
**SUBMISSION TO GOVERNMENT**

## CUTTING RED TAPE

# UTILITIES & INFRASTRUCTURE TRANSPORT

**{APPENDIX B}**

**{MAY 2014}**

GH/CoR/U&I

# EXECUTIVE SUMMARY

The following issues have been identified as representing opportunity for the Government to address and ensure that cost savings are maximised and inefficiencies are reduced.

| Item | Description and solution | Cost Impact | Urgency | Page No. |
|---|---|---|---|---|
| 1. | **Coastal shipping**<br>Rewind reforms to Coastal Trading (Revitalising Australia Shipping Act 2012) | High | Short Term | 2 |
| 2. | **Retail energy price regulation**<br>Amend regulations to facilitate innovative tariffs to improve utilisation of infrastructure | Medium | Short Term | 3 |
| 3. | **Mandatory set-backs in respect of infrastructure approvals**<br>Institute objective merit-based approach for all major industry and infrastructure projects | High | Immediate | 4 |
| 4. | **Differences between States – energy regulation**<br>Institute nationally consistent framework along National Energy Consumer Framework lines | Medium | Short Term | 5 |
| 5. | **'Water-trigger' amendments to Environmental Protection and Biodiversity Act 1999**<br>Remove duplication of processes in State and Federal legislative regimes. | High | Medium Term | 5 |
| 6. | **Energy Efficiency Opportunities Act 2006**<br>Repeal Act as requirements largely duplicated by Emissions Reduction Fund. | Medium | Immediate | 6 |
| 7. | **National Greenhouse and Energy Reporting**<br>Improve efficiency and effectiveness of reporting by introducing/changing materiality thresholds | Medium | Short Term | 7 |
| 8. | **Second-hand dealing**<br>Numerous regimes and registrations in respect of second-hand dealing. Introduce harmonised State and Federal requirements. | Low | Medium Term | 8 |
| 9. | **Trade promotion laws**<br>Lack of consistency in trade promotions legislation for games of chance.<br>Introduce harmonised state and federal requirements | Low | Medium Term | 9 |
| 10. | **Unsolicited consumer agreements**<br>Current requirements prevent suppliers from providing product/service in 'cooling off' period.<br>Amend requirements to allow suppliers flexibility | Low | Medium Term | 11 |
| 11. | **Retail price controls for telecommunications in competitive market**<br>Repeal requirements | Low | Medium Term | 12 |
| 12. | **Priority assistance – telecommunications**<br>Reform of requirements in a competitive market and implement industry-wide requirement. | Medium | Immediate | 14 |

**Implementation of the G100's recommendations is estimated to result in cost savings of around $57m over the time periods suggested.**

GH/CoR/U&I

## 1. REFORMS TO THE REGULATORY ENVIRONMENT OF AUSTRALIAN COASTAL SHIPPING

### Background

Coastal shipping/trading is the transportation of goods and personnel between two domestic ports. For example, Patrick Autocare utilise coastal shipping through the use of foreign vessels with shipping lines to transport vehicles and trucks from port-to-port around the Australian coast (as required). This ideally provides Patrick Autocare with flexibility during peak periods and allows them to move large volumes at one time.

The Rudd/Gillard Governments made significant changes to the regulatory environment of Australian coastal shipping in the form of the *Coastal Trading (Revitalising Australian Shipping) Act 2012.* This was in line with the *Fair Work Act 2009* which imposed Australian industrial relations law upon most foreign-registered and foreign-crewed vessels that operated in the Australian coastal trade

The intention of these reforms was to reduce the number of foreign vessels currently carrying coastal freight and to make Australian ships more competitive. However, the combination of these reforms has increased the regulatory burden on foreign ships and has artificially inflated the lack of competitiveness of Australian crews.

Currently, shipping lines are required (under the changes by the Gillard Government) to apply for a temporary and special license to transport cargo around the Australian Coast. These are exceptionally strict guidelines that shipping companies are finding it increasingly difficult to comply with. For instance, the Government requires that shipping lines give 7 working days' notice to make a booking to call at specific Ports around Australia. In such an unpredictable industry, this adversely impacts upon the productivity of coastal shipping in Australia, and has a negative effect on the efficiency and productivity of operations.

