

COMMUNICATIONS
ALLIANCE LTD



INDUSTRY CODE
MOBILE PREMIUM SERVICES
C637:2009

C637:2009 Mobile Premium Services Code

Communications Alliance Ltd (formerly Australian Communications Industry Forum Ltd) was formed in 2006 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

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INTRODUCTORY STATEMENT

Prior to the registration of this Mobile Premium Services Code (C637:2009) (the Code), certain mobile premium services were regulated in Australia pursuant to the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005* (the Determination).

The Determination provided for the development of self-regulatory industry schemes for approval by ACMA. The Mobile Premium Services Industry Scheme (MPSI Scheme) was approved by ACMA in 2006 and thereafter constituted the approved self-regulatory scheme for the purposes of the Determination. The MPSI Scheme was accompanied by an associated Guideline (the MPSI Guideline). The Determination also provided for a default scheme applicable to non-members of the MPSI Scheme (the Default Scheme).

In 2007, the *Communications Legislation Amendment (Content Services) Act 2007* (Cth) (the Content Services Amendment) was passed. The Content Services Amendment, amongst other things, amended the *Broadcasting Services Act 1992* (Cth) to create a new Schedule 7 to regulate content services delivered via carriage service.

Schedule 7 commenced on 20 January 2008. The Determination was also amended with effect from 20 January 2008.

Schedule 7 provided that bodies or associations representing sections of the content industry may develop industry codes for registration by ACMA. The Internet Industry Code of Practice – Content Services Code (the Content Services Code) was registered by ACMA on 16 July 2008.

From the date on which the provisions of this Code take effect, the MPSI Scheme and MPSI Guideline have no further effect. The Determination is repealed with effect from 1 July 2009.

The Code is accompanied by the Mobile Premium Services Guideline (G638:2009) (the Guideline).

The Guideline is designed to:

- assist in interpreting the Code Rules; and
- provide examples of how a Supplier may choose to comply with the Rules.

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* (Cth) (the Act) sets out the intention of the Commonwealth Parliament that bodies and associations representing sections of the telecommunications industry develop industry codes relating to the telecommunications activities of participants in those sections of the industry.
- 1.1.2 The development of the Mobile Premium Services Code (the Code) and the accompanying Mobile Premium Services Guideline (the Guideline) has been facilitated by Communications Alliance through a Working Committee comprising representatives from the telecommunications industry and consumer groups.
- 1.1.3 The Code and the Guideline should be read in conjunction with related legislation, including:
- (a) the Act;
 - (b) the *Broadcasting Services Act 1992* (Cth);
 - (c) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth);
 - (d) the *Trade Practices Act 1974* (Cth);
 - (e) State and Territory fair trading legislation, where relevant;
 - (f) the *Disability Discrimination Act 1992* (Cth);
 - (g) the *Racial Discrimination Act 1975* (Cth);
 - (h) any other relevant equal opportunity legislation;
 - (i) the *Privacy Act 1988* (Cth);
 - (j) the *Spam Act 2003* (Cth); and
 - (k) the *Do Not Call Register Act 2006* (Cth).
- 1.1.4 This Code and the Guideline should be read in the context of other relevant codes, guidelines and documents, including the:
- (a) Telecommunications Consumer Protections Code (TCP) Code (C628:2007);
 - (b) Telecommunications Consumer Protections Guideline (G631:2007);
 - (c) Internet Industry Code of Practice – Content Services Code (the Content Services Code); and

- (d) Disability Matters: Access to Communication Technologies for People with Disabilities and Older Australians Industry Guideline (G586:2006).

- 1.1.5 If there is a conflict between the requirements of the Code and any requirement imposed on a Supplier by statute, the Supplier will not be in breach of the Code by complying with the statute.
- 1.1.6 Compliance with this Code does not guarantee compliance with any legislation. The Code is not a substitute for legal advice.

1.2 Registration with ACMA and transitional arrangements

- 1.2.1 The Code is registered with the Australian Communications and Media Authority (ACMA) pursuant to section 117 of the Act.
- 1.2.2 The provisions of this Code have no effect until 1 July 2009.
- 1.2.3 Until Communications Alliance provides notice (via the website located at www.commsalliance.com.au) that the Short Code Look-up Database and Short Code Look-up Data Entry Tool are operative and to be the only means used for providing information to Communications Alliance pursuant to the Rules in clauses 4.2.1(b), 4.2.2 and 4.2.3, Suppliers may comply with their obligations under those clauses by providing such information to Communications Alliance in hard copy or such other means as accepted by Communications Alliance.

1.3 Scope

- 1.3.1 The Code applies to the:
 - (a) Carriage Service Providers; and
 - (b) Content Service Providers,
 sections of the telecommunications industry under section 110 of the Act.
- 1.3.2 The Code deals with the following telecommunications activities as defined in section 109 of the Act:
 - (a) carrying on business as a Carriage Service Provider;
 - (b) supplying a Content Service using a Listed Carriage Service; and
 - (c) supplying goods or services for use in connection with the supply of a Listed Carriage Service.
- 1.3.3 This Code only applies to the activities of Suppliers in relation to Mobile Premium Services.
- 1.3.4 As required by section 116 of the Act, this Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

1.4 Objectives

- 1.4.1 The objective of the Code is to establish appropriate community safeguards and customer service requirements for Mobile Premium Services.
- 1.4.2 The objectives of each chapter are detailed in that chapter.

1.5 Code review

- 1.5.1 The Code will be reviewed after 1 July 2010 and every 5 years subsequently, or earlier in the event of significant developments that impact on the Code, or as otherwise determined by Communications Alliance.

2 ACRONYMS, DEFINITIONS AND INTERPRETATION

2.1 Acronyms

For the purposes of this Code:

ACMA

means Australian Communications and Media Authority.

IVR

means interactive voice response.

MMS

means multimedia message service.

MSISDN

means mobile subscriber integrated services digital network number.

SMS

means short message service.

TIO

means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme.

WAP

means wireless access protocol.

2.2 Definitions

For the purposes of this Code:

Act

means the *Telecommunications Act 1997* (Cth).

Aggregator

means a Supplier who contracts with both:

- (a) a Content Supplier; and
- (b) an End Carriage Supplier,

to facilitate the carriage of the Content Supplier's Mobile Premium Service to Customers using the End Carriage Supplier's Carriage Service.

Business Day

means a day that is not a Saturday, a Sunday or a public holiday:

- (a) in the place of business of the relevant Supplier; or
- (b) in New South Wales, if the place of business of the relevant Supplier is outside Australia.

Carriage Fees

means fees charged for supply of a Carriage Service.

Carriage Service

has the meaning given by section 7 of the Act.

Carriage Service Provider

has the meaning given by section 87 of the Act.

Carriage Service Intermediary

has the meaning given by section 87(5) of the Act.

Charge Period

means:

- (a) in the case of a Subscription Service charged on a fee per time period basis, that time period; and
- (b) in the case of a Subscription Service charged on a fee per message basis, the time period between messages.

Chat Service

means a Mobile Premium Service which:

- (a) facilitates the exchange of messages between three or more people who are not otherwise known to each other;
- (b) is intended to facilitate the exchange of messages between three or more people who are not otherwise known to each other, even when only used by two people; or
- (c) facilitates the exchange of messages between a Customer and a person engaged by or on behalf of the Content Supplier, where the content of those messages is not primarily about the supply of the Mobile Premium Service.

Communications Alliance

means Communications Alliance Ltd (ABN 56 078 026 507).

Complaint

means an expression of dissatisfaction made to a Supplier in relation to a Mobile Premium Service.

Content Service

has the meaning given by section 15 of the Act.

Content Service Provider

has the meaning given by section 97 of the Act.

Content Supplier

means the Content Service Provider who is the originating Supplier of a Mobile Premium Service to Customers via the supply chain, but does not include a Supplier who is only acting in the capacity of an Aggregator.

Customer

means a customer who acquires a Mobile Premium Service, or a potential customer of Mobile Premium Services.

End Carriage Supplier

means the Mobile Carriage Service Provider who:

- (a) has a contract with the Customer for the carriage of data, which includes a Mobile Premium Service; and
- (b) is the entity responsible for charging the Customer any Carriage Fees in respect of that carriage.

Exempt Service

means:

- (a) a Carriage Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199,

where:

- (c) the only purpose of messages sent as part of that service is to facilitate the billing of another service (for the purposes of this definition, the non-related service);
- (d) the non-related service is not a service of the kind described in subclause (a) or (b) above, nor a Proprietary Network Service; and
- (e) the messages sent as part of the service do not contain content (or a means to access content) of any kind, other than:
 - (i) a statement that the customer has been charged for the non-related service;
 - (ii) any relevant details of the non-related services being billed and the relevant charges; and
 - (iii) any other content required by law.

Guideline

means G638:2009 Mobile Premium Services Guideline.

Helpline

means the Customer support helpdesk number referred to in clause 6.1.2.

Listed Carriage Service

has the meaning given by section 16 of the Act.

Minor

means a person below the age of 18.

Mobile Carriage Service Provider

means:

- (a) a Carriage Service Provider who supplies a customer with a public mobile telecommunications service; or
- (b) a Carriage Service Intermediary who arranges for the supply by a Carriage Service Provider to a customer of a public mobile telecommunications service.

