



Telecommunications Consumer Protection Code

Submission to the Communications Alliance



November 2011



About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Introduction

The Australian Communications Consumer Action Network (ACCAN) thanks the Communications Alliance for the opportunity to provide a submission on the consultations for the draft Telecommunications Consumer Protection Code (the draft Code).

ACCAN's analysis focuses on four areas. We analyse whether the Australian Communications and Media Authority's (the ACMA) *Reconnecting the Customer* (the RTC) recommendations have been adopted. We explore an alternative, holistic approach to a compliance framework which focuses on a simpler, more transparent and accountable suite of measures. We identify two outstanding consumer issues that remain problematic in the draft Code. Lastly, we summarise inconsistencies, inaccuracies, unenforceable provisions and other matters that relate to the way existing content has been drafted.

The key findings of our RTC analysis are as follows:

- Of the five RTC recommendations relevant to the draft Code, none have been implemented in full.
- The draft Code attempts to implement a great many of the RTC recommendations but regularly falls short because of vague drafting or definitional issues, for example the definition of a complaint excludes faults.
- In other circumstances the draft Code interprets the RTC recommendations too weakly, for example only banning the term 'cap' for new products, only applying unit pricing disclosures to 'large format' advertisements, and limiting usage notifications to data allowance.
- The draft Code is silent on a range of critical RTC recommendations, for example the requirement to have transitional measures to limit debts where spend management tools are not in place or the requirement to include the TIO details on the Critical Information Summary.

We find that the compliance framework needs to be simpler and more transparent:

- ACCAN recommends limiting reporting to a single annual Compliance Attestation Statement, still scaled to Supplier size, but with the flexibility to allow Suppliers to report on areas where they have been or remain non-compliant and how they have or intend to address their non-compliance. Adopting this measure would remove the Customer Information Compliance Statements and Compliance Achievement Plans.
- Compliance Attestation Statements should be published on Supplier websites.
- A number of the proposed compliance reporting obligations create a burden on business because they carry no corresponding benefit to consumers, for example the Customer Information Compliance Statement should never be required if Suppliers meet their obligation to make information readily available.
- Too much is being expected of the proposed *Communications Compliance* committee which in its early years of development risks being overloaded by tasks. In the absence of details on constitution, governance, funding and resourcing, our preference is for it to focus exclusively on facilitating industry publications of compliance attestation statements.
- Code monitoring remains an important area that is not addressed in the draft Code. The TIO is best placed over the coming years to expand its code monitoring



activities. Only a small proportion of suspected code breaches can currently be confirmed because the TIO is limited in which matters it can investigate. We envisage that the TIO can quickly expand its capacity to investigate suspected code breaches and publish regular reports on the nature of code breaches, trends and systemic issues.

- Performance reporting can be a good way to measure the efficacy of the various consumer protection instruments but is too underdeveloped in the Code. Performance reporting should be undertaken as a separate project to the *TCP Code*, either as a project of the Communications Alliance or the ACMA. It should not be a role of the *Communications Compliance* committee.
- The ACMA should extend its enforcement activities to issue sanctions for non-compliance, although the ability of customer to exit contracts without penalty should also be explored as a suitable sanction to sit inside the *TCP Code*.

We identify two outstanding issues in the draft Code

- Definition of Financial hardship and its use in urgent complaints
- TIO contact details on bills

The code drafting requires further work to ensure it is legally enforceable and accurate.

- Our submission documents over 100 drafting-related queries, many of which are simple and straightforward to rectify.

1. Implementing *Reconnecting the Customer*

On 9 September 2011, the Australian Communications and Media Authority released its final *Reconnecting the Customer Report* ('RTC'). This report outlined 6 proposals, 5 of which relate directly to the draft TCP Code.¹ Below we examine each of these recommendations in turn and provide ACCAN's view on whether the draft Code meets the RTC requirements. The analysis is very detailed due to the complexity of the recommendations and the Code's drafting.

We recognise that industry has made some important steps forward in the brief two months between the release of the final RTC and the release of the draft Code on 8 November 2011. We are also aware that industry has likely progressed the RTC matters as far as they are capable of doing and that the shortfalls identified below are now likely to become a matter for deliberation by the ACMA. We nevertheless welcome the opportunity to work with industry, to the extent possible, to enhance the adoption of the RTC recommendations.

1.1. Improved advertising practices

Use of confusing terms

The ACMA states that there be 'clear and enforceable rules that prohibit specific terms known to be confusing'.² Specific terms include 'cap', 'unlimited', 'no exclusions' and 'free'. If the terms are to be used it is only in certain circumstances – for example, the term 'cap' can only be used for a product that is subject to a hard cap.³

The ACMA further notes imposing a ban on specific words is insufficient as this 'may cause marketers to substitute other similarly confusing terms'.⁴ The ACMA therefore proposes that in addition to specific terms 'any similar term' also be prohibited 'at a minimum'.⁵ We will look at each of the terms in turn.

Cap

CI 4.1.1.1(c) of the draft Code states:

Offer name: cease using the term 'cap' to describe any new Offer made after the date of registration of this Code, unless the Offer contains a Hard Cap.

CI 2.1 of the draft Code defines a hard cap:

means a maximum Limit applied to a Customer's use of Telecommunications Services, which Limit cannot be exceeded by the relevant Customer.

CI 2.1 of the draft Code also defines Limit:

means the maximum monetary amount assigned to a Customer's expenditure with a Supplier, for the total of Unbilled Charges accumulated during the Billing Period.

¹ The sixth recommendation is about changes to the TIO scheme.

² RTC final at 85.

³ RTC final at 83.

⁴ RTC final at 83.

⁵ RTC final at 83.

Clause 4.1.1.1(c) only applies to 'any new Offer'. This means that the use of the term 'cap' can continue to apply for products that are not so called 'Hard Caps' (if these products are part of an offer made *before* the date of registration of the Code).

This is further supported by Cl 4.2.1(a) (xiii) which states that continued use of the term cap (when it is, in fact, not a hard cap) is allowed for pre-Code plans provided 'it is made clear in context that Consumers may be required to pay more than the monthly quoted amount for the cap plan.'

To allow two different and opposing meanings of the word 'cap' to exist is confusing and in direct contravention of the RTC requirement.

The ACMA has made very clear in its RTC recommendations that there is either a total ban on the use of the term 'cap' or there is only one use of the term 'cap' allowed, that is, when it is describing a maximum amount.

ACCAN submits the current use of the term 'cap' in the draft Code does not meet the RTC recommendation banning use of confusing terms.

Unlimited

The draft Code stipulates when certain 'practices' cannot be engaged in, including the use of certain terms. 'Unlimited' 'no exceptions, exclusions or catches' and 'free' are named in particular and discussed below.

Cl 4.2.1.1(a)(ii) use the term 'unlimited' in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network

ACCAN submits the phrase 'in an unqualified manner when referring to usage' implies unlimited can be used in a qualified way. This is contrary to the RTC recommendation which 'prohibits terms known to be confusing.' 'In an unqualified manner when referring to usage' must be deleted to meet the RTC requirements.

No exceptions, exclusions or catches

Cl 4.2.1.1 (a)(iii): use the terms 'no exceptions', 'no exclusions' or 'no catches' without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer.

'Sufficient disclosure' suggests suppliers can continue to use the terms 'no exceptions, exclusions or catches' even when there are exceptions, exclusions or catches. This is contrary to the RTC recommendation which 'prohibits terms known to be confusing.' 'Without sufficient disclosure when referring to a price or service offer' must be deleted to meet the RTC requirements.

Free

Cl 4.2.1.1 (a)(iv): use the term 'free' to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;

ACCAN notes this term has been taken from the undertaking under s87B given by Telstra, Optus and Vodafone to the ACCC on 14 September 2009. However, ACCAN submits that this clause would be difficult for a consumer to enforce.

A more modest proposal would be to require any service provider using the term free to have available an analysis that substantiates that the cost of the 'free' product is not recovered from other charges under the plan. That substantiation document should be produced on request. Such a provision would be similar in effect to the power that the 'substantiation notice' powers that the ACCC currently has under Part5-1, Div 2 of the ACL.

Any similar term

ACCAN has not been able to find a reference to the banning of any similar confusing terms as required by the first RTC recommendation. Such a provision needs to be included in the TCP Code for the reasons the ACMA provided in its final report.⁶ This is an RTC requirement.

The RTC states that the 'advertising practices that confuse consumers about charging arrangements within the included value plan are widespread.'⁷ In ACCAN's submission in response to the draft Reconnecting the Customer Report, we referred to two reports commissioned by ACCAN that highlight the confusion regarding the use of these terms is continuing: *Taking Advantage of Disadvantage* and *Mind the Gap: refugees and communications technology literacy*.⁸

Due to significant and ongoing detriment, ACCAN advocates for a complete ban on confusing terms. ACCAN submits that the use of these terms in the draft Code as discussed above do not meet the RTC recommendation banning use of confusing terms.

Standardised rates of charging

The first RTC proposal also requires that the cost of a 2 minute standard call (based on the highest rate under the plan), SMS and download of 1 megabyte of data be disclosed 'in all advertisements or promotions (in any text-based media) of products that refer to a minimum monthly spend' as well as an 'estimate of the number of calls within the plan'.⁹

There are two elements to this – the standardised rates themselves and the manner in which the rates are disclosed in advertising. ACCAN submits the standardised rates criteria is partially met but the advertising requirements are not met. This is discussed in detail below.

ACCAN welcomes the inclusion in the draft Code of CI 4.1.2(a)(iii)(A) which outlines the maximum price for a 2 minute call whether inside or outside the minimum monthly spend of a post-paid service. As raised in previous submissions by both ACCAN and ACCAN members, (source) to have a higher call rate once a consumer exceeds the plan can be confusing and can contribute to bill shock, particularly when the consumer is not aware they have exceeded their limit and charges can be significantly higher than they are within the plan.¹⁰

⁶ Final RTC at 83.

⁷ ACMA, Reconnect the Customer Public Inquiry, Summary of Proposed Solutions, June 2011, Proposal 1.

⁸ ACCAN, *Response to the Reconnecting the Customer Draft Report* at 16-17 assessed on 23 November 2011 at http://accan.org.au/files/ACCAN_Response_to_the_RTC_Draft_Report_final_.pdf

⁹ Final RTC at 85-86.

¹⁰ For example, ACCAN, *Response to the Reconnecting the Customer Draft Report* at 18; Brotherhood of St Laurence, *Response to the Reconnecting the Customer Draft Report* at 9 accessed

ACCAN understands CI 4.1.2(a)(iii)(C) to be saying that suppliers must disclose the maximum cost of one megabyte of data within Australia whether inside or outside the minimum monthly spend of the post-paid service. ACCAN wishes to clarify with Communications Alliance - does the reference to 'prior to any discounts being applied' mean this is the highest amount that can be charged for using one megabyte of data within Australia? If not, in what circumstances would different prices be charged? This must be clearly stated in the Code to comply with the RTC requirement.

If the maximum price for 1 megabyte data is included in the standardised rate, what is the purpose of CI 4.2.1.1(a)(viii)?

CI 4.2.1.1(a)(viii) Prices for data allowances: use unqualified headline representations as to ongoing prices for specified data allowances in circumstances where the price for that data is likely to increase within a reasonable use period.

As raised, ACCAN seeks clarification about the maximum charging rate for data download and the way the charging will be advertised.

Further, ACCAN is unable to find a reference in the Code to including an estimate of the number of calls within the plan in advertising. This is an RTC requirement that has not been met.

Minimum monthly spend v included value

ACCAN is concerned by the reference in the draft Code to 'included value for a mobile post-paid service' (CI 4.2.1.1(b)). The ACMA recommends disclosing the cost of a call, text and data download as outlined above for an advertisement or plan that refers to a 'minimum monthly spend'. Many telco products refer to 'minimum monthly spend' but not all of the plans refer to 'included value'.¹¹ ACCAN is concerned that the term 'included value' would narrow the circumstances in which the three standard pricing elements will be disclosed. ACCAN submits the reference must be to a 'minimum monthly spend' to adequately address the RTC recommendation.

In any text-based media v large text advertising

The final RTC recommended that unit pricing elements (call, text, data) be included in each advertisement or promotion of a plan 'in any text-based media'. ACCAN understands 'text based media' to exclude the radio only.

ACCAN is concerned that the draft Code does not meet the requirement of disclosing the three standard pricing elements in 'any text-based media' but instead seeks to limit disclosure to 'large text advertising' (CI 4.2.1.1(b)). Large text advertising limits the obligation significantly as the definition in the draft Code highlights.

CI 2.1 of the draft Code defines Large Text Advertising:

on 23 November 2011 at:

http://www.bsl.org.au/pdfs/BSL_response_Reconnecting_the_customer_draft_report_2011.pdf

¹¹ For example, Vodafone's terms and conditions refer to a minimum monthly spend for postpaid plans, accessed on 17 November 2011 at:

<http://www.vodafone.com.au/personal/plans/termsandconditions/index.htm> ; iinet refers to a monthly plan fee, accessed on 17 November 2011 at: <http://www.iinet.net.au/needhelp/> ;



means press advertisements in newspapers, magazines and press inserts which are the following sizes:
(a) in broadsheet newspapers at least half the broadsheet in size or larger;
(b) in tabloid newspapers at least half the tabloid page in size or larger;
(c) in magazines at least half an A4 page in size or larger; and
(d) in press inserts at least A5 in size or larger;
and advertisements on a Supplier's online websites other than advertising which consists of strips, banners or tiles.

This belief is further supported by reference to CI 4.2.2 which states:

A Supplier must provide a level of detail in its Advertising which is appropriate to the manner in which the Advertising is displayed to Consumers.

The word 'appropriate' is uncertain and thus difficult to enforce. To meet the RTC requirement the three standard pricing elements must be disclosed in *any* text-based media. (Emphasis added).

