



Review of the Telecommunications Consumer Protections Code

ACCC response to 17 November 2023
Drafting Committee package

January 2024

Overview

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair, and informed Australian markets, including telecommunications markets.

Telecommunication services are essential services

Telecommunications are an essential service. Telecommunications support a vast range of access to Government services, work, business, education, health, and entertainment needs. Telecommunications are essential to the lives of consumers. The Minister for Communications has directed the Australian Communications and Media Authority (ACMA) to make an enforceable industry standard to ensure appropriate support is provided to telecommunications customers experiencing financial hardship.¹ It is critical that the Telecommunications Consumer Protections Code (TCP Code) recognises the essential nature of telecommunications by particularising this within the Code itself.

Response to the TCP Code draft package of issues and position papers

On 17 November 2023, Communications Alliance provided the ACCC with a package of 13 issues and position papers, and an incomplete draft outline of the TCP Code prepared by the TCP Code Drafting Committee. Feedback was sought on this package of papers, which we understand will influence the ultimate content of the draft TCP Code.

The ACCC provided verbal feedback at the TCP Code Review Committee meeting on 28 November 2023. Our Deputy Chair provided initial written feedback via letter on 30 November 2023. The complexity of the package and the short timeframe precluded the provision of a more detailed assessment at that time.

Pursuant to the process outlined in 2023, the ACMA is due to determine whether or not the progress demonstrated by Communications Alliance to date is sufficient such that drafting of a revised TCP Code can continue, or whether it is preferable that the ACMA make a standard or standards.

While the ACCC recognises that progress has been made by the Drafting Committee on important issues, key issues remain where the proposed response is in our view insufficient to address significant and longstanding consumer protection issues. These issues are addressed in more detail below, but are, in summary:

- Selling practices
- Payment options
- Sanctions and remediation of non-compliance
- Issues raised by stakeholders but not addressed through the Code review process.

¹ <https://minister.infrastructure.gov.au/rowland/media-release/albanese-government-improve-safeguards-telco-consumers-experiencing-financial-hardship>.

Notwithstanding, the ACCC's position remains that key requirements must be elevated out of a voluntary code and into direct regulation by the ACMA to enable better enforcement. Further, we would only support the residual requirements being in the industry code if they are well drafted and improve outcomes for customers. In the absence of a well drafted code for these residual matters, we would support direct regulation for all industry-specific matters.

ACCC feedback on proposed TCP Code outline

In this section, we set out the ACCC's views on the proposed revised TCP Code outline. We note that the outline document does not contain significant portions of the proposed revised TCP Code drafting, and that the proposed drafting that has been included is subject to change. The ACCC is providing high level commentary based on the detail provided.

As noted in the TCP Code Review Committee meetings, we consider that in order to be able to provide detailed comments and indeed a concluded view on the protections the Code can deliver, it is necessary to see the draft in full and in context, in particular to assess:

- The interaction between different code provisions; and
- Whether the detailed (final) drafting delivers the intent of the outcomes and expectations expressed in the Code.

Introduction

Scope

The draft outline introduces a new section on the scope of the TCP Code. This section recognises the power imbalance between Carriage Service Providers (CSPs) and consumers, and highlights that the obligations contained within the TCP Code should assist to address this imbalance in CSP dealings with consumers. This is a welcome and positive inclusion.

However, the ACCC considers this section would be improved by the addition of a statement regarding the essential nature of telecommunications services.

Information for consumers

The new outline makes it clear that the audience for the TCP Code is CSPs rather than consumers, and provides a link to a consumer-focussed reference document, namely Communications Alliance's *Telecommunication Consumer Protections code – information for consumers*. We highlight that this linked document will require updates to align with the revised TCP Code content.

Code structure and summary of chapters

This section discusses the structure of TCP Code Chapters 3-10. It sets out that each of these chapters is designed to be prefaced with:

- Outcomes - the required outcomes for consumers,
- Expectations - the high-level expectations about what RSPs need to do to ensure that these consumer outcomes are realised,
- Rules - the minimum requirements/minimum compliance obligations on RSPs to meet the expectations, and

- Measurement of Success (MoS) - details about what needs to be recorded and reported on to measure that high-level outcomes are being met (effectiveness metrics) and that rules are complied with (process metrics).

We support the inclusion of each of these points. However, we highlight an issue with the proposed measurements of success. We note that measurements of success included throughout the draft structure document are often intangible. We consider that measurements of success should be focused on tangible outcomes, because they otherwise lack enforceability. We consider that further clarity could be achieved by the provision of more concrete examples for each chapter's expectations and rules.

Chapter 1 - Terminology, definitions, and acronyms

Subject to the issues raised in the Overview above, the ACCC will provide detailed comments on the chapter when the proposed definitions have been drafted.

Chapter 2 - General

Subject to the issues raised in the Overview above, the ACCC will provide detailed comments on the chapter when the proposed rules have been drafted.

Chapter 3 - Organisational culture, policies, training, and governance

The current version of Chapter 3 contains only the proposed outcomes and expectations for this chapters. The ACCC will provide detailed comments on the chapter when the proposed rules have been drafted.

As a general comment, we consider that significant work is needed by CSPs to embed and demonstrate a culture of compliance, noting the significant and repeated enforcement action the ACCC has been required to take against telcos in relation to key legal obligations, as set out in Appendix A to our submission to the initial 2023 TCP Code consultation.² All staff should be trained to enable CSPs to meet their compliance obligations, but we expect CSP CEOs to be responsible for ensuring compliance with the TCP Code, and to foster a company culture that strives to provide consumers with the protections to which they are entitled.

We make a number of comments later in this submission about the criticality of improving the monitoring and enforceability of the TCP Code. We consider these improvements will be essential to achieving significant cultural change within CSPs.

² See <https://www.accc.gov.au/system/files/ACCC%20submission%20to%202024%20Telecommunications%20Consumer%20Protections%20Code%20Review.pdf>.

Chapter 4 - Supporting the consumer

As with Chapter 3, this draft chapter contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed rules have been drafted.

As a general comment, we expect that All CSP staff interacting with consumers will be trained to provide information that is clear, accurate, and accessible to consumers, and that all CSPs will assist consumers, upon request, to access translated documentation or translation services.

