

COMMUNICATIONS
ALLIANCE LTD



INDUSTRY GUIDELINE
MOBILE PREMIUM SERVICES
G638:2009

G638:2009 Mobile Premium Services Guideline

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INTRODUCTORY STATEMENT

Prior to the registration of the 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.

[To be confirmed – From the date of registration of the Code, the MPSI Scheme and MPSI Guideline have no further effect. The Determination is repealed with effect from [insert date].]

This Mobile Premium Services Guideline (G638:2009) (the Guideline) accompanies the Code.

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 this 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 The 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 the 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 to be registered with the Australian Communications and Media Authority (ACMA) pursuant to section 117 of the Act.
- 1.2.2 The provisions of the 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 of the Code, 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 of the Code

- 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 The 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, the Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

1.4 Relationship between the Code and the Guideline

1.4.1 The Code contains Rules for Suppliers (the Rules).

1.4.2 This Guideline is designed to:

- (a) assist Suppliers to interpret the Rules; and
- (b) provide examples of how a Supplier may choose to comply with the Rules.

1.5 Objectives

1.5.1 The objective of the Code is to establish appropriate community safeguards and customer service requirements for Mobile Premium Services.

1.5.2 The objectives of each chapter are detailed in that chapter.

1.6 Code review

1.6.1 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 Guideline:

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 Guideline:

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.

Code

means *C637:2008 Mobile Premium Services Code*.

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 of the Code.

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 of the Code.

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 of the Code.

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 Guideline, 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.

2A INTRODUCTORY GUIDELINES

Objectives

The Code sets out Rules relating to Mobile Premium Services.

The objectives of the Code are to establish appropriate community safeguards and customer service requirements for Mobile Premium Services.

Relationship with the Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

The introductory Guidelines on Mobile Premium Services are:

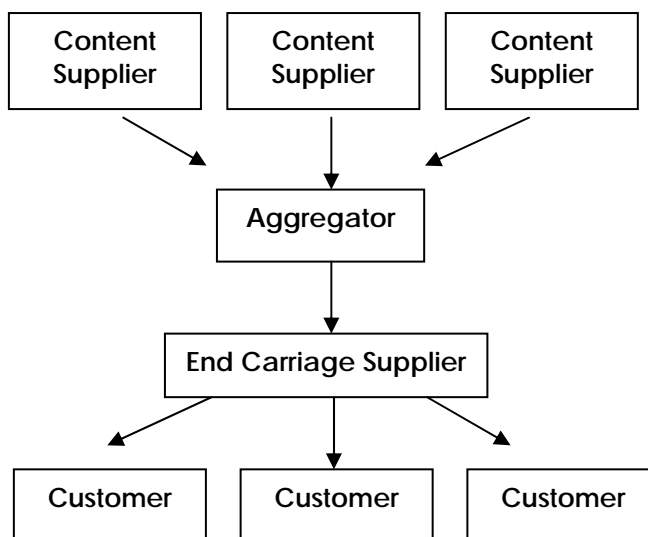
Q: *The definition of Content Supplier refers to the supply chain. What does this mean in the context of Mobile Premium Services?*

A: A number of different Suppliers may be involved in supplying a Mobile Premium Service to a Customer. Some examples of how this supply chain often works are set out below. In each example, the Content Supplier is the Supplier at the top of the supply chain – i.e. the originating Supplier of the Mobile Premium Service to Customers via that supply chain.

Example 1: Premium SMS or MMS Service

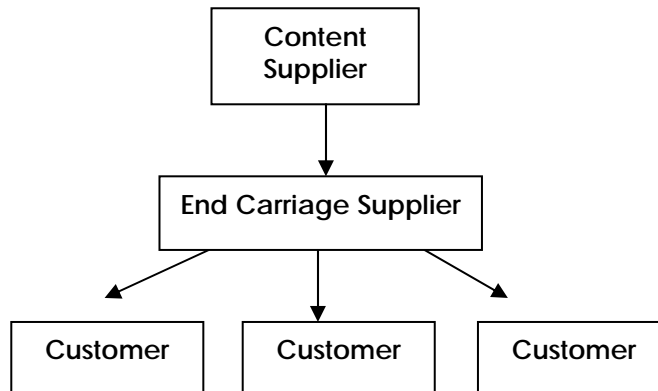
A Content Supplier creates a Premium SMS or MMS Service. The Content Supplier creates content for its service "in house" and/or obtains some content from third party content providers.

An Aggregator aggregates the Premium SMS or MMS Services of that Content Supplier along with those provided by a variety of other Content Suppliers. The Aggregator contracts directly with an End Carriage Supplier to enable all of the Premium SMS or MMS Services provided by its Content Suppliers to be carried to Customers via that End Carriage Supplier's Carriage Service. In turn, the End Carriage Supplier may provide various services such as billing the Customers for those Mobile Premium Services. Once those arrangements are in place, the Content Supplier will supply their Premium SMS or MMS Service to Customers via that End Carriage Supplier's Carriage Service.



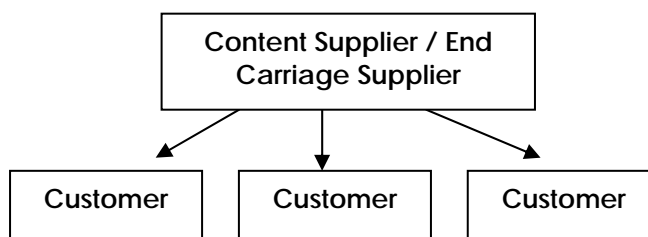
Example 2: Premium SMS or MMS Service

Sometimes a Premium SMS or MMS Service may be supplied without an Aggregator. In this instance, the Content Supplier contracts directly with the End Carriage Supplier to enable its Premium SMS or MMS Services to be carried to Customers via that End Carriage Supplier's Carriage Service.



Example 3: Proprietary Network Service

A Mobile Carriage Service Provider provides a Carriage Service to its Customers. In addition, the Supplier also acts as a Content Service Provider by creating its own Proprietary Network Service and supplying content to its Customers via that Proprietary Network Service. In this example, the Carriage Service Provider is acting as both the End Carriage Supplier and the Content Supplier. As with the examples above, the Content Supplier may create some of the content for its Proprietary Network Service itself or may contract third party content providers to provide content for inclusion in its Proprietary Network Service.



To determine whether you are acting as a Content Supplier, an Aggregator or an End Carriage Supplier in any given scenario, you need to consider what function you are performing in relation to that Mobile Premium Service. As demonstrated in Example 3 above, you may not always be acting in the same capacity. For example, an entity which normally acts as an Aggregator will be classified as a Content Supplier for a particular Mobile Premium Service

if it is performing the Content Supplier function in relation to that Mobile Premium Service.

Q: *What is the difference between a Content Service and a Carriage Service?*

A: There is a distinction between a Content Service supplied to Customers, and the means of delivering, or carriage, of those Content Services.

Content Services can include text, visual and audible information as well as applications that provide interactive advice, alerts, entertainment and transaction services.

Carriage Services include a wide variety of packet data delivery services (such as SMS, MMS, USSD, GPRS, 1xRTT, EVDO, WAP, EDGE and HSDPA) designed to transparently carry all types of packet data traffic.

