

Telecommunications Consumer Protections Code Review 2024

28 February 2025

Recommendations

This submission recommends that:

- > Communications Alliance address the critical shortcomings identified by ACCAN in our engagement with the Telecommunications Consumer Protections (TCP) Code which prevents it from providing appropriate community safeguards to communications consumers.
- > The Minister for Communications direct the Australian Communications and Media Authority (ACMA) to develop direct regulation for section 6 of the TCP Code due to the inability of the TCP Code to provide for appropriate community safeguards for communications consumers.

About this submission

The Australian Communications Consumer Action Network (ACCAN) thanks Communications Alliance (CA) for the opportunity to submit to the consultation on the Telecommunications Consumer Protections Code Review 2024. ACCAN has engaged with the TCP Code review since our first submission to this consultation in June 2023.¹

¹ ACCAN, TCP Code Discussion Paper (Submission, 2023) <<https://accan.org.au/accans-work/submissions/2147-tcp-code-discussion-paper-2023>>.

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**Australian Communications
Consumer Action Network**

Australian Communications Consumer Action Network

ACCAN is the peak national consumer advocacy organisation for communications working to achieve trusted, accessible, inclusive, affordable and available communications and digital services for all Australians.

Introduction

ACCAN thanks Communications Alliance for the opportunity to engage with the review of the TCP Code. Communications are essential. Their delivery, and the consumer protection arrangements that underpin them, are critical to the provision of appropriate community safeguards to communications consumers. The current absence of appropriate consumer protections covering sales practices, credit assessments, credit management and code compliance fundamentally inhibit the TCP Code's ability to provide appropriate consumer protections to communications consumers. While ACCAN notes that some areas of the TCP Code have seen marginal improvements upon the current Code, we are unconvinced that this draft Code is capable of registration by the ACMA.

Background

ACCAN has engaged in multiple reviews of the TCP Code to represent the interests of communications consumers to industry and government stakeholders and advocate for fit-for-purpose telecommunications consumer protections. The current review of the TCP Code began in May 2023, prior to the announcement that the Minister for Communications will direct the ACMA to develop a mandatory industry standard to provide appropriate protections to telecommunications consumers experiencing financial hardship.² This was followed by the Minister for Communications directing the ACMA to develop an industry standard to ensure appropriate support is provided to telecommunications customers experiencing domestic and family violence in October 2024.³

The government's decision to transition key consumer protections relating to financial hardship and domestic and family violence from a voluntary code-based regulatory regime to mandatory direct regulation by the ACMA signals a lack of confidence in the effectiveness of the TCP Code as a consumer protection instrument. In ACCAN's view, the effectiveness of the TCP Code continues to be adversely impacted by the conflict-of-interest present in industry drafting critical consumer protections arrangements.

The TCP Code process itself suffers from fundamental weaknesses which inhibit its ability to deliver for consumers. The ACMA previously noted that the TCP Code process is slow, can result in poor drafting and is not necessarily representative of the industry that will be affected by the code.⁴ ACCAN is aware it is not uncommon for industry code reviews in self-regulatory regimes to be led by industry. However, the process for reviewing the TCP Code is hampered by an industry-consumer power imbalance that has prevented the TCP Code from being uplifted to a standard that is expected of a Code governing an essential service. These weaknesses prevent the Code from providing the appropriate community safeguards required for the ACMA to register the Code.⁵

² Michelle Rowland, Albanese Government to improve safeguards for telco consumers experiencing financial hardship (Media Release, 2023) <<https://minister.infrastructure.gov.au/rowland/media-release/albanese-government-improve-safeguards-telco-consumers-experiencing-financial-hardship>>.

³ Michelle Rowland, Better protections for telco customers experiencing domestic and family violence (Media Release, 2024) <<https://minister.infrastructure.gov.au/rowland/media-release/better-protections-telco-customers-experiencing-domestic-and-family-violence>>.

⁴ ACMA, ACMA submission to Consumer Safeguards Review: Part C Choice and Fairness (Submission, 2020) 10 <<https://www.infrastructure.gov.au/have-your-say/consumer-safeguards-review-consultation-part-c-choice-and-fairness>>.

⁵ *Telecommunications Act 1997 (Cth)*

New ACMA enforcement powers may be rendered ineffective by poor TCP Code drafting

ACCAN maintains that the TCP Code is an ineffective solution to establishing the critical protections consumers require, especially in light of recent and historical allegations of unconscionable sales conduct among other services breaches.⁶ ACCAN supports the recent government proposal outlined in the Telecommunications Amendment (Enhancing Consumer Safeguards) Bill 2025 (the Bill) to amend the *Telecommunications Act 1997 (Cth)* to make compliance with the TCP Code mandatory. However, in ACCAN's view, this will do little to address the problem.⁷

Until the Bill or equivalent passes parliament, no changes will have occurred which impact the TCP Code. We consider that the ACMA must assess the TCP Code and its capacity to provide appropriate community safeguards against the status quo as opposed to possible future regulatory and enforcement frameworks when considering its ability to provide appropriate community safeguards. Increased penalties and mandatory industry codes are positive developments but effective enforcement of the TCP Code will continue to be limited by a poorly drafted TCP Code. Many clauses are still vaguely drafted and ambiguous, allowing carriage service provider (CSP)s to comply at the margin, contributing to deepening distrust by consumers of the telecommunications sector authorities and industry participants.

Direct regulation of consumer protections addresses this persistent issue as minimum consumer protection requirements on CSPs are drafted by the ACMA rather than industry participants. This would allow for the construction of an effective enforcement framework in which industry standards produce clear and enforceable requirements on CSPs and are complemented by meaningful penalties for non-compliance. ACCAN considers that this outcome would provide significant benefits to communications consumers in addition to clear compliance requirements for CSPs.

The TCP Code is incapable of registration by the ACMA

Communications services are critical to the everyday lives of Australians and are essential for basic wellbeing, national growth and productivity. It is important that communications services are subject to regulation as an essential service – one that puts the interests of consumers at its centre. The TCP Code must adopt language that is clear, addresses consistently reported industry misconduct, and ensures that any discretion or flexibility does not provide opportunities for CSPs to circumvent their obligations or comply only at the margin. The consumer protections in the TCP Code should ensure that consumers purchase telecommunications goods and services that are appropriate to their needs and be treated fairly and sensitively when they are experiencing vulnerability. ACCAN remains deeply concerned that the draft TCP Code cannot deliver this. ACCAN has engaged with the TCP Code review since its inception and is unconvinced that the ACMA can be satisfied with the TCP Code's ability to provide 'appropriate community safeguards' as required under Section 117 of the *Telecommunications Act 1997 (Cth)* owing to the TCP Code's oversights.

