

**COMMUNICATIONS  
ALLIANCE LTD**



**DRAFT** INDUSTRY CODE

DR C628:2018

TELECOMMUNICATIONS CONSUMER  
PROTECTIONS CODE

DRAFT FOR PUBLIC COMMENT

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## **C628:2018 Telecommunications Consumer Protections Code**

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**Communications Alliance Ltd ACN 078 026 507 (Communications Alliance) was formed in 1997 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.**

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## **INTRODUCTORY STATEMENT**

This Communications Alliance Telecommunications Consumer Protections (TCP) Code is a code of conduct designed to ensure good service and fair outcomes for all Consumers of Telecommunications Products in Australia.

All Carriage Service Providers who supply Telecommunications Products to Customers in Australia are required to observe and comply with the Code.

The Code is registered by the Australian Communications and Media Authority (ACMA), which has appropriate powers of enforcement. Compliance with the Code is monitored by Communications Compliance.

### **Our Key Commitments to Consumers**

1. Consumers will enjoy open, honest and fair dealings with their Supplier, and have their privacy protected.
2. Consumers will receive clear, accurate and relevant information on products and services from their Supplier; before, during and, where appropriate, after the point of sale.
3. Consumers will have disputes resolved quickly and fairly by their Supplier.
4. Promotion of products and services by Suppliers will be clear, accurate and not misleading.
5. Disadvantaged and vulnerable consumers will be assisted and protected by appropriate Supplier policies and practices.
6. Consumers will receive an effective remedy from any Supplier who breaches the Code.
7. Suppliers will use monitoring and reporting tools to ensure successful implementation of the Code.

### **Culture**

Suppliers will promote a culture of compliance with the above key commitments and all requirements of this Code. They will foster commitment to Customer Service transparency in their organisations, and abide by their commitments to Consumers.

## **Summary of Chapters**

The chapters in the Code are summarised as follows:

### General Rules

*This chapter sets out the general rules which apply to each of chapters 4 to 9 of the Code, including training and language requirements.*

### Consumer Sales, Service and Contracts

*This chapter sets out what Suppliers must do for Consumers in relation to retail sales and service, including the provision of information, advertising, selling practices, contracting, assisting Consumers with different needs, and customer service.*

### Billing

*This chapter sets out what Suppliers must do in relation to Billing and providing information about Bills and Charges to Customers arising out of the supply of Telecommunications Products.*

### Credit and Debt Management

*This chapter sets out what Consumers are entitled to from Suppliers, and what Suppliers must do, in relation to the provision and management of credit in connection with the supply of Telecommunications Products, including the denial and restriction of access to Telecommunications Services for credit-related reasons. Rules on credit management under Financial Hardship arrangements are set out in the chapter on Financial Hardship.*

### Financial Hardship

*This chapter sets out what Suppliers must do in relation to the creation and application of a Financial Hardship Policy. It also sets out Suppliers' obligations regarding credit management during discussion and application of Financial Hardship arrangements.*

### Complaint Handling

*Complaint Handling was previously addressed in the TCP Code. This version of the TCP Code has been revised to align with the ACMA's Telecommunications (Consumer Complaints Handling) Industry Standard 2018.*

*As of the date of registration of this version of the TCP Code, all Complaints must be dealt with under the ACMA's Industry Standard.*

### Changing Suppliers

*This chapter sets out Consumer rights and Supplier obligations when Consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier. It also sets out Suppliers' obligations to Customers when a transfer of a Customer's Telecommunications Service arises as a result of the sale of a Supplier's business, a Supplier's change in wholesale network provider, or a corporate reorganisation of the Supplier.*

### Code Compliance and Monitoring

*This chapter sets out the compliance and monitoring arrangements that apply to this Code and requires Suppliers to implement a Code Compliance Framework which will:*

- *encourage, monitor and enhance industry compliance with this Code;*

- *improve the levels of customer service and consumer protection enjoyed by users of Telecommunications Products in Australia;*
- *improve self-regulation by Suppliers;*
- *enhance transparency regarding compliance with this Code; and*
- *provide Consumer confidence in the self-regulatory regime of which this Code forms a part and in the telecommunications industry's compliance with the Code.*

## **Code Revision**

The Code replaces Code C628:2015 Incorporating Variation No.1/2017. The Code is the result of a revision project undertaken by Communications Alliance's Working Committee WC84 chaired by Ms Fay Holthuyzen and comprised of industry, consumer, regulator, and government representatives. The scope of the revisions was revising all chapters and appendices, excepting Chapter 9, to improve readability, align with current regulations and technology, and reflect consumer needs.

### Code Revision History

Code C628:2015, which replaced Code C628:2012, revised the Code's customer information provisions and removed duplicated Code rules that already exist in legislation in accordance with the ACMA's and Communications Alliance's Customer Information Provisions Policy Framework May 2014.

In 2016, C628:2015 was varied to reflect a review and replacement of Chapter 9 – Code Compliance Monitoring, and in 2017 C628:2015 underwent a minor variation to reference assistance for victims of domestic or family violence in Chapter 2, Definitions and Interpretation and Chapter 6, Credit and Debt Management.

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# 1 GENERAL

## 1.1 Introduction

- 1.1.1 Section 112 of the Telecommunications Act 1997(Cth) (Act) sets out the intention of the Commonwealth Parliament that bodies and associations representing sections of the telecommunications industry develop industry codes relating to the telecommunications activities of participants in those sections of the industry.
- 1.1.2 The Code replaces TCP Code C628:2015 Incorporating Variation No.1/2017, with effect from the date of registration by the ACMA.

## 1.2 Relevant Documents

- 1.2.1 The Code should be read in the context of other relevant Communications Alliance Codes and their guidelines.
- 1.2.2 The Code should be read in conjunction with related legislation, regulations, standards, determinations, codes, ACCC guides and guidelines, ACMA fact sheets, and Communications Alliance guidance notes and guidelines, including:
- a) the Act;
  - b) the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth);
  - c) the Competition and Consumer Act 2010 (Cth) including the Australian Consumer Law;
  - d) the Disability Discrimination Act 1992 (Cth);
  - e) the Racial Discrimination Act 1975 (Cth);
  - f) any other relevant equal opportunity legislation;
  - g) the Privacy Act 1988 (Cth);
  - h) the Spam Act 2003 (Cth);
  - i) the Do Not Call Register Act 2006 (Cth);
  - j) the Communications Alliance Guidelines on Developing Accessible Documents;
  - k) the Communications Alliance NBN Migration Management Industry Guideline (G652:2016);
  - l) the Communications Alliance Industry Guidance Note on Sales Practices and Credit and Debt Management (IGN 013);
  - m) the Communications Alliance Industry Guidance Note on Domestic and Family Violence [*in process*];
  - n) [*Industry Guidance Note on Assisting Vulnerable Customers to be written and published prior to publication of this revised TCP Code and referenced here*]; and
  - o) the Communications Alliance Customer Authorisation Guideline (G651:2017).

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

### 1.3 **Registration with ACMA**

The Code is to be submitted to the Australian Communications and Media Authority (ACMA) for registration pursuant to section 117 of the Act.

### 1.4 **Scope**

- 1.4.1 The Code applies to the Carriage Service Providers section of the telecommunications industry under section 110 of the Act.
- 1.4.2 It deals with the following telecommunications activities as defined in section 109 of the Act:
  - a) carrying on business as a Carriage Service Provider; and
  - b) supplying goods or services for use in connection with the supply of a Listed Carriage Service.
- 1.4.3 The Code applies to Carriage Service Providers in respect of their relationship with Consumers only.
- 1.4.4 The Code does not apply to matters covered by codes or standards registered or determined under the Broadcasting Services Act 1992 (Cth) as required by section 116 of that Act.

### 1.5 **Compliance with the Code**

- 1.5.1 Suppliers are deemed to comply with the Code if they:
  - a) achieve the outcomes and actions formulated throughout chapters 4 to 9; and
  - b) comply with the rules in chapter 3.
- 1.5.2 "Guidance" boxes contained in the Code do not form part of the Code, are for the purposes of guidance only, and do not constitute legal advice. Compliance with guidance in the Code does not guarantee compliance with the relevant clause of the Code or the corresponding provision of legislation or requirement of a Regulator.

### 1.6 **Commencement date**

The Code will commence on the day of registration with the ACMA.

## 1.7 Code review

The Code will be reviewed every 5 years subsequent to registration, or earlier in the event of significant developments that impact on the Code or a chapter within the Code.

## 1.8 Power of the TIO to handle complaints under the Code

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.

## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

For the purposes of this Code:

**ACCAN**

means the Australian Communications Consumer Action Network.

**ACCC**

means the Australian Competition and Consumer Commission.

**ACMA**

means the Australian Communications and Media Authority.

**Act**

means the *Telecommunications Act 1997* (Cth).

**Action Plan**

means a plan submitted to Communications Compliance by a Supplier pursuant to clause 10.6.

**Advertising**

means marketing and promotional material (including electronic and online material) in relation to a Supplier's Telecommunications Products.

**Advocate**

means a person nominated by a Consumer to deal with a Supplier on the Consumer's behalf in accordance with clause 3.5.

**ASIC**

means the Australian Securities and Investments Commission.

**Attestation Deferral Notice**

means a notice given by a Supplier under clause 10.8.1, in the form required by Communications Compliance, to defer the date by which it is required to provide the statements prescribed in clause 10.4.1.

**Australian Consumer Law**

means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Authorised Representative**

means the person who has authority from a Consumer to deal with a Supplier on behalf of that Consumer as their authorised agent in accordance with clause 3.4.

**Bill**

means an invoice from a Supplier which advises a Customer of the total of each Billed Charge.

**Bill Media**

means the method in which a Bill is communicated or delivered to the Customer, and its format.

**Billed Charge**

means a Charge that is due for payment by a Customer in respect of Telecommunications Products provided by a Supplier.

**Billing**

means any one, or a combination of, the following activities:

- a) calculating and assembling Charges incurred by a Customer during a Billing Period;
- b) applying any debits or credits outstanding or Discounts due against the Charges, and calculating the net amount payable by the Customer;
- c) issuing and delivering Bills to the Billing Address;
- d) handling Billing Enquiries; and
- e) receiving and receipting payments made by the Customer.

**Billing Accuracy**

means the validity of Charges and the correctness of the calculation of the Charges.

**Billing Address**

means the Customer's nominated electronic, physical, or postal address to which a Bill is sent.

**Billing Complaint**

means a Complaint made to a Supplier by a Customer about any aspect of the Customer's Bill or the Supplier's Billing.

**Billing Enquiry**

means a request to a Supplier by a Consumer for relevant information about a Bill, or Billing generally.

**Billing Name**

means the name of the Customer to whom the Bill is issued and delivered.

**Billing Option**

means a Billing related option offered by the Supplier that the Consumer may choose or nominate.

**Billing Period**

means a period of time in relation to which Billed Charges relate.

**Carriage Service Provider**

has the meaning given in the Act. Also referred to as CSP in the Code.

**Carrier**

has the meaning given in the Act.

**Charge**

means the tariff or fee which a Supplier levies for the provision of a Telecommunications Product or a related transaction.