### Proposed Solution

Any solution must offer flexibility for both the shipping lines and companies who participate in coastal shipping. Previously, shipping lines were able to apply for a 'continuing permit' which meant that they could call into any port without a very long notice period. This system provided both the shipping lines and companies such as Patrick Autocare with great flexibility.

The Government has recently issued an Options Paper on Coastal Shipping Reform which seeks feedback on proposals to review the rules governing ship movements around our coast.

The Paper outlines a range of options for streamlining the process for applying for a temporary license and to remove unnecessary red tape which adds to the cost of coastal shipping in Australian.

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| **Cost Impact** | **High Cost** | **Urgency** | **Short Term** |

## 2. RETAIL ENERGY PRICE REGULATION

### Background

Under the 2006 Australian Energy Market Agreement, the Council of Australian Governments agreed to phase out retail energy price regulation in jurisdictions in which the Australian Energy Market Commission finds that competition is effective. Victoria and South Australia are the only States that have deregulated gas and electricity prices. Removing retail price regulation where competition is effective is a key factor in ensuring the advancement of competition in energy markets. Retail price regulation impedes the potential for tariff innovation, product differentiation and service competition where the prices being regulated are in a market in which effective competition exists.

Once a market is 'workably competitive', as the retail sectors of the National Electricity Market are, price regulation ceases to have an economic function [1]. Regulators act with imperfect information, and the information required to set an efficient price in a market that demonstrates competitive characteristics increases exponentially as the number of players in a market increases. It is difficult to set an efficient price even under conditions of a monopoly. It is exceedingly difficult for a regulator to correctly define the truly efficient price of a workably competitive market given the vast amount of information and data incorporated within final clearing prices.

The continued regulation of retail energy prices in Queensland and New South Wales (although retail gas prices are not regulated in Queensland) is a constraint on four key government objectives:

- Economic growth – as prices are regulated for consumers who have an increasingly peaky demand (contributed to largely by air conditioning penetration), there is a cross subsidy in network pricing which is perpetuated by the ongoing regulation of retail prices. This results in businesses effectively cross-subsidising households which results in lower economic activity, fewer jobs, and lower real wage growth.

- Innovation – there is significant scope for new technologies to be deployed that will assist customers to manage their energy consumption more effectively. Technologies such as in-home displays, wireless appliance device controllers and other innovations are currently deployable. However, companies with such expertise are unwilling to invest significant sums of capital given the risk that regulated prices will be kept artificially low, thereby undermining their attractiveness and an acceptable rate of return.

- Environmental outcomes – efficient energy pricing is critical to achieving environmental outcomes. Prices that are kept artificially low through regulatory intervention mute the impact of carbon policies, thereby resulting in sub-optimal abatement outcomes.

- New investment – regulated retail prices, particularly where these are regulated in a sub-economic manner, provide a distinct disincentive for new investment in electricity generation plant.

[1] Simshauser, P. (2012), "When does retail electricity price regulation become distortionary?", *AGL Applied Economic and Policy Research Working Paper No. 33*, Brisbane. Available at www.aglblog.com.au

Over time, the continued regulation of electricity prices is likely to result in sub-optimal timing of investment decisions and excessive energy prices.

**Proposed Solution**

The current regulation of tariffs effectively limits the ability of the industry to introduce innovative tariffs that provide incentives for consumers to reduce demand during periods of high demand. Simshauser and Downer (2011)[2] demonstrated that the introduction of relatively simple peak, off-peak and critical peak pricing, combined with smart meters, could significantly improve the utilisation of existing infrastructure, which would manifest itself in significant reductions in unit pricing.

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| **Cost Impact** | **Medium** | **Urgency** | **Short Term** |

## 3. MANDATORY SET BACKS IN RESPECT OF INFRASTRUCTURE APPROVALS

**Background**

Significant inefficiencies arise from unnecessary and arbitrary infrastructure and major project approvals and assessment processes. In particular, some policies underpinning legislation that contain major project development assessment and approvals processes are being developed or changed in an arbitrary manner, without evidence or a scientific basis to support the policy or the policy change.

For example, a 2km set back requirement has been imposed on wind farms in Victoria, and in respect of coal seam gas exploration and development projects in New South Wales. This has particularly serious implications in New South Wales, which risks facing gas supply shortages over the next few years if regulatory restrictions are not lifted so as to enable the realisation and development of known gas reserves within the State.