⁶ ACCC, Optus in court for alleged unconscionable sales and debt collection (Media Release, 2024) <<https://www.accc.gov.au/media-release/optus-in-court-for-alleged-unconscionable-sales-and-debt-collection>>.

⁷ Michelle Rowland, Government moves to legislate better protections for telco consumers <<https://minister.infrastructure.gov.au/rowland/media-release/government-moves-legislate-better-protections-telco-consumers>>.

These critical oversights include:

- The inability of TCP Code clauses related to sales practices and incentives to provide uniform and effective consumer protections arrangements or address persistent sources of consumer harm. These omissions materially impact the lives of vulnerable consumers and consumers living in regional, rural and remote areas.
- Lack of prescription in the requirements on CSPs to conduct comprehensive credit assessments which protect consumers and small businesses from financial hardship.
- The absence of material requirements to treat consumers with fairness in credit management processes.
- Opaque and complex compliance structures which duplicate the roles and responsibilities of the ACMA and allow CSPs to remain non-compliant with the TCP Code.
- Vague language, interpretation and translation requirements which do not reflect the diversity of Australia's population and will cause harm despite compliance by CSPs.

These deficiencies have fostered the view within the consumer sector that the Code is an ineffective instrument which serves the interests of industry participants. The standing of the TCP Code within the consumer sector has deteriorated to the extent that ACCAN's stakeholders have questioned our engagement with the TCP Code review process due to its limited value in generating improved outcomes for consumers. ACCAN continues to advocate for direct regulation as this has resulted in vastly improved and uniform consumer protections settings for consumers, without posing an unreasonable financial or administrative burden on industry participants.⁸ This sentiment is reflective of the perspective of ACCAN members and consumer organisations who do not believe that the TCP Code can provide appropriate community safeguards to communications consumers.

Our concerns

ACCAN's overarching concern is that the TCP Code does not provide appropriate community safeguards to communications consumers, thereby rendering it incapable of being registered as an industry Code by the ACMA.⁹ We are particularly concerned with the following deficiencies.

Responsible selling clauses in the TCP Code (section 6.1) have critical weaknesses

ACCAN does not consider the TCP Code clauses related to responsible selling provide appropriate community safeguards to communications consumers. The TCP Code's sales-related clauses demonstrate a heavy focus on industry sales 'processes' around information provision as opposed to the conduct of CSP representatives. ACCAN considers that clauses should be amended to include a strong focus on both CSP representative conduct and sales processes. The ACCC's enforcement actions against Telstra and Optus provide considerable evidence that staff conduct must be addressed to reduce consumer harm from irresponsible sales practices.

⁸ ACMA, Financial hardship in the telco sector – enhancing consumer protections impact analysis (Report, 2023) 27 <https://oia.pmc.gov.au/sites/default/files/posts/2024/02/Impact%20Analysis_0.pdf>.

⁹ *Telecommunications Act 1997 (Cth) s.117.*

Sales incentive structures under the TCP Code do not promote positive outcomes for consumers and the current clauses in the Code do not sufficiently manage or mitigate these risks. The tension between the commercial interests of industry participants and consumer interests warrants material revisions to sales related clauses.

Credit assessments in the TCP Code (section 6.2) are not fit-for-purpose to protect consumers

Credit assessments are a critical consumer protection, ensuring that consumers are sold products and services which they can afford and which suit their needs. ACCAN does not consider the Code clauses covering credit assessments are fit-for-purpose in ensuring CSPs undertake comprehensive and meaningful credit assessments that ensure consumers do not financially over-commit when purchasing telecommunications goods and services. The glaring absence of comprehensive credit assessment requirements presents the opportunity for significant consumer harm to be facilitated by the draft TCP Code.

Credit management processes are not required to treat consumers with fairness (section 9)

ACCAN has significant concerns that under the current TCP Code, CSPs are not required to treat consumers with fairness in their credit management processes. For example, section 9.2.1 mischaracterises 9.2.1(a)-(f) as requirements which facilitate fair treatment of customers without providing for a TCP Code clause which proactively requires CSPs to treat customers with fairness.

ACCAN considers that 9.2.1 should have a general obligation that customers are treated with fairness and a level of care that is appropriate to their characteristics and circumstances, and that avoids potential harm to them. This should be complemented by a pre-sale obligation for CSPs to provide consumers with clear information on their credit management policies. Disconnection of customer services due to non-payment should only occur after reasonable steps have been taken. This includes providing adequate notification of overdue accounts, offering a reasonable opportunity to avoid credit management action and disconnection, and ensuring appropriate support and assistance are offered to customers experiencing vulnerability. In instances where a CSP sells a customer's debt, that third party should be obliged to treat customers with the same fairness obligations. CSPs should not be able to contract out protections provided by the Code.

Compliance reporting in the draft TCP Code will not make CSPs accountable (section 10)

Compliance monitoring and reporting is an essential element of an effective Code-based regulatory framework. ACCAN has the following concerns with the proposed framework in the TCP Code:

- Communications Compliance (**CommCom**)'s role has changed from previous versions of the TCP Code to determining whether a CSP's claims of compliance are substantiated. ACCAN is concerned about CommCom's ability to accurately substantiate the Code compliance claims of approximately 1600 CSPs in Australia every year, given its size and resources.
- The draft TCP Code allows for CSPs to remain partially compliant with Code clauses and creates a complex and opaque system of directions and remedial action plans which overlaps with the role of the ACMA in regulating the telecommunications industry.
- CommCom does not have the ability to reject a Compliance Action Plan or substantively request that these areas be addressed in a more material manner.

- Section 10 includes opaque and unclear requirements on what constitutes partially substantiated compliance with the TCP Code. Partially substantiated compliance is currently determined by CommCom and the CSP through a Compliance Action Plan.
- Annual reporting on TCP Code compliance only provides a list of CSPs that have completed a Compliance Assessment and otherwise duplicates ACMA responsibilities.

CommCom’s Chair, Chief Executive and Industry Director have all held or currently hold positions within the telecommunications industry or industry associations. CommComs’ sole consumer director and non-executive deputy represents the only consumer voice within the organisation and is outnumbered by former industry executives. ACCAN considers that the membership of CommCom should be significantly revised to effectively reflect an independent compliance monitoring body and avoid the current conflicts of interest present within the CommCom executive.

The TCP Code reporting framework lags other major sectors with industry codes. It should include a compliance reporting framework where each CSP’s Compliance Assessment is reported publicly so that there is transparency about which obligations have been breached by CSPs. Sufficient details should be published so the public can form a view on whether code-based regulation is working effectively and which areas require compliance uplift by CSPs. A system of self-reporting of TCP Code breaches to the ACMA and a public annual industry reporting process should be established to promote transparency and accountability. Genuine improvements in industry practice and a culture of compliance will not occur without this transparency.

