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To: [REDACTED]
Subject: FW: TCP Code submission for sharing with the ACMA [SEC=OFFICIAL]
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Sent: Monday, 24 February 2025 1:26 PM

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Subject: FW: TCP Code submission for sharing with the ACMA [SEC=OFFICIAL]

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OFFICIAL

Dear Nerida, Adam and Samantha,

The ACCC has recently finalised its submission to Communications Alliance's public consultation on the December 2024 draft TCP Code. This submission is attached for your reference, and will be available on our website later today at the link below.

<https://www.accc.gov.au/inquiries-and-consultations/accc-submissions-to-external-consultations#toc-communications>

The submission outlines our view that the draft TCP Code continues to have significant shortcomings that weaken its ability to achieve its stated purpose of providing telecommunications consumer protections. Our key concerns with the draft TCP Code are:

- The TCP Code should explicitly recognise that telecommunications is an essential service.
- Specific obligations in the Code should be supported by broader general and outcomes focussed obligations to avoid unsuitable contracts and to deliver fair and reasonable outcomes for consumers.
- Treatment of incentive-based selling, which can lead to real harm for consumers.
- Easy cancellation rights should be guaranteed in the TCP Code, to provide telecommunications-specific consumer protections that have regard to the requirements of telecommunications consumers and the complex and dynamic technological nature of the products and services they purchase.
- The draft Code's compliance section should be re-worked, to address its significant loopholes and deficiencies.

In addition, we have identified 18 separate areas where we consider the protections delivered by the draft Code are materially deficient, which we discuss in our submission.

The submission expresses our view that if Communications Alliance does not address the issues that we have identified above and in our submission, then we consider that the TCP Code is not suitable for registration on the basis that consumer detriments are unlikely to be prevented by compliance with the TCP Code.

We would be happy to talk through the matters raised in our submission and our concerns with the draft Code.

[Redacted signature block]

Kind regards,

[Redacted signature]

[Redacted signature block]



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Telecommunications Consumer Protections Code review

**ACCC submission to public consultation on December
2024 draft code**

February 2025

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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ACCC 02/2025

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1. Introduction

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.

The ACCC is responsible for monitoring and enforcing compliance with the Australian Consumer Law, alongside other state and territory regulators in a 'one law, multiple regulators' model. The Australian Consumer Law establishes economy-wide legal protections for consumers in their dealings with businesses. It requires that businesses ensure that consumers are not misled when purchasing goods and services, and that businesses have reasonable grounds for making representations about future matters. It also contains protections against unconscionable conduct and unlawful debt collection conduct.

Why telecommunications consumer protections are important

Australia has 30 million mobile phone subscribers and 9.1 million residential and small business fixed line subscribers, and most Australians have access to a phone from their teenage years.¹ Australians use their internet and phone connections for banking, work, entertainment, socialising and keeping in contact with others.

Telecommunications are thus increasingly essential to all elements of everyday life. This essentiality brings with it a higher risk of consumer harm, because consumers cannot avoid interacting with the telecommunications market. As such, telecommunications requires strong and specific consumer protections to ensure that carriage service providers are unable to take advantage of their consumers. In this context, the quality of the draft Telecommunications Consumer Protections Code ('the draft Code') and its ability to deliver substantive protections for consumers is of high importance.

Structure of this submission

This submission has two parts:

- The ACCC's position on why the draft Code does not meet the legislative requirements to provide appropriate community safeguards, and
- Detailed submissions on the content of the draft Code.

¹ ACCC, [Internet Activity Report](#), June 2024, and ACCC, [NBN Wholesale Market Indicators Report](#) 30 June 2024.

2. ACCC's position on the draft Code

The draft Code has significant shortcomings

The Telecommunications Consumer Protections (TCP) Code has been in place for around 20 years and has not provided adequate customer protections.

The ACCC acknowledges and appreciates that the Communications Alliance Drafting Committee has made some positive changes to the draft Code throughout the code development process.

Nevertheless, as we noted in our May 2024 submission, the test that the Code needs to face is not whether it is an improvement on the existing TCP Code, but rather whether it provides adequate protections for consumers.

On this test, we maintain that the draft Code continues to suffer from fundamental shortcomings that weaken its stated purpose of providing telecommunications consumer protections.

Because of its shortcomings, we consider that the draft Code is not suitable for registration. In the absence of a fit-for-purpose Code, we encourage the ACMA to proceed to direct regulation.

Significant changes are required to ensure the draft Code provides adequate protections

The ACCC considers that the draft Code requires significant further changes to provide appropriate consumer protections.

