

**COMMUNICATIONS
ALLIANCE LTD**



INDUSTRY CODE

C637:2011

MOBILE PREMIUM SERVICES

Incorporating Variation No.1/2014

C637:2011 Mobile Premium Services Industry Code

Incorporating Variation No.1/2014

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INTRODUCTORY STATEMENT

The *Mobile Premium Services Industry Code (C637:2011)* replaces the registered *Mobile Premium Services Industry Code (C637:2009)*.

The *Mobile Premium Services Code* sets out rules that apply to service providers in relation to the supply of Mobile Premium Services in Australia.

2011 Revision

The inaugural *Mobile Premium Services Code* was registered by the Australian Communications and Media Authority in May 2009. Two years later a review of the Code was undertaken with the recommendation of the review being that a revision was warranted. The 2011 Code revision has been undertaken to clarify and streamline processes while providing greater certainty for all parties in the implementation of the Code. The 2011 revision of the Code introduces the following amendments to the registered Code:

- increased accessibility aimed at making the Code easier to read and understand. Each chapter has a summary table to direct readers to relevant provisions, in addition to the simplification and clarification of terminology used in the Code;
- additional requirements that facilitate increased clarity of advertising, specifically for online advertisements. Introduction of deeming provisions to provide additional clarity around the "sufficient proximity" requirements;
- clarification that Rules relating to advertising apply only to Premium Messaging Services and not Proprietary Network Services as these services are already regulated under the Telecommunications Consumer Protections Code;
- clear distinction between Premium Fees and Data Fees;
- clear distinction between Single Purchase Services and Subscription Services;
- 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, technology neutral opt-in process;
- new requirements stipulating that specific information (STOP facility, inclusion of the term "subscribe/subscription", content suppliers Helpline, service name) be included in subscription messages;
- a consolidated process for all Chat Services;
- new protections relating to the supply of Reverse Charge Billing Services, which had previously been exempted from the Code;
- minor changes to Helpline requirements to clarify which time zone applies to suppliers for the purposes of Helpline obligations, and to clarify IVR/staffed Helpline requirements;
- new requirements on carriage service providers that mandate the provision of quarterly Industry Compliance Reporting data to the ACMA. This data will be provided to the ACMA in accordance with metrics set out in the Code. This data

will then assist the ACMA in undertaking its own Code compliance investigations;
and

- Code review period amended to two years.

2014 Variation

In 2014 a Variation of the Code resulted in the following amendments:

- reference to redundant National Privacy Principle 1 in the Code's Explanatory Statement replaced with reference to Australian Privacy Principle 5, along with a new reference to Australian Privacy Principle 11;
- new drafting in Section 7 to protect customers from being charged a Premium Fee of more than 25c to opt-out of marketing messages;
- inclusion of new obligations in Sections 4 and 6 that requires CSPs and Aggregators to provide specific information on the availability of MPS barring when a customer makes an MPS related inquiry or complaint; and
- removal of industry compliance reporting requirements.

Specific details of these amendments are set out in Appendix A of the Code.

Visu Thangavelu

Chair

WC62: Mobile Premium Services 2014 Variation Working Committee

SEPTEMBER 2014

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* (Cth) 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) has been facilitated by Communications Alliance through a Working Committee comprising representatives from the telecommunications industry and consumer groups.
- 1.1.3 The Code should be read in conjunction with related legislation, including:
- (a) the *Telecommunications Act 1997* (Cth);
 - (b) the *Broadcasting Services Act 1992* (Cth);
 - (c) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth);
 - (d) the *Competition and Consumer Act 2010* (Cth);
 - (e) State and Territory fair trading legislation, where relevant;
 - (f) the *Disability Discrimination Act 1992* (Cth);
 - (g) the *Racial Discrimination Act 1975* (Cth);
 - (h) any other relevant equal opportunity legislation;
 - (i) the *Privacy Act 1988* (Cth);
 - (j) the *Spam Act 2003* (Cth); and
 - (k) the *Do Not Call Register Act 2006* (Cth).
- 1.1.4 This Code should be read in the context of other relevant codes, guidelines and documents, including the:
- (a) Telecommunications Consumer Protections Code (TCP) Code (C628:2012);
 - (b) Internet Industry Code of Practice – Content Services Code (the Content Services Code);
 - (c) Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1);
 - (d) Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2); and

(e) Telemarketing (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007.

- 1.1.5 If there is a conflict between the requirements of the Code and any requirement imposed on a Supplier by statute or otherwise by law, the Supplier will not be in breach of the Code by complying with the statute or law.
- 1.1.6 Compliance with this Code does not guarantee compliance with any legislation or other laws.
- 1.1.7 The Code is not a substitute for legal advice and is not a guide to compliance with the law. A range of laws are relevant to the activities described in the Code. For example, when advertising a Mobile Premium Service a Supplier must comply with the requirements of the Code but other laws, including all applicable requirements of the *Competition and Consumer Act 2010* (Cth), will also be relevant to such advertisements.

1.2 Approval by the ACMA

- 1.2.1 This version of the Code is the result of a revision conducted during 2010 and 2011 and includes amendments made in a 2014 Variation as per Appendix A.
- 1.2.2 The 2014 Variation has been approved by the Australian Communications and Media Authority (ACMA) pursuant to Section 119A of the Act.
- 1.2.3 The 2014 Variation of the Code takes effect from the date of approval by the ACMA.

1.3 Scope

- 1.3.1 The Code applies to the:
- (a) Carriage Service Providers; and
 - (b) Content Service Providers,
- sections of the telecommunications industry under section 110 of the Act.
- 1.3.2 The Code deals with the following telecommunications activities as defined in section 109 of the Act:
- (a) carrying on business as a Carriage Service Provider;
 - (b) supplying a Content Service using a Listed Carriage Service; and
 - (c) supplying goods or services for use in connection with the supply of a Listed Carriage Service.
- 1.3.3 This Code only applies to the activities of Suppliers in relation to Mobile Premium Services.

- 1.3.4 As required by section 116 of the Act, this Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992* (Cth).

1.4 Objectives

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

1.5 Code review

- 1.5.1 The Code will be reviewed after 2 years of the Code being registered by the ACMA and every 2 years subsequently, or earlier in the event of significant developments that impact on the Code, or as otherwise determined by Communications Alliance.

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

- 1.6.1 Under section 114 of the Act and subject to the consent of the TIO, the Code confers on the TIO the functions and powers of:
- (a) receiving;
 - (b) investigating;
 - (c) facilitating the resolution of;
 - (d) making determinations in relation to;
 - (e) giving directions in relation to; and
 - (f) reporting on,

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

1.7 Summary of changes relating to Reverse Charge Billing Services

- 1.7.1 A number of the key changes included in the 2011 revision of the Code relate to Reverse Charge Billing Services.
- 1.7.2 For ease of reference, the approach that was been taken with respect to the introduction of this new concept into the Code was as follows:
- (a) Historically, Premium Messaging Services have been used to deliver content to, or otherwise facilitate interactive services for, Customers.

- (b) A Reverse Charge Billing Service involves the use of a Premium Messaging Service solely as a payment mechanism for a Reverse Charge Phone Service. A Reverse Charge Phone Service is a reverse charge telephone service that is not, itself, delivered via a Mobile Premium Service. Reverse Charge Billing Services and Reverse Charge Phone Services are defined in detail in chapter 2.
- (c) Reverse Charge Billing Services were not covered by the previous version of the Code (C637:2009).
- (d) This version of the Code aims to ensure that the protections in the Code apply to such Reverse Charge Billing Services so that appropriate safeguards and customer service requirements apply to such services. Other services that use a Premium Messaging Service purely to bill a product or service that is not a Mobile Premium Services are not covered by the Code. Please see the definition of Billing Only Service in chapter 2 for more detail.
- (e) As a result, this version of the Code now regulates Reverse Charge Billing Services. The Code does not regulate Reverse Charge Phone Services or Billing Only Services.

1.8 Industry monitoring

- 1.8.1 At the date of registration of the 2011 version of the Code with the ACMA, three End Carriage Suppliers (Optus, Telstra and Vodafone Hutchison Australia) undertook industry monitoring activities.
- 1.8.2 Optus, Telstra and Vodafone Hutchison Australia intend to continue with industry monitoring activities.

2 ACRONYMS, DEFINITIONS AND INTERPRETATION

2.1 Acronyms

For the purposes of this Code:

ACMA

means the Australian Communications and Media Authority.

IVR

means interactive voice response.

MMS

means multimedia message service.

MSISDN

means mobile subscriber integrated services digital network number.

SMS

means short message service.

TIO

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

WAP

means wireless access protocol.

2.2 Definitions

For the purposes of this Code:

Above the Fold

means visible on the first screen, without scrolling, when the Standard Website is viewed on a computer monitor with a screen resolution of 1024x768 pixels.

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.

Audit Standards

means, with respect to an End Carriage Supplier, the standards used by that End Carriage Supplier in the course of its industry monitoring activities (which may include monitoring criteria as determined by that End Carriage Supplier, including by reference to the Code and otherwise).

Billed Message

means an MT Message that:

- (a) is sent by a Content Supplier as part of a Premium Messaging Service; and
- (b) specifically triggers a Premium Fee being incurred by the Customer.

An MT Message will not be a Billed Message if it forms part of a Premium Messaging Service that is otherwise charged to the Customer, but does not itself specifically trigger the addition of a Premium Fee onto the Customer's account.

Billing Only 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,

other than a Reverse Charge Billing 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 Service

has the meaning given by section 7 of the Act.

Carriage Service Intermediary

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

Carriage Service Provider

has the meaning given by section 87 of the Act.

Charge Period

means:

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

Chat Service

means a Mobile Premium Service which:

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

Communications Alliance

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

Complaint

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

Content Service

has the meaning given by section 15 of the Act.

Content Service Provider

has the meaning given by section 97 of the Act.

Content Supplier

means:

- (a) in the case of a Mobile Premium Service that is not a Reverse Charge Billing Service, 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; and
- (b) in the case of a Reverse Charge Billing Service, the Content Service Provider who is the Originating Supplier of the Reverse Charge Billing Service to Customers via the supply chain, but does not include a Supplier who is only acting in the capacity of an Aggregator. The Content Supplier of a Reverse Charge Billing Service will not necessarily also be the provider of the Reverse Charge Phone Service.

