

25 February 2025

Communications Alliance

Dear Colleagues

Public consultation on DRC628:2025 Telecommunications Consumer Protection Code

By way of introduction, CMobile Pty Ltd (**CMobile**) is a small MVNO that has been in operation since 2012. We currently provide mobile services on the Telstra and Vodafone networks as well as NBN services.

We have reviewed the draft changes to the TCP Code and are quite dismayed with what appears to be a general failure to consider the smaller providers in the market and the impact of the changes on them. While we can certainly appreciate that the carriers are front of mind when considering changes, there are a significant number of smaller providers who simply do not have the budgets that the carriers have to implement certain changes.

By way of example, new section 8.10.3 which provides that where a CSP offers a direct debit payment option it must allow a customer flexibility with their direct debit payment by allowing them to choose their own recurring date, choose a payment frequency or temporarily defer a payment without penalty. At CMobile, we have customers either on a calendar monthly billing cycle or a cycle that commences on the 28th of each month. Customers have the option of going on direct debit with that occurring on the 15th of each month. This is how our billing system is built. Our billing system also has automatic payment reminder notifications that are sent following periods of non-payment.

To implement such a change, significant work would need to be undertaken to our billing system at cost to our business. We do not force our customers onto direct debit. They have the option of paying their bill via BPay or credit card at any time they wish prior to the 15th. Even if they do not pay on time, we do not take any action on their account (aside from sending reminder notices) until the following month so this effectively means our customers can pay on any day of the month they like, which begs the question why CMobile would need to comply with this new section given (a) the cost and disruption to our business to do so; and (b) that it is unnecessary when a customer can pay when they like during the month anyway.

In the past 18 months, Telstra has increased our wholesale pricing twice with the last price increase being significant. They grandfathered very popular low-end plans at a time when Australians are doing it tough. While we increased our pricing after the first, smaller, increase, we only passed through the second, larger, increase (ie. only Telstra benefited from that second increase). We have also recently been advised that Vodafone intends on increasing wholesale pricing quite significantly as well. We are not Telstra, or Optus or Vodafone. We do not have millions of customers and millions of dollars so every change to the TCP Code has the potential to heavily impact us.

Attached are our comments on a number of the changes that are of particular concern. When reviewing, we simply ask that you consider smaller CSPs and the significant impact that the changes will have on these businesses. We would be happy to discuss these further should Communications Alliance have any questions.

Regards

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DR C628:2025: TELECOMMUNICATIONS CONSUMER PROTECTION CODE

Code Chapter	Concerns
Chapter 2, General	<p>Recognising that there will be limited flexibility to extend general implementation timeframes, are there areas, in addition to those listed at 2.1.4, that you believe require delayed implementation?</p> <p>No.</p>
Chapter 2, Record Keeping	<p>Clauses associated with data retention have been consolidated and clarified to attempt to address various (often conflicting) stakeholder feedback.</p> <p>Are the requirements clear, and do you have any concerns or comments? No concerns.</p>
Chapter 4, Supporting the Consumer	<p>A new definition (Authorised estate representative) and new clauses have been included in the draft Code (section 4.5) to facilitate the management of a deceased customer’s account.</p> <p>There may be some conflicts between the requirements in clause 4.5.1 and those in the Telecommunications Service Provider (Customer Identity Authentication) Determination 2022.</p> <p>The ACMA is currently consulting on possible changes to that Determination in January 2025. This clause will be reviewed as required in light of those discussions.</p> <p>(a) Do you have concerns about such conflicts? Yes we do. The definition of ‘authorised representative’ in the CIA Determination is someone listed by the customer on the account as having authority and whose personal information is listed on the account. This may not be the ‘Authorised estate representative’. The CIA Determination applies to high-risk transactions which include adding a person as the authorised representative and the process is not drafted in a way so as to allow an ‘Authorised estate representative’ to deal with the account. On the current drafting, it appears that CSPs would be paralysed in the event of the death of a customer given the conflict.</p> <p>(b) Do you have any other comments about the proposed requirements? Perhaps it would be prudent to delay compliance with this section until such time as the conflict has been resolved. The death of an individual is a</p>

