

## ACMA specific feedback on revised position on payment methods - submitted 14 March 2024

ACMA feedback – 1 February 2024	Drafting Committee (DC) Comments	How addressed (numerical references are to provisional drafting in Attachment A)	Specific ACMA feedback – 3 April 2024
<p><i>Payment options in Critical Information Summaries (CIS)</i></p> <p>The CIS should specify which payment options are free-of-charge and the costs associated with any payment options – rather than the consumer being required to click on a link from the CIS. This is a more transparent approach, facilitates consumer awareness of fees associated with payment methods and reduces the risk of information asymmetry.</p>	<p>We agree with the intent – to provide as much transparency on key points as possible. However, putting all the proposed detail in the CIS is problematic; the CIS is designed to be a summary document of key information, and must be no more than 2 pages long. Where multiple paid payment methods are offered (in addition to fee-free ones), there may not be room to add full details within the CIS without increasing its length beyond the maximum 2 pages. Including pricing details in the CIS itself also creates challenges in keeping the CIS up to date and makes key points harder to find - the intent and focus is to ensure that consumers are clear about:</p> <p>(1) what’s included (without additional cost); and</p> <p>(2) whether there are any other payment options available (and if so, at what cost).</p>	<p>The proposed drafting <b>presented at 1 (in the new drafting)</b>:</p> <p>i) requires that the CIS clearly identify the <b>fee-free</b> payment methods offered (i.e. those without additional charges imposed by the CSP), and</p> <p>ii) provides flexibility for providers to include <i>details</i> of any other (non-free) payment methods through some other means (e.g. through a link on the CSP’s website) rather than in the CIS.</p>	<p>We note that there is limited space available on CIS. It would be reasonable that only fee-free payment options and details must be included on a CIS. This is the most important payment method information so it should be prominently shown to customers.</p> <p>Details of other payment types and associated fees may be in a CIS but we agree that they could also be on a service provider’s website or other easily accessible location. If this information is not included in a CIS, then the CIS must still have clear directions to allow customers to easily find it. This requirement should also be clearly and enforceably drafted. The current proposed drafting has a ‘For clarity’ note saying that details of such payment options “may be provided outside the main body of the CIS. For example, on the CSP’s website”, but this does not provide enforceability.</p> <p>Code drafting around the sales process will also need to ensure that customers are advised of the fee-free payment methods available and the details of any non-fee free payment methods, regardless of channel used (e.g. online, phone, in store).</p>
<p><i>Fee-free payment methods and flexibility</i></p> <p>To provide appropriate community safeguards, the provisions will need to ensure that direct debits/auto-payments are not the only payment method offered, with at least one alternative being offered</p>	<p>Left blank</p>	<p>The proposed drafting <b>presented at 2</b> requires that all CSPs offer at least 2 fee-free methods of payment, with at least one of these to be a manual method of payment. To ensure clear drafting, we have chosen to use the terms ‘manual payment’ and ‘direct debit’ and have defined both.</p> <p>The obligation to ensure flexibility for direct debit payments has been</p>	<p><i>Fee-free payment methods</i></p> <p>The proposed drafting to include at least two fee-free payment methods, including a manual payment process that the customer initiates meets the ACMA’s key concern that direct debit payments must not be the only fee-free payment type to be offered. The examples of possible manual payments shown should include both electronic and in-person methods. Cash payments are included in the definition but other examples such</p>

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<p>fee-free to all customers with similar flexibility.</p>		<p>retained. However, the drafting proposed in the December package has been amended in light of the new included obligation noted above, as well as to accommodate/reflect the new Financial Hardship Standard.</p> <p>The proposed drafting does not explicitly include clauses to require flexibility for other methods because it is unnecessary to do so; flexibility is an intrinsic character of all manual and other payment options.</p>	<p>as ‘over the counter’ payments Australia Post outlets should also be added for clarity.</p> <p><i>Direct debit flexibility</i></p> <p>The drafting around flexibility for direct debit payments (presented at 2(3)) has changed since the 14 December 2024 drafting package. Where previously direct debit customers could choose to nominate a date for their direct debit <u>and</u> choose either a payment frequency (fortnightly or monthly) or reasonably defer a payment without penalty, these three measures are now presented as single options (there is an “or” between each). This appears to reduce the original 14 December drafting flexibility. We consider that the original level of flexibility should be retained.</p> <p>The ACMA is concerned that the original reference to customers being able to exercise direct debit flexibility “at no cost” (page 084 of the 14 December 2024 package) has been lost. We consider that this should be returned to the drafting for clarification.</p> <p>There also needs to be sufficient time to allow customers to alter their direct debit arrangements to exercise these flexibility provisions (such as to temporarily defer a payment). The payment methods section drafting is silent on this issue.</p>
<p><i>Updates to current 5.7.1</i></p> <p>The new draft cl 5.7.1 omits the following protection at 5.7.1(c) in the existing code. That existing protection gives post-paid direct debit customers whose bills are not for set monthly amounts at least 10 days to check</p>	<p>Confirming that this protection <b>will be maintained</b> but has been moved to a different part of the chapter for flow/structure reasons (which is still a work-in-progress and therefore has not been included with this drafting).</p>	<p>Confirming that the protection as described by the ACMA is to be retained.</p>	<p>We are satisfied with this assurance at this stage, however we cannot assess the adequacy of the consumer protections until drafting is provided in the context of the revised TCP Code as a whole.</p>

