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An introduction to the Telecommunications Consumer Protections Code 2012

Resource Book

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1. Telecommunications Act 1997 – section 117

Registration of industry codes

(1) This section applies if:

(a) the ACMA is satisfied that a body or association represents a particular section of the telecommunications industry, the e-marketing industry, the telemarketing industry or the fax marketing industry; and

(b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the telecommunications activities, e-marketing activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and

(c) the body or association gives a copy of the code to the ACMA; and

(d) the ACMA is satisfied that:

(i) in a case where the code deals with matters of substantial relevance to the community – the code provides appropriate community safeguards for the matters covered by the code; or

(ii) in a case where the code does not deal with matters of substantial relevance to the community – the code deals with the matters covered by the code in an appropriate manner; and

(e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and

(f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

(g) the ACMA is satisfied that the ACCC has been consulted about the development of the code; and

(h) except in a case where:

(i) the code applies to participants in a section of the telemarketing industry and deals with one or more matters relating to the telemarketing activities of those participants; or

(ii) the code applies to participants in a section of the fax marketing industry and deals with one or more matters relating to the fax marketing activities of those participants;

the ACMA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the code; and

(i) the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the code; and

(j) in a case where the code deals with a matter set out in paragraph 113(3)(f)--the ACMA is satisfied that the Information Commissioner has been consulted by the body or association about the development of the code before the body or association gave the copy of the code to the ACMA; and

(k) the ACMA has consulted the Information Commissioner about the code and consequently believes that he or she is satisfied with the code, if the code deals directly or indirectly with a matter dealt with by:

(i) the National Privacy Principles (as defined in the Privacy Act 1988); or

(ii) other provisions of that Act that relate to those Principles; or

(iii) an approved privacy code (as defined in that Act) that binds a participant in that section of the telecommunications industry, the e-marketing industry, the telemarketing industry or the fax marketing industry; or

(iv) provisions of that Act that relate to the approved privacy code.

(2) The ACMA must register the code by including it in the Register of industry codes kept under section 136.

(3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

(4) If:

(a) an industry code (the new code) is registered under this Part; and

(b) the new code is expressed to replace another industry code;

the other code ceases to be registered under this Part when the new code is registered.

Note: An industry code also ceases to be registered when it is removed from the Register of industry codes under section 122A.

2. The prior codes that were consolidated – after the introduction to the 2007 TCP Code

The Telecommunications Consumer Protections Code (TCP) Code (C628:2007) replaced the following registered ACIF Codes:

(a) Billing Industry Code [ACIF C542:2003],

(b) Customer Information on Prices, Terms and Conditions Industry Code [ACIF C521 :2004],

(c) Complaint Handling Industry Code (ACIF C547:2004],

(d) Consumer Contracts Industry Code (ACIF C620:2005]

(e) Credit Management Industry Code [ACIF C541:2006], and

(f) Customer Transfer Industry Code (ACIF C546:2007].

3. The reasons behind the 2007 consolidation – after the introduction to the 2007 TCP Code

The purpose of moving to a single TCP Code was to:

(a) make it easier for consumers and their representatives and advocates to know their rights;

(b) ensure drafting consistency and deliver a consistent style and language;

(c) provide a consolidated single Code and Guideline document, using consistent definitions and terminology;

(d) separate out the rules from the procedures and highly prescriptive elements of the existing Codes; and

(e) allow suppliers to use their own systems and procedures to comply with the Code, rather than having to use prescribed methods of compliance.

4. Common consumer problems identified by the *Reconnecting the Customer* enquiry and report

(a) Customers find it difficult to contact their service provider, particularly by telephone.

Common problems include being left on hold, experiencing long waiting times, not being able to speak to a real person, not being able to communicate easily with customer service representatives, having to repeat their story to each new customer service representative, having calls drop out, experiencing multiple transfers and not being able to speak to someone who can resolve their issue.

(b) Customers find it difficult to have problems resolved in the time they expect, especially for bills.

Our research found that having a problem fixed within a reasonable time is very important feature of customer service that is driving dissatisfaction.

(c) Customers receive contrary and inconsistent advice about services.

The large number of plans and products available, and the confusing way in which they are promoted, makes it hard for many consumers to understand the service they are buying.

(d) Customers frequently experience 'bill shock', which occurs when a consumer receives a higher than expected bill or sees their prepaid credit run down faster than expected.

This appears to be commonly caused by either the consumer having a poor understanding of the charging arrangements for their service at the time they purchased it or because they are unable to track how charges are accumulating under a plan.

5. Reconnecting the Customer – the identified causes of complaint

(a) While most consumers see price as the main factor when choosing a service, the advertising and marketing of plans does not make it clear how prices inside a plan are calculated.

(b) In addition, marketing material often does not present information in a way that makes it easy for a consumer to compare it with other similar products. As a result, many consumers end up with a plan that is not the most suitable for their needs.

(c) Providers may use words such as 'cap' to describe a plan for which the advertised amount is, in fact, the minimum amount charged each month. This can be very confusing for some consumers.

(d) Products and services are becoming more complex. While some of this complexity is unavoidable, some is also generated by telecommunications providers, particularly with how they structure their plans and pricing.

(e) Consumers cannot compare the quality of customer care offered by different telecommunications providers before they choose a plan and so cannot use this as a basis for their choice. This means that they are often disappointed by the quality of customer care they receive after they have purchased their plan, particularly when they have a question or problem.