Q: *I am a Supplier of Mobile Premium Services. Does every Rule apply to me?*

A: No. Whilst some Rules apply to all Suppliers, some of the Rules only apply to Content Suppliers, some only apply to Aggregators and some only apply to End Carriage Suppliers. Also, some Rules only apply to particular types of Mobile Premium Services. You need to check which Rules apply to your activities.

Q: *What is the difference between a Carriage Fee and a Mobile Content Fee?*

A: Mobile Content Fees are determined by the relevant Content Supplier and usually vary between different types of content and different Content Services. Mobile Content Fees are sometimes referred to as premium content fees.

End Carriage Suppliers generally do not distinguish between different types of content carried by their networks, and merely charge a fixed fee per data volume carried (for example, per kilobyte) and/or standard text charges per SMS or MMS message as a Carriage Fee. Sometimes, End Carriage Suppliers instead offer a fixed (or "flat") monthly tariff irrespective of the volume of data traffic carried (usually up to some maximum "capped" aggregate monthly volume of Carriage Fees).

End Carriage Suppliers do not set Mobile Content Fees (unless they are also acting as the Content Supplier in relation to a particular Mobile Premium Service) and are generally unaware of applicable third party Mobile Content Fees in advance of each Customer transaction posting.

Depending on the arrangements in place between any End Carriage Supplier, Aggregator and/or Content Supplier, End Carriage Suppliers retain a share of the Mobile Content Fee billed to the Customer in return for the billing and remittance functions undertaken by the End Carriage Supplier on behalf of the Content Supplier.

Q: *How is a Proprietary Network Service usually displayed?*

A: A Proprietary Network Service is often presented by means of a visual menu displayed on a Customer's handset. Customers can generally scroll through the listed menu multi-level hierarchy to access different Content Services via a single "click" on the chosen menu item.

3 ADVERTISING

Objectives

Chapter 3 of the Code sets out Rules relating to advertising Mobile Premium Services.

The objective of that chapter of the Code is to establish 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 Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

3.1 All Mobile Premium Services – Advertising

The Guidelines on advertising any Mobile Premium Services are:

Q: Are there other advertising obligations I should be aware of, in addition to those in the Code?

A: Yes. These include the requirements of Chapter 4 (Customer information on prices, terms and conditions) of the *Telecommunications Consumer Protections Code* (TCP) Code (C628:2007), the guidance on providing information set out in *Disability Matters: Access to Communications Technologies for People with Disabilities and Older Australians Industry Guideline* (G586:2006) and the requirements of the *Trade Practices Act 1974* (Cth).

You should also remember that the Australian eMarketing Code of Practice, the *Spam Act 2003* (Cth) and the *Privacy Act 1988* (Cth) apply to marketing messages and that you also need to comply with those obligations.

Further guidance on these issues is available from the Office of the Privacy Commissioner at <http://www.privacy.gov.au>, including the Information Sheet titled "Interaction of the Privacy Act and the Spam Act".

By way of guidance only:

- Customers should only be included in a Content Supplier's marketing database if the Customer has provided consent to receive marketing messages;
- the content of marketing messages should include accurate sender information, in accordance with the Spam Act;
- Content Suppliers should:
 - not use electronic marketing messages unless an appropriate means of allowing the end-user to notify the sender of the message not to send further marketing messages is implemented; and
 - ensure that any opt-out or "STOP" Message received from the recipient of an electronic marketing message is immediately complied with.

Advertising display requirements (Code 3.1.2)

Q: When might advertising not be clear, prominent or legible? (Code 3.1.2(a))

A: An example of when advertising will not be clear, prominent or legible is when the advertisement has been designed to distract the Customer's attention from the price or other details listed in Rule 3.1.2(a)(i) and (ii).

Q: *What might information about the basis for calculating charges include? (Code 3.1.2(a))*

A: It may include frequency of charging information.

Q: *How should I determine who the average person is? (Code 3.1.2(a)(vi))*

A: You should consider the relevant market that will be exposed to the advertisement when determining who the average person would be.

Q: *What are some examples of expressly referring to Carriage Fees? (Code 3.1.2(b))*

A: Some examples are:

- "\$3 plus standard SMS rates"; and
- "data carriage charges also apply".

Requirements for disclaimers (Code 3.1.3)

Q: *What should I have regard to when considering the type of advertising being used? (Code 3.1.3)*

A: The type of advertising includes the medium or format being used.

Q: *What is the effect of including a information about the price of the advertised Mobile Premium Service in a disclaimer? (Code 3.1.3)*

A: Code Rule 3.1.2(a) requires that information about pricing be included in a clear, prominent and legible manner. By including such information in a disclaimer, you may be in breach of Rule 3.1.2(a).

Use of the term "free" (Code 3.1.9)

Q: *What are some examples of equivalent terms to the word "free"? (Code 3.1.9)*

A: Examples of equivalent terms include "no cost", "no fee", "no charge" or "\$0".

Benefits (Code 3.1.10)

Q: *What are some examples of benefits in relation to Mobile Premium Services? (Code 3.1.10)*

A: Examples of benefits include credits, free services or products.

Up to date advertising (Code 3.1.12)

Q: How might an advertisement become out of date? (Code 3.1.12)

A: An advertisement may become out of date if time-sensitive information is published, released or made available after a relevant deadline.

Mobile marketing messages (Code 3.1.13)

Q: What are some examples of a marketing message that implies that it is a personal message or otherwise suggests a false imperative for the Customer to reply? (Code 3.1.13(b))

A: Some examples are:

- "I fancy you";
- "I miss you";
- "I'm lonely do you want to chat";
- "Where are you?"; and
- "Urgent, please call".

Q: What is an example of how I might word a mobile marketing message? (Code 3.1.13)

A: You should note that mobile marketing messages need to comply with clause 3.1.13 but also need to comply with the:

- other applicable advertising Rules; and
- the requirements of the Spam Act (eg the requirement to include accurate sender information).

An example of how to word a mobile marketing message for a Premium SMS or MMS Service that is not a Subscription Service is:

- "FreeMsg New ring tone available now. Cost = \$3 + data carriage fees. To receive, reply "YES". To stop, reply "STOP". For help, ring [Helpline]. From HotTones Pty Ltd"

Q: Are these the only legal obligations I have when sending marketing messages? (Code 3.1.13)

A: No. A variety of laws (as well as other provisions of this Code) apply to marketing. In particular, you must comply with the *Spam Act 2003* (Cth) whenever you are sending commercial electronic messages.

Scams (Code 3.1.15)

Q: What is a prohibited scam? (Code 3.1.15)

A: This prohibition covers any scam that is wholly or partially operated via Mobile Premium Service. A scam includes any promise or offer to provide a reward, gift or prize by redemption, by which the redemption method may be expected to cost the receiver a sum larger than the value of the promised reward.

An example of a scam is sending an SMS to a Customer requesting them to call a Mobile Premium Service to claim a prize that does not exist.

More information about scams is available at <http://www.scamwatch.gov.au>.

Q: *What might happen if I use a Mobile Premium Service for conducting or participating in the promotion of a scam? (Code 3.1.15)*

A: In addition to the consequences that may flow from a breach of the Code, you may be subject to penalties under the *Trade Practices Act 1974* (Cth) and under other relevant laws.

