end of February 2020.

On commencement, the new project officer immediately organized trips to Yuendumu, Amoonguna and Docker River, as well as to several Alice Springs town camps in conjunction with a local Aboriginal employee from Tangentyere Council.

An initial visit to Amoonguna was undertaken in conjunction with a skilled Aboriginal interpreter as well as a town camp resident with whom we had linked through the Tangentyere Women's Family Safety Group.

There was significant interest at Amoonguna where it was reported that there were a number of residents with telco debt. They had been informed that Telstra would waive their debts subsequent to a Telstra outreach visit to the community in February 2020, however they believed that this had not been actioned (see details in Amoonguna outreach section). A date was arranged for a follow up visit where the community office worker was due to coordinate with a number of residents who had debts and wanted to see MoneyMob. A trip to Kaltukatjara (Docker River) was scheduled for 16th March 2020, but prior to the trip an advisory was issued cautioning against any non-emergency travel to remote communities to guard against the spread of the COVID-19 virus. This was followed shortly after by a total lockdown of all remote communities.

Data collection was also due from the following town camps and community, however due to the risk of COVID-19, outreach was suspended at:

- Hidden Valley
- Trucking Yards
- Karnte Camp

Ntaria Outreach

Ntaria was the first community visited by MoneyMob as part of this project. It was selected because of the proximity to Alice Springs, the substantial population and our relationship with some key community contacts. It is 130km from Alice Springs and has a population of approximately 605 majority Indigenous residents.

- Number of Individuals with telco debt – 9 (all female)

- Total amount of Telco debt documented - \$28,910.95
- Amount already waived - \$9,970.16
- Number of clients referred to Financial Counselling for advocacy/follow up – 6

During this outreach trip, MoneyMob met with the following services to make them aware of the issue of telco debt and avenues for addressing it:

- Local Shire Council
- Tjuwampa Rangers
- Community Store
- Congress Health Clinic
- Lutheran Community Care

These organizations were subsequently sent the advocacy pack we had developed for education purposes, as well as a report on our findings from the visit.

Ltyentye Apurte (Santa Teresa) Outreach

Ltyentye Apurte Community was the second community visited by MoneyMob as part of this project. It was selected because of the proximity to Alice Springs, the substantial population and reports from a MoneyMob Board member who is the senior Community Development officer at Community First Volunteers (formerly Indigenous Community Volunteers) that the problem of telco debt was significant in the community. It is located 80km from Alice Springs and has a population of approximately 555, majority Indigenous residents. Telstra was also due to be in the community on the Friday of MoneyMob's visit. This was unknown to the regular financial counselling service, Lutheran Community Care and came as a surprise when we informed them. They advised that this was not consistent with the meetings and discussions they have had with Telstra about how they would interact with the community. Telstra advertised in the community that they would be hosting BBQs, requesting people's ID to verify and handing out \$50 recharge vouchers with posters stating "To help get on the right plan and fix mobile or bills problems".

- Number of Individuals with telco debt – 8 (all female)
- Total amount of Telco debt documented - \$23,898.87
- Amount already waived - \$12,429.95
- Number of clients referred to Financial Counselling for advocacy/follow up – 1

During this outreach trip, MoneyMob met with the following services to make them aware of the issue of telco debt and avenues for addressing it:

- Local Shire Council Office
- Catholic Care Community Services

- Spiritual Centre
- Keringke Arts Centre
- Community Store
- Women's Centre
- AAAC
- Congress Health Clinic

These organizations were subsequently sent the advocacy pack we had developed for education purposes, as well as a report on our findings from the visit.

Yuendumu Outreach

Due to the sensitivities in the community at the time of this visit, no data was collected from individuals or services.

Amoonguna Outreach

Amoonguna is 21 km from Alice Springs, its 275 residents are mostly Eastern and Central Arrernte speakers. Community residents and workers stated telco debt in their community was a significant issue with many people having previous and or existing Telstra debt and big bills. Two community members informed us that in February 2020 the Telstra truck came into their community with four Telstra staff, hosting a BBQ, offering \$50 recharge vouchers and stating they will waive residents' Telstra debts. The community members noted that Telstra only provided the vouchers to select Telstra customers and some of the community members whom Telstra stated had had their debts waived.

MoneyMob investigated this by phoning the Alice Springs Telstra store, and making inquiries in relation to debts for four community members - \$5,894.03, \$2,688.14, \$8,604.01 and \$1,158.63, a total of \$18,344.81. In relation to these specific debts, we were informed by Telstra staff that they were not sure if the debts had been waived or not. This caused further confusion, frustration and lack of trust in Telstra from these community members.

The MoneyMob Project Officer then sent account balances and debt waiver requests to Telstra's Specialist Assistance Team for four clients to find out if the debts had been waived as promised to Amoonguna community members. Upon raising this with Telstra, four separate emails were received from different employees in the Specialised Assistance Telstra team and Complex Complaints Resolution-Specialist, GCC Domestic Service and Complaints, Consumer and Small Business and Service, Recovery and Industry Bodies teams who requested further information such as; if the customers still had the phones in their possession and only providing partial debt waivers. Ultimately, after further advocacy by MoneyMob, the \$18,344.81 of debt was waived.

For this initial trip, the local Council Shire Office was engaged and directed the project officer to specific community members to visit. The Shire staff and additional community members indicated

that there was a significant amount of community members with large Telstra debts which resulted in a second outreach trip to be scheduled post COVID-19 restrictions.

On 28/05/2020, a second outreach trip was conducted to Amoonguna in which more debt was discovered and the following services were engaged:

- Local Shire Council Office
- Aged Care Centre
- Congress Health Clinic
- Local Primary School
- The following total debts were identified during the two outreach trips:
- Number of Individuals with telco debt – three male and eight female
- Total amount of Telco debt documented - \$55,464.14
- Amount waived - \$43,724.30.

During the second outreach to Amoonguna, a clearer consistent pattern began to emerge through individual interviews with community members. All interviewees indicated that they presented at the Alice Springs Telstra store seeking a mobile phone. They were met by sales staff who indicated they could have multiple (at least two) smartphone devices through a great deal with free accessories such as speakers. All interviewees indicated they felt pressured and rushed and did not have the contracts explained to them, nor that there would be any additional costs, or what to do if they were having trouble affording their bills. All stated that their scheduled direct debits didn't occur on the agreed date with Telstra at point of sale. Additional debts collected on this day were \$7,473.90, \$4,265.97, \$10,662.01, \$5,281.24 and \$9,436.22 from a pool of four females and one male. All of these debts had been sold to debt collection agencies with three of the debts having been closed due to "invalid charges".

One of our observations arising through the course of this work has been that varying and inconsistent terminology is used in response to consumer advocates' requests for debt waiver, sometimes making it unclear as to whether the outcome is a waiver, write off or something else. We have records of the following in Telstra correspondence: "closed account," "ring-fence debt," "bought back debt," "invalid charges," "accepted into debt waiver program". For example, on 13 September 2019, MoneyMob submitted a request for a bulk waiver of 22 cases to Telstra's Specialist Assistance Team, along with a spreadsheet providing details about each affected customer. In the response received on 8 October 2019, Telstra sent back an updated spreadsheet with its proposed resolutions, including in some instances that they would "ring fence without default". When queried

further as to what “ring fence” meant, Telstra responded that it meant they would “not pursue the debt and the customer is not required to pay the amount.”⁵

Another instance of ambiguous language is found in the following exchange:

“As I can see the debt is sold, I will be requesting this to be closed. The account has also been default listed, I will be requesting this to also be removed. I will be placing a credit risk flag on the account to ensure no further services are connected. Can confirm as per the account matter is resolved, however I’d definitely recommend the client obtain a copy of their credit file to ensure all in order.”⁶

Recommendation 2: That telcos use clear, unambiguous language when resolving complaints with consumer advocates. Well established terminology such as partial or complete waiver or write off is preferred.

Total Remote Debt Estimate

As at the end of the project, the total identified debt from the three phases of work undertaken by MoneyMob stood at approximately:

Total \$1,123,297.09

Waived \$778,469.71

Outstanding \$344,827.38

This represents 221 clients. Debt totals are noted as “approximate” as some clients self-reported the amount of their debt that could not subsequently be verified - either due to the client not returning to follow through on their initial report, or not being able to locate any documentation to further investigate their claim. Unverified debt accounts for \$82,592 worth of the total debt.

Summary of Findings

- Across Phases One and Two of the Project we saw **80 individuals with debts or reported debts** totaling approximately **\$427,865.00** in the APY Lands. Some individuals had debt with more than one company or had multiple accounts and debts with the same company.
- \$406,561 of the total debt was attributable to Telstra accounts. The remainder is due to other telco companies.
- **20 new debts** were found in the APY Lands during Phase Two of the Project.
- The largest debt found for an individual was **over \$20,400**.

⁵ Email correspondence between Carolyn Cartwright and David Porter of MoneyMob and Abdul Salam of Telstra, 13/9/2020 to 10/10/2020.