Mobile Content Fees

means fees charged for the supply of a Mobile Premium Service, excluding any Carriage Fees.

Mobile Originated (MO) Message

means a Premium SMS or MMS Service message sent by a Customer's mobile phone to a Content Supplier.

Mobile Premium Service

means:

- (a) a Premium SMS or MMS Service; or
- (b) a Proprietary Network Service.

Mobile Terminated (MT) Message

means a Premium SMS or MMS Service message sent by a Content Supplier to a Customer's mobile phone and reverse charged to the Customer.

MPS Code Monitoring

means reasonable requests for information held by a Supplier relating to:

- (a) in the case of a Content Supplier, that Content Supplier's Mobile Premium Services;
- (b) in the case of an Aggregator, the Mobile Premium Services facilitated by that Aggregator through contractual relationships with Content Suppliers and End Carriage Suppliers; or

- (c) in the case of an End Carriage Supplier, the Mobile Premium Services carried by that End Carriage Supplier,

when made by a Code monitor that is:

- (d) appointed by or on behalf of Communications Alliance under the direction of a group of industry, consumer and government representatives;
- (e) acting in pursuance of its functions including, where appropriate:
 - (i) ongoing monitoring and reporting on compliance with the Rules;
 - (ii) conducting independent inquiries and investigations into compliance with the Code;
 - (iii) reporting and sharing of information which, where appropriate, may include:
 - (A) sharing of information with regulatory bodies, the TIO and the Minister for Broadband, Communications and the Digital Economy;
 - (B) producing reports on industry compliance, the results of which will inform future reviews of the Code; and
 - (C) advising individual Suppliers of the results of any MPS Code Monitoring undertaken in relation to that Supplier and obtaining further information from that Supplier regarding any follow up activities undertaken as a result of the findings of that MPS Code Monitoring; and
- (f) independent from any one Supplier, industry group or consumer group.

Premium Content Service

means a Content Service to which either of the following applies:

- (a) a charge for the supply of the service is expected to be included in a bill sent to a relevant Customer of a Mobile Carriage Service Provider or any person acting on behalf of that provider;
- (b) a charge for the supply of the service is payable by a relevant Customer to a Mobile Carriage Service Provider or any person acting on behalf of that provider:
 - (i) in advance; or
 - (ii) in any other manner.

Premium Messaging Subscription Service

means a Premium SMS or MMS Service that is a Subscription Service.

Premium SMS or MMS Service

means:

- (a) a Carriage Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a Content Service supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199,

other than an Exempt Service.

Proprietary Network

means a Telecommunications Network used by a Mobile Carriage Service Provider that enables Customers of that provider to access, by way of a mobile device, a Premium Content Service that is not otherwise generally available.

Proprietary Network Service

means a public mobile telecommunications service that enables an end-user to access a Proprietary Network.

Public Mobile Telecommunications Service

has the meaning given in section 32 of the Act.

Register

means the register of Content Supplier and Aggregator contact details maintained by Communications Alliance.

Registration Form

means the registration form available from Communications Alliance setting out information to be included on the Register.

Rules

means the Supplier's obligations, which are in Chapters 3 to 7.

Short Code

means a number between 6 and 8 digits long that enables the charging of Mobile Content Fees.

Short Code Look-up Database

means the database maintained by Communications Alliance that enables members of the public to look up details of Short Codes.

Short Code Look-up Data Entry Tool

means the electronic data entry form available from Communications Alliance enabling the entry of data into the Short Code Look-up Database.

"STOP" Message

means a "STOP" message as described in clause 7.2.1.

Subscription Service

means a Mobile Premium Service that delivers material to a Customer on an ongoing or periodic basis.

Supplier

means a Mobile Carriage Service Provider or Content Service Provider.

Telecommunications Network

has the meaning given in section 7 of the Act.

WAP Push Message

means an SMS message with a WAP website link in it.

2.3 Interpretation

In this Code, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular include the plural and vice versa;
- (d) words importing persons include a body whether corporate, politic or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) all amounts are expressed in Australian dollars, inclusive of GST;
- (g) mentioning anything after include, includes or including does not limit what else might be included;
- (h) words and expressions which are not defined have the meanings given to them in the Act;
- (i) a requirement to provide something "in writing" can be met by electronically sending a written message; and
- (j) a reference to a person includes a reference to the person's executors, administrators, successors, agents, assignees and novatees.

3 ADVERTISING

Summary

This chapter requires Suppliers to advertise Mobile Premium Services appropriately.

Some Rules apply to all Mobile Premium Services, whereas some Rules only apply to specific types of Mobile Premium Services. The various types of Mobile Premium Services are set out in the table below.

| <i>Mobile Premium Services</i> | | |
|---|--|-------------------------------------|
| <i>Premium SMS or MMS Services</i> | | <i>Proprietary Network Services</i> |
| <i>Premium SMS or MMS Services that are not Subscription Services</i> | <i>Premium Messaging Subscription Services</i> | |

*Suppliers need to consider all sections of this chapter that apply to each Mobile Premium Service. Any particular category of Mobile Premium Service needs to comply with the Rules listed for its own category, and any additional Rules that apply to all other categories listed **above** it in this table.*

Objectives

The objective of this chapter is to establish appropriate community safeguards for Mobile Premium Services by requiring Suppliers to use appropriate advertising that assists Customers to make informed decisions about the use and cost of the services.

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *assist in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

3.1 All Mobile Premium Services – Advertising

The Rules for advertising any Mobile Premium Service are:

3.1.1 **Scope of general advertising requirements:** Clauses 3.1.2 to 3.1.16 only apply to:

- (a) advertisements for Premium SMS or MMS Services; and
- (b) advertisements for Proprietary Network Services to the extent that a Content Supplier is using the advertisement to fulfil its obligations under clause 4.5.1 or 4.5.2.

3.1.2 **Advertising display requirements:** In advertisements for Mobile Premium Services, a Content Supplier must:

- (a) include clear, prominent and legible information in plain language on:
 - (i) the price including, if the service is a Subscription Service:
 - (A) any sign-up cost;
 - (B) the basis for calculating charges, including any:
 - (aa) charge per MO Message;
 - (bb) charge per MT Message; or
 - (cc) charge per Charge Period, and that Charge Period;
 - (ii) where relevant, that it is a Subscription Service, for each Mobile Premium Service advertised:
 - (iii) accurately and within sufficient proximity to:
 - (A) the Short Code for; or
 - (B) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe to,

the Mobile Premium Service being offered to make it obvious that the information applies to that Mobile Premium Service;
 - (iv) in the same orientation and direction as:
 - (A) the Short Code for; or
 - (B) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe to,

the Mobile Premium Service being offered;

- (v) simultaneously and for the same duration as:
 - (A) the Short Code for; or
 - (B) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe to,

the Mobile Premium Service being offered;

- (vi) for long enough to allow it to be read or heard, and understood, by an average person;
- (vii) on the same page as the rest of the advertisement; and
- (viii) if the advertisement is online, above the fold;
- (b) expressly refer to any Carriage Fees that will apply for access or use of each Mobile Premium Service advertised;
- (c) use a minimum 6 point font for all text in any print medium; and
- (d) clearly and legibly state:
 - (i) the Content Supplier's Helpline; and
 - (ii) where the service is a Subscription Service, how to unsubscribe.

3.1.3 **Requirements for disclaimers:** A Content Supplier must ensure that any disclaimer included in an advertisement for a Mobile Premium Service is:

- (a) placed next to the offer for the Mobile Premium Service;
- (b) linked to the offer by an asterisked footnote or other symbol; or
- (c) if the advertisement is for radio or television, is part of the advertisement visually or aurally, and

is readily available and clearly indicated and stated, having regard to the type of advertising and its intended audience.

3.1.4 **Prohibitions on disclaimers:** A Content Supplier must ensure that any disclaimer included in an advertisement for a Mobile Premium Service is not:

- (a) inconsistent with anything in the principal message of the advertisement;
- (b) negating the principal message of the advertising; or
- (c) introducing a new or additional offer.

