

14 March 2023

To: Ms Nerida O'Loughlin PSM
Chair and Agency Head
Australian Communications and Media Authority

By email: OfficeoftheChair@acma.gov.au

cc: Jeremy Fenton
TCP Code Review Committee

Dear Nerida,

RE: TCP Code – your letter of 1 February 2023, ACMA ref: ACMA2023/415-6

Thank you for your letter of 1 February 2024 recognising the substantial work that has gone into the review and draft revisions of the TCP Code to date, and for the detailed feedback provided on the positions and drafting proposed in our 'December package'.

You asked that we provide an update on industry's position and proposed drafting on payment methods by 14 March; and that we provide drafting that addresses the remaining matters of concern by 3 May. Our revised drafting on payments is attached.

As you will see, we have included drafting to address the ACMA's key requirement that CSPs be required to offer at least two 'fee-free' options for payment to customers. We have also included revised drafting on the other clauses from the 'payments paper' in the 'December package', amended where applicable to take account of the new requirement on fee-free payment methods and the new Financial Hardship Standard, as well as the ACMA comments.

As before, these clauses would be better read in the context of the entire Code, but we have endeavoured to provide sufficient detail in the drafting and accompanying [comment log](#) to enable the ACMA to assess progress, pending you seeing the clauses in full context.

You will note that the new drafting on the CIS and failed direct debits is not entirely in line with the suggested ACMA revisions. We believe, however, that it delivers on the intended consumer outcomes. Our reasoning is explained in the comment log. Our approach to drafting other clauses is also outlined in that log.

We would also appreciate the opportunity to meet with the ACMA Authority and/or staff, at your convenience, to provide any additional clarity required and discuss any remaining concerns.

In relation to the May deadline, the Drafting Committee is methodically working through the recent feedback provided, as well as previous feedback from all stakeholders on issues not covered in the December package, as we continue drafting. I must admit I am somewhat nervous as to our ability to hit that deadline,

given the work we can still see ahead of us. I am not asking for an extension now, but can't rule out that – even with the best of intentions and the intensity of the effort that CA management and our members are bringing to the tasks – we might have no choice but to come to you at some point and plead for a little leeway on the timing.

We encourage and will consider stakeholder input as drafting continues, as outlined in our recent letter to the TCP Code Review Committee (RC) (copy attached). This includes the proposal (supported in conversations with stakeholders to date) that the RC review and provide constructive, written feedback on the May package in parallel with the Authority, with that feedback to be considered in drafting, before the Code is released for public comment.

We look forward to the opportunity to discuss with the ACMA timeframes for that stage of the process, noting that feedback from the RC to date suggests that it will require at least 4-6 weeks to review and provide comment on the May package.

We look forward to discussing issues with the ACMA as proposed. In the interim, should the Authority have questions about the attached payments paper, or any other aspect of the process as we progress, please do not hesitate to contact Peppi Wilson, Senior Manager, Policy and Regulation (p.wilson@commsalliance.com.au), or me. We would be glad to make ourselves available to walk you through the proposals, and would appreciate the opportunity to understand and respond to issues and concerns as they arise.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Stanton', written in a cursive style.

John Stanton
Chief Executive Officer

Attachments

- 1. Payment methods – revised clauses; feedback log.*
- 2. Letter to Review Committee, February 2024*

Attachment 1: Payment methods – revised clauses; feedback log

Revised draft clauses on the key payment issues (identified in the ACMA feedback) are outlined below.

The [comment log](#) overleaf records the feedback provided on previous drafting **as well as the rationale for addressing the issues in the manner proposed**.

