

**COMMUNICATIONS  
ALLIANCE LTD**



## Communications Alliance Submission

to Treasury  
in response to the  
**Consultation Paper**

### ***Unfair trading practices***

***Consultation on the design of proposed general and specific prohibitions***

13 December 2024

## About Communications Alliance

[Communications Alliance](#) is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

*Note: As other industry groups represent the digital platforms sector, CA's digital platform members did not participate in the development of this submission.*

For questions on this submission, please contact Christiane Gillespie-Jones ([c.gillespiejones@commsalliance.com.au](mailto:c.gillespiejones@commsalliance.com.au)).

## 1. Overarching comments

- 1.1. We welcome the opportunity to make a submission on Treasury's paper *Unfair trading practices, Consultation on the design of proposed general and specific prohibitions*.
- 1.2. Communications Alliance (CA) understands the basis for the Australian Government's intention to introduce a general economy-wide prohibition on unfair trading practices as well as several specific prohibitions into the *Australian Consumer Law (ACL)*.
- 1.3. However, while these new measures may address gaps in consumer protection in other sectors of the economy, we believe they do not add meaningfully to the protections of the telecommunications sector.
- 1.4. The proposals have the potential to significantly overlap or, worse, conflict with existing (and already proposed) provisions in the (revised) *Telecommunications Consumer Protections (TCP) Code*<sup>1</sup> and other sector-specific regulation.
- 1.5. In particular, the TCP Code contains detailed requirements for carriage service providers (CSPs) including on issues such as:
  - Responsible selling, pre-sale information, advertising, sales, contracts, and credit assessments
  - Customer service and support
  - Account support
  - Credit management, debt management and disconnection
- 1.6. The TCP Code is complemented by a number of related consumer protection regulations, including a mandatory standard on complaint handling.
- 1.7. Breaches of the TCP Code – and of any other sector-specific regulation – are subject to enforcement action by the sector regulator, the Australian Communications and Media Authority (ACMA).<sup>2</sup>
- 1.8. We would welcome an ongoing dialogue with Treasury and other relevant stakeholders to ensure achieve the desired outcome, are appropriately targeted, avoid duplication and are consistent with other legislative and regulatory requirements, including sector-specific requirements in the telecommunications sector.

## 2. Consistency of sector-specific regulation and new general and specific prohibitions.

- 2.1. We note that we sought Australian Competition and Consumer Commission (ACCC) (and consumer group) input during the current revision of the TCP Code. Anticipated changes in the legislation around unfair trading practices, ACMA and consumer feedback, and our sector's desire to enhance sales practices have resulted in, so we believe, a substantial uplift of consumer protections, particularly in the areas of responsible sales practices, including for vulnerable consumers.
- 2.2. In addition to the TCP Code, there are several further regulatory instruments that protect consumers in contexts in which the new general and specific prohibitions would also have potential application or interaction. These include the:
  - *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*;<sup>3</sup>

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<sup>1</sup> [Communications Alliance - C628:2019 Telecommunications Consumer Protections \(TCP\) Code](#)

<sup>2</sup> [Telecommunications Consumer Protections Code | ACMA](#)

<sup>3</sup> <https://www.legislation.gov.au/Series/F2018L00727>

- *Telecommunications (Financial Hardship) Industry Standard 2024*;<sup>4</sup>
  - *Telecommunications (Customer Service Guarantee) Standard 2023*;<sup>5</sup> and
  - *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022*.<sup>6</sup>
- 2.3. Consequently, it will be key to ensure that the proposed general and specific prohibitions are consistent with those and other existing (and anticipated) regulatory obligation as they apply to CSPs.
- 2.4. We propose that compliance with a registered industry-specific code or standard should confer a 'safe harbour' for the business in respect of application of (at least) the new prohibitions to the same conduct by the business. This could be by way of a rebuttable presumption that compliance with a registered code or standard will not breach the general or specific prohibitions of the ACL and that action by the ACCC be stayed until the enforcement mechanism for the relevant sector-specific regulation has concluded, or by way of an exemption from specific prohibitions, as proposed in Focus Question 18 of the Consultation Paper.
- 2.5. To ensure that the scope and application of existing telecommunications-specific regulation be fully understood by Treasury, CA would welcome an opportunity to discuss with Treasury the design considerations for the proposals put forward in the Consultation Paper, with view to minimising unnecessary layering of regulation and ensuring consumer protection obligations and their enforcement path are clear.