Customer

means:

- (a) in the case of a Mobile Premium Service that is not a Reverse Charge Billing Service, a customer who acquires a Mobile Premium Service, or a potential customer of Mobile Premium Services; and
- (b) in the case of a Reverse Charge Billing Service, a customer who acquires a Reverse Charge Phone Service, or a potential customer of Reverse Charge Phone Services.

Data Fees

means fees charged by an End Carriage Supplier for the supply of mobile internet data.

Double Opt-In

means the process described in clause 4.4.1 to 4.4.8 whereby a Customer who has requested to subscribe to a Subscription Premium Messaging Service has to confirm that request (via the process described in clause 4.4.1 to 4.4.8) before being subscribed.

Double Opt-In Keyword

means a word that is to be used by the Customer in their MO Message response to a Subscription Request Message, if the Customer wishes to subscribe to the Subscription Premium Messaging Service identified in the Subscription Request Message.

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 Data Fees in respect of that carriage.

Functional Opt-out Mechanism

means:

- (a) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the message; or
- (b) a statement to similar effect,

where:

- (c) the statement is presented in a clear and conspicuous manner; and
- (d) the electronic address is reasonably likely to be capable of receiving:
 - (i) the recipient's unsubscribe message (if any); and
 - (ii) a reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message;

at all times during a period of at least 30 days after the message is sent; and

- (e) the electronic address is legitimately obtained.

Helpline

means the Customer support helpdesk number referred to in clause 6.1.3.

Industry Compliance Reporting

means, in the case of an End Carriage Supplier, providing reports to the ACMA in accordance with the Rules in Chapter 8 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 Originated (MO) Message

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

Mobile Premium Service

means:

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

Mobile Terminated (MT) Message

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

Non-Subscription Premium Messaging Service

means a Premium Messaging Service that is not a Subscription Service.

Originating Supplier

means:

- (a) in the case of a Premium Messaging Service, the Content Service Provider that:
- (i) sends messages to Customers as part of the Premium Messaging Service; or
 - (ii) if the Premium Messaging Service is delivered via an Aggregator, contracts with the Aggregator for supply of the Premium Messaging Service; or
 - (iii) if no messages are sent as part of the Premium Messaging Service, operates the Premium Messaging Service,

provided that if there is more than one such Content Service Provider, the Originating Supplier is the Content Service Provider that operates the Premium Messaging Service and directs the activities of the other Content Service Providers; and

- (b) in the case of a Proprietary Network Service, the Content Service Provider that operates that Proprietary Network Service.

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 Fees

means:

- (a) in the case of a Mobile Premium Service that is not a Reverse Charge Billing Service, fees charged by a Content Supplier for the supply of a Mobile Premium Service, excluding any Data Fees; and
- (b) in the case of a Reverse Charge Billing Service, fees that are:
 - (i) charged to a Customer for a Reverse Charge Phone Service; and
 - (ii) triggered on the Customer's mobile telephone account by a Content Supplier through the use of a Reverse Charge Billing Service,

excluding any Data Fees.

Premium Messaging 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,

where all charges for use of the Premium Messaging Service are billed to the Customer by their Mobile Carriage Service Provider, other than a Billing Only 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.

Reverse Charge Billing 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 by the Content Supplier as part of that service is to facilitate the billing of a reverse charge telephone calling facility (for the purposes of this definition, the non-related service);
- (d) the non-related service is not a product or service of the kind described in subclause (a) or (b) above, nor a Proprietary Network Service; and
- (e) the messages sent by the Content Supplier 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 service being billed and the relevant charges; and
 - (iii) any other content required by this Code or otherwise required by law.

Reverse Charge Phone Service

means a reverse charge telephone calling facility that is billed to a Customer using a Reverse Charge Billing Service.

Rules

means the Supplier's obligations, which are in Chapters 3 to 8.

Service Name

means:

- (a) in the case of a Mobile Premium Service that is not a Reverse Charge Billing Service, the name most commonly used in a Content Supplier's advertising to refer to a particular Mobile Premium Service; and
- (b) in the case of a Reverse Charge Billing Service, the name most commonly used in the advertising of a Reverse Charge Phone Service to refer to that particular Reverse Charge Phone Service.

Short Code

means a number between 6 and 8 digits long that enables the charging of Premium 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.

Single Purchase Service

means a Premium Messaging Service:

- (a) where the only Premium Fee charged for the Premium Messaging Service is:
 - (i) a one-off set fee for the entire Premium Messaging Service; and
 - (ii) charged up-front by sending one or more Billed Messages to the Customer at the start of, or as soon as reasonably practicable after the start of, the Premium Messaging Service (once the Customer has requested the Premium Messaging Service in accordance with clause 5.1.2); and
- (b) that delivers content to a Customer on an ongoing or periodic basis.

A Single Purchase Service is a Non-Subscription Premium Messaging Service for the purposes of the Code.

Standard Website

means a website that is specifically designed for viewing on a computer monitor with a screen resolution of 1024x768 pixels.

"STOP" Message

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

Subscription Premium Messaging Service

means a Premium Messaging Service that is a Subscription Service.

Subscription Request Message

has the meaning set out in clause 4.4.1.

Subscription Service

means a Mobile Premium Service that delivers content to a Customer on an ongoing or periodic basis, other than a Single Purchase Service.

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

2.3.1 In this Code, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular include the plural and vice versa;
- (d) words importing persons include a body whether corporate, politic or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) all amounts are expressed in Australian dollars, inclusive of GST;
- (g) mentioning anything after include, includes or including does not limit what else might be included;
- (h) words and expressions which are not defined have the meanings given to them in the Act;

- (i) a requirement to provide something "in writing" can be met by electronically sending a written message; and
- (j) a reference to a person includes a reference to the person's executors, administrators, successors, agents, assignees and novatees.

2.3.2 A Reverse Charge Billing Service is deemed to be a Non-Subscription Premium Messaging Service for the purposes of this Code.

3 ADVERTISING

Objectives

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

Summary

Some Rules in this chapter only apply to some types of Mobile Premium Services and/or only some types of Suppliers. The table below is provided to assist readers to understand which Rules apply.

Type of Mobile Premium Service	Type of Supplier	Applicable Rules in this chapter
Non-Subscription Premium Messaging Service	Content Supplier	3.1.1 – 3.1.25
	Aggregator	3.1.1
	End Carriage Supplier	3.1.1
Subscription Premium Messaging Service	Content Supplier	3.1.2 – 3.1.25 3.2.1 – 3.2.4
	Aggregator	None
	End Carriage Supplier	None
Proprietary Network Service	Content Supplier	None
	Aggregator	None
	End Carriage Supplier	None

Rules

3.1 Premium Messaging Services – Advertising

The Rules for advertising any Premium Messaging Services are:

- 3.1.1 **Reverse Charge Billing Services:** The Rules in this Chapter 3 do not apply to Reverse Charge Billing Services.
- 3.1.2 **Misleading advertising:** A Content Supplier must ensure that advertisements for Premium Messaging Services are not confusing, misleading or deceptive, having regard to the intended audience.
- 3.1.3 **General advertising display requirements:** In advertisements for Premium Messaging Services, a Content Supplier must:
 - (a) include clear, prominent and legible or audible (as applicable) information in plain language on:
 - (i) the Premium Fees including, if the service is a Subscription Service:
 - (A) any Premium Fees incurred on sign-up;
 - (B) the basis for calculating Premium Fees, including any:
 - (aa) charge per MO Message;
 - (bb) charge per MT Message; or
 - (cc) charge per Charge Period, and that Charge Period;
 - (ii) where relevant, that it is a Subscription Service, for each Premium Messaging Service advertised:
 - (iii) accurately and within sufficient proximity to:
 - (A) the Short Code for; or
 - (B) if no Short Code is stated, the primary mechanism displayed or stated to enable Customers to request or subscribe to, the Premium Messaging Service being offered to make it obvious that the information applies to that Premium Messaging Service;
 - (iv) if the information is in the visual components of the advertisement, in the same orientation and direction as:
 - (A) the Short Code for; or

- (B) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe to,
 - the Premium Messaging Service being offered;
- (v) if the information is in the visual components of the advertisement, simultaneously and for the same duration as:
 - (A) the Short Code for; or
 - (B) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe to,
 - the Premium Messaging Service being offered;
- (vi) for long enough to allow it to be read or heard, and understood, by an average person;
- (vii) if in print, on the same page as the rest of the advertisement;
- (viii) if the advertisement is displayed on a Standard Website, Above The Fold;
- (ix) if the advertisement is a visual advertisement, in a manner that:
 - (A) contrasts with the background; and
 - (B) is not overlaid on any pictures or other visual elements that are distracting;
- (x) if the advertisement is a television advertisement, in a manner that is easily comprehensible and on screen long enough for an average viewer to read all text; and
- (xi) if the advertisement is displayed online via any platform or device (including a mobile device) other than on a Standard Website, on the first page of the site (even if scrolling is required);
- (b) if Data Fees may apply for access to or use of any of the Premium Messaging Services advertised, expressly state that Data Fees may apply;
- (c) use a minimum 6 point font for all text in any print medium;
- (d) clearly and legibly state:
 - (i) the Content Supplier's Helpline; and
 - (ii) where the service is a Subscription Service, how to unsubscribe

in a manner which:

- (iii) in the case of a visual advertisement, must contrast with the background; and
- (iv) where that advertisement is a television advertisement, must be displayed in a manner that is easily comprehensible and on screen long enough for an average viewer to read all text.

3.1.4 **Sufficient proximity:** A Content Supplier will be deemed to have included the information required by clauses 3.1.3(a)(i) and (ii) in sufficient proximity for the purposes of clause 3.1.3(a)(iii) if the information is included in the visual components of an advertisement and the information is placed directly above, below or on either side of, and within three line breaks (each in a font size no larger than the minimum font size used to display the information required by clauses 3.1.3(a)(i) and (ii)) of:

- (a) the Short Code; or
- (b) if no Short Code is displayed, the primary mechanism displayed to enable Customers to request or subscribe,

with no intervening text or graphics. This clause 3.1.4 does not limit the ways in which this information may be displayed in sufficient proximity for the purposes of clause 3.1.3(a)(iii) and does not require a Content Supplier to include information in the visual components of an advertisement where the Content Supplier is not otherwise obliged by this Code to do so.

