



Telecommunications Consumer Protections Code

Submission by the Australian Communications Consumer Action
Network to Communications Alliance

10 August 2018

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

Contact

Isabel Durie- Policy Officer

PO Box 639,

Broadway NSW, 2007

Email: info@accan.org.au

Phone: (02) 9288 4000

Fax: (02) 9288 4019

Contact us through the [National Relay Service](#)

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1. Introduction

ACCAN thanks Communications Alliance for the opportunity to provide feedback to the draft Telecommunications Consumer Protections (TCP) Code. As the peak national body representing telecommunications consumers, ACCAN is pleased to play a key role in the review of the TCP Code by representing consumers on the Working Committee.

The TCP Code is a keystone in the current consumer protection framework for the telecommunications industry. Given the rapidly changing nature of this industry, increasing consumer use of and reliance on telecommunications services, and emerging new technologies, the periodic review of this Code is vital. Reviews allow the Code to be amended to ensure it reflects current market trends, consumer interests and places adequate obligations on retail service providers (RSPs) to fairly and efficiently manage their relationships with customers.

High complaint numbers to the Telecommunications Industry Ombudsman (TIO) over the previous two years demonstrates a clear need for a stronger TCP Code. In its 2017 Annual Report, the TIO reported a 41.1% increase in complaints from the previous year¹. Further, the TIO six month update complaint data for July-December 2017 illustrated an overall increase in complaints across all services, indicating systemic issues across the board that need to be addressed².

ACCAN acknowledges that the public comment draft TCP Code incorporates some new measures that we support and have proposed. These include:

- An obligation for RSPs to handle and resolve complaints about third party billing
- Some changes to credit assessment with a requirement for RSPs to check on payment history of existing customers when they want to upgrade their plan
- More recognition of financial hardship with a separate chapter and a revised slightly broader definition of financial hardship
- More clarity around the content and layout of the Critical Information Summary (CIS);
- Broadening of the current industry complaints in context reporting (TIO complaints received by individual RSPs by number of services in operation)

Additionally, the Code includes guidance notes providing suggestions about credit assessment measures and information required from customers during financial hardship assessments. We also note that Communications Alliance is proposing a separate guidance note on dealing with vulnerable consumers. While guidance notes may represent an acknowledgment by the industry that there are areas where practices could be improved, they are unenforceable. For this reason, ACCAN does not consider guidance notes to be an adequate substitute for substantive obligations in the Code that potentially will lift performance across the industry.

There are a number of areas where the Code should be amended further to support better consumer outcomes. These areas are:

¹ TIO 2017, 2016-2017 Annual Report: http://www.tio.com.au/_data/assets/pdf_file/0018/250911/Telecommunications-Industry-Ombudsman-Annual-Report-2017.pdf, p.28

² TIO 2018, July-December six month update: <https://sixmonthupdate.tio.com.au/#goals>

- An amended definition of consumer to ensure adequate protection of small businesses
- Billing
- Customer service
- Customer access to records
- Selling practices
- Credit assessment
- Financial hardship
- Accessibility.

ACCAN's submission is informed by extensive consultation with our members, community organisations and individual consumers throughout the revision of the Code, and during the public comment period. It is also informed by our recent *Can You Hear Me?* research which surveyed telecommunications customers about their experience of customer service.

2. List of recommendations

Recommendation 1: There should be no charge for providing a bill in the format chosen by the customer.

Recommendation 2: There should be a free method of bill payment offered in addition to direct debit

Recommendation 3: Suppliers must not bill for Third Party Charges without direct account holder activation of this facility with the Supplier; ie must be opt in, not opt out

Recommendation 4: Suppliers must set the default spend limit for Third Party Charges at \$0, and upon account holder activation of Third Party Charging, apply the spend limit amount selected by the account holder

Recommendation 5: Suppliers must not bill for Third Party Charging if a double opt-in arrangement for each third party billed service is not in place

Recommendation 6: Suppliers must not bill for Third Party Charges if the Consumer has sent a STOP request to the third party service

Recommendation 7: The maximum time permitted for provision of the usage alerts under 6.6.2 should be substantially reduced to 1 hour.

Recommendation 8: Reduce time taken to resolve customer issues by adding the following wording to 4.9.1:

‘Suppliers must deal with simple enquiries within a maximum of two working days and more complex inquiries within five working days.’

Recommendation 9: The following wording should be added to 4.9.1(b):

- Telephone contact: Customer wait times to be connected to the right customer service area to handle the enquiry must be kept to a maximum of 5 minutes.
- Live chat: an acknowledgement to an enquiry must be provided within 2 minutes.
- Other contact methods: email, online and social media inquiries must be acknowledged by the Supplier within one working day.

Recommendation 10: The following wording should be added to 4.9.1(c):

and,

‘Ensure that simple account administrative enquiries are resolved at first contact (for example change of contact details, requests to change plans, general account enquiries)’

Recommendation 11: The following amendment should be made to 4.6.1(d):

‘Keep records of interactions between the Supplier and Customers *immediately* accessible to staff tasked with responding to such Customer Service enquiries, to aid in resolving Customer Service enquiries.’ (amendment in italics)

Recommendation 12: The following wording should be added to 4.6.1(e): ‘and have the knowledge and ability to do so.’

