Appendix A: Additional targeted commentary on the draft Code

Area of the draft Code	Our commentary
Authorised representatives and bereavement support	
Clause 4.3.2(c) – levels of authority granted to authorised representatives	The note under this subclause states a consumer's authorised representative may be given authority to 'act on the customer's behalf as if they were the customer, or may be granted limited, defined rights.' It is not clear whether this note is intended to create any obligations for CSPs about the levels of authority they must allow consumers to give an authorised representative. We receive complaints where the representatives of vulnerable consumers say a telco has told them they are not able to do certain things on the consumer's account (such as cancelling a service or moving a service to a new address), even though the consumer had granted them full authority on the account. There should be a clear obligation for CSPs to accept an authorisation from a consumer that gives their authorised representative the ability to do anything on the account the consumer could do. This obligation should be contained in a separate Code clause rather than a note, to clarify that it is binding. There should also be a clear obligation on CSPs to inform account holders about the nature and extent of powers granted to an authorised representative, including what an account holder can do if they want to revoke their authorisation. We sometimes see complaints where an account holder has not understood the full extent of the powers they were granting to an authorised representative, and the authorised representative took advantage of this to the consumer's detriment. We also see complaints from consumers who say their telco told them an authorised representative they had set up on their account had 'expired'. Depending on the circumstances, this can sometimes cause significant inconvenience or anxiety for vulnerable consumers, who then have to complete the process of re-authorising their representative. We understand some telcos place time limits on the authorisation of representatives as a security measure, but it should always be the consumer's choice to remove an authorised representative. In our view, it is beneficial for a telco to remind a consumer about authorised representatives on their account (and of how they can remove those representatives), but telcos should not be permitted to remove authorised representatives unilaterally. A new clause should be inserted into the

	Code to make clear CSPs can only remove an authorised representative on an account holder's instructions.
Section 4.5 – Managing a customer's death	The new section 4.5 provides rules for managing a customer's death. Broadly, these rules would require CSPs to have processes in place to accept notification of a consumer's death from an 'Authorised Estate Representative' and facilitate management of the deceased person's account in accordance with their representative's wishes. We acknowledge Communications Alliance has outlined that the proposed requirements in section 4.5 would be subject to the multifactor authentication requirements of the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022*. The Australian Communications and Media Authority is currently considering proposed amendments to that Determination. We support the goal of helping consumers deal with bereavement issues more easily and efficiently. We receive complaints from consumers who are experiencing delays and other difficulties dealing with bereavement issues. Typically, these consumers come to us for assistance in cancelling their deceased relative's services and ensuring any remaining charges are finalised. Occasionally, consumers want to transfer the deceased relative's services into their own name or organise for a credit balance on their account to be refunded. We are concerned to ensure that if the proposed requirements in section 4.5 are ultimately incorporated into the Code, they do not create an undue risk that CSPs will accept instructions from persons who are not authorised to represent a deceased estate. The proposed definition of 'Authorised Estate Representative' is broad, covering any 'party with a confirmed relationship to a deceased customer's account who has met the CSP's evidence of the customer's death requirements, and met the CSP's identification requirements.' A note underneath the definition says this may include the customer's next of kin or an individual with power of attorney. Depending on the circumstances of a deceased estate, we understand these persons may or may not be authorised to represent the estate. The typical bereavement request where a consumer just wants to cancel their deceased relative's account is likely to represent minimal risk to the estate. Where a bereavement request involves the refunding of credit balances or the transfer of services or accounts into another person's name, there may be increased risks. We encourage Communications Alliance to be mindful of any risks that may be posed to a deceased person's estate by the proposed section 4.5 requirements, when determining the final drafting of the section.