**Code Compliance Framework**

means the framework for industry compliance with the Code which is described in Chapter 10 of this Code.

**Communications Compliance**

means the independent body which monitors and reports on Code compliance, the role of which is set out in Appendix 1 to this Code.

**Competition and Consumer Act**

means the *Competition and Consumer Act 2010* (Cth).

**Complaint**

means an expression of dissatisfaction made to a CSP by a Consumer in relation to its telecommunications products or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected by the Consumer.

It does not include an initial call to request information or support or to report a fault or service difficulty unless a Consumer advises that they want that call treated as a Complaint, and does not include an issue that is the subject of legal action.

**Compliance Achievement Plan**

means a plan submitted to Communications Compliance by a Supplier pursuant to clause 10.5.

**Compliance Attestation**

means a statement by a Supplier, attested in the manner required by clause 10.4.1 and addressing the matters referred to in clause 10.4.1.

**Compliance Monitoring Request**

means a request from Communications Compliance to a Supplier for information relating to that Supplier's compliance with this Code.

**Compliance Plan**

means documentation prepared by a Supplier in accordance with clause 10.3.1.

**Compliance Standard**

means the Australian Standard *AS ISO 19600:2015 Compliance management systems – Guidelines*.

### **Consumer**

means:

- a) an individual who acquires or may acquire a Telecommunications Product for the primary purpose of personal or domestic use and not for resale; or
- b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:
  - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract; and
  - (ii) has or will have an annual spend with the Supplier which is, or is estimated on reasonable grounds by the Supplier to be, no greater than \$20,000.

A reference to a Consumer includes a reference to the Consumer's Authorised Representative.

A reference to a Consumer includes a reference to a Customer.

### **Corporate Reorganisation**

means a reorganisation of the corporate group of which the Supplier is a part with the result that a Customer will be provided with Telecommunications Services by another Supplier after that reorganisation is complete.

### **Credit Assessment**

means the process by which a Supplier determines the level of credit to be provided by it (if any) to a Consumer.

### **Credit Management**

means the process by which a Supplier:

- a) helps Customers to manage their expenditure on Telecommunications Services;
- b) manages any credit risk to the Supplier; and
- c) collects outstanding debts from Customers, and former Customers.

### **Credit Reporting Body**

has the meaning given in the Privacy Act.

### **Customer**

means a Consumer who has entered into a Customer Contract with a Supplier.

A reference to a Customer includes a reference to the Customer's Authorised Representative.

### **Customer Contract**

means an arrangement or agreement between a Supplier and a Consumer for the supply of a Telecommunications Product to that Consumer. For the avoidance of doubt, unless stated otherwise, the Standard Form Customer Contract is a Customer Contract.

**Customer Service**

means services, other than Telecommunications Services, provided by a Supplier to a Customer, in connection with the Customer's use of the Supplier's Telecommunications Products and the Customer's Customer Contract with the Supplier.

**Data**

means the component of a Carriage Service that provides access to online services such as: e-mail, web pages, media (e.g. audio and video), social networks and app downloads and updates.

**Direct Debit**

means a periodic payment that is automatically deducted by a Supplier from a Customer's nominated financial institution account, implemented by the Supplier at the Customer's request.

**Disconnection**

means the termination by a Supplier of a Customer Contract for a Telecommunications Service.

**Discount**

means a reduction in the Charge which is usually levied by a Supplier.

**Emergency Service Number**

has the meaning given by section 3.24 of the Telecommunications Numbering Plan 1997.

**External Qualified Assessor**

means an assessor who:

- f) is external to, and independent of, the Supplier;
- g) is not with the Supplier's Immediate Circle;
- h) in that Supplier's opinion, has suitable qualifications to assess that the Supplier's Compliance Plan has been prepared in accordance with principles and guidance outlined in the Compliance Standard;
- i) is a member of a professional organisation such as a professional auditing or compliance body; and
- j) has been contracted by the Supplier to perform the role of External Qualified Assessor.

**Financial Hardship**

means a situation where:

- a) a) a Customer is unable to discharge the financial obligations owed by the Customer under their Customer Contract or otherwise discharge the financial obligations owed by the Customer to a Supplier, due to illness, unemployment, being the victim of domestic or family violence, or other reasonable temporary or ongoing cause; and
- b) the Customer believes that they are able to discharge those obligations if the relevant payment arrangements or other arrangements relating to the supply of Telecommunications Products by the Supplier to the Customer are changed.

**First Compliance Attestation**

means the Compliance Attestation first provided by a Supplier in accordance with clause 10.4.1 of this Code or of any prior editions of this Code.

**Force Majeure**

means an unforeseen or uncontrollable force or event, such as fire, flood, earthquake, storm or other disturbance, whether caused by the elements, an act of God, war, strike, lockout, riot, explosion, insurrection, governmental action or another event of the same kind, which is not reasonably within the control of a party.

**Fraud**

means dishonestly accessing or using any Telecommunications Products of a Supplier, or attempting to do so, with the intent of securing unlawful gain or advantage by:

- a) deceiving the Supplier, any other Supplier, or any other person; or
- b) not paying for the relevant Telecommunications Products.

**Gaining Supplier**

means the Supplier to whom a Telecommunications Service is to be Transferred.

**Guarantee**

means a guarantee of a Customer's obligations under a Customer Contract.

**Guarantor**

means an individual or company who guarantees a Customer's obligations under a Customer Contract.

**Hard Cap**

means a maximum amount applied to a Customer's use of Telecommunications Services, which cannot be exceeded.

**Immediate Circle**

has the meaning given in the Act.

**Included Value Plan**

means a mobile Post-Paid Service plan under which the Customer receives a larger amount of monthly included value than the minimum monthly Charge they pay (e.g. for \$50 per month, receive \$500 included value), to use on a combination of eligible services across Standard National Mobile Calls, Standard National Mobile SMS and national Data usage, and the use of any of these three eligible services is not unlimited.

**Itemised**

means the detail(s) provided in relation to a particular Billed Charge.

**Itemised Billing**

means the provision of a Bill that includes details for each Billed Charge.

**Large Supplier**

means a Supplier with 100,000 or more services in operation.

**Listed Carriage Service**

has the meaning given in the Act.

**Material Change**

means a significant change to any of the following:

- a) a Supplier's operations arising from new or changed activities or services, which change affects a Supplier's compliance with this Code;
- b) a Supplier's systems and processes relevant to the Supplier's Compliance Plan; or
- c) a Supplier's compliance obligations under this Code, which change results in the need to review and update the Supplier's Compliance Plan.

**Metrics**

means performance measures relating to certain obligations of Suppliers under this Code, as required by Communications Compliance from time to time.

**Offer**

means a current, standard in-market plan containing pricing that is made by a Supplier for the provision of Telecommunications Products, which is available to any individual Consumer or Consumers as a class and includes, without limitation such offers made in Advertising.

**Partial Confirmation**

has the meaning given in clause 10.4.1b)(ii)B or 10.4.1b)(iii)B (as the case may be).

**Personal Information**

has the meaning given to it in the *Privacy Act*.

**Post-Paid Service**

means a Telecommunications Product that can be used fully or in part prior to being paid for by the Consumer including month to month plans.

**Pre-Paid Service**

means a Telecommunications Product that must be paid for by the Consumer before it is used.

**Priority Assistance**

has the meaning given in the *Priority Assistance for Life Threatening Medical Conditions Code (C609:2007)*.

**Priority Assistance Customer**

means a Customer receiving Priority Assistance.

**Privacy Act**

means the *Privacy Act 1988 (Cth)*.

**Prominently Displayed**

means conspicuously presented in clear font and in a prominent and visible position that is appropriate for the Advertising medium in the main body of the Advertising.

**Regulator**

means any of the ACCC, ACMA, ASIC and any government body in any State or Territory responsible for the administration of all or part of the legislation referred to in clause 1.2.2.

**Residential Customer**

means a Customer that is an individual who acquires a Telecommunications Product for the primary purpose of personal or domestic use and not for resale under the standard terms and pricing for residential, non-business customers set out in the Supplier's Standard Form of Agreement.

**Resolve**

when used in connection with a Complaint, means the bringing of that Complaint to a conclusion in accordance with the requirements of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018.

**Restriction**

means where access to one or more of a Supplier's available Telecommunications Products or an aspect of those Telecommunications Products is limited.

**Restriction Point**

means the point at which a Restriction is to occur.

**Retail Outlet**

means a retail premises that sells various goods and services in addition to Telecommunications Products.

***Rights Of Use Holder***

has the meaning given in the *Rights of Use of Numbers Code (C566:2005)*, or the equivalent Number Management Rules Part 1 – Use of Numbers by Customers, as part of an industry managed numbering scheme.

***Rules***

means the Supplier-specific obligations under this Code, which are in chapters 3 to 10.

***Sales Representative***

means a person employed or contracted, directly or indirectly, by a Supplier (including staff employed by a third party call centre to sell a Supplier's Telecommunications Products on behalf of that Supplier) to sell, offer to sell, or otherwise promote, Telecommunications Products to Consumers as all or a substantial part of their role, other than a person who undertakes and completes a transaction for a Pre-paid Service for a Consumer at a cash register in a Retail Outlet.

***Security Deposit***

means a sum of money paid by a Customer to a Supplier and which is held by the Supplier for the purpose of securing the Customer's payment of Charges.

***Shaping***

means where a Supplier deliberately controls the maximum Data transfer rate on a broadband service when the Customer has exceeded the specified Data allowance.

***Small Online Advertising***

means online strip, banner or tile Advertising or the equivalent.

***Small Supplier***

means a Supplier with fewer than 3,000 services in operation.

***Special Promotion***

means an offer of limited duration, limited quantity or offered to a limited sub-set of Consumers, (for example, a once-off promotion for members of a local gym or a special discount for the staff of a business customer of a Supplier), such as Discounts off Telecommunications Goods or components of Telecommunications Services.

***Spend Management Tools***

means a tool available to a Customer or applied by a Supplier to assist the Customer to take timely action to limit and/or manage their expenditure or usage allowance on a particular Telecommunications Product.

***Standard Form Customer Contract***

means the Supplier's current Standard Form of Agreement for contracting with Consumers.

***Standard Form of Agreement***

has the meaning given in the Act.

**Standard National Mobile Call**

means a mobile voice telephone call from a Supplier's mobile service to another Supplier's mobile service (off-net) during peak time where the calling and receiving parties are in Australia.

**Standard National Mobile SMS**

means a mobile short message containing a maximum of 160 characters from a Supplier's mobile service to another Supplier's mobile service (off-net) during peak-time where the sending and receiving parties are in Australia.

**Standard Telephone Service**

has the meaning given to it in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**Statement of Independent Assessment**

means a written statement by an External Qualified Assessor prepared in accordance with the requirements in clause 10.4.1.

**Substantiate**

means to provide the ACMA with information to support claims or representations made by a Supplier in Advertising.

**Supplier**

means a Carriage Service Provider.

**Suspension**

means the prevention of access to a Telecommunications Service, except to Emergency Service Numbers, by the Supplier.

