

**COMMUNICATIONS
ALLIANCE LTD**



Telecommunications Consumer Protections (TCP) Code

DR C628:2018

Public Comment Explanatory Statement
July 2018

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Current Code Status

For the avoidance of confusion, the current registered TCP Code ([C628:2015, Incorporating Variation 1/2017](#)) remains in force.

The draft version of the Code (DR C628:2018) has been published for public comment purposes only.

Suppliers remain obliged to comply with the current registered version of the Code, and that is the version of the Code they will be attesting to for the [Communications Compliance](#) attestation due 1 September 2018.

In the course of preparation of a Communications Alliance Publication, a draft is released for public comment.

Public comment for the Telecommunications Consumer Protections (TCP) Code Draft (DR C628:2018) closes **Friday 10 August at 5:00pm**.

Due to scheduling requirements, extensions are unable to be granted.

Methods to submit:

- [Submit Comments Form](#) on the Communications Alliance website
- Email: info@commsalliance.com.au
- Postal address: PO Box 444, Milsons Point NSW 1565
- Fax: (61) 2 9959 9111

For any questions, please contact info@commsalliance.com.au, or call (61) 2 9959 9111.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

Introduction

This is the Explanatory Statement for the draft Communications Alliance **Telecommunications Consumer Protections (TCP)** Industry Code (DR C628:2018).

This Explanatory Statement outlines the purpose of the Code, the factors that have been taken into account in its revision, and the intentions of the revised Code.

The draft Code is to replace the TCP Code C628:2015, Incorporating Variation 1/2017.

Following the public comment period, the TCP Code Working Committee will review all public comments, revise the draft as appropriate, vote on the final revised Code, and once published, Communications Alliance will submit the Code to the Australian Communications and Media Authority (ACMA) for consideration for registration.

Background

The TCP Code applies to all Carriage Service Providers (CSPs) in Australia. It is a code of conduct for the Telecommunications Industry, providing consumer safeguards in the areas of sales, service and contracts, billing, credit and debt management, and for changing suppliers for mobile, landline, and internet customers. It also sets out a framework of code compliance and monitoring. The Code is registered and enforced by the ACMA.

The Code was developed in 2007 as the result of a consolidation of six previous individual codes. It has undergone two major revisions, published in 2012 and 2015. In 2016, the Code was varied to replace the Chapter on Code Compliance and Monitoring, and in 2017 it was varied to reference assistance for victims of domestic or family violence.

Under the provisions of the existing Code, the 2015 Code was scheduled for review in 2017. The review and revision began in August 2017, and is being conducted by a Working Committee led by an independent Chair and comprised of representatives of consumers, industry, regulators, and government.

Regulatory Arrangements

The Code is one piece of a broader telecommunications and consumer protection framework. This includes the relevant legislation, regulator, ombudsman, other legal obligations such as the Australian Privacy Principles, Standards published by the ACMA, and other operational Codes published by Communications Alliance. Below is a brief overview of some of the key pieces of this framework.

Australian Consumer Law

The Australian Consumer Law (ACL) provides overarching rules and protections for interactions between companies and consumers, and applies to all Australian businesses. The safeguards in the TCP Code are in addition to those in the ACL, and specific to the telecommunications industry.

Creation of the Code

Section 112 of the *Telecommunications Act 1997* (Cth) outlines the intention of Parliament that the telecommunications industry develop industry codes relating to telecommunications activities. Section 113 lists examples of the matters that may be dealt with by the development of an industry code. The list includes the areas covered by the existing (and revised) Code.

Compliance and Enforcement

The Code, once published, is submitted to the ACMA Authority for registration, and is then enforceable by the ACMA. Additionally, Communications Compliance – an independent

compliance monitoring body established by the Code – oversees the conduct of the TCP Code Compliance framework.

Telecommunications Industry Ombudsman (TIO)

The Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) requires carriers and carriage service providers to enter into and comply with the TIO Scheme. This scheme is an avenue of last resort for the handling of end-user complaints about carriage services. Subject to the consent of the TIO, this Code confers powers on the TIO to handle complaints about matters arising under the Code.

Related Codes and Standards

There is a range of other obligations and rules by which CSPs must abide. For example, the ACMA has recently made a Standard on Complaints Handling, and Communications Alliance publishes a number of [operational Codes and technical Standards](#).

Revision

Revision process

The Revision of the TCP Code began with stakeholder consultations in March 2017. The Working Committee was formed in August 2017, and decided on the Terms of Reference found in Appendix B.

Overview of the Revision

The revised Code has seen a number of significant changes.

