

Mr John Stanton
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Via email: Stanton@commsalliance.com.au

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Dear John,

Thank you for your letter requesting input to the Telecommunications Consumer Protection Code Review. Whilst we greatly appreciate the opportunity, the timeframe for doing so means that we can offer preliminary comments on potential work areas. As I mentioned at our recent meeting, ACCAN has sought input to this letter from members of our Standing Advisory Committee on Consumer Affairs which met on May 19.

While ACCAN is committed to work with everyone who has an interest in promoting consumer welfare, we are yet to be convinced that Communications Alliance is the appropriate forum to develop and review consumer codes. Despite recent reductions in the numbers of complaints about communications issues, there remain issues about the ability of the industry to follow the rules it has created, or even to create fair rules that are in the best interests of consumers.

ACCAN will be looking for clear indications from Communications Alliance that this code review will lead to measurable improvements for consumer welfare, and that a genuine partnership opportunity is being offered to consumer groups. We believe a clear vision of success is required for this Code review to deliver outcomes for consumers.

General principles

From its inception, ACCAN has recognised that consumer welfare is best served through vigorous competition in fair and informed markets and where empowered consumers shape supply through the expression of their demand rather than modifying demands to fit whatever is offered. We seek fairness in dealings and swift restitution where things go wrong.

The Code will be successful if it provides strong incentives on industry participants to:

- establish appropriate incentives for complaint reduction
- establishing basic high-level standards for customer care ensure accessible, swift, fair and transparent complaint handling procedures
- require a fair and timely resolution of complaints

- require the provision to consumers of information about supplier performance
- increase awareness of ADR schemes where complaints cannot be resolved

In a recent discussion of the reasonable expectations that a consumer could have of minimum service standards of a telecommunications service ACCAN identified the following which we also see as a benchmark for assessment of consumer codes.

- accurate, timely, comprehensible and relevant service information
- access to a range of services to enable reasonable communications regardless of geographical location
- choice of competing services provided at different levels depending on need and willingness to pay
- comparative information about price, quality, accessibility and availability
- clear and accurate information to enable the safe, economical and efficient use of the service
- information about access to speedy, fair and no cost dispute resolution
- contact information for ADR schemes or enforcement agencies where service failures are of such a magnitude that such action is warranted
- information about the environmental impact of the service and ways to mitigate any adverse impacts
- clear and plain language warnings of any hazards associated with the use of the service
- plain language statement of service provider warranties and statutory rights

Communications Alliance should issue a statement of intent, to ensure all parties are committed to working for agreed goals.

ACCAN suggests that Communications Alliance commit to developing a statement of intent for this project, which stakeholders can sign on to prior to the work formally beginning. This will give Communications Alliance a mandate to begin this work, and all stakeholders will understand what is expected from this code review.

Consumer groups will be looking to this review to bring about fundamental changes to consumer protections, and without industry agreement up front, there would be little to encourage participation in the code review.

We anticipate that a statement of intent might include things such as: an acknowledgement that code changes may require significant changes to industry behaviours and processes (which in turn will have costs associated); that all code rules need to be unambiguously implementable and enforceable; that a “lowest common denominator” approach isn’t acceptable; that the code will require specific measures for the protection of the most vulnerable consumers; the key performance

benchmarks which will apply (such as the reduction in complaints to the TIO to 2007 levels within 2 years).

Process issues

Recognising that Communications Alliance has proposed equal consumer and industry representatives on the Steering Committee, a number of issues remain. Will there be a formal role for regulators and the TIO to provide input to the working groups? Will an asymmetry of influence be avoided if the only equal representation is on the Steering Committee, and not the working groups? How will project management resources be mutually agreed upon and by whom will they be delivered? The development of the current codes was compromised by “independent drafters” who were contracted by Communications Alliance, despite being under instruction of working groups. Issues have arisen where drafting instructions were not followed, or not returned in a marked up form to the committee for sign off. It’s critical for ACCAN to understand how these practical considerations are going to be dealt with.

Language and Accessibility

Despite containing a significant proportion of the consumer protections in the communications industry, the TCPC remains inaccessible to consumers. It is a highly complex, overly long and ponderous document. Unlike the banking industry with its Code of Practice, there is no place a communications consumer can go to ascertain what their rights are and how their supplier has agreed to engage with them. For the very few people who are aware of the TCPC can actually use it effectively to help frame their complaint as a means of understanding their rights as consumers.

A key work item for the review needs to be a plain language document developed to inform consumers of their rights and responsibilities. This will need to directly reflect the revised rules of the TCPC. The banking industry has developed a document that may be a suitable model

Issues Log

We note that an issues log was created as part of the initial code development process, and ask that this be recirculated and activated to inform the review.

Code rules need to be implementable and enforceable

Many code rules have the effect of allowing suppliers to justify their actions rather than reflect an underlying principle. In this review, we’d like the underlying rules to be tested to ensure that they can be implemented, monitored and enforced.