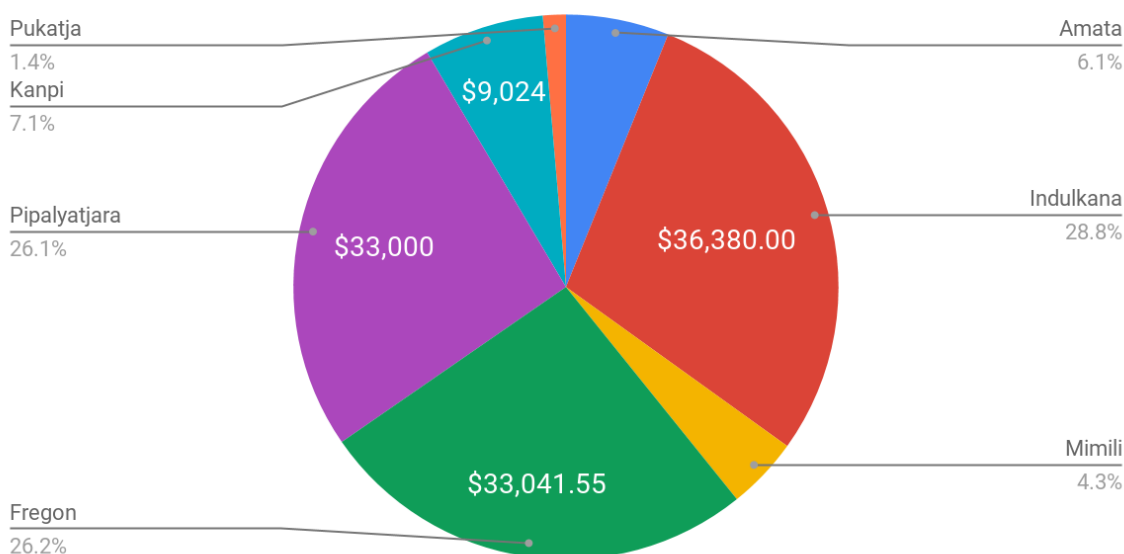
⁶ Email correspondence between Chanelle McAuliffe and Lori Swanton, Telstra Complex Complaints Resolution-Specialist Service Recovery and Industry Bodies Consumer & Small Business, 07/04/2020.

- Debts have been accumulated by all ages and genders, but female debt (78.5%) far outweighed male debt (21.5%).
- During phases two and three of the project **we documented cases of 151 individuals with debts or reported debts** totaling approximately **\$695,432.54** in the APY Lands, Northern Territory and Adelaide, Victoria and Queensland.
- \$738,548.33 of the total debt across all phases was attributable to Telstra accounts, the remainder is due to other telco companies.
- The largest debt found for an individual was **\$22,013.43**.
- The average individual debt was \$4,977.00.

Recommendation 3: That Telstra undertake a gender analysis of its debtors to understand why (particularly Indigenous) females are over-represented in mobile phone debt, and undertake a social marketing and education campaign to raise awareness amongst women of potential telco vulnerability.

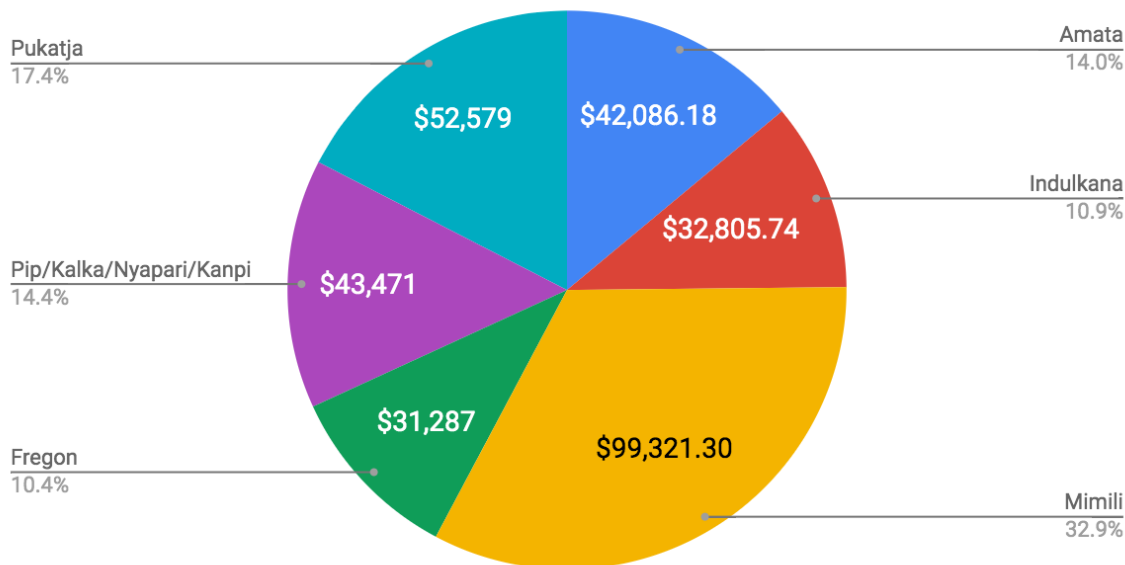
Telco Debt Phase 1

Total Debt \$126,314.33



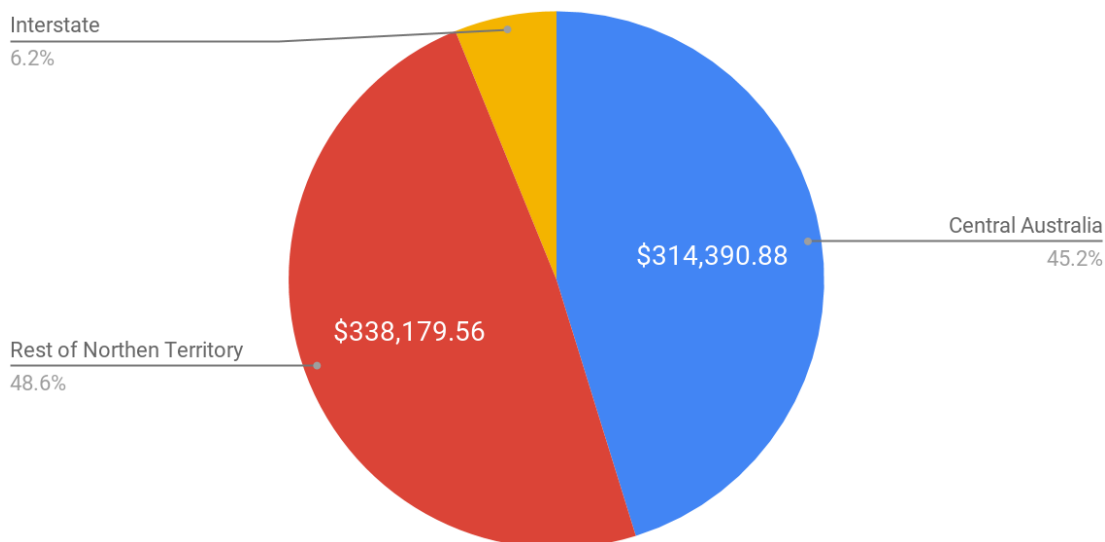
Telco Debt Phase 2

Total Debt \$301,550.22



Telco Debt Phase 3

Total debt \$695,433.44



Sales Practices

The sales practices identified in phase three of the project mirror those that were observed in phases one and two. In phase one it was established that community members would attend a telco store (in the vast majority of cases we saw this was Telstra) seeking a single mobile device, but often leave the store with multiple post-paid devices despite being on a low income and/or welfare payments. Since 2018 we documented Newstart (now Jobseeker)/Youth Allowance recipients who were sold multiple high-end devices, and 'extras' that were not understood, or needed. Excess data charges also continued to be a significant contributor to consumers not affording their plans. In phase two a notable case discovered a community member who incurred 87 automatic 1GB/\$10 data recharges, which resulted in a particularly large bill and the inability to pay. Further, problems with contracts where the consumer was not the end user of the devices have been a theme. Indigenous clients have reported general misunderstanding when multiple devices are signed for by an individual, where that individual intends to give some of them away to family members or friends. Remote Indigenous consumers had believed that these devices would become the payment responsibility of those family members, and did not understand that as they had entered into the contract for the devices, they would retain responsibility for payment.

In phase two we found that cold calling advertising 'free' tablets to remote Indigenous consumers was an issue. Whilst we have only documented two cases in which this affected consumers, the behaviour was reported by numerous community members and service providers in different communities, citing multiple and often forceful calls in short periods of time. This feedback has been one of the most consistent findings from community discussion with multiple community members and service providers highlighting this experience. After some initial confusion about the origin of these calls, Telstra confirmed that this was a marketing strategy conducted through a domestic marketing partner, and not a scam. With any new registration for a pre- or post-paid device the mobile number was automatically added to an outbound call register.

To Telstra's credit, following the concerns raised by MoneyMob⁷, as of July 2019, 50 postcodes in Australia had all their mobile numbers removed from the outbound calls list, which is about 12,000 mobile numbers. Some of the postcodes were those in the APY Lands, Broome, Darwin, and other remote locations around Australia.