3.1.5 **Additional requirements for television advertising:** In any television advertisements for Premium Messaging Services, a Content Supplier must:

- (a) display the Short Code for the Premium Messaging Service for at least 10 seconds;
- (b) state pricing information:
 - (i) in a prominent and highly visible manner in the visual elements of the advertisement; and
 - (ii) in font at least 50% of the size of the Short Code.

3.1.6 **Additional requirements for print advertising:** In any print advertisements for Premium Messaging Services, a Content Supplier must:

- (a) state pricing information:
 - (i) in a prominent and highly visible manner in the main body of the advertisement;
 - (ii) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and

- (iii) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size.

3.1.7 **Additional requirements for online advertising:** In any online advertisements for Premium Messaging Services, a Content Supplier must:

- (a) state pricing information:
 - (i) in a prominent and highly visible manner in the main body of the advertisement; and
 - (ii) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers.

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

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

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

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

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

3.1.10 **Limitations:** If an advertisement offers a Premium Messaging Service:

- (a) for a limited period or in limited quantity; or
- (b) that is available only to a limited class of Customers,

the Content Supplier must ensure that the advertisement clearly communicates that limitation.

3.1.11 **Special offers:** A Content Supplier must ensure that advertisements for special offers to give a discount or rebate from standard Premium Fees for a limited period contain sufficient details of the special offer including:

- (a) its principal elements;
 - (b) any conditions or limitations; and
 - (c) any future start date, and the end date.
- 3.1.12 **Savings claims:** A Content Supplier must ensure that advertisements which make any savings claim about a Premium Messaging Service specify the service, rate or other matter on which the savings claim is based.
- 3.1.13 **Advertising "free" services:** A Content Supplier must ensure that any advertisement for a Premium Messaging Service that is described as "free" clearly states the terms and conditions of supply, including whether the supply is conditional on the Customer also accepting any other service for which Premium Fees may be incurred.
- 3.1.14 **Use of the term "free":** Where a Content Supplier uses the term "free" or an equivalent in an advertisement for Premium Messaging Services, the Content Supplier must ensure that:
- (a) a message is sent to the Customer's nominated mobile phone (without charging a Premium Fee for the message) when the "free" period is over including details of:
 - (i) the impending Premium Fees for the Premium Messaging Service;
 - (ii) the Helpline; and
 - (iii) the "STOP" Message;
 - (b) the "free" Premium Messaging Service is not subject to any Premium Fees;
 - (c) the duration of the "free" period is clearly stated to the Customer in any messages sent as part of the Premium Messaging Service;
 - (d) the advertisement clearly identifies those elements that are referred to as "free" or equivalent;
 - (e) other conditions that qualify the offer are stated; and
 - (f) the prices of other products or services accompanying the Premium Messaging Service are not inflated to cover some or all of the offer described as "free" or equivalent.
- 3.1.15 **Benefits:** A Content Supplier must ensure that advertisements which offer or promote any benefits in relation to Premium Messaging Services clearly communicate any conditions upon the Customer's ability to use the benefits.
- 3.1.16 **Up to date advertising:** A Content Supplier must ensure that advertisements for Premium Messaging Services do not contain out of date material.

- 3.1.17 **Mobile marketing messages:** A Content Supplier must ensure that any Premium Messaging Service marketing message sent to a Customer's mobile phone does not result in the Customer incurring Premium Fees, and must:
- (a) commence with the phrase "FreeMsg";
 - (b) not imply that it is a personal message or otherwise suggest a false imperative for the Customer to reply;
 - (c) not include any adult related language or concepts;
 - (d) clearly and accurately identify the individual or organisation who authorised the sending of the message; and
 - (e) include a Functional Opt-out Mechanism.
- 3.1.18 **Limited number of marketing messages:** A Content Supplier must not send more than one Premium Messaging Service marketing message to a Customer's mobile phone per week, unless the Customer provides express consent to receive more.
- 3.1.19 **Scams:** A Content Supplier must not use a Premium Messaging Service for conducting or participating in the promotion of a scam.
- 3.1.20 **Advertising to children:** A Content Supplier must:
- (a) not place a Premium Messaging Services advertisement in any publication, show, website, location or any other presentation (in any medium or format) which is specifically and primarily targeted at persons below the age of 15; and
 - (b) if the placement, context and content of a Premium Messaging Services advertisement is reasonably likely to attract or encourage a significant number of Minors to use that Premium Messaging Service, include a warning to the effect "If you are under 18 you must ask the account holder before using this service" in the advertisement.
- 3.1.21 **Endorsements:** A Content Supplier must ensure that advertisements for Premium Messaging Services only imply that they are supplied or endorsed by a particular End Carriage Supplier or Aggregator if that is, in fact, the case.
- 3.1.22 **Charges for replying to marketing messages:** If a Customer would incur Premium Fees for replying to a marketing, prompt or inducement message sent as part of a Premium Message Service, the Content Supplier must identify those Premium Fees in the marketing, prompt or inducement message.
- 3.1.23 **Marketing, prompt and inducement messages:** If a Content Supplier supplies a Premium Messaging Service which includes the provision of marketing, prompt or inducement messages as a component of the service, the Content Supplier must give

Customers the option of not receiving such messages prior to, or on commencing, supply.

- 3.1.24 **WAP Push Marketing Messages:** A Content Supplier must ensure that:
- (a) any Premium Messaging Service marketing message sent to a Customer's mobile phone by WAP Push Message is recorded in a call log in clear text format; and
 - (b) any website linked to such a WAP Push Message includes a link enabling the Customer to opt-out of marketing.
- 3.1.25 **Call logs:** A Content Supplier must:
- (a) ensure that the call log described in clause 3.1.24(a) enables the reader of the log to easily read the content of each recorded WAP Push Message; and
 - (b) make records from that call log available to the relevant End Carriage Supplier or Aggregator on request.

3.2 Subscription Premium Messaging Services – Advertising

The additional Rules for advertising Subscription Premium Messaging Services are:

- 3.2.1 **Charges for receiving marketing messages:** A Content Supplier must not charge a Customer Premium Fees for receiving any marketing or promotional material in relation to Subscription Premium Messaging Services.
- 3.2.2 **Post subscription marketing:** If a Content Supplier wishes to advertise directly to the mobile phone of a Customer who has unsubscribed to a Subscription Premium Messaging Service, the Content Supplier must:
- (a) in the unsubscribe confirmation message sent pursuant to clauses 7.2.5 and 7.2.6 provide an option for the Customer to opt-in to receive this advertising; and
 - (b) only send advertisements to that Customer's mobile phone if the Customer has opted in to receive them.
- 3.2.3 **Subscription advertisements:** A Content Supplier must ensure that advertisements for a Subscription Premium Messaging Service clearly state:
- (a) whether, by subscribing, the Customer is also consenting to their details being included in a marketing database;
 - (b) in a prominent manner that it is a Subscription Service and details of Premium Fees including:
 - (i) any Premium Fees incurred on sign-up; and
 - (ii) the basis for calculating Premium Fees, including any:

- (A) charge per MO Message;
- (B) charge per MT Message; or
- (C) charge per Charge Period, and that Charge Period,

in sufficient proximity to each other to make it clear that the Premium Fees relate to the subscription;

- (c) details of the "STOP" Message;
- (d) how to opt-out of receiving marketing; and
- (e) the word "subscription" or "subscribe" to convey the activation method:
 - (i) in the case of television advertisements:
 - (A) in a prominent and highly visible manner in the visual elements of the advertisement:
 - (aa) for as long as the Short Code is displayed; and
 - (bb) in font at least 50% of the size of the Short Code; and
 - (B) in the voice over for the advertisement;
 - (ii) in the case of print advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement;
 - (B) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and
 - (C) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size;
 - (iii) in the case of online advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement; and
 - (B) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers; and
 - (iv) in voiceovers for radio and IVR advertisements.

3.2.4 **Sufficient proximity:** A Content Supplier will be deemed to have included the two pieces of information required by clause

3.2.3(b) in sufficient proximity to each other for the purposes of that clause if:

- (a) the information is included in the visual components of an advertisement; and
- (b) the two pieces of information are placed directly above, below or on either side of, and within three line breaks (each in a font size no larger than the minimum font size used to display the information required by clauses 3.2.3(b)) of each other, with no intervening text or graphics.

This clause 3.2.4 does not limit the ways in which this information may be displayed in sufficient proximity for the purposes of clause 3.2.3(b) and does not require a Content Supplier to include information in the visual components of an advertisement where the Content Supplier is not otherwise obliged by this Code to do so.

4 PROVIDING SERVICE INFORMATION

Objectives

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

Summary

Some Rules in this chapter only apply to some types of Mobile Premium Services and/or only some types of Suppliers. The table below is provided to assist readers to understand which Rules apply.

Type of Mobile Premium Service	Type of Supplier	Applicable Rules in this chapter
Non-Subscription Premium Messaging Service	Content Supplier	4.1.1 – 4.1.6, 4.1.8 – 4.1.9 4.2.1 – 4.2.2 4.3.1 – 4.3.6
	Aggregator	4.1.1 – 4.1.2, 4.1.5 4.2.3 – 4.2.4
	End Carriage Supplier	4.1.5, 4.1.10 – 4.1.11 4.2.4
Subscription Premium Messaging Service	Content Supplier	4.1.1 – 4.1.3, 4.1.5 - 4.1.9 4.2.1 – 4.2.2 4.4.1 – 4.4.14
	Aggregator	4.1.1 – 4.1.2, 4.1.5 4.2.3 – 4.2.4
	End Carriage Supplier	4.1.5, 4.1.10 – 4.1.11 4.2.4
Proprietary Network Service	Content Supplier	4.1.1 – 4.1.3, 4.1.5 - 4.1.9 4.5.1 – 4.5.3
	Aggregator	4.1.1 – 4.1.2, 4.1.5
	End Carriage Supplier	4.1.5, 4.1.10 – 4.1.11

Rules

4.1 All Mobile Premium Services - Providing Service Information

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

4.1.1 **Register:** Prior to:

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

each Content Supplier and Aggregator must:

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

(d) provide the Registration Form to Communications Alliance.

