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Submission

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**ACCAN Response to Telecommunications
Consumer Protections (TCP) Code Review
2024**

Submission by the Australian Communications Consumer Action
Network (ACCAN) to Communications Alliance

About ACCAN

The Australian Communications Consumer Action Network (**ACCAN**) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Executive Summary

Communications are essential, their delivery, and the consumer protection arrangements that underpin them are critical to the welfare of consumers and the broader community. ACCAN thanks Communications Alliance for the opportunity to engage with the review of the Telecommunications Consumer Protections (TCP) Code.

The review provides a timely opportunity to reflect on the effectiveness of consumer protections set out in the TCP Code and the broader regulatory framework that underpins the code. ACCAN's engagement with consumers, consumer representatives, peak bodies, and consumer groups has elicited a common view that the TCP Code provides inadequate consumer protections and is not underpinned by effect compliance, enforcement and penalty arrangements.

ACCAN welcomes recent positive engagement with the sector on consumer protection arrangements and the TCP Code. However, while goodwill on the part of industry participants is welcome, it is insufficient to address the fundamental conflict of interest inherent in industry being responsible for drafting the primary instrument for consumer protection.

Progressing improved consumer protections requires a re-evaluation of the balance of direct regulation and self-regulation currently in place in the sector. While self-regulation has been effective in driving the improved functioning of specific aspects of the sector e.g. through technical codes, we are unpersuaded that industry has the capacity to resolve questions of consumer protections in a manner consistent with the public interest, due to the fundamental tension between commercial and consumer interests.

This statement is not intended to be a critique of the efforts put forward by many in industry in good faith, but rather reflects the fundamental commercial imperatives that drive the communications market. These commercial imperatives have driven much value for consumers through improved access to services at more affordable prices, however they are not conducive to the development of improved consumer protections.

ACCAN considers that material revisions to the content of consumer protection arrangements is required. In our view, this is best advanced through direct regulation drafted by government, in keeping with their role of safeguarding and advancing the public interest. Revising the content of consumer protections, however, must be progressed in conjunction with reform to strengthen and empower an effective regulator.

ACCAN considers that direct regulation of communications consumer protections is needed to address the problems that vulnerable consumers face. Accordingly, we consider that action to address the lack of protections on domestic and family violence (DFV) and long-standing issues with financial hardship, credit assessment, mis-selling and payment options should be expedited for direct regulation.

Response to Questions

Response to question 1

Question: What do you understand the TCP Code's objectives to be?

The TCP Code sets out rules for the communications industry in Australia. Ostensibly, the TCP Code aims to provide baseline protections for communications consumers. Industry compliance with the TCP Code is voluntary unless the Australian Communications and Media Authority (**ACMA**) directs a participant to comply.¹

While ACCAN supports the development of a consumer protection framework with which industry is capable of complying, we consider that the TCP Code's focus on minimum protection has, at times, led to the drafting of consumer safeguards that reflect the ability to comply of the least resourced and capable industry participant. Noting that the communications market is highly concentrated, with most participants well resourced, we consider that directly regulated minimum consumer protections could be strengthened considerably, while still providing a proportionate set of obligations.

ACCAN queries whether the TCP Code and broader regulatory arrangements are achieving its stated objective of providing minimum protections, noting that it is voluntary and underpinned by limited external compliance and enforcement powers. The limitations of existing arrangements have seen many ACCAN members and stakeholders express the view that the TCP Code overwhelmingly serves the interests of industry participants due to the weak protections it affords, poor overall compliance, and the absence of mandatory consumer protections measures. ACCAN has been advised on several occasions that the community sector views the TCP Code as an ineffectual instrument intended to forestall genuine engagement on consumer protection matters.

Response to question 2

Question: What areas of the TCP Code do you think are working well, and why? Please provide as much detail as possible to help us understand why you hold this view.

ACCAN's response to this question is informed by our engagement with our members and stakeholders who have extensive experience safeguarding communications consumers' rights and interests in Australia. Throughout our consultations, ACCAN members and stakeholders noted limited positive interactions with industry participants when engaging with provisions of the TCP Code. ACCAN members and stakeholders advised us that they frequently raised provisions of the TCP Code and these provisions being frequently read down or ignored by industry participants.

