28 February 2025

To: Communications Alliance

Submitted via https://commsalliance.com.au/hot-topics/TCP-Code-Review-2024/Stage-3-Formal-consultation

RE: DRAFT C628:2025: TELECOMMUNICATIONS CONSUMER PROTECTIONS CODE

Introduction

We thank Communications Alliance, and the drafting and review committees, for their ongoing work on a new Telecommunication Consumer Protection and welcomes the opportunity to contribute to the Telecommunications Consumer Protections Code Review (Stage 3).

Leaptel is a small challenger carriage service provider (CSP) that provides residential and small business fixed line services on the nbn and other superfast broadband access services, such as the Opticomm network.

As a small challenger we have pioneered exceptional customer service, support, and business practices that exemplify the core principles and intent of the Telecommunication Consumer Protection (TCP) Code.

We have watched carefully as Communications Alliance has worked through a drafting process that has faced challenges, including competing stakeholder interests and different (and often incorrect) interpretations of the enforceability of the TCP Code. Despite this we acknowledge the effort of those working on this process in balancing these perspectives to develop this draft Code.

Broadly we support the revisions contained in the new Code, as most additions sensibly enhance consumer protections while maintaining an acceptable compliance burden for CSPs. In particular we support the changes to fee payment methods and direct debit in chapter 8 and 9.

However, we strongly oppose the reduction of the credit assessment threshold from $1,000 to $150 in Section 6. This change is not in the best interests of consumers, is based on a flawed rationale, and will lead to significant unintended consequences to the detriment of the consumers it is designed to protect.

Our concerns about this change are so substantial that Leaptel cannot support the revised Code in its current form. We strongly urge reconsideration of this provision, ensuring regulatory changes align with consumer needs, industry norms, and proportional compliance requirements.

In line with the public consultation question paper, we have addressed each question individually, alongside raising suggestions relating to other elements not contained in the paper.

1. **Are there any definitions or specific clauses that are not clear? Please provide details.**

No the draft is clear as it stands.

2. **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?**

We have concerns about the capacity of smaller CSPs to implement the requirements surrounding displaying information about community languages within 3 months.

Small CSPs are particularly vulnerable because they may not have dedicated resources they can access to do this work, particularly around community languages. They will have to invest, probably in an external resource, to produce new contact / CIS community language information.

To increase the ability of smaller CSPs to comply inside the 3-month timeline, and given most small CSPs will rely on the criteria of languages commonly used in Australia (based on public data e.g. from the ABS), could templates be provided that could be modified to add the details for small CSPs? This would be beneficial to both consumers and industry.

3. **Clauses associated with data retention have been consolidated and clarified to attempt to address various (often conflicting) stakeholder feedback.**
   Are the requirements clear, and do you have any concerns or comments?

They are clear, albeit vague, for CSPs that don't need to comply with the Privacy Act. Given the threshold for falling under the Privacy Act, almost all CSPs should be complying with the act so the utility of further emphasis on this section is questionable.

4. **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.**
   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.
   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.

4. (a) Do you have concerns about such conflicts?

We have concerns that the Code revisions may set requirements that may conflict with the existing standard.

The 2022 determination mandates strong authentication before account access changes, whereas the draft Code proposes a broader range of acceptable evidence for estate representatives, including notifications from funeral homes or letters of administration.

It is unclear how CSPs would reconcile these competing requirements as to follow the Code would put us in breach of the Determination.

We believe it would be prudent to delay finalizing this section of the Code until the ACMA review of the Determination is complete. The ad-hoc review process could then be utilized to update the Code.

4. (b) Do you have any other comments about the proposed requirements?

Our primary concern is what constitutes acceptable verification for an "Authorised Estate Representative." Until the Determination is finalised, we cannot confidently implement this section of the Code.

5. 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.

Are the requirements clear? And do you have any concerns or comments?

While the requirements are clear, we have strong concerns about the increasing length of the Critical Information Summary (CIS) due to the inclusion of multiple new elements.

The Code requires six new elements to be added, with some – such as the community language information, National Relay Service (NRS) details, and payment options – taking up significant space,. Given these additions it is unlikely that the CIS will remain within two pages, a limit previously imposed to maintain consumer engagement. In our experience consumer interaction with the CIS was already low, and expanding its length may further reduce its effectiveness as a concise reference document.

