

New TCP Code—frequently asked questions

CODE REGISTRATION

Why has the ACMA registered the TCP Code?

Communications Alliance (CA) commenced its review of the Telecommunications Consumer Protections (TCP) Code in April 2010. At that time, the ACMA announced a public inquiry into the complaints-handling and customer service practices of Australia's telecommunications industry.

The *Reconnecting the Customer* (RTC) inquiry, which concluded in September 2011, gathered a body of evidence to support a need for a change in customer care practices.

The ACMA found that problems commonly arise because consumers don't have access to timely, accurate and comprehensible information about their service. For example, consumers may complain about receiving an unexpectedly high bill because they can't understand the description of what is included in a 'capped plan' or how calls are charged once the cap is exceeded. The ACMA recommended that:

- > consumers are given accurate information at both pre-sale and point of sale
- > providers make tools available to consumers that they can use to monitor and manage how much they spend.

The ACMA released its final report on the inquiry in September 2011, and issued a notice to CA (under section 125 of the Telecommunications Act), setting out identified deficiencies in the existing TCP Code.

After several additional iterations by CA, the ACMA now considers that the deficiencies in the TCP Code have been adequately addressed in the revised code presented for registration.

The new code implements more than 95 per cent of RTC recommendations and will transform the landscape for Australian telecommunications consumers.

We now expect to see the industry comply with these rules.

Why didn't the ACMA make a standard?

The ACMA considers that the revised code presented by CA adequately addresses the key problem areas as it specifies that providers must offer consumers tools to monitor charges and usage, and implement effective complaints-handling processes.

The ACMA has worked with industry to register a code that it believes will have a positive—and immediate—effect for consumers. But if industry fails to meet the requirements in the code or further consumer protection issues arise, the ACMA will take further regulatory action.

The Telecommunications Act gives industry the opportunity to proactively identify and implement solutions to problems. If the ACMA regulates directly, it can chase past instances of non-compliance but it may not be able to change the culture of the industry.

TIMING

Hasn't it taken a long time to get a new code?

Developing a new code involves negotiations between consumers, industry representatives and regulators. The ACMA received a draft of the code from CA in February but it didn't sufficiently address the RTC proposals. Following several months of intense negotiations between CA and the ACMA, CA presented a satisfactory code in June.

While the delays are unfortunate, the outcome for consumers is much improved. The ACMA considers the revised code was worth fighting for.

Why hasn't the ACMA taken more enforcement action about consumer protection matters?

The key focus of the ACMA's compliance activities has been on code education and engagement. While enforcement action has been taken, this is necessarily reactive and can be slow, given the need for due process in investigations, which is required under legislation.

The ACMA's ability to take more direct enforcement action has been affected by several factors:

- > there are limited code enforcement tools available to the ACMA
- > many of the provisions of the previous TCP Code were not easily enforceable as they did not impose obligations that could be objectively assessed
- > the number of telco providers—more than 1,100—means that breaches aren't easily detectable.

Nevertheless, the ACMA acknowledges that it could have adopted a more aggressive regulatory approach by decreasing education and engagement resources, and increasing the number of investigations. It will shortly make this adjustment.

CODE CONTENT

What are the improvements in the new code?

Advertising

- > Suppliers to stop using confusing terms such as 'cap' (unless the offer refers to a 'hard cap').
- > Suppliers to disclose unit pricing for three key elements of internet and mobile included value plans:
 - > national calls*
 - > standard SMS*
 - > downloading one megabyte of data in advertisements where price is quoted*.
- > Suppliers to substantiate advertising claims about broadband speeds and network coverage to the ACMA upon request.

****Delayed implementation—27 October 2012.***

Product summaries

- > Suppliers to include a range of essential information about the service, pricing and complaints-handling in a document called the 'Critical Information Summary'*.

****Delayed implementation—1 March 2013.***

Spend management

- > Suppliers to send notification alerts of data, voice calls and SMS usage within included value plans no later than 48 hours after the customer has reached data usage and expenditure thresholds of 50, 85 and 100 per cent*.
- > Suppliers to include additional notification information about charges applying to included value plans when the customer has exceeded 100 per cent of data or expenditure usage*.