(f) Bills are linked to data usage, the number of calls and texts made, and call times. However, the way bills are calculated—and how charges add up—is often hard to understand and difficult to track between bills.

(g) In many cases, customer service representatives do not acknowledge when a customer is making a complaint or escalate it to the right staff member or team.

6. Reconnecting the Customer: Proposal 1 – Improved advertising practices

6.1 Objective

Marketing and advertising practices need to be improved by the introduction of clear and enforceable rules that apply to all providers' advertising practices. These should:

(a) prohibit the use of terms (and any similar terms) that are known to be confusing for consumers in certain circumstances (for example, using 'cap' when the advertised amount is the minimum monthly payment, not the maximum)

(b) ensure that representations, in particular about network coverage and broadband speeds, can be substantiated

(c) provide a reasonable basis for comparison, particularly for representations about prices for products that are based on, include or refer to a minimum spend 'plan' arrangement.

6.2 Proposal for achieving the objective

The ACMA proposes that service providers be prohibited from using terms (and similar terms) in advertising that are known to confuse consumers and be required to only make representations, particularly for broadband speed and network coverage, if they can be substantiated. Further, the ACMA proposes that service providers be required to disclose in advertisements (in any media) for products that are not subject to a hard cap or shaping of data use and that are based on, include or refer to a minimum monthly spend:

(a) a standardised rate disclosing the cost of making a two-minute call in Australia to another mobile (based on the highest rate charged under the plan for making a call plus flagfall), sending a standard SMS in Australia and downloading one megabyte of data in Australia (at the highest rate charged under the plan)

(b) an estimate of the volume of calls included within the plan based on the standardised rate disclosed (including flagfall costs) and assuming that the value that can be used on either calls or SMS was used on calls only. For example, $550 value ÷ $2.10 (the standardised rate) = 262 two-minute calls.

The comparable pricing rate should also be disclosed on bills to help consumers understand their billing arrangements.

7. Reconnecting the Customer: Proposal 2 – Improved product disclosure

7.1 Objective

Consumers should be provided with clear, accurate and comparable information about the key features of products and aspects of a service before entering into a contract.

7.2 Proposal for achieving the objective

The ACMA proposes that service providers be required to provide a critical information summary to consumers before a sale that:

(a) summarises critical information about their product—including the term of the contract, maximum amount payable for early termination, minimum monthly payment

(b) is available for different types of products and provides critical information about those products—including voice call costs (based on the standardised rate), SMS costs, data use costs, exclusions

(c) provides consumers with non-product specific information—including customer service contact details, access to spend management tools, warnings about roaming costs, cooling-off periods, access to IDR and EDR, and TIO contact details.

8. Proposal 3 – Performance reporting and customer service charters

8.1 Objective

To introduce transparency about the relative quality of customer care, particularly whether service providers resolve matters in a timely way, and to improve transparency and accountability about the commitment of service providers to a common set of service standards, through a customer service charter.

8.2 Proposal for achieving the objective

The ACMA invites industry members to identify metrics to measure customer care performance, including timely contact resolution, and to implement a metric reporting framework for service providers with more than 30,000 (residential/small business) customers. It is intended that such metrics will be published.

If a metric reporting framework is not implemented within that time frame, the ACMA will require that service providers with more than 30,000 (residential/small business) customers report to the ACMA at regular intervals on metrics identified to measure customer care performance. These may include the following metrics:

(a) Customer service performance:

(b) total number of contacts made by existing customers

(c) number of repeat contacts made by the same customer within a 45-day period

(d) Complaints-handling performance

(e) total number of complaints received by a service provider

(f) total number of the service provider's residential and small business customers.

Service providers are also encouraged to develop and publish customer service charters that contain commitments to a common set of service standards and consequences (if any) for failing to deliver on those commitments.

Service standards to be included in a charter might include the channels through which a customer can contact their provider, what a customer could expect when making an enquiry and the contact details of the TIO.

9. Proposal 4 – Expenditure management tools

9.1 Objective

Consumers should be equipped with the tools they need to manage their telecommunications expenditure, particularly the ability to monitor the accumulation of charges in a plan during a billing period. Requiring providers to include on bills a comparative pricing rate, based on the included value of a plan, should also improve consumer understanding of charging arrangements and bills.

9.2 Proposal for achieving the objective

The ACMA proposes that service providers be required to offer measures or tools that allow customers to monitor the accumulation of charges during a billing period. Such tools should cover all components within a minimum monthly spend plan. For products not subject to a hard cap or shaping, this should include:

(a) an equivalent platform-based notification (SMS for phone, email for internet) that alerts consumers at specified expenditure and/or usage points (such as 50 per cent and 80 per cent) and an alert at 95 per cent

(b) details about the expenditure/usage point reached and the consequences of any exclusions (such as roaming costs).

Service providers should also disclose a customer's usage on all bills in a form that allows a customer to compare his or her actual usage over a period of time—for example, including a graph that shows either expenditure (based on the included value amount) on calls, SMS and data on each bill; or the number of call minutes, SMS used and megabytes of data downloaded during the billing period.

10. Proposal 5—Internal complaints-handling

10.1 Objective

Internal complaints-handling standards that meet 'best practice' are to be implemented by all service providers.

10.2 Proposal for achieving the objective

The ACMA proposes that service providers be required to implement complaints-handling procedures that:

(a) adopt the definition of 'complaint' as set out in the Australian standard for complaints-handling, AS ISO 10002-2006

(b) comply with the guiding principles set out in the Australian standard for visibility, accessibility, responsiveness, objectivity, charging, confidentiality, being consumer-focused, accountability and continuous improvement

(c) establish minimum benchmarks for ensuring timeliness in dealing with complaints, documenting procedures, and collecting, analysing and reporting complaints information.