Advertising to children (Code 3.1.16)

Q: *Is there anything else I should keep in mind when advertising to children? (Code 3.1.16)*

A: All marketing should be presented and conducted in a responsible manner, for example by taking into account any relevant child-specific factors including safety of children and ability to pay.

Q: *What is the difference between 3.1.16(a) and 3.1.16(b)? (Code 3.1.16)*

A: Subclause 3.1.16(a) prohibits Mobile Premium Services advertising in publications (or other media or formats) which specifically and primarily target at persons below the age of 15.

Examples of these types of publications or shows include:

- after-school cartoons or other children's television programming; and
- magazines aimed primarily at pre-teen girls.

If a particular advertisement is not prohibited by subclause 3.1.16(a) (because the publication in which it is placed is not specifically targeted at persons below the age of 15), but is reasonably likely to attract a significant number of Minors (due to its content, context and placement) then the advertisement must include the warning required by subclause 3.1.16(b). In determining whether 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, you should consider the relevant market that will be exposed to the advertisement.

Examples of types of publications or shows where an advertisement would be permitted (pursuant to subclause 3.1.16(a)) but would require a warning pursuant to subclause 3.1.16(b) include:

- television shows presenting video clips of popular songs (when shown at a time reasonably likely to attract a significant number of Minors).

Charges for replying to marketing messages (Code 3.1.17)

Q: What is an example of how to identify Mobile Content Fees in a marketing, prompt or inducement message sent as part of a Mobile Premium Service? (Code 3.1.17)

A: An example is:

- "Cost = \$2 send/receive."

3.2 Premium SMS or MMS Services – Advertising

The additional Guidelines on advertising any Premium SMS or MMS Services are:

Pricing information (Code 3.2.3)

Q: Can I include this pricing information in terms and conditions placed at the end of a print advertisement? (Code 3.2.3(b)(i))

A: Yes, but to comply with this Rule, the information must also be in the main body of the advertisement, not just in the terms and conditions.

Q: Can I include this information below the fold of the web page displaying the Short Code? (Code 3.2.3(c)(ii))

A: Yes, but to comply with this Rule, this information must also be on the same page as the Short Code. If the Short Code is included above the fold, the information must therefore also be included above the fold in order to be on the same page. You should also note clause 3.1.2 which requires clear, prominent and legible information on price to be displayed above the fold in online advertisements.

Terms and conditions (Code 3.2.4)

Q: How can I ensure that information is displayed in a manner that is clear, legible and contrasts with the background? (Code 3.2.4(d))

A: To help ensure that information is clear, legible and contrasting with the background, you may need to:

- in a case where the text is placed against a moving background, place the on-screen text on a single-coloured box;
- keep in mind that certain colour combinations (eg white on yellow) may increase the difficulty of reading text; and
- keep in mind that fading text in and out can make text difficult to read unless the text is displayed for longer than otherwise necessary to compensate for the fact that at some points it will not be visible.

Q: *How can I ensure that text is on screen long enough for an average viewer to read it all? (Code 3.2.4(e))*

A: To help ensure that an average viewer can read all text on screen, a minimum duration of 0.2 seconds per word or 2 seconds for less than 5 words is recommended. You should consider the relevant market that will be exposed to the advertisement when determining who the average viewer would be.

3.3 Premium Messaging Subscription Services – Advertising

The additional Guidelines on advertising Premium Messaging Subscription Services are:

Charges for receiving marketing messages (Code 3.3.1)

Q: *Does this Rule apply to all marketing or promotional material relating to my Premium Messaging Subscription Service? (Code 3.3.1)*

A: Yes. This Rule applies to all promotional material, including websites and marketing messages sent to Customers' mobile phones.

Subscription advertisements (Code 3.3.3)

Q: *What is an example of how to include the information required by Rule 3.3.3 in an advertisement for a Subscription Service? (Code 3.3.3)*

A: An example is:

- "Subscription service costs \$5 to subscribe and \$2 per message sent. 5 msg per month. To unsubscribe send STOP to XXX. Further information at www.XXXX.com.au. Content Supplier XXXX. Helpline XXXX."

Q: *What is an example of how to include information about the basis for calculating charges in close proximity to the fact that it is a Subscription Service, in an advertisement for a Subscription Service? (Code 3.3.3)*

A: Some examples are:

- "Subscription service: \$5 per message, 2 messages each week (\$10)";
- "Subscription service: \$5 on signup (\$5), then 1 x \$5 message per day (\$35 weekly)";
- "Subscription service for \$5 per week"; and
- "Subscription service: \$10 per week plus \$5 sign-up".

Q: *Can I include this information in terms and conditions placed at the end of a print advertisement? (Code 3.3.3(e)(ii))*

A: Yes, but to comply with this Rule, this information must also be in the main body of the advertisement, not just in the terms and conditions.

Q: *Can I include this information below the fold of a web page displaying the Short Code? (Code 3.3.3(e)(iii))*

A: Yes, but to comply with this Rule, this information must also be on the same page as the Short Code. If the Short Code is included above the fold, the information must therefore also be included above the fold in order to be on the same page. You should also note clause 3.1.2 which requires clear, prominent and legible information to be displayed above the fold in online advertisements.

4 PROVIDING INFORMATION

Objectives

Chapter 4 of the Code sets out Rules relating to providing information to Customers of Mobile Premium Services.

The objectives of that chapter of the Code are to establish 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 Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

4.1 All Mobile Premium Services - Providing information

The Guidelines on providing information to Customers of any Mobile Premium Services are:

Q: *Is there other information (in addition to the information required by the Code) that I may need to provide to a Customer in connection with a Mobile Premium Service?*

A: Yes. You must meet all of your information provision obligations at law. For example, you need to comply with the requirements of National Privacy Principle 1, *Privacy Act 1988* (Cth).

Charges, terms and conditions (Code 4.1.3)

Q: *What refund arrangements might apply to a Mobile Premium Service involving a competition or voting? (Code 4.1.3(g))*

A: A refund may be required to be given:

- where the terms and conditions of supply of the relevant Mobile Premium Service are not met; or
- where there is a material change in the competition mechanics or voting conditions prior to a Customer's entry into the competition, and reasonable steps have not been taken to inform the Customer of the change.

Q: *What are some examples of time-sensitive activities? (Code 4.1.3(h))*

A: Examples include:

- competitions; or
- voting services.

Q: *Why might a Customer need to have my contact details? (Code 4.1.3(i))*

A: A Customer might need to have your contact details to unsubscribe from a Subscription Service.

Q: *How could I comply with my obligation to clearly inform my Customers of the information required by clause 4.1.3? (Code 4.1.3)*

A: Examples include:

- by including the information in all advertisements that tell Customers how to subscribe to or purchase the service; or
- by including the information in a message to the Customer (for example, a message sent to the Customer pursuant to 4.4.3).

Video calling (Code 4.1.8)

Q: *Are there other laws or requirements that I need to consider if I am considering undertaking these kinds of activities? (Code 4.1.8)*

A: Yes. A number of laws apply to these kinds of activities, including in particular the *Telecommunications (Interception and Access) Act 1979* (Cth). You must ensure you comply with all relevant laws.