Recommendation 13: That the Code be amended to allow customers to have access to records of their interactions with suppliers, on request of the customer.

Recommendation 14: The definition of consumer should be altered so that the spend limit for small businesses is matched to that in the Australian Consumer Law.

Recommendation 15: 4.1.4(b) should specify what other types of information a supplier ‘may include’

Recommendation 16: The exception provided by 6.8.1(a)(i) be removed

Recommendation 17: The following paragraph should be added to Chapter 3:

‘3.3.6: Suppliers must ensure that customer service staff receive training to deal with disadvantaged and vulnerable customers, and are able to deal with disadvantaged and vulnerable customers appropriately.’

Recommendation 18: That the following wording be added to paragraph 4.6.1:

‘Sales incentives should promote responsible and ethical selling, that actively takes account of the customer’s requirements. Targets and incentives for staff must be aligned with long-term consumer outcomes, rather than short-term sales.’

Recommendation 19: The following wording should be added to 4.6.2:

‘The supplier must actively take account of customer circumstances and provide information about appropriate products and services, including lower/all cost options.’

Recommendation 20: That a post-sales support paragraph be added as follows:

‘Customer service staff must contact new customers after 3 billing cycles to see if the customer needs further assistance in understanding their obligations³.

Recommendation 21: Under 6.2.1(a) RSPs must be required to assess the suitability of a post-paid service against a consumer’s capacity to pay. This should, at a minimum, include checking a customer’s:

- Proof of income
- Proof of housing costs (rent receipt, copy of lease, mortgage repayments).

Suppliers must not supply a service where the credit assessment shows that the customer could not afford payment obligations at all or only without substantial hardship.

Recommendation 22: The following wording should be added to 7.1.1 Access to policy:

³ http://accan.org.au/files/Reports/Confident%20Confounded_accessible%20WEB_03.11.16.pdf, p.42.

‘In addition, financial hardship policies must be available in stores, on bills and in relevant communications with customers, alongside the direct contact details (email, phone number, live chat etc) for financial hardship staff.’

Recommendation 23: The following should replace 7.2.1(a):

‘a customer in financial hardship should not be denied access to essential telecommunications services, face legal action, be given a credit default listing, or have to pay any debt recovery costs. At a minimum the following must be included in a Financial Hardship policy:

- Late payment fees should be waived for customers in financial hardship; cancellation fees should be waived for customers in serious hardship.
- Flexible payment options including : extensions to payment times; payments to be made in instalments over longer period; incentives for making payments; low cost interim options until the customer can continue with original payments; payment vouchers distributed to clients by financial counsellors.
- Hard caps and shaping.
- Restructuring of customer’s account.
- Transferring the customer to pre-paid services.
- Releasing a customer from their debt in situations where their financial hardship is entrenched.
- When a provider has been found to have used irresponsible sales practices, a customer’s debt should be waived.’

Recommendation 24: The word ‘designed’ be replaced with ‘suitable’. 4.7.1 should read:

‘A Supplier must make information available about Telecommunications Products offered by the Supplier *suitable* for Consumers with different disabilities...’ (amendment in italics)

Recommendation 25: The following amendment should be made to 3.2.5:

‘A supplier must *ensure* its web content complies with...’ (amendment in italics)

3. Key consumer concerns

3.1. Billing (Chapter 5)

Billing is a common area of frustration for telecommunications consumers. In the 2016-17 financial year the TIO found billing was an issue in 66,142 complaints, amounting to almost 42% of all complaints for the year. ACCAN considers the TCP Code could better support consumers in several areas relating to their billing experience.

Charging for paper bills

Being able to pay a bill should be easy and simple for all consumers. Unfortunately, RSPs have created several barriers that inhibit certain consumers from being able to receive and pay their bills in a way that suits them. Whilst most consumers prefer to access their bills online, there are still some who find this method prohibitive. ACCAN hears regularly from consumers who are frustrated at having to pay to receive a paper bill.

Some customers struggle with internet capacity and usage so prefer to receive paper bills. This is particularly an issue for rural and remote customers who may have difficulty accessing online billing information due to poor service. Older consumers also often prefer to receive paper bills. The 2018 *Australian Household Use of Information Technology*⁴ data demonstrates that only about 55.3% of individuals over 65 uses the internet (compared with 87% who were internet users when considering all people over the age of 15). Unfortunately most RSPs charge a fee to customers of around \$2 a month to be sent a paper bill and only waive this fee if the customer meets certain criteria.

These fees reinforce the digital divide for those customers that are not confident with internet billing options or do not have reliable access to the internet for billing purposes. A recent survey⁵ found that 42% of respondents strongly agreed that consumers should not be charged more to receive a paper bill, with an additional 33% in agreement. ACCAN considers that the cost of providing paper bills should simply be factored into the cost of doing business.

