



Australian Government



International Training Program 2014


Consumer Protection

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Presentation Overview

- > Co-Regulatory Context
- > Broadcasting Consumer Protections
- > Telecommunications Consumer Protections

Key:
Regulation
Accountability

 **Minister for Communications**

Policy advice Department of Communications

Regulator Australian Communications & Media Authority (ACMA)

 **Operators**
• Broadcasters
• Telecommunications Service Providers

 **Consumers / Citizens**

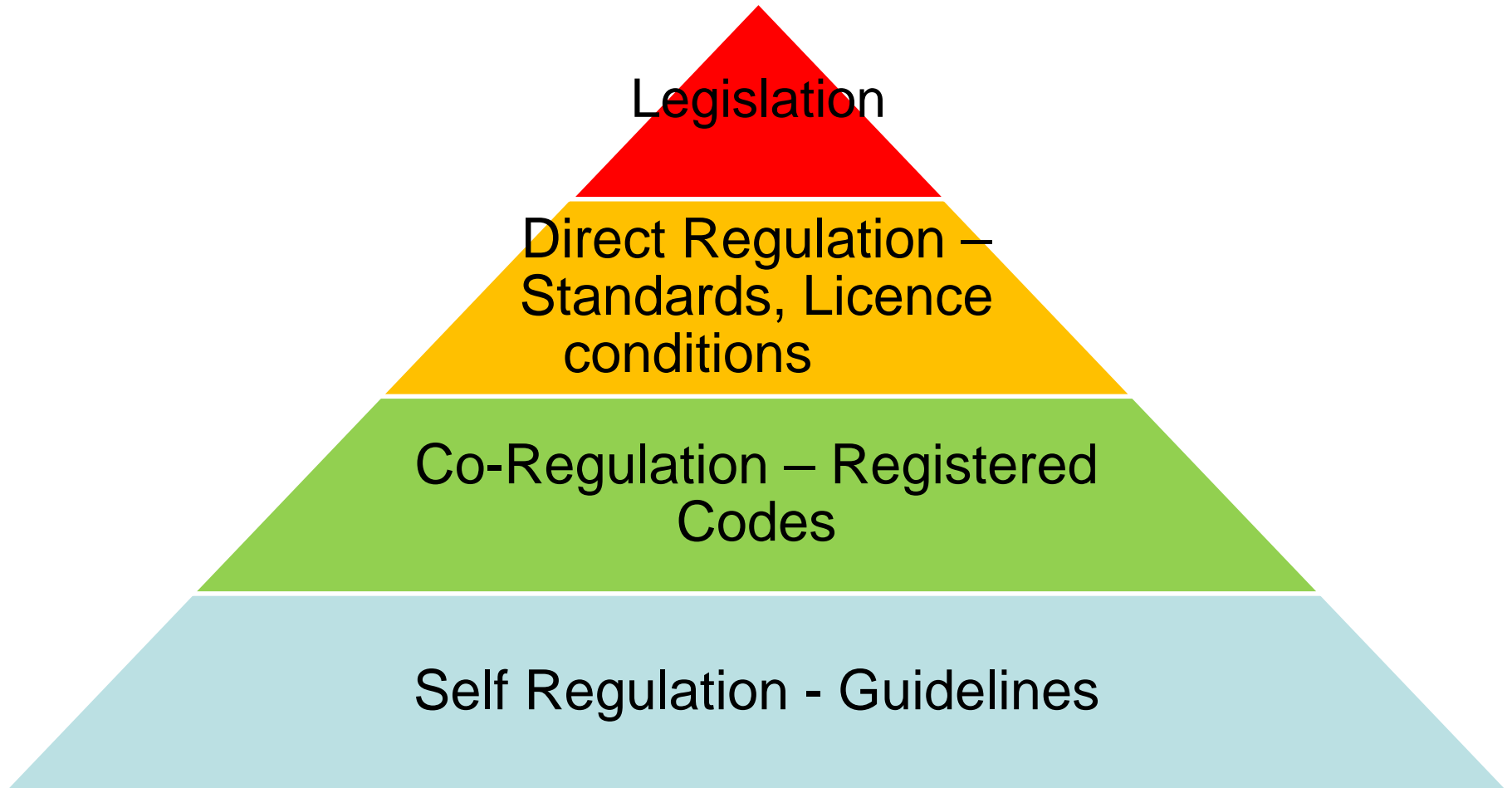
Industry bodies with self-regulatory functions

Industry bodies with co-regulatory functions

Regulatory Framework

- > **Industry initiatives** (self-regulation):
 - > Developed by industry and regulated by industry – such as guidelines
- > **Industry codes of practice** (co-regulation):
 - > Developed by broadcasting and telecommunications industry
 - > Registered by the ACMA
- > **Standards**(direct government regulation):
 - Developed by the ACMA
- > **Licence conditions** (direct government regulation):
 - > Made by the Australian Parliament and/or developed by the ACMA

Forms of Regulation



Optimal conditions for self-regulation

Environmental conditions

| | Then | Now |
|--|------|-----|
| Market structure | X | X |
| Competitive market/ barriers to entry | X | X |
| Products homogeneous | X | X |
| Common industry interest | X | ? |
| Incentives for firms to participate and comply | X | ? |