MPS Code Monitoring (Code 4.1.11)

Q: *How will MPS Code Monitoring be carried out? (Code 4.1.11)*

A: MPS Code Monitoring is proposed to:

- be carried out by a monitor that is independent from any one Supplier, industry group or consumer group;
- be carried out by or on behalf of a group of industry, consumer and government representatives;
- be carried out by a monitor whose functions include:
 - (a) monitoring compliance with the Code; and
 - (b) the conduct of independent inquiries and investigations into compliance with the Code;
- result in appropriate reporting and sharing of information, including:
 - (a) sharing of information with regulatory bodies and with 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) where appropriate, 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.

Q: *I have an obligation to cooperate with MPS Code Monitoring. What might such cooperation include? (Code 4.1.11)*

A: Such cooperation would include ensuring you have sufficient resources devoted to it to help ensure that MPS Code Monitoring operates effectively and efficiently.

4.2 Premium SMS or MMS Services – Providing Information

The additional Guidelines on providing information to Customers of a Premium SMS or MMS Service are:

Short Code Look-up Database (Code 4.2.1)

Q: I am an End Carriage Supplier. Do I need to make information about the costs of Mobile Premium Services available to my Customers? (Code 4.2.1)

A: Yes. In particular, you will have obligations under the Telecommunications Consumer Protections Code (TCP Code (C628:2007)), including:

- an obligation under rule 6.1.1(a) of the TCP Code to ensure that customers can obtain information relevant to their current bill of any item of its content; and
- an obligation under rule 6.1.3 of the TCP Code to ensure that itemised charge details relating to the current bill are available.

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

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

Content of purchase confirmation message (Code 4.3.2)

Q: What is an example of a purchase confirmation message? (Code 4.3.2)

A: An example is:

- "FreeMsg Welcome to Pay-per-View videos. Cost is \$1 per video viewed for the next 24 hours. Reply YES to confirm. For help call 1300 xxx xxx"

Content of \$30 expenditure update (Code 4.3.5)

Q: What is an example of a \$30 expenditure update? (Code 4.3.5)

A: An example is:

- "FreeMsg Courtesy message from [name of Premium SMS or MMS Service]. You have reached or passed \$30 mobile content fees on short code [Short Code] this month. For your info only, no action required."

Chat Service welcome message (Code 4.3.6)

Q: What is an example of a Chat Service welcome message? (Code 4.3.6)

A: An example is:

- "FreeMsg. Welcome to 'My Chat'. Cost = \$1.00 to send/receive per message. Helpline 1800123123".

4.4 Premium Messaging Subscription Services – Providing Information

The additional Guidelines on providing information to Customers of a Premium Messaging Subscription Service are:

Q: *Section 4.4 of the Code requires me to send a number of different messages to my Premium Messaging Subscription Service Customers. When do I need to send these messages? (Code 4.4)*

A: The various messages described in section 4.4 of the Code serve different purposes. A summary of these different messages is set out below.

Clause	Message	When?
Code 4.4.1/4.4.2	Non-mobile, WAP and IVR subscription request messages	If the Customer requests the service using a non-mobile subscription mechanism, an IVR or a mechanism contained in a WAP Push Message. This message forms part of the "sign-up" process in those circumstances (see clauses 5.1.1/5.1.2).
Code 4.4.3	Subscription confirmation message	Once the Customer has sent an MO Message requesting the service but prior to supplying the service. This message forms part of the "sign-up" process for those Premium Messaging Subscription Services not covered by the first mechanism described above. It requires those Customers to confirm their subscription prior to subscribing.
Code 4.4.4 - 4.4.8	\$30 expenditure updates / 30 day reminder notifications	Ongoing requirement during the subscription.

Code 7.2.5/7.2.6	Unsubscribe confirmation message	If the Customer unsubscribes from the service.
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In all cases, you should check clause 5.1.2 to confirm the elements of the "sign-up" process for the particular type of Mobile Premium Service you are supplying. Clause 5.1.1 prohibits the supply of a Mobile Premium Services that the Customer did not request in accordance with clause 5.1.2.

Non-mobile, WAP and IVR subscription mechanisms (Code 4.4.1)

Q: *What is an example of a non-mobile subscription mechanism? (Code 4.4.1)*

A: An example of a non-mobile subscription mechanism is a website where a Customer can request to subscribe to a Premium Messaging Subscription Service.

Q: *What kind of positive action might I require the Customer to take on an IVR in order to accept a Premium Messaging Subscription Service? (Code 4.4.1)*

A: Positive action could include asking the Customer to dial "0" to accept the Premium Messaging Subscription Service, to agree to be included on the Content Supplier's marketing list and to proceed with the call. Positive action would not include the caller failing to terminate the call until after a given length of time.

If the caller does not take the required positive action to proceed, this means that the Customer has not requested the service for the purposes of clause 5.1.2. If that is the case, the Customer's MSISDN must not be registered for the Premium Messaging Subscription Service and that Customer must not be included on your marketing list.

Q: *Why is it necessary to send a subscription request message to a Customer who has requested a Premium Messaging Subscription Service using a non-mobile, WAP or IVR subscription mechanism? (Code 4.4.1)*

A: This is essential to help ensure that the person requesting the subscription is also the owner of the handset.

Clause 5.1.1 of the Code prohibits the supply of a Mobile Premium Service that a Customer did not request in accordance with clause 5.1.2. For example, in the case of a Premium Messaging Subscription Service with a non-mobile subscription request mechanism, a Customer has only requested the service in accordance with clause 5.1.2 if:

- the Customer has requested the service using that non-mobile subscription mechanism;
- the Content Supplier has sent the Customer a subscription request message in accordance with clause 4.4.1 and 4.4.2, including details of the subscription mechanism described in clause 4.4.2(e); and
- the Customer has used that subscription mechanism to subscribe to the service.

Content of subscription request message (Code 4.4.2)

Q: What is an example of a subscription request message? (Code 4.4.2)

A: An example is:

- "FreeMsg Our records indicate you wish to subscribe to Greatest Mobile Tones. Cost = \$4.50 per week. To subscribe SMS YES to 1900 XXXX. Helpline 1800 123 XXX."

Subscription confirmation messages (Code 4.4.3)

Non-mobile, WAP and IVR subscription mechanisms (Code 4.4.3(a))

Q: If I send a Customer a subscription request message in accordance with clause 4.4.2, do I need to send them a subscription confirmation message pursuant to clause 4.4.3(a) as well? (Code 4.4.3(a))

A: Yes. If a Customer has requested a Premium Messaging Subscription Service using the mechanism set out in clause 4.4.2 (as required by clause 5.1.2(a)), you must always send that Customer a subscription confirmation message in accordance with clause 4.4.3(a) prior to supplying the service. This message contains additional information necessary for subscribers to that service.

Q: What is an example of a subscription confirmation message for services with a non-mobile, WAP or IVR subscription mechanism? (Code 4.4.3(a))

A: An example is:

- "FreeMsg Thanks for subscribing to Hottest Mobile Tones. Cost=\$4.50 per msg / 5 msg per month until you SMS STOP to 19X XXX. Helpline 1800 123 XXX [Content Supplier's name]"

Q: Does the subscription confirmation message sent pursuant to clause 4.4.3(a) have to be received by the Customer before I can begin to supply the Premium Messaging Subscription Service? (Code 4.4.3(a))

A: You must send the Customer the subscription confirmation message described in clause 4.4.3(a) before you begin to supply the Premium Messaging Subscription Service. It is

acknowledged that you do not control the order in which the messages are received and read by the Customer. Therefore you will have met your obligation if you send the subscription confirmation message to the Customer before you begin to supply the Premium Messaging Subscription Service, regardless of the order in which the messages are received and read by the Customer.