The RTC proposal also refers to 'the comparative rate of charging being included in all bills'.¹² While CI 5.3.2(k) includes charges that exceed spend limits or included value and CI 5.3.2(m) the total amount of the bill for two previous billing periods, the draft Code does not appear to include the comparative rate of charging. This must be included to meet the RTC requirements.

Substantiation

The Draft Code includes clauses about broadband speeds – A Supplier must not engage in the following practices:

CI 4.2.1.1(a)(x) advertise or promote headline theoretical, 'up to' or 'peak' broadband speeds where those speeds are unattainable by Consumers on the network.

and network coverage - A Supplier must not engage in the following practices:

CI 4.2.1.1(a)(xi) advertise or promote network coverage unless the network coverage is generally available to Consumers in the claimed coverage area

Significantly, the undertaking given by Telstra, Optus and Vodafone to the ACCC on 14 September 2009 is broader than this in that it does not refer to specific phrases such as 'up to' and 'peak'.

These clauses in the draft TCP Code, however, do not oblige suppliers to be able to substantiate their representations, as required by the first RTC recommendation.¹³

The TIO recently reported a 609.6% increase in complaints about poor mobile phone coverage and a 482.8% increase in complaints about dropouts.¹⁴ It is therefore very important that the TCP Code meets the RTC requirements with respect to substantiation of network coverage and broadband speeds.

¹² Summary of proposed solutions, Proposal 1.

¹³ RTC Final Report at 86.

¹⁴ TIO Annual Report 2011 at 8 accessed on 23 November 2011 at:

http://www.tio.com.au/data/assets/pdf_file/0003/28470/TIO_2010-11_AR.pdf

Table 1: Implementation of RTC Recommendation 1 in the draft Code

RTC recommendation	Meets RTC requirements ACCAN's assessment
Ban on confusing words	No – continued use of confusing and misleading terms, including two opposing meanings of the word 'cap' and does not include reference to 'any similar term'
Standardised rates of charging	Partially meets content requirement, ie states maximum charge of 2 minute call cost and standard text. Unclear if the maximum cost of 1 megabyte data is stated. Does not include estimated number of calls in a plan. Does not meet advertising requirements: a) only applies to included value and not minimum spend b) only applies to large text advertising and not 'any text-based media' Does not include comparative rate of charging in bills.
Substantiation of broadband speeds and network coverage	No obligation that representations made about broadband speeds and network coverage be substantiated included in the draft Code.
Comparative rate of charging in bills.	Does not include comparative rate of charging in bills.

1.2. Improved product disclosure

The second RTC proposal states that carriage service providers must provide a critical information summary to consumers before entering a contract and that this be in writing.¹⁵ The critical information summary is required for both pre and post-paid plans.¹⁶

The ACMA particularly recommends that the statement be called a 'critical information summary' and not a 'summary of offer' as this title 'better reflects the nature of such a document and alerts consumers to its purpose.'¹⁷

ACCAN notes that the Draft Code refers to this statement as a 'summary of offer': CI 4.1.2. ACCAN submits that the statement must be referred to as a critical information summary to meet the RTC requirements.

Table 2: Implementation of RTC Critical Information Summary Recommendation

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
1. The service provided	Doesn't appear to be included	Yes
2. If the service depends on bundling arrangements	4.1.2(a)(ix) eligibility requirements regarding	Yes

¹⁵ RTC Final Report at 89.

¹⁶ RTC Final Report at 91.

¹⁷ RTC Final Report at 91.

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
	bundling	
3. Any equipment provided (either included in the minimum monthly payment or as an up-front payment)	4.1.2(iv) refers to inclusions and exclusions	No Doesn't specifically name equipment.
4. The term of the contract	4.1.2(a)(vi)	Yes
5. The maximum amount payable for early termination	4.1.2(a)(viii) refers to whether there are any exit or termination fees but not the maximum amount	No
6. The minimum monthly payment	4.1.2(a)(ii) the monthly access, call, text and/or data charges	Unclear - unable to assess. This is unclear as to whether it is the minimum amount
7. The maximum monthly payment (where calculable)	4.1.2(a)(ii)	Yes
8. Voice call costs, based on the cost of making a 2-minute call in Australia (maximum rate charged in plan)	4.1.2(a)(iii)A	Yes
9. SMS costs (based on sending a standard SMS in Australia)	4.1.2(a)(iii)B	Yes
10. Data use costs (calculated on the basis of the maximum payable for each megabyte in Australia)	4.1.2(a)(iii)C	Unclear Clarification sought about the maximum payable. Is this the maximum amount whether inside or outside the plan?
11. Estimated number of calls included with the plan	Not included	No
12. Exclusions such as voicemail, photo-messaging, video calls	4.1.2(a)(iv)	Yes
13. The effective rate of charging for different components of a plan, which includes the rate charged if the included value is exceeded	Not included	Unclear – ACCAN seeks clarification as to whether the one megabyte data is the maximum amount that can be charged
14. Customer service contact details	4.1.2(a)(xii)	Yes
15. Instructions on access to expenditure management tools	4.1.2(a)(xi) 'where customers can access information about the Supplier's Spend Management Tools (if any)'	Partial The draft Code only requires Suppliers to do this if they have spend management tools. Yet

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
		RTC recommendation 4 requires mandatory spend management tools (including transitional measures). "If any" should therefore be deleted to meet the RTC requirement.
16. Cooling-off periods	Not included	No
17. Information about how to access internal dispute resolution processes	4.1.2(a)(xii) information on IDR	Yes
18. Information about how to access external dispute resolution processes, including the TIO contact details	Not included	No
19. Available for different types of products	Doesn't appear to state this	No
20. Warning about roaming costs (both international and domestic)	4.1.2(a)(x)(where appropriate) a warning that higher charges may apply when using the Telecommunications service abroad	Yes 'Where applicable' would be preferable language.
21. Received in writing before entering a contract. Failure to provide the customer with a critical information summary prior to entering into contract should enable a consumer to exit the contract without penalty	Not included	No There does not appear to be any reference to the critical information summary being provided in writing.

Exceptions to provision of critical information summary

ACCAN is concerned that CI 4.1.2 of the draft Code refers to providing a summary of each of its current Offers, which ACCAN understands to mean both pre and post-paid plans but stipulates in CI 4.1.2(c) that it will only provide the critical information summary for post-paid services 'free of charge'. As the RTC proposal makes clear, the critical information summary must be for both pre and post-paid plans and all must be provided free of charge. This must be rectified in the Code to meet the RTC requirements.

ACCAN is further concerned by the exceptions to the provision of a critical information summary outlined in the draft Code at CI 4.1.2(c). Firstly, when it is an unsolicited sale, the draft Code seems to suggest it is not necessary to provide a critical information summary before sale as the consumer has the benefit of the cooling off period.

The purpose of providing a consumer with a critical information statement prior to sale is so they understand the product and have the opportunity to compare products and plans prior to entering an agreement. Based on the critical information summary provided, some consumers are likely not to enter the contract, identifying that particular product is not for them. To suggest you have the same rights and protections by entering into an unsolicited sale (that is a purchase you did not initiate) without receiving a critical information summary



before the sale, but having a cooling off period is misleading. The onus in the latter circumstances is on the consumer (who did not initiate the purchase) to carefully read the critical information summary when it arrives and if they are not satisfied to activate their cooling off rights by giving oral or written notice of the termination.

Where the sale is by phone but it is not an unsolicited sale (and so is at the initiative of the consumer), ACCAN supports the RTC recommendation that the consumer has the opportunity to cancel the contract without penalty upon review of the critical information summary.¹⁸ The draft Code does not provide for this. Instead, the draft Code allows a consumer who agrees to a sale over the phone which is not an unsolicited sale, to opt out of the right to receive a critical information summary while providing no protections for this consumer if they change their mind after reviewing the critical information summary. The Code must provide the consumer with the opportunity to cancel the contract without penalty upon review of the critical information statement as the RTC recommendation requires.

Additionally, there is no requirement in the draft Code, as required by the RTC recommendation, for the service provider to keep evidence of both the consumer's decision to opt out and that the consumer was informed about the purpose and content of the summary.¹⁹ This must be rectified to meet the RTC requirements.

1.3. Performance reporting and customer service charters

RTC Proposal 3 requires service providers that have more than 30,000 customers to develop and implement a performance-reporting framework that measures customer care performances particularly in the area of timely contact resolution. The ACMA stipulates that there must be a 'mechanism for publishing the metrics identified.'²⁰ A mechanism for publishing metrics does not appear to be present in the draft Code.

The ACMA further stipulates that if a performance metric that meets the RTC objectives is not developed within six months of the TCP Code being registered, the ACMA 'will require service providers to report quarterly (in the first year of operation) and half-yearly thereafter on the total number of contacts made by existing customers and the number of repeat contacts made by the same customer within a 45 day period.'²¹

The draft Code refers to 'metrics' at cl 9.7.1(b) and A.1.8. However, there is no effective definition of 'metrics'. Additionally, there is no mandatory requirement in the Code to develop metrics within 6 months of the Code's registration as required by the RTC recommendation. Rather, the Code states the CC will 'endeavour to agree the scope of the metrics within 6 months of the date of this Code'.

See Section 2 for ACCAN's preferred approach to metrics.

Further, the ACMA recommended industry members consider the development of service charters. While Cl 4.6.5 refers to a Customer Service Charter, there is no requirement to develop one nor is there a requirement to have consequences if the Supplier fails to meet any commitments made in its Charter. These provisions there have little substantive effect.

¹⁸ RTC Final Report at 88.

¹⁹ RTC Final Report at 88

²⁰ RTC Final Report, at 97.

²¹ RTC Final Report, at 97.

1.4. Expenditure management tools

International roaming costs

In the final RTC, the ACMA said it 'will assess the revised TCP Code to make sure that it includes new rules or better information and awareness of the telecommunications costs that might be incurred when travelling.'²² Having clear notifications about roaming costs is important as the risk of significant detriment is very high. For example, one consumer recently contacted ACCAN after receiving a bill for \$8,265.57 after a two week holiday in Malaysia. This included data roaming charges of \$6,770.20 and call charges made while overseas of just over \$550.00.²³

International roaming is referred to in the draft Code at Cls 4.1.3.1(i). This clause requires a supplier to 'make available on its website' information about whether a consumer needs to take action to activate and deactivate global roaming and outline the charges for SMS, calls and data usage, including making as well as receiving calls while overseas.

The ACMA also encourages industry members to develop additional tools such as sending an SMS when consumers are travelling 'to alert them to the risk of roaming costs'.²⁴ While some providers are doing this, a specific provision to this effect does not appear in the draft *TCP Code*. Given the significant detriment caused by global roaming as referred to above, ACCAN recommends such a clause should be included in the *TCP Code*. An alert by text at the time of travelling is effective as it alerts the consumer at the time of potential incurring of costs. To only have the information available on the website relies on consumers knowing about the high costs of roaming which they may not be aware of.

Usage/Expenditure notifications

The ACMA clearly states it is 'not satisfied that giving consumers access to online tools to check usage is sufficient to protect from bill shock.'²⁵ (emphasis added) The ACMA expects service providers to provide tools to 'allow customer to effectively monitor the accumulation of charges during a billing period'²⁶ 'at no charge to the consumer.'²⁷ Telstra also acknowledges the importance of providing tools, such as shaping for customers to monitor their spending.²⁸

RTC Recommendation 4 requires service providers to notify consumers on plans not subject to a hard cap or shaping at 50% and 80% expenditure/usage points, with a warning at 95%. Each of these messages needs to include details about the expenditure/usage point reached, any exclusions (eg roaming costs) and state how timely the information is, 'whether it is less than 24 hours old or, if more by how much.'²⁹ The message at 95% should also include consequences, for example how much it will cost per megabyte to download data once exceeded minimum monthly spend.

²² RTC Final Report, at 99.

²³ ACCAN Consumer Contact, 21 November 2011.

²⁴ RTC Final Report, at 100.

²⁵ RTC Final Report at 100.

²⁶ RTC Summary of proposed Solutions, Proposal 5

²⁷ RTC Final Report at 100.

²⁸ For example, Patrick Lion, 'Telstra will choke download speeds instead of charging extra fees when users hit their download limits', *The Advertiser*, 7 November 2011 accessed on 19 November 2011 at:

<http://www.news.com.au/technology/tablets/telstra-will-choke-download-speeds-instead-of-charging-extra-fees-when-users-hit-their-download-limits/story-fn6vigfp-1226187705797>

²⁹ RTC Final Report at 103.



CI 6.6.1(d) of the draft Code adds a qualification on the RTC proposal. In addition to only offering spend management tools for plans which are not subject to a cap or shaping the notifications only apply to plans 'with an included data allowance'. Firstly, we have earlier raised concerns about the use of the term 'included' rather than 'minimum spend' Secondly, the RTC recommendation does not limit mandatory spend management tools to data only. ACCAN understands it to also include calls and texts. The phrase 'with an included data allowance' therefore must be deleted to meet the RTC recommendation.

Further, the draft Code provides the notifications be provided to 'residential consumers' at 50%, 80% and 100% of data allowance. At a minimum the RTC recommendations requires notifications at 50%, 80% and 95% and the RTC recommendation was not limited to 'residential consumers' only. The Code needs to include a notification at 95% and remove the limitation of applying to 'residential consumers' only.

ACCAN submits the content of the notifications also does not meet the requirements of the RTC recommendation. For example, CI 6.6.1(c) requires the supplier to 'inform a customer of the *approximate delay* of any unbilled usage information provided to that customer' (emphasis added). What does 'approximate' mean? The length of the delay must be clear, particularly if real time notifications cannot occur at this stage. Also, cl 6.6.1(d)(iii) requires service providers to only disclose 'whether excess data charges would apply' and not how much these charges will be. How much the charge will be must be disclosed to meet the RTC requirements.