### 3. Specific concerns

#### Flexibility of regulation

- 3.1. The ACCC submission to Treasury's initial consultation process<sup>7</sup> referred to industry codes as being "*rigid ex-post regulation*", which, so it contended, is unable to keep up sufficiently with evolving commercial practices.<sup>8</sup> CA does not believe this is a fair characterisation of the TCP Code, which has undergone regular updates since its inception and includes numerous ex-ante consumer protection measures.
- 3.2. It is difficult to identify any obvious gap in the telecommunications sector-specific regulation in relation to the prevention of unfair trade practices which the new general prohibition seeks to address but that are not already covered by the ACL (e.g. misleading and deceptive conduct), the TCP Code, and/or other ACMA-enforced industry regulation.
- 3.3. As detailed in a member's submission to the initial Treasury consultation, the cases involving misconduct by foreign telecommunications companies cited by Treasury would already be in breach of the ACL and/or the TCP Code in Australia.<sup>9</sup> Accordingly, we believe that Treasury ought to design the new general and specific prohibitions with view to enabling the ongoing efficacy of these existing regulations while avoiding inconsistencies, duplication and 'double jeopardy'.

#### General prohibition

<sup>4</sup> <https://www.legislation.gov.au/F2024L00133/asmade/text>

<sup>5</sup> <https://www.legislation.gov.au/F2023L01140/latest/text>

<sup>6</sup> <https://www.legislation.gov.au/F2022L00548/latest/text>

<sup>7</sup> <https://treasury.gov.au/consultation/c2023-430458>

<sup>8</sup> ACCC, Unfair trading practices Consultation Regulation Impact Statement – ACCC submission to Treasury, November 2023, p7.

<sup>9</sup> Telstra, Submission to Treasury - 'Protecting consumers from unfair trading practices' – Consultation Regulation Impact Statement, November 2023, Appendix A: *International telco industry examples cited by Treasury are fully addressed by existing Australian consumer protection law.*

- 3.4. In response to Focus Question 4, CA supports the general prohibition being targeted at business conduct which is 'unreasonable'.
- 3.5. CA disagrees with a general prohibition that duplicates the requirement in the unfair contract terms provision in subsections 24(1)(b) and 24(4) of the ACL, which would rebuttably presume that a particular conduct was not in a business's legitimate interest unless the business proves that in fact it was.
- 3.6. The different types of business conduct that might be tested against the general prohibition will not have the defined form that is typical of a written contractual term. Consequently, there is a significant risk that a reversal of onus as proposed would chill legitimate business conduct in the marketing and supply of products and services to consumers – arguably a counter-productive outcome. If the new general prohibition wants to give express consideration to the legitimate interest of the business, this should be a factor in the considerations whether the business's conduct was 'unreasonable', rather than a separate limb with a reversal of onus.

### **'Grey list'**

- 3.7. In response to Focus Question 6, CA does not consider that the proposed 'grey list' would provide additional benefit to consumers in the telecommunications sector. This is because the behaviours listed focus on ensuring consumers are given clear and relevant information and can exercise their rights readily – issues already comprehensively being dealt with in the TCP Code and other sector-specific regulation.
- 3.8. The only proposed 'grey list' provision that is not already expressly covered in telecommunications sector-specific regulation relates to the use of design elements in online consumer interfaces, so-called dark-patterns. In CA's view such behaviour ought to be caught by the general prohibition as currently proposed (if not already interpreted to be caught by existing TCP Code provisions and/or the ACL).
- 3.9. Consequently, the 'grey list' conduct should rather – to the extent that it is informative rather than mandatory – be the subject of ACCC guidance, which would develop over time as Courts determine cases brought under the general prohibition.
- 3.10. Annexure 1 details a mapping of the proposed 'grey list' item to currently existing requirements for the telecommunications sector. In this context, it is important to note that the TCP Code is currently being revised, with the proposed revised version containing substantial additional safeguards, particularly (but not limited to) around responsible selling practices.

