

Responding to consumers with different needs

Complaints we receive involving consumers with different needs include claims that a provider:

- refused to deal with a person nominated by the consumer to communicate with the provider on their behalf
- did not adapt its information, communication methods, or services to take into account a consumer's different needs
- disregarded or took advantage of the consumer's different needs when offering or selling its services
- did not provide sufficiently detailed and accurate information about disability equipment, either at point of sale or on an ongoing basis.

Examples of consumers who may have different needs include consumers who:

- have a disability
- have a serious or chronic illness
- are from an Indigenous background
- are from language backgrounds other than English
- are homeless
- are very young, or are elderly
- live in a rural or remote area, or
- have a low level of literacy or numeracy.

For complaints involving priority assistance services see our position statement [Priority assistance services](#).

For complaints involving selling practices or lack of informed consent see our position statement [Pre-sale information or conduct](#). For complaints involving capacity to contract see our position statement [Contracts](#).

For complaints involving financial hardship see our position statement [Financial hardship](#).

This position statement should also be read in conjunction with any other [TIO position statements](#) that may be relevant. It does not replace any other position statement on a particular topic.

This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.

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Laws, codes, and guidelines

The following laws, codes, and guidelines are relevant to consumers with different needs:

- [Competition and Consumer Act 2010, Schedule 2 The Australian Consumer Law](#)
- [Disability Discrimination Act 1992](#)
- [Telecommunications \(Consumer Protection and Service Standards\) Act 1999](#)
- [Telecommunications \(Equipment for the Disabled\) Regulations 1998](#)
- [Telecommunications Consumer Protections \(TCP\) Code 2015](#)
- ACCC compliance guide [Don't take advantage of disadvantage 2011](#)
- Communications Alliance [Guidelines on developing accessible documents](#)
- Industry Guidance Note: [Migration Of Back-To-Base Medical And Security Alarms To Fibre To The Premises \(FTTP\) Open Access Networks – Considerations](#)

Our approach

When we deal with complaints involving consumers with different needs we consider the law, good industry practice, and fairness in all the circumstances.

The law

Rules in the [Australian Consumer Law](#) prohibit misleading, deceptive, and unconscionable conduct in the supply of goods or services.

The Australian Consumer Law sets out factors a court will consider when assessing if conduct is unconscionable, including:

- the relative bargaining strength of the parties
- if any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party

- if the weaker party could understand the documentation used
- the use of undue influence, pressure or unfair tactics by the stronger party
- the requirements of applicable industry codes
- the willingness of the stronger party to negotiate
- the extent to which the parties acted in good faith.

See our position statement [Pre-sale information or conduct](#) for more information.

The [Disability Discrimination Act](#) prohibits discrimination on the grounds of disability when providing goods or services. If a person requires a carer or assistant, the Disability Discrimination Act applies in relation to the carer or assistant in the same way as it applies in relation to having a disability.

The [Telecommunications \(Consumer Protection and Service Standards\) Act](#) sets out a universal service regime to ensure that all people in Australia, wherever they reside or carry on business, have reasonable access to a standard telephone service, or an equivalent service if the person has a disability. This service is called a **USO service**. A provider that supplies USO services is known as the **universal service provider**.

Telstra is the current universal service provider. As part of its obligations under the universal service regime, Telstra must supply customer equipment in order to comply with the Disability Discrimination Act where the equipment is for use in connection with the standard telephone service. The equipment may be subject to rental charges and is provided following an application process which assesses eligibility criteria.

Good industry practice

The ACCC guide [Don't take advantage of disadvantage](#) includes the following guidance for providers:

- If it is apparent that a potential customer may not have the capacity to make a voluntary or informed purchasing or contractual decision, a provider needs to act responsibly and take extra care in its

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dealings to ensure that no unfair advantage is taken

- A provider should be alert to any special needs its customers have and make sure it has systems in place to prevent any unfair treatment
- A provider should consider that it may be appropriate for a guardian, carer or other appropriate person to be present to either act on the consumer's behalf or help explain and assist the consumer with a decision
- If things go wrong, a provider should be open to resolving complaints and, where appropriate, setting aside contracts or agreements.

