

Minutes from RC meetings



COMMUNICATIONS ALLIANCE

TCP Code Review Committee Meeting No. 1, Final Minutes

Date: 05 September 2023

Time: 11:00 AM – 12:30 PM

1. Attendance

Present Organisation	Name, Position	Official Role
Independent Adviser	Michael Cosgrave	Independent Adviser
ACCAN	Gareth Downing, Deputy CEO	RC Representative
ACCC	Catriona Lowe, Deputy Chair	RC Representative
	Brenda Elferink, Assistant Director Mobiles Transmission & Consumer	Supporting Officer
ACMA	Craig Riviere, Executive Manager, Telecommunications Safeguards Branch	RC Representative
Aussie Broadband	Eric Erikson, Regulatory Affairs Advisor	RC Representative <i>(Also in the DC)</i>
Department of Communications	Kathleen Silleri, Assistant Secretary, Consumer Safeguard Branch	RC Representative
	Andrew Symonds, Director, Codes and Standards Section.	RC Representative
Optus	Lisa Brown, Senior Manager, Consumer Policy	RC Representative <i>(Also in the DC)</i>
Telstra	Bill Gallagher, Regulatory and Legal Executive	RC Representative
TIO	Cynthia Gebert, Telecommunications Industry Ombudsman	RC Representative
TPG	Annie Leahy, Regulatory Specialist	Substituting for Alexander Osborne, Head of Regulatory (RC Representative) (Annie is a DC member)
Twilio	Natasha Slater, Senior Manager, APAC Public Policy	RC Representative <i>(Also in the DC)</i>
Vocus	John Sexton, Manager Regulatory and Compliance - Telco	RC Representative <i>(Also in the DC)</i>
Comms Alliance	Peppi Wilson, Senior Manager	Chair
	John Stanton, CEO	-
	Jasmine Thai, Manager, Program Management	(secretariat support)



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2. Welcome and opening remarks

2.1. Role of committee

The Chair opened the meeting and welcomed participants, before briefly commenting on the role of the TCP Code Review Committee (RC). Key points:

- A primary role of the RC is to explore the 'trickier issues' that need to be resolved in the review and to work together towards practicable solutions that will deliver meaningful consumer outcomes. e.g., issues
 - about which there are opposing stakeholder views, or
 - for which there are practical barriers to achieving what has been suggested, or
 - where requested changes would likely lead to unintended consequences.
- It is expected that separate papers on these topics will be provided to the RC (as required). This was not possible for this first meeting because of the very tight timeframe and the need to review all inputs to stage one.
- It is expected that a number of issues will need to be considered out of session. Timeframes for response will be tight due to the December deadline imposed.
- Although meeting papers will include a table of issues raised/considered in the initial information-gathering stage of the TCP Code review and an initial high-level response from the drafting committee (as per the meeting 1 attachment), it is not proposed that the RC will work through the table line-by-line. The intent of providing the summary table is primarily to demonstrate transparency of process and give an indication of direction being taken (there are many updates etc. about which all stakeholders agree).

Note: refer also to the RC [Terms of Reference](#).

2.2. Members of Committee

Members introduced themselves (see attendance list).

The Chair noted that:

- The OAIC was invited to join the RC, as privacy is one of the key themes. They declined but will participate bi-laterally. The DC will meet with them next week.
- First Nations participation (bi-laterally or by joining the RC) was invited through the First Nations Digital Inclusion Advisory Group (FNDIAG) (Dot West), through the Department. No response has yet been received; the Department's assistance to follow-up on this matter was sought.

There was a brief discussion:

- Mr. Stanton thanked attendees for agreeing to participate in the RC, noting the seniority and caliber of representatives.
- Dr Downing suggested that it would be more appropriate to invite feedback through ACCAN's First Nation's representatives, as they were more focused on consumer issues than the FNAG and were better placed to comment on key issues such as mis-selling and credit assessments. ACCAN were thanked for the offer, and it was agreed that CA would follow-up with ACCAN on the issue.



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- Ms. Lowe questioned the composition of the group, raising concerns about the overlap with the TCP Code Drafting Committee (DC). The following points were made in response by Mr. Stanton and Ms. Wilson:
 - The review process for this review is new, redesigned to address feedback on previous reviews, and to allow for more efficient, wider, and deeper stakeholder engagement, which were expected to lead to better outcomes (clearer understanding of the issues and an informed response).
 - The anticipated opportunity for deep engagement is somewhat curtailed by the change of scope and much shortened timeframe for drafting arising from the decision to create a Financial Hardship Standard and require a draft Code by December 2023. However, CA's intent remains to engage as much as possible with the relevant stakeholders to produce a Code that meets its intended purpose.
 - Having DC members participate in the RC meetings was useful in ensuring that those responsible for drafting the Code understood firsthand the concerns of the RC.
- Mr. Cosgrave requested to introduce himself, advising that he would express his view about the RC composition in his remarks. (See next item)

Actions

Action Item 1.1: ACCAN to reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.

3. Remarks from Michael Cosgrave, Independent Adviser (IA)

Mr. Cosgrave introduced himself and his role as IA. Key points:

- Ran the ACCC telecommunication regulatory function until 2021.
- His role as Independent Adviser to the TCP Code is to monitor and provide advice on the revision process to verify that it is fair, reasonable, and appropriately transparent.
- The IA's Terms of Reference, permit him to:
 - go to drafting committee where they think it is appropriate to do so. (He has not yet thought this necessary/appropriate.)
 - provide advice to the ACMA at various stages of the process.
- As already noted, the envisaged review process is not possible due to external factors. The extensive bilateral exercise that CA had envisaged is therefore not going to be feasible by the 15th of December.
- In relation to the composition of the group:
 - This Committee was designed as a primary feedback mechanism to the Drafting Committee.
 - Some organisations have decided to separate membership on each committee. However, other organisations, due to reasons of resourcing and other issues, have decided to have one representative on both committees.
 - In his view, there is no inherent tension being a member of both, and it may be beneficial for members of the drafting committee to hear the views of members of the review committee, as well as putting forth their input.



4. Update on Financial Hardship (FH) Standard - scope, progress and consultation timeframes

Mr. Symonds provided an update on the FH Standard. Key points:

- The Department has finalised the Direction and Minister Rowland has/will announce it today.
- Changes were made to the draft Direction following consultation with stakeholders. Noted that it is intended that the Standard does not apply to very large businesses; it's focus is residential, not-for-profit and small business, but the latter has not been defined, acknowledging that scope and the definition of small business is something that is being reviewed and will need to be worked through during the consultation phase, along with the definition of financial hardship.
- The Financial Hardship Standard is to be determined by the 15th of February 2024, and commence in full by the 29th of March 2024.
- In response to CA concerns about the difficulty of identifying those who may be in financial hardship, the department noted that it is ultimately up to the ACMA to draft appropriate and reasonable rules to meet the objectives of the Direction – noting ACMA have an obligation under the Telecommunications Act 1997 to ensure they consider other factors.
- The draft Standard will reflect the Direction.
- ACMA noted that a 30-day consultation on the draft Standard will occur in mid-Oct. There will be some 1-on-1 sessions during this consultation. The draft Standard will reflect ACMA published reports *What Consumers Want – consumer expectations for telecommunications safeguards* and *Financial hardship in the telco sector: Keeping the customer connected*.

5. Review process and progress.

Ms. Wilson provided a summary of the work to-date on the Code:

- As noted earlier, a new process was designed (in consultation with key stakeholders) to address stakeholder feedback on previous reviews. Preparatory work started in 2022 including on:
 - designing the new process,
 - reviewing the SOE
 - drafting the discussion paper (which clearly flagged known issues that would be addressed in the review, including new DFV provisions, addressing ACMA's SOE (more focus on vulnerable consumers), issues of scope and clarity, inclusion of measurements of success.
 - restructuring the Code to address known issues e.g., those noted above.



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The new process comprises 3 stages:

- **Stage 1: Information Gathering** – information-gathering to set the foundations for the rest of the review and understand positions before starting any drafting. Comprising:
 - i. a public discussion paper (released May 2023)
 - ii. one-on-one discussions
 - iii. review and analysis of other relevant material.

Ms. Wilson advised that:

- i. 9 submissions were received; 8 are available on the CA website; OAI's was 'staff level only' and is not public, but their feedback has been/will be reflected in the summary reports without attribution.
- ii. Two one-on-one meetings were requested, both with individual consumers. These were positive and useful discussions. A summary report on these is available on the CA website.
- iii. Relevant material that is informing the review includes:
 - Numerous public reports, statements, and public commentary, including the ACMA SOE and the financial hardship reports (including but not limited to, the May 2023 early July 2023 reports); comments made at ACCAN's 2022 conference.
 - Relevant comments made in response to other processes, including ACCAN's reference in its 2023 submission to issues raised in earlier TCP Code review processes by it and its members (CALC, etc.), that it did not feel had been adequately addressed at that time; and ACCAN/CALC/WEjustice comments to CA in relation to the DFV Guideline.
 - Discussions with members and the ACMA over a number of years on 'digital only'; feedback on unclear wording; feedback over time from Commcom.

This stage is now closed.