Responses to Consultation Questions

Question 1

Are there any definitions or specific clauses that are not clear? Please provide details.

Definition: Credit Management Action

Credit management action means the process by which a CSP:

- (a) helps customers to manage:

 - (i) their risk of debt associated with a telecommunications good or service; or*
 - (ii) their expenditure; or**
- (b) manages any credit risk to a CSP; or*
- (c) collects outstanding debts from customers.*

ACCAN considers (c) repeats the definition given for Credit Management. The definitions of Credit Management and Credit management action should be revised for clarity.

Definition: Critical Locations

Critical Locations means the key locations the customer indicates they intend to use the telecommunications service, for example the customer’s home or work.

ACCAN considers that the definition for 'Critical Locations' should not be restricted to areas a customer 'indicates' they intend to use the telecommunications service. ACCAN supports redrafting this definition to: 'means the key locations the customer intends to use the telecommunications service, for example the customer's home or work'.

Inclusive Design – Clause 3.2.5-3.2.6

ACCAN considers that inclusive design should be a central guiding principle for the ways in which CSPs create telecommunications goods, services, systems, policies and processes. The guidance between 3.2.5 – 3.2.6 should be drafted into distinct TCP Code clauses as the guidance box does not place any expectation or requirements on how CSPs should engage with inclusive design. Further, ACCAN expresses some concern over the nature of "best possible handling" as this term is ambiguous and may be misinterpreted by CSPs. Language such as "concepts", "principles" may be opaque and inhibit the readability of the code.

Assessing creditworthiness: current residential customers

6.2.7. In addition to complying with clause 6.2.6, where the customer is seeking to increase their current credit commitment with their CSP: [6.1.1(a)]

(i) by more than \$1000; and

(ii) any previous external check was completed over 6 months prior.

a CSP must undertake a new external credit check from a credit reporting agency.

ACCAN notes that an increase in the customer's credit commitment with a CSP by more than \$1,000 only results in a CSP undertaking a new external credit check as opposed to a credit assessment. This does not present a material requirement on CSPs to ascertain a customer's credit capacity. ACCAN considers that any increase in a customer's credit commitment with a CSP warrants the undertaking of a credit assessment and external credit check. Additionally, ACCAN recommends that 'current credit commitment' is defined in the TCP Code.

Customer Service – Clause 7.1.6

7.1.6. Where a CSP has a case management process, it must ensure the process has been designed to prioritise customer outcomes. [new]

Note: prioritising customer outcomes will depend on the issues being managed. For example, case management for customers affected by DFV would be different to that for a customer with a technical issue. It may include processes to avoid or minimise the need for a customer to constantly repeat details of their situation or problem and consider the compromise between repetition of the issue and wait time.

ACCAN considers the drafting of clause 7.1.6 ambiguous and requires clearer drafting to specify what customer outcomes case management processes must prioritise. Additionally, 'case management process' is not defined in the TCP Code. The requirement in 7.1.6 should be preceded by an obligation for all CSPs to have a case management process.

While case management processes differ by issue type, ACCAN supports the inclusion of overarching consumer outcomes for all case management processes such as:

- (a) consumers do not need to repeat details. Wherever possible, a single case manager should be allocated to each consumer for the entire case management process.
- (b) consumers correspond with the minimum practicable amount of staff members when engaging with a CSP's customer service.
- (c) consumers are frequently informed of the progress of their customer service query.
- (d) information provided to consumers by customer service staff is consistent and accurate.
- (e) consumers are notified of a clear and efficient process for escalating unresolved issues to a higher level of authority or the TIO.
- (f) consumers are offered an opportunity to provide meaningful feedback on the case management process, which is actively used by the CSP to improve service quality.

Credit Management Process – Clause 9.2.1

9.2.1. A CSP must ensure its credit management process treats customers with fairness, by: [new]

ACCAN considers that it is essential that customers are treated fairly when subject to credit management action. The drafting of clause 9.2.1 should be revised to more clearly convey this. We recommend amending clause 9.2.1 (a) should be amended to:

"A CSP must:"

ACCAN considers that a new subclause should be included as part of 9.2.1 which ensures its credit management staff, policies, systems and process treat customers with fairness and actively take into account their identified vulnerabilities in undertaking any credit management action.

Question 2

Recognising that there will be limited flexibility to extend general implementation timeframes, are there areas, in addition to those listed at 2.1.4, that you believe require delayed implementation?

Consideration of delayed implementation of TCP Code clauses should be balanced against the consumer harm which may occur in the time prior to the implementation of the updated TCP Code. Clause 2.1.4 notes that the following clauses will commence 6 months after Code registration:

- Training, cls. 3.2.2(c), 3.2.4;
- Provision of an order summary, cl. 6.3.2;
- WCAG 2.2 accessibility, cl. 4.1.8;
- Two payment methods, cls. 8.10.1, 8.10.2; and
- Direct debit flexibility 8.10.3.¹⁰

¹⁰ Communications Alliance, Industry Code Draft For Public Comment – C628:2025: Telecommunications Consumer Protections Code (Code, 2024) 23 <<https://www.commsalliance.com.au/hot-topics/TCP-Code-Review-2024>>.

ACCAN considers that 6 months is an unnecessarily long timeframe for implementation as CSPs have been aware of the nature of these changes for a substantial period of time. ACCAN considers the delayed implementation of the following clauses unnecessarily extends the timeframe for consumers to benefit from sorely needed updated consumer protections.

For example, ACCAN does not consider the provision of an order summary, as outlined in cl 6.3.2, necessitates significantly delayed implementation. CSPs should be well-placed to implement this change within 3 months of the Code being registered. ACCAN notes that Communications Alliance has included drafting requiring CSPs to offer two payment fee free methods options in place since the release of the May TCP Code Package in May 2024.

Question 3

Clauses associated with data retention have been consolidated and clarified to attempt to address various (often conflicting) stakeholder feedback.

Are the requirements clear, and do you have any concerns or comments?

ACCAN has concerns with the TCP Code clauses related to remedies for consumers in vulnerable circumstances and the data retention requirements they place on CSPs.

6.1.16. A CSP must establish processes to allow it to assess evidence of vulnerability in cases of mis-selling. This must include:

(a) a process to allow for the information to be provided to personnel who are authorised for the purposes of assessing eligibility.

(b) steps to protect the information from misuse, interference and loss, unauthorized access, modification or disclosure; and

(c) steps to ensure the information is disposed of, or destroyed, in a secure manner where the record is no longer needed under this industry Code or any other applicable laws.

