

Optus response to
the Treasury's consultation paper
An Australian Consumer Law:
Fair markets – Confident consumers

17 March 2009

1. Executive Summary

- 1.1 Optus is a leading integrated national telecommunications provider, delivering cutting-edge communications, information technology and entertainment services throughout Australia. Our services are used by consumers, businesses, corporate entities and government agencies.
- 1.2 As such, Optus is obliged to operate in (and be compliant with) a consumer policy regulatory environment which encompasses national, state and territory laws and regulations as well as, importantly, mandatory telecommunications industry-specific consumer protection codes and standards developed by industry and registered and enforced by an industry-specific regulator, the Australian Communications and Media Authority (ACMA).
- 1.3 Optus welcomes the opportunity to provide input to the Treasury's consultation paper, *An Australian Consumer Law: Fair markets – Confident consumers* (ACL paper), and is already on the record voicing our in-principle support for a streamlined national approach to consumer policy in order to reduce the regulatory burden on business while maintaining an effective consumer protection regime. We note that Optus provided a submission to the PC's *Review of Australia's Consumer Policy Framework* paper (Consumer Policy paper) in February 2008.
- 1.4 Optus believes that consumer policy regulation, as with all regulation, should be well targeted, based on solid evidence and actually address the specific problem for which it has been created to resolve or remove. As such, when considering how specifically to craft and implement an Australian Consumer Law (ACL), Optus would urge policy makers to give careful consideration to ensuring that the new law's focus remains on overcoming existing inconsistencies, gaps and duplications and on seeking to provide clear safeguards and protections for consumers, without unnecessarily extending the law into new areas with consequent uncertain outcomes.
- 1.5 Optus would also urge policy makers to take care to balance the need for "reform" of the various federal and state consumer laws with consideration of the impact in practice a new ACL may have on the legitimate interests and operations of business. In general terms, we would assert that overly prescriptive, or simply too much, regulation can lead to greater regulatory complexity and higher compliance burdens and associated costs – as well as perverse unintended consequences which can damage innovation and undermine economic productivity and dynamism.
- 1.6 With respect to the ACL paper, Optus has not provided commentary on every issue raised. We have sought to confine ourselves to those issues which we believe are of greatest impact on us or that we are most qualified to provide insights. Specifically, Optus' submission addresses the following key issues:
 1. **Unfair contract terms regulation** – As a national company serving over 7 million customers per day, Optus uses standard form contracts with most of our customers. This right is provided for in the *Telecommunications Act 1997*, which together with regulations made under Part 23 and the

Telecommunications (Standard Form of Agreement Information) Determination 2003, sets out the legislative rules governing standard form contracts in the industry. It would simply be impossible for Optus to individually negotiate contractual terms with such a large number of customers.

We are already on the public record supporting the inclusion of a provision in the Australian Consumer Law (ACL) that voids unfair terms in standard form contracts in specific circumstances.

Determining whether a term is unfair - Optus is concerned about two core elements of the proposed ACL definition of an unfair term. Firstly, it does not require a consumer to experience material detriment; and secondly, it does not require that all of the relevant circumstances of a contract and supply arrangement be taken into account.

Representative actions – Optus believes that there are ample existing mechanisms in place to deal with customer complaints. In our view, the costs and risks of unsatisfactory outcome associated with representative actions outweigh the apparent benefits of making such actions specifically available. That is, the case has not been adequately made for regulator-led representative actions.

Banning of certain contract terms – Optus has serious concerns about this proposal at the levels of both principle and practice. Regarding the former, Optus would note that the greater the level of prescription in regulations the greater the complexity and potential cost and the greater the likelihood of negative unintended consequences.

Regarding the latter, Optus is concerned that the ACL paper cites a number of contract terms that are similar to those which we employ in our consumer contracts that we strongly assert are entirely reasonable and completely fair. Adopting a *per se* test for such provisions would unreasonably disadvantage legitimate business interests. We provide specific details in the body of our submission.

2. **Definition of “consumer”** – In the context of unfair contract terms, Optus believes that the definition of “consumer” should adopt aspects of the definition of “consumer contract” used in the VFTA, by relating it to goods and services acquired for the purposes of ordinary personal, domestic or household use or consumption.
3. **Enforcement powers** – We believe that consumer regulators already possess a sufficient range of enforcement tools for dealing with breaches of the law; and that adding to the current range of tools could result in additional compliance costs on firms and increase the risk of regulatory error.