The Treasury recently undertook a consultation on the issue of fees for paper bills⁶. The consultation paper outlined the impacts to both businesses and consumers of providing paper bills. For businesses there is a cost for producing and dispatching paper bills for its customers. However, for some consumers, having to pay for paper bills can place on them an unwanted burden, especially those who are vulnerable. The paper recognised that for many consumers the fees for paper bills can be prohibitive, especially for those who are digitally excluded and may fit into the following categories:

- Low income
- People with disability
- Chronic illness
- Poor reading, writing and numeracy skills

⁴ Australian Bureau of Statistics 2018, Household Use of Information Technology 2016-17: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0>

⁵ http://www.keepmeposted.org.au/wp-content/uploads/2017/10/twosides_australian_tolunasurvey2017_web.pdf, p.18.

⁶ Treasury 2018: <https://consult.treasury.gov.au/small-business-and-consumer-division/fees-for-paper-bills/>

- Homeless
- Indigenous
- Remote
- Very old or very young

The purpose of the consultation was to ensure that disadvantaged consumers are not paying paper bill fees that are disproportionately high and that exemption programs offered by businesses are appropriately targeted and easy to access.

Many consumer organisations submitted to this consultation urging Treasury to ban fees on paper bills. Whilst Treasury is yet to announce the result of this consultation, ACCAN would like to see industry take a lead and remove fees for paper bills.

Recommendation 1: There should be no charge for providing a bill in the format chosen by the customer.

Charges for payment methods other than direct debit

Many consumers prefer to pay their phone and other utility bills by a method other than direct debit. This is primarily because other payment methods allow for greater spending control and better financial management. This is particularly the case for consumers on fixed low incomes, who can be charged bank fees and late fees if there are insufficient funds in their account when the direct debit is made.

The Code rule is that RSPs must provide at least one free method of bill payment (see 5.3.1). Direct debit should be excluded from being the only free method of payment, and the Code should be amended to reflect this.

Recommendation 2: There should be a free method of bill payment offered in addition to direct debit

Third party charges

Third party charges include items like game credits, subscriptions to digital services like Spotify, and Google Play/App Store products.

Unexpected third party charges on bills are of great concern to consumers. ACCAN is pleased that industry has agreed to include a requirement in the Code that RSPs must handle billing enquiries and complaints from customers about third party services charged to the telco bill (see 5.8). However there are further protections are needed to prevent the harm from arising in the first place. We consider that the following recommendations will provide more control and transparency to consumers over their access and expenditure on third party services billed via their telco.

Recommendation 3: Suppliers must not bill for Third Party Charges without direct account holder activation of this facility with the Supplier; ie must be opt in, not opt out

Recommendation 4: Suppliers must set the default spend limit for Third Party Charges at \$0, and upon account holder activation of Third Party Charging, apply the spend limit amount selected by the account holder

Recommendation 5: Suppliers must not bill for Third Party Charging if a double opt-in arrangement for each third party billed service is not in place

Recommendation 6: Suppliers must not bill for Third Party Charges if the Consumer has sent a STOP request to the third party service

Automatic data top-ups

The automatic mobile data top up is a good way of avoiding high excess data fees, but consumers would like this to be an optional alternative to a hard data cap. As the auto top-up costs around \$10/1GB, it is frustrating and costly to consumers who do not always require the extra data. We have recommended that the top-up be opt-in, with clear notification of how to enable/disable this feature. Alternatively, at the very least consumers should have adequate notice regarding when it will be applied so they can manage their data to avoid the extra charge.

The draft Code (6.6.3) requires RSPs to include information in the 85% data usage alert about what charges will apply when all data is used. While this is welcomed, the effectiveness of this measure is undermined as the Code permits usage alerts to be delayed by a maximum period of 48 hours (6.6.2). This permissible delay would allow the customer to exceed their data limit and incur the \$10 add on charge without warning.

Recommendation 7: The maximum time permitted for provision of the usage alerts under 6.6.2 should be substantially reduced to 1 hour.

3.2. Customer service

Telecommunications consumers are frequently frustrated by poor customer service from their provider. ACCAN recently released a research report⁷ demonstrating the lived experience of customer service provided by the telecommunications industry. It shows that people are waiting for long periods to talk to a customer service representative and to have enquiries or issues resolved, even those that are simple such as changing contact details. The following results are particularly concerning:

- It takes on average 13 days⁸ and 2.6 contacts⁹ to resolve an enquiry or complaint (based on resolved cases only)
- For cases still unresolved at the time of the survey the average time spent seeking a resolution increased to 60 days¹⁰.
- Even simple enquiries such as changing a plan or updating contact details takes time (10.4 and 11.3 days respectively)¹¹

⁷ ACCAN 2018, Can You Hear Me?: http://accan.org.au/Can%20You%20Hear%20Me_v6_accessible.pdf