Definitions

Definitions relevant to this drafting (and italicised within the clauses):

- **Fee-free:** means free of charges directly imposed by the CSP for processing a payment. It relates to general processing fees that the CSP has visibility and direct control of (such as card surcharges), but does not include late payment fees.
- **Direct debit:** means a payment that is automatically deducted ('pulled') from a customer's nominated financial account by the CSP on an agreed date or on an agreed schedule. Direct debit requires authorisation from the account holder.
- **Manual payment:** A form of payment that is initiated and directly controlled ('pushed') by the customer. Examples include (but are not limited to): scheduled transfers, electronic funds transfers, cash payments, credit card payment, BPay.

1. Amendment to CIS requirements (Chapter 5)

1. In the body of the document, each CIS must contain the following elements:
 - a. clear identification of the payment options available that are *fee-free*.
For clarity: Where applicable, details of any further payment options offered, and applicable fees, may be provided outside of the main body of the CIS. For example, on the CSP's website.
 - b. [...]

2. New clauses requiring 2 fee-free payment methods, and flexibility (Chapter 8)

1. CSPs must offer a *manual payment* method that is *fee-free*.
2. CSPs must offer at least one other payment method that is *fee-free*.
3. Where a CSP offers a *direct debit* payment option, it must reasonably allow the customer to:
 - a. choose a recurring payment date or payment cycle; or
 - b. choose a payment frequency option (e.g. fortnightly or monthly); or
 - c. temporarily defer a payment without penalty.

For clarity: Options 3a and 3b are designed to provide the customer the flexibility to, for example, align their direct debit payments with their pay cycle. Option 3c is designed to assist customers needing to manage updates to credit card information, banking information, or similar. It is aligned with the Financial Hardship Standard definition of options for assistance, 'temporarily postponing, extending or deferring the time for paying a bill', with the additional protection to ensure no penalty is applied.

'Reasonably allow' means that it would be reasonable to allow a customer to take advantage of the flexibility options offered in this clause more than once, but it would not be expected that a customer can make these changes on a regular basis (e.g. every time a bill is due).

Note: Requirements for managing customers in financial hardship are separate. See the Telecommunications (Financial Hardship) Industry Standard 2024.

3. New and updated requirements for direct debit payments (Chapter 8).

1. [updated] A CSP offering direct debit as a payment facility for a *telecommunications service* must:
 - a. ensure they have the *customer's* authorisation; [current 5.7.1]
 - b. ensure that the *customer* can readily verify that the *direct debit* arrangements in place are in accordance with their authorisation; [current 5.7.1(b)]
 - c. ensure that a *customer* can cancel or update a *direct debit* authorisation through a simple mechanism; [current 5.7.1(e)] and
 - d. cancel the *customer's direct debit* within 3 *working days* of receipt of the *customer's* cancellation request. [current 5.7.1(f)]

2. [new], [partial updated 5.7.1(a)] A CSP must provide a reminder notice to a *customer* paying by *direct debit* at least 3 *working days* in advance of the debit. This must include
 - a. the payment date; and
 - b. information about the debit amount.

For clarity:

(1) This clause does not apply where a customer has actively opted out of notifications. See clause [x-ref to be inserted to clause allowing customers to opt out of notifications – current Code reference 6.5.5]

(2) Information about the debit amount can be provided directly in the notification (e.g. '\$x will be debited from your account'), or via a reference or link to a self-service mechanism, such as an app, online account, or automated balance phone service (e.g. check your balance by [visiting xxxx].'). Notification format and mechanism are not prescribed.

Note: refer to the Comment Log for information about clauses that appear to be 'missing' (i.e. are included in the current Code at 5.7.1 but missing from drafting above).

4. New requirement for failed direct debit payments (Chapter 8).

1. CSPs must: [new]
 - a. promptly notify a *customer* if a *direct debit* fails;
 - b. inform the *customer* of the timeframe for any re-attempt of the *direct debit* (prior to making the re-attempt); and
 - c. provide at least 3 *working days* before re-trying the *direct debit*.

