

TIO Submission to the CommsAlliance consultation on draft Code DR C637:2011 *Mobile Premium Services* (incorporating variation No. 1/2017)

1. The revised Code requires modernisation to reflect advances in mobile technology

- 1.1 The draft *Mobile Premium Services Code* (DR C637:2011), incorporating variation No. 1/2017 (**revised Code**) is out of step with technological developments. The TIO recommends that the revised Code be modernised to reflect advancements in mobile phone technology so it is, and remains fit for purpose (**Recommendation 1**).
- 1.2 The coverage of the revised Code should be extended to apply to all types of third-party mobile content services, including premium data content, mobile app and in-app purchases, and services charged through direct carrier billing (**Recommendation 2**).

The draft *Mobile Premium Services Code* (DR C637:2011), incorporating variation No. 1/2017 (**revised Code**) is out of step with technological developments. The TIO recommends that the revised Code be modernised to reflect advancements in mobile phone technology so it is, and remains fit for purpose (**Recommendation 1**).

The Code was first developed in 2009 at a time when mobile phone access to the internet was relatively new and not widely adopted, and subscription and billing for premium services, such as ring tones and emoticons, relied mainly on text messaging. Since then, the mobile phone has evolved into the 'smart phone', which has opened up consumer access to the internet by the mobile phone's access to mobile networks and wifi networks. This has enabled alternative methods for customer access to content and billing by 'data connection' instead of text messaging.

The revised Code currently focuses on third-party mobile content services when delivered by text message or over the Retail Service Provider (**RSP**)'s proprietary network¹. The revised Code does not cover third-party mobile content services beyond the RSP's proprietary network that are delivered by 'data connection'.

A summary of third-party mobile content services and charging mechanisms that may not be captured by the revised Code include:

Direct carrier billing	<p>This allows for consumers to be invoiced directly through their mobile phone bill for entertainment content services provided by a third-party provider.</p> <p>To facilitate direct carrier billing arrangements, mobile service providers may enter into a contractual relationship with each content service provider, or an aggregator (who acts as an intermediary to connect mobile service providers with third-party content providers by facilitating the invoicing and transfer of customer payments with partner content providers).</p>	<p>Typically, the customer charge may be 'one off' for movies, music, apps and e-books.</p> <p>These content services may be provided by:</p> <ul style="list-style-type: none"> • app stores (e.g. Google Play, Apple iTunes); • digital media companies (e.g. Spotify, Sony); and • social media companies (e.g. Facebook).
Premium data content	<p>These are similar to premium services that are covered by the revised Code, in that third-party content providers use the short code prefix 19, but delivery is by data connection instead of text messaging.</p>	<p>Examples include:</p> <ul style="list-style-type: none"> • the Gamifive subscription from Buongiorno SpA; • professional self-improvement services (e.g. mproove.me) • subscription gaming products (e.g. No Limits Games, PlayPlanet, SkillDerby and Play.Weez).

¹ Draft *Mobile Premium Services Code* (DR C637:2011), incorporating variation No. 1/2017, clause 2.2 (definition of 'mobile premium service')

<p>Mobile app and in-app purchases</p>	<p>The consumer may separately elect to purchase a mobile app or make an in-app purchase by adding the charge to their mobile phone bill.</p> <p>The TIO is aware of differences of opinion amongst industry participants as to whether these purchases are captured by the revised <i>Code</i>. Bringing them within the revised <i>Code</i> would clarify the <i>Code</i>'s coverage and create certainty.</p>	
-----------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

The coverage of the revised *Code* should be extended to apply to all third-party mobile content services, including premium data content, mobile app and in-app purchases, and services charged through direct carrier billing (**Recommendation 2**).

The TIO makes these recommendations in the context of:

- a growing number of Australian consumers using smart phones²;
- an increasing number of TIO complaints about mobile premium services (**MPS**) in 2017 (Attachment A);
- RSPs seeking to challenge TIO's ability to handle complaints about third-party mobile content services delivered by 'data connection' on the basis that they are not covered by the *Code*; and
- consumer research commissioned by ACCAN into mobile third party billing³.

While the number of complaints to the TIO categorised as complaints about MPS is a small proportion of all new complaints, this may not reflect the incidence of consumer issues with these products. The ACCAN research⁴ indicates that unexpected charges are often unchallenged and do not progress to the TIO. The reasons for the low incidence of TIO complaints may include the low value of the unexpected charge and the fact that RSPs refer consumers to the third-party to dispute the charge.

