

**From:** [Cathy Rainsford](#)  
**To:** [Tanya Farrell](#); [REDACTED]  
**Subject:** CM: FW: TCP Code -- Update and Review Committee Meeting [SEC=OFFICIAL]  
**Date:** Monday, 24 July 2023 8:28:19 AM  
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[Invite and invitation to first meeting - ACMA.rtf](#)

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the spirit of reconciliation the Communications Alliance acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.



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20 July 2022

Cathy Rainsford  
General Manager Content and Consumer Division  
Australian Communications and Media Authority

By email: [cathy.rainsford@acma.gov.au](mailto:cathy.rainsford@acma.gov.au)  
cc: Tanya Farrell [Tanya.Farrell@acma.gov.au](mailto:Tanya.Farrell@acma.gov.au)  
Craig Riviere [craig.riviere@acma.gov.au](mailto:craig.riviere@acma.gov.au)

Dear Cathy,

**RE: TCP Code – Update and Review Committee Meeting**

As you are aware the revision of the TCP Code is now well underway. This letter serves to provide an update on the work that has been undertaken to date, note the likely impact of Minister Rowland's recent direction that the ACMA draft a Standard regarding the financial hardship provisions currently covered under the Code, and to invite you to the first meeting of the Review Committee that will oversee the revision process.

**Process and progress to date**

***New process – recap: why, how and when it was developed?***

Informal discussions with stakeholders that began in 2022 led to the development of a new consultation and revision process that was developed to address stakeholders' thoughts on how to improve on previous processes. This included:

- a considerably longer consultation process, with multiple opportunities for deep engagement with individual stakeholders on issues specifically relevant to *them*, designed to allow issues and possible solutions to be properly and efficiently understood by the relevant parties and appropriately addressed,
- increased transparency of process, with input received shared at each stage publicly available, and shared with a new Review Committee (this committee; Terms for Reference for which are available [here](#)),
- increased independence of process, with the engagement of former ACCC head of telecoms, Michael Cosgrave, as an independent adviser, tasked to provide independent oversight of the process, engaging directly with stakeholders at his discretion, report regularly to the Communications Alliance Board and to provide advice to the ACMA at the time it is considering whether to register the draft revised Code ([IA Terms of Reference](#)).

### **Formal review launch**

The process formally commenced in May 2023 with the release of a comprehensive but open discussion paper. This set out the expected process and timeframe for the review, and, without limiting the scope of the input and content for review, flagged key **known** issues that would be addressed in the review, including:

- an increased focus on protections for vulnerable consumers:
  - o addressing the AMCA statement of expectations (SOE),
  - o the inclusion of domestic and family violence (DFV) provisions (taking key clauses from our recently strengthened guideline on domestic and family violence; an intention clearly flagged as part of that process, and communicated both publicly and directly to the relevant parties<sup>1</sup> accordingly in response to their feedback on that Guideline),
- updating numerous out-dated and/or unclear provisions,
- consideration of whether the Code's purpose and scope is adequately described and communicated to relevant stakeholders,
- consideration of the effectiveness of current Code compliance and reporting obligations (with a flagged intent to consider the effectiveness and appropriateness of including clear 'consumer outcomes', paired with appropriate compliance program/reporting metrics and measures).

Responses to the discussion paper were requested by 6 June but continued to be accepted after that deadline, with late submissions arriving from a number of parties. The final submission was received in early July.

Submissions were received from the following organisations/individuals: ACCC, ACCAN, CommCom, D Havyatt, Internet Association of Australia (IIA), 2 private citizens, the TIO and (at staff level only), the OAIC.

Two submitters requested one-on-one meetings as part of this initial 'information gathering' stage of the process. Communications Alliance is in the process of arranging suitable times for these conversations.

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<sup>1</sup> ACCAN/CALC/WEjustice provided comments directly to Comms Alliance as part of the multistep review on its DFV Guideline. Where related to making specific clauses mandatory, Communications Alliance clearly indicated its intention to address this, with the following response:

*This document is a best practice voluntary guideline, not a mandatory Code supported by relevant regulatory instrument(s) and is, therefore, not the right instrument to include new mandatory requirements. The mandatory provisions already in the guideline (the 'musts') already have relevant regulatory backing (being requirements of Codes or other regulatory instruments).*

*However, we appreciate this feedback as it helps us focus on the elements of the Guideline that we should codify to enhance protections for vulnerable consumers in the upcoming TCP Code review. (We have already announced our intention to include specific provisions in the TCP Code for those affected by DFV).*

*We will update the relevant clauses in the Guideline to reflect the new TCP Code once that process is complete.*

