

Chair and Agency Head

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ACMA file reference ACMA2023/415-22

Dear Mr Stanton <sup>John</sup>

**Re: Telecommunications Consumer Protections (TCP) Code Review: May 2024 draft**

Thank you for your letter of 20 May 2024 that included a near complete draft TCP Code.

As I indicated in my letter of 20 August, the ACMA appreciates the extensive work undertaken by Comms Alliance and its members to date on this important set of consumer safeguards. That effort is evident in a number of areas in the drafting where industry has committed to new or enhanced actions which should drive improved outcomes for consumer.

However, after careful and detailed review of the draft Code, the ACMA considers that it falls well short of being adequate on a number of fronts. In forming that view, we have considered whether the provisions as drafted would likely be assessed as delivering adequate community safeguards in dealing with a matter of significant relevance to the community—the test we are required to apply under the *Telecommunications Act 1997* (the Act) to register an industry Code. We have also taken into account the statement of regulatory policy set out in Part 6 of the Act.

We consider that the industry needs to lift its commitments to consumers in a range of areas before the ACMA would be satisfied of the Code's adequacy. We will write separately on our views on appropriate protections for domestic and family violence victim-survivors. This leaves the most significant and substantive issues currently of concern to the ACMA as:

- (a) responsible selling protections, including incentive structures;
- (b) the removal of outcomes and expectations for each Chapter of the Code;
- (c) the commencement timeframes;
- (d) the definition of 'consumer';
- (e) the proposed performance measurement framework and associated compliance; and
- (f) various omissions and drafting issues.

We set out our high-level concerns below, with further detail on those matters we see as high priority to address in **Attachments A and B**.

#### *Responsible Selling practices*

It is our view that the protections set out in draft chapters 5 and 6 around responsible selling fall substantially below what we consider is needed to deliver appropriate community safeguards. Our concerns about responsible selling practices have been raised with industry on multiple occasions, most notably, as a key area of concern in the [What Consumers Want position paper](#) (July 2023) and my 1 February 2024 letter.

Without significantly enhanced commitments by industry in a revised Code, the ACMA is prepared to initiate a process to introduce direct regulation of selling practices in the sector.

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In order to achieve a draft Code which is likely to deliver appropriate community safeguards, the proposed obligations would need to be redrafted to achieve:

- (a) Material disincentives to irresponsible selling, including via the design of sales incentive schemes and remedies where mis-selling is identified.
- (b) Application of protections to both telco goods and services, rather than just services
- (c) The provision of more comprehensive information through Critical Information Summaries (CIS), which would allow consumers to adequately inform themselves about whether the product or service meets their needs and the full extent of any commitment they make in purchasing such products or services.
- (d) Clarity around what information can be requested from a consumer and when, with associated record keeping and record disposal arrangements.

Further detail on the issues identified in these draft chapters is at **Attachment B**.

### *Outcomes and Expectations*

We consider the decision to not include the Outcomes and Expectations material as envisaged in the December 2023 package is materially contributing to both limited clarity and significant complexity in assessing what the proposed provisions will achieve for consumers.

This includes because:

- obligations are framed around the existence of documents, rather than the consumer outcomes to be delivered, and often provisions do not even require that a carriage service provider (CSP) follow or implement what is set out in the documents;
- the use of vague or subjective language within the draft Code would make it difficult to objectively measure compliance or enforce in certain areas;
- there is still an overuse of non-enforceable notes, many of which contain what should be enforceable obligations.

The ACMA appreciates the intent of the Outcomes and Expectations material was to align with the ACMA's Statement of Expectations. We understand the removal of this content and replacement with summary boxes was requested by the Reviewing Committee.

However, the ACMA considers it important that there should be clarity on what the protections in each chapter are intended to achieve, providing a framework against which compliance with the substantive provisions can be assessed. Examples for an approach to achieving this through the use of objective statements for each chapter are included in **Attachment A**.

### *Commencement timeframes*

We are concerned that, as currently drafted, the Code would not commence until 6 months after registration. Errors in the current draft would also have the effect of there being no enforceable Code for 6 months which would be unacceptable.

The proposed commencement delay on some (currently unspecified clauses) by up to 12 months to implement significant IT systems changes is also unlikely to be unacceptable, particularly for change to address the key areas raised in our July 2023 What Consumers Want position paper.