We have a number of concerns with the draft Code that have not been addressed throughout extensive consultation. Key concerns are:

- First, the draft Code should explicitly recognise that telecommunications is an essential service, necessary to participate in society. The absence of this in the draft Code undermines the interpretation and enforcement of all provisions. We note that the ACMA, in its 'What Consumers Want' position paper, observed that telecommunications is now an essential service.² We agree, and consider that this should be reflected in the draft Code.
- Second, across the whole Code, specific obligations should be supported by broader general obligations to avoid unsuitable contracts and to deliver fair and reasonable outcomes for consumers. Put another way, carriage service providers should be required by the Code to achieve or avoid substantive outcomes, rather than merely to take specific incremental steps or have procedures in place.
- Third, rules governing incentive-based selling are proposed to be included in the TCP Code for the first time. The ACCC considers that incentive-based selling can lead to

² ACMA, [What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector](#), July 2023, accessed 4 February 2025, p8.

real harms for consumers as sales staff are incentivised to increase sales at the expense of the customers. Provisions that seek to mitigate this potential harm can only work by creating a stronger incentive not to engage in mis-selling than the incentive to make the sale. While the draft Code requires sales incentive schemes to promote responsible selling, it is unclear how a regulator or carriage service provider will determine whether a particular incentive structure achieves this.

Our previous submission recommended that this practice be banned and we suggest that consideration being given to this again.

In addition, we have identified 18 separate areas where we consider the protections delivered by the Code are materially deficient. These are discussed in detail from page 14.

Significant changes to the Code's content are still required to ensure positive consumer outcomes of the Code under the ACMA's proposed new enforcement powers

The ACCC welcomes the recent announcement by the Minister for Communications that the ACMA will receive enhanced enforcement powers. These will significantly improve the enforceability of the TCP Code.

However, the ACCC considers that the substance of the draft Code will continue to create difficulties for the ACMA regardless of its new enforcement tools.

We remain concerned that the draft Code is overly reliant on process-based requirements rather than direct obligations to achieve outcomes. While the Minister's changes have the capacity to improve the enforceability of the Code, positive consumer outcomes will still depend on its content. Examples of our concerns are included throughout this submission.

Direct regulation is an appropriate response to the shortcomings of the draft Code and the need for strong protections for telecommunications consumers

Given these issues and the shortcomings that remain in the draft Code despite its extensive history and current consultation, we consider that there is no alternative but to impose direct regulation.

Relevantly, under the *Telecommunications Act 1997*, the ACMA has powers to directly regulate the telecommunications industry. The Australian Government has directed the ACMA to lift certain consumer protections from the TCP Code into direct regulation, where the ACMA drafts the protections and then is able to directly enforce them. These important matters include protections for telecommunications consumers experiencing financial hardship, consumers experiencing family and domestic violence, and provisions regarding complaint handling. We strongly support direct regulation of these matters. The Government's recent direction on domestic, family and sexual violence recognises the TCP Code's inability to deliver consistent protections in a timely manner.³

If Communications Alliance does not address the issues that we have identified above, then we consider that the TCP Code is not suitable for registration. This is because consumer detriments are unlikely to be prevented by compliance with the TCP Code. In such an event

³ The Honourable Michelle Rowland MP, [Better protections for telco customers experiencing domestic and family violence](#), Media release, 08 October 2024, accessed on 20 February 2025.

the ACMA should impose direct regulation, adopting the appropriate drafting of the TCP Code and rectifying the key issues requiring improved protections.

Direct regulation will complement economy-wide consumer protections

Telecommunications remains an enforcement priority for the ACCC, given its essential nature, the large numbers of contacts and complaints we receive, and the evidence of consumer harm we receive from consumers and consumer agencies.

The ACCC has previously noted the high volume and serious nature of actions we have taken against telecommunications companies and carriage service providers in response to misleading, deceptive and unconscionable conduct.⁴

The Australian Consumer Law establishes economy-wide legal protections for consumers across the economy. However, the telecommunications sector requires sector-specific consumer protections, having regard to its essential nature, the requirements of telecommunications consumers and the complex and dynamic technological nature of the products and services they purchase.

As the ACMA, in its 2023 position paper 'What Consumers Want – Consumer expectations for telecommunications safeguards', noted:

While the ACL can apply to harmful conduct within the telco industry, it is important to note that it is not, and should not be, the sole regulation to protect consumers and address harmful conduct. Any effective regulatory strategy should be structured not only to address harmful conduct after it occurs but also to proactively prevent harm to consumers. Incentives for compliance with telco-specific regulation, in conjunction with the ACL provisions, enhance consumer protection in the telecommunications sector. In particular, the TCP Code sets out standards of conduct for specific consumer protection issues, with which a telco provider is expected to comply and will often assist providers in also complying with the ACL provisions.⁵

In light of the shortcomings identified in this submission, we suggest that direct regulation offers better prospects of incentivising behaviour that proactively prevents harm.

The ACCC will continue to vigorously enforce the Australian Consumer Law. But we submit that, in writing and enforcing the telecommunications-specific rules, the ACMA will be able to shape and raise the standard of protections to the benefit of all Australian telecommunications consumers.

⁴ ACCC, [Review of the Telecommunications Consumer Protections Code ACCC submission](#), June 2023, pp12-14.

⁵ ACMA, [What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector](#), July 2023, accessed 4 February 2025, p14.

3. Submission on content

Enforceability and effectiveness of TCP Code provisions

The ACCC has consistently raised concerns about the limited powers available to the ACMA for enforcing the TCP Code throughout the review process.