⁸ See Figure 46 in the report

⁹ See Figure 69 ibid

¹⁰ See Figure 46 ibid

¹¹ See Figure 10 ibid

- To contact a provider by phone requires waiting 1.2 hours¹² on average before reaching the right person to talk to
- Providers are failing to keep adequate records of customer issues and enquiries with 58% of respondents saying they were required to re-provide information on average 3.7 times¹³. 26% of these people had to repeat the information of their case more than five times¹⁴
- 55% of respondents who said they looked for information about how to lodge a complaint said it was difficult to find¹⁵. Only 18% of respondents who lodged a formal complaint with their provider found the process easy¹⁶
- Respondents were particularly critical of their provider keeping them proactively informed, providing a timely resolution, and the knowledge of customer service staff¹⁷

It is no surprise that of the 158,016 complaints that the TIO received in the 2016-17 financial year, almost 49% of those identified customer service as an issue. It is apparent that poor internal processes for managing customer enquiries and contacts are creating barriers to efficient handling of enquiries and issues by providers and drive many consumers to seek external dispute resolution through the TIO.

ACCAN member the National Farmer's Federation (NFF) has recently surveyed regional and rural consumers to understand their distinct telecommunications needs¹⁸. This revealed similar findings to ACCAN's survey. 24.05% of respondents identified poor customer service as an issue. When asked how they typically sought to resolve an issue, 19.85% said that they did nothing as it was too hard to get a resolution. Only 6.25% of respondents were able to get a resolution on the same day they made contact and 43% within the same week. Of the remaining respondents, 21.74% spent a month, 9.09% spent between two and six months, and 19.57% spent more than six months seeking a resolution.

In light of these combined findings, we believe the minor amendments in the draft Code will not result in improved customer service (see **4.9**) because they do not substantively change existing provisions. Wording such as 'a reasonable minimum time in the circumstances' (under **4.9.1(b)**) for reducing wait times allows for loose interpretation and makes enforcement very challenging. Importantly, the current draft contains no substantive benchmarks for customer service performance.

We propose introducing customer service benchmarks for:

- Time taken to get an enquiry resolved;
- Wait times to talk to or receive acknowledgement of an enquiry or issue (depending on the method of communication) from customer service staff;
- First contact resolution for simple issues.

¹² See Figure 16 ibid

¹³ See Figure 27 ibid

¹⁴ See Figure 28 ibid

¹⁵ See Figure 36 ibid

¹⁶ Ibid

¹⁷ See page 8 ibid

¹⁸ Unpublished at the time of writing

We are also proposing changes to record keeping and staff training requirements.

1. Reduce timeframes to resolve customer issues

Our findings are that average timeframes to deal with relatively simple issues such as changing or renewal of plans (10.4 days); updating contact details (11.3 days); general inquiry about account/plan/contract (19.7 days) are unacceptably long. The draft TCP Code currently requires:

4.9.1: Effective service: A Supplier must ensure enquiries by Customers are dealt with by the Supplier in a timely and effective manner.

Recommendation 8: Reduce time taken to resolve customer issues by adding the following wording to 4.9.1:

‘Suppliers must deal with simple enquiries within a maximum of two working days and more complex inquiries within five working days.’

2. Reduce wait times for customer contact with customer service staff

Current proposed wording in the draft Code is:

4.9.1(b) Average wait times: monitor average wait times experienced by Customers to communicate with a Supplier and provide an acknowledgment to the Customer Service enquiry within a reasonable minimum in the circumstances.

Our findings are:

- Average of 1.2 hours on the phone before reaching the right person
- Less than half of respondents using phone contact reported being told the wait time to speak to someone; and less than half (48%) reported being offered a call back option.
- 23% requested a call back, and 17% of this group said they never received the call back.

These findings suggest that RSPs are not monitoring wait times sufficiently closely, or acting to reduce them effectively using a range of measures. As ‘a reasonable minimum in the circumstances’ is not defined in the TCP Code, our findings suggest this paragraph is interpreted loosely by the industry.

Recommendation 9: The following wording should be added to 4.9.1(b):

- Telephone contact: Customer wait times to be connected to the right customer service area to handle the enquiry must be kept to a maximum of 5 minutes.
- Live chat: an acknowledgement to an enquiry must be provided within 2 minutes.
- Other contact methods: email, online and social media inquiries must be acknowledged by the Supplier within one working day.

3. Increased first contact resolution

Our findings on first contact resolution by contact method were:

- Phone contacts: 55% reported first contact resolution.
- In store: 74% reported first contact resolution
- Online chat/messenger: 60% reported first contact resolution
- Email: 55% reported first contact resolution.

The overall average was 58% of customers indicated that their inquiry was resolved at first contact.

Vodafone (76%) and Virgin (75%) customers are significantly more likely to have their cases resolved during the first contact when compared to customers of all other providers. Conversely, Telstra (53%) customers are less likely to have their query resolved at the first contact when compared with customers of all other providers.

These findings indicate there is wide variation across RSPs in numbers of first contact resolutions. The fact that some are performing significantly better than others indicates there is plenty of scope for improvement. We do not believe that RSPs are putting sufficient effort into resolving issues/answering queries at first contact. This is unacceptable, especially for simple issues.