### *The definition of 'consumer'*

We consider that the definition of 'consumer' in the TCP Code should align with the definition in the *Telecommunications (Financial Hardship) Industry Standard 2024* (FH Standard). However, we would also be open to consider alternative definitions provided it is:

- (a) supported by evidence of who would be excluded and why, and
- (b) the drafting makes it possible for a small business to know whether or not it was caught in the definition, irrespective of decisions their telco might make on the customer classification.

The ACMA also does not agree with additional proposed carve-outs from the definition in the Code. These gives CSPs very broad discretion to make decisions which result in certain customers who should receive the protections of the Code without them.

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## *Performance measurement framework*

We consider that the reporting requirements in the draft Code do not result in any ability for the audience to determine the overarching effectiveness of the Code, nor any particular CSP's overall compliance with it. There needs to be clear obligations about CSP's keeping sufficient records to demonstrate compliance with all Code requirements for a set period of time.

We are also concerned about the shift to regulatory language around Communications Compliance's role e.g. in determining compliance, partial compliance or non-compliance given it is likely to lead a reader to believe it has some quasi-regulatory role in the broader system.

## *Various omissions and drafting issues*

There are also a range of existing TCP Code obligations which have been attenuated or omitted with the current drafting, diminishing the protections this Code would offer to consumers. This is in addition to numerous drafting, definitional, grammatical and other inconsistencies throughout the draft Code. While these may be unintentional, they detract from the effectiveness of the TCP Code in safeguarding consumers and make it very difficult for us to assess whether the Code would deliver adequate safeguards.

The draft Code is also missing a provision conferring powers on the TIO – as per clause 1.8 of the current TCP Code. The ACMA required that this provision be included and remains of this view.

## **Next steps**

As set out in our letter of 1 February 2024 the ACMA's decision about whether to register a new Code will entail assessing the extent to which the revised Code sets out effective, measurable and enforceable obligations that provide appropriate consumer safeguards, as well as being satisfied of the other relevant matters set out in the Act. Addressing the matters raised in this letter will be crucial to this assessment; conversely, should the ACMA's concerns not be adequately addressed, it remains open for us to pursue direct regulation in any area of remaining concern.

In the first instance, we seek an early assurance from Comms Alliance that the industry is willing to make further commitments around responsible selling practices, consistent with the feedback provided. We would appreciate such an assurance by 9 September if possible but, to be clear, do not require completed drafting by then. We would welcome an early meeting with Comms Alliance to discuss this matter.

On the other priority matters identified by the ACMA we seek Comms Alliance response through a revised draft Code to be submitted to the Authority prior to public consultation and appreciate advice on an expected timeframe for a redrafted Code to be developed.

The ACMA contact is Ms Cathy Rainsford, General Manager, Consumer Division on (02) 6219 5500 or at [cathy.rainsford@acma.gov.au](mailto:cathy.rainsford@acma.gov.au).