2. Double opt-in protections for all consumers of third-party mobile content services

2.1 The TIO recommends that the double-opt in requirements in the revised *Code* apply to third-party mobile content services beyond the RSP's proprietary network that are delivered by 'data connection' (**Recommendation 3**).

A double opt-in selection for all third-party mobile content services would reduce unexpected charges and complaints.

When the TIO handles complaints about third-party mobile content charges, consumers tell us they:

- did not know they had agreed to the service and had no knowledge of subscription. In some cases the consumer has accidentally subscribed, for example after entering what appeared to be an online competition; and
- disputes the third-party mobile content service charge.

This is consistent with findings of ACCAN's recently commissioned research into mobile third party billing⁵.

Better opt-in protections are needed to ensure consumers knowingly sign-up for third-party mobile content services. Addressing this issue will reduce consumer complaints.

The TIO recommends that the double-opt in requirements in the revised *Code* apply to third-party mobile content services beyond the RSP's proprietary network that are delivered by 'data connection' (**Recommendation 3**).

² At June 2016, an estimated 13.75 million Australian adults (76%) used a smart phone: ACMA, *Communications Report 2015-2016*, 18

³ Ipsos, *Mobile third party billing – Consumer experiences and expectations*, research commissioned by ACCAN (June 2017)

⁴ As above, note 3

⁵ As above, note 3, 6

3. Complaints about third-party mobile content charges should be handled directly by the retail service provider

3.1 The TIO recommends that Chapter 8 of the revised *Code* be updated so the complaints handling requirements in the *Telecommunications Consumer Protections Code (TCP Code)* applies to complaints about third-party mobile content charges. Consumers who challenge third-party charges should not be directed away from their RSP to a content provider or aggregator. (**Recommendation 4**).

The TIO recommends that Chapter 8 of the revised *Code* be updated so the complaints handling requirements in the *Telecommunications Consumer Protections Code (TCP Code)* applies to complaints about third-party mobile content charges. Consumers who challenge third-party charges should not be directed away from their RSP to a content provider or aggregator (**Recommendation 4**).

Third-party mobile content charges are listed on the bill issued by the RSP and are collected under the contract for service with the consumer. If the charges are not paid by the consumer, the RSP is the entity that can initiate credit management to collect the charges. Complaint handling procedures for third-party charges should be consistent with industry codes and standards that reflect the contractual relationship between the consumer and the RSP.

The *TCP Code* sets out minimum standards for complaints handling that are designed to promote the early resolution of complaints by RSPs⁶.

The *TCP Code* requires an RSP to resolve both enquiries and complaints on first contact⁷. This seeks to achieve the principle of 'efficiency' and aligns with Australian and New Zealand best practice standards for managing customer complaints⁸. Clause 1.1.4 of the revised *Code* states that the revised *Code* should be read in the context of the *TCP Code*.

The TIO believes that Chapter 8 of the revised *Code* promotes a dispute resolution system that does not facilitate the early resolution of complaints, deters consumers from complaining and is overly complex.

Chapter 8 of the revised *Code* sets out requirements for a complaints handling process that differ to the *TCP Code*.

The revised *Code* sets out that:

- RSPs and aggregators may redirect complainants to third-party content providers, unless the RSP voluntarily elects to handle the complaint itself⁹; and
- third-party content providers, after unsuccessfully attempting to resolve the complaint, must advise the complainant of their right to access the TIO¹⁰.

When the TIO receives a complaint where the consumer has already attempted to resolve the issue with a third-party content provider, the TIO classifies this as a complaint because the RSP has already had an opportunity to respond to the complaint¹¹. This approach ensures the TIO meets its obligation to be accessible in accordance with the *Benchmarks for Industry-based Customer Dispute Resolution* and does not put up barriers to lodging a complaint¹².

Chapter 8 of the revised *Code* would be improved if the complaints handling process required the RSP to respond to all complaints about third-party mobile content charges at first instance.