**Telecommunications Goods**

means any goods supplied by a Supplier for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service.

**Telecommunications Product**

means Telecommunications Goods and/or a Telecommunications Service.

**Telecommunications Service**

means:

- a) a) a Listed Carriage Service or any service supplied by a Supplier in connection with that service; and
- b) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) provided by the Supplier in connection with the supply of a Listed Carriage Service.

### **Text Advertising**

means

- c) Supplier-placed advertisements in newspapers, magazines and press inserts and Supplier-generated flyers, leaflets, brochures and catalogues.
- d) Supplier-placed outdoor static large format advertising, including advertisements displayed upon:
  - e) public transport panels (e.g. buses, trains and trams);
  - f) outdoor street furniture; and
  - g) billboards;
- h) online advertisements on a Supplier's own website and Supplier-placed advertising on other online sites, other than Small Online Advertising.

### **Third Party Charges**

means Charges collected by a Supplier on behalf of another commercial entity, for any goods and services provided by that other commercial entity.

### **Timed Call**

means a call for which a Charge is calculated according to the duration of the call.

### **TIO**

means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme referred to in the Act.

### **Transfer**

means the transfer of all or part of a Consumer's Telecommunications Service from one Supplier to the Gaining Supplier.

### **Unbilled Charges**

means Charges relating to a Telecommunications Product which have been incurred by a Customer and of which the Supplier is aware, but which the Supplier has not yet included in a Bill.

### **Unfair**

has the meaning given to it in the Competition and Consumer Act.

### **Untimed Call**

means a call where the applicable Charge is not calculated according to the duration of the call.

### **Verification**

means the process performed by a proposed Gaining Supplier prior to effecting a Transfer, pursuant to which such Gaining Supplier enlists a person or procedure (independent of the Sales Representative who procured the Transfer) to confirm with the Consumer the Consumer's request to Transfer.

### **Working Day**

means a day that is not a Saturday, Sunday or gazetted public holiday in the location of the relevant Supplier.

## **2.2 Interpretation**

In the 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) mentioning anything after include, includes or including does not limit what else might be included;
- g) words and expressions which are not defined have the meanings given to them in the Act; and
- h) a reference to a person includes a reference to the person's executors, administrators, successors, agents, assignees and novatees.

### **3 GENERAL RULES**

This chapter sets out the general rules with which Suppliers must comply, and must be applied across all following chapters of this Code.

#### **3.1 Language**

- 3.1.1 A Supplier must communicate with Consumers in plain language; and
- 3.1.2 A Supplier must make reasonable information available to Consumers in all languages used by the Supplier in its advertising, and must assist Consumers to obtain help in those language(s).
- 3.1.3 A Supplier must provide reasonable assistance to Consumers to obtain help in languages other than English when needed.

#### **3.2 Information for Consumers**

- 3.2.1 A Supplier must ensure that any information provided or made available to Consumers is clear, accurate, free of material omissions, relevant, current, readily accessible, and, in cases where information is provided, timely.
- 3.2.2 A Supplier must ensure that its representatives who manage enquiries for Consumers are able to communicate effectively with Consumers in the Supplier's primary language of operation.
- 3.2.3 A Supplier must communicate with a Consumer in a way that is appropriate to the Consumer's communications needs, including those with special needs.
- 3.2.4 A Supplier must ensure that Consumers can view and download all relevant terms and conditions of its Telecommunications Products from a website.
- 3.2.5 A Supplier must have regard to its web content complying with the most recent version of the *Web Content Accessibility Guidelines*, developed by the World Wide Web Consortium (W3C).

#### **3.3 Application of the Code and Training**

- 3.3.1 A Supplier must have systems and processes to support Code obligations where relevant.
- 3.3.2 A Supplier must ensure that its staff and Sales Representatives interact with Consumers courteously and in a fair and accurate manner.
- 3.3.3 A Supplier must ensure staff are adequately trained in relation to Code obligations related to their roles, and in the use of systems and processes that support Code obligations.
- 3.3.4 A Supplier must ensure appropriate action is taken against its staff who are rude or harassing to, or engage in misleading conduct with, Consumers.

- 3.3.5 A Supplier must regularly review the training, systems and processes available to staff in relation to their roles to ensure it meets its obligations under the Code.

### 3.4 Authorised Representatives

- 3.4.1 An Authorised Representative is a person who has the authority to discuss or make changes to a Customer's account without that Customer being present.
- 3.4.2 A Supplier must ensure that a Consumer can appoint an Authorised Representative to act on their behalf, if the Consumer requires, and must:
- a) **Authority:** ensure it obtains the Customer's authority or the appropriate other authority such as a letter of authorisation, copy of the relevant power of attorney or other form of authorisation as may be required by the Supplier, before accepting a person as the Authorised Representative for a Customer;
  - b) **Advice regarding power to act:** advise the Consumer that a person appointed as an Authorised Representative has the power to act on the Consumer's behalf as if they are the Consumer or, if the Authorised Representative has more limited rights, the level of access that the Authorised Representative has to the Customer's information;
  - c) **Record keeping:** keep a record of the circumstances and when the Authorised Representative was appointed;
  - d) **Assistance:** provide Consumers with access to information about how to appoint an Authorised Representative and access to any relevant forms required to evidence the appropriate authority;
  - e) **Acknowledgement:** keep records of notification(s) to the Supplier of a relevant change in circumstance for a Customer, including the death of a Customer or the making of a guardianship order for a Customer; and
  - f) **Balance risks:** take reasonable steps to balance the risks of fraud, privacy and security of Customers with facilitating the appointment of Authorised Representatives.

### 3.5 Advocates

- 3.5.1 An Advocate is a person who cannot make changes on a Consumer's behalf without the Consumer being present and agreeing to such action.
- 3.5.2 A Supplier must ensure that a Consumer can easily use an Advocate to communicate with the Supplier, if the Consumer requires.
- 3.5.3 A Supplier must advise the Consumer that a person acting as their Advocate has no power to act on the Consumer's behalf and has no access to their information without the Consumer being present and agreeing to such action.

- 3.5.4 A Supplier may presume that an Advocate is not authorised to establish or make changes to a Customer's account or Telecommunications Services, unless the Advocate is also the Customer's Authorised Representative.

**Guidance**

Further information on Authorised Representatives and Advocates can be found in [Industry Guidance Note on Assisting Vulnerable Customers to be drafted].

## 4 CONSUMER SALES, SERVICE AND CONTRACTS

### Summary

This chapter sets out what Suppliers must do for Consumers in relation to retail sales and service, including regarding the provision of information, advertising, selling practices, contracting, dealing with Consumers with different needs and customer service, to allow Consumers to make informed choices.

### General Rules

The general rules in chapter 3 apply in addition to the Rules in this chapter.

### 4.1 Critical Information Summary

This rule (except the rule in clause 4.1.9) applies only in respect of Offers first made available by Suppliers on or after the date of registration of the Code. Offers first made available by Suppliers before the date of registration of the Code must comply with the rule in clause 4.1.9.

- 4.1.1 A Supplier must provide a summary of each of its current Offers called a "Critical Information Summary" (CIS) free of charge to allow Consumers to compare Offers provided by each Supplier which best suit their needs.
- 4.1.2 **Content:** A Supplier must ensure the CIS includes the following information:
- a) at the beginning of the CIS, a section under which the following information is included where applicable:
    - (i) a description of the Telecommunications Service to be provided under the Offer, including inclusions;
    - (ii) the minimum monthly Charge payable under the Offer (where calculable);
    - (iii) the maximum monthly Charge payable (where calculable);
    - (iv) the maximum Charge payable for early termination of the Offer; and
    - (v) the minimum term applicable in respect of the Telecommunications Product set out in the Offer.
  - b) in the remainder of the CIS:
    - (i) whether the Offer depends on a bundling arrangement with other Telecommunications Services and, if so, a description of those other Services;
    - (ii) whether there is any Telecommunications Good that the Customer must take as a mandatory component of the Offer, (so the Consumer has no choice as to that Telecommunications Good), what the mandatory Telecommunications Good is and if the Charge for the mandatory Telecommunications Good is not already built into the Offer pricing disclosed in the summary of Offer, then the separate Charge for this mandatory Telecommunications Good;

- (iii) for broadband services where the Telecommunications (NBN Consumer Information) Industry Standard 2018 does not apply, a link to the Communications Alliance Broadband Education Package;
- (iv) where applicable, the exclusions and any important conditions, limitations, restrictions or qualifications for that Offer, such as mobile Data auto top-ups;
- (v) where applicable, information sufficient for a Customer to determine the approximate early termination fee applicable at any time during the minimum term;
- (vi) where the Offer is not unlimited, the cost (prior to any Discounts being applied) of making a 2 minute Standard National Mobile Call (including flagfall where applicable);
- (vii) where the Offer is not unlimited, the cost (prior to any Discounts being applied) of sending a Standard National Mobile SMS;
- (viii) where the Offer is not unlimited, the cost (prior to any Discounts being applied) of using one megabyte of Data within Australia;
- (ix) a link to the area on the Supplier's website where the Customer can obtain call and Data usage information or instructions on where the Customer can obtain call and Data usage information;
- (x) warnings about roaming costs (both international costs and the circumstances in which additional Charges may be imposed in Australia when the service roams onto a different network);
- (xi) customer service contact details;
- (xii) information about how to access internal dispute resolution processes; and
- (xiii) contact details for the Telecommunications Industry Ombudsman.

#### 4.1.3 **Format:**

- a) **Clear headings:** A Supplier must ensure that information contained in the CIS of each Offer uses clear headings to identify the content contained in each section.
- b) **Length:** A Supplier must ensure that each CIS is available to a Consumer as a standalone document and is no longer than:
  - (i) two A4 pages when all its mandatory contents are included for a single Offer, or
  - (ii) the Supplier may choose to combine multiple Offers to be made available to a Consumer into a single CIS, in which case a Supplier must ensure that the CIS is no longer than it would be if a CIS was provided for each Offer in the bundled Offer.

#### **Guidance**

For avoidance of doubt, where a Supplier has multiple products in an Offer and is bundling multiple Offers as part of a bundled package the Supplier may choose to supply a separate CIS for each Offer in the bundled package, or a combined CIS as provided for by 4.1.3 b) (ii).

