

ACCAN Response to Questions on Notice

18 October 2024

Key points

This response outlines ACCAN's response to questions taken on notice. The document sets out the basis for ACCAN's views that:

- > The existing model of code-based regulation in telecommunications is ineffective.
- > Minimum mandatory complaints and dispute resolution standards need to encompass all consumer harms to be effective in combatting misinformation and disinformation.
- > Minimum mandatory media literacy plans for digital communications platforms should include consumer education.

About this document

The Australian Communications Consumer Action Network (**ACCAN**) is pleased to provide this response to the Senate Standing Committees on Environment and Communications (**the Committee**). This response is provided to the Committee following ACCAN's evidence and submission to Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 [Provisions].

ACCAN thanks the Committee for the opportunity to provide a response to their questions. Should you wish to discuss any of the issues raised in this response further, please do not hesitate to contact Samuel Kininmonth, Senior Policy Adviser,

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Australian Communications Consumer Action Network

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services.

ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

Responses to questions

Q1: On what basis has ACCAN formed the view that existing telecommunications arrangements are ineffective?

ACCAN considers that the existing model of code-based regulation, through the Telecommunications Consumer Protections (TCP) Code, is ineffective based on several sources of evidence, including:

- Direct ACCAN staff experience in engaging with industry led code drafting processes.
- The withdrawal of consumer groups from the TCP Code process.
- Ministerial intervention has been required to ensure appropriate consumer protections arrangements for critical areas of consumer protections such as financial hardship and domestic and family violence.
- Declining reported complaints indicates consumer withdrawal rather than satisfaction.
- Insignificant fines that are not commensurate with severity of issues and are often not even able to be addressed under the code as it is silent on them e.g. contacting relatives of deceased persons for several years.

Voluntary industry codes can lead to weak compliance and falling consumer trust

The decline in trust observable in the telecommunications sector is due to poor consumer protection outcomes enabled by the self-regulatory framework envisaged within the Telecommunications Act 1997 (Cth).¹ Industry codes within the *Telecommunications Act 1997* (Cth) are voluntary in the first instance, with compliance only made mandatory once the Australian Communications and Media Authority (ACMA) has directed a company to comply.² This means that any breaches to a code in the first instance cannot be subject to enforcement or penalty action by the ACMA.

Independent research has shown that according to publicly available information, between 1 January 2010 and 30 June 2023 (around 13 years), the ACMA issued an estimated 24 infringement notices with a total value of \$6,143,160 for breaches to telecommunications consumer protections regulations.³ In ACCAN's view, the evidence indicates that the ACMA does not have appropriate resourcing and a suitable regulatory framework to protect consumers, and instead relies heavily on warnings and other non-financial actions to enforce compliance.⁴

The failure of industry codes and the co-regulatory system has been posited by the Department of Communications for some time. A 2014 departmental background paper noted that co-regulation within Australian communications sector: 'raises a question as to whether too much heavy lifting was being asked of a co-regulatory approach to dealing with a range of important areas of consumer

¹ Telecommunications Act 1997 (Cth) s. 4.

² Telecommunications Act 1997 (Cth) s. 106.

³ Karen Lee, Derek Wilding, Kieran Lindsay & Vidya Kathirgamalingam, *The Enforcement of Telecommunications Consumer Protections* (Report, 2024).

⁴ ACMA, *Compliance and enforcement policy* (Web Site, 2024). <https://www.acma.gov.au/compliance-and-enforcement-policy>.

concerns, particularly given the ACMA's observations of its likely success'.⁵ Under the current regime, the telecommunications sector continues to lose trust in Australia.⁶

The TCP Code and Consumer Safeguards Review Part C highlights the failures of industry codes

Failure of the current TCP Code

A recent example of industry codes failing to provide adequate consumer protections is the most recent revision of the TCP Code. Despite over a year of consultation, drafting and missed deadlines, the TCP Code has failed to meet expectations. The Australian Competition and Consumer Commission (ACCC), Telecommunications Industry Ombudsman (TIO) and consumer groups have called on the ACMA to reject the industry-drafted code.⁷

The ACCC stated that '[c]o-regulation under the industry led TCP Code, combined with the framework's two-step enforcement process and disproportionately low-level financial penalties provide very few incentives for industry compliance'.⁸ Further, 'aspects of the current framework do not reflect the everyday importance of telecommunications services or the potential harm to consumers of non-compliance'.⁹ Commenting on the enforcement structure of the TCP code, the ACCC noted:

'[T]he current legislated two-step enforcement framework means that a provider could potentially engage in behaviour that breaches the Code (and profit from such breaches), cause significant detriment to a large number of consumers and only face consequences if the provider fails to comply after it has been given an ACMA warning or direction to comply with the Code'.¹⁰

In other words, the TCP Code is not fit-for-purpose and does little to deter systemic poor behaviour.