Optimal conditions for self-regulation

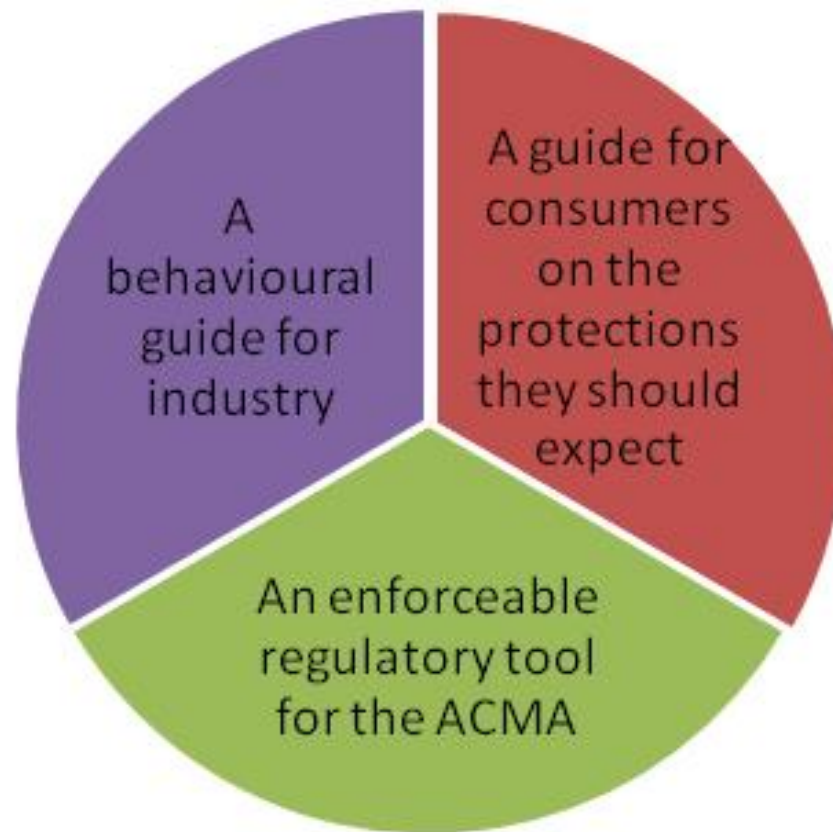
Features of regulatory scheme

| | Then | Now |
|---|------|-----|
| Objectives clearly defined | X | √ |
| Code/scheme is promoted to consumers | X | ? |
| Active consumer participation in code development process | X | √ |
| Transparency/Accountability | X | √ |
| Regulator's capacity to enforce | ? | ? |

Co-Regulatory Context

- > Australia's approach – 'first principle'
- > Benefits
- > Codes – 38 in total
 - > Broadcasting
 - > Telecommunications
 - > Internet
 - > Optimal conditions for self and co-regulation
- > Co-regulatory Cycle – development, review, compliance and enforcement
- > Challenges

What is a Code?



CONSUMER PROTECTIONS

Broadcasting

Overview

- > Codes
- > Standards
- > Licence Conditions
- > Complaints
- > Investigations
- > Enforcement

Industry Codes of Practice (co-regulation)

- > A key tool for content regulation
- > Industry's role
- > ACMA's role
- > Currently 9 broadcasting codes
- > National broadcasters (ABC/SBS) notify their codes to ACMA
- > Complaints under codes of practice

Code registration

- > The ACMA registers a code if:
 - ✓ it provides community safeguards
 - ✓ it has been endorsed by a majority of broadcasters
 - ✓ industry and public have been given opportunity to comment
- > Topics covered by codes of practice
- > Broadcasters' obligations under codes of practice

Standards (direct government regulation)

- > Determined by Parliament
 - > *Example* - **Children's Television Standards & Australian Content Standard**
- or
- > Imposed by ACMA
 - > *Example* - Broadcasting Services (**Commercial Radio Current Affairs Disclosure**) Standard 2012

Content Standards

Commercial television standards

- > Australian Content Standard
- > Australian Content in Advertising Standard
- > Children's Television Standard

Commercial radio standards

- > Disclosure Standard

Australian Content Standards

Requirement to broadcast certain amounts of Australian content

- > First release Australian drama
- > Australian documentaries

Children's Television Standards

- > Advertising restrictions during children's and preschool programming
- > Requirement to broadcast certain amounts of children's and preschool programming

Licence conditions (direct government regulation)

- > Legislated licence conditions
- > Additional licence conditions may be imposed by the ACMA in certain circumstances (e.g. K&JO Case Study)

Examples of licence conditions: local content

Commercial Television

- > Applies to regional television in aggregated television markets (in QLD, NSW, VIC & TAS)
- > At least 90 points each week and 720 points every 6 weeks

Commercial Radio

- > Applies to regional radio broadcasters
- > Most are required to broadcast at least 3 hours of local content on business days
- > Additional requirements apply where there has been a 'trigger event' (such as a change of ownership of a radio station)

Broadcast investigations

> **Can arise from:**

> complaints alleging breaches of:

- BSA or regulations, or breach of a licence condition or standard
- Code matters - where a complaint has first been made to a broadcaster

> ACMA's own initiative

- Example – investigation into live hosted entertainment programs on commercial radio