Minister Rowland has recently announced plans to introduce amendments to the *Telecommunications Act 1997* to make industry codes directly enforceable, and to increase the maximum penalties from \$250,000 per breach to \$10 million per breach.⁶ These amendments would be a significant beneficial change to the Code's enforcement process, and would resolve two of the ACCC's key concerns with the current Code (the two-step enforcement process and inadequate penalties).

The ACCC strongly supports these changes. They will make the protections contained within the Code significantly more valuable to consumers.

Nonetheless, it remains vital that the substance of those protections is fit for purpose. We remain concerned that the Code continues to suffer from a lack of clear and enforceable requirements to prevent consumer harm. As noted by the ACMA in its 'What Consumers Want' position paper:

Clarity in drafting consumer protection rules is needed to assist industry [to] understand their obligations and take appropriate measures.⁷

This clarity is not always present in the draft TCP Code. For example, the section on staff training includes detailed drafting, and requires carriage service providers to have and implement internal policies and supporting materials on a range of topics (cl 3.2.1), to provide company-wide training on the Code on a number of listed issues (cl 3.2.2), to have company-wide training at specific points in time (cl 3.2.3 and cl 3.2.5), to supplement this training with specific training for certain staff (cl 3.2.4), and to update the training under specific circumstances (cl 3.2.8).

While this detail provides process requirements, it may not deliver better outcomes for customers. Even with the proposed additional ability to enforce the Code, such action may not improve customer outcomes unless the Code includes outcome-based provisions. If a carriage service provider's representatives were behaving in a manner that suggested they did not understand their obligations under the TCP Code, then the ACMA would only be able to take enforcement action if the carriage service provider could not demonstrate it had followed one (or all) of the specific process obligations in Chapter 3. This is because the TCP Code requires the process of undertaking training, rather than the outcome of understanding the training in how to appropriately engage with consumers.

These issues with the Code's drafting will persist despite the improved enforcement powers proposed by the Government because they relate to the substance of the provisions.

⁶ The Honourable Michelle Rowland MP, [Albanese Government takes strong action to protect telco consumers](#), Media release, 21 January 2025, accessed on 21 January 2025.

⁷ ACMA, [What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector](#), July 2023, accessed 4 February 2025, p42.

The way to resolve these concerns is to add Code provisions on customer outcomes in addition to the process steps already included. If Communications Alliance does not focus on customer outcomes (in addition to other specific matters raised), then we consider that the TCP Code is not suitable for registration.

Essential service

Telecommunications is an essential service, and this should be made explicit in the drafting of the TCP Code.

By definition, 'essential' means something that is necessary, indispensable or unavoidable.⁸ Telecommunications are vital for engaging with modern Australian society in a wide variety of different ways. Without access to telecommunications services, consumers are unable to access emergency and government services, education, healthcare or financial services, compete for employment or housing, or engage with many other aspects of society. As noted above, the ACMA has also agreed that telecommunications has become an essential service in their 'What Consumers Want' position paper.⁹

In this context, there is value in the Code directly stating that telecommunications services are essential. As we noted in our June 2024 response,¹⁰ such a statement could have interpretive benefits for regulators and courts, which could more readily have regard to this essentiality when interpreting provisions of the Code.

Perhaps more significantly, clearly noting that telecommunications services are essential in the TCP Code could drive cultural change among carriage service providers. There is clearly a need for cultural change within the telecommunications industry, as demonstrated by recent findings that the telecommunications industry is the most distrusted industry by a significant margin, and that consumers are losing trust in telecommunications providers to fix problems when they arise.¹¹ Recognising the essential nature of telecommunications in the TCP Code would force similar recognition in policies and training procedures, and would hopefully go some way towards limiting the recurrence of ACL breaches in this sector.

A similar concern relates to the omission of the 'Our Key Commitments to Consumers' section that was at the beginning of the 2012, 2015 and 2019 Codes. These commitments (ranging from engaging in open, honest and fair dealings with consumers to using monitoring and reporting tools to ensure successful implementation of the Code) were supplemented by the objective in the introductory statement that the Code was designed to ensure good service and fair outcomes for telecommunications consumers. In combination, they set out a minimum standard for what the Codes were intended to achieve.

In the draft Code, however, the equivalent objectives are merely to supplement sector- and economy-wide regulation, and to address the power imbalance between consumers and carriage service providers. It is unclear why Communications Alliance has opted to remove these statements of the Code's importance. A firmer and more explicit set of objectives could help to inform the drafting and interpretation of the Code.

⁸ Merriam-Webster, [Merriam-Webster dictionary](#), 'essential', accessed on 16 January 2025.

⁹ ACMA, [What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector](#), July 2023, accessed 4 February 2025, p8.

¹⁰ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p5.

¹¹ Roy Morgan, [September 2024 Quarterly Update – Trust and Distrust + Social Media Deep-Dive Webinar](#), 28 November 2024, accessed on 16 January 2025; Telecommunications Industry Ombudsman and Consumer Policy Research Centre, [Barriers to effective dispute resolution in the telecommunications industry – Key insights report](#), 24 July 2024, accessed on 16 January 2025, p4.