We recognise that setback proposals attempt to address community concerns around the perceived potential for health impacts caused by close proximity to wind farms and coal seam gas exploration sites and support community consultation and engagement on issues which have the potential to impact upon local community issues, health, services or amenities. Accordingly, we believe that appropriate community consultation should occur as a standard part of its development processes, and community concerns addressed to the greatest extent possible. However, it is particularly important to avoid reactive policy development where such policy changes have significant repercussions upon crucial issues such as energy security and supply, and the levels of investment in and economic prosperity in a State.

A mandatory 2km set back requirement appears to be unsupported by any particular empirical data. Further, we are not aware of any independent scientific findings that support the principle of a setback area around a wind turbine as being necessary to protect against health and noise impacts.

[2] http://www.aglblog.com.au/wp-content/uploads/2011/03/No.24-Limited-Form-Dynamic-Pricing.pdf

**Proposed Solution**
An objective, merit-based approach should be used for all major industries and infrastructure projects, based on a rigorous quantitative and qualitative assessment of impacts in place of the introduction of arbitrary setbacks.

| Cost Impact | High | Urgency | Immediate |
|---|---|---|---|

## 4. SCOPE FOR IMPROVEMENT OF REGULATION THROUGH NATIONAL HARMONISATION AND REMOVING DIFFERENCES ACROSS STATES

**Background**
The G100 favours a national approach to energy regulation rather than the separate State-based regimes which currently exist. The current approach in which energy retailers that operate nationally are required to comply with separate State-based obligations is inefficient and expensive, and leads to increased administrative and compliance costs. Energy retailers face different regulatory reporting obligations in each jurisdiction as well as different energy efficiency and environmental schemes. National consistency in requirements would deliver significant efficiency benefits.

**Proposed Solution**
We see great benefit in the National Energy Consumer Framework (**NECF**) with minimal jurisdictional derogations, under which a nationally consistent framework would exist for the supply and sale of energy. The failure of all States to adopt the NECF together has undermined the benefits that achieving national consistency would have delivered, resulting in energy retailers experiencing continued administrative inefficiencies arising from compliance with multiple jurisdictional requirements.

| Cost Impact | Medium | Urgency | Short Term |
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## 5: "WATER TRIGGER" AMENDMENTS TO ENVIRONMENTAL PROTECTION & BIODIVERSITY CONSERVATION ACT

**Background**
The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has recently been amended such that actions involving coal seam gas (CSG) developments or large coal mining developments that have or are likely to have a significant impact on a water resource must obtain Ministerial approval under the EPBC Act.

The Amendments represent an unnecessary expansion of the Commonwealth's jurisdiction because it is additional to rigorous State Government environmental approvals processes that project proponents must satisfy. For example, mandatory environmental approvals processes in both Queensland and New South Wales require CSG project proponents to undertake full assessments of the likely impact of projects on surface and ground water. Significant CSG projects in Queensland are governed by the *State Development and Public Works Organisation Act 1971* and the *Environmental Protection Act 1994.* Similarly, CSG project proponents in New South Wales must comply with rigorous environmental approvals processes legislated under the *Environmental Planning and Assessment Act 1979.*

There was no demonstration of any deficiencies or weaknesses in the previous environmental approvals regimes which the Amendments address. Nor was it demonstrated how the Amendments strengthened (as opposed to merely duplicated) existing processes in such a way as to lead to superior environmental outcomes that outweighed the increased regulatory compliance costs faced by project proponents, and the long term impact on the economy and community.

The Amendments are unnecessary in the light of the National Partnership Agreement between State and Federal Governments to strengthen the regulation of CSG development through greater reliance on improved science and independent expert advice as a basis for informing decisions. It also appears to undermine the work of the Independent Expert Scientific Committee (**IESC**), which provides advice to State and Federal Governments on CSG development issues and oversees research into the management of impacts of CSG projects on water resources.