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their bill charges prior to being direct debited.			
<p><i>'Missing clauses'</i></p> <p>Current 5.7.1(a) Current 5.7.1(c) Current 5.7.1(d)</p>	<p>Note that for structural reasons,</p> <p>(i) the part of the requirement currently at 5.7.4(a) not included in the new drafting presented at 3 above, will be moved to a new 'spend management' section in the billing chapter.</p> <p>(ii) the current 5.7.1(c) will move to a new 'charge notification' section in the billing chapter.</p> <p>(iii) the current 5.7.1(d) will move to a new 'timeliness' section in the billing chapter.</p>	<p>Confirming that these protections will be retained.</p>	<p>We are satisfied with this assurance at this stage, however we cannot assess the adequacy of the consumer protections until drafting is provided in the context of the revised TCP Code as a whole.</p>
<p><i>Reminder notice to customers before a DD payment is due</i></p> <p>The new cl 5.7.1(1)(d) should include a specified time rather than the current drafting of 'sufficient time'.</p>	<p>A specified time has now been included.</p>	<p>The proposed drafting <b>presented at 3 (part 2)</b> requires 3 working days' notice.</p>	<p>Three working days (which may be three consecutive calendar days) is an insufficiently short time for customers to register the reminder message, check their funds and put money in their direct debit account if needed.</p> <p>We consider that a reminder notice should be sent to customers at least 5 working days prior to a direct debit of a customer's account, to afford more robust consumer protections.</p> <p>The reminder notice needs to include the payment amount due to be an easy and helpful aid for customers. The reminder notice should not send customers to another place to try to find the</p>

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			amount of their upcoming direct debit, as would be permitted under the “For clarity” note (2) under 3(2).
<p><i>Simple mechanism to cancel a DD</i></p> <p>The current 5.7.1(e) is missing from the drafting.</p>	<p>This was included in the drafting provided in December. (Note that updates to drafting mean the clause is split and clauses reordered).</p> <p>Note: a CSP will need to authenticate a customer before cancelling or updating (per the <i>Telecommunications Service Provider (Customer Identify Authentication) Determination 2022</i>).</p>	<p>Confirming that the requirement has been retained and updated to include the word ‘update’ (cancel or update a direct debit, etc.) – see drafting <b>presented at 3</b>.</p>	<p>We are satisfied with this assurance and consider the addition of ‘update’ is a minor improvement.</p>
<p><i>Failed direct debits</i></p> <p>‘3-4 working days’ [for a customer to make funds available or pay with another payment method] is not an adequate timeframe and should be 7 working days in consideration of timeframes associated with rearranging finances, pay cycles, asking for and obtaining financial help. Seven working days is also consistent with s.17 of the FH Standard.</p>	<p>We have asked the ACMA to clarify where the 7 working days’ notice is in the Financial Hardship Standard, as we cannot find it (it is not in s.17). Advice is yet to be received.</p> <p>Regardless, the clear advice from businesses is that 7 days is problematic:</p> <p>i) A failed direct debit is not necessarily an indicator of financial hardship; it may be due to:</p> <ul style="list-style-type: none"> <li>- a customer forgetting the payment is due and not putting the funds in the relevant account (addressed with a new requirement for reminders).</li> </ul>	<p>The proposed drafting <b>presented at 4</b> now specifies a 3 working day minimum timeframe within the clause, rather than in guidance.</p>	<p>We understand that 7 working days before re-trying a direct debit could stretch out to a significantly longer period and could extend well after the original due date. It could also potentially run into the time of reminder notices to customers on a fortnightly payment cycle for their next payment, and becoming confusing.</p> <p>An acceptable arrangement would be to adopt 5 working days before a direct debit re-try. This would be logically consistent with the reminder notice period for upcoming direct debits described above and allow reasonable time for customers to react to a failed direct debit.</p> <p>The drafting should also clarify that the period of time referred to is the time commencing when the customer is notified that the direct debit has failed,</p>