Other Premium Messaging Subscription Services (Code 4.4.3(b))

Q: *If a Customer requests to subscribe to a Premium Messaging Subscription Service by sending an MO Message (other than as part of the mechanism for non-mobile, WAP and IVR subscriptions) do I also need to send them a subscription confirmation message pursuant to clause 4.4.3(b)? (Code 4.4.3(b))*

A: Yes. Unless the Premium Messaging Subscription Service Customer has used the subscription mechanism set out in clauses 4.4.1, 4.4.2 and 4.4.3(a), you must send them a subscription confirmation message asking them to confirm that they wish to subscribe prior to subscribing that Customer to the requested Premium Messaging Subscription Service. Non-mobile, WAP and IVR subscription mechanisms have a different sign-up process (as set out in clauses 4.4.1, 4.4.2 and 4.4.3(a)). However, in the case of all other Premium Messaging Subscription Services, you must confirm the Customer's initial MO Message request to subscribe by sending the message required by clause 4.4.3(b).

As different "sign-up" mechanisms apply to different Mobile Premium Services, please note that in all cases, you should check clause 5.1.2 to confirm the steps that must be taken to "sign-up" a Customer to a Mobile Premium Service. Clause 5.1.1 prohibits the supply of a Mobile Premium Services that the Customer did not request in accordance with clause 5.1.2.

Exceptions to expenditure updates (Code 4.4.4)

Q: *Why are expenditure updates important? (Code 4.4.4)*

A: Expenditure updates are important because Customers can find it difficult to keep track of actual expenditure during the use of a Premium Messaging Subscription Service.

Q: *Why are there exceptions to the expenditure updates? (Code 4.4.4)*

A: The exceptions are primarily intended to provide an opt-out facility to permit informed adult Customers to opt-out of receiving expenditure updates in relation to high value services. In those circumstances, the frequency of expenditure updates may be annoying to the Customer or disruptive to the Premium Messaging Subscription Service.

Q: *If I am an End Carriage Supplier and a Content Supplier requests my permission for the purposes of clause 4.4.4(a), am I able to give my consent subject to certain conditions? (Code 4.4.4(a))*

A: Yes. If you think it is appropriate, you may seek to impose additional requirements on the Content Supplier such as the maintenance of records confirming the terms of the Customer's opt-out to the expenditure updates.

Content of \$30 expenditure update (Code 4.4.6)

Q: *What is an example of a \$30 expenditure update? (Code 4.4.6)*

A: An example is:

- "FreeMsg U are subscribed to [name of Premium Messaging Subscription Service]. U have reached or passed \$30 spend on mobile content fees. To cancel SMS STOP to [Short Code]. Helpline 1800 XXX"

30 day reminder notification (Code 4.4.7)

Q: *If I have sent a \$30 expenditure update to a Customer in a calendar month pursuant to clause 4.4.7, do I also need to send the Customer a 30 day reminder notification? (Code 4.4.7)*

A: No. If a \$30 expenditure update has been sent to a Customer in a calendar month pursuant to clause 4.4.5, you do not have to also send a 30 day reminder notification for that month pursuant to clause 4.4.7.

Content of reminder notification (Code 4.4.8)

Q: *What is an example of a reminder notification? (Code 4.4.8)*

A: An example is:

- "FreeMsg U are subscribed to [name of Premium Messaging Subscription Service]. Cost = [\$] per [charging frequency], until you SMS STOP to [Short Code]. Helpline 1800 XXX"

Message identification (Code 4.4.9)

Q: *Why may a Customer wish to identify and contact the Content Supplier? (Code 4.4.9)*

A: A Customer may wish to contact the Content Supplier to opt out of the Premium Messaging Subscription Service.

4.5 Proprietary Network Services – Providing Information

The additional Guidelines on providing information to Customers of a Proprietary Network Service are:

Information (Code 4.5.1)

Q: *Does this information always have to be provided in writing? (Code 4.5.1)*

A: Yes. This information must be provided in writing regardless of the format in which the Proprietary Network Service will be supplied.

Opt-out information (Code 4.5.3)

Q: *Can I provide this information via other mechanisms? (Code 4.5.3)*

A: You must provide this information via at least the two mechanisms listed. You may choose to also provide it in other additional ways, for example via a website.

5 SUPPLYING A MOBILE PREMIUM SERVICE

Objectives

Chapter 5 of the Code sets out Rules relating to supplying Mobile Premium Services.

The objectives of that chapter of the Code are to establish community safeguards for Mobile Premium Services by requiring Suppliers to supply Mobile Premium Services in an appropriate manner.

Relationship with the Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

5.1 All Mobile Premium Services – Supplying Services

The Guidelines on supplying a Mobile Premium Service are:

Q: *Are there specific requirements for Mobile Premium Services that are also gambling services?*

A: There are no such requirements in the Code. However, remember that if a Mobile Premium Service is also a gambling service, then it must also comply with all legislation relevant to gambling services.

Q: *Are there specific requirements for the content of Mobile Premium Services or requirements specific to particular types of content?*

A: Yes. You should consider in particular the requirements of Schedules 5 and 7 to the *Broadcasting Services Act 1992* (Cth) as well as the codes registered under those Schedules. For example, be aware that Schedule 7, the Internet Industry Code of Practice – Content Services Code and the *Restricted Access System Declaration 2007* address issues relating to permitting mobile access to adult content.

Q: *Many of the obligations in Chapter 5 apply to Content Suppliers. I act as an End Carriage Supplier. Do I have any other obligations that I need to comply with before supplying one of my services, in addition to those set out in the Code?*

A: Yes. You must meet all of your obligations at law. In particular, be aware of obligations contained in the Telecommunications Consumer Protections Code (TCP Code (C628:2007)) including, for example, rule 7.1.1 of the TCP Code which obliges Carriage Service Providers, when a customer applies for a service, to either:

- undertake an appropriate credit assessment to determine whether to supply the customer; or
- supply the service with measures to effectively limit the customer's expenditure or usage, such as a hard cap or barring of premium service calls.

Prohibitions (Code 5.1.1)

Q: *What is an example of an activity that will constitute supply of a Mobile Premium Service? (Code 5.1.1)*

A: One example is sending a message to a Customer as part of a Premium SMS or MMS Service.

Q: *Can I charge a Customer a Mobile Content Fee for an error message, even if I did not cause the error? (Code 5.1.1)*

A: No. You cannot charge a Customer a Mobile Content Fee for an error message, irrespective of the cause of the error.

