

Explanatory Statement

Issued by the authority of the Minister for Communications

Telecommunications Act 1997

Telecommunications (Domestic, Family and Sexual Violence Consumer Protections Industry Standard) Direction 2024

Authority

The *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections Industry Standard) Direction 2024* (the Direction) is made by the Minister for Communications (the Minister) under subsection 125AA(4) of the *Telecommunications Act 1997* (the Act).

Subsection 125AA(4) of the Act enables the Minister to direct the Australian Communications and Media Authority (ACMA) to determine an industry standard that applies to participants in a specified section of the telecommunications industry, and deals with one or more matters relating to the telecommunications activities of those participants.

Subsection 125AA(1) of the Act provides that the ACMA may, by legislative instrument, determine an industry standard that applies to participants in a particular section of the telecommunications industry, and deals with one or more matters relating to the telecommunications activities of those participants. Subsection 125AA(5) of the Act provides that the ACMA can only determine an industry standard under subsection 125AA(1) if directed to do so by the Minister.

Purpose and operation

This instrument directs the ACMA to make an industry standard that deals with safeguarding telecommunications consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence.

This instrument is a legislative instrument for the purpose of the *Legislation Act 2003*. However, this instrument is not subject to disallowance or sunset, as it is a direction by a Minister to a person or body (see item 2 of the table in section 9 and item 3 in the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Details of the Direction are set out in [Attachment A](#).

Background

The harms of domestic, family and sexual violence are profound and pervasive in Australian society. Violence against women and children is a problem of epidemic proportions, one in three women has experienced physical violence since the age of 15, and one in five has experienced sexual violence.

The *National Plan to End Violence against Women and Children 2022-2032* (the National Plan) is a 10-year commitment seeking to end violence against women and children within one generation. The National Plan recognises that addressing violence against women and children requires the support of the whole community, with businesses and the corporate sector playing a vital role.

Telecommunications services are essential for participation in modern life. Consumers rely on telecommunications services to support work, education, healthcare, banking, entertainment and community and government services.

In that regard, it is important that the telecommunications sector is at the forefront of efforts to assist those experiencing domestic, family and sexual violence and to ensure that it is able to better respond to and support victim-survivors.

Telecommunication services need to be a safe, secure and reliable avenue for victim-survivors to access information, conduct critical safety planning and seek the support they need to leave a violent situation, as well as remain connected with family members, friends and important social support networks.

The telecommunications sector has done considerable work in understanding the needs of victim-survivors in developing its voluntary Guideline, *Assisting Consumers Affected by Domestic and Family Violence*. This Guideline provides practical, operational-level guidance about the policies, training and supporting materials telecommunications providers should have in place to identify and appropriately support affected consumers. However, given the importance of this issue, consumers affected by domestic, family and sexual violence should have enforceable and consistent protections available through an industry standard. Compliance with industry standards is mandatory. A range of enforcement options apply to industry standards under the Act, including infringement notices and civil penalties.

The Direction takes a broad, objectives-based approach to give the ACMA flexibility to determine appropriate safeguards for affected consumers following a thorough and wide consultation and interrogation of the complexities at play.

Domestic, family and sexual violence is complex, what protects one might harm the other, and the ACMA should carefully balance relevant factors when determining appropriate safeguards - including where to apply specificity or flexibility, or objective and subjective standards. Victim-survivors can have a small window to communicate and some participants in consultation on the development of the Direction said the emphasis should be on safely supporting and assisting the consumer based on their circumstances, needs and preferences, rather than the carriage service provider focusing on 'ticking boxes'.

The industry standard should be service type agnostic, that is, the rules are designed and written to be applicable to and workable for all service types, including fixed and satellite.

Further, the ACMA should work with relevant stakeholders and expert organisations through its review and compliance mechanisms to ensure that obligations in the industry standard are working as intended and victim-survivors are appropriately supported and assisted. An agile and dynamic approach should be taken to the industry standard and its review over time, so that it can evolve as awareness grows about issues facing victim-survivors.