- > Improved and consolidated information about international roaming.
- > Rules limiting the circumstances in which suppliers may access customer's security deposits.

****Delayed implementation:***

- > ***For data, 1 September 2013 (all suppliers)***
- > ***For voice/SMS, 1 September 2013 (for large suppliers) or 1 September 2014 (small suppliers).***

Billing

- > Suppliers to provide free-of-charge historic billing information for a 24-month period of use.
- > Additional information in bills about how to access further call and data usage information.
- > Suppliers to not bill customers for charges older than 160 days.
- > Suppliers to provide total bill amounts for each of the two previous billing periods*.
- > Suppliers to provide 10 days notice before each direct debit.

****Delayed implementation—1 March 2013.***

Credit management

- > Suppliers to provide information on their financial hardship policies when issuing a customer with a reminder notices.
- > Suppliers to give customers clear policy rules and a credit assessment before accessing their security bond.

Complaints-handling

- > Tighter time frames for standard complaint acknowledgement and resolution. Complaints must be acknowledged within two days and resolved within three weeks. Suppliers must also implement a special process for urgent complaints, which must be resolved within two days.
- > Suppliers to inform customers of complaint outcomes.
- > A new definition of 'complaint' that requires suppliers, where uncertain, to ask if the customer wishes to make a complaint.
- > Suppliers to more clearly promote the services of the Telecommunications Industry Ombudsman (TIO).
- > Suppliers to implement their complaints-handling processes.
- > Improved record-keeping that includes giving customers unique complaint reference numbers (or similar tool) that enables them to track a complaint.

Code compliance

- > Industry will establish 'Communications Compliance', which will undertake regular compliance monitoring as well as develop customer service metrics and benchmarking standards*.

****Delayed implementation—1 March 2013.***

How does the new code address issues of:

- > **long wait times/inability to get through to telcos**
- > **offshore call centres**
- > **multiple transfers?**

These issues are sources of strong dissatisfaction for many consumers. The ACMA considers that the revised TCP Code will help to address them.

Improvements in product information and spend management tools aim to address some of the common underlying reasons that people contact providers in the first place, and so reduce the incidence of contacts and complaints.

The code mandates the development of a performance-reporting framework, which will inform consumers about how providers perform with customer service and complaints-handling, and enable them to consider this when choosing a provider. In turn, this should encourage industry to start competing on customer care, therefore improving performance in this area.

Why doesn't the code contain a charging cap on plans so that consumers can't overspend? Hasn't this been done overseas?

A bar preventing consumers spending more than a pre-determined amount—as with pre-paid products—can be appropriate for some consumers. Others like to have some flexibility. ACMA research found that some people are happy to exceed their plan limit by a certain amount each month.

The spend management tools in the code enable people to moderate their use to prevent going over their plan limit, or to knowingly go over the limit if they choose to.

The US Federal Communications Commission is introducing rules that require mobile service providers to provide usage alerts and information to help consumers avoid unexpected charges on their bills.

The EU has mandated automatic alerts that let consumers know when they are approaching the limits of their text, voice and data plans, and when they are about to incur roaming charges.

Why is the ACMA sanctioning a 48-hour delay between usage and the information about usage becoming available?

The ACMA considered the limitations of existing billing systems and the particular difficulty that resellers face in receiving usage information from wholesalers. It would not be appropriate to put obligations on a selected class of suppliers that they are unable to meet as this would limit competition in the industry.

What is the requirement for 'volumetric disclosure' in the Critical Information Summary?

The Critical Information Summary requires suppliers to disclose the following standard prices:

- > the peak-time cost of making a two-minute mobile call to another number in Australia
- > the cost of sending an SMS within Australia
- > the cost of a megabyte of data.

Suppliers must then estimate the number of two-minute calls that can be made within the plan. For example:

- > \$250 worth of calls
- > the standard charge for a two-minute call is \$2.50
- > the number of two-minute calls included is 100.

In plans where the number of calls can be affected by the number of texts sent (for example, plans for \$250 of talk and text), the summary must state: 'If you restricted your use solely to Standard National Mobile Calls each of two minutes duration, you could make x calls'.