### **Subscriptions-related practices**

- 3.11. The Consultation Paper contemplates the introduction of specific prohibitions, including around subscriptions-related practices.
- 3.12. We are not aware of any practices, or complaints for that matter, that specifically relate to subscriptions in the telecommunications sector.
- 3.13. We highlight that the term 'subscriptions' is broad and encompasses a variety of different recurring payments, many of which, so we believe, would not be suitable for some or all of the proposed requirements.
- 3.14. The TCP Code contains a number of requirements that aim at extensive information provision prior to a customer entering into a contract, during a contractual arrangement (including in relation to direct debits and billing) and with respect to contract termination.

- 3.15. We would welcome further discussions with Treasury to better understand the issues that the proposals seek to address and the actual or perceived gaps in regulation in the telecommunications sector.

## Annexure 1

Mapping of Grey List Behaviours and Dark Patterns against Existing Telecommunications Regulation

**Note: the Telecommunications Consumer Protections Code is currently being revised with the proposed revised version containing substantial additional safeguards, particularly (but not limited to) around responsible selling practices.**

## 'Grey list' behaviours

GREY LIST BEHAVIOUR	TELECOMMUNICATIONS CONSUMER PROTECTION CODE 2019	TELECOMMUNICATIONS (FINANCIAL HARDSHIP) INDUSTRY STANDARD 2024	TELECOMMUNICATIONS (CONSUMER COMPLAINTS HANDLING) INDUSTRY STANDARD 2018	TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) STANDARD 2023	TELECOMMUNICATIONS SERVICE PROVIDER (INTERNATIONAL MOBILE ROAMING) DETERMINATION 2019	COMMENTS
The omission of material information (p 14-15 of the <a href="#">Consultation Paper</a> )	<p style="text-align: center;">✓</p> <p><b>Information for Consumers</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 3.2</b> – requires that any information made available to Consumers is free of material omissions.</li> </ul> <p><b>Advertising, sales contracts and customer service</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 4.1.1</b> – requires a Supplier to <b>include</b> any important conditions, limitations, qualifications or Restrictions about an Offer in its Advertising of the Offer.</li> <li>▪ <b>cl 4.2</b> – a Supplier must provide a critical information summary (<b>CIS</b>) that includes key information about the offer, such as minimum monthly charges, maximum charges, early termination fees</li> </ul>	<p style="text-align: center;">✓</p> <p>Sections 9-12 of the Standard set out minimum content requirements which ensure that all material information is disclosed to consumers who may be experiencing financial hardship, for example:</p> <ul style="list-style-type: none"> <li>▪ <b>s 9</b> - requires the payment assistance policy to set out processes for assisting financial hardship customers, and how customers can make an application.</li> <li>▪ <b>s 10</b> - requires certain information to be provided regarding the process for making a payment assistance application.</li> <li>▪ <b>s 11</b> - requires disclosure of certain</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 8</b> - requires each potential step in process for managing a complaint.</li> <li>▪ <b>s 10</b> - sets out what information that must be included in a CSP's complaints handling process including escalation/prioritisation processes and dispute resolution process.</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 9(1)</b> - requires a carriage provider, as soon as practicable after connecting a customer to a CSG service to give written information about applicable performance standards and the obligations of the provider under those standards.</li> <li>▪ <b>s 9(2)</b> requires the same information to be given, at least once every 2 years.</li> <li>▪ <b>s 9(3)</b> requires a CSP to inform a consumer when it is relying on an exemption from performance standards when making arrangements.</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 7(6)</b> – when a charge may be imposed for accessing a message or notification using a preferred method of communication, a CSP must inform a customer that a charge may apply to that method of communication.</li> <li>▪ <b>s 8(2)</b> – requires a CSP to <b>message</b> a customer when they have activated IMR and informing them of certain prescribed matters including that their device has been activated overseas, there might be delays in receiving usage data and alerts, higher charges might apply, maximum charge information and how the customer can</li> </ul>	<p>The Telecommunications Consumer Protection Code (<b>TCP Code</b>) and multiple Telecommunications Standards (<b>Standards</b>) contain extensive prescriptive requirements about what information must be disclosed to consumers prior to entering into any contract, and for the duration of the relationship between the parties.</p> <p>Additionally, there is already a general obligation in the TCP Code that any information made available to consumers is 'free of material omissions'.</p> <p>A failure to disclose 'material information' many already result in a breach of the TCP Code and Standards.</p>