- **Stage 2: Iterative drafting** – This is the current stage the review process is in.
 - Input from the submissions has been collated into a spreadsheet and sorted by topic. The DC has finished its initial review of all 160+ lines of input and is now starting to draft and to discuss/consult further with stakeholders* on issues raised, as required (i.e., where the commentary/problem to be addressed is unclear, where there's conflicting views, different options, likely unintended consequences, etc.)
 - *As appropriate. e.g., bilateral discussions directly with the stakeholder concerned; discussions through this RC; guidance from the IA.
 - It is also further developing its thoughts on metrics and structure in light of input received. (Broadly, after information on definitions, scope etc., the new structure looks at overarching issues of organisational culture and training and is then based on 'customer journey', from advertising and pre-sales behavior, through to post sales and beyond. Each chapter sets out outcomes (for consumers); expectations (on RSPs, to meet these outcomes) and rules (minimum requirements). The Code will also include Measurements of Success (MoS) and Reporting.)
 - It was noted that the anticipated deep engagement, designed to ensure the issue was properly understood and worked through, will not be able to be conducted as envisaged due to the as-yet-unclear change in scope due to the FH Standards and the shortened timeframe. However, the intent remains.



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- The key issues summaries provided as an attachment to this RC meeting will be posted on the website following each RC meeting (as part of the commitment to transparency).
- **Stage 3: Formal Consultation** – This is the part of the process that most people will be familiar with – the formal Code review process that includes a mandatory 30-day public comment period on a draft Code.

There was a brief discussion, with the following points raised:

- Given the compressed timeframe, should the DC focus on primary issues of concern, such as mis-selling, rather than Code restructuring?
- Industry members/CA advised that while this was the overarching intent,
 - a) restructuring had begun before timelines were changed;
 - b) restructuring was necessary to address some of the key issues raised, as the intent is that it will aid comprehension and compliance by industry and would also assist with issues of enforceability. It was acknowledged that managing it all in the new timeframe was indeed a concern, however, and that there may be 'place holders' in some less 'problematic' parts of the Code when it was presented in December.

6. Key issues for RC feedback.

6.1. Scope/Intent of Code

Issue: As the RC will have seen in the summary issues paper, there's questions about the Code's scope and intent, particularly relating to the type of organisation given protection under the code as currently written.

- The DC's understanding of the Code's intent (as outlined in the TA /ACMA guidance on the purpose of Codes, and as outlined in the ASIC summary of the purpose of protections in that space) is that extra consumer protections are commonly seen to be required where there is a significant imbalance in power, rights, and obligations of the two parties entering a contract.
- As currently drafted, the Code applies to 'consumers', which includes small business, with small business including those spending up to \$40,000 with the telco (with some exclusions). The ACCC suggested in its submission to the discussion paper that this should be updated to \$100,000. However, even the current definition captures many very large businesses that do not need the Code's protections.
- The DC noted that numerous other definitions of small businesses exist, e.g., the TIO, ABS and ACMA in the ID Determination all define it differently. And suggested that it might put forward a revised definition to the ACMA in the first instance.

RC Discussion.

There was a short discussion:

- The ACCC expressed a desire to understand the proposals in view in context – i.e., once the Code drafting was complete.
- The DC suggested that this was not possible/practical in the timeframe; this issue needs to be resolved prior to drafting being completed.



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- The ACMA indicated that it was willing to discuss proposals out of session.

Actions

Action Item 1.2: DC to discuss the consumer/small business definitional issues, and proposed new definitions, with the ACMA in the first instance (out-of-session, before the next meeting).

6.2. Duplication

Issue: There are clauses that directly duplicate obligations set out in other legislation/regulation, such as the requirement in the Code to comply with the Web Content Accessibility Guidelines, which is already a requirement under the Disability Discrimination Act 1992.

- The DC suggests that the Code should either reference relevant legislation /regulation in guidance notes or include clauses that provide telco-specific instruction on what must be done by telcos to meet their legal requirements in areas where industry-specific guidance adds value. (Noting the particular value of the Code providing clarity to small RSPs.)
- The DC is looking to understand the expectations of the RC on these issues, as removing duplicative clauses has been contentious in previous Code reviews.

RC Discussion.

Members of the RC commented:

- Mr. Cosgrave referenced ACMA's What Consumer's Want Report, noting that it talks about codes as being complimentary vehicles to substantive obligations; a risk minimisation for industry to ensure it doesn't breach other obligations.
- ACCC noted that it is not the job of the Code to define compliance with the law; the ACCC can and does take action as it sees fit based on its interpretation of compliance with the ACL, as is evidenced by the number of enforcement actions taken by ACCC. However, Code obligations can diminish the risk of non-compliance with the law and the focus ought to be to address poor consumer outcomes in the industry.

6.3. Payment methods

Issue: The current Code requires that suppliers provide one free billing method. Feedback has been that consumers need more options and control over payments. The DC is seeking guidance on whether Code requirements can focus on requiring more flexibility of payments only, or whether a second option other than an autopay for *all* providers is also required, noting that requiring all CSPs to provide a second method may result in unintended consequences, such as prices rising across the board, as specific 'digital only' services were sometimes designed to only have direct debit as an option, as that suited the customer base and reduced costs. Another concern is that providing another payment option will not achieve consumer outcomes such as less customers in financial hardship or having their services interrupted or decrease the amount the debt they incur.

RC Discussion.

The following points were noted:

- TIO: complaints received and speaking to Financial Counselling conferences suggests the Code needs to require both more flexibility plus more payment options. Concerning digital only providers there needs to be better information upfront provided to consumers. This is to ensure consumers are making the right choices and not getting into a relationship with a provider who does not offer the range of choices they need.



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- ACCAN: echo TIO's comments. Flexibility is a given, but the strong view that the Code should mandate that there be more than one type of payment other than Auto-payment, by every RSP, regardless of their business model and customer target. They see consumers having difficulty paying where there has been no alternative but direct debit. Consumers have had cash and gone to stores and been rejected because the staff was unable to help them.
- DC members: Every other market categorized by healthy competition is finding new ways to make it easier for consumers to purchase. Direct debit options make business cash flow management easier and reduce costs for industry (and therefore consumers). It is not clear that mandating extra payment options will lead to the desired consumer outcomes.
- ACCC: Agreed that just changing the payment options will not solve the issue of consumers getting into financial hardship. Need to understand the interaction with other elements of the TCP Code and with the FH Standard.
- ACCC also noted that this discussion was useful and suggested that this is what the RC should be focusing on. Ms. Wilson confirmed that that was the plan for future meetings.

It was **agreed** that the DC would write a more detailed briefing paper on the issue for the RC to consider.

Actions

Action Item 1.3: DC to provide written briefing to RC out of session, to include different options on ways the way forward.

6.4. Note on Privacy/Records

- Ms. Wilson noted that views on privacy/record keeping were diverse: some stakeholders suggested that far less information should be retained, particularly with the ever-increasing threat of data breach; some (like the TIO) wanted more information retained, for longer, to help with possible resolution of complaints.
- The DC is concerned that it will be difficult to resolve these issues in a timely manner, given there is a review of the Privacy Act currently underway, it will not be complete by December, and it will almost certainly impact the TCP Code content.
- CA has arranged a meeting with the OAC in the first instance, next week (noting the Attorney General is leading the current Privacy Act review) and will likely be requesting RC input on this issue soon.

7. Other Business

None.

8. Next Meeting

Tuesday 10th of October 2:30pm – 4:30pm.



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Action Items

Status	No	Action Item	Comments
Items			
New or open as of 5 Sept			
New	1.1	ACCAN - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	
New	1.2	DC - To discuss the consumer/small business definitional issues, and proposed new definitions, with the ACMA in the first instance (out-of-session, before the next meeting).	
New	1.3	DC - To provide written briefing to RC re payment methods out of session, to include different options on ways the way forward.	



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TCP Code Review Committee Meeting No. 2, Minutes

Date: 10 October 2023

Time: 2:30 PM – 4:43 PM

1. Welcome and Attendance

The Chair opened the meeting and welcomed participants.