The RTC recommendations require notifications via SMS for phone and email for internet. This is reflected in CI 6.6.1(d) of the draft Code. However, ACCAN submits there should be exceptions in circumstances where issues of accessibility arise.

In the *draft RTC*, the ACMA recommended customer nominated limits. In the final RTC, the ACMA encourages those service providers with the technological capacity to offer customer nominated limits.³⁰ The benefit of customer nominated limits is that the customer is the person best placed to know the level of risk they can afford and is suitable to their specific circumstances. ACCAN welcomes the possibility of customers being able to nominate the points at which they receive notifications ((CI 6.6.1(d)) and expects, as the RTC recommendation states, that those service providers with the technological capacity to offer customer nominated limits will do so.

ACCAN also welcomes the possibility of customers receiving additional notifications and customers receiving notifications via a different method (other than SMS or email) (CI 6.6.1(d)).

However, ACCAN is concerned that consumers can opt out of receiving notifications 'at the discretion of the supplier' (CI 6.6.1(d)). There is no clear criteria outlining the basis on which consumers can opt out. ACCAN believes left unchecked, this leaves open the potential for abuse.

ACCAN also questions the inclusion of 6.6.2 which is not mandatory and therefore is not binding on suppliers. With reference to cl 6.6.2(h) in light of earlier comments about cap in the section above on RTC Proposal 1, the word 'hard' is not required to describe a cap.

Transitional measures

The ACMA further states that for service providers not able to offer spend management tools as outlined by the ACMA immediately, transitional measures are necessary.³¹ Such

³⁰ RTC Final Report at 103.

³¹ RTC Final Report at 102.

transitional measures include a cap being imposed such that a customer cannot exceed 50% above their minimum monthly spend, that is on a \$39 a month minimum spend, they cannot exceed \$58.50 a month without express permission.

This has not been included as a mandatory clause in the draft TCP. This is a crucial area in which the Code falls short of the RTC recommendations.

RTC recommendation 4 also requires carriage service providers to provide customer usage patterns on bills in the form of a graph for SMS, calls and data usage over a period of time.³² An example of the kind of graphs the service providers can use is provided in the final RTC.³³ The ACMA makes clear it is aware that some providers have started to include graphs that depict expenditure in different billing periods, but that they ‘do not currently reflect the level of included value spent or actual usage, which would provide more meaningful information to consumers.’³⁴ Cl 5.3.2(m) of the draft Code refers to including on the bill ‘the total amount of the Bill for of each the (sic) two previous Billing Periods’. As the ACMA explained in their final RTC as outlined above, this does not meet the requirements of RTC recommendation 4. A provision regarding usage patterns on bills as per the RTC proposal must be included.

1.5. Internal complaints-handling

The ACMA proposes that service providers implement complaints-handling processes that meet the standards as set out below.³⁵

Table 3: Implementation of RTC general benchmarks for complaints handling processes

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN’s assessment)
1. Apply to all complaints made by residential and small business customers	Reference to ‘consumer’ in the definition of ‘complaint.’	Yes
2. Adopt the definition of ‘complaint’ in AS ISO 10002-2006: ‘An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is implicitly or explicitly expected.’	Cl 2.1 excludes the initial reporting of a fault or service difficulty as a complaint.	No An initial reporting of a fault or service difficulty should be included in the definition of complaint as required by the RTC recommendation The definition also imposes a substantive requirement which puts the onus on the consumer to elect to have an initial call treated as a complaint. Any doubt should be resolved in favour of treating the initial call as a complaint.
3. Demonstrate commitment throughout the organisation to effective and efficient complaints-handling. Commitment can be	Cl 8.1.1(c) states that Suppliers ensure its staff are ‘made aware of the complaint handling process, their responsibilities under it and are able to identify and record a	Partial The Oxford dictionary defines ‘knowledgeable’ as ‘well informed’. The Oxford dictionary defines ‘made aware’ as ‘having

³² RTC Final Report at 103-104.

³³ RTC Final Report at 104

³⁴ RTC Final Report at 103.

³⁵ This would apply to all service providers who provide retail services or products to residential customers and small business customers. It will include all service providers that are members of the TIO Scheme.

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
<p>demonstrated by:</p> <p>a) ensuring all relevant staff (including third-party staff where customer service and complaints-handling services are outsourced) are knowledgeable about the complaints-handling processes</p>	<p>complaint' (emphasis added). Training of staff with specific complaints management responsibilities is mentioned at Cls 8.4.1(c) and (d)</p>	<p>knowledge or perception'. To be 'made aware' is a lower threshold requirement than 'knowledgeable'. We also seek clarification as to the meaning of 'customer facing services' (Cl 8.1.1(c)) To be knowledgeable in complaints handling ACCAN submits Cl 8.4.1(c) should expand to include all staff with complaints handling roles.</p>
<p>b) ensuring adequate resources are allocated to complaints-handling.</p>	<p>Cl 8.4 'sufficiently resourced'</p> <p>Cl 8.4.1(b) 'ensure appropriate resources'</p>	<p>Partial The term 'adequate resources' should be used. 'Appropriate' is a subjective and uncertain term and should not be used.</p>
<p>4. Satisfy and demonstrate compliance with the guiding principles of AS ISO 10002-2006, which are set out below: <i>Section 4. Guiding principles of the AS ISO 10002-2006:</i> a) <i>Visibility</i>—information about complaints-handling processes should be readily available, including how to escalate complaints. All staff who deal with customers, not just complaints-handling staff, should have an understanding of the complaints-handling processes. This may include third parties such as contact centre staff, where customer service and complaints-handling are outsourced.</p>	<p>Cl 8.1.1(b) requires a summary document Cl 8.1.1(c) requires all staff be 'made aware' Cl 8.1.1(a)(xi)A-C provides clear and accessible information about options for external dispute resolution. Cl 8.2.1(b) – if a consumer is dissatisfied with the timeframes for resolving a complaint, the Supplier is required to inform the Consumer of its "internal prioritisation and internal escalation processes".</p>	<p>Partial As at point 3 above 'made aware' is a lower threshold than 'have an understanding of complaints-handling processes'. The TIO details must be available on the critical information summary. The requirements for the escalation aspects of the Complaint handling process is undermined by Cl 8.2.1(a)(ix) Cl 8.1.1(b) makes no reference to minimum content of this document. 'Easily navigable and/or easily searchable position on the Supplier's website' are vague terms. The sole requirement should be that the summary is in a prominent position.</p>
<p>b) <i>Accessibility</i>—arrangements for making complaints should be simple and accessible and include options for making a complaint by telephone, in person or in writing, including by email or post. Service providers should offer additional support to vulnerable and disadvantaged consumers who wish to make a complaint (such as</p>	<p>Cl 8.1.1(vii)E offering assistance if requested. Cl 8.1.1(vii)F allowing consumers to use Authorised Representative and/or Advocate to make a complaint Cl 8.1.1(vii)H recognising and servicing the needs of consumers with disabilities, consumers suffering hardship and consumers from non-English speaking backgrounds Cl 8.1.1(b)(vii) documenting complaint handling process in</p>	<p>Partial Puts the onus on the consumer to ask for assistance. Recommend deleting 'if requested'. The RTC recommendation suggests referring a consumer to a consumer advocate. 'Allowing' consumers to use an advocate does not meet this requirement. Referring a vulnerable and disadvantaged consumer to a consumer advocate would be preferable. 'Recognising' is a weak term and</p>

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
<p>assisting the consumer to make a complaint or referring the consumer to a consumer advocate who could assist the customer make a complaint).</p>	<p>appropriate different formats.</p>	<p>does not require any action. The Ofcom Code of Practice for Complaints Handling states: 'Complaints handling procedures must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint.'³⁶ We recommend this language be adopted. Equally, obligations to non English speakers remain unclear. Specific obligation (like above) must be adopted.</p>
<p>c) <i>Responsiveness</i>—consumers should be informed about response times for handling complaints and the progress of their complaints. Providers should also have in place processes that prioritise complaints that require an urgent response (see minimum standards for timeliness below).</p>	<p>Cl 8.2.1 (a)(i)C the Supplier must provide the Consumer with <i>indicative timeframes</i> for the Resolution of the Complaint Cl 8.2.1 (a)(vii) finalising complaints within 15 days ... <i>or as soon as practicable in all the circumstances</i> Cls 8.2.1 (a)(viii),(ix), (x), (xii) advising Consumers in plain language of the outcome of their Complaint, as soon as practicable after finalisation of the Complaint and providing a written confirmation should the Consumer request this. Cl 2.1 Definition of urgent complaint discussed below at point 6 in this table – much narrower than definition in the RTC recommendations.</p>	<p>Partial Indicative timeframes are not binding. The qualification 'or as soon as practicable in all the circumstances' undermines the principal obligation. Responsiveness should include advising Consumers in writing of the outcome of their complaint. This should not occur only upon request by the Consumer. See point 7 below for further comments on the definition of Urgent Complaint.</p>
<p>d) <i>Objectivity</i>—all complaints should be dealt with in an equitable, objective and unbiased manner.</p>	<p>Cl 8.1.1(a)(viii) requires all complaints to be treated in an objective, efficient and fair manner...</p>	<p>Yes</p>
<p>e) <i>Charging</i>—charges should not be imposed for handling complaints or providing material explaining complaints-handling processes. ACMA sees merit in the suggestion that complaint or technical fault reporting numbers should be free to call from a mobile.³⁷</p>	<p>Free of charge other than: Cl 8.1.1(ii)A: for information held by the Supplier about the Customer for more than two years prior to the date of request; or Cl 8.1.1(ii)B: free provision of the information in the form requested is inconsistent with the usual business processes of the Supplier Cl 8.1.1(vii) A: free, local or low cost access number</p>	<p>No</p>
<p>f) <i>Confidentiality</i>—personal information concerning the complaint should not be disclosed except with</p>	<p>Cl 8.5.1(f)</p>	<p>Yes</p>

³⁶ Ofcom, *A Review of Consumer Complaint Procedures at 102.*

³⁷ Final at 113.

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
express consent of the complainant.		
g) <i>Customer-focused approach</i> —complaints-handling staff should be courteous, helpful and communicate in plain English.	CI 8.1.1(a)(i) complaint process is consumer focused CI 8.2.1(a)(xii) requires communication of outcome in plain language	Partial No explicit reference to courteous or helpful.
h) <i>Accountability</i> —reports about complaints should be prepared on a quarterly basis for the executive management of the service provider, which should include actions taken and decisions made in respect of complaints handled during that period.	CI 8.1.1(d)(i) monitor and report at least annually to the Chief Executive Officer of the Supplier regarding its compliance with its complaint handling process and opportunities for improvement. CI 8.1.1(d)(ii) on a quarterly basis to the Supplier's senior management	Partial The RTC recommendation describes accountability as including 'actions taken and decisions made' in respect of complaints.
i) <i>Continual improvement</i> —to ensure behavioural change, complaints-handling processes should be regularly reviewed to ensure the processes remain effective.		No
Benchmark standards for timelines		
5. Service providers must acknowledge the receipt of complaints: a) immediately for complaints received by telephone –	CI 8.2.1 (a)(i)A. CI 8.2.1 (a)(i)B. where the complaint is by telephone and a message is recorded the Code states the supplier had 2 working days to acknowledge	Partially While CI 8.2.1 (a)(i)A. appears to meet the RTC requirement, CI 8.2.1 (a)(i)B. qualifies the circumstances in which complaints by telephone will be acknowledged in a longer timeframe.
b) within one working day for complaints made in writing. ³⁸	CI 8.2.1(i)B. within two working days	No The ACMA concedes 48 hours is acceptable. Must be redrafted as within 48 hours.
6. Service providers must promptly handle complaints in accordance with their degree of urgency. A complaint is considered urgent if: a) it involves hardship b) if disconnection of a service is imminent or has	CI 2.1 Definitions: Urgent Complaint means a Complaint where (a) the Complaint is made by a Customer who has been accepted as being in Financial Hardship under that Supplier's Financial Hardship Policy and where the subject matter of the Complaint	Partial We have very strong concerns about the definition of financial hardship in the Code and the limited circumstances in which hardship is applied when assessing whether a complaint is urgent. These concerns are discussed in detail in Section 3.

³⁸ The ACMA accepts that acknowledging complaints within one working day could be difficult for smaller service providers. It has therefore accepted industry's suggestion that this be varied to respond within 48 hours of receipt.

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
<p>actually occurred</p> <p>c) if it involves a priority assistance customer.³⁹</p>	<p>can reasonably be presumed to directly contribute to or aggravate the Financial Hardship of that Customer; or</p> <p>(b) disconnection of a service has inadvertently occurred; or</p> <p>(c) it involves a Priority Assistance Customer.</p>	<p>Determining urgency with respect to disconnection is significantly more limiting than RTC requires.</p>
<p>7. Service providers must provide a written final response to a customer within 21 days. A final response requires that the service provider write to or email the complainant within 21 days, informing them of:</p> <p>a) the final outcome of their complaint</p> <p>b) their right to take the complaint to the TIO</p> <p>c) the TIO's contact details.</p>	<p>CI 8.2.1(vii) finalising Complaints within 15 working days from the date the Complaint is received or as soon as practicable in all the circumstances</p> <p>CI 8.2.1 (xii) advising consumers in plain language of the outcomes as soon as practicable after finalisation of the Complaint and providing a written confirmation should the Consumer request this</p> <p>CI 8.2.1(ix)(C) Where a supplier does not believe the Complaint can be resolved in 15 Working Days (2 Working Days for Urgent Complaints) if the anticipated delay is 10 Working Days or more and is not the result of a declared mass service disruption, advising the Consumer of their options for external dispute resolution including the TIO</p> <p>CI 8.2.1(b) If a Consumer tells the Supplier they are dissatisfied with timeframes the Supplier must tell the Consumer about the Supplier's internal prioritisation and internal escalation process and if after these processes the Customer remains unsatisfied, the Supplier must tell the Consumer of the options for external dispute resolution</p> <p>CI 8.2.1(c) Consumer tells the Supplier they are dissatisfied with the progress or outcome or asks about their options to pursue a Complaint further, the Supplier must tell them about internal escalation process and EDR including the TIO.</p>	<p>No</p> <p>15 Working Days would meet the 21 days requirement. However the exception 'or as soon as practicable in all the circumstances' undermines the primary obligation.</p> <p>The RTC recommendation clearly states the final response must be in writing. The Code puts the onus on the Consumer to request the response be in writing.</p> <p>There is no obligation to advise in writing of rights to access the TIO or to provide the TIO contact details.</p>
<p>8. If a final response cannot be provided within 21 days, the service provider must write to or email the customer, informing them</p>	<p>CI 8.2.1(ix)</p>	<p>Partial</p> <p>The Draft Code meets the requirement of providing reasons and a revised timeframe. However, there is no obligation to</p>

³⁹ Priority Assistance is a service designed to help people with diagnosed life-threatening medical conditions who depend on a reliable home telephone service to be able to call for assistance when needed. Customers receiving such a service are referred to as 'priority assistance customers'.