- 3.1.5 **Limitations:** If an advertisement offers a Mobile Premium Service:
- (a) for a limited period or in limited quantity; or
 - (b) that is available only to a limited class of Customers,
- the Content Supplier must ensure that the advertisement clearly communicates that limitation.
- 3.1.6 **Special offers:** A Content Supplier must ensure that advertisements for special offers to give a discount or rebate from standard Mobile Content Fees for a limited period contain sufficient details of the special offer including:
- (a) its principal elements;
 - (b) any conditions or limitations; and
 - (c) any future start date, and the end date.
- 3.1.7 **Savings claims:** A Content Supplier must ensure that advertisements which make any savings claim about a Mobile Premium Service specify the service, rate or other matter on which the savings claim is based.
- 3.1.8 **Advertising "free" services:** A Content Supplier must ensure that any advertisement for a Mobile Premium Service that is described as "free" clearly states the terms and conditions of supply, including whether the supply is conditional on the Customer also accepting any other service for which Mobile Content Fees may be incurred.
- 3.1.9 **Use of the term "free":** Where a Content Supplier uses the term "free" or an equivalent in an advertisement for Mobile Premium Services, the Content Supplier must ensure that:
- (a) a message is sent to the Customer's nominated mobile phone without charge when the "free" period is over including details of:
 - (i) the impending charges for the Mobile Premium Service;
 - (ii) the Helpline; and
 - (iii) the "STOP" Message;
 - (b) the "free" Mobile Premium Service is not subject to any charge, fee or cost, other than Carriage Fees;
 - (c) the duration of the "free" period is clearly stated to the Customer in any messages sent as part of the Mobile Premium Service;
 - (d) the advertisement clearly identifies those elements that are referred to as "free" or equivalent;
 - (e) other conditions that qualify the offer are stated; and

- (f) the prices of other products or services accompanying the Mobile Premium Service are not inflated to cover some or all of the offer described as "free" or equivalent.
- 3.1.10 **Benefits:** A Content Supplier must ensure that advertisements which offer or promote any benefits in relation to Mobile Premium Services clearly communicate any conditions upon the Customer's ability to use the benefits.
- 3.1.11 **Misleading advertising:** A Content Supplier must ensure that advertisements for Mobile Premium Services are not confusing, misleading or deceptive, having regard to the intended audience.
- 3.1.12 **Up to date advertising:** A Content Supplier must ensure that advertisements for Mobile Premium Services do not contain out of date material.
- 3.1.13 **Mobile marketing messages:** A Content Supplier must ensure that any Mobile Premium Service marketing message sent to a Customer's mobile phone is sent at no cost to the Customer, and must:
- (a) commence with the phrase "FreeMsg";
 - (b) not imply that it is a personal message or otherwise suggest a false imperative for the Customer to reply;
 - (c) not include any adult related language or concepts;
 - (d) clearly and accurately identify the individual or organisation who authorised the sending of the message; and
 - (e) include details of the "STOP" Message, and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the marketing message.
- 3.1.14 **Limited number of marketing messages:** A Content Supplier must not send more than one Mobile Premium Service marketing message to a Customer's mobile phone per week, unless the Customer provides express consent to receive more.
- 3.1.15 **Scams:** A Content Supplier must not use a Mobile Premium Service for conducting or participating in the promotion of a scam.
- 3.1.16 **Advertising to children:** A Content Supplier must:
- (a) not place a Mobile Premium Services advertisement in any publication, show, website, location or any other presentation (in any medium or format) which is specifically and primarily targeted at persons below the age of 15; and
 - (b) if the placement, context and content of a Mobile Premium Services advertisement is reasonably likely to attract or encourage a significant number of Minors to use that Mobile Premium Service, include a warning to the effect "If

you are under 18 you must ask the account holder before using this service" in the advertisement.

- 3.1.17 **Charges for replying to marketing messages:** If a Customer would incur Mobile Content Fees for replying to a marketing, prompt or inducement message sent as part of a Mobile Premium Service, the Content Supplier must identify those Mobile Content Fees in the marketing, prompt or inducement message.

3.2 Premium SMS or MMS Services – Advertising

The additional Rules for advertising Premium SMS or MMS Services are:

- 3.2.1 **Endorsements:** A Content Supplier must ensure that advertisements for Premium SMS or MMS Services only imply that they are supplied or endorsed by a particular End Carriage Supplier or Aggregator if that is, in fact, the case.
- 3.2.2 **Short Code:** A Content Supplier must ensure that television advertisements for Premium SMS or MMS Services display the Short Code for the Premium SMS or MMS Service for at least 10 seconds.
- 3.2.3 **Pricing information:** A Content Supplier must ensure that advertisements for Premium SMS or MMS Services include pricing information:
- (a) in the case of television advertisements:
 - (i) in a prominent and highly visible manner in the visual elements of the advertisement; and
 - (ii) in font at least 50% of the size of the Short Code;
 - (b) in the case of print advertisements:
 - (i) in a prominent and highly visible manner in the main body of the advertisement;
 - (ii) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and
 - (iii) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size;
 - (c) in the case of online advertisements:
 - (i) in a prominent and highly visible manner in the main body of the advertisement; and
 - (ii) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers; and
 - (d) in radio and IVR advertisements.

3.2.4 **Terms and conditions:** A Content Supplier must ensure that visual advertisements for Premium SMS or MMS Services set out:

- (a) the price of the relevant Premium SMS or MMS Service including, if the service is a Premium Messaging Subscription Service:
 - (i) any sign-up cost;
 - (ii) the basis for calculating charges, including any:
 - (A) charge per MO Message;
 - (B) charge per MT Message; or
 - (C) charge per Charge Period, and that Charge Period;
- (b) in the case of a Premium Messaging Subscription Service:
 - (i) that it is a Subscription Service; and
 - (ii) how to unsubscribe, and
- (c) the Content Supplier's Helpline,
in a manner that is:
- (d) clear, legible and contrasts with the background; and
- (e) in the case of television advertisements, easily comprehensible and on screen long enough for an average viewer to read all text.

3.2.5 **Marketing, prompt and inducement messages:** If a Content Supplier supplies a Premium SMS or MMS Service which includes the provision of marketing, prompt or inducement messages as a component of the service, the Service Provider must give Customers the option of not receiving such messages prior to, or on commencing, supply.

3.2.6 **WAP Push Marketing Messages:** A Content Supplier must ensure that:

- (a) any Mobile Premium Service marketing message sent to a Customer's mobile phone by WAP Push Message is recorded in a call log in clear text format; and
- (b) any website linked to such a WAP Push Message includes a link enabling the Customer to opt-out of marketing.

3.2.7 **Call logs:** A Content Supplier must:

- (a) ensure that the call log described in clause 3.2.6(a) enables the reader of the log to easily read the content of each recorded WAP Push Message; and

- (b) make records from that call log available to the relevant End Carriage Supplier or Aggregator on request.

3.3 Premium Messaging Subscription Services – Advertising

The additional Rules for advertising Premium Messaging Subscription Services are:

- 3.3.1 **Charges for receiving marketing messages:** A Content Supplier must not charge a Customer for receiving any marketing or promotional material in relation to Premium Messaging Subscription Services.
- 3.3.2 **Post subscription marketing:** If a Content Supplier wishes to advertise directly to the mobile phone of a Customer who has unsubscribed to a Premium Messaging Subscription Service, the Content Supplier must:
 - (a) in the unsubscribe confirmation message sent pursuant to clause 7.2.5 provide an option for the Customer to opt-in to receive this advertising; and
 - (b) only send advertisements to that Customer's mobile phone if the Customer has opted in to receive them.
- 3.3.3 **Subscription advertisements:** A Content Supplier must ensure that advertisements for a Premium Messaging Subscription Service clearly state:
 - (a) whether, by subscribing, the Customer is also consenting to their details being included in a marketing database;
 - (b) in a prominent manner and in close proximity to each other, that it is a Subscription Service and details of:
 - (i) any sign-up cost; and
 - (ii) the basis for calculating charges, including any:
 - (A) charge per MO Message;
 - (B) charge per MT Message; or
 - (C) charge per Charge Period, and that Charge Period;
 - (c) details of the "STOP" Message;
 - (d) how to opt-out of receiving marketing; and
 - (e) the word "subscription" or "subscribe" to convey the activation method:
 - (i) in the case of television advertisements:
 - (A) in a prominent and highly visible manner in the visual elements of the advertisement:
 - (aa) for as long as the Short Code is displayed; and

- (bb) in font at least 50% of the size of the Short Code; and
- (B) in the voice over for the advertisement;
- (ii) in the case of print advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement;
 - (B) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and
 - (C) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size;
- (iii) in the case of online advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement; and
 - (B) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers; and
- (iv) in voiceovers for radio and IVR advertisements.

4 PROVIDING INFORMATION

Summary

This chapter requires Suppliers to provide necessary information to Customers.

Some Rules apply to all Mobile Premium Services, whereas some Rules only apply to specific types of Mobile Premium Services. The various types of Mobile Premium Services are set out in the table below.

| <i>Mobile Premium Services</i> | | |
|---|--|-------------------------------------|
| <i>Premium SMS or MMS Services</i> | | <i>Proprietary Network Services</i> |
| <i>Premium SMS or MMS Services that are not Subscription Services</i> | <i>Premium Messaging Subscription Services</i> | |

*Suppliers need to consider all sections of this chapter that apply to each Mobile Premium Service. Any particular category of Mobile Premium Service needs to comply with the Rules listed for its own category, and any additional Rules that apply to all other categories listed **above** it in this table.*

Objectives

The objective of this chapter is to establish appropriate community safeguards for Mobile Premium Services by providing Customers with sufficient information enabling them to make informed decisions about the use and cost of the services.

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- assist in interpreting the Rules; and*
- provide examples of how a Supplier may choose to comply with the Rules.*

Rules

4.1 All Mobile Premium Services - Providing Information

The Rules for providing information to Customers of any Mobile Premium Service are:

4.1.1 **Register:** Prior to:

- (a) in the case of a Content Supplier, supplying any Mobile Premium Services to any Customers; and
- (b) in the case of an Aggregator, contracting with any Content Suppliers for the supply of their Mobile Premium Services,

each Content Supplier and Aggregator must:

- (c) complete a Registration Form including:
 - (i) the full name, corporate details (including any ABN, ACN or ARBN), address and contact details of that Content Supplier or Aggregator;
 - (ii) if that Content Supplier or Aggregator is a company that does not have an ACN, ABN or ARBN, the names of all directors;
 - (iii) if that Content Supplier or Aggregator is a company that has an ACN, ABN or ARBN, the name of one director;
 - (iv) if that Content Supplier or Aggregator is not a company, the name of the principal;
 - (v) the name of an authorised contact person for the purpose of queries relating to:
 - (A) that Content Supplier's Mobile Premium Services; or
 - (B) the Mobile Premium Services provided via that Aggregator,
 (as applicable); and
 - (vi) in the case of that Content Supplier, the Content Supplier's Helpline; and
- (d) provide the Registration Form to Communications Alliance.