⁶ *Telecommunications Consumer Protections Code* (C628:2015) (Incorporating Variation No. 1/2016), Chapter 8

⁷ As above, note 6, clauses 4.6.1 and 8.2.1(a)(ii)

⁸ Australian/NZ *Guidelines for complaint management in organizations* AS/NZS 10002:2014, guideline 8.3; as above, note 4, clause 8.2

⁹ As above, note 1, clauses 6.1.9 – 6.1.11

¹⁰ As above, note 1, clause 6.1.18

¹¹ TIO Terms of Reference, clause 2.5

¹² Cth Treasury, *Benchmarks for Industry-based Customer Dispute Resolution – Principles and Purposes* (February 2015); Cth Treasury, *Key Practices for Industry-Based Customer Dispute Resolution* (February 2015); *Telecommunications (Customer Protection and Service Standards) Act 1999*, s128

This approach is supported by:

- recent consumer research commissioned by ACCAN that indicates consumers contact their RSP first when they: discover an unexpected charge on their account for third-party mobile content services (89% of survey respondents); or wish to dispute the charge (52% of survey respondents)¹³;
- consumers who complain to the TIO report dissatisfaction with their RSP directing them to a third-party content provider. These consumers tell us it can be difficult to contact the content provider to dispute the charge, especially if they are based overseas;
- the contractual relationship between the customer and the RSP allows the RSP to bill its customer for the third-party mobile content services (whether delivered through an aggregator). A consumer is entitled to challenge the RSP about items invoiced on the bill in the first instance; and
- the *TCP Code* that states the RSP is obliged to respond to billing enquiries and complaints and has certain legal rights to recover an unpaid or disputed amount on the customer's bill as a debt¹⁴. This makes the RSP best placed to remove a disputed charge and therefore respond to complaints.

¹³ As above, note 6, pages 52-53

¹⁴ As above, note 6, Chapter 6; *Assisting and responding to customers in financial hardship – Principles and practices – guide for telecommunications providers* (2nd edition) 2017

Attachment A

As illustrated by Figures 1 and 2, new complaints to the TIO about Mobile Premium Services generally increased during the first half of 2017. These complaints reflected a small (1-2%) proportion of TIO's overall new caseload.

Figure 1: FY2016-2017 new TIO complaints about Mobile Premium Service charges

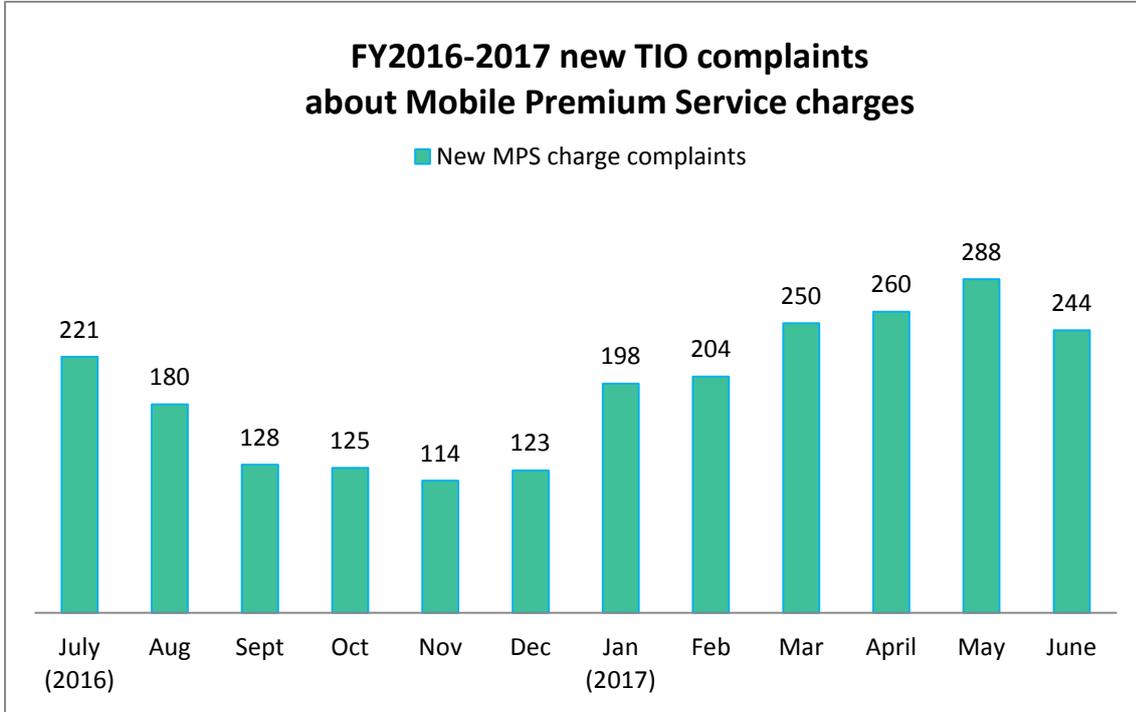


Figure 2: FY2016-2017 new TIO complaints about Mobile Premium Service charges (as a proportion of all new TIO complaints)

