

14 December 2023

To: Ms Nerida O'Loughlin PSM
Chair and Agency Head
Australian Communications and Media Authority

By email: OfficeoftheChair@acma.gov.au

cc: Craig Riviere

Dear Nerida,

RE: TCP Code – your letter of 5 July, ACMA ref: ACMA2022/176

In July, you wrote to Communications Alliance (CA) to acknowledge the launch of our TCP Code review process and request that, by 15 December, we provide “definitive and agreed views from CA and its members on the changes it will make to the TCP Code” to address six “key areas of concern”, with such advice to “include draft revised proposed code provisions to give confidence to the regulator of the effectiveness of CA’s proposed approach.”

You also advised us of Minister Rowland’s intent to instruct the ACMA to make a Financial Hardship Standard.

The six areas of concern highlighted in the letter and set out in more detail in the accompanying position paper *What consumers want – consumer expectations for telecommunications safeguards* were:

1. selling practices,
2. credit assessments,
3. payment methods,
4. disconnection processes,
5. financial hardship assistance, and
6. treatment of customers in vulnerable situations.

This letter and accompanying papers (‘TCP Code package’) detail the definitive and agreed views of CA and its members on the changes CA proposes to make to the TCP Code to address the areas of concern that you highlighted, with the draft revised and new code provisions to address these key concerns.

Details of the process we have followed to date are also provided, and we will continue to follow if Code drafting continues. This substantially revised process was designed in late 2022 to address feedback on previous Code review and revision processes. A key aim was to allow the TCP Code Drafting Committee (DC) to identify the key concerns, understand and analyse the different stakeholder perspectives, and work to address issues in an inclusive, open, transparent and consultative way

that reasonably balances the divergent views of all stakeholders. The process undertaken in practice was modified to accommodate the shorter timeframe set by the ACMA and the concurrent drafting of a financial hardship standard. While we have maintained the key elements of the first steps of the planned new process, with a detailed review and analysis of issues and an iterative drafting process, we have not been able to undertake the in-depth one-on-one consultation that was initially envisaged and have had to impose less than ideal feedback timeframes on industry members and the TCP Code Review Committee (RC).

Despite different positions at this stage on some issues with non-industry stakeholders and ongoing work needing to be undertaken to move to a formal draft industry Code, in our view, considerable progress has been made. This is, in no small part, a consequence of the constructive engagement of all stakeholders, which we wish to acknowledge.

The following items are included as part of the TCP Code Package, as prepared by the DC:

- **this letter**, which includes the following addendum: Code review and revision process;
- **a TCP Code 'compendium'** - a pdf that includes the following documents:
 - an **introduction and 'map'** to clearly show how the Agreed Industry Position Papers relate to the six key 'areas of concern';
 - **13 Agreed Industry Position Papers, with draft revised proposed code provisions** included within each as relevant. These papers:
 - outline the identified consumer **issue**, considerations for Code revision and desired outcome;
 - include **background** on **existing relevant obligations** (in the TCP Code and other instruments) and **document stakeholders' positions** on the issue, as stated in their submissions to the review process/other relevant forums and at the RC meetings; and
 - outline the **agreed industry position** on how these key concerns can reasonably be addressed in a way that balances the divergent views of all stakeholders, with the draft revised (and new) proposed code provisions.

Note: the Scope paper explains CA's agreed preferred position. However, the scope of the TCP Code will likely mirror the Financial Hardship Standard, which, at the time of writing, is yet to be finalised. Other details will similarly depend on the completion of the FH Standard. Refer to the *Addendum: Code review and revision process* for further information.

- a **draft refreshed TCP Code 'outline'**, showing:
 - the new Code structure,
 - a non-exhaustive list of agreed draft **outcomes and expectations** for each chapter,
 - reference to **key new draft proposed code provisions** relevant to each chapter (with the actual draft new proposed provisions included in *Agreed Industry Position Papers*),
 - reference to relevant existing Code obligations (non-exhaustive), and

- one whole, new proposed draft chapter to assist you in visualising the finished Code.
- a **stakeholder feedback comment** log – a spreadsheet with comments received on the 'final draft position papers' – and clear information on how comments were dealt with.