This section is an example of where interactions between chapters and provisions are important, as the effectiveness of information provision and support for customers interacts strongly with selling practices.

Chapter 5 - Responsible selling: Advertising and pre-sale information

Chapter 5 is more developed in its drafting than the previous chapters. From a principles-based perspective, we consider that commission-based selling should be prohibited, due to its well-understood adverse outcomes for consumers.³ If commission-based selling is not prohibited, we consider the outcomes and expectations set out in Chapter 5 would benefit from additional outcomes related to responsible selling and incentives. These should reward the sale of a service or product that is *suited to the consumer's needs*, rather than rewarding sales volumes. They should incentivise staff to provide consumers with information about low-cost options, if this is suited to the consumer's needs.

We further consider that the expectations for this chapter should capture a requirement to provide essential information⁴ in accessible formats⁵ for every product and service sold.

Chapter 6 – Responsible selling: Sales, contract, and credit assessments

As with earlier chapters, Chapter 6 contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed rules have been drafted.

As a general comment, the ACCC considers that the TCP Code should include a positive duty upon CSPs to deliver fair and reasonable outcomes for consumers, which are suited to each consumer's individual circumstances.

³ As set out in the ACCC submission to the Review of the Telecommunications Consumer Protections Code, June 2023, pp. 7-8.

⁴ *Essential information* being a new defined term for a standard set of information about each product advertised or sold.

⁵ Accessible formats for all consumers, including consumers with a disability and/or people who speak, read and write in languages other than English.

Chapter 7 – Customer service and support

As with earlier chapters, Chapter 7 contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed definitions have been drafted.

Chapter 8 – Charging, bills, and payments

As with earlier chapters, Chapter 8 contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed rules have been drafted.

As a general comment, we consider it vital that the right for a consumer to access at least one fee-free flexible payment method in addition to direct debit be encompassed in the chapter outcomes and expectations. We note this was clear feedback from the Review Group.

We also consider it essential that the outcomes and expectations address a requirement to advise consumers on their bills of the end date of their contract or other benefits, and to notify consumers of the lowest cost plan available to them when their contract is due for renewal.

Chapter 9 – Credit management, debt management and disconnection

As with earlier chapters, Chapter 9 contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed rules have been drafted. We note the importance of clear links and coherence between the provision of this Chapter and the financial hardship standard.

Chapter 10 – Performance management framework and compliance

As with earlier chapters, Chapter 10 contains only proposed outcomes and expectations. The ACCC will provide detailed comments on the chapter when the proposed definitions have been drafted.

As a general comment, we consider that the chapter expectations should encompass a requirement that CPSs have clearly defined performance measurements which capture compliance with the proposed TCP Code expectations (effectiveness measures) and rules (process measures).

ACCC views on approaches proposed in position papers

In this section, we consider in turn the positions proposed by the TCP Code Drafting Committee in each of 12 position papers provided to the ACCC on 17 November. Throughout the remainder of this paper, the text appearing in italics and in breakout boxes is text drawn from the Drafting Committee position papers.

Responsible selling

The best practice approach for CSPs is to ensure that consumers do not enter into a sale or contract that is not suitable for them.

The Responsible selling position paper incorrectly summarises the ACCCs views on responsible selling practices, by attributing to the ACCC the view that ‘...*vulnerable consumers...are less capable of making sound decisions.*’ To be clear, the ACCC considers that responsible selling requires that all consumers be provided with transparent, clear, accessible information, provided with suitable options, and sold products and services that best meets their needs.

Misleading advertising and commission-based remuneration schemes drive aggressive sales behaviour and encourages agents to adopt tactics that are not compliant with the Code.⁶

Industry must take responsibility for irresponsible selling. The Code must ensure commission-based selling is removed, that the information provided to consumers is true, easy to understand and reliable, and consumers are sold products that best meet their needs.

Communications Alliance problem statement

The Responsible selling position paper sets out the following ‘consumer problem’ in relation to the current TCP Code:

Consumer safeguards at point of sale can be enhanced to protect consumers and prevent inappropriate sales of telecommunications products. Information provided to consumers at point of sale does not always include all the key information relating to the product being sold, including the terms and conditions or lower-cost options. Further, unsolicited over-the-phone sales can contribute to financial hardship, particularly for vulnerable consumers.

The framing of the definition of the ‘consumer problem’ has positive elements but is ultimately insufficient as it continues to frame the issue of mis-selling as one that can be addressed by information and disclosure. It fails to acknowledge key contributors to mis-selling, namely misleading conduct, aggressive selling practices, sales incentives and commission-based remuneration schemes. We consider the problem extends to the tension

⁶ Frost & Sullivan, *Research into the Door-to-Door Sales Industry in Australia, Report for the Australian Competition and Consumer Commission*, <https://www.accc.gov.au/system/files/Research%20into%20the%20door%20to%20door%20sales%20in%20in%20Australia%20August%202012.pdf>, August 2012.

between achieving sales targets or commissions and servicing consumers' interests, which can lead to adverse outcomes for consumers.

Communications Alliance proposed 2024 TCP Code approach

The Responsible selling position paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – Provision of information at point of sale

The responsible approach to selling requirements will be updated to require a standardised set of 'essential information' to be shared with the customer at the point of sale, removing ambiguity about what should be considered the "key terms, conditions, and costs" to be explained to consumers. It will also match the details contained within the CIS.

This change aims to address concerns related to consumers not receiving adequate information at point of sale, or not having key information explained to them prior to purchase.

The ACCC welcomes the concept of essential information being defined and included in the TCP Code, shared at the point of sale, and included in the critical information summary (CIS). However, the Drafting Committee has failed to address the ACCC's submission that CIS should contain links to information about the ACCC and consumer rights under the ACL.

Communications Alliance proposal – Remedies for mis-selling

The responsible approach to selling requirements will be updated to include more detailed examples of actions a CSP may take to address mis-selling. Recommended remedies may include:

- *returning the customer to the position they were in prior to the mis-selling of the telecommunications product*
 - *terminating a customer's contract without charge*
 - *providing a credit amount to the customer*
 - *waiving a debt on the customer's account*
 - *enacting a change of contract without penalty to the customer*
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The ACCC welcomes the introduction of remedies for mis-selling and agrees that CSPs must take steps to correct instances of mis-selling.