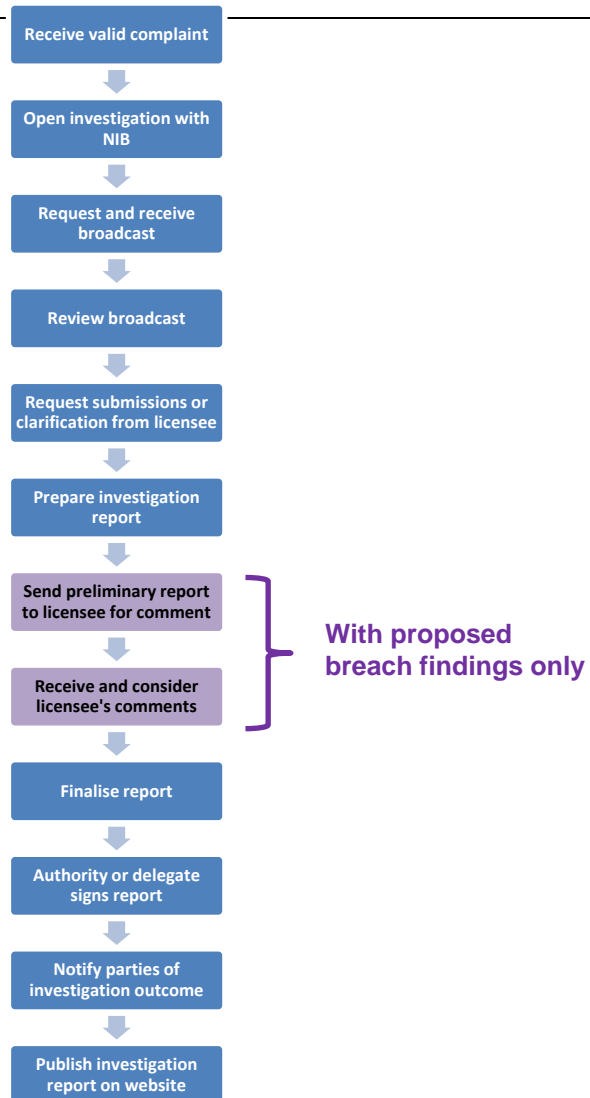
> direction of Minister

Complaints process

- > Code complaints:
 - must first be made to the broadcaster
 - the ACMA can investigate if:
 - the complainant is not satisfied with the response they receive from the broadcaster
 - the broadcaster hasn't responded to the complainant within 60 days
- > Licence condition complaints:
 - can be made directly to the ACMA
 - examples:
 - political advertising
 - tobacco advertising

Investigation process

- > Most investigations are complaint-based
- > The ACMA may commence investigations of its own motion under section 170 of the Broadcasting Services Act
 - example – Royal prank call investigation
- > Internal Investigations Review Committee (IRC) has oversight of the opening and conduct of investigations
- > Flowchart on next slide shows the main steps in the investigation process



Investigation process – other common steps

- > Seek legal advice on one or more aspects of the investigation
- > Prepare Authority submissions
- > Consult complainant about proposed publication of investigation report
- > Prepare media release and associated material
- > Respond to requests under freedom of information legislation

Streamlined process for some complaints

- > Streamlined process for certain complaints (those which we wouldn't investigate if we had a discretion to investigate)
- > Decision made on the papers, often without the broadcast
- > Investigation findings conveyed to complainant and licensee by outcome letter
- > Benefits:
 - quicker disposal of minor complaints
 - reduced burden on licensees as they have less involvement

Enforcement options

| Remedy/action | Breach of code provision | Breach of licence condition |
|--|--------------------------|-----------------------------|
| Accept agreed measures | ✓ | ✓ |
| Accept enforceable undertakings | ✓ | ✓ |
| Issue remedial directions | | ✓ |
| Impose additional licence condition | ✓ | ✓ |
| Suspend licence | | ✓ |
| Cancel licence | | ✓ |
| Seek civil penalty in Federal Court | | ✓ [^] |
| Refer to Director of Public Prosecutions (Cth) | | ✓ [^] |

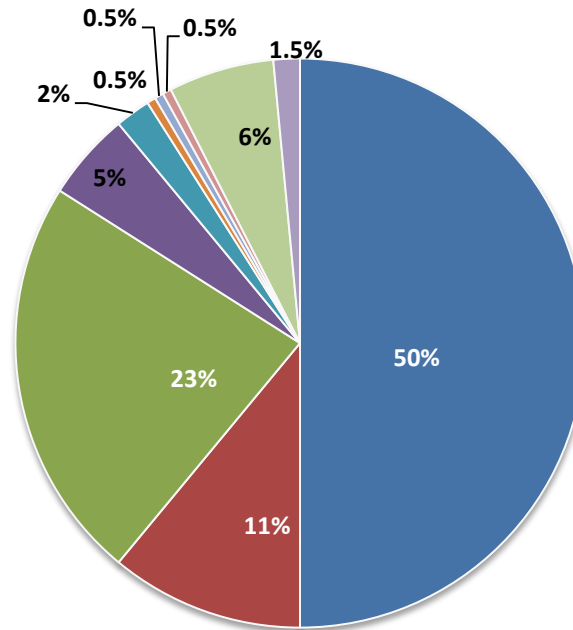
[^] Not available for breaches of additional licence conditions imposed by the ACMA

Enforcement options – ABC and SBS

- > Enforcement options are much more limited with the national broadcasters
- > The ACMA can make a recommendation to the national broadcaster
 - this can include a recommendation that the national broadcaster make an apology
- > The ACMA can give the Minister a written report if:
 - the ACMA made a recommendation to a national broadcaster
 - the national broadcaster did not comply with the recommendation

Investigations statistics

Investigations by service type FY2013



- Commercial TV
- Commercial radio
- ABC TV
- ABC radio
- SBS TV
- SBS radio
- Subscription TV
- Community TV
- Community radio
- Datacasting