Note: Clause 6.1.15 does not require that the CSP request proof of vulnerability affecting the customer, rather, this is at the discretion of the CSP.

ACCAN considers that organisational processes that staff must comply with to assess customer vulnerability and to manage sensitive data in cases of mis-selling are important. From a drafting perspective, ACCAN would prefer to see the obligation expressed in terms of desired consumer outcomes. For example, 6.1.16 could include processes that ensure the customer only deals with staff that are appropriately trained and authorised to assess customer vulnerability.

ACCAN considers that CSPs must limit the number of staff accessing information on consumer vulnerabilities and only allow authorised staff to access the information. To strengthen privacy protections, ACCAN considers that information obtained to demonstrate consumer vulnerability must not be used for any other purpose.

As this Code clause does not provide substantial requirements on CSPs, it does not align with clause 2.4.3 of the Code which notes that:

Where a CSP requests evidence of vulnerability in relation to clause 6.1.15 or is assessing evidence of vulnerability for the purposes of clause 6.1.14, it must:

(a) only retain a copy or record of the information received from the customer for the period that it is required to complete that assessment; and

(b) after the completion of that assessment, dispose of, or destroy, all copies or records of the information in a secure manner.

With respect to 6.1.16, ACCAN considers that assessments must be timely and provide consumers with examples of evidence of vulnerability with which to discreetly and easily present to their CSP.

Question 4

A new definition (Authorised estate representative) and new clauses have been included in the draft Code (section 4.5) to facilitate the management of a deceased customer's account. There may be some conflicts between the requirements in clause 4.5.1 and those in the Telecommunications Service Provider (Customer Identity Authentication) Determination 2022. The ACMA is currently consulting on possible changes to that Determination in January 2025. This clause will be reviewed as required in light of those discussions.

4 (b) Do you have any other comments about the proposed requirements?

In ACCAN's submission to the consultation on the Determination we supported amending subsection 12(2) to include the government death notification system as an example of documentary evidence that a CSP can use to satisfy that a requesting person is an unlisted authorised representative.¹¹ However, ACCAN recommends initiating this process after the CSP has attempted to contact the listed authorised representative and the account holder.¹²

ACCAN also sought clarification on exceptions for sending notifications involving unlisted authorised representatives, as these could compromise consumer safety and privacy, particularly for vulnerable individuals. To address this, CSPs should implement strict verification processes and require documentation before processing high-risk transactions.

In cases where unlisted authorised representatives request transactions for deceased individuals, CSPs should consult relevant parties, such as the estate's executor or legal guardians.¹³ Decisions should prioritise the designated power of attorney. Without proper safeguards, these situations pose significant risks, so clear protocols must be established for verifying identity and legal standing.

¹¹ ACCAN, ACMA's proposal to vary the Telecommunications Service Provider (Customer Identity Authentication) Determination 2022 (Submission, 2025) 5 <<https://accan.org.au/accans-work/submissions/2397-acma-s-proposal-to-vary-the-telecommunications-service-provider-customer-identity-authentication-determination-2022>>.

¹² Ibid.

¹³ ACCAN, ACMA's proposal to vary the Telecommunications Service Provider (Customer Identity Authentication) Determination 2022 (Submission, 2025) 5 <<https://accan.org.au/accans-work/submissions/2397-acma-s-proposal-to-vary-the-telecommunications-service-provider-customer-identity-authentication-determination-2022>>.

Question 5

Rules in relation to responsible selling in chapters 5 and 6 have been substantially strengthened in response to stakeholder feedback, particularly to address concerns about responsible sales incentive structures (section 6.1) and expectations about remedies.

Are the requirements clear? And do you have any concerns or comments?

ACCAN does not consider that the following sections provide appropriate community safeguards for communications consumers due to several critical shortcomings. These shortcomings include:

- Section 6.1 focuses on sales 'processes' rather than accountability which goes to the appropriate conduct of CSP representatives as is the case in the current TCP Code.
- Clauses related to sales incentive structures and sales metrics not materially deterring irresponsible sales conduct nor promoting responsible sales.
- Inappropriate monitoring and reviewing sales incentive structures which do not place substantive requirements on CSPs.
- Remedies for irresponsible sales conduct not prioritising consumer outcomes.

Sales processes

6.1.1. A CSP must sell telecommunications goods and services responsibly.

6.1.2. A CSP must ensure its sales processes: [4.5.1 + new]

(a) promote and sell its telecommunications goods and services in a fair and accurate manner; [4.5.1(a)]

(b) promote and sell its telecommunications goods and services in plain language; [4.5.1(a)]

(c) clearly explain the offer, including (where applicable) [4.5.1(b)]:

(i) the minimum periodic price;

(ii) the minimum term of the offer;

*(iii) information about any costs payable if the customer terminates the offer;
[updated 4.2.2 (a)(iv)]*

(iv) the minimum term of any special promotions, discounts or benefits (if applicable); and

(v) information about the impact cancellation of the telecommunications service may have on any other telecommunications goods and services (if applicable).

6.1.3. A CSP must train and resource relevant staff to promote and sell telecommunications goods and services in compliance with this Code. [4.5.1(c), [4.5.1(f)]]

The objective of responsible sales is to ensure that the incidences of consumers entering into unsuitable contracts are minimised. ACCAN acknowledges the updated clause 6.1.1 places a proactive obligation on CSPs to responsibly sell telecommunications goods and services.

Providing clear information on the terms and conditions of the contract, as clause 6.1.2 requires, is important. However, in our view, ensuring the organisation has the right culture as well as systems to prevent or deter irresponsible sales cannot be understated. This is the case because, as the ACCC has previously submitted, the drivers of mis-selling 'include aggressive selling practices, sales incentives and commission-based remuneration schemes'¹⁴ none of which can be addressed by the proposed sales process provision alone.

Given the serious consumer harms that can occur due to mis-selling, the TCP Code should be much more explicit about a CSP's obligation to:

- Ensure CSPs and their staff have a positive duty to deliver fair and reasonable outcomes according to each consumers' individual circumstances.
- Ensure that CSPs and their sales staff adopt a responsible approach to selling that assists consumers in making informed purchasing decisions appropriate to their needs.
- Ensure staff are aware of the harms caused by mis-selling, particularly consumers experiencing vulnerability.
- Monitor sales practices on an ongoing basis and act swiftly to correct irresponsible sales practices as they are identified.
- Periodically review its sales processes and practices to ensure ongoing improvement and share the outcomes of these reviews with the ACMA and its sales staff.

As per our comments on the drafting of clause 6.1.16, ACCAN would also recommend that this obligation be re-drafted to express the desired consumer outcomes associated with responsible selling.