The current TCP Code requirement is:

4.9.1(c) First contact resolution: monitor the level of first contact resolution of customer service enquiries, take reasonable steps to understand the root causes for why enquiries cannot be resolved at first contact and address those root causes.

Recommendation 10: The following wording should be added to 4.9.1(c):

and,

‘Ensure that simple account administrative enquiries are resolved at first contact (for example change of contact details, requests to change plans, general account enquiries)’

4. Improved record keeping and access to records by customer service staff

If records are kept effectively to assist customer service staff interacting with customers, then the customer should not have to repeat their issue on each contact. Our findings are that 58% of customers needed to re-provide some or most of the details of their issue on subsequent contacts. This is an unacceptably high figure, and a source of significant consumer frustration.

The current obligation in the draft TCP Code is:

4.6.1(d) Record keeping: keep records of interactions between the Supplier and Customers accessible to staff tasked with responding to such Customer Service enquiries, to aid in resolving Customer Service enquiries

Recommendation 11: The following amendment should be made to 4.6.1(d):

‘Keep records of interactions between the Supplier and Customers *immediately* accessible to staff tasked with responding to such Customer Service enquiries, to aid in resolving Customer Service enquiries.’ (amendment in italics)

5. Improved training and performance of customer service staff

Our findings indicate that staff training and performance is a major contributing factor to the unsatisfactory levels of first contact resolution and record keeping shortfalls.

Respondents were asked to rank relevancy, accuracy and comprehensibility of information provided by customer service. Rankings were 7.1 out of 10 for relevancy and accuracy, and 7/10 for comprehensibility. Knowledge and staff ability to answer questions were also ranked at 6.6/10. There was some variability between providers, with Telstra performing below average and Vodafone above.

The draft TCP Code obligation currently is:

4.6.1(e) Training: ensure that staff who are employed to deal with customer queries are appropriately trained to address and seek to resolve common customer queries.

Our findings show that training is not adequately meeting this requirement across the board.

Recommendation 12: The following wording should be added to 4.6.1(e): ‘and have the knowledge and ability to do so.’

3.3. Customer access to records

Consumers and their authorised representatives should have a clearer right to access records of interactions with their RSP. ACCAN has heard from members that RSPs make it very difficult for customers to access records of their interactions, and often the customers must go through the TIO to do so. In particular, authorised representatives dealing with RSP on behalf of a client have reported great difficulty in establishing past agreements and interactions between their client and a RSP due to not being given access to records.

It is particularly important for RSP to allow customers access to records of sales transactions. This is vital in understanding the information given to a customer at point of sale, particularly in instances where they have fallen into debt after overcommitting to a post-paid service.

A clearer right does not necessarily mean that recordings of phone calls must be made available, but that any notes or records relating to calls [should] must be made available to consumers. Allowing access to recordings goes beyond Privacy Act obligations but is not inconsistent with the Act.

Recommendation 13: That the Code be amended to allow customers to have access to records of their interactions with suppliers, on request of the customer.

3.4. Small business

ACCAN's small business members have raised concerns that the definition of 'a business or non-profit organisation' is unrealistic and outdated. The estimated annual spend of 'no greater than \$20,000' is deemed too low to encompass most small businesses and many not for profit organisations. This figure needs to be significantly increased to reflect the current context in which many small businesses rely heavily on access to multiple telecommunications services to operate (for example, internet, voice services, mobile and EFTPOS). ACCAN research in 2013 found that 92% of small business respondents used 3-5 distinct telecommunications service types. At a minimum, the spend level should be the same as that provided for under the Australian Consumer Law which is currently \$40,000.

Recommendation 14: The definition of consumer should be altered so that the spend limit for small businesses is matched to that in the Australian Consumer Law.

3.5. Critical Information Summary (CIS): 4.1.4(b)

ACCAN is pleased that some amendments have been made to simplify the content and layout of the CIS. However we remain concerned by the retention of the following provision:

4.1.4(b): may include other information as the Supplier determines is appropriate.

ACCAN is concerned that this provision allows for the information in the CIS to be overloaded, and thus become less effective as a decision-making and market comparison tool for consumers. The reasons why a supplier can include more information should be specified. For example, perhaps where the offer has unique features not usually found in other services, and that will affect the cost of that service or are factored into the cost of that service, the supplier should include information explaining those features.

Recommendation 15: 4.1.4(b) should specify what other types of information a supplier 'may include'

3.6. 6.8.1 Notice to restrict, suspend or disconnect a service for credit and/or debt management reasons

There is a general requirement that 5 working days' notice be given when a customer is to be restricted, suspended or disconnected from their service. However, there are exceptions to this which allow for restriction/suspension/disconnection of the service without notice. We consider the exception in 6.8.1 (a)(i) permitting an RSP to cut off a service without notification if it considers the customer or the account status is an unacceptably high credit risk to be unfair, and that it should be removed.

We also question whether this provision is consistent with the unfair contract provisions of the ACL.