Pre-sale information for consumers and sales practices	
Clause 6.1.10 – requirements to provide pre-sale information about mobile coverage	We regularly receive complaints from consumers who say they received incorrect advice about the level of coverage available, or that their telco did not check the level of coverage available at their address before selling them a mobile service. We support the intent of new clause 6.1.10 (to give consumers access to coverage information during a sale), but are concerned it does not go far enough to make a meaningful difference to current sales practices. The clause will only apply to new residential customers, and only applies where a sale is 'assisted' (by a staff member). Where the clause applies, it requires the telco to direct a consumer to check coverage maps themselves, rather than requiring the *CSP* to check and advise on available coverage in the locations where a consumer wants to use their service. It is not clear what the rationale is for limiting this clause to new residential customers. In our experience, consumers often discover their telco does not have good mobile coverage at their new home or place of business after moving. While a consumer will likely be aware of the level of coverage they can expect at their current home if they have an existing mobile service with their telco, this may not be the case if an existing customer wants to buy a service before moving. Similarly, an existing customer may only have fixed line services (and therefore no lived experience of their telco's mobile coverage). Small business consumers also have an interest in receiving accurate information about mobile coverage. To support the effective provision of coverage information to consumers, the clause should apply to all sales of mobile services (not just sales to new residential customers where the sale is 'assisted'). As we recommended in our June 2023 Submission, there should also be a requirement for CSPs to provide coverage information in a standardised format, to assist consumers when comparing telcos.
Clause 5.1.1 – requirements to make CISs available	Clause 5.1.1 defines the offers for which CSPs must provide CISs. As currently drafted, paragraph (a) says a CIS must be made available for all offers for telecommunications services. Paragraph (b) says a CIS must me made available for all offers for 'telecommunications services where a bundled telecommunications good or additional service is included as a mandatory component of that offer'. This drafting is unclear, as on the face of it all offers covered by paragraph (b) would also be covered by paragraph (a). That is, all telecommunications services with bundled goods or services are also covered by the broader category of telecommunications services. It is not clear what offers are intended to be covered by paragraph (b) that are not already covered by paragraph (a). If the intent is for CISs for telecommunications services to be required to cover any telecommunications *goods* or *non-*

	telecommunications services that are bundled with the telecommunications service as a mandatory component of an offer, then paragraph (b) should be redrafted to clarify this. We sometimes deal with complaints about telecommunications-adjacent products some telcos offer as add-ons to telecommunications products. One example of this kind of product is the mobile handset replacement services offered by some larger telcos. Typically, these services will allow a consumer (for a monthly fee and subject to various conditions) to return their contracted mobile device before its minimum contract term has expired, and sign up for a new device repayment plan. In our experience, consumers can sometimes find these products confusing, and may benefit from CISs being provided for them. We are aware at least one major telco provides a CIS for this kind of product, but it is not clear that the Code requires this. Consumers could benefit from the Code being clear that CSPs are required to issue CISs for these kinds of products.
Clauses 5.1.8 and 6.1.2(c) – content requirements for CISs and information that must be explained to consumers pre-sale	In addition to our comments about the importance of consumers receiving notice about all CSP-initiated changes to their contracts rather than just detrimental ones (under clauses 7.2.2 and 7.2.3), we would support information about CSP-initiated contract changes being given to consumers early in the sales process. We receive complaints from consumers who are surprised or unhappy to discover that their telco has changed the terms of their contract. Requiring CSPs to include in CISs (where applicable) an explanation that they may unilaterally alter the terms of a contract would promote better consumer understanding and may reduce complaints about these issues. A requirement for CSPs to explain the possibility of CSP-initiated contract changes to consumers before a sale takes place would also support better consumer understanding.
Credit assessments	