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
of: a) the reasons for the delay and a revised timeframe for a final response b) their right to complain to the TIO c) The TIO's contact details.		advise of rights to access the TIO or to provide the TIO contact details.
9. For urgent complaints, the response time should be reduced to two working days.	Cl 8.2.1(viii) provides a two stage process: (1) write to the Consumer outlining 'envisaged' Resolution within 2 Working Days and (2) 'setting into motion the resolution process within 2 Working Day after the date the Complaint is received,	Yes
10. While a complaint is being handled internally, and for at least the next seven days, service providers will not commence or continue legal proceedings or any other enforcement activity (including but not limited to, debt collection, credit reporting, suspension or disconnection of a service).	Cls 8.2.1(v) suspend all credit management action Cls 8.2.1(vi) delay commencement of any legal proceedings. Cls 8.2.1(v) and (vi) refer to Consumer advised of the outcome of their Complaint.	No The definition of credit management (Cl 2.1) in the draft Code does not appear to include credit reporting, suspension or disconnection. It is therefore not clear if this will commence or continue. The draft code is silent on continuing legal proceedings already on foot.
Benchmark standards for documenting procedures		
11. Service providers must document and distribute complaints-handling procedures to all staff who deal with consumers. The procedures must enable all relevant staff to understand and follow the procedures	Cl 8.1.1(b) Document the process Cl 8.1.1(c) staff awareness	Partial See comment above, we are not convinced that the Summary document will contain sufficient detail. The provision requires only that a document of the process be <i>made available</i> to all staff. It must be 'distributed' to all staff. In order to 'understand and follow procedures', ACCAN submits more is required than staff be 'made aware' of the Complaint handling process.
12. Promote accountability and transparency. Service providers must also ensure that such procedures are accessible to, and easily understood by, consumers. For example, providing user-friendly guides to a customer at the point of sale and at the time that they make a complaint (unless that complaint is resolved immediately).	Cl 8.1.1(b) document made available in summary form to staff, consumers and stakeholders Cl 8.3.1(b) provides a mechanism to notify 'appropriately senior management'	Partial The obligation to have a summary documents attempts to meet this requirement. However, there are still questions about the content of the document and the timeliness of the distribution of the document to customers. Specifically whether customers receive this summary at the point of sale and at the time they make a complaint. Accountability - There is no requirement for management to resolve issues brought to their

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
<p>13. Documented procedures for staff should include the procedures and policies for:</p> <ul style="list-style-type: none"> a) identifying and receiving complaints b) investigating complaints c) meeting time limits for responding to complaints d) referring complaints to the TIO e) recording complaints (including classifying complaints). 	<p>CI 8.1.1(a)-(b) refers to 'document its complaint handling process' and making this available in summary form to staff.</p> <p>CI 8.5 refers to record keeping</p> <p>CI 8.3.1</p>	<p>attention.</p> <p>Yes</p> <p>Suppliers are required to have a policy and a summary of that policy available for staff. However, much of the content in the documents is still disputed and falls short of RTC</p>
<p>14. the types of remedies available for resolving complaints or disputes</p>	<p>CI 8.2.1 (iv) A. 'ensuring relevant staff are aware of the potential remedies available to resolve a complaint.'</p>	<p>Yes</p>
<p>15. internal structures and reporting requirements for complaints-handling staff.</p>		<p>Unclear</p>
<p>Benchmark standards for collecting, analysing and reporting complaints information</p>		
<p>16. Service providers must: implement and maintain effective recording systems to track complaints, including resolutions. This should enable the service provider to monitor that any requests made by or promises given to a customer are actioned within a specified time (for example, two business days)</p>	<p>CI 8.5.1(a)(i) a unique reference number or other means as will ensure the Supplier's ability to subsequently identify the Complaint and its subject matter.</p> <p>CI 8.5.1(a)(iv) due date for a response</p> <p>CI 8.5.1(a)(iii) requested resolution</p> <p>CI 8.5.1(a)(viii) commitments (if any) made to a consumer to resolve complaint</p> <p>CI 8.5.1(b) track progress of complaint</p>	<p>Partial</p> <p>The term 'subject matter' is not sufficiently specific. It is essential that Suppliers can track resolutions, promises and the actions taken to meet these. CI 8.5.1(b)(iv) requires the recording of a due date for response and (viii) recording of commitments if any. What mechanism (if any) is in place to alert the Supplier if they have not responded in a timely manner or actioned undertakings?</p>
<p>17. Implement and maintain a process whereby consumers can track the progress of their complaint, such as by issuing ticket or docket numbers</p>	<p>CI 8.5.1(a)(i) a unique reference number of other means as will ensure the Supplier's ability to subsequently identify the Complaint and its subject matter.</p> <p>CI 8.5.1(b) track progress of complaint</p>	<p>Partial</p> <p>We remain unsure how a consumer will be enabled to track the progress of their complaint (even with a unique reference number)</p>
<p>18. Have processes to identify and analyse complaints to identify systemic and recurring complaints and trends</p>	<p>CI 8.3.1(a) identification of problems</p> <ul style="list-style-type: none"> (i) Classify and analyse complaints at least every 3 months to identify recurring problems (ii) Address emerging issues as soon as practicable (iii) Monitor and record progress to address areas requiring attention 	<p>Partial</p> <p>CI 8.3.1(a) outcome clause mentions 'systemic issues'. However, 'systemic issues' is not mentioned in the substantive clauses – these clauses refer to 'recurring problems' and 'emerging areas' only. Systemic issues is more expansive than this, including, for example, a one off incident that affects 10,000</p>

RTC recommendation	Draft TCP Code	Meets RTC requirements (ACCAN's assessment)
		customers.
<p>19. Have clear procedures in place to address systemic issues or the cause of recurring complaints</p>	<p>CI 8.3.1(a) identification of problems (iii) Monitor and record progress to address areas requiring attention CI 8.2.1(a)(iv)C tailoring remedy offered to address root cause of complaint and individual circumstances of Consumer D. where the Complaints are indicative of a wider problem or issue, addressing the root cause of the problem or issue.</p>	<p>Partial As discussed above, the complaint analysis provisions in the Code seek to address 'recurring problems' but not 'systemic issues'. Obligations to address systemic issues must also be included. It is unclear if the remedy envisaged in the clause just for the particular individual who has complained or is there a remedy for all who have experienced this problem. Similarly, is the responsibility of the Supplier to inform and provide all affected consumers with this remedy?</p>

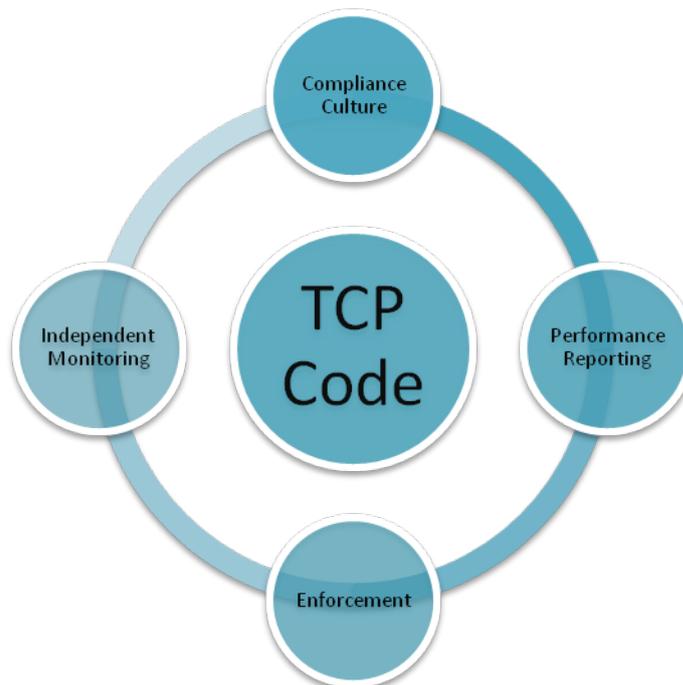
2. Compliance Framework

ACCAN wants to see the new approach to consumer protection arising from the ACMA’s Reconnecting the Customer Inquiry succeed. We therefore clarify the approach that we believe will work for both industry and consumers.

To begin with, as is now clear from our analysis in section 1 above, some aspects of consumer protection matters will need to be taken up by the ACMA as either Service Provider Determinations or new consumer protection Standards. These standards and determinations will have the added compliance incentive of the ACMA’s new infringement notice powers and our expectation is that consumer protection determinations and standards would be listed as subject to that regime.

For the rules that remain in the TCP code, there needs to be a clear delineation between who is responsible for promoting a culture of compliance, who is responsible for undertaking systematic, transparent and independent monitoring of code compliance and what are the commercially significant penalties for non-compliance.

ACCAN’s vision is represented in the diagram below. The rules contained in the TCP Code are supported by four distinct activities: Promoting a compliance culture, independent monitoring, reporting on performance measurement and application of commercially significant sanctions (as required).



These four measures can act in tandem to ensure that Suppliers who are meeting their obligations to customers receive the recognition they rightly deserve. Together we believe they create a robust incentive to be compliant.

Below we address how ACCAN believes these four supporting roles can best be achieved.

2.1. Compliance Culture

Once of the most significant changes presented in the 2011 TCP Code is that it removes the previously failing option to become a signatory to the non-functioning *Code Administration*



Compliance Scheme. As the Communications Alliance has observed, this system failed to deliver code compliance among Suppliers.

The new approach to compliance culture includes many positive features: it is not optional for Suppliers and it is scaled to Supplier size. But the approach to developing a compliance culture also needs to be improved: **it must be simpler and it must be more transparent.**

Well targeted compliance obligations are beneficial for suppliers and customers. But poorly drafted, designed or targeted rules add to the cost of essential telecommunications products without delivering a corresponding benefit to consumers. ACCAN's preferred approach recognises that unnecessary documentation creates a burden on business that consumers ultimately pay for.

The recommendations contained in the table below outline ACCAN's preferred approach, which would see all Suppliers producing just one document – the Compliance Attestation statement, still scaled to Supplier size - and to ensure that the statement is published on the Supplier's website. Our preferred approach also recognises that from time-to-time Suppliers are likely to experience incidences of non-compliance and that transparency around instances of non-compliance is the best model for developing a compliance culture.

ACCAN is supportive of Communications Alliance being given responsibility for developing a compliance culture among Suppliers. Should the measures we outline in detail below be adopted, we think it is highly likely that the committee formed by Communications Alliance could be incredibly successful in developing a strong culture of compliance. Were the measures we outline to be adopted, we believe this committee could operate quite successfully within the Communications Alliance structure.

2.2. Independent Monitoring

Monitoring supplier compliance with the code is critical to assuring customers that suppliers are meeting their obligations.

This activity requires resourcing, expertise in monitoring and a wide range of monitoring tools, including shadow shopping, audits of advertising and websites and monitoring requests. These activities must be carried out completely independently of industry and must be reported in a public and transparent way.

ACCAN does not support the Communications Alliance's proposed body undertaking the monitoring function at this point in time. There remains too many unanswered questions about from where it will receive its funds, at what level it will be resourced, how the constitution will be written and the respective roles the new Board and the Communications Alliance board. We also remain concerned about how the interests of non-communications Alliance member Suppliers' interests will be protected in any such body.

We are also aware that there is no enforceability of any of the roles laid out in Appendix 1. We are also concerned that too much is being expected of this committee which in its early years of development risks being overloaded by tasks. Our preference is for it to focus exclusively on developing a compliance culture.

Instead we believe that the Telecommunications Industry Ombudsman is best placed over the coming years to expand its code monitoring activities. As part of the review of the TIO, it has already been flagged that the TIO's capacity to investigate systemic issues needs to improve. We are also aware that only a small proportion of suspected code breaches can be confirmed because the TIO is limited in which matters it can investigate. We envisage that the TIO can quickly expand its capacity to investigate suspected code breaches and publish regular reports on the nature of code breaches, trends and systemic issues.



We therefore recommend that the independent monitoring role be adopted by the TIO and its implementation be clarified as part of the current government review of the TIO scheme.

2.3. Enforcement

The ACMA has the capacity to issue Directions to Comply to bring code breaches within the ambit of civil penalty provisions. While the ACMA has not been particularly active in this area, our expectation is that the ACMA will considerably expand its enforcement activities following the implementation of the Reconnecting the Customer recommendations.

We understand that there remains a degree of confusion as to the interplay between code monitoring and the application of sanctions. ACCAN contends that both the ACMA and the TIO have a role to play in monitoring and assessing code compliance, albeit for different purposes. The ACMA's investigations are specifically designed to support its regulatory and enforcement activities. The TIO's monitoring role would provide market intelligence for the general public about the degree to which suppliers were meeting their obligations.

