

19 May 2025

Ms Nerida O'Loughlin PSM

Chair and Agency Head
Australian Communications and Media Authority

By email: OfficeoftheChair@acma.gov.au

Dear Ms O'Loughlin,

RE: TCP Code 2025 – updated following public consultation feedback

I am pleased to attach an updated TCP Code for the Authority's consideration for registration, along with the comment log from the public consultation and associated documents. These records comprehensively and transparently document the thorough process undertaken in the Code's review, including detailed information about the drafting committee's analysis, considerations, and responses to all stakeholder feedback received.

We believe that this Code represents a substantial uplift from the current 2019 Code, providing a range of new and extended safeguards for telecommunications consumers on a range of issues not adequately captured by other instruments.

Code in context

To fully understand the consumer protections afforded under the Code, it must be read in the context of the entire telecommunications' regulatory framework, as well as the other provisions within the Code. That is, no clause should be read in isolation; its relationship and interaction to other rules within and outside of the Code (including the instruments listed in chapter 2) must be considered and understood.

The Code is drafted to mirror the customer journey, and the protections are layered and built upon throughout the TCP Code. The rules in each chapter relate to the protection at that point of customer engagement with a CSP. For example, responsible selling protections are not limited to sales incentive clauses but are found in several chapters including (but not limited to) training, policies, monitoring compliance, providing information pre-sale, credit assessments and remedies.

We would welcome the opportunity to directly engage with the ACMA to discuss the amendments made since the most recent public draft, key issues raised through the consultation and our responses, and to answer any questions, clarifications, or concerns that you may have.

Code consultation – summary of process

Public consultation on the draft TCP Code closed at the end of February. This was the final step in a transparent, comprehensive iterative review and consultation process, with considerable opportunity for input and comprehensive analysis, discussion and response to issues. A summary of the process – and inputs provided – is included at Attachment D.

Thirty formal submissions were received; 28 public and two confidential (DITRDCA and OAIC). The ACMA was provided copies of all submissions, and staff-level commentary about key issues raised was provided to CA on 8 April. The drafting committee has thoroughly reviewed of all this input.

The comment log comprehensively details these inputs, and the drafting committee's responses to each.

Additionally, the drafting committee has considered:

- a number of practical implementation issues (some quite fundamental), and editorial issues raised directly or indirectly by CSPs represented on the drafting committee. These are also all clearly and transparently included in the comment log.
- the expected overlap/ interplay between the Code and the following instruments, all of which are new or have been the subject of change or review this year: the proposed Domestic, Family and Sexual Violence Standard; proposed amendments to the Customer ID Determination; new updates to the Complaint Handling Standard; new outages rules; and a number of related Code updates.
- previous input provided as part of this iterative review process.

Overarching key issues raised in the public consultation, and the Drafting Committee's response to them, are noted below. An analysis and response of the key specific issues identified in the ACMA letter of 8 April is included at Attachment A.

Overarching concerns raised in through public consultation

Disproportionate burden on smaller providers

Representative industry bodies and individual CSPs expressed concerns that the proposed reforms under the revised TCP Code – together with the numerous other requirements and regulatory reforms in the sector – will place a disproportionate burden on smaller entities, increase regulatory costs, put smaller CSPs out of business and reduce competition in the sector, ultimately resulting in increased prices and reduced choice for consumers. Key new TCP Code requirements contributing to this concern include those associated with payment methods and credit checks.

CA is sympathetic to these concerns and notes some minor adjustments to the Code have been included and/or suggested in relation to credit checks. However, as the ACMA has provided clear direction on these issues, and it is difficult to understand how the Code could be revised to reasonably apply to only larger providers and still ensure consumers are uniformly protected in the directed manner, proposed adjustments to address smaller CSPs' concerns are limited.

However, CA urges the ACMA to consider the overall regulatory burden on the sector, and particularly its disproportionate effect on smaller CSPs, when reviewing the Code and CA's responses to some stakeholders' feedback. CA also notes its suggestion to the ACMA earlier in the year that it include data from smaller CSPs in the Office of Impact Analysis' (OIA) cost-benefit analysis of this Code.