	<p>traumatic event. Their family members do not need to be stuck in a position where they cannot deal with a service because of a legislative and regulatory conflict that has effectively made it impossible for a CSP to manage the service without breaching either the TCP Code or the CIA Determination.</p>
<p>Chapters 5, 6, Responsible selling</p>	<p>Rules in relation to responsible selling in chapters 5 and 6 have been substantially strengthened in response to stakeholder feedback, particularly to address concerns about responsible sales incentive structures (section 6.1) and expectations about remedies.</p> <p>Are the requirements clear? And do you have any concerns or comments? No concerns.</p>
<p>Chapter 6, Responsible selling</p>	<p>Credit assessment requirements at 6.2 have been substantially strengthened to increase consumer protections. These clauses require an affordability check, with an external credit check required when a customer could be liable for a debt of over a specified amount.</p> <p>There may be unintended consequences if the threshold for external credit checks is too low, however, and it is unclear whether the balance between responsible service provision and accessibility as presented currently is right, noting that:</p> <ul style="list-style-type: none"> - running a credit check on a consumer will create a record on their credit file which may impact their ability to obtain credit in the future (including for other third parties) and/or the cost of that credit. - consumers without a credit score would be locked out of post-paid services/payment-over time arrangements. - consumers not able to make use of a plan arrangement to, for example, buy a device interest-free over time, may be driven to more expensive forms of credit, or pawn brokers. - existing customers with a long record of paying on time, etc, may complain about poor customer service experience if asked for what they consider an unnecessary external credit check. <p>(a) As highlighted in the draft, the proposed trigger for an external credit check for a NEW customer is that the potential for a debt owed is over \$150. Is this a reasonable threshold? Why/why not?</p> <p>In CMobile's view, this is <i>entirely</i> unreasonable. This is a change that indicates a complete failure to take small business into consideration where there appears to be an expectation that we can absorb an increasing number of additional costs. We sell postpaid plans at the lower end of the market with no lock in contracts. External credit checks cost money. They are not free to businesses. Given how small our margins are, it could take us</p>

months to make back that external credit check cost which is untenable, which we pay also never make back given our customers could leave at any time. We would therefore need to pass that cost onto consumers putting us at a disadvantage with the larger providers because they can afford to absorb these costs, and increasing the cost to consumers. By having the level so low and applying it to all postpaid services irrespective of there being no minimum term, the draft Code will directly impact competition in the market as smaller providers will have to pass the cost on to consumers.

Given the above, it follows that CMobile and small CSPs cannot afford to be carrying debt in our business. Over the years we have been operating, we have written off debt because we simply cannot afford to spend money chasing money we are unlikely to ever recover. We therefore manage this risk very carefully.

(b) Is the proposed threshold of \$2000 for new or existing small business customers reasonable? Why/why not?

This is not reasonable for the reasons stated above.

(c) Is the proposed threshold of \$1000 for an external credit check for existing customers reasonable? (This reflects the current, 2019, Code requirements). Why/why not?

This does not reflect the current Code requirements as the current code limits credit checking to services with a minimum term greater than 1 month. CMobile does not agree that the removal of this limitation is reasonable. This is a significant change and CMobile is concerned that there has been a failure to understand the ramifications such a change could have on those smaller CSPs that sell plans on a no-lock in contract basis and have therefore not been subject to this obligation before.

(d) Any other comments or concerns about the proposed credit check requirements?

CMobile is generally concerned about the lack of consideration given to small business with these proposed changes. It indicates a general lack of understanding about how small business operates in this market and the costs involved, noting that Telstra forced two price increases (the last one quite significant) to its wholesale

	<p>customers in the space of 12 months, with TPG/Vodafone readying itself to do the same. If you want smaller challenger brands to remain in the market, then any TCP Code changes should reflect an understanding of those businesses.</p>
<p>Chapter 7 – Customer service and support</p>	<p>The Code requires CSPs to notify customers of CSP-initiated changes to a customer’s telecommunications service contract that are detrimental (7.2.2 and 7.2.3 (a) and (b)). This rule reflects the Australian Consumer Law (ACL) requirements.</p> <p>Some stakeholders have suggested that the requirement should be to inform consumers of ALL changes, whether detrimental, neutral or positive, to remove possible subjectivity in the assessment of whether a change is detrimental.</p> <p>The counter-argument is that a requirement to require customers be notified of all changes not result in better consumer outcomes because:</p> <ul style="list-style-type: none"> - the risk to the consumer is with detrimental change, not positive change. - CSPs are usually very keen to inform customers of positive changes (it’s good marketing), but would usually do so just before, or at the time of a change being made, allowing customers to understand very quickly that the change is favourable (rather than calling the CSP to check). - there is a risk of ‘the cry wolf effect’ if the requirement is too broad; that is, that customers will not focus on detrimental notices if they are told of positive or neutral changes every time. <p>Considering the different perspectives, do you consider the current drafting appropriate? Why/why not?</p> <p>CMobile does not consider it appropriate to notify consumers of all changes given what has been referred to above as the ‘cry wolf effect’. We would ask the drafters of the changes to ask themselves how often they read all the “Our terms have been updated” emails they personally receive. Consumers are being bombarded on a daily basis with email communications from different providers and it seems fair to say that a significant number of them go unread.</p> <p>Further, CSPs have to comply with the Australian Consumer Law. CMobile queries why the telecommunications industry should be subject to more stringent obligations than applies to providers in every other industry.</p>