There is considerable concern amongst the business community on the impact of state and federal regulatory duplication, more generally, on projects in Australia. In 2013, the Australian Petroleum Production and Exploration Association released a report indicating that many overlapping State and Federal regulations are applied to specific projects without any environmental benefit. The report warns that duplicate regulation may be holding back projects worth around $200 billion. The Business Council of Australia also reiterated these concerns, indicating the inefficiency caused by duplicated rules. It released a study in 2012 which found that resources projects cost 40% more to deliver in Australia than in the US.

**Proposed Solution**

The duplication of processes across state and federal legislative regimes not only increases the costs of regulatory compliance for project proponents who have to comply with an additional layer of environmental approvals, but more importantly, it leads to delays in the progress and completion of projects. This has the potential to substantially undermine infrastructure and investor confidence.

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| **Cost Impact** | **High** | **Urgency** | **Medium Term** |

## 6. REPEALING THE ENERGY EFFICIENCY OPPORTUNITIES ACT 2006

**Background**

The Commonwealth *Energy Efficiency Opportunities Act 2006* (**EEO Act**) should be repealed as it is unnecessarily onerous and will be largely duplicated by the operation of the Emissions Reduction Fund.

The Energy Efficiency Opportunities Program aims to encourage large energy-using businesses to increase their energy efficiency by identifying, evaluating and implementing energy saving opportunities. However, it is unduly onerous and prescriptive in its operation, for example, requiring corporate Board involvement that cannot be delegated.

Furthermore, recent funding cuts to the administration of the program have created uncertainty, given that obligations on liable companies remain, however the government administration and oversight of the program will be reduced substantially.

The objective of the Emissions Reduction Fund is to incentivise abatement activities across the Australian economy. Such abatement is expected to include energy efficiency projects like those identified by companies under the EEO Act. Accordingly, there is no need for the retention of the EEO Act.

**Proposed Solution**
Repeal the Energy Efficiency Opportunities Act 2006.

| Cost Impact | Medium | Urgency | Immediate |
|---|---|---|---|

## 7. REFINING THE NATIONAL GREENHOUSE AND ENERGY REPORTING REGIME

**Background**
Changes should be made to the National Greenhouse and Energy Reporting regime so as to streamline and improve the efficiency of reporting obligations. Currently, reporting corporations are required to report on practically every single energy and emissions source within their organisations, regardless of whether they are large or small.

This results in a disproportionate amount of resources being employed in data collection and complex calculations for sources that are completely inconsequential (both in absolute terms and relative to corporate totals), rather than focusing measurement and reporting on material energy and emissions sources.

**Proposed Solution**
The efficiency of this process would be improved by introducing and/or increasing the existing materiality thresholds for the reporting of energy and emissions, thereby focusing reporting obligations on significant facilities within corporate groups, and material sources within those facilities. This would substantially reduce the regulatory burden without significantly reducing the completeness and accuracy (or otherwise usefulness) of reportable data.

| Cost Impact | Medium | Urgency | Short Term |
|---|---|---|---|

## 8. DIFFERENT LEGISLATIVE REGIMES RELATING TO SECOND-HAND DEALING

**Issue**
Five different licences are required to operate a national second-hand dealing program in addition to other registration requirements.

**Background**:
There are three key reasons why reform of second hand dealing regulation in Australia is appropriate.

**First**, there is a lack of alignment between the state and territory regimes on important issues such as:

- who is considered to be a 'second-hand dealer', and the types of goods the regimes apply to;
- the registration/licensing requirements for second-hand dealers;
- 'background checks' required for officers and management of a second-hand dealer;
- the identification required to be displayed by a second-hand dealer in stores;
- how a second-hand dealer can deal in second-hand goods – i.e. who you can enter into sale contracts with, how long you can keep the goods, and where you can 'deal' from;
- the records to be retained regarding dealings in second-hand goods; and,
- the forms of exemption that can be obtained, and how.

As a result, a business that seeks to operate a national second-hand dealing program faces considerable administrative and compliance burdens.

**Second**, while compliance with many aspects of the legislative regimes may be manageable for smaller businesses, the nature of relevant obligations means they are impractical (and arguably unwarranted) for many large businesses (given factors such as their size, scope of 'retail outlets', and the fact that second-hand dealing may in many cases be just one very minor aspect of their retail operations).