GREY LIST BEHAVIOUR	<u>TELECOMMUNICATIONS CONSUMER PROTECTION CODE 2019</u>	<u>TELECOMMUNICATIONS (FINANCIAL HARDSHIP) INDUSTRY STANDARD 2024</u>	<u>TELECOMMUNICATIONS (CONSUMER COMPLAINTS HANDLING) INDUSTRY STANDARD 2018</u>	<u>TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) STANDARD 2023</u>	<u>TELECOMMUNICATIONS SERVICE PROVIDER (INTERNATIONAL MOBILE ROAMING) DETERMINATION 2019</u>	COMMENTS
	<p>and other relevant details.</p> <ul style="list-style-type: none"> <li>▪ <b>cl 4.3</b> – a Supplier must make an extensive list of other information, not covered in the CIS available, e.g. the products description, manufacturer and information to allow the consumer to estimate what capacity they may need on a Telco product to meet their usage requirements.</li> </ul> <p><b>Billing</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 5.1</b> - a Supplier must ensure that information is available to Consumers about its charges and discounts, various Bill Media, any Billing Options, and processes to assist Customers who are experiencing difficulties paying their Bills.</li> </ul> <p><b>Financial Hardship</b> [Note: this section is intended to be replaced by the Financial Hardship Industry Standard]</p>	<p>information concerning the assessment of financial hardship assistance applications.</p> <ul style="list-style-type: none"> <li>▪ <b>s 12</b> - requires provision of information about seeking a review of a complaint, including through external dispute resolution.</li> <li>▪ <b>s 20</b> – requires that where a customer has agreed to an arrangement for financial hardship assistance, certain information must be given by the provider, including details of the arrangement and the customer’s rights and obligations under the arrangement.</li> </ul>		<ul style="list-style-type: none"> <li>▪ <b>s 10(3)</b> – when a CSP is informing a customer about the functionality and terms and conditions of supply of an alternative service, it must provide certain prescribed pieces of information (e.g. charges payable, connection timeframes).</li> </ul>	<p>decline the continuing supply of IMR service.</p> <ul style="list-style-type: none"> <li>▪ <b>s 9(2)(a)</b> – requires that a mobile network operator that supplies carriage service to another CSP sends a customer an SMS warning about the activation of the IMR service.</li> <li>▪ <b>s 13(1)(a)</b> – requires a CSP that supplies an IMR service to, before entering into a contract with that customer for the supply of IMR, inform that customer of the spend management tools.</li> </ul>	



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	<ul style="list-style-type: none"> <li>▪ <b>cl 7.1</b> - a Supplier must ensure that its Financial Hardship policy is readily accessible on the Supplier's website and provide contact details for discussing the policy.</li> <li>▪ <b>cl 7.4</b> – a Supplier must inform the Customer or former Customer of their rights and obligations under the Financial Hardship arrangement.</li> </ul> <p><b>Changing Suppliers</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 9.5</b> – where a consumer is transferring Suppliers of their Telecommunications Service, they must be kept informed of the timing, and any changes in process or date of completion of the transfer.</li> </ul>					
The provision of material information to a consumer in an unclear, unintelligible, ambiguous or untimely manner,	<p style="text-align: center;">✓</p> <p><b>Language</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 3.1.1</b> – a Supplier must communicate with Consumers in plain language.</li> </ul> <p><b>Information for consumers</b></p>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 8(1)(b)</b> – requires that a payment assistance policy be clear and use plain language.</li> <li>▪ <b>s 8(1)(c)</b> – requires that a payment assistance</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 8(1)(e)</b> - requires that a complaints handling process is easy to understand and use.</li> <li>▪ <b>s 10</b> - requires that a CSP's complaints handling process describe the internal</li> </ul>		<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 8(2)</b> - requires a CSP to message a customer when they have activated IMR within 10 minutes of that activation (i.e. in a timely manner).</li> </ul>	The TCP Code and Standards contain requirements that information is presented to consumers in a manner that is clear, transparent, accurate, easy to understand and timely.