Telco as an essential service

A number of stakeholders, including the ACCC, suggested that telco is an 'essential service' and should be recognised as such in the Code, including to assist with the Code's interpretation.

CA does not dispute the importance of telecommunications in today's society, but notes that:

- An 'Essential Service' has a specific meaning under legislation and is declared on a state-by-state basis. Given this legal basis for the definition of an 'essential service', it is not possible for the sector to define itself as such. It is also unclear which 'telecommunication services' provided, and at what level, would be included in such a definition.

- Customers of declared essential services benefit from government subsidies, providing support to vulnerable consumers who may not otherwise be able to afford them. Critically on this point, we note that essential service customers are not subject to credit checks, as they are seen as an unnecessary barrier to access for such services.

Questions of interpretation are explored below.

Key commitments to consumers

Some stakeholders, including the ACCC, raised concerns that the updated Code no longer includes the 'Our Key Commitments to Consumers' section at the start, and suggest that this is detrimental to the Code's interpretation.

This part was removed in part because of feedback in stage one of this review that the audience of the TCP Code was unclear. CA reiterates the points made in the initial discussion paper and beyond that this document is written for CSPs. It is not written for a consumer audience. This is an important distinction. CSPs are aware of the numerous other obligations and limitations on a CSP that affect the drafting of these rules. The average consumer cannot and should not be expected to understand these issues, or the specifics of the Code's drafting to appropriately accommodate them.

That said, consumers *should* be aware of the protections afforded to them under this Code, and for that reason, a separate document will be produced specifically for a consumer audience clearly explaining the Code's protections. (The aim is to write this prior to the Code's registration.)

Additionally, this Code, unlike previous versions, includes clear statements about each chapter's consumer objectives at the start of each chapter. This assists with interpretation of the Code for the ACMA and CSPs.

Adjustments have been made to introductory section of the Code to better highlight the consumer objectives contained in the chapter statements, as well as providing clear reference to the TCP Code consumer document.

Overarching concerns: Code clarity and enforceability

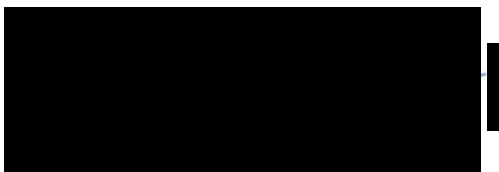
Some stakeholders expressed concern about the Code not being prescriptive enough, with too many guidance notes and too much discretion for telcos in the Code's application, making it difficult for the ACMA to enforce requirements.

CA has again reviewed and tightened drafting where issues have been identified, and has uplifted guidance notes to clauses where appropriate. This was always an important part of an iterative review process, and we note that feedback on drafting clarity was specifically sought in the public consultation.

We note that there are a number of areas where the more prescriptive approach sought by some is not possible, as it does not accommodate or recognise the diversity of CSPs' offerings and business models, and therefore will not and cannot provide the consumer protections assumed. Further commentary on this as it relates to specific issues is included below and in the comment log.

We will be in touch with your staff to follow up on our proposal for a briefing. In the interim, please do not hesitate to contact Peppi Wilson, Senior Manager Policy and Regulation, or me, with any questions or concerns.

Yours sincerely,



Luke Coleman
Chief Executive Officer
Communications Alliance

cc: Cath Rainsford,
Tanya Farrell
Michael Cosgrave, Independent Advisor

Attachments:

1. **Attachment A:** Analysis of, and response to, the key specific issues identified in the ACMA 8 April letter.
2. **Attachment B:** Updated TCP Code, 'clean' pdf.
3. **Attachment C:** Updated TCP Code, full mark-up version in Word (provided with track changes to assist review. We suggest that you review in 'simple markup', noting that changes (other than typographical corrections) are clearly flagged through the use of 'comments').
4. **Attachment D:** Comment log from Public Comment (confidential version – includes NFP comments)
5. **Attachment E:** Summary of TCP Code review and revision process.
6. **Attachment F:** Draft website copy for Guidance on section 3.2.2(c), all-staff training, First Nations Cultural Understanding