Yours sincerely



Nerida O'Loughlin PSM

29 August 2024

Encl: Attachments A and B

Table 1: Detailed ACMA feedback on May 2024 draft TCP Code

Chapter	Item	ACMA feedback
Ch 1 – Terminology, Definition and Acronyms	Chapter 1 Objectives	Consumers are adequately protected by robust definitions that underpin the regulatory framework.
	Definition of ‘Consumer’	<p>The proposed definition retains the current Code definition of ‘consumer’ with additional carve-outs for businesses and NFPs that are account managed or integrated services customers or who have been assessed on ‘reasonable grounds’ by a CSP to not be small – subparagraphs (b)(ii)(1) and (b)(ii)(2) of the draft Code, respectively.</p> <p>The ACMA does not agree with additional proposed carve-outs. In our view the proposal gives CSPs very broad discretion to make decisions which result in certain customers who should receive the protections of the Code without them.</p> <p>We consider that the application of the definitions from the <i>Telecommunications Service Provider (Customer Identity Authentication) Determination 2022</i> not to be beneficial here as the use of that determination is for a very narrow set of circumstances where the exclusions for integrated or account managed customers resulted from an analysis of the source of the harms that determination was aiming to address. That analysis does not support the same position for a broad consumer protection code.</p> <p>In our view, the definition of ‘consumer’ in the TCP Code should align with the definition in the <i>Telecommunications (Financial Hardship) Industry Standard 2024</i> (FH Standard). However, we would also be open to consider alternative definitions provided it is:</p> <ul style="list-style-type: none"> <li>(a) supported by evidence of who would be excluded and why, and</li> <li>(b) the drafting makes it possible for a small business to know whether or not it was caught in the definition, irrespective of decisions their telco might make.</li> </ul>
	Definition of “Credit management action”	This should align with the definition in the Financial Hardship Standard.
	Definition of “essential information”	<p>This definition must be redrafted to cover both telecommunications services and products. Additionally, we consider it important that “maximum monthly charge” be included in essential information as it assists consumers know the extent of their financial commitment.</p> <p>The proposed changes mean that the information requirements have been attenuated compared with the current Code with flow-on effects throughout the draft Code and this needs to be addressed.</p>
Definition of Restriction	Under the current Code definition of ‘restriction’ limits a customer’s access to telecommunications products (which includes goods and services). However, under the draft Code the definition only covers telecommunications services which has the effect of reducing consumer safeguards. We consider the definition in the current Code to be more appropriate and should be reinstated.	

Chapter	Item	ACMA feedback
	<b>Definition of 'Telecommunications Product'</b>	The definition of 'Telecommunications Product' in the current Code has been omitted from the draft Code with the effect that overall consumer safeguards are reduced. This must be addressed.
<b>Ch 2 – General</b>	<b>Chapter 2 Objectives</b>	Consumers have access to continuous telecommunications safeguards.
	<b>Commencement dates</b>	<p>As currently drafted the Code would not commence until 6 months after registration. The current draft is affected by a drafting error which would have the effect of there being no enforceable Code for 6 months (see s.117(4) of the <i>Telecommunications Act 1997</i>). That, of course, will need to be corrected as a gap in consumer protections with no enforceable Code for 6 months is unacceptable. ACMA staff will separately provide advice on how the Code needs to be drafted so as to preserve the operation of existing Code provisions should the Authority ultimately agree that delayed commencement of any or all provisions in a new registered Code is acceptable.</p> <p>The proposed commencement delay on some (currently unspecified clauses) by up to 12 months to implement significant IT systems changes is also unlikely to be unacceptable, particularly for change to address the key areas raised in our July 2023 What Consumers Want position paper. These are selling practices, credit assessments, payment methods, disconnection processes, and the treatment of consumers in vulnerable circumstances (noting that DFV provisions will be separately addressed by a Standard).</p>
<b>Throughout the draft Code</b>	<b>Overarching concerns</b>	<p>Any requirement to have policies, supporting material, process, training etc must also include a requirement to implement and follow these.</p> <p>There must also be clarity on the consumer outcome to be protected through those policies, supporting material, process, training etc, and they must be enforceable against those outcomes. For example, it cannot be sufficient to have policies and training on responsible selling absent a link to what those policies and training are expected to deliver for consumers or what obligations the CSPs have to fulfil.</p>
<b>Chapter 3 – Organisational</b>	<b>Chapter 3 Objectives</b>	<p>The objectives of Chapter 3 are as follows:</p> <ol style="list-style-type: none"> <li>I. Consumers will benefit from a culture of compliance within their CSPs organisation, including through regular staff training on Code compliance.</li> <li>II. Consumers in vulnerable circumstances will receive appropriate support from staff who are trained and equipped to address their specific needs.</li> <li>III. Consumer protections will be upheld through CSPs implementing and following processes for monitoring Code compliance.</li> </ol>
	<b>Staff training: company wide – 3.2.2</b>	Requirements should extend to updating training to coincide with any material updates to the TCP Code itself, or the company policies, procedures, processes etc as they are updated.
	<b>Monitoring – 3.2.14, 3.2.15</b>	Some of the protections related to monitoring the conduct of sales staff are diminished in comparison to those in the current Code and should be strengthened and aligned with the provisions of the current Code which extends to all information rather than just essential information. For example, we consider that the proposed drafting of cl. 3.2.14 about the monitoring of complaints should not be limited to the