4.1.2 **Currency of registration:** If any of the details provided pursuant to clause 4.1.1 change, the Content Supplier or Aggregator must:

- (a) complete a Registration Form including the updated details; and
- (b) provide the Registration Form to Communications Alliance,

within:

- (c) if the change relates to the details provided pursuant to clause 4.1.1(c)(i) to (v), 14 days of that change; or
- (d) if the change relates to the details provided pursuant to clause 4.1.1(c)(vi), 5 Business Days of that change.

4.1.3 **Charges, terms and conditions:** Prior to:

- (a) supplying a Mobile Premium Service to a Customer; or
- (b) renewing a Subscription Service,

a Content Supplier must clearly inform the Customer of:

- (c) **Charges:** all charges that may be incurred for its supply;
- (d) **Carriage Fees:** the fact that in accessing a Mobile Premium Service, they may incur Carriage Fees as well as Mobile Content Fees;
- (e) **Nature:** the nature of the Mobile Premium Service;
- (f) **Terms:** all applicable terms and conditions;
- (g) **Competitions:** if the Mobile Premium Service involves a competition or voting, any applicable refund arrangements;
- (h) **Closing Dates:** any closing dates for time-sensitive activities; and
- (i) **Contact:** the name and contact details of the relevant Content Supplier of any Subscription Service.

4.1.4 **Pricing information charges:** A Supplier must not charge a Customer any Mobile Content Fees for providing, as at the commencement of a Mobile Premium Service, pricing information about Mobile Premium Services to a Customer.

4.1.5 **Pricing information:** A Content Supplier must ensure that a Customer can access pricing information about Mobile Premium Services, including:

- (a) any sign-up cost; and
- (b) the basis for calculating charges, including any:
 - (i) charge per MO Message;
 - (ii) charge per MT Message; or
 - (iii) charge per Charge Period, and that Charge Period,

without requesting supply of the Mobile Premium Service.

- 4.1.6 **Unsubscribe information:** A Content Supplier must provide information to Customers, at no charge, about how to unsubscribe from a Subscription Service:
- (a) in a clear manner prior to supply of the Subscription Service; and
 - (b) on an ongoing basis by:
 - (i) a website;
 - (ii) a Proprietary Network Service;
 - (iii) telephone; or
 - (iv) SMS.
- 4.1.7 **Chat Service warning messages:** Prior to, or on commencing supply of a Chat Service to a Customer, a Content Supplier must warn the Customer of the danger of disclosing personal details via the Chat Service and advise the Customer not to do so.
- 4.1.8 **Video calling:** If a Mobile Premium Service involves video calling, the Content Supplier must notify a Customer for the Mobile Premium Service, prior to, or on commencing each video call as part of that Mobile Premium Service:
- (a) of whether the Content Supplier will be able to see the Customer during the video calling; and
 - (b) if the Mobile Premium Service is recorded.
- 4.1.9 **End Carriage Suppliers:** An End Carriage Supplier must provide Communications Alliance with details of the measures it has available to limit a Customer's expenditure on Mobile Premium Services, for publication on the website located at www.19sms.com.au.
- 4.1.10 **Currency of expenditure limit information:** If any of the details provided pursuant to clause 4.1.9 change, the End Carriage Supplier must update the details provided pursuant to clause 4.1.9 within 5 Business Days to include the new details.
- 4.1.11 **MPS Code Monitoring:** All Suppliers must cooperate with MPS Code Monitoring.

4.2 Premium SMS or MMS Services – Providing Information

The additional Rules for providing information to Customers of a Premium SMS or MMS Service are:

- 4.2.1 **Short Code Look-up Database:** A Content Supplier of Premium SMS or MMS Services must:
- (a) provide to their Aggregator; or

- (b) if the Content Supplier does not have an Aggregator, use the Short Code Look-up Data Entry Tool to provide to Communications Alliance:

a list of:

- (c) all Short Codes the Content Supplier uses to provide Premium SMS or MMS Services; and
- (d) for each of those Short Codes:
 - (i) the primary name under which the services on that Short Code are provided;
 - (ii) the time period during which it will be provided, including start date and end date;
 - (iii) the Content Supplier's name;
 - (iv) the Content Supplier's Helpline;
 - (v) a contact email address linked to the Content Supplier's Helpline; and
 - (vi) a description of the services provided,

and any other data entry fields listed in the Short Code Look-up Data Entry Tool.

4.2.2 **Currency of Short Code Look-up Database:** If any of the details provided pursuant to clause 4.2.1 change, the Content Supplier must update the list provided pursuant to clause 4.2.1 within 5 Business Days to include the new details.

4.2.3 **Aggregators:** An Aggregator must use the Short Code Look-up Data Entry Tool to provide:

- (a) within 5 Business Days of receipt from a Content Supplier, all information it receives from that Content Supplier pursuant to clause 4.2.1 and 4.2.2; and
- (b) the Aggregator's name,

to Communications Alliance.

4.3 Premium SMS or MMS Services that are not Subscription Services – Providing Information

The additional Rules for providing information to Customers of a Premium SMS or MMS Service that is not a Subscription Service are:

4.3.1 **WAP purchases:** Subject to clause 4.3.3, if a Customer requests to purchase a Premium SMS or MMS Service that is not a Subscription Service using a mechanism contained in a Mobile Premium Services marketing message sent to the Customer as a WAP Push Message, the Content Supplier must send a standard, dedicated

SMS purchase confirmation message to the Customer's nominated mobile phone number, at no charge to the Customer.

- 4.3.2 **Content of purchase confirmation message:** The purchase confirmation message referred to in clause 4.3.1 must:
- (a) commence with the phrase "FreeMsg";
 - (b) include the name of the Premium SMS or MMS Service;
 - (c) state the cost per purchase;
 - (d) instruct the Customer to send an MO Message to a particular Short Code in order to confirm their wish to purchase;
 - (e) inform the Customer that their confirmation will be valid for 24 hours;
 - (f) include details of the Helpline; and
 - (g) only be sent to the Customer once in relation to each Customer request, unless the Content Supplier is notified by the End Carriage Supplier or Aggregator that there has been a delivery failure, in which case the Content Supplier may resend the purchase confirmation message.
- 4.3.3 **24 hour purchase period:** If a Customer sends an MO Message in response to the instructions described in clause 4.3.2(d), the Content Supplier is not required to send that Customer a purchase confirmation message pursuant to clause 4.3.1 with respect to any other requests made by that Customer to purchase Premium SMS or MMS Services using the same mechanism for 24 hours from receipt of the Customer's MO Message.
- 4.3.4 **\$30 expenditure updates:** A Content Supplier must send an expenditure update to a Customer of a Premium SMS or MMS Service that is not a Subscription Service, as a standard, dedicated SMS message, at no cost to the Customer:
- (a) once the Customer has incurred \$30 of Mobile Content Fees as a result of using a particular Short Code in a single calendar month; and
 - (b) each time the Customer incurs an additional incremental \$30 of Mobile Content Fees as a result of using that Short Code in that calendar month.
- 4.3.5 **Content of \$30 expenditure update:** The expenditure update referred to in clause 4.3.4 must:
- (a) commence with the phrase "FreeMsg";
 - (b) inform the Customer that they have incurred \$30 of Mobile Content Fees as a result of using the particular Short Code:
 - (i) in that calendar month; or

(ii) since the previous expenditure update of \$30 spend that month; and

(c) state the name of the Premium SMS or MMS Service and/or the relevant Short Code.

4.3.6 **Chat Service welcome message:** Prior to, or on commencing supply of a Chat Service to a Customer via a Premium SMS or MMS Service that is not a Subscription Service, a Content Supplier must send the Customer a standard, dedicated SMS message, at no charge to the Customer:

(a) commencing with the phrase "FreeMsg"; and

(b) including:

(i) the name of the Chat Service;

(ii) any sign-up cost;

(iii) the basis for calculating charges, including any:

(A) charge per MO Message;

(B) charge per MT Message; or

(C) charge per Charge Period, and that Charge Period; and

(iv) details of the Helpline.

4.4 Premium Messaging Subscription Services – Providing Information

The additional Rules for providing information to Customers of a Premium Messaging Subscription Service are:

4.4.1 **Non-mobile, WAP and IVR subscription mechanisms:** If a Customer requests to subscribe to a Premium Messaging Subscription Service using:

(a) a subscription mechanism other than a mobile phone;

(b) a subscription mechanism contained in a marketing message sent to the Customer as a WAP Push Message; or

(c) a mobile phone via an IVR,

a Content Supplier must:

(d) in the case of an IVR:

(i) require the Customer to take some positive action:

(A) to accept the Premium Messaging Subscription Service; and

- (B) to be included on the Content Supplier's marketing list,

prior to proceeding to send the subscription request message described in clause 4.4.1(e); and

- (ii) ensure that the IVR states the information required by clauses 3.2.3(d) and 3.3.3(e)(iv) prior to requesting such positive action; and

- (e) in all cases, send a standard, dedicated, SMS subscription request message to the Customer's nominated mobile phone number, at no charge to the Customer.