The TIO wrote that 'essential consumer protections' are best introduced 'through direct regulation' where rules are 'made by government and regulators rather than industry representatives through

⁵ Department of Communications, *Regulating harms in the Australian communications sector Observations on current arrangements* (Report, 2014) 13. https://www.infrastructure.gov.au/sites/default/files/Dept-policy-background-paper_2_May-14.pdf.

⁶ Edelman, *2023 Edelman Trust Barometer* (Report, 2023) 9. <https://www.edelman.com.au/sites/g/files/aatuss381/files/2023-02/2023%20Edelman%20Trust%20Barometer%20Report%20-%20AUS%2002-2023.pdf>.

⁷ Consumer Action Law Centre, *'The Telco Code has run its course and failed to deliver': ACMA must explore other options to protect consumers* (Media Release, 4 July 2024). <https://consumeraction.org.au/the-telco-code-has-run-its-course-and-failed-to-deliver-acma-must-explore-other-options-to-protect-consumers/>.

⁸ ACCC, *ACCC submission to Part C of the Consumer Safeguards Review* (Submission, 2020) 2. <https://www.accc.gov.au/system/files/ACCC%20submission%20to%20Part%20C%20of%20the%20Consumer%20Safeguards%20Review%20-%20September%202020.pdf>.

⁹ ACCC, *ACCC submission to Part C of the Consumer Safeguards Review* (Submission, 2020) 2. <https://www.accc.gov.au/system/files/ACCC%20submission%20to%20Part%20C%20of%20the%20Consumer%20Safeguards%20Review%20-%20September%202020.pdf>.

¹⁰ ACCC, *ACCC submission to Part C of the Consumer Safeguards Review* (Submission, 2020) 12. <https://www.accc.gov.au/system/files/ACCC%20submission%20to%20Part%20C%20of%20the%20Consumer%20Safeguards%20Review%20-%20September%202020.pdf>.

the creation of industry codes'.¹¹ The CEO of Consumer Action Law Centre, Stephanie Tonkin observes that the TCP Code is 'riddled with vague promises and assertions, unenforceable guidance notes, and lacks the necessary firm commitments needed from telcos to assist customers in vulnerable circumstances'.¹² The TCP Code process is still ongoing and it is unlikely that any formal TCP Code arrangements will be introduced until 2025 at the earliest, leaving consumers without adequate protections.

Failure noted in Consumer Safeguards Review Part C

ACCAN's submission to the Consumer Safeguards Review Part C consultation noted that the TCP Code was characterised by similar limitations, including:

- 'Evidence of routine non-compliance with obligations and guidelines surrounding dealing with vulnerability'.¹³
- 'That from an end-user perspective, industry codes can set a low bar for compliance, containing ambiguous rules which allow for subjective application'.¹⁴
- 'In some instances, the code development process resembles a style akin to 'negotiation by attrition', where working committees work for month after month to come to agreement'.¹⁵

ACCAN concluded that codes are ineffective and substantial reform is needed.

The inadequacy of industry drafted codes has been acknowledged by several stakeholders including the ACMA and Department of Communications as part of a review of consumer safeguards undertaken in 2020. The ACMA's response to the Consumer Safeguards Review Part C consultation undertaken in 2020 noted that the ACMA supported 'enshrining essential consumer protection rules in direct regulation—some of which currently reside in industry codes'.¹⁶

The ACMA added that '[t]he code development process is slow',¹⁷ 'can result in poor drafting'¹⁸ and that once codes are registered the 'code review processes is resource intensive and delivers limited incremental value'.¹⁹ It is unclear that codes reflect the values of industry or consumers as 'membership of industry bodies is not necessarily representative of the industry that will be affected by the code'²⁰ and 'commercial incentives of industry outweigh the interests of consumers'.²¹

¹¹ TIO, *Submission to Communications Alliance's 2024 TCP Code review* (Submission, June 2023) 5.

<https://www.tio.com.au/sites/default/files/2023-06/TIO%20submission%20to%20Communications%20Alliance%20-%202024%20TCP%20Code%20Review.pdf>.

¹² Consumer Action Law Centre, 'The Telco Code has run its course and failed to deliver': ACMA must explore other options to protect consumers (Media Release, 4 July 2024). <https://consumeraction.org.au/the-telco-code-has-run-its-course-and-failed-to-deliver-acma-must-explore-other-options-to-protect-consumers/>.