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

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

within:

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

4.1.3 **Charges, terms and conditions for Mobile Premium Services (other than Reverse Charge Billing Services):** Prior to:

- (a) commencing supply of a Mobile Premium Service that is not a Reverse Charge Billing Service to a Customer; or
- (b) renewing a Subscription Service,

a Content Supplier must clearly inform the Customer (via any means, including advertising) of:

- (c) **Premium Fees:** all Premium Fees that will be incurred for its supply;
- (d) **Data Fees:** if Data Fees may apply for access to or use of the Mobile Premium Service, that Data Fees may also be incurred;
- (e) **Nature:** the nature of the Mobile Premium Service;
- (f) **Terms:** all applicable terms and conditions;
- (g) **Competitions:** if the Mobile Premium Service involves a competition or voting, any applicable refund arrangements;
- (h) **Closing Dates:** any closing dates for time-sensitive activities; and
- (i) **Contact:** the name and contact details of the relevant Content Supplier of any Subscription Service.

4.1.4 **Charges, terms and conditions for Reverse Charge Billing Services:** Prior to commencing to charge a Customer for a Reverse Charge Phone Service via a Reverse Charge Billing Service, a Content Supplier must clearly inform the Customer (via any means, including advertising) of:

- (a) **Premium Fees:** all Premium Fees that will be incurred for the supply of the Reverse Charge Phone Service and triggered to the Customer's mobile telephone account through supply of the Reverse Charge Billing Service;
- (b) **Data Fees:** if Data Fees may apply for access to or use of the Reverse Charge Billing Service, that Data Fees may also be incurred;
- (c) **Nature:** the nature of the Reverse Charge Phone Service;

- (d) **Terms:** all terms and conditions that apply to the Reverse Charge Billing Service; and
 - (e) **Contact:** the name and contact details of the relevant Content Supplier.
- 4.1.5 **Pricing information charges:** A Supplier must not charge a Customer any Premium Fees for providing, as at the commencement of a Mobile Premium Service, pricing information about Mobile Premium Services to a Customer.
- 4.1.6 **Pricing information:** A Content Supplier must ensure that a Customer can access information about Premium Fees for Mobile Premium Services (or, in the case of a Reverse Charge Billing Service, the Reverse Charge Phone Service), including:
- (a) any Premium Fees incurred on sign-up; and
 - (b) the basis for calculating Premium Fees, including any:
 - (i) charge per MO Message;
 - (ii) charge per MT Message; or
 - (iii) charge per Charge Period, and that Charge Period,
 without requesting supply of the Mobile Premium Service (or, in the case of a Reverse Charge Billing Service, the Reverse Charge Phone Service).
- 4.1.7 **Unsubscribe information:** A Content Supplier must provide information to Customers, without charging Premium Fees, about how to unsubscribe from a Subscription Service:
- (a) in a clear manner prior to supply of the Subscription Service; and
 - (b) on an ongoing basis by:
 - (i) a website;
 - (ii) a Proprietary Network Service;
 - (iii) telephone; or
 - (iv) SMS.
- 4.1.8 **Chat Service warning messages:** Prior to, or on commencing supply of a Chat Service to a Customer, the Content Supplier must warn the Customer of the danger of disclosing personal details via the Chat Service and advise the Customer not to do so.
- 4.1.9 **Video calling:** If a Mobile Premium Service involves video calling, the Content Supplier must notify a Customer for the Mobile Premium Service, prior to, or on commencing each video call as part of that Mobile Premium Service:

- (a) of whether the Content Supplier will be able to see the Customer during the video calling; and
- (b) if the Mobile Premium Service is recorded.

4.1.10 **End Carriage Suppliers:** An End Carriage Supplier must provide Communications Alliance with details of the measures it has available to limit a Customer's expenditure on Mobile Premium Services, for publication on the website located at www.19sms.com.au.

4.1.11 **Currency of expenditure limit information:** If any of the details provided pursuant to clause 4.1.10 change, the End Carriage Supplier must update the details provided pursuant to clause 4.1.10 within 5 Business Days to include the new details.

4.2 Premium Messaging Services – Providing Service Information

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

4.2.1 **Short Code Look-up Database:** A Content Supplier of Premium Messaging Services must:

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

a list of:

- (c) all Short Codes the Content Supplier uses to provide Premium Messaging Services; and
- (d) for each of those Short Codes:
 - (i) the Service Names for:
 - (A) all Premium Messaging Services (other than Reverse Charge Billing Services) on that Short Code; and
 - (B) all Reverse Charge Phone Services that are billed using a Reverse Charge Billing Service on that Short Code;
 - (ii) the time period during which they will be provided, including start date and end date;
 - (iii) the Content Supplier's name;
 - (iv) the Content Supplier's Helpline;
 - (v) a contact email address linked to the Content Supplier's Helpline; and

- (vi) a description of:
 - (A) in the case of a Premium Messaging Service that is not a Reverse Charge Billing Service, the services provided via each such Premium Messaging Service; and
 - (B) in the case of a Reverse Charge Billing Service, both the Reverse Charge Phone Service and the Reverse Charge Billing Service,

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

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

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

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

- (b) the Aggregator's name,

to Communications Alliance.

4.2.4 **Barring:** End Carriage Suppliers and Aggregators must provide information on the availability of barring when a Customer makes an inquiry about Premium Messaging Services. This information must include:

- (a) a description of what Premium Messaging Services are and how charges for them are incurred;
- (b) confirmation that there is no charge for activating barring of Premium Messaging Services; and
- (c) a description of how, and to whom, a customer may make a complaint about Premium Messaging Services.

4.3 Non-Subscription Premium Messaging Services – Providing Service Information

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

4.3.1 **WAP purchases:** Subject to clause 4.3.3, if a Customer requests to purchase a Non-Subscription Premium Messaging Service (other than a Reverse Charge Billing Service) using a mechanism contained in a Mobile Premium Services marketing message sent to the Customer as a WAP Push Message, the Content Supplier must send a standard, dedicated SMS purchase confirmation

message to the Customer's nominated mobile phone number (with no Premium Fees charged to the Customer for the message).

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

- (b) inform the Customer that they have incurred \$30 of Premium Fees as a result of using the particular Short Code:
 - (i) in that calendar month; or
 - (ii) since the previous expenditure update of \$30 spend that month; and
- (c) state the Service Name of:
 - (i) in the case of a Premium Messaging Service other than a Reverse Charge Billing Service, the Premium Messaging Service; and
 - (ii) in the case of a Reverse Charge Billing Service, the Reverse Charge Phone Service that is billed using the Reverse Charge Billing Service,

and/or the relevant Short Code.

4.3.6 **Chat Service welcome message:** Prior to, or on commencing supply of a Chat Service that is a Non-Subscription Premium Messaging Service, a Content Supplier must send the Customer a standard, dedicated SMS message (with no Premium Fees charged to the Customer for the message) to the Customer's mobile phone:

- (a) commencing with the phrase "FreeMsg"; and
- (b) including:
 - (i) the Service Name;
 - (ii) any sign-up cost;
 - (iii) the basis for calculating charges, including any:
 - (A) charge per MO Message;
 - (B) charge per MT Message; or
 - (C) charge per Charge Period, and that Charge Period; and
 - (iv) details of the Helpline.

4.4 Subscription Premium Messaging Services – Providing Service Information

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

4.4.1 **Double Opt-In – Subscription Request Message:** Following receipt of a clear and positive request to subscribe to a Subscription Premium Messaging Service (regardless of how that request is received, whether via an MO Message, any other advertised means or otherwise) a Content Supplier must in all cases, send a

standard, dedicated SMS subscription request message ("**Subscription Request Message**") to the Customer's mobile phone number (with no Premium Fees charged to the Customer for the message) which must:

- (a) commence with the phrase "FreeMsg";
- (b) include the Service Name of the Subscription Premium Messaging Service;
- (c) include any Premium Fees incurred on sign-up;
- (d) include the basis for calculating Premium Fees, including any:
 - (i) charge per MO Message;
 - (ii) charge per MT Message; or
 - (iii) charge per Charge Period, and that Charge Period;
- (e) instruct the Customer to send an MO Message containing a Double Opt-In Keyword to a particular Short Code in order to subscribe;
- (f) include details of the Helpline;
- (g) include details of the "STOP" Message, and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the subscription request message; and
- (h) meet the display requirements set out in clause 4.4.2.

4.4.2 **Double Opt-in – order of Subscription Request Message:** The Subscription Request Message must:

- (a) include the information required by subclauses 4.4.1 (b) to (e) before the information required by subclauses 4.4.1 (f) and (g); and
- (b) include the information required by subclauses 4.4.1 (c) and (d) in close proximity to the information required by subclause 4.4.1 (e).

4.4.3 **Double Opt-In – inclusion of words "subscription" or "subscribe":** A Content Supplier must use the word "subscription" or "subscribe" at least once in either the Subscription Request Message or the subscription confirmation message sent pursuant to clause 4.4.4.

4.4.4 **Double Opt-In - subscription confirmation message:** Following receipt of an MO Message sent by a Customer in response to the instruction described in clause 4.4.1 (e), a Content Supplier must send the Customer an SMS subscription confirmation message, which must:

- (a) at the start of the message, confirm that the Customer has entered into a subscription arrangement; and

- (b) be sent by the Content Supplier:
 - (i) as quickly as possible following receipt of the Customer's MO Message;
 - (ii) in any event within 1 Business Day of receipt of the Customer's MO Message; and
 - (iii) before any other messages are sent to the Customer as part of that Subscription Premium Messaging Service.

4.4.5 **Double Opt-In - delivery of subscription confirmation messages:** A Content Supplier may:

- (a) include the subscription confirmation message described in clause 4.4.4 as part of the first message sent as part of the requested Subscription Premium Messaging Service; and
- (b) only charge Premium Fees for that message if the message contains content in addition to the subscription confirmation message,

but must not include the subscription confirmation message in a WAP Push Message.

4.4.6 **Double Opt-In Keywords:** A Content Supplier must:

- (a) not use a particular word as a Double Opt-In Keyword for a Subscription Premium Messaging Service if:
 - (i) the same word is used as the Double Opt-In Keyword for another Subscription Premium Messaging Service on that Short Code; and
 - (ii) the Subscription Premium Messaging Services have different Charge Periods or different charging mechanisms;
- (b) ensure that any word used as a Double Opt-In Keyword on a Short Code is not the same as any word advertised by the Content Supplier as the means of initially requesting any Subscription Premium Messaging Service on that Short Code (including the Subscription Premium Messaging Service to which the Double Opt-In Keyword will relate); and
- (c) ensure that any word used as a Double Opt-In Keyword is an expression indicating a clear and positive intention to proceed.