We question the necessity of including community language and NRS details in the CIS, as this information will now be required on contact pages under the Code, as well as on bills. This redundancy does not add value and instead risks undermining the CIS's core purpose of summarizing key service information in a digestible format.

That said, the inclusion of payment information is a positive change, as it allows consumers to better compare offers and understand key differences between

competing CSP products. We have no concerns regarding the remaining additions in Chapters 5 and 6.

6 (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?

No, it is our view that the $150 threshold is not reasonable, the basis for this position is as follows:

- Unclear rationale for the change during the drafting process.
- The justifications that were provided in submissions do not stand up to scrutiny and reflect a very narrow group of sectional interests rather than the broader consumer interest.
- The telecommunications industry will be operating under a far more restrictive threshold than any other industry in Australia, and out of alignment with consumer protection norms in other countries.
- The impact of the change will mean a significant portion of new customers will require an invasive credit assessment / credit check process, and this will only grow with inflationary pressures on telco products over the course of the TCP term.
- Consumers will be concerned about the privacy implications of this process, and it poses a risk that outweighs the benefits of the change.
- There are significant unintended consequences from this change which are not in the interests of consumers.
- Smaller CSPs will be disproportionately impacted by the compliance costs for this change which will lessen competition and hurt consumer choice.
- Consumers also have significant protections already for amounts below the $1000 threshold through the introduction of the Telecommunications Financial Hardship Standard (2023) and existence of a no-cost dispute resolution mechanism via the Telecommunications Industry Ombudsmen.

We will cover each point in detail below.

- **Unclear rationale for the change**

The current $1,000 threshold was established to align telecommunication post-paid services with financial regulatory standards such as the National Consumer Protection (NCCP) Act of 2009, which sets $1,000 as a key financial threshold for responsible lending obligations.

The justification for the $150 threshold appears to be based upon the Privacy (Credit Reporting) Code 2014, which allows unpaid debts of $150 or more to be listed as defaults after 60 days.

However, this alone is insufficient justification applying a mandatory preemptive credit check at such a low level. Australian consumers can purchase a myriad of product and services that risk being reported a credit debt without the requirement for a credit assessment/check.

- **Misalignment with other industry standards and internationally**

The proposed change would place telecommunication services under stricter credit assessment requirements than other essential services. Electricity, gas and water providers do not require mandatory credit checks, as their essential nature demands unrestricted access. If telecommunications are increasingly recognized as an essential service, it should follow the same principles of accessibility rather than introducing additional barriers for consumers.

Settings the credit assessment and external credit check threshold at $1,000 strike a practicable balance between accessibility and consumer protection. It ensures that consumers can access telecommunication services while introducing reasonable safeguards for higher-value purchases. Unlike other utilities, telecommunications encompasses a wide range of products and pricing structures, making a measured threshold necessary. Lowering this threshold to $150 disrupts this balance, unnecessarily subjecting a vast number of essential consumer purchases to invasive credit checks.

Furthermore, current Buy Now Pay Later (BNPL) reforms – a product widely used by financially vulnerable consumers – proposes less stringent credit assessment requirements than what is being introduced for telecommunications. For BNPL amounts up to $2,000, providers only need to conduct a negative credit check and affordability assessment, a lower standard than the current $1,000 threshold for telecommunication services. It is therefore unclear why a $150 credit assessment/check threshold is being imposed on telecommunications given the limited financial risk associated with these products.

Internationally, we have looked at New Zealand, the United Kingdom and Canada as comparable countries to Australia and found they have no similar credit assessment requirement in their consumer protection frameworks. All three countries all regulate credit assessment under general consumer protection laws without industry specific credit checks. Instead, they rely on broader financial regulations, such as Australia's NCCP Act, to provide appropriate consumer protection.

This highlights that Australia is an outlier in requiring credit assessment for telecommunications at all. When the $1,000 threshold was aligned with the NCCP Act, it was at least consistent with broader financial regulations. However, drastically lowering it to $150 underscores the flaws of including credit assessments in the Code in the first place. If anything, the Code should be amended to remove credit assessment obligations altogether, instead reminding CSPs of their existing obligations under the NCCP Act. This would create consistency across industries rather than enforcing a redundant, industry-specific threshold. While we recognise that some stakeholders are advocating stricter standards this approach is neither justified nor aligned with broader consumer protection norms.

