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To: Communications Alliance

By submission: https://commsalliance.com.au/hot-topics/TCP-Code-Review-2024/Stage-3-Formal-consultation

RE: Review of the C628: 2025 Telecommunications Consumer Protections Code

INTRODUCTION

The Internet Association of Australia Ltd (**IAA**) thanks the Communications Alliance Working Group (**WG**) for the opportunity to respond to the consultation on the proposed draft *C628: 2025 Telecommunications Consumer Protections Code* (**Revised TCP Code**)**.**

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**) and retail service providers (**RSPs**) that will be subject to the Proposed Code and are currently subject to the existing *C628: 2019 Telecommunications Consumer Protections Code* (**TCP Code**)**.** Our response is primarily in representation of these members that represent the smaller entities within the telecommunications industry, as well as for the greater public benefit of the Telecommunications sector.

IAA and our members acknowledge and appreciate the work of the WG in its extensive review of the TCP Code. We also take this opportunity to recognise the importance of robust consumer protections to ensure a thriving sector, and sincerely support the efforts undertaken to ensure the TCP Code meets and reflects reasonable expectations of the various stakeholders within the sector as to safeguards for consumers. IAA is a strong proponent of the telecommunications sector's co-regulatory scheme and sincerely hopes that the Revised TCP Code will continue to contribute to this important regulatory landscape. We are therefore highly interested in ensuring that the Revised TCP Code continues to reflect the principles that underpin our sector's co-regulatory scheme and maintains effective, practical and balanced obligations.

To that end, we are concerned that some of proposed reforms under the Revised TCP Code do not reflect these principles. We are particularly concerned about the disproportionate burden these new requirements would especially place on smaller entities such as many of our members that lack the resources to comply with prescriptive and cumbersome regulatory obligations.

Furthermore, we understand that this Proposed Code should be reviewed in light of the various other regulatory reforms underway in the sector. By way of example, this includes the new *Telecommunications Amendment (Enhancing Consumer Safeguards) Bill 2025* (**Consumer**

Safeguards Bill) which if passed, will allow the Australian Communications and Media Authority (**ACMA**) to take direct and immediate enforcement action against telecommunications providers in breach of industry codes, as well as various reform to industry standards regulated by the ACMA in relation to consumer complaints handling and communication during outages. While we do not necessarily oppose such new safeguards, we are concerned about the great number of regulatory reforms in the sector, and the disproportionate costs borne by smaller entities in keeping up with these changes.

Given this increasingly complex regulatory landscape, we are concerned that the Revised TCP Code will overly contribute to the increased regulatory costs for telecommunications providers. We are furthermore concerned that this regulatory burden will consequently result in:

- increased costs of telecommunications services for consumers as service providers will inevitably have to pass on regulatory costs to end-users amidst a cost-of-living crisis; and
- reduced competition in the sector in what is an already imbalanced market as smaller providers are inundated with regulation that makes it difficult for them to operate.

We do not consider this to be in the public interest given the adverse implications for both consumers and industry. In addition, we are concerned about potential gaps in understanding and expectations between industry and the ACMA due to any vague provisions which may result in enforcement action being taken against providers and as such, have requested for greater clarity on various provisions throughout the Revised TCP Code.

We therefore offer the below response and recommendations in the hope to contribute to a TCP Code that reflects an appropriate balance between robust safeguards for consumers and the burden on providers.

OUR RESPONSE

CHAPTER 1: TERMINOLOGY, DEFINITIONS AND ACRONYMS

Exclude State and Territory public holidays in definition of 'working day'

We recommend that the definition of 'working day' is amended to exclude State and Territory based public holidays, in addition to national public holidays. The restriction to exclude only national public holidays disproportionately burdens smaller providers. This is as there are many providers that only service customers in a single State or Territory or operate out of only one State or Territory as its principal place of business. At the least, the definition of 'working day' should be amended to exclude a public holiday in the location of the principal place of business of the relevant provider.

We note that this inclusion of State and Territory public holidays is common practice in relevant telecommunications regulation such as the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* and *Telecommunications (Financial Hardship) Industry Standard 2024* (**Financial Hardship Standard**). Therefore, we also consider that the recognition of State and Territory based public holidays to be within consumers' reasonable expectations.

CHAPTER 2: GENERAL

Extend the commencement date of the Revised TCP Code to at least 6 months following its registration

Extend the delayed commencement date of identified provisions to 9 months following the registration of the Revised TCP Code.

We are extremely concerned about the proposed 3-month grace period to comply with the bulk of the Revised TCP Code. We understand that in respect of certain provisions, an additional 3 months has been provided. However, we consider these commencement periods too short.

