

Draft TCP Code Submission

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The draft code represents an improvement on the previous code in terms of obligations and organisation. Those involved should be congratulated. Nonetheless, there are several areas where there could be further work to improve consumer outcomes.

Definition of small business consumer (Chapter 2)

The TCP Code sits in a regulatory context with the Australian Consumer Law (ACL). For purposes of regulatory coherence, the definition of a business consumer should be consistent with the definition of consumer in the ACL, which for the purposes of the consumer guarantee law currently has a monetary threshold of \$40,000.

General rules on information

Part 3 of the Code recognises that communications and the way in which information is provided is crucial in supporting consumers make decisions that advance their best interests. It also identifies the role of staff in supporting this process. It would be useful for the competence obligation in 3.3.2 to include an obligation to interact in a way that facilitates clear communication with individual customers.

The Melbourne Social Equity Institute is currently undertaking projects with ACCAN and with the Thriving Communities Partnership, which looks at presales information, communications and processes in supporting consumers with cognitive disabilities.

<https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions>

Consumers requiring decision making support

The draft code properly strives to recognise that some consumers may require decision-making support (3.2.3 and Key commitments). It does this by referring to consumers with 'special needs' (3.2.3) and to 'vulnerable' consumers (Key Commitments). A preferable way of phrasing the guidance might be to avoid the description of consumers as vulnerable or as having special needs because these terms may be seen as discriminatory and as perpetuating stereotypes of certain individuals being in some way less capable than others of making decisions for themselves. Preferable wording might be 'consumers needing support with decision making', which recognises that all consumers may at times require help in making complex decisions.

Industry Guidance on assisting Vulnerable Consumers

The draft Code provides that Industry Guidance on assisting vulnerable customers is to be drafted (1.2.2).

The Melbourne Social Equity Institute has worked with people with cognitive disabilities to document their experiences in contracting for mobile phones and considered the role of supported decision making and continues to work with these consumers to develop strategies for better outcomes.

<https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions>

This work may be relevant in drafting industry guidance.

The guidance that is developed should also reflect the experiences and input of consumers with disabilities and other groups who might require decision making support themselves in designing the support processes.

Selling practices

As the draft Code (4.6.2) recognises, meeting consumers' identified needs is an important component of supporting good consumer outcomes. We also suggest that providers should be committed to sales process that do not pressure or manipulate consumers, including consumers who need support with decision making. This requires careful design of the sales process, including allowing time for questions, comparisons and reflection by consumers.

Some of these principles are discussed in the research undertaken by the Melbourne Social Equity Institute projects.

See <https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions>

Commission based sales are problematic as they can provide a perverse incentive to sales people to promote sales over the best interests of consumers.

Customer service

The process of raising and resolving a complaint about services or products (4.9) can be difficult and tiring for consumers with disabilities as well as those who need support with decision making. Service standards should require streamlined processes for such consumers.

Accessibility

The Code (4.7.1) should support people with disabilities by including an obligation in for providers to give information about the accessibility features of the products and services they sell.

Credit assessment and hardship relief

The rules on credit assessment and on hardship (parts 6 and 7) are of crucial importance to consumers given the adverse consequences of financial over commitment and hardship affecting ability to pay. Clear and precise rules are needed to produce real outcomes. There should be less scope for provider discussion in this area. I support the recommendations of ACCAN in this regard.