Present Organisation	Name, Position	Official Role
Independent Adviser	Michael Cosgrave	Independent Adviser
ACCAN	Gareth Downing, Deputy CEO	RC Representative
ACCC	Catriona Lowe, Deputy Chair	RC Representative
	Sarah O'Brien, Assistant Director, Mobiles, Transmission and Consumer Branch	Supporting Officer
ACMA	Craig Riviere, Executive Manager, Telecommunications Safeguards Branch	RC Representative
	Kathleen Stevenson, Assistant Manager, Telecommunications Performance and Regulation.	RC Representative
Aussie Broadband	Eric Erikson, Regulatory Affairs Advisor	RC Representative <i>(Also a DC member)</i>
Department of Communications	Kathleen Silleri, Assistant Secretary, Consumer Safeguard Branch	RC Representative
	Nicola Tuckerman, Assistant Director, Consumer Safeguards, Communications Services and Consumer Division.	Supporting Officer, substituting for Andrew Symonds, Director, Codes and Standards Section (Supporting Officer)
Optus	Lisa Brown, Senior Manager, Consumer Policy	RC Representative <i>(Also a DC member)</i>
	Melanie Rainey, Senior Manager, Public Policy.	DC Member
Telstra	Shona Fury, Senior Regulatory Adviser	Substituting for Bill Gallagher, Regulatory and Legal Executive (RC Representative) <i>(Also a DC member)</i>



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	Taryna Wilkins, Senior Regulatory Specialist, Consumer and Regional Policy.	DC Member
TIO	Cynthia Gebert, Telecommunications Industry Ombudsman	RC Representative
	Erin Dempsey, Policy and Regulatory Affairs Lead.	Supporting Officer
TPG-Telecom	Alexander Osborne, Head of Regulatory	RC Representative
	Annie Leahy, Regulatory Specialist	DC Member
Twilio	Natasha Slater, Senior Manager, APAC Public Policy	RC Representative (Also a DC member)
Vocus	John Sexton, Manager Regulatory and Compliance – Telco	RC Representative (Also a DC member)
Comms Alliance	Peppi Wilson, Senior Manager Policy and Regulation	Chair
	John Stanton, CEO	-
	Jasmine Thai, Manager, Program Management	(secretariat support)

2. Minutes and Actions from last meeting

2.1. Minutes

The following comments and corrections were noted/requested about the draft minutes from meeting 1.

- Ms. Lowe:
 - Difficult to consider issues properly without seeing proposals in context; seeing the Code in its totality is important in understanding whether concerns have been addressed. Questioned whether there could there be an extra final meeting scheduled to look at the entirety of what was proposed before it was submitted in December?
 - Requested that it be noted that Ms. Lowe, Mr. Downing, and Ms. Gebert all agreed at RC#1 that that there needs to be more than one payment option in the Code.
- There was a short discussion.
 - Ms. Wilson advised that there would not be time for a 5th meeting but acknowledged that the request to provide context was reasonable, noting that it will not be a full code provided by 15 December.
 - Mr. Cosgrave reiterated DC's aim to provide a best-efforts document by December.
 - It was agreed that the DC would consider how to best accommodate Ms Lowe's request.



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- Mr. Downing supported Ms. Lowe's points. And advised that they also had minor drafting corrections, which they would provide by email.

Action Item 2.1	Mr. Downing – To send drafting corrections for the minutes of meeting 1.
Action Item 2.2	Ms. Thai – Resend out minutes from meeting 1 with comments and corrections from the RC.
Action Item 2.3	DC – to consider how best to accommodate Ms. Lowe's request for a 5 th RC meeting.

2.2. Actions from meeting 1

- Action item 1.1: open. Mr. Downing will continue to seek engagement from groups due to availability issues. ACCAN will continue to reach out to its networks and contacts.
- Action 1.2: complete (closed). See [stakeholder meeting, comment, discussion log](#) provided with agenda papers.
- Action item 1.3: open. The DC is still further considering this issue.

3. Report on bi-lateral meetings since last RC meeting

Ms. Wilson noted that the drafting Committee had held a number of bi-lateral meetings since RC1, with OAIC, the First Nation Digital Inclusion Advisory Group (FNDIAG), and the ACMA.

Discussions with FNDIAG have been reflected in the language issues paper; discussions with the OAIC are reflected in the Privacy and Retention Issues Paper, along with notes re the Government's response to the Privacy Review Report.

For further details see: [Stakeholder meeting, comment, discussion log](#).

4. Key Issues for Discussion

Ms. Wilson invited individual members of the DC to present on each of the key issues, noting that the individual members presenting were talking on behalf of the DC not on behalf of their individual organisation.

Ms. Wilson also noted that there were overarching provisions that focused on vulnerable consumers covered in other chapters that were not mentioned in the current papers presented.

4.1. Domestic and Family Violence

Ms. Leahy presented on the issues paper that was circulated with agenda papers.

The paper was generally positively received, with the following questions/comments raised and responses received:

Scope/coverage questions:

- Ms. Lowe: With multiple obligations across several different instruments, there is a risk of confusion and therefore difficulty complying. Notwithstanding the risk of duplication, could all DFV-related obligations be together in one document/instrument to make it plainer and simpler? Noted that the Essential Service Commission Victoria (ESCV) provides a useful benchmark, with all the obligations in one document.



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- Mr. Downing: A lot of practical issues relate to disconnection, credit assessment and economic abuse. Agree with Ms. Lowe that there needs to be a comprehensive package because there will be critical pieces in the issues paper that are not spoken to, including the way CSPs treat disconnection, which is a significant concern to ACCAN, which has evidence of consumers being disconnected even after telling their CPSs that they are experiencing DFV.

Scope/coverage responses/clarifications:

- Ms. Leahy: The current obligations are necessarily split across different technical Codes – capturing all the different scenarios into a single instrument would be very complex. The updated Comms Alliance [DFV Guideline](#) makes these connections clear – including making clear where other, related mandatory obligations (in other instruments) lie – as well as providing operational best practice guidance. The new provisions proposed for the TCP Code mandate action in new areas (as presented) and clearly highlight the CSPs' obligations in the space.
- Ms. Wilson: The presentation of abuse is much more complicated in the telecommunication sector than in the electricity sector and managing the issues therefore also much more complicated. The Guideline document is a lengthy, comprehensive, best practice document and is the correct place for this detail. It would be impractical and confusing to include such detail in the TCP Code. However, the guidelines will be clearly referenced in the Code.
- Mr. Riviere: Agreed that reference to the guideline was useful. Noted that the Guidelines were distinctly separate from obligations under the Code and would not be enforceable.
- Mr. Cosgrave: Agreed that reference to the guideline should address the issue that Ms. Lowe raised around having multiple obligations in technical Codes and asked if this approach addressed her concerns. Ms. Lowe indicated that it might, but it would need to be assessed in context, noting that she was more accustomed to seeing all the obligations in one place, as seen in the Essential Service Commission Victoria's documentation.
- Ms. Leahy: The issues paper pack did not discuss disconnection as the Financial Hardship (FH) Standard would be directing on that. The direction around the FH Standard has outlined both credit and disconnection elements to it, so part of the work in the proposals for the Code is pending and subject to what is included in the FH Standard.

Training questions/comments:

- Mr. Downing: Could the proposed requirement for staff training be extended to require it be conducted with a reputable training provider? Additionally, it would be useful to have basic training on "dos and don'ts" around safety issues – e.g., basic training to ensure staff did not require two individuals in an abusive relationship to present together in store to sign documentation, collect devices, etc.
- Ms. Lowe: Supported Mr. Downing's comments and suggested that it would be useful to have training in relation to two distinct practices: (1) proactive identification of DFV customers and (2) appropriate procedures to follow once a DFV customer has been identified.

Training responses/clarifications

- Ms. Leahy: It is a Guideline recommendation that both policy and training are drafted / delivered in connection with a training provider. However, obligations must be flexible to



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allow smaller CSPs in particular to appropriately meet obligations to suit their business size and structure.

Access to support

- Ms. Lowe: Commended the proposed requirement to not require evidence of abuse in order to receive support and recommended that the Code make an absolute prohibition against requiring evidence of DFV.
- Ms. Gebert: Supported Ms. Lowe's comments re ensuring training enables staff to understand how to both identify and support consumers.

Access to support responses/clarifications

- Ms. Leahy: Confirmed that the intent is to clearly not require evidence of abuse before providing assistance, except where it is required under law (as presented). Noted that CA engaged with around 17 DFV support organisations as part of the Guideline review process and the approach taken in the Guideline received broad support.

4.2. Privacy and Record Retention

Ms. Rainey presented on the issues paper that was circulated with agenda papers.

The following questions/comments were raised, and responses received:

- Ms. Gebert: Concerned that removing detail about retention periods would cause confusion, interpretative differences, and non-compliance: if obligations are scattered over several different legislative and regulatory instruments, it is more difficult for CSPs to keep on track what their obligations are. Or for regulators to enforce provisions.
- Ms. Wilson:
 - Questioned whether the TIO could review their data to understand what information is required to respond to TIO complaint issues, particularly after 2 years (helping to hone in on what was useful, avoiding the expectation – and associated data risk – that everything be kept).
 - Questioned whether it was the Code's role/ in scope to repeat other regulation and suggested that it might be more appropriate and efficient to include such information in a separate guidance document (perhaps jointly drafted by the ACMA and CA?) that could easily be updated, and to reference that separate document in the Code.
- Mr. Osborne: Indicated a strong preference to include information in a separate document, not as a Code appendix. Noted that major organisations most likely already have a separate document outlining the obligations of retention period across different instruments.
- Mr. Downing: General support for a separate document to allow obligations to be clearly articulated and kept up to date. However, the Code should clearly include retention periods for billing to ensure consumers can resolve disputes and seek redress, so there should be a combination approach, with key record retention obligations in the Code, and links to the more comprehensive document. This would ensure smaller CSPs know their obligations.



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- Ms. Lowe: Supportive of the framework as discussed, with minimum retention period for compliance within the Code, with links to associated guidance on the broader legal obligations.
- Ms. Wilson: Noted that the ACMA had/used to have a document entitled "Know your obligations," (or similar title) which provided information on all CSPs' regulatory obligations (under different agencies, etc). She noted that this appeared to be a very useful document for smaller providers and new entrants in particular, and asked if the ACMA was – or could - consider revising the document. Mr. Riviere: was unaware of the document but agreed to look into it.