- 4.1.4 **Separate document:** For the avoidance of doubt,
- a) a CIS must be a separate document to the full contractual terms and conditions; and
  - b) may include other information as the Supplier determines is appropriate.
- 4.1.5 **Special Promotions:** A Supplier must supply a CIS for the underlying Offer on which the Special Promotion is based, noting that the Supplier is not required to provide details of the differences between the underlying Offer and the Special Promotion in that CIS of the Offer.
- 4.1.6 **Accessibility (current Offers):** A Supplier must ensure that the CIS of each of the Supplier's current Offers is:
- a) readily accessible on the Supplier's website (including without limitation, a CIS for each of the Supplier's current Offers for Pre-Paid Services);
  - b) included as a link to the CIS of the Offer where the Supplier advertises the Offer on the Supplier's website (other than online banner, tile, strip and pop-up Advertising where the link is not required); and
- 4.1.7 **Accessibility (historical Offers):** A Supplier must ensure that the CIS of any Offer in respect of a Telecommunications Product which continues to be supplied to Customers (but is no longer offered to new Customers) remains available on request to Customers who are being supplied the Telecommunications Product.
- 4.1.8 **Provision prior to sale:** A Supplier must provide the CIS for Post-Paid Services to a Consumer prior to sale except:
- a) **Unsolicited consumer agreement:** where the sale falls within the scope of an unsolicited consumer agreement under the Australian Consumer Law and as a result the Consumer is entitled to a cooling off period, a Supplier must provide the Consumer with a copy of the relevant CIS after the sale at the same time as the relevant unsolicited consumer agreement and cancellation notice required by the Australian Consumer Law; or
  - b) **Other agreement via phone:** where the sale is carried out over the telephone and is not treated as an unsolicited consumer agreement under the Australian Consumer Law, the Consumer may agree to opt out of their right to receive all information contained in the CIS prior to sale. In this case, a Supplier must:
    - (i) give the Consumer a general overview of the CIS prior to or at the point of sale and dispatch a copy of the CIS to the Consumer within 5 Working Days after the sale; and
    - (ii) not engage in practices that would encourage Consumers to opt out of receiving the CIS prior to the sale.

**Guidance**

A Supplier will not be regarded as having encouraged Consumers to opt out of receiving a CIS prior to the sale merely by informing them of their right to do so.

4.1.9 **Summary of Offers made available before this Code:** Offers first made available by Suppliers before the date of registration of the Code must comply with the rule in clause 4.1.1 of the Telecommunications Consumer Protections Code C628:2015.

## 4.2 Other relevant information

4.2.1 A Supplier must make available other relevant information about Telecommunications Products currently offered by the Supplier beyond that which is covered in the summary of each Offer, to assist Consumers to assess those Telecommunications Products compared with other Telecommunications Products that the Consumer is investigating. A Supplier must make available the following information without charge to enable this outcome:

- a) **Product description:** a description of the key attributes of the Telecommunications Products offered by the Supplier;
- b) **Manufacturer:** the manufacturer's name for non-Supplier branded Telecommunications Goods supplied by a third party as part of the Supplier's Offers;
- c) **Technical information:** the main features for any Telecommunications Goods forming part of a Supplier's Offers or where this information can be obtained by the Consumer;
- d) **Billing and payments:** information on the Supplier's Bill formats, Billing Options, Billing Period and payments offered by the Supplier in relation to its Telecommunications Products;
- e) **Usage:** information to assist Consumers to estimate what capacity they may need on a Telecommunications Product to meet their usage requirements;
- f) **Post-sales support:** details of any post-sales support for the Telecommunications Products and any fees or charges for post-sales support;
- g) **Mobile coverage:** the network coverage in Australia for the Telecommunications Services, which may include a map or diagram of the mobile coverage;
- h) **International Roaming:** information about whether a Consumer needs to take any action to activate international roaming on the Supplier's Telecommunications Product (such as applying for activation of this functionality with the Supplier) or deactivate international roaming and the basic Charges to send SMS, make and receive standard calls and for Data usage on the Supplier's Telecommunications Product from different countries (including that roaming Charges may be higher than Charges for international calls from Australia and Data usage may be more expensive, and that Customers may be charged for both making and receiving calls while overseas); and
- i) **Mobile Virtual Network Operators:** if a Supplier does not own the mobile network(s) over which they are supplying a mobile Telecommunications Service, the name of the principal Carrier(s) whose network(s) is/are used to provide the mobile Telecommunications Services (but ensuring it is clear to the Consumer that the Supplier is responsible for the service to the Consumer and is not affiliated or related to the principal Carrier(s) unless it in fact is).

**Guidance**

Suppliers may wish to reference the *Customer Information Provision Policy Framework*, available on the Communications Alliance website, to consider the most appropriate methods and formats to provide the information identified in clause 4.2.

Appropriate formats to provide the information under clause 4.2 may include:

- verbally;
- in writing;
- prominently displaying the information at your premises and drawing the Customer's attention to it; or
- electronically.

Where appropriate, you may also provide information to that Customer's Authorised Representative.

### 4.3 Remedies for inaccurate information

- 4.3.1 Where inaccurate information has been provided by a Supplier to a Customer regarding an Offer and the Customer has relied on it in making a purchasing decision to sign up to that Offer with the Supplier, the Supplier must:
- a) **Remedies:** attempt to resolve Complaints about inaccurate information by providing the Customer with the correct information and a remedy that is appropriate in the circumstances for that individual Customer, which may include a right for the Customer to terminate the Customer Contract or provide a refund or equivalent service;
  - b) **Updating:** take reasonable steps to update inaccurate information provided by the Supplier to Customers as soon as practicable; and
  - c) **Continuous improvement:** monitor Complaints about inaccurate information and take steps to address any material issues regarding inaccurate information.

**Guidance**

As stated in clause 1.2.2, this Code should be read in conjunction with related documents including the Competition and Consumer Act, in particular the Australian Consumer Law contained in Schedule 2. The Competition and consumer Act and Australian Consumer Law applies irrespective of this Code.

Suppliers may wish to refer to the Australian Consumer Law, specifically Chapter 3, Part 3-1, Division 1 and Chapter 5, Part 5-2, for additional information relevant to clause 4.3.

This in no way implies a direct correlation between these two clauses, or that the referred parts of the Australian Consumer Law are the only relevant external obligations.

#### 4.4 Information to recontracting Customers

At the time of recontracting, the Supplier must inform the Customer of features available on new plans that may not be available on their existing plan, including spend management notifications.

#### 4.5 Advertising

- 4.5.1 **Content of Advertising:** A Supplier must include any important conditions, limitations, qualifications or restrictions about an Offer in its Advertising of the Offer, to allow Consumers to make informed choices and to avoid Consumers being misled.
- 4.5.2 **Proscribed content:** A Supplier must not engage in the following practices:
- a) **Headline representations:** use headline representations as to a price or offer in circumstances where the overall impression of the price or offer is subsequently qualified by fine print terms and conditions that make it unlikely or impossible that a Consumer, by the ordinary use of their service, could reasonably achieve the benefits offered in the headline representation;
  - b) **Unlimited:** use the term 'unlimited' or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;
  - c) **No exceptions, exclusions or catches:** use the terms 'no exceptions', 'no exclusions' or 'no catches' or equivalent terms without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer;
  - d) **Free:** use the term 'free' or an equivalent term to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;
  - e) **Price per minute:** use headline representations as to a price per minute for mobile phone calls, or calls made using phone cards, in circumstances where there is insufficient disclosure of extra charges including flag fall or call connection fees or for non-standard calls;
  - f) **Bundled products or services:** use headline representations as to price for a particular product or service, unless that product or service is available for purchase at the advertised price without being part of a bundled product or service or the advertised price is clearly identified as the price for that product or service when purchased as part of a bundled product or service;
  - g) **Offer:** use headline representations as to prices for an Offer unless any exclusions are Prominently Displayed;
  - h) **Prices for Data allowances:** use unqualified headline representations as to ongoing prices for specified Data allowances in circumstances where the price for that Data is likely to increase within a reasonable use period;

- i) **Phone cards:** use headline representations as to the minutes of call time available on phone cards unless those minutes can be achieved by Consumers with ordinary use of the card;
- j) **Network coverage:** advertise or promote network coverage unless the network coverage is generally available to Consumers in the claimed coverage area;
- k) **Full minimum quantifiable price:** advertise or promote a periodic price to be paid for a Telecommunications Product without also Prominently Displaying (but not necessarily as prominent as the periodic price) the "single price" as defined in the Competition and Consumer Act;
- l) **Cap:** use the term "cap" to advertise any new Offers launched after 1 September 2012 unless the Offers contain a Hard Cap;
- m) **Cap:** use the term "cap" to advertise Offers in existence as at 1 September 2012 in any television, radio and print advertising, provided that a Supplier can still:
  - (i) use the term "cap", or an equivalent term, to advertise existing Offers that contain a Hard Cap; and
  - (ii) refer to existing Offers that use the term "cap", or an equivalent term, by their existing name in online information, billing information, Customer Contracts, reference materials for customers, partners and staff, and one-on-one communications with Customers; and
- n) **Basis of claims:** make claims in Advertising in relation to broadband speed, network coverage and other performance characteristics of a Telecommunications Product unless the Supplier is able to Substantiate such claims.

**Guidance**

Suppliers must have regard to the Competition and Consumer Act, in particular the Australian Consumer Law contained in Schedule 2, when advertising or promoting broadband speeds or Data transfer rates on their networks.

Suppliers may also wish to refer to the ACCC's Broadband Speed Claims Industry Guidance for additional information on advertising fixed-line broadband plans.

4.5.3 **Advertising medium:** A Supplier must provide a level of detail in its Advertising which is appropriate to the manner in which the Advertising is displayed to Consumers.

A Supplier must take the following actions to enable this outcome:

- a) **Clarity:** ensure the principal message and the main terms are captured in the body of the Advertising;
- b) **Detail:** ensure that use of any disclaimers does not negate the principal message and main terms of the Advertising; and
- c) **Format:** take into account the typical amount of time that Consumers are able to view the particular Advertising in deciding how much information to include in the Advertising.

4.5.4 **Special Promotions:** A Supplier must communicate any important limitations which apply to its Special Promotions so Consumers are informed of the limitations.

A Supplier must take the following actions to enable this outcome:

- a) **Principal terms:** disclose the key terms of the Special Promotion and any key limitations, such as whether stocks are limited and the period during which a Customer will receive any associated discounts;
- b) **Timeframes:** if the Special Promotion has a set end date, the Supplier must disclose the end date for the Special Promotion; and
- c) **Eligibility:** if there are special eligibility requirements, such as provision of coupons, bundling with other products and services or restriction to a specific class of Consumers, the Supplier must disclose each requirement of the Special Promotion.

4.5.5 **Advertising for post-paid internet plans with an included Data allowance:** When advertising the price or dollar value of a Post-Paid Service which is an internet plan with an included data allowance, a Supplier must Prominently Display the cost (prior to any Discounts being applied) of using one megabyte of Data within Australia in Text Advertising, provided that if the usage is unlimited, the Supplier is not required to quote a cost for the Data usage that is unlimited.

4.5.6 **Display of standard elements in certain advertising:** For the purposes of clause 4.5.5 and notwithstanding the definition of "Prominently Displayed":

- a) **Certain text advertising:** The standard elements referred to in clause 4.5.5 will be deemed to be Prominently Displayed in a single item of Text Advertising of 8 pages or more in length, provided they appear in a clearly referenced section of that item of Text Advertising.
- b) **Small Online Advertising:** The standard elements referred to in clause 4.5.5 will be deemed to be Prominently Displayed in Small Online Advertising if the standard pricing elements described in clause 4.5.5 are displayed on the linked webpage that details plan information.

4.5.7 **Disclaimers:** A Supplier must ensure disclaimers are clear and understandable, having regard to the type of Advertising.