4.4.7 **Double Opt-In – interpreting a Customer's response to a Subscription Request Message:** If:

- (a) a Customer has sent a clear and positive request to subscribe to more than one Subscription Premium

Messaging Service on the same Short Code (in the manner described in clause 4.4.1);

- (b) the Supplier has sent a Subscription Request Message to the Customer in respect to each of those Subscription Premium Messaging Services;
- (c) the Content Supplier uses the same Double Opt-In Keyword for more than one of those Subscription Premium Messaging Services; and
- (d) the Customer sends an MO Message to the Content Supplier containing that Double Opt-In Keyword,

then the Content Supplier must treat the Customer's response as a response to the most recent Subscription Request Message sent to the Customer with that Double Opt-In Keyword. A Content Supplier must never treat a single MO Message received from a Customer in response to a Subscription Request Message as a response that applies to more than one Subscription Premium Messaging Service.

4.4.8 **Double Opt-In - recontacting Customers:** If a Content Supplier sends a Subscription Request Message and does not receive a response from the Customer, the Content Supplier:

- (a) must only re-send the Subscription Request Message to the Customer once; and
- (b) if the Content Supplier does choose to re-send the message in accordance with (a), must do so within 1 hour of the time that the first Subscription Request Message was sent.

4.4.9 **Message identification:** Any message sent by a Content Supplier as part of a Subscription Premium Messaging Service must contain the Service Name in either the body or the header of the message.

4.4.10 **Exceptions to expenditure updates:** A Content Supplier is not required to provide expenditure updates to a Customer pursuant to clauses 4.4.11 or 4.4.13 if:

- (a) the Content Supplier has obtained the prior written permission of the End Carriage Supplier; and
- (b) the Customer has expressly opted-out of receiving such expenditure updates.

4.4.11 **\$30 expenditure updates:** A Content Supplier must send a Subscription Premium Messaging Service Customer a standard, dedicated SMS message containing an expenditure update, with no Premium Fees charged to the Customer:

- (a) once the Customer has incurred \$30 of Premium Fees as a result of using that Subscription Premium Messaging Service in a single calendar month; and

- (b) each time the Customer incurs an additional incremental \$30 of Premium Fees as a result of using that Subscription Premium Messaging Service in that calendar month.

4.4.12 **Content of \$30 expenditure update:** The expenditure update referred to in clause 4.4.11 must:

- (a) commence with the phrase "FreeMsg";
- (b) inform the Customer that they have incurred \$30 of Premium Fees as a result of using that particular Subscription Premium Messaging Service in a single calendar month;
- (c) state that the Customer is "subscribed to" that particular Subscription Premium Messaging Service and/or its relevant Short Code;
- (d) contain details of the "STOP" Message, and the Short Code to which it must be sent, if that Short Code is different to the Short Code used for the expenditure update; and
- (e) contain details of the Helpline.

4.4.13 **30 day reminder notification:** If a Content Supplier has not sent an expenditure update to a Subscription Premium Messaging Service Customer under clause 4.4.11 in a particular calendar month, the Content Supplier must send the Customer a reminder notification at the end of that calendar month as a standard, dedicated SMS (with no Premium Fees charged to the Customer for the message).

4.4.14 **Content of reminder notification:** The reminder notification referred to in clause 4.4.13 must:

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

4.5 Proprietary Network Services – Providing Service Information

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

- 4.5.1 **Information:** Prior to a Customer subscribing to a Proprietary Network Service that is a Subscription Service, the Content Supplier must inform the Customer in writing (which may be by letter or in any other written form such as an onscreen notice) of:
- (a) the cost of the Proprietary Network Service;
 - (b) the frequency of the Proprietary Network Service, if applicable;
 - (c) whether the subscription is ongoing or for a particular period of time; and
 - (d) how to unsubscribe from the Proprietary Network Service.
- 4.5.2 **Premium Fees:** A Content Supplier must inform a Customer about the Premium Fees involved in using a Proprietary Network Service:
- (a) before the Customer first accesses the Proprietary Network Service; or
 - (b) after the Customer first accesses the Proprietary Network Service but before any Premium Fees are incurred,
- in a way that is clear and easily accessible by the Customer.
- 4.5.3 **Opt-out information:** A Content Supplier must provide readily available information to Customers about how to unsubscribe from a Proprietary Network Service that is a Subscription Service on an ongoing basis, including via:
- (a) the Proprietary Network Service portal; and
 - (b) telephone.

5 SUPPLYING A MOBILE PREMIUM SERVICE

Objectives

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

Summary

Some Rules in this chapter only apply to some types of Mobile Premium Services and/or only some types of Suppliers. The table below is provided to assist readers to understand which Rules apply.

Type of Mobile Premium Service	Type of Supplier	Applicable Rules in this chapter
Non-Subscription Premium Messaging Service	Content Supplier	5.1.1 – 5.1.2, 5.1.4 – 5.1.11 5.2.1 – 5.2.9
	Aggregator	5.1.3 – 5.1.6 5.2.6, 5.2.9
	End Carriage Supplier	5.1.3 – 5.1.6 5.2.6, 5.2.9
Subscription Premium Messaging Service	Content Supplier	5.1.1 – 5.1.2, 5.1.4, 5.1.6 – 5.1.9, 5.1.11 5.2.1 – 5.2.2, 5.2.4 - 5.2.9 5.3.1 – 5.3.4
	Aggregator	5.1.3 – 5.1.4, 5.1.6 5.2.6, 5.2.9
	End Carriage Supplier	5.1.3 – 5.1.4, 5.1.6 5.2.6, 5.2.9
Proprietary Network Service	Content Supplier	5.1.1 – 5.1.2, 5.1.4, 5.1.6 – 5.1.9, 5.1.11 5.4.1
	Aggregator	5.1.3 – 5.1.4, 5.1.6
	End Carriage Supplier	5.1.3 – 5.1.4, 5.1.6

Rules

5.1 All Mobile Premium Services – Supplying Services

The Rules for supplying a Mobile Premium Service are:

5.1.1 **Prohibitions:** A Content Supplier must not:

- (a) **Supply without request:** supply a Mobile Premium Service that a Customer did not request in accordance with clause 5.1.2;
- (b) **Charge without request:** charge a Customer a Premium Fee for any Mobile Premium Service that the Customer did not request in accordance with clause 5.1.2; or
- (c) **Error message charges:** charge a Customer a Premium Fee for an error message.

An amount of 25 cents or less that:

- (i) is charged by a Content Supplier to a Customer for an MO Message that the Customer sends as part of making a request for a Mobile Premium Service in accordance with clause 5.1.2; and
- (ii) was clearly set out in all advertising for that Mobile Premium Service,

is deemed not to be a Premium Fee for the purposes of clause 5.1.1 (b).

5.1.2 **Request:** A Customer has requested supply of a Mobile Premium Service if:

- (a) in the case of a Subscription Premium Messaging Service, the Customer has requested to receive it by sending an MO Message in response to the instructions described in clause 4.4.1 (e) in accordance with the Double Opt-In process;
- (b) in the case of a Non-Subscription Premium Messaging Service that has a request mechanism contained in a marketing message sent to the Customer as a WAP Push Message, the Customer requested to receive it using:
 - (i) the request mechanism contained in the marketing message; and
 - (ii) by sending an MO Message in response to the instructions described in clause 4.3.2(d) within the last 24 hours;
- (c) in the case of a Non-Subscription Premium Messaging Service with an IVR activation request mechanism:
 - (i) where the Non-Subscription Premium Messaging Service is not a Reverse Charge Billing Service, the

Customer has made a clear and positive request to receive it using the IVR; and

- (ii) where the Non-Subscription Premium Messaging Service is a Reverse Charge Billing Service, the Customer has made a clear and positive request to be billed for the Reverse Charge Phone Service via the Reverse Charge Billing Service using the IVR;
- (d) in the case of a Premium Messaging Service not described in subclause (a), (b) or (c) above:
 - (i) where the Premium Messaging Service is not a Reverse Charge Billing Service, the Customer has requested to receive it by sending an MO Message that contains either:
 - (A) a clear and positive request to receive that service; or
 - (B) a keyword that was advertised as the means of requesting that service; or
 - (ii) where the Premium Messaging Service is a Reverse Charge Billing Service, the Customer has requested to be billed for the Reverse Charge Phone Service via the Reverse Charge Billing Service by sending an MO Message that contains either:
 - (A) a clear and positive request to be billed for the Reverse Charge Phone Service through use of the Reverse Charge Billing Service; or
 - (B) a keyword that was advertised as the means of requesting to be billed for the Reverse Charge Phone Service through use of the Reverse Charge Billing Service;
- (e) in the case of a Proprietary Network Service, the Customer has requested the service.

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

5.1.4 **Refunds for Mobile Premium Services other than Reverse Charge Billing Services:** Unless a Customer agrees to another form of payment, a Supplier must pay any refund with respect to a Mobile Premium Service (other than a Reverse Charge Billing Service) to a Customer by either:

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

5.1.5 **Refunds for Reverse Charge Billing Services:** Unless a Customer agrees to another form of payment, a Supplier must pay any refund of amounts that have been:

- (a) charged for a Reverse Charge Phone Service; and
- (b) triggered on a Customer's mobile phone bill via use of a Reverse Charge Billing Service,

by either:

- (c) issuing a direct credit against the Customer's current mobile phone account; or
- (d) directly refunding the Customer.

5.1.6 **Withdrawals:** If:

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

then the Supplier must remove the amount from that Customer's account prior to billing. In the case of a Reverse Charge Billing Service, this clause only applies to withdrawals of amounts triggered on a Customer's mobile phone bill via use of the Reverse Charge Billing Service.

5.1.7 **Minimum period:** A Content Supplier must not enter into:

- (a) in the case of a Mobile Premium Service that is not a Reverse Charge Billing Service, a Mobile Premium Services contract with a Customer;
- (b) in the case of a Reverse Charge Billing Service, a contract that obliges a Customer to pay for a Reverse Charge Phone Service where such amounts are triggered via use of a Reverse Charge Billing Service,

that requires the Customer to pay Premium Fees to meet a minimum contract period requirement in addition to those Premium Fees informed to the Customer pursuant to clause 4.1.3(c).

5.1.8 **WAP Push Messages:** Any WAP Push Messages sent by a Content Supplier:

- (a) as part of a Mobile Premium Service; or
- (b) to advertise a Mobile Premium Service,

must state:

- (i) the Short Code; or
- (ii) the Helpline,

for the Mobile Premium Service prior to stating the WAP website link. This clause 5.1.8 does not apply to Reverse Charge Billing Services.

