

Recent Amendments to the *Telecommunications (Arbitration) Regulations 1997 (Cth)*

By Christian Santos*

The *Telecommunications (Arbitration) Regulations 2018 (Cth)* ('the TAR') has made changes to the arbitration of disputes by the Australian Competition and Consumer Commission (ACCC). The significant changes follow:

1. ACCC Conduct of Arbitrations

Regulation 14 of the TAR gives greater flexibility to the ACCC in how it may conduct the arbitration of a dispute. The ACCC may either conduct an arbitration 'on the papers', or hold an arbitration hearing, in-part on the papers and in-part by arbitration hearing. This is intended to avoid having to determine a case through a potentially lengthy and expensive hearing.¹

2. Joint Arbitrations

Regulation 22 of the TAR allows the ACCC to conduct a joint arbitration where the ACCC is conducting multiple disputes at a particular time that share one or more matters common to those disputes. The intention of the change is to allow for faster decisions where a number of telecommunication providers are involved in a dispute about a single issue.²

3. Removal of 'Reasonable Excuse' Defences

Regulation 27 of the TAR omit the 'reasonable excuse' defences of the 1997 Regulations, when prosecuting for the failure of a witness to appear when summoned, the failure of a witness attending an arbitration to be sworn or affirmed, or to answer a question or produce a document as required by the ACCC. However, the general defences in Part 2.3 of the *Criminal Code Act 1995* would still be available, where applicable.³

*Christian Santos LLB/BA (Hons), is currently an ADC intern and a PhD candidate at Notre Dame University.

¹ Explanatory Statement, *Telecommunication (Arbitration) Regulations 2018 (Cth)*.

² Ibid

³ Ibid