Incentive Structures

6.1.4. *Where a CSP has sales incentive structures in place, the sales incentive structures must promote responsible selling practices. [new]*

6.1.5. *At a minimum, sales incentive structures must:*

(a) include material disincentives to irresponsible selling practices, including:

(i) negative consequences for all persons who benefitted, where mis-selling is identified, for example, clawback; and

Note: For example, commissions may be reclaimed if mis-selling is identified. This may apply to both past and future commissions based on individual performance.

(ii) incorporating customer feedback and satisfaction scores into sales incentive structures; and

¹⁴ Australian Competition and Consumer Commission, Telecommunications Consumer Protections Code review (Submission, June 2024) 5 <<https://www.accc.gov.au/system/files/accc-response-to-the20-may2024-draft-of-the-tcp-code.pdf>>.

Note: For example, customer satisfaction scores and positive consumer interaction metrics will be integrated into the calculation for commission qualification and potential claw back.

(iii) clear limitations or controls on the volume and value of sales that contribute to commissions.

(b) include additional protections for consumers identified as vulnerable. This must include:

(i) specifically training sales staff on identifying and appropriately handling these consumers; and

(ii) prohibiting practices that prioritise sales volume or value over consumer welfare.

(c) incorporating metrics that promote responsible selling when setting targets, evaluating performance and calculating rewards or commissions (as applicable)

Note: Such metrics may include:

- *compliance with responsible selling practices and policies.*
- *customer feedback and satisfaction scores.*
- *measures of positive consumer interactions and long-term customer relationships.*
- *Accessibility and inclusivity engagement.*

6.1.6. Sales practices must be monitored and reviewed at least annually to ensure compliance with these rules.

6.1.4

Clause 6.1.4 may not appropriately facilitate responsible sales due to the absence of a focus on consumer outcomes. This clause is not complemented by substantive drafting providing direction to CSPs on the nature and contents of responsible selling practices. This clause replicates the existing drafting limitations previously identified by ACCAN which requires CSPs to establish processes or structures which do not generate or facilitate positive consumer outcomes.

6.1.5

Section 6.1.5 (a)(i) is entirely retroactive and does not prevent irresponsible sales practices. It is silent about the negative consequences staff will face if they engage in irresponsible sales. As drafted, it continues to allow practices that prioritise sales volume or value over consumer welfare given that this practice is only prohibited for vulnerable consumers. These clauses do not sufficiently mitigate the risk of consumer harm.

In particular:

- Clawbacks of future commissions are unlikely to be an effective deterrent to irresponsible sales practices and may encourage irresponsible sales and staff turnover. Facing claw backs on commissions accrued due to irresponsible sales, CSP staff may choose to leave the employ of the CSP prior to claw backs taking effect but after irresponsible sales have occurred. Due to the delay between the irresponsible sale occurring (and a CSP staff member gaining a commission from the irresponsible sale) and the sale being identified as irresponsible, there is a substantial opportunity for CSP staff to benefit from the commission without receiving negative consequences or experiencing clawbacks. A CSP seemingly has no scope to claw back commissions from a staff member no longer in their employ.
- Sub-clauses (a)(ii) and (iii) do not specify how customer feedback and satisfaction must be incorporated, leaving considerable discretion to CSPs. For example, a CSP could include customer feedback as a component of their sales incentive structure, alongside traditional metrics like sales volume. However, if customer feedback is weighted significantly less than sales volume in rewarding the staff, then the sales incentive structure does not sufficiently deter or prevent staff from engaging in irresponsible sales. As drafted, this example would still fully comply with the Code. Furthermore, customer feedback that is provided at the point of sale (or shortly thereafter) is unlikely to provide a true picture of whether the sales practices adopted were appropriate as the unsuitability of a product or service only becomes apparent over time.

Clause 6.1.5 offers insufficient protections for consumers in vulnerable circumstances. The drafting assumes CSP staff are adequately trained, proactively identifying and appropriately supporting consumers in vulnerable circumstances. This is a false assumption that is not reflected in consumer feedback or input ACCAN has received from financial counsellors or various community legal centres.

The new drafting to limit sales incentives structures through incorporating additional metrics to sales volume and value does not recognise how sales incentive structures pose an inherent risk to consumers. Subclause (b)(ii) is ambiguous and leaves too much discretion to CSPs on what factors they permit in designing sales incentive structures in relation to consumers in vulnerable circumstances. ACCAN has concerns that CSP staff may be disincentivised from identifying vulnerable consumers as this would materially impact on the commissions received by CSP staff.

ACCAN considers that processes alone are insufficient and factors such as organisational culture, skills and commitment to ongoing improvement will facilitate compliance. The TCP Code should therefore also ensure that staff are trained about the importance of the issue and the need to comply with the process and regular monitoring or audits are undertaken by the CSP to check levels of compliance. As part of a cycle of continuous improvement, any non-compliance identified should trigger a review of the adequacy of processes and these examples should be shared with staff to increase their knowledge and awareness of acceptable practices.

6.1.5 (c) sets no minimum standard for what metrics CSPs are required to include, leaving it up to the discretion of the CSP, who may choose an inappropriate metric to encourage responsible selling practices. The absence of minimum metrics in this subclause will result in significant variations in customers' experience of sales practices and processes and compliance with it will not improve consumer outcomes.

6.1.6

ACCAN considers that this clause should be extended to include sales incentive structures and should specify which clauses of the Code should be annually reviewed. As it stands, the TCP Code contains little mention of specific sales practices due to the Code's focus on ensuring responsible sales through the establishment of processes and structures.

Monitoring and reviewing sales incentives

6.1.7. Monitoring and reviewing required under 6.1.6 must be undertaken at arm's length from any persons who benefit directly from sales incentives schemes or the outcomes of any monitoring or review functions.

Note: see also chapter 3, Organisational culture and governance.

ACCAN agrees with the general proposition that any monitoring of sales practices must be conducted independently and by persons free of any conflict of interest. However, the drafting of clause 6.1.7 could be considerably improved:

- To provide appropriate direction to CSPs on reviewing and monitoring sales incentives schemes.
- To avoid use of vague language such as 'At arm's length' which may inhibit the enforceability of the obligation.

ACCAN has fundamental concerns about the ability of CSPs to ensure sales incentive structures do not influence sales practices leading to consumer harm. All CSP staff stand to directly or indirectly benefit from sales incentive structures that aim to drive profit for the company.

Information provided to consumers prior to a sale

6.1.9. Prior to taking initial payment, a CSP must provide the customer with information about at least two fee free payment methods. [new]

ACCAN would support the expansion of this drafting to remove ambiguity. Discussions about fee free manual payment methods should occur earlier in the sales process than "prior to initial payment" which is ambiguously drafted. ACCAN considers that the CSP must provide the customer with information about fee free payment methods (both manual and automatic payment methods) immediately after discussing the cost of the telecommunications good or service.

