

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Inquiries Question on Notice

Environment and Communications

Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023 [Provisions]

IQ24-000001

Division/Agency: DIV - Communications Infrastructure

Hansard Reference: Written (26 February 2024)

Topic: Issues raised in submissions

Senator Karen Grogan asked:

Some submissions have raised concerns or questions in relation to specific aspects of the Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023 (bill).

Could the Department of Infrastructure, Transport, Regional Development, Communications and the Arts respond to these issues, and in particular the Telecommunications Industry Ombudsman's (TIO):

- comments about the issuing of evidentiary certificates under the proposed section 360VF;
- recommendation that the bill also require carriers to notify the TIO when they declare service areas and when they are unable to fulfil their SIP obligations in a service area; and
- their suggested amendments in relation to the compensation framework proposed in Division 4A of the Telecommunications Act 1997.

Answer:

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts welcomes the submissions to the Senate Environment and Communications Legislation Committee's inquiry into the Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023 (the Bill). The department notes that submissions generally support the Bill, but have raised a few points of detail.

How evidentiary certificates could be used for the SIP consumer protection framework.

The proposed SIP compensation regime is modelled on the long-standing Customer Service Guarantee regime, which also allows for the Ombudsman, or the Australian Communications and Media Authority (ACMA), to issue evidentiary certificates. Such certificates address potential power imbalances where disputes proceed to a court of law, as they constitute *prima facie* evidence of the matters contained in the certificate. It would be a matter for the TIO to determine whether it wishes to issue evidentiary certificates, and if so, at what point in its dispute resolution process. However, generally speaking, the department considers that this would be done at a point at which it became clear that a dispute was unable to be resolved through the TIO's processes and legal action may be

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required, or in a situation where legal proceedings are threatened by one of the parties to a TIO complaint process.

As the TIO notes, the circumstances in which such certificates may be issued are best dealt with through secondary measures, such as delegated legislation. The department will discuss this further with the TIO after the passage of the Bill.

Requiring carriers to notify the TIO when they declare service areas and when they are unable to fulfil their SIP obligations in a service area

The TIO has suggested that the Bill be amended to require carriers to notify the TIO when they declare nominated service areas and when they exit a SIP service area.

Under the statutory infrastructure provider (SIP) regime, SIPs are required to notify the ACMA when they declare or exit service areas, and also to notify the secretary of the department when they exit service areas.

The intention of the notification requirements is to promote transparency and service continuity. Notifications of SIP exits are relatively rare, but notifications in relation to new nominated service areas are quite common, with over 1,100 service areas either nominated or subject to anticipatory notices since the SIP regime took effect in 2020. Rather than amending the Bill to achieve the outcome the TIO is seeking, the department considers that administrative arrangements can be put in place between the TIO and the ACMA to ensure the TIO has access to this information in a timely manner.

Amendments in relation to the compensation framework proposed in Division 4A of the Tel Act 1997.

The TIO argued that the term ‘customer’ should be replaced with ‘end-user’ and also suggested that, given most SIPs do not have a direct contractual relationship with the end-user, a two-step process should be implemented, where SIPs pay compensation to the retail provider, who then passes that on to the end-user.

The compensation provisions in the Bill have been drafted to reflect SIPs’ different structural arrangements. Most SIPs, as the TIO notes, operate as wholesale providers, and therefore their customers are retail providers or other wholesale providers. However, some SIPs are also vertically integrated, and either supply services directly to end-users or through a functionally separated entity that is nonetheless an associate of the SIP.

As stated in the explanatory memorandum to the Bill, the term ‘customer’ covers both retail provider customers and end-user customers. This means that the compensation regime can capture both types of structural arrangements.

The ACMA has previously considered how pass through arrangements could be put in place when SIPs pay compensation to retail providers.ⁱ Retail providers generally indicated they did not favour a blanket approach. A difficulty here is that the SIP would be required to pay

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compensation when it breaches a SIP standard or rule. However, it does not automatically follow that the retail provider has then also breached the terms of its agreement with an end-user. Retail providers also have differing approaches to compensating their customers that may be linked to their differing service standards.

The issues are complex, and blanket legislation may create unintended consequences. Accordingly, they are best addressed through delegated legislation at the time any compensable SIP standards or rules may be made. The department would look to engage with interested parties, including the TIO, in advance of any arrangements being made.

ⁱ ACMA November 2020, *Service standards for superfast fixed broadband services*. See <https://webarchive.nla.gov.au/awa/20231218010327/https://www.acma.gov.au/consultations/2020-11/proposed-service-standards-superfast-fixed-broadband-services-consultation-332020>.