Recommendation 16: The exception provided by 6.8.1(a)(i) be removed

3.7. Training

ACCAN is not satisfied that the requirements for training go far enough to support consumer outcomes. Adequate staff training is a vital piece in ensuring consumer interests and needs are met in an efficient and fair manner. In particular, customer service staff should be adequately trained to assist and meet, where possible, the needs of vulnerable consumers. There is currently no requirement in the code for this.

Recommendation 17: The following paragraph should be added to Chapter 3:

‘3.3.6: Suppliers must ensure that customer service staff receive training to deal with disadvantaged and vulnerable customers, and are able to deal with disadvantaged and vulnerable customers appropriately.’

4. Vulnerable consumers

There are a few key areas where the Code must be strengthened to better support and protect the needs of vulnerable consumers. ACCAN sees point of sale as an area that requires improved practices to ensure the needs and interests of vulnerable consumers are being met. This is when many vulnerable consumers over-commit financially to services they cannot afford and do not need. Whilst it is not always possible for sales representatives to have necessary information to comprehensively match customers with a suitable service, ACCAN believes this is an area where RSPs are too frequently getting it wrong. ACCAN acknowledges that many consumers are able to choose for themselves services suitable to their circumstances, however there are gaps in the consumer safeguards offered at point of sale that are causing significant detriment to vulnerable consumers who are less capable of making these decisions.

Improved practices and measures to limit the frequency with which consumers are signed up to unsuitable products are needed. This includes ethical selling practices and staff incentives that are aligned with the long-term interests of the customer, improved information at point of sale, and a more robust credit assessment. When consumers do end up in a situation where they are unable to meet the financial obligations they have signed up for, RSPs need flexible and sensitive hardship programs in place to ensure these consumers stay connected to an essential service.

4.1. Selling practices

Telecommunications products can be complicated and very confusing for consumers, particularly in the case of bundles where several services (for example mobile, home internet, devices and home phone) are packaged and billed under the one contract. Alongside this, ACCAN frequently hears cases of sales representatives using pushy sales tactics to upsell products. For some consumers, this can result in financial over-commitment, and purchasing products that are not suited to their needs. Some vulnerable consumers do not have the capacity to properly comprehend the financial responsibility of a telecommunications contract, or in instances of domestic violence and economic abuse, may be forced into purchasing products for others in their name.

ACCAN has been consulting extensively on this issue with financial counsellors from across Australia. They have reported horrific cases of overselling to vulnerable consumers who have ended up with thousands of dollars of debt to their name and zero capacity to pay it back. A financial counsellor from the Broome Circle community service reported to ACCAN that he was helping 21 clients manage debts amounting to around \$90,000. All of these clients were vulnerable, most were from remote Indigenous communities and had been targeted by sales staff at a Telstra shop in Broome. Most were also on government benefits and were sold contracts that were completely unaffordable, and in some instances could not even receive service where they lived. ACCAN has also spoken to many financial counsellors working across the APY lands in northern South Australia who have reported very similar stories and who have deep concerns about the way sales staff target vulnerability in order to meet sales targets and receive commissions.

These issues are not just specific to vulnerable Indigenous consumers but can affect any consumers facing vulnerability. This can include consumers who are older, are culturally and linguistically diverse, from a low-income background, have a disability, or facing situations of family and domestic violence. These indicators of vulnerability present diverse problems and needs for consumers.

There is a significant need to strengthen the TCP Code to ensure consumer interests are promoted and supported during the sales process. Inherent to this problem are the underlying targets and

incentives given to sales representatives and the way they are trained to sell products. Whilst ACCAN would not expect sales representatives to have a deep understanding of the range of factors that can underpin a consumer’s vulnerability, there is a clear need for these staff to be better trained and supported to identify and/or enquire about a customer’s vulnerability.

It is time to shift greater responsibility onto RSPs for ensuring the products they are selling are suitable for a consumer’s needs and circumstances. At present the Code does not support this outcome and assumes this responsibility lies solely with the consumer. The amendments made to **4.6** do not go nearly far enough to enable this change.

ACCAN wants industry to adopt a more ethical and consumer-oriented approach to sales practices. This requires aligning sales incentives with positive customer outcomes, and puts a greater onus on retailers to enquire about a consumer’s needs and circumstances, to ensure they are selling appropriate products to customers. Post-sale support is also important. Customers need clearer, more frequent and timely information from RSPs to better understand their obligations and problem-solve regarding their contracts. We would like to see the following recommendations adopted:

Recommendation 18: That the following wording be added to paragraph 4.6.1:

‘Sales incentives should promote responsible and ethical selling, that actively takes account of the customer’s requirements. Targets and incentives for staff must be aligned with long-term consumer outcomes, rather than short-term sales.’

Recommendation 19: The following wording should be added to 4.6.2:

‘The supplier must actively take account of customer circumstances and provide information about appropriate products and services, including lower/all cost options.’

Recommendation 20: That a post-sales support paragraph be added as follows:

‘Customer service staff must contact new customers after 3 billing cycles to see if the customer needs further assistance in understanding their obligations¹⁹.’