6.1.10. Prior to an assisted sale of a mobile telecommunications service to a new residential consumer, the staff member facilitating the sale must prompt the consumer to check the critical locations the service is intended to be used. [new] See also cl. 5.3.5(k).

ACCAN considers that this drafting should be altered to reflect the importance of attaining quality telecommunications connectivity in areas that a consumer deems important. ACCAN considers that this clause should require a CSP to **provide** information on service availability at critical locations as identified by the consumer. ACCAN supports inclusion of a disclaimer that coverage maps may not be accurate or reliable. ACCAN considers that this clause should also be extended to apply current customers and small business customers.

Remedies for mis-selling

6.1.11. A CSP must take reasonable steps to correct instances of mis-selling in breach of this Code by offering a remedy that is realistic, appropriate and tailored to suit the customer's needs, circumstances and harm experienced, taking into account the customer's preferred remedy. [updated 4.4.1(a)]

Note: This could include, but is not limited to:

(a) providing a refund; or

(b) returning the customer to the position they were in prior to the sale; or [new]

(c) terminating a customer's contract without charge; or [4.4.1(a)]

(d) enacting a change of contract without penalty to the customer; or [4.4.1(a)]

(e) another action or remedy, as agreed with the customer. [new]

Note: Customers should not be required to accept a remedy that is preferred by the CSP or be penalised for choosing one remedy over another.

ACCAN considers that 6.1.11 (b) should reflect the overarching goal of the remedy process rather than being an option for CSPs to consider when offering remedies to the consumer. ACCAN notes that as this option is one of the offers listed under this clause and included as a note, providers are not required to offer it. We recommend removing 'take reasonable steps to' from the drafting to ensure uniform application of this clause and recommends removing 'realistic' as a criteria in addition to clarifying that 'appropriate' means 'appropriate for the customer'.

ACCAN considers that the current drafting makes remedies only available to customers reporting instances of irresponsible sales practices. The clause should clarify that any mis-selling that is identified by the customer or by the CSP (through its own monitoring processes) will be eligible for remedies. ACCAN expects that reporting avenues for instances of irresponsible sales conduct must be accessible, actively promoted and be made prominently available during customer interactions with CSP sales representatives. ACCAN notes that in the TCP Code May Draft, CSPs were required to offer at least one remedy to consumers and the list of remedies located in the note were included in a clause. It is a critical oversight that the options for remedy in this draft have been demoted to an accompanying note.

ACCAN considers that CSPs should:

- Be required to offer all remedies in the note in the form of a TCP Code clause.
- Be required to agree to the customer's preferred remedy, not only take into account the customer's preferences.
- Make publicly available the list of remedies which CSPs are required to offer customers who have experienced mis-selling.

ACCAN has concerns that this note does not adequately restrict CSPs from penalising consumers for choosing one remedy over another as notes are not code clauses.

Remedies for incorrect information

6.1.12. *Where a customer has relied on inaccurate information provided by a CSP about an offer to make a purchasing decision, the CSP must provide the customer with:*

(a) corrected information about the offer; and [4.4.1(b)]

(b) a tailored remedy as set out in cl. 6.1.11. [new]

ACCAN considers that in instances where a CSP has provided incorrect information to a customer and the customer has relied on this information to make a purchasing decision, it is very unlikely that this information is officially recorded or that the consumer has this information available after experiencing mis-selling. Information incorrectly provided to customers about a service is likely to come verbally from a staff member as has occurred historical instances of unconscionable sales.¹⁵ ACCAN would support the introduction of a positive obligation for CSPs to promote to consumers that they offer this consumer protection. ACCAN considers that 6.1.12 should be redrafted to include instances where a customer has relied on misleading and incomplete information in addition to inaccurate information provided by a CSP.

Clause 6.1.13. Where a customer has purchased a mobile telecommunications service, and actual mobile network coverage does not meet the customer's coverage requirements (see cl. 5.3.5(k), a CSP must allow the customer to exit their service contract with no early exit fees. [new]

ACCAN supports the inclusion of this clause in the TCP Code and would suggest the following improvements to ensure that consumers can appropriately utilise this clause:

- CSPs must actively make customers, especially customers living in regional, rural and remote areas, aware of their right to remedy under this clause during the sales process.
- References to this clause should be made in the Critical Information Summary.
- This clause should apply to mobile telecommunications goods in addition to mobile telecommunications services.

ACCAN notes that consumers purchasing mobile telecommunications services and goods may have traded in previous mobile devices with the expectation that their new device will fit their mobile coverage requirements. Should a customer purchase a new device based on inaccurate information provided by the CSP, customers should have access to all remedies as detailed in the clauses above.

Remedies for customers in vulnerable circumstances

6.1.14 Where a customer has purchased a telecommunications good or service while affected by a vulnerability that impacted their decision-making at the time of sale, a CSP must allow return of the telecommunications good, or cancellation of the purchased telecommunications service without charge. [new]

¹⁵ Australian Competition and Consumer Commission, Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers (Media Release, 2021) <<https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>>.

ACCAN supports the provision of remedies for customers in vulnerable circumstances. Remedies should not be limited to customers affected by a vulnerability that impacted their decision-making at the time of sale. Instead, remedies should be available to customers who experience vulnerability after the purchase of the good or service. This is because vulnerability can arise, for example, from irresponsible sales practices which contribute to a consumer's vulnerability subsequent to the original transaction.

Requirements for vulnerable consumers to produce proof of their vulnerability must be handled appropriately. Consumers should not have to be subject to rigorous and/or invasive questioning by CSPs with respect to the vulnerabilities they experienced at the time of sale. CSP staff should also note that some vulnerabilities are also clearly visible and do not require further confirmation. Further, CSPs should not require that customers undergo a lengthy process to demonstrate vulnerability under this clause. ACCAN also supports expanding remedies to customers under this clause akin to the remedies located in the 6.1.11. We note that these protections are critical to consumers experiencing vulnerability but may not have been subject to mis-selling.

ACCAN notes that 6.1.14 only requires CSPs to allow the return of the telecommunications good, **or** cancellation of the purchased telecommunications service without charge. ACCAN considers that consumers should be able to return the telecommunications good **and** cancel the service in question without charge.