- **Substantive changes:** There been a number of rule changes throughout the Code. As the restructuring and redrafting of the Code could make these challenging to identify when reviewing the draft, the table in Appendix A identifies the substantive changes made to the Code.
- **Restructuring and redrafting:** It was determined that additional clarity in many sections of the Code would facilitate compliance and be easier to understand for providers and consumers. Throughout the Code there has been significant restructuring of sections, and redrafting to emphasise important consumer protections.
- **Raising prominence of consumer protections:**
 - The General Rules contained in Chapter 3, including staff training and clear and accessible information for Consumers, are vital for the proper application of the Code. The section on “Compliance with the Code” in Chapter 1 was revised to highlight that Suppliers must comply with the rules in Chapter 3, as was the introductory language to Chapter 3.
 - Financial Hardship was previously included in the chapter on Credit and Debt Management. To ensure providers place appropriate emphasis on assisting customers in financial hardship, a new chapter focusing on financial hardship was created, with additional guidance.
- **Guidance boxes:** Where provisions in the Code could be or have been misinterpreted, or where it was seen that clarification could offer additional consumer protection or guidance to providers, guidance boxes have been added.

National Broadband Network

The rollout of the National Broadband Network (NBN) has been a significant event for Australian telecommunications. During the revision, the Working Committee discussed what changes, if any, needed to be made to the Code in light of this.

The Code is intended to be technology-neutral, creating broad consumer protections across all telecommunications services – including those delivered over the NBN.

There are a number of Communications Alliance NBN-specific operational codes, including the [NBN Access Transfer Code](#), which describes processes for post-migration transfers on the NBN and the [Connect Outstanding Code](#) which also addresses transfers. Additionally, the ACMA's new tranche of instruments, including the [Service Continuity Standard](#) and [Consumer Information Standard](#), address NBN services. Additionally, the Department of Communications and the Arts developed and published a [Migration Assurance Framework](#), establishing principles that guide the migration process and setting out roles and responsibilities of all telecommunications industry parties.

With this in mind, the Working Committee revised the Code to ensure the obligations were up to date and relevant for the NBN, but did not identify specific clauses which need to directly address the NBN, as it is intended to be a technology-neutral Code.

Communications Compliance

Communications Compliance was established by the Code in 2012 to oversee the Code Compliance Framework. The Code Compliance and Monitoring Chapter of the Code, along with the associated Appendices, was subject to a substantial revision in 2016.

The Working Committee agreed that the obligations on Suppliers in the compliance framework, as set out in Chapter 9, remain relevant and appropriate. However, following feedback from Code stakeholders and discussions with Communications Compliance, it was proposed that the scope of the framework could be enhanced to increase its effectiveness. This would entail a more proactive role for Communications Compliance in terms of educating providers, promoting code compliance, and identifying instances of systemic non-compliance.

Communications Compliance has subsequently identified specific actions it will take to facilitate this. These include a compliance attestation process that places specific emphasis on current areas of consumer detriment; a more robust process for coordination and information sharing with other Code stakeholders such as the ACMA, ACCAN, industry, and the TIO; enhanced transparency by way of published reports; and year round self-initiated enquiries which target suppliers who Communications Compliance has identified as being in breach, or are at risk of being in breach, of one or more Code obligations. The implementation of these activities is already under way.

To align with these enhanced measures without limiting Communications Compliance's ability to introduce new measures, the Working Committee has consolidated Appendices 1 and 2 into a single Appendix which sets out both Communications Compliance's remit and the nature of its engagement with industry and other Code stakeholders, specifically the ACMA. This principles-based approach allows Communications Compliance to respond to current complaints trends and concerns from industry and consumers without requiring Code revisions.

Complaint Handling

The ACMA's new [Consumer Complaints Handling Standard](#) (which came into effect on 1 July 2018) has replaced what was previously Chapter 8 of the TCP Code, Complaint Handling. The revised Code retains a placeholder for this Chapter to avoid confusion, directing providers and consumers to the new Standard for information on that topic.

Relevant definitions in the Code have also been revised to align with the definitions in the new Standard.

Implementation Timing

Previous revisions of the Code have been published with staged implementation of Code rule changes. The Working Committee has not addressed this topic yet, and will do so following public comment.

Questions for the Public

The Working Committee is seeking public comment on the entirety of the revised Code.

Additionally, there are two specific questions on which the Committee requests input:

- **Small Business:** The definition of “Consumer” can be found on page 12 of the draft Code. It includes businesses that do “not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract and has or will have an annual spend with the Supplier which is...no greater than \$20,000.”