ACCAN would like to see the ACMA have even stronger powers to issue a range of commercially significant sanctions and encourages all parties to work towards this outcome.

We also note that a simple sanction that could be easily built into the code is the capacity for customers to leave a contract without penalty should a Supplier fail to uphold their Code obligations to the customer. In many – if not all – cases, the most effective remedy a consumer would have would be to terminate a contract without penalty.

2.4. Performance Reporting

As identified in section 1 above, the Code does not meet performance reporting recommendations stipulated in the RTC.

ACCAN believes that performance reporting can be a good way to measure the efficacy of the code rules and supporting instrument and is strongly supportive of developing a performance reporting framework.

However, we do not believe that this framework can or should be developed under the ambit of the TCP Code. The code is too weak in this area to have any enforceability and it too underdeveloped to give us any confidence that the right set of performance measures will be developed. We therefore recommend removing all references to metrics in the TCP Code and commencing a new, separate process specifically designed for reporting on performance of customer service and compliant handling in the retail telecommunications market. The work the ACCC does on competition in the telecommunications industry could be a useful precedent on which to model this project. ACCAN would be happy to work with industry and the ACMA on this process.

2.5. Drafting Recommendations

Table 4: ACCAN Recommendation for Compliance chapter 9

Code Provision	ACCAN recommendations
9.3.1 Suppliers must take the following actions to enable this outcome:	
(a) Compliance processes: have processes and systems in place to ensure compliance with the requirements of this Code;	It is not clear how 9.3.1(a) is substantially different from 9.3.1(c). Can the Communications Alliance please explain what they would expect suppliers to do meet this clause that is different from 9.3.1(c)
(b) Customer Information Compliance Statement: provide a Customer Information	The emphasis on the code is about customer information being easily and readily available. There is

Code Provision	ACCAN recommendations
<p>Compliance Statement to the CC annually, the first such Customer Information Compliance Statement to be provided to the CC within 7 months of the date of registration of this Code;</p>	<p>no reason why such a document would be needed if a supplier were compliant with the code. Consumers would never use these statements to access information – how would they even know it exists in the first instance. We also point out that customers are extremely unlikely to access this information in the absence of an obligation to publish the report. Clause 9.3.1(b) places an unnecessary burden on suppliers and creates a compliance obligation that is not meaningful in any way.</p>
<p>(c) Compliance Plan: prepare and maintain a documented Compliance Plan which outlines the initiatives of the Supplier supporting compliance with the provisions of the Code and which is prepared in a manner consistent with the principles and guidance provided in the <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>;</p>	<p>ACCAN has not had access to AS 3806 – 2006. We would appreciate a briefing from the Communications Alliance about this standard and how it would be applied by suppliers.</p> <p>The clause should reflect 9.4.1(b) and therefore be amended to read “which meets the requirements of the <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>,”</p>
<p>9.4 Code compliance statements</p>	
<p>Suppliers must provide to the CC prescribed statements regarding Code compliance, which statements are to be prepared and provided to CC depending on the nature of the Supplier, in the manner and times set out in this clause 9.4.</p>	<p>This is not drafted as an outcome and currently simply restates further obligations. It should be reworded as an outcome.</p>
<p>9.4.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(a) Compliance Attestation: unless it is a Small Supplier, a Medium Supplier or a New Entrant Supplier, provide an Initial Compliance Attestation to the CC which has been endorsed by the chief executive officer or a senior manager of the Supplier, within 7 months of Code registration, and then provide a Compliance Attestation annually thereafter;</p>	<p>If clause 1.4 specifies that chapter 9 does not commence until 6 months after Code registration, does this mean that compliance attestations would not be required until 13 months after code registration?</p> <p>The language of an “initial” Compliance attestation is confusing. It should be deleted (the definition is nonsensical) and, if required, an implementation delay noted in 1.4. This clause should simply state that Compliance Attestation statements are to be provided annually.</p>
<p>(b) Statement of Independent Assessment: unless it is a Small Supplier, a Medium Supplier or a New Entrant Supplier, provide a Statement of Independent Assessment to the CC at the same time as providing the Initial Compliance Attestation pursuant to clause 9.4.1(a), which Statement of Independent Assessment must state that an External Qualified Assessor has determined that the Supplier’s documented Compliance Plan meets the requirements of the <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>;</p>	<p>An Independent Assessment should be undertaken annually as part of the Compliance Attestation, not simply on the first occasion. This recognises that business practices constantly change and the compliance program must adapt at the same time.</p> <p>The clause should be amended to simply state that “an External Qualified Assessor has determined that the Supplier’s Compliance Plan meets <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>,”</p>
<p>A Supplier must provide a further Statement of Independent Assessment where any Material Changes are made by the Supplier. These further Statements of Independent Assessment must be provided to the CC at the same time as the</p>	<p>See comment above, there is no transparency about Material Changes by the Supplier. ACCAN, for example, is unlikely to be aware of when a supplier makes major changes to its internal systems. We do not believe it is onerous to have an annual external assessment of the</p>

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Supplier provides its annual Compliance Attestation to the CC;	Supplier's Compliance Plan
(c) Small Supplier self-attestation: if it is a Small Supplier, provide a Compliance Attestation to the CC which is signed by the chief executive officer or the board of directors of the Supplier, with the initial such statement to be provided within 7 months of Code registration and then annually thereafter;	9.4.1(c) and (d) are identical obligations and therefore the distinction between the two is not necessary. We recommend condensing into a single definition and obligation. Please also see comment about timeframe above.
(d) Medium Supplier self-attestation: if it is a Medium Supplier, provide a Compliance Attestation to the CC, which is signed by the chief executive officer or the board of directors of the Supplier, with the initial such statement to be provided within 7 months of Code registration and then annually thereafter;	See above
(e) New Entrant Supplier self-attestation: if it is a New Entrant Supplier, initially provide a Compliance Attestation to the CC, which is signed by the chief executive officer or the board of directors of the Supplier, within 7 months of Code registration, and thereafter annually report in accordance with the requirements of clauses 9.4.1(b), (c) or (d), depending on the category of Supplier into which it fits;	This clause is not required. A supplier will simply fit into either clause 9.4.1(a) or (c), its status as a new entrant is irrelevant for the purposes of 9.4.1
(f) Contents of Compliance Attestation: if it is required to be provided by this clause 9.4, ensure that the Initial Compliance Attestation and each Compliance Attestation prepared annually thereafter includes:	See above, we recommend the clause should simply read "the Compliance Attestation must include:"
(i) confirmation that a review has been undertaken by the Supplier regarding its compliance with the Code;	
(ii) confirmation of the Supplier's compliance with the Code;	<p>This clause should be widened to allow suppliers to identify those areas where it has not been compliant in the previous 12 months and how those areas have already been remedied. If the Supplier is currently non-compliant with any specified code rules, to articulate how it will remedy the instances of non-compliance and the timeframes in which that will occur.</p> <p>The reason for this is that with the best of intentions, it is still possibly (and even likely) that suppliers will experience non-compliance issues from time-to-time. The Compliance Attestation should give Suppliers the scope to report on these instances rather than requiring suppliers to assert compliance.</p> <p>By creating this reporting mechanism, there will be no need to have an additional Compliance Achievement Plan. ACCAN believes clause 9.5 would become redundant.</p> <p>We therefore recommend the following text is adopted:</p> <p>(ii) assessment of the Supplier's compliance with the Code over the previous 12 months, including any incidences of non-compliance with specified code rules</p>

Code Provision	ACCAN recommendations
	<p>and how these were addressed;</p> <p>(iii) assessment of the Supplier's current compliance with the Code, including identification of any Code rules that the Supplier is not currently compliant and how and when the Supplier intends to achieve compliance</p>
<p>(iii) assertion that the Supplier's Compliance Plan has been prepared in a manner consistent with the principles and guidance provided in the <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>.</p>	<p>See 9.3.1(c) and 9.4.1(b) above. We recommend adopting consistent language that states "which meets the requirements of the <i>Australian Standard on Compliance Programs AS 3806 – 2006</i>;"</p>
<p>(iv) other than in relation to an Initial Compliance Attestation, a report on the Supplier's compliance with its Compliance Plan during the preceding year, including details of any significant changes to the Supplier's business structure and operations that are relevant, and any feedback to the CC regarding suggested improvements to the Code Compliance Framework and/or the compliance requirements of the Code;</p>	<p>We query why feedback is limited to the compliance aspects of the Code. A great frustration of the code process is that there is no way to receive ongoing feedback from Suppliers about the adequacy of the TCP Code provision over the course of its operations. Given that the legislation will be amended to allow codes to be amended while they are registered, it would be useful to get supplier feedback on the adequacy of the whole TCP Code</p>
<p>(v) a link to the website of the Supplier where Consumers may obtain information regarding that Supplier's Spend Management Tools;</p>	<p>ACCAN does not believe it is appropriate to single out one code rule for additional compliance attention in this way. Again, these provision are already addressed by Code rules at 6.6 and if the Communications Alliance is concerned that these are inadequate to deliver community safeguards, then attention should be directed towards improving the actual obligations on suppliers instead of creating meaningless compliance reporting obligations. We also point out that customers are extremely unlikely to access this information in the absence of an obligation to publish the report.</p> <p>Rules 9.4.1(f)(v), 9.4.1(f)(vi) or 9.4.1(f)(vii) do not add any value to the Code. The rules are an unnecessary burden on Suppliers and we recommend they be deleted.</p>
<p>(vi) a report on Spend Management Tools that have been released by the Supplier to the market in the immediately preceding 12 months; and</p>	<p>See above</p>
<p>(vii) information regarding programs and actions undertaken by that Supplier during the immediately preceding 12 months to promote awareness among the Supplier's customer base of both the existence of the Supplier's Spend Management Tools and how to access and use them effectively.</p>	<p>See above, in addition we note that this is already addressed at 6.1.1</p>
	<p>We recommend an additional obligation on Suppliers to publish their Compliance Attestation reports on their website.</p>
<p>9.5 Compliance Achievement Plans</p>	<p>If the amendments suggested at 9.4.1(f)(ii) are adopted, any non-compliance with a code rule would be reported in a Compliance Attestation report, rather than requiring a separate Plan to be developed.</p> <p>These recommendations would significantly simplify the</p>

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	compliance framework and reduce the administrative burden on the Compliance Committee. The entire section 9.5 is therefore not required and should be deleted.
If a Supplier is unable to submit to the CC a Customer Information Compliance Statement, a Compliance Attestation or a Statement of Independent Assessment (if required) at the times required by this chapter 9, the Supplier must submit to the CC a Compliance Achievement Plan detailing how and when actions will be taken to comply with the relevant Code requirement.	See above, recommended to be deleted
9.5.1 A Supplier must take the following actions to enable this outcome:	See above, recommended to be deleted
(a) Inability to provide statements to the CC: if a Supplier cannot provide the Customer Information Compliance Statement, Compliance Attestation or Statement of Independent Assessment (if required) to the CC in the timeframe required in clause 9.4, provide a Compliance Achievement Plan to the CC (with contents and in a form acceptable to the CC) identifying the Code provision with which the Supplier does not comply and detailing the actions to be taken to become compliant and the expected timeframe for completion of those actions;	See above, recommended to be deleted
(b) Monitoring and Reporting on Compliance Achievement Plan: if the Supplier provides a Compliance Achievement Plan to the CC pursuant to clause 9.5.1(a), monitor progress and report regularly on its progress under the Compliance Achievement Plan to the CC.	See above, recommended to be deleted
9.6 Compliance Monitoring Requests	
Suppliers must respond to a Compliance Monitoring Request received by them from the CC and provide an Action Plan if required by clause 9.6.1.	
9.6.1 A Supplier must take the following actions to enable this outcome:	
(a) Compliance Monitoring Requests: respond to Compliance Monitoring Requests from the CC by the date specified by the CC for such a response;	Please see commentary in the preamble to the table. ACCAN does not believe that 9.6.1(a) is a sufficient form of monitoring.
(b) Action Plan as a result of a Compliance Monitoring Request: if a Supplier's response to a Compliance Monitoring Request indicates that the Supplier cannot comply with all or part of the relevant aspects of the Code that are the subject of that Compliance Monitoring Request, provide an Action Plan to the CC (within the time required by, and with contents and in a form acceptable to, the CC) detailing the actions to be taken by the Supplier to address any compliance failure or other issues identified through the Compliance Monitoring Request, including the expected time	Taking note of our comment above, we do not support this provision. We cannot envisage any circumstance where a Supplier is unable to respond to a Compliance Monitoring Request as defined in the code. There is nothing to prevent a supplier responding to request stating that they are not compliant. If the request is to state whether or not they are compliant then there is no circumstance where a supplier would not be able to answer that question in one form or another. Recommend deleting 9.6.(b)

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for completion of those actions. The Supplier must include in the Action Plan, if appropriate, details of planned remedial measures; and	
(o) Monitoring and Reporting on Action Plan: if the Supplier provides an Action Plan to the CC, monitor progress and report regularly on its progress under the Action Plan to the CC.	See comments above, we recommend deleting this clause.
9.7 Suppliers obligations regarding the CC	
Suppliers must do all things reasonably necessary to assist the CC to perform its functions as set out in Appendix 1 to the Code and in CC's operating plan from time to time.	No comment
9.7.1 A Supplier must take the following actions to enable this outcome:	No comment
(a) Comply with directions: comply in a timely manner with all directions given by CC to the Supplier which are anticipated by this Code or which may be given pursuant to the operating plan of the CC; and	No comment
(b) Metrics: provide to the CC annually, or more frequently if required by the CC, a report in a format required by the	See introductory commentary, recommend deleting this provision.

3. Additional issues

Financial Hardship

ACCAN has significant concerns about the draft Code's definition of Financial Hardship.