GREY LIST BEHAVIOUR	<u>TELECOMMUNICATIONS CONSUMER PROTECTION CODE 2019</u>	<u>TELECOMMUNICATIONS (FINANCIAL HARDSHIP) INDUSTRY STANDARD 2024</u>	<u>TELECOMMUNICATIONS (CONSUMER COMPLAINTS HANDLING) INDUSTRY STANDARD 2018</u>	<u>TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) STANDARD 2023</u>	<u>TELECOMMUNICATIONS SERVICE PROVIDER (INTERNATIONAL MOBILE ROAMING) DETERMINATION 2019</u>	COMMENTS
<p>including the provision of information in a manner that overwhelms, or is likely to overwhelm, a consumer (p 15 of the <a href="#">Consultation Paper</a>)</p>	<ul style="list-style-type: none"> <li>▪ <b>cl 3.2</b> – requires that any information provided or made available to consumers is clear, accurate, relevant, current, readily available and, in cases where information is provided, timely.</li> </ul> <p><b>Advertising, sales contracts and customer service</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 4.1.2</b> – proscribes certain forms of advertising, e.g. restrictions on the use of the terms 'unlimited', 'free' and 'no exceptions'.</li> <li>▪ <b>cl 4.1.3</b> – Supplier must provide a level of detail in its Advertising appropriate to the manner in which the Advertising is displayed to consumers.</li> <li>▪ <b>cl 4.1.7</b> – a Supplier must ensure disclaimers are clear and understandable, having regard to the type of Advertising. Guidance directs consumers to design Advertising as clearly as possible to minimise</li> </ul>	<p>policy be easy to understand and use.</p> <ul style="list-style-type: none"> <li>▪ <b>s 8(1)(d)</b> – requires that a payment assistance policy be accurate and up to date.</li> <li>▪ <b>s 8(1)(e)</b> – requires that a payment assistance policy uses a font that is clear and easy to read.</li> <li>▪ <b>s 8(1)(f)</b> – requires that a payment assistance policy be in an accessible format.</li> <li>▪ <b>s 13(a)</b> – requires that a payment assistance policy summary be a maximum of 500 words in length and in a font style and size that is easy to read.</li> </ul>	<p>prioritisation and escalation process in a manner that is clear, plain and transparent.</p>		<ul style="list-style-type: none"> <li>▪ <b>s 9(2)(a)</b> - requires that a mobile network operator that supplies carriage service to another CSP sends a customer an SMS warning with prescribed wording within 10 minutes of IMR being activated.</li> <li>▪ <b>s 10(2)</b> - requires that a CSP who operates a mobile virtual network to inform a customer using an IMR service overseas of the applicable maximum charge, and the method through which they can decline the continued supply of IMR within 10 minutes of being informed that that customer has activated IMR.</li> <li>▪ <b>s 11(2)</b> - requires that a CSP provides applicable maximum charge information to a customer who has requested it within 24 hours of that request (going to the timeliness of such information).</li> </ul>	<p>The provision of information in an unintelligible, ambiguous, untimely or overwhelming manner would likely already result in a breach of either the TCP Code or Standards.</p>

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	<p>the need for disclaimers and possible confusion.</p> <ul style="list-style-type: none"> <li>▪ <b>cl 4.5.1</b> – a Supplier must ensure its Sales Representative promotes products in a fair, transparent, responsible and accurate manner, and clearly explains key terms, conditions and costs.</li> </ul> <p><b>Billing</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 5.4</b> – in most circumstances, Suppliers must issue a Bill to a Customer within 10 Working Days after closure of the Billing period.</li> </ul> <p><b>Financial Hardship</b> <i>[Note: this section is intended to be replaced by the Financial Hardship Industry Standard]</i></p> <ul style="list-style-type: none"> <li>▪ <b>cl 7.4.4</b> – when making an information request to assess a Customer's eligibility under a Financial Hardship policy, a Supplier must make attempts to ascertain whether the Customer has</li> </ul>					