For example, various regimes require directors and key officers of the second-hand dealer to supply details to the licensing authority on an annual basis that go beyond simple 'date of birth' and 'address' type information, such as details of whether the relevant person has ever been the subject of an investigation or disciplinary action relating to any licence, permit, certificate of registration or other authority.

In some regimes, representatives of the second-hand dealer must also fulfil administrative obligations such as reporting to a local police station before commencing second-hand dealing under the regime, and keeping detailed records of each item dealt with and its source and eventual buyer. The justification and practicality of these requirements is clearly significantly greater for small business operators seeking to engage in second-hand dealing in a very limited number of locations – while for large corporate businesses the effect of the requirements become as onerous as to make it almost impossible to comply.

**Third**, the telecommunications sector is already effectively addressing issues that the regimes seek to manage. As noted above, it is understood that the main purposes of the legislative regimes is to restrict the traffic in stolen goods and to assist the rightful owners of goods in recovering their stolen property. At the time most of the current primary Acts were introduced, mobile phones would have been a major issue in this regard. However, since that time the industry has taken a number of steps to help address this issue in relation to lost or stolen mobile phones. For example, the Australian Mobile Telecommunications Association (AMTA) runs a world-leading program that protects mobile phone users by blocking their handsets (by blocking the International Mobile Equipment Identity (IMEI) electronic serial number) across all Australian networks if they are reported lost or stolen. When blocked a handset is inoperable in Australia, preventing its misuse and minimising call costs to the owner. There are approximately 150,000 mobiles blocked every year in Australia with 50,000 unblocked at the request of the owner because they have been found or returned.

The effect of these inefficient regulations is that socially beneficial programs that may otherwise be able to be more readily and widely offered in the telecommunications sector face significant barriers.

For example promotions whereby customers can 'trade in' their existing mobile phones and receive credit towards a new phone are difficult to carry out. For example, Telstra believes there is great demand for these types of programs, but the ability of telecommunications companies to undertake and manage them effectively and in a manner that meets the needs of the public is constrained by the second-hand dealing regimes.

**Proposed Solution**
It is recommended that consideration be given to:

- standardising second-hand dealing licensing and regulatory obligations across each state and territory; and
- adjusting the scope and nature of the obligations so they better accommodate second-hand dealing practices by large corporates.

The proposed reforms will make it more efficient for telecommunications companies to provide customers with offers that are valued by customers but otherwise costly to provide. For example, reform might result in offers that allow customers to trade in their existing mobile handsets.

| Cost Impact | Low | Urgency | Medium Term |
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## 9. REFORM OF THE STATE AND TERRITORY BASED TRADE PROMOTIONS LAWS

**Background**
Each Australian State and Territory has different legislation that regulates the conduct of trade promotions (specifically, games of chance).

There is no national uniform trade promotions legislation for games of chance, which creates unnecessary complexity and burden for promoters. For companies operating in already highly regulated industries with a strong track record of compliance with consumer laws, there is duplication and overlap with other regulatory regimes.

The most significant issue to arise for each of the States and Territories is the requirement for a permit to conduct a game of chance trade promotion. Generally, in Queensland, Western Australia and Tasmania no permits are required. In New South Wales and the Australian Capital Territory a permit is mandatory, and in South Australia and Victoria a permit is required if the total value of the prize pool exceeds $5000. Generally a permit will not be required in Northern Territory unless the promotion is only conducted in the Northern Territory and the total prize pool value exceeds $5000.

The application process differs in each State and Territory with some offering online applications. Processing times range from 7 working days for the Australian Capital Territory to up to 20 working days for New South Wales. South Australia is the only state to offer a service to expedite the application, but this attracts an additional fee.

New South Wales and the Australian Capital Territory are the only lottery departments to offer multiple lottery or blanket permits which are issued for a 12 month period. This enables companies to apply the permit to low value promotions, subject to the conditions of the permit.