CONSUMER PROTECTION

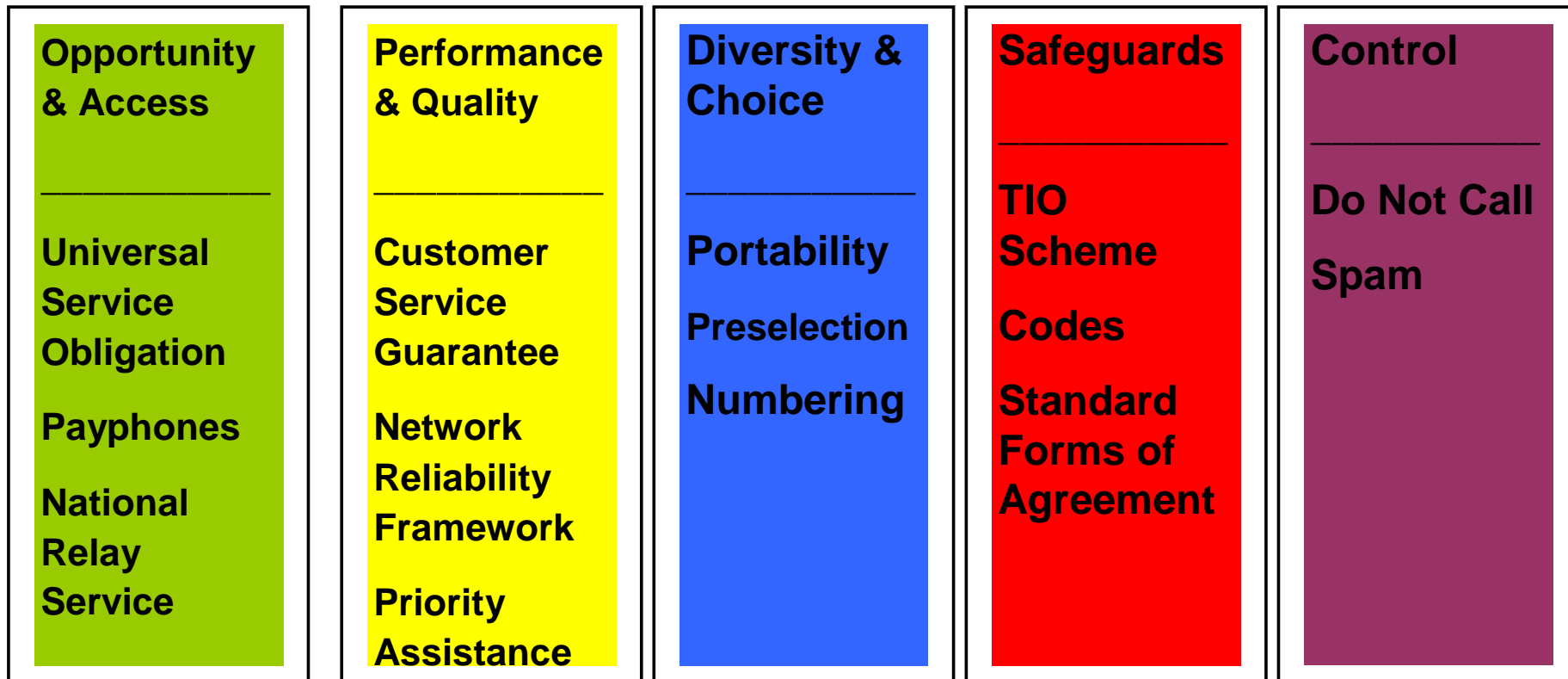
Telecommunications

Regulatory framework

- > Legislation
 - > Telecommunications Act 1997
 - > Telecommunications (Consumer Protection and Service Standards) Act 1999
 - > The ACMA Act 2005

ACMA – Telecommunication Consumer protection

Points of protection for telecommunications consumers



Regulatory framework – Industry Codes

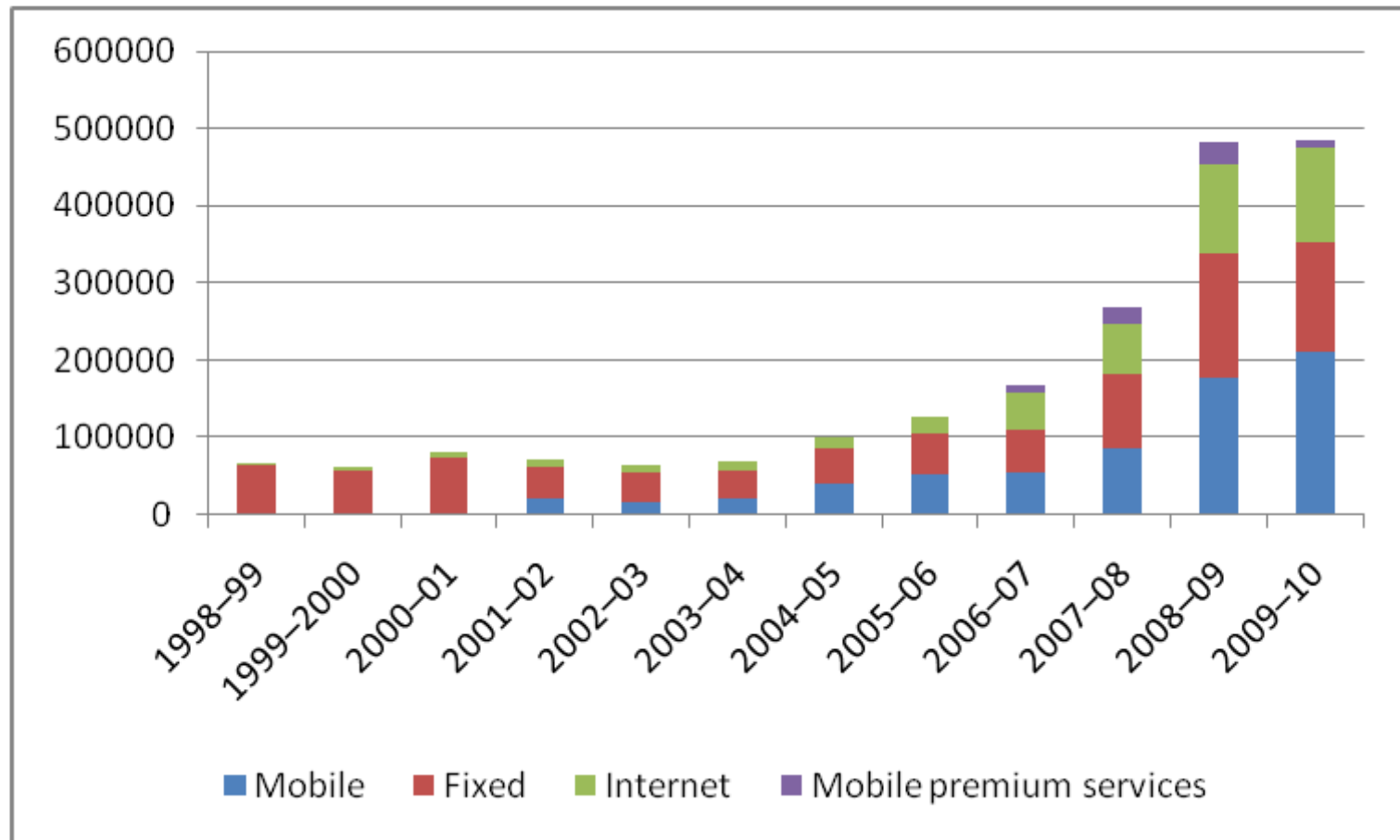
> **Matters that may be dealt with in codes or standards**