However, we consider it is important to make clear that it is compulsory for a CSP to take action and thus that the proposal should state that a supplier *must* take action and *may* utilise one or more of the proposed remedies.

Communications Alliance proposal – Monitoring complaints about sales conduct

The responsible approach to selling requirements relating to complaints monitoring will be refreshed to strengthen requirements to proactively identify and act when mis-selling occurs.

The ACCC welcomes a complaint monitoring mechanism. We emphasise the importance of focusing on prevention to avoid the need for remediation.

However, when mis-selling has occurred it is important for CSPs to remediate customers as a priority. As previously mentioned, the tension between achieving sales targets or commissions and servicing the consumers' interests can lead to adverse outcomes, and must be addressed by the Code.

Communications Alliance proposal - Selling policies for sales staff

Requirements on CSPs will be introduced for commission or incentive structures to promote responsible selling, including a recommendation to claw back staff commissions from inappropriate sales. For example, responsible selling incentives may be based on customer satisfaction surveys rather than number of sales/items sold.

The ACCC considers that incentive structures should reward the sale of products that are suitable for the consumer. We consequently consider mechanisms such as clawback are inadequate on their own. Incentive structures should be designed to incentivise responsible selling, rather than to respond only to those instances of mis-selling that are identified.

We consider the TCP Code must require suppliers to take account of customer circumstances and provide information about lower cost options, and for remuneration structures to encourage this.

Communications Alliance proposal – Sales to vulnerable customers

We will introduce a new clause clarifying that customers can cancel services sold to them, where there is reasonable proof of vulnerability that impacted their decision-making at the time of sale.

While we support greater focus on vulnerable customers, we are concerned that the new proposal requiring proof of vulnerability does not reflect best practice and is not practical.

In addition to the fact that it can be traumatic for the consumer being required to provide 'proof' of their vulnerability, in many instances it will also be practically impossible. It is common that instances of mis-selling are identified after the fact. Where the nature of a vulnerability is episodic or medical it will not necessarily be possible to acquire retrospective proof.

Further, limiting the ability to cancel a contract only in circumstances where vulnerability was occurring *at the time of the sale* may lead to adverse outcomes for consumers who have begun experiencing vulnerable circumstances since the time of the sale.

Vulnerable customers

The Vulnerable customers position paper sets out that the TCP Code does not provide sufficient protections for consumers in vulnerable circumstances. The only obligation in the current TCP Code is to 'have regard to' the ACCC's *Consumer Vulnerability – A Business Guide to the ACL* (cl 3.4.1). There are no specific rules obliging CSPs to:

- treat all consumers fairly and reasonably, so they are less likely to experience vulnerability and harm when accessing and maintaining communications services,
- have policies and processes in place to assist consumers in vulnerable circumstances to gain and maintain access to telecommunications services that meet their needs and circumstances
- identify and respond to consumers in vulnerable circumstances.
- consider support for consumers experiencing vulnerability in business planning processes.

We note this issue definition is drawn from the ACMA's statement of expectations in relation to consumers experiencing vulnerability,⁷ and we agree with the ACMA's characterisation.

The ACCC welcomes the increased focus on consumers experiencing vulnerability, and the acknowledgement that they are likely to be affected by the power imbalance between CSPs and consumers. There are, however, several critical points we wish to raise in response to the position paper:

- 1) We are concerned about the characterisation of a CSP's requirement to balance a consumer's 'needs vs wants'.⁸ CSPs should focus on ensuring that consumers have the best possible information, which outlines the options available to them, including the lowest cost options as appropriate to their circumstances.
- 2) The existing TCP Code definition of financial hardship is broader than the suggested guidance definition for a 'consumer in vulnerable circumstance' contained within the Vulnerable Customers petition paper. However, neither the existing nor suggested definitions include low-income consumers.
- 3) As low income is not included in the existing definition of financial hardship nor in the suggested amended definition of vulnerable circumstances, the benefits currently afforded to consumers in financial hardship will not be afforded to those on low incomes.
- 4) It is critical that the definition of consumers experiencing vulnerability be codified and not just included as guidance.

Communications Alliance proposed 2024 TCP Code approach

The Vulnerable customers position paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – enhanced prominence and focus on meeting the needs of consumers in vulnerable circumstances, including through a new 'supporting the consumer' (or similar title) chapter.

The needs of those in vulnerable circumstances will be highlighted throughout the Code, as it is relevant to most chapters (e.g. advertising, sales, customers service and support, payments, debt management and disconnection), but would also be a key focus of an early chapter, 'supporting the consumer' (or similar title).

This would include enhanced specific information and overarching requirements relating to vulnerable consumers, covering:

- ***Languages/translation requirements (ref: Languages Issues paper)***
 - ***DFV (ref: DFV Issues Paper)***
 - ***A consumer's right and ability to use an Authorised Representative (a current requirement under 3.5 but with clarifications and updates to update it in line with the Customer ID Determination and for clarity)***
 - ***A consumer's right and ability to use an Advocate (current 3.6, with updates/clarity changes)***
 - ***Accessibility requirements (see new separate issues paper).***
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⁷ ACMA, Consumer vulnerability: expectations for the telecommunications industry, May 2022, https://www.acma.gov.au/sites/default/files/2022-05/Consumer%20vulnerability_statement%20of%20expectations%20for%20telcos_0.pdf.

⁸ Communications Alliance Drafting Committee, Vulnerable Customers – Position Paper, page 2.

CSPs' understanding of issues and requirements will be enhanced both through the inclusion of clearly articulated (in plain-English):

- ***expected outcomes (for consumers) and expectations (on CSPs), (accompanied by rules that spell out the minimum requirements that must be met by CSPs to meet these expectations), and***
 - ***clear guidance boxes in this and other chapters that explain key concepts.***
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The ACCC welcomes the recognition that the needs of consumers experiencing vulnerability should be highlighted throughout the TCP Code. However, we emphasise the importance of codifying these new protections to ensure enforceability.

Communications Alliance proposal – new/enhanced obligations in relation to CSPs' organisational culture and policies.