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		identification of possible inaccurate essential information and should align with the drafting of cl 4.4.1(c) in the current Code which extends to all information.
Ch 4 – Supporting the Consumer	Chapter 4 Objectives	<p>The objectives of Chapter 4 are as follows:</p> <ol style="list-style-type: none"> <li>I. Consumers can easily access clear, accurate and comparable information about products and services from a CSP both before and after purchase – communicated in a way that is appropriate to the consumer’s needs.</li> <li>II. Consumers’ interests are safeguarded and their account is secure when utilising an authorised representative to act on their behalf or an advocate to communicate with their CSP.</li> <li>III. Consumers in vulnerable circumstances receive appropriate support to assist them to get and stay connected .</li> </ol>
	Overarching concerns	<p>Redrafting of this chapter is needed to strengthen and not diminish existing protections for consumers. In particular, we consider that the current Code requirements that communications be <i>free of material omissions, readily available and timely</i> need to be reinstated.</p> <p>We would also suggest that consideration is given to imposing an obligation on CSPs about communications with authorised representatives after a customer has passed away. While the draft Code requires the CSP to keep records relating to any notifications they receive of the customer’s death, this requirement serves no purpose in the absence of consequential obligations about how to use that information in the Code.</p> <p>Noting the high number of people in Australia who do not speak English as their first language, we consider that there would be benefit in having some obligations requiring CIS’ to be provided in some other common languages spoken in the community. We would be open to limiting that requirement to the larger telcos.</p> <p>We note the current drafting imposes a positive obligation for CSPs to retain information for a minimum period of time. However, there is no obligation to delete the customer information which is an important protection. We suggest aligning the provisions with the record-keeping approach in the Financial Hardship Standard.</p> <p>We also note the adequacy of the proposed personal information protections is also dependent upon material in an Appendix for which drafting is pending so we will comment in due course on these protections.</p>
Ch 5 – Responsible selling: Pre-sale information and advertising	Chapter 5 Objectives	<p>The objectives of Chapter 5 are as follows:</p> <ol style="list-style-type: none"> <li>I. Consumers are empowered to understand what telecommunications goods and services are available in the market and make informed decisions about which will best meet their financial and personal needs.</li> <li>II. Consumers in vulnerable circumstances receive support to assist them to appropriate telecommunications goods and services and stay connected to services.</li> </ol>

Chapter	Item	ACMA feedback
	<b>Overarching concerns</b>	<p>The consumer protections in the draft Code are substantially different and have been diluted compared with the current Code. For example:</p> <ul style="list-style-type: none"> <li>(a) there is no requirement for a CIS to contain information about product offers, only services,</li> <li>(b) standard information no longer includes existing requirements about products for consumers with a disability, and</li> <li>(c) the Note to cl 5.1.1 states a CIS is not required for special promotions. The ACMA considers this can lead to issues with consumer understanding of the overall cost and ‘special promotions’ and applicable concessions should be included in CIS requirements.</li> </ul> <p>Special promotions should be required to have a direct link to the CIS for the underlying offer, for transparency purposes and to assist enforceability.</p> <p>The CIS should contain standardised information and formatting so that consumers can easily compare offerings.</p> <p>We also consider some of the language to be vague, uncertain and ambiguous – for example, use of terms such as “genuinely”, “or equivalent” will impact on the enforceability of the Code. The provisions need to be tightened to make them clearer and enforceable, particularly those dealing with advertising offers.</p> <p>The definition of “essential information” (see above) has a flow on effect to provisions in this chapter. For example, by removing the “minimum monthly charge payable”, “maximum monthly charge payable”, “maximum charge for early termination of the offer” from the definition of “essential information” it is difficult for a consumer to know the extent of their financial commitment. This is significantly different to the current Code and while the December 2023 compendium suggested the justification for this change was to create consistency, in our view the change has significantly diluted consumer safeguards throughout the Code.</p>
<b>Ch 6 – Responsible Selling: Sales, Contracts and Credit Assessments</b>	<b>Chapter 6 Objectives</b>	Consumers are protected from irresponsible selling at point of sale.
	<b>Overarching concerns</b>	<p>Effectiveness of the protections in this chapter is a particular concern due to a lack of clarity in drafting. For example, a CSP could comply with requirements of some clauses and still engage in irresponsible selling.</p> <p>Responsible incentive structures remain of significant concern. The draft Code allows for incentive schemes provided that “volume of sales” is not the only criterion – this is a very low bar to meet.</p> <p>We consider incentive based commission on sales to vulnerable consumers should be prohibited in all circumstances. For other consumer sales, we are open to revised suggestions that put appropriate guardrails around incentive schemes e.g. by restricting the use of sales volume/dollar value of goods or services sold via the use of, capped or decreasing incentives, or rolling target thresholds, combined with a customer service measurement.</p>

