

9 August 2023

Codes and Standards Team, Consumer Safeguards Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

By email to ConsumerSafeguards@communications.gov.au

Dear Codes and Standards Team,

Submission – Consultation on draft Telecommunications (Financial Hardship Industry Standard) Direction 2023

Thank you for the opportunity to comment on your draft *Telecommunications (Financial Hardship Industry Standard) Direction 2023 (Direction)*.

We welcome the Direction as an important first step in developing direct regulation to protect vulnerable consumers in the telecommunications space. As we have highlighted in recent publications,¹ we support the inclusion of essential consumer protections in direct regulation such as Industry Standards rather than in industry-developed codes.

Our Submission to Stage 1 of Communications Alliance’s 2024 Telecommunications Consumer Protections (TCP) Code Review (TCP Submission)² outlined several areas where our experience shows the Code is not operating effectively to protect vulnerable consumers, including those experiencing payment difficulties. We are pleased to see the Department is acting now to develop stronger safeguards for financially vulnerable consumers.

We support the Direction’s objectives and broadly defined content requirements for the Australian Communications and Media Authority’s (ACMA’s) future Financial Hardship Industry Standard (Standard). We are pleased the Direction recognises the essential importance of telecommunications services. We support the objective of the Standard to ensure telcos prioritise keeping consumers connected and only use disconnection as a measure of last resort. The Direction’s requirement for the Standard to include rules about credit management action relating to consumers experiencing hardship (including rules relating to the restriction, suspension or disconnection of services)³ will support this objective.

Section 7(3) of the Direction states that the Standard may cover matters relating to complaint-handling and may confer powers and functions on our office. As we outlined in our TCP Submission, our office has sufficient power to handle complaints against members of the TIO Scheme under our Terms of Reference and our Constitution without a conferral of powers.⁴ It is important we are consulted on any future changes to our powers and functions, as any changes will likely have operational impacts for us.

We offer the following observations on areas where the Direction could provide additional explicit guidance to the ACMA about the Standard’s content.

¹ See our submission to Stage 1 of [Communications Alliance’s 2024 TCP Code Review](#), our [Systemic Investigation Report, ‘A time for change – Three years of systemic investigations in review’](#), June 2023.

² Our submission to Stage 1 of [Communications Alliance’s 2024 TCP Code Review](#).

³ Section 7(2)(h) of the Direction.

⁴ [TCP Submission](#), pg 39; our [Terms of Reference](#), our company [Constitution](#).

The Direction should require an inclusive approach to hardship protections

The Direction does not define 'financial hardship'. Because the Direction's objectives and content requirements for the Standard are defined by reference to 'financial hardship', this means it leaves open-ended the scope of circumstances where the Standard will apply.

We support enabling the ACMA to detail hardship consumer protections in the Standard. However, it is important that any definition is inclusive and adequately captures all consumers who require help in paying their telco bills and staying connected.

As we highlighted in our TCP Submission, the TCP Code's definition of 'financial hardship' can sometimes exclude some vulnerable consumers who need assistance.⁵ This is because the TCP Code defines 'financial hardship' by reference to matters such as the cause of a consumer's financial difficulties and their personal belief about their capacity to pay. We see cases where telcos apply the TCP Code's definition inconsistently, including between different complaints against the same telco.

The Standard should provide protections for all financially vulnerable consumers, irrespective of the cause of their vulnerability or their belief about their capacity to pay. This could be achieved by expanding section 7(1) of the Direction so it includes additional or modified objectives. For example, the Direction could include an objective of ensuring the availability of protections under the Standard is not limited by the cause of a consumer's financial vulnerability or their belief about their capacity to pay.

Our TCP Submission also argues that the language of 'financial hardship assistance' can be a barrier to consumers seeking assistance, and should be replaced with clearer and more accessible terminology. We suggested language modelled on that used in the Victorian energy sector, such as 'Assistance for consumers anticipating or facing payment difficulties.'⁶ We recommend that the Direction enable the ACMA to use such accessible terminology in the Standard.

The Direction could require rules to proactively identify consumers experiencing non-financial vulnerability

As we highlighted in our TCP Submission, payment assistance is most effective where telcos proactively identify consumers who may need help and offer assistance early.⁷ We support the Direction's content requirement for the Standard to include requirements for ensuring early and ongoing identification of consumers who may be experiencing financial hardship.⁸

Financial vulnerability rarely occurs in isolation, and consumers experiencing other kinds of vulnerability can face additional challenges when seeking help.

In our view, the Standard will support better outcomes for consumers and telcos if it requires telcos to proactively identify and support consumers experiencing vulnerabilities, not just financial vulnerabilities. For example, consumers experiencing domestic or family violence can face additional barriers to seeking help if their telco asks them to repeat their story several times to multiple different staff.

The Standard could require telcos to provide appropriate and accessible avenues for consumers experiencing additional vulnerabilities when they seek assistance with payment difficulties.

The Department could achieve this by adding a content requirement to section 7(2) of the Direction.

⁵ [TCP Submission](#), pg 19-20.

⁶ [TCP Submission](#), pg 19.

⁷ [TCP Submission](#), pg 17.

⁸ Section 7(2)(d) of the Direction.

The Direction should require rules specifying non-automatic payment methods for consumers experiencing or anticipating payment difficulty

As we observed in our TCP Submission, automatic payment methods based on the direct debiting of funds from consumers' bank accounts can have detrimental impacts for consumers experiencing payment difficulties.⁹ In recent years, we have observed a marked shift in the telco industry towards automatic payments as the only available payment option. Several major telcos now offer only automatic payment methods for most of their in-market plans.

In our experience, automatic payment methods can make it more difficult for financially vulnerable consumers to control their finances.¹⁰ These consumers often receive government benefits as their only form of income. Many live from pay to pay, and have to budget carefully to make sure each fortnight's payment can cover their living expenses. Where a consumer's payment cycle does not align with their telco's direct debit date, it can make it more difficult for them to budget.

When things go wrong with automatic payments (for example where a telco debits charges on the wrong date or for an incorrect amount), it can leave consumers with overdrawn accounts and associated bank fees. We receive complaints from consumers who say a telco's incorrect direct debit left them without money to pay for food, rent or other essentials.¹¹

In our TCP Submission, we argued telco consumer protections should prescribe mandatory payment methods all telcos must offer, including:

- (a) at least one method that is not automatic or based on direct debit, and
- (b) for those consumers who use and request it, Centrepay.¹²

While the TCP Code Review remains underway, we know automatic payment methods are impacting financially vulnerable consumers now. Therefore, we recommend that the Department include a content requirement in the Direction for the Standard to specify non-automatic payment methods telcos must offer their customers. At a minimum, the Standard should ensure non-automatic payment methods are available to all consumers experiencing or anticipating payment difficulty.

Thank you for considering our submission. We look forward to commenting further when the ACMA consults on the text of the Standard.

Yours sincerely,



Cynthia Gebert
Telecommunications Industry Ombudsman

⁹ [TCP Submission](#), pg 32-35.

¹⁰ Our [Systemic Investigation Report, 'A time for change – Three years of systemic investigations in review'](#), pg 14-15; TCP Submission, pg 32.

¹¹ [TCP Submission](#), pg 35.

¹² [TCP Submission](#), pg 34, recommendation 24.