In addition, consideration should be given to how the industry standard operates with respect to other existing regulatory instruments, such as the *Telecommunications (Financial Hardship) Industry Standard 2024* to avoid inappropriate conflicts or unintended consequences. Consumers affected by domestic, family and sexual violence should also have access to accessible complaints pathways, as their issues can often be time critical to their safety.

Guidance to accompany the industry standard would be beneficial to carriage service providers in understanding the required obligations and how they flow through into practice.

Impact Analysis

The Office of Impact Analysis advised that an Impact Analysis was not required for the Direction (OIA reference: OIA24-08331). The Office of Impact Analysis will consider the appropriate requirements for the industry standard made in accordance with the Direction, in due course.

Consultation

Consultation on the proposed Direction was undertaken with the Department of Social Services, the ACMA, the Essential Services Commission Victoria, the Telecommunications Industry Ombudsman, the Australian Communications Consumer Action Network, Consumer Action Law Centre, Communications Alliance and members of the telecommunications industry, Energy Australia and a range of organisations and experts with specific domestic, family and sexual violence experience (with verbal or written input received from Flequity Ventures, Relationships Australia, Thriving Communities Australia and Settlement Services International).

Statement of compatibility with human rights

As section 42 of the *Legislation Act 2003* does not apply to this instrument, being exempted under Part 4 of the *Legislation (Exemption and Other Matters) Regulation 2015*, a statement of compatibility with human rights is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections Industry Standard) Direction 2024*

Section 1 – Name

This section provides that the name of the Direction is the *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections Industry Standard) Direction 2024*.

Section 2 – Commencement

This section provides that the Direction commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section states that the Direction is made under subsection 125AA(4) of the *Telecommunications Act 1997*.

Section 4 – Definitions

This section sets out definitions for terms used in the Direction.

The note to this section informs the reader that a number of expressions used in the instrument are defined in the *Telecommunications Act 1997* (the Act).

Subsection 7(4) clarifies that in determining the standard, the ACMA may define any terms that it considers appropriate or necessary, including terms used in the instrument but not defined in section 4.

Section 5 – Direction to the ACMA

Subsection 5(1) of the instrument provides that the Minister directs the ACMA to determine an industry standard under subsection 125AA(1) of the Act that gives effect to the objectives set out in section 7 of the instrument. These objectives broadly relate to safeguarding telecommunications consumers who are, or may be, affected by domestic and family, and where relevant, sexual violence.

Under the Act, if the Minister directs the ACMA to make such a standard, the Minister may also direct that the ACMA is to do so within a specified period (paragraph 125AA(4)(b)).

Subsection 5(2) provides that the industry standard is to be determined within six months after the Direction is issued. The industry standard must commence in full at the earliest practical opportunity, noting the critical importance of implementing rules for victim-survivors for their safety. In setting the timeframe for commencement, the ACMA should prioritise establishing safeguards for consumers as soon as possible whilst balancing the need to ensure those rules and arrangements are appropriate, and to allow (where relevant) time for

carriage service providers to consult on and implement obligations of the industry standard. The timeframe should be clear and allow for consistent implementation.

Subsection 5(3) of the instrument provides that the ACMA may vary the resulting industry standard in future without the need for a further Ministerial direction, so long as the resulting industry standard continues to comply with, and meet the objectives provided in the Direction.

Section 6 – Application of the standard

Subsection 6(1)(a) provides that the industry standard applies to carriage service providers in their dealings with relevant consumers. Consumer is considered to cover the broadest range of people that would have circumstances where they require support and assistance from a carriage service provider in relation to domestic, family and sexual violence. That is, customers (as the account holder) and end-users, including whether they are past, present or prospective customers or end-users. It is intended that ACMA determine which groups of consumers are relevant consumers for the purposes of each obligation, if needed.

Subsection 6(1)(b) provides that the industry standard applies to carriers in their supply of carriage services to carriage service providers.