CSPs will be required have policies and support material to support an organisation culture that considers fair and reasonable consumer outcomes, including for those that may be in vulnerable circumstances. This will include, for example, being able to demonstrate that their organisational culture and practices appropriately supports compliance with this Code.

This might be demonstrated through:

- ***a clear articulation of expectations and values,***
- ***evidence that policies and processes that consider fair consumer outcomes, including for those who may be experiencing vulnerability, are championed by staff from the CEO level down,***
- ***policies and support material that outlines that the needs of particular vulnerable groups have been appropriately accommodated in the CSP's policies, processes and customer support arrangements.***

This might be demonstrated through, for example:

- ***policies for managing particular vulnerabilities being developed:***
 - ***by engaging an external consultant to advise on best practice, or***
 - ***after engaging in direct consultation with individuals or groups with relevant expertise,***
 - ***specialist staff having the authority to resolve matters fairly, effectively, and efficiently,***
 - ***systems and processes being in place to assist different vulnerable groups – for example,***
 - ***specific contact channels for those experiencing domestic and family violence, financial hardship***
 - ***information and tools to help create awareness of help available, and to support self-identification of vulnerability, and assistance to self-manage (e.g. through apps/website to manage payments, change plan, etc.,) or seek customer support assistance.***
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The ACCC considers that CSPs must, rather than 'might' demonstrate that their organisational culture supports consumers experiencing vulnerability.

We further consider it critical that these TCP Code provisions be drafted in such a way that the provisions are specific, measurable, and enforceable.

Communications Alliance proposal - new/enhanced obligations in relation to CSPs' training arrangements.

In addition to specific rules governing requirements on DFV, fair selling practices, language requirements, etc (as outlined in separate papers), the Code would require appropriate training for relevant staff on issues such as:

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- *understanding and identifying indicators or vulnerability/potential barriers,*
 - *awareness of First Nations Australians' cultural and language differences,*
 - *awareness of other cultural backgrounds*
 - *awareness of the challenges and needs of those living with a disability,*
 - *working with Advocates, including translators and interpreters, and*
 - *working with Authorised Representatives*

This would be demonstrated through a requirement to have training for:

- *staff with any role in product or service design or related processes, have a broad understanding of this Code and awareness of different customer needs, and*
 - *specialist staff have appropriately detailed and tailored training for their role, including in relation to recognising and responding to different customer needs.*
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The ACCC considers commencement and annual refresher training for all staff, as well as for specialist staff working with consumers experiencing vulnerability, to be a positive step.

However, the TCP Code should also require that training occur after any revisions to the Code and/or the introduction of or change to other regulatory protections for consumers.

Communications Alliance proposal - new/enhanced obligations in relation to CSPs' governance arrangements.

A requirement to demonstrate executive or senior management oversight of the development, implementation and appropriate review of policies, procedures and code compliance arrangements.

The ACCC agrees that CSPs must have appropriate executive oversight, preferably at CEO level, regarding policies and supporting materials which support consumers experiencing vulnerability. The ACCC also considers that regular reporting to the CSP's board is desirable.

Payment methods

The Payment methods position paper set outs the following issue with the payment methods provisions under the current TCP Code:

Consumers would like flexibility and control over when and how they pay for their telecommunication services.

Some consumers are unclear about how direct payments work, particularly where the direct debit is linked to 'payments over time' for telecommunication products purchased as part of a bundled arrangement.

Some consumers would like to be able to pay for their telecommunications services by means other than direct debit.

As set out in our submission to the TCP Code review consultation process in June 2023, the ACCC considers there are significant limitations in the current Code in relation to fee-free payments. Consumers subject to direct debit arrangements with limited cashflow lose the capacity to juggle bills which may have implications for their ability to meet their obligations on time. Direct debit meets the needs of the CSP, but not necessarily the needs of the consumer, and limits the consumer's capacity to effectively manage and prioritise their expenditure.

Communications Alliance proposed 2024 TCP Code approach

The Payment methods position paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – new requirements designed to require that payment method options are clearly disclosed

New requirements would be introduced to make it easy for consumers to quickly identify whether a telecommunications service includes a payment option to suit their preference. Note: there will also be provisions in the Code to ensure consumers are informed, before sale, of the terms and conditions of the offering, including payment terms and conditions and relevant information about associated bundled products.

The ACCC agrees that terms of payment, including the method of payment should be disclosed to the consumer prior to a sale (and in the CIS).

Communications Alliance proposal – new requirements to require flexibility around payment methods

New requirements would be introduced to guarantee a minimum level of flexibility, at no cost, for residential customers around payments.

The ACCC emphasises that a minimum level of flexibility should encompass at least one fee-free payment option in addition to direct debit.

Communications Alliance proposal – update and simplify requirements relating to (all) direct debit payments

The protections currently in cl. 5.7.1 would be updated and the language simplified.

The ACCC considers that simplifying requirements relating to direct debit payments is helpful. We note, however, that this is not an end in itself, and should not replace the requirement for an additional fee-free payment option.

Communications Alliance proposal – new/extended requirements around notifications to remind consumers of impending direct debits

A new clause would be added to the requirements currently at cl. 5.7.1 to require that CSPs remind customers of upcoming direct debit withdrawals 3-4 days prior to the funds being debited.

This would allow the customer the opportunity to ensure they have sufficient cleared funds for the payment, or to make other arrangements if required (i.e. deferring payment; contacting their CSP to request financial hardship assistance, etc).

It would be in addition to the current requirements at 5.7.1. Note: It is proposed that the clause would be drafted to allow CSPs flexibility around the mechanism method, and that customers would be permitted to opt out of notifications.

The ACCC supports the concept of reminder notices relating to direct debit payments. However, we reiterate the need for at least one other fee-free payment method, which should allow flexibility for a consumer to pay their bill at a time of the consumer's choosing and by the due date.

Communications Alliance proposal – new requirement relating to failed Direct Debits

A new requirement would be included in the Code around failed Direct Debits.

The ACCC considers that CSPs must notify a consumer if a direct debit fails, and provide reasonable opportunity to change debit arrangements or make payment by another fee-free method.

We consider a failed direct-debit payment may indicate an early indication of financial hardship, and that consequently a requirement to provide information about financial hardship assistance should be triggered by a failed direct-debit payment.