The Committee seeks to establish whether if this spend limit is still accurate, with the note that it was established quite some time ago, and there have been economic changes which may have led to businesses spending more on telecommunications services, while simultaneously prices for those services have gone down.

The Committee specifically requests that any input on this question include information on how any suggested changed spend limit was reached (the logic and/or calculations used to arrive at that amount).

- **Included Value Plans:** Committee deliberations have identified that Included Value Plans are not common in the market today. With this in mind, two specific requirements about Included Value Plans, for information included in the CIS and rules on advertising, have been removed from the revised Code. These requirements were 4.1.1 (a) (i) G and 4.2.4 (a) in the [current registered Code](#). The Committee inquires if these provisions are still necessary in today’s telecommunications market.

Other relevant activities

Industry Guidance Notes are documents created by Communications Alliance to address a need for further guidance and/or clarification for a specific topic. There is already an Industry Guidance Note on [Sales Practices and Credit and Debt Management](#), and two additional guidance notes relevant to the TCP Code are in process.

A guidance note on how providers can assist customers facing domestic and family violence is currently being drafted, with publication anticipated in August 2018.

Additionally, in response to proposals for Code amendments by the [Australian Communications Consumer Action Network \(ACCAN\)](#), industry members of the TCP Code Working Committee identified that a new guidance note with information on assisting vulnerable customers would be helpful, providing information to RSPs on detailed topics like supporting deafblind customers to access customer assistance, and with broader educational and awareness raising information on the diversity of vulnerability. These are being drafted by Communications Alliance in consultation with a broad range of stakeholders including ACCAN.

It is anticipated that these Guidance Notes will be referenced in the revised TCP Code.

Appendix A: Summary of substantive changes

This table captures changes to requirements only – this does **not** include drafting, clarification, guidance, etc, which are significant parts of this revision. We strongly recommend reviewing the entirety of the draft Code, and not relying solely on this document, as to identify any other drafting changes you may have comments on.

Topic	Previous clause	Previous Requirement	New/revised Requirement	New/revised clause
Chapter 2, Definitions				
Complaints	N/A	Definitions specific to the previous Complaint Handling Chapter: <ul style="list-style-type: none"> • Acknowledging a Complaint • Closed • Complaint • Resolution • Resolve • Urgent Complaint 	Removed: <ul style="list-style-type: none"> • Acknowledging a Complaint • Closed • Resolution • Urgent Complaint Aligned with ACMA Telecommunications (Consumer Complaints Handling) Industry Standard 2018: <ul style="list-style-type: none"> • Complaint • Resolve 	N/A
Chapter 3, General Rules				
Language (moved from Chapter 4)	4.4.1 (b)	Supplier must provide reasonable information in all languages used in advertising (this requirement has been retained)	Additional requirement: "A Supplier must provide reasonable assistance to Consumers to obtain help in languages other than English when needed."	3.1.2, 3.1.3
Information for Consumers	3.2.1	Clear, accurate, free of material omissions, relevant, current, timely	Added "readily accessible"	3.2.1
Staff communication with consumers (moved from Chapter 4)	4.4.1 (a)	Ensure Sales Representatives are able to communicate effectively in the English language	New language: A Supplier must ensure that its representatives who manage enquiries for Consumers are able to communicate in the Supplier's primary language of operation with Consumers. (removal of "English language" specification)	3.2.2
Web accessibility	3.2.4	<u>Should</u> have regard to <i>Web Content Accessibility Guidelines</i>	<u>Must</u> have regard to the most recent version of the <i>Guidelines</i>	3.2.4

Culture, training, application of the Code	3.3 and throughout Code	3.3 (Dealing appropriately with Consumers) covered Culture and Disciplinary Action, while specific training requirements were identified throughout the Code.	<p>Changes intended to improve clarity and enforceability:</p> <ul style="list-style-type: none"> • Training language throughout the Code has been moved to Chapter 3 to apply across all chapters, and certain clauses in the Code are being altered to: “ensure staff are aware of...” and similar to align with this change. • Adding requirements to have systems and processes to support Code obligations. • “Culture” requirement moved to Introduction and expanded upon. 	Introduction (Culture), 3.3
Chapter 4, Consumer Sales, Service and Contracts				
CIS - Layout	4.1.1	Entire layout was specified	<ul style="list-style-type: none"> • Key parts of information must be at beginning of CIS, with additional flexibility throughout CIS. • New ability to combine multiple offers (bundled offers) into a CIS. 	4.1.2 a, 4.1.2 b, 4.1.3 b) (ii)
CIS – Information included	4.1.1 (a) (i) G	Information unit pricing for Included Value Plans	Removed	N/A
	4.1.1 (a) (i) E	Important conditions for the offer	Clarify that mobile data auto-top ups count as important conditions	4.1.2 b) (iv)
	N/A	None	Adding reference to Communications Alliance Broadband Education Package	4.1.2 b) (iii)
	N/A	None	Addition of information for consumer to calculate early termination fee	4.1.2 b) (v)
CIS – Historical Offers	N/A	No requirement	Suppliers must ensure that CIS for any offers still in operation are available upon request	4.1.7
Remedies for inaccurate information	4.1.4	Remedies: attempt to resolve Complaints about inaccurate information by providing the Customer with the correct information and a remedy that is appropriate in the circumstances for that individual Customer, which may include a right for	Remedies: attempt to resolve Complaints about inaccurate information by providing the Customer with the correct information and a remedy that is appropriate in the circumstances for that individual Customer, which may include a right for the Customer to terminate the Customer Contract or to be entitled to a refund;	4.3