Chapter	Item	ACMA feedback
		<p>We also consider that the proposed consumer safeguards around remedies for mis-selling have been diminished compared to those proposed in the December 2023 compendium which required CSPs to <b>take</b> reasonable steps to correct instances of mis-selling. As currently drafted, remedies for mis-selling are only required to be set out in a CSP’s policy but not actioned.</p> <p>While cl 6.1.12 provides a 10 working day timeframe for the CSP to implement the remedy once accepted by the customer, the current drafting does not include a timeframe in which the CSP must make an offer to customer. We consider a provision should be included requiring a CSP to offer a remedy to a customer within 5 working days of the customer raising the issue with the CSP and that compensation should also be included as a possible remedy.</p> <p>Further, we consider provisions regarding for the requesting of evidence of vulnerability to be sighted and records destroyed should align with requirements of paragraph 16(4)(d), subsections 16(7) and 29(3) of the Financial Hardship Standard. To this effect, the Note to cl 6.1.11 should be elevated to the clause and expanded. We consider requests for “evidence of vulnerability” in cl 6.1.11 should not be unreasonably onerous on the customer and limited to particular types of evidence specified – i.e. the example documentation in the callout box (statutory declaration, medical letter, letter from a support service used by the customer).</p> <p>In regard to customer contracts, customers must be able to access a record of their current contract free of charge.</p>
<b>Ch 7 – Customer Service and Support</b>	<b>Chapter 7 Objectives</b>	<p>The objectives of Chapter 7 are as follows:</p> <ul style="list-style-type: none"> <li>I. Consumers can easily and conveniently engage with their CSPs through the method that is best suited to their needs.</li> <li>II. Consumers have access to timely and effective customer service.</li> <li>III. Consumers in vulnerable circumstances receive appropriate support to assist them to stay connected.</li> </ul>
	<b>Overarching concerns</b>	<p>Amendments need to be made to impose obligations on CSPs to provide clear information on financial and product consequences to customers for any requested changes to their contract. More specificity and constraint is needed around the circumstances in which a CSP can propose a detrimental change to a customer’s contract and when CSPs are exempt from this requirement.</p> <p>There are a number of vague terms/obligations which raise questions about the enforceability of the provisions e.g. ‘near real time’, ‘CSP must consider which delivery methods’ and ‘it [the CSP] must ensure the process has been designed to prioritise...’. These need to be reviewed and redrafted.</p>