Note: the spreadsheet is provided in PDF format. It is available on request as an Excel spreadsheet, where each topic is presented on a different tab. This is not printer-friendly but is easier to navigate as a soft copy.

- Approved minutes from the first 3 RC meetings. The minutes for the 4th meeting have not yet been approved and are therefore not attached.

I also enclose Comms Alliance's Paper: Proposed regulatory reform package (June 2023). Although not part of the TCP Code Package, this is relevant to the discussions.

Please note that the whole package is designed to be read and considered as a whole. Comms Alliance consider that it is crucial that the ACMA appreciate this point. As the draft refreshed TCP Code should demonstrate, considerable work has been undertaken in restructuring the Code not only to make it more user-friendly but also to seek to maximise compliance. The ACMA's statement of consumers' expectations has evolved into a concise statement of consumer outcomes for each chapter. Carriage service providers (CSPs) now have clear statements of expectations and guidance where appropriate to provide context for the enforceable rules that follow.

Individual parts of the package read in isolation capture only part of the proposed solution; most issues require a multi-pronged approach, with different requirements to address the issue included across different parts of a provider's organisation and different points of a customer's journey. Solutions are reflected in different *Agreed Position Papers* and different parts of the Code outline. Existing rules, as well as new ones, will need to be positioned to reflect these new overall objectives in the new Code.

Should the Authority have questions about any aspect of this package, please do not hesitate to contact Peppi Wilson, Senior Manager, Policy and Regulation (p.wilson@commsalliance.com.au), or me. Should there be any specific issues of concern, we would appreciate the opportunity to understand and respond to them before the Authority finalises its decision on the next steps. In the interim, we will continue to work on progressing the Code to ensure we can meet the June deadline.

Yours sincerely,



John Stanton
Chief Executive Officer

Addendum: Code review and revision process

PRE-JULY 2023 – NEW REVIEW AND REVISION PROCESS DEVELOPED, CONSULTED ON AND LAUNCHED

The following work was completed/well underway before the scope/timeline change (resulting from the ACMA July 2023 letter).

TCP Code industry group established. An industry working group was established in November 2022. This subsequently became the 'Drafting Committee' (DC). It started to consider the Code's structure, metrics and expectations, in line with the ACMA Statement of Expectations (SOE), and to design a new review and revision process.

Redesigned review and revision process. Informal discussions with stakeholders that began in 2022 led to CA developing a new 3-step consultation and revision process. This was designed to address stakeholders' thoughts on how to improve on previous processes, with key features including:

- a considerably longer consultation process, with multiple opportunities for deep engagement with individual stakeholders on issues specifically relevant to *them*, designed to allow problems and possible solutions to be properly and efficiently understood by the appropriate parties and appropriately addressed,
- increased transparency of the process, submissions and information about each stage publicly available and shared with a new Review Committee (RC) comprising senior representatives from key stakeholder groups (Terms for Reference are available [here](#)),
- increased independence of the process, with the engagement of an independent adviser (IA) tasked to provide independent oversight of the process, engaging directly with stakeholders at his discretion, report regularly to the Communications Alliance Board and provide advice to the ACMA at the time it is considering whether to register the draft revised Code ([IA Terms of Reference](#)).

The announced three-step process was:

Stage 1: information gathering

Pre-code-drafting stage information-gathering exercises to set the foundations for the rest of the review:

- discussion paper
- one-on-one discussions, open invitation.

