

Summary of issues raised in TCP review process

A summary of inputs to the TCP Code review process is presented below. This includes:\

- responses to the discussion paper,
- the ACMA SOE and other policy papers and statements,
- relevant public reports and statements from numerous other stakeholders,
- relevant comments received in relation to other processes (e.g. feedback provided in the review and revision process for the recently published Guideline: Assisting Consumers Affected by Domestic and Family Violence).

1. SCOPE, OVERARCHING			
Summary of issues raised	Submitters' suggested remedies	Drafting committee (DC) response	Action Item
General <ul style="list-style-type: none"> • Target audience unclear • Too many open-ended clauses resulting in inconsistent application • Use of terms such as 'have regard to' are unclear 	<ul style="list-style-type: none"> • clearer drafting • possible use of accompanying guidance notes to explain more complicated clauses 	<p>Use of term 'have regard to' is an accepted legal term and extensively used, including by ACCC.</p> <p>But we agree it is difficult to interpret.</p> <p>DC will review whole Code to:</p> <ul style="list-style-type: none"> • making its intended audience (industry) clear • making language clearer • desired outcomes & expectations being clear <p>Consideration to be given to:</p> <ul style="list-style-type: none"> • guidance notes for industry (if required once above changes made) 	<p>Audience, outcomes, language issues to be covered in drafting.</p> <p>(guidance notes to be considered post-drafting)</p>

<p>Scope</p> <p>Protections for vulnerable consumers is:</p> <ul style="list-style-type: none"> • unclear ('have regard' to ACCC best practice guide) • not extensive enough • doesn't reflect the ACMA SOE 		<p>As indicated in the discussion paper, the DC is working to restructure the whole Code to make expectations & outcomes clearer throughout, but particularly in relation to provisions relating to vulnerable consumers, as envisaged by the SOE (which wasn't published when the Code was drafted)</p> <p>The DC has also been working to try to identify appropriate metrics to manage compliance issues.</p> <p>This work is challenging and has been ongoing for some time.</p>	<p>Issues will be worked through further through the drafting process.</p>
<p>Code Review Process</p> <ul style="list-style-type: none"> • The Code review is dominated by industry. • No transparency in the process to identify and address current consumer issues 	<p>The periodic review of the TCP Code should be:</p> <ul style="list-style-type: none"> • Conducted by an independent reviewer • Include early public consultation on the terms of reference • Funded separately and include funding and support for extensive consumer advocate involvement, and • Industry should not control or dominate the process 	<p>This comment appears not to recognise that the entire review process was substantially changed to address the feedback on this with:</p> <ul style="list-style-type: none"> • early commencement – started approx. 12 months earlier than previous reviews • one-on-one consultations with stakeholders throughout (open to anyone) • transparency of process at every stage • engagement of an Independent Advisor. <p>The re-designed process has been compromised as new, shorter timeframes have been imposed, but the intent remains.</p>	<p>None</p>

<p>Scope – Residential vs Small Business</p> <ul style="list-style-type: none"> Not clear for smaller providers with business customers how the provisions (i.e., FH, Credit Assessment, vulnerable customers) could apply to a business as opposed to an individual. <p>B2B providers noted they did not offer specific methods of communication for consumers with disability as it was not applicable to them as they only provided services to businesses.</p>	<ul style="list-style-type: none"> Suggestion to clarify and make a distinction in the Code where obligations apply to either or both residential and small business customers. 	<ul style="list-style-type: none"> The Code clearly defines Consumer to include small business, and then the provision clearly applies to consumers. It is unclear what the issue here is with whether a provision applies. <p>However, clarity & definitions to be considered and addressed in drafting.</p>	<p>Ensure scope and application clear when drafting & check with commenter.</p>
<p>Scope – Scam</p> <ul style="list-style-type: none"> Strengthen protections within the Code to prevent scam activity and identity fraud. However, must also be cognisant of accessibility issues and potential barriers for First Nation consumers, by changes requiring photo identification verification. 		<ul style="list-style-type: none"> This is out of scope. Already existing legislation in place: Scam Code + ID Determination. 	<p>DC to put note in TCP Code to clarify scope and aims of the Code.</p>
<p>Scope – Introductory Statement</p> <p>Introductory statement outlines 7 key commitments but doesn't measure if they are sufficient.</p>	<p>Add a second limb to ask the introductory statement that asks "Are these objectives appropriate and sufficient?"</p>	<p>DC is reviewing audience/explanation of purpose/scope issues.</p>	<p>General concepts to be reviewed in drafting</p>