MoneyMob referred two instances of clients reporting offers of free tablets to Telstra for further investigation⁸. Unfortunately, Telstra was not able to locate the call recordings pertaining to these transactions, so it has not been possible to further analyse the interactions. The Telecommunications Consumer Protection Code clause 4.6.6 (a) requires that a telco must provide a consumer access to records regarding customer contracts for a minimum of the term of the customer contract plus two years, or if cancelled prior to the minimum term, two years following cancellation. This includes any voice recording applicable to the entry into the customer contract.

⁷ Email from Mark Sulikowski, Senior Advisor, Indigenous Digital Capability Indigenous Directorate
Chief Sustainability Office Corporate Affairs Telstra, dated 12 June 2019

⁸ Email from Chanelle McAuliffe to Mark Sulikowski dated 10 May 2020

Through all phases of the project, we found examples of poor and misleading sales practices, which we have grouped into themes below and detailed in individual case studies in section 10. The sales practices were documented in the APY Lands, Western Australia, Northern Territory, Queensland, New South Wales and Victoria.

Patterns of sales practices we found across the three phases were:

- Manipulating knowledge obtained about client's personal circumstances to push additional sales. For example: A consumer entering a store seeking a phone and once the sales staff had provided the client with a mobile phone lease, the staff member then asked "How many children do you have?" The consumer responded "three." The sales person stated "Well you'll need three iPads on plans then." Similarly, another case reported the sales staff sighting the consumer's Medicare card, seeing dependents listed and proceeding to sell products for the dependents that were not present. Eight instances of this type of behaviour were identified.
- Unsolicited upselling: Consumers attending stores seeking hardware repair or calling to activate a pre-paid sim and/or purchase recharge credit, and being signed up to one or multiple post-paid plans and leased devices. 20 cases of this nature were identified.
- Cold calling: Telstra pre-paid customers were cold called and signed up to one or multiple post-paid plans and leased devices. (Case studies showed disadvantaged consumers signing up to iPad plans when they did not know how to use the device). Two such cases were identified.
- Misleading/inaccurate advice: Sales staff stating to consumers that they are offering them a great deal, with some staff stating some particular features/services are "free". 21 cases of this type of behaviour were noted.
- Pressure tactics: Persisting with consumers until they feel pressured to agree. The noted cultural trait of gratuitous concurrence⁹ - Indigenous people agreeing to something they may not understand or for the purpose of not offending an authority figure - make this type of sale of serious concern. This was explicitly identified in 13 cases.
- Inadequate credit and guarantor assessments: selling to people who can't afford to pay and approving guarantors when the consumer doesn't have adequate understanding of the liability involved if the lessee defaults. 117 of the cases we documented were on a Centrelink income only, and in one case the person had no income.

⁹ Gratuitous concurrence is when a person appears to assent to every proposition put to them even when they do not agree. For many indigenous people, using gratuitous concurrence during a conversation is a cultural phenomenon, and is used to build or define the relationship between the people who are speaking. It is widely recognised that people who are in a position of powerlessness when confronted by alien institutions and authority figures, and who are disadvantaged due to a language barrier, may adopt a strategy of always agreeing or saying what they think the person in authority wants them to say, regardless of the truth of the matter. Legal Services Commission of South Australia, *How to Assist Aboriginal Defendants*. <https://lsc.sa.gov.au/dsh/ch03s04.php> (accessed 2 May 2020)

- No mobile coverage - phones on plans sold to at least 15 consumers where there was no coverage in their remote community - including when the name of the community was specified on the client's ID.

The ABC recorded an interview with a former Telstra employee from a Northern Territory store on unconscionable sales practices on 30th of October 2018. The former employee explained how sales staff would lie and falsify their customers' employment status in order to manipulate the company's credit check system and sign them up to contracts and additional services, even when their income was insufficient.

The ABC article further stated that Telstra had conducted an internal investigation and identified:

'[T]wo store employees [that] were engaging in unusual behaviours consisting of manipulating credit check information.'

These individuals are no longer employed at the Telstra licensee and Telstra said its investigation showed the issues were not systemic. The telco also said it had implemented additional procedures to ensure fair sales practices since the review. 'These include requiring stores to cease creating new customer identification numbers and conducting audits of contracts and sales,' the spokesperson said."¹⁰

In a report published by ACCAN on 27 March 2019 titled *A Spotlight on Telco Sales Commissions and Targets*¹¹ ACCAN interviewed former telco sales employees to understand what incentivizes sales staff to sell products and services and whether sales staff are aware of key obligations for responsible selling. The value of incentive payments as a proportion of total pay (hourly wage plus incentive payments) varied between 0% and 50% of total pay for full time employees and 4-5% to 30% of total pay for part time. Most of the time incentive payments were approximately 15% of their total pay for selling, upselling and cross-selling.¹²

Former telco sales staff stated:

"[Management] try to pressure you into selling things to people that might not be in their best interest in the long-run" – Interviewee #18, Customer Sales Rep from Telstra.

"They're paying extra for junk" – Interviewee #18, Customer Sales Rep from Telstra.

"We wanted to out-do one another" – Interviewee #5, Customer Sales Rep from Vodafone.

When asked which customers were easier to sell to, sales staff identified customers that were generally less informed and more confused or unsure about what to buy, such as "Older people,

¹⁰ ABC. *Former Telstra Employee Details Dodgy Credit Checks* <https://www.abc.net.au/news/2018-10-30/former-telstra-franchise-employee-details-dodgy-credit-checks/10427522> (accessed 25 April 2020)

¹¹ ACCAN, *Are You Being Sold? - A spotlight on telco sales commissions and targets*. 2019 <https://accan.org.au/media-centre/hot-issues/1585-are-you-being-sold-a-spotlight-on-telco-sales-commissions-and-targets> (accessed 25 March 2020)

¹² Ibid.

people who don't speak English well, people with disability pensions" – Interviewee #18, Customer Sales Rep from Telstra.

"They didn't know what they were signing" – Interviewee #4, Customer Sales Rep from Telstra.

"There were more complaints than sales [...] It's out of control" – Interviewee #24, Customer Sales Rep from Telstra.

"It became cut throat" – Interviewee #9, Sales Associate from Optus.

"You guys have put me on this plan... I don't understand why I've been put on it" – Interviewee #22, Customer Sales Rep from Telstra.

"Some people were set up on the wrong plans. They misunderstood what they had signed up for." – Interviewee #7, Customer Service from Telstra.¹³

Telstra has made public statements to the effect that mis-selling is a small problem limited to a few consultants or that processes were not being followed by some frontline staff¹⁴. In the cases we have documented, it is our understanding that the majority of sales have indeed originated from licensee stores. Whilst the focus of our research has been with Indigenous telco consumers in the Northern Territory and the APY Lands, we have also been provided with case studies from around the country, including from urban and regional areas of Victoria, New South Wales and Queensland. Licensee operators seem to comprise a significant proportion of Telstra's retail shopfront network.¹⁵; The geographic spread of the cases we have collected and other indicators such as the research ACCAN has undertaken into selling practices would suggest that the problem existed across a broader scale. We therefore believe that it is valid to question the public downplaying of the problem

Sales Practices Case Studies - Phase 3

Manipulating knowledge obtained about a client's personal circumstances to push additional sales. Case Study 1.

A young mother from a remote community living on Centrelink welfare with dependents went into a Telstra store seeking a mobile phone. The sales staff proceeded to provide the client with a leased device on a contract without explaining the contract or assessing the client's affordability. The sales staff then asked the client if she had any children, the client responded "Yes", the sales staff stated "Well you'll need three iPad's then on plans". The client thought the sales staff member was helping

¹³ Ibid.

¹⁴ Penn, A "Responsible Business", p. 13 Keynote Speech to the American Chamber of Commerce, 6 February 2020, provided by Michael Parks in email to Carolyn Cartwright

¹⁵ For example, the Vita Group operates a third of Telstra branded retail and business points across Australia, as well as supplying a range of accessories such as cases, speakers and earpieces that can be sold alongside handsets. Vita Group. <https://www.vitagroup.com.au/content/media/the-group> (accessed 29 May 2020)

her and her children by looking after their “needs”. This resulted in the client becoming \$4,219.57 in debt. The Financial Counsellor sought debt waiver and was successful.

Unsolicited Upselling (Inbound Call Centre). Case Study 2.

The client purchased a prepaid phone from the community store, then the client phoned Telstra to activate the sim card and was placed on a post-paid plan for \$49 per month. It is still connected and she is still using the phone with \$1,376.67 due. The high charges are from excess data which was not explained to her. The client wants to return to pre-paid service. The MoneyMob Project Officer sent a debt waiver request to Telstra and the debt was waived.

Cold Calling (Outbound Sales). Case Study 3.

In approximately August 2019 the client received a phone call to their prepaid phone, the caller stating they were a Telstra representative. The client was living in a remote community on welfare and was offered an iPad. The client stated the Telstra call centre sales representative was very persuasive and stated “You won't get a deal like this anywhere else” the client didn't want the iPad and felt uncomfortable and pressured. The sales representative asked for the client's bank account details and the client complied. The iPad was sent to the client and no longer works, resulting in a \$1,158.63 debt about which the client has been distressed. The Financial Counsellor sought a debt waiver and was successful.

