

**From:** [Samantha Yorke](#)  
**To:** [Nerida O'Loughlin](#); [REDACTED]; [Cathy Rainsford](#); [Craig Riviere](#)  
**Subject:** FW: ACCC Comments on proposed TCP Code Payment Methods [SEC=OFFICIAL]  
**Date:** Friday, 5 April 2024 2:20:48 PM  
**Attachments:** [TCP Code - Communications Alliance comment log \(14 Mar 2024\) with ACCC comments\(16527181.2\).pdf](#)

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Dear all,

Just FYI, please see below and attached correspondence from the ACCC to CA on the TCP code review.

Kind regards

Sam

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[REDACTED]

**Subject:** ACCC Comments on proposed TCP Code Payment Methods [SEC=OFFICIAL]

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**OFFICIAL**

Dear John

Thank you for sharing Communications Alliance's revised payment methods proposal with us.

The ACCC considers the revised proposal to be a significant improvement on the initial proposal, but notes that further improvements will be necessary before we consider the Code would meet the required threshold for approval. These improvements would involve, amongst other things, increasing minimum timeframes for payment, strengthened rights to direct debit variations and specificity on the mechanism to do so, and mandated reminder notices before second attempts at direct debiting.

The ACCC's views on these issues, plus additional comments, are further detailed in the attached table. Please let us know if you would like to discuss these further.

Regarding the question posed in the 28 February letter on timing required to provide written detailed feedback on the May package, we consider at least 4 weeks would be a more appropriate timeframe for the Review Committee to provide written feedback.

I will be unavailable from today to Friday 12 April (inclusive) due to overseas work engagements, but if you would like to discuss any of this further please don't hesitate to contact [REDACTED] in my

absence.

Sincerely

[REDACTED]

[REDACTED]

[REDACTED]

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## TCP Code - Communications Alliance comment log (14 March 2024) with ACCC comments on proposals

ACMA feedback	DC comment	How it has been addressed	ACCC comments
<p><b>CIS</b></p> <p>The CIS should specify which payment options are free-of-charge and the costs associated with any payment options – rather than the consumer being required to click on a link from the CIS. This is a more transparent approach, facilitates consumer awareness of fees associated with payment methods and reduces the risk of information asymmetry</p>	<p>We agree with the intent – to provide as much transparency on key points as possible. However, putting all the proposed detail in the CIS is problematic; the CIS is designed to be a summary document of key information, and must be no more than 2 pages long. Where multiple paid payment methods are offered (in addition to fee-free ones), there may not room to add full details within the CIS without increasing its length beyond the maximum 2 pages. Including pricing details in the CIS itself also creates challenges in keeping the CIS up to date and makes key points harder to find - the intent and focus is to ensure that consumers are clear about:</p> <p>(1) what's included (without additional cost); and</p> <p>(2) whether there are any other payment options available (and if so, at what cost).</p>	<p>The proposed drafting <b>presented at 1:</b></p> <p>i) requires that the CIS clearly identify the <b>fee-free</b> payment methods offered (i.e. those without additional charges imposed by the CSP), and</p> <p>ii) provides flexibility for providers to include <i>details</i> of any other (non-free) payment methods through some other means (e.g. through a link on the CSP's website) rather than in the CIS.</p>	<p><b>The ACCC has concerns.</b></p> <p>In our view, the code <u>must</u> require all fee-free payment options offered by a CSP to be included in the CIS, so we are supportive of this proposal by the DC.</p> <p>However, we consider that all options and charges should be specified in the CIS so that consumers can make an informed choice. Consumers can only understand payment options if they are made aware of them.</p> <p>Drafting note at 1. <u>Amendment to the CIS (chapter 5)</u> says, 'For clarity: Where applicable, details of any further payment options offered, and applicable fees, may be provided outside of the main body of the CIS.'</p> <p>The code <u>must</u> require CSPs to include clear directions in the CIS to other payment options that incur fees, where there isn't enough room to include those payment options that incur fees on the CSP's CIS.</p> <p>Irrespective of the sales process (in store, over the phone or online) the code <u>must</u> provide that CSP staff must make consumers aware of fee-free payment methods available and details</p>

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			of any non-free payment methods so that consumers can make an informed choice and select the option that best meets the consumer's circumstances.
<p><b>Fee-free payment methods. Flexibility.</b></p> <p>To provide appropriate community safeguards, the provisions will need to ensure that direct debits/auto-payments are not the only payment method offered, with at least one alternative being offered fee-free to all customers with similar flexibility.</p>		<p>The proposed drafting <b>presented at 2</b> requires that all CSPs offer at least 2 fee-free methods of payment, with at least one of these to be a manual method of payment. To ensure clear drafting, we have chosen to use the terms 'manual payment' and 'direct debit' and have defined both.</p> <p>The obligation to ensure flexibility for direct debit payments has been retained. However, the drafting proposed in the December package has been amended in light of the new included obligation noted above, as well as to accommodate/reflect the new Financial Hardship Standard.</p> <p>The proposed drafting does not explicitly include clauses to require flexibility for other methods because it is unnecessary to do so; flexibility is an intrinsic character of all manual and other payment options.</p>	<p><b>The ACCC has concerns.</b></p> <p>We understand the Code will require there be at least 2 fee-free payment options for consumers. One non-direct-debit (manual) option, and one other option, which may be direct debit. At a high level we do not have concerns, however, we remain concerned about the details of the proposal.</p> <p>We understand direct debit flexibility to firstly require the CSP to allow changes to the timing of the direct debit multiple times, but not every billing cycle. This may place too much discretion in the hands of the CSP to refuse changes of timings, and would benefit from more specificity and clarity of drafting. It is unclear, for example, whether CSPs are required to act reasonably in allowing or disallowing changes of direct debit times, or whether they merely need to allow changes more than once.</p> <p>Changes from one payment method to another should be at no cost to the consumer.</p>