11. TCP Code contents

12. Speech by Jennifer McNeill / General Manager, Content, Consumer and Citizen / Australian Communications and Media Authority / Sydney, Wednesday 1 August 2012

The revised Code and the approach of the ACMA to compliance and enforcement

INTRODUCTION

My thanks to John and Communications Alliance for the invitation to speak today.

REFLECTIONS ON CODE DEVELOPMENT

I'm pleased that I'm still on the guest list after the extensive interactions that have taken place between our organisations on the TCP Code over the past year.

I'd like to take this opportunity to thank John for his responsiveness to the ACMA's demands during the code development process and his openness to engage in discussions with regulators and consumer representatives. I give John great credit for his powers of persuasion in bringing industry so far.

Code development is a multilateral process and it places considerable demands on Communications Alliance and its staff. So, I'd like to particularly thank Christiane and Margaret at CA for all of their hard work on the TCP Code.

ACMA ROLE IN GENERATING COMPLIANCE

Now that we have a code in place, the next task is implementation.

Just as code development is a multi-party process, so too, fostering code compliance is a shared responsibility. And ACMA, as the ultimate enforcer of the code, has a key role to play. Good corporate citizenship and a sense of social responsibility may be a sufficient compliance incentive for some providers—but not for all.

At the ACOMMS dinner last week, John likened the ACMA's persistent, dogged pursuit of particular outcomes in the TCP process as sticking like 'porridge to a blanket'. Can I signal that there is more dogged persistence to come?

The ACMA Chair Chris Chapman has indicated that the ACMA will monitor industry's progress and the code's performance very closely. The ACMA will use its investigation and enforcement powers if participants do not to comply with these new Code obligations.

And we will not hesitate to press for further change, if the Code does not deliver on its remarkable promise.

APPLICABILITY OF CODE

The new Code applies very broadly. It applies to all carriage service providers, whether they offer fixed, mobile or internet services. It applies to network

operators and resellers. It applies to providers of Voice over Internet Protocol services, phone card services and National Broadband Network retail services.

If you provide services to residential or small business customers, the code applies to you.

There is, however, some differentiation in the code around when and which code rules apply to:

- particular service providers, and
- particular products.

An example arises in the sphere of spend management obligations. Clause 1.5 of the code specifies that the obligations in clause 6.5.2 arise 12 months after registration for suppliers with 100K included value services but for providers with fewer services, those obligations commence 24 months after registration.

ACMA POWERS

The ACMA is empowered to enforce the Code.

What are the ACMA's code powers?

If an industry participant breaches the Code, the ACMA has two formal enforcement options under the Telecommunications Act.

Firstly, the ACMA can issue a formal warning. An ACMA decision to issue a formal warning is not subject to merits review.

Secondly, the ACMA can direct a supplier to comply with the Code. A decision to issue a direction to comply with the Code is subject to merits review (first internally within the ACMA and then via the Administrative Appeals Tribunal).

If a direction to comply is breached (because the Code is breached), the ACMA may

- issue an infringement notice ($6,600 per breach)
- accept an enforceable undertaking
- give a remedial direction (requiring the service provider to take specific, identified steps), or
- seek a civil penalty of up to $250,000 in the Federal Court.

CHANGE IN APPROACH

Over the next two years, you will see a change in the way the ACMA secures code compliance. The change was foreshadowed in the Reconnecting the Customer public inquiry final report (delivered September 2011).

For those of you who don't know, the RTC Inquiry examined customer service and complaints handling practices in the telco industry with a view to recommending changes that would secure material improvements for

consumers. Historically, the ACMA's compliance approach was to engage with and educate individual providers, quietly securing process improvements. It involved 'auditing' particular obligations and providers, brought to the ACMA's attention by TIO statistics or through consumer consultation.

In the course of the RTC Inquiry, that compliance approach was criticised as insufficiently vigorous. Apparently the industry want more investigations, more directions, more court cases.

Well—the good news is that we have heard these criticisms and over time you will see a shift of emphasis from education to investigation, direction and prosecution.

Already, the ACMA has commenced a program of visits to medium-sized telcos who are not CA members, to remind them of the new Code, its starting date, the new obligations it contains and to inform them of our expectations.

What are our expectations?

We expect immediate compliance with the obligations that have, substantially, carried over from the current registered Code.

Then, as each new key rule in the code comes into effect, we will focus initially on educating providers but quite quickly we will decrease education and engagement activities and focus more on investigations and enforcement. And the compliance culture that the ACMA encounters in service providers who breach their Code will be a critical consideration in the ACMA's response.

Remember, this is a Code in which some key new obligations have a staggered start.

- 1 September—the code will be registered and most obligations will commence immediately.
- Eight weeks later—clauses 4.2.6 and 4.2.7 commence—which mandate the inclusion of standard charging information in text and online advertising
- 1 March 2013 (six months later)
    - clauses 4.1.2—(critical information statements)
    - clause 5.3.1(m) (historical billing information)

    come on line; and
    - the term 'caps' must cease to be used—even in the promotion of existing offers.
- 1 September 2013 clause 6.5.2 kicks in requiring usage alerts to be pushed out to consumers on certain plans with certain providers (in effect, small players are being given an extra 12 months to get their IT houses in order).