If this volumetric information is mandatory in the Critical Information Summary, why isn't it required to be disclosed in advertising?

Where charging arrangements are complicated, requirements for standardised information may mislead consumers. Industry considers that information can be conveyed more effectively in Critical Information Statements than in the fine print of advertisements.

If consumers are already making a lot of complaints, doesn't this mean that making a complaint is easy? What is the purpose of stronger rules for complaints?

As high as the TIO complaint numbers are, ACMA research indicates that it isn't easy to complain to a provider—who should always be the first point of contact. Only eight per cent of customers who contacted a provider in the previous six months had dealt with its internal complaints department. And

of those, 41 per cent felt that their issue should have been referred to the complaints area sooner than it was. This may indicate that customer service representatives don't recognise when a consumer is complaining or are reluctant to acknowledge that an issue is a complaint and escalate the matter.

As well as helping consumers to have their problems addressed in a fair and timely manner, a well-functioning complaints-handling system also supports a well-functioning market. It allows service providers to receive consumer feedback (which they can consider when formulating competitive strategies) and helps them to retain the business of their customers. It also reduces the costs associated with poor complaints-handling, such as time spent and actual costs, for consumers and service providers alike.

Don't consumers already get a lot of information—how will a requirement to give them another document help?

The ACMA wants consumers to be given *better*—not more—information. While there is currently a lot of information, it is often complex or not given to the customer when they need it. ACMA research has found that telco consumers can suffer from information overload and are more likely to take short cuts (for instance, by following rules of thumb rather than assessing and comparing products). The research shows that all consumers prefer information to be as simple as possible.

Will the spend management tools cover roaming? Why not?

International roaming is excluded from the spend management tools. This is because the retail service provider does not receive information from the carriers onto whose service its customers have roamed until sometime later.

But providers must notify consumers of any unavoidable exclusions, such as international roaming, and roaming costs on websites.

TIMING

When will the code take effect?

The TCP Code commences on 1 September 2012. However, some rules have a delayed commencement date:

- > Standard charge information is to appear in the relevant advertisements from **27 October 2012**.
- > Critical information summaries must be available from **1 March 2013**.
- > Total amounts for last two billing periods are to appear on bills from on **1 March 2013**.
- > Spend management tools are to be phased in, with the first tools to be provided by **1 September 2013**.
- > The new Communications Compliance framework commences on **1 March 2013**.

Why do consumers have to wait for some of the rules to commence?

Some of the rules require providers to make significant changes in systems and practices. Given the scope of the expected improvements in outcomes for consumers, the ACMA has considered it reasonable to allow industry some time to implement the new rules. In addition, many telco service providers are themselves small businesses and it is reasonable to allow time for necessary adjustments.

Can the new rules be applied retrospectively?

No. The new rules apply from the date of registration. Some clauses have delayed implementation dates.

COMPLIANCE AND ENFORCEMENT

The Australian Competition and Consumer Commission (ACCC) has had some success in its litigation against telecommunications providers on misleading advertisements. Why doesn't the ACMA leave these practices to the ACCC to deal with?

The ACCC has taken action for misleading and deceptive advertising practices against telecommunications companies on numerous occasions over the past two years. As recently as April

2012, TPG Internet Pty Ltd paid two infringement notices totalling \$13,200 over advertisements for its '500 free VoIP Minutes' offer, which the ACCC believed to be misleading.

While the ACCC's actions have addressed unlawful misleading or deceptive conduct, *confusing* advertising practices in the industry continue to persist and are widespread, resulting in significant consumer detriment such as bill shock. Currently, confusing advertisements are not necessarily unlawful. Accordingly, the ACMA considers it timely to introduce stronger community safeguards to reduce consumer confusion.

When will the ACMA begin enforcing the new TCP Code?

For the first three months, the ACMA's focus will be on industry education. However, this does not mean that it won't take enforcement action where there is flagrant or substantial non-compliance by a supplier.

What enforcement action can the ACMA take against a provider who isn't complying with the new code?

The ACMA is able to direct a supplier to comply with the code. If a direction is breached, the ACMA may issue an infringement notice, accept enforceable undertakings or seek civil penalties of up to \$250,000 in the Federal Court.