		the Customer to terminate the Customer Contract; Updating: take reasonable steps to promptly update inaccurate information provided by the Supplier to Customers;	Updating: take reasonable steps to promptly update inaccurate information provided by the Supplier to Customers as soon as practicable ;	
Advertising – Special Promotions	4.2.3 (a)	Must disclose key terms and limitations such as whether stocks are limited	Added “and the period during which a Customer will receive any associated discounts”	4.5.4 a)
Advertising – Special Promotions	4.2.3 (b)	If the Special Promotion is to end within a short period of time...Supplier must disclose the end date...	Changed to: “If the Special Promotion has a set end date, the Supplier must disclose...”	4.5.4 b)
Advertising – Included Value Plans	4.2.4 (a)	Specific requirements for advertising Included Value Plans	Removed	N/A
Selling Practices	4.3	“ensure its Sales Representatives are <i>appropriately trained</i> to promote and sell its Telecommunications Products in a fair and accurate manner to assist Consumers in making informed purchasing decisions;”	“A Supplier must ensure its Sales Representatives promote and sell its Telecommunications Products in a fair, transparent, and accurate manner to assist Consumers in making informed purchasing decisions.” (Removed “are appropriately trained to”	4.6
Customer Service – Average Wait Times	4.6.1 (b)	Text changes as shown: “monitor average wait times experienced by Customers to communicate with a Supplier and provide an acknowledgement to the about a Customer Service enquiry within and seek to keep the average wait times to a reasonable minimum time in the circumstances;”		4.9.1 b)
Customer Service – First Contact Resolution	4.6.1 (c)	Text changes as shown: “monitor and seek to increase the level of first contact resolution of Customer Service enquiries, take by taking reasonable steps to understand the root causes for why enquiries cannot be resolved at first contact, and seeking to address those root causes;”		4.9.1 c)
Customer Service – Record Keeping	4.6.1 (d)	Text changes as shown: “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 resolving Customer Service enquiries assisting Customers.”		4.9.1 d)
Customer Service – reporting	N/A	No publication requirements	Mandating the Complaints in Context report for the Suppliers with the top 10 amount of complaints in the TIO Annual Report.	4.9.3

Chapter 5, Billing				
Direct Debit guarantee	N/A	None	"if the amount of a Direct Debit is incorrect, must either ensure that the Customer (or former Customer) receives a full and timely refund of the amount paid in error or undertake other appropriate option as agreed with the Customer (or former Customer) and Supplier."	5.7.1 g)
Third Party Services	N/A	None	Suppliers who include third party charges on bills must address all enquiries and Resolve Complaints about those charges.	5.8
Chapter 6, Credit and Debt Management				
Credit Assessment	6.2.1 (a)	A supplier must undertake a Credit Assessment	Addition: For existing Customers who seek to purchase additional devices, sign up to multiple Post-Paid services, or change plans to one with increased cost, Suppliers must check that Customer's payment history with them.	6.2.1 a)
Security Deposits	6.4.1 (c) 6.4.1 (e)	<ul style="list-style-type: none"> Suppliers had to advise Consumers of repayment and interest arrangements and the account to which the Security Deposit would be applied within 10 working days of receiving the Deposit. Suppliers had 10 days to repay the Security Deposit to the Customer. 	<ul style="list-style-type: none"> Suppliers must now inform consumers of this information in writing, prior to receiving the deposit. Suppliers have 5 days to repay the Security Deposit. 	6.4.1 c) 6.4.1 e)
Usage notifications	6.5.2 (g), (h), (i)	Information about charges which apply at 100% were provided at the 100% notification	That information must now be provided at the notification prior to the 100% notification (typically the 85% notification)	6.6.3
Usage notifications	N/A	No provision for Force Majeure	New provision that a Supplier will not breach this clause because of delays due to a Force Majeure event, with relevant Customer protections.	6.6.6
Reminder Notices	6.6	Written reminder notices must include information about the Financial Hardship policy	Reminder notices by email or letter must contain this information, while reminder notices by all other methods must include a link or reference to the Financial Hardship policy as appropriate for the communication method.	6.7