- September 2014—the small players become subject to the same usage alert obligations.

When it investigates, ordinarily the ACMA will prepare a report on each finalised investigation and (subject to any legitimate publication concerns raised on a case by case basis) these reports will be published on the ACMA's website. The reports will serve as educational vehicles explaining the Authority's approach to the Code. But they will also serve the ends of specific and general deterrence.

Some of you will have seen and/or experienced this change of approach already yourselves.

The ACMA proposes to promulgate a public facing set of priorities, the scope of which we will make public shortly. Our enforcement priorities will be a living document responding to emerging and existing issues. However, in the first instance, my expectation is that our stated priorities will align with the priorities the ACMA identified in its Reconnecting the Customer inquiry. We will focus on ensuring that the mandated changes are delivered in practice, not just on paper.

So—this might see us first focussing on complaint handling, particularly on ensuring providers deliver on the undertakings they make to customers when resolving complaints.

The failure of providers to actually perform agreed actions has been one of the leading sources of TIO complaints for several years. Now, we have a TCP Code clause 8.2.1(a)(xiii) requires providers to complete all actions to deliver on a resolution promise within 10 days.

We are also likely to have an early focus on advertising - both the inclusion of standard charging information and potentially misleading and confusing claims. We will be assisted in our efforts by clause 4.2.5(a) which obliges providers to substantiate their advertising claims or representations, when upon ACMA request. A provider who cannot substantiate its advertising claims, will breach the code.

I expect we will also have an early focus on the important credit management improvements, particularly those concerning financial hardship, which industry has delivered, largely independent of the RTC.

Next year, I expect that we will focus on the roll-out of Critical Information Summaries.

Also at that time, we will probably receive our first referrals from Communications Compliance.

COMMUNICATIONS COMPLIANCE

CC is a self-regulatory industry body which aims 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.

CC is an industry initiative intended to encourage and demonstrate the industry's compliance with the Code. The ACMA welcomes the CC initiative and looks forward to working with CC over time.

We expect most of the early CC referrals will be about small providers not completing the required compliance attestations.

This early focus on procedures (the attestation and audit forms) is a sensible starting point.

Over time, the ACMA hopes CC will broaden its activities to include environmental scanning that gives industry and consumers' confidence that there is an active industry presence that is educating suppliers and checking compliance.

The ACMA is developing a Memorandum of Understanding with Communications Alliance to ensure an efficient process for referrals and response.

MEASURES OF EFFECTIVENESS

I've spent most of this talk on the implementation of the Code but I would also like to refer to a further matter of ACMA interest, and that is Code evaluation.

In particular, the ACMA is considering its criteria for assessing the effectiveness of the Code.

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.

However, it is possible that the higher standards for complaint handling and the including of TIO details in Critical Information Summaries may lead to more complaints to the TIO as customers become aware of their new rights and start to exercise those rights.

So, while TIO complaints will be one consideration in measuring success, they cannot be determinative.

CONCLUDING REMARKS

It is exciting from a regulator's perspective that a number of the Reconnecting the Customer proposals have been implemented in the TCP Code and that many compliance issues will be highly visible—unit pricing in advertising, critical information summaries, expenditure management warnings and compliance statements. Any systemic failures to deliver in these areas should be obvious.

And the world will be watching.

13. Podcast script

1. Introduction

Welcome to Cracking the TCP Code presented by Cooper Mills Lawyers and TCPCode.com.au.

This podcast explains where the Telecommunications Consumer Protections Code it came from and outlines what it is.

The podcast has a companion resource book, also available for download from TCPCode.com.au. We'll be referring to the resources frequently, so be sure you have a copy handy. Whenever we refer to a resource, we'll allow a little time for you to take it in. And the final item in the resource book is the script for the podcast, in case you find that helpful.

2. Telco industry self-regulation

To make sense of the legal basis of the TCP Code, we need to go back to 1996, when the Australian Federal Parliament passed the telecommunications law that has underpinned the Australian telecommunications industry during the tumultuous, deregulated years since then. That law came into force as the Telecommunications Act 1997 on 22 April 1997, and we'll call it the Telco Act.

It's interesting to note that in early 1997, Australia had just one licensed telecommunications carrier … the company we know today as Telstra. Since then, 338 others have been granted (with 195 licences currently active). And for every licensed carrier, there are (on current numbers) about five or six 'carriage service providers' who don't require licences, and use the carriers' networks to provide retail services to the public. That means that somewhere between 1,200 and 1,400 businesses are at the centre of what we call the telecommunications industry.

The new telco law included various tools for regulating the new communications marketplace. Later, we'll talk about a tool called an Industry Standard but right now we're interested in one called an Industry Code, that's provided for by section 117 of the Telco Act.

Section 117 is set out in full in item 1 of the resource book. We'll give you a few moments to scan it, then we'll walk you through it.

[40 second interval]

OK, let's step through section 117, but starting with sub-section (2). This actually requires the Australian Communications and Media Authority (ACMA) to register an Industry Code. But if you go back to sub-section (1), you'll see the list of things that has to happen, including a lot of things that ACMA must first be satisfied about, before sub-section (2)

applies. So the fact is that ACMA has a lot of discretion about whether a proposed Industry Code is registered as part of the law, or not.

Sub-section 1(a) says that the first precondition to an Industry Code is that ACMA is satisfied that a certain body is representative of a section of the telecommunications industry. In this case, that body was Communications Alliance Limited, which is the closest thing Australian telecommunications has to a representative industry body.