5.1.9 **Error messages for Mobile Premium Services other than Reverse Charge Billing Services:** If a Customer sends a Content Supplier:

- (a) an indecipherable or invalid content request; or
- (b) a message that cannot be decoded by the Content Supplier's system,

in relation to a Mobile Premium Service other than a Reverse Charge Billing Service, the Content Supplier must send the Customer a standard, dedicated, SMS error message (with no Premium Fees charged to the Customer for the message), which must:

- (c) commence with the phrase "FreeMsg";
- (d) if it is possible to identify the Mobile Premium Service to which the Customer's message relates, include the Service Name of the Mobile Premium Service;
- (e) if possible, describe the error and details of the correct format required for the message; and
- (f) include details of its Helpline.

5.1.10 **Error messages for Reverse Charge Billing Services:** If a Customer sends a Content Supplier a message that cannot be decoded by the Content Supplier's system in relation to a Reverse Charge Billing Service, the Content Supplier must send the Customer a standard, dedicated, SMS error message (with no Premium Fees charged to the Customer for the message), which must:

- (a) commence with the phrase "Free Msg";
- (b) if it is possible to identify the Service Name of the Reverse Charge Phone Service to which the Customer's message relates, include that Service Name;
- (c) if possible, describe the error and details of the correct format required of the message; and
- (d) include details of its Helpline.

5.1.11 **Database:** Subject to record keeping requirements, a Content Supplier must maintain any database of active Customer MSISDNs, including by:

- (a) managing and purging expired data; and
- (b) purging their database within 5 Business Days of a Carriage Service Provider issuing information about dormant or quarantined MSISDNs.

5.2 Premium Messaging Services – Supplying Services

The additional Rules for supplying a Premium Messaging Service are:

- 5.2.1 **Recording Customer requests and notifications:** A Content Supplier must retain a record of:
- (a) all Customer requests made in accordance with clause 5.1.2, including sufficient information about all elements of the request sent via MO Message for the End Carriage Supplier and any Aggregator to reconcile the transaction with its internal records;
 - (b) all subscription confirmation messages sent pursuant to clause 4.4.4; and
 - (c) all Customer requests to unsubscribe from a Subscription Service,

for that Content Supplier's Subscription Premium Messaging Services.

- 5.2.2 **Failed MT Messages for a Premium Messaging Service other than a Reverse Charge Billing Service:** If an MT Message sent as part of a Premium Messaging Service (other than a Reverse Charge Billing Service) fails to deliver to a Customer, the Content Supplier must:

- (a) **No charging for resending messages:** not charge the Customer Premium Fees for any attempt to resend the message if:
 - (i) its content was of a time sensitive nature; and
 - (ii) it was not delivered within a reasonable timeframe for content of that nature;
- (b) **Limited requirement to resend:** attempt to resend the message if:
 - (i) the Customer had already paid Premium Fees for it in advance; and
 - (ii) there is no "event based" Premium Fee for that message to be sent;
- (c) **Limitations on resending where non-permanent reason for delivery failure other than a lack of Customer credit:** if the End Carriage Supplier or Aggregator notifies the Content Supplier that the reason for the delivery failure is potentially of an interim nature (other than a lack of Customer credit), only attempt to deliver the message if:
 - (i) no more than 1 attempt is made each day for 7 days after the date the End Carriage Supplier or Aggregator notified the Content Supplier of the delivery failure;

- (ii) no more than 2 attempts are made in any 7 day period from the end of the period described in clause 5.2.2(c)(i) until the date that is 30 days after the End Carriage Supplier or Aggregator notified the Content Supplier of the delivery failure; and
 - (iii) no further attempts are made after the period referred to in clause 5.2.2(c)(ii);
- (d) **Limitations on resending where Customer credit reason for delivery failure:** if the End Carriage Supplier or Aggregator notifies the Content Supplier that the reason for the delivery failure is a lack of Customer credit, then in the case of:
- (i) a Non-Subscription Premium Messaging Service, make no more than 2 further attempts to send the message within 7 days of such notification by the End Carriage Supplier or Aggregator; or
 - (ii) a Subscription Premium Messaging Service:
 - (A) if the Customer is unable to access the then current content of that Subscription Premium Messaging Service, make no more than 2 further attempts to send the message within:
 - (aa) each 7 day period (following such notification by the End Carriage Supplier or Aggregator) up until the end of the current Charge Period; or
 - (bb) if the Charge Period is less than 7 days, the current Charge Period; or
 - (B) if the Customer remains able to access the then current content of that Subscription Premium Messaging Service:
 - (aa) make no more than 2 further attempts to send the message within:
 - (1) each 7 day period (following such notification by the End Carriage Supplier or Aggregator) up until the end of the current Charge Period; or
 - (2) if the Charge Period is less than 7 days, the current Charge Period;
 - (bb) make no more than 2 further attempts to send the message within:
 - (1) each 7 day period (following the end of the period described in clause 5.2.2(d)(ii)(B)(aa)) up until the end of the next Charge Period; or

- (2) if the Charge Period is less than 7 days, the next Charge Period (following the end of the period described in clause 5.2.2(d)(ii)(B)(aa)),
 - (iii) all Premium Messaging Services, make no further attempts to send the message after the time period referred to in clause 5.2.2(d)(i) or 5.2.2(d)(ii) (as relevant).
- 5.2.3 **Reverse Charge Billing Services to trigger charges by single MT Messages only:** A Content Supplier of a Reverse Charge Billing Service must not send multiple Billed Messages to a Customer in order to trigger a single charge on the Customer's account.
- 5.2.4 **Single charge:** If a Content Supplier calculates charges for a Reverse Charge Billing Service on a fee per time period basis, then:
 - (a) each fee per time period is deemed to be a "single charge"; and
 - (b) where the total charge for a call made by a Customer on the Reverse Charge Billing Service is made up of a number of separate charges incurred on a fee per time period basis, the total charge is deemed not to be a "single charge",
 for the purposes of clause 5.2.3.
- 5.2.5 **Prohibition on resending where permanent reason for delivery failure:** If an MT Message sent as part of a Premium Messaging Service fails to deliver to a Customer, the Content Supplier must if the End Carriage Supplier or Aggregator notifies the Content Supplier that the reason for the delivery failure is of a permanent nature, abandon the attempt to send the message and, subject to record keeping requirements, remove the Customer's MSISDN from the Content Supplier's databases.
- 5.2.6 **No charges for undelivered content:** If an MT Message sent as part of a Premium Messaging Service fails to deliver to a Customer, a Supplier must:
 - (a) not post any Premium Fees to the Customer's account for that failed message; and
 - (b) refund any Premium Fees it has posted for that failed message.
- 5.2.7 **Extended period of failure to send and receive:** If a Content Supplier has not successfully sent or received any Premium Messaging Service message to or from a particular Customer on a particular Short Code for 60 days, the Content Supplier must stop contacting that Customer using that Short Code unless the Customer requests otherwise.

- 5.2.8 **Paid message indicator:** A Content Supplier must include the term "\$Msg" at the start of a Billed Message.
- 5.2.9 **Total Charges:** A Supplier must not charge any fee for a Premium Messaging Service message other than a Data Fee or a Premium Fee.

5.3 Subscription Premium Messaging Services – Supplying Services

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

- 5.3.1 **No minimum subscription period:** A Content Supplier must permit a Customer to unsubscribe from a Subscription Premium Messaging Service at any time and must not:
- (a) suggest otherwise; or
 - (b) advertise or operate a Subscription Premium Messaging Service with a minimum subscription period.
- 5.3.2 **Decommissioned services:**
- If:
- (a) a Subscription Premium Messaging Service has been using a particular Short Code; and
 - (b) that Subscription Premium Messaging Service is to be replaced with an alternative service using the same Short Code,
- the Content Supplier must not automatically include a Customer of the decommissioned service as a Customer of the newly launched service unless that Customer has requested the new service in accordance with clause 5.1.2.
- 5.3.3 **Increasing prices:** If a Content Supplier wishes to increase the Premium Fees of a Subscription Premium Messaging Service, the Content Supplier must notify all active Customers of that Subscription Premium Messaging Service of:
- (a) the new Premium Fees; and
 - (b) the effective date for the new Premium Fees,
- at least 1 month before that effective date.
- 5.3.4 **Cost of notification:** If the message required by clause 5.3.3 is sent via SMS, no Premium Fees may be charged to the Customer for that SMS.

5.4 Proprietary Network Services – Supplying Services

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

- (a) the Customer is informed that this will occur prior to the commencement of the Subscription Service; and
- (b) the Content Supplier has complied with clauses 4.1.7 and 6.1.3.

6 COMPLAINT HANDLING

Objectives

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

Summary

Some Rules in this chapter only apply to some types of Mobile Premium Services and/or only some types of Suppliers. The table below is provided to assist readers to understand which Rules apply.

