

10 March 2022

ACMA file reference: ED22/21760

Dear Mr Stanton

Public Submission - Draft Reducing Scam Calls and Scam SMS Industry Code

The Australian Communications and Media Authority (ACMA) is pleased to see industry moving forward with proposed new protections against scam short messages (SMS) to complement existing measures to reduce scam calls.

While it is promising that telcos report blocking over 357 million scam calls in the first year of the Reducing Scam Calls industry code (RSC code) being in force, more needs to be done to combat scam activity, including scam SMS.

Recent ACMA consumer experience research shows that scam calls are the most common type of unwanted communication received by Australians. Nearly 9 out of 10 Australians reported that they had a scam call in the 6 months before our survey (with 40% receiving scam calls at least weekly), and 7 out of 10 are negatively impacted by unsolicited SMS. The full research can be found here:

<https://www.acma.gov.au/articles/2022-01/research-reveals-australians-want-more-control-over-how-their-information-used-marketing>

We are also aware that data from the Australian Competition and Consumer Commission indicates from 2020 to 2021 reports of phone scams increased 40% (103,153 to 144,601) and associated reported losses increased by 108% (\$48,223,415 to \$100,281,113). In the same period, reports of scam SMS increased 107% (32,337 to 67,180) and associated reported losses by 226% (\$3,091,790 to \$10,099,886).

While I cannot pre-empt any decision on code registration that may be taken by the Authority upon application from Communications Alliance Ltd, I want to flag matters arising from our initial consideration of the draft Reducing Scam Calls and Scam SMS industry code (the draft code). These matters are informed by our experience monitoring compliance with, and enforcing, the RSC Code.

Monitoring for scam calls

Many of the measures set out in the draft code rely on the effectiveness of carrier/carriage service providers' (C/CSPs) monitoring processes.

Monitoring obligations could be strengthened by including similar requirements as found in other industry codes (such as [C564:2020 Mobile Phone Base Station Deployment industry code](#)) so that a C/CSP must have written procedures to monitor their network for scam calls and scam SMS and must comply with those procedures.

Reducing ambiguity of obligations

Numerous clauses in the code are potentially difficult to enforce due to the use of terms and phrases such as “may”, “should” or “are responsible for”.

Without a clear obligation to act, the enforceability and therefore the effectiveness of the code is compromised. We draw CA’s attention to clauses 4.2.6, 4.6.3, 4.6.4, 4.6.6, 5.6.1, 5.6.1(a), 5.6.1(b) and 5.6.2 in this respect.

Use of contractual arrangements

Clauses 4.8.1 and 5.8.1 of the code place obligations on C/CSPs to use *all available contractual arrangements* with International Operators to secure assistance in stopping further scam calls entering Australia. Not only is this limited to available arrangements, but there is also no equivalent provision for contractual arrangements between Australian C/CSPs.

We are aware that some telcos have amended contractual arrangements with Australian-based wholesale customers and resellers to include specific obligations to address scam call activity.

Placing an obligation to develop contractual measures in all applicable commercial arrangements and extending these measures to arrangements with Australian providers would strengthen the effectiveness of traceback and blocking mechanisms within Australia. Supporting references in the associated guideline should be revised accordingly.

Timeframes for taking certain actions

The existing code and proposed revised code are both accompanied by a confidential guideline with indicative timing for certain code provisions.

To aid clarity about the obligations and enforceability of the provisions, these timeframes should be elevated to the revised code. For example, in relation to code clause 4.2.12, the guideline states: ‘The provision of information to the ACMA is to occur within 7 Business Days’.

While acknowledging that publishing timeframes could provide detail to bad actors, elevating most timeframes to the code would clarify expectations about how telcos are to respond against scam calls and SMSs.

Other matters

We suggest including an explanatory statement (similar to that in the [C555:2020 Integrated Public Number Database](#) industry code) that includes how the code builds on the current regulatory arrangements, what the code accomplishes, how the code objectives are met and a cost/benefit summary. The code would also benefit from clarification that the new code supersedes the existing RSC code.

We suggest deleting clause 1.3.5 as the *Spam Act 2003* covers commercial electronic messages and clause 1.1.4 already states the draft code should be read in conjunction with related legislation, including the *Spam Act 2003*.

We note the cross-referenced clauses at 5.2.5 and 5.2.6 appear to be incorrect and suggest clarification of the cross reference made at 5.2.8 that refers to both Alphanumeric Sender IDs and scam SMSs.

The ACMA also has concerns about whether either of the options canvassed at clause 4.2.1 (e) would deliver outcomes consistent with the intended regulatory objectives. We have provided separate feedback on this point.

Yours sincerely

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