Optus is concerned that the introduction of Substantiation notices could, perversely, result in greater litigation through the court system and consequently greater delay, inefficiency and costs than currently exist.

With respect to the proposed public warning powers, Optus believes that there must be a high threshold set before such powers are employed; and

that statutory immunity from legal action should not be granted. We consider as a matter of fundamental principle that regulators must be held accountable for their actions.

4. **Door-to-door trading and telemarketing** – Optus supports at the level of principle the shift towards nationally consistent regulations so long as such a shift results in greater efficiency and less complexity. We believe that a nationally consistent approach would remove the uncertainty and cost of dealing with at least eight different pieces of state and territory legislation.

Optus has some concern that a move to “best practice” regulation could equate in practice to an exercise in which the most restrictive regulations from various state and territory regimes are brought together in the ACL. We outline in our submission some specific provisions currently present in state and territory legislation which could valuably be brought into the ACL.

5. **Mandatory disclosure** – Optus notes the significant volume of industry-specific regulation that already exists in this area for telecommunications providers and proposes that great care be taken before any provisions from state/territory fair trading laws is incorporated into the ACL; and that account be taken of regulations already in place for the telecommunications industry.
6. **Review of industry-specific regulation** – Optus believes that the telecommunications industry is subject to unnecessary sector-specific regulation and that the development of the ACL presents a logical time to initiate a program of review and reform. We would welcome a consultative process in which stakeholders such as Optus could participate in which unnecessary or divergent regulation could be identified with a view to repealing or harmonising it across jurisdictions where beneficial.

2. Unfair contract terms regulation

- 2.1 As a national company which serves over 7 million customers per day and provides a wide variety of fixed, mobile and satellite telephony, internet and subscription television services, Optus uses standard form contracts with most of our customers. Part 23 of the *Telecommunications Act 1997* gives telecommunications providers the right to contract with their customers on a general, non-individual basis; which together with regulations made under that Part and the *Telecommunications (Standard Form of Agreement Information) Determination 2003* sets out the legislative rules governing standard form contracts in the industry.
- 2.2 Indeed, it would simply be impossible for Optus to individually negotiate contractual terms with such a large number of customers and, as noted in the ACL paper, standard form contracts lower the cost of doing business with large numbers of consumers, with consumers also benefiting from these lower costs.¹

¹ ACL paper, p29

- 2.3 Optus is on the public record supporting the inclusion of a provision in the ACL that voids unfair terms in standard form contracts, though as stated in our submission to the PC's Consumer Policy paper, we noted that this should occur only where a number of specific criteria have been met. In Optus' view, such criteria should include that there is evidence of material detriment to consumers; that all of the circumstances of the contract have been considered; and that there is an overall public benefit from remedial action.
- 2.4 With respect to consumer contracts, Optus' operates nationally in a manner which is designed to ensure compliance with the unfair contract terms provisions of the *Victorian Fair Trading Act* (VFTA) and the industry-specific *Telecommunications Consumer Protection Code* (TCP Code). In this way, we have sought, as a national provider, to manage our regulatory compliance burden by placing upon ourself the more stringent Victorian legislation in all states and territories.
- 2.5 We have outlined below our specific comments with regard to the proposals with respect to unfair contract terms contained within the ACL paper:

Consumer detriment

- 2.6 With respect to the proposed definition of an unfair term to be one in which "it causes a significant imbalance in the parties' rights and obligations arising under the contract, and it is not reasonably necessary to protect the legitimate interests of the supplier"², Optus is concerned that there is no requirement for there to be material detriment to a consumer before deeming that a term may be unfair. We believe that evidence of material consumer detriment is essential in determining whether a term is unfair or not. We also believe that consumers should bear the onus of proving that they have suffered material detriment.
- 2.7 It is important to note that an imbalance in the parties' rights does not of itself indicate that a term is unfair. Indeed, while the industry-specific TCP Code and the VFTA both use a similar definition of "unfair", the Guideline to the Code (TCP Guideline) states that "due to the nature of the supplier/consumer relationship, the rights and obligations will be inherently different. Some imbalances may be reasonable in the circumstances and not unfair. For example, as a Supplier you need to be able to respond to events which threaten the security of a network or to intervene if you suspect a consumer's handset has been stolen and used without their consent."³
- 2.8 So that the law will take into account the inherently different rights and obligations in the supplier/consumer relationship, Optus suggests that the phrase "in all the circumstances" is an important inclusion in any definition of what constitutes an unfair term. Optus notes that it is a phrase which is already included in the definition which appears in the VFTA (section 32W)

² ACL paper, p30

³ TCP Guideline, p36

and in the industry-specific TCP Code, as well as in the unconscionable conduct provisions of the *Trade Practices Act 1974* (TPA) (sections 51AB and 51AC).