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	<p>- administrative issues (e.g. changed credit card details) – provided for in this clause.</p> <p>Where there <i>is</i> an indicator of financial hardship, obligations on CSPs are covered in the FH Standard.</p> <p>ii) A delay of 7 working days translates into a delay of many more calendar days before a re-attempted debit (particularly where point (iii) below applies). For customers, this may result in the debit occurring well after the expected timeframe and not long before, or even at the same time as, their next ‘usual’ debit (especially for customers on weekly or fortnightly direct debits). For most customers, an alert/notification and re-attempted debit closer to their original payment due date, as we propose, is easier to budget for and delivers a better and timely customer experience.</p> <p>iii) Some CSPs do not have IT systems or logic that recognise Working Days and must translate Working Day obligations into calendar days. To mitigate risk, this needs to ensure that appropriate time is built in for various public holiday timeframes that change by state. For example, if a 7 Working Day period straddles two weekends, the equivalent calendar days to mitigate this risk is up to 14 days.</p>		<p>not from the date of the failed direct debit, which may be a shorter timeframe.</p>

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<p><i>Remedies for direct debit errors</i></p> <p>The proposal does not include appropriate remedies if CSPs adopt the approach in the proposed Guidance box. ‘Alternatives’ to a refund must not be presented in such a way that it confuses customers about their rights to a refund. Accordingly, we consider the following text be moved from the guidance note into a provision – e.g. create provision (2):</p> <p>2. Alternatives must only be presented as alternatives to a refund and not as remedies.</p>	<p>We agree that the drafting was not clear and that the alternatives must not be presented in a way that confuses a customer about their right to a refund. We have revised the clause accordingly.</p>	<p>Revised to make the customer’s right to a refund clear. See proposed drafting <b>presented at 5</b>.</p>	<p>Re-drafting of the requirements for remedying direct debit errors is still unclear and contains several changes and omissions that are concerning.</p> <p>The drafting, “unless otherwise agreed” at the end of 5(1) does not specify who must agree. This clause also does not make it clear that customers must be made aware that they can choose to get a refund and do not have to agree to another remedy.</p> <p>Drafting at 5(2) is limited to residential customers, rather than all customers covered by the TCP Code. This may have been unintentional but, we consider that the word ‘residential’ should be removed to avoid doubt.</p> <p>There is now no indication or guidance of what remedies may be agreed to in place of a refund. Crediting the customer’s account with the refund amount would be acceptable. Remedies such as gift cards, movie tickets or extra data are considered not an appropriate equivalent to refund.</p> <p>The drafting also needs to include a reasonable timeframe for when a refund (or credit if a customer consents to it) will be provided to the affected customer.</p>
<p><b>General comments</b></p>			
<p><b>Context</b></p> <p>The ACMA cannot properly access the adequacy of consumer protections until all drafting is complete</p>	<p>This has been a challenge throughout for us to manage, as noted in both the letter to the Review Committee and the cover letter to which this note is attached.<sup>1</sup> We look forward to further</p>	<p>Left blank</p>	<p>This should be addressed in the Drafting Committee’s (DC) more complete draft Code due in May 2024, which should also incorporate the DC’s response to feedback from the ACMA’s comments on the revised Payment Methods drafting.</p>

<sup>1</sup> The cover letter is CA’s proposed revisions to payment method at Attachment A. The letter to the Review Committee addresses the next steps being taken in the TCP Code review process and further consultation opportunities.

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	discussion/ advice from the ACMA on this issue.		We did anticipate that the revised Payment Methods drafting would be presented in a more complete chapter format to allow a fuller assessment of the the proposals in context.
<p><b>Use of guidance</b> There is too much use of guidance/reference to guidelines. Details should be included in clauses where possible/relevant</p>	<p>We note that the use of ‘guidance’ is standard in regulatory instruments, including those drafted by government. Our intention matches the intent of the guidance in those instruments; to aid understanding and compliance with the relevant instrument.</p> <p>However, we are reviewing throughout to see where it is possible to include what is now in guidance in clauses, and are looking to use different terms to more clearly articulate the difference different ‘types’ of guidance – e.g. guidance that provides clarity (but should not be part of a clause) – as shown in the revised drafting herein; guidance that provides examples or best practice to support CSPs on how to meet the requirements; and guidance that refers to guidelines or similar.</p>	Left blank	<p>As noted in the ACMA feedback on the 14 March 2024 package, the Authority appreciates that guidance notes and guidelines have a place, but they should not replace enforceable requirements.</p> <p>Some guidance note material for payment methods has been moved into clauses (e.g. time frames for 'sufficient time' for reminder notices). This needs to continue throughout the remaining process of Code drafting.</p>