Communications Alliance proposal – remedies for direct debit errors

Remedies in relation to payments would remain (5.7.1(g)), but with clearer guidance about 'appropriate action'.

The ACCC welcomes the requirement for clearer guidance in relation to appropriate action to be taken in cases where direct debit errors have occurred.

Domestic and family violence

The Domestic and family violence position paper set outs the following issue with the protections for consumers experiencing domestic and family violence under the current TCP Code:

Protections for consumers experiencing domestic and family violence (DFV) are not mandatory

As outlined in our June 2023 submission to the initial TCP Code consultation, the ACCC agrees that the absence of mandatory protections for consumers experiencing domestic and family violence is a key issue. We welcome and support codification of protections for consumers experiencing domestic and family violence in the revised TCP Code.

We have one specific comment on the proposed definition of domestic and family violence. We consider that the definition should be expansive rather than limited, and would benefit from a caveat applied to any examples given that the example does not limit the interpretation of what domestic and family violence might entail.

Accessibility

The Accessibility position paper set outs the following issue with the accessibility under the current TCP Code:

The Code:

- ***does not contain general requirements to make consumer information available in an array of accessible formats.***
 - ***does not require CSPs to consider accessibility issues when designing products or services.***
 - ***is out-of-date and inaccurate in its referencing of WCAG***
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The ACCC welcomes the proposal to update the TCP Code to clarify CSP obligations in relation to accessibility, and considers this should extend also to plain English information requirements.

Code structure, measurements of success and reporting

The Code structure, measurements of success and reporting position paper set outs the following issues under the current TCP Code:

There are minimal reporting obligations in the current Code regarding customer service metrics, making it difficult for regulators and consumers to readily access information about the industry's compliance and performance with Code obligations; the existing framework for complaints in context reporting is helpful but solely focuses on TIO complaints.

Additionally, current Code provisions lack clarity, making it difficult both for industry to ensure compliance and for regulators to assess it.

Finally, submissions suggested insufficient knowledge or understanding of the independence and value of the independent attestation process to drive compliance by industry.

The ACCC welcomes the introduction of metrics that would measure CSP adherence to TCP Code outcomes, expectations, and rules. We consider these metrics should form part of annual compliance reporting under the TCP Code. However, we consider more is needed to assist in driving the necessary culture of compliance, namely sanctions for non-compliance and compulsory obligations regarding:

- requirements regarding independent audit of compliance
- processes to remedy non-compliance.

Communications Alliance proposed 2024 TCP Code approach

The Code structure, measurements of success and reporting paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – a user-friendly Code structure with clauses in plain English and clear intended outcomes. Each chapter would set out:

- ***OUTCOMES*** - the required outcomes for consumers,
- ***EXPECTATIONS*** - the high-level expectations about what RSPs need to do to ensure that these consumer outcomes are realised,
- ***RULES*** - the minimum requirements / minimum compliance obligations on RSPs to meet the expectations, and
- ***MEASURES OF SUCCESS (MoS)*** - details about what needs to be recorded and reported on to measure that high-level outcomes are being met (effectiveness metrics) and that rules are complied with (process metrics).

Where relevant, guidance notes would be included for additional assistance about how rules should be implemented to ensure outcomes and expectations are met.

The ACCC's views on this proposed approach are set out in pages 2-3 above.

Communications Alliance proposal - Measures of Success (MoS) in the TCP Code

To demonstrate Code outcomes and expectations are being achieved, CSPs must be able to produce:

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- *process metrics - policies and/or supporting materials; and*
 - *effectiveness metrics - reporting and/or data.*
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The ACCC's views on this proposed approach are set out in pages 2-3 above.

Communications Alliance proposal – MoS reporting MoS would be reported in three different ways:

- 1) Public reporting**
 - 2) Risk Management Processes**
 - 3) Attestation**
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The ACCC welcomes increased reporting on compliance with measurements of success. The ACCC will provide further comments once we see the detail of the proposal.

Credit and debit management

The Credit and debit management position paper set outs the following issues under the current TCP Code:

Notification

- *There may not be sufficient notice to customers in relation to debt management process which includes suspension, restriction and disconnection and referral to debt collection agencies.*
- *Auto-top up charges can occur before a customer gets a notification that their 85% usage threshold has been reached. This can cause financial difficulty and earlier notification would be desirable.*
- *Disconnections without notice are permitted in certain circumstances under cl. 6.7.1 – is the potential inconvenience to the consumer justified?*

Disconnection

- *Customers identified as being in domestic and family violence (DFV) situations or impacted by natural disasters should be protected from disconnection. (This is in addition to any requirements covered by the Complaints Handling Standard, or Financial Hardship Standard.)*
- *Customers who have been disconnected incorrectly should be reconnected.*

Confusion

- *Customers do not understand the difference between*
 - *debt management processes for restriction/suspension/ disconnection which apply to post-paid services (where there is a debt), and*
 - *processes relating to non-payment (for example, where an automatic payment is missed) for upfront payment plans (pre-paid and periodic/subscription payments, which exist so that the consumer does not incur debt).*

Identified industry concerns

- *Some existing TCP Code provisions/ processes are not sufficiently clear.*
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The ACCC supports the identified issues but notes that given the essential nature of telecommunications services it is important to acknowledge that disconnection is significantly more than an inconvenience.

Communications Alliance proposed 2024 TCP Code approach

The Credit and debit management paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following the list of proposals.

New obligations to:

- 1) ***keep customers connected/not disconnect customers that the CSP has identified as being affected by DFV or impacted by a natural disaster***
- 2) ***reconnect customers if the customer indicates they would like this, if the customer is disconnected in error, or is not provided with required disconnection notice.***
- 3) ***provide additional information for suspension notices to include notice to the customer that consequences for ultimately failing to pay the debt could result in the debt being referred to a debt collection agency (if relevant), and to highlight seriousness of situation.***
- 4) ***provide additional information in disconnection notices to highlight seriousness of situation.***
- 5) ***provide clear information for all plan types about the consequences of missed automatic payments.***

Amendments/clarifications:

- 6) ***Amend clause to clarify that the obligations in suspension and disconnection notices to include notice about debt referral consequences are only required if relevant, considering the CSP's practices.***
-

The ACCC supports clarity in the provision of any information to consumers. We note the importance of CSPs identifying whether a relevant consumer is experiencing financial hardship before commencing any debt management process. The ACCC will provide further comments once we see the detail of the proposal.