Default listed in error	6.8.1 (f)	A Supplier must use reasonable endeavours to inform the Credit Reporting Body within 1 Working Day	A Supplier must inform the Credit Reporting Body, and use reasonable endeavours to do so within 1 Working Day	6.9.6
Separation of Debts	6.9.1 (c)	A Supplier must take steps to ensure that debts sold or assigned...do not include any specified disputed amounts...	Removed "take steps to," is now "A Supplier must ensure that debts..."	6.10.3
Chapter 7, Financial Hardship – new Chapter				
Information required for assessment	6.12.1 (a)	No specifications around what kind of/how much information should be required for assessment	"A Supplier must limit required documentation to that which is relevant to the Financial Hardship assessment and not unduly onerous"	7.4.1
Timing of assessment and communication	6.12.1 (d)	Within 7 Working Days	Within 5 Working Days	7.4.5
Communication of Arrangements	6.13.1 (b)	Did not clearly include that a Customer must be informed of Credit Management arrangements (typically that Credit Management is put on hold)	Specifies that the rights and obligations a Supplier must inform their Customer of include "Credit Management arrangements under clause 7.7"	7.5.2
Restarting Credit Management Action	6.14.1 (b)	"A Supplier can restart Credit Management action when:..."	"A Supplier can only restart Credit Management action when:,,,"	7.7.2
Chapter 9 (previously Chapter 7), Changing Suppliers				
Keeping records regarding transfers	7.6	Must create and retain auditable records establishing: - The Authorisation - The Transfer was undertaken and advised to the Customer in accordance with this chapter	Addition of a clause: Information on Supplier: the provision of information to the Customer regarding the identity of each Supplier's role in the delivery of the service proposed to be supplied by the Gaining Supplier was accurate;	9.7.2 (a)

Appendix B: WC84: TCP Code Working Committee Terms of Reference

The **WC84: TCP Code** Working Committee has been established to perform an area of work identified by the Industry Consumer Advisory Group Reference Panel (ICAG).

This Committee, in carrying out the specific terms below, is to observe the following guidelines, as appropriate:

- to ensure that if the Code is to be registered with ACMA that it comply with Part 6 of the *Telecommunications Act 1997* and the ACMA "*Developing Telecommunications Codes for registration – a Guide*" including the identification of:
 - the sections of the industry that are to be covered by the Code, as per s.110 of the Act; and
 - the telecommunications activities to be covered by the Code, as per s.109 of the Act.

Noting that the Committee will take into account regulatory and legislative changes currently underway,

specifically, the Working Committee is to revise the C628:2015 **Telecommunications Consumer Protection Code** to:

- a) Adapt the code to ensure it is fit for purpose for NBN and other new services;
- b) where appropriate, simplify code provisions to support innovation;
- c) where appropriate, avoid duplication of the Australian Consumer law;
- d) identify and address provisions which would be more appropriately outcomes based where feasible;
- e) revise the Critical Information Summaries provisions in Chapter 4 to reflect new and altered services, input from consumers, associated research, and changing consumer access to information;
- f) consider Customer Service issues, including provision 4.6;
- g) revise and clarify advertising provisions in Chapter 4 as needed, including reflecting changing services and changing advertising technologies;
- h) revise and clarify all Chapter 5 as needed, including consideration of third party charges;
- i) revise and clarify Chapter 6 as needed, including consideration of changes in credit assessment and management practices and implications of the recent TIO Financial Hardship Guideline;
- j) consider need for revision to Chapter 7 regarding unauthorised transfers;
- k) consider need for revision to Chapter 8 to address complex complaints involving multiple parties and recent complaint trends;
- l) correct any identified typographical error(s); and
- m) update the format of the Code to the current Communications Alliance template.

The Working Committee only to consider minor changes to Chapter 9 made necessary by revisions to other Chapters within project scope, unless the parallel discussion concerning the role of Communications Compliance recommends otherwise.

Primary deliverables

- a revised version of C628:2015 **Telecommunications Consumer Protections Code**.
- Documented responses to comments received during the public consultation process.



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