Stage 2: iterative code drafting

Information gathered through the first stages of the review is to be used to inform initial drafting by a small industry Drafting Committee (DC), to be further developed and refined through an iterative drafting process, with stakeholders regularly engaged to ensure that their individual issues and concerns are understood. Engagement to take place via a number of mechanisms, including:

- Review Committee meetings,
- deep engagement and liaison with an Independent Adviser (IA),
- direct, one-on-one engagement between the Drafting Committee and individual stakeholders on issues of direct interest to that stakeholder,

- report summaries made available online, and
- opportunities for direct engagement with the IA.

Stage 3: formal consultation

The final stage involves the more formal release of a 'revised draft Code', which will be subject to the formal processes required of the Code development process, including a mandatory public comment period.

NOVEMBER 2022 – COMMENCEMENT STAGE 1: INFORMATION GATHERING

Code review begins. The DC began considering how known issues concerning the Code's structure might be addressed. In line with the ACMA SOE, the DC started to test a new Code structure as it began to work through the substantial body of inputs to the Code review.

Acknowledging the high interest rates, rising inflation and general cost-of-living pressures, it focussed on vulnerability and financial hardship issues, which it included as a separate chapter in a draft restructured outline.

Information gathering. A comprehensive public discussion paper was drafted in early 2023 and launched in May. This set out the expected process and timeframe for the review and, without limiting the scope of the input and content for review, flagged key known issues that would be addressed in the review, including:

- an increased focus on protections for vulnerable consumers:
 - addressing the AMCA statement of expectations (SOE),
 - the inclusion of domestic and family violence (DFV) provisions (taking key clauses from our recently strengthened guideline on domestic and family violence; an intention clearly flagged as part of that process and communicated both publicly and directly to the relevant parties¹ accordingly in response to their feedback on that Guideline),
- updating numerous outdated and unclear provisions,
- consideration of whether the Code's purpose and scope are adequately described and communicated to relevant stakeholders,
- consideration of the effectiveness of current Code compliance and reporting obligations (with a flagged intent to consider the effectiveness and appropriateness of including clear 'consumer outcomes', paired with appropriate compliance program/reporting metrics and measures),
- comment on any other issues was also welcomed.

¹ ACCAN/CALC/WEjustice provided comments directly to Comms Alliance as part of the multistep review on its DFV Guideline. Where feedback related to making specific clauses mandatory, Communications Alliance clearly indicated its intentions, with the following response provided to those stakeholders at the time. This intent was also publicly announced through the DFV Guideline launch. *This document is a best practice voluntary guideline, not a mandatory Code supported by relevant regulatory instrument(s) and is, therefore, not the right instrument to include new mandatory requirements. The mandatory provisions already in the guideline (the 'musts') already have relevant regulatory backing (being requirements of Codes or other regulatory instruments).* However, we appreciate this feedback as it helps us focus on the elements of the Guideline that we should codify to enhance protections for vulnerable consumers in the upcoming TCP Code review. (We have already announced our intention to include specific provisions in the TCP Code for those affected by DFV).
We will update the relevant clauses in the Guideline to reflect the new TCP Code once that process is complete.

The Discussion Paper was pushed out to a list of stakeholders (the ACMA was consulted to ensure appropriate coverage). Details of the Code review and revision process were also included on the CA [website](#) and advertised through other fora.

Michael Cosgrave appointed as IA for the Code's review and revision. The appointment as IA of former ACCC head of telecoms, Michael Cosgrave, was formally announced in June 2023. However, Michael provided comment to CA on issues before this date (including on the draft discussion paper, before it was launched). (The formal announcement was delayed because of procedural ACMA issues.)

Stage 1 input: Discussion paper. Responses to the discussion paper were requested by 6 June but continued to be accepted after that deadline, with late submissions arriving from a number of parties. The final submission was received in early July.

Nine submissions were received. Eight were made public (via the CA [website](#)):

- ACCC
- ACCAN
- CommCom
- D Havyatt
- Internet Association of Australia (IIA)
- 2 private citizens
- TIO
- OAIC (staff level only – not public).