Credit assessments

The Credit assessment position paper sets out the following issues with credit assessments under the current TCP Code:

Credit assessment processes do not adequately address the risk of financial harm. There are three critical residential consumer harms to address: financial overcommitment, financial hardship, and debt/default listing.

Credit assessment processes do not address the risk of financial harm associated with the current telecommunications products, including the move to 'upfront' or 'subscription' services.

Residential consumers may be assessed on their capacity to make payment for a single telecommunications product; however, increasingly, it is the totality of their account that is the source of financial harm, specifically harm from ancillary telecommunications goods payment requirements (e.g. mobile devices sold on a payment plan in connection with the service).

The ACCC supports the high-level description of the current issues, and agrees that credit assessment processes must improve to ensure that consumers are not placed on repayment plans which are not suited to their needs.

Communications Alliance proposed 2024 TCP Code approach

The Credit assessments paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal - refresh credit assessment clauses

A refreshed credit assessment requirement, designed to address the risk of financial harm through financial overcommitment, credit management and defaults.

Additionally, there will be a collection of updates to the Code to address the underlying causes of harm connected with responsible selling:

- ***Selling practice review and responsible selling (see 'Positions Paper – selling practices').***
 - ***Support vulnerable consumers (see 'Positions Paper – vulnerable consumers').***
 - ***Privacy obligations.***
 - ***Financial hardship protections will be dealt with under the draft Telecommunications (Financial Hardship) Industry Standard 2024.***
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The ACCC will provide further comments once we see the detail of the proposal.

Communications Alliance proposal – credit management, debt risk

A new obligation would consider the risk of financial harm to residential consumers - a risk of a debt or default listing where the potential debt may be \$150 or more, in line with the Privacy (Credit Reporting) Code 2014.

The ACCC supports this proposed approach.

Communications Alliance proposal - Outcome of failed credit assessment

Where a residential consumer fails a credit assessment, the current cl 6.1.2 would result in the residential consumer being directed to a more appropriate telecommunications product that better suits their financial circumstances. No updates to the function of this clause are recommended, however the clause will be updated in line with the simple English updates.

The ACCC considers it essential that consumers be offered products and services that suit their financial circumstances.

Customer service

We firstly note the Customer service paper mischaracterises the ACCC's position on customer service. In our June 2023 submission to the initial TCP Code consultation, the ACCC noted that telecommunications services and contracts can be complex, and this can be exacerbated by the fact that 44% of Australians have literacy levels below what is considered enough to get by in everyday life. We also noted that 22.8% of Australians speak languages other than English, and that the current TCP Code lacks a requirement that CSPs provide critical information summaries or information on hardship supports which are translated in common languages other than English spoken in Australia.

In that context, we noted that current gaps may prevent consumers' ability to effectively engage with telecommunications suppliers, and to understand the products or services they are acquiring, as well as the support available to them if they so require. This was not a general comment on customer service requirements under the TCP Code.

The Customer service position paper sets out the following issues with customer service under the current TCP Code:

- ***There are no benchmarks for acceptable customer service arrangements in the Code.***
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- ***Protections need to be updated to ensure consistent and effective customer service outcomes, regardless of the communication method that consumers use to contact their CSP.***
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The ACCC supports this high-level description of customer service issues under the current TCP Code.

Communications Alliance proposed 2024 TCP Code approach

The Customer service paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – enhanced prominence and focus on meeting the needs of consumers through a new 'supporting the consumer' (or similar title) chapter.

The ACCC supports this proposed approach in theory but is unable to comment further in the absence of drafting.

Communications Alliance proposal – available customer service channels and related information is clearly communicated

The Code will include provisions to require that:

- ***CSPs make available clear information about the available contact channels for consumer enquiries, assistance, and support to enable customers to make an informed decision about a service to purchase, including in relation to the support channels available to them.***
 - ***Contact channels reasonably reflect the needs of the target market. For example, if a product is targeted at the youth market, it would be reasonable to have a particular focus on digital communication channels.***
-

The ACCC supports this proposed approach.

Communications Alliance proposal – clear customer service escalation pathways

CSPs have at least one contact channel for the consumer that enables the consumer to communicate with a real person in real time, or near real time. This might include phone, or live chat (not bot).

CSPs have clear escalation pathways to enable a consumer to speak to a real person. This might be a phone number or similar voice service. Or it might be an ability to request a call back (i.e. an outward-bound voice call from the CSP.)

These options would be in addition to ensuring that accessibility requirements are appropriately met. See 'Accessibility' position paper.

The ACCC supports this proposed approach.

Communications Alliance proposal – new requirement in relation to case management

The Drafting Committee (DC) proposes to include a clause requiring that CSPs be able to demonstrate case management processes and procedures: have been designed to prioritise customer safety and security, and progress towards a workable and satisfactory outcome for the consumer, while also appropriately balancing the desire to:

- ***avoid or minimise the need for a customer to constantly repeat details of their situation or problem, and***
-

-
- *consider the compromise between repetition of the issue and wait time (noting that warm transfers may cause delays).*

Best practice in case management will depend on the issues being addressed. For example, case management for customers affected by domestic and family violence may be different to that for a customer with an enquiry about coverage.

The ACCC supports this proposed approach.

Communications Alliance proposal – clearer requirement about the management of the ongoing relationship with a customer

The DC will include information and/or provisions around:

- *understanding that consumer needs can change;*
 - *making all reasonable efforts to be able to meet those needs; and*
 - *providing access to timely advice and support, including, where relevant, in relation to external referrals, should the CSP be unable to offer services to assist the customer’s specific needs.*
-

The ACCC supports the intent of this proposed approach.

Essential information

The Essential information position paper sets out the following issue with information provision under the current TCP Code:

Customers purchasing telecommunications products are sometimes unclear about the costs, inclusions and terms and conditions associated with the telecommunications product they are buying because information is inconsistently provided at different points in the advertising and sales process.

The ACCC agrees with this characterisation.

Communications Alliance proposed 2024 TCP Code approach

The Essential information paper sets out the following ‘proposed approach’ in relation to the 2024 TCP Code. Our views are set out following the proposal.