A Supplier must take the following actions to enable this outcome:

- a) **Effect of disclaimers:** ensure a disclaimer does not negate the principal messages of Advertising; and
- b) **Content of disclaimers:** ensure a disclaimer is clear and understandable, having regard to the type of Advertising, including the medium or format used and its intended audience.

**Guidance**

It is preferable to design advertising as clearly as possible to minimise the need for disclaimers and possible confusion.

## 4.6 Selling Practices

4.6.1 **Fair sales practices:** A Supplier must ensure its Sales Representatives promote and sell its Telecommunications Products in a fair, transparent, and accurate manner to assist Consumers in making informed purchasing decisions.

A Supplier must take the following actions to enable this outcome:

- a) **Training for Sales Representatives:** ensure its Sales Representatives are appropriately trained to promote and sell as required by 4.6.1;
- b) **Ongoing monitoring:** ensure the conduct of its Sales Representatives is monitored periodically to see how they interact with Consumers, and take steps to address emerging or systemic deficiencies in the sales conduct; and
- c) **Complaints:** monitor Complaints about the sales conduct of the Supplier's Sales Representatives and take steps to address emerging or systemic deficiencies in the sales conduct.

4.6.2 **Meeting Consumer needs:** If a Consumer identifies a particular need to a Supplier, the Supplier must indicate if it has an Offer that may suit the Consumer's identified need and if the Supplier does indicate a particular Offer that may suit the Consumer's identified need, the Supplier must provide the Consumer with information about the particular Offer, to allow the Consumer to assess the suitability of that Offer against that need.

A Supplier must take the following actions to enable this outcome:

- a) **Sales Representatives:** Ensure Sales Representatives are aware of how to understand Consumer needs and advise Consumers on the Supplier's suitable Offers;
- b) **Information:** provide standard information about Offers which can meet common needs expressed by Consumers;
- c) **Usage:** provide information that can help Consumers predict their average level of telecommunications usage and what Offers may be suitable for that level of usage; and
- d) **Different needs:** assist Consumers to find out where to access information about Telecommunication Products which may suit specific needs, such as the disclosed needs of Consumers with a disability.

## 4.7 Consumers with different needs

4.7.1 **Consumers with disabilities:** A Supplier must make information available about Telecommunications Products offered by the Supplier designed for Consumers with different disabilities and how the Telecommunications Products operate, including, where the Supplier is supplying equipment, any information required to be supplied pursuant to the *Information on Accessibility Features for Telephone Equipment* Industry Code (C625:2009) and accompanying Guideline (G627:2011).

4.7.2 **Disadvantaged or vulnerable Consumers:** A Supplier must ensure its Sales Representatives are able to interact with disadvantaged or vulnerable Consumers appropriately.

## 4.8 Customer Contracts

4.8.1 A Supplier must:

- a) **Availability:** make its Standard Form Customer Contracts available and provide a copy to the Customer upon request at no charge; and

- b) **Information on expired Offers:** retain the sections of its Standard Form Customer Contracts that contain the terms of Offers which are withdrawn by the Supplier after the date that this Code takes effect, for so long as Customers continue to receive Telecommunications Products pursuant to those Offers to enable a response to Consumer queries about Offers which are no longer current.
- c) **Customer specific information:** A Supplier must make available information about the activation and expiry date of any current Customer Contract that the Customer has with the Supplier for a Telecommunications Product upon the Customer requesting this information from the Supplier.

## 4.9 Customer Service

- 4.9.1 **Effective service:** A Supplier must ensure enquiries by Customers are dealt with by the Supplier in a timely and effective manner.

A Supplier must take the following actions to enable this outcome:

- a) **Access:** inform Customers how to contact the Supplier about Customer Service enquiries and the hours of operation of these contact methods;
- b) **Average wait times:** monitor average wait times experienced by Customers to communicate with a Supplier and provide an acknowledgement to the Customer Service enquiry within a reasonable minimum time in the circumstances;
- c) **First contact resolution:** monitor the level of first contact resolution of Customer Service enquiries, take reasonable steps to understand the root causes for why enquiries cannot be resolved at first contact, and address those root causes; and
- d) **Record keeping:** keep records of interactions between the Supplier and Customers accessible to staff tasked with responding to such Customer Service enquiries, to aid in resolving Customer Service enquiries.

- 4.9.2 **Assessing performance:**

A Supplier must:

- a) **Customer feedback:** seek and obtain feedback from Customers about how the Supplier deals with Customer enquiries; and
- b) **Improvements:** use this Customer feedback to identify any systemic issues and take reasonable steps to implement improvements to its Customer Service processes.

- 4.9.3 **Reporting:** Suppliers identified in the Telecommunications Industry Ombudsman's (TIO) Annual Report as being the 10 service providers with the largest number of phone and internet complaints during the prior TIO year (July – June) must participate in the following year's (January - December) Communications Alliance Complaints in Context Report for four quarters.

- a) **Voluntary Participation:** Any Supplier may voluntarily participate in the Complaints in Context report
  - (i) A Supplier who voluntarily participates must do so for a minimum of four consecutive quarters.

- b) **Services in Operation:** Participating Suppliers must provide Services in Operation data to Communications Alliance by the last business day of each quarter, which will:
- (i) be measured as at the end of second month of the quarter;
  - (ii) include small business customers covered by the Code but exclude all other business customers (i.e. large business customers);
  - (iii) exclude inactive, suspended and cancelled services (noting that each Service Provider may have different definitions of these);
  - (iv) exclude wholesale services;
  - (v) be reported by either at the corporate group level or for the individual Supplier (noting that each Supplier may have a different preference);
  - (vi) be calculated at service level rather than at account level;
  - (vii) exclude Pay TV services;
  - (viii) include IPTV services;
  - (ix) include M2M services of residential and small business customers included in the scope of this Code.

#### 4.9.4 **Personal information:**

This clause applies to Suppliers which are not required to comply with the Australian Privacy Principles contained in Schedule 3 to the Privacy Act, in order to align requirements across all Suppliers.

A Supplier must ensure that a Customer's or former Customer's Personal Information is protected from unauthorised use or disclosure.

A Supplier must take the following actions to enable this outcome:

- a) **Storage:** have robust procedures for storing its Customers' Personal Information in its possession which are followed by its staff;
- b) **Security:** have robust procedures to keep its Customers' Personal Information in its possession secure and restrict access to personnel who are authorised by the Supplier; and
- c) **Breach:** ensure its staff understand that they may face disciplinary action if they breach the Supplier's privacy procedures, the Privacy Act or other privacy laws.

## 5 BILLING

### Summary

*This chapter sets out what Suppliers must do in relation to Billing and providing information about Bills and Charges to Customers arising out of the supply of Telecommunications Products.*

*This chapter does not apply to the Billing of goods and services provided by a Supplier in relation to specific works and commercial arrangements that are not the Supplier's market offerings.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### 5.1 Information about charging, Bills and payment processes

- 5.1.1 **Pricing, Billing and payment terms:** A Supplier must ensure that in the Supplier's information available to a Customer that describes its Telecommunications Products, or on request consistent with clause 3.2.3, a Consumer may obtain information about its:
- a) Charges and Discounts;
  - b) various Bill Media;
  - c) any Billing Options;
  - d) Billing Period policy;
  - e) terms and conditions applicable to the Supplier's Bill, any Billing Options, its frequency and its payment; and
  - f) processes to assist Customers who are experiencing difficulties paying their Bills.
- 5.1.2 **Bill payment information:** At the time of, or before, the issue to the Customer of the first Bill by the Supplier, a Supplier must advise Customers in general terms of:
- a) the time they have to pay their Bill for Telecommunications Services;
  - b) their obligation to pay Bills for Telecommunications Services by the due date;
  - c) any processes the Supplier has for:
    - (i) interim Billing or changes in the Billing Period;
    - (ii) following up overdue Bills;
    - (iii) assisting Customers who experience difficulties paying their Bills, including where to access the Supplier's Financial Hardship policy referred to in clause 6.11;
  - d) the effect of part payment of a Bill and any method used by the Supplier for allocating amounts received; and
  - e) the fact that non-payment or repeated late payment of Bills may have an effect on the provision of current or future Telecommunications Services to the Customer.

## 5.2 Charging policies and rules, charging for Bills

Subject to the exceptions in clauses 5.2.1a) and b), a Supplier must supply its Customers with a Bill using a Bill Media that the Customer has been advised of, and must make all information about a Customer's Billing available to that Customer.

5.2.1 **Providing Bills:** A Supplier must supply a Bill to a Customer, and where applicable a former Customer for each current Billing Period, except

- a) in respect of a Pre-Paid Service; or
- b) in respect of a Post-Paid Service, where
  - (i) the Customer pays by Direct Debit; and
  - (ii) the Charges for that Billing Period are for the same fixed amount in each Billing Period; and
  - (iii) the Customer and Supplier have agreed, in the Supplier's terms and conditions for the relevant Telecommunications Product or otherwise, that, although a Charge for that fixed amount will be payable by the Customer, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount.

5.2.2 **Information required if no Bill:** If a Supplier does not issue a Bill, but clause 5.2.1b) applies, the Supplier must obtain the Customer's prior consent to any Charge that will be applied in addition to the fixed amount and advise the Customer how to contact the Supplier if they have a Billing Enquiry.

5.2.3 **Format of Bill Media:** A Supplier must offer its Customers the ability to receive a Bill and any Billing information; in a Bill Media that the Customer is able to store and reproduce. Bill Media options may include, but are not limited to, any one or more of the following Bill Media:

- a) paper form sent by regular post;
- b) email; or
- c) online.

5.2.4 **Changes to Bill Media:** If a Supplier proposes to change its Bill Media, it must inform the Customer:

- a) of the proposed change to the Bill Media; and
- b) of any options open to the Customer in relation to that change.

Prior to levying any Charge for the issue of a Bill in additional Bill Media; or in Bill Media different from the Supplier's usual Bill Media for that Customer in addition to complying with clause 5.6.1, the Supplier must inform the Customer of the amount of the Charge and its method of calculation.

5.2.5 **Billing information provided free of Charge:** Following a Customer's request and irrespective of whether or not previously made available on a Bill or otherwise made available, a Supplier must provide to Customers and former Customers all Billing information related to that Customer's or former Customer's Telecommunications Service (whether a Pre-Paid Service or a Post-Paid Service):

- a) for a period of up to six years prior to the date the information is requested;
- b) in a format that is able to be read and understood;

- c) through one medium free of charge for the period of up to 24 months prior to the date the Billing information request is received by the Supplier, noting that providing online or via email is considered to be free of charge;
- d) for information requested which is older than 24 months and up to six years from the date the Customer request is received by the Supplier, the Supplier may impose a Charge for the provision of this information;
- e) where requested, the Supplier must include Itemised details of all Charges associated with the Telecommunications Service; and
- f) Customers may request provision of Billing information via other mediums and formats normally available from the Supplier (e.g. hardcopy bill re-prints) and subject to clause 5.2.6 **Error! Reference source not found.**, the Supplier may impose a Charge for the provision of this information.

5.2.6 **Cost of providing Billing information:** If a Charge for providing Billing information is applied by a Supplier in accordance with clause 5.2.5f) above, it must be limited to the cost of providing the information.