- 2.9 Optus also suggests that the unfair contract provisions specifically recognise that one of the matters which ought to be taken into account in determining whether a contract term is unreasonable is the provisions of an applicable industry code. This is an important inclusion because code provisions have had the benefit of extensive consultation between consumer groups and suppliers, and also have the approval of the industry regulator.
- 2.10 Optus notes that the inclusion of the “legitimate interests of the supplier” in the proposed definition of unfair terms is intended to recognise that a supplier may have legitimate reasons for including a particular clause in a consumer contract. We also support the proposed removal of “good faith” in view of its uncertain application in Australian law, as noted in the ACL paper.
- 2.11 The ACL paper proposes that remedies will be available only where detriment to a consumer is shown – or where a substantial likelihood of detriment is shown. Optus notes that “substantial likelihood of detriment” is not a proper basis for making an assessment of damages. That is, courts will award damages based only on actual loss; and that where there is an apprehension of loss, there exists already adequate provision within the court system for a party to get injunctive relief.
- 2.12 For the above reasons Optus suggests that the words “substantial likelihood of detriment” are unnecessary. As a minimum, Optus believes that clarity is required to confirm that, under the proposed ACL, damages would be awarded only where actual loss has occurred.

Private (and regulator-led) representative actions

- 2.13 Optus believes that there are ample existing mechanisms in place to deal with customer complaints. Businesses have their own internal complaint handling processes, the Telecommunications Industry Ombudsman (TIO) has jurisdiction within the telecommunications sector to deal with customer issues in a number of cases and regulators including the Australian Competition and Consumer Commission (ACCC) can commence proceedings and take advantage of the wide range of remedies provided for under the TPA.
- 2.14 Optus is not aware of any evidence having been provided that indicates that consumers are not getting sufficient access to complaint handling processes or, for more serious cases, courts or regulators. In Optus’ view, the costs and risks of unsatisfactory outcome associated with representative actions outweigh the apparent benefits of making such actions specifically available. It is also not explained how the ACL would deal with a situation where consumers were not content with a regulator’s court action and wanted to bring a separate proceeding against a business.

Banning of certain contract terms

- 2.15 With respect to whether certain contract terms should be banned on the basis that they are considered, in all circumstances, to be unfair, Optus has serious concerns at the levels of both principle and practice. Notwithstanding the reasonable intent underlying consideration of banning particular types of contract terms, Optus would note that the greater the level of prescription in regulations the greater the complexity and potential cost and the greater the likelihood of unintended consequences for circumstances not envisaged at the time of drafting.
- 2.16 That is, at the level of principle, Optus believes that there is a need for balance between providing for a framework in which consumer contract terms can be identified as unfair on the one hand; and providing suppliers with sufficient flexibility to develop consumer contracts that meet both their needs and the needs of consumers on the other. In sectors such as telecommunications, such balance is critical to enable a supplier to efficiently and effectively engage with, in some cases, millions of consumers. Consumers also benefit from such arrangements, such as through lower costs passed on by suppliers.
- 2.17 At the level of practice, Optus is concerned that the ACL paper cites a number of contract terms that are similar to those which we employ in our consumer contracts as those that may be banned for being unfair in all circumstances. Optus would strongly assert that we include only reasonable terms in all our consumer contracts and, as such, would object to such categories of terms being subject to a blanket ban. Specifically, Optus employs the following terms which are being considered for banning, in circumstances that we would strongly assert are entirely reasonable:
1. *Title retention clauses* - In certain circumstances where we install equipment in a customer's premises but retain ownership of the equipment, we maintain the contractual right to collect such equipment in certain circumstances and specifically note that we are not obliged to return a customer's premises to their original condition. This is to allow for circumstances such as leaving in place a wall socket installed at a customer's premises.
 2. *Terms that deem something a fact* - The ACL paper cites the following as an example of a term that would be considered unfair under this category: "*.....failure by us to enforce a right does not prevent our enforcing other rights, or the same right on a future occasion*"⁴.
- Our view is that it is entirely reasonable, and not unfair, to include a provision in our consumer contracts which clarifies that despite having waived our rights in respect of one instance of a breach, this does not constitute a general waiver of our rights in respect of any subsequent breach.

