

BY EMAIL ONLY

Communications Alliance Ltd
Level 12, 75 Miller Street
North Sydney NSW 2060

25 February 2025

Dear Sir/Madam

Thank you for the opportunity to comment on the proposed amended *Telecommunications Consumer Protection (TCP)* Industry Code designated C628:2025 (**Proposed Code**).

MATE is in a unique position to assess the effectiveness of the TCP code because:

1. It began business at the inception of the TCP code and has watched the industry regulation landscape evolve over the past decade.
2. It has consistency received awards and praise for its customer service and maintains an outstanding track record of low complaints on a per service in operation basis in comparison to its industry peers.
3. MATE is Australia's largest privately owned consumer and retail focused carriage service provider within the meaning of the *Telecommunications Act 1997* (Cth) and supplies services to over one hundred thousand residential and small business consumers. MATE is large enough to matter, but small enough to care.

Having regard to the anecdotal and ad-hoc commentary within the domain, the only thing that the vastly opposing positions of consumer advocates on one hand and industry on the other are likely to agree on is that the TCP code is an abject failure and the proposed amendments do not address the long-standing structural difficulties with the code nor assist in orientating it in the vastly different regulatory landscape than was found in 2019.

The regulatory context which the TCP code now finds itself is wedged between the ever-growing number of industry standards which continue to encroach its subject matter and supplant its relevance. Indeed, cl. 2.2.1 of the Proposed Code lists over 33 regulatory or legislative instruments that should be read 'in conjunction' with it and its provisions contain strike-out related to domestic and family violence protections now the subject of an industry code. The ever-shrinking scope of the TCP code indicates any relevance it may have once had is now expended.

In our respectful submission, the proposed amendments in the Proposed Code are not connected with an evidence-based approach demonstrating there is any real mischief to be resolved by these amendments. Rather, the code, as a generalist approach appears to attempt to weave narrow a path between the myriad of legislative and regulatory instruments to which carriage service providers must comply in a desperate but failed attempt to gain relevance in a niche.

What is left is a document which creates uncertainty and provides no useful consumer protection or consumer assistance over the provisions contained in the *Australian Consumer*

Law and the multitude of industry standards which have been promulgated by the Australian Communications and Media Authority in the past 5 years.

Despite our fundamental concerns about its place in the regulatory framework, to have a meaningful dialog about the regulatory changes proposed, we make the following submissions in relation to the Proposed Code.

Plain Language

1. The Proposed Code proposes a mandate of the ubiquitous use of plain language in cl 4.1.1 of the Proposed Code to “*reduce the level of ability required to use a product or process*” and defines plain language as something capable to communicate to an average cognitive level of a 12 to 14-year-old.
2. There are substantial difficulties with this approach, relevantly:
 - a. There is no evidence that carriage service providers are not using language which is well understood by the public or appropriate in the circumstances and therefore it is difficult to identify what mischief this provision proposes to resolve. Existing industry standards are very prescriptive in relation to what information must be provided to consumers to assist them in comparing services and understand their capabilities such as Key Fact Statements and Critical Information Summaries.
 - b. The difference in reading comprehension and cognitive maturity between a 12 (schooling year 7) and a 14-year-old (schooling year 10) is so different as to create real uncertainty as to what level communications must be directed. It is not clear how this is to be assessed and as to what standard carriage service providers will be held.
 - c. The minimum age to contract at law is 18 years. The requirement to pitch communications to a 12 year infantilises and embarrasses the tens of millions of consumers who contract with their supplier for the supply of services. The requirement risks losing meaning in communications relevant for almost all Australians at the expense of a group of persons that on their face are not capable of contracting at law at all.
 - d. The supply and use of a telecommunications service cannot be ‘simplified’ by the brush stroke of a regulation. The reality of facts of life such as the multi-technology mix of the national broadband network necessitate nuanced conversations about matters important to customers such as latency, speed and reliability when comparing technologies such as fibre to the premises and fixed wireless, explaining and integrating the importance of customer premises equipment and its contribution to the service delivery supply chain.
 - e. The absurdity of the requirement can be best illustrated that the Proposed Code requires ‘plain language’ but at the same time requires communication of the ‘Access virtual circuit identifier’ (being a lexical nonsense to any lay person) to consumers to facilitate a transfer under cl 7.3.7.
3. The approach proposed demonstrates naivety in its drafting and the industry and regulatory context. Any representations or communications which cannot be

understood would already fall foul under consumer protections in the *Australian Consumer Law*.