<p>Duplication /overlap Sections of the Code duplicate legislation/regulation without adding extra consumer protections, or industry-specific clarification on the application of the relevant instrument.</p> <p>This is confusing and counter to the defined purpose of codes, which are required to not repeat or paraphrase regulation.</p>	<p>Remove clauses 4.1 Advertising 4.5 responsible approach to selling 4.6 customer contracts</p> <p>Review ongoing usefulness/relevance of: 4.2 & 4.3 relating to the CIS and other information 4.7 customer service (noting overlap with RKR's)</p>	<p>Noted.</p> <p>ACCC has previously been reluctant to remove duplication in this area.</p> <p>DC agrees that clauses should meet the intended Code purpose of either creating industry-specific clarity or extending consumer protections.</p>	<p>Code intent to be raised at RC meeting in general terms initially.</p> <p>DC to review clauses in the first instance, before discussing possible approaches with ACCC/Review committee.</p>
<p>Acknowledge improvements: issues with outdated data.</p> <ul style="list-style-type: none"> • Since the last revision complaints in context shows a healthy downward trend that industry does not get enough credit for. • Issues raised in page 4 of ACMA's SOE predominantly relate to reports made prior to 2022. • Though the data does a very good job of presenting to regulators improved performance of telcos but does little to help consumers. 		<p>Noted/agree. Except on comment about 'does little to help consumers'; the CIC creates competition and transparency in areas of customer service, which is good for consumers.</p>	<p>none</p>
<p>Illegal Churning of NBN services</p>		<p>Out of scope for this Code. But note that this issue has been dealt with through the recent changes to C647 NBN Access Transfer Code (currently with the ACMA for registration; note: if/when it is registered, there's a 12-month implementation timeframe).</p>	<p>none</p>

<p>Not necessary for industry Codes to confer complaint handing power to TIO under s114 of Act</p>	<p>Remove clauses conferring power on the TIO</p>	<p>Accept</p>	<p>Remove conferral powers from Code.</p> <p>Include reference to TIO powers in intro or other section of Code.</p>
<p>Out of date provisions Both the provisions 3.5.1(a) Auth reps; 3.8 Tools for unauthorised access are out of date.</p>	<p>Update to account for Customer ID Determination changes</p>	<p>Agree.</p>	<p>Update as suggested.</p>
<p>Breadth of Code – Should focus on telco’s role as CSP Code is stifling innovation as it inadvertently captures products that are ancillary to the concept of providing connectivity.</p>		<p>Ensure clear definitions and scope</p>	<p>Ensure clear definitions and scope</p>

2. Definitions			
Summary of issues raised	Submitters' suggested remedies	Drafting committee (DC) response	Action Item
<p>General Definitions aren't clear or consistent</p>	<p>ACMA should have the power to provide binding guidance on the preferable and correct interpretation of the definitions and obligations.</p>	<ul style="list-style-type: none"> Accept that there some definitions need to be reviewed. These should be agreed and cleared up as part of review - not in some accompanying document. Not clear which definitions are a particular problem from ACCAN's perspective. 	<p>Definition section to be reviewed.</p> <p>Then consult with ACCAN to confirm their issues addressed.</p>
<p>Sales Representative Does not to include sales staff who sell telco services and goods at third-party retail outlets (for example, JB Hi-Fi or Harvey Norman).</p>	<p>Amend to include sales staff who sell telco services and goods at third-party retail outlets.</p>	<ul style="list-style-type: none"> The current definition appears to cover this – DC would like to seek ACMA advice /clarification. What wording does the ACMA suggest? The exact obligations depend on contract law. Does the issue relate to who has to comply with the TCP obligations - i.e. who is the CSP? The CSP register will address this part, by making it clear who bears the responsibility. 	<p>Seek further clarification and advice from ACMA about the problem and what they suggest.</p>
<p>Small Business Current definition is problematic as it captures a lot of enterprise customers, as well as the genuinely small businesses and residential consumers who need the protections.</p>		<ul style="list-style-type: none"> Agree that the intent of Code is to provide protection where there's a power imbalance with contract negotiation/protection. 'small business' is defined in many different ways in different instruments. E.g. ABS (fewer than 20 employees), TIO, ACCC, Customer ID Determination all use different definitions. DC to consider revised definition that is fit-for-purpose. Must be something that both protects those with the need, plus does not require collection of new data from the 	<p>DC to discuss general concepts with RC in first instance.</p> <p>DC to propose new definition.</p>