⁴ ACL paper, p36

3. *Terms under which consumers acknowledge that they have read or understood the contract* – Optus outlines in our consumer contracts the respective roles and responsibilities of Optus and our customers, including clauses to the effect that a customer has read and understood the contract.

We would strongly assert that it is absolutely reasonable for a supplier such as Optus to ask for a customer to acknowledge that they have read and understood their contract with us. This provides both Optus and the customer with a level of certainty as to the terms of that contract.

The alternative scenario would be unworkable in practice. The ACL paper itself, when it states that it “is impossible to know, without searching enquiry, whether [a consumer’s] understanding is correct”⁵, highlights the complete lack of certainty that would follow if such terms were banned. Optus would submit that it is perfectly reasonable for us to seek to rely on the fact that a customer who has signed a contract with us has done so understanding the terms of the contract.

4. *Early termination fees* – In relation to judging the unfairness of an early termination fee, the ACL paper states that “under the agreed model, the question would appear to be whether, in its terms or in its application, an early termination fee causes a significant imbalance to the consumer’s detriment...”⁶

It is concerning to Optus that the ACL paper places such emphasis on the imbalance to the consumer’s detriment. This emphasis seems to give little or no regard to the well-established principles of law on liquidated damages that focus on the supplier’s position – that is, whether it is a genuine pre-estimate of loss.

Optus charges an early termination fee to its customers where the customer has signed up to a fixed length contract (typically 12 or 24 months) and the customer chooses to terminate the contract before expiry of the committed term. The risk of wanting to terminate the contract early (and having to pay a cancellation fee) is part of the risk the customer agrees to in exchange for the more beneficial price deal offered on a fixed term contract. There may be an apparent monetary imbalance, but it is not an unfair term; rather it is a term that is part and parcel of the deal being struck between the supplier and the customer and enables the customer to take advantage of a more beneficial pricing offer.

Optus suggests that it is not appropriate to analyse the imbalance or otherwise to the consumer’s detriment in circumstances where the consumer has breached their contractual obligations by terminating prior to expiry of the fixed term period of their contract.

⁵ ACL paper, p36

⁶ ACL paper, p 39

Instead, Optus would strongly assert that the focus for calculating the fairness (and validity) of an early termination fee should be based on established general law; that is that the fee must be a genuine pre-estimate of the loss that a supplier would suffer by the breach.

Transitional arrangements

- 2.18 Optus welcomes the ACL paper’s recognition that there will be a need for transitional arrangements to be put in place after enactment to give businesses time to modify their contracts. It is critical that sufficient time is given for such transitional arrangements. For example, Optus has over 200 individual standard consumer contracts which would require review and potential amendment. We believe that a period of 12-18 months would be a reasonable transitional timeframe.

3. Definition of “consumer”

- 3.1 Optus notes the various ways in which “consumer” is defined in different legislative and regulatory instruments across different states and territories – and believes that moving towards a consistent national approach is a positive step so long as such a move does not result in greater regulatory complexity and associated cost.
- 3.2 Our comments in this section are limited to the proposed provisions concerning unfair contract terms, because that is the focus of the ACL, and they are provisions which do not currently exist under the TPA.
- 3.3 Optus’ view is that the definition of “consumer” in connection with unfair contract terms should adopt the key phrases of the definition of “consumer contract” under the VFTA. There are a number of features of that definition which support its adoption:
1. the goods or services are acquired *for the purposes* of the ordinary personal, domestic or household use or consumption of those goods or services⁷. This means that the provision is designed to protect traditional “residential” consumers which Optus submits is the appropriate focus;
 2. the VFTA definition recognises that it is not necessary to bring businesses (including small businesses) within the definition;
 3. in Optus’ view the provisions of section 51AC of the TPA already provide sufficient protection to businesses; and
 4. it would be inappropriate to adopt the current definition under the TPA given that it can apply to businesses in particular circumstances and it was not the intention of Parliament when the TPA definition was introduced that it would apply to the issue of unfair contract terms.