General duties to achieve consumer outcomes

The TCP Code should supplement its process requirements with general duties to avoid entering into contracts with consumers that are unsuitable for them, and to deliver fair and reasonable outcomes for consumers.

Currently, the TCP Code is still structured in terms of process requirements, without general obligations to improve consumer outcomes. As mentioned above, carriage service providers are required to take specific incremental steps by the Code, but often not required to achieve or avoid any particular outcomes. These process obligations may add useful detail and assist carriage service providers to comply with the Code, but the overarching obligations must focus on outcomes.

Further, enforcing internal policies and processes only could impose regulatory costs without necessarily improving customer outcomes.

Relying on process requirements only without also requiring outcomes would separate any assessment of legal breaches from the real harm suffered by consumers, making the assessment turn instead on process steps that may or may not have been taken. It is no comfort to a consumer victim of mis-selling that the carriage service provider may have had policies in place forbidding that conduct, or that they trained staff not to engage in that conduct. In fact, actual consumer harm is almost irrelevant to the determination of whether a carriage service provider had the appropriate policies, implementation and training processes in place.

These process provisions are important supplements to direct carriage service providers to take specific steps towards complying with broader obligations. However, they are only meaningful if those broader obligations are outcomes-focussed.

Two general duties that would be especially useful are a general duty to avoid unsuitable contracts, and a general duty to deliver fair and reasonable outcomes to consumers.

The former would ensure that carriage service providers have a specific duty not to enter into contracts that are not in a consumer's interests, such as for products that a consumer has advised they do not want. This would be best supplemented by a general duty to deliver fair and reasonable outcomes to consumers, which would apply at both the sale and customer service stages. This would ensure that poor treatment of consumers would be discouraged by this obligation.

Sales incentive structures

The ACCC continues to be concerned by the impact of sales-based incentive structures in the telecommunications space. Our previous submission recommended that this practice be banned and we suggest that consideration be given to this again.

Why are sales incentive structures a concern?

Sales incentive structures motivate sales representatives to sell products and services to consumers. This is true whether or not the product or service is one that is in the interests of the consumer to purchase. As such, where these incentive structures are present, sales representatives are motivated to make as many sales as possible, maximise sales values, or both, irrespective of whether those sales are in the consumer's interests. This results in a

fundamental misalignment of interests and an environment in which mis-selling is more likely to occur.

As we have raised in our January 2024 and June 2024 responses, repeated studies have highlighted the harms caused by these practices in multiple industries.¹² Moreover, the recent case of *ACCC v Telstra* involved a finding that 'Telstra was aware that its licensees paid financial rewards to sales staff and that this system had the potential to encourage the improper sales practices'.¹³

We have observed circumstances across the economy where unmitigated sales incentive structures contributed to poor consumer outcomes.

Can these harms be adequately mitigated?

The draft Code has introduced a number of protections around sales incentives since the May 2024 draft, with the intention of mitigating the harms associated with them. However, fundamental incentive issues remain that would be extremely difficult to eliminate.

Mitigating provisions must work by creating countervailing incentives (e.g. creating an incentive not to engage in mis-selling that is stronger than the incentive to make a sale regardless of whether it is in consumers' interests). This is clearly the intended approach of cl 6.1.4, for example, which requires sales incentive structures to promote responsible selling.

The issue with this approach is that a regulator or carriage service provider will find it extremely difficult to determine whether a particular incentive structure creates a net incentive to sell responsibly. Determining whether (for example) a 5% commission is outweighed by a bonus based on customer satisfaction scores would be very hard to assess, and likely turn on individual circumstances. This lack of clarity could create the risk of unintentional infringements and protracted litigation.

We consider that even with mitigation measures in place, sales incentives create risks for customer outcomes because of the underlying incentive to sell more to customers.

Specific concerns with current drafting

Finally, the specific drafting used in cl 6.1.4-7 suffers from a number of loopholes and interpretative difficulties. A sample of these include:

- the negative consequences for beneficiaries of mis-selling (cl 6.1.5(a)(i)) are not required to outweigh the positive consequences for doing so.
- the clear limitations or controls on the volume or value of sales that contribute to commissions (cl 6.1.5(a)(iii)) could be set at any level, and thus could be set at a level far beyond what any sales representative could sell.
- the banning of practices that prioritise sales over vulnerable consumers' welfare (cl 6.1.5(b)(ii)) signals that sales can be prioritised over other consumers' welfare, as well as disincentivising sales representatives from assessing a consumer as vulnerable. In this way, the other protections for vulnerable consumers in the Code are weakened by

¹² Frost & Sullivan, [Research into the Door-to-Door Sales Industry in Australia, Report for the Australian Competition and Consumer Commission](#), August 2012, accessed on 16 January 2025; Consumer Action Law Centre, [Knock it off!](#), November 2017, accessed on 16 January 2025; ACCAN, [Spotlight on Telco Commissions and Targets](#), March 2019, accessed on 16 January 2025.