- Telling customers about goods or services on offer
- Prices of goods and services
- Privacy e.g. calling number display
- Debt collection practices
- Disconnection of customers
- Quality of standard telephone services

Code development

- > Codes are developed by approved industry body
- > Codes may be registered by the ACMA
- > The ACMA may reimburse the costs associated with developing the code to the industry body

TIO complaint stats – measure of industry performance



Reconnecting the Customer - intervention

In 2010, increasing TIO complaint numbers prompted the ACMA to launch a public inquiry into customer service and complaint handling by the telecommunications industry.

The ACMA sought input from consumers, advocates, industry, the TIO and other government departments.

As part of the inquiry the ACMA:

- > Issued discussion papers
- > Held public hearings
- > Undertook research into consumer behaviour



Reconnecting the Customer



A final report was released in September 2011, recommending:

1. Clearer pricing information in advertisements allowing consumers to more easily compare services
2. Improved and more consistent pre-sale information about plans
3. Developing meaningful performance metrics which allow consumers to compare providers
4. Tools for consumers to monitor usage and expenditure.
5. Better complaints-handling by providers

Reconnecting the Customer – Code Review

- > At the same time, industry body Communications Alliance (CA) was reviewing the Telecommunications Consumer Protections Code (TCP Code)
- > Recommendations from the RTC were fed into the process and industry was required to meet the standards nominated by the report
- > September 2012 – New TCP Code was registered by the Authority

Key objective for the new code

- > Cultural shift intended
- > Complaint handling made easier
- > Measures to address bill shock
- > Better information for consumers
- > Clearly identified avenues for redress
- > **+** Increased focus on compliance from industry and regulator

Top ten wins in the code

1. Unit pricing charging information in text advertising
2. Critical Information Summary detailing volumetric and other key information about telco products
3. Notification about your current spend on mobile calls, texts and data usage
4. Claims about broadband speed need to be substantiated
5. Confusing advertising terms banned (e.g. no more caps that aren't caps)
6. Information about charging (whether here or overseas) will be readily available
7. Access to information about your call and data usage (both current and historical) will be readily available
8. Industry's complaint resolution procedures overhauled
9. Provision of a unique reference number for each complaint
10. Industry responsibility for code compliance through the Communications Compliance

Improved advertising practices



- > Reducing 'confusopoly'
- > Inappropriate use of certain terms banned
- > Claims to be substantiated

Standard charge information for advertisements

| | Information to be included in advertisements | | |
|---|--|------------------------|-------------------------------|
| | Cost of national 2-minute call | Cost of a national SMS | Cost of 1mb data in Australia |
| <i>BigTelco \$49 plan</i> "\$500 of included value" | \$1.95 | 20 cents | 4.87c |
| <i>HugeTelco \$49 plan</i> "\$550 of included value" | \$2.28 | 25 cents | 4.87c |

Improving product disclosure

‘Critical Information Summary’

- > Two page document
- > Consistent order of contents
- > Commenced 1 March 2013
- > Available in-store and on-line
- > Key information includes:
 - Standard charges including estimated calls
 - Termination fees
 - Contact and website contact details

Better spend management tools

- > Response to 'bill shock'
- > Alerts at 50%, 85% and 100% of plan limits for data, voice and SMS
- > Commenced 1 September 2013 for internet, large mobile suppliers
- > Commences 1 September 2014 for small mobile suppliers