Examples of the complexities when applying each of the lottery department's individual requirements include:

a. Notification and publication of winners' details: for example, if a prize is valued at $250 and above, South Australia requires winners' details to be published and that notification must occur within 14 days of the draw. In New South Wales, winners' details are required to be published if the prize is valued at $500 and above, but notification must occur within two days of the draw.

b. Re-draw facility: the length of time in which a prize remains unclaimed before a redraw can be conducted varies from 28 days for Victoria to 3 months for New South Wales and the Australian Capital Territory.

c. Record keeping: each of the state lottery departments requires promoters to keep a record of each promotion for periods ranging from 1 to 3 years. Records must include all entry forms, draw dates, winners' names and addresses and their respective prizes.

d. Prize distribution: South Australia requires prizes to be distributed within 14 days of the draw, whereas New South Wales allows up to 6 weeks.

e. Scrutineer: New South Wales and South Australia requests that an independent person is present to witness a draw if the value of the prize pool exceeds $10,000 or $20,000, respectively.

f. Authorised Nominee: in Victoria, an employee (who must hold a current police check) must certify that they will ensure the competition is run in accordance with legislative requirements.

g. Advertising requirements: there is a minimum requirement that must be included in the advertising of a permit promotion, these are referred to as abbreviated (or short form) terms and conditions which set out the key details of the competition including permit numbers. The requirements vary depending on the state in which you intend to advertise and whether the promotion is going to be advertised by print, radio or TV.

Complexity is also created when moving from national trade promotions to individual state and territory based trade promotions simply because of the disparity in laws and regulations. Preparation and drafting of terms and conditions is burdensome and creates confusion and unnecessary administration.

**Proposed Solution**

The G100 recommends that national uniform legislation regulating game of chance trade promotions be introduced to reduce the unnecessary complexity and administrative burden currently faced by promoters conducting promotions in more than one state or territory.

The expansion of the multiple lottery permit arrangements should be applied across South Australia and Victoria to allow for low value prize promotions to be conducted without applying for individual permits on each occasion.

Exemption from the need to comply with the permit regime for game of chance trade promotions should be available where it is deemed those companies already operate in highly regulated industries and with a strong track record of compliance with consumer laws.

Online permit application facilities should be available across all states and territories to expedite the current application approval timeframes.

Reform in this area will also see a cost saving for promoters. For example, if regulation is amended in Victoria and South Australia to allow a multiple lottery permit to be issued to align with NSW and ACT, the promoter would be able to use the multiple lottery permits instead of applying for individual permits on each occasion. The cost of a permit for a promotion valued between $5,000 and $10,000 in South Australia and Victoria is $341.00 and $325.80 respectively.

| Cost Impact | Low | Urgency | Medium Term |
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## 10 REFINING THE UNSOLICITED CONSUMER AGREEMENT PROVISIONS IN AUSTRALIAN CONSUMER LAW

### Background

The unsolicited consumer agreement provisions set out in the Australian Consumer Law (ACL)[3] prescribe what salespeople must do and say if they are engaging in unsolicited sales, as well as prescribing the documentation that must be given to a customer who agrees to purchase a product or service.

The provisions also prescribe that customers are entitled to a cooling off period of 10 clear business days from when they receive the copy of their agreement (which can be up to 15 business days after the sales conversation).

The existing laws do not allow an organisation to provide any products or services to the customer during the cooling off period. Customers are not able to consent to receive products or services during the cooling off period. The consequences of such a supply are that the customer is not liable to pay for the service and the organisation is liable for pecuniary penalty under the ACL.

Allowing for telecommunications transfer and activation processes, customers often need to wait between 14 and 21 days after a sale to receive the product or service they purchased. This is a long time for a customer to wait and can create tension between the supplier and the customer and lead to a negative customer experience.

A telecommunications member, Telstra considers the prohibition on supplying products or services during the cooling off period is unnecessary as customers are ultimately protected by the cooling off period and they have this right regardless of whether or not a product or service is supplied during this period.

[3] Part 3-2, Schedule 2.

The supplier should be able to decide whether it wants to take the risk to supply the product or service to the customer, knowing that the customer may decide to exercise their right to cool off and in doing so the supplier will not be entitled to payment for supply made to that point.

**Proposed Solution**

Suppliers should be allowed to supply products and services to customers during the cooling off period. Customers should retain the right to cancel the agreement during the cooling off period, provided that they return any products supplied to them within a reasonable period of time - except if the products can't be returned, removed or transported without significant cost to the consumer, in which case the supplier should be under an obligation to collect them (which is consistent with the consumer guarantee regime).

Consumer rights remain unchanged as consumers would still retain the right to cancel an unsolicited consumer agreement during the cooling off period regardless of whether or not products or services had been supplied during the cooling off period.