		<p>customer to implement.</p> <ul style="list-style-type: none"> • Possibly align definition with Customer ID Determination? 	
<p>Small Business The definition of small business is out of date - \$40,000.</p>	<ul style="list-style-type: none"> • Update to \$100,000 to match ACCC definition. • Update the definition not based on spend limits. 	<ul style="list-style-type: none"> • See above. • \$100,000 would capture too many business and enterprise customers and isn't a fit-for-purpose definition for these protections. 	See above
<p>Financial Hardship definition & scope Not inclusive of all customers in different circumstances e.g.:</p> <ul style="list-style-type: none"> • struggling • being in financial difficulty, and • having trouble paying. 	<ul style="list-style-type: none"> • Terminology should be amended to make it more accessible. • Amend the title to use the Victorian Energy sector "<i>Assistance for consumers anticipating or facing payment difficulties.</i>" 	<p>Potentially partly now out of scope for Code, with introduction of FH Standard.</p> <p>However, note that:</p> <ul style="list-style-type: none"> • A clear distinction must be made between formal financial hardship arrangements and financial assistance measures, and • debt management within a financial hardship is separate (and different) to credit management actions unrelated to financial hardship. <p>Draft definitions provided to the Dept in feedback on the FH Direction are:</p> <p><u>Financial assistance measures</u> – actions to reduce costs that require no assessment or conditions to be met. These may include, for example, the customer moving to a cheaper plan.</p> <p><u>Financial hardship arrangements</u> – formal arrangements requiring an assessment against a formal FH policy with agreed terms. Focus is on managing the customer's debt (i.e. agreeing on an appropriate payment plan).</p> <p><u>Credit management</u> – actions relating to recovery</p>	<p>CA to provide input on FH Standard.</p> <p>DC to consider scope and definitions of that Standard when reviewing relevant remaining TCP Code clauses.</p> <p>(see also: Financial Hardship summary table.)</p>

		of monies owed (which may or may not be related to financial hardship). These may be taken by the CSP directly, or by a 3rd party contracted by the CSP.	
<p>Subscription Services There are more than just prepaid, postpaid services now, with increasing popularity for subscription services.</p>	<ul style="list-style-type: none"> Review out of date definitions of prepaid and postpaid services and include a definition for subscription services. Determine the implications of subscription services for other areas of code. 	<ul style="list-style-type: none"> Agree an update needs to be made. <p>It may be more useful to:</p> <ul style="list-style-type: none"> draft with focus on outcome to be achieved (or avoided) rather than service type (pre, post or subscription), rather than attempt to formally define service type. separate service from product (relates to above: focus on outcome, noting debt commonly associated more with product than with service.). 	<p>Definitional issues to be addressed through drafting process, focussing on consumer outcome.</p>
<p>Authorised Representative Unclear the responsibility and abilities of what authorised representatives are able to do with an account.</p>	<p>Make it clear that the AR can do anything the customer can do.</p>	<ul style="list-style-type: none"> Agree. IGN being reviewed currently DC to review and AR definition proposed by IGN review committee and confirm/agree on appropriate definition with that committee. 	<p>DC to agree new, clearer AR definition</p>
<p>Large Supplier/ Small Supplier</p>	<p>Consider following the definition in the Telecommunications (Consumer Complaints) Record-Keeping Rules 2018:</p> <p>“service in operation means a service that is both (a) a telecommunications service; and (b) an active service.</p> <p>Note: A service in operation can be pre-paid or post-paid, and it can be the subject of a contract of fixed duration or can be a service without a minimum term.”</p>	<ul style="list-style-type: none"> Considerable work went into defining SIO 3 years ago. This isn't a consumer protection issue. 	<p>Consider once definitional review for whole code is complete – and seek further input from the stakeholder in question at that point, if required.</p>

	Note: This clarification is also relevant to the definition of Small Supplier.		
<p>Minium Quantifiable Price</p> <ul style="list-style-type: none"> This definition is commonly misunderstood. It would be helpful to better explain the meaning in the Code noting it does duplicate section 48 of the ACL. 	Insert clarifying guidance note (as it relates to month-to-month plans).	review once Code redrafted and restructured to see if this is required/useful.	Consider suggestion again once Code draft ready to see if still applicable/ useful.
<p>Standard National Mobile SMS</p> <p>Is the maximum number of characters still 160?</p>	<ul style="list-style-type: none"> Current approach in other regulatory documents is to not define SMS via reference to 160 characters. The code should align with other definitions. E.g., the Mobile Number Pre-Porting Additional Identity Verification Standard: "SMS message means a message or series of messages sent using a short message service." 	Update definition as proposed	Accept – update SMS definition as proposed.