- **Arguments for changes to credit assessment by stakeholders in submission are general in nature or misunderstand the current threshold.**

Many of the arguments made by stakeholders in favor of stricter credit assessment requirements are overly broad, lack detailed evidence, or misinterpret the existing $1,000 threshold. Both ACCAN and the TIO rely on general claims rather than substantive data to justify lowering the threshold to $150, failing to demonstrate the credit assessment failure is widespread of systematic issues in the industry.

The TIO's own complaint data contradicts its argument that financial assessment issues are a major concern. In Q4 2022, only 22 financial assessment complaints were recorded out of 17,840 total complaints (0.12%) and by Q3 2023, that number had increased to just 64 complaints out of 17,777 (0.36%). These figures show that financial assessment complaints make up a fraction of a percent of all telecommunication complaints, demonstrating that this is not a widespread consumer issue.

Despite this, the TIO argues for a significant regulatory change, failing to acknowledge that almost all telecommunication customers successfully access post-paid services without encountering issues relating to credit assessment.

The number of financial assessment complaints received by the TIO remains low and does not indicate systemic industry issues. Despite this the TIO uses these complaints to justify lowering the credit check threshold. However, as a dispute resolution body, the TIO primarily refers complaints back to the CSPs for resolution, meaning it often lacks insight beyond the consumer's initial perception of an issue.

A complaint categorized under financial assessment does not confirm a breach of the TCP Code. The TIO does not systematically verify complaints before reporting them, meaning a large proportion of these cases may not actually involve non-compliance. In many instances, the provider may have fully adhered to the Code, but the consumer misunderstood the credit assessment requirements under the Code, or they could even be complaints about failing a credit assessment entirely in line with the requirements of

the Code. For all we know, the increasing number of complaints referring to financial assessment could indicate better implementation of the Code by CSPs and the fallout of customer dissatisfaction at being unable to access services due to the requirements set out in the Code.

Since the TIO does not track the specifics of individual complaints or their outcomes, its data does not provide a reliable foundation for policy change. Regulatory decisions should be based on verified compliance failures, not unverified consumer reports that may misrepresent industry practices.

The case studies presented by the TIO do not support their claims either but instead seem to highlight a lack of understanding of the current Code. Case Study 1 in the TIO submission seems to be a relatively straightforward example that should have been captured under credit assessment requirements for existing customers. Case Study 2 if there was a contract involved that exceeded the threshold (as is suggested), it should have already required a credit assessment and external credit check, but the case study is too non-specific on this point to be totally confident in understanding the specifics.

Based on the case studies provided we would suggest the issue relates more to implementation and enforcement of the existing Code, rather than requirements to change the Code. Given the provisions for stronger enforcement by ACMA that were recently announced, this should facilitate better outcomes for consumers without radically changing the credit assessment thresholds and requirements.

Similarly, ACCAN's arguments for stronger credit assessment are largely anecdotal and drawn from financial counselors rather than direct consumer sentiment. ACCAN does not provide consistent data demonstrating that credit assessments are failing at a systematic level, nor does it conduct independent consumer surveys to gauge public sentiment on credit checks. Instead, it relies on reports from its members without verifying whether these perspectives are reflective of broader consumer experiences.

ACCAN's submission fails to acknowledge that most Australian consumers successfully manage post-paid services without financial hardship, and its arguments appear to assume that all consumers require great protection in the form of an invasive credit assessment and credit check process, rather than targeting interventions towards those genuinely at risk.

The arguments presented by TIO and ACCAN for tightening the credit assessment process are either overly broad, anecdotal or suggest a lack of enforcement of the existing threshold. To justify such a significant change that would impact all consumers, clearer evidence of a systemic issue should be presented.

- **Unintended consequences of a low threshold.**

Lowering the credit check threshold to $150 carries significant unintended consequences, particularly for consumers who are financially responsible but lack an established credit history. Credit checks impact consumer credit files, potentially making it more difficult or expensive to access financial products, even for those who are not financially at risk.

Consumers without a credit score, such as young adults and new migrants, may find themselves locked out of post-paid services despite being fully capable of meeting their financial obligations. This would force them to rely on prepaid options, which often come with higher costs and fewer consumer protections. If telecommunications are being treated as an essential service, it must be equally accessible, just as gas, electricity, and water providers are not required to conduct credit checks to ensure service access. Advocates cannot argue for enhanced consumer protections while simultaneously introducing barriers to access.