Request (Code 5.1.2)

Q: *Are there circumstances where I can supply a Mobile Premium Service without first receiving a request that meets the requirements of clause 5.1.2? (Code 5.1.2)*

A: No. You are prohibited from supplying any Mobile Premium Service unless:

- In the case of a Premium Messaging Subscription Service with a non-mobile subscription mechanism or a subscription mechanism contained in a marketing message sent as a WAP Push Message, you have received a request that meets the requirements of clause 5.1.2(a).
- In the case of a Premium Messaging Subscription Service with a mobile IVR subscription mechanism, you have received a request that meets the requirements of clause 5.1.2(b).
- In the case of any other Premium Messaging Subscription Service, you have received a request that meets the requirements of clause 5.1.2(c).
- In the case of a Premium SMS or MMS Service (that is not a Subscription Service) with a request mechanism contained in a marketing message sent as a WAP Push Message, you have received a request that meets the requirements of clause 5.1.2(d).
- In the case of any other Premium SMS or MMS Service, you have received a request that meets the requirements of clause 5.1.2(e).
- In the case of a Proprietary Network Service, you have received a request that meets the requirements of clause 5.1.2(f).

Q: *If a Customer requests supply of a service, what services am I permitted to send that Customer? (Code 5.1.2)*

A: A Customer's request only applies to the specific service the Customer has requested to receive. A Customer must separately request each Mobile Premium Service in accordance with clause 5.1.2.

Q: *What is an example of a clear and positive request to receive a service? (Code 5.1.2(d)(i))*

A: Examples include:

- "Yes";

- "I accept"; or
- "I agree".

Refunds (Code 5.1.4)

Q: What other forms of refund might I use if the Customer agrees? (Code 5.1.4)

A: If the Customer explicitly agrees, you might offer a refund by way of:

- in-kind replacement;
- substitute; or
- voucher.

Q: What is an example of how I might provide a direct refund to a Customer? (Code 5.1.4(b))

A: You might provide a direct refund by sending a cheque to the Customer made out in his/her name.

WAP Push Messages (Code 5.1.7)

Q: Why do WAP Push Messages need to contain these details? (Code 5.1.7)

A: This is important so that the Customer can identify where a WAP Push Message has come from when viewing it in their inbox.

Error messages (Code 5.1.8)

Q: What is an example of an error message? (Code 5.1.8)

A: An example is:

- "FreeMsg From Hottest Mobile Tones – The requested item code "160034" does not exist. Please check code again and SMS to 1900 XXXX. Helpline 1800 123 XXX."

Database (Code 5.1.9)

Q: Clause 5.1.9 requires me to purge my database within 5 Business Days of a Carriage Service Provider issuing information about dormant or quarantined MSISDNs. How does this happen? (Code 5.1.9)

A: General industry practice is that End Carriage Providers have automatic processes in place to notify Aggregators (and Content Suppliers) of dormant or quarantined MSISDNs on an ongoing basis.

5.2 Premium SMS or MMS Services – Supplying Services

The additional Guidelines on supplying a Premium SMS or MMS Service are:

Failed MT Messages (Code 5.2.2)

Q: *What are some examples of content of a time sensitive nature?
(Code 5.2.2(a)(i))*

A: Examples include weather or traffic alerts.

Q: *When might a Customer have paid for a message in advance?
(Code 5.2.2(b)(i))*

A: A Customer might have paid for a message in advance if the Customer has paid a flat monthly charge in advance for the Premium SMS or MMS Service.

Q: *What are some examples of when I may resend messages pursuant to Rule 5.2.2(d)? (Code 5.2.2(d))*

A: Some examples are as follows:

- You send an SMS MT Message as part of a Premium SMS or MMS Service that is not a Subscription Service but the message fails to deliver. Your End Carriage Supplier or Aggregator notifies you that the reason for the failure is a lack of Customer credit. You may try to resend the message twice within the next 7 days.
- You send an SMS MT Message as part of a Premium Messaging Subscription Service but the message fails to deliver. Your End Carriage Supplier or Aggregator notifies you that the reason for the failure is a lack of Customer credit. The Customer is unable to access the then current content of that Premium Messaging Subscription Service. The Premium Messaging Subscription Service is charged at \$5 per week. You may try to resend the message twice before the start of the next week (i.e. before the next Charge Period).
- You send an SMS MT Message as part of a Premium Messaging Subscription Service but the message fails to deliver. Your End Carriage Supplier or Aggregator notifies you that the reason for the failure is a lack of Customer credit. The Customer remains able to access the then current content of that Premium Messaging Subscription Service. The Premium Messaging Subscription Service is charged at \$5 per week. You may try to resend the message twice before the start of the next week (i.e. before the next Charge Period) and twice during the next Charge Period. No further attempts may be made.
- You send an SMS MT Message as part of a Premium Messaging Subscription Service but the message fails to deliver. Your End Carriage Supplier or Aggregator notifies you that the reason for the failure is a lack of Customer credit. The Customer remains able to access the then current content for that Premium

Messaging Subscription Service. The Premium Messaging Subscription Service is charged at \$3 per day. You may try to resend the message twice on the first day and twice on the second day. No further attempts may be made.

Q: I supply a Premium Messaging Subscription Service that charges Customers \$2 per message and sends the Customer 1 message per day. What is the relevant Charge Period? (Code 5.2.2(d))

A: The Premium Messaging Subscription Service is charged on a daily basis, and therefore the Charge Period is one day.

Paid message indicator (Code 5.2.5)

Q: What is an example of how to include the paid message indicator? (Code 5.2.5)

A: An examples is:

- "\$Msg. Your horoscope for September is ... "

5.3 Premium Messaging Subscription Services – Supplying Services

The additional Guideline on supplying a Premium Messaging Subscription Service is:

Decommissioned services (Code 5.3.2)

Q: Should I notify Customers when I decommission a Premium Messaging Subscription Service in the circumstances described by clause 5.3.2? (Code 5.3.2)

A: There is no Code Rule which requires you to do so. However, you may consider it appropriate and helpful to do so in certain circumstances.

6 COMPLAINT HANDLING

Objectives

Chapter 6 of the Code sets out Rules relating to Complaints.

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

Relationship with the Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

6.1 All Mobile Premium Services - Complaint Handling

The Guidelines on handling Complaints about Mobile Premium Services are:

Q: Who is able to make a Complaint?

A: Any Customer may make a Complaint. You should note that "Customer" is defined broadly. The result of this is that you must ensure that all end users in any way connected with your Mobile Premium Services may lodge a Complaint about those Mobile Premium Services and have it dealt with in accordance with the Rules in Chapter 6. The term "Customer" is therefore not limited to the person who holds the account for a mobile phone with the relevant End Carriage Supplier.

Q: What external avenues of recourse does a Customer have?

A: External avenues of recourse may include:

- the TIO;
- the ACMA; or
- the Office of the Privacy Commissioner.

Complaint handling and inquiry procedures (Code 6.1.1)

Q: Who does the Complaint handling and inquiry procedure have to be accessible to? (Code 6.1.1(b))

A: The procedure must be accessible to all Customers, including those with disabilities.

Q: What is an example of accessible, flexible and free or low cost methods of lodging Complaints? (Code 6.1.1(i))

A: Examples of appropriate methods may include a combination of telephone, email, internet and/or post.