Chapter	Item	ACMA feedback
	<b>Accessing customer service (cl 7.1)</b>	<p>There remain very limited commitments for support for customers in vulnerable circumstances to engage with their telco via telephone. Accessibility to telephone contact is important and should be addressed. This could be done as per paragraph 9(f) of the Financial Hardship Standard.</p> <p>As drafted, provisions favour the CSP. For example, a CSP only has to consider the method of customer notification. Customers are not given a choice about preferred delivery method for receipt of required customer notifications in the draft Code.</p>
	<b>CSP-initiatives change to a contract (cl7.2.2 and 7.2.3)</b>	<p>We consider that there should be a requirement to notify the customer of a CSP initiated change to their contract in all circumstances – it cannot turn (or not be enforceable) on a CSP’s assessment about whether the change is beneficial or neutral to the customer. Any exemption from this requirement which turns on the change being required by legal or regulatory change should be limited to a circumstance where the CSP has not had reasonable opportunity to do the notification ahead of the change commencing. We’d expect those circumstances to be incredibly rare.</p>
	<b>Sale of Business or CSP reorganisation / move to a different wholesale network provider (cl 7.4)</b>	<p>We consider a timeframe, e.g. 20 working days before the proposed date of transfer”, should be introduced into clauses 7.4.1 and 7.5.1 to allow the consumer time to consider whether they wish to churn to a different CSP or a different retail provider. Notifications should be required to be provided in writing unless a customer has previously expressly requested no written notifications.</p> <p>There should be an obligation on a CSP to disclose any and all changes to fees and charges resulting from a CSP deciding to sell or reorganise its business up until the date of the transfer. Further, where the transfer has been brought about by the CSP’s sale of business or reorganisation, termination charges attributable to the provision of services by the CSP should not be charged as outlined in cl 7.4.1(g) as such a decision is out of the control of the customer who has entered into a contract in good faith.</p>
<b>Ch 8 – Account Support</b>	<b>Chapter 8 Objectives</b>	<p>The objectives for Chapter 8 are as follows:</p> <ol style="list-style-type: none"> <li>I. Customers can easily verify charges and bills related to their telecommunications products and services.</li> <li>II. Customers are assisted with account support and billing enquiries in an effective and timely manner, regardless of the method of contact.</li> <li>III. Customers have flexibility and control over how they meet their financial commitments.</li> <li>IV. Consumers in vulnerable circumstances (including those in financial hardship) receive appropriate support to assist them to stay connected.</li> </ol>
	<b>Spend management and usage notifications (cl 8.2)</b>	<p>Spend management tools are designed to help prevent bill shock and help customers manage their telco spend so that the customer does not accumulate unaffordable debt. We consider it unacceptable to charge a consumer to access spend management tools. In our view these should be free of charge. We also consider CSPs should be required to provide more than just one spend management tool.</p>

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		<p>We also consider that additional charges for usage should be notified to the consumer prior to 100% usage as currently occurs and not after the fact. This is an important consumer safeguard and is different to what the current Code permits.</p> <p>Some clauses are not drafted in a way which sets out clear and enforceable obligations. See clauses 8.2.10 and 8.2.14(a) which need redrafting. Suggest change:</p> <p>(a) clause 8.2.10 from “A CSP may choose to allow ...” to “A CSP must allow ...”  (b) paragraph 8.2.14(a) from “attempt to provide a remedy...” to “provide a remedy...”</p> <p>The obligations under “Allowable delays” have been diminished as the draft Code proposes to allow a delay for “any connection to a force majeure event” and not just the force majeure event itself as in the current Code. The justification for this expansion is not evident.</p>
<b>Ch 9 – Credit Management, Debt Management and Disconnection</b>	<b>Chapter 9 Objectives</b>	<p>The objectives of Chapter 9 are as follows:</p> <ol style="list-style-type: none"> <li>I. Customers are given fair warning of any action to restrict, suspect or disconnect their services and have reasonable opportunity to avoid these actions.</li> <li>II. Customers are given fair warning of any proposed credit or debt management activity and have reasonable opportunity to avoid these actions being taken.</li> </ol>
	<b>Overarching concerns</b>	<p>Protections have been diluted in comparison to the current Code. For example, protections only apply to the reconnection of disconnected services but should also apply to any credit management action made in error or without the required notice including suspension or restriction. Such an obligation is critical, especially for customers experiencing vulnerable circumstances.</p> <p>There are no obligations on a CSP to inform a customer or keep them updated about matters a CSP lists with a credit reporting body.</p>
	<b>Debt collection (cl 9.5)</b>	<p>The timeframe for notifying a customer that a debt has been sold is too long. We consider 5 working days to be more helpful to customers.</p>
	<b>Chapter 10 Objectives</b>	<p>The objectives of Chapter 10 are as follows:</p>

Chapter	Item	ACMA feedback
<b>Ch 10 – Performance Measurement Framework and Compliance</b>		I. Consumers have access to meaningful, contextual, and comparable CSP customer service performance metrics. II. Consumers can have confidence that CSPs are demonstrating compliance with the Code.
	<b>Overarching concerns</b>	<p>In regard to process metrics, as outlined in the draft code, its purpose is purported to be “to demonstrate compliance to individual code requirements”. However, the process metrics themselves are limited, as are the associated record keeping requirements. The reporting requirements in this Chapter do not result in any ability for the audience to determine the overarching effectiveness of the Code, nor any particular CSP’s overall compliance with it. While it would be useful to have a reporting regime which did achieve this, the alternate is to change to language in this Chapter to accurately reflect the modest contribution to publicly available information the requirements would deliver.</p> <p>There needs to be an obligation about CSP’s keeping sufficient records to demonstrate compliance with all Code requirements for a set period of time.</p> <p>The shift to regulatory language around Communications Compliance’s role e.g. in determining compliance, partial compliance or non-compliance is concerning given it is more likely to lead a reader to believe CommCom has some quasi-regulatory role in the broader system.</p> <p>Clause 10.6.4 needs to be removed. The Code cannot purport to commit the ACMA to any course of action.</p>