4.4.2 **Content of subscription request message:** The subscription request message referred to in clause 4.4.1(e) must:

- (a) commence with the phrase "FreeMsg";
- (b) include the name of the Premium Messaging Subscription Service;
- (c) include any sign-up cost;
- (d) include the basis for calculating charges, including any:
 - (i) charge per MO Message;
 - (ii) charge per MT Message; or
 - (iii) charge per Charge Period, and that Charge Period;
- (e) instruct the Customer to send an MO Message to a particular Short Code in order to subscribe; and
- (f) include details of the Helpline.

4.4.3 **Subscription confirmation messages:** Following:

- (a) receipt of an MO Message sent by a Customer in response to the instruction described in clause 4.4.2(e), but prior to supplying the requested Premium Messaging Subscription Service to the Customer, a Content Supplier must send the Customer a standard, dedicated SMS subscription confirmation message, at no charge to the Customer, which must, at the start of the message:
 - (i) commence with the phrase "FreeMsg";
 - (ii) confirm that the Customer has entered into a subscription arrangement; and
 - (iii) include:
 - (A) the name of the Premium Messaging Subscription Service;
 - (B) details of the Helpline;

- (C) any sign-up cost;
 - (D) the basis for calculating charges, including any:
 - (aa) charge per MO Message;
 - (bb) charge per MT Message; or
 - (cc) charge per Charge Period, and that Charge Period; and
 - (E) details of the "STOP" Message, and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the subscription confirmation message; and
- (b) receipt of an MO Message sent by a Customer (other than an MO Message described in subclause (a)) that contains either:
- (i) a clear and positive request to receive that Premium Messaging Subscription Service; or
 - (ii) a keyword that was advertised as the means of requesting that Premium Messaging Subscription Service;

but prior to supplying the requested Premium Messaging Subscription Service to the Customer, a Content Supplier must send the Customer a standard, dedicated SMS subscription confirmation message, at no charge to the Customer, which must, at the start of the message:

- (iii) commence with the phrase "FreeMsg";
- (iv) confirm that the Customer is about to enter into a subscription arrangement;
- (v) include:
 - (A) the name of the Premium Messaging Subscription Service;
 - (B) details of the Helpline;
 - (C) any sign-up cost;
 - (D) the basis for calculating charges, including any:
 - (aa) charge per MO Message;
 - (bb) charge per MT Message; or
 - (cc) charge per Charge Period, and that Charge Period; and
 - (E) details of the "STOP" Message, and the Short Code to which it must be sent, if that Short

Code is different to the Short Code used for the subscription confirmation message; and

- (vi) instruct the Customer to send an MO Message to a particular Short Code in order to subscribe.

- 4.4.4 **Exceptions to expenditure updates:** A Content Supplier is not required to provide expenditure updates to a Customer pursuant to clauses 4.4.5 or 4.4.7 if:
- (a) the Content Supplier has obtained the prior written permission of the End Carriage Supplier; and
 - (b) the Customer has expressly opted-out of receiving such expenditure updates.
- 4.4.5 **\$30 expenditure updates:** A Content Supplier must send a Premium Messaging Subscription Service Customer a standard, dedicated SMS message containing an expenditure update, at no charge to the Customer:
- (a) once the Customer has incurred \$30 of Mobile Content Fees as a result of using that Premium Messaging Subscription Service in a single calendar month; and
 - (b) each time the Customer incurs an additional incremental \$30 of Mobile Content Fees as a result of using that Premium Messaging Subscription Service in that calendar month.
- 4.4.6 **Content of \$30 expenditure update:** The expenditure update referred to in clause 4.4.5 must:
- (a) commence with the phrase "FreeMsg";
 - (b) inform the Customer that they have incurred \$30 of Mobile Content Fees as a result of using that particular Premium Messaging Subscription Service in a single calendar month;
 - (c) state that the Customer is "subscribed to" that particular Premium Messaging Subscription Service and/or its relevant Short Code;
 - (d) contain details of the "STOP" Message, and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the expenditure update; and
 - (e) contain details of the Helpline.
- 4.4.7 **30 day reminder notification:** If a Content Supplier has not sent an expenditure update to a Premium Messaging Subscription Service Customer under clause 4.4.5 in a particular calendar month, the Content Supplier must send the Customer a reminder notification at the end of that calendar month as a standard, dedicated SMS at no charge to the Customer.

4.4.8 **Content of reminder notification:** The reminder notification referred to in clause 4.4.7 must:

- (a) commence with the phrase "FreeMsg";
- (b) state the name of the Premium Messaging Subscription Service;
- (c) state the cost and the basis for calculating charges for the Premium Messaging Subscription Service, including any:
 - (i) charge per MO Message;
 - (ii) charge per MT Message; or
 - (iii) charge per Charge Period, and that Charge Period;
- (d) include details of the "STOP" Message and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the 30 day reminder notification; and
- (e) include details of the Helpline.

4.4.9 **Message identification:** All messages sent by a Content Supplier as part of a Premium Messaging Subscription Service must contain sufficient information to enable the Customer who receives it to identify and contact the Content Supplier.

4.5 Proprietary Network Services – Providing Information

The additional Rules for providing information to Customers of a Proprietary Network Service are:

4.5.1 **Information:** Prior to a Customer subscribing to a Proprietary Network Service that is a Subscription Service, the Content Supplier must inform the Customer in writing of:

- (a) the cost of the Proprietary Network Service;
- (b) the frequency of the Proprietary Network Service, if applicable;
- (c) whether the subscription is ongoing or for a particular period of time; and
- (d) how to unsubscribe from the Proprietary Network Service.

4.5.2 **Mobile Content Fees:** A Content Supplier must inform a Customer about the Mobile Content Fees involved in using a Proprietary Network Service:

- (a) before the Customer first accesses the Proprietary Network Service; or
- (b) after the Customer first accesses the Proprietary Network Service but before any charges are incurred,

in a way that is clear and easily accessible by the Customer.

- 4.5.3 **Opt-out information:** A Content Supplier must provide readily available information to Customers about how to unsubscribe from a Proprietary Network Service that is a Subscription Service on an ongoing basis, including via:
- (a) the Proprietary Network Service portal; and
 - (b) telephone.

5 SUPPLYING A MOBILE PREMIUM SERVICE

Summary

This chapter requires Suppliers to supply Mobile Premium Services in an appropriate manner.

Some Rules apply to all Mobile Premium Services, whereas some Rules only apply to specific types of Mobile Premium Services. The various types of Mobile Premium Services are set out in the table below.

| <i>Mobile Premium Services</i> | | |
|---|--|-------------------------------------|
| <i>Premium SMS or MMS Services</i> | | <i>Proprietary Network Services</i> |
| <i>Premium SMS or MMS Services that are not Subscription Services</i> | <i>Premium Messaging Subscription Services</i> | |

*Suppliers need to consider all sections of this chapter that apply to each Mobile Premium Service. Any particular category of Mobile Premium Service needs to comply with the Rules listed for its own category, and any additional Rules that apply to all other categories listed **above** it in this table.*

Objectives

The objective of this chapter is to establish appropriate community safeguards for Mobile Premium Services by requiring Suppliers to supply Mobile Premium Services in an appropriate manner.

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *assist in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

5.1 All Mobile Premium Services – Supplying Services

The Rules for supplying a Mobile Premium Service are:

- 5.1.1 **Prohibitions:** A Content Supplier must not:
- (a) **Supply without request:** supply a Mobile Premium Service that a Customer did not request in accordance with clause 5.1.2;
 - (b) **Charge without request:** charge a Customer a Mobile Content Fee for any Mobile Premium Service that the Customer did not request in accordance with clause 5.1.2; or
 - (c) **Error message charges:** charge a Customer a Mobile Content Fee for an error message.
- 5.1.2 **Request:** A Customer has requested supply of a Mobile Premium Service if:
- (a) in the case of a Premium Messaging Subscription Service with:
 - (i) a subscription mechanism other than a mobile phone; or
 - (ii) a subscription mechanism contained in a marketing message sent to the Customer as a WAP Push Message,

the Customer requested to receive it using that subscription mechanism and has sent an MO Message in response to the instruction described in clause 4.4.2(e);
 - (b) in the case of a Premium Messaging Subscription Service with a mobile IVR subscription mechanism, the Customer requested to receive it using the mechanism described in clause 4.4.1(d)(i) and has sent an MO Message in response to the instruction described in clause 4.4.2(e);
 - (c) in the case of a Premium Messaging Subscription Service not described in subclause (a) or (b) above, the Customer has requested to receive it by:
 - (i) sending an MO Message that contains either:
 - (A) a clear and positive request to receive that service; or
 - (B) a keyword that was advertised as the means of requesting that service; and

- (ii) sending an MO Message in response to the instructions described in clause 4.4.3(b)(vi);
- (d) in the case of a Premium SMS or MMS Service that:
 - (i) is not a Subscription Service; and
 - (ii) has a request mechanism contained in a marketing message sent to the Customer as a WAP Push Message,

the Customer requested to receive it using:

 - (iii) the request mechanism contained in the marketing message; and
 - (iv) by sending an MO Message in response to the instructions described in clause 4.3.2(d) within the last 24 hours;
- (e) in the case of a Premium SMS or MMS Service not described in subclause (a), (b), (c) or (d) above, the Customer has requested to receive it by sending an MO Message that contains either:
 - (i) a clear and positive request to receive that service; or
 - (ii) a keyword that was advertised as the means of requesting that service; or
- (f) in the case of a Proprietary Network Service, the Customer has requested the service.