We note that the standing of the TCP Code amongst our members and stakeholders has deteriorated to the extent that a senior representative of a financial counselling organisation noted that they no longer see value in ACCAN providing training on the TCP Code due to the limited value this voluntary industry code has for financial counsellors.

¹ Telecommunications Act 1997 (Cth) Part 6. Div.1. section 106.

When pressed, ACCAN stakeholders and members indicated improvements in complaint handling, a section of the TCP Code that ACCAN notes is now covered by direct regulation in the form of a standard.²

Response to question 3

Question 3: What areas of the TCP Code do you think are working less well, and why? Please provide as much detail as possible to help us understand the problem (and, therefore, possible solutions).

ACCAN is a member-based organisation and has received a significant amount of feedback related to the shortcomings of the TCP Code. This feedback has come from ACCAN's membership base of peak bodies, consumer representative groups, financial counsellors, community legal centers, and consumers.

We note that much of this feedback has been provided to Communications Alliance as part of previous TCP Code reviews. Accordingly, noting the resource limitations faced by community organisations, many of whom have a focus on delivering services for the most vulnerable people in Australia, we encourage Communications Alliance to review historical comments on the TCP Code.³

Feedback received from stakeholders indicate material concerns with respect to the effectiveness of TCP Code provisions relating to:

- Financial Hardship.
- Credit Assessment.
- Payment Options.
- Sales incentives and Mis-Selling.

While we note that DFV protections have been raised as a potential expansion to the TCP Code, we do not believe a voluntary industry code is the appropriate instrument to ensure the protection of vulnerable consumers. Due to the public safety risk posed by DFV and how communications may facilitate DFV, we considered that a binding framework of direct regulation is the appropriate mechanism through which protections are advanced.

ACCAN welcomes recent steps taken by industry to address DFV issues through the Assisting Consumers Affected by Domestic and Family Violence Guideline,⁴ but consider that the extensive case studies received by ACCAN indicates that direct regulation is required to address the endemic issues we are observing.

Financial Hardship

Arrangements under the TCP Code are not reflective of best practice outcomes in financial hardship. Financial hardship arrangements in the TCP Code are inadequate for consumers experiencing vulnerability. Current financial hardship provisions in the TCP Code:

² ACMA, *How telcos must handle complaints*, Available at: <https://www.acma.gov.au/how-telcos-must-handle-complaints>.

³ Key submissions include: ACCAN's 2018 TCP Code review: <https://accan.org.au/our-work/submissions/1528-tcp-code?highlight=WyJOY3AiXQ==>; ACCAN's 2020 submission to Consumer Safeguards Review Part C: <https://accan.org.au/our-work/submissions/1804-csr-partc>; Consumer Action Law Centre's 2018 TCP Code submission: <https://consumeraction.org.au/draft-tcp-code/>.

⁴ Communications Alliance, 2023, Industry Guideline G660:2023 Assisting Consumers Affected by Domestic and Family Violence.

- Do not require telecommunications providers to proactively identify consumers they may believe are at risk of entering into financial hardship.
- Do not require that telecommunications providers offer consumers reasonable repayment options, only flexible repayment options.⁵ Financial Counselling Australia (FCA) noted that 50% of financial counsellors reported offers of unaffordable hardship arrangements by telecommunications providers happened ‘regularly’ or ‘all the time’.⁶
- Enable telecommunications providers to disconnect consumers partaking in a financial hardship arrangement without their notice where they consider there is a credit risk.⁷

ACCAN encourages Communications Alliance to review the ACMA’s most recent financial hardship report and the significant feedback provided by the community through previous TCP Code reviews.⁸

Credit Assessment

The TCP Code instructs telecommunications providers to conduct a credit assessment prior to a consumer purchasing a post-paid telecommunications service.⁹ Despite this requirement, there are concerns that some consumers are not asked about their capacity to pay when purchasing telecommunications services in person.¹⁰

When credit assessments are insufficiently conducted or absent, they can contribute to consumer and provider harm, such as:

- Providers signing consumers up to telecommunications services which they cannot afford, leading to considerable consumer detriment.¹¹
- Possibly facilitating providers conducting unconscionable conduct.¹²
- Telecommunications providers taking on irrecoverable or ‘bad’ debt.