Retention of credit assessment information	Our complaint-handling staff often find that when they need to investigate a complaint where it appears a telco may not have completed an adequate credit assessment, they have difficulty obtaining useful information from the CSP in order to review the credit assessment. In these circumstances, the CSP often says it either cannot provide any information relating to the credit assessment, or the information it can provide is cursory and does not show what factors its assessment considered or how the factors were assessed. To assist telcos and consumers in resolving complaints relating to the adequacy of credit assessments fairly, CSPs could be required to record and retain information they considered as part of their credit assessments, including a description of how they applied the information when making a credit assessment, for the duration of the contract plus 24 months. This could be achieved by explicitly defining what information CSPs are required to retain about credit assessments in order to comply with the record retention requirements in clause 2.4.1. Any privacy risks associated with collecting and retaining information to support credit assessments could be mitigated by a requirement for CSPs to delete the information once the mandatory retention period has expired.
<u>Contract information for consumers, including retention of contract information</u>	
Clauses 6.3.2 and 6.3.3 – provision of 'order summaries' to consumers after sale	We support the requirements for CSPs to give consumers 'order summaries' within five working days of entering into a customer contract. In principle, this should give consumers easy access to basic information particular to their individual contracts. The requirements relating to the content of 'order summaries' could be improved by including additional pieces of important information. In our view, 'order summaries' should also be required to include the name and ongoing cost of the relevant telco product. We acknowledge this information will be included in the telco product's CIS (and that the order summary must contain a link to the CIS). However, in our experience CISs often cover more than one plan, including plans with differing prices (for example - all of a CSP's internet plans for different NBN speed tiers). This can cause confusion for consumers, as without more information specifying the name of their plan, they may not know which part of their CIS to refer to.

	It may also be helpful for there to be a requirement that order summaries contain the 'essential information' for a given telecommunications product.
Clause 6.3.4 – retention of information about consumer contracts	We observe the draft no longer explicitly requires for CSPs to retain auditable records establishing that a consumer agreed to enter into a contract. The current Code contains such a requirement in clause 4.6.5(b), but the new clause 6.3.4 requires CSPs to retain only the consumer's order summary, the CIS for the telco product and the CSP's standard form of agreement, as well as 'records to enable a customer to verify that the process for entering into the customer contract was undertaken in accordance with [Chapter 6 of the Code]'. We acknowledge there have been divergent views from stakeholders about the right balance between retaining contract information for dispute resolution purposes and avoiding privacy risks. There has been much discussion about whether the Code should prescribe a period of time for which CSPs must retain information. We welcome the decision to keep the mandatory record retention periods in clause 2.4.1. Our office regularly deals with complaints from consumers where the existence or terms of a customer contract are in dispute. In this context, we often need to request access to contract information to establish the existence or content of an agreement. Sometimes a telco tells us it did not retain important information such as a physical written contract or call recording showing the consumer agreed to enter a contract. In our view, a good-faith reading of a requirement to retain records to enable a consumer to verify that the process for entering into their contact was undertaken in accordance with Chapter 6 of the Code would include a requirement to retain records showing the consumer agreed to enter a contract. However, this is not explicitly clear from the text of clause 6.3.4. In our June 2023 Submission, we argued telcos should be required to retain all contract information (including a copy of the physical written contract, call recording or webchat transcript where the consumer agreed to be bound by the contract), for a minimum period of the duration of the contact, plus 24 months. We maintain the Code should explicitly require CSPs to retain this information. Privacy risks posed by the retention of this information could be reduced by including an obligation for telcos to delete the information once the mandatory retention period expires.

