

16 February 2023

To: Chris Jose, Authority Member
Australian Communications and Media Authority
By email: Chris.Jose@acma.gov.au

cc:
Cathy Rainsford, General Manager Content & Consumer Division
Cathy.Rainsford@acma.gov.au
Tanya Farrell, Manager, Telecommunications Performance & Regulation
Tanya.Farrell@acma.gov.au

Dear Chris,

RE: TCP Code Review Process

Further to your questions and comments at our recent ICAG meeting, I would like to provide further details on our plans for the 2024 TCP Code review and invite you to meet to discuss any ideas or concerns that you may have about them.

As you will be aware, earlier Code revisions were undertaken via a resource-intensive, lengthy and somewhat inefficient process that can be described as "drafting by committee". Work was progressed by a steering committee comprising an independent chair (former Departmental Deputy-Secretary, Fay Holthuyzen), with consumer representatives, Communications Alliance management, telecommunications industry representatives and observers from the ACMA, ACCC and Department of Communications. The Steering Committees met regularly and at length. Although the process ultimately generated positive outcomes and a revised Code, all parties concur the process was fundamentally inefficient and should be improved.

For the 2024 review, we are proposing a new, multi-stage review process that is designed to better accommodate stakeholders' time and resource constraints while retaining the core principles of broad and thorough consultation, transparency of process and the retention of an independent presence.

Stage 1: Information-gathering

The concept is for industry and Comms Alliance to set the foundations for the rest of the review through some very early, pre-code-drafting stage information-gathering exercises in the form of:

a) **a public discussion paper** that would be available on the CA website and would be pushed out to all key stakeholders (we would appreciate the ACMA's assistance in identifying all relevant stakeholders), and

b) **one-on-one stakeholder meetings**, with parties indicating their interest in engaging in this manner through the above discussion paper.

In addition to seeking stakeholders' input on their key priorities and areas of interest, the discussion paper would outline the review process and timelines; provide background information about the regulatory environment in Australia and describe the purpose and role of the TCP Code in providing consumer protections in the telco sector; outline current reporting and enforcement arrangements; and flag some of the key issues that will be examined in the upcoming review. This would include, for example, how best to address the ACMA's expectations as set out in the Statement of Expectations for telcos dealing with vulnerable customers.

The one-on-one meetings would provide a relatively informal opportunity to properly understand the issues, with few enough participants in each meeting to allow the kind of non-confrontational, two-way, constructive dialogue that is often simply not possible in bigger group settings.

Stage 2: Drafting

Once the initial information-gathering is complete, Code drafting would begin in earnest. A small industry working group ('Review Committee') would use information gathered through the first stages of the review to clearly inform a first draft of the revised Code.

The Code would then be further developed and refined through an iterative drafting process with stakeholders regularly engaged to ensure that their individual issues and concerns are reasonably addressed.

Stage 3: Formal consultation on a new Code

This would be followed by the more formal release of a 'revised draft Code' which would be subject to the formal processes required of the Code development process, including a mandatory public comment period.

Transparency and independence of process

Transparency of process and independence of process at each stage would be ensured through appropriate documentation and reporting mechanisms.

To ensure transparency of process:

- submissions received in response to the discussion paper would be posted on the CA website (unless the respondent requests otherwise), along with a summary of key issues identified through the one-on-ones,
- details of stakeholder meetings/input received at each additional stage would be documented,
- drafting records would clearly document how key identified issues have been managed (i.e. has the issue been addressed within the Code revision? If not, why not?), and
- there would be regular, scheduled reporting, as described below.

We propose that independence of process would be assured through the engagement of an Independent Adviser (IA) – appointed by the CA Board of Directors, who would monitor the revision process to ensure it is fair, reasonable and appropriately transparent.

The Review Committee would meet and report to the IA on a month basis, and the IA would raise concerns or issues directly with the Communications Alliance Board (as well as advising CA management and the Review Committee of any concerns or suggestions).

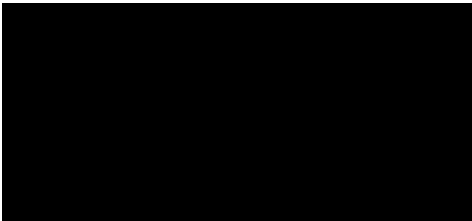
We would invite the ACMA to attend these monthly meetings as an 'independent observer'. The ACCC would also be invited to attend in this capacity. The ACMA representative can then brief ACMA Authority members on progress and issues, and the ACMA can then in turn raise any issues directly with the IA, as appropriate. The IA would also be empowered, at his or her discretion, to liaise with consumer groups or other stakeholders.

The IA would also provide to the Authority an accompanying note and any observations, when the draft Code is submitted to the ACMA for consideration for registration.

There may also be a role for a (different) independent party to provide neutral and considered advice about whether the Code clauses are clear and fit for purpose, and/or to provide expert advice on metrics, analytics and reporting issues. We would consider the benefit of these options once the process is further progressed.

We are keen to ensure that we have your and other stakeholders' buy-in on this proposed process before progressing further. As such, we would appreciate meeting (virtually) with you at your earliest convenience. We will extend similar invitations to other key stakeholders. In the interim, please do not hesitate to contact either Peppi Wilson, Senior Manager Policy and Regulation (p.wilson@commsalliance.com.au), or me, with any questions.

Yours sincerely,



John Stanton
Chief Executive Officer