We note that in addition to the provisions identified in clause 2.1.4 subject to the Delayed Commencement Date, many of the other amendments under the Revised TCP Code will require providers to undertake a significant review of their current operations and systems, consider what changes are necessary, and then implement those changes and train staff accordingly. Again, we note that smaller providers in particular will struggle with this timeline, and the undue costs they will have to bear. Many smaller providers do not have dedicated regulatory personnel to keep track of and navigate regulatory material.

In addition, we note the Consumer Safeguards Bill intends to remove the 2-step process that currently exists in relation to enforcement of industry codes, allowing ACMA to take stronger and immediate enforcement action. While we recognise the importance of enforcing compliance with the TCP Code, we note that industry, and in particular, smaller providers must be given a fair and reasonable opportunity to properly understand their compliance requirements, and implement changes to ensure their compliance.

The Revised TCP Code would introduce a slew of regulatory obligations and the 3-month commencement period is not an appropriate timeframe. Especially as the sector is simultaneously facing a great number of other regulatory reforms on a range of issues, we would appreciate the Commencement Date to be amended to 6 months following the registration of the Revised TCP Code. Accordingly, the Delayed Commencement Date should be extended to 9 months following registration.

Include additional provisions to be subject to the Delayed Commencement Date

In addition to the clauses identified under clause 2.1.4, we consider a provider's compliance obligations under below provisions should also be subject to the Delayed Commencement Date, due to the significant work that providers would have to undertake to implement these changes:

- Introducing processes to proactively identify customers in vulnerable circumstances – Clause 4.2.1b
- Completing credit assessments – Clause 6.2
- Providing at least 1 live customer contact channel, and alternative support channels – Clauses 7.1.2, 7.1.3, and 7.1.4
- Providing information about discounts and credits – Clause 8.6.4
- Providing receipts within 48 hours of processing payment – Clause 8.7.2
- Processes in response to failed direct debit payments – Clause 8.11.3

Extended commencement date for any clauses relating to domestic and family violence

Given that consultation on the *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections) Industry Standard 2025* (**DFV Standard**) is currently underway, we expect that any provisions related to domestic and family violence (**DFV**) in the Revised TCP Code will be reviewed in consideration of the DFV Standard. As such, any provisions relating to DFV in the Revised TCP Code should only come into effect 9 months following the establishment of the DFV Standard. We consider that at least 9 months is required to allow for the following:

- initial 3 months to review and consult on the provisions relating to DFV in light of the new DFV Standard; and
- an additional 6 months for providers to ensure compliance with those provisions.

Inclusion of other relevant documents

We expect that clause 2.2.1(a) will be updated to include the DFV Standard as and when it is drafted and comes into force.

CHAPTER 3: CULTURE AND GOVERNANCE

Define and clarify 'account management'

We would appreciate greater clarification on 'account management' under clause 3.2.4(b) and how this differs from the other, specific aspects of management of consumer accounts set out under the rest of clause 3.2.4.

CHAPTER 4: SUPPORTING THE CUSTOMER

Provide clarification in relation to clause 4.2.1(a)

We consider the obligation to assist consumers to self-identify as experiencing vulnerability as vague and unclear as to what is required for providers to ensure compliance with this provision. We appreciate that the clause is left non-prescriptive to allow providers flexibility in their assistance approach, however, we would appreciate if further examples could be provided as non-mandatory guidance on the various ways that providers could ensure compliance.

CHAPTER 5: RESPONSIBLE SELLING – ADVERTISING

Define 'fair use policy'

We note that 'fair use' has different meanings (such as in relation to copyright law) and thus to avoid any confusion, we recommend that 'fair use policy' is defined for the purposes of clause 5.1.9(g).

Provide clarification in relation to clause 5.3.3

Clause 5.3.3 suggests that all telecommunications providers must supply goods and services that are specialised for consumers with disabilities. While we strongly support that all providers should not be discriminating against consumers with disability in accordance with the *Disability Discrimination Act 1992*, we note that this is distinct from providing specialised relevant goods and services.

We assume that the clause is intended to require providers to provide information about any goods or services that they supply that may be suitable for the needs of consumers with disabilities. We recommend amendment of, or clarification provided in relation to clause 5.3.3 to specify this clause does not require providers to supply goods or services that are specifically specialised for consumers with disabilities.

In addition, we consider it would be more appropriate to require providers to provide information about or links to the resources identified under clause 5.3.4(a)-(c) in its guidance material about suitable goods or services.

CHAPTER 6: RESPONSIBLE SELLING, SALES, CONTRACTS AND CREDIT ASSESSMENTS

Confirm compliance with clause 6.1.9 by way of compliance with other clauses

We note that the Revised TCP Code includes various provisions relating to providing information about 2 fee-free payment methods to consumers. For example, information about 2 fee free methods must be provided in the Critical Information Summary under clause 5.1.8(b) and in each bill under clause 5.4.7(n). In both cases of the CIS and bills, it is customary that these are provided prior to a consumer's payment.