In regard to outbound sales, an anecdote relayed by a service provider from the APY Lands illustrates the risks associated with this sales practice where remote Indigenous people are involved. The client had received a call and thought (as a result of their limited English) when being offered a “free tablet” that they were being offered medication. The client was trying to tell the salesperson to send the tablets to the clinic. The service provider had to intervene, to prevent further confusion for the consumer. The service provider was then himself asked if he wanted a tablet.

Pressure Tactics. Case Study 4.

Amy Nelson is an Elder of Arlparra Community in the Utopia region, living on disability support pension and homeless due to a housing shortage in Arlparra. Her home is essentially a windbreak - three upright corrugated pieces of sheet metal partially inserted into the ground, a large tarp beside the sheet metal on which she sleeps with a few blankets and a jerry can used for water supply. Ms Nelson has limited English, her first language being Alyawarr. She sought out a mobile phone at the Alice Springs Telstra store and was signed up to a smartphone, tablet and platinum subscription due to feeling pressured to agree and without the terms and conditions of the contract explained. Within one year, Ms Nelson's Telstra bill had escalated to \$9,000.00, resulting in her mobile phone being disconnected and the full contract becoming payable. Her financial Counsellor sought debt waiver and was successful.



Amy Nelson at home in Arlparra, Utopia NT

Inaccurate/Misleading Information. Case Study 5.

This case study was provided by Uniting Care Sunshine Coast, and directly quotes the client. Some details have been removed to safeguard the client's identity.

"In August 2018, we had to move out of our home from one location to another in Queensland, to escape a situation of severe domestic violence. Before signing a lease, we went into a Telstra Store to confirm that the address we wanted to move to was connected to WiFi or NBN. We were told by

two separate stores that we would have no trouble transferring our Phone/Internet bundle to the new address. Based on this assurance by Telstra, we went ahead and signed a 12-month lease.

Upon moving in, we were then told by Telstra that, in fact, we could not get any internet... no WiFi, no ADSL and no NBN. For the next few months I spent ages on the phone with various Telstra consultants trying to get some sort of assistance, while my excess data charges started piling up. I am a single mother and when I moved...I had 3 of my 4 children living with me, as well as my ageing parents. I was working part-time as a cleaner, and was recovering from a heart attack caused by living for 28 years in a severely abusive marriage. After surviving the heart attack, I left my husband, in an attempt to heal from years of trauma. Moving...was supposed to be part of a new start for me and my family but instead it became a nightmare as my Telstra bill grew and grew! In January 2019, I lost my part-time job and have had to survive doing odd jobs here and there cleaning homes. I fell way behind on all my bills but by this point my Telstra bill was over \$3000. I called over and over, begging and crying for help but instead of giving me some sort of hardship solution, all I was given was extension after extension. Eventually I went into a store again to get help and got talked into taking out a new contract with our three phones, on a lease package, in order to get more available data. I was assured that it was only a temporary measure, with no lock in contract, until we were able to get NBN. Based on this assurance I signed up. This new contract cost me \$540 per month. Due to extreme financial hardship, which the consultant was aware of prior to signing me up, I was unable to meet these payments. I have now been told that it is in fact a 2-year contract and that if I want to break the contract I need to pay \$190 per phone. I have consequently had to break the lease on our [new] home, due to non-affordability, incurring a \$900 penalty and our family has had to split up and move in with friends. In effect we are homeless. During this time of extreme stress and mental strain, I had an advocate to step in to try and help me. Unfortunately, their "help" was to persuade me to agree to cancel my contract with Telstra altogether. I felt overwhelmed by the bills coming in every month and due to decision fatigue, in that moment under pressure, I agreed to cancel the contract. This came with a \$4000 cancellation fee which has taken my bill to \$7000. I earn on average about \$500 per week."

Inadequate Credit and Guarantor Assessments. Case Study 6.

A non-English speaking client with limited literacy skills (cannot read or write English), attended a Vodafone store with his partner who acted as an interpreter. The sales staff sold the client three phone contracts. Two were for the use of other people and billed to different addresses than his own (three separate addresses overall). One person broke the phone, and stopped paying the account. The client was charged \$2500 in total for cancellation fees. By the time the client presented to a financial counsellor, the debt was with a collection agent. The client stated that he was not aware that he was going to have to pay the cost of the accounts if the people with the phones stopped paying. The client thought he was just helping them to get a phone because they couldn't do it on their own. A complaint was lodged with the TIO. The financial counsellor did not receive much intervention from the TIO and therefore escalated advocacy directly with Vodafone, resulting in a reduced settlement offer of \$460, allowing the client to continue on his contract without converting to prepaid and agreed to transfers to the third person pending returned documents stating that they would take the contract on.

Financial Hardship

This project largely focused on establishing the likely extent of telco debt and whether this was being driven by patterns of mis-selling. However, another notable finding is that out of the 221 case studies collected over the three phases of the project, there were no Indigenous clients found to be on a telco hardship arrangement. This strongly suggests that Indigenous people aren't aware of hardship options available to them if they get into financial difficulty, and clients reported little to no explanation in store of what to do if they couldn't pay a bill.

Telstra contract documents provide an option for customers to go online to [Telstra.com/complaints](https://www.telstra.com.au/complaints) if they have a problem or complaint about their service, where they will find information about how to resolve their complaint, or they can call a number for help. On bills, there is another section which says "For help with your bill, visit [telstra.com/yourbill](https://www.telstra.com.au/yourbill) which lists questions and answers explaining charges on bills, at the bottom there is a link to "Bill Assistance Hub" for support if in financial hardship.

Optus bills provide a similar online option, however the landing page for the help link makes no mention of financial hardship. Information about this option sits on the page "Legal and Regulatory" and is not easy to find. For many remote Indigenous clients with their lack of access to the internet, generally lower standard of mainstream education and commercial awareness, it might not be clear that these hints at help would include discussing a bill they can't pay. Furthermore, where remote people speak a language other than English, they may also lack the vocabulary and confidence to have a complex discussion about financial hardship over the phone or navigate financial hardship assistance online.

Thus, it is possible that it is not obvious to clients how to get help with an unpaid bill until they receive their first overdue notice. Even at this stage, customers may be under the impression that they are required to pay the whole outstanding amount. This impression likely compounds once the bill goes to debt collection or credit management, and they start to receive legalistic letters.

The Australian Communications and Media Authority (ACMA) published the *Customer financial hardship in the telco industry: State of Play* report¹⁶, which found 36,500 telco customers were in financial hardship arrangements in the 2018-19 financial year, equivalent to around 0.07% of all residential telco customers. Yet the Indigenous debt we have uncovered suggests that there could be significant groups within the residential telco customer population that never even attempt to access financial hardship arrangements; therefore this means that the number of people on financial hardship does not provide the full picture of customers struggling to pay telco bills with significant telco debts.

Through our research, we found three cases in which an Indigenous consumer entered into a payment arrangement with a debt collector, seemingly unaware of their rights to hardship arrangements directly through their telco provider. We also found one case in which an Indigenous

¹⁶ ACMA, *Customer Financial Hardship in the Telco Industry: state of play report 2018-2019*. ACMA, Canberra. March 2020 <https://financialcapability.gov.au/files/customer-financial-hardship-in-the-telco-industry.pdf> (accessed April 10 2020)

consumer proactively made contact with Telstra directly to state they were struggling to pay their phone bills and the client was not placed onto a payment arrangement or financial hardship program.

Taken together, these factors paint a dispiriting picture of regional and remote Indigenous people's journey with telcos. Many have been mis-sold unfair and inappropriate contracts which compounded their already well documented disadvantage. They were effectively set-up to fail from the moment of contract inception, and on the kindest interpretation their lack of understanding of contract obligations is poorly catered to. Once in financial difficulty, they were largely unaware of or unable to take advantage of the financial hardship options available to them - let alone to make complaints about the fairness of the original contract. The vast distances serviced by under resourced financial counselling agencies, tasked with addressing a wide range of financial matters, also likely means that many of these cases are not discovered. Moreover, ACMA's "State of Play" report suggests that even if remote consumers were accessing hardship, statistically many of them might be unlikely to successfully complete the arrangements. ACMA reported 45% of people on payment plans nationally pay \$150 per month in instalments - most Indigenous cases we documented were income support recipients, so this would constitute a substantial proportion of their income. Notably, the same percentage of people nationally fail to complete their hardship arrangements.¹⁷

Recommendation 4: That telcos be required to undertake full affordability assessments along the lines of those required for licensed credit providers in the National Consumer Credit Protection Act.

Recommendation 5: That telcos prominently feature a phone number to call to discuss financial hardship and use simple language to describe this such as, "call this number for help when you are having a hard time paying your bill".

¹⁷ Ibid. p,10.

Debt Collection

A flow on consequence of remote Indigenous people not availing themselves of financial hardship options is that many debts end up going into credit management with debt collection agencies. Case studies collected through this project indicated 37 clients' debts were either sold to debt collection agencies and law firms or had multiple debt collection agencies acting as an agent for one creditor. One case study found a debt of only \$647 had three separate debt collection agencies and a law firm, all concurrently alluding to legal action.