Subsection 6(2)(a) and (b) provide that the industry standard may deal with matters differently for different classes of carriers or carriage service providers. Further, it may exempt certain classes of carriers or carriage service providers from particular provisions of the standard. This section is designed to ensure the ACMA has the authority to appropriately target rules to appropriate providers in a manner that reflects, for example, the services they provide. It may also allow, for example, certain obligations to be targeted or exempted to large, small or non-consumer facing providers if considered necessary. However, it is intended that all obligations should apply to the most carriage service providers as possible to ensure uniformity of standards across the telecommunications sector.

Subsection 6(2)(c) provides that the industry standard may deal with matters differently for different classes of consumers.

Section 7 – Objectives of the standard

Objectives of the standard

Subsection 7(1) outlines the objectives the industry standard is to be drafted to give effect to, in relation to the telecommunications activities of carriage service providers.

Paragraph 7(1)(a) seeks to ensure that the safety of a relevant consumer who is, or may be, affected by domestic and family violence, and where relevant, sexual violence is prioritised.

There is currently no nationally agreed upon definition for domestic, family and sexual violence. The National Plan defines each category separately, as does the Australian Institute of Health and Welfare. The terms domestic, family and sexual violence have not been defined in the Direction. It is intended that the ACMA will determine relevant definitions during consultation on the industry standard.

In considering definitions, the ACMA should have regard to the examples in industry's Guideline, the National Plan and Australian Institute of Health and Welfare, and to work that is underway by the Government, in particularly within the Attorney General's Department to establish a nationally consistent definition.

The inclusion of 'or may be' across the Direction is in recognition of the fact that a consumer may not realise they are subject to abuse (for example economic abuse), or where there are strong indicators that a consumer is experiencing domestic, family and sexual violence but they do not directly disclose it (for example due to fear or discomfort). Further, the use of 'or may be' in reference to groups disproportionately affected, is in recognition of the fact that there may not always be hard data or confirmation of which groups are disproportionately impacted but there may be suspicions or indications which are sufficient to act on in terms of, for example, tailoring training and policies.

'Where relevant' in relation to sexual violence is to provide the ACMA flexibility to consider sexual violence that occurs outside a relationship, and determine obligations if they are relevant to the telecommunications sector. Ultimately, it will be for the ACMA to define sexual violence for the purpose of the standard and whether sexual violence outside a relationship is covered.

Paragraph 7(1)(b) provides that carriage service providers take a tailored and appropriate approach to ensure and maintain the privacy of personal information and the security of accounts of relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence. This highlights the need for carriage service providers to ensure an affected consumer's personal information is kept private and secure to avoid disclosure to alleged perpetrators, which creates safety risks. For example, personal information such as contact details and phone numbers. This paragraph also extends to ensuring the affected consumer's account is secure and unable to be accessed by an unauthorised person. This is to be done in a way that is tailored and appropriate to the consumer's individual circumstances.

Paragraph 7(1)(c)(i) provides that staff of carriage service providers should be appropriately trained to identify and support relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence. In cases of economic abuse, a consumer may not be aware they are in a domestic, family and sexual violence situation until their provider has identified discrepancies with their account. It is intended that awareness training is provided to staff across the company, where appropriate, and more specific training is provided for staff who have roles that flow through to the end-user such as customer service, marketing or product design. Carriage service providers should be sensitive to the fact that they may have staff who are victim-survivors of domestic, family and sexual violence (victim-survivors) or alleged perpetrators of domestic, family and sexual violence (alleged perpetrators). It is intended that training be informed by experts, using a trauma-informed and safety focused approach, and done regularly to continue to build the capability of the workforce and upskill staff as new information is learned about how best to support victim-survivors.

Additionally, paragraph 7(1)(c)(ii) extends to educating staff on the specific needs of consumers belonging to groups who are, or may be, disproportionately affected by domestic and family violence, and where relevant, sexual violence, such as persons with disabilities, First Nations people, people from culturally and linguistically diverse backgrounds and

people who identify as LGBTQIA+.

Paragraph 7(1)(d) provides that staff of carriage service providers should be appropriately supported in their work in relation to domestic, family and sexual violence, due to the possibility of, for example, staff experiencing vicarious trauma. Supporting staff will allow them to appropriately support affected consumers.