ACCAN would query the maximum time frame for which a customer can make use of clause 6.1.14 noting that consumers may be unaware of the particular vulnerabilities they experience at the time of sale and/or may be unaware of their ability to make use of clause 6.1.14. Additionally, ACCAN would support further clarification with respect to the returning of damaged goods or goods not fit for resale. ACCAN considers that CSPs should conduct a review process prior to requesting details about a customer's vulnerability with respect to cl 6.1.14 as customers experiencing certain vulnerabilities may not have adequate or available documentation with respect to the vulnerabilities they are experiencing. ACCAN considers that this review process should only allow CSPs to request evidence of vulnerability as a last resort.

6.1.15. A CSP may request evidence of vulnerability in relation to cl. 6.1.114, except in cases where the customer is affected by DFV as required under cls 4.2.5 – 4.2.7. [new]

6.1.16. A CSP must establish processes to allow it to assess evidence of vulnerability in cases of mis-selling. This must include:

(a) a process to allow for the information to be provided to personnel who are authorised for the purposes of assessing eligibility.

(b) steps to protect the information from misuse, interference and loss, unauthorized access, modification or disclosure; and

(c) steps to ensure the information is disposed of, or destroyed, in a secure manner where the record is no longer needed under this industry Code or any other applicable laws.

Note: Clause 6.1.15 does not require that the CSP request proof of vulnerability affecting the customer, rather, this is at the discretion of the CSP.

Note: other obligations for sales and related remedies can be found under the Australian Consumer Law clauses in this Code do not limit those requirements.

ACCAN appreciates that there must be flexibility as to what may constitute evidence of vulnerability as consumer vulnerabilities are diverse and varied. However, ACCAN would support a clause requiring CSPs to provide customers with a list of evidence types which may be considered suitable evidence of vulnerability. This list can include, but is not limited to, the examples given in the breakout box. Clause 6.1.16 is exclusive to cases of mis-selling, leaving consumers who have provided evidence under clauses 6.1.14 and 6.1.15 unprotected by the requirements under 6.1.16. CSPs should establish a process to assess vulnerability with respect to clause 6.1.14.

Timeframe for remedies

6.1.17. A remedy provided to a customer by a CSP must be implemented by the CSP within 10 working days of the customer accepting that remedy, except where otherwise agreed with the customer. [new]

Note: other obligations for sales and related remedies can be found under the Australian Consumer Law. Clauses in this Code do not limit those requirements.

ACCAN considers that due to the financial implications of providing mis-selling remedies, customers should be provided with remedies within 5 working days of the customer accepting the remedy. The difference between 5 and 10 working days is far more material to customers who have experienced mis-selling compared to CSPs. Customers who are requiring remedies are likely in vulnerable circumstances may be experiencing debt and hardship as a result of the instance of mis-selling. ACCAN considers that CSPs should make known to customers that they are required to provide a remedy within the determined working day period.

Question 6

Credit assessment requirements at 6.2 have been substantially strengthened to increase consumer protections. These clauses require an affordability check, with an external credit check required when a customer could be liable for a debt of over a specified amount.

There may be unintended consequences if the threshold for external credit checks is too low, however, and it is unclear whether the balance between responsible service provision and accessibility as presented currently is right, noting that:

- running a credit check on a consumer will create a record on their credit file which may impact their ability to obtain credit in the future (including for other third parties) and/or the cost of that credit.
- consumers without a credit score would be locked out of post-paid services/payment-over-time arrangements.
- consumers not able to make use of a plan arrangement to, for example, buy a device interest-free over time, may be driven to more expensive forms of credit, or pawn brokers.
- existing customers with a long record of paying on time, etc, may complain about poor customer service experience if asked for what they consider an unnecessary external credit check.

6 (a) As highlighted in the draft, the proposed trigger for an external credit check for a NEW customer is that the potential for a debt owed is over \$150. Is this a reasonable threshold? Why/why not?

6.2.1. A CSP must complete a credit assessment for new residential consumers where the contract may result in: [updated 6.1, 6.1.1(b)]

(a) a debt owed by the consumer equal to or greater than \$150; and [new]

(b) the debt being pursued by the CSP. [new]

Note: the debt being pursued by the CSP includes passing the debt to a collection agency and/or debt buyer, default listing of the debt in line with the Credit Reporting Code, and legal action that may be taken to recover an unpaid debt. It does not include payment reminder communications to customers or restriction, suspension or disconnection of a telecommunications service for credit management reasons (including the sending of associated notices under Chapter 9). If a CSP has a policy to waive a debt rather than pursue it, this does not affect its obligations to sell responsibly under cl. 6.1 and other legal and regulatory obligations.

ACCAN does not consider that this clause provides appropriate community safeguards by allowing CSPs to avoid undertaking credit assessments and substantial compliance with the TCP Code. ACCAN notes that with respect to 6.2.1(b), regardless of a debt being pursued, credit assessments are essential to ensure adequate consumer protection.

If a CSP does not complete a credit assessment as they have not chosen to pursue debts under (b), a consumer is still at risk of financial over-commitment, disconnection, accruing of debt (even if it is not paid out), and the default being listed against their credit score. These harms have an immediate and long-term impact on consumers.

Declined credit assessment

6.2.11. *Following a credit assessment, if a CSP concludes that a consumer does not qualify for the requested telecommunications product, the CSP must: [6.1.2]*

(a) advise the consumer that their credit assessment was declined; and [6.1.2(a)]

(b) provide the consumer with information about alternate telecommunications goods and services that the CSP has determined may meet the consumer's needs in accordance with the outcome of the credit assessment; or [6.1.2(b)]

Note: alternate telecommunications goods and services may include lower cost telecommunications goods and services, such as pre-paid services or telecommunications services supplied with restrictions placed on them, upfront payment options (including upfront payment for telecommunications goods such as mobile devices), the use of a guarantor, or a security deposit. [new]

(c) where a CSP determines that it does not have suitable alternatives to offer, advise the consumer of that fact.

In instances of a declined credit assessment, ACCAN suggests that 6.2.11(b) be amended to require CSPs to clearly explain to the customer the implications of a declined credit assessment.

ACCAN suggests that 6.2.11(b) be amended to:

'provide the consumer with information about alternate telecommunications goods and services that the CSP has determined will meet the consumer's needs and financial capability in accordance with the outcome of the credit assessment'.

6 (b) Is the proposed threshold of \$2000 for new or existing small business customers reasonable? Why/why not?

6 (c) Is the proposed threshold of \$1000 for an external credit check for existing customers reasonable? (This reflects the current, 2019, Code requirements). Why/why not?

ACCAN notes that an increase in the customer's credit commitment with a CSP by more than \$1,000 only results in a CSP undertaking a new external credit check not a credit assessment. ACCAN considers that credit checks alone are not sufficient to ascertain a customer's credit capacity and do not constitute a meaningful assessment of a customer's capacity to take on credit. Any increase in a customers' credit commitment with a CSP warrants the undertaking of a credit assessment, in line with our above recommendations regarding the undertaking of credit assessments.