Sub-section 1(b) then says that this representative body must have developed a code dealing with the participants and activities in that section of the industry. Again, it was Communications Alliance that developed the TCP Code.

Sub-section 1(c) requires that the representative industry body must give its proposed code to ACMA. In fact, Communications Alliance provided several drafts to ACMA as we shall see in a moment.

Sub-section 1(d) involves ACMA assessing the proposed code and reaching two conclusions: First, that where the code impacts the community, it provides appropriate community safeguards. Second, that where it does not impact the community, it is simply 'appropriate'.

Sub-section 1(e) requires that ACMA is satisfied about two more things: First, that the representative body published the code and invited industry submissions within a certain time. A later sub-section says that must be at least 30 days. Second, that it considered any submissions it received.

Sub-section 1(f) requires another two things: First, that the public has been allowed a period, again at least 30 days, to make submissions. Second, that any public submissions have been considered.

Sub-section 1(g) requires that ACMA is satisfied that the Australian Competition and Consumer Commission has been consulted about the code's development.

Sub-section 1(h) requires that the Telecommunications Industry Ombudsman has been consulted, where the code relates to the telecommunications sector.

Sub-section 1(i) preconditions registration of an Industry Code on ACMA being satisfied that at least one representative consumer body was consulted about the Code's development. In the case of the TCP Code, that included ACCAN, the Australian Communications Consumer Action Network.

Sub-section 1(j) applies where a proposed code deals with certain matters relating to privacy, such as protection of personal information

and intrusive use of telecommunications. In that case, ACMA must be satisfied that the Information Commissioner has been consulted.

Sub-section 1(k) applies where the code touches on matters covered by the National Privacy Principles (which will soon be known as the Australian Privacy Principles). In that case, ACMA itself must consult with the Information Commissioner and reach the view that the Commissioner is satisfied with the code.

If all of those sub-sections (a) to (k) are satisfied, ACMA must accept and register the code proposed by the representative body.

Now, from a legal point of view, all I've just been talking about describes what happened. It *must* have happened, because we have a Code that ACMA has registered. But there's more to the story than that eleven legal boxes were neatly ticked in the right order. So here's some of the real story behind the Code.

3. The road to the Code

3.1 The original six codes

The 2012 TCP Code's story really starts in 2003. Back then, Communications Alliance didn't exist. The Australian Communications Industry Forum was considered to be the industry's representative body, and it proposed an Industry Code to regulate information about telco billing practices. It was registered by the Australian Communications Authority (that's the predecessor of the ACMA) as ACIF Code C542:2003.

In 2004, ACIF proposed another code about telco prices, terms and conditions. That was eventually registered as ACIF Code C521:2004.

In the same year, ACIF sponsored a complaint handling code, and that was successfully registered as ACIF Code C547:2004.

In 2005, ACIF developed a code dealing with consumer contracts, and that was registered as ACIF Code C620:2005.

2006 saw ACIF move onto the subject of credit management, and a code about that was registered as ACIF Code C541:2006.

Finally for now, in 2007 ACIF oversaw the development of a code to regulate churn processes, and that was registered as ACIF Code C546:2007.

So there we were: six codes in four years. You can see them listed in item 2 of the resource book.

[10 second interval]

But there were two problems. The first was that the Codes never showed any teeth. Despite the fact that the Australian Communications

Authority, and later ACMA, could legally step in and enforce the Codes, they really didn't do so. So, from the start, the Codes had little traction with the industry. Many telcos didn't even know they existed, and those that had heard of them regarded them as pretty much optional.

The second problem was that the Codes were badly written. Mostly, they were worked up by six basically separate committees with not enough time, and without enough access to top class legal writers. So the Codes were often sloppy and vague, and the six of them taken together didn't constitute a coherent collection.

3.2 The 2007 consolidation

By 2007, Communications Alliance had succeeded ACIF and somebody had the idea of consolidating the six existing codes into a single volume. There were some good reasons behind this, such as:

- increasing the consistency of drafting across the various topics;
- making it easier for consumers to know their rights; and
- breaking the old Codes into a volume of rules, and a second volume of guidelines about complying with the rules.

In item 3 of the resource book, I've extracted the 2007 Code's own statement of the purposes of the consolidation.

[15 second interval]

But the 2007 Code was not intended to change the substance of the six prior Codes. It was all supposed to be about cleaning up the form. As the Code's introduction notes:

"The TCP Code is designed to preserve the rights and obligations set out in the six existing codes. New or modified obligations were considered to be outside the scope of this project. However, where identified, these have been noted on an 'Issues List' for future consideration."

3.3 In a nutshell: The fate of the 2007 consolidated TCP Code

The account you'll get of the impact of the 2007 TCP Code depends on who you ask. Nobody in the telco industry took the entire Code to heart but a small number of responsible players gave considerable weight to parts of it. But overall, it's fair to say that most telcos ignored it, and many had never even heard of it.

Also, the regulators did no more to enforce the 2007 Code than they had its six predecessors, so much so that the ACMA Chairman Chris Chapman welcomed the strengthened 2012 replacement Code with the remark that compliance with the TCP Code was no longer optional, implying that the earlier version was virtually unenforced … and that's a fair assessment.