Paragraph 7(1)(e) provides that carriage service providers offer prompt, sufficient and appropriate assistance that is tailored to the individual needs and preferences of relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence. This includes to assist them to:

- stay safe (s 7(1)(e)(i)); and
- stay connected to or be reconnected to appropriate services being provided by the carriage service provider (s 7(1)(e)(ii)); and
- minimise the ongoing impact of domestic and family violence, and where relevant, sexual violence (s 7(1)(e)(iii)).

It is intended that the type of assistance required should be guided by the needs and preferences of the individual consumer to empower them to have choices in the way they stay safe, stay connected or be reconnected to appropriate services, and to minimise the ongoing impact of domestic and family violence, and where relevant, sexual violence. Appropriate services is intended to mean services that are appropriate for the consumer. Consumers should have a choice on whether to be reconnected or not. Sufficient is not intended to be the subjective view of the carriage service provider.

Minimising the ongoing impact is intended to require consideration of issues that impact a relevant consumer's ability to either flee their situation or move forward from domestic and family violence, and where relevant, sexual violence, this is typically in relation to debt, which is often weaponised to prevent a victim-survivor leaving or the reason why they return to a violent relationship. Subparagraph 7(1)(e)(iii) envisages minimising the burden of debt a victim-survivor may be facing due to actions of their alleged perpetrator but may extend to other circumstances that are discovered during consultation. It is accepted and intended that carriage service providers can only address issues within the reasonable limits of their remit.

Paragraph 7(1)(f) provides that carriage service providers have policies, systems and processes in place that:

- meet minimum requirements, as provided in the standard (s 7(1)(f)(i)); and
- are trauma-informed (s 7(1)(f)(ii)); and
- safely and appropriately support relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence (s 7(1)(f)(iii)); and
- are tailored for consumers belonging to groups who are, or may be, disproportionately affected by domestic and family violence, and where relevant, sexual violence (s 7(1)(f)(iv)); and
- are regularly reviewed and updated, as appropriate (s 7(1)(f)(v)).

It is intended that the ACMA determine the minimum standards for these policies, systems and processes, as per subparagraph 7(1)(f)(i). Subparagraph 7(1)(f)(iv) is intended to cover consumers belonging to groups who are, or may be, disproportionately affected by domestic and family violence, and where relevant, sexual violence, such as persons with disabilities, First Nations people, people from culturally and linguistically diverse backgrounds and

people who identify as LGBTQIA+. It would be appropriate to also have regard to intersectionality, that is, how interconnected identities such as gender, disability and sexual orientation create overlapping discrimination or disadvantage. Understanding and addressing these intersections is crucial for delivering effective and equitable support, as individuals do not experience these identities in isolation. Each person's circumstances are unique, and a person-centred approach recognises and responds to these complexities.

It is intended that subparagraph 7(1)(f)(iv) is supplementary to paragraph 7(1)(c)(ii) in that it allows carriage service providers the ability to further tailor their policies and systems to consumers belonging to groups that are, or may be, disproportionately affected, for example, it may be appropriate for information to be provided in a particular language or easy to read form, or it may be appropriate to have experts/teams available that calls can be diverted to.

Paragraph 7(1)(g) provides that carriage service providers must comply with their policies and processes referenced in paragraph 7(1)(f).

Paragraph 7(1)(h) provides that carriage service providers must review their existing and proposed systems, processes and products to identify risks they may pose to relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence, and take action to reduce those risks. It envisages that carriage service providers take a contemporary and forward leaning approach in thinking proactively about how their systems, processes and products may impact on victim-survivors and unintentionally facilitate harms or abuse. For example, consideration of whether automated messages should include a consumer's personal information. Further, carriage service providers must take action to reduce identified risks. This is intended as a safety by design approach in which organisations can anticipate, detect and eliminate harms before they occur.