Debt Collection Case Study 1

This concerns the debt of \$647, above, with multiple debt collection agencies acting as agent for one Creditor:

- Impact Financial Services, Letter of Demand dated 10 July 2018.
- Charter Mercantile, Credit Reputation Warning letter dated 16 October 2018.
- Gregg Lawyers, Action Required letter dated 1 November 2018.
- Credit Corp Group, Notice of Assignment of Debt letter 15 April 2019.

Debt Collection Case Study 2

This client was discovered in Amoonguna in early 2020. The client had around \$7,671 worth of debt with Telstra. Multiple debt collection agencies are acting on their behalf:

- Commercial Litigation & Insolvency Lawyers, Outstanding debt letter dated 23 October 2018.
- Milton Graham, Immediate Action Required letter dated 10 November 2018.
- Charter Mercantile, Debt Collection letter dated 15 November 2018.

There was only 4 business days in between demand letters received by the client from Milton Graham and Charter Mercantile.

The Debt Collection Guidelines stipulate: "You must not threaten action (legal or otherwise) that you are not legally permitted to take, do not have instructions or authority to take, or you have no intention to take. How legal action is threatened or taken can, in certain circumstances, amount to misleading or deceptive conduct, unconscionable conduct or harassment. You also must not misrepresent your legal entitlement to seize goods."¹⁸ Our case studies have shown instances of debt collection letters stating "This account may refer for further legal proceedings" and "Legal action pending", when it is unclear whether the agent has authority or intent to do so or whether legal proceedings have been instigated. The TCP Code 2019 requires adoption of best practice by

¹⁸Commonwealth of Australia, *Debt collection guideline: for collectors and creditors*. Canberra 2015. <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors> (accessed 2 March 2020) p.4.

telcos as set out in the ACCC and ASIC Debt Collection Guideline (TCP Code 6.10.1). Further, they should have regard to the ACCC guideline “Don’t Take Advantage of Disadvantage” compliance guide in relation to the nature of their collection activities with vulnerable consumers, and in other activities (3.4.1(a)).¹⁹

While debt collection is distressing for anybody, it has particularly troubling connotations for Indigenous people, likely compounded by demands from multiple debt collection agencies. Throughout the stages of this work we have come into contact with Indigenous people who have indicated that they felt very stressed and afraid about contact from debt collection agencies. Some have believed that they could go to prison for unpaid debt, and as a result some have avoided seeking any help for the debt. Chief Executive Officer of Urapuntja Aboriginal Corporation in Arlparra Community, Michael Grosvener, confirmed this. He has observed community members “put less food on the table” due to paying or attempting to pay their large mobile bills. “People have thought they were going to be sent to prison due to legal threats of overdue bills”.²⁰ With a history of over-policing and incarceration in Australia,²¹ it is not surprising that Indigenous consumers believe being sent to prison for unpaid debt is a possibility.

Recommendation 6: That telcos require - through their procurement or other contracts with debt collectors or buyers - a prominently displayed, plain English statement on any debt collection correspondence advising “You will not go to jail if you cannot pay this bill.”

Recommendation 7: That Telstra’s Customer Advocate review Telstra’s debt collection process to:

- Ascertain the extent of cases where multiple debt collection agencies are involved.
- Ensure that the multiple agencies contacting clients are not engaging in conduct which may be misleading or detrimental to consumers: for example, by leading consumers into thinking that they may need to pay – or actually paying - multiple agencies for the one debt.
- Ascertain the extent to which Telstra may have operated in breach of its TCP Code obligations.

¹⁹ Australian Competition & Consumer Commission, *Don’t Take Advantage of Disadvantage*, 2011.
https://www.accc.gov.au/system/files/217_%20BS%20Don%27t%20take%20advantage%20_FA_Web_Nov-2014.pdf

²⁰ Conversation between Chanelle McAuliffe, Project Officer & Michael Grosvener, CEO on 14th August 2019.

²¹ For example, as at 30th June 2018 the Australian Bureau of Statistics recorded a national Indigenous incarceration rate of 28%, and 84% in the Northern Territory - the highest of any State or Territory in Australia. ABS, *Prisoners in Australia*, 2018.
<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Northern%20Territory~27> (accessed 2 March 2020).

Financial Statements and Debt

Telstra - to whom the vast majority of the cases documented during our work relate - have stated that the issues we have documented constitute only a small percentage of its business.²² With eight million retail mobile post-paid services in operation²³ alone (not considering its other business streams) this is indisputable. However, this does not tell us much about the actual numbers of human consumers or the impact on them.

In looking for information, we reviewed Telstra's annual financial reports²⁴ to see if we could glean anything about mobile phone bad debt. These financial statements are detailed documents that even seasoned analysts and economists have observed are extremely complex.²⁵ What we think we have been able to decipher is that two contracts are accounted for in each sale if the contract contains a substantial lease component. These components are the fixed rental per month for phone services on a post-paid plan, and then a fixed amount for the payment of the handset. The revenue from the handset component is recognised at inception (that is, at the time of sale), even if not fully paid for upfront. The monthly service fee is recognised as revenue as and when the service is provided and paid for over time. If the consumer stops paying, Telstra or the reseller simply stop recognising revenue - it is not recorded as a loss.

As we noted earlier, many of Telstra's retail shopfronts are operated by licensees. So, in many cases, it is the licensee from whom Telstra receives revenue for hardware and does so at the time handsets are sold to them for the purpose of leasing on to consumers. So when a consumer cannot pay a bill, and defaults on their mobile phone post-paid contract, in many cases it will be the reseller that loses out on the revenue from the handset. The loss will not appear on Telstra's books.

Losses for the value of a handset that is not fully paid over the life of the contract would likely show up on the resellers' books. However, as long as they continue to make sales and write contracts, there will be revenue seen to be coming into both Telstra and the resellers business, appearing to diminish the impact of contract defaults. Further, debts can be sold on to a debt collection agency, so the retailer or Telstra continue to have some cash coming in and it is the consumer that bears the ultimate brunt of the loss.

There is nothing illegal about such accounting practices, but it does mean that the extent of any losses incurred on mobile phone post-paid contracts is difficult to identify due to the accounting treatment used. It could also mean there is a lesser incentive to properly check contract

²² Telstra, *Communicating Openly to Rebuild Trust*, <https://exchange.telstra.com.au/communicating-openly-to-rebuild-trust/> (accessed 2 May 2020)

²³ Quoted in "AMCHAM Selling Practices Keynote Speech" by Telstra CEO Andy Penn, p. 10, provided by email from Michael Parks of Telstra's Chief Sustainability Office to MoneyMob on 6.2.2020

²⁴ Telstra, *Annual Report 2019*, pp.99-103. <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/2019-Annual-Report.PDF>

²⁵ V. Poljak, "Telstra's accounts defy Buffett's war on complexity." *AFR*. 16 October 2019. <https://www.afr.com/markets/equity-markets/telstra-s-accounts-defy-buffett-s-war-on-complexity-20191015-p530pu> (accessed 2 March 2020)

affordability, because revenue is based on the sale, rather than whether the consumer fulfils the contract (which could be read as one indicator of affordability). It is therefore unclear also whether contract defaults are considered an important metric in measuring business performance.

Telstra advises that it has “changed how licensees are incentivised.”²⁶ ACCAN identified in 2019 that significant incentives went to frontline retail sales staff as a proportion of their total pay, suggesting that if incentives have been changed or removed, it is this group who may have lost the most.

Telstra has communicated that it now uses better real time systems to monitor performance by stores, as a means to more promptly identify patterns of concerning sales. But if significant revenue for licensees continues to be derived from handset sales, we remain concerned about the possibility that they may make unaffordable sales to consumers as part of demonstrating business success.

For consumer advocates, the upshot of this is that it is very difficult to obtain a clear picture of the number and extent of individuals in Australia that are or have been affected by mobile phone debt. As Andy Penn, Telstra’s CEO acknowledged in his AMCHAM speech in February 2020, “small percentages [of customers] are still big numbers.”²⁷

Recommendation 8: That ACMA report on the national number of mobile phone accounts that have gone into credit management and then disconnection, including the total national value of the debt.

²⁶ Op. cit. “AMCHAM Selling Practices Keynote Speech”, p.17

²⁷ Op. cit. “AMCHAM Selling Practices Keynote Speech”, p.11

Regulatory Environment

There are numerous actors in the telecommunications regulatory environment, all with different roles to play. With the number of different entities involved in the regulatory environment, all charged in varying ways with consumer safeguarding roles, how is it that this pattern of unconscionable conduct with Indigenous consumers was able to occur?

The Australian Communications and Media Authority

The Australian Communications and Media Authority (ACMA) is an Australian Government statutory authority tasked with regulating communications and media to maximise the economic and social benefits for Australia.²⁸ One of its regulatory mechanisms is the Telecommunications Consumer Protections Code (TCP Code), a code of conduct for the Telecommunications Industry in Australia which sets standards that ACMA can enforce. The Code provides community safeguards in the areas of sales, service and contracts, billing, credit and debt management and changing suppliers. It also sets out a framework for code compliance and monitoring. The TCP Code is developed in conjunction with the telco industry.