Financial Hardship is defined as a situation where:

CI 2.1:(a) *a Customer is unable to discharge the financial obligations owed by the Customer under their Customer Contract or otherwise discharge the financial obligations owed by the Customer to a Supplier, due to unexpected illness, unemployment or other reasonable cause; and*
 (b) *the Customer believes that they are able to discharge those obligations if the relevant payment arrangements or other arrangements relating to the supply of Telecommunications Products by the Supplier to the Customer are changed.*

This is not consistent with the definition in s72 of the National Credit Code (Schedule 1 of the National Consumer Credit Protection Act) ('the Credit Law'). While the draft Code refers to 'unexpected illness, unemployment or other reasonable cause', the Credit Law refers to 'illness, unemployment or reasonable cause.' ACCAN strongly believes the definition of financial hardship in the TCP Code should be consistent with Credit Law. In the circumstances of an urgent complaint, the TCP Code narrows the application of its definition of hardship. CI 2.1:

(a) the Complaint is made by a Customer who has been accepted as being in Financial Hardship under that Supplier's Financial Hardship Policy and where the subject matter of the Complaint can reasonably be presumed to

directly contribute to or aggravate the Financial Hardship of that Customer;

This requires the consumer to be already accepted by the Supplier as being in financial hardship. This means that consumers experiencing financial hardship who have not yet been assessed by the Supplier as being in financial hardship will not have their situation treated as urgent. Rather, they will need to go through an ‘eligibility for assessment’ process, which can take up to 7 Working Days after the Supplier received all the information they need from the customer to make the assessment (CI 6.13.1(d)). This falls well short of the RTC requirement that the complaint ‘involve hardship’.

ACCAN further notes that the definition of urgent complaint allows each Supplier to have its own financial hardship policy. While noting there cannot be a ‘once size fits all’ approach to financial hardship, ACCAN welcomes work by Suppliers to promote consistency of financial hardship policies across providers. We also strongly encourage Financial Counselling Australia be consulted in such a process.

TIO details on bills

ACCAN has repeatedly requested that the TIO contact details be included in bills, late notices and disconnection notices.⁴⁰ This is based on reports from members and supporters of a lack of awareness of the TIO.⁴¹ While we acknowledge the important work of the TIO in seeking to raise awareness about their service, Suppliers also have a responsibility to inform consumers of their right to access the TIO. Significantly, an explanation of ADR is required to be included on all paper bills in the United Kingdom.⁴²

4. Drafting issues

This section provides a summary of inconsistencies, inaccuracies, unenforceable provisions and other matters that relate to the way existing Code content has been drafted. As the analysis highlights, many clauses are vague to the point that they are either unenforceable or are unlikely to have any real effect. There is also a question of whether outcome statements are enforceable (eg CI 8.3) or only the statements that lie beneath these (eg CI 8.3.1(a)(i) – (iii)). Finally, just by saying something doesn’t make it so. This is an issue throughout the Code, for example processes for internal prioritisation and internal escalation process should include an explanation of escalation, for example to a person who has the decision-making power to a certain amount of money.

Table 5: Drafting Issues in the draft Code

Provision	Comment
1.3.3 The Code applies only to residential and small	This is not technically correct as it also covers large

⁴⁰ See ACCAN, *Response to the Reconnecting the Customer Draft Report* at 27 accessed on 25 November 2011 at:

http://accan.org.au/files/ACCAN_Response_to_the_RTC_Draft_Report_final_.pdf; ACCAN, *Modernising the TIO*, March 2011 at 19-20, accessed on 25 November at: <http://accan.org.au/files/Submissions/ACCAN%20Submission%20TIO%20March%202011%20FINAL.pdf>

⁴¹ See, ACCAN, *Modernising the TIO* at 10-19.

⁴² Ofcom, *A Review of Consumer Complaint Procedures*, July 2010 at 102 accessed on 25 November 2011 at:

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/statement/statement.pdf

Provision	Comment
business consumers and regulates matters relating to their relationship with their Carriage Service Providers.	businesses – the limitation in the definition of consumer is that the total annual value of services is less than \$20,000.
1.4 Commencement date	
For the purposes of Chapter 9, the Code Compliance Framework will not commence until that date which is 6 months after the date of registration of this Code with ACMA.	<p>Although that is understandable for new provisions, it will leave a 6 month compliance hiatus, because the old Code is automatically repealed by operation of TA s 117(4) and cl 1.1.3. The important new provisions are also covered by the delayed introduction below.</p> <p>It also makes little sense because the ACMA's enforcement framework commences immediately upon registration.</p> <p>(The drafting is also poor: "For the purposes of Chapter 9, the Code Compliance Framework..." In fact, Chapter 9 <i>is</i> the Code compliance Framework)</p> <p>Alternative approach: delay registration of new Code until 6 months after finalisation.</p>
2 DEFINITIONS AND INTERPRETATION	
ASIC means the Australian Securities and Investment Commission.	should be "Investments"
<p>Complaint means an expression of dissatisfaction made to a Supplier in relation to its Telecommunications Products or the complaints handling process itself, where a response or Resolution is explicitly or implicitly expected by the Consumer.</p> <p>An initial call to a provider to request a service or information or to request support is not necessarily a complaint. However, if a Customer advises that they want this initial call treated as a Complaint, the Supplier will also treat this initial call as a Complaint. An initial call to report a fault or service difficulty is not a complaint.</p> <p>If a Supplier is uncertain, a Supplier may ask a Customer if they wish to make a Complaint and may rely on the customer's response.</p>	<p>The effect of the definition is to impose a substantive requirement, rather than just defining the term.</p> <p>This puts an onus on consumers to elect to have an initial call treated as a complaint in a situation where it may be quite plain that an initial call is a complaint. The use of "not necessarily" is also vague.</p> <p>Alternative approach: include statement that doubt should be resolved in favour of treating an initial call as a complaint.</p>
Consumer means:	
(b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:	
(i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract; and	This restriction is not included in ACL s 3 and does not seem appropriate. But a matter of policy.
(ii) has or will have an annual spend with the Supplier which is, or is estimated on reasonable grounds by the Supplier to be, no greater than \$20,000,	This threshold is lower than the amount in ACL s 3 (\$40,000), potentially creating inconsistent treatment. It is particularly inappropriate in that an annual spend on a telecommunications contract is likely to be a greater amount than the sort of single purchases contemplated

Provision	Comment
	under ACL s 3.
A reference to a Consumer includes a reference to the Consumer's Authorised Representative.	Equating the consumer with an Authorised Rep creates numerous problems in the Code Rules, such as cl 3.6, which relies on the distinction between them.
A reference to a Consumer includes a reference to a Customer.	
Customer Contract means an arrangement or agreement between a Supplier and a Consumer for the supply of a Telecommunications Product to that Consumer. For the avoidance of doubt, unless stated otherwise, the Standard Form Customer Contract is a Customer Contract.	Instead of "arrangement or agreement" use "contract".
Discount means a reduction of any Charge which is levied by a Supplier and which is or may be payable by a Customer.	Drafting could be improved here.
Fraud means dishonestly accessing or using any Telecommunications Products of a Supplier, or attempting to do so, with the intent of: (a) deceiving the Supplier or any other person; (b) not paying for the relevant Telecommunications Products; or (c) securing unlawful gain or advantage.	Question whether appropriate to define conduct in this code using language of criminal law. Arguably, this definition is too broad (it would, for example, include tricking someone into letting you see their phone so you can send a prank sms to another friend). It also doesn't seem necessary as where it is used in the Code (6.8.1), reference to the established notion of fraud would suffice.
Hard Cap means a maximum Limit applied to a Customer's use of Telecommunications Services, which Limit cannot be exceeded by the relevant Customer.	"maximum" is redundant because already included in the definition of "Limit".
Inform means to advise another person of a particular fact, circumstance or claim:	
(b) verbally, where same is confirmed and recorded, whether in Writing or otherwise, to provide a record of the verbal communication.	"Orally" is probably intended.
Initial Compliance Attestation means the inaugural Compliance Attestation as required under clause 9.4.1 of this Code.	Question "inaugural" - why not "first"? In fact there is probably no need for this definition because the initial one is in fact just the first Annual Compliance Attestation.
Itemised means the detail(s) provided in relation to a particular Billed Charge.	"Itemised" is an adjective, the definition refers to a noun.
Large Text Advertising means press advertisements in newspapers, magazines and press inserts which are the following sizes: (a) in broadsheet newspapers at least half the broadsheet in size or larger; (b) in tabloid newspapers at least half the tabloid page in size or larger;	Does "half the broadsheet" mean a whole page or half the page? Drafting is poor ("at least... or larger")
Limit means the maximum monetary amount assigned to a Customer's expenditure with a Supplier, for the total of Unbilled Charges accumulated during the Billing Period.	This is not used consistently through the Code. First, it is not capitalised. In cl 6.6.2(h) it is used as a "usage" limit for broadband, which suggests a <i>non</i> -monetary amount, which conflicts with the definition. May be better to define "Spend Limit" and "Usage Limit". But question also whether the definitions actually do any work.

Provision	Comment
<p>Medium Supplier means a Supplier with 100,000 services in operation or more but less than 1million services in operation.</p>	<p>There does not appear to be a situation where Medium Suppliers and Small suppliers have different obligations. Two definitions seem unnecessary.</p>
<p>Metrics means performance metrics relating to certain of the obligations of Suppliers under this Code, as required by CC from time to time.</p>	<p>There is no clarity about what “Metrics” means, nor is there any provision for the CC to define them. The closest is A.1.8 which only relates to a discussion with the CC about the “scope of the metrics”. This is potentially serious as it undermines one of the key aspects of the CC system.</p>
<p>Offer means a current, standard in-market plan containing pricing that is made by a Supplier for the provision of Telecommunications Products, which is available to any individual Consumer or Consumers as a class and includes, without limitation such offers made in Advertising, but excludes special promotions of limited duration or non-standard offers negotiated with or only made available to individual Consumers or class of Consumers.</p>	<p>Question whether special promotions should be excluded if the only definition of “special offers” is that they are of limited duration.</p> <p>(See comment on “special offers” at 4.2.3)</p>
<p>Personal Information means the point at which the relevant Sales Representative obtains informed consent in accordance with clause 8.1.3.</p>	<p>Clause 8.1.3 does not exist. Point of sale (not capitalised) used in 4.1.2.</p>
<p>Residential Customer means a Customer that is an individual who acquires a Telecommunications Product for the primary purpose of personal or domestic use and not for resale under the standard terms and pricing for residential, non-business customers set out in the Supplier’s Standard Form of Agreement.</p>	<p>This definition only used for notifications in cl 6.6.1. Question why this should be restricted more than the definition of Consumer.</p>
<p>Retail Outlet means a retail premise that sells various goods and services in addition to Telecommunications Products.</p>	<p>This definition only used to assist in defining the exclusion for cash register staff under “Sales Representative” (see comments under “Sales Representative”)</p>
<p>Rules means the Supplier-specific obligations under this Code, which are in chapters 3 to 8.</p>	<p>“Rules” is only used in the text in headings and to refer to other parts of the Code. Question whether definition serves any purpose.</p>
<p>Sales Representative means a person employed or contracted, directly or indirectly, by a Supplier to sell (including staff employed by a third party call centre to sell a Supplier’s Telecommunications Products on behalf of that Supplier), offer to sell, or otherwise promote, Telecommunications Products to Consumers, other than a person who undertakes and completes a transaction for a Pre-paid Service for a Consumer at a cash register in a Retail Outlet.</p>	<p>The exclusion here is far too wide. It covers any sales staff who complete a transaction “at a cash register” in any store that sells products in addition to telecommunications products.</p>
<p>Small Supplier means a Supplier with less than 100,000 services in operation.</p>	<p>(see comment under “Medium Supplier”)</p>
<p>Standard Form Customer Contract means the Supplier’s current Standard Form of Agreement for contracting with Consumers.</p>	<p>Why define this rather than just use SFOA?</p>
<p>TIO means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme referred to in the Act.</p>	<p>TIO is defined in the s 128 of <i>Telecoms (Consumer Protection and Service Standards) Act 1999</i>.</p>
<p>Unfair has the meaning given to it in the</p>	<p>Should refer to Schedule of CCA – the previous</p>

Provision	Comment
Competition and Consumer Act.	definition in CCA was removed when the ACL was introduced.
<p>Written Notice means a document or other material that is provided in Writing and sent or delivered by the Supplier to the relevant Consumer by:</p> <p>(a) delivering it to the Consumer in person;</p> <p>(b) pre-paid post to the Consumer's address in the Supplier's records;</p> <p>(c) email, with the Consumer's prior consent;</p> <p>(d) including the information on or in a Bill, including electronically where the Consumer has expressly consented to receiving an electronic Bill; and</p> <p>(e) for Pre-Paid Telecommunications Services, otherwise making it available and informing the Consumer of the method(s) or venue(s) to obtain or access it.</p>	<p>This definition is mostly substantive requirements for the delivery of a written notice, not a definition. The effect is that if the supplier does not comply with the rules about delivery given here, it simply relieves itself of any other obligations in the code, because notice falls outside the definition.</p> <p>It is also unnecessary, because the only place that "written notice" seems to appear is in the definition of "Inform", which gives verbal (presumably "oral") as an alternative, so all the complex requirements about delivery are pointless.</p>
3 GENERAL RULES	
This chapter sets out the general rules which will apply to each of chapters 4 to 9 of the Code.	
3.1 Plain language	
3.1.1 A Supplier must communicate with Consumers in simple, plain language.	Vague.
3.2 Quality of information	
3.2.1 A Supplier must ensure that information provided to Consumers is accurate, relevant, current and timely.	Vague.
3.3 Access to information	
3.3.1 A Supplier must communicate with a Consumer in a way that is appropriate to the Consumer's communications needs.	Vague.
3.3.3 A Supplier must ensure that Consumers can view and download all relevant terms and conditions of its Telecommunications Products from a website and that the website is accessible.	<p>The intention here is that the terms and conditions should be available in a format that is appropriate for a range of users.</p> <p>However this clause will be difficult to enforce because Suppliers will not be able to ensure a particular consumer can download information if there is some restriction beyond their control. Should be recast as an obligation to publish in a certain place on website and in a defined format. This seems to be the point of 4.1.2 and 4.4.2.1(b) and it may be preferable to use those requirements here.</p>
3.4 Complying with the law	
3.4.1 A Supplier must comply with all applicable laws in dealing with Consumers.	Seems too broad. Suppliers will have to comply with the law in any case but the question is whether every breach of all laws that might be relevant to "dealing with Consumers" the subject of compliance under the Code? This would, for example, include state laws about opening hours, criminal laws, etc.