Systems and processes could be simplified so that no additional controls need to be implemented to supply goods and services that have been sold to a consumer. Products or services sold to customers under an unsolicited consumer agreement need to be withheld separately so that they are only supplied after the cooling off period has ended, which adds to the cost of supply**.**

| Cost Impact | Low | Urgency | Medium Term |
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## 11 RETAIL PRICE CONTROLS REFORM

**Background**

The Minister has the power to regulate Telstra's retail prices under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Over time a number of additional obligations have been added, such as metro-rural price parity on Telstra's pre-select product – HomeLine Part.

The current price control determination (PCD) commenced on 1 January 2006 and has been subject to a number of reviews. Following the most recent review by the Department of Communications in 2012, the operation of Telstra's price control arrangements was extended until 30 June 2014.

In recognition of the transition of Telstra's services over time onto NBN, the 2012 review amended the PCD excluding NBN based services from the remit of the price controls – the exception being local call price regulation on voice only NBN based services.

This regulation was designed to place retail price controls on Telstra's fixed voice services (including directory assistance), initially to emulate the effects of competition in the retail voice market and then retained to ensure that productivity gains from competition were shared with consumers.

More recently retail price control have been used to drive other social policy objectives, such as rural/metro price parity and making telephone services available to low-income Australians.

Retail price regulation on Telstra is redundant because there is a significant amount of competitive pressure in the fixed voice market from fixed voice competitors and fixed voice substitutes (e.g. mobiles and VoIP). This competition is driving lower fixed voice prices. The fact that fixed voice prices are declining and Telstra retains a large price control surplus evidences that it is competition, not retail price controls, that are driving prices down.

The PCD is legacy regulation and has been removed or wound back in most telecommunications markets where access regulation is present. Retail price controls were removed from BT in the UK over six years ago.

**Proposed Solution**

The retail price controls should be repealed in their entirety. However, it is recognised that there are community sensitivities in the pricing of local calls, Directory Assistance and payphone calls. These concerns should, to the extent necessary, be addressed through separate non-regulatory arrangements.

**Potential Cost Savings**

Low

The PCD constrains Telstra's retail pricing flexibility and innovation. In addition it imposes regulatory overhead in the form of direct reporting costs, regulatory oversight costs and auditing costs, as well as a complex reporting regime.

It also indirectly constrains the flexibility of all market participants to innovate with pricing structures, denying consumers the benefit such innovation may deliver.

The ACCC is likely to support the removal of retail price controls, as they are not necessary in a competitive market in which basic wholesale inputs are regulated. In its report of December 2011, the ACCC advocated removal of some parts of the price controls.

The current retail price controls adversely impact retail customers as they constrain Telstra's ability to offer innovative and simple product solutions. There is little financial benefit to customers of the price controls given that Telstra's prices substantially undercut the prices allowed under the controls.

Low income groups and regional community groups may raise concerns with price control removal specifically around the cost of access, local call pricing and metro-regional price parity. As outlined above, these concerns should be addressed though separate non-regulatory arrangements.

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| **Cost Impact** | **Low** | **Urgency** | **Medium Term** |

## 12 PRIORITY ASSISTANCE REFORM IN TELECOMMUNICATIONS SECTOR

**Background**

Telstra's licence condition was amended in 2002 to include an obligation to offer and supply priority assistance (PA) to those residential customers who have a life threatening medical condition, and who require an operable working fixed line service in the event of an emergency.

Telstra is the only retail service provider (RSP) that has an obligation to offer PA to its customers. Other RSPs are only obliged to advise their new customers if they offer PA, and if they do not, to advise the customer of the names of one or more RSPs who do offer PA. Where an RSP (other than Telstra) chooses to offer PA, the RSP must comply with the requirements of the ACIF Code – Priority Assistance for Life Threatening Medical Conditions.

Reform of PA is appropriate for a number of reasons.

- A large number of customers request priority status but do not validate their "provisional" PA status by submitting a PA application form. Telstra estimates that approximately 30% of priority customers "validate" their provisional status, which means that a large number of customers each year receive the significant benefits of PA but appear not to be eligible.