As of 1 August 2019, the TCP Code was revised and strengthened under new consumer protection rules approved by ACMA. The stated intention was to better protect consumers from financially over committing themselves due to poor sales practices. The new code requires telcos to promote and sell their products in a fair and responsible manner. The Code also requires telcos to clearly explain key terms and conditions to enable consumers to make informed decisions and to assess a customer's capacity to pay.

Consumers cannot make a direct complaint to ACMA about a mobile phone issue. The consumer must raise the issue directly with their telco provider and, if not satisfied, escalate the matter to the Telecommunications Industry Ombudsman. The TIO can then choose to refer matters for investigation to ACMA.

The Telecommunications Industry Ombudsman

The Telecommunications Industry Ombudsman (TIO) is a company limited by guarantee, established by Statute²⁹ which is tasked with providing a fair, independent and accessible external dispute resolution service for residential consumers and small businesses who have an unresolved complaint about their phone or internet service.³⁰

According to its Terms of Reference, when handling complaints, the TIO considers:

- Relevant laws;
- Good practice;

²⁸ ACMA, *What We Do*. <https://www.acma.gov.au/what-we-do> (accessed 25 May 2020)

²⁹ S.128 *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth.)

³⁰ TIO. *About Us*. <https://www.tio.com.au/about-us> (accessed 25 May 2020)

- What is fair and reasonable

and will also consider these matters when exercising other functions and when developing procedures for handling complaints.³¹

The TIO may also share information with regulators, government bodies and community and industry groups. For example, information:

- That may be relevant to the investigation or enforcement roles of a regulator.
- For the purposes of increasing legal compliance or promoting good practice.
- For the purposes of suggesting improvements to telecommunications services.
- To provide an independent voice about consumer telecommunication issues.

Where the TIO identifies a systemic issue, it will work with the relevant TIO member to try to resolve the issue. A systemic issue is a concern about a system, process or practice of a TIO member or TIO members that may or does affect a significant number or particular type of consumer. The TIO can handle a systemic issue with or without a complaint³². The TIO Terms of Reference are supplemented by procedures for dealing with systemic complaints. On its website, the procedure states that the TIO can identify systemic issues through a range of methods, including “handling complaints and analysing complaint trends”.³³ Further, the TIO may refer to an appropriate regulator where the TIO considers a systemic issue cannot be resolved with the telco, their resolution is not implemented, or where the conduct of a TIO member is relevant to the investigation or enforcement roles of a regulator.³⁴

In August 2017, Cameron Ralph Khoury Consultants undertook an independent review of the TIO³⁵, the first such review to be undertaken subsequent to a 2014 amendment to the Telecommunications (Consumer Protection and Service Standards) Act 1999 which introduced a requirement to undertake such reviews.³⁶ The review recommended, amongst other things, that:

“ The TIO’s systemic issues team should have the capability to analyse the TIO’s complaints database to proactively identify telecommunications providers that have been subject to repeat claims of

³¹ TIO, *TIO Terms of Reference As Approved by the Board on 12 November 2019*.

<https://www.tio.com.au/about-us/terms-of-reference-and-company-constitution> (accessed 26.5.2020). p.3

³² Ibid, p.13

³³ TIO, *Systemic Issues Guidelines*. <https://www.tio.com.au/about-us/policies-and-procedures/systemic-problem-investigation> (accessed 6 May 2020)

³⁴ Ibid

³⁵ Cameron Ralph Khoury, *Telecommunications Industry Ombudsman Independent Review Report*, August 2017.

³⁶ Ibid, page 3.

misleading sales practices and unauthorised transfers. Where an investigation confirms that the misconduct is systemic, the TIO should report the telecommunications provider to the ACCC.”³⁷

The TIO’s website talks of two types of systemic reports which it uses to drive improvements in the delivery of telecommunications services. These are Systemic Spotlights and Systemic Insights. The former “raises awareness of systemic issues identified” by the TIO.³⁸ The latter “provides in-depth analysis, findings and recommendations about systemic issues identified by the Telecommunications Industry Ombudsman in order to improve industry practice.”³⁹ In February 2019, the TIO published a Systemic Insight paper called “Sales Practices Driving Consumer Debt”⁴⁰ The publication identified four common selling practices by telco providers that drive financial over-commitment by consumers:

- Conducting credit assessment checks primarily focused on the provider’s commercial risk appetite, and not the customer’s ability to pay over the term of the post-paid plan.
- Commission based income and rewards based on sales figures can lead to high-pressure sales environments or a lack of care in assessing the circumstances of vulnerable and financially disadvantaged customers.
- Allowing customers to obtain multiple or additional post-paid plans with relatively low barriers, when these transactions carry higher risks of financial over-commitment.
- Allowing representatives appointed on an account to sign up for additional post-paid plans and purchase equipment without the account holder’s knowledge.

The TIO made four recommendations in the report to attempt to further safeguard consumers from unconscionable sales conduct:

- Assessing customers’ actual capacity to pay.
- Training sales staff to recognise vulnerability.
- Increasing safeguards for additional or multiple post-paid plans.
- Restricting how plans are sold to customers’ authorised representatives.

This publication also notes that the TIO in October 2018 commenced a systemic investigation into the selling practices of a particular telco store, selling multiple post-paid plans and devices to vulnerable Indigenous consumers. Sales practices of concern were selling to clients whose only source of income was a Centrelink pension, selling additional devices to consumers already in debt,

³⁷ Ibid, page 70

³⁸ TIO. *Systemic Issues*. <https://www.tio.com.au/systemic-issues>, accessed 30 May 2020

³⁹ Ibid.

⁴⁰ Ibid.

and selling to consumers when it was clear that they were not going to be the end user⁴¹(all themes which we have observed in the cases that have been collated by MoneyMob in its work with various financial counselling and community legal agencies). The Systemic Insight notes that the telco in question was also implementing new control mechanisms across all of its stores⁴² suggesting an awareness that the problem may be broader than just one store. The TIO advises that it referred matters to the ACCC in early 2019 for investigation, but once this had taken place, it had no continuing involvement in the process.

Through phases one and two of this project, we identified at least 24 cases (14 remote Indigenous debts) that were sent to the TIO between November 2018 and October 2019. We are also aware of at least eight different financial counselling and community legal services⁴³ that submitted complaints, which may be additional to the 24 we documented in our research. Many of the complaints lodged highlighted similar patterns of sales conduct where vulnerable consumers had been sold multiple devices on inappropriate/unaffordable plans, as well as cases where there was no coverage in the client's service area and cases of sales where there should have been an awareness that the client would not be the end user. The complaints relate to the following Telstra stores around Australia - Carlton, Mildura, Wodonga (Victoria); Arndale, Port Augusta, Port Pirie (South Australia), Alice Springs, Casuarina (NT), Mount Isa (Queensland). Despite knowledge of the systemic issues, this does not seem to have been picked up well by the TIO's frontline complaint handling process.

The case studies below seem to show that TIO frontline staff during 2018 and 2019 were reluctant to entertain financial counsellors' complaints of unconscionable selling; they dismissed information about customer vulnerability - which goes to the issue of unconscionability and capacity to contract - and pushed advocates to accept settlements based on an assumption of financial hardship. They did not accept that but for the unconscionable sale, the client debt may not have arisen in the first place. Had financial counselling agencies not made the ACCC aware of the extent of the problem, it seems they would not necessarily have heard this from the Ombudsman.

TIO & Financial Counsellor Case Study 1

(Provided by Financial Counsellor, Barry Cooper, Uniting Care, July 2019)

An indigenous client attended a Telstra store on 23/10/2018 with her grandson (her grandson turned 18 in December 2018) to help him purchase a mobile phone. The client said that it was intended to be in his name and for him to be responsible for the payments. She said that she did not know anything more about the account set up apart from the account being activated in her name. She had no understanding of what was happening or the consequences of what she was signing. The contract turned out to be a lease over a 2 year term at \$99.00 per month. The contract was made out in her name with the correspondence to be sent to her grandson in Mount Isa. The client

⁴¹ TIO. *Sales Practices Driving Consumer Debt*, 2019. <https://www.tio.com.au/reports-updates/sales-practices-driving-consumer-debt> February 2019, p. 8

⁴² Ibid, p.8.

⁴³ NAAJA, Uniting Care, Catholic Care NT, Broome Circle, Mallee Family Care, The Salvation Army, Money Mob Talkabout, Anglicare.

advised that her grandson now tells her that he can't find the mobile phone and is unable to return it. A complaint was lodged with the TIO in approximately July 2019, consistent with its guidelines in dealing with disadvantaged/vulnerable clients and also as a secondary arm of the complaint, on the basis that a credit assessment for a 61 year old client, living in a remote area with a Centrelink Newstart Allowance as a sole source of her income should not have been approved for this level of financial commitment. Telstra agreed to waive cancellation fees and other charges, but not the cost of the handset. They did agree that if returned in good condition that they would waive the handset charges as well. This unfortunately cannot happen due to the device being lost.