⁷ emphasis added

4. Enforcement powers

- 4.1 Optus stated in our submission to the PC's Consumer Policy paper our view that consumer regulators already possess a sufficient range of enforcement tools for dealing with breaches of the law and we agreed with the PC that there was little evidence that lack of access to particular enforcement tools was imposing any significant costs on consumers.
- 4.2 Optus also noted that adding to the current range of enforcement tools could result in additional compliance costs on firms and increase the risk of regulatory error. We maintain this view – and in the current economic climate remain especially concerned about the risk of unintended consequences from overly prescriptive or onerous regulation.
- 4.3 However, Optus also acknowledges that it has already been decided to extend the existing penalties, enforcement powers and consumer remedies currently available in the TPA and our comments below are provided in that context. Broadly speaking, Optus' concern about such an extension of powers relates to a lack of explanation about why such an extension is required; and the increased compliance costs and risk of regulatory error that may occur if the scope of the ACL's proposed new enforcement powers go beyond bridging gaps and eliminating inconsistencies towards extending the law into new and uncharted territory without a sufficiently robust cost-benefit analysis.

Substantiation notices & public warning powers

- 4.4 For example, Optus is concerned that the inclusion of a substantiation notice provision in the ACL may lead in practice to legalistic disputes between the ACCC and firms about the scope and form of such notices and the in/adequacy of responses to such notices. Such a situation could, perversely, result in greater litigation through the court system and consequently more delay and inefficiency and higher costs than currently exists – for all parties. Optus would also note that the ACCC already has sufficient powers under section 155 of the TPA.
- 4.5 Optus agrees in-principle with the policy intent underlying public warning powers, though at the practical level notes the ACL paper's specific highlighting of the need for appropriate safeguards around how such power would be exercised, the need for national consistency, and the risk of regulatory error.
- 4.6 The ACL paper correctly notes at page 51, “the potential ongoing impact on businesses that are the subject of warnings, as well as the potential for regulatory error.” It seems appropriate therefore that there must be a high threshold set before public warning powers are employed. Optus considers that such a threshold would need to include a robust public interest test as well as a requirement that the conduct in question represents a breach of the especially serious provisions of the consumer law..
- 4.7 Optus also believes that it is essential that statutory immunity from legal action with respect to public warning notices not be granted. As a matter of fundamental principle, regulators must be held accountable for their actions.

- 4.8 In relation to non-party redress, Optus is concerned that there are already sufficient powers given to regulators, including court-enforceable undertakings under the TPA, which can be used to obtain redress for affected consumers. We do not believe that it has been sufficiently demonstrated that there is a need to refer such matters to a court, rather than having them dealt with relatively expeditiously via the undertaking approach.

5. Door-to-door trading and telemarketing

- 5.1 As we have indicated in other sections of this submission and in earlier submissions, such as our response to the PC's Consumer Policy review, Optus supports at the level of principle a shift towards nationally consistent regulations where such a shift would result in greater efficiency and less complexity – as opposed to such a move leading to higher levels of complexity and, importantly, additional restrictions on the flexibility afforded us, as a national provider of products and services, to conduct legitimate business. This latter point is especially important in the current challenging and uncertain economic environment.
- 5.2 A nationally consistent approach would remove the uncertainty of dealing with at least eight different pieces of legislation as well as the ad hoc compliance costs which are incurred every time changes are made to a piece of legislation in a particular state or territory (an example is the forthcoming changes to SA's *Fair Trading Act 1987*). However, Optus is also concerned that a move to "best practice" regulation could equate in practice to an exercise in which the most restrictive regulations from various state and territory regimes are brought together in the ACL. Such an outcome would be negative for business activity without necessarily benefiting consumers.
- 5.3 For example, contrary to the more restrictive approach provided for in NSW, Victorian and forthcoming SA legislation, Optus considers that contracts negotiated and entered into entirely over the phone do not call for the same extent of regulation as contracts which are negotiated and entered into face-to-face at the premises of the consumer, as the potential for a consumer to feel 'pressured' by a supplier or dealer is arguably lessened by the lack of face-to-face interaction.
- 5.4 In addition, Optus believes that it would be reasonable for a nationally consistent regulatory regime to remove the protection currently given to some business customers in the NSW and Victorian FTAs in respect of door-to-door and telemarketing sales, where those customers purchase goods or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption'. As a provider of telecommunications services, it is not always clear whether a service Optus provides is of a kind ordinarily acquired for personal, domestic or household use, and this lack of certainty can restrict the flexibility that a national business requires to conduct business.
- 5.5 Other areas of inconsistency that would benefit from a national approach are the length of the cooling off period (in NSW, the most populous state, it is 5 business days, compared to 10 calendar days in every other jurisdiction); certain procedural differences (for example, the requirement in ACT to read

aloud to a consumer the notice setting out the consumer's rights); and the prohibitions on accepting consideration and/or supplying a service during the cooling off period (which do not apply in NSW and Victoria).