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<b>Updates to current 5.7.1</b> The new draft cl 5.7.1 omits the following protection at 5.7.1(c) in the existing code. That existing protection gives post-paid direct debit customers whose bills are not for set monthly amounts at least 10 days to check their bill charges prior to being direct debited.	Confirming that this protection <b>will be maintained</b> but has been moved to a different part of the chapter for flow/structure reasons (which is still a work-in-progress and therefore has not been included with this drafting).	Confirming that the protection as described by the ACMA is to be retained.	<b>No concerns, but subject to final drafting</b> The ACCC does not have concerns at this stage, but the ACCC is unable to provide informed comment without final drafting.
<b>'Missing clauses'</b> Current 5.7.1(a) Current 5.7.1(c) Current 5.7.1(d)	Note that for structural reasons, (i) the part of the requirement currently at 5.7.4(a) not included in the new drafting presented at 3 above, will be moved to a new 'spend management' section in the billing chapter. (ii) the current 5.7.1(c) will move to a new 'charge notification' section in the billing chapter. (iii) the current 5.7.1(d) will move to a new 'timeliness' section in the billing chapter.	Confirming that these protections will be retained.	<b>No concerns, but subject to final drafting</b> The ACCC does not have concerns at this stage, but the ACCC is unable to provide informed comment without final drafting.
The <b>new cl 5.7.1(1)(d)</b> should include a specified time rather than the current drafting of 'sufficient time'.	A specified time has now been included.	The proposed drafting <b>presented at 3 (part 2)</b> requires 3 working days' notice.	<b>The ACCC has concerns.</b> The ACCC considers that 3 days' notice is insufficient. Given Communications Alliance's advice it can take up to 5 business days' notice to adjust for a

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			<p>direct debit from a bank account, this should be the minimum timeframe.</p> <p>We also have concerns regarding the 2 'clarity notes' Communications Alliance has provided regarding this proposal.</p> <p><b>Clarity note 1</b> – <i>reminder notices do not apply to customers that have opted out of notifications.</i></p> <p>We will need to see the drafting to confirm what is meant here, but we would be concerned if consumers could not separately opt out of usage, marketing or promotions etc notifications, and payment reminder notifications.</p> <p><b>Clarity note 2</b> – <i>information about the direct debit amount can be provided directly in the notification or by referring the consumer to a self-service mechanism (e.g. app, online account or automated phone service)</i></p> <p>We consider that all relevant information (the payment date and amount) should be within the reminder notice itself, not via a reference or link to some other location. The suggested approach of referring a consumer to a self-service mechanism puts the onus on the consumer to themselves seek out the information the CSP should be communicating to them.</p>

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<p>The <b>current 5.7.1(e)</b> is missing from the drafting (simple mechanism to cancel a direct debit)</p>	<p>This was included in the drafting provided in December. (Note that updates to drafting mean the clause is split and clauses reordered).</p> <p>Note: a CSP will need to authenticate a customer before cancelling or updating (per the <i>Telecommunications Service Provider (Customer Identify Authentication) Determination 2022</i>).</p>	<p>Confirming that the requirement has been retained and updated to include the word 'update' (cancel or update a direct debit, etc.) – see drafting <b>presented at 3</b>.</p>	<p><b>The ACCC has concerns</b></p> <p>More specificity is needed around the required 'simple mechanism' to cancel or update a direct debit, as this term is currently vague and may be interpreted differently across CSPs.</p> <p>This mechanism should ideally involve both an online mechanism and a phone line, both of which are easy to access and use.</p> <p>Otherwise, a theoretically simple mechanism could be unusable for some customers, particularly more vulnerable consumers.</p>
<p><b>Failed direct debits</b></p> <p>'3-4 working days' [for a customer to make funds available, or pay with another payment method] is not an adequate timeframe and should be 7 working days in consideration of timeframes associated with rearranging finances, pay cycles, asking for and obtaining financial help.</p>	<p>We have asked the ACMA to clarify where the 7 working days' notice is in the Financial Hardship Standard, as we cannot find it (it is not in s.17). Advice is yet to be received.</p> <p>Regardless, the clear advice from businesses is that 7 days is problematic:</p> <p>i) A failed direct debit is not necessarily an indicator of financial hardship; it may be due</p>	<p>The proposed drafting <b>presented at 4</b> now specifies a 3 working day minimum timeframe within the clause, rather than in guidance.</p>	<p><b>The ACCC has concerns.</b></p> <p>There needs to be a longer period to pay without charge than 3 business days. Given the previous advice from Communications Alliance that it can take up to 5 business days' notice to adjust for direct debit payments from bank accounts,<sup>1</sup> we consider this should be the minimum timeframe provided.</p> <p>If CSP systems cannot accommodate working days, then working days could</p>

<sup>1</sup> Communications Alliance, [TCP Code Review Package](#), page 86.