TIO Response

The client's financial counsellor lodged a complaint with the TIO in July 2019. After review the TIO advised that Telstra's offer of \$1,782.54 was the best likely outcome for the client and to continue with the complaint through the TIO may leave the client liable for the full amount. In discussions with the client subsequent to this, she is unable to pay the amount and as a result of her level of income has no capacity to offer even a minimum payment arrangement. The debt has since been sold. The client advised that she has received a phone call from the debt collection agency, offering a discounted payout figure of around \$900.00, which is still an amount she is unable to pay.

The financial counsellor that worked on this case stated that their client met the TIO's guidelines for disadvantaged/vulnerable consumers, however the TIO representative referred to contract law and stated that since the client signed the contract, they are therefore liable. The TIO recommended the financial counsellor and client pursue negotiations through Telstra and not through the TIO, if they were to continue with their complaint through the TIO then they could be liable for the full amount of the debt (\$3,180.54).

TIO & Financial Counsellor Case Study 2

(Provided by Financial Counsellor, Sandra Blake of Uniting, Wodonga, May 2019)

In 2012, a single mother experiencing financial hardship and recipient of Centrelink welfare attended the Wodonga Telstra store where she was mis-sold a contract she could not afford or understand which resulted in a large debt. A financial counsellor advocated on behalf of the client and had the debt waived. In 2018, the client attended the same Telstra store stating that she was a single mother with Centrelink as the only source of income. The Telstra staff proceeded to sell the client 6 contracts for iPhones, iPads and Samsung Galaxies. The client stated "They talk too fast and they don't give you time to read it and then say sign it. Push it under your nose. I believe I bought one iPad outright, but now Telstra says it is being paid off on a contract and I can't find the contract to prove this. My daughter says she remembered I paid outright for the iPad. A couple of the Telstra staff didn't treat me with respect, they want to push you in and out the door." The same financial counsellor submitted a complaint to the TIO in May 2019. After the TIO complaint was lodged (while it was being investigated) Telstra sold her another mobile plan, this was \$129 per month and the client understood it to be approximately \$60 per month. Telstra continued to phone my client while the complaint was with the TIO demanding payment. In an attempt to keep Telstra satisfied and not harass her to pay, my client has received two loans to pay her Telstra debt. This put her in a worse situation. Telstra disconnected her service even though she had Priority Assistance for life

threatening medical conditions. She continues to struggle now with excess data charges. Telstra say they are unable to restrict the data so that this does not occur.

TIO Response

"I am of the view that if the client cannot return the equipment or wishes to keep it she should be liable for the costs. This is because the client has received reasonable enjoyment of the equipment. It would also place her in an unjust position if she was to keep the equipment without penalty. On 23 April 2019 Telstra offered to apply a \$1,352.25 goodwill credit. The credit reflected the clients account balance at the time. The client's April 2019 invoice shows the credit has already been applied to her account. This credit reflects service charges from February 2019 to April 2019. The client's Telstra invoices show usage on all of her services during this period. This offer is fair and reasonable because Telstra has credited valid charges. Telstra has confirmed if the client cancels her services or converts them to prepaid it will allow the client 12 months to finalise her account balance. If the client cannot finalise her account within this timeframe it is reasonable for Telstra to take credit management action on the outstanding amount. I am satisfied Telstra has waived charges, offered to allow the client to cancel her contract and change to a product she can afford and has offered a payment arrangement for the final balance. This response is reasonable because it is in line with industry guidelines and the TIO's position statements".

Feedback from financial counsellor in this case, Sandra Blake

The result was not satisfactory. I had a similar case months earlier that waived all charges. But this did not. I then went back to Telstra after a discussion with Telstra at the Financial Counselling Australia conference and had everything waived except her latest phone contract that was issued during the TIO complaint. The client's services were moved to prepaid with the exception of her latest Samsung and one iPad.

Other financial counsellors have provided feedback about interactions with the TIO going back to late 2018. For example, Jenna Conway-Jones from Catholic Care, stated:

"At the time I lodged the complaint I believed that it was unconscionable conduct by Vodafone. In TIO's initial contact they tried to dissuade me from proceeding with the claim before investigating the matter at all, I was not confident that the case would be reviewed in an unbiased manner.

The TIO case manager (before having collected any information with Vodafone) told me that Vodafone had done nothing wrong, that my claim that the Vodafone representative should make sure a buyer understands the terms and conditions of the product they are buying is incorrect. Vodafone does not need to clarify if a person has adequate English before buying a phone and if he smiled and nodded and only said yes, that they could have decided that he was just a happy agreeable customer who was not talkative. Further to that, he told me that it was a customer's responsibility to make sure it was clear to Vodafone at the time of purchase that he did not speak English well, by stating 'I do not speak English' and if he didn't do this it wasn't Vodafone's responsibility to make sure he did. I was also told that if he didn't speak English that he should still be familiar with the concept of contracts because contracts exist all across the world and that even ancient civilisations had contracts. I was told that I should not be hopeful of a resolution with TIO regarding the matter.

I have had quite a bit of issue with the TIO over the years, I avoid them where possible because of that. I find that rather than be independent and unbiased they tend to lean in favour of the telco. They also in my experience don't want to argue against the telco, when the telco says something it often seems to be taken as fact."

Another financial counsellor, Veronica Johnson of Broome Circle WA, has commented:

"I have experienced significant inconsistencies and inadequate responses which have been given by the TIO in regards to telco debts. The TIO's outcomes for the most vulnerable clients has been less than appropriate as far as I'm concerned, with responses such as 'You have done enough, the client should be happy with the outcome 'and at no point at all has there been any acknowledgement of unconscionable conduct."

TIO & North Australian Aboriginal Justice Agency Case Study 3

The North Australian Aboriginal Justice Agency provided the following feedback about their dealings with the TIO on a particular client case in 2019:

- You are not initially given a caseworker, you are just given another opportunity to negotiate further with the other party. This is frustrating considering we had already been negotiating for months. If you don't come to an agreement within the prescribed negotiation period then you can go back to the TIO and then they allocate you to a caseworker.
- The caseworker provided a summary of what they understood to have happened. This summary left out some key details which we had to add back in. The missing details related to factors which highlighted the enormous vulnerability of our client and which ultimately related to establishing unconscionability.
- Key details which were initially left out by the TIO included: that the client was Aboriginal, lived in a remote community, was non-English speaking, has difficulty understanding English and grasping financial concepts, and partially paid the Telstra debt by taking out cash loans. By erasing those details, it appeared that the TIO did not appreciate the significance of how those factors impacted what occurred and the seriousness of the conduct that we were alleging against Telstra.
- We didn't get any further than the summary stage as Telstra then offered everything we were seeking.
- In terms of a timeline, it went as follows:
 - Initial negotiation: partial debt waiver offered by Telstra.
 - Stage 1 TIO: full waiver and partial refund offered by Telstra.
 - Stage 2 TIO: full waiver and full refund offered by Telstra.
- Ultimately, it seems that the TIO didn't do much, although it did put Telstra on notice and may have prompted Telstra to make an offer that our client was willing to accept.

Lawyers at NAAJA have further stated that there has been no interest from the TIO when initially raising complaints about systemic telco issues. However, when pushing hard to escalate cases, they are eventually able to achieve resolution through the TIO. This requires submission of extensive detailed letters and complaints outlining the law. NAAJA observed they have seen some financial counsellors' complaints to the TIO and have identified that referencing the law is not evident in these complaints. They wondered whether this could result in financial counsellors having less success through the TIO than lawyers.

Recommendation 9: That the TIO undertake intensive training with first point of contact staff to ensure that they can identify and appropriately deal with complaints involving evidence of unconscionable/unfair practices. Also that first point of contact staff are required to make it clear to financial counsellors that they can request a review of an initial decision by a senior dispute resolution specialist.

Recommendation 10: That the TIO add "vulnerable" to its list of complaint keywords under the "making a contract" category and ensure that all staff receive adequate training in the range of factors which can make a consumer vulnerable. Staff should also receive training in identifying their unconscious biases and differentiating between the moral and legal basis for a decision.

Recommendation 11: That Financial Counselling Australia and state financial counselling peak bodies ensure financial counsellors can access continuing professional development in how to appropriately frame telco complaints and ask for a review of decisions, including referencing relevant legislation.

TIO Consumer Panel

In March 2020, the TIO established a Consumer Panel to provide it with "access to diverse consumer perspectives to inform [its] work."⁴⁴ Lynda Edwards is the consumer co-chair of this group; Lynda is an Indigenous woman and financial counsellor with significant experience. Given her knowledge, networks and contacts, there should no longer be any reason why the TIO can remain poorly informed about the telco challenges faced by Indigenous - particularly remote - consumers. There is a broad cross-section of organizations represented on this panel, but none that are evidently servicing remote communities at a ground level in respect to their experiences of debt and financial management. The TIO Consumer Panel must ensure that it regularly canvasses remote financial counselling and community legal centres, in order to gather intelligence on what is happening for remote Indigenous consumers in relation to telco services and products.