- 5.6 Optus provides the above comments in the context of our support for appropriate consumer protection regulations. We would be keen to work with Government to assist with developing an effective national regulatory framework for door-to-door trading and telemarketing.

6. False and misleading representations

- 6.1 Optus' believes that this is a very good example where the scope of existing provisions in sections 51A, 53, 53A and 53B dealing with false and misleading representations are sufficient and do not need to be augmented or amended.

7. Mandatory disclosure

- 7.1 The telecommunications industry is required to provide an enormous amount of information to its customers at several different points in the customer lifecycle. Optus agrees that customers should be well informed, however:
1. the volume and prescribed format of information we are required to provide to our customers is not effective in meaningfully informing and/or educating consumers; and
 2. regulations requiring information provision to consumers do not contain sunset clauses, meaning that we are required to send customers information on issues which are not necessarily of ongoing relevance to consumers.
- 7.2 Research and anecdotal feedback from our customers and from consumer advocates has indicated that consumers are confused and overwhelmed by the amount of information they are provided with; yet they also often remain unaware of their rights and the consumer safeguards that exist to protect them.
- 7.3 Therefore, with respect to the proposal to insert mandatory disclosure provisions into the ACL, Optus would urge great care be taken before any of the existing state or territory fair trading law provisions are included. At a minimum, any existing state or territory information provision requirements should, before being considered for the ACL, be subject to analysis regarding:
1. its necessity;
 2. its effectiveness; and
 3. an appropriate sunset clause or review period.

Clarity in consumer documents

- 7.4 With respect to the discussion in the ACL paper regarding clarity in consumer documents⁸, Optus notes that the telecommunications industry has significant experience in this area. For example, an appropriate and reasonable representation of consumer terms and conditions information will be different if provided on an internet website viewed from a mobile phone handset as opposed to a billboard or magazine advertisement.
- 7.5 As such, while Optus strongly supports requirements that information be provided to consumers in a legible and clear manner, we would not support overly prescriptive formulations. By way of practical example, the chapter of the telecommunications industry-specific TCP Code dealing with customer information on prices, terms and conditions, contains outcomes-orientated requirements in the Code, with more prescriptive explanatory detail provided in the Guideline to the Code.

Itemised billing

- 7.6 Optus notes that the telecommunications industry already operates under detailed sector-specific regulations regarding billing (in the TCP Code), which includes provisions related to providing itemised billing. These provisions indicate specific information which must be provided on customer bills as well as information (such as related to mobile text messages) which, recognising the limitations of telecommunications providers' billing systems, needs to be provided in an itemised format following a request (with notice) from a customer.
- 7.7 If it is intended that the ACL contain provisions related to itemised billing, Optus would urge that care be given to ensure that the telecommunications industry is not made subject to additional regulations which would be over-and-above, and potentially in conflict with, existing sector-specific regulations.

8. Review of industry-specific regulation

- 8.1 As we stated in our submissions in response to the PC's Consumer Policy paper and the PC's recent issues paper, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, and elsewhere, Optus – as a national provider in the communications sector – operates in an environment in which we must comply with generic national, state and territory laws and regulations as well as mandatory telecommunications industry-specific consumer protection codes and standards.
- 8.2 Moreover, these telecommunications industry-specific regulations are monitored and enforced by an industry-specific regulator, the Australian

⁸ ACL paper, p90

Communications and Media Authority (ACMA). The industry is also subject to the industry-specific (and industry-funded) TIO. In Optus' opinion, the telecommunications industry is subject to unnecessary industry-specific regulation – and the development of the ACL presents a logical time to initiate a program of review and reform.

- 8.3 As such, provided that it is conducted in consultation with relevant industry stakeholders (such as Optus), we are supportive of a process to identify unnecessary or divergent industry-specific consumer (and other) regulation with a view to repealing or harmonising it across jurisdictions where beneficial. Importantly, care must be taken to ensure that relevant stakeholders are not inadvertently excluded from consideration of sector-specific laws and regulations which may impact them. For example, telecommunications providers such as Optus use and access credit reporting information in order to operate. Any review of such regulations therefore would need to involve industry stakeholders beyond “mainstream” financial services providers.

9. A new name for the TPA

- 9.1 Optus is open to the TPA being renamed to more readily reflect its core functions however, given the administrative cost and burden that such a change would likely entail for both industry and government stakeholders (for example, by requiring the review and amendment of consumer contracts, industry codes and various training materials), we believe that the costs and benefits of this proposal should be considered as part of the Regulatory Impact Assessment process.