There are examples in the Code of provisions that are unenforceable because there are no requirements to substantiate them. As a result, suppliers implement variable processes that may not be compliant with the intention of the code.

We strongly believe there needs to be a test for enforceability and compliance against operative clauses of the Code.

Compliance reporting and monitoring

A major ongoing problem of the TCP Code has been a lack of public reporting on compliance and monitoring for compliance with the Code. An existing code rule (9.1.8) requires identification of systemic problems and prevention of recurrence, and yet the TIO complaint statistics indicate repeated breaches of code clauses.

The TIO is not an appropriate way to gauge the level of compliance with Code rules, because they require an individual to make a complaint, approach the supplier for resolution, and then finally go to the TIO as an office of last resort. This data cannot capture the number of consumers impacted by rules that are not complied with.

We note that by way of example, that the Telephone Information Service Standards Council monitors the 190 industry for compliance with the code of practice. This ensures that services remain compliant with the code, and consumer complaints as a result are negligible.

An active and ongoing monitoring regime is critical to ensuring a rules based code is workable. The ISO has a suit of standards which bear on the customer service experience.

Definitions issues

We would like to flag that common definitions in the sector may need to be reviewed, for example what constitutes a complaint?.

Get rid of exemptions that appear throughout Code rules

In the same way that fine print in advertising can undermine the key elements of an offer, exemptions contained in the existing TCPC serve to undermine the clear intention of the overall rule. We hope this review offers the opportunity to create a Code that provides clear guidance for suppliers about how they must engage with their customers, without the myriad exemptions that currently riddle the code.

For example instead of carving out numerous examples of when a supplier doesn't need to give a customer information, the key principle needs to be that suppliers must undertake all efforts to provide any information requested by a customer.

Mobile Premium Services

The committee needs to consider whether the Mobile Premium Service Code should be incorporated into the TCPC. Basic underlying consumer protections should be standardised where possible. Whilst more detail has been added to that code

Informed consent

The issue of gaining informed consent has been on ACCAN's agenda since our inception. Whilst much of the Code focuses on information disclosure, we'd like to shift the discussion away from one way disclosure to efforts to obtain informed consent prior to contracting people for supply of a product or service. ACCAN's report into informed consent issues is available [here](#) on our website.

Content issues

We note that content-related issues are presently out of scope of the existing Code. This may require a re-think as the market continues to evolve.

Comprehensibility must be the outcome of 'plain language' requirements

Some of our biggest concerns about the communications industry's behaviour toward their customers are theoretically already covered by the code. For example, the need to communicate in simple, plain language (Clause 3.1) is a general rule and yet consumers are bombarded with complex terms and advertising that ultimately disempower consumers and prevent them making choices in their own best interest. We support the need for plain language, but ultimately this requirement needs to be more directly linked with the outcome of comprehensibility.

Complaints handling

A comprehensive review of complaint handling and customer service issues will be necessary. This will no doubt need to tie in with ACMA's formal inquiry into customer service, the details of which are yet to emerge.

Consumer groups have suggested that a customer service standard, which would be a regulatory rather than self-regulatory instrument, may be more appropriate given the huge numbers of complaint issues.

Compensation

ACCAN has previously identified compensation for customers as a mechanism for improving incentives for better conduct and for the relationships between customers and their service providers. This needs to be considered in the TCP review.

Fairness

We recognise that the code has a prohibition on unfair contract terms, but there is no overall requirement of fairness. This would be a welcome inclusion to the code.

Credit management and financial hardship

Financial counselling agencies need to be consulted on the adequacy of credit management and hardship policies in order to assess their effectiveness.

Billing

We expect that billing issues will need to be significantly re-thought, given the prevalence of deals that offer discounts. Feedback we have received suggests that bills that reflect caps are nearly incomprehensible. Standards Australia has convened a stakeholder meeting to consider the ISO Utility Billing Standard; this may provide useful guidance to the sector

Hidden fees and charges

The proliferation of fees and charges beyond the headline offer is out of control in this industry. We want to see the end of a range of non-cost based fees that consumers are experiencing, such as late fees, paper bill fees, and account keeping fees.

Customer nominated hard caps must be required

The communications sector needs tools for preventing bill shock. It is time to ensure customer nominated hard caps become part of the framework and deal with this issue. More generally, credit control tools need to be more reliable and 'real time' than they presently are.

Priority areas

ACCAN is in the process of undertaking a member survey. One of the questions we have asked our members is how important customer service and complaint handling is compared with other issues that correspond with the existing code chapters, such as contracts, the prices terms and conditions, and so on. We aim to provide Communications Alliance with the priorities nominated by our members to assist in determining which chapters should be reviewed as a priority.

Yours sincerely,



Allan Asher
Chief Executive
Australian Communications Consumer Action Network