¹³ ACCAN, *ACCAN submission to consumer safeguards review part C* (Submission, 2020) 16. <https://accan.org.au/our-work/submissions/1804-csr-partc>.

¹⁴ *Ibid* 28.

¹⁵ *Ibid* 28.

¹⁶ ACMA, *ACMA submission to Consumer Safeguards Review Part C: Choice and Fairness* (Submission, 2020) 3. <https://www.infrastructure.gov.au/sites/default/files/submissions/csr-part-c-acma.pdf>.

¹⁷ *Ibid* 9.

¹⁸ *Ibid* 10.

¹⁹ *Ibid* 10.

²⁰ *Ibid* 9.

²¹ *Ibid* 9.

The ACMA considered that ‘essential consumer protection rules are more appropriately housed in direct regulation’ due to the characteristics of the telecommunications market, information asymmetries between customers and providers and because ‘the range of products available in the market is increasingly varied, complex and difficult to compare’.²²

The failure of industry codes has required intervention

The failure of the voluntary industry codes process has required direct intervention from the Minister for Communications, The Hon Michelle Rowland MP, on several occasions including for financial hardship in 2023 and domestic and family violence in 2024.

Intervention required for financial hardship

Following calls from the consumer sector and research from the ACMA, in September 2023 the Minister for Communications directed the ACMA to make an industry standard for telco customers experiencing financial hardship.²³

Intervention required for domestic and family violence

Communications Alliance’s 2023 voluntary guideline, *Assisting Consumers Affected by Domestic and Family Violence*, was found to be unable to provide sufficient levels of consistent protections for victim-survivors and in 2024 the Minister for Communications announced her intention to direct the ACMA to make an enforceable industry standard.²⁴ The Minister noted that the review of the TCP Code has also shown the Code is an ‘ineffective solution to establish necessary protections in an appropriate timeframe’ and required intervention to provide timely protections.²⁵

Together these two examples demonstrate the weaknesses of the TCP Code process and required ministerial intervention to address key consumer protection needs.

Further, ACCAN notes that protections for consumers experiencing domestic and family violence were not established through the industry code drafting processes and were not subject to genuine consideration until the most recent TCP Code process commencing in 2023. This is despite revisions to the TCP Code occurring in 2019, and the harms associated with domestic and family violence being acknowledged in the public sphere over many years.

²² ACMA, *ACMA submission to Consumer Safeguards Review Part C: Choice and Fairness* (Submission, 2020) 10. <https://www.infrastructure.gov.au/sites/default/files/submissions/csr-part-c-acma.pdf>.

²³ The Hon Michelle Rowland MP, *Better support for telco customers experiencing financial hardship* (Media Release, 5 September 2023). <https://minister.infrastructure.gov.au/rowland/media-release/better-support-telco-customers-experiencing-financial-hardship>

²⁴ The Hon Michelle Rowland MP, *Better protections for telco customers experiencing domestic and family violence* (Media Release, 8 October 2024). <https://minister.infrastructure.gov.au/rowland/media-release/better-protections-telco-customers-experiencing-domestic-and-family-violence>.

²⁵ The Hon Michelle Rowland MP, *Better protections for telco customers experiencing domestic and family violence* (Media Release, 8 October 2024). <https://minister.infrastructure.gov.au/rowland/media-release/better-protections-telco-customers-experiencing-domestic-and-family-violence>.

Consumers are tired of complaining

Falling consumer complaints to the Telecommunications Industry Ombudsman (TIO) indicates consumer fatigue. According to Communications Alliance, the number of complaints to the TIO last reported quarter was stable at 2.7 per 10,000 services in operation.²⁶ These numbers show consumer resignation rather than satisfaction. Recent data from CHOICE found that most (73%) consumers have experienced poor customer service, including with telcos, and most (85%) think customer service is getting worse.²⁷ Regarding telecommunications, 55% of consumers experienced at least one telco challenge in the past 12 months.²⁸ However, fewer than 50% of consumers who experienced challenges complained to their service provider.²⁹ Many chose to do nothing because they were out of time and didn't think it would make a difference.³⁰ Only 42% of consumers who did choose to complain to their service provider were satisfied with the process and satisfaction fell the longer the complaints process took.³¹ CPRC's CEO Erin Turner has commented that lack of complaints is 'a strong sign that consumers are losing trust in the sector'.³² Falling complaints data does not indicate better customer service but that many consumers have given up on getting their problems resolved.

