

14 June 2023

Communications Compliance submission to Communications Alliance Discussion Paper on the 2023 review of the Telecommunications Consumer Protections Code C628:2019.

Introduction

Communications Compliance Ltd. (CommCom) appreciates the opportunity to provide comments on the discussion paper for the review of the Telecommunications Consumer Protections Code (C628_2019 Incorporating Variation no. 1/2022) (the Code). This submission explains CommCom's role within the current telecommunications co-regulatory landscape and offers some observations on aspects of the Code which might benefit from further consideration by the Review Committee.

CommCom -background and role

CommCom was established in 2012 under the Code as an independent, industry funded body responsible for overseeing the Compliance Framework as outlined in Chapter 10 of the Code.

More specifically, CommCom enables Australian telecommunications providers in meeting their TCP Code compliance obligations by providing an accessible consumer protection regime complementary to regulatory bodies and the Telecommunications Industry Ombudsman (TIO) scheme. Commcom does this by way of annual assessments of a provider's consumer facing information and processes and the provision of ongoing support via document templates, guidance notes and real-time feedback as required.

All telecommunications providers who offer telecommunications services to Australian consumers (as defined in the Code) are required to lodge an attestation of compliance with CommCom on an annual basis. The statement of compliance takes the form of a questionnaire, developed by CommCom, which addresses, chapter by chapter, the Code's key provisions. Providers are required to respond to each of the questions, stating compliance, partial compliance, or non-compliance, often being required to provide supporting documentation to support their claims of compliance. This establishes a baseline for how service providers should structure their TCP code compliance to ensure their compliance processes are accessible to consumers and relevant to consumer interests.

The questionnaire is reviewed on an annual basis to ensure that current areas of concern are given appropriate focus. Industry and ACCAN (via CommCom's Advisory Committee) and the ACMA are involved in the annual review of the questionnaire, each being asked to provide input.

The assessment of a provider's attestation is a detailed process which in effect requires each provider to conduct a full internal audit on an annual basis.

Upon receipt of a provider's completed attestation, CommCom then verifies, via its own research and audit processes, each response (regardless of the provider stating compliance or otherwise). If remedial action is required to address non-compliance, feedback is provided back to the provider, who is required under Chapter 10 to address the area of non-compliance and confirm with CommCom that this has been done.

Providers who do not comply with CommCom directions can be referred to the ACMA for investigation and possible enforcement action. CommCom also liaises with the ACMA with respect to identifying providers who did not lodge an attestation in that year. These providers may also be subject to enforcement action.

In addition to ensuring that key stakeholders are involved in the drafting of the questionnaire, CommCom also undertakes maintain an ongoing dialogue with each stakeholder to ensure transparency of its operations. With respect to engagement with providers, CommCom has always adopted a flexible approach to the attestation lodgement process, including expanding lodgement windows in recent years to ensure that providers have sufficient time within which to complete their attestation.

Comments on the Code

CommCom is well placed to assess the state of the Australian telecommunications market given its direct engagement with providers each year. This includes the movement toward specific business models, the range of services being offered, and the demographic of the provider market itself.

CommCom's comments do not address specific Code obligations, but rather provides observations on whether the Code in its current form sufficiently acknowledges the changes in the demographic of the Australian telecommunications market, trends in market behaviour and whether the Code is accessible, from an interpretation viewpoint, for all sizes and types of providers.

Accessibility of the Code with respect to language

In the time that CommCom has been conducting its assessment/audits of providers compliance with the Code, one constant has been the number of providers who operate under the Code who would be categorised as a "small provider". They still represent most players in the market.

CommCom classifies a provider as "small" if they have an SIO (services in operation) figure of less than 3,000. Many of these providers have very lean operations, sometimes with only two or three staff, and do not have dedicated teams for compliance, legal and regulatory matters.

CommCom acknowledges that the Code is a legally enforceable document under the Act and accordingly needs to be both specific and wide-ranging in the manner in which it sets out provider obligations. CommCom's experience is that the level of complexity and detail does not always lend itself to easy interpretation by small providers. CommCom spends more time assisting smaller providers than larger providers with significantly larger product offerings, given the need to explain the intent of specific obligations and how compliance with them can be achieved.

Often, these providers simply want CommCom to "*tell them what they need to do, and how to do it.*"

CommCom suggests that these providers would greatly benefit from having access to obligations that are set out in plain English, are direct and don't involve cascading obligations involving numerous sub-clauses. While this may not be

feasible in the Code itself, given the enormity of the drafting that would be required, then if not in the Code, then perhaps by way of supporting guidelines. CommCom notes that the previous iteration of the Code had an accompanying Guideline, which explained Code requirements in plain English. CommCom feels that it could offer significant benefit to providing input to such a document.

If the Code can be made more accessible to smaller providers, then the outcome will be providers who better understand their obligations to their customers.

Providers with small business customers

As noted above, CommCom has some insight into the changing demographic of the telecommunications market. One trend which has become more evident during the past three years has been the increase in the number of providers who offer small business consumer services and product lines.

Our engagement with these providers tells us that, particularly at the smaller provider end, decreasing margins in the residential market coupled with the costs of running a business and meeting compliance requirements mean that the small business space is a more attractive one for many of these providers. *“We don’t do residential anymore”* is a comment that we hear frequently.

In addition, the amendment to the definition of “Consumer” in the 2019 revision of the Code, increasing the annual telco spend from \$20,000 to \$40,000 p.a., had the effect of bringing more business customers under the protection of the Code.

With the knowledge that the original Code was primarily written with residential consumers in mind, CommCom suggests that there would be benefit in clarifying which Code obligations apply to both residential and small business customers and those which only apply to one or the other.

A clear example of the above, and one which potentially leaves specific customers exposed, are the obligations relating to financial hardship, credit assessment, and dealing with disadvantaged and vulnerable customers. CommCom has, in the past three years, gone to lengths to assist smaller providers with business customers in understanding how such provisions could apply to a business as opposed to an individual. This has been done via direct engagement and in the way questions are set out in the questionnaire. This is because it is not immediately apparent in the Code.

CommCom understands that these three areas are of particular focus at the moment so would support any efforts to clarify how these rules apply to different types of customers.

Again, CommCom appreciates the opportunity to provide comments for the Review Committee to consider. Should the Committee have any further questions in relation to this submission please do not hesitate to contact me as per the details below.

Yours sincerely,

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