5. Clearer requirement for remedies in relation to direct debit payment errors
(Chapter 8).

1. Where it is identified that the amount of a *direct debit* is incorrect, the CSP must provide a full and timely refund of any excess amount debited, unless otherwise agreed. [5.7.1(g)]
2. CSPs must not: [new]
 - a. encourage or require a residential customer to nominate another action as a remedy; and
 - b. penalise a *residential customer* if they do not nominate another action as a remedy.

Comment Log

ACMA Feedback	DC Comment	How it has been addressed
<p>CIS The CIS should specify which payment options are free-of-charge and the costs associated with any payment options – rather than the consumer being required to click on a link from the CIS. This is a more transparent approach, facilitates consumer awareness of fees associated with payment methods and reduces the risk of information asymmetry</p>	<p>We agree with the intent – to provide as much transparency on key points as possible. However, putting all the proposed detail in the CIS is problematic; the CIS is designed to be a summary document of key information, and must be no more than 2 pages long. Where multiple paid payment methods are offered (in addition to fee-free ones), there may not room to add full details within the CIS without increasing its length beyond the maximum 2 pages. Including pricing details in the CIS itself also creates challenges in keeping the CIS up to date and makes key points harder to find - the intent and focus is to ensure that consumers are clear about: (1) what's included (without additional cost); and (2) whether there are any other payment options available (and if so, at what cost).</p>	<p>The proposed drafting presented at 1 :</p> <p>i) requires that the CIS clearly identify the fee-free payment methods offered (i.e. those without additional charges imposed by the CSP), and</p> <p>ii) provides flexibility for providers to include <i>details</i> of any other (non-free) payment methods through some other means (e.g. through a link on the CSP's website) rather than in the CIS.</p>
<p>Fee-free payment methods. Flexibility. To provide appropriate community safeguards, the provisions will need to ensure that direct debits/auto-payments are not the only payment method offered, with at least one alternative being offered fee-free to all customers with similar flexibility.</p>		<p>The proposed drafting presented at 2 requires that all CSPs offer at least 2 fee-free methods of payment, with at least one of these to be a manual method of payment. To ensure clear drafting, we have chosen to use the terms 'manual payment' and 'direct debit' and have defined both.</p> <p>The obligation to ensure flexibility for direct debit payments has been retained. However, the drafting proposed in the December package has been amended in light of the new included obligation noted above, as well as to accommodate/reflect the new Financial Hardship Standard.</p>

		The proposed drafting does not explicitly include clauses to require flexibility for other methods because it is unnecessary to do so; flexibility is an intrinsic character of all manual and other payment options.
<p>Updates to current 5.7.1 The new draft cl 5.7.1 omits the following protection at 5.7.1(c) in the existing code. That existing protection gives post-paid direct debit customers whose bills are not for set monthly amounts at least 10 days to check their bill charges prior to being direct debited.</p>	Confirming that this protection will be maintained but has been moved to a different part of the chapter for flow/structure reasons (which is still a work-in-progress and therefore has not been included with this drafting).	Confirming that the protection as described by the ACMA is to be retained.
<p>'Missing clauses'</p> <p>Current 5.7.1(a)</p> <p>Current 5.7.1(c)</p> <p>Current 5.7.1(d)</p>	<p>Note that for structural reasons,</p> <p>(i) the part of the requirement currently at 5.7.4(a) not included in the new drafting presented at 3 above, will be moved to a new 'spend management' section in the billing chapter.</p> <p>(ii) the current 5.7.1(c) will move to a new 'charge notification' section in the billing chapter.</p> <p>(iii) the current 5.7.1(d) will move to a new 'timeliness' section in the billing chapter.</p>	Confirming that these protections will be retained.
The new cl 5.7.1(1)(d) should include a specified time rather than the current drafting of 'sufficient time'.	A specified time has now been included.	The proposed drafting presented at 3 (part 2) requires 3 working days' notice.
The current 5.7.1(e) is missing from the drafting (simple mechanism to cancel a direct	This was included in the drafting provided in December. (Note that updates to drafting mean the clause is split and clauses reordered).	Confirming that the requirement has been retained and updated to include the word 'update' (cancel or update a direct debit, etc.) – see drafting presented at 3 .