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	understood the information contained in the request.					
Impeding the ability of a consumer to exercise their contractual or other legal rights (p 15 of the <a href="#">Consultation Paper</a> )	<p style="text-align: center;">✓</p> <p><b>Billing</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 5.2.7</b> – a Supplier which provides access to its Billing Enquiry Point by telephone must provide such access at Unlimited Call rates, unless otherwise agreed with customer.</li> <li>▪ <b>cl 5.2.8</b> – a Supplier must offer information about a Bill via at least one method that doesn't involve charges being imposed.</li> </ul> <p><b>Credit and debt management</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 6.8.1</b> – following a customers' request, a Supplier must review any decision to restrict, suspend or disconnect the Telecommunications Service and inform the Customer of the outcome of that review.</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 8(1)(g)</b> – requires that a payment assistance policy be clearly available (via hyperlink or summary) on the provider's website and (if relevant) app.</li> <li>▪ <b>s 9(d)</b> – requires that a payment assistance policy state that customers have a right to apply for financial hardship assistance.</li> <li>▪ <b>s 9(e)</b> – requires that a payment assistance policy is free of charge for customers to use.</li> <li>▪ <b>s 12(a)</b> – requires that a payment assistance policy include information about how a customer can complain to the provider about or seek review of a decision by the provider to provide (or not provide) financial assistance.</li> <li>▪ <b>s 12(b)</b> – requires that a payment assistance policy sets out how the</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 7(1)</b> - requires a CSP to establish and implement a consumer complaints handling process that meets prescribed minimum requirements.</li> <li>▪ <b>s 8(1)</b> - requires that a complaints handling process must state that consumers have a right to make a complaint, and set out consumers can make a complaint.</li> <li>▪ <b>s 13</b> - imposes a number of obligations on a CSP to encourage the making of complaints, for example a CSP must use best efforts to resolve a complaint on first contact.</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 9(1)</b> - requires a carriage provider, as soon as practicable after connecting a customer to a CSG service to give written information about the customer's entitlement to damages under the <i>Telecommunications Act</i> for breach of a performance standard.</li> <li>▪ <b>s 9(2)</b> - requires the same <b>information</b> to be communicated to the consumer at least once every 2 years.</li> </ul>	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ <b>s 7(5)</b> – requires a CSP action any requests from consumers to change their preferred method of communication for receiving notifications about an IMR service as soon as possible.</li> <li>▪ <b>s 8(2)(c)</b> - requires a CSP to message a customer when they have activated international mobile how they can decline the continuing supply of IMR service.</li> <li>▪ <b>ss 8(6) &amp; 9(6)</b> – a CSP must not charge a fee for sending a message regarding containing information about their supply of an IMR, including a warning SMS about the activation of mobile data overseas.</li> <li>▪ <b>s 12(1)</b> – requires a CSP to make available at least one method through which a</li> </ul>	The TCP Code and Standards impose prescriptive requirements on information that must be provided to consumers about their contractual and legal rights.  Consumers must be advised of available complaint pathways and the applicable processes for making a complaint. Under the Code and Standards there is very limited (if any) scope for a supplier or CSP to engage in conduct that 'dissuades a consumer from exercising their legal rights' (in the manner contemplated by the proposed prohibition) without contravening their existing obligations.

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	<ul style="list-style-type: none"> <li>▪ <b>cl 6.8.2</b> – following a review under cl 6.8.1, if the Customer remains dissatisfied of the outcome of the review, they must be advised of how they can make a complaint.</li> <li>▪ <b>cl 6.10</b> – a Supplier must have an internal dispute resolution process for all debt collection activities.</li> </ul> <p><b>Financial Hardship</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 7.4.7</b> – a Supplier must not <b>charge</b> for an assessment of financial hardship.</li> <li>▪ <b>cl 7.5</b> – a Supplier must inform a Customer of their rights and obligations under a Financial Hardship arrangement and a Credit Management arrangement and other matters such as the duration of the arrangement and date or review of the arrangement.</li> </ul>	<p>customer can complain to the Telecommunications Industry Ombudsman for external dispute resolution regarding a decision to provide (or not provide) financial assistance.</p> <ul style="list-style-type: none"> <li>▪ <b>s 20(b)</b> – requires that a customer who has agreed to a financial hardship assistance arrangement receives written information about their rights and obligations under the arrangement.</li> </ul>			<p>customer can decline the continued supply of IMR at any time.</p>	