3.4 Reconnecting the Customer – the issues uncovered

Through 2008 and 2009, the ACMA became increasingly concerned at the level of consumer dissatisfaction with telecommunications retailers, especially as reflected in complaints data from the Telecommunications Industry Ombudsman scheme. As the ACMA saw it, they key area of concern was "customer care" and it explained that phrase saying "customer care includes the information received from a telecommunications provider about a product or service, how easy it is to contact them, how quickly they solve a problem (for example, with a bill), whether they do what they say they will, and how easy it is to make a complaint and have it resolved."

By early 2010, the ACMA was ready to act in the consumer cause. The result was an enquiry and report both titled "Reconnecting the Customer".

The outcome presented a pretty bleak picture of life as a telecommunications consumer in Australia. ACMA said:

"Based on the information we collected, we found that, overall, many consumers are dissatisfied with their experience of customer care in the industry. This dissatisfaction occurs regardless of which service provider they are with and what products they have."

Some issues that were highlighted in the report included:

- Customers find it difficult to contact their service provider, particularly by telephone.
- Customers find it difficult to have problems resolved in the time they expect, especially for bills.
- Customers receive contrary and inconsistent advice about services.
- Customers frequently experience 'bill shock', which occurs when a consumer receives a higher than expected bill or sees their prepaid credit run down faster than expected.

In item 4 of the resource book, we've set out the regulator's more detailed comments on the issues we've just mentioned. It's worth reading them carefully, because it is the ACMA's convictions about these issues that explain its dogged approach to subsequent negotiations with the industry.

[30 second interval]

3.5 Reconnecting the Customer – the causes identified

The ACMA considered that it could identify root causes of many consumer complaints. In brief, it particularly noted that:

- Advertising didn't really explain telco plan prices.
- Marketing material didn't make it easy to compare plans and make a good choice.
- Confusing terms were common, like 'cap' when used to describe the lowest monthly amount a plan would cost.
- Plan structures were becoming more complex, sometimes because that suited the telcos.
- There was no way to compare customer care before a consumer signed up.
- Billing calculations were hard to understand and track across billing periods.
- Customer care agents often ignored complaints, deliberately or otherwise, and didn't escalate them.

Again, the report's comments around these issues explain its thinking about where the solutions lay, and in turn largely explain why the 2012 TCP Code ended up in the form it did. Spend a moment reviewing item 5 in the resource book.

3.6 Reconnecting the Customer – the recommendations

Inside the ACMA, the Reconnecting the Customer enquiry and report became known as 'Reconnecting the Customer' or simply 'RTC'. RTC's headline recommendations were these:

(a) Clearer pricing information in advertisements—all providers should clearly disclose pricing information in their advertisements in a way that will make it easier for consumers to compare plans. Advertisements should no longer use words that could be confusing for customers.

Item 6 of the resource book provides more detail about this recommendation, drawn from the Executive Summary of the RTC.

I'll give you a few moments to read that.

[30 second interval]

(b) Improved information about plans—all providers should give customers a simple, standard explanation of what is included in a plan, how bills are calculated and other essential information they need to know about the plan (similar to a 'product disclosure statement').

Item 7 of the resource book provides more detail about this recommendation. Again, it's drawn from the Executive Summary of the RTC.

I'll give you a few moments to read that.

[30 second interval]

(c) Comparisons between providers—industry will be asked to provide more information about how good their customer care is, particularly how quickly they resolve their customers' enquiries. We also think that providers should have customer service charters.

Item 8 of the resource book provides more detail about this ACMA recommendation, as it was explained in the RTC's Executive Summary.

I'll give you a few moments to read that.

[30 second interval]

(d) Tools to monitor usage and expenditure—all providers should enable customers to track their usage and expenditure on data, calls and SMS during a billing period to help reduce the risk of bill shock.

Item 9 of the resource book is extracted from the RTC's Executive Summary of this point.

I'll give you a few moments to read that.

[30 second interval]

(e) Better complaints management—all providers should have a standard complaints-handling process that meets benchmark standards and includes timeframes for dealing with a complaint.

Item 10 of the resource book provides detail on this point, as explained in the RTC's Executive Summary.

I'll give you a few moments to read that.

[30 second interval]

If you want to understand how the ACMA relates to the 2012 TCP Code, and how it will interpret clauses that are less than perfectly clear, and what kinds of breaches will 'push its buttons', you only need to re-read the items referred to above. Whatever else the TCP Code was intended to deliver, it was those outcomes, and they are the outcomes that are close to the ACMA's corporate heart.

3.7 What the ACMA did next

Consider what we know so far:

(a) The Telecommunications Act provides for industry self-regulation.

(b) By 2007, the industry had developed a consolidated but ineffectual code that related to a wide range of telco activities and functions.

(c) In 2011, the ACMA decided that telco behaviours needed reforming.

As the ACMA described its next step:

We have told industry what changes we think are necessary in order to address customer care problems and we have invited them to make the necessary changes in their self-regulatory code of practice, the Telecommunications Consumer Protections Code (TCP Code).

If those changes are not made, or we think that the changes made in the TCP Code will not lead to better customer care, we will consider other options. These include making rules that will apply to the industry in order to make sure that industry practices improve.

The ACMA was offering the industry a chance to upgrade the 2007 TCP Code, to address the new ACMA agenda that flowed out of the RTC enquiry and report. The thinly veiled threat was that if self-regulation didn't deliver, the ACMA would impose an Industry Standard, a legal instrument that it could design and enforce, to achieve the outcomes it wanted.

That resulted in a tug of war between the ACMA and the telecommunications industry that ultimately produced the 2012 TCP Code.