¹³ *Australian Competition and Consumer Commission v Telstra Corporation Limited* [2021] FCA 502, [54].

the sales incentives, because sale representatives are incentivised to apply them narrowly.

These clauses have been the subject of numerous revisions and changes over this Code review process, and they continue to be insufficient. This is a clear demonstration that this kind of limitation is inadequate to address the issues of sales incentives, and that this practice must cease for this kind of essential service. This was rightly recommended for banking as part of the Financial Services Royal Commission¹⁴ and the Retail Banking Remuneration Review,¹⁵ and is of equal importance here.

Cancellation of contracts

We consider that easy cancellation rights should be included in the TCP Code, as we argued in our January 2024 and June 2024 responses, to ensure a higher standard of behaviour around this practice in telecommunications.

Making contract cancellation processes needlessly difficult exacerbates all other consumer difficulties and is anti-competitive. Where unnecessary obstructions prevent consumers from exiting contracts, the potential harms from mis-selling or other unacceptable conduct are increased. Additionally, this makes consumers less able to swap between providers, reducing the benefits of competition in the market.

Cancellation difficulties are a common source of consumer complaints received by the ACCC. Complaints we have received include:

- consumers being passed between different team members while on the phone for hours, eventually having to hang up without successfully cancelling their service
- carriage service providers agreeing to cancel the services as requested, but continuing to bill the consumers
- carriage service providers offering multiple alternative offers in response to consumers' repeated cancellation requests instead of meeting the consumers' requests
- carriage service providers only providing one method for customers to request cancellations.

These difficulties are substantially exacerbated for consumers experiencing some form of vulnerability, as discussed further in our comments on 6.1.10 (Remedies for consumers in vulnerable circumstances) below.

Easy cancellation rights address this concern. The Government is currently consulting on a proposal to address unfair trading practices in the ACL. This includes consideration of a requirement in the ACL that businesses make the process for terminating a subscription as straightforward and easy as the process for subscribing to it.¹⁶ The ACCC supports this reform as an economy-wide measure.

However, even if this reform is implemented in the ACL, the ACCC considers that the TCP Code should provide sector-specific consumer protections regarding cancellation rights,

¹⁴ Kenneth M Hayne, [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), 2019, Recommendation 1.3, accessed on 16 January 2025.

¹⁵ Stephen Sedgwick AO, [Retail Banking Remuneration Review](#), May 2021, p3, accessed on 16 January 2025.

¹⁶ Treasury, [Unfair trading practices: Consultation on the design of proposed general and specific prohibitions](#), November 2024, p20, accessed on 16 January 2025.

having regard to the requirements of telecommunications consumers and the complex and dynamic technological nature of the products and services they purchase.

Similar obligations are also present in a different but similar context in the *National Consumer Credit Protection Act*,¹⁷ and have been implemented in overseas jurisdictions like the US and Germany.¹⁸

Communications Alliance has previously responded to our concerns on this issue by referring to the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022* (the 'Authentication Determination'),¹⁹ arguing that this Determination does not allow for minimum-click cancellation.²⁰ However, compliance with the Authentication Determination does not appear to prevent any attempts to strengthen cancellation rights in the TCP Code.

Sections 8 and 11 require multi-factor authentication before a high-risk customer interaction (including cancelling a contract), and at least two account information authenticators or personal information authenticators for vulnerable consumers. These requirements would be compatible with requirements to ensure cancellation is as streamlined as possible, subject to meeting the Authentication Determination's requirements.

The issues consumers raise with us with respect to difficulties cancelling telecommunication contracts do not relate to service providers requiring multi-factor authentication for contract cancellations, as noted in the points listed above. Instead, they relate to practices that are not required by the Authentication Determination.

Requiring service providers to not implement barriers to cancellation – beyond the Authentication Determination's requirements – would address the issues that feature in our consumer contacts data about cancellation difficulties.

Code compliance (Chapter 10)

The ACCC has a range of concerns with the provisions in Chapter 10 on Code compliance. The ability for this framework to operate and improve outcomes for consumers suffers from the same challenges identified in the *Enforceability and Effectiveness of TCP Code provisions* section above.

The objective of Chapter 10 – articulated at the start of the Code compliance section – states that the key objective is to give consumers confidence that carriage service providers are demonstrating compliance with the TCP Code. The objective should be to provide carriage service providers with a clear framework of what they must do to comply and demonstrate they have embedded the Code requirements into their business practice.

The effectiveness metrics and the complaints-in-context reporting have been removed since the previous draft of the Code (in May 2024). It appears that this role is to be filled by individual carriage service provider complaints-handling data published by the ACMA, which may be more informative for consumers.²¹ Critically, this change now places even greater

¹⁷ *National Consumer Credit Protection Act 2009* (Cth) s133BU.

¹⁸ Section 312k *German Civil Code*, enacted in July 2022; [FEDERAL TRADE COMMISSION 16 CFR Part 425 Negative Option Rule](#), registered November 15 2024, accessed on 16 January 2025.