5.1.3 **Content Supplier contracts:** Each Aggregator and End Carriage Supplier must, in all contracts it enter into with a Content Supplier for the supply of that Content Supplier's Mobile Premium Services, contractually oblige the Content Supplier to comply with the Rules and the law.

5.1.4 **Refunds:** Unless a Customer agrees to another form of payment, a Supplier must pay any refund to a Customer by either:

- (a) issuing a direct credit against the Customer's current account; or
- (b) directly refunding the Customer.

5.1.5 **Withdrawals:** If:

- (a) a Supplier agrees to withdraw a particular amount from a Customer's account; and
- (b) the Supplier has not yet issued a bill for that amount,

then the Supplier must remove the amount from that Customer's account prior to billing.

- 5.1.6 **Minimum period:** A Content Supplier must not enter into a Mobile Premium Services contract with a Customer that requires the Customer to pay amounts to meet a minimum contract period requirement in addition to those charges informed to the Customer pursuant to clause 4.1.3(c).
- 5.1.7 **WAP Push Messages:** Any WAP Push Messages sent by a Content Supplier:
- (a) as part of a Mobile Premium Service; or
 - (b) to advertise a Mobile Premium Service,
- must state:
- (i) the Short Code; or
 - (ii) the Helpline,
- for the Mobile Premium Service prior to stating the WAP website link.
- 5.1.8 **Error messages:** If a Customer sends a Content Supplier:
- (a) an indecipherable or invalid content request; or
 - (b) a message that cannot be decoded by the Content Supplier's system,
- in relation to a Mobile Premium Service, the Content Supplier must send the Customer a standard, dedicated, SMS error message, at no charge to the Customer, which must:
- (c) commence with the phrase "FreeMsg";
 - (d) include the name of the Mobile Premium Service;
 - (e) if possible, describe the error and details of the correct format required for the request; and
 - (f) include details of its Helpline.
- 5.1.9 **Database:** Subject to record keeping requirements, a Content Supplier must maintain any database of active Customer MSISDNs, including by:
- (a) managing and purging expired data; and
 - (b) purging their database within 5 Business Days of a Carriage Service Provider issuing information about dormant or quarantined MSISDNs.

5.2 Premium SMS or MMS Services – Supplying Services

The additional Rules for supplying a Premium SMS or MMS Service are:

- 5.2.1 **Recording Customer requests and notifications:** A Content Supplier must retain a record of:

- (a) all Customer requests made in accordance with clause 5.1.2, including sufficient information about all elements of the request sent via MO Message for the End Carriage Supplier and any Aggregator to reconcile the transaction with its internal records;
- (b) all subscription confirmation messages sent pursuant to clause 4.4.3; and
- (c) all Customer requests to unsubscribe from a Subscription Service,

for that Content Supplier's Premium Messaging Subscription Services.

5.2.2 **Failed MT Messages:** If an SMS MT Message sent as part of a Premium SMS or MMS Service fails to deliver to a Customer, the Content Supplier must:

- (a) **Charging for resending messages:** not charge the Customer for any attempt to resend the message if:
 - (i) its content was of a time sensitive nature; and
 - (ii) it was not delivered within a reasonable timeframe for content of that nature;
- (b) **Requirement to resend:** attempt to resend the message if:
 - (i) the Customer had already paid for it in advance; and
 - (ii) there is no "event based" charge for that message to be sent;
- (c) **Limitations on resending where non-permanent reason for delivery failure other than a lack of Customer credit:** if the End Carriage Supplier or Aggregator notifies the Content Supplier that the reason for the delivery failure is potentially of an interim nature (other than a lack of Customer credit), only attempt to deliver the message if:
 - (i) no more than 1 attempt is made each day for 7 days after the date the End Carriage Supplier or Aggregator notified the Content Supplier of the delivery failure;
 - (ii) no more than 2 attempts are made in any 7 day period from the end of the period described in clause 5.2.2(c)(i) until the date that is 30 days after the End Carriage Supplier or Aggregator notified the Content Supplier of the delivery failure; and
 - (iii) no further attempts are made after the period referred to in clause 5.2.2(c)(ii);
- (d) **Limitations on resending where Customer credit reason for delivery failure:** if the End Carriage Supplier or Aggregator

notifies the Content Supplier that the reason for the delivery failure is a lack of Customer credit, then in the case of:

- (i) a Premium SMS or MMS Service that is not a Subscription Service, make no more than 2 further attempts to send the message within 7 days of such notification by the End Carriage Supplier or Aggregator; or
- (ii) a Premium Messaging Subscription Service:
 - (A) if the Customer is unable to access the then current content of that Premium Messaging Subscription Service, make no more than 2 further attempts to send the message within:
 - (aa) each 7 day period (following such notification by the End Carriage Supplier or Aggregator) up until the end of the current Charge Period; or
 - (bb) if the Charge Period is less than 7 days, the current Charge Period; or
 - (B) if the Customer remains able to access the then current content of that Premium Messaging Subscription Service:
 - (aa) make no more than 2 further attempts to send the message within:
 - (1) each 7 day period (following such notification by the End Carriage Supplier or Aggregator) up until the end of the current Charge Period; or
 - (2) if the Charge Period is less than 7 days, the current Charge Period;
 - (bb) make no more than 2 further attempts to send the message within:
 - (1) each 7 day period (following the end of the period described in clause 5.2.2(d)(ii)(B)(aa)) up until the end of the next Charge Period; or
 - (2) if the Charge Period is less than 7 days, the next Charge Period (following the end of the period described in clause 5.2.2(d)(ii)(B)(aa)),
- (iii) all Premium SMS and MMS Services, make no further attempts to send the message after the time period

referred to in clause 5.2.2(d)(i) or 5.2.2(d)(ii) (as relevant); and

- (e) **Prohibition on resending where permanent reason for delivery failure:** if the End Carriage Supplier or Aggregator notifies the Content Supplier that the reason for the delivery failure is of a permanent nature, abandon the attempt to send the message and, subject to record keeping requirements, remove the Customer's MSISDN from the Content Supplier's databases.

5.2.3 **Charges for undelivered content:** If an SMS MT Message sent as part of a Premium SMS or MMS Service fails to deliver to a Customer, a Supplier must:

- (a) not post any Mobile Content Fees to the Customer's account for that failed message; and
- (b) refund any Mobile Content Fees it has posted for that failed message.

5.2.4 **Extended period of failure to send and receive:** If a Content Supplier has not successfully sent or received any Premium SMS or MMS Service message to or from a particular Customer on a particular Short Code for 60 days, the Content Supplier must stop contacting that Customer using that Short Code unless the Customer requests otherwise.

5.2.5 **Paid message indicator:** If the Mobile Content Fee for an MT Message is higher than the standard charge for receiving an SMS or MMS message (as applicable) then, except in the case of an MT Message sent as part of a Chat Service, the Content Supplier must include the term "\$Msg" at the start of the MT Message.

5.3 Premium Messaging Subscription Services – Supplying Services

The additional Rules for supplying a Premium Messaging Subscription Service are:

5.3.1 **No minimum subscription period:** A Content Supplier must permit a Customer to unsubscribe from a Premium Messaging Subscription Service at any time and must not:

- (a) suggest otherwise; or
- (b) advertise or operate a Premium Messaging Subscription Service with a minimum subscription period.

5.3.2 **Decommissioned services:** If:

- (a) a Premium Messaging Subscription Service has been using a particular Short Code; and
- (b) that Premium Messaging Subscription Service is to be replaced with an alternative service using the same Short Code,

the Content Supplier must not automatically include a Customer of the decommissioned service as a Customer of the newly launched service unless that Customer has requested the new service in accordance with clause 5.1.2.

5.3.3 **Increasing prices:** If a Content Supplier wishes to increase the price of a Premium Messaging Subscription Service, the Content Supplier must notify all active Customers of that Premium Messaging Subscription Service of:

- (a) the new price; and
 - (b) the effective date for the new price,
- at least 1 month before that effective date.

5.3.4 **Cost of notification:** If the message required by clause 5.3.3 is sent via SMS, that SMS must be sent at no cost to the Customer.

5.4 Proprietary Network Services – Supplying Services

5.4.1 **Continuation of Subscription Service:** A Content Supplier must not allow a Subscription Service that is a Proprietary Network Service to continue on an ongoing basis unless:

- (a) the Customer is informed that this will occur prior to the commencement of the Subscription Service; and
- (b) the Content Supplier has complied with clauses 4.1.6 and 6.1.2.

6 COMPLAINT HANDLING

Summary

This chapter requires Suppliers to deal properly with Complaints.