4.2. Credit Assessment

ACCAN is dissatisfied with industry’s response to our proposals to strengthen the credit assessment process undertaken when a consumer signs up to a post-paid service. We acknowledge that this is a difficult area, but when expensive devices and significant ongoing financial commitment are involved, it is important that this is done sensitively and properly. Stronger requirements should be adopted that allow for a more realistic assessment of the affordability of a product for a consumer and their capacity to pay.

¹⁹ http://accan.org.au/files/Reports/Confident%20Confounded_accessible%20WEB_03.11.16.pdf, p.42.

Currently, the draft Code only includes an explicit obligation for RSPs to check the payment history of existing customers who want to upgrade/add services to their plan. The guidance box that has been added to list what a credit assessment may include holds very little substance given it is unenforceable. In addition, many of the options in the guidance box are irrelevant to a consumer's capacity to pay such as residential status, or how long they have been living at their current address.

Without the requirement of a more rigorous credit assessment too much is left to the discretion of the sales representative. Their priority is likely to be meeting sales targets and getting commission rather than understanding the customer's needs. Requirements should be introduced that allow for a realistic assessment of the suitability (i.e. affordability) of the product for the consumer and their capacity to pay. These measures should include at a minimum checking proof of income and other big-ticket costs such as rent and mortgage, in addition to payment history with the RSP (where applicable).

We would also like to see sales staff better equipped to handle situations where they may think a consumer will be unable to meet the financial obligations of a product. Staff should be empowered to identify, where possible, signs of vulnerability that may impact the consumer's capacity to pay. This, alongside changing the culture of inappropriate, incentive-based selling practices, is an important step in reducing the frequency of telco-related debt, especially for vulnerable consumers. Dealing with debt can be incredibly distressing for consumers especially when they face being chased by debt collectors, and can prohibit them from obtaining credit in the future.

Recommendation 21: Under 6.2.1(a) RSPs must be required to assess the suitability of a post-paid service against a consumer's capacity to pay. This should, at a minimum, include checking a customer's:

- Proof of income
- Proof of housing costs (rent receipt, copy of lease, mortgage repayments).

Suppliers must not supply a service where the credit assessment shows that the customer could not afford payment obligations at all or only without substantial hardship.

4.3. Financial Hardship

Consumer advocates are deeply concerned by financial hardship practices in the telecommunications industry. Given poor selling and credit assessment practices, it is no surprise that many consumers find themselves unable to pay their telecommunications bills and require access to hardship programs. Consumers can find themselves facing either temporary or long-term financial problems that mean they are unable to meet bill deadlines. It has recently been reported that in Australia the default rate on telecommunications bills is higher than any other type of bill²⁰. Consumers facing telecommunications debt are also doing all they can to stay connected, showing how essential these services are to them. This also highlights that, alongside greater protections at point of sale to ensure consumers are being matched appropriately to services, RSPs need to have robust financial hardship policies in place. Financial hardship can arise due to a number of reasons

²⁰ Barrymore, K 2018, 'Growth in telco bill defaults' The Daily Telegraph, June 12

and each case should be treated with fairness and empathy with a resolution appropriate to the consumer's needs and severity of financial hardship.

Financial counsellors report instances of considerable difficulties in their dealings with RSPs in getting fair payment resolutions appropriate to the consumer's needs. They ranked the industry poorly for hardship practices in the Rank the Telco report²¹ with a top score of 4/10, worse than rankings given to banking (6.4/10) energy (5.8/10), water and even debt collection industries. It is unsatisfactory that the telecommunications industry is trailing in this area given other essential service industries have illustrated it is possible to implement better practices.

A notable example can be drawn from the Victorian Energy Retail Code. In 2016 the Victorian Essential Services Commission (ESC) undertook an inquiry into hardship²² after identifying systemic issues with hardship practices in the energy sector. This inquiry was underpinned by the simple fact that energy is an essential service that is vital to the wellbeing of consumers. The result has been the development of the 'payment difficulty framework'²³ to help reduce the debt that can be accumulated from energy services and to prevent consumers being disconnected. This framework is being embedded into the Energy Retail Code to ensure standardised financial hardship practices across the Victorian energy sector.

ACCAN urges the telecommunications industry to consider the findings of this inquiry and the lessons and benchmarks that can be drawn from the payment difficulty framework. Telecommunications, like energy, is an essential service that underpins the wellbeing of most modern consumers. As such, it is time for the industry to put in place stronger protections for consumers who may be at risk of or who are experiencing payment difficulty.

Whilst ACCAN is pleased that the draft Code includes an amended definition of financial hardship and a standalone financial hardship chapter, these measures do not go nearly far enough. The financial hardship chapter is still largely focused on the accessibility of information about financial hardship policies rather than their actual contents. ACCAN would like to see improvements in this area by requiring RSPs to make financial hardship policies available in stores, on bills and in communications with customers, alongside the direct contact details (email, phone number, live chat etc) for financial hardship staff to encourage customers experiencing financial difficulty to make contact early.