Billing Date Changes

4. The Proposed Code proposes mandates under cl. 8.10.3 the ability for customers to change their recurring billing dates. In relation to this, we submit that
 - a. There is no evidence that there is any demand for this from customers.
 - b. We are aware of medium sized carriage service provider who offers the option to bill for services on a daily or weekly basis and they have had limited success with this offering. No other carriage service providers have followed suit for good reason: the market has spoken with little or no demand for this type of product.
 - c. This provision will create confusion for customers who will inevitably face one or more instances of pro-rata adjustments of their fixed monthly service fee as they transition between billing dates.
 - d. Even when calculated in perfect arithmetic precision, pro-rata adjustments are likely to cause bill-shock for some customers: a mischief which the regulator has pushed to eradicate over the past decade.

Credit Check Requirements

5. The Proposed Code proposes mandates under cl. 6.2.1 (a) that each carriage service provider must perform a credit assessment where a contract may result in a debt of \$150.00 or more by the consumer. In relation to this, we submit:
 - a. The practical operation of chapter 9 of the TCP code means that any consumer that subscribers for a service of \$75.00 per month or more on a month-to-month basis will fall within this provision as that consumer will accrue \$150.00 or more of debt if they failed to pay the first month's service cost.
 - b. The average ARPU of a Telstra customer in FY24 was \$82.41¹. This is broadly indicative of the entire industry.
 - c. By reason of the practical operation above, the average consumer will be subjected to a credit check by a carriage service provider if they subscribe to an average type of service.
 - d. The impact of performing a credit check on almost every average consumer cannot be understated. Multiple credit enquiries (such as are typical of a value shopper acquiring services from different providers) can be interpreted by credit providers as a sign of financial stress.²

¹ Telstra Corporation Limited, 15 August 2024, Full year 2024 results < <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf-i/ceo-cfo-analyst-briefing-presentation-and-MATERials-fy24.pdf>>

² Tippla, July 208 2023, The Effects of Multiple Credit Enquiries on Your Credit Score < <https://www.tippla.com.au/credit-enquiries/effects-of-multiple-credit-enquiries-on-credit-scores/>>

- e. The promulgation of such a provision will substantially **hurt** consumers and only seek to benefit credit enquiry providers.
6. In the premises of the above, a more appropriate amount would be 1% of the average Australian income, which would be \$1062.36 as at November 2024 according to the Australian Bureau of Statistics and this should be indexed annually.³
7. It is difficult to see where any evidence-based approach has been taken to determine the quantum for the minimum value for credit assessment.

Sale of Business

8. The provisions of cl 7.4.1 of the Proposed Code have been poorly drafted since promulgation and despite multiple amendments over the years, these issues have not been resolved.
9. The primary problem is that on one interpretation, these provisions create new rights of termination for consumers in the event of an asset sale of business of a carriage service provider. It is not clear, at law how this could occur given that the TCP Code is not a statutory provision and cannot be implied into a contract at law.
10. The defects with the provisions of cl 7.4.1 have been a matter ventilated on numerous occasions by industry legal expert Peter Moon of Cooper Mills Lawyers over the past decade yet despite private and public protest⁴, no changes have been made.
11. Further, the provisions of chapter 9 of the TCP code have also been poorly drafted since their promulgation and despite multiple amendments over the years, these issues too have not been resolved.
12. The defects at their highest and most charitable interpretation, appear to be inadvertent drafting errors, mean that an Australian carriage service provider cannot sell its customer base in an asset sale or perform a solvent re-organisation unless the buyer (or incoming purchaser) complies with cl 9.1.1 of the TCP Code being that it obtains the consent of every single customer.⁵
13. It is difficult to see that the proper purpose of these provisions as:
 - a. It cannot be the case that the TCP code purports to reduce the value of personal property (being the choice in action of a customer contract) by reducing its ability to be assigned as to do so would be outside of the Commonwealth's power unless it also provided compensation.
 - b. If the purpose of the provisions is to try and prevent improper and unlawful transfer to facilitate corporate phoenix behaviour as has been their only judicial consideration⁶, then the appropriate provision for such remedy is in the service