¹⁹ ACMA, [Telecommunications Service Provider \(Customer Identity Authentication\) Determination 2022](#), 1 April 2022.

²⁰ Communications Alliance, [2024-Comment-Log-website](#), Media release, 20 May 2024, p22, accessed on 16 January 2025.

²¹ The ACMA collects this data under the Telecommunications (Consumer Complaints) Record-keeping Rules 2018, and commenced [publishing provider-specific data](#) in December 2024.

emphasis on the Compliance Assessment Report process to determine the Code's effectiveness in protecting consumers from harm.

Further, there do not appear to have been any meaningful changes since the May 2024 draft in terms of the process that Communications Compliance ('CommCom') will use for attestation: Compliance Assessment, Compliance Assessment Reports, Compliance Action Plans and Remedial Compliance Action Plans. As such, our concerns with this section remain consistent with those expressed in our June 2024 response.

Carriage service provider attestation will now be determined as 'fully substantiated', 'partially substantiated' or 'not substantiated', thereby reducing any implied quasi-regulatory role for CommCom. Under the proposed drafting, CommCom needs to determine if a carriage service provider's self-assessment is 'substantiated', meaning that the carriage service provider has demonstrated it has systems, policies and procedures in place to support its claims of fully meeting Code requirements.

This system creates significant loopholes. For example, a carriage service provider could conceivably have systems, policies and procedures in place that include what is required by the TCP Code, but not be enacting them properly (either intentionally or due to genuine mistakes). But because the systems, policies and procedures are in place, CommCom would be required to find the carriage service provider has fully substantiated its claims and would not need to take any further action.

This proposed process is not the same as a robust compliance process, in which an auditor would confirm whether or not the company has actually met its requirements under the Code. For example, communicating in a clear and accurate manner with consumers, selling to them responsibly, and ensuring that vulnerable consumers can revert purchases without charge. Success or failure is not tested by CommCom, only the presence of the appropriate systems, policies and procedures.

Additionally, the process is still heavily reliant on CommCom's ability to verify self-attestations. There have been no changes to CommCom's resourcing and independence since the May 2024 package. As such, the risks that CommCom will be under-resourced or overly dependent for funding on the carriage service providers it is auditing remain just as concerning as in May. If there is a sense among carriage service providers that CommCom will struggle to determine the accuracy of any claim, then they are incentivised to claim compliance even where this may not be the case.

We note that best practice Code compliance and monitoring is independent of the relevant industry and governed by a stakeholder board or committee comprised of an equal number of consumer and industry representatives with an independent chair. See for example the Banking Code of Practice and the Insurance Code of Practice.

Other issues not addressed in December 2024 draft

The ACCC has numerous other concerns with the December 2024 draft TCP Code, which we consider make it less effective. These include issues that we have raised in previous responses to earlier drafts of the Code. Some of our most significant other concerns are discussed below.

Disconnection notification requirements (Chapter 9)

As noted in our June 2024 response,²² the essential nature of telecommunications means that disconnection should explicitly be considered a last resort. We have previously suggested taking inspiration from the pre-disconnection obligations on energy providers,²³ and note that no change has occurred on this front (or on the overly broad disconnection notification exemptions at cl 9.3.8).

Mobile coverage (Chapter 5)

The concerns around mobile coverage we expressed in our June 2024 response remain applicable and significant.²⁴ Clause 6.1.13 includes the important protection of allowing a customer to exit their service contract early without any early exit fees, where actual mobile coverage does not meet their coverage requirements. However, it continues to lack any obligation to refund fees already paid, even where the consumer has been induced to purchase a mobile plan where actual mobile coverage does not meet their requirements. This is an unfortunate omission that weakens this important consumer protection. Clause 5.2.3 is also lacking any obligation to caveat coverage claims with the fact that the coverage advertised is strictly outdoors.

Moreover, our concerns about industry's ongoing reluctance to cooperate in producing more comparable coverage maps with set methodologies remain. Since the May draft, and as a result of our ongoing concerns regarding the lack of visibility and transparency over the mobile network operators' methodologies in producing their coverage maps, the ACCC has decided to discontinue analysis based on coverage maps provided by the mobile network operators in the context of its annual Mobile Infrastructure Report.²⁵

Remedies for consumers in vulnerable circumstances (Chapter 6)

As we noted in our June 2024 response,²⁶ the requirement for 'reasonable proof of vulnerability' in cl 6.1.10 seriously limits this important consumer protection. Vulnerability is often identified after mis-selling has occurred, or is episodic or medical in nature, and thus not capable of retrospective proof. Consumers may find it traumatic or outright impossible to prove that their vulnerability was present at the time of the mis-selling, and this should not preclude them from accessing these remedies.

²² ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p8.

²³ See for example, Essential Services Commission, [Energy Retail Code of Practice \(Version 3\)](#), 1 October 2024, pp. 124-127.

²⁴ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p11-12.

²⁵ ACCC, [Mobile Infrastructure Report 2024](#), November 2024, p2.

