

MOBILE PREMIUM SERVICES INDUSTRY CODE (C637:2011)

EXPLANATORY STATEMENT

Introduction

This is the Explanatory Statement for the revised **Mobile Premium Services** Industry Code (C637:2011) (the Code).

This Explanatory Statement outlines the purpose of the Code and the factors that have been taken into account in its revision.

The Code is to replace the C637:2009 **Mobile Premium Services** Industry Code published by Communications Alliance in March 2009.

The *Telecommunications Act 1997* (Cth) encourages self-regulatory processes. Communications Alliance has been at the forefront of these processes and has worked closely with suppliers, regulators, the Telecommunications Industry Ombudsman (TIO) and consumer groups to develop industry codes of practice dealing with issues which affect consumers. The focus of this work has been to ensure that the residential and small business segments have adequate consumer protections.

Background

The then Australian Communications Authority (ACA) made the *Telecommunications Service Provider (Mobile Premium Services) Determination 2004* (No. 2) (the 2004 Determination). The 2004 Determination was made pursuant to section 99 of the *Telecommunications Act* and Reg 3.12 of the *Telecommunications Regulations 2001* (Cth) which allows the Australian Communications and Media Authority (ACMA) (at that time the ACA) to make determinations setting out rules that apply to service providers in relation to the supply of mobile premium services.

The 2004 Determination provided for the development of approved self-regulatory schemes, being schemes submitted to the ACMA by a content service provider, mobile carriage service provider or by a nominated member on behalf of all members of the scheme, and approved by the ACMA pursuant to clause 5.4 of the 2004 Determination.

Since 2005, mobile premium services in Australia have been regulated through a number of different mechanisms as part of a co-regulatory approach.

The Mobile Premium Services Industry Scheme was approved by the ACMA in 2006 and constituted the approved self-regulatory scheme. When the *Communications Legislation Amendment (Content Services) Act 2007* (Cth) was passed in 2007, it set out a new framework for content regulation across a variety of communications platforms (including mobile premium services).

The new legislation had a "flow-down" effect requiring alignment, development, removal and amendment of a number of regulatory mechanisms.

As part of this, primarily in acknowledgement of the growing numbers of complaints about mobile premium services, the existing Mobile Premium Services Industry Scheme was replaced with a Communications Alliance code in May 2009. The Code was developed by a Communications Alliance Code Working Group comprising representatives of industry and consumer groups

As a registered Code, the ACMA may direct any providers operating within the industry to comply – whereas the MPSI Scheme applied only to signatories to the Scheme (noting that other providers were covered by the Default Scheme). The Code is enforceable by the ACMA.

Current regulatory arrangements

In summary, mobile premium services are defined in the Code as:

- (a) premium SMS or MMS services, meaning carriage services or content services 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) proprietary network services, meaning public mobile telecommunications services that enable an end-user to access a 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.

The Code sets out appropriate community safeguards and customer service requirements for mobile premium services by:

- requiring suppliers to use appropriate advertising to assist customers to make informed decisions about the use and cost of services;
- providing customers with sufficient information to help enable them to make informed decisions about the use and cost of services;
- requiring suppliers to supply mobile premium services in an appropriate manner;
- ensuring complaints are handled in an appropriate manner; and
- ensuring customers can easily unsubscribe from subscription services and opt-out of marketing in relation to mobile premium services.

Acknowledging the need for greater levels of transparency, Communications Alliance and industry developed an MPS Industry Register (the Register). The Register's function is to capture the contact details of suppliers of mobile premium services in Australia in order to provide an accessible mechanism for regulatory bodies to identify these parties. Code obligations pertaining to the Register stipulate that registration is mandatory prior to the supply of any mobile premium services in Australia. Under the Code, suppliers are obliged to ensure that all information retained in the Register is kept up-to-date, and further, suppliers must not undertake any commercial dealings with unregistered parties in the supply of mobile premium services.

A new website (the 19SMS website) was also developed to provide a single point for consumers to access information about mobile premium services. New Code obligations, specifically clauses 4.1.9 and 4.1.10, relating to expenditure management information to be provided on the 19SMS website, place an obligation upon suppliers to provide consumers with visibility of the measures available to them to manage their expenditure on mobile premium services.

The Code was published in March 2009 and was registered by the ACMA on 14 May 2009 with an effective implementation date of 1 July 2009. The review date for the Code was set at a period of one year from the date of implementation.