Recommendation 12: That the TIO Consumer Panel schedule regular annual dialogues with financial counselling and community legal services working in remote communities, to gather intelligence about telco issues affecting remote Indigenous consumers.

⁴⁴ TIO. *Telecommunications Industry Ombudsman Consumer Panel*. <https://www.tio.com.au/about-us/consumer-panel> (accessed 30 May 2020)

Other Regulatory and Advisory Bodies

Low Income Measures Assessment Committee

The Low Income Measures Assessment Committee (LIMAC) is a body that Telstra is required to convene and resource under its Carrier Licence Conditions.⁴⁵ It comprises representatives of low-income consumer advocacy groups that work on behalf of people on a low income.⁴⁶ These same Licence Conditions require Telstra to offer, or have a plan for offering, products and services to address the needs of low-income customers, and LIMAC's role is to assess any changes to Telstra's low income package or the marketing plan for the low income package⁴⁷. In addition, Telstra must seek and consider the views of LIMAC before it makes any significant change to the low-income package.⁴⁸ The low-income package referred to was originally announced by Telstra in April 2002 and was called Access for Everyone.

LIMAC's 2003 report to the Minister included a 10-page research, analysis and future directions of the affordability needs of Indigenous consumers. It noted:

"LIMAC has taken a particular interest in the telecommunications needs of Indigenous Australians. Telstra Country Wide has briefed the Committee on Telstra's undertakings to improve access and affordability for this segment. Developments will continue to be closely monitored by LIMAC through the market research results and the TAPRIC database."

In conversation with Telstra about the mis-selling issues we had identified, we asked whether LIMAC had had any oversight or input into mobile phone products, particularly given the impacts of what we had found on low-income consumers.⁴⁹ We came to understand that at the time LIMAC was convened, the product environment (particularly in remote communities) was quite different. Due to this, LIMAC's focus has historically been on issues such as fixed line products or looking at mechanisms for remote communities such as phone away cards to address low income access to telco services. We understand they did not have any active involvement in reviewing how mobile phone products could impact on low income Indigenous consumers, and that this falls more into the arena of the Telstra CEOs Roundtable and Indigenous Advisory Committee. Further, in 2014, Telstra's Carrier Licence Obligations were amended to remove the requirement for LIMAC to make an annual report to the Minister on the effectiveness of the Low Income Package.⁵⁰

⁴⁵ Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019 (originally 1997), clause 13(3)

⁴⁶ Ibid, clause 13(3)

⁴⁷ Ibid, clause 13(4)

⁴⁸ Ibid, clause 13(6)

⁴⁹ Conversation with Robert Morsillo, Digital Inclusion Senior Specialist, Telstra, 21st May 2020

⁵⁰ See Explanatory Statement Issued by the authority of the Minister for Communications pertaining to the *Telecommunications Act 1997 Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Amendment No. 2 of 2014)

As LIMAC is an independent committee mandated by legislation, we would like to see it take a strong and ongoing role in assessing the effects of new individual/residential product offerings on Indigenous consumers. The organizations that are represented on LIMAC bring a huge national wealth of experience about low-income consumers, and the issues they face. Combined with the expertise in Telstra's Indigenous Advisory Committee, a regular collaborative dialogue between these two forums would ensure a formidable capability to identify potential issues. Whilst the economic situation of all Indigenous people cannot be adequately covered with sweeping generalizations, statistically they still lag behind other population cohorts on many social indicators.⁵¹ LIMAC should be involved in assessing the potential effects of all Telstra products on Indigenous consumers.

Recommendation 13: That Telstra's LIMAC's focus be expanded to include all new relevant product offerings and their potential to impact low income Indigenous consumers. That they are guided by Telstra's Indigenous Advisory Committee in this work.

Recommendation 14: That Telstra be required to explicitly report on any such considerations by LIMAC in its Annual Sustainability Report.

⁵¹ For example, the 2019 *Closing the Gap* report noted that the gap in Indigenous employment had widened over the last decade. Department of Prime Minister and Cabinet, *Closing the Gap*, 2019, p.96

Conclusion

This project has followed in the footsteps of other reviews and reports that have noted concerns about the sales practices of telcos, the complexity of the regulatory environment and the case for better investigation of systemic issues. We hope we have added richness to the story by providing a comprehensive picture of the way the industry has, in the recent past, engaged with, and failed, so many remote Indigenous consumers in Central Australia. This includes regulators. The recommendations we have made are geared towards addressing the widespread problems we have documented. We believe there is evidence to suggest that other vulnerable groups may have been affected by these types of sales practices. If this report leads to a deeper examination of the extent of those affected, we will have achieved a small positive. We thank the consumers, financial counsellors and other advocates who have generously shared their time, knowledge and information with us. We hope we have treated it with appropriate respect. We also recognise the steps that Telstra has taken to date, to acknowledge and mitigate some of the damage caused by their past practices. We hope their lead will encourage others in the industry to review and improve their processes.

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Acronyms

ABC	Australian Broadcasting Corporation
ACCAN	Australian Communications Consumer Action Network
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ADSL	Asymmetric Digital Subscriber Line
APY	Anangu Pitjantjatjara Yankunytjatjara
AFR	Australian Financial Review
CLC	Central Land Council
FCA	Financial Counselling Australia
LIMAC	Low Income Measures Assessment Committee (Telstra)
MMT	MoneyMob Talkabout
NBN	National Broadband Network
TCP	Telecommunications Consumer Protections (Code)
TIO	Telecommunications Industry Ombudsman

Appendices

Appendix 1 - Data Collection Template

The data collection template is shown below:

Collecting Telco Debt - Template

Worker Details:

Date:	
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Organisation:	
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Worker Name / Contact details	
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Client Details:

Name:	
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Date of Birth:	
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City/Town/ Community:	
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<p>Vulnerabilities:</p> <p>Please tick all that apply</p>	<p><input type="checkbox"/> Low Income- Centrelink payment (specify payment _____)</p> <p><input type="checkbox"/> Elderly (over 50)</p> <p><input type="checkbox"/> Remote</p> <p><input type="checkbox"/> Low/no literacy</p> <p><input type="checkbox"/> Relevant health concerns _____ _____ _____</p> <p><input type="checkbox"/> English as a second or later language (language _____)</p> <p><input type="checkbox"/> Interpreter required?</p>
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Telco Sales Information:

Account No:		Date of Sale:	
		Point of Sale:	

<p>What happened?</p>	<p>Some questions that might be useful to explore</p> <ul style="list-style-type: none"> • Why did you go to the Telco store? Were you with anyone? • Do you remember what the sales person said or did? • Was the contract explained well? • How did you feel when the salesperson was talking to you? • What did you end up purchasing? Do you still have the goods? • Do you know the contract details like price per month and total amount? • How were you going to make the repayments?
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Total amount allegedly due?	\$
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Financial Counsellor assistance and outcome:	Please outline what assistance your organisation provided <ul style="list-style-type: none"> • What was the outcome of your complaint to the Telco? • Did you go to TIO?
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Contract Correspondence:	Please attach any copies of contracts and correspondence
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Consent: <i>please tick if you have received consent</i>	<input type="checkbox"/> ACCC Authorisation <input type="checkbox"/> FC Authorisation <input type="checkbox"/> Tio Authorisation
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Appendix 2 - Research Consent form



Research Consent

We are asking you to be part of a study about the problem of Indigenous telecommunications debt in regional and remote Central Australia.

The study is being conducted by MoneyMob Talkabout. MoneyMob Talkabout helps people in the APY lands with money problems, education and safe No-Interest Loans. We have some funding to do this work in the Northern Territory.

We hope to learn more about how much phone and internet debt there is, and if the way phones are sold is part of the problem. We also want to educate key services and individuals in communities about recognising unfair contracts and how to deal with debt. From the information we collect, we will try to push for changes in the law and sales practices, to better protect consumers.

If you decide to be part of the study, the MoneyMob Project Officer will ask you for information. You do not have to agree to be part of the study. If you do agree, we want you to know that it means we will pass your details on to other organizations and people. These organizations may include:

- Lutheran Community Care, a financial counselling service, for help with your debts
- The TIO (Telecommunications Industry Ombudsman) for complaints about your debt
- The ACCC, to investigate the behaviour of the phone or internet company.

These organizations might want to follow up with you, to get more information about your situation.

The Australian Communications Consumer Action Network who are funding this study will also get a report about this work. But it will not include any personal details such as your name, age or other things that can identify you.

The Information we collect will not be given to anyone else except as required by law. We plan to publish the results in a final report and present our findings to advocacy groups, telcos and regulators, to try to achieve change. In any of our reports, the information will be provided in such a way that you cannot be identified. Your community will receive a copy of the final report.

If you say yes to the study, but later change your mind and don't want to share any information, you can let us know and this will not be a problem. If you have any questions, please feel free to call Carolyn Cartwright 08 8953 2410 (Managing Director of MoneyMob Talkabout) who will be happy to answer them.

By signing this form, you agree to everything I have explained and give consent to your information being collected.

Signed

Date