Helpline (Code 6.1.2)

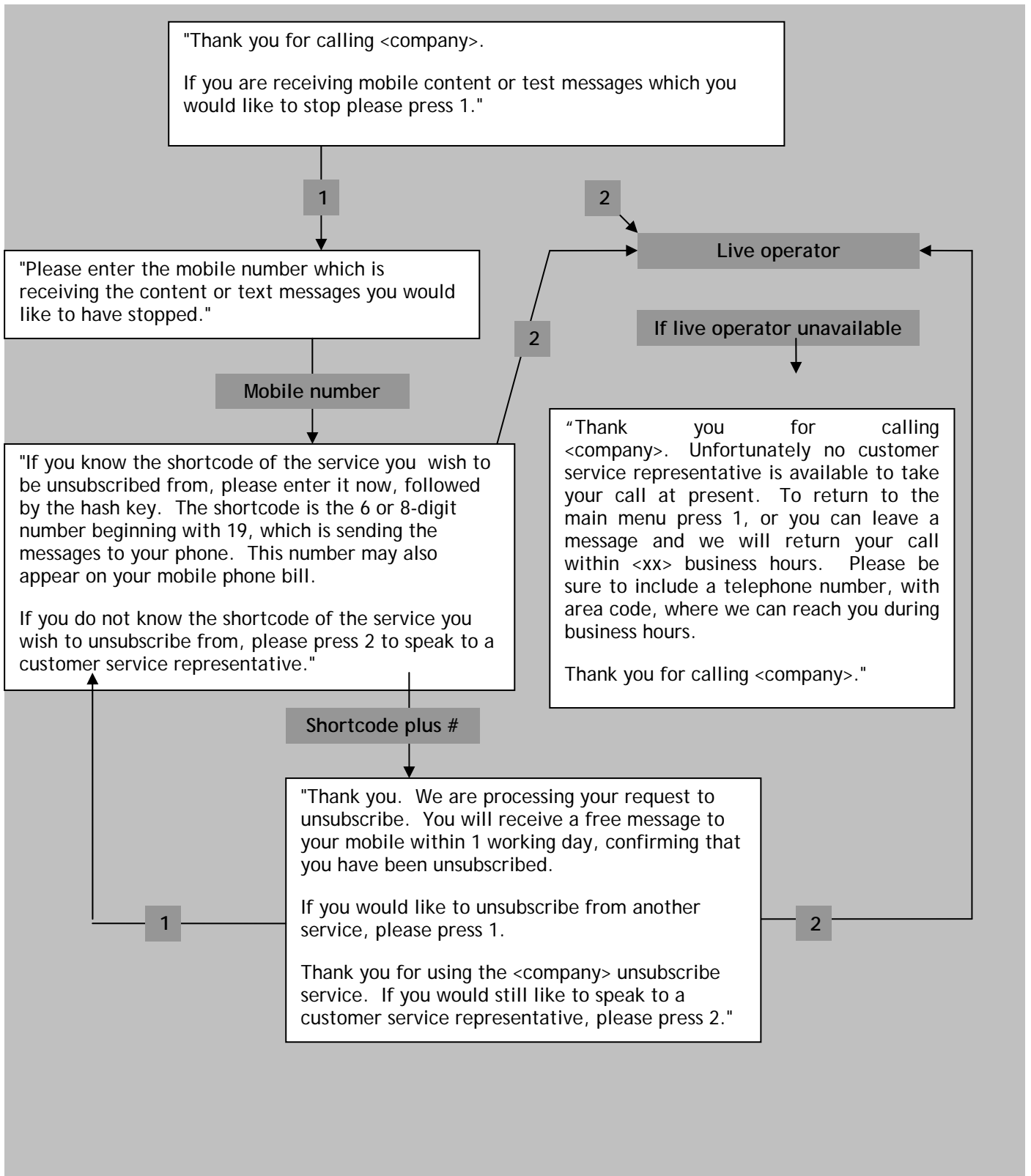
Q: As a Content Supplier, I have an obligation to offer a Helpline for use by Customers. Do I have to provide this internally or can I engage a third party (such as my Aggregator) to provide it on my behalf? (Code 6.1.2)

A: You can outsource the provision of your Helpline to a third party supplier. However, under the Code, you will remain responsible for ensuring that your Helpline complies with the relevant Rules, regardless of whether you provide it internally or on an outsourced basis.

Helpline requirements (Code 6.1.4)

Q: *What is an example of an appropriate IVR service helpdesk message flow? (Code 6.1.4(d))*

A: An example is set out below:



End Carriage Suppliers and Aggregators (Code 6.1.8)

Q: *Why might I need to refer relevant Complaints to the Content Supplier? (Code 6.1.8(a)(ii))*

A: If you are an End Carriage Supplier or an Aggregator, you need to refer Complaints relating to an aspect of a Mobile Premium Service under the Content Supplier's control to that Content Supplier in a timely manner to give the Content Supplier an opportunity to propose a resolution to the Complaint.

Q: *I am acting as an End Carriage Supplier. Clause 6.1.8(c) requires me to deal with Complaints that are not resolved by the relevant Content Supplier in any manner I consider appropriate. What would be an appropriate process for dealing with such Complaints? (Code 6.1.8(c))*

A: If a Customer:

- has already spoken to the relevant Content Supplier; and
- the Customer contacts you because the Content Supplier has failed to resolve the Complaint,

it would be appropriate to seek to deal with the substance of the Customer's Complaint (in accordance with your obligations in Chapter 6 and your obligations under the Telecommunications Consumer Protections Code (TCP) Code (C628:2007)) rather than directing the Customer back to the Content Supplier again.

Disputed amounts (Code 6.1.14)

Q: *If I am acting as an End Carriage Supplier, can I demand payment of disputed amounts whilst the Complaint is being investigated? (Code 6.1.14)*

A: No. Clause 9.1.6 of the Telecommunications Consumer Protections Code (TCP) Code (C628:2007) prohibits such action.

TIO (Code 6.1.16)

Q: *How might I clearly describe the TIO's contact details and a description of its role? (Code 6.1.16)*

A: An example of how you might do so is:

- "You can contact the TIO (or Telecommunications Industry Ombudsman) via telephone on 1800 062 058 or via email at tio@tio.com.au. A variety of other contact mechanisms for the TIO are set out on the TIO website at www.tio.com.au. The TIO is the escalated complaints handling body for the purposes of the MPS Code."

You should also remember that the Office of the Privacy Commissioner is the appropriate external Complaints handling body to assist Customers with privacy related Complaints. An example of how you might direct a Customer to the Office of the Privacy Commissioner is:

- "You can contact the OPC (the Office of the Privacy Commissioner) via telephone on 1300 363 992 or via email at privacy@privacy.gov.au. A variety of other contact mechanisms for the OPC are set out on the OPC website at www.privacy.gov.au."

Q: *What are the Complaint handling timeframes imposed by Chapter 6 of the Code?*

A: A summary is set out below:

Obligation	Timeframe
Live agent helpdesk	9am – 5pm Australian EST, Business Days
Calls answered by live agents (9am – 5pm, Australian EST, Business Days)	Reasonable timeframe
IVR service	24/7
Confirmation of unsubscribe	1 Business Day
Message callback	1 Business Day
Acknowledgement of written Complaints	2 Business Days
Unsubscribe request action	As quickly as possible and, in any event, 1 Business Day (excluding matters beyond reasonable control).
Resolution of direct Complaints	2 Business Days
Resolution of escalated Complaints	2 Business Days
Resolution of further escalated Complaints	1 Business Day
Complaint record keeping	2 years

7 UNSUBSCRIBE AND OPT-OUT MECHANISMS

Objectives

Chapter 7 of the Code sets out Rules relating to enabling Customers to unsubscribe from Mobile Premium Services and opt-out of marketing in relation to Mobile Premium Services.