Some Rules apply to all Mobile Premium Services, whereas some Rules only apply to specific types of Mobile Premium Services. The various types of Mobile Premium Services are set out in the table below.

| <i>Mobile Premium Services</i> | | |
|---|--|-------------------------------------|
| <i>Premium SMS or MMS Services</i> | | <i>Proprietary Network Services</i> |
| <i>Premium SMS or MMS Services that are not Subscription Services</i> | <i>Premium Messaging Subscription Services</i> | |

*Suppliers need to consider all sections of this chapter that apply to each Mobile Premium Service. Any particular category of Mobile Premium Service needs to comply with the Rules listed for its own category, and any additional Rules that apply to all other categories listed **above** it in this table.*

Objectives

The objective of this chapter is to establish appropriate community safeguards for Mobile Premium Services by ensuring Complaints are handled in an appropriate manner.

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *assist in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

6.1 All Mobile Premium Services - Complaint Handling

The Rules for handling Complaints about any Mobile Premium Service are:

- 6.1.1 **Complaint handling and inquiry procedures:** Content Suppliers must have Complaint handling and inquiry procedures which:
- (a) address any issues raised in the supply of Mobile Premium Services to Customers;
 - (b) are accessible;
 - (c) are easy and convenient for Customers to use;
 - (d) are fair and reasonable;
 - (e) include appropriate methods of taking action and monitoring undertakings made to complainants;
 - (f) include an appropriate Complaint escalation process;
 - (g) electronically record Complaints received and any resolutions;
 - (h) have a publicly available Complaints handling policy (including information about the Customer's right to complain) that is publicised to Customers and to staff;
 - (i) have accessible, flexible and free or low cost methods of lodging Complaints;
 - (j) have a process:
 - (i) for continuously classifying and analysing Complaints to identify recurring and systemic problems and trends and rectify and eliminate underlying causes of Complaints; and
 - (ii) which includes reasonable consideration of whether redress is appropriate for Customers affected by problems (including, where appropriate, all those Customers identified as having been affected by a recurring or systemic problem);
 - (k) include a Helpline;
 - (l) provide all relevant End Carriage Suppliers and Aggregators with the Content Supplier's Helpline number in a timely manner; and
 - (m) have a process for handling Complaints that involve Minors which includes consideration of the following factors where relevant and within the knowledge of the Content Supplier handling the Complaint:

- (i) whether the Mobile Premium Service was used by a Minor;
- (ii) whether the Minor is the sole or primary user of the mobile phone;
- (iii) whether the person who holds the relevant account with the End Carriage Supplier:
 - (A) expressly or impliedly consented to the use of their mobile phone for the Mobile Premium Service; and
 - (B) if the person did consent, whether they were aware, or ought reasonably to have been aware, of the cost and nature of the Mobile Premium Service;
- (iv) whether advertisements for the relevant Mobile Premium Service advised its potential audience to seek the permission of the relevant account holder before accessing the Mobile Premium Service; and
- (v) whether the Mobile Premium Service specifically targeted Minors.

6.1.2 **Helpline:** A Content Supplier must offer a local or free-call Helpline for use by Customers wishing to:

- (a) make Complaints; or
- (b) unsubscribe from a Subscription Service or opt-out of marketing.

6.1.3 **Advising End Carriage Supplier:** A Content Supplier must formally advise all End Carriage Suppliers of its Mobile Premium Services of the details of its Helpline.

6.1.4 **Helpline requirements:** A Content Supplier must:

- (a) **Live Agents:** staff its Helpline from 9am to 5pm, Australian EST, on Business Days;
- (b) **Call times:** ensure all calls received by the Helpline during the timeframe referred to in clause 6.1.4(a) are either:
 - (i) answered by live agents within a reasonable timeframe;
 - (ii) dealt with in accordance with clause 6.1.4(c); or
 - (iii) if the customer chooses that option, dealt with in accordance with clause 6.1.4(d);
- (c) **Queues:** if a caller to the Helpline is queued to speak to a live agent about a Premium SMS or MMS Service, tell the caller:

- (i) that their call will be answered by an agent; or
 - (ii) that they may leave a message;
- (d) **IVR:** make a 24 hour per day, 7 day per week, IVR service available via the Helpline in relation to any Premium Messaging Subscription Services, that:
- (i) gives Customers the option of unsubscribing from any Premium Messaging Subscription Services by:
 - (A) entering their mobile number into the IVR helpdesk service; or
 - (B) leaving a recorded voice message on the IVR helpdesk service; and
 - (ii) informs Customers of the timeframe in which they will be unsubscribed or, if applicable, have their call returned;
- (e) **Greeting:** greet Customers calling the Helpline with the name of the Content Supplier and, where applicable, the name of the person taking the call;
- (f) **Answering messages:** have an operator call a Customer to respond to verbal Complaints left on the Helpline's answering service as soon as practicable, and at least within 1 Business Day; and
- (g) **Unsubscribe and opt-out:** ensure that Customers can:
- (i) unsubscribe from Subscription Services; and
 - (ii) opt-out of marketing,
- by ringing the Helpline.
- 6.1.5 **Written Complaints:** Within 2 Business Days of receipt of a written Complaint, a Content Supplier must contact that Customer to:
- (a) acknowledge receipt; and
 - (b) advise the complainant of the timeframe for possible final determination of that Complaint.
- 6.1.6 **Investigating Complaints:** Subject to clauses 6.1.7 and 6.1.8, a Supplier must investigate all Complaints, other than those which it reasonably determines to be:
- (a) frivolous;
 - (b) vexatious; or
 - (c) not made in good faith.
- 6.1.7 **Referral of Complaints by Content Supplier:** A Content Supplier must refer Complaints that do not relate to the Content Supplier's

Mobile Premium Services to an appropriate organisation to address the Complaint.

- 6.1.8 **End Carriage Suppliers and Aggregators:** End Carriage Suppliers and Aggregators must:
- (a) subject to clause 6.1.8(c), if they receive a Complaint that relates to an aspect of the Mobile Premium Service under the control of a Content Supplier:
 - (i) take reasonable steps to ensure the correct Helpline number is passed on to the complainant; and
 - (ii) refer the Complaint to the Content Supplier in a timely manner;
 - (b) provide Content Suppliers with a contact mechanism by which they can submit and update their Helpline numbers; and
 - (c) undertake to resolve Complaints:
 - (i) not resolved by the relevant Content Supplier; or
 - (ii) received from the TIO,

in any manner they consider appropriate (acting reasonably) based on available information, with reference to any relevant independent third party and, in the case of resolution of Complaints by End Carriage Suppliers, such End Carriage Suppliers may have regard to clause 6.1.1(m).
- 6.1.9 **Escalation emails:** A Content Supplier must reply to emails from Aggregators and End Carriage Suppliers escalating Complaints within 2 Business Days.
- 6.1.10 **Resolving Complaints:** A Supplier must use reasonable efforts to resolve all Complaints made by Customers to it prior to referring them to the TIO.
- 6.1.11 **Complaints information:** A Content Supplier must share available complainant call log information relevant to a Complaint with the complainant on request.
- 6.1.12 **Resolution times:** A Content Supplier must:
- (a) resolve:
 - (i) direct Complaints within 2 Business Days of receipt by the Content Supplier;
 - (ii) escalated Complaints within 2 Business Days of escalation from the relevant Supplier; and
 - (iii) escalated Complaints relating to a previous Complaint made by that Customer to the Content

Supplier within 1 Business Day of escalation from the relevant Supplier;

- (b) if it is not possible to meet the timeframes set out in clause 6.1.12(a):
 - (i) provide the Customer with at least weekly updates on the Complaint's progress and likely timeframe for resolution; and
 - (ii) propose a resolution of the Complaint within 30 days of receipt by the Content Supplier; or
 - (c) if it is not possible meet the timeframes set out in clause 6.1.12(b), advise the Customer that they may refer their Complaint to the TIO.
- 6.1.13 **Advice on outcomes:** A Content Supplier must advise each Customer complainant of the outcome of their Complaint. Such advice must be in writing if requested by the complainant.
- 6.1.14 **Disputed amounts:** A Content Supplier must not demand payment of genuinely disputed amounts whilst the dispute is being investigated.
- 6.1.15 **Refund requests:** A Content Supplier must not require Customers to put refund requests in writing.
- 6.1.16 **TIO:** A Content Supplier must advise Customers of their external avenue of recourse to the TIO if the Customer:
- (a) expresses dissatisfaction with the resolution of their Complaint; or
 - (b) requests this information.
- 6.1.17 **Recording Complaints:** A Supplier must:
- (a) maintain accurate records of each Complaint made to it about Mobile Premium Services, including:
 - (i) the complainant's contact details;
 - (ii) the date of the Complaint;
 - (iii) the nature of the Complaint;
 - (iv) a running log of actions undertaken to resolve the Complaint; and
 - (v) the relevant Short Code;
 - (b) retain these Complaint records for at least 2 years;
 - (c) make these Complaint records available to the relevant Aggregator or End Carriage Supplier on request; and

- (d) if ACMA requests a copy of a Complaint record in relation to a particular Short Code, or series of Short Codes, make the copy available to ACMA within a reasonable time period (taking into account the nature of the information requested).

7 UNSUBSCRIBE AND OPT-OUT MECHANISMS

Summary

This chapter requires Suppliers to allow Customers to unsubscribe from Subscription Services and opt-out of marketing in relation to Mobile Premium Services.