In a 2021 report, FCA identified that current approaches to affordability assessments for telecommunications were inadequate.¹³ FCA noted that financial counsellors see far too many clients on unaffordable telecommunications plans and that adequate affordability checks would be able to prevent this.¹⁴

⁵ Communications Alliance, 2022, C628:2019 Telecommunications Consumer Protections Code, Incorporating Variation No.1/2022, 7.6.1

⁶ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.12, Available at: <https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>.

⁷ Communications Alliance, 2022, C628:2019 Telecommunications Consumer Protections Code, Incorporating Variation No.1/2022, 6.7.1 (a)(i).

⁸ ACMA, 2023, *Financial Hardship in the telco sector – Keeping the consumer connected*, Available at:

https://www.acma.gov.au/sites/default/files/2023-04/Financial%20hardship%20in%20the%20telco%20sector_Keeping%20the%20customer%20connected.pdf.

⁹ Communications Alliance, 2022, C628:2019 Telecommunications Consumer Protections Code, Incorporating Variation No.1/2022, 6.1

¹⁰ ACMA, 2020, *Telco consumer credit checks: Findings of shadow shopping study*, Available at:

<https://www.acma.gov.au/publications/2020-06/report/telco-consumer-credit-checks-findings-shadow-shopping-study>.

¹¹ Telecommunications Industry Ombudsman, 2019, *Systemic Insight: Sales Practices Driving Consumer Debt*, Available at:

<https://www.tio.com.au/sites/default/files/2019-05/TIO-Systemic-Insight-Sales-Practices-Driving-Consumer-Debt-f.pdf>.

¹² ACCC, 2021, *Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers*, Available at:

<https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>.

¹³ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.24, Available at:

<https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>.

¹⁴ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.24, Available at:

<https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>.

Payment Options

Currently, suppliers are required to offer one payment method free of charge to consumers, with other payment methods having costs passed onto consumers.¹⁵ Many suppliers offer direct debit as the only fee-free payment method available to consumers. For consumers utilising other bill payment methods, for example paper or cheque bills, they may be charged fees for doing so.¹⁶

Direct debit arrangements do not work for all consumers and may place an unfair financial risk on some consumers. ACCAN research has found that 19% of consumers do not find direct debit easy to use, while 24% of consumers prefer other methods of paying their bills.¹⁷ ACCAN's research highlighted that inconsistent direct debit charges can be problematic for vulnerable consumers.¹⁸

Sales Incentives and Mis-Selling

Telecommunications debts that arise due to mis-selling can cause material harm to consumers. Consumers may experience financial hardship and go without certain essentials to service their telecommunications debts.¹⁹ Unfortunately, ACCAN continues to receive reports of mis-selling from our members and stakeholders.

Mis-selling can involve manipulated credit assessments, demonstrated by the Australian Competition and Consumer Commission's (ACCC) \$50 million penalty to Telstra for unconscionable sales to Indigenous consumers.²⁰

ACCAN stakeholders and members have expressed concerns that telecommunications mis-selling is producing negative outcomes for consumers. A report from FCA noted that:

- Approximately 80% of financial counsellors said that they had clients where mis-selling had occurred.²¹
- Telecommunications mis-selling is common and occurs across the industry.²²
- More than 50% of financial counsellors' clients were struggling to pay their telecommunications debts.²³

¹⁵ Communications Alliance, 2022, C628:2019 Telecommunications Consumer Protections Code, Incorporating Variation No.1/2022, 5.6.1.

¹⁶ Telstra, *Why are my paper bills changing to electronic bills?*, Available at: <https://www.telstra.com.au/small-business/online-support/accounts-payments/paper-bill-fees>; Optus, *Late payment and other billing fees*, Available at: <https://www.optus.com.au/for-you/support/answer?id=1466>.

¹⁷ ACCAN, 2023, ACCAN Research Snapshot: Direct Debit in Telecommunications, p.2, Available at: <https://accan.org.au/files/Reports/ACCAN%20Research%20Snapshot%20-%20Direct%20Debit%20in%20Telecommunications.pdf>.

¹⁸ Ibid.

¹⁹ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.28, Available at: <https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>.

²⁰ ACCC, 2021, *Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers*, Available at: <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>.

²¹ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.3, Available at: <https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>.

²² Ibid p.5.