CMOBILE – OTHER COMMENTS	
3.2.2 Staff training: company-wide	<p>CMobile is concerned with the inclusion of '(c) First Nations cultural understanding'. CMobile, along with a large number of CSPs, is an online service provider. We do not see our customers, nor do we ask them about their cultural background. We see all our customers as equal and we do not understand the basis on which this training is required.</p> <p>Every obligation you place on us is more cost for our business. CMobile appreciates that the drafters no doubt have the likes of Telstra, Optus and TPG in their minds when they attempt to include these obligations, however there are a significant number of smaller CSPs who do not have million-dollar training budgets and when we see additional training requirements, we want to understand what the obligation is trying to achieve. This obligation goes beyond what is required to provide telecommunications services to <i>all</i> Australians.</p>
5.1.9(e) CIS	<p>CMobile queries why this remains an obligation for plans with unlimited calls and SMS, as a significant majority of plans are these days. We are essentially being asked to include information that is useless to consumers. If they are receiving unlimited calls and SMS, CMobile queries what is being achieved by having to include this information in the CIS. CMobile suggests amending this obligation to those plans that do not have unlimited national calls and SMS included.</p>
8.10.2 Customer choice and control of payments	<p>While CMobile does not charge any fees on any payment methods, we do query why CSPs should be forced to provide <i>two</i> fee free options. Margins in the telecommunications industry are small. The only way to avoid payment gateway fees is to offer bank transfers which still comes with the cost of paying someone within our business to allocate the payment to the customer's account. CMobile queries why the telecommunications industry should effectively be prevented from passing on payment fees given we ourselves have no choice but to pay them and no ability to negotiate them.</p>
8.10.3 Customer choice and control of payments	<p>This is entirely unreasonable. CMobile's entire billing system is built upon our direct debit falling on the 15th of each month which is in line with our billing periods. We sell plans on both the Telstra and Vodafone mobile networks. The billing period for Telstra plans commences on the 28th of each month and the billing period for Vodafone plans commences on the 1st of each month. Our direct debit runs on the 15th of each month giving customers 15-19 days between the end of the billing period and the debit of their account. Having customers being able to nominate direct debit dates would involve <i>significant</i> development work to our billing platform as</p>

	<p>it would require not only changes to allow for different dates to be entered but it would also impact all the automatic notices we send on overdue accounts. It would be difficult to manage and, in our view, entirely unnecessary. In the 13 years we have been operating, we have never had a customer take issue with our direct debit date.</p> <p>Furthermore, customers do not have to go on direct debit. It is entirely optional. Our customers are free to pay their bill via credit or Bpay at any time prior to the 15th of the month (and have a 2-week grace period after that before we consider suspending the service for non-payment) so CMobile queries what this change is trying to achieve and why it is necessary given the significant impact it is going to have on a business like CMobile and come at a significant cost to us? Again, this change is demonstrative of a complete lack of understanding of how smaller CSPs operate.</p>
<p>9.2.1(e) Credit management and active TIO complaints</p>	<p>The TCP Code does not define “active complaint” and CMobile is not convinced the TIO has a firm view on it either. CMobile has put this question to the TIO a number of times previously and only received one response – <i>“...you can recommence credit management action if the consumer is no longer pursuing the complaint.”</i></p> <p>This is subjective. In the past we have responded to a complaint referral and then never heard from the customer again. It is unclear when the consumer “is no longer pursuing the complaint”. Is it after one month, two months or some other period of time?</p>