5.2.7 **Cost of Billing Enquiry:** A Supplier which provides access to its Billing Enquiry point by telephone (including calls from a mobile phone) must provide such access at Untimed Call rates, unless agreed otherwise with the Customer.

5.2.8 **Cost of data containing Billing information:** If a Supplier is making information from, or about, a Bill, available in an electronic form, it must offer at least one method of accessing that information that does not involve Charges being imposed by that Supplier.

### 5.3 The Bill

A Supplier must ensure that its Bills for a Telecommunications Service contain relevant Billing information.

5.3.1 **Bill content requirements:** A Supplier must include in each Bill it issues, at least:

- a) the Customer's or former Customer's Billing Name and Billing Address;
- b) the Supplier's trading name and ACN and/or ABN;
- c) the Bill issue date and sequential identification (such as Invoice numbering or dates) to enable a Customer, or former Customer, to readily identify if a previous Bill has not been received and readily determine the chronological order of Bills received;
- d) the Billing Period;
- e) an account reference number;
- f) a Customer reference to be used when paying online, which is the same on each Bill for that Customer, or former Customer, for the same Telecommunications Products. A Supplier may, however, change the Customer reference from time to time when its circumstances require it (such as a change to its billing systems);
- g) the current due date for the Billed Charges and the due date for any outstanding amount;
- h) at least one free method of Bill payment;

- i) advice regarding any additional Charges (e.g. credit card merchant fees) that will apply for any additional payment method;
- j) the name of, or reference for, the agreement or plan to which the Bill relates;
- k) any Charges that exceeded any spend limits or included allowance thresholds;
- l) a description of the Charges included in the Bill including the total amount of the Bill, any applicable Discounts or credits being applied to the Bill or Charge, including any Third Party Charges;
- m) for Bills that contain Charges for an Included Value Plan, the total amount of the Bill for of each the two previous Billing Periods;
- n) for Bills that contain Charges for an Included Value Plan, a link to the area on the Supplier's website where the Customer can obtain call and Data usage information or instructions on where the Customer can obtain call and Data usage information;
- o) a contact point for the Customer, or former Customer, to make Billing Enquiries that includes at least a telephone number;
- p) a contact point for the Customer, or former Customer, to obtain pricing information if not available from the contact point described in clause o);
- q) the hours of operation of the contact point in clause o) above, if the contact point is open less than 24 hours, 7 days a week; and
- r) the nature of any Charges applying to Billing Enquiry calls, including information about any Charge greater than the Supplier's local call tariff, or equivalent.

5.3.2 **Bills for new products, features or services:** A Supplier must not release a new product, feature or service, except as part of a free trial, without having appropriate Billing arrangements in place, unless the Supplier:

- a) has agreed with a specific recipient Customer or group of recipient Customers to provide them with customised or limited Billing arrangements; and
- b) has clearly informed them of the details of the customised or limited Billing arrangements,

prior to the Supplier providing, or the Customer accessing, the product, feature or service.

## 5.4 Timing of Bill

5.4.1 **Timeliness of Bill issue:** Suppliers must issue a Bill to a Customer, or former Customer, within 10 Working Days after closure of the Billing Period, except when:

- a) temporary system or processing problems or issues arise;
  - b) a Force Majeure event occurs; or
  - c) a Supplier delays the issue of a Bill for Customer Service purposes,
- and if any delay extends beyond 10 Working Days, the Customer must be granted an extension of time to pay of not less than the length of the delay.

5.4.2 **Timeliness for Billed Charges:** A Supplier must:

- a) endeavour to incorporate all Charges relating to the current Billing Period into a Bill;

- b) inform the Customer, or former Customer, that some Charges in a Bill may relate to a previous Billing Period; and
- c) not Bill for Charges older than 160 days from the date the Charge was incurred for that Telecommunications Service.

5.4.3 **Allowable delays:** A Supplier will not breach clause 5.4.2 because of delays due to:

- a) changes to the regulatory or legislative framework applicable to all Suppliers and one-off network infrastructure changes, where prior notice has been given to affected Customers, or former Customers; or
- b) a Force Majeure event.

## 5.5 Verifying Charges

5.5.1 **Supplier verification:** A Supplier must ensure it provides, and must be able to verify and demonstrate, Billing Accuracy except for inaccuracies caused by:

- a) the Supplier's reliance on information provided by a person who is not its director, employee or agent;
- b) an action or failure of another person who is not the Supplier's director, employee or agent; or
- c) an accident, mistake or any matter beyond the Supplier's control, where the Supplier took reasonable care and precautions to avoid the inaccuracy.

5.5.2 **Verification of Charges:** A Supplier must ensure that sufficient information is readily available to the Customer, or former Customer, to allow them to verify that Charges are correct and consistent with:

- a) the Supplier's published or contracted Charges and Discounts; and
- b) the Telecommunications Products which the Customer, or former Customer, has requested, used or contracted to receive.

5.5.3 **Itemised Charges:** A Supplier must ensure that Itemised details of all Charges relating to its Telecommunication Products are made available to the Customer, or former Customer, unless they have otherwise requested or agreed.

5.5.4 **Timed Calls:** A Supplier must supply or make available to the Customer, or former Customer, Itemised Timed Call Charges, unless they have otherwise requested or agreed.

5.5.5 **Notice period for Itemised Billing:** A Supplier must inform its Customers of any notice period required by the Supplier in order for the Supplier to provide Itemised Billing details to them.

## 5.6 Payment Options

5.6.1 **No Charges for Bill payment:** The Supplier must offer at least one method of payment for its Telecommunications Products that is free of charges imposed by the Supplier.

5.6.2 **Verifying payment:** A Supplier must provide a means by which a Customer, or former Customer, may easily verify any payments.

5.6.3 **Timeliness of Bill payment processing:** A Supplier must:

- a) note Bill payments in the Supplier's relevant system within 48 hours from the start of the next Working Day after the Supplier is formally notified of payment;
- b) apply payments received by the due payment date to the Customer's, or former Customer's account:
  - (i) prior to generating the subsequent Bill; or
  - (ii) within 5 Working Days of the payment being received by the Supplier, whichever is sooner; and
- c) apply payments received after the due payment date within 5 Working Days of receiving the payment.

5.6.4 **Exceptions for Bill payment processing:** A Supplier will not breach clause 5.6.3 when:

- a) system or processing problems occur;
- b) the Supplier does not receive accurate, complete and timely information about payment for the Telecommunications Service; or
- c) a Force Majeure event occurs.

## 5.7 Direct Debit

5.7.1 **Direct Debit payment:** A Supplier offering Direct Debit as a payment facility for a Telecommunications Service must comply with the Customer's authorisation and:

- a) must ensure that the Customer, or former Customer, can access all Billing information on request and before the Direct Debit occurs;
- b) must ensure that the Customer, or former Customer, can, on request, verify that its Direct Debit arrangements are in accordance with their authorisation;
- c) except where clause 5.2.1b) applies or where otherwise agreed between the Supplier and the Customer, must allow the Customer, or former Customer, not less than 10 Working Days to check the Bill or if no Bill is required, all applicable Charges, before the associated Direct Debit transaction occurs;
- d) subject to compliance with clause 5.4.1, must provide details of a Direct Debit transaction to the Customer, or former Customer's nominated financial institution in a timely manner, to ensure the transaction to take place as close as possible to the due date for payment;
- e) must ensure that a Customer, or former Customer, can readily cancel a Direct Debit authorisation by providing a simple mechanism (such as email or faxed request to do so);
- f) must cancel a Direct Debit authorisation within 3 Working Days of receipt of the request detailed in clause e) above; and
- g) if the amount of a Direct Debit is incorrect, must either ensure that the Customer (or former Customer) receives a full and timely refund of the amount paid in

error or undertake other appropriate option as agreed with the Customer (or former Customer) and Supplier.

## 5.8 Third Party Services

- 5.8.1 Where a Supplier includes Third Party Charges on a Customer's Bill, a Supplier must address all enquiries and Resolve all Complaints made to it regarding those Third Party Charges.

### **Guidance**

The above includes where a Customer notifies the Supplier that it has unsuccessfully attempted to Resolve the Billing Enquiry or Complaint directly with the Content Provider.

A Supplier is responsible for all Billing Enquiries and Complaints, including about the inclusion of Third Party Charges on a Bill and the amounts of Third Party Charges.

A Supplier is not responsible for the content of any third party services.

## 6 CREDIT AND DEBT MANAGEMENT

### Summary

*This chapter sets out what Consumers are entitled to from Suppliers, and what Suppliers must do, in relation to the provision and management of credit in connection with the supply of Telecommunications Products, including the denial and restriction of access to Telecommunications Services for credit-related reasons. Specific rules on credit management under Financial Hardship arrangements are set out in the following chapter on Financial Hardship.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### 6.1 Tools for preventing unauthorised access

6.1.1 A Supplier must make available, at no cost, information about any tools the Supplier offers for preventing unauthorised access to, or use of, Telecommunications Services, including information about:

- a) how to obtain assistance to use those tools; and
- b) the cost of any tools offered directly by the Supplier.

### 6.2 Responsible provision of Telecommunications Products

Suppliers must undertake a Credit Assessment before providing a Post-Paid Service to a Consumer, and explain the financial implications of the provision of that Post-Paid Service to a Customer or their Guarantor.

6.2.1 A Supplier must take the following actions to enable this outcome:

- a) **Assess credit risk:** undertake a Credit Assessment, including:
  - (i) For an existing Customer who seeks to purchase additional device(s), sign up to multiple Post-Paid Services, or change plans to one with increased cost, a check of that Customer's payment history with the Supplier;
- b) **Advising the Customer about liability:** where the Supplier is made aware by the Customer that the Customer is not going to be the principal end user of the Telecommunications Service, inform the Customer at the time it becomes aware (or as soon as practicable thereafter), that the Customer remains liable for the use of the Telecommunications Service;
- c) **Requiring a Guarantee:** if a Supplier requires a Guarantee the Supplier must provide advice to the Guarantor regarding the nature and effect of the Guarantee before the Guarantee is provided by the Guarantor and the Telecommunications Product is provided by the Supplier; and
- d) **Cooling off period for Guarantor:** provide a Guarantor with a minimum 10 Working Days cooling off period in which the Guarantor may terminate the agreement for which the Guarantee is provided.

### **Guidance**

A Credit Assessment may include:

- a) obtaining an external credit check from a credit reporting body each time a new post-paid service is applied for by the customer before they have established a reasonable payment history (e.g. 6 months) with the CSP;
- b) their residential status including whether they rent, board, or own their home;
- c) how long they have been living at their current address;
- d) their occupation;
- e) sources of income;
- f) ownership of credit cards;
- g) duration of their current employment;
- h) duration of their previous employment;
- i) current and/or previous payment history or debt with their CSP, if any; and
- j) current services or contracts held with provider.

Further information can be found in the *Sales Practices and Credit and Debt Management Industry Guidance Note (IGN013:2017)*

## **6.3 Provision of information where service is Restricted at the time of application**

Suppliers must provide Consumers seeking a Telecommunications Service with information about a decision taken by the Supplier in relation to a Restriction placed on the supply of or access to a Telecommunications Service at the time the Telecommunications Service is applied for.