²⁶ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p12.

Additionally, vulnerability may well onset following a sale, and potentially as a result of that sale. Limiting remedies for consumers experiencing vulnerability to exclude consumers whose vulnerability stems from the mis-sale is a significant oversight, and one that has persisted over the entire Code review process.

Culture, policies and training (Chapter 3)

In our June 2024 response,²⁷ we urged Communications Alliance to include a requirement for carriage service provider staff to engage in training after any revisions to the Code or other significant regulatory changes. The ACMA similarly requested that the training requirement capture changes to the Code and policy changes.²⁸ There is now a requirement to retrain staff after Code updates, which is positive, but matching obligations covering other regulatory or policy changes (such as the implementation or alteration of Industry Standards) have been omitted.

Additionally, it is concerning that the organisational culture and policy obligations remain inadequately specific, measurable or enforceable (as flagged above in the 'Enforceability of TCP Code provisions' section). Very little progress appears to have been made on this significant issue, which we have been raising throughout the entire Code review process. It would be difficult for the ACMA to enforce these obligations as they are currently written.

Residential customers (Chapter 8)

The use of the phrase 'residential customer' has been cut from cl 8.11.4 (Remedies for direct debit errors), where it served to implicitly deny those protections to small businesses. This is a positive step. However, it remains in use in the following clauses, which we raised in our June 2024 response:

- Prompts to check the coverage available at the critical locations of use (cl 6.1.10)
- Usage notifications (cl 8.2.4), and
- Notifications of additional charges (cl 8.2.9).²⁹

These protections should extend to non-residential consumers as well, as they are broadly applicable to small businesses and would be of value to them.

Failed direct debits and financial hardship (Chapter 8)

As we noted in our June 2024 response,³⁰ failed direct debits should be a warning sign of potential financial hardship. While this is partially covered by s14(a)(b) of the *Telecommunications Financial Hardship Industry Standard*, this provision only captures multiple consecutive unpaid bills. As such, a requirement to provide information about financial hardship assistance following a failed direct debit would help to 'catch' at-risk consumers early before their financial position deteriorates too far. No change has occurred on this issue, nor has Communications Alliance provided any reasoning for why.

²⁷ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p13.

²⁸ ACMA, [Re: Telecommunications Consumer Protections \(TCP\) Code Review: May 2024 draft](#), 29 August 2024, accessed 22 January 2025, p2.

²⁹ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p13.

³⁰ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p13.

Notice of direct debits (Chapter 8)

There has been no action on our recommendation that direct debit notices and notifications of failed direct debits should include the amount to be debited in the notice itself.³¹ While we accept that this may need to be an approximation or a maximum amount (due to complexities around discounts and such), giving consumers a ready sense of how much money is likely to be taken from their account is crucial for their financial management. This is a key omission from an otherwise useful addition to the Code.

Accessing customer service (Chapter 7)

Our concerns on accessing customer service have been partially addressed by the requirement to provide a telephone number for customer service where the carriage service provider ordinarily makes available a telephone number as a contact method, or where they provide a near-real-time contact method like live chat and have escalated to a phone call (cl 7.1.3-7.1.4).

However, vulnerable consumers who may not be able to access live chat will not have the option of a phone line unless they are with a carriage service provider that ordinarily offers one. This remains of concern.

Carriage service provider-initiated changes to a contract (Chapter 7)

Clause 7.2.3 continues to provide unnecessarily broad exceptions to the requirement to notify consumers of unilateral changes to their contract.

Noting Communications Alliance's points that notifying consumers of all neutral and beneficial changes to their contract may overwhelm them, we remain concerned by the discretion that this allows to carriage service providers in how they determine whether a change is detrimental. At a minimum, more specificity about this process (or a requirement that the change contain no likely negative consequences for consumers) would allow for stronger consumer agency and understanding of their legal position.

Similarly, cl 7.2.3(b)-(c) should act as limiting factors rather than exemptions. That is, they should allow for shorter notice periods where the 20-working-day notice period is impossible, rather than exempt the carriage service provider from communicating the changes.

The ACCC does accept that many carriage service providers will go above and beyond these requirements in any case. However, the point of regulatory instruments like the TCP Code is to provide enforceable guarantees for consumers that are independent of the service provider's goodwill. If carriage service providers tend to comply with these requirements in the course of doing business anyway, then the regulatory impact of filling in these loopholes should be minimal.

³¹ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p14.

Communication with non-English speakers (Chapter 4)

The ACCC reiterates our previous suggestions on this topic.³² Firstly, Critical Information Summaries and information on hardship supports should be made available in common languages other than English which are spoken throughout Australia (as the ACMA argued in their 'What Consumers Want' paper at the beginning of this process³³). This would ensure that a minimum of essential information was available to consumers, regardless of the advertising choices of a particular carriage service provider.

And secondly, carriage service providers should be obligated to contribute to existing interpreter services for First Nations consumers. Given that this community has been subject to mis-selling and unconscionable conduct in the past, and the important role that interpreters have in ensuring consumer understanding, it would be fitting for carriage service providers to provide funding for these services.