Provision	Comment
3.5 Dealing appropriately with Consumers	
3.5.1 A Supplier must ensure that its Sales Representatives do not:	
(a) harass or coerce a Consumer; or	Restates ACL s 50.
(b) engage in unconscionable conduct.	Incorporates ACL s 20-22.
3.6 Authorised Representatives and Advocates	The provisions on appointment of Authorised Reps would be better placed here (see 4.6.4)
3.6.1 A Supplier's process for dealing with an Authorised Representative or an Advocate must include procedures to protect the Consumer's privacy and confidentiality.	Does this mean protection of privacy from the AR/Advocate? If not, why is the provision any different from privacy obligations that would apply normally, if so, how is it to be practically implemented?
3.6.3 A Supplier must ensure that a Consumer can easily use an Advocate to communicate with the Supplier, if the Consumer requires.	Unable to be complied with. The Supplier cannot realistically "ensure a Consumer can easily use an Advocate" if there is some difficulty beyond the Supplier's control. Is the intention that the Supplier is to arrange for an Advocate to be made available?
3.6.4 A Supplier may presume that an Advocate is not authorised to establish or make changes to a Customer's account or Telecommunications Services, unless the Advocate is also the Customer's Authorised Representative.	Whatever the intention of this clause is, it is unlikely it is achieved. It appears to grant the Supplier discretion over a matter that should be for the Consumer to decide – ie whether the Advocate is also his or her Authorised Rep. If the "Supplier may presume" that the Advocate is not authorised, this implies the Supplier may also presume the opposite – that the Advocate is authorised. The issue is really one of how the Authorised Representative is actually authorised.
4 CONSUMER SALES, SERVICE AND CONTRACTS	
General Rules	
<i>The general rules in chapter 3 apply in addition to the Rules in this chapter.</i>	This statement is redundant and repeated in each section.
Rules	
4.1 Telecommunications Offers	
4.1.1 Communication of Offer: A Supplier must communicate its Offers in a way which is clear, accurate and not misleading, to allow Consumers to make informed choices.	<p>Conduct-purpose problem. The clause states conduct that is required and then qualifies it by reference to some purpose.</p> <p>If intended as the object of the clause itself this creates uncertainty about whether it limits the clause, that is, the information has to be only <i>sufficiently</i> clear, accurate and not misleading to allow consumers to make informed choice) or is intended to extend the obligation (ie, it must be "clear, accurate and not misleading <i>and also</i> allow consumers to make informed choices"). If a statement of the object of clauses is required, this should be stated expressly and separately.</p> <p>The clause partly adopts ACL s 18.</p>

Provision	Comment
4.1.1.1 A Supplier must take the following actions to enable this outcome:	
(a) Everyday language: use language to communicate its Offers to Consumers (whether orally or in writing, including in the Supplier's Advertising) which is appropriate for the intended audience; and	<p>The clause is unlikely to have any practical effect beyond cl 3.1.</p> <p>NB "appropriate" is used throughout the Code – this is vague not only because it is measured subjectively, rather than against an objective standard, but also because it is often tied to an unspecified object (so for example in cl. 4.1.1.1(a): "appropriate for the <i>intended audience</i>"); clause 4.3.6.1(c) restricts sales representatives to promote transfers or unsolicited offers in places that are "appropriate".</p>
(b) Clarity: provide information about its Offers in a comprehensible, clear and accurate manner, without exaggeration or omission of key information.	Lacking definition – what is "key information". Either this should be specified (eg as the summary of offer) or omitted.
(c) Offer name: cease using the term "cap" to describe any new Offer made after the date of registration of this Code, unless the Offer contains a Hard Cap.	<p>There is the potential for avoidance if an offer includes two caps. So, for example, an offer could be described as a "\$50 Cap", which includes a soft cap at \$50 as well as a hard cap at \$100. On a literal reading, this would comply with the clause because it "contains a Hard Cap". To avoid, the clause should specify that any cap referred to in the advertisement is a Hard Cap.</p> <p>The bigger problem is banning particular words.</p>
4.1.2 Summary of Offer: A Supplier must provide a summary of each of its current Offers to allow Consumers to compare Offers provided by each Supplier which best suit their needs. A Supplier must take the following actions to enable this outcome:	Suffers from "conduct-purpose problem". It is unclear whether " <i>each</i> supplier" means to compare between different suppliers or only the different offers from that particular supplier. – the best that they can do is provide information on their offers.
(a) Content: ensure the summary of the Offer contains:	There is overlap and potentially inconsistency with cl 6/Schedule 1 of the Telecommunications (Standard Form of Agreement Information) Determination 2003.
(i) the following statement prominently on the first page: "This document contains critical information about the service so please take time to read."	The statement is ungrammatical. Should be "... so please take time to read it."
(ii) the key pricing for that Offer, which includes (as appropriate) for that Telecommunications Service type, the monthly access, call, text and/or data Charges for use in Australia in a readily identifiable manner;	Each of these items is open to interpretation and "readily identifiable" is not really a standard of comprehensibility.
C. the cost (prior to any discounts being applied) of using one megabyte of data within Australia.	
(v) the "single price" (if any) as defined in the Competition and Consumer Act;	<p>"(if any)" is not appropriate because every good and service has a "single price" as defined in the CCA (unless offered genuinely for free). However, the single price only covers the minimum charge at the time of the representation.</p> <p>The reference should be to the Australian Consumer Law.</p>

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(viii) whether there are any exit or termination fees for that Offer;	It should also state what those fees are.
(xi) where Customers can access information about the Supplier's Spend Management Tools (if any) including where Customers can access information about their previous billing periods' mobile call, SMS and mobile data usage; and	Clause 6.6 requires spend management tools be provided, so "(if any)" is not appropriate.
(i) where the sale falls within the scope of an unsolicited consumer agreement under the Australian Consumer Law and as a result the Consumer is entitled to a cooling off period, the Consumer will be provided with a copy of the relevant summary of the Offer after the sale at the same time as the relevant unsolicited consumer agreement and cancellation notice.	<p>This tends to misrepresent the effect of the regime in ACL. If the unsolicited agreement is not negotiated by phone, s 78 requires that the agreement is provided to the consumer when it is signed. So, there is no reason for the "summary of Offer" not being provided at the time of sale.</p> <p>The summary should be provided then. Where the contract is negotiated by telephone, it must be provided within 5 days.</p>
(d) Comprehensible: ensure that information contained in the summary of each Offer:	
(ii) allows the Consumer to obtain all the summary information for that Offer in one place;	The clause seems redundant given that the contents of the summary are defined in 4.1.2(a).
(iv) does not include misleading marketing techniques; and	This should be "misleading or deceptive" information.
(f) Awareness: take steps to make Consumers aware that summaries of the Supplier's Offers are available.	Seems redundant if the Consumer must be provided with the Summary
(f) Warranties: the details of warranties that apply to Telecommunications Goods, including references to Consumers' entitlements under the Competition and Consumer Act;	<p>Consumer guarantees also apply to services (ACL s 60-63).</p> <p>There is standard wording in Competition and Consumer Reg 90 (for express warranties), which might be used.</p>
4.1.4 Meeting Consumer needs: Where a Consumer has identified a particular need to a Supplier, the Supplier must indicate if it has an Offer that may suit the Consumer's identified need and if the Supplier does indicate a particular Offer that may suit the Consumer's identified need, the Supplier must provide the Consumer with information about the particular Offer, to allow the Consumer to assess the suitability of that Offer against that need.	<p>This clause seems to serve no purpose other than to require the Supplier to engage in a standard sales process in response to a consumer request.</p> <p>The sort of situation addressed does raise issues about fitness for purpose guarantees under ACL (s 55/61).</p>
4.1.4.1 A Supplier must take the following actions to enable this outcome:	
(b) Information: provide standard information about Offers which can meet common needs expressed by Consumers;	This is already covered by the summary of Offer requirements.
4.1.5 Remedies for inaccurate information: Where inaccurate information has been provided by a Supplier to a Customer regarding an Offer and the Customer has relied on it in making a purchasing decision to sign up to that Offer with the Supplier, the Supplier must offer a remedy that is appropriate in the circumstances for that Customer.	<p>Excessive discretion about key obligations.</p> <p>This clause achieves nothing without specifying what the remedy should be.</p> <p>The (possible) right to terminate is not mentioned until 4.1.5.1(a).</p>
4.2 Advertising	

Provision	Comment
<p>4.2.1.1 To enable this outcome, (a) a Supplier must not engage in the following practices:</p>	<p>The clauses below are variations on those included in the undertaking under s 87B given by Telstra, Optus and Vodafone to the ACCC on 18 September 2009 (“T/O/V Undertaking”). However, in several cases, they depart from the text, with the result that the clauses are generally more favourable to Suppliers. For the three signatories to the T/O/V Undertaking, this creates some inconsistencies in compliance. It also potentially undermines the broader effect that the T/O/V Undertakings had as an informal industry standard.</p>
<p>(iv) Free: use the term ‘free’ to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;</p>	<p>This seems worse than the clause from the previous Code. (It is also contains a triple negative “Supplier must not... use the term... unless the cost is... not..”)</p> <p>A more modest proposal would be to require any service provider using the term free to have available an analysis that substantiates that the cost of the ‘free’ product is not recovered from other charges under the plan. That substantiation document should be produced on request. Such a provision would be similar in effect to the power that the ‘substantiation notice’ powers that the ACCC currently has under Part5-1, Div 2 of the ACL.</p>
<p>(vii) Phone plans: use headline representations as to prices for phone plans unless any exclusions are prominently stated;</p>	<p>This clause repeats (i). (The equivalent clause in the T/O/V Undertaking is similar, but is more specific about the exclusion of particular types of calls.)</p>
<p>(x) Broadband speeds: advertise or promote headline theoretical, ‘up to’ or ‘peak’ broadband speeds where those speeds are unattainable by Consumers on the network;</p>	<p>The equivalent clause in the T/O/V Undertaking is broader in that it does not refer to specific phrases (“up to”, “peak”).</p>
<p>4.2.2.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(c) Format: take into account the typical amount of time that Consumers are able to view the particular Advertising in deciding how much information to include in the Advertising; and</p>	<p>Fails to create an obligation at all.</p>
<p>4.2.3.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(a) Principal terms: disclose the key terms of the promotion and any key limitations, such as whether stocks are limited;</p>	<p>“Key terms” not defined.</p>
<p>4.3.2 Accurate descriptions of products: A Supplier must provide information about its current Telecommunications Products in a comprehensible and truthful manner, without exaggeration or omission of key information that the Supplier’s staff know or should know is reasonably likely to be important to that Consumer in reaching a purchasing decision in the circumstances.</p>	<p>This repeats the substance of 4.3.1.</p>
<p>4.3.3 Appropriate behaviour: A Supplier must interact with Consumers courteously and not engage in harassing behaviour.</p>	<p>Combining courtesy and not engaging in harassment is not appropriate. Courtesy is a not really a standard at all; harassment is prohibited under the ACL (s 50).</p>
<p>4.3.3.1 A Supplier must take the following actions to enable this outcome:</p>	

Provision	Comment
(a) Culture: promote a sales culture within the Supplier's organisation where rudeness with or harassment of Consumers, and/or non-compliance with this Code, is not acceptable and make Sales Representatives aware that they will face disciplinary action for such behaviours; and	see comment above regarding courtesy.
(b) Disciplinary action: ensure appropriate action is taken against its Sales Representatives who are rude, harassing and/or engage in misleading conduct with Consumers,	No indication of what is appropriate.
4.3.4 Consent: A Supplier must obtain the Consumer's consent before the Consumer enters a Customer Contract with the Supplier.	<p>Legally there cannot be a contract without consent. These requirements are really for the protection of the Supplier.</p> <p>This seems a misconceived response to the ACMA-commissioned research on consent as part of the RTC process. The issues raised in the ACMA's report cannot be resolved by a simple requirement to "confirm consent" such as 4.3.4.1.</p>
4.3.4.1 A Supplier must take the following actions to enable this outcome:	
(d) Refusals: if a Supplier refuses to supply a Consumer with a Telecommunications Product for any reason, inform the Customer of the nature of those reasons.	This clause does not relate to the Consumer's consent.
4.3.5 Unsolicited Offers: A Supplier must ensure its Unsolicited Offers comply with the law.	This imports legal obligations (ACL Part 3-2, Div. 2) into the Code. This potentially creates difficulties for suppliers in completing Compliance Attestations because they would theoretically have to conduct their own internal investigation to determine whether any laws have been contravened. In some cases, it may require them to expose themselves to penalties under the laws.
4.3.6.1 A Supplier must take the following actions to enable this outcome:	
(c) Place: ensure its Sales Representatives only promote Transfers or Unsolicited Offers to Consumers in person in locations that are appropriate; and	See 4.1.1.1(a)
4.5 Customer Contracts	
4.5.1 Presentation: A Supplier's Standard Form Customer Contract must be available on the Supplier's website where Consumers can easily locate, access and read them.	<p>Existing requirements under TA s 479 for SFOAs and summaries in Telecommunications (Standard Form of Agreement Information) Determination 2003.</p> <p>Because of the definition here of "Standard Form Customer Contract", this is the same document and there are several inconsistencies between the requirements in the determination and those here.</p>
4.5.1.1 A Supplier must take the following actions to enable this outcome:	
(a) Location: make its Standard Form Customer Contracts available on its website in a place that is easy for Consumers to find them and provide a copy to the Customer upon request at no charge;	Existing requirements under TA s 479 for SFOAs and summaries in Telecommunications (Standard Form of Agreement Information) Determination 2003.