Communications Alliance proposal - inclusion of term in critical stages of the sales process - ‘essential information’ is required to be provided

To create consistency in the information provided to consumers, the Code will use the defined term in key clauses within the new responsible selling chapters, including clauses for:

- *Critical Information Summary (CIS)*
 - *Advertising requirements*
 - *Selling practices*
 - *Requirement to discuss before selling as a summary of the CIS*
 - *Requirement to outline difference to the base offer for special promotions*
-

The ACCC welcomes the inclusion of a requirement in the TCP Code that essential information be provided at critical stages of the sales process, particularly in the CIS, in advertising, and at the point of sale.

Languages and translation services

The Languages and translation services position paper sets out the following issue under the current TCP Code:

Consumers from a non-English speaking (NES) background (NESB) may be unable to engage effectively with telcos because of language barriers. This puts them in a vulnerable situation when purchasing or seeking help in relation to a telecommunications product.

As we noted in our June 2023 submission to the initial TCP Code consultation, the ACCC considers that there should be a requirement under the TCP Code that suppliers provide translations of critical information summaries or information on hardship supports. We accordingly support the acknowledgment of the issue as set out in this position paper.

Communications Alliance proposed 2024 TCP Code approach

The Languages and translation services paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following each proposal.

Communications Alliance proposal – requirement to publish information about interpreter/translation services

A new obligation will be included in the Code to require that all CSPs provide information to consumers about translation services and support.

The ACCC welcomes this proposed approach as a first step. We consider it could be strengthened by a requirement to provide translated materials in commonly spoken languages other than English.

Communications Alliance proposal – expand existing obligations for targeted advertising

Where a CSP has targeted advertising in a language other than English:

- ***essential information must be provided in that language, and***
 - ***at no cost to the consumer, reasonable assistance must be provided in that language (e.g. support for sales, billing enquiries, credit management).***
-

The ACCC welcomes this proposed approach.

Communications Alliance proposal – include reference to a First Nation's central resource

We would like to be able to point to a central resource for First Nation's people – for information about various First Nation languages and potentially other information that could be used for cultural awareness training, etc.

Our understanding is that such a resource is not currently available.

We have, therefore, written to the First Nations' Advisory Group (4-10-23) to ask whether they are developing (or might consider developing) such a resource. At the time of writing, no response has yet been received.

The ACCC considers that the telecommunications industry should fund its own central resource for First Nations consumers, rather than relying on the First Nations' Advisory Group to do so.

Mobile network coverage

The Mobile network coverage position paper sets out the following issues with mobile coverage claims under the current TCP Code:

Submissions received claimed information available about mobile network coverage and performance is unclear

The ACCC agrees there is scope to improve information currently being provided by CSPs regarding mobile coverage to better inform consumers purchasing mobile services. We note that coverage maps are based on predicted coverage, and therefore do not necessarily reflect an on the ground experience. In the ACCC's view, the industry should work together and adopt a common set of assumptions in predicting mobile coverage.

Communications Alliance proposed 2024 TCP Code approach

The Mobile network coverage paper sets out the following 'proposed approach' in relation to the 2024 TCP Code. Our views are set out following the proposal.

Communications Alliance proposal - Provide guidance on coverage and update 4.3.1

The Code will include a guidance note on coverage that explains the existing AMTA2 agreement outlined above and directs CSPs to the AMTA coverage map resource so that CSPs are required to:

- ***be specific about which mobile network their mobile service products are associated with; and***
 - ***provide consumers with the coverage map information relevant to their offer, in the form of a map or a diagram.***
-

The ACCC notes that some CSPs make overall coverage claims in addition to providing coverage maps. These claims do not necessarily contain the same level of details about the nature of coverage as available on a coverage map, so CSPs must ensure that such broad claims are properly qualified so as not to be misleading.

If a CSP makes a claim about the overall size of their mobile coverage, the ACCC considers they should clearly state whether the coverage is outdoor only, as well as the size for outdoor coverage and external antenna coverage (based on predicted coverage maps) separately, as these could be significantly different.

Further, carriers use different methods to predict coverage, so the coverage maps are not readily comparable. The Federal Government is undertaking a National Mobile Audit which is likely to shed some lights on actual performance of the mobile networks.

In the ACCC's view, the industry should work together and adopt a common set of assumptions in predicting mobile coverage.

Issues paper – Scope and application of the TCP Code

In this section, we set out the ACCC's views on the Issues Paper regarding the TCP Code Scope and application, as provided to the ACCC on 17 November 2023.

The Issues Paper sets out the following identified problem:

As currently drafted, the TCP Code provides protections for 'consumers'. The definition of 'consumers' is:

a) an individual who acquires or may acquire a Telecommunications Product for the primary purpose of personal or domestic use and not for resale; or

b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:

i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract; and

ii) has or will have an annual spend with the Supplier which is, or is estimated on reasonable grounds by the Supplier to be, no greater than \$40,000.

In our June 2023 submission to the initial TCP Code consultation, the ACCC noted that under the Australian Consumer Law, consumer guarantees apply to all goods and services purchased by consumers. Currently, a 'consumer' can either be a business or a person, provided the goods or service cost up to \$100,000. We accordingly recommended the financial threshold for a small business consumer under the TCP Code be increased to the \$100,000 threshold, for consistency with the ACL.

The ACCC acknowledges the lengthy discussion regarding this financial threshold in the Scope and application Issues paper. We appreciate the challenges set out in the Issues paper, and will comment further once a proposed definition has been settled upon.

Consumer issues not addressed by the Drafting Committee

There are a number of issues with the current TCP Code that the ACCC raised in its June 2023 submission to the initial TCP Code consultation but which have not been addressed in any of the provided position papers. We remind the ACMA and Communications Alliance of our views on each.