This change may also incentivise a shift away from post-paid services towards prepaid models, as CSPs seek to avoid the compliance burden of credit assessments. While prepaid services reduce financial risks for CSPs, they limit consumer choice and are often more expensive than post-paid plans. For vulnerable consumers, being required to pay upfront for telecommunications products could create financial stress – precisely the issue these reforms aim to prevent.

Another unintended consequence is that consumers unable to access post-paid services may turn to riskier credit alternatives such as BNPL services, payday loans, or other forms of high-cost credit to afford the upfront costs of pre-paid services. This would expose them to greater financial harm than a carefully managed post-paid plan, again undermining the very consumer protections these reforms aim to strengthen.

- **Consumer views on the threshold necessity particularly around privacy risk.**

Recent high-profile data breaches across multiple sectors, but including telecommunications, have heighted public awareness of privacy risks, reinforcing the need for data minimization principles in regulatory design. A $150 credit check requirement would significantly increase the amount of sensitive financial data collected by CSPs, exposing consumers to a greater risk of identify theft, fraud and misuse of personal information in the event of a data breach.

This requirement ignores growing consumer expectations for stronger privacy protections and increases the regulatory burden on CSPs to store, protect, and process unnecessary financial data. Unlike financial institutions, telecommunications providers do not have access to comprehensive credit reporting and should not be required to collect invasive financial data for low-risk services.

As such, we believe the $150 threshold would be perceived as excessive and unnecessary by the average consumer, lacking credibility when viewed through a commonsense lens particularly given the invasive nature of the questions required by 6.2.2 (a).

- **Inflationary pressures and the expanding scope of the requirement**

Since the $1,000 threshold was set in 2018, inflation has devalued this amount in real-world terms by over 20%, meaning that if it was indexed it would now be close to $1,200-$1,300 in today's dollars. While telecommunications products and services have proved resilient to inflation, they are not immune, and inflation driven price rises have started to occur in the industry.

The $150 threshold is not inflation-proof, and given how low it has been set it would not require even a significant inflationary event (such as that which occurred between 2021-23) for the threshold to inadvertently capture a growing number of low-value services, expanding the requirement far beyond its original intent.

This means that even if the new threshold is introduced with the assumption that it applies to certain post-paid plans, future inflation will make it applicable to an increasingly broad range of telecommunications services, resulting in widespread consumer impact over time.

- **Disproportionate compliance costs on smaller CSPs, reducing competition.**

As a very small CSP in the industry, Leaptel is particularly sensitive to the burden of increasing compliance costs. Implementing widespread credit checks will fall disproportionately on smaller and challenger CSPs, which lack the purchasing power to secure bulk credit reporting services at the lower rates enjoyed by larger telcos. The regulatory cost will place independent and emerging CSPs at a competitive disadvantage, discouraging market entrants and reducing industry competition.

Challenger CSPs are often responsible for driving improvements in customer service and affordability in the sector. If smaller providers are forced to absorb higher compliance costs, they will have fewer resources to invest in service quality and innovation, ultimately harming consumers by reinforcing the market dominance of larger incumbents. This is ultimately to the detriment of all consumers and not in the public interest.

- **Existing consumer protections already address financial harm risks that this revised threshold seeks to address.**

Existing consumer protections provided by both the *Telecommunications (Financial Hardship) Industry Standard 2024* (FHIS) the TIO and Australian Consumer Law already offer robust safeguards against financial harm, ensuring consumers have access to support, dispute resolution and fair contract protections.

The FHIS mandates CSPs offer structural financial assistance, including payment plans, service modifications and bill deferrals for consumers on post-paid services. With its introduction consumers have much greater protection from having their telecommunication services suspended or disconnected for non-payment if they're experiencing financial hardship. Due to its enforceability, CSPs are much more likely to forgive or defer debt incurred by consumers.

The TIO provides a no-cost dispute resolution mechanism, so in the event that a consumer has entered into an arrangement beyond their capacity to pay for it, they have a accessible fallback option to support them. Due to the significant costs involved relative to the cost of telecommunication services, consumers are likely to have bills waived well above any $150 threshold. Given a direct resolution now costs $739 (ex gst), once staff costs are added to managing a TIO complaint, there is only a very narrow window between the $1,000 credit assessment threshold and where a CSP would accept its minimum cost for enforcing even a debt below that amount.