3.8 The journey

It's fair to say that the final version of the 2012 TCP Code was a vigorously negotiated outcome. At the Communications Alliance event where the Code was launched, ACMA General Manager Jennifer McNeill bluntly said:

I'm pleased that I'm still on the guest list after the extensive interactions that have taken place between our organisations on the TCP Code over the past year.

At the ACOMMS dinner last week, [Communications Alliance] likened the ACMA's persistent, dogged pursuit of particular outcomes in the TCP process as sticking like 'porridge to a blanket'. Can I signal that there is more dogged persistence to come?

The draft Code went back and forth between Communications Alliance and the ACMA during 2011 and 2012, with the industry doing its best to water down the regulator's wish list and the ACMA mostly holding its line and issuing thinly veiled threats that if the Code development process didn't deliver a satisfactory document in an acceptable timeframe, ACMA

would walk away from the exercise and resort to an alternative regulatory strategy: an Industry Standard under its direct control, as permitted by the Telecommunications Act.

According to those in the know, the TCP Code was one draft away from being finally rejected by the authority when the industry produced a draft that was acceptable. In July 2012, the ACMA announced that what is now the Telecommunications Consumer Protections Code 2012 would be registered, and take effect, from 1 September 2012.

4. The ingredients

At this point, it's worth thinking about the ingredients that were mixed to produce the 2012 TCP Code.

There were six pre-2007 Codes that were written by six different committees, pretty inconsistently and with pretty poor drafting.

There was the 2007 revision of the TCP Code that tried valiantly to unify the earlier documents, but with limited success.

There was ACMA's wish list arising from the RTC enquiry and report, and it's fair to say that ACMA was more concerned to see those points implemented than that the new Code was, overall, a first class document.

Then there were several committees charged with drafting chapters of the new Code.

And finally there was a rush of amendment and drafting in the final weeks, as Communications Alliance tried to harmonise industry and regulatory positions.

In summary: Lots of history, lots of pages and words, lots of drafts, lots of committees, lots of agendas, lots of pressure and lots of last minute changes. Predictably, the Code contains lots of mistakes and lots of uncertainty.

In this presentation, I'm not going to analyse the very significant deficiencies in the TCP Code, but you'll find extensive discussions of some of them online at www.tcpcode.com.au. Look under the category 'Criticising the Code' for more information.

5. The 2012 Code

The 2012 Telecommunications Consumer Protections Code consists of nine chapters and including formal parts runs to 102 pages. Item 11 of the resource book is the table of contents of the Code, and you might care to turn to that as we outline what the Code says and does.

(a) Chapter 1 is a formal chapter and contains no rules.

(b) Chapter 2 contains the Code dictionary. It doesn't create any rules but it is critical for understanding the rest of the document.

For instance, Chapter 8 of the Code imposes special rules on the way telcos deal with Urgent Complaints, and the ACMA is already taking telcos to task for failing to correctly identify Urgent Complaints and comply with the rules about them. If you don't study the definitions of 'Complaint' and 'Urgent Complaint', you have little chance of understanding when the special rules apply.

(c) Chapter 3 sets out some general rules, plus a couple of miscellaneous items.

The general rules mandate:

- clarity of language
- quality of information
- accessibility of information
- general legal compliance, and
- courteous dealings with consumers.

In addition, Chapter 3 requires that a telco customer must be allowed to deal with the service provider through a representative such as an 'authorised representative' who may act on the customer's behalf, or an advocate who acts as a voice for the customer, but with no powers of agency.

(d) Chapter 4 moves onto consumer sales, service and contracts. I'm going to give you quite a lot of detail about this because it makes quite a few new demands on telcos.

This chapter is largely concerned with what the TCP Code calls 'Offers', defined as:

> *a current, standard in-market plan containing pricing that is made by a Supplier for the provision of Telecommunications Products, which is available to any individual Consumer or Consumers as a class and includes, without limitation such offers made in Advertising.*

This is one of the more challenging definitions to understand in the Code. But whatever an 'Offer' is, Chapter 4 requires that it is communicated :

- clearly and accurately;
- in a way that is not misleading.

Chapter 4 also introduces the Critical Information Summary, an all-new TCP Code initiative that involves a one or two page summary of the key points of an Offer. The idea is to provide consumers with a pithy, reasonably standardised product disclosure statement that can be used to understand, assess and compare products.

Then Chapter 4 goes on to require that telcos make available (on their website is the obvious place) a range of information about:

- plans and products
- any hardware they supply, and the warranties that apply to them
- their billing and payment practices and options
- how to estimate what level of capacity a customer should be looking for in a plan
- their post-sales support
- the coverage of any mobile products they sell
- the arrangements around international roaming ,and
- what underlying network their services are supplied on.

The Chapter then mandates that telcos must try to address identified consumer needs, and creates an obligation to provide an appropriate remedy where a customer signs up on the basis of inaccurate information.

Chapter 4 then deals with advertising practices and prohibits:

- headlines that are unreasonably qualified by fine print
- unjustified use of the word ‘unlimited’
- unjustified use of phrases like ‘no exceptions’ and ‘no catches’
- unjustified use of the word ‘free’
- failure to fairly disclose flag-fall or connection charges
- failure to fairly disclose the fact that advertised pricing for a product depends on buying it as part of a bundle
- certain pricing misrepresentations
- exaggerated network coverage claims
- using the word ‘cap’ in relation to a product that does not feature a true maximum spend limit (which the Code calls a ‘hard cap’)

- making claims about broadband speed that are misleading or unrepresentative of real world experience.