Provision	Comment
<p>4.5.2.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(b) Comprehensive: ensure all contractual terms regarding an Offer are set out in the Supplier's Standard Form Customer Contract or are clearly incorporated by reference; and</p>	<p>See notes about crossover with SFOA requirements in Telecommunications Act.</p>
<p>4.5.3 Unfair Terms: A Supplier will not include terms which would be Unfair in its Standard Form Customer Contracts.</p>	<p>Attempt to restate the law from ACL.</p>
<p>4.5.3.1 To enable this outcome, without limiting the effect of the Unfair Contract Terms provisions contained in Part 2-3 of the Australian Consumer Law, or clause 4.5.3 of this Code, when assessing a term for unfairness a Supplier must consider whether the object or effect of the term is to:</p>	<p>This clause is intended to look like a black list (or grey list) but in fact does nothing. Requiring the Supplier to "consider" a matter is not really useful.</p> <p>As a result, the content of the clauses is not really relevant (although in many cases they have been found to be unfair (<i>Director of Consumer Affairs Victoria v AAPT [2006] VCAT 1493</i>))</p>
<p>4.6.1.1 A Supplier must take the following actions to enable this outcome:</p>	<p>These clauses do not impose any concrete service standards. That may be intended but provisions such as 4.6.1.1(b) on average wait times effectively impose no obligation.</p>
<p>(b) Average wait times: monitor average wait times experienced by Customers to communicate with a Supplier about a Customer Service enquiry and seek to keep the average wait times to a reasonable minimum in the circumstances;</p>	<p>The clause has the following problems:</p> <ul style="list-style-type: none"> - it only requires monitoring and "seeking" rather than any positive conduct; - there is no explanation of how the average is to be calculated (over how many calls, time period, over what type of calls, etc.) - in any case, an average means that it is acceptable to keep some customers waiting for long periods as long as others are served quickly; - it is unacceptably vague by the inclusion of "reasonable... in the circumstances" (making allowance for particular circumstances also seems inappropriate given that it only deals with an average, rather than individual cases); - the phrase "keep the average wait times to a reasonable minimum" is intended in the colloquial sense of ensuring the times are kept short but introduces ambiguity: the obligation (to the extent there is one) should address <i>maximum</i> wait times.
<p>(d) Record keeping: keep records of interactions between the Supplier and Customers in a system which is accessible to staff who are typically tasked with responding to such Customer Service enquiries, so staff have historical data to aid in assisting Customers.</p>	<p>There should be an obligation to provide the record to customer</p>
<p>4.6.3 Personal information: A Supplier must ensure that a Customer's Personal Information is protected from unauthorised use or disclosure and dealt with by the Supplier in compliance with all applicable privacy laws.</p>	<p>There are existing protections in the <i>Privacy Act 1988</i> and Part 13 of the TA. Although the provisions here may be well-motivated, they do not go as far as the existing legal obligations (particularly National Privacy Principles (NPPs)) and are more likely to cause confusion, compliance problems and may suggest consumers have fewer rights than in fact exist in that</p>

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	legislation.
<p>4.6.3.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(a) Storage: have robust procedures for storing Customer's Personal Information which are followed by its staff;</p>	<p>This is an attempt to replicate some of the NPPs but does not address key ones such as the obligation to provide information to customers (NPP 6).</p>
<p>(c) Breach: ensure its staff understand that they may face disciplinary action, such as termination of their employment, if they breach the Supplier's privacy procedures, the Privacy Act or other privacy laws.</p>	<p>This assumes that the disciplinary action mentioned is available. There are no requirements relating to disciplinary procedures for staff the Code. Even though these are phrased as "may", termination of employment seems an extreme example.</p>
<p>4.6.5 Customer Service Charter: A Supplier may choose to have a Customer service charter.</p>	<p>These provisions have no substantive effect and could result either in apparent inconsistencies between the Code and charters (if a Supplier includes an "expectation" in a charter that is not provided for in the Code) or redundancy if the same.</p>
<p>4 BILLING</p>	<p>(Note numbering should be 5)</p>
<p>5.1.1 Provision of information: A Supplier must take the following actions to enable this outcome:</p>	
<p>(a) Pricing, Billing and payment terms: ensure that in the Supplier's material that describes its Telecommunications Products, or on request, a Consumer may obtain information relevant to that Telecommunications Product or its Bill:</p>	<p>This should be mentioned in the provisions regarding the Summary of Offer (4.1.2).</p> <p>The use of "or on request" here undermines the obligation to provide.</p>
<p>5.2 Charging Policies and Rules, Charging for Bills</p>	
<p>5.2.1 Providing Bills: A Supplier must supply a Bill to Customers for each Billing Period, except in the following circumstances:</p>	
<p>(a) where the Charges are for the same fixed amount in each Billing Period and the Customer and Supplier have agreed, in the Supplier's terms and conditions for the relevant Telecommunications Product or otherwise, that, although a Charge for that fixed amount will be payable by the Customer, a Bill will not be issued unless the total amount payable in that Bill is more than 20% higher than that fixed amount; or</p>	<p>When can a bill for a "fixed amount" be 20% higher than the fixed amount?</p> <p>Need to explain the circumstances.</p>
<p>5.2.7 Cost of providing Billing information: If a Charge for providing Billing information is applied by a Supplier in accordance with clause 5.2.6 above, it must be limited to the cost of the providing the information.</p>	<p>Probably unenforceable because of the difficulty of determining the cost of providing the bill. Could be resolved by placing the onus on the Supplier to justify any charges for billing information.</p>
<p>5.3 The Bill</p>	
<p>5.3.1 Descriptions in Bills: A Supplier must ensure that items and categories in a Bill are described in a sufficient manner and with sufficient detail to enable a Customer to identify individual components of the Bill and readily understand them.</p>	<p>This seems unnecessary given the more detailed requirements below.</p>
<p>5.3.2 Bill content requirements: A Supplier must include in each Bill it issues, at least:</p>	

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(r) the nature of any Charges applying to Billing Enquiry calls, including information about any Charge greater than the Supplier's local call tariff, or equivalent.	This potentially conflicts with 5.2.8.
5.4 Timing of Bill	
5.4.1 Timeliness of Bill issue: Suppliers must issue Bills to their Customers within 10 Working Days after closure of the Billing Period, except when:	
(a) system or processing problems or issues arise; or	This exception is very broad – “a system or processing... issue” could include the fact that a supplier does not have a system that allows bills to be issued within 10 days. The point here should be that it is a temporary system or processing problem.
(c) a Supplier delays the issue of a Bill for Customer Service purposes;	The definition of “Customer Service” is very broad, so unclear what this clause is intended to address.
5.4.3 Allowable delays: A Supplier will not breach clause 5.4.2 because of delays due to:	
(a) changes to the applicable regulatory or legislative framework applicable to all Suppliers and one-off network infrastructure changes, where prior notice has been given to affected Customers; or	“applicable” repeated.
5.5.3 Itemised Charges: A Supplier must ensure that Itemised details of all Charges relating to its Telecommunication Products are made available to the Customer on the Bill, unless the Customer otherwise requests or agrees, and upon request in relation to a Pre-Paid Service.	Note itemised billing is required under TA Sch 2, Part 5.
6 CREDIT AND DEBT MANAGEMENT	
6.3.1 A Supplier must take the following actions to enable this outcome: (a) Timing of information regarding denial: provide the information in subclauses 6.3.1 (b), (c) and (d) to the Consumer in writing within 7 Working Days after the decision is made to deny the provision of the Telecommunications Service;	
(b) Reason for denial: inform the Consumer that the denial of the Telecommunications Service was based wholly or partly on information given to the Supplier by a Credit Reporting Agency;	These clauses reproduce s 18M of the Privacy Act 1988.
6.6 Spend Management Tools	
Suppliers must provide Customers with access to Spend Management Tools.	This is the only point where an obligation to provide spend management tools (as oppose to notifying customers of their existence) appears.
6.6.1 A Supplier must take the following actions to enable this outcome:	
(d) for Residential Customers, where offering a post-paid mobile or internet plan with an included data allowance and in circumstances where no shaping/throttling or Hard Cap applies, provide Residential Customers with a notification once a Residential Customer has used:	This seems to be the only detailed requirement on spend management tools. There is no explanation as to why this is limited to: <ul style="list-style-type: none"> - residential consumers; and - data allowances.

Provision	Comment
<p>6.6.2 While features of the Supplier's Spend Management Tools will vary between Suppliers, a Supplier may make available to Customers one or all of the following:</p>	<p>The clause merely state that Suppliers may offer certain features - it contains no obligation.</p>
<p>6.11 Debt collection</p>	
<p>6.11.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(b) Collection activities: while ever it is in force, adopt best practice as set out in the ACCC guideline "<i>Debt collection guideline for collectors and creditors: joint publication by ACCC and ASIC</i>" issued in October 2005 when collecting amounts due;</p>	<p>The guideline is not "best practice"; it merely sets out what is required to comply with the law.</p>
<p>(c) Disadvantaged and vulnerable Customers: in their collection activities, while ever it is in force, adopt best practice as set out in the ACCC Compliance Guide "<i>Don't take advantage of disadvantage: a compliance guide for businesses dealing with disadvantaged or vulnerable consumers when collecting amounts due</i>" issued on 15 August 2005;</p>	<p>Similar to above.</p>
<p>7 CHANGING SUPPLIERS</p>	
<p>Summary <i>This chapter sets out Consumer rights and Supplier obligations when Consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier. It also sets out Suppliers' obligations to Customers when a transfer of a Customer's Telecommunications Service arises as a result of the sale of a Supplier's business or a corporate reorganisation of the Supplier.</i></p>	<p>There is the risk of inconsistency with the ACIF/CA Commercial Churn Code. A review of these provisions has not been conducted here on the assumption that this will have been completed by Communications Alliance.</p>
<p>7.3 What Constitutes Consent</p>	
<p>A Gaining Supplier must take all reasonable steps to ensure that the consent obtained from a Consumer to undertake a Transfer is informed consent.</p>	<p>This is already provided by 7.2.1 and by 4.3.4, which should apply by operation of 7.1;</p>
<p>7.11 Sale of Supplier's Business or Supplier Re-organisation</p>	
<p>7.11.1 A Supplier must take the following actions to enable this outcome:</p>	
<p>(b) Termination by a Customer: ensure that, if so notified by the Customer pursuant to clause 7.11.1(a), the Supplier terminates the relevant Customer Contract relating to the Telecommunications Service within 5 Working Days of receiving the Customer's notice.</p>	<p>This leaves open the effects of termination. Under most contracts the customer will have some right to terminate but with various penalties (eg paying out a contract). The supplier could comply with this clause and terminate the contract but the consumer will be in a worse position.</p>
<p>8 COMPLAINT HANDLING</p>	
<p><i>The requirements set out in this chapter have been determined having regard to the Australian Standard – Complaint Handling AS ISO 10002-2006.</i></p>	<p>The number of the standard is incorrect (one too many zeros). I have not been able to access the standard to conduct a full comparison. Preferable approach would be to simply require compliance with the standard and regular</p>

Provision	Comment
	auditing.
8.1 Provision of a Complaint handling process that is accessible, transparent and free of charge	
8.1.1 A Supplier must take the following actions to enable this outcome:	
H recognising and servicing the needs of Consumers with disabilities, Consumers suffering hardship and Consumers from non-English speaking backgrounds.	'Recognising' does not impose any obligation. 'Servicing the needs' is vague.
(x) requires all TIO costs relating to the Complaint to be borne by the Supplier and not passed on to Consumers;	Regulated by s 128(4A) Telecoms (Consumer Protection and Service Standards) Act 1999.
8.2 Complaint management	
8.2.1 A Supplier must take the following actions to enable this outcome:	
(a)(iv)B. taking a consistent approach to resolving known issues and particular types of Complaints;	Poor drafting – uncertain.
(a)(v) suspending all Credit Management action for specified disputed amounts that are the subject of an open Complaint while the Complaint is being handled internally by the Supplier and for 7 Working Days after the Consumer is advised of the outcome of their Complaint;	Slightly different wording to cl 6.10 but substantively the same.
(a)(vii) finalising Complaints within 15 Working Days from the date the Complaint is received in accordance with clause 8.2.1 (a) or as soon as practicable in all the circumstances;	This looks like an exception, but in effect undermines the principal obligation. The result of the exception is to render the main obligation powerless to impose anything other than a requirement that the supplier follow its usual business practice, which, by definition, it already does.
9 CODE COMPLIANCE AND MONITORING	
Overview	
• <i>provide Metrics to the CC.</i>	No effective definition of "Metrics"
9.4 Code compliance statements	
9.4.1 A Supplier must take the following actions to enable this outcome:	
(a) Compliance Attestation: unless it is a Small Supplier, a Medium Supplier or a New Entrant Supplier, provide an Initial Compliance Attestation to the CC which has been endorsed by the chief executive officer or a senior manager of the Supplier, within 7 months of Code registration, and then provide a Compliance Attestation annually thereafter;	See comments in definitions about Small, Medium and New Entrant suppliers.
9.7 Suppliers obligations regarding the CC	
9.7.1 A Supplier must take the following actions to enable this outcome:	
(b) Metrics: provide to the CC annually, or more frequently if required by the CC...	See comment above – no definition of Metrics