Action Item 2.4	Mr. Riviere/ACMA to consider request to update/publish a document outlining overarching obligations on CSPs to support education/compliance and report back.
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4.3. Essential Information

Ms. Leahy presented on the issues paper. The paper was generally positively received. Key discussion points:

- Ms. Lowe: Important to explicitly explain the concept of 'minimum quantifiable price'. Questioned how this concept will interact with what is on bills. Very pleased to see expiry of contract information included in the essential information.
- Ms. Leahy: Confirmed that the concepts would be clearly set out and clarified, noting the difference between the minimum periodic cost (where calculable) and the minimum quantifiable price of the offer, where the latter is the total potential debt risk for the consumer as opposed to what they would need to pay each payment cycle.
- There was discussion about the Connectivity Literacy pack by Better Internet for Rural Regional & Remote Australia (BIRRR) and its guidance on assisting consumers understanding of telecommunications products. Ms. Leahy suggested that it would be considered in reference to Essential Information and as a general resource. Mr. Cosgrave also noted that the work was largely around not only the formation of the contract but understanding what connectivity is relevant to a consumer's need, which is probably not best addressed for a Code process of this sort.
- Mr. Downing: Expressed support for the general concept, noting that it would be useful to have clarity around the treatment of payments with month-to-month devices and what the exit costs/cost structure could be. It would be excellent if this was standardised as this would facilitate comparison and efficient search for consumers for various offers.
- Ms. Leahy clarified that the consistency of the information is how it will be presented, and that the intention would be consistently delivered through the requirement to ensure essential information is presented in every step.
- Ms. Gebert: Also expressed support for the concept of essential information. Noted that the proposal would make it easier for consumers to understand what the key things are they need to know at the beginning of the relationship, the cost, how to end the relationship and that it should be provided in a timely manner to consumers. Suggested that if information received at later contradicted information at point of sale, consumers should be able to cancel their contract.
- Ms. Leahy noted Ms. Gebert's comments on cancellation and advised that the DC is reviewing the CIS as part of the work undertaken for the essential information.



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- Mr. Cosgrave: the DC should consider whether essential information is related only to billing was a move create a single class of essential information that relates to the whole cycle of a consumer's journey.
- Ms. Leahy noted the importance of having the distinction between the broader life cycle as opposed to the sale lifecycle.

4.4. Selling Policies

Mr. Erickson presented on the issues paper.

- Ms. Gebert: Really supportive of what she is hoping is in the detail provided in the issues paper but reiterated it was hard to provide feedback without seeing it in context. Asked for clarification on whether the remedies provided were a shopping list, optional, and/or suggestions.
- Mr. Erickson confirmed that there would be some specific remedies included. This was welcomed.
- Ms. Lowe: Pleased to see the acknowledgement of incentives and in particular commission selling. It is hard to comment any further without seeing what is proposed in context. Balance score card type incentives are hard to execute in practice, which will require a lot of thought. Suggested that, if sales incentives are kept, there should be some requirements relating to the suitability of products for the customer. Concerned about the requirement of reasonable proof of vulnerability - understands why it is there but given the sort of behavior that incentives can drive, does not think it is appropriate that the onus is on the customer to remedy in those circumstances.
- Mr. Erickson: Having to provide remedies post-sale costs the business, so should be an appropriate incentive for organisations to avoid inappropriate selling. Also noted that there are a lot of obligations under the ACL which staff would need to follow.
- Ms. Lowe: ACCC has been enforcing significant penalties under the ACL and that hasn't stopped some of the problems. How the remedies are phrased is important which is why suitability is an alternative road to get to the end point.
- Mr. Downing: Strongly endorsed Ms. Lowe's comments.
- Mr. Riviere: agreed with all the comments for the need to see the concepts in context. Commended all the work put into this document and believes it is heading in the right direction and that it picks up on several comments made in various reports in recent times.

4.5. Credit Assessment

Ms. Wilson noted that there is no formal paper on this issue. Rather, the DC was wanting to test its thoughts with the RC before doing substantive work around the concept of risk and the requirements for mitigation.

Ms. Leahy spoke to the group:

- The DC:
 - recognises that the current credit assessment process doesn't address the risk of financial harm associated with a multitude of services.
 - recognises that the market has changed, with a shift to upfront subscription model options, with the devices and goods on payment plans 'on the side'. Consumers do not understand the way these interrelate.



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- and notes that there is TIO evidence of financial hardship that has got nothing to do with the underlying service; rather, it is associated with the total device debt remaining needing to be paid off in full when the associated service is cancelled by a customer early.
- The DC has concluded that there are three forms of harm that consumers are experiencing:
 - i. financial over commitment;
 - ii. financial hardship; and
 - iii. debt and default listing.

Each of the particular types of harms requires a different type of mitigation.

- Financial Hardship is out of scope with the FH Standard coming and therefore has not been dealt with. However, that, plus Code obligations in relation to responsible selling, debt management and remedies, all interact.
- The DC is looking to create a *credit assessment* process that is clear and requires responsible selling – including a conversation about current obligations, linked to the number of services being sold (or where it is evident that the customer already has numerous services). This would not be formally recorded.
- Where there is potential for a new purchase (for a new or existing customer) to create a debt, default, or credit risk for the consumer of \$150 or more, the DC is considering a requirement that the credit assessment must include an external credit check. This is a substantially lower threshold than the current code obligation, which requires checks where the potential debt is over \$1000 only for new customers.

RC Discussion

- Ms. Lowe: Pleased to hear the framework outlined and agrees that it links fundamentally with the selling policies discussion and what is committed there influences what occurs in credit assessment. Suggested that expenses are equally critical as part of the conversation and should be included. The other harm that needs to be thought about is disconnection and loss of access to an essential service.
- Ms. Leahy: Acknowledged the points made by Ms. Lowe and noted that most would likely be addressed through the FH Standard.
- Mr. Downing: The default listing is the end of that process and that is probably the most visible harm in terms of long-term access to credit. Picking up issues of loss of access and disconnection and the financial stress related to the services. The real challenge is with credit assessment and ACCAN has seen real sizeable debts such as \$10,000 of devices, which is quite significant. It is critical to have credit assessments in place as the lack of regulation around this is the driver of unconscionable conduct and a significant driver of the financial hardship issues that they have observed. This is an opportunity combined with some of the changes being proposed around sales practices to drive a reduction in that harm. There need to be appropriate approaches in place for both new customers and existing customers.
- Ms. Leahy: noted Mr. Downy's comments and noted that the focus was to reduce harm.

Action Item 2.5	DC to provide an issues paper to RC on Credit Assessment.
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4.6. Scope and Application

Ms. Fury presented on the issues paper.

RC Discussion

- Mr. Downing: wants TCP Code definition to align with the ACL's definition of small business. Questioned what the substantive harm is for the company in having these multinational businesses who do not rely on the provisions in the first place and therefore do not pose a substantive or real risk – surely if they didn't need the protections, it would not cost business to include them? However, Mr. Downing suggested that the potential risk of small business being inadvertently excluded from the Code's protection could create more harm.
- Ms. Fury responded that there is a cost to businesses in having systems and processes in place for all covered by the Code. But undertook to provide further detail/explanation.
- Ms. Lowe: Wants the small business definition to be aligned with the ACL. One of the challenges with small businesses is that there is a proliferation of different definitions, and it is confusing. The number of employees provided in the issues paper is the smallest number of employees that is defined in a vast array of different definitions. There is a case for clarity and consistency but open to hearing more about the harm to business.
- Ms. Wilson noted that the definition that included number of employees for a small business was the TIO's and that there is a cost to business in including protections, even if they are never required, and this should be balanced with the consumer benefit provided.
- Ms. Wilson asked the RC to provide feedback on which of the proposed potential carveouts were problematic.
- Mr. Cosgrave noted that the current definition in the issues paper does not talk about a *small* business as the Direction does. He suggested it might be easier to rely on the *prima facie* definition of small business, which would immediately cut out multinational businesses.
- Mr. Cosgrave asked Mr. Riviere whether they were seeking to have regulatory consistency across the instruments. Mr. Riviere advised that regulatory consistency is an aim but acknowledged the challenges.

Action Item 2.6	DC to provide further information on the harms to business with the current definition for small business.
Action Item 2.7	RC to provide written feedback on why certain carveouts proposed for the small business definition is problematic.

4.7. Languages

Mr. Sexton spoke to the issues paper.

RC Discussion

- Ms. Lowe: Highlighted that there is a difference between actively assisting people and giving people information. It is pleasing to see there is a shift into a reasonable assistance framework, which is a positive development if that is maintained.
- Mr. Downing: Proposed approach is a positive step forward. It might be worthwhile considering what resources being made available to focus on simple English rather than looking to produce documentation in numerous different languages. The focus should



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be on major language groups and also documentation which is simple and easy to read.

- Mr. Sexton noted Mr. Downing's suggestion.

5. Other Business

No other business.