Barriers to consumers' ability to cancel contracts

The ACCC highlights recent international reforms designed to reduce barriers faced by consumers who wish to cancel a subscription or contract. At the heart of these reforms is the reduction or elimination of the practice of 'forced continuity.' Forced continuity refers to design features and website navigation that impede a consumer's ability to cancel or move out of a particular service. For example, a Norwegian Consumer Council investigation identified that in 2021 it took consumers three screens/clicks to subscribe to Amazon Prime, but up to 12 screens/clicks to unsubscribe from the service.⁹

Forced continuity can lead to consumers keeping products or services that they no longer want or need, which may cause them financial harm. The Consumer Policy Research Centre noted that the potential harm may be exacerbated or compounded for those consumers already experiencing circumstantial vulnerabilities, such as illness or loss of employment, or systemic vulnerabilities, such as lower digital literacy.¹⁰ The ACCC is concerned that forced continuity is becoming ubiquitous. For example, the Consumer Policy Research Centre found that 76% of consumers surveyed had experienced difficulty cancelling an online subscription.¹¹

In July 2022, following complaints by European consumer protection authorities, Amazon Prime reduced their cancellation process for European subscribers to just two screens/clicks.¹² Further, Germany has recently enacted laws requiring businesses to implement a 'cancellation button' on websites to enable consumers to easily terminate ongoing contracts. This cancellation function is mandatory, and must be legible and clearly labelled.¹³ The Federal Trade Commission in the USA is also currently consulting on similar rules.¹⁴

We note that laws requiring that businesses offer simple online cancellation processes have already been enacted in specific cases in Australia. For example, in 2018, the National Consumer Credit Code was amended to allow easier online credit card cancellation options after a Senate Inquiry found that consumers could easily sign up for a credit card but

⁹ Consumer Policy Research Centre, *Duped by Design: Manipulative online design: Dark patterns in Australia*, <https://cprc.org.au/wp-content/uploads/2022/06/CPRC-Duped-by-Design-Final-Report-June-2022.pdf>, June 2022.

¹⁰ Consumer Policy Research Centre, *Duped by Design: Manipulative online design: Dark patterns in Australia*, <https://cprc.org.au/wp-content/uploads/2022/06/CPRC-Duped-by-Design-Final-Report-June-2022.pdf>, June 2022.

¹¹ Consumer Policy Research Centre, *Duped by Design: Manipulative online design: Dark patterns in Australia*, <https://cprc.org.au/wp-content/uploads/2022/06/CPRC-Duped-by-Design-Final-Report-June-2022.pdf>, June 2022.

¹² European Commission, *Consumer protection: Amazon Prime changes its cancellation practices to comply with EU consumer rules*, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4186, 1 July 2022.

¹³ Section 312k *German Civil Code*, enacted in July 2022.

¹⁴ Federal Trade Commission, *Federal Trade Commission Proposes Rule Provision Making it Easier for Consumers to "Click to Cancel" Recurring Subscriptions and Membership*, <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>, March 2023.

typically had to take multiple complex steps to cancel.¹⁵ We consider it to be concerning that similar rights are not afforded to telecommunications consumers.

Lack of notice of impending contract expiry

The ACCC notes that telecommunications service providers generally do not include the contract end date on a bill, and may not notify a customer when their contract is nearing the end date. Consumers may be able to check the end date by logging into an online account associated with their service, or may have to contact customer service to clarify when their contract ends. As raised in our general comments on TCP Code Chapter 8 above, we consider that consumers should be actively advised of an impending contract expiry date. We further consider this should extend to notice of benefit expiry date.

We note that since February 2020, the British Office for Communications (Ofcom) has required that telecommunication suppliers provide notice that a contract is coming to an end. Ofcom's research has indicated that these end-of-contract notifications have led to significant consumer benefits in nudging consumers to seek out better deals for the supply of their telecommunications services.¹⁶

We highlight the ACCC's recommendation made during the Home Loan Price Inquiry regarding prompts which set out how consumers could look for a better offer,¹⁷ and the AER's Better Bills requirement that suppliers include information within bills about the best possible offer currently available to consumers.¹⁸

Lack of information relating to the level of early termination fee

Early termination fees usually involve the consumer having to pay out the contractual period on a pro rata basis. The current TCP Code includes some rules about early termination fees, which relate to the disclosure of termination fees in communications offers and advertising. These do not include information about the level of the fee.

The ACCC considers the lack of requirement to provide information about the level of a termination fee to be a significant issue. We also have concerns around the lack of requirement to inform consumers if a termination fee is affected by the return of any service equipment that may have been acquired in the course of the service contract.

Opportunity to improve compliance auditing standards

Section 10 of the TCP Code sets out requirements for Code compliance and monitoring. These requirements differ depending on the size of the supplier. The requirements are less onerous for small suppliers with fewer than 3,000 services in operation, and more onerous for large suppliers with more than 100,000 services in operation.

The ACCC highlights two issues with the current Code provisions. We note that Chapter 10 requires telecommunications suppliers to report annually on their compliance with the Code,

¹⁵ Section 133BU *National Consumer Credit Protection Act 2009*.

¹⁶ Ofcom, *End-of-contract notifications driving better deals for customers*, <https://www.ofcom.org.uk/news-centre/2022/end-of-contract-notifications-driving-better-deals-for-customers>, May 2022.

¹⁷ As per the ACCC's recommendations made in ACCC, *Home Loan Price Inquiry Final Report*, <https://www.accc.gov.au/system/files/Home%20loan%20price%20inquiry%20-%20final%20report.pdf>, November 2020.

¹⁸ As per the 'better offer' requirements imposed on energy retailers in the AER, *Better Bills Guideline*, https://www.aer.gov.au/system/files/AER%20-%20Better%20Bills%20Guideline%20%28Version%20%29%20-%20January%202023_0.pdf, January 2023.

and allows suppliers to identify that they are only partially compliant with the Code and submit a compliance attestation to that effect. However, there is no limit on the number of occasions on which a telecommunications supplier can report being partially compliant. We consider repeated non-compliance relating to the same conduct or issue should be addressed in the enforcement framework.

Secondly, we note that the Code compliance provisions require only large suppliers to provide a statement of independent assessment by an external auditor to provide assurances about the supplier's compliance program. Further, this independent assessment of the compliance program is only required once. The ACCC considers that a best practice compliance approach would encompass at least biennial independent auditing, and would require that all suppliers who are not small suppliers be subject to the same auditing requirements.

Given the current Drafting Committee proposal to introduce new measures such as outcomes and expectations, we consider there is an opportunity to include these in the course of improving the overall TCP Code compliance auditing standards.