Type of Mobile Premium Service	Type of Supplier	Applicable Rules in this chapter
Non-Subscription Premium Messaging Service	Content Supplier	6.1.1 – 6.1.8, 6.1.10 – 6.1.18
	Aggregator	6.1.1, 6.1.7, 6.1.9, 6.1.11, 6.1.18
	End Carriage Supplier	6.1.1, 6.1.7, 6.1.9, 6.1.11, 6.1.18
Subscription Premium Messaging Service	Content Supplier	6.1.2 – 6.1.8, 6.1.10 – 6.1.18
	Aggregator	6.1.7, 6.1.9, 6.1.11, 6.1.18
	End Carriage Supplier	6.1.7, 6.1.9, 6.1.11, 6.1.18
Proprietary Network Service	Content Supplier	6.1.2 – 6.1.8, 6.1.10 – 6.1.18
	Aggregator	6.1.7, 6.1.9, 6.1.11, 6.1.18
	End Carriage Supplier	6.1.7, 6.1.9, 6.1.11, 6.1.18

Rules

6.1 All Mobile Premium Services - Complaint Handling

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

- 6.1.1 **Application to Reverse Charge Billing Services:** In the case of a Reverse Charge Billing Service, this Chapter 6 only applies to complaints relating to the Reverse Charge Billing Service, not the associated Reverse Charge Phone Service.
- 6.1.2 **Complaint handling and inquiry procedures:** Content Suppliers must have Complaint handling and inquiry procedures which:
- (a) address any issues raised in the supply of Mobile Premium Services to Customers;
 - (b) are accessible;
 - (c) are easy and convenient for Customers to use;
 - (d) are fair and reasonable;
 - (e) include appropriate methods of taking action and monitoring undertakings made to complainants;
 - (f) include an appropriate Complaint escalation process;
 - (g) electronically record Complaints received and any resolutions;
 - (h) have a publicly available Complaints handling policy (including information about the Customer's right to complain) that is publicised to Customers and to staff;
 - (i) have accessible, flexible and free or low cost methods of lodging Complaints;
 - (j) have a process:
 - (i) for continuously classifying and analysing Complaints to identify recurring and systemic problems and trends and rectify and eliminate underlying causes of Complaints; and
 - (ii) which includes reasonable consideration of whether redress is appropriate for Customers affected by problems (including, where appropriate, all those Customers identified as having been affected by a recurring or systemic problem);
 - (k) include a Helpline;
 - (l) provide all relevant End Carriage Suppliers and Aggregators with the Content Supplier's Helpline number in a timely manner;

- (m) have a process for handling Complaints that involve Minors which includes consideration of the following factors where relevant and within the knowledge of the Content Supplier handling the Complaint:
- (i) whether the Mobile Premium Service was used by a Minor;
 - (ii) whether the Minor is the sole or primary user of the mobile phone;
 - (iii) whether the person who holds the relevant account with the End Carriage Supplier:
 - (A) expressly or impliedly consented to the use of their mobile phone for the Mobile Premium Service; and
 - (B) if the person did consent, whether they were aware, or ought reasonably to have been aware, of the cost and nature of the Mobile Premium Service;
 - (iv) whether advertisements for the relevant Mobile Premium Service advised its potential audience to seek the permission of the relevant account holder before accessing the Mobile Premium Service; and
 - (v) whether the Mobile Premium Service specifically targeted Minors; and
- (n) include appropriate steps to actively protect the privacy and confidentiality of personally identifiable information about complainants.

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

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

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

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

- (a) **Live Agents:** staff its Helpline from 9am to 5pm, Australian EST or EDST (as applicable to the Content Supplier or where neither is applicable, then at the Content Supplier's election, either EST or EDST), on Business Days;
- (b) **Call times:** ensure all calls received by the Helpline during the timeframe referred to in clause 6.1.5(a) are either:

- (i) answered by live agents within a reasonable timeframe;
 - (ii) dealt with in accordance with clause 6.1.5(c); or
 - (iii) if the customer chooses that option, dealt with in accordance with clause 6.1.5(d);
- (c) **Queues:** if a caller to the Helpline is queued to speak to a live agent about a Premium Messaging Service, tell the caller:
- (i) that their call will be answered by an agent; or
 - (ii) that they may leave a message;
- (d) **IVR:** make a 24 hour per day, 7 day per week, IVR service available via the Helpline (other than during any time that a live staffed Helpline is available) in relation to any Subscription Premium Messaging Services, that:
- (i) gives Customers the option of unsubscribing from any Subscription Premium Messaging Services by:
 - (A) entering their mobile number into the IVR helpdesk service; or
 - (B) leaving a recorded voice message on the IVR helpdesk service; and
 - (ii) informs Customers of the timeframe in which they will be unsubscribed or, if applicable, have their call returned;
- (e) **Greeting:** greet Customers calling the Helpline with either:
- (i) the name of the Content Supplier; or
 - (ii) the words "Welcome to the Mobile Premium Services Helpline" or words to substantially the same effect,
- and, where applicable, the name of the person taking the call;
- (f) **Answering messages:** have an operator call a Customer to respond to verbal Complaints left on the Helpline's answering service as soon as practicable, and at least within 1 Business Day; and
- (g) **Unsubscribe and opt-out:** ensure that Customers can:
- (i) unsubscribe from Subscription Services; and
 - (ii) opt-out of marketing,
- by ringing the Helpline.

- 6.1.6 **Written Complaints:** Within 2 Business Days of receipt of a written Complaint, a Content Supplier must contact that Customer to:
- (a) acknowledge receipt; and
 - (b) advise the complainant of the timeframe for possible final determination of that Complaint.
- 6.1.7 **Investigating Complaints:** Subject to clauses 6.1.8 and 6.1.9, a Supplier must investigate all Complaints, other than those which it reasonably determines to be:
- (a) frivolous;
 - (b) vexatious; or
 - (c) not made in good faith.
- 6.1.8 **Referral of Complaints by Content Supplier:** A Content Supplier must refer Complaints that do not relate to the Content Supplier's Mobile Premium Services to an appropriate organisation to address the Complaint. In the case of a Reverse Charge Billing Service, where the Complaint relates to the Reverse Charge Phone Service (not the Reverse Charge Billing Service) this may be the provider of the Reverse Charge Phone Service.
- 6.1.9 **End Carriage Suppliers and Aggregators:** End Carriage Suppliers and Aggregators must:
- (a) subject to clause 6.1.9(c), if they receive a Complaint that relates to an aspect of the Mobile Premium Service under the control of a Content Supplier:
 - (i) take reasonable steps to ensure the correct Helpline number is passed on to the complainant; and
 - (ii) refer the Complaint to the Content Supplier in a timely manner;
 - (b) provide Content Suppliers with a contact mechanism by which they can submit and update their Helpline numbers;
 - (c) undertake to resolve Complaints:
 - (i) not resolved by the relevant Content Supplier; or
 - (ii) received from the TIO,

in any manner they consider appropriate (acting reasonably) based on available information, with reference to any relevant independent third party and, in the case of resolution of Complaints by End Carriage Suppliers, such End Carriage Suppliers may have regard to clause 6.1.2(m); and

- (d) include information on the availability of barring when a Customer makes a complaint about Premium Messaging Services, as set out in clause 4.2.4.
- 6.1.10 **Escalation emails:** A Content Supplier must reply to emails from Aggregators and End Carriage Suppliers escalating Complaints within 2 Business Days.
- 6.1.11 **Resolving Complaints:** A Supplier must use reasonable efforts to resolve all Complaints made by Customers to it prior to referring them to the TIO.
- 6.1.12 **Complaints information:** A Content Supplier must share available complainant call log information relevant to a Complaint with the complainant on request.
- 6.1.13 **Resolution times:** A Content Supplier must:
- (a) resolve:
 - (i) direct Complaints within 2 Business Days of receipt by the Content Supplier;
 - (ii) escalated Complaints within 2 Business Days of escalation from the relevant Supplier; and
 - (iii) escalated Complaints relating to a previous Complaint made by that Customer to the Content Supplier within 1 Business Day of escalation from the relevant Supplier;
 - (b) if it is not possible to meet the timeframes set out in clause 6.1.13(a):
 - (i) provide the Customer with at least weekly updates on the Complaint's progress and likely timeframe for resolution; and
 - (ii) propose a resolution of the Complaint within 30 days of receipt by the Content Supplier; or
 - (c) if it is not possible to meet the timeframes set out in clause 6.1.13(b), advise the Customer that they may refer their Complaint to the TIO.
- 6.1.14 **Advice on outcomes:** A Content Supplier must advise each Customer complainant of the outcome of their Complaint. Such advice must be in writing if requested by the complainant.
- 6.1.15 **Disputed amounts:** A Content Supplier must not demand payment of genuinely disputed amounts whilst the dispute is being investigated. In the case of a Reverse Charge Billing Service, this clause only applies to disputed amounts that have been triggered on a Customer's mobile telephone account through use of a Reverse Charge Billing Service.

- 6.1.16 **Refund requests:** A Content Supplier must not require Customers to put refund requests in writing. In the case of a Reverse Charge Billing Service, this clause only applies to refund requests relating to amounts that have been triggered on a Customer's mobile telephone account through use of a Reverse Charge Billing Service.
- 6.1.17 **TIO:** A Content Supplier must advise Customers of their external avenue of recourse to the TIO if the Customer:
- (a) expresses dissatisfaction with the resolution of their Complaint; or
 - (b) requests this information.
- 6.1.18 **Recording Complaints:** A Supplier must:
- (a) maintain accurate records of each Complaint made to it about Mobile Premium Services, including:
 - (i) the complainant's contact details;
 - (ii) the date of the Complaint;
 - (iii) the nature of the Complaint;
 - (iv) a running log of actions undertaken to resolve the Complaint; and
 - (v) the relevant Short Code;
 - (b) retain these Complaint records for at least 2 years;
 - (c) make these Complaint records available to the relevant Aggregator or End Carriage Supplier on request; and
 - (d) if the ACMA requests a copy of a Complaint record in relation to a particular Short Code, or series of Short Codes, make the copy available to the ACMA within a reasonable time period (taking into account the nature of the information requested).

7 UNSUBSCRIBE AND OPT-OUT MECHANISMS

Objectives

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

Summary

Some Rules in this chapter only apply to some types of Mobile Premium Services and/or only some types of Suppliers. The table below is provided to assist readers to understand which Rules apply.

Type of Mobile Premium Service	Type of Supplier	Applicable Rules in this chapter
Non-Subscription Premium Messaging Service	Content Supplier	7.1.1 – 7.1.5
	Aggregator	7.1.1
	End Carriage Supplier	7.1.1
Subscription Premium Messaging Service	Content Supplier	7.1.2 - 7.1.5 7.2.1 - 7.2.7
	Aggregator	None
	End Carriage Supplier	None
Proprietary Network Service	Content Supplier	7.1.2 - 7.1.5 7.3.1
	Aggregator	None
	End Carriage Supplier	None

Rules

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

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

7.1.1 **Reverse Charge Billing Services:** The Rules in this Chapter 7 do not apply to Reverse Charge Billing Services.

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

(a) stop supplying the Subscription Service (other than supplying messages or providing access that the Customer has already paid for):

(i) as quickly as possible following receipt of the request by the Content Supplier;

(ii) and in any event within 1 Business Day of receipt of the request by the Content Supplier, unless the Content Supplier is unable to stop supply within that time due to matters beyond its reasonable control;

(b) from receipt of the request to unsubscribe, not post any new Premium Fees to the Customer's account in respect of the Subscription Service unless it is actively renewed by the Customer in accordance with clause 5.1.2; and

(c) refund any new Premium Fees posted after the request to unsubscribe was received from the Customer by the Content Supplier,

unless the Customer's request is of the kind described in clause 5.1.9, in which case the Content Supplier must instead comply with clause 5.1.9.