Some Rules apply to all Mobile Premium Services, whereas some Rules only apply to specific types of Mobile Premium Services. The various types of Mobile Premium Services are set out in the table below.

| <i>Mobile Premium Services</i> | | |
|---|--|-------------------------------------|
| <i>Premium SMS or MMS Services</i> | | <i>Proprietary Network Services</i> |
| <i>Premium SMS or MMS Services that are not Subscription Services</i> | <i>Premium Messaging Subscription Services</i> | |

*Suppliers need to consider all sections of this chapter that apply to each Mobile Premium Service. Any particular category of Mobile Premium Service needs to comply with the Rules listed for its own category, and any additional Rules that apply to all other categories listed **above** it in this table.*

Objectives

The objectives of this chapter are to establish appropriate community safeguards for Mobile Premium Services by ensuring Customers can easily unsubscribe from Subscription Services and opt-out of marketing in relation to Mobile Premium Services.

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *assist in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

7.1 All Mobile Premium Services – Unsubscribe and opt-out mechanisms

The Rules on providing unsubscribe and opt-out mechanisms for Mobile Premium Services are:

7.1.1 **Unsubscribing from Subscription Services:** If a Customer requests to unsubscribe from a Subscription Service, at any time, a Content Supplier must:

- (a) stop supplying the Subscription Service (other than supplying messages or providing access that the Customer has already paid for):
 - (i) as quickly as possible following receipt of the request by the Content Supplier;
 - (ii) and in any event within 1 Business Day of receipt of the request by the Content Supplier, unless the Content Supplier is unable to stop supply within that time due to matters beyond its reasonable control;
- (b) from receipt of the request to unsubscribe, not post any new Mobile Content Fees to the Customer's account in respect of the Subscription Service unless it is actively renewed by the Customer in accordance with clause 5.1.2; and
- (c) refund any new Mobile Content Fees posted after the request to unsubscribe was received from the Customer by the Content Supplier,

unless the Customer's request is of the kind described in clause 5.1.8, in which case the Content Supplier must instead comply with clause 5.1.8.

7.1.2 **Opting-out of marketing:** If a Customer requests to opt-out from receiving mobile marketing messages in relation to a Mobile Premium Service, the Content Supplier must ensure that this:

- (a) terminates the Customer's consent to receive any further mobile marketing messages in relation to that Mobile Premium Service; and
- (b) results in the Customer being removed from any relevant marketing database,

unless the Customer's request is of the kind described in clause 5.1.8, in which case the Content Supplier must instead comply with clause 5.1.8.

7.1.3 **Unsubscribe fees:** A Content Supplier:

- (a) must not charge any Mobile Content Fees for:

- (i) processing a request to unsubscribe from a Subscription Service; or
 - (ii) any "STOP" Message; and
- (b) is not taken to have charged a Mobile Content Fee for the purposes of clause 7.1.3(a) if the Subscription Service was a Premium SMS or MMS Service and:
- (i) the request to unsubscribe can be issued without using a Premium SMS or MMS Service, and the Mobile Content Fee is not more than the usual cost of communicating in the same way as was used to issue the request to unsubscribe; or
 - (ii) in any other case – a refund is given to the Customer to reimburse the Customer for any cost above the usual cost of communicating in the same way.

7.2 Premium Messaging Subscription Services – Unsubscribe and Opt-Out Mechanisms

The additional Rules on providing unsubscribe and opt-out mechanisms for Premium Messaging Subscription Services are:

- 7.2.1 **"STOP" Messages for Premium Messaging Subscription Services:** A Content Supplier of a Premium Messaging Subscription Service must allow Customers to unsubscribe from the service and opt-out of associated marketing messages by:
- (a) entering the word "STOP" in a message sent from the Customer's handset to a Short Code or destination number for the Premium Messaging Subscription Service; and
 - (b) where practical, allowing the "STOP" Message described in (a) to be sent as a reply to a message sent as part of the Premium Messaging Subscription Service.
- 7.2.2 **"STOP" Messages:** Subject to clause 7.2.3, a Content Supplier must ensure that a "STOP" Message:
- (a) sent to a Short Code terminates:
 - (i) all Premium Messaging Subscription Services from that Short Code in accordance with clause 7.1.1; and
 - (ii) all marketing messages sent to the Customer's mobile phone as part of those Premium Messaging Subscription Services in accordance with clause 7.1.2; and
 - (b) sent in response to a marketing message in relation to a Premium Messaging Subscription Service results in the Customer opting-out of marketing in relation to that Premium Messaging Subscription Service in accordance with clause 7.1.2.

7.2.3 **Multiple services using same Short Code:** If:

- (a) multiple Premium Messaging Subscription Services use the same Short Code; and
- (b) a "STOP" Message expressly identifies which particular Premium Messaging Subscription Service the Customer wishes to unsubscribe from,

the Content Supplier may unsubscribe the Customer from only that particular Premium Messaging Subscription Service if:

- (i) the "STOP" Message is in the format "stop <service name>" or "<service name> stop"; and
- (ii) the "<service name>" identified in the "STOP" Message unambiguously matches a particular Premium Messaging Subscription Service.

7.2.4 **Wording of "STOP" Messages:** A Content Supplier must treat any message sent to a Short Code containing the word "stop" (other than a message sent as part of a Chat Service where the word "stop" appears in combination with other words in the ongoing dialogue between the chat participants) as a "STOP" Message for that Short Code.

7.2.5 **Unsubscribe confirmation messages:** Whenever a Customer unsubscribes from a Premium Messaging Subscription Service the Content Supplier must confirm:

- (a) as soon as possible; and
- (b) in any event, within 1 Business Day of receipt of the request (unless the Content Supplier is unable to do so within that time due to matters beyond its reasonable control),

by standard, dedicated SMS message, at no charge to the Customer, that their request to unsubscribe has been acted upon.

7.2.6 **Content of unsubscribe confirmation message:** The confirmation message described in clause 7.2.5 must:

- (a) commence with the phrase "FreeMsg";
- (b) include confirmation that the Customer has unsubscribed from the Premium Messaging Subscription Service or Premium Messaging Subscription Services; and
- (c) state if the Customer will still receive messages or access that the Customer has already paid for.

7.2.7 **Content previously paid for:** If:

- (a) a Customer requests to unsubscribe from a Premium Messaging Subscription Service; and

- (b) the Content Supplier continues to send the Customer messages that the Customer has already paid for, those messages must include the term "FreeMsg".

7.3 Proprietary Network Services – Unsubscribe and Opt-Out Mechanisms

The additional Rule on providing unsubscribe and opt-out mechanisms for Proprietary Network Services is:

- 7.3.1 **Unsubscribe from Proprietary Network Services:** A Content Supplier of a Proprietary Network Service must allow Customers to unsubscribe via:
 - (a) a website; or
 - (b) the Proprietary Network Service itself.

8 CODE ADMINISTRATION AND COMPLIANCE

8.1 Communications Alliance Code Administration and Compliance Scheme

- 8.1.1 Under Communications Alliance Industry Code Signatory arrangements, signatories to this Industry Code are subject to the *Code Administration and Compliance Scheme* (G514:2003) Industry Guideline (the Scheme). Accordingly, all signatories who are bound by this Code are also bound by the Scheme.

8.2 Powers of the Telecommunications Industry Ombudsman to handle complaints under the Code

- 8.2.1 Under section 114 of the Act and subject to the consent of the TIO, the Code confers on the TIO the functions and powers of:

- (a) receiving;
- (b) investigating;
- (c) facilitating the resolution of;
- (d) making determinations in relation to;
- (e) giving directions in relation to; and
- (f) reporting on

complaints made by the end users of a Listed Carriage Service about matters arising under or in relation to the Code, including compliance with the Code by those industry participants to whom the Code applies.

8.3 Power to handle industry complaints under this Code

- 8.3.1 A member of the industry (or a voluntary or non-profit consumer organisation or similar body) may complain directly to Communications Alliance about a contravention of this Code by a signatory to this Code.
- 8.3.2 A member of the industry (or a voluntary or non-profit consumer organisation or similar body) may also complain to ACMA about a contravention of this Code by a signatory to this Code. ACMA may refer the complaint to Communications Alliance under the power granted to ACMA in section 514 of the Act, subject to Communications Alliance agreeing to accept the referral. Without limiting the grounds on which Communications Alliance may withhold its agreement to accept a referral, Communications Alliance may withhold its agreement where it considers that the complaint can be more conveniently dealt with in another forum or that handling the complaint may impose an unreasonable cost burden on Communications Alliance.

- 8.3.3 Communications Alliance must handle complaints under clause 8.3.1 or 8.3.2 in accordance with the provisions of the *Code Administration and Compliance Scheme* (G514:2003).

PARTICIPANTS

The Working Group that developed the Code consisted of the following organisations and their representatives:

| Organisation | Representative |
|---|-----------------------|
| Communications Alliance Consumer Council | Teresa Corbin |
| Communications Alliance Disability Council | Loretta Kreet |
| MobileActive | Neil Wiles |
| Optus | John Doyle |
| Sybase 365 | Jo Rich |
| Telstra | Dan Mandaru |

This Working Group was chaired by Margaret Fleming. Visu Thangavelu of Communications Alliance provided project management support.

Communications Alliance was formed in 1997 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

In pursuing its goals, Communications Alliance offers a forum for the industry to make coherent and constructive contributions to policy development and debate.

Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

It is committed to the achievement of the policy objective of the Telecommunications Act 1997 - the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry.



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Care should be taken to ensure the material used is from the current version of the Standard or Industry Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact Communications Alliance