6.3.1 A Supplier must explain to the Consumer the general nature of the reasons for the Restriction at the time of application, including:

- a) **Telecommunications Services:** which of the Supplier's Telecommunications Services the Consumer will have access to after the Restriction is applied;
- b) **Removal of Restrictions:** if applicable, how a Consumer may have the Restriction removed;
- c) **Who may remove Restrictions:** if the Restriction can be removed by anyone other than the Consumer;

6.3.2 **Oral advice of Restriction:** where the Consumer is informed orally of the Restriction and the reasons for it, the Supplier must make attempts to ascertain whether the Consumer has understood the oral advice given.

## **6.4 Security Deposit**

In the event that a Security Deposit is required by a Supplier, the Supplier must provide the Consumer with information about the terms of that Security Deposit,

including the circumstances in which the Security Deposit may accrue interest, be forfeited or be repaid.

- 6.4.1 A Supplier must take the following actions to enable this outcome:
- a) **Requirement for a Security Deposit:** base the requirement for a Security Deposit on the outcome of a Credit Assessment conducted in relation to the Consumer and the Telecommunications Product to be acquired by the Consumer;
  - b) **Prior agreement to Security Deposit:** obtain the Consumer's prior agreement as to the circumstances in which the Security Deposit or part thereof will be forfeited. In the absence of such agreement, the Supplier may decline to supply to the Consumer the relevant Telecommunications Product;
  - c) **Repayment and interest information:** prior to the Supplier receiving the Security Deposit, advise the Consumer in writing of repayment and interest arrangements and the account to which the Security Deposit will be applied;
  - d) **Opportunity to pay:** before accessing the Security Deposit, advise the Consumer that the Security Deposit will be accessed within 5 Working Days and provide an opportunity for the Consumer to pay within that period; and
  - e) **Repayment to the Customer:** repay to the Customer the amount of the Security Deposit (or the balance then remaining), and interest accrued in relation to it, within 5 Working Days of the Customer:
    - (i) satisfactorily completing the terms of the Security Deposit arrangements; or
    - (ii) ceasing to receive the relevant Telecommunications Products from the Supplier.

## 6.5 Spend Management Tools

- 6.5.1 A Supplier must provide Spend Management Tools as outlined in clause 6.6 (Usage Notifications) and clause 6.5.4 (Other Spend Management Tools).
- 6.5.2 **Tools for Customers without internet access:** A Supplier must ensure that Customers who obtain services other than internet services from the Supplier have access to at least one Spend Management Tool which is not dependent on the Customer having internet access.
- 6.5.3 **Make available information about tools:** A Supplier must make available, in an accessible manner, at no cost, information about its Spend Management Tools, including information about:
- a) how to obtain assistance to use those Spend Management Tools;
  - b) the cost of any Spend Management Tools offered directly by the Supplier;
  - c) the approximate delay of any unbilled usage information provided including for the notifications referred to in clause 6.6.1; and
  - d) any usage types that may not be included in the unbilled usage information provided (such as usage incurred outside Australia, premium service and other third party charges, etc) which must include details of usage types not included in the usage notifications referred to in clause 6.6.2.

6.5.4 **Other Spend Management Tools:** While features of Suppliers' Spend Management Tools will vary between Suppliers, in addition to the required usage notifications referred to in clause 6.6, a Supplier must also make available to Customers at least one of the following:

- a) the ability for Customers to access usage information that is near to real-time information e.g. ideally no older than 48 hours;
- b) the ability for Customers to choose a product that features either cessation of a Telecommunications Service or of an aspect of a Telecommunications Service within an advised timeframe, or another form of control that limits use of the Telecommunications Service in such a way as to stop charges for that Telecommunications Service exceeding an agreed spend limit within the relevant Billing Period;
- c) call barring or Restrictions on certain Telecommunications Services (e.g. for more expensive Telecommunications Services);
- d) providing usage charge advice before or during the use of a high value Telecommunications Service;
- e) prepaid services (except those with a balance triggered automatic top up that has no limitations set on the automatic top up, which would not be deemed to meet the requirements of acting as a Spend Management Tool);
- f) Hard Caps;
- g) reducing broadband internet download speed when a usage limit is reached;  
or
- h) any other Spend Management Tool the Supplier may choose to offer.

## 6.6 Usage notifications

6.6.1 **Provision of notifications:** A Supplier must provide electronic notifications free of charge to a Service for each Residential Customer who receives either an Included Value Plan or a Post-Paid Service for a broadband plan with an included Data allowance where:

- a) there is no Hard Cap, Shaping (in relation to Data allowance) and/or equivalent measure that applies to the plan;
- b) the usage type in question under the plan is not unlimited; and
- c) in relation to Included Value Plans, where such plans were launched by the Supplier after 1 March 2012.

6.6.2 **Timing of notifications:** The electronic notifications in clause 6.6.1 must be provided no later than 48 hours after the Customer has reached the following point each month:

- a) 50% of the expenditure and/or the Data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first);
- b) 85% of the expenditure and/or the Data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first);

- c) 100% of the expenditure and/or the Data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first).
- 6.6.3 **Notification of additional charges:** The Supplier must inform the Residential Customer, at the time of sending the notification prior to the 100% notification in 6.6.2c), of the following information (either as part of the notification, or via an included link in the notification, or separate to the notification):
- a) the Charges applying once 100% of the included value or Data allowance has been used;
  - b) that the information in the above notification may be up to 48 hours old; and
  - c) that the notification does not include calls or SMS to overseas or usage outside Australia.
- 6.6.4 **Customer options:** In respect of the notifications specified in clauses 6.6.2 and 6.6.3, a Supplier may at its discretion make available and allow its Residential Customers the choice of:
- a) not receiving all or some of the notifications;
  - b) receiving more notifications;
  - c) receiving notifications at different usage points; and/or
  - d) receiving usage notifications via a different method,
- provided that the Supplier must:
- e) where a Customer has made a choice, make a record of that Residential Customer's choice from time to time under this clause and retain the records for the duration of the relevant Customer Contract; and
  - f) not engage in practices that would encourage its Residential Customers to opt out of receiving all or some of the notifications specified in clause 6.6.2, such as penalising the Customer if they choose not to opt out or requiring the Customer to opt out.
- 6.6.5 **Platform:** A Supplier must send the above usage notifications:
- a) via SMS or email for national voice calls and national SMS usage on Included Value Plans;
  - b) via SMS or email for national Data usage on Included Value Plans; and
  - c) via email for national Data usage on internet plans,
- unless the Residential Customer chooses a different option that the Supplier has made available to receive these notifications.
- 6.6.6 **Allowable delays:** A Supplier will not breach clause 6.6.2 because of delays due to a Force Majeure event. If a Customer incurs excess charges during a Force Majeure event during which Usage Notifications were delayed, a Supplier must attempt to provide a remedy that is appropriate in the circumstances and as agreed between the Customer and Supplier.
- 6.6.7 **Scope:** For avoidance of doubt, the mandatory usage notifications referred to in clauses 6.6.2, 6.6.3, and 6.6.4 only apply to national calls, SMS and Data usage in Australia and do not cover any usage whilst overseas or calls or SMS sent to overseas.

## 6.7 Reminder notices

- 6.7.1 A Supplier must, where issuing reminder notices by email or letter, advise the Customer, or former Customer, of the Supplier's Financial Hardship policy and how to obtain more details on it.
- 6.7.2 If the Supplier issues the reminder notice by an alternate method, they must include a link to, or reference, the Financial Hardship policy as appropriate for the communication method.

## 6.8 Notice to Restrict, Suspend or Disconnect a service for Credit and/or Debt Management Reasons

Suppliers must ensure Customers are given adequate notice regarding a decision by the Supplier to Restrict, Suspend or Disconnect their Telecommunications Service for credit and/or debt management reasons.

- 6.8.1 **Prior notice of Restriction, Suspension or Disconnection action:** A Supplier must give the Customer at least 5 Working Days' notice prior to the Restriction, Suspension or Disconnection of the Telecommunications Service for credit and/or debt management reasons, unless subclause a) applies:
- a) A Supplier may only Restrict, Suspend, or Disconnect a Telecommunications Service for credit and/or debt management reasons without first informing the Customer if:
- (i) the Supplier assesses that the Customer or the account status presents an unacceptably high credit risk to the Supplier;
  - (ii) the Supplier reasonably suspects Fraud or attempted Fraud; or
  - (iii) the Customer has nominated to the Supplier a Restriction Point and the Customer has reached that Restriction Point.
- 6.8.2 **Precautions to be taken:** When notifying a Customer about a Supplier's Restriction, Suspension or Disconnection of the Customer's Telecommunications Service, a Supplier must:
- a) make reasonable attempts to ascertain whether the Customer has understood any oral advice given;
  - b) ensure that attempts to inform are directed to the Customer; and
  - c) ensure that the primary method of notification used is a format reasonably acceptable to the Customer based on their usage history.
- 6.8.3 **Content of Restriction, Suspension, or Disconnection notice:** Notices under section 6.8.1 must include:
- a) an indication of the earliest date the Restriction, Suspension or Disconnection could occur; and
  - b) the date of issue of correspondence if they are informed in writing.
- 6.8.4 **Content of Restriction or Suspension notice:** If notifying a Customer about a Supplier's Restriction or Suspension of the Customer's Telecommunications Service, inform the Customer:

- a) about any on-going or additional Charges that will still apply whilst the Telecommunications Service is Restricted or Suspended;
- b) about the Supplier's Financial Hardship policy in case the Customer needs such assistance; and
- c) about any impacts the Restriction or Suspension may have on other services the Customer has with the Supplier.

6.8.5 **Content of Disconnection notice:** If notifying a Customer about a Supplier's Disconnection of the Customer's Telecommunications Service, send a separate Disconnection notice, not just a Bill, to the Customer and any relevant Guarantor prior to Disconnecting the Telecommunications Service.

The notice of Disconnection must inform the Customer and Guarantor:

- a) that, after Disconnection has occurred, the Customer's Telecommunications Service plan and/or Telecommunications Product (and/or, where applicable, telephone number), may no longer be available;
- b) about any impacts the Disconnection may have on other services the Customer has with the Supplier;
- c) about the consequences of non-payment, including that the Customer's default leading to the Disconnection may be disclosed to a Credit Reporting Body and/or collection agency and/or debt buyer and may be added to the Customer's credit file with a Credit Reporting Body;
- d) about the Supplier's Financial Hardship policy in case the Customer needs such assistance;
- e) that the debt may be passed to a collection agency and/or debt buyer; and
- f) that legal action may be taken to recover the unpaid debt.

## 6.9 Fair Credit Management process

Suppliers must ensure that Customers and former Customers are treated with fairness in relation to the Credit Management process.