²³ Financial Counselling Australia, 2021, *Telcos and Financial Hardship: Feedback from the frontline*, p.8, Available at: <https://www.financialcounsellingaustralia.org.au/fca-content/uploads/2021/04/Telcos-and-Financial-Hardship-Feedback-from-the-Frontline-Final.pdf>. | FCA asked financial counsellors; "On average, what proportion of your clients are struggling to pay their telco debts?". The most common answer was that more than 50% of clients were struggling to pay.

An ACMA survey of financial counsellors showcased that they believe that some cases of financial hardship could be prevented if telecommunications providers did not upsell to consumers who cannot afford the purchase or do not understand its financial implications.²⁴

Response to question 4

Question 4: Are there specific issues that are adequately covered in the Code but are inadequately implemented? Or inadequately enforced? Please provide as much detail as possible to explain your position. Do you have any constructive, practical suggestions as to how these issues could be addressed?

ACCAN considers that the TCP Code places too much emphasis on the effect of reputational harm to drive industry compliance. Further, the reputational harm mechanism assumes that consumers are able to easily switch to alternative providers, which they may not be in a position to do so due to required coverage and cost.

ACCAN notes that we have been repeatedly advised by industry that it both has the ability and incentive to self-regulate and comply with the provisions of the TCP Code. However, ACCAN has observed limited evidence that reputational damage is encouraging better conduct and consumer outcomes, noting that this mechanism assumes consumer engagement with relatively obscure regulatory statements concerning non-compliance with code provisions. Instead, the general effect of non-compliance has been a general reduction in trust in the sector overall,²⁵ which reduces consumer willingness to spend and overall value for all market participants.

The ACMA cannot adequately enforce the TCP Code due to its limited enforcement powers under the *Telecommunications Act 1997* (Cth) and the *Australian Communications and Media Authority Act 2005* (Cth). ACCAN recommends enhancing and strengthening the powers of the ACMA to allow them to adequately enforce consumer protections through greater discretion and the ability to impose more significant penalties for breaches of consumer protections. To support this recommendation, ACCAN suggests the Australian Government increase the ACMA's funding to further support its ability to investigate and act when a service provider breaks the rules of the TCP Code in a timely manner.

Currently, the ACMA can only fine industry for code violations after a formal warning has been contravened, which means breaches of the TCP Code cannot be dealt with promptly, leading to consumer harm.²⁶ The inadequate enforcement and voluntary nature of the TCP Code directly leads to poor outcomes for consumers.

²⁴ ACMA, 2021, *Customer financial hardship in the telco industry: State of play report 2019–20*, Telco financial hardship programs: views from financial counsellors - Qualitative research, p.2, Available at: <https://www.acma.gov.au/publications/2021-02/report/customer-financial-hardship-telco-industry-state-play-report-2019-20>

²⁵ Roy Morgan, 2023, *Telecommunications industry overtakes Social Media as the most distrusted industry* (Article No. 9193), Available at: <https://roymorgan-cms-dev.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2023/04/04235718/9193-Risk-Monitor-Telco-most-distrusted-industry-2023-1.pdf>.

²⁶ ACCAN, 2020, *Submission to Consumer Safeguards Review Part C*, p.35, Available at: <https://accan.org.au/our-work/submissions/1804-csr-partc>.

Furthermore, ACCAN has previously noted that the TCP Code is inadequately implemented in the areas of:

- Providing adequate protection for small businesses.
- Billing.
- Customer service.
- Customer access to records.
- Selling practices.
- Credit assessment.
- Financial hardship.
- Accessibility.²⁷

Finally, ACCAN questions whether an industry code remains the best avenue for safeguarding consumers considering the TCP Code's voluntary nature and inadequate implementation in numerous areas.

Response to question 5

Question 5: Please identify any sections of the Code (or concepts within it) that you believe are no longer necessary and should be removed. This might include, for example, sections that duplicate legislation/regulation, or rules that are out of date and no longer required.

Feedback from ACCAN's members and stakeholders has identified that critical consumer protections related to communications consumers' financial and physical wellbeing should be covered by direct regulation. It is counterintuitive for a voluntary industry-drafted code to be relied upon to provide adequate consumer protections for critical public safety issues.

Response to question 6

Question 6: Are there any new consumer protection issues (not currently covered in the Code*) that you think need to be included? Please provide details. As noted earlier, these should be matters relating to direct interactions between service providers and consumers and should not cover issues already dealt with by other regulatory, legislative or co-regulatory instruments.