6. Next Meeting

- Ms. Wilson has suggested that the meeting be extended to 2.5 hours, which would mean the meeting will conclude at 1:00PM.
- The next meeting is scheduled for Wednesday the 1st of November 10:30AM -1:00PM.

Action Items

Status	No	Action Item	Comments
Items			
New or open as of 10 Oct			
Open	1.1	Mr. Downing - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	
Open	1.3	DC - To provide written briefing to RC regarding payment methods out of session, to include different options on the way forward.	
New	2.1	Mr. Downing - To send drafting corrections for the minutes of meeting 1.	
New	2.2	Ms. Thai - Resend out minutes from meeting 1 with comments and corrections from the RC.	
New	2.3	DC - to consider how best to accommodate Ms. Lowe's request for a 5 th RC meeting.	
New	2.4	Mr Riviere/ACMA - to consider request to update/publish a document outlining overarching obligations on CSPs to support education/compliance and report back.	
New	2.5	DC - Provide a paper to RC on Credit Assessment.	
New	2.6	DC - to provide further information on the harms to business with the current definition for small business.	
New	2.7	RC - to provide written feedback on why certain carveouts proposed for the small business definition is problematic.	
Closed at RC #2 10 Oct			
Closed	1.2	DC - To discuss the consumer/small business definitional issues, and proposed new definitions, with the ACMA in the first instance (out-of-session, before the next meeting).	

TCP Code Review Committee Meeting No. 3, Final Minutes

Date: 1 November 2023

Time: 10.30 AM – 1.00 PM

1. Welcome and Attendance

Present Organisation	Name, Position	Official Role
Independent Adviser	Michael Cosgrave	Independent Adviser
ACCAN	Gareth Downing, Deputy CEO	RC Representative
ACCC	Tara Morice, A/g General Manager, Mobiles, Transmission and Consumer	Substituting for RC Representative, Catriona Lowe, Deputy Chair
ACMA	Craig Riviere, Executive Manager, Telecommunications Safeguards Branch	RC Representative
	Kathleen Stevenson, Assistant Manager, Telecommunications Performance and Regulation.	RC Representative
Aussie Broadband	Eric Erikson, Regulatory Affairs Advisor	RC Representative (Also a DC member)
Department of Communications	Kathleen Silleri, Assistant Secretary, Consumer Safeguard Branch	RC Representative
	Andrew Symonds, Director, Codes and Standards Section	Supporting Officer
	Nicola Tuckerman, Assistant Director, Consumer Safeguards, Communications Services and Consumer Division	Supporting Officer
	Sam Grunhard, First Assistant Secretary of the Communications Services & Consumer Division	Observing meeting informally (see introductory remarks)
Optus	Lisa Brown, Senior Manager, Consumer Policy	RC Representative (Also a DC member)
	Melanie Rainey, Senior Manager, Public Policy.	DC Member
Telstra	Shona Fury, Senior Regulatory Adviser	DC member Substituting for Bill Gallagher, Regulatory

		and Legal Executive (RC Representative)
	Tarnya Wilkins, Senior Regulatory Specialist, Consumer and Regional Policy	DC Member
TIO	Cynthia Gebert, Telecommunications Industry Ombudsman	RC Representative
	Erin Dempsey, Policy and Regulatory Affairs Lead	Supporting Officer
TPG-Telecom	Alexander Osborne, Head of Regulatory	RC Representative
	Annie Leahy, Regulatory Specialist	DC Member (half of meeting)
Vocus	John Sexton, Manager Regulatory and Compliance – Telco	RC Representative (Also a DC member)
Comms Alliance	Peppi Wilson, Senior Manager Policy and Regulation	Chair
	John Stanton, CEO	-

Apologies

ACCC	Catriona Lowe, Deputy Chair	RC Representative
Telstra	Bill Gallagher, Regulatory and Legal Executive	RC Representative
Twilio	Natasha Slater, Senior Manager, APAC Public Policy	RC Representative (Also a DC member)

The Chair opened the meeting and welcomed participants, including welcoming Mr Sam Grunhard, the new First Assistant Secretary of the Communications Services & Consumer Division, DITRDCA, attending to observe the meeting and understand how the group was operating.

Mr Grunhard briefly introduced himself.

2. Minutes and Actions from last meeting

2.1. Minutes

The Minutes from RC2 were agreed pending a few minor corrections that were tabled at the meeting.

Action 3.1: Ms Wilson to update and circulate the final RC#2 Minutes.

2.2. Actions

Action items from previous meetings were discussed and updated or closed as follows (and as reflected in the table overleaf).

Action 2.3: Ms Wilson advised that the DC will provide, to all members of the RC, a draft package comprising:

- i) a skeleton draft Code to illustrate the new proposed structure, with examples of key clauses in context,
- ii) a full pack of Position Papers (which are Issue Papers, updated to reflect RC discussions, with draft clauses provided in them and/or within an accompanying draft skeleton Code)

The aim is to have this ready by mid-November to allow it to be discussed further at the final RC meeting. It was noted that this timeframe was tight and it may be that the information is provided in two stages. None of the information should be totally unfamiliar, having been presented at RC meetings in some form.

Action 2.4: Mr Riviere reported that the ACMA had discussed this issue and agreed that the information would be useful and it would be something that the ACMA will consider further after the TCP Code has been dealt with.

Action 2.6 and Action 2.7: No further written information has yet been provided by the DC to the RC on problems with using the ACCC definition of consumer. However, no member of the RC has provided further information on their concerns about specific proposed carve outs either.

- There was (further) discussion, with the following points noted:
 - DC members: applying the ACCC definition of consumer (which includes small business) is problematic as it would unintentionally capture very large organisations. The fact that these large organisations do not need TCP Code (or FH Standard) protections (and the provisions will not be called upon), does not mean that their inclusion in the Code is cost-neutral; there is a substantial cost to CSPs in them being included, as all staff and systems managing enterprise customers will need to be set up and trained to ensure Code (or FH Standard) compliance. This represents a cost in the \$millions.
 - All RC members agreed that the intent should be to only include small business. However, Mr Downing noted concern that carve outs could unintentionally exclude some genuinely small businesses that need protection.
 - Mr Riviere suggested that examples are needed assist illustrate the issues (from the DC and ACCAN/other RC members). These should be provided as part of the 'package' to assist the Authority in their consideration of this issue.

New actions:

Action 3.2: DC to provide a draft package to the RC by mid-November, for feedback by or at the final RC meeting.

Action 3.3: DC and RC members to provide examples with information provided for actions 2.6 and 2.7, to assist illustrate the issues.

Status	No	Action Item	Comments
Items			
Open	1.1	Mr. Downing - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	No update from previous (see comments from RC#2)
Open	1.3	DC - To provide written briefing to RC regarding payment methods out of session, to include different options on the way forward.	Noted that this action is still outstanding
Closed	2.1	Mr. Downing - To send drafting corrections for the minutes of meeting 1.	complete
Closed	2.2	Ms. Thai - Resend out minutes from meeting 1 with comments and corrections from the RC.	Complete
Closed	2.3	DC - to consider how best to accommodate Ms. Lowe's request for a 5 th RC meeting.	Closed at meeting. See <u>note</u> .
Closed	2.4	Mr Riviere/ACMA - to consider request to update/publish a document outlining overarching obligations on CSPs to support education/compliance and report back.	Closed at meeting. See <u>note</u> .
Closed	2.5	DC - Provide a paper to RC on Credit Assessment.	Provided with agenda papers.
Open	2.6	DC - to provide further information on the harms to business with the current definition for small business.	Outstanding. Updated to also include examples, per new action item 3.2. See <u>note</u> .
New	2.7	RC - to provide written feedback on why certain carveouts proposed for the small business definition is problematic.	Outstanding. Updated to also include examples, per new action item 3.2. See <u>note</u> .

3. Key Issues for Discussion

Ms. Wilson invited individual members of the DC to present on each of the key issues, noting that, as previously, the individual members presenting were talking on behalf of the DC not on behalf of their individual organisation.

3.1. Accessibility

Mr Sexton spoke to the issues paper that was circulated.

The paper was well received, with the following comments made (all with the usual caveats about needing to see the final drafting):

- Ms Gebert – commended the focus on inclusive design.
- Mr Downing – voiced support for proposals as suggested and the focus on continuous improvement.
- Ms Morice – also voiced support for the principles espoused.
- Ms Silleri – agreed with others in supporting proposals. Noted that an element of accessibility that is often missed (and may or may not be included in the definition of inclusive design being discussed here) is awareness of the accessibility features built into the products/devices. This may not be in scope/possible to address in the Code but was worth noting.

Mr Sexton and DC members acknowledged this point and advised that consideration would be given to whether or how this could be appropriately accommodated.

Ms Wilson noted that this might be something that could be usefully included in a new accessibility guideline – something that the DC has briefly discussed (to be considered after the Code work is complete).

Action 3.4: DC to consider how awareness of product accessibility features could be best addressed (within or outside of the Code).

3.2. Code structure and measures of success

Ms Leahy spoke to the issues paper that was circulated.