Unlike financial credit products, telecommunication services are limited in their applicability. Most consumers would have a fixed-line internet service and then mobile phone plans for their needs. This limits the potential debt they can incur. While physical handsets are an increasing cost, these generally push above the $1,000 threshold as is. By contrast, financial credit allows consumers to access any product or service, hence the need for credit assessment / credit checks for these products. But even then as indicated, BNPL, the most ubiquitous form of financial credit for vulnerable consumers at present, has a low level form of credit assessment for amounts under $2,000.

- **Summary**

As we have argued, the proposed $150 credit assessment threshold is unjustified, misaligned with financial and industry norms. It also fundamentally fails the TCP Code Drafting Committee's own principles of avoiding unnecessary barriers and overly prescriptive processes. The existing $1,000 threshold was set to align with financial regulatory standards, ensuring that telecommunication services are treated proportionally to other credit-base products. The justification for lowering this to $150 appear to be based on the Privacy (Credit Reporting) Code's default listing threshold which is an inadequate rationale for imposing preemptive credit checks at such a low

level – especially when no similar requirement exists for essential services like electricity, water or gas. No one has articulated a reason as to why the telecommunication sector should be subject to more restrictive credit rules than any other industry or service.

Beyond being unnecessary, the $150 threshold introduces significant unintended consequences, including increased privacy risks, exclusion of consumers without a credit history, and a shift toward prepaid services that reduce consumer choice. It would disproportionately impact on smaller CSPs, who lack the scale to absorb the costs of mandatory credit checks, reducing competition and reinforcing the dominance of larger telcos.

Consumers are increasingly concerned about privacy and data security, and mandatory credit checks at such a low threshold will likely be met with resistance. This change risks eroding consumer trust without clear justification.

The existing threshold works and is supported by a framework of additional protections for consumers through the FHIS, TIO and ACL. These measures ensure CSPs assist consumers in financial difficulty, and offer structured hardship support, and hold providers accountable for mis-selling. With stronger enforcement of the TCP Code forthcoming due to changes with the ACMA, the existing threshold should be retained and this change should be rejected as an costly, invasive and ineffective new requirement with no mandate.

Given the lack of clear justification, we strongly urge the Drafting Committee to retain the $1,000 threshold and reject the proposed $150 requirement.

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

We are skeptical of the need for a threshold for small business customers at all. No stakeholder specifically mentioned small business customers in their submissions relating to credit assessment.

There were no representation from small business advocacy groups, such as the Council of Small Business Australia (COSBA) or the Australian Small business and Family Enterprise Ombudsman (ASBFEO). If there were genuine concerns, we would expect these organisations to have provided submissions. Instead, the introduction of a credit requirement appears arbitrary and without industry consultation.

6 (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?

Yes, this ensures the TCP Code is aligned with other credit reporting requirements. While CSPs have information on their customers' ability to pay their previous invoices, they don't know about their ability to pay a higher invoice. But requiring a check on a threshold lower than $1,000 would be invasive.

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

No further comment.

7. 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.

In most cases, CSPs will want to communicate beneficial changes to a contract with a consumer, and as indicated in the consultation paper the risk to consumers is on a determinantal claim. If the Code is about protecting consumers from harm, why should it be prescriptive beyond this?

We therefore consider the current drafting sufficient.

Conclusion

We again thank the Communications Alliance, the Drafting Committee and Review Committee for their continued hard work on reforming the Code.

Considerable progress has been made, and we believe the enhanced protections for consumers that the new Code includes, particularly in chapter 5, 6, 8 and 9 will be a significant step forward for consumers.

The changes around direct debit and fee-free manual payment methods is something we strongly support.

As our submission makes clear, however, we have strong objections to the implementation of credit assessments at $150. We fundamentally believe that this is against the overwhelming interests of Consumers, irrespective of our views on how it will impact us as a CSP. We urge those involved in reviewing this submission to strongly consider reverting the existing credit assessment threshold.

Beyond this, we do have concerns that the new requirements for the CIS will undermine the value of these documents for consumers in understanding the critical information relating to the product or service they are considering purchasing.

We look forward to seeing the outcome of the Stage 3 consultations and participating further in the process should the opportunity arise.

Should you have any questions about our submission please don't hesitate to contact us.

Warm Regards,

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Leaptel