DFV is a key consumer protection issue that requires direct regulation.

Direct regulation would help victim-survivors of DFV to protect their personal and financial safety, to re-establish their lives, and to maintain contact with friends, family, and support services. Communications are a vital service for victim-survivors of DFV, who often need assistance from their provider to retain a safe and affordable service. In contrast, communication services can also be used to facilitate DFV, which can lead to considerable consumer detriment.

In Australia, DFV is a pervasive social problem, with 27% (2.7 million) of women and 12% (1.1 million) of men experiencing violence by an intimate partner or family member since age 15.²⁸

²⁷ ACCAN, 2018, *Submission to the Telecommunications Consumer Protections Code* (Communications Alliance), p.5, Available at: https://accan.org.au/files/Submissions/TCP%20Code_ACCAN%20submission%20100818.pdf.

²⁸ Australian Bureau of Statistics 2021-22, Personal Safety, Australia, ABS, viewed 16 March 2023, <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

Technology-facilitated abuse is estimated to involve 8% to 48% of all DFV cases, with 27% of children in Australia experiencing technology-facilitated DFV.²⁹ The cost of DFV to the Australian economy is approximately \$26 billion annually.³⁰

DFV poses material risks to public safety. It intersects with various topics, such as financial hardship, economic abuse, compromised security and privacy, and vulnerable populations.³¹ ACCAN's stakeholders have consistently provided concerning reports regarding the experiences of communications consumers affected by DFV. Consumer's rights and interests need to be safeguarded by adequate protections for those affected by DFV and appropriate responses when they need assistance.

Direct regulation for protecting consumers experiencing DFV would leverage the expanded investment in DFV responses as part of the *National Plan to End Violence Against Women and Children 2022-2032* by extending benefits to consumers of communication services and reducing technology-facilitated abuse.

Response to question 7

Question 7: Are there areas of the Code that you think unnecessarily restrict service innovation or the efficient, equitable and responsive delivery of telecommunications goods and services to customers? Please explain.

The TCP Code unnecessarily restricts the equitable delivery of telecommunications goods and services through its lack of enforceability. ACCAN receives consistent accounts and case studies of suppliers failing to meet their consumer protection obligations. These accounts and case studies differ between telecommunications providers and showcase that consumers are not experiencing the same level of consumer protections because of their choice of telecommunications providers.

Due to its voluntary nature, the TCP Code has limited capacity to ensure uniformity amongst telecommunications providers, resulting in consumers receiving different protections depending on their choice of supplier. While in theory market participants should seek to compete actively on customer service in addition to other service dimensions, ACCAN has observed limited examples of this. Although ACCAN can point to specific industry participants that meet and exceed consumer expectations, we see limited evidence of widespread competition on these dimensions, with coverage and pricing being the two key drivers of competition in the market.

Accordingly, the soft-touch regulation of consumer protections, instead of driving competition on service dimensions, has provided a competitive environment in which many market participants appear to read down consumer protections in order to retain a cost advantage. Although this is not the case across all market participants, we consider the current framework is fundamentally anti-competitive and fails to provide adequate incentives for service based competition.

²⁹ Molly Dragiewicz 'How children are involved in technology-facilitated coercive control' (Lecture, British Society of Criminology Annual Conference, online, 8 July 2021) 6.

³⁰ KPMG, 2016, *'The cost of violence against women and their children in Australia'*.

³¹ Telecommunications Industry Ombudsman *'Phone or internet complaints impacted by family violence'*, Available at: <https://www.tio.com.au/guides/family-violence/phone-or-internet-complaints-impacted-family-violence>.

Response to question 8

Question 8: Do you think that the Code's application to residential and small business customers (as defined) is appropriate? If not, why not?

ACCAN considers that the application to residential and small business customers should be subject to further refinement. The TCP Code as drafted primarily reflects the challenges and issues faced by residential consumers, rather than those of small businesses.

ACCAN considers that a nuanced approach to addressing the challenges faced by small businesses is necessary to improve the effectiveness of the TCP Code. In addition to revisions to the TCP Code, we consider that there is scope to provide further guidance through supplementary documents including guidelines to support engagement by providers with small businesses.

Response to question 9

Question 9: Do you have any comments about the attestation process and other compliance activities run by CommCom?