Mr Downing –

- supportive of the proposals, particularly on the proposal for public reporting. Ideally, report information would all available all in one place.
- Noted that the Complaints in Context (CiC) is useful but the information doesn't reach consumers.
- Noted difficulty in ensuring data is comparable.
- Re attestation: sees value in strengthening CommCom's role with a view to better assessing whether compliance is measured against the letter of the code, or the intent of the Code (which may be different).
- Frequency of reporting issues are important to consider – reporting has to provide an incentive for good behaviour by providers.

Ms Leahy noted that these issues were important and are being considered. The new proposed structure and proposals are designed to address many of these issues.

Ms Gerbert –

- strong support for explicit outcomes/expectations proposal.
- Strong support for public reporting.

- Questioned whether it was envisaged that reporting obligations only apply to the top 10, like CiC? And where consumers would find that information.

Ms Leahy advised that the participation issue is an active question. The RC is considering how to reasonably balance the impact on different size providers vs wide inclusion.

Mr Sexton noted that it is also important to understand the type of service offered and type of product offered, as apples-for-apples comparisons are not possible without this consideration.

Ms Morice –

- very supportive of framework.
- Re performance metrics, ACCC supports comparison on issues other than price but noted that it is very difficult to find an accurate comparison of service between providers on anything other than price – this is very challenging to do.
- ACCC can provide information from their experience with other sectors
- advised that the ACCC was not sufficiently aware of CommCom's role in attestation prior to this review – and asked if it was possible to get more information.

Ms Wilson

- Thanked and accepted Ms Morice for her offer to provide information from the ACCC's experience on reporting in other sectors.
- Noted that there has been (and will continue to be) discussion of CommCom's role, including in providing some useful data. As an independent body, one thought bubble (not yet workshopped) is that it might be that they can do an 'NPS-style' survey of some sort.
- Clarified that the ACCC had spoken to CommCom directly at the beginning of the process (Ms Morice confirmed that this was indeed the case, with her colleague having had a discussion with them). Ms Wilson suggested that talking to directly to CommCom again with further questions about attestation was likely more useful than talking through an intermediary, but welcomed any follow-up questions or a follow-up discussion with the ACCC.

Mr Riviere –

- Noted that although the ACMA clearly deals with CommCom in relation to attestations, it would seem that there could be an expanded role for them (staffing and resourcing permitting).

Action 3.5: ACCC to share their experience on reporting challenges/approaches in other sectors with the DC.

Action 3.6: ACCC to seek further information about the attestation process directly from CommCom. And to initiate follow-up questions /discussion with CA (Ms Wilson) as required.

3.3. Supporting the customer

Mr Sexton spoke to the issues paper that was circulated before the meeting.

Ms Morice –

- supportive of overarching proposals as tabled
- questioned whether, with the possible inclusion of a new chapter, is it proposed that the Code will be structured around the customer lifecycle?

Ms Wilson advised that yes, the new code structure would essentially be structured around the customer journey, with overarching obligations/information at the start.

Ms Gebert –

- very supportive of the proposal that there be a requirement in relation to escalation to a 'real person', noting that support is (again) conditional on seeing full drafting.
- noted that there needs to be consistency with Complaints Handling Standard (CHS) re complaints.

In response to questions from Ms Wilson and Mr Sexton about whether this constancy might be appropriately achieved through an update to the CHS, which is currently quite dated and very prescriptive, requiring CSPs to have a postal address and phone number, Ms Gebert emphasised that she is focussed on the outcome.

3.4. Network coverage

Ms Brown spoke to the issues paper that was circulated before the meeting.

Ms Brown noted that CSPs aren't responsible for networks and creating coverage maps, but the obligations of the TCP Code are on the CSPs, which complicates obligations in the Code somewhat.

Mr Downing –

- supportive of proposals, particularly in relation to rescinding contracts where the network coverage is not as expected when sold
- re coverage maps, this is positive, but would like to see it better communicated to consumers.

Ms Gebert –

- supports consistency in terminology. Interested to see it in context in the selling chapters, particularly in regional areas.
- noted that the TIO receives complaints when people move house and this negatively affects their coverage.
- noted the difficulty in unpicking bundles.

Ms Brown responded:

- code requirements in relation to bundling issues would likely be high-level - 'you must have a process in place' - to provide appropriate flexibility to the provider assist the customer.
- in relation to the moving house example, the approach has to be more about managing customer expectations. Ms Gebert acknowledged this point.

Ms Morice –

- re rescinding contracts, isn't this happening anyway? (but useful to include to ensure it is consistent across all providers, including resellers.)

- in relation to network coverage issues, this is complicated – the ACCC has been considering this issue and is aware of confusion about the different coverage availability (eg wholesale network vs full access to network; 4G vs 5G).
- Offered to have a further conversation on network coverage – which the DC accepted.

Mr Cosgrave –

- are current obligations in relation to this staying in the Code?

Ms Leahy advised that the intention is to retain them, but with simple, clearer language.

Action 3.7: ACCC to share with/discuss with the DC its experience/findings in relation to network coverage.

3.5. Consumer vulnerability (overarching)

Ms Fury spoke to the issues paper that was circulated before the meeting.

Ms Gebert –

- very supportive of the general concepts and explaining what ‘vulnerability’ means.
- As before, need to see drafting in context to understand whether it will be useful.

Ms Brown raised that there were a number of difficulties in notifying customers in the world of spam and scam: There’s obligations to notify customers of numerous issues, including obligations to include links in those notifications, which is contrary to the messages that customers are getting re scams (which is not to click on links).

The RC acknowledged this issue.

Ms Morice –

- acknowledged that this is very difficult to manage.
- undertook to seek internal (ACCC) advice on this issue and to inform the group accordingly.

Mr Downing –

- Suggested that the SMS registry may assist in the scam issues.
- Voiced general support for the proposals in the paper. Noted that ACCAN see people being sold inappropriate products constantly, e.g. elderly consumers being sold products that are expensive and do not meet their needs.

Mr Grunhard –

- suggested that the SMS sender ID registry should assist.
- noted that there will be work required to educate everyone on the changes and ‘what is safe’.

Mr Osbourne (on the meeting chat) -

- cautioned that expectations should be tempered about the ability of the SMS register to address this issue, noting that the first iteration of the register will give no extra protections than are provided by the ‘spreadsheet’ model currently in existence – it will have little practical effect. The initial activity will be a limited list of alpha tags and the expected origination network. Later stages, due end 2024, will look at a more comprehensive approach.

- o noted that TPG Telecom would like to see early delivery of the end-state solution rather building an interim solution with little practical effect.

Action 3.8: ACCC to share advice with the RC on the ACCC's experience on managing notifications with spam and scam concerns.

3.6. Credit/debt management (including restriction, suspension for disconnections)

Ms Wilkins spoke to the issues paper that was circulated before the meeting.

Mr Downing –

- o Disconnection should be a last resort. ACCAN receives many representations from customers who have been disconnected – many in DFV circumstances – in circumstances in which disconnection was avoidable, particularly relating to direct debit failures.
- o Re prepaid, appreciate that a debt is not occurring, but want to see connection maintained.
- o Noted that consumers have been disconnected because of poor processes, including on prepaid.

Ms Gebert –

- o questioned whether the RC had seen the payments issues paper that was referred to, noting that it was difficult to comment without having seen the detail. (It was confirmed that it was outstanding – issues had been discussed at RC#1 but the paper not yet circulated).
- o Noted disappointment on the DC not being keen to include TIO details on the notifications – i.e. if you need to escalate this issue, here's the TIO's number. (Mr Downing supported this position.)

DC members noted the point, advising that the DC is wrestling with balancing what is included in a notification that must be short and to the point, especially when in short notice form (e.g. SMS) and noting that there were numerous points where the TIO's details were included.

Ms Morice –

- o would like to be able to confer with Ms Lowe on these issues. Would that be possible given she does not return from leave until mid-November?

Ms Wilson advised that feedback would be welcome and encouraged, but noted that it may not be able to be properly reflected in papers for the 'package' to the ACMA for December at that late point. However, assuming the decision was made to progress to a Code, there would be opportunities for further discussions.

All members of the RC were encouraged to provide any further comments on the issues papers presented to date ASAP.

Action 3.9: ACCC to provide feedback ASAP once Ms Lowe returns from leave on disconnections.

4. Other Business - none

5. Next meeting – as scheduled – 28 November, 1030am.

Actions

Status	No	Action Item	Comments
Items			
Open	1.1	Mr. Downing - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	No update from previous (see comments from RC#2)
Open	1.3	DC - To provide written briefing to RC regarding payment methods out of session, to include different options on the way forward.	
Open	2.6	DC - to provide further information on the harms to business with the current definition for small business.	Outstanding. Updated to also include examples, per new action item 3.2. See <u>note</u> .
New	2.7	RC - to provide written feedback on why certain carveouts proposed for the small business definition is problematic.	Outstanding. Updated to also include examples, per new action item 3.2. See <u>note</u> .
New	3.1	Ms Wilson - to update and circulate the final RC#2 Minutes.	
New	3.2	DC - to provide a draft package to the RC by mid-November, for feedback by or at the final RC meeting.	
New	3.3	DC and RC members - to provide examples with information provided for actions 2.6 and 2.7, to assist illustrate the issues.	
New	3.4	DC - to consider how awareness of product accessibility features could be best addressed (within or outside of the Code).	
New	3.5	ACCC - to share their experience on reporting challenges/approaches in other sectors with the DC.	
New	3.6	ACCC - to seek further information about the attestation process directly from CommCom. And to initiate follow-up questions /discussion with CA (Ms Wilson) as required.	
New	3.7	ACCC - to share with/discuss with the DC its experience/findings in relation to network coverage.	
New	3.8	ACCC - to share advice with the RC on the ACCC's experience on managing notifications with spam and scam concerns.	
New	3.9	ACCC - to provide feedback ASAP once Ms Lowe returns from leave on disconnections.	