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

Relationship with the Code

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 this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

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

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

Q: *Does Chapter 7 of the Code contain a comprehensive list of all unsubscribe and opt-out requirements that I need to think about when providing a Mobile Premium Service?*

A: No. The procedures set out in Chapter 7 should not be considered exhaustive and do not replace any opt-out or unsubscribe commands otherwise required by law.

Q: *What are examples of some steps I can take to enable Customers to readily and conveniently discontinue a Subscription Service at any time?*

A: You should encourage Customers who wish to unsubscribe to do so, whenever possible, by way of the "STOP" Message. The "STOP" Message is usually the quickest and easiest method for a Customer to unsubscribe and you should promote it to Customers to encourage its use. You should also ideally seek to unsubscribe Customers quicker than the timeframes required by Chapter 7. For example, in many circumstances, you should be able to unsubscribe a Customer within 10 minutes of receiving their request.

Unsubscribing from Subscription Services (Code 7.1.1)

Q: *Will a Customer's request to unsubscribe always be made directly to the Content Supplier by the Customer? (Code 7.1.1)*

A: No, not always. The relevant End Carriage Supplier or Aggregator may receive and pass on the Customer's request to unsubscribe to the Content Supplier. This is still a Customer request to unsubscribe and, following receipt of the request by the Content Supplier, the Content Supplier must deal with the request in accordance with the requirements in clause 7.1.1. The timeframes set out in clause 7.1.1 apply from the receipt of the Customer's request by the Content Supplier.

Q: *Code Rule 7.1.1(a) requires that I stop supplying a Subscription Service as quickly as possible following my receipt of the request to unsubscribe, and in any event within 1 Business Day, unless I am unable to stop supply within that time due to matters beyond my reasonable control. What are some examples of matters considered to be beyond my reasonable control? (Code 7.1.1(a))*

A: Some examples are:

- a technical system outage; or

- a power outage,

that occurs after your receipt of the request to unsubscribe, and affects your ability to stop supplying the Subscription Service within 1 Business Day. Such outages would not be beyond your reasonable control if they were caused by your actions.

Q: *Clause 7.1.1(b) prohibits me from posting any new Mobile Content Fees to the Customer's account. Are there any examples of charges that are permitted to be posted? (Code 7.1.1(b))*

A: Yes. For example:

- Mobile Content Fees for content that the Customer has already been given access to;
- Mobile Content Fees for content that was unsuccessfully sent prior to the time the Customer unsubscribed to the service, and is resent in accordance with clause 5.2.2.

In both of these examples, these are not "new" Mobile Content Fees and therefore may be posted. These are "old" Mobile Content Fees incurred prior to the request to unsubscribe.

Q: *A Customer has requested to unsubscribe from one of my Subscription Services. I am aware that new Mobile Content Fees were posted to the Customer's account after the request to unsubscribe was received. The Customer has not requested a refund. Am I required to give that Customer a refund? (Code 7.1.1(c))*

A: Yes. You must give the Customer a refund, regardless of whether the Customer has requested one.

7.2 Premium Messaging Subscription Services – Unsubscribe and opt-out mechanisms

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

"STOP" Messages for Premium Messaging Subscription Services (Code 7.2.1)

Q: *When might it not be practical to allow the "STOP" Message to be sent as a reply? (Code 7.2.1)*

A: Best practice is to enable the Customer to unsubscribe by sending a "STOP" Message in reply. However, it is acknowledged that there are technical or practical limitations on this occurring in some circumstances. In such circumstances, a different number may be identified for the "STOP" Message.

Multiple services using same Short Code (Code 7.2.3)

Q: *If a Customer sends a "STOP" Message to a particular Short Code and the "STOP" Message doesn't identify or match a particular Premium Messaging Subscription Service, what do I do? (Code 7.2.3)*

A: Subject to clause 7.2.3, if multiple Premium Messaging Subscription Services operate using the same Short Code, any "STOP" Message sent to unsubscribe from a service on that Short Code is a request to unsubscribe from all Premium Messaging Subscription Services sharing that Short Code.

If the "STOP" Message does not match a particular Premium Messaging Subscription Service (for example if the service referred to does not exist), the "STOP" Message must be treated as a request to unsubscribe from all Premium Messaging Subscription Services on that Short Code.

Q: *What are some examples of how to properly deal with "STOP" Messages? (Code 7.2.3)*

A: Some examples are as follows:

- A Customer has subscribed to three Premium Messaging Subscription Services, "Games", "Tones" and "Wallpaper", which all use the same Short Code. The Customer sends a message stating "stop" to that Short Code. In this scenario, the Customer's subscription to all three services must be cancelled.
- A Customer has subscribed to three Premium Messaging Subscription Services, "Games", "Tones" and "Wallpaper", which all use the same Short Code. The Customer sends a message stating "stop games" to the Short Code. In this scenario, the Customer's subscription to the "Games" service must be cancelled. The Customer's subscription to "Tones" and "Wallpaper" can continue.
- A Customer has subscribed to three Premium Messaging Subscription Services, "Games", "Tones" and "Wallpaper", which all use the same Short Code. The Customer sends a message stating "stop everything" to the Short Code. In this scenario, the Customer's subscription to all three services must be cancelled.

Wording of "STOP" Messages (Code 7.2.4)

Q: *What are some examples of messages that should be treated as "STOP" Messages? (Code 7.2.4)*

A: Any message sent to the Short Code containing the word "STOP" is a "STOP" Message. The word "stop" is not case

sensitive and can be included anywhere in the message. Some examples of valid "STOP" Messages are:

- "stop";
- "Pls STOP"; and
- "StoP now".

Unsubscribe confirmation messages (Code 7.2.5)

Q: Do I need to send an unsubscribe confirmation message each time a Customer unsubscribes from a Premium Messaging Subscription Service? (Code 7.2.5)

A: Yes. An unsubscribe confirmation message needs to be sent in all cases, regardless of whether the Customer submitted their unsubscribe request via text, IVR, voice call, website, WAP or email.

Q: If a Customer makes a single request to unsubscribe from multiple Premium Messaging Subscription Services, can I send a single unsubscribe confirmation message? (Code 7.2.5)

A: Yes. However, if a "STOP" Message results in a Customer unsubscribing from multiple Premium Messaging Subscription Services (see clause 7.2.3) that use a single Short Code, it might be useful, in some circumstances, to send the Customer separate unsubscribe confirmation messages for each Premium Messaging Subscription Service being terminated. This might help to provide full clarity to the Customer.

Content of unsubscribe confirmation messages (Code 7.2.6)

Q: What is an example of an unsubscribe confirmation message? (Code 7.2.6)

A: An example is:

- "FreeMsg U are now unsubscribed to Hottest Mobile Tones. Helpline 1800 123 XXX."

7.3 Proprietary Network Services – Opt-out mechanisms

There are no additional Guidelines on providing opt-out mechanisms for Proprietary Network Services.

8 PARTICIPANTS

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

Organisation	Representative
Communications Alliance Consumer Council	Teresa Corbin
Communications Alliance Disability Council	Loretta Kreet
Mobile Active	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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ALLIANCE LTD**

Level 9
32 Walker Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
TTY 61 2 9923 1911
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507

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