## 'Dark pattern' behaviours

GREY LIST BEHAVIOUR / SPECIFIC PROHIBITION	TELECOMMUNICATIONS CONSUMER PROTECTION CODE 2019	TELECOMMUNICATIONS (FINANCIAL HARDSHIP) INDUSTRY STANDARD 2024	TELECOMMUNICATIONS (CONSUMER COMPLAINTS HANDLING) INDUSTRY STANDARD 2018	TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) STANDARD 2023	TELECOMMUNICATIONS SERVICE PROVIDER (INTERNATIONAL MOBILE ROAMING) DETERMINATION 2019	COMMENTS
'Dark patterns' (p 15 of the <a href="#">Consultation Paper</a> )	The TCP Code contains clauses governing sales tactics in relation to in person sales representatives. The Code or Standards do not regulate the use of 'dark practices' as defined by the OECD, and UTP consultation paper.					
Subscription traps (pp 19-21 of the <a href="#">Consultation Paper</a> )	<p style="text-align: center;">✓</p> <p><b>General rules</b></p> <ul style="list-style-type: none"> <li>cl 3.2 - doesn't explicitly deal with subscription traps, the requirement that any information provided or made available is 'clear, accurate and free of material omissions' would require the disclosure of any 'subscription traps'.</li> </ul> <p><b>Advertising, sales, contracts and customer service</b></p> <ul style="list-style-type: none"> <li>cl 4.1.1 - a Supplier must <b>include</b> any important conditions, limitations, qualifications or restrictions about an offer would also</li> </ul>					The TCP Code requires that information is provided to consumers without material omissions and subject to any important limitations, qualifications or restrictions. This would require a Supplier to disclose, for example, if a subscription will automatically roll over from a free trial or promotional period to a paid or full price subscription. Furthermore, the TCP Code requires that a customer must be able to readily cancel a periodic payment. This means that any practice which makes it difficult for a consumer to cancel any contract would already contravene the TCP Code.

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	<p>require the disclosure of any 'subscription traps'.</p> <p><b>Billing</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 5.7.1(e)</b> – a Supplier must ensure that a Customer can readily cancel a Direct Debit (a periodic payment that is automatically deducted by a Supplier from a Customer's nominated financial institution account), by providing a simple mechanism (e.g., email).</li> </ul>					<p>Note that neither the Code nor Standards explicitly contemplate 'subscription traps'.</p>
<p>Drip pricing (pp 21-22 of the <a href="#">Consultation Paper</a>)</p>	<p style="text-align: center;">✓</p> <p>There are a number of provisions in the Code which promote pricing transparency (see especially <b>cl 4.1.2</b>, which proscribes certain forms of advertising, e.g. restrictions on the use of the terms 'unlimited', 'free' and 'no exceptions'), however there is no specific prohibition on drip pricing.</p>				<p style="text-align: center;">✓</p> <p>This determination does require the disclosure of maximum charge information applicable to IMR services as well as limiting the price for which customers can be charged for communicating with their CSP (using IMR), which is similar to a prohibition on drip pricing.</p>	<p>There are a number of provisions in the Code (e.g., cl 4.1.2) and Standards (see s 11 of the IMR Determination) which promote pricing transparency, although note that there is no explicit prohibition on drip pricing. Note also that drip pricing (e.g., adding on additional fees throughout the transaction process) is not a practice which has emerged in the telecommunications industry.</p>

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Dynamic pricing (p 22 of the <a href="#">Consultation Paper</a> )	✓ As above, there are a number of provisions in the Code which promote pricing transparency (see especially <b>cl 4.1.2</b> ), however there is no specific prohibition on dynamic pricing.					Dynamic pricing is also not explicitly separately prohibited under the Code or Standards, although, like drip pricing, could nevertheless contravene the obligation in the TCP Code to provide transparent information to consumers.  As above, we note that dynamic pricing is not an established practice in the telecommunications industry.
Online account requirements (pp 22-23 of the <a href="#">Consultation Paper</a> )	There are no provisions of the Code or Standards which explicitly prevent a Supplier or CSP from requiring consumers to set up an online account.					
Barriers to accessing customer support (p 23 of the <a href="#">Consultation Paper</a> )	✓ <b>Advertising, sales, contracts and customer service</b> ▪ <b>cl 4.3(f)</b> – Suppliers must make available the details of any post-sales support and any fees or charges for such support. ▪ <b>cl 4.5.1(e)</b> – Suppliers must monitor Complaints about the sales conduct of the Supplier's Sales	✓ ▪ <b>s 8(1)(f)</b> – requires a payment assistance policy be in an accessible format (including accessibility to customers with disabilities, from culturally or linguistically diverse backgrounds or with other special needs). ▪ <b>s 8(1)(g)</b> - requires that a payment assistance	✓ ▪ <b>s 8(1)</b> - sets out a number of requirements for intended to make a CSP's complaints handling process accessible, including that it is: (a) in writing (b) publicly available (c) made available on request		✓ ▪ <b>s 7(1)</b> - requires a CSP that supplies an IMR service to offer SMS and at least one other method of communication as a customer's preferred method of communication for receiving notifications about this service. ▪ <b>s 12(1)</b> - requires a CSP to make at least one	The elimination of barriers to accessing customer support is already a focus under the TCP Code and Standards.  The details of available complaints mechanisms and support services must be made available.  Additional obligations such as requiring complaints to be resolved as soon as possible, without charge and for complaints to be