Stage 1 input: One-on-one meetings. Two submitters requested one-on-one meetings as part of this initial 'information gathering' stage of the process.

Stage 1 input: Other inputs. The DC began analysing dozens of reports, speeches, papers, etc., from the previous two years to allow it to understand other issues relevant to the review, including.

- ACCAN's referenced earlier submissions (incl CALC, etc) + conference speeches,
- ACCAN/CALC/WEjustice comments to CA regarding the DFV Guideline and other issues,
- ACMA SOE, discussions with the ACMA on various issues, incl. 'digital only'
- TIO Reports + speeches
- CommCom feedback
- Industry feedback
- Other industry and international consumer protection obligations and best practice.

Analysis of inputs received from stage 1. Input from stage 1 (all sources) was summarised into spreadsheets to allow the DC to sort by topic and methodically work through each issue.

JULY 2023 - NEW SCOPE AND TIMELINES SET FOR TCP CODE REVIEW

ACMA Letter. In July 2023, Minister Rowland announced her intent to instruct that a Financial Hardship Standard be drafted. The ACMA also wrote to CA to outline its key six areas of concern and to ask for "definitive and agreed views from CA and its members on the changes it will make to the TCP Code... [to address the issues raised]... by 15 December", including, "draft revised proposed code provisions to give confidence to the regulator of the effectiveness of CA's proposed approach."

CA's formal update to RC and invitation to first meeting. CA formally invited organisations to its first RC meeting. The letter also provided a comprehensive update on the process and progress to date (how/when/why a new process was developed; an update on submissions received, a comprehensive list of inputs considered as part of the review; anticipated changes as a result of the 'ACMA letter'.

AUGUST 2023 – COMMENCEMENT STAGE 2: ITERATIVE CODE DRAFTING – MODIFIED APPROACH

Stage 2 of the new revision process began in August 2023, with modifications made to meet the ACMA's new timeframe (notably: shortened engagement, fewer opportunities for the envisaged in-depth consultation) and scope (work undertaken on the financial hardship (FH) chapter was now out of scope and not relevant. As FH provisions apply throughout the Code, overall scope uncertainties have also created challenges.

DC meetings. The DC met twice per week, as it reviewed and analysed the inputs collected in Stage 1, commenced the initial iterative Code drafting work, and developed Issues Papers for the RC.

Review Committee meetings. Four RC meetings took place between 5 September and 28 November. Key issues identified through the information-gathering stage were discussed at each (see below), with **additional input encouraged in writing at any stage**. Discussion about the papers is **clearly recorded in the RC Minutes** (provided as a separate attachment). It was also used to **update the issues papers as they transitioned to position papers and then to agreed industry positions** (see below for more information).

Engagement with individual stakeholders on issues of direct interest to that stakeholder. CA met with the following stakeholders between RC meetings: Office of the Australian Information Commissioner (OAIC), First Nationals Digital Inclusion Advisory Group (FNDIAG), Intopia (accessibility experts), CommCom, AMTA, individual representatives of the RC (e.g. the ACMA), the IA, CA members. Input from these discussions was reflected in discussions and issues/position papers.

Note: OAIC and FNDIAG were both invited to join the RC.

Discussion of key issues – Issues Papers. Analysis of inputs to Stage 1 by the DC resulted in the following outputs, which were provided to the RC:

- i) **Summary tables** – summaries of all the issues raised in the various review inputs, with very preliminary Drafting Committee (DC) comments. (Shared on the [CA website](#) in line with our commitment to transparency of process.)
- ii) **Issues papers** focussing on the key identified areas of concern. Designed for **guided discussion**, these set out:
 - a. **the issue** (identified consumer problem; considerations for code obligation drafting; desired outcome from TCP Code revision),
 - b. **background** (summary of exiting obligations; comments from submissions to the review/related inputs), and
 - c. **proposed approach** (how the DC proposed to address the issue in a way that reasonably balanced the divergent views of all stakeholders).