### **Other input to the review**

As noted in the discussion paper (and on our [website](#)), Communications Alliance is also considering numerous other inputs as part of this review:

- relevant public reports and statements. This includes:
  - o the ACMA SOE
  - o the ACMA financial hardship reports, including those published in May 2023 early July 2023,
- comments made in response to other or earlier processes, including those referenced by ACCAN in its 2023 submission. This includes:
  - o a list of issues raised in earlier TCP Code review processes that ACCAN did not feel had been adequately addressed,
  - o ACCAN/CALC/WEjustice comments in relation to the DFV Guideline<sup>1</sup>, and numerous other issues,
- discussions with members and with the ACMA over a number of years in relation to 'digital only' issues,
- feedback and corrections from industry members over the past 2+ years on numerous aspects of the Code, including unclear wording, out-dated provisions and unintended potential consequences,
- feedback from other fora (including the ACCAN 2022 conference) that is relevant to the Code,
- feedback from experts in the field on specific issues,
- feedback from CommCom.

Input from all sources has been summarised into spreadsheets to allow the Drafting Committee to sort by topic and methodically work through each issue.

### **Drafting Committee work to date**

In parallel with developing a new process and drafting a comprehensive discussion paper, the Communications Alliance TCP Code Drafting Committee<sup>2</sup> began work earlier this year to consider known inputs to the Code. A key focus of these discussions has been possible Code changes to address issues and expectations outlined in the ACMA SOE. This has included work to identify a more user-friendly Code structure, and to identify possible measures of success (metrics) for incorporation within the Code.

In line with the ACMA SOE, the Committee has started to test the following overall Code structure, as it begins to work through the substantial body of inputs to the Code review.

Acknowledging the high interest rates, rising inflation and general cost-of-living pressures, the Drafting Committee has been focussing on vulnerability and financial hardship issues and had included the latter as a separate chapter:

- (a) Chapter 1: Introduction, scope, etc.
- (b) Chapter 2: Definitions

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<sup>2</sup> described in the Discussion paper, the Comms Alliance [website](#) and in its [Terms of Reference](#).

- (c) Chapter 3: Organisational culture, staff structure, staff training, processes and procedures

Chapters 4-6 structured by 'customer journey':

- (d) Chapter 4: Selling, contracting and pre-sales support
- (e) Chapter 5: Customer service and post-sales support, and
- (f) Chapter 6: Credit/debt management and disconnection
- (g) Chapter 7: Financial Hardship
- (h) Chapter 8: Reporting and enforcement requirements and complaint handling arrangements.
- (i) Appendixes.

Within each chapter, the Committee is currently envisaging a clear summary of the chapter objectives before setting out:

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

Where relevant, it is likely that references would be included for additional **guidance** about how the outcomes and expectations might be met.

It is not envisaged that clause drafting will be attempted until the Drafting Committee has reviewed all 200-300 'issues' as captured in the aforementioned spreadsheets, noting that extra information or clarification may be required to properly understand many issues and an appropriate response.

#### **Independent Adviser's work to date**

The Independent Adviser, Michael Cosgrave, has commenced meeting with those stakeholders who have provided submissions to explain the nature of his role and ensure it is properly understood.

The Independent Adviser is a member of the Review Committee.

### **Impact of the Minister's recent announcements**

As you would be aware, the Minister has directed the ACMA to draft a Financial Hardship (FH) Standard. Additionally, the ACMA has requested,

*"definitive and agreed views from CA and its members on the changes it will make to the TCP Code to address the issues we have identified in our position paper by 15 December 2023. We expect such advice would also include draft revised proposed code provisions to give confidence to the regulator of the effectiveness of CA's proposed approach. "*

Communications Alliance has advised the ACMA that, notwithstanding the truncated consultation and development process, and the current lack of certainty about what will or will not be included in the FH Standard (noting that nearly every chapter of the current Code contains FH provisions), we are aiming to meet this deadline. We look forward to urgent advice on the content of the FH Standard to assist us rise to this task.

### **Review Committee Meeting**

We are looking to hold the first Review Committee meeting on 5 September, 11am – 12.30pm (EST).

At this stage, further meetings are proposed for 10 Oct (to avoid school holidays), 2-4pm; 1 November, 10.30am - 12.30pm; 29 November, 10.30-12.30pm.

[REDACTED]  
[REDACTED] by **28 July** to advise:

- a) who will be representing your organisation\*, and
- b) availability for 5 September.

In the interim, please do not hesitate to contact Peppi or me with any feedback or questions about the work undertaken to date.

*\*if you have not already done so. Note that the ACCC will be represented by Catriona Lowe; ACCAN by Gareth Downing.*

Yours sincerely,

[REDACTED]

John Stanton  
Chief Executive Officer