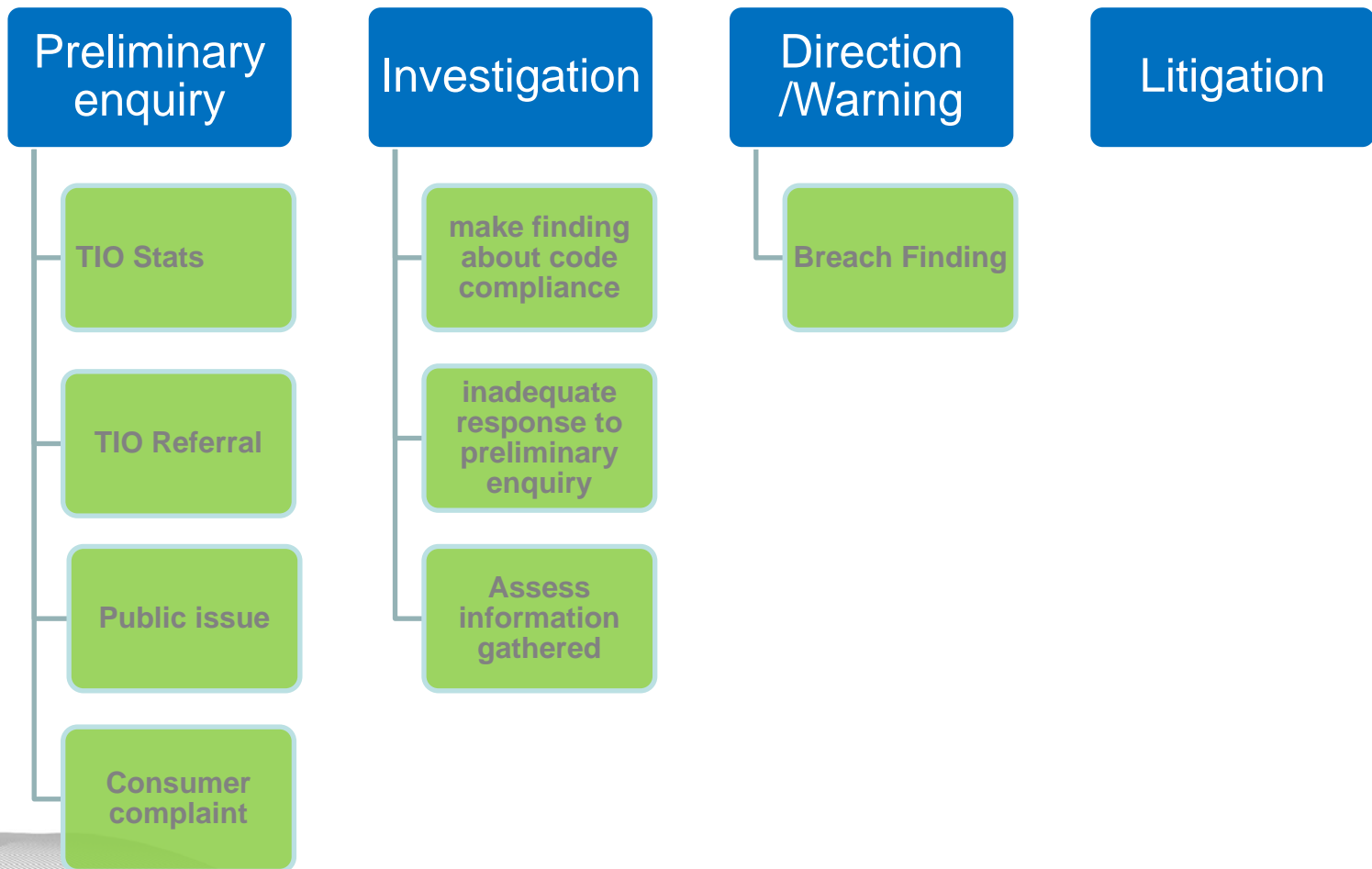
Better complaint handling

- > New benchmark standards including timeframes for dealing with complaints
- > 2 days for urgent complaints – incl hardship, priority assistance and disconnection without due process
- > In other cases, 2 days for acknowledgement and 3 weeks for resolution
- > Requirements to promote the TIO
- > Unique reference numbers

Supplementary development - International Mobile Roaming

- > Ministerial direction to ACMA to make a Standard
- > Focus on information to be delivered to customers while they are using roaming overseas
- > TCP Code requires information in a consolidated place on websites and warnings in Critical Information Summaries

The ACMA's approach to compliance



Communications Compliance

- > New Industry body created under the code
- > Objective to encourage and support compliance by industry with TCP Code
- > Collects audited and attested compliance statements from Providers
- > Has the power to name and shame providers which do not provide statements
- > Refers non-compliant providers to the ACMA for enforcement action
- > Also conducts education programs with industry