TCP Code Review Committee Meeting No. 4, Final Minutes

Date: 28 November 2023

Time: 10.30 AM – 11.37 AM

1. Welcome and Attendance

Present Organisation	Name, Position	Official Role
Independent Adviser	Michael Cosgrave	Independent Adviser
ACCAN	Gareth Downing, Deputy CEO	RC Representative
ACCC	Catriona Lowe, Deputy Chair	RC Representative
	Brenda Elfernik, Assistant Director Mobiles Transmission & Consumer	Supporting Officer
ACMA	Craig Riviere, Executive Manager, Telecommunications Safeguards Branch	RC Representative
	Kathleen Stevenson, Assistant Manager, Telecommunications Performance and Regulation.	RC Representative
Aussie Broadband	Eric Erikson, Regulatory Affairs Advisor	RC Representative (Also a DC member)
	Isabelle Mihic, Regulatory affairs analyst	
Department of Communications	Kathleen Silleri, Assistant Secretary, Consumer Safeguard Branch	RC Representative
	Andrew Symonds, Director, Codes and Standards Section	Supporting Officer
	Nicola Tuckerman, Assistant Director, Consumer Safeguards, Communications Services and Consumer Division	Supporting Officer
Optus	Lisa Brown, Senior Manager, Consumer Policy	RC Representative (Also a DC member)
	Melanie Rainey, Senior Manager, Public Policy.	DC Member
Telstra	Shona Fury, Senior Regulatory Adviser	DC member Substituting for Bill Gallagher, Regulatory and Legal Executive (RC Representative)

	Tarnya Wilkins, Senior Regulatory Specialist, Consumer and Regional Policy	DC Member
TIO	Cynthia Gebert, Telecommunications Industry Ombudsman	RC Representative
	Erin Dempsey, Policy and Regulatory Affairs Lead	Supporting Officer
TPG-Telecom	Alexander Osborne, Head of Regulatory	RC Representative
	Annie Leahy, Regulatory Specialist	DC Member
Twilio	Natasha Slater, Senior Manager, APAC Public Policy	RC Representative (Also a DC member)
	Darryn Lim, Senior Director, APAC Public Policy	DC Member
Vocus	John Sexton, Manager Regulatory and Compliance – Telco	RC Representative (Also a DC member)
Comms Alliance	Peppi Wilson, Senior Manager Policy and Regulation	Chair
	John Stanton, CEO	-
	Jasmine Thai, Manager, Program Management	Secretariat support

Apologies

Telstra	Bill Gallagher, Regulatory and Legal Executive	RC Representative
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The Chair opened the meeting and welcomed participants.

2. Minutes and Actions from last meeting

2.1. Minutes

The Minutes from RC3 were accepted by the group.

Action 4.1: Mr. Downing to resend written feedback on action item 2.7 to Ms. Wilson.

2.2. Actions

Action items from previous meetings were discussed and updated or closed as per the table below.

Status	No	Action Item	Comments
Items			
Open	1.1	Mr. Downing - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	No update from previous (see comments from RC#2)
Closed	1.3	DC - To provide written briefing to RC regarding payment methods out of session, to include different options on the way forward.	Complete - provided in the final draft package sent to the RC (Payment methods position paper)
Closed	2.1	Mr. Downing - To send drafting corrections for the minutes of meeting 1.	Complete
Closed	2.2	Ms. Thai - Resend out minutes from meeting 1 with comments and corrections from the RC.	Complete
Closed	2.3	DC - to consider how best to accommodate Ms. Lowe's request for a 5 th RC meeting.	Complete – draft package sent to RC fulfilled this request.
Closed	2.4	Mr Riviere/ACMA - to consider request to update/publish a document outlining overarching obligations on CSPs to support education/compliance and report back.	Closed at meeting. (To be considered next year.)
Closed	2.5	DC - Provide a paper to RC on Credit Assessment.	Complete
Closed	2.6	DC - to provide further information on the harms to business with the current definition for small business.	Complete - provided in the final draft package sent to the RC
Open	2.7	RC - to provide written feedback on which of the proposed carveouts proposed for the small business definition is problematic, and why.	Outstanding. Mr Downing advised he would send/resend an email (no email received on either occasion)
Closed	3.1	Ms Wilson - to update and circulate the final RC#2 Minutes.	Complete
Closed	3.2	DC - to provide a draft package to the RC by mid-November, for feedback by or at the final RC meeting.	Complete. Draft package circulated 17 November for feedback by 30 November (2 days after the final RC for the year).
Closed	3.3	DC and RC members - to provide examples with information provided for actions 2.6 and 2.7, to assist illustrate the issues.	Complete

Closed	3.4	DC - to consider how awareness of product accessibility features could be best addressed (within or outside of the Code).	Complete - provided in the final draft package sent to the RC (Accessibility paper)
Open	3.5	ACCC - to share their experience on reporting challenges/approaches in other sectors with the DC.	Outstanding
Unclear	3.6	ACCC - to seek further information about the attestation process directly from CommCom. And to initiate follow-up questions /discussion with CA (Ms Wilson) as required.	CA followed up to ensure ACCC had still had contact details. Unclear if ACCC followed up with CommCom.
Open	3.7	ACCC - to share with/discuss with the DC its experience/findings in relation to network coverage.	Outstanding
Open	3.8	ACCC - to share advice with the RC on the ACCC's experience on managing notifications with spam and scam concerns.	Outstanding
Open	3.9	ACCC - to provide feedback ASAP once Ms Lowe returns from leave on disconnections.	Ms. Lowe stated that she will be providing feedback in the comments on the final draft package. (Outstanding)

3. Draft Package

3.1. Introductory Remarks/Comments on the package (Chair)

Ms. Wilson provided a comprehensive presentation on the process leading up to the final draft package, and outlined the final steps before submission of the final package to ACMA on the 15th of December.

A summary of the presentation is set out below:

- **Work completed pre-July 2023 –**
 - CA redesigned the TCP Code review and revision process, established an industry working group, released a public discussion paper, reviewed the entire Code structure, and appointed Michale Cosgrave as an independent Adviser.
- **Stage 1: Information gathering –**
 - A public discussion paper was released, and CA received 9 submissions.
 - One-on-one discussions were conducted with individual stakeholders.
 - Relevant materials were reviewed and summarised into a key issues table.
- **July 2023 Scope and timelines for task changed:**
 - Minister Rowland made a direction to ACMA to make a Financial Hardship Standard. ACMA provided 6 areas of concern to be addressed in the Code review.
 - ACMA asked for "definitive and agreed views from CA and its members on changes it will make to the TCP Code," and "draft revised proposed

code provisions to give confidence to the regulator of the effectiveness of CA's proposed approach."

- **Stage 2: Iterative Drafting –**
 - Modified approach to meet ACMA's new timeframe - shortened engagement.
 - DC analysed input from stage 1 and engaged with multiple stakeholders, which was captured and addressed in a series of issues papers. 14 papers were developed and provided to the RC and to the broader membership of CA.
 - These issues papers were then developed into position papers that incorporate the feedback from RC and other stakeholders and set out DC's proposed approach with sample code clauses.
- **Definitive and agreed views: refreshed Code –**
 - A new consumer outcomes-focused structure, which includes outcomes and expectations outlined in each chapter and measurements of success.
 - Primary reason for the total restructure of the Code is to aid compliance and provide clear consumer protections.
 - Ms. Wilson explained that there will be minimal drafting included in the outline Code even for retained clauses because it is not possible to include meaningful drafting of a restructured code within the restricted timeframe, and it this was not what was requested. However, place holders would be included to help the ACMA understand the proposals in context.
 - The December 2023 pack will include a cover letter, draft refreshed TCP Code, a paper on scope and application and 12 agreed industry position papers. Records and privacy had been discussed and a paper provided to the RC for consideration, but it would not be included in the package as priority needed to be given to the 'ACMA key issues'.
- **Finalise Stage 2, on to Stage 3 –**
 - If ACMA accepts the package provided DC will continue with stage 2 iterative drafting. This would include addressing any feedback from ACMA, as well as consultation with other stakeholders as proposed in the initial new process package.
 - A formal Code consultation will then be conducted.
 - The Code would be provided to ACMA for registration by June 2024.