Will the new TCP Code allow the ACMA to fine non-compliant businesses?

No. It is not possible for codes to include financial penalties. The TIO has the power to direct telco providers to restore financial detriment experienced by consumers (where the consumer is unhappy with the complaint resolution offered by their service provider). Recent amendments to the Telecommunications Act allow the ACMA to issue infringement notices in the event of non-compliance with a direction to comply with a code.

What can consumers do if telcos are not meeting the code rules?

Consumers who believe their service provider is not complying with the code in a matter that affects them can complain to their provider. If they aren't satisfied with how the complaint is handled, they can complain to the TIO.

What is the role of the new body Communications Compliance? Will it take over from the ACMA/TIO?

Communications Compliance is a self-regulatory industry body to improve industry members' compliance with code rules. It won't handle consumer complaints—this remains the role of the TIO—or enforcement under the Telecommunications Act—this remains the role of the ACMA.

ASSESSING EFFECTIVENESS

Will the new code lead to a drop in complaints to the TIO?

It's difficult to estimate the effect the new code will have on complaints. The ACMA anticipates that the improved point-of-sale information (the Critical Information Summary) will alleviate some of the common causes of confusion and complaints. Similarly, the usage notifications should help to prevent excessive overspend on telecommunications products and the resultant bill shock.

Will the new code improve the way telcos deal with customers?

The ACMA expects to see an improvement in industry behaviour in line with the new code rules and also expects that the code will be implemented in good faith. A stronger approach to compliance and enforcement will support this.

How will we know if this new code is working or not?

It is now up to industry to implement the code rules and take the opportunity to improve its relationship with consumers. We will be watching closely to ensure that it does.

Does the code consider the impact of the NBN?

One of the drivers of the inquiry was to examine customer care in a changing telecommunications environment. The NBN and other technological developments will inevitably bring benefits to

consumers and may help create incentives to compete on the basis of customer care. However, other issues that affect the quality of customer service, such as complexity, are enduring and likely to remain relative irrespective of technological changes.

How does the new code deal with issues relating to new and emerging technologies?

Many of the changes to the new code are designed to be applicable to new and future technologies. These include usage management alerts, improved advertising and complaints-handling, and the Critical Information Summary.

COSTINGS

How did the ACMA calculate the costs to consumers and industry cited in its media release?

The RTC public inquiry estimated that, over the past three years, the annual costs of consumers choosing the wrong plan were approximately \$1.5 billion per annum. The key data used to calculate this figure was research conducted by UK price comparison website Bill Monitor, who analysed over 28,000 UK bills. The ACMA conservatively extrapolated this data to Australian consumers, assuming a similar amount of under-use of monthly allowances. In fact, the figure could be higher due to higher complaint rates in Australia.

The ACMA has calculated the total cost of telephone complaints during 2011–12 to be \$108 million. This figure took account of Galaxy research on rates of complaint to providers, historical data on complaint numbers to the TIO, and time spent by consumers and providers resolving complaints. The total cost includes costs to industry, the TIO and consumers.

The ACMA also calculated \$113 million per annum for the costs of writing off bad debts. The ACMA used reports from Telstra of its incidence of bad debts, and then conservatively extrapolated this data across the industry.

What's the significance of the costs the ACMA cites?

Consumers using the wrong plan for their needs will not derive the best value for their monthly spend on telecommunications services. The UK Bill Monitor study found that many consumers only use one-quarter of their allowance. The new rules in the code for advertising and information provision will help consumers to choose the right plan.

Unnecessary complaints and poor practices for resolving complaints waste valuable time for consumers, the TIO and providers. Time translates to money. New rules on advertising, information provision and spend management tools should, over time, reduce the likelihood of consumers making complaints. In the event that complaints are made, new complaints-handling rules with clear time frames will reduce the time taken to resolve complaints.

Unexpectedly high bills for consumers often mean bad debts for providers. The new code will reduce the incidence of bill shock. New rules on financial hardship are expected to encourage consumers and industry to arrive at payment arrangements that will also reduce the number and value of bad debts.