## Responsible selling practices (Chapters 5 and 6)

The protections set out in draft chapters 5 and 6 around responsible selling fall substantially below what the Authority considers is needed to deliver appropriate community safeguards.

### Suggested objectives for these Chapters are as follows

#### Chapter 5 – Responsible selling: Pre-sale information and advertising

Consumers are empowered to understand what telecommunications goods and services are available in the market and make informed decisions about which will best meet their financial and personal needs.

Consumers in vulnerable circumstances receive support to assist them to access appropriate telecommunications goods and services and stay connected to services.

#### Chapter 6 – Responsible Selling: Sales, Contracts and Credit Assessments

Consumers are protected from irresponsible selling at the point of sale.

### What would be included to provide adequate consumer protections in the code or a Responsible Selling Practices Standard

To meet the objectives, there must be an inclusion of minimum level standards on CSPs to have and implement robust policies and procedures. Collectively, these standards/protections must be designed so as to promote or incentivise responsible selling practices.

Each obligation must be clear and enforceable.

#### Pre-Sale Information and Advertising

It is the Authority's view that the Critical Information Summaries (CIS) must, in addition to what is included in the draft, and as relevant to which the CIS relates:

- (a) apply to **both** telco goods and services
- (b) provide information about products for consumers with disability
- (c) have links to any underlying special promotion or offer so consumers are fully aware of when a promotion or offer may end, and if so, how much more the service or product will cost
- (d) include requirements for information about
  - a. applicable concessions
  - b. that CSP provided email services are not transferable
  - c. the extent to which service inclusions are 'unlimited', and
  - d. the operation of any 'fair use' policies
- (e) be provided to pre-paid customers. Given the 'renew' function of most pre-paid plans and the predominance of this type of plan amongst First Nations customers and those having difficulty with their bills, this presents an information gap disproportionately affecting these customers, and
- (f) not exclude information that is required under clause 4.2.2 of the current Code due to the new definition of "essential information", for example maximum monthly cost and require additional information such as the minimum quantifiable price for bundled products, not just a description.

The Authority considers it is important that customers know exactly what they are and are not buying, including the extent of their potential financial exposure.

#### Sales, Contracts and Credit Assessments

The Authority considers that chapter 6 must be redrafted to:

- emphasise that CSPs and their staff have **and follow** a policy addressing mis-selling
- align with requirements of paragraph 16(4)(d), subsections 16(7) and 29(3) of the Financial Hardship Standard concerning evidence of vulnerability
- focus the obligations on having adequate selling processes, rather than an obligation to ensure a CSP's selling processes do certain things.

#### Sales incentives

The Authority considers that the provisions concerning sales incentives are problematic and must be revised.

Any sales incentives scheme that would reasonably be assessed. In whole or in part, to incentivise irresponsible selling must be prohibited for sales to consumers in vulnerable circumstances.

Beyond this, we consider that there needs to be safeguards for other consumers around what incentive schemes can and cannot do. To that end, such schemes must provide disincentives for irresponsible selling by sales staff. An example of this would be that incentive models which include a focus on volumes or revenues are counterbalanced by a parallel focus on customer metrics that promote responsible and fair selling.

The ACMA is not suggesting that a “one size fits all” one model approach must be set out in the Code. It is open to the industry having flexibility to design incentive schemes so long as the Code includes enforceable guardrails that focus on promoting responsible selling practices.

#### Credit assessments

In regard to credit assessments the Authority considers provisions should apply to all consumers covered by the Code, not just residential customers.

#### Customer contracts

The Authority considers that clauses concerning customer contracts must be redrafted to permit customer requests for access to their contract records free of charge for the term of the contract.