The ACCC considers the additional changes made since the May 2024 draft to be of relatively limited value to consumers. Carriage service providers putting links to translation services and the National Relay service on their websites and in the Critical Information Summary (where they will be written in English) does not fundamentally improve the accessibility of information for non-English speakers.

Guidance (Chapter 3)

As we have noted throughout the Code review process,³⁴ a significant proportion of the guidance notes and breakout boxes in the draft Code should be integrated into the text in a way that renders them clearly enforceable. Work has been done in this regard, but concerning examples continue to exist within the draft Code. These include at cl 8.11.5 – where the consumer's right to a refund is only specified in a guidance breakout box, rather than in the draft Code text – and cl 6.1.11 (remedies for mis-selling), which is covered below.

While there have been improvements in this regard over the Code review process, it remains an ongoing issue with the draft Code.

Content of the Critical Information Summary (Chapter 5)

As we have noted throughout the Code review process,³⁵ information about the ACL would be of significant value in the Critical Information Summary. While we continue to accept the importance of brevity in this document, the repeated breaches of the ACL by carriage service providers demonstrate the importance of summarising these consumer rights alongside other key consumer information.

Essential information (Chapter 5)

The ACCC broadly accepts the revised approach to essential information in the December 2024 draft.

³² ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p15.

³³ ACMA, [What consumers want – Consumer expectations for telecommunications safeguards: A position paper for the telecommunications sector](#), July 2023, accessed 4 February 2025, p45.

³⁴ See e.g. ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p16.

³⁵ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p16.

However, we are concerned that the minimum quantifiable price required by cl 5.2.3 (b) does not specify whether it includes termination fees, or whether it is affected by the return of any relevant service equipment. If this clarification is made, then it would provide improved transparency about the costs incurred by the consumer.

Remedies for mis-selling (Chapter 6)

The ACCC continues to support the remedies for mis-selling introduced at cl 6.1.11. However, we also continue to consider that the choice of remedies available (perhaps from a specified list) should be left to the consumer, given their position as the aggrieved party and the party with most knowledge of their specific needs and circumstances.

We also note that our above concerns on the excessive use of guidance notes rather than full codification is particularly significant here. Consumers should not be required to accept a specific remedy or penalised for choosing one over another, and this right should be codified rather than left as a guidance note.

Definition of Consumer (Chapter 1)

The alignment of the definition of consumer with that used by the Telecommunications Industry Ombudsman is an improvement on the previous approach, both because it is less restrictive and because it reduces the number of competing definitions in this sector. Alignment with the ACL remains preferable, in order to ensure that as many small businesses as possible receive the benefit of the Code's protections.

One continuing concern is that there is no requirement for a carriage service provider to notify a small business customer that the carriage service provider has deemed them not to be a 'consumer' (and thus protected by the Code). Such a requirement would be valuable, especially for carriage service provider judgements made on the basis of the business having a genuine and reasonable opportunity to negotiate the terms of the consumer contract, as that assessment may be somewhat subjective.

Declined credit assessments (Chapter 6)

Clause 6.2.11 continues to lack a requirement to notify consumers whose credit assessment has been declined of lower cost alternatives, as we have raised throughout the Code review process.³⁶ A carriage service provider could clearly comply with the provision by informing consumers of the possibilities for upfront payment or the use of a guarantor, without mentioning lower-cost options.

As is a recurring theme in this submission, the proposed change to cl 6.2.11 appears to be an easy change to make, and it is concerning that this issue remains unaddressed. This may make it hard for Communications Alliance to demonstrate that it has taken into account the views expressed by stakeholders, as required by the ACMA's *Guide to developing and varying telecommunications codes for registration*.³⁷

³⁶ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p18.

³⁷ ACMA, [Guide to developing and varying telecommunications codes for registration](#), September 2015, p20.

Contract end dates (Chapter 8)

As noted in our June 2024 response,³⁸ a requirement to notify consumers of the impending end to their contract (ideally both on their bill and as a separate notification) would strengthen competition. The implementation of a similar requirement by the UK Ofcom in 2020 has led to significant consumer benefits by ‘nudging’ them to seek out better offers in the market.³⁹

This would improve competition, benefiting both consumers and the sector itself. Ideally, this notice would also include a list of similar or cheaper plans currently available on the market to help inform consumer choice.

Cancelling or updating direct debits (Chapter 8)

Clause 8.11.1(c) continues to lack specificity in its requirement that consumers be able to ‘readily’ cancel or update a direct debit authorisation. Adding in a requirement that carriage service providers provide both an online mechanism and phone line would allow for consistent interpretation across carriage service providers, and ensure that consumers are able to easily make changes to the process by which they pay for their telecommunications services. As noted in previous sections, this lack of specificity may make it challenging for the ACMA to enforce this section if the draft Code is registered.

³⁸ ACCC, [Telecommunications Consumer Protections Code review ACCC response to 20 May 2024 draft](#), June 2024, p18.

³⁹ 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>, Media release, May 2022, accessed on 16 January 2025.