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Seven working days is also consistent with s.17 of the FH Standard.	<p>to:</p> <ul style="list-style-type: none"> <li>- a customer forgetting the payment is due and not putting the funds in the relevant account (addressed with a new requirement for reminders).</li> <li>- administrative issues (e.g. changed credit card details) – provided for in this clause.</li> </ul> <p>Where there <i>is</i> an indicator of financial hardship, obligations on CSPs are covered in the FH Standard.</p> <p>ii) A delay of 7 working days translates into a delay of many more calendar days before a re-attempted debit (particularly where point (iii) below applies). For customers, this may result in the debit occurring well after the expected timeframe and not long before, or even at the same time as, their next 'usual' debit (especially for customers on weekly or fortnightly direct debits). For most customers, an alert/notification and re-attempted debit closer to their original payment due date, as we propose, is easier to budget for and delivers a better and timely customer experience.</p> <p>iii) Some CSPs do not have IT systems or logic that recognise Working Days and must translate Working Day</p>		<p>be translated into calendar days to achieve a similar effect (e.g., 7 working days would become 10 or 11 calendar days).</p> <p>Additionally, CSPs must be obligated to provide another reminder message for any subsequent direct debit attempts, in the format required for the initial reminder message.</p>

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	obligations into calendar days. To mitigate risk, this needs to ensure that appropriate time is built in for various public holiday timeframes that change by state. For example, if a 7 Working Day period straddles two weekends, the equivalent calendar days to mitigate this risk is up to 14 days.		
<p><b>Remedies for direct debit errors</b></p> <p>The proposal does not include appropriate remedies if CSPs adopt the approach in the proposed Guidance box.</p> <p>‘Alternatives’ to a refund must not be presented in such a way that it confuses customers about their rights to a refund. Accordingly, we consider the following text be moved from the guidance note into a provision – e.g. create provision (2):</p> <p>2. Alternatives must only be presented as alternatives to a refund and not as remedies.</p>	<p>We agree that the drafting was not clear and that the alternatives must not be presented in a way that confuses a customer about their right to a refund. We have revised the clause accordingly.</p>	<p>Revised to make the customer’s right to a refund clear.</p> <p>See proposed drafting <a href="#">presented at 5</a>.</p>	<p><b>The ACCC has concerns.</b></p> <p>This needs further drafting for enhanced clarity.</p> <p>It should be clear that consumers are entitled to a refund and should not be penalised for not accepting other remedies (e.g., there is no reason to allow CSPs to encourage or require any consumers to nominate another action as a remedy, nor to penalise any if they do not do so).</p> <p>CSPs should face some form of penalty (beyond the refunding of the additional money taken) in order to disincentivise overcharging through direct debit errors.</p> <p>Further, we do not think there should be a limitation to ‘residential customers’ when requiring a CSP to not penalise a customer if they do not nominate a remedy other than a refund. This should instead by</p>

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			'consumers' (which would cover small businesses as well).
<b>General</b>			
<b>Context</b> The ACMA cannot properly access the adequacy of consumer protections until all drafting is complete.	This has been a challenge throughout for us to manage, as noted in both the letter to the RC and the cover letter to which this note is attached. We look forward to further discussion/ advice from the ACMA on this issue.		<b>The ACCC has concerns</b> Drafting remains incomplete. As noted in the TCP Code Review Committee meetings, we consider that in order to be able 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: <ul style="list-style-type: none"> <li>▪ The interaction between different code provisions; and</li> <li>▪ Whether the detailed (final) drafting delivers the intent of the outcomes and expectations expressed in the Code.</li> </ul>
<b>Use of guidance</b> There is too much use of guidance/reference to guidelines. Details should be included in clauses where possible/relevant.	We note that the use of 'guidance' is standard in regulatory instruments, including those drafted by government. Our intention matches the intent of the guidance in those instruments; to aid understanding and compliance with the relevant instrument.  However, we are reviewing throughout to see where it is possible to include what is now in guidance in clauses, and are looking to use different terms to more clearly articulate the difference		<b>The ACCC has concerns</b> Guidance notes do not equate to enforceable consumer protections. Use should be avoided or, where unavoidable, used sparingly.

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	different 'types' of guidance – e.g. guidance that provides clarity (but should not be part of a clause) – as shown in the revised drafting herein; guidance that provides examples or best practice to support CSPs on how to meet the requirements; and guidance that refers to guidelines or similar.		