ACCAN considers that to the extent that existing regulatory arrangements are retained, and the TCP Code remains the primary instrument for delivery consumer protection, that CommCom requires a material increase in its resourcing and expansion of its powers to allow for it to undertake investigations and commission external and independent audits of compliance.

The attestation process run by CommCom is fundamentally reliant on the information being provided to it being accurate and truthful. While CommCom is well placed to identify clear instances of non-compliance, it does not have the powers or resourcing to independently verify all aspects of industry compliance.

ACCAN considers that while CommCom plays an important role in driving compliance in the sector, it is not suitably empowered to challenge the attestation documentation submitted. Further, at times the lack of clear and consistent definitions within the TCP Code makes it difficult for CommCom to come to clear and consistent interpretation of the standard of conduct required under the TCP Code. Accordingly, while ACCAN considers that CommCom plays an important role in the system, in guiding non-compliant entities towards better practice, its ability to fulfil this function is limited by its resourcing and powers afforded to it.

ACCAN considers that should consumer protections continue to be provided via the TCP Code, that the ACMA should be empowered to provide binding guidance on the preferable and correct interpretation of the definitions and obligations set out in the TCP Code. We consider such an approach would reduce the considerable ambiguity as to the intended effect of provisions within the TCP Code and facilitate CommCom more effectively assessing compliance.

While ACCAN has confidence in the genuine efforts taken by CommCom to drive compliance with the TCP Code, it is not a substitute for rigorous external auditing or a suitably empowered regulator. We consider that expanding the powers of CommCom to allow for independent external audits, combined with broader reforms will rebuild stakeholders trust in the attestation process.

While ACCAN notes that internal audits may be cost-effective and suitable for assessing compliance for small market participants, we consider that external and independent audits of compliance are appropriate for medium to large market participants. We note that many recent instances of non-compliance with the TCP Code and consumer protection laws have stemmed from failures in large and well established market participants, that have the resources to ensure appropriate arrangements are in place to support compliance.

Response to question 10

Question 10: Do you have any comments about other Code compliance, enforcement, and reporting arrangements (other than by CommCom)?

In principle, a self-regulatory framework implies that the burden and obligation to police compliance for industry performance lies primarily with industry, which frequently advises ACCAN that it has the incentive and ability to do so. Fundamentally therefore the responsibility for non-compliance and poor consumer outcomes primarily lies with industry who have the ability to set and police their own performance under the current regulatory regime.

ACCAN considers that notwithstanding the limited enforcement powers, discretion, resourcing, and penalties available to the ACMA, it has sought to execute its function as a regulatory backstop admirably. While no regulator or regulatory framework is perfect, we consider that the ACMA is as effective as can be expected given the significant limitations placed upon it by existing regulatory arrangements. Noting ongoing failures on the part of industry to effectively police the conduct of its own members, we consider that reforms are necessary to empower an effective and efficient regulator.

Response to question 11

Question 11: Do you have any additional comments or suggestions to assist the review?

ACCAN encourages Communications Alliance to engage widely on the TCP Code in order to elicit a diversity of views on mechanisms to improve the code and supporting arrangements. While we are conscious that many community sector organisations have limited resources, to support the development of consumer protections that reflect the diversity of Australia's population, ACCAN recommends Communications Alliance undertake an inclusive consultation process and publishes the results of their findings. We encourage Communications Alliance investigate whether an industry code aligns with other essential services approaches to safeguarding vulnerable consumers in Australia.

Noting the extensive historical engagement issues with the TCP Code and the limited revision of the TCP Code at the last review, we encourage Communications Alliance to examine the detailed comments previously provided by ACCAN and other organisations. We consider this is an appropriate starting point, noting the limited resourcing and availability of historical participants.

Importantly, we encourage Communications Alliance to engage critically with the outstanding issues and concerns raised with respect to the TCP Code and challenge its own appetite for reform. While we have confidence in Communications Alliance's understanding of the issues raised, we consider that an incrementalist approach to consumer protection has failed to deliver improvements in the TCP Code and broader arrangements in keeping with consumer and community expectations.

While striking a pragmatic approach to code revisions may suit some in industry, an incrementalist approach risks the TCP Code losing relevance in a rapidly evolving market and society. Accordingly, we encourage Communications Alliance to examine closely the objective and intent of the TCP Code and supporting arrangements and align the aspirations of the TCP Code more closely with the expectations of consumers and community.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)