²⁶ Communications Alliance, *Telecommunications Complaints in Context April - June 2024* (Report, 2024).

<https://www.commsalliance.com.au/Documents/Publications-by-Topic/CiC-Reports>.

²⁷ CHOICE, *3 in 4 consumers experienced poor customer service: CHOICE* (Media Release, 2024).

<https://www.choice.com.au/about-us/media/media-releases/2024/august/3-in-4-consumers-experienced-poor-customer-service>.

²⁸ CPRC, *Barriers to effective dispute resolution in the telecommunications industry* (Report, July 2024) 11.

https://www.tio.com.au/sites/default/files/2024-07/TIO_CPRC_Telco%20Research%20Report.pdf.

²⁹ CPRC, *Barriers to effective dispute resolution in the telecommunications industry* (Report, July 2024) 13.

https://www.tio.com.au/sites/default/files/2024-07/TIO_CPRC_Telco%20Research%20Report.pdf.

³⁰ CPRC, *Barriers to effective dispute resolution in the telecommunications industry* (Report, July 2024) 13.

https://www.tio.com.au/sites/default/files/2024-07/TIO_CPRC_Telco%20Research%20Report.pdf.

³¹ CPRC, *Barriers to effective dispute resolution in the telecommunications industry* (Report, July 2024) 14.

https://www.tio.com.au/sites/default/files/2024-07/TIO_CPRC_Telco%20Research%20Report.pdf.

³² TIO, *Sobering new research from Ombudsman and CPRC reveals telco customers are doing it tough* (Media Release, 25 July 2024). <https://www.tio.com.au/news/sobering-new-research-ombudsman-and-cprc-reveals-telco-customers-are-doing-it-tough>.

Q2: How well do you think the Bill will align with broader efforts to develop an external dispute resolution (EDR) scheme for scam complaints, as announced by the Government last month?

The EDR scheme announced as part of the *Scams Prevention Framework – exposure draft legislation* is limited to scams and so would not cover many other harms faced by consumers on digital communications platforms. Section 58DA outlines that the purpose of Division 4 is that '[o]ne or more external dispute resolution schemes may be authorised for dealing with consumer complaints about scams relating to regulated services.'³³ This would preclude a range of consumer complaints, including misinformation and disinformation on digital communications services. Issues facing digital communications consumers include:

- Payments
- Spam
- Scams
- Fake reviews
- Hacking and fake accounts
- Content or account removal
- Ad-related issues
- Platform policies and procedures.³⁴

As outlined in the original submission, restricting minimum dispute resolution standards to misinformation and disinformation or scams will miss issues that cut across categories. Minimum internal dispute resolution (IDR) and EDR standards need to apply to all consumer issues to ensure that issues are not missed. In ACCAN's view, the TIO is best placed to act as an EDR scheme to reduce delays and recognise the convergence of digital communications and telecommunications.

³³ Exposure Draft, Treasury Laws Amendment Bill 2024: Scams Prevention Framework, s. 58DA.

³⁴ Accenture, *Mapping dispute resolution on digital platforms* (Report, 2023) 12.

<https://www.infrastructure.gov.au/sites/default/files/documents/foi--23-037.pdf>.

Q3: Your proposal is that this should include consumer education around false advertising and harmful products as well. Why do you think that would be useful?

In the digital economy, consumers are offered an extraordinary variety of products and services but navigating this market is difficult. The ACCC has observed harms related to products and services that may sit in the grey area between scams and low-quality products or services.³⁵ Misinformation and disinformation harms overlap with other consumer harms, including false advertising and harmful products.

For example, actor Russell Brand appeared on TikTok recently to sell a ‘magical amulet’ from Aires Tech to protect from ‘corrupting’ Wi-Fi and other electromagnetic radiation.³⁶ Harms from electromagnetic radiation in communications are a strong topic of misinformation and the magical amulet demonstrates both consumer harms and misinformation and how they overlap. Consumer education measures to address misinformation and disinformation harms cannot be productively separated from broader consumer rights education.

The Australian Communications Consumer Action Network (ACCAN) is Australia’s peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia’s past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)

³⁵ ACCC, *Digital platform services inquiry - September 2022 interim report - Regulatory reform* (Report, 2022) 91-92. Available at: <https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform>

³⁶ Athena Stavrou, ‘Russell Brand appears in bizarre video selling “magical amulet” to protect from “corrupting” wifi’ *Independent* (News Report, 16 October 2024). <https://www.independent.co.uk/news/uk/home-news/russell-brand-magic-amulet-wifi-aires-tech-tiktok-b2629426.html>