6(d) Any other comments or concerns about the proposed credit check requirements?

ACCAN has significant concerns about clause 6.2.2 with respect to its ability to provide material credit assessment protections to consumers.

6.2.2 A credit assessment under cl. 6.2.1 for new residential consumers must include:

(a) consideration of the consumer's financial circumstances, including: [updated 6.1.1(b)(i)] (i)

(i) employment status (e.g. part-time, full-time, casual, unemployed, self-employed, retired); and

(ii) employment type (e.g. professional, student, hospitality, retail, construction); and

(iii) affordability indicators (e.g. income, age, time at current address, residential status, data held within credit file, financial hardship indicators, general expenses, telecommunication expenses); and

Note: this does not require a CSP to request evidence from the customer about their financial circumstances unless the CSP can demonstrate a risk proportionate to the risk of collecting personal information.

(b) an external credit check from a credit reporting body. [6.1.1(b)(ii)]

ACCAN has serious concerns with the note present underneath 6.2.2(a)(iii), which appears to allow the CSP to opt out of undertaking credit assessment if they determine that requesting evidence poses greater harm to consumers than the possible credit risk of a customer. The note is vaguely and opaquely drafted which may significantly inhibit its uniform implementation by CSPs. There may be some circumstances involving vulnerable consumers that could give rise to disproportionately high risks of collecting personal information. If this is the intent of the opt out, the drafting in the Code should explain the circumstances under which this would be warranted and provide examples of why the risks would be disproportionately high.

ACCAN has additional concerns with respect to this clause and credit assessments under 6.2.6:

- A credit assessment based solely on a person's self-report plus payment history/credit report is not an appropriate credit assessment.
- Requiring CSPs to "consider" the consumer's financial situation is not a stringent requirement which provides for appropriate safeguards in light of comparative obligations on credit providers in other sectors.
- The clause gives CSPs the discretion to determine indicators of affordability, putting consumers at risk of financial harm, as a CSP may choose affordability indicators that favourably, not accurately, reflect the consumer's circumstances.
- How the criteria of "time at current address" may be material to the conducting of a credit assessment. ACCAN considers that this may unreasonably discriminate against renters.

Telecommunications debts are fundamentally credit and should have equivalent protections provided to consumers provided with credit under the National Credit Code.¹⁶ Telecommunications debts are able to facilitate financial hardship in the same way as other credit products and should have appropriate credit assessments in place to ensure consumers are protected.

The disparity between the credit assessment requirements in the TCP Code and the requirements on other credit providers under *National Consumer Credit Protection Act 2009 (Cth)* (the National Credit Act) demonstrate the inability of this section of the TCP Code to provide for appropriate community safeguards.¹⁷ ACCAN would expect that credit assessment clauses in the TCP be modelled on the responsible lending obligations required of credit licensees under *the National Consumer Credit Act*.

Question 7

The Code requires CSPs to notify customers of CSP-initiated changes to a customer's telecommunications service contract that are detrimental (7.2.2 and 7.2.3 (a) and (b)). This rule reflects the Australian Consumer Law (ACL) requirements. Some stakeholders have suggested that the requirement should be to inform consumers of ALL changes, whether detrimental, neutral or positive, to remove possible subjectivity in the assessment of whether a change is detrimental. The counter-argument is that a requirement to require customers be notified of all changes not result in better consumer outcomes because:

- the risk to the consumer is with detrimental change, not positive change.
- CSPs are usually very keen to inform customers of positive changes (it's good marketing), but would usually do so just before, or at the time of a change being made, allowing customers to understand very quickly that the change is favourable (rather than calling the CSP to check).
- there is a risk of 'the cry wolf effect' if the requirement is too broad; that is, that customers will not focus on detrimental notices if they are told of positive or neutral changes every time.

Considering the different perspectives, do you consider the current drafting appropriate? Why/why not?

ACCAN notes the current drafting of the relevant sections of the Code to be:

7.2.2 Where a CSP proposes a detrimental change to a customer's telecommunications service contract, it must notify the consumer a minimum of 20 working days before the earliest date the proposed change may be completed. [new]

Note: a detrimental change may include a change to contract benefits, such as an increase in cost or loss of entitlements.

7.2.3. A CSP will not be in breach of their obligations under cl. 7.2.2 where the CSP: [new]

¹⁶ ACCAN, Regulating Buy Now, Pay Later in Australia (Submission, 2022) <<https://accan.org.au/accans-work/submissions/2063-buy-now-pay-later>>.

¹⁷ Australian Securities and Investment Commission, Responsible lending (Webpage) <<https://asic.gov.au/regulatory-resources/credit/responsible-lending/>>.

(a) reasonably considers the change is likely to benefit the customer or have a neutral impact on them; or [new]

(b) makes changes as required by other legal or regulatory obligations; or [new]

Note: for example, see Chapter 9 for credit management obligations and termination of contract.

(c) does not receive sufficient notice of a change from a wholesale provider to allow it to meet the timeframe provisions under cl. 7.2.2.

ACCAN notes that a CSP may not be best placed to determine what change to a customers' telecommunications service contract is detrimental, neutral or positive due to the customers unique experience of their telecommunications good and/or service. ACCAN would query how often changes occur to service contracts to warrant the realisation of the 'cry wolf' effect described in the above question. Should CSPs communicate the changes made to service contracts effectively, which is in their best interest, consumers will be adequately informed of the changes to their service contracts and likely appreciate the information. Consumers should be adequately and appropriately informed of the changes being made to their service contracts as alterations made to the contract without the consumer being made aware of such changes is likely to contribute to customer dissatisfaction.

ACCAN considers that the Drafting Committee should remove "detrimental" from the drafting of clause 7.2.2 and remove 7.2.3(a) from the TCP Code. The note under clause 7.2.2. should also be removed from the Code as consumers should be alerted to any changes to their service contracts, not only to changes determined as detrimental by a CSP. Under ACCAN's proposed changes, CSPs will still be able to alert consumers of positive changes to their account and can tailor their communications to further alert consumers as to the benefits associated with a particular change.

Conclusion

ACCAN acknowledges the work of industry participants in revising the existing TCP Code with the aim of improving the protections available to consumers. ACCAN acknowledges that incremental progress that has been made but remains unpersuaded that industry participants will uplift the Code to incorporate critical consumer protections sufficient to provide the appropriate community safeguards required for registration. Without this confidence, ACCAN continues to support direct regulation of the TCP Code as the appropriate solution to addressing the harms experienced by communications consumers. Accordingly, we consider that persistent and longstanding issues present with TCP Code clauses concerning sales practices and credit assessment should be expedited for direct regulation.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)