The Chapter then has some more positive rules, such as that:

- the particular terms of special promotions must be communicated to consumers
- recontracting customers shouldn't just be rolled over on their old plans if a more favourable newer plan is then available; they should be informed and given the option
- telcos must train relevant staff about advertising requirements and have adequate advertising review processes in place.

Chapter 4 then introduces the TCP Code's unit pricing scheme, that applies to post-paid mobile plans that ask for a minimum spend and offer a higher dollar amount of 'included value' that might be spent on calls or texts or data, and also applies to post-paid data plans that have an included data allowance.

For these plans, telcos must advertise the cost (including flagfall) of a two minute national mobile call, one national SMS and a megabyte of data used in Australia. There are rules about how and where these numbers must appear.

Next, Chapter 4 moves onto sales practices. For instance, it requires:

- sales agent training
- monitoring of sales agents
- monitoring of complaints about sales agents
- accurate product description
- genuine customer consent to a sale
- fair sales practices, and
- sensitivity to the needs of different consumers.

After that, Chapter 4 deals with customer contracts.

- They have to be easily available.
- They must be complete and clear.
- Where the customer is a non-business customer, standard form contracts must not contain unfair terms, including four specific types listed in the Code.

Next the Chapter turns to customer service and requires that:

- It must be effective.
- Customers must be told how to access it.
- Average wait times must be monitored.
- First contact resolution is to be encouraged.
- Proper customer service records must be kept.
- Customer care agents must be properly trained.

The Code expects telcos to actively seek customer feedback on their support experience, and use that to improve the quality of care.

There are a few other things but you can already see that Chapter 4 is an extensive code for the way telcos advertise, sell and engage with consumers.

(e) Chapter 5 deals with billing by telcos. It mandates:

- better billing information
- minimum standards of billing disclosure
- clear billing formats
- free access to historical billing information for a reasonable period
- prompt billing
- accurate billing
- provision of sufficient information to verify charges
- minimum payment options including at least one free payment method, and
- rules about direct debit arrangements, including a default rule that extraction not occur before a customer has had ten working days to check the bill.

(f) Chapter 6 deals with credit and debt management.

There's an emphasis here on assisting customers to:

- avoid unsuitable plans
- track and manage their spend, and
- not get in over their heads financially.

Telcos are obliged to provide and publicise spend management tools, and these will include actively notifying certain residential

customers when their plan usage reaches 50%, 85% and 100% of their entitlements, as well as other requirements.

Chapter 6 sets out proper processes to be followed when a customer is suspended or disconnected for debt or credit management reasons, and it specifies and mandates fair credit management processes.

It also requires a working, fair and meaningful financial hardship policy that must be made known to customers, especially when it appears they are in some financial difficulty.

(g) Chapter 7 deals with three situations:

- where a telco wins a customer from another telco
- where a telco buys a customer base, and
- where a telco changes the wholesaler that's providing the underlying service.

The Chapter mandates proper consent when customers churn, and proper information when a customer base is being transferred.

(h) Chapter 8 deals with complaint handling and mandates what, for most telcos, will be a much enhanced complaint management process. Now the complaint handling process is highly prescribed, including:

- special, and very broad, definitions of what must be treated as a 'Complaint' and a special definition of an 'Urgent Complaint'
- transparent, efficient processes
- issuing of trouble tickets for all complaints
- maximum times for acknowledgment, response, resolution and implementation of resolutions
- fairness
- information to customers involved in complaints
- extensive and specific record keeping, and
- regular analysis of complaints data to identify systemic and emerging issues.

(i) Chapter 9 of the Code has no even approximate equivalent in any earlier version of the Code. It is intended to ensure that this time, the TCP Code is taken seriously and complied with.

- A new independent body is created, called Communications Compliance, tasked with education and monitoring code

compliance and, ultimately, reporting serious non-compliance to the ACMA.

- Annually, telcos must lodge documentation with Communications Compliance (or CommCom as it has become known) attesting and demonstrating that they actually do comply.
- If a telco can't say that it fully complies, it must lodge a 'Compliance Assessment Plan' that identifies its shortfalls and details the strategy to address them.
- Every telco must have a documented TCP Code Compliance Plan, prepared consistently with the Australian Standard on compliance programs.
- Telcos will be required to submit to CommCom data on their performance under the Code, based on specified metrics, that will be published by CommCom so that consumers can make an assessment of competing service providers.

And of course, the ACMA as enforcer of the TCP Code always stands ready to deal with non-compliance as well. It is not required to wait for references from CommCom.

6. Wrapping up

Well, our brief was to get an overview of where the 2012 TCP Code came from, and what it is, and we've done that. I want to give the last word to the ACMA, which explained its attitude to the Code in a feisty speech by General Manager Jennifer McNeill when the Code launched.

Try this ominous comment, for instance:

In the course of the RTC Inquiry, that compliance approach was criticised as insufficiently vigorous. Apparently the industry want more investigations, more directions, more court cases.

Well—the good news is that we have heard these criticisms and over time you will see a shift of emphasis from education to investigation, direction and prosecution.

If you want to understand how the ACMA intends to approach and enforce the ground it has gained under the TCP Code, General Manager McNeill's speech is compulsory reading. It's set out in full in item 12 of the resource book. I'll leave you now, to read that in full.

Thanks for joining me on this TCP Code history and overview, and please visit www.tcpcode.com.au for in depth commentary on the Code and an extensive range of compliance materials you can buy and download.