However, it is unclear whether providing this information by way of the CIS or on a bill issued prior to the payment is made is sufficient for the purposes of satisfying clause 6.1.9. We would consider that this is sufficient, and it would unnecessarily burdensome for providers to have to additionally provide the same information. We therefore recommend that further clarification is provided under this clause to specify that providing information about 2 fee free payment methods prior to the initial payment such as in the body of the CIS or in a bill is sufficient.

Confirmation of 'critical locations' as a defined term

We assume that 'critical locations' in clause 6.1.10 refers to the defined term and if so, should be italicised and linked in accordance with clause 1.1.

Limitations on when a consumer can exit their service contract

In general, we appreciate the attempt to ensure responsible selling practices within the telecommunications sector and the existence of appropriate remedies for consumers who are victims of irresponsible selling. However, we believe that clause 6.1.13 goes beyond what should be considered as reasonable practice when a mobile telecommunications service does not meet a consumer's coverage requirements.

We note that other provisions, such as clauses 5.3.5(k) and 6.1.10 already provide consumer safeguards to ensure consumers are aware of the network coverage of the service contract they intend to enter, and the appropriateness of such coverage for their intended use.

In addition, the blanket requirement to allow consumers to exit service contracts without incurring exit fees is extremely broad does not account for the various scenarios where this should not be considered reasonable. For example:

- where consumers enter a mobile telecommunications service contract and then relocate part way through the contract;
- where consumers were advised of the 'generally available network coverage' and/or chose to enter the service contract fully aware of the limitations of the service coverage for their intended use; or
- where actual network coverage *temporarily* fails to meet the customer's coverage requirements such as in the event of a transient network outage.

As such, we recommend that 6.1.13 is amended so that it is limited to:

- when the actual network coverage of a mobile telecommunications service fails to meet the generally available network coverage that was advised at the time of entering the service contract; and
- such failure occurring at least 3 consecutive times in any 3-month period, or another appropriate calculation as deemed necessary.

Furthermore, there should be safe harbour provisions to ensure that providers who complied with all other relevant provisions relating to responsible selling are only required to enter good-faith negotiations with consumers.

Balancing reasonable interests of providers and safeguards for consumers in relation to clause 6.1.14

IAA and our members support providing consumers experiencing vulnerability with greater assistance. However, we note that 'vulnerability' as has been defined in the Revised TCP Code and generally used in the telecommunications sector, such as under the Financial Hardship Standard, is extremely broad, especially given the cost-of-living crisis in Australia. Indeed, it is very likely that most consumers could be determined to be experiencing or have experienced vulnerability in the last 12 months due to the breadth of circumstances that 'vulnerability' encompasses.

As such, we consider clause 6.1.14 too broad in scope and does not appropriately balance the reasonable interests of providers in relation to the costs of providing goods and services, or the difficulties imposed on providers in trying to comply with this provision whilst also protecting its own interests to prevent consumers from inappropriately abusing this provision to receive refunds for simply changing their mind and without genuine experiences of vulnerability. We note that especially as this provision also relates to telecommunications goods, this provision goes beyond standard consumer guarantees under Australian Consumer Law.

We understand that clauses 6.1.15 to 6.1.16 allow for providers to request and assess evidence of vulnerability to provide some protections for providers from consumers abusing their ability to return goods or cancel services without charge. We also appreciate that 6.1.14 has been limited to where the vulnerability had an adverse impact on the decision making of the consumer at the time of the purchase, however, we do not consider this sufficient and raises additional complexities for providers in having to address ancillary privacy concerns and also to ensure it is not succumbing to wrongful discrimination in the assessment of vulnerability.

In general, we note the difficulty in being able to prove or assess whether the vulnerability *did in fact* impair the decision making of the consumer. This is likely to result in unfavourable customer experiences in the determination process. For example, 'consumer in vulnerable circumstances' includes consumers who are from a culturally diverse background or heritage. While we fully recognise that in some circumstances, being of a culturally diverse background may result in a consumer being unable to fully understand the terms of service contract, and therefore have impaired decision making, this is not so easy to assess or determine. Furthermore, the provision does not provide any safe harbour protection where a provider provided the contact details of an interpreter service in a relevant community language, and the consumer chose not to use such services.

In addition, given the retrospective nature of clause 6.1.14, it may be difficult for consumers to provide evidence. Furthermore, consumers may justifiably not feel comfortable providing evidence in light of increasing privacy concerns.