The requirements also do not adequately minimise the onerous steps consumers must go through to access a financial hardship program. Industry should consider the approach taken by the Victorian ESC whereby any consumer who misses a payment is automatically placed on a 'very simple payment plan'²⁴. The requirement under **7.2** must be strengthened to create an obligation for all RSPs to offer the same options in their financial hardship policy. The ESC's hardship inquiry for the energy sector was largely driven by the inconsistencies and complexities in the sector's financial hardship arrangements. ACCAN therefore supports an approach that would standardise a baseline for hardship programs across the telecommunications industry.

²¹ FCRC 2017, Rank the Telco, p.5, 12: <http://accan.org.au/files/Grants/Rank%20the%20Telco%20Report.pdf>

²² Essential Services Commission Victoria 2016: <https://www.esc.vic.gov.au/sites/default/files/documents/Energy-Hardship-Inquiry-Final-Report-February-2016-1.pdf>

²³ ESC 2017: <https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-final-decision-20171009.pdf>

²⁴ ESC 2016: <https://www.esc.vic.gov.au/sites/default/files/documents/Energy-Hardship-Inquiry-Final-Report-February-2016-1.pdf>, p.III

The TCP Code should spell out the range of options that a RSP should make available to help customers in financial hardship and stay connected to essential telecommunications services. Options should include those outlined in the TIO guide on customers in financial hardship²⁵ and the FCRC Rank the Telco Report²⁶.

Recommendation 22: The following wording should be added to 7.1.1 Access to policy:

‘In addition, financial hardship policies must be available in stores, on bills and in relevant communications with customers, alongside the direct contact details (email, phone number, live chat etc) for financial hardship staff.’

Recommendation 23: The following should replace 7.2.1(a):

‘a customer in financial hardship should not be denied access to essential telecommunications services, face legal action, be given a credit default listing, or have to pay any debt recovery costs. At a minimum the following must be included in a Financial Hardship policy:

- Late payment fees should be waived for customers in financial hardship; cancellation fees should be waived for customers in serious hardship.
- Flexible payment options including : extensions to payment times; payments to be made in instalments over longer period; incentives for making payments; low cost interim options until the customer can continue with original payments; payment vouchers distributed to clients by financial counsellors.
- Hard caps and shaping.
- Restructuring of customer’s account.
- Transferring the customer to pre-paid services.
- Releasing a customer from their debt in situations where their financial hardship is entrenched.
- When a provider has been found to have used irresponsible sales practices, a customer’s debt should be waived.’

4.4. Accessibility

The current draft includes the following requirement regarding the provision of information by retailers about the accessibility features of the products and services they sell:

4.7.1: Consumers with disabilities: A Supplier must make information available about Telecommunications Products offered by the Supplier designed for Consumers with different disabilities and how the Telecommunications Products operate, including, where the

²⁵ TIO 2017: Assisting and responding to customers in financial hardship: Principles and practices- guide for telecommunications providers: http://www.tio.com.au/_data/assets/pdf_file/0009/169776/TIO_FinancialHardship-Guidelines-2nd-edition-28-April-2017.pdf, p.8

²⁶ FCRC 2017: Rank the Telco: <https://accan.org.au/files/Grants/Rank%20the%20Telco%20Report.pdf>, pp.28-29

Supplier is supplying equipment, any information required to be supplied pursuant to the Information on Accessibility Features for Telephone Equipment Industry Code (C625:2009) and accompanying Guideline (G627:2011).

This paragraph has been amended by replacing the word ‘specifically’ with ‘designed’. ACCAN is not satisfied that this amendment will support the needs of consumers with disability. The amendment does not substantially alter the current obligation as the meaning of ‘specifically for’ and ‘designed for’ is essentially the same. It suggests RSPs will only give information about products made only for the purposes of serving a consumer with a disability (such as a teletypewriter), rather than being a mainstream product that has features that make it suitable for certain disabilities.

Handsets and tablets have a variety of accessibility features that may be suited to people with disability. Consumers rely on such information to choose products that are best for them and offer features that enhance their usability for different disabilities. ACCAN considers the Code should include a requirement that RSPs provide information about the accessibility features of all the products they sell.

Recommendation 24: The word ‘designed’ be replaced with ‘suitable’. 4.7.1 should read:

‘A Supplier must make information available about Telecommunications Products offered by the Supplier *suitable* for Consumers with different disabilities...’ (amendment in italics)

4.5. 3.2.5 Web content accessibility guidelines.

The draft Code has been amended to include the following:

3.2.5: A Supplier must have regard to its web content complying with the most recent version of the Web Content Accessibility Guidelines, developed by the World Wide Web Consortium (W3C)

ACCAN is disappointed that industry will not strengthen this provision to ensure RSPs comply with the *Web Content Accessibility Guidelines*. Without a strengthened obligation to comply with W3C there is little to encourage or enforce RSPs to make their websites accessible to consumers who are blind or vision impaired. Many consumers falling into these categories report that there are few RSPs with websites that meet the accessibility standards set out in W3C.

Recommendation 25: The following amendment should be made to 3.2.5:

‘A supplier must *ensure* its web content complies with...’ (amendment in italics)