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

(a) terminates the Customer's consent to receive any further mobile marketing messages in relation to that Mobile Premium Service; and

(b) results in the Customer being removed from any relevant marketing database,

unless the Customer's request is of the kind described in clause 5.1.9, in which case the Content Supplier must instead comply with clause 5.1.9.

7.1.4 **Unsubscribe fees:** A Content Supplier must not offer a mechanism which charges a Premium Fee in excess of 25 cents for:

- (a) processing a request to unsubscribe from a Subscription Service; or
- (b) any "STOP" Message; or
- (c) processing a request to opt-out from receiving ongoing marketing messages.

7.1.5 **Unsubscribe Fee Refunds:** If a Customer sends a request to opt-out of marketing messages to a Short Code that generates a Premium Fee in excess of 25c then if the Content Supplier:

- (a) has the ability to refund the Customer without the Customer providing any further information, the Content Supplier must within 5 Business Days of receiving the "STOP" message refund the Customer for the amount charged in excess of 25 cents regardless of whether the Customer has made a request for refund; or
- (b) does not have the ability to refund the Customer without the Customer providing further information, the Content Supplier must send the Customer a standard, dedicated SMS refund message (with no Premium Fees charged to the Customer for the message), which must:
 - (i) commence with the phrase "FreeMsg";
 - (ii) notify the Customer of the Premium Fee charged to the Customer for the "STOP" message sent;
 - (iii) include that the Customer is entitled to a refund for the amount charged in excess of 25 cents;
 - (iv) include that the Customer may request the refund by:
 - (A) utilising the Content Supplier's local or free-call Helpline; and
 - (B) any other method that the Content Supplier makes available for requesting a refund (with no Premium Fees charged to the Customer for the request);
 - (v) include details of the Content Supplier's Helpline; and
 - (vi) include the Service Name of the Mobile Premium Service.

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

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

- 7.2.1 **"STOP" Messages for Subscription Premium Messaging Services:** A Content Supplier of a Subscription Premium Messaging Service must allow Customers to unsubscribe from the service and opt-out of associated marketing messages by:
- (a) entering the word "STOP" in a message sent from the Customer's handset to a Short Code or destination number for the Subscription Premium Messaging Service; and
 - (b) where practical, allowing the "STOP" Message described in (a) to be sent as a reply to a message sent as part of the Subscription Premium Messaging Service.
- 7.2.2 **"STOP" Messages:** Subject to clause 7.2.3, a Content Supplier must ensure that a "STOP" Message:
- (a) sent to a Short Code terminates:
 - (i) all Subscription Premium Messaging Services that use that Short Code in accordance with clause 7.1.2; and
 - (ii) all marketing messages sent to the Customer's mobile phone as part of those Subscription Premium Messaging Services in accordance with clause 7.1.3; and
 - (b) sent in response to a marketing message in relation to a Subscription Premium Messaging Service results in the Customer opting-out of marketing in relation to that Subscription Premium Messaging Service in accordance with clause 7.1.3.
- 7.2.3 **Multiple services using same Short Code:** If:
- (a) multiple Subscription Premium Messaging Services use the same Short Code; and
 - (b) a "STOP" Message expressly identifies which particular Subscription Premium Messaging Service the Customer wishes to unsubscribe from,
- the Content Supplier may unsubscribe the Customer from only that particular Subscription Premium Messaging Service if:
- (i) the "STOP" Message is in the format "stop <service name>" or "<service name> stop"; and
 - (ii) the "<service name>" identified in the "STOP" Message unambiguously matches a particular Subscription Premium Messaging Service.

- 7.2.4 **Wording of "STOP" Messages:** A Content Supplier must treat any message sent to a Short Code containing the word "stop" (other than a message sent as part of a Chat Service where the word "stop" appears in combination with other words in the ongoing dialogue between the chat participants) as a "STOP" Message for that Short Code.
- 7.2.5 **Unsubscribe confirmation messages:** Whenever a Customer unsubscribes from a Subscription Premium Messaging Service the Content Supplier must confirm:
- (a) as soon as possible; and
 - (b) in any event, within 1 Business Day of receipt of the request (unless the Content Supplier is unable to do so within that time due to matters beyond its reasonable control),
- by standard, dedicated SMS message (with no Premium Fee charged to the Customer for the SMS) that their request to unsubscribe has been acted upon.
- 7.2.6 **Content of unsubscribe confirmation message:** The confirmation message described in clause 7.2.5 must:
- (a) commence with the phrase "FreeMsg";
 - (b) include confirmation that the Customer has unsubscribed from the Subscription Premium Messaging Service or Subscription Premium Messaging Services; and
 - (c) state if the Customer will still receive messages or access that the Customer has already paid for.
- 7.2.7 **Content previously paid for:** If:
- (a) a Customer requests to unsubscribe from a Subscription Premium Messaging Service; and
 - (b) the Content Supplier continues to send the Customer messages that the Customer has already paid for,
- those messages must include the term "FreeMsg".

7.3 Proprietary Network Services – Unsubscribe and Opt-Out Mechanisms

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

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

APPENDIX

A VARIATION CONTROL SHEET

TABLE 1
Details of Variation No.1/2014

Clause No.	Clause detail	Notes
7.1.4	<p>Previous:</p> <p>7.1.4 Unsubscribe fees: A Content Supplier must not charge a Premium Fee in excess of 25 cents for:</p> <p style="padding-left: 40px;">(a) processing a request to unsubscribe from a Subscription Service; or</p> <p style="padding-left: 40px;">(b) any "STOP" Message.</p>	
	<p>As amended:</p> <p>7.1.4 Unsubscribe fees: A Content Supplier must not offer a mechanism which charges a Premium Fee in excess of 25 cents for:</p> <p style="padding-left: 40px;">(a) processing a request to unsubscribe from a Subscription Service; or</p> <p style="padding-left: 40px;">(b) any "STOP" Message; or</p> <p style="padding-left: 40px;">(c) processing a request to opt-out from receiving ongoing marketing messages.</p>	Prevents the promotion of services where a Premium Fee in excess of 25cents is charged for processing a request to opt out of receiving ongoing marketing messages.
New Clause 7.1.5	<p>7.1.5 Unsubscribe fee refunds: If a Customer sends a request to opt-out of marketing messages to a Short Code that generates a Premium Fee in excess of 25c then if the Content Supplier:</p> <p style="padding-left: 40px;">(a) has the ability to refund the Customer without the Customer providing any further information, the Content Supplier must</p>	Provides a facility for refunds where a request to opt-out of marketing has inadvertently been sent to a Short Code which results in a Premium Fee in excess of 25cents being charged.

	<p>within 5 Business Days of receiving the "STOP" message refund the Customer for the amount charged in excess of 25 cents regardless of whether the Customer has made a request for refund; or</p> <p>(b) does not have the ability to refund the Customer without the Customer providing further information, the Content Supplier must send the Customer a standard, dedicated SMS refund message (with no Premium Fees charged to the Customer for the message), which must:</p> <p>(i) commence with the phrase "FreeMsg";</p> <p>(ii) notify the Customer of the Premium Fee charged to the Customer for the "STOP" message sent;</p> <p>(iii) include that the Customer is entitled to a refund for the amount charged in excess of 25 cents;</p> <p>(iv) include that the Customer may request the refund by:</p> <p>(A) utilising the Content Supplier's local or free-call Helpline; and</p> <p>(B) any other method that the Content Supplier makes available for requesting a refund (with no Premium Fees charged to the Customer for the request) ;</p> <p>(v) include details of the Content Supplier's Helpline; and</p> <p>(vi) include the Service Name of the Mobile Premium Service.</p>	
<p>New Clause 4.2.4 – Barring</p>	<p>4.2.4 Barring: End Carriage Suppliers and Aggregators must provide information on the availability of barring when a Customer makes an inquiry about Premium Messaging Services. This information must include:</p> <p>(a) a description of what Premium Messaging Services are and how charges for them are incurred;</p>	<p>Inclusion of an obligation to provide specific information on the availability of barring when a customer makes an inquiry about Mobile Premium Services, replacing the requirement under Sections 11(2) and 12(6) of Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1), which the ACMA has indicated are to be repealed.</p>

	<p>(b) confirmation that there is no charge for activating barring of Premium Messaging Services; and</p> <p>(c) a description of how, and to whom, a customer may make a complaint about Premium Messaging Services.</p>	
New Clause 6.1.9(d) – Information on Barring	6.1.9(d) provide information on the availability of barring when a Customer makes a complaint about Premium Messaging Services, as set out in clause 4.2.4.	Inclusion of an obligation to provide specific information, as set out in 4.2.4, on the availability of barring when a customer makes a complaint, replacing the requirement under Section 12(6) of Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1), which the ACMA has indicated is to be repealed.
Chapter 8 – INDUSTRY COMPLIANCE REPORTING	Deletion of Chapter 8	<p>The ACMA conducted a review of industry reporting requirements in 2014 as part of its commitment to red tape reduction. As part of this review, industry was asked to consider the ongoing utility of the current MPS Compliance Reporting regime, noting that the current compliance reporting obligations were established when MPS was generating significant consumer detriment. TIO complaints statistics indicate that compliance rates with Code requirements over the past eighteen months have been consistently high, while complaints about MPS remain at only 1% of total industry complaints.</p> <p>Accordingly the Working Committee has removed the MPS Code Compliance Reporting requirement.</p>
APPENDIX A – INDUSTRY COMPLIANCE REPORTING FORM	Deletion of Appendix A	The previous Appendix A set out the format for reporting on Compliance Monitoring, the obligation for which exists in Chapter 8. The previous Appendix A is no longer applicable following the deletion of Chapter 8.

PARTICIPANTS

The Working Committee responsible for the revisions made to this Code consisted of the following organisations and their representatives:

Organisation	Representative
ACCAN	Kirisha Thanapalasantheram
ACCAN	Victoria Rubensohn AM
Mobile Embrace	Neil Wiles
Optus	Tim Cuthbert
Oxygen8 Communications	Susie Thompson
Telstra	Dan Mandaru

The Working Committee was chaired by Jane Smith. Visu Thangavelu of Communications Alliance provided project management support.

A Variation was made in 2014 by a Working Committee comprising representatives of Dialogue Communications, Oxygen8, Optus and Telstra.

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

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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