Fourteen separate key issues were identified and presented to the RC over the first three meetings. Papers generally have been provided to the RC in advance of each meeting. Comment was also welcomed out of session.

Eleven issues papers mapped directly to the ACMA 6 key issues:

- selling policies,
- essential information,
- mobile network coverage,
- credit assessments,
- payment methods,
- credit and debt management,
- vulnerable consumers (overarching),
- domestic and family violence,
- languages,
- accessibility,
- customer service.

Two related to the overarching success of the Code:

- code structure and measurements of success
- scope and application

and one related to an additional critical issue identified by the DC (that did not map to the 'ACMA' issues):

- privacy and record keeping

Position Papers. Issues Papers were developed by the DC into 'Position Papers', which:

- incorporated additional feedback from the RC and other stakeholders,
- where applicable, including revisions to the DC's 'proposed approach' (changed or narrowed, where different options were presented in the initial paper),
- included sample clauses to reflect the proposed approach in drafting.

As the RC Minutes show, proposals outlined in the Issues Papers received a generally positive response. However, the RC emphasised that it was difficult to fully comprehend and consider the proposals and proposed approach without seeing the drafting in context.

Notwithstanding the significant time pressures, the DC committed to providing a 'draft package' to the RC prior to anything being sent to the ACMA Authority to allow it to better understand the proposals in context and provide meaningful, constructive comments that could be considered before finalising the pack for the December 15 deadline.

17 NOVEMBER – DRAFT PACKAGE CIRCULATED TO RC FOR FEEDBACK

On 17 November, a draft 'TCP Code package' was sent to all RC participants (industry and other) and other CA members as appropriate. This included the following components, designed to be read and considered together:

1. **A cover letter,**
2. **A package overview and explanation**
3. **12 Position Papers** (developed from the Issues Papers)
4. **1 Issues Paper** (on scope – included as an issues paper in the pack to reflect the fact that the FH Standard draft had just been released and was under consideration and the scope of the TCP Code will likely mirror the Financial Hardship Standard)
5. **An outline draft TCP Code.**

Feedback was requested in writing by 30 November.

The process and package outline were discussed briefly at RC Meeting 4, with written comments requested to ensure that the DC could adequately understand and respond to specific issues.

1 DECEMBER TO 14 DECEMBER – FINALISATION OF AGREED CA POSITION AND DRAFT REVISED PROPOSED CODE PROVISIONS

Written input was received from ACCAN, the TIO and industry members. The ACCC responded but was unable to provide feedback within the requested timeframe.

The DC worked through the comments received from ACCAN, TIO and industry.

Changes were made to papers to accommodate comments where reasonable and achievable in the timeframe. This included quite substantial changes to the sales and DFV papers in particular – see stakeholder comment log for full details.

Other comments were noted for further consideration in the new year.

Details of the comments received, and the DC's response and action to each are recorded in the stakeholder comment log that is included in the 'TCP Code Compendium'.

EARLY 2024 – ITERATIVE DRAFTING TO CONTINUE

As noted in the main body of the cover letter, some details depend on the completion of the FH Standard, including scope, issues associated with vulnerable customers, credit and debt management, and disconnection.

Other positions will clearly evolve as iterative drafting progresses. As explained in the process outline, iterative drafting by the DC will occur in consultation with all stakeholders, with consideration given to other moving parts such as the privacy review, the development of guidance on accessibility, and so forth.

Note that no paper has been provided on records and privacy (as this was not a key issue identified in the 'ACMA letter'). However, a paper was discussed with the RC and we have been discussing this issue with key stakeholders, including the OIAC, and would need to work through issues further with key stakeholders as Code drafting progresses.

In the interim, should the ACMA have any specific issues of concern, we would appreciate the opportunity to understand and respond to them before the Authority finalises its decision on the next steps.