3. Accessibility, clear communications, accurate information			
Summary of issues raised	Submitters' suggested remedies	Drafting committee (DC) response	Action Item
<p>Languages</p> <ul style="list-style-type: none"> Chapter 3 General Rules needs to be updated to be a requirement for consumers to request access to translated documentation or translation services. Same recommendation for clause 4.2 CIS and Chapter 7 Financial Hardship. 		<p>DC suggest an obligation to:</p> <ul style="list-style-type: none"> tell consumers about the Translating Interpreting Service (TIS) (noting the customer will be charged a fee for service by the TIS). provide free translated documents where the RSP actively targets language groups in their marketing <p>Note: It would not be a reasonable impost on small providers to routinely require translation into other languages.</p>	<p>Discuss the concept with the RC</p>
<p>Clear, Accurate information (specific issue consumer complaint)</p> <ul style="list-style-type: none"> Requirement under TCP Code (and ACL) to ensure information is clear, accurate... etc. However, there was incorrect information on a provider's website about roaming. Remedy was provided (roaming charges credited); website was corrected - but consumer was unhappy with the time it took.) 		<ul style="list-style-type: none"> Incorrect information on a website is a breach of the current TCP Code (and ACL - enforceable by ACCC). The issue appears to be requiring a correction in a set timeframe. It would be difficult to set a specific timeframe, particularly noting that websites have a problem with cached pages. But drafting committee will look at adding the concept of 'updating within a reasonable timeframe'. 	<p>Drafting committee will look at adding the concept of 'updating within a reasonable timeframe'</p>
<p>Accessibility</p> <ul style="list-style-type: none"> No obligation to comply with World Wide Web Consortium (W3C). No requirements to provide information in a variety of accessible formats, or design products, services, and internal policies that work for people with disability. 	<ul style="list-style-type: none"> Recommendation to amend clause 3.2.5(a) to : ""a suppliers must ensure its web content complies with..." (amendment in italics) ACMA referenced WCAG 2.0AA. Different types of accessible formats such as braille, large print, plain English, and Auslan resources, or mandating a 	<p>This current clause is wrong – CA had advice on this independently and have facilitated an info session for members on this (2022).</p> <p>Moreover, WCAG2.0 Level AA is a standard that ALL organisations are expected to comply with – there is nothing telco-specific about it. Other higher penalties and obligations outside of the Code including requirements under the Disability</p>	<p>DC to look at:</p> <ul style="list-style-type: none"> adding add 'inclusion' in a new chapter that looks at culture; cover clearly in the training section, and

	<p>minimum standard for accessible formats.</p>	<p>Discrimination Act 1992 (DDA). The TCP Code should not be repeating legislation/regulation.</p> <p>However, clearly this is important. DC suggest that, to aid awareness of these legislated obligations, DC can:</p> <ul style="list-style-type: none"> clearly add 'inclusion' in a new chapter that looks at culture; cover clearly in the training section, and include a guidance box to point to obligations such as DDA and WW3. 	<ul style="list-style-type: none"> including a guidance box to point to obligations such as DDA and WW3
<p>Accessibility – Online Communication</p> <ul style="list-style-type: none"> The current rules are out of date and do not consider the increase adoption of online communication for customer service. Online communication is not always easier to use and can pose barriers to consumers – especially language barriers and literacy difficulties. 	<p>Current protections need to be adapted to ensure consistent and effective customer service outcomes, regardless of the communication method they use to contact telcos.</p>	<ul style="list-style-type: none"> Agree with principle that consumer protection outcomes should be focus. Suggest that the Code make it clearer that where there is a digital only service model offered (which suits particular demographics), this fact must be very clear in customer information, so that customers know that this is the deal and are empowered to choose this or another option, as best suits their needs. <p>(Note: The code currently includes requirements of accessible, responsive, quality of service is regardless of method.) (see also below)</p>	<p>Update drafting to outcomes-based to make it a requirement that consumers are provided the necessary information about the service option that they are signing up to.</p>
<p>Accessibility – Contacting telcos</p> <ul style="list-style-type: none"> Difficulty contacting telcos; Unable to find number; Telcos not answering calls; and Long wait times on webchat; <p>Limitations on automated functions for unique enquiries and complaints:</p>	<ul style="list-style-type: none"> Consumers prefer the phone as a method of contact for help – especially consumers in vulnerable circumstances. Consumers should be notified at point of sale (if not before) for digital only plans of the limited contact options available. 	<ul style="list-style-type: none"> Agree that customers should be notified about available contact methods. Agree it should be easy to find contact details (phone <u>or other</u>, as applicable). Consider Information obligation – incl perhaps in CIS? 	<p>DC to review the best way of conveying relevant information to customers.</p> <p>DC to explore possible Code requirements for</p>

<ul style="list-style-type: none">• Stuck in transfer loops;• Referred to irrelevant information• Cannot find a way to talk to a real person.	<ul style="list-style-type: none">• Benefit for telcos to maintain human based contact as a contact method for customer service.	<ul style="list-style-type: none">• DC to consider Code requirements for escalation to 'real person' options? (to address all three final bullets.)• Note: There is a difference between chat bot and chat agent.• See also: comments above; post-sale/customer service section.	escalation to 'real person' options? (also see Post sales, customer support table)
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