Payments	
Clause 8.10.1 - 8.10.2 – changes to mandatory payment methods	We welcome the proposed requirement for CSPs to offer two fee-free payment methods, and in particular the requirement in clause 8.10.2 for telcos to offer at least one manual payment method (such as Bpay) free of charge. However, we suggest the drafting of clause 8.10.2 could be strengthened to clarify providers must offer a free manual payment method for *all* their telco products. Under the current drafting, there may possibly be some scope for a CSP to argue it complies with clause 8.10.2 because it offers a manual fee-free payment method for some of its plans but not others. This would not be consistent with the intent of the clause. Clause 8.10.2 could be strengthened further by prescribing particular manual payment methods all telcos must offer their consumers, such as Centrepay (for those consumers who use and request it). To support good accessibility of payment methods for all consumers, CSPs could be required to offer a range of methods including Bpay and payment at a post office (noting many elderly consumers feel more comfortable paying this way).
Clause 8.10.3 – flexibility for consumers paying by direct debit	We welcome requirements for telcos to offer flexibility to consumers who choose to pay for their services by direct debit. We observe clause 8.10.3 has been drafted to give CSPs the choice about which of the three options for flexibility they offer. In our view, this is unlikely to meet the expectations of consumers paying for their services by direct debit. The clause should be amended to require CSPs to allow consumers paying by direct debit to choose at a minimum, the date *and* frequency of their payments. Where a consumer chooses a payment cycle of less than a month, this could require telcos to allow consumers to choose what day of the week their payments are deducted. We appreciate implementing more prescriptive requirements may represent some additional cost to CSPs. If a CSP determines such costs are undesirable, it would have the option of choosing not to offer direct debit payments.

Clauses 8.11.2 and 8.11.3 – timeframes for direct debit payment reminders and re-attempting failed direct debits	We support requirements for telcos to send reminder notices to consumers about upcoming direct debit payments, and for there to be a minimum period of time telcos must wait after a failed direct debit before reattempting the payment. We are concerned there is no set timeframe within which telcos must give consumers notice of a failed direct debit payment under clause 8.11.3(a). This may lead to inconsistency of approach between telcos. Having minimum timeframes a CSP must wait before re-attempting a failed direct debit will be less likely to assist a consumer, if the consumer does not receive timely notice of the failed payment. In our view, CSPs should be required to send notice of failed payments within 24 hours of a payment failing.
Clause 8.11.4(b) – timely refunds for direct debit errors	We are disappointed to see there is still no set timeframe within which CSPs must process refunds of money incorrectly debited from consumers' bank accounts. In our experience, unexpected and incorrect direct debits can sometimes leave consumers in significant financial difficulty (e.g., leaving them in a position where they are unable to pay for food or rent). Given the high level of detriment incorrect direct debits can cause, it is imperative that there be a clear, mandatory timeframe within which CSPs must process refunds after direct debit errors. We gave feedback about the need for clear mandatory timeframes for these refunds in our June 2023 Submission. We acknowledge the note beneath clause 8.11.5 does indicate refunds 'should' be processed within 15 working days. It is unclear whether this is intended to qualify the operation of clause 8.11.4(b), but a 15-working-day timeframe is in any case inadequate. At most, the timeframe for refunding incorrect direct debits should be 5 working days. This would reflect the seriousness of the detriment that direct debit errors can cause for consumers, and ensure they are not disadvantaged by such errors for extended periods of time. In our view, any clause providing a mandatory timeframe for the refunding of incorrect direct debits should also make clear what date the mandatory timeframe starts.
Credit management	

Clause 9.1.3 – 'protecting' consumers' affected by a natural disaster from disconnection because of credit or debit management activity	We support the goal of these clauses, which is to provide a level of protection for consumers affected by natural disasters, recognising that having access to working services is often necessary to keep such consumers safe. We welcome this attempt to reduce the likelihood that consumers in these circumstances will have their telecommunications services disconnected. However, we have concerns about the broad language that has been used when drafting this provision. It is not clear what it will require in practice. Given the lack of specificity in the drafting language it is likely CSPs will interpret and apply this obligation in inconsistent ways. It is also likely it will be difficult for the ACMA to enforce it. We suggest the clause should be reworded to include clear actions CSPs must take or (if that is the intent) clear prohibitions on CSPs disconnecting services in certain well-defined circumstances (for example, where a consumer's place of residence is affected by a declared natural disaster). Without clear language indicating the minimum standard of behaviour required under clause 9.1.3 there is a risk it will not achieve the desired outcome of keeping services connected.