Rules in the [Telecommunications Consumer Protections Code](#) include that a provider must:

- communicate with consumers in plain language
- communicate with a consumer in a way that is appropriate to the consumer's communications needs including those with special needs
- ensure that consumers can view and download all relevant terms and conditions of its telecommunications products from a website
- ensure that a consumer can appoint an **authorised representative** to act on their behalf, if the consumer requires
- ensure that a consumer can easily use an **advocate** to communicate with the provider, if the consumer requires.

In the Telecommunications Consumer Protections Code:

- authorised representative means the person who has authority from a consumer to deal with a provider on their behalf as their authorised agent
- advocate means a person nominated by a consumer to deal with a provider on their behalf, but does not act as the consumer's agent and cannot access any of the consumer's account information.

Guidelines

The Communications Alliance [Guidelines on developing accessible documents](#) give guidance for providers about how to provide equity in access to telecommunications products, services, and information. This includes:

- when a product, a service, or information is likely to impact on people with disabilities, providers should consult with appropriate people with disabilities in the initial stages of its development
- providers should make any documentation available in alternative formats on request, including large print, Braille or electronic format. Electronic documentation should be accessible to computer screen reader software used by people who are blind or have vision impairment
- all printed information should be designed with appropriate font size, style and colour, appropriate colour contrast between background and text, and with clear, defined graphics to maximise readability for people with vision impairment
- a range of different ways of interacting with people with disabilities should be available, and the appropriate one used on request
- customer service lines should include sufficient text communication facilities for people who are deaf, hard of hearing, or with a speech impairment, to enable communication in real time. Customer service staff should be trained in the efficient use of the relevant communication devices
- customer service counter staff should provide facilities which enable communication, including:
 - on request, sign language interpreters for Deaf people
 - hearing augmentation (such as a hearing loop) for people who are hard of hearing
- providers should ensure that a customer with a disability, non-English speaking background or other special need can be easily assisted by an advocate, if required, when communicating.

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The Industry Guidance Note [Migration Of Back-To-Base Medical And Security Alarms To Fibre To The Premises \(FTTP\) Open Access Networks – Considerations](#) encourages providers to develop processes to identify consumers that have medical alarms and add them to NBN Co's [medical alarm register](#).

We encourage providers to adopt and apply the principles set out in these guidelines.

TIO view

Adapting to a consumer's different needs

Providers should not place any undue burden on a consumer with different needs by requiring them to provide onerous information to verify the consumer's different need. For example, a provider should not require detailed specialist medical evidence to support a complaint about lack of capacity to contract if there is other more easily obtainable information available, including documents already held by the consumer.

When a provider is aware that it may not be able to adapt its services sufficiently to meet a consumer's needs, we encourage it to discuss this with the consumer, particularly if there are other providers that will be able to offer the services the consumer requires. In some cases it may be appropriate to release a consumer from contract without exit fees and assist with a transfer to another provider.

When a consumer nominates another person to communicate on their behalf

People that consumers commonly ask to communicate on their behalf include financial counsellors, legal advisors, carers, family members, and friends of the consumer.

We would expect a person communicating on a consumer's behalf to be able to demonstrate to a provider that they have been validly nominated by the consumer.

We encourage providers to have standard and simple processes, without unnecessary requirements, to allow another person to communicate on a consumer's behalf, including when the person is

making enquiries and complaints for the consumer.

Communication in languages other than English

If a provider is specifically marketing its services to a particular community from a language background other than English, we encourage the provider to communicate its services in a language widely understood by people of that community.

See our position statement [Pre-sale information or conduct](#) for information about informed consent.

Dealing with a dispute

To assess a complaint involving a consumer with different needs we may ask for information from the consumer and provider, including:

- Does the consumer have a particular need that requires the provider to offer different products, services, or communication?
- Has the provider addressed this need appropriately in the circumstances?

Outcomes

When, in our view, a provider has not met the requirements of the law, good industry practice or guidelines when dealing with a consumer with different needs, we expect the provider to comply with these requirements and address any detriment. This may include:

- accepting an enquiry or complaint from a person nominated by the consumer to communicate on their behalf
- releasing the consumer from a contract without exit fees.

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When, in our view, it is appropriate for a provider to adapt its information, communication methods, or services to meet a consumer's particular need, but it has not done so, we expect the provider to make the required adaptation and address any detriment. This may include:

- offering the consumer appropriate customer equipment
- providing suitable communication options for the consumer.

Effective date: 11 March 2016

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