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	<p>Representatives and take steps to address emerging or systemic deficiencies in the sales conduct.</p> <ul style="list-style-type: none"> <li>▪ <b>cl 4.7</b> – a Supplier must ensure enquiries by Customers are dealt with in a timely and effective manner, including by informing them how to contact the Supplier about Customer Service enquiries, monitoring average wait times and understand how enquiries are not resolved at first contact.</li> </ul> <p><b>Third party complaints</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 5.8</b> – where a Supplier includes Third Party Charges on a Customer's Bill, it must address all enquiries and resolve all complaints made to it regarding those Third Party Charges.</li> </ul> <p><b>Financial Hardship</b> [Note: this section is intended to be replaced by the Financial Hardship Industry Standard]</p>	<p>policy be clearly available (via hyperlink or summary) on the provider's website and (if relevant) app.</p> <ul style="list-style-type: none"> <li>▪ <b>s 10(a)</b> - requires that customers are able to apply for financial assistance using all contact methods ordinarily available to customers to contact the provider.</li> <li>▪ <b>s 10(e)</b> – requires the mechanism through which customers apply for financial assistance is accessible to consumers with disabilities, from culturally or linguistically diverse backgrounds or with other special needs.</li> <li>▪ <b>s 28(1)</b> – requires that a provider regularly monitors how its personnel interact with financial hardship customers to ensure compliance with the Standard.</li> </ul>	<p>(d) free of charge to use</p> <p>(h) allows complaints to be made by telephone, letter email or online</p> <p>(i) allows complaints to be made in store.</p> <ul style="list-style-type: none"> <li>▪ <b>s 12</b> – a CSP must acknowledge a complaint by written or verbal response.</li> <li>▪ <b>s 14</b> – a CSP must advise consumers of any delay in the management of their complaint.</li> <li>▪ <b>s 15(1)(e)</b> – if a consumer is dissatisfied with the response times or want their complaint treated as urgent, they must be advised of options for external dispute resolution.</li> </ul>		<p>method available to a customer to decline the continued supply of an IMR service at any time (with the customer not being able to be charged more than \$1.00 for so declining, with the exact maximum charge depending on the method through which supply is declined).</p> <ul style="list-style-type: none"> <li>▪ <b>s 13(1)(a)</b> - requires a CSP that supplies an IMR service to, before entering into a contract with that customer for the supply of IMR, inform that customer of the spend management tools available for that IMR service and how they can be accessed by the customer.</li> </ul>	<p>submitted through multiple channels all encourage consumers to seek support or make a complaint.</p>

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	<ul style="list-style-type: none"> <li>▪ <b>cl 7.1</b> – a Supplier must ensure its Hardship Policy is readily available on its website, that customers are provided with the relevant point of contact with whom to discuss the Hardship Policy, that they are provided with the details of a community financial counsellor and a summary of how the Financial Hardship Policy may assist them.</li> </ul> <p><b>Changing Suppliers</b></p> <ul style="list-style-type: none"> <li>▪ <b>cl 9.3.2(e)</b> – before initiating a Transfer or when requested by a Consumer, a Gaining Supplier must ensure that the Consumer receives the appropriate contact details for lodging an inquiry or complaint about any aspect of the Transfer if different from the Gaining Supplier's normal Complaint handling process.</li> </ul>					



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