- The reliance upon fixed line services has reduced in the 10 years since Telstra's PA licence condition was introduced, as the number of mobile phone services has increased in the same period.

- The rollout of the NBN and the commitment of NBN Co to offer PA timeframes facilitate the capability of all RSPs to offer PA over the NBN. Consumers should, wherever possible, be able to obtain PA from the RSP of their choice.

**Proposed Solution**

**Short term**

It is proposed that the Minister make amendments to Telstra's licence condition to:

- Make Telstra's Priority Assistance for Individuals Policy (PA Policy) a standalone document by removing the requirement to include a:

  a. Summary of its PA obligations in both its USO Policy Statement and USO Standard Marketing Plan; and a
  b. Copy of its PA Policy as an appendix to the SMP.

  This will enable changes to be made to Telstra's PA Policy independent of its USO documentation;

- Transition from the current post facto ratification scheme to a scheme whereby, in order to receive PA, customers must have either:

  a. Pre-registered for the service (similar to the disabled car parking permits administered by local government); or where they have not pre-registered

  b. Provide medical certification before PA status will be applied to a particular connection or fault rectification request. For example, the PA application form would be made available on Telstra's website to complete and download so that it can be taken to a doctor for verification. It could then be scanned and emailed by the medical centre to a specialised online submission portal in Telstra for immediate attention.

- Clarify that the service reliability requirements only apply to those PA services supplied over Telstra's network.

PA services supplied over telecommunications networks owned by other parties (e.g. the NBN), where Telstra is not in a position to exercise control over those networks, should be excluded from this requirement;

- Clarify that an interim service must be supplied within 24/48 hours of the interim offer being accepted by the PA customer (and not within 24/48 hours of Telstra receiving the original PA request). The proposed change is consistent with the requirements of the ACIF PA Code;

- Clarify customer obligations around battery backup so it is clear that Telstra is only obliged to provide PA to those customers who have consented to the installation of battery backup on their NBN fibre service;

- Amend the record keeping and reporting regime as set out in subclause 19(8) of the licence condition by removing the following items:

  a. the number of applications for registration as priority customers received;
  b the proportion of applications accepted;
  c. the number of customers levied a cost recovery charge after failing to meet the eligibility criteria;
  h. the proportion of requests for priority assistance satisfied with interim or alternative services (connections and restorations);
  i the number of priority customers experiencing 2 or more faults in a 3 month period during which they were a priority customer; and
  j details of requests for priority assistance in relation to which the licensee has been unable to supply an interim service, due to circumstances beyond its control (e.g. road closured caused by flooding), including an explanation of the circumstances (including location, time and duration) that have prevented the timeframes being met.

The G100 recommends that the present requirements for reporting information on the PA regime to ACMA should be replaced with a requirement to report annually.

If Telstra's PA Policy is removed from its USO documentation, revised arrangements should be negotiated between the company and the Minister.

**Long Term**

In the longer term an industry-wide PA policy that places an obligation on all RSPs to offer PA, should be implemented. The rollout of the NBN facilitates this as NBN Co's wholesale broadband agreement includes commitments to meet the priority assistance connection and fault rectification timeframes.

**Potential Cost Savings**

Implementation of the proposed changes will result in significant cost savings, due to a significant reduction in the number of unsubstantiated claims for PA. This saving is made up of reductions in the following areas:

- call handling time in front of house call centres;
- interim services that need to be supplied;
- after hours recalls (e.g. attending to a fault after 9pm);
- contact with PA customers to make them aware of planned network outages; and
- follow up activities, for example, sending reminder letters to those customers who have not provided a PA application form.
- PA will be more targeted at those consumers who are in genuine need and who are therefore willing to obtain the necessary supporting documentation;
- delivery of an enhanced level of service to those customers who genuinely meet the PA eligibility criteria will be enhanced, as there will be a significant reduction in the number of unsubstantiated claims for PA;
- a simplified and more flexible application process that will suit the needs of a greater proportion of PA customers (e.g. by allowing them to re-validate in ways that suit them and allow them to agree to use their existing mobile service); and
- customers will benefit from improved communication that recognises today's communication needs (i.e. a reduction in lengthy written information in favour of e-mail, SMS, etc).

| Cost Impact | Medium | Urgency | Immediate |
|---|---|---|---|