

28 February 2024

To: Members of the TCP Code Review Committee

By email

Dear TCP Review Committee,

**RE: TCP Code – update and next steps**

As you are aware, Communications Alliance provided a comprehensive “TCP Code Package” to the ACMA on December 14 last year. This detailed the “definitive and agreed views” of CA and its members on the changes CA proposes to make to the TCP Code to address the areas of concern that the ACMA had highlighted in its letter to CA of July 2023, with the draft revised and new code provisions to address these key concerns. You were provided a copy of the full package, which was also made available on the [CA website](#).

In early February, the ACMA Chair and Agency Head wrote to CA to advise that “In summary, the Authority considers that good progress has been made in improving proposed consumer protections in many sections of the Code but that the effectiveness of those provisions will not be able to be fully assessed ....until the final drafting has been completed.” The letter outlined a number of matters requiring further consideration by CA and included detailed feedback on drafting proposals to date”. The letter concluded that “...the Authority is largely comfortable with CA continuing its Code development process as long as the ACMA feedback provided is addressed.” It requested that industry provide reconsidered views on the issue of payment methods by **14 March**, with drafting to address the remaining matters of concern by **3 May**.

A copy of the ACMA correspondence has already been made public by the ACMA. It has now also been placed by CA on its website, and is attached.

**Next steps**

As you would appreciate, timeframes for further Code development remain challenging. To meet the deadlines, CA must focus on drafting, working through not only the feedback on the key issues that formed part of the December package, but also the myriad of other issues raised by stakeholders (including industry itself) in the early stages of the review process. These are issues such as updates and metrics that were not the ACMA’s specific focus and priority, but are clearly necessary to address before a draft Code can be released for public comment.

Given the tightness of these timeframes, CA has been giving consideration to the most effective method for ensuring that the views of the Review Committee are given proper consideration prior to the formal consultation on a draft Code in the event that CA meets the ACMA’s March and May expectations.

Proposed key steps are set out in the table below. In developing this proposal, CA has taken a number of factors into account, including those listed below.

**Review Committee meetings.** These have been an important input for the development of agreed industry positions, including through a sharing of all stakeholder concerns.

It is not clear, however, that further RC meetings before the full drafting is presented to the ACMA in May would substantially add value; the ACMA, in its most recent correspondence, made it clear that the effectiveness of provisions will not be able to be fully assessed until final drafting has been completed. Other stakeholders have similarly stressed the importance of seeing the draft Code in totality in understanding whether concerns have been addressed.

**Written input.** From a drafting perspective, the RC meetings have provided a useful input, but the most useful contributions to the drafting to date have been the **written** inputs from stakeholders, supported by bi-lateral conversations about areas of specific interest to stakeholders. This includes the clear expectations on matters requiring further consideration and accompanying detailed comments in the most recent ACMA correspondence; the written input from numerous stakeholders to the discussion paper; the written input provided by the TIO and ACCAN on the draft package in November, and input from numerous bilateral discussions. It has been particularly helpful where feedback has been accompanied with suggestions about how to address issues raised.

The Drafting Committee is working through the ACMA comments and suggestions. It is also working through the ACCC comments on the *draft* package that were received in mid-January (the ACCC was unable to provide feedback on the draft package in the short timeframe provided). Concerns around these key issues, which include positions on payment, are now well documented and understood by all parties. It is anticipated that written input will continue to provide useful feedback as drafting continues.

**Timeframes.** Given the experience with the December package and the ACMA's deadlines, CA does not believe it will be feasible to get feedback on the totality of its drafting from the RC prior to its submission to the ACMA on 3 May; there is simply not sufficient time to provide a draft to the RC, allow a reasonable opportunity for it to provide detailed, written comment on the drafting, and for the Drafting Committee to then give proper consideration of any feedback received.

CA believes, however, that meaningful pre-public consultation can occur through contemporaneous provision of the drafting to the ACMA, for consideration by the Authority, and the RC. Feedback from the Authority and the RC would then be appropriately addressed before the formal release of the draft Code for public consultation. All parties would then get a second chance to review the public comment draft, as per the 'usual' Code processes.

Deadlines for RC response at this pre-public consultation stage would be set by the Authority. CA will seek their guidance on this matter, but would appreciate the RC's

guidance on a reasonable response time: 2 weeks' response for the draft package (and 2 weeks for the drafting committee to consider all comments raised) was difficult for all, and impossible for some. **What time would you need to review and provide detailed written feedback on the drafting, all things being equal?**

CA would also like to understand your interest in an RC briefing session on the May package shortly after its submission. The thinking is that this would provide an opportunity for us to walk you through the key inclusions in the package and allow you to ask any questions. **Would this be useful? If so, what timing might suit?** We have pencilled-in 7 May at this stage, pending feedback.

The table below outlines the key steps described above, and related timeframes.

**Consultation key steps - TCP Code development 2024**

| When  | What  | Note   |
|---|---|--|
| Ongoing   | Seek any required clarification on issues raised.                               | Likely a bi-lateral discussion or request to the individual stakeholder (not limited to RC members). This is in line with our original commitment to thorough review and consultation processes. |
| Ongoing   | Test ideas and concepts with relevant stakeholders as required.                 | Anticipated to include requesting written feedback from RC on, e.g. review and measurement issues.   |
| 14 March  | Provide the RC with a copy of the response to the ACMA on payments.             | Will also be published on the CA website.  |
| 3 May   | Provide the RC a copy of the 'May package' to the ACMA and RC and seek feedback | As above.  |
| 7 May or some other suitable date shortly after provision of the May package                | RC meeting – CA to provide an overview of the 'May package'.                    | (pending feedback on this letter.)   |
| ACMA timeframe - TBC  | Feedback from ACMA and RC to CA on the May package.                             | Written feedback invited. Deadline for response to be as agreed with the ACMA (i.e. to align with an Authority decision; or at a date that the ACMA otherwise considers reasonable).             |
| TBC - 6 weeks after ACMA Authority feedback/RC feedback to May package (whichever is later) | Draft Code published for PUBLIC consultation                                    | (after CA has appropriately responded to feedback.)  |
| 30 days after above date  | Public consultation officially closes   |  |
| TBC - 6 weeks after the above date  | Submission of completed Code to the ACMA for registration.                      |  |

I understand that the Independent Adviser has taken initial soundings from some stakeholders about some of these thoughts. No fundamental concerns were raised, and some of the ideas and suggestions from those conversations and related ones have been incorporated into the process described. Thank you for your feedback.

We therefore propose implementing the key steps set out above, unless this correspondence raises any issues. In the interim, your feedback (as soon as possible) on the specific questions raised in this letter (feedback timeframe; briefing session) would be appreciated.

Please do not hesitate to contact either John Stanton, Chief Executive Officer, or me, with any questions.

Yours sincerely,

Peppi Wilson  
Senior Manager, Policy and Regulation