However, we reiterate the importance of ensuring consumer safeguards, particularly for those experiencing vulnerability and understand the complexity in trying to achieve an appropriate balance. We therefore recommend that clause 6.1.14 is amended to require consumers to enter good faith negotiations about the return of, or cancellation, without charge of a telecommunications good or service that was purchased while the consumer was affected by a vulnerability that impaired their decision-making.

The debt amount should be increased for when a provider must complete a credit assessment

We are extremely concerned about the requirement for providers to have to complete a credit assessment for consumers on what will essentially encompass the majority of telecommunications sales. The amounts specified under the Revised TCP Code, $150 for residential consumers and $2000 for business consumers, are extremely low and therefore impractical.

The drafting of clause 6.2.1(a) and 6.2.5(a) means that $150 is not specific to the 'periodic price', but rather represents the amount that may be incurred by a residential consumer throughout the course of the entire contract (and equivalent for business consumers under clauses 6.2.3(a) and 6.2.9(a)). This essentially covers all telecommunications service contracts. In addition, the amounts are vague and does not address inflation, nor whether it includes GST.

While we understand these requirements are intended to address instances of mis-selling within the industry, we are concerned that it is overly paternalistic and excessively invasive. We strongly believe this will frustrate consumers rather than provide any assurance or comfort about providers' selling practices, and further erode consumer-industry relations. Such a low figure may indeed drive poor behaviour, for example where incorrect information is provided by consumers in order to meet the test, or incorrectly recorded by providers in order to satisfy the test.

Furthermore, we consider that consumers would be uncomfortable with providing the information required under clauses 6.2.2 or 6.2.6 for the purposes of undergoing the credit assessment. The note provided under clause 6.2.6(a) states providers are not required to request evidence is even more confusing and seems to contradict the requirement that providers consider the consumers' financial circumstances.

In addition, the costs to be incurred by providers in relation to performing a credit assessment in accordance with clause 6.2.4 in relation to business consumers, as well as the requirement to complete an external credit check for both residential and business consumers is not insignificant, especially due to the low amounts specified which – to reiterate – will cover almost all sales.

We therefore recommend that clauses 6.2.1(a) and 6.2.5(a) are amended so that providers only need to complete credit assessments for residential consumers for a contract that may result in a debt that would equal or be greater than $1000.

Similarly, we recommend that the amounts specified in clauses 6.2.3(a) and 6.2.9(a) are amended to $10,000.

In addition, we assume that there should be an 'or' placed at the end of each paragraph 6.2.10(a)(i) to (iii), and the providers are not required to undertake all of the activities listed under clause 6.2.10(a).

CHAPTER 7: CUSTOMER SERVICE AND SUPPORT

Amend and provide clarification on clause 7.1.9

In general, we support the intention of clause 7.1.9 that exempts a provider from providing records which would jeopardise the safety of a consumer or end user experiencing DFV. However, we believe that the vague wording on this clause may cause some uncertainty as to what is reasonably expected of a provider, and when or how a provider would be aware of when providing records that may jeopardise the safety of a consumer or end user experiencing DFV. We therefore recommend that the clause is amended to the following:

Clause 7.1.7(b) does not apply where the CSP reasonably believes or suspects that providing records may jeopardise the safety of a customer or end user experiencing DFV.

We also expect that this clause may be amended, or further clarification will be required, to ensure harmonisation with the impending new industry standard on DFV.

CHAPTER 9: CREDIT MANAGEMENT, DEBT MANAGEMENT, AND DISCONNECTION

Clarification on when a provider 'becomes aware' of a consumer being affected by a natural disaster

In general, we support the intent behind clause 9.1.3 that strives to ensure consumers affected by a natural disaster are not unduly disconnected from their telecommunications service, given the vital nature of telecommunications, especially during times of crisis. However, the vague drafting of this clause makes it unclear as to the provider's requisite responsibility in 'being aware' for the purposes of having to comply with this clause. For example, it is unclear whether the provider should only be considered as being aware via notification from the consumer or their authorised representative, or whether this clause is intended to impose an active responsibility on the provider to find out whether its consumers are affected by a natural disaster the provider should reasonably be aware of. We would appreciate clarification on this point. Further, we recommend that a balance should be struck so as not to place unreasonable expectations on providers but also appropriately assist consumers affected by natural disasters.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Revised TCP Code. We appreciate the work of the Communications Alliance Working Group in undertaking this extensive review into the TCP Code and again recognise the importance of robust consumer protections to ensure a healthy and thriving sector. Equally we reiterate our concerns in ensuring those consumer protections are measured, practical and reasonable. To that end, we look forward to continuing to work with Communications Alliance, other industry representatives, consumer advocates, regulators and any other stakeholders to ensure that the Revised TCP Code is fit for purpose.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth. IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

Yours faithfully,

Internet Association of Australia