³ Australian Bureau of Statistics, November 2024, Annual Weekly Earnings <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/latest-release>>

⁴ Telco Central, 20 December 2024, Will the next TCP Code destroy telco business value <<https://telcocentral.com.au/will-the-next-tcp-code-destroy-telco-business-value/>>

⁵ Telco Central, 20 December 2024, 12 years on, and a TCP Code 'fail' still fails <<https://telcocentral.com.au/12-years-on-and-a-tcp-code-fail-still-fails/>>

⁶ *ACCC v Harrison (No 2) [2017] FCA 182.*

transfer consent provisions of the TCP code or in the *Corporations Act 2001* (Cth).

14. In the premises of the above, industry reasonably requires complete redrafting or removal of these clauses to provide clarity and precision.

Community Languages

15. The provisions of cl 4.1.5, 5.1.8 (d) and 8.4.7 (s) require that a carriage service provider provide information in at least five “community languages”.
16. Australia is not Switzerland where there are four official languages. The sole national official language of Australia is English.⁷ The Department of Home Affairs describes our national language as:

“English, as our national language, connect us together and is an important unifying element of Australian society. English proficiency is a key contributor to better education and employment outcomes and social participation levels”

17. The founders of MATE and all its senior executives come from a non-English speaking background, and all are first generation Australians. MATE does not understand the purpose or value of this provision because:
- a. There is no requirement at law for carriage service providers to provide contracts or other documentation in anything other than English.
 - b. The provision of minimal and tokenistic information in an arbitrary (and potentially ever changing) five community languages does not assist consumers in any meaningful way.
 - c. The provision of such information may mislead consumers into believing that they may be able to communicate with MATE in those community languages.
 - d. There is no evidence that any meaningful proportion of consumers require this information.
 - e. Alternative services are available to assist consumers with varying language needs.

Uncertain and otiose provisions

18. Clause 6.1.1 of the Proposed Code states that a carriage service provider must sell telecommunications goods and services *responsibly*.
19. There is not any commonly accepted or common law legal meaning of the word *responsibly*. The provision is of no practical or legal consequence.
20. Clause 5.1.2 (a) requires promotion and sales of telecommunications goods and services in a fair and accurate manner. Other than the counterfactual being *unfair* contractual terms within the meaning of the *Australian Consumer Law*, there is not any commonly accepted or common law legal meaning of the word *fair*. Any inaccurate

⁷ Australian Government, 2024, English – our national language <<https://www.homeaffairs.gov.au/about-us/our-portfolios/social-cohesion/english-our-national-language>>

promotion or sales would likely afoul of the provisions of misleading and deceptive conduct prohibited by the *Australian Consumer Law*.

21. The remedies set out in cl 6.1.1 appear to attempt to deal with a field clearly covered entirely by the *Australian Consumer Law*.
22. In the premises of the above, it is uncertain what purpose, value or meaning the above clauses purport to describe.

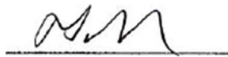
Conclusion

23. The Proposed Code is a regulation looking for a problem. Any possible mischief it seeks to resolve is already appropriately resolved through existing statutory and common law provisions as well as industry standards.
24. The Proposed Code ought to seek to promote market outcomes that result in real consumer benefit in terms of lowering cost, increasing competition, and improving transparency. Instead, the Proposed Code seeks to impose duplication of existing laws and standards and otiose regulatory regimes that do not result in improved consumer outcomes.

We look forward to your feedback on the matters set out above.

Yours faithfully,

Jonathan Dundovic
Finance Director



MATE Communicate Pty Ltd