The Code is complemented by two Mobile Premium Services Determinations, made by the ACMA in 2010:

- *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)*, which requires all mobile carriage service providers to implement the capability to bar all premium SMS and MMS services and act on a request for such barring from a customer or potential customer; and
- *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*, which sets out two specific rules relating to the supply of mobile premium services:
 - (i) A 'Do Not Contract' rule which prohibits suppliers from contracting with a content supplier to deliver that content supplier's premium SMS/MMS services if the content supplier has not completed the MPS Code registration process; and
 - (ii) A 'Do Not Bill' rule which states that mobile carriage service providers may be directed by the ACMA to suspend billing customers for premium SMS/MMS services of a named content supplier or aggregator for a period of up to three years, where that content supplier or aggregator has been found by the ACMA to have breached the MPS Code and behaved in a way that is significantly detrimental to consumers.

Following the making of these 2010 Mobile Premium Services Determinations the ACMA repealed the 2004 Determination.

Why current regulatory arrangements are inadequate

While the Code, as part of this suite of Mobile Premium Services consumer protection measures, has successfully delivered a 77% decrease in related complaints to the TIO, the scheduled review of the Code in July 2010 identified areas in which the Code required revision for the purposes of both strengthening the existing Code but also increasing accessibility to the Code for both suppliers and consumers.

How the Code builds on and enhances the current regulatory arrangements

The amendments to the Code will provide for additional protection for consumers when opting in to subscription services, where the majority of complaints still lie. Amendment to the previous Code Exemption rule will now ensure that suppliers of Reverse Charge Billing Services will be required to comply with specific Code obligations relating to the provision of information to consumers. The new Code compliance reporting obligations will ensure that the ACMA has additional visibility of industry activities and the provision of Code monitoring data to the ACMA and the Communications Compliance body will assist both organisations in identifying problematic or systemic issues relating to Mobile Premium Services.

What the Code will accomplish

The revised Code aims to further enhance existing community safeguards via the introduction of new requirements on suppliers. Simplification of the Code's structure and language will assist suppliers in interpreting and implementing Code rules. These benefits are targeted at further reducing the numbers of complaints made to the TIO in relation to mobile premium services.

Anticipated benefits to consumers

Consumers are anticipated to benefit from the following enhanced requirements in the Code:

- Increased accessibility to the Code, aimed at making the Code easier to read and understand, by way of a summary table at the start of each chapter to direct readers to

relevant provisions, and the simplification and clarification of terminology used in the Code;

- additional requirements that facilitate increased clarity of advertising, specifically online advertisements;
- stream lining of the Double Opt-in procedure which consolidates the opt-in process for non-mobile, WAP and IVR request mechanisms with the opt-in process for MO (Mobile Originating) requests to create a new single opt-in process;
- new requirements stipulating that specific information (STOP facility, inclusion of the term "subscribe/subscription", content suppliers Helpline) be included in subscription messages;
- new protections relating to the supply of Reverse Charge Billing Services, which had previously been exempted from the Code;
- new requirements on carriage service providers that mandate the provision of quarterly mobile premium services compliance reporting data to the ACMA. This data will take the form of outputs of existing carriage service provider compliance monitoring activities and will be provided to the ACMA in accordance with metrics to be stipulated in the Code at the time of submission for registration. This data will then assist the ACMA in undertaking its own Code compliance investigations; and
- reduction of the Code review period to two years will ensure that the Code maintains currency at both a regulatory and technology level.

Anticipated benefits to industry

It is anticipated that the industry will benefit from the introduction of consolidated Double Opt-in and Chat processes in terms of the reduced cost of running multiple message flows for different mediums.

Increased accessibility to the Code will also benefit industry helpline and regulatory staff.

Anticipated costs to industry

Industry participants will incur initial and ongoing costs in relation to compliance with this Code. These will include costs associated with the amendment to the Double Opt-in and Chat processes, education and training of staff, development or enhancement of policies and procedures, new compliance reporting requirements, additional messaging requirements, and the development or modification of internal systems.

New suppliers will need to ensure that compliance with the Code is built into their processes and systems.

Privacy considerations

Industry suppliers are still required to meet all information collection and provision obligations at law, including the requirements of National Privacy Principle 1, *Privacy Act 1988* (Cth).

Consumers of mobile premium services have a right of recourse to direct complaints to the Office of the Australian Information Commissioner where the complaint is related to privacy matters.

Other public interests benefits or considerations

Those carriage service providers who currently undertake independent Code compliance monitoring activities, Telstra, Optus and Vodafone Hutchison Australia, have stated in Section 1.8 of the revised draft Code their commitment to continue to undertake these activities.