Paragraph 7(1)(i) provides that carriage service providers promote information about where relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence can seek assistance. For example, on its website or through relevant community or domestic, family and sexual violence organisations. It is intended that in providing information about where to get assistance, carriage service providers provide information on how relevant consumers can seek assistance. It would also be prudent to promote information to groups who are, or may be, disproportionately affected by domestic and family violence, and where relevant, sexual violence, such as persons with disabilities, First Nations people, people from culturally and linguistically diverse backgrounds and people who identify as LGBTQIA+.

Paragraph 7(1)(j) requires that where appropriate, carriage service providers undertake relevant consultation and collaboration with relevant groups and organisations in the implementation of obligations in the industry standard, such as:

- domestic and family violence support services and organisations, and where relevant, sexual violence support services and organisations (s 7(1)(j)(i); and
- those with lived experience of domestic and family violence, and where relevant, sexual violence (s 7(1)(j)(ii); and
- groups who are, or may be, disproportionately affected by domestic and family violence, and where relevant, sexual violence (s 7(1)(j)(iii); and
- other sectors with experience in implementing responses to domestic and family violence, and where relevant sexual violence (s 7(1)(j)(iv); and
- other carriage service providers (s 7(1)(j)(v)).

It is intended that the ACMA determine which obligations in the industry standard require consultation and who the relevant group or organisation is to provide their experience and understanding of domestic and family violence, and where relevant, sexual violence. It is intended that the ACMA take a considered approach to the practical and resourcing implications, particularly during the initial phase of implementation to ensure this is done efficiently and to avoid onus or overwhelm on relevant groups, experts and organisations. It is also intended that this paragraph extends across objectives to consulting and collaborating when reviewing and updating policies, systems and processes, as per subparagraph 7(1)(f)(v).

Further, subparagraph 7(1)(j)(iv) highlights the value in consulting and collaborating with other sectors that have experience and lessons learned from implementing responses to domestic, family and sexual violence, such as Energy, Water and Banking. Additionally, subparagraph 7(1)(j)(v) envisions that carriage service providers collaborate with each other to achieve good outcomes for relevant consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence.

Paragraph 7(1)(k) provides that carriage service providers keep and maintain relevant records to demonstrate compliance with the requirements of the industry standard. This is intended to cover records around policy, system and process obligations, rather than those that contain personal information relating to affected consumers. It is a matter for the ACMA to determine reporting requirements for carriage service providers, such as how and when records are provided to the ACMA to demonstrate compliance. Also, if and how the ACMA chooses to report publicly on any related matters, subject to legislative authority.

Paragraph 7(1)(l) provides that if appropriate, carriage service providers implement policies and processes relating to their engagement with alleged perpetrators of domestic and family violence, and where relevant sexual violence. This could extend to requirements relating to, for example, the way an alleged perpetrator is communicated with or the level of information shared by their carriage service provider. It is intended to empower the ACMA to make rules relating to alleged perpetrators, if they consider that would be appropriate following consultation.

Subsection 7(2) provides that the industry standard is to be drafted to give effect to the objective, as it relates to the telecommunications activities of carriers and carriage service providers, to take action to limit or prevent the disclosure of information on customer invoices, bills and other customer facing materials which may contribute safety risks to consumers who are, or may be, affected by domestic and family violence, and where relevant, sexual violence.

This is intended to allow for requirements that cover, for example, the suppression of 1800RESPECT and other support services numbers on customer invoices, bills and other customer facing material. Other customer facing material means other locations where a customer may access their invoice or bill, for example, through their carriage service provider's website or app. The framing of this objective will allow the ACMA to investigate and consult on the best way to achieve the overarching objective. This includes enabling the ACMA to determine which support service numbers are to be suppressed, or a process for determining that.

Subsection 7(3) provides that the ACMA may deal with arrangements for handling consumer

complaints about domestic, family and sexual violence matters and may confer functions and powers on the Telecommunications Industry Ombudsman. The ACMA is expected to ensure any conferral operates effectively (and without duplication) with other instruments and processes, including the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

Subsection 7(4) provides that the ACMA may define any terms it considers appropriate or necessary in the industry standard that are not defined in section 4 of the Direction.