3.2. Overall comments on draft 'package' (RC)

The RC stressed that CA should be very clear that the agreed position papers reflected the DC's position, not an agreed RC position. This was acknowledged – Ms Wilson confirmed that the first part of the papers reflected the views of the RC and other stakeholders, as expressed in the various consultation stages to date; the second part of each paper presented the DC's proposals for addressing the issues raised, in what it considered to be a considered and balanced manner considering the feedback from all stakeholders.

- Mr. Downing noted that the agreed position papers do not reflect the views of the broader sector as there has not been an opportunity to consult with them so far. Ms. Wilson confirmed that there had been limited opportunity to consult with the broader sector in the timeframe set, and that consultation would continue in the next stages of drafting (informally and formally). However, she noted that there had been updates provided to other CA members during the process to date and the draft package had been sent out to CA members not in the DC.
- Mr. Downing noted that the issues papers included generic attributions to 'consumer groups', which might imply that the cited position was ACCAN's, as it is the only consumer group in the process involved in the process. Mr. Downing asked for papers to clear cite the consumer organisation that had made the comment rather than 'consumer group' each time, but confirmed that he would be comfortable with comments being attributed to ACCAN if it had cited the other organisation's response in its submission.
- It was agreed that CA would update papers as requested. Ms. Wilson noted that many of the comments were from groups that ACCAN had cited in its submission, but other consumer groups views were noted in the information-gathering stage, from direct interaction during the DFV Guideline development, or through review of public statements, speeches or reports.

Action 4.2: DC to amend in the position papers to remove attributions to 'consumer group' and replace with 'ACCAN' or the name of the contributing party, as relevant.

The ACCC and ACCAN raised concerns that:

- positions presented in the presented Position Papers might change in light of feedback, and questioned whether the RC would get visibility of changes.
- there was risk that a clear statement of intent might not translate to clear clause drafting.
- Ms. Lowe specifically raised the concern of the extensive use of the word 'may,' which allows discretion on how the Code is drafted and implemented into practice.

Ms. Wilson and Ms. Wilkins responded:

- papers may change in light of feedback as clearly any consultation process must consider – and where appropriate make changes to address – feedback received. However:
 - in line with the commitment to transparency of process, a spreadsheet would be kept (and made available) to record all comments received on the Position Papers and to clearly record how and why the DC addressed each in the revised Agreed Position Papers.
 - the **industry position** is unlikely to change substantially as the Position Papers transition into Agreed Position Papers because the DC included representation from a range of industry members, encompassing different size organisations and organisations with different business models.
 - the DC attempted to clearly articulate the intent because actual drafting may change somewhat to reflect feedback from all parties that clarity /detail /corrections/ guidance/ examples, etc., etc., were required; code structure changes and cross-references, etc, etc. Capturing the intent

should provide comfort and allow time for the wording to be appropriately worked through to ensure it is clear, correct and unambiguous (all necessary for a successful Code and for compliance). If there is concern that drafting does not reflect what DC is committed to there will be additional opportunities to address issues through the iterative drafting process.

- Ms. Wilson stated that it was not the DC's intention to have 'mays' in the drafting; DC had changed most 'mays' to 'wills' and must have missed some. She confirmed that the RC would review the draft provisions to address this point and ensure that the language is clear and unambiguous.
- Mr. Cosgrave noted that:
 - the timeframe was not set by CA
 - all stakeholders were under the same time pressures to provide comments and feedback by the 30th of November.

<p>Action 4.3: DC to review use of the word 'may' in the draft clauses to ensure unambiguous language.</p>

The RC commented on wanting more detail in provisions and had a discussion below:

- A number of RC members stated that there was not enough detail in the sample drafting, and they would like to see more.
- Mr. Downing made the following comments:
 - while the process has been overall more positive, there have been a significant amount of dialogue on direct debit and the scope of small business protections but very little comparative discussions on sales practices, which is one of their key concerns. He noted that sales practice issues were not simply an information asymmetry problem – the issue of predatory sales and sales incentive policies should be addressed.
 - the Credit Assessment proposals are positive, but again more detail is required around the scope to ensure intent is reflected in drafting.
- Ms. Lowe commented:
 - recognises that a lot of work had gone into the preparation of the package and that it contains some meaningful improvements such as requiring an order summary and a requirement for CSPs to monitor complaints around selling practices. She highlighted concern that although necessary, these proposals are insufficient to prevent and stop inappropriate selling practices, noting that the ACCC has conducted a huge amount of enforcement actions in this area, with large penalties, which has not deterred inappropriate selling practices.
- Ms. Wilson invited the ACCC to provide constructive feedback on what additional changes could be made to address the Ms. Lowe's concerns. This was the purpose of the consultation and iterative drafting feedback.
- Ms. Lowe noted that the main concern related to incentivised sales.

- The DC noted that there were proposals in the papers in relation to incentivised sales but undertook to consider how to strengthen those proposals further.

Action 4.4: DC to consider how to strengthen proposals in the draft paper around incentivised sales practices.

Action 4.5: RC members to provide specific proposals about how to address issues raised (in their written feedback)

Some discussion followed on the Code Structure and Measurement of Success Position Paper.

- Ms. Lowe:
 - recognises that there are some elements that she sees as significant steps forward, but concerned that enforcement would still be problematic and therefore questioned the value of any code improvements.
 - reporting is important but is not sufficient to ensure compliance. She encouraged the DC to look at other sectors' Code compliance processes such as in banking, finance, superannuation, or insurance, which impose consequences when the Code is breached beyond reporting mechanism. There are a whole range of additional consequences imposed by the regulator such as putting in plans to avoid future breaches and potentially provide compensation.
- Ms. Wilson:
 - as explained in the measurement of success paper there are three different types of reporting mechanisms that have been suggested: public reporting, risk management processes, and attestation. Together with the restructured and simplified Code, these should make it clear when a CSP is not compliant with the Code's requirements and aid enforcement (including by the regulator)
 - noted the challenge of identifying metrics that are comparable and measurable (as acknowledged by the ACCC at the previous meeting).
- Mr. Downing:
 - it would be beneficial to have as much of the reporting public as possible to ensure consumers can be informed. The current reporting framework is ineffective as very few consumers are reading reports or press releases (e.g. on complaints) and ultimately it does not weigh into their decision making. It is weakening the competition in the market as there is no good information, it is not comparable, and it also subjective.
- Ms. Wilson:
 - noted again the challenge in identifying metrics that are comparable and meaningful, but that the DC had been exploring what basic metrics could be reported to provide useful information for consumers.
 - noted that risk management processes and attestation information would likely not translate well to useful information for the consumer – its focus is to allow the ACMA to understand compliance and for CA and industry to also understand and be able to address issues.

Closing comments

- Ms. Wilson confirmed that the DC was requesting **written** feedback on all the papers by 30 November. She noted that points verbally discussed at earlier RC meetings in relation to the initial issues papers had been reflected in updated stakeholder comment sections in the Position Papers, but until the DC received more detailed feedback on the issues, it was difficult to work through and address 'it doesn't' go far enough' type of comments. Further, draft clauses had been added to many papers since the initial discussions.
- Mr. Cosgrave:
 - reminded the meeting that the DC had provided a draft outline TCP Code in the recent pack, and that this included draft high-level outcomes and expectations. He urged the RC to ensure that they reviewed and commented on this draft.
 - suggested that the RC should reflect upon DC's decision to restructure the Code to address both on ease-of-use concerns and to aid compliance. He suggested that if the Code gets governance, clear high-level expectations, and training right, with strong and enforceable minimum rules, then there is a reasonable framework for an effective Code mechanism. He again urged the RC to consider this as they reviewed the package.

4. Other Business – None.

5. Next meeting – TBA pending ACMA Authority decision.

Actions

Status	No	Action Item	Comments
Items			
Open	1.1	Mr. Downing - To reach out to First Nation's consumer representatives concerning their potential participation in the TCP Code process.	No update from previous (see comments from RC#2)
Open	2.7	RC - to provide written feedback on why certain carveouts proposed for the small business definition is problematic.	Outstanding. (see also 4.2)
Open	3.5	ACCC - to share their experience on reporting challenges/approaches in other sectors with the DC.	Outstanding
Open?	3.6	ACCC - to seek further information about the attestation process directly from CommCom. And to initiate follow-up questions /discussion with CA (Ms Wilson) as required.	CA part complete. Unclear if ACCC has been in contact (again) with CommCom
Open	3.7	ACCC - to share with/discuss with the DC its experience/findings in relation to network coverage.	Outstanding
Open	3.8	ACCC - to share advice with the RC on the ACCC's experience on managing notifications with spam and scam concerns.	Outstanding

Open	3.9	ACCC - to provide feedback ASAP once Ms Lowe returns from leave on disconnections.	Ms. Lowe stated that she will be providing feedback in the comments on the final draft package.
Repeat	4.1	Mr. Downing - to resend written feedback on action item 2.7 to Ms. Wilson.	
New	4.2	DC - to amend in the position paper where 'consumer group' is mentioned to clearly identified if this is a ACCAN comment.	
New	4.3	DC to review use of the word 'may' in the draft clauses to ensure unambiguous language.	
New	4.4	DC to consider how to strengthen proposals in the draft paper around incentivised sales practices	
New	4.5	RC members to provide specific proposals about how to address issues raised (in their written feedback)	