debit)	<p>Note: a CSP will need to authenticate a customer before cancelling or updating (per the <i>Telecommunications Service Provider (Customer Identify Authentication) Determination 2022</i>).</p>	
<p>Failed direct debits '3-4 working days' [for a customer to make funds available, or pay with another payment method] is not an adequate timeframe and should be 7 working days in consideration of timeframes associated with rearranging finances, pay cycles, asking for and obtaining financial help. Seven working days is also consistent with s.17 of the FH Standard.</p>	<p>We have asked the ACMA to clarify where the 7 working days' notice is in the Financial Hardship Standard, as we cannot find it (it is not in s.17). Advice is yet to be received.</p> <p>Regardless, the clear advice from businesses is that 7 days is problematic:</p> <p>i) A failed direct debit is not necessarily an indicator of financial hardship; it may be due to:</p> <ul style="list-style-type: none"> - a customer forgetting the payment is due and not putting the funds in the relevant account (addressed with a new requirement for reminders). - administrative issues (e.g. changed credit card details) – provided for in this clause. <p>Where there is an indicator of financial hardship, obligations on CSPs are covered in the FH Standard.</p> <p>ii) A delay of 7 working days translates into a delay of many more calendar days before a re-attempted debit (particularly where point (iii) below applies). For customers, this may result in the debit occurring well after the expected timeframe and not long before, or even at the same time as, their next 'usual' debit (especially for customers on weekly or fortnightly direct debits). For most customers, an alert/notification and re-attempted debit closer to their original payment</p>	<p>The proposed drafting presented at 4 now specifies a 3 working day minimum timeframe within the clause, rather than in guidance.</p>

	<p>due date, as we propose, is easier to budget for and delivers a better and timely customer experience.</p> <p>iii) Some CSPs do not have IT systems or logic that recognise Working Days and must translate Working Day obligations into calendar days. To mitigate risk, this needs to ensure that appropriate time is built in for various public holiday timeframes that change by state. For example, if a 7 Working Day period straddles two weekends, the equivalent calendar days to mitigate this risk is up to 14 days.</p>	
<p>Remedies for direct debit errors The proposal does not include appropriate remedies if CSPs adopt the approach in the proposed Guidance box. 'Alternatives' to a refund must not be presented in such a way that it confuses customers about their rights to a refund. Accordingly, we consider the following text be moved from the guidance note into a provision – e.g. create provision (2): 2. Alternatives must only be presented as alternatives to a refund and not as remedies.</p>	<p>We agree that the drafting was not clear and that the alternatives must not be presented in a way that confuses a customer about their right to a refund. We have revised the clause accordingly.</p>	<p>Revised to make the customer's right to a refund clear. See proposed drafting presented at 5.</p>
General		
<p>Context The ACMA cannot properly access the adequacy of consumer protections until all drafting is complete.</p>	<p>This has been a challenge throughout for us to manage, as noted in both the letter to the RC and the cover letter to which this note is attached. We look forward to further discussion/ advice from the ACMA on this issue.</p>	
Use of guidance	<p>We note that the use of 'guidance' is standard in</p>	

<p>There is too much use of guidance/reference to guidelines. Details should be included in clauses where possible/relevant.</p>	<p>regulatory instruments, including those drafted by government. Our intention matches the intent of the guidance in those instruments; to aid understanding and compliance with the relevant instrument.</p> <p>However, we are reviewing throughout to see where it is possible to include what is now in guidance in clauses, and are looking to use different terms to more clearly articulate the difference different 'types' of guidance – e.g. guidance that provides clarity (but should not be part of a clause) – as shown in the revised drafting herein; guidance that provides examples or best practice to support CSPs on how to meet the requirements; and guidance that refers to guidelines or similar.</p>	
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