Approaches to compliance

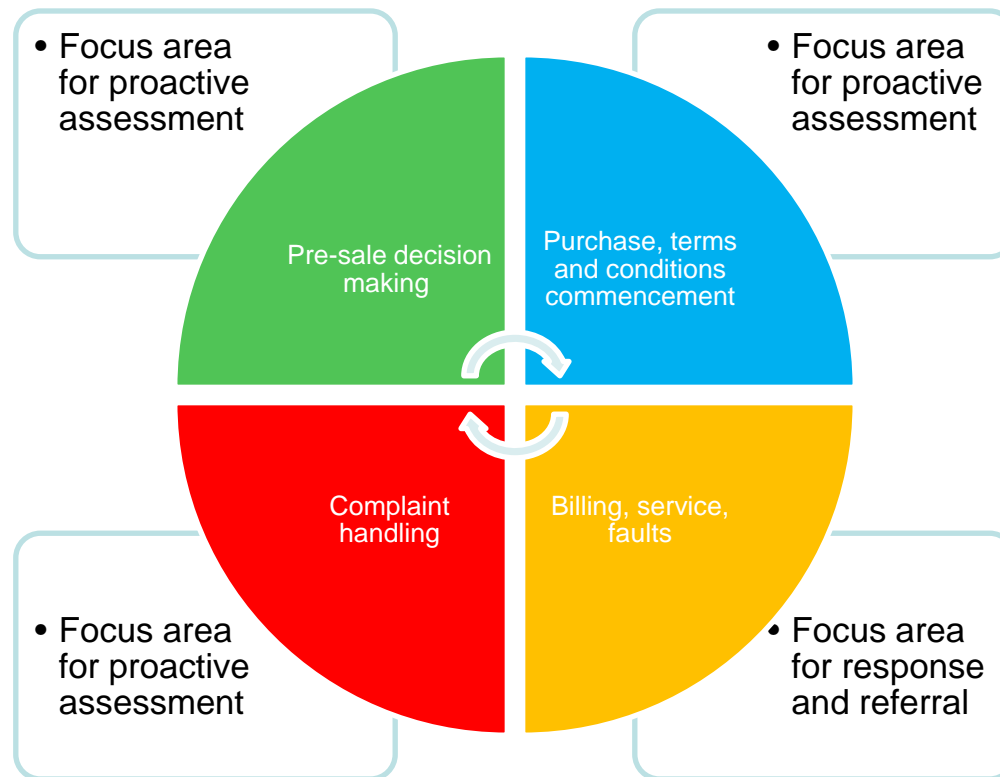
1. Proactive – own motion

- > Identification of potential areas of detriment
- > Targeted audits
- > Targeted information gathering
- > Shadow shopping – both ad hoc and formally commissioned

2. Referral & response

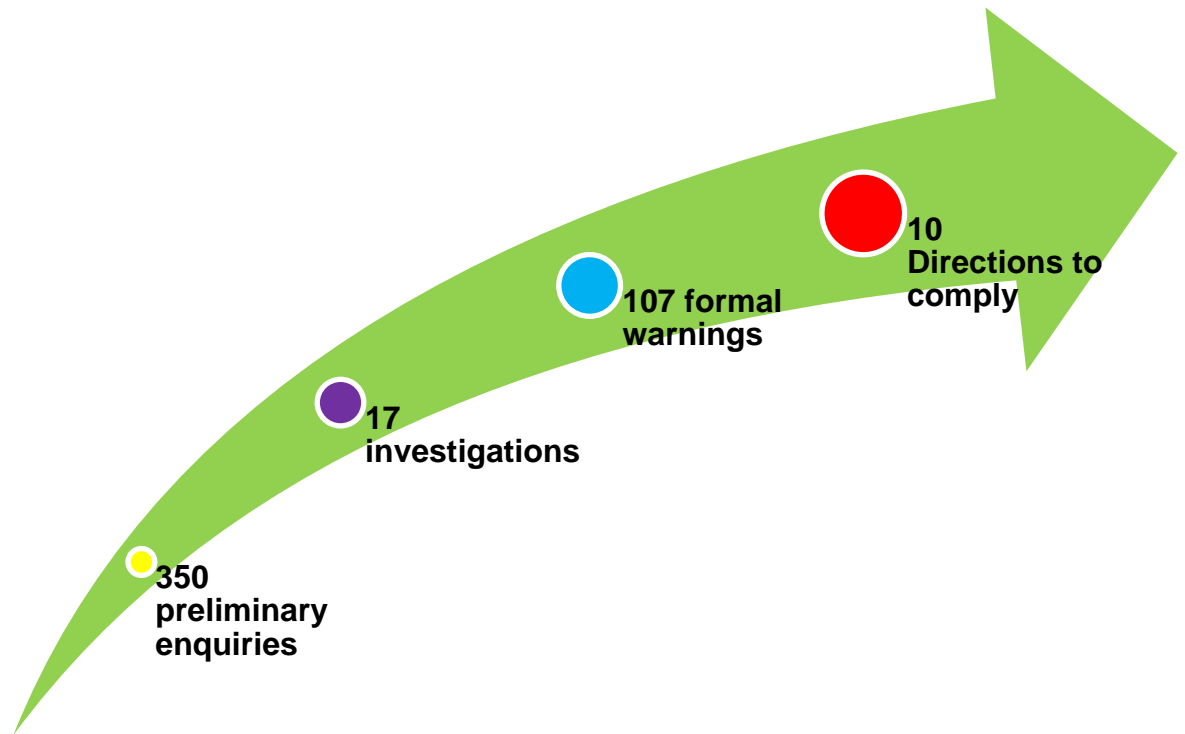
- > TIO
- > Communications Compliance (CommCom)
- > Other regulators
- > ACCAN
- > Consumers

Compliance philosophy – Consumer Lifecycle



Compliance activity

Sept 2012 to Dec 2013



Preliminary enquiries programs

- > Advertising
 - 27 ads - prohibited terms
 - 33 ads – standard charge information
- > Complaint Handling – assessed 23 policies
- > Financial hardship – assessed 22 policies
- > Critical Information Summaries – assessed 180 offers

Other activity

- > Communications Compliance – 95 warnings & 4 directions
- > Usage notifications – wrote to all providers obliged to provide notifications
- > International Roaming Standard
- > Mid sized provider outreach

Investigations

- > Concluded 17 TCP Code investigations
- > Privacy
- > Billing
- > Customer transfer

Enforcement tools

- > **Warnings** can be issued very quickly and are non-reviewable
- > **Directions** (either full or specific) require full formal investigations, extensive legal advice and generate appeal rights. There are occasions where this action may not be justified from a cost benefit perspective

Appropriateness of enforcement action

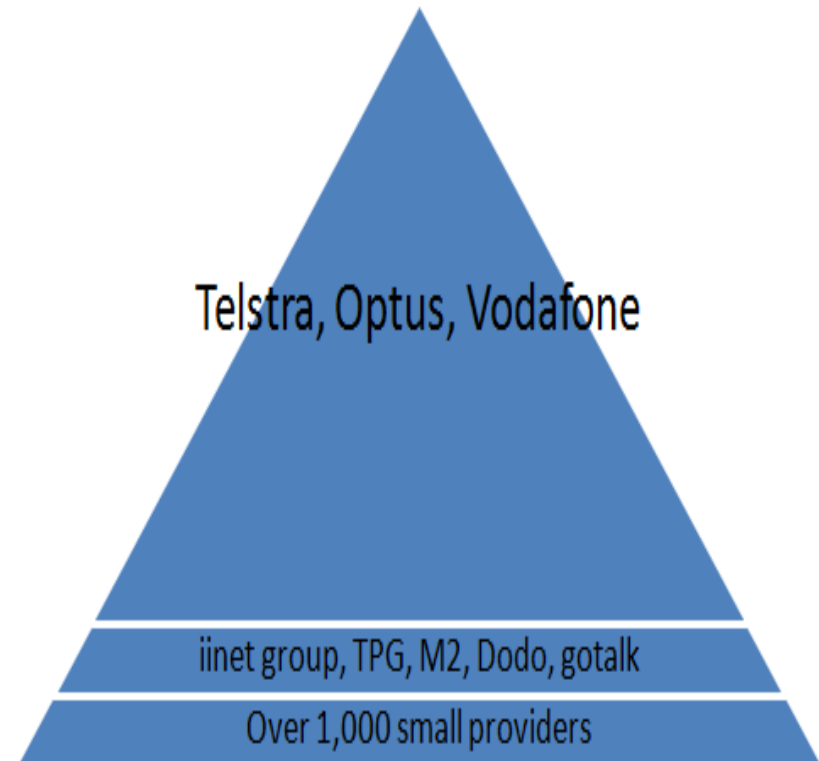
- > Each matter will be considered on its merits

- > However, the following factors are used to guide our approach:
 - size of the CSP
 - compliance attitude of the CSP
 - severity of the breach
 - impact of the behaviour on consumers

Size of CSP

Industry structure – 3 tiers

- > Large
 - > Medium
 - > Small
- The size of the provider is key in determining its likely attitude and response to compliance
 - What is effective with large providers, may not be as effective with small providers



Enforcement– general approach

The action taken will be based on assessment of the issue, compliance attitude and size of the provider.

| Size of provider | non responsive | Recalcitrant | Minimalist approach to compliance | Demonstrated culture of compliance |
|------------------|----------------|--|--|--|
| Large | unlikely | broad direction, Federal Court if conduct continues | direction, infringement notices if conduct continues | limited direction then EU if conduct continues |
| Medium | | direction, further action dependent on extent of detriment | direction, further action dependent on extent of detriment, e.g. Infringement notice | formal warning or limited direction – depends on extent of detriment |
| Small | | direction | | formal warning |

Interagency Liaison Impact of the NBN

- > TIO
 - > ACCC
 - > DBCDC
 - > Together and separately
 - > Develop closer relationship with ASIC
 - > Maintain contact with state based agencies
- > First principle - consumers should have at least the same level of protections on the NBN as with any other network
 - > Monitor communication of copper network closure by RSPs
 - > Monitor structure and advertising of NBN IVPs
 - > Assess advertising, communication of speeds
 - Ensure that Critical Information statements provide relevant information regarding contract termination, equipment and installation costs etc
 - > Assess NBN changes occurring mid-contract

Additional supporting activities

- > Research
- > Assessment
- > Evaluation
- > Observations
- > What's next

Research program

- > Benchmarking industry performance against specific code obligations – audit and commissioned research
- > Customer awareness and satisfaction with industry performance
- > Use and availability of Critical Information Summaries
- > Use and understanding of standard charges information
- > Shadow shopping to measure specific industry and consumer responses - i.e complaint handling behaviour
- > Systematic monitoring of media to track advertising trends
- > Follow-up to RTC community research on customer service
- > Work with CommCom to establish service metrics

Measuring change

Industry performance

- > Establish bench marks using existing data
- > Conduct further research in the future to assess changes in practice and performance
- > Conduct targeted research and audits ahead of roll out of new code provisions
- > Assessing whether product offerings change
- > Internal complaint numbers- although indicative only
- > Advice from other agencies- TIO, ACCAN, ACCC
- > Level of industry engagement with CC

Consumer experience

- > Benchmark consumer satisfaction and concern levels using existing data
- > Commission additional research in the future to compare
- > Shadow shopping (both ad hoc and commissioned) before and after code provisions are rolled out
- > Complaint numbers – indicative only

ACMA experience

- > Determining non-compliance is more straightforward
- > Code clauses are easily applied and interpreted
- > Compliance and enforcement actions are more timely

Observations

- > Perceptible change in industry attitude to compliance and customer service
- > Perceptible change in industry advertising practices – confusing terms no longer in use
- > Critical information statements are widely available and requested by consumers
- > Standard charges information widely available and used by consumers to make decisions
- > Our communications are reaching a wider audience as evidenced by increased consumer awareness of the code



2017 Code review

- > What parts of the code have delivered for consumers?
- > What needs to change?
- > Is the framework relevant?
- > Is further regulatory supplementation required?
- > What role should the ACMA play?
- > How will we drive further change?