- 6.9.1 **Review:** Following a Customer's request, a Supplier must review any decision to Restrict, Suspend or Disconnect the Telecommunications Service and inform the Customer of the outcome of that review. If the review is not undertaken and completed by the Supplier at the time of the Customer's request, the Supplier must notify the Customer at that time when the review will be completed.
- 6.9.2 **Advise of dispute resolution options:** Following a review as referred to in clause 6.8.1 (a) above, if the Customer remains dissatisfied with the outcome of the review, a Supplier must advise the Customer of how they can make a Complaint.
- 6.9.3 **Supplier's mistake:** A Supplier must not impose a reconnection Charge following Suspension or Disconnection if it resulted from the Supplier's mistake.
- 6.9.4 **Credit Management Charges:** A Supplier must not impose Credit Management Charges unless the Charges are a reimbursement of the Supplier's costs and the Customer or former Customer is advised of its amount or method of calculation.

- 6.9.5 **Issues following sale of debt:** A Supplier must resolve any Billing Complaint or Telecommunications Service issues that arise after a debt has been sold or assigned to a third party.
- 6.9.6 **Default listed in error:** Where a Supplier becomes aware that a Customer or former Customer has been default listed in error, the Supplier must inform the Credit Reporting Body and use reasonable endeavours to do so within 1 Working Day.
- 6.9.7 **Failure to pay through no fault of Customer:** Where a Customer or former Customer can demonstrate that they have taken all reasonable steps to pay a known due debt but the Bill has not been paid due to the fault of a third party or the Supplier, the Supplier must ensure that:
- a) if the Customer or former Customer has been default listed with a Credit Reporting Body as a result, it notifies the Credit Reporting Body within 1 Working Day;
  - b) no additional Credit Management Charges apply; and
  - c) no other credit related disadvantages arise for the Customer or former Customer.

## 6.10 Credit Management for disputed amounts

- 6.10.1 **Amounts that are the subject of an open Complaint:** A Supplier must not take Credit Management action in relation to a specified disputed amount that is the subject of an unresolved Complaint in circumstances where the Supplier is aware that the dispute has not been resolved to the satisfaction of the Consumer and is being investigated by the Supplier, the TIO or a relevant recognised third party.
- 6.10.2 **Timing of commencement of Credit Management action:** A Supplier must advise the Customer or former Customer when the Supplier will commence any Credit Management action after that dispute has been resolved;
- 6.10.3 **Separation of debts:** A Supplier must ensure that debts sold or assigned to third parties or listed with a Credit Reporting Body do not include any specified disputed amounts that are the subject of an unresolved Complaint; and
- 6.10.4 **Amounts not the subject of unresolved Complaint:** Where part of an amount on a Bill is the subject of an unresolved Complaint, a Supplier must advise the Customer or former Customer that Credit Management action may be undertaken in relation to those amounts which are not the subject of that unresolved Complaint.

## 6.11 Debt collection

- 6.11.1 **Collection activities:** While ever it is in force, a Supplier must adopt best practice as set out in the ACCC and ASIC guideline "*Debt collection guideline: for collectors and creditors*" issued in July 2017 when collecting amounts due.
- 6.11.2 **Disadvantaged and vulnerable Customers:** In their collection activities, while ever it is in force, a Supplier must adopt best practice as set out in the ACCC Compliance Guide "*Don't take advantage of disadvantage: a compliance guide for businesses dealing with disadvantaged or vulnerable consumers*" issued in 2011.

- 6.11.3 **Internal dispute resolution:** A Supplier must require that all of the Supplier's debt collection activities have an internal dispute resolution process.
- 6.11.4 **Debt buyers:** A Supplier must only sell a debt to a debt buyer if that debt buyer is a member of an ASIC approved external dispute resolution scheme.
- 6.11.5 **Notification of sale of debt:** A Supplier must notify the Customer or former Customer in writing within 25 Working Days that the debt has been sold, or arrange for the purchaser of the debt to do so.

## 7 FINANCIAL HARDSHIP

### Summary

*This chapter sets out what Suppliers must do in relation to the creation and application of a Financial Hardship Policy. It also sets out Suppliers' obligations in regards to credit management during discussion and application of Financial Hardship arrangements.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### 7.1 Access to Financial Hardship assistance

Suppliers must have a Financial Hardship policy and ensure that it is easy for Consumers to find and access.

- 7.1.1 **Access to policy:** A Supplier must ensure that its Financial Hardship policy is readily accessible on the Supplier's website.
- 7.1.2 **Contact details:** A Supplier must provide relevant contact details of staff with whom the Customer or former Customer may discuss the Financial Hardship policy.
- 7.1.3 **Community financial counsellor:** A Supplier must provide details of a source at which the Consumer or former Customer can locate contact details of community financial counsellors or consumer advocates who deal with financial difficulty matters.
- 7.1.4 **Summarising the Financial Hardship policy:** A Supplier must provide a summary to a Customer, or former Customer, of how the Supplier's Financial Hardship policy may assist them:
  - a) upon request;
  - b) when the Customer, or former Customer indicates to the Supplier that they are experiencing Financial Hardship; or
  - c) if the Supplier considers the Customer, or former Customer, may be eligible for the policy.

### 7.2 Contents of Financial Hardship policy:

- 7.2.1 A Supplier must provide at least the following information as part of the Financial Hardship policy:
  - a) options available to the Customer, or former Customer, to assist with their management of Financial Hardship as it relates to their use of Telecommunications Services which could include:
    - (i) Spend controls;
    - (ii) Restriction of service, overall or specific services;
    - (iii) Extending the term of the contract to reduce monthly repayments;

- (iv) Temporarily postponing or deferring payments (for a longer period than would typically be offered to customers requesting an extension outside of Financial Hardship arrangements);
  - (v) Agreeing on an alternative arrangement, plan, or contract, including discussing pre-paid options;
  - (vi) Changing the terms of the contract; or
  - (vii) Waiving debt
- b) available times for contact with the Supplier regarding the Financial Hardship policy;
  - c) Information that the Supplier might require a Customer, or former Customer, to provide to make an assessment of Financial Hardship under the Financial Hardship policy, e.g. income details, details of the Telecommunications Service (telephone number, broadband) and most recent contact details; and
  - d) Generally how the Supplier makes an assessment of Financial Hardship under the Financial Hardship policy.

### 7.3 Staff

A Supplier must ensure that staff who are directly involved in applying the Financial Hardship policy are appropriately trained.

### 7.4 Fair and timely Financial Hardship assessment

Suppliers must assess the Customer's or former Customer's eligibility for assistance under the Supplier's Financial Hardship policy in a fair and timely manner.

- 7.4.1 **Information required for assessment:** A Supplier must limit required documentation to that which is relevant to the Financial Hardship assessment and not unduly onerous.

#### **Guidance**

A Supplier may request supporting documentation from a Customer to conduct an assessment. However, you would not ordinarily require it unless:

- it appears that the financial arrangement will need to be long term;
- you consider the amount to be repaid large or significant;
- the Customer has not been your Customer very long; or
- you reasonably believe there is a possibility of fraud.

- 7.4.2 **Requesting Information from the Customer:** A Supplier must inform the Customer, or former Customer, of the information which the Supplier requires to assess their eligibility for assistance under the Financial Hardship policy.

A Supplier must also inform the Customer, or former Customer, of the following:

- a) that the assessment may be based on the information provided by them or other information available to the Supplier;

- b) that, where the requested information is not provided, an assessment may not be made;
- c) that the provision of false or incomplete information may result in the Supplier cancelling any hardship arrangements; and
- d) if the information provided by the Customer, or former Customer, is not sufficient to make an assessment of eligibility under the Financial Hardship policy, of what other information is needed to make such an assessment.

7.4.3 **Providing information for assessment:** A Supplier inform the Customer, or former Customer that, if the Supplier requires supporting documentation from a Customer, or former Customer, to assess their eligibility for assistance under the Financial Hardship policy, the Customer, or former Customer, must send the documentation to a specific contact point.

The Supplier must accept such documentation via:

- a) a postal address;
- b) facsimile; or
- c) email,

and provide the Customer, or former Customer, with details for those contact points as preferred by the Customer, or former Customer.

7.4.4 **Understanding:** In relation to the provision of information referred to in clause 7.4.2, the Supplier must make attempts to ascertain whether the Customer, or former Customer, has understood the information provided by and contained in requests being made by the Supplier.

7.4.5 **Timing of assessment:** A Supplier must inform the Customer, or former Customer, how long it will take to make an assessment for assistance and must ensure that an assessment regarding eligibility for assistance under a Financial Hardship policy is made within 5 Working Days after receipt of the final information from the Customer or former Customer.

7.4.6 **Failure to meet criteria:** A Supplier must inform the Customer, or former Customer, immediately if assistance will not be given where it is clear to the Supplier that the Customer, or former Customer, does not meet assistance criteria.

7.4.7 **No charge for assessment:** A Supplier must not charge for an assessment of Financial Hardship.

## 7.5 Communication of Financial Hardship arrangements

7.5.1 **Arrangement details:** A Supplier must supply to a Customer, or former Customer, details of the Financial Hardship arrangement on request, which details must be given in writing if requested by the Customer in that form.

7.5.2 **Rights and obligations:** A Supplier must inform the Customer, or former Customer, of their rights and obligations under the Financial Hardship arrangement, including without limitation that they have an obligation to promptly advise a Supplier if their circumstances change during the term of the Financial Hardship arrangement and of Credit Management arrangements under clause 7.7.

- 7.5.3 **Duration of arrangement:** A Supplier must advise the Customer, or former Customer, of the duration of the Financial Hardship arrangement or of the review date of the arrangement.
- 7.5.4 **Timing of communication:** A Supplier must advise the Customer, or former Customer of the matters referred to in clauses 7.5.1, 7.5.2, and 7.5.3 within 5 Working Days of the Supplier and the Customer, or former Customer, agreeing to the specific Financial Hardship arrangements.

## 7.6 Application of Financial Hardship arrangements

- 7.6.1 **Flexible repayment options:** A Supplier must, where possible, provide flexible repayment options to meet the Customer's individual circumstances, including options appropriate to the ongoing management of accounts and/or liabilities where being the victim of domestic or family violence contributed to an inability to pay the debt.
- 7.6.2 **Commencement of arrangement:** A Supplier must ensure that the Financial Hardship arrangement will not commence unless the Customer, or former Customer, indicates their acceptance.
- 7.6.3 **No charge for administration:** A Supplier must not charge for administration of the Financial Hardship arrangement.
- 7.6.4 **Changed circumstances:** A Supplier must review the arrangements if the Customer notifies the Supplier that the Customer's, or former Customer's, circumstances have changed.

## 7.7 Credit Management in Financial Hardship

- 7.7.1 A Supplier must suspend Credit Management action whilst an arrangement under a Financial Hardship policy is being discussed or is in place unless:
- a) the Customer, or former Customer, does not meet their obligations under the Financial Hardship arrangement. In that event, if the Customer, or former Customer, does not contact the Supplier to discuss a new arrangement, the Supplier must take reasonable steps to contact the Customer, or former Customer, before taking Credit Management action;
  - b) the Supplier decides it is reasonable to do so given the circumstances, e.g. to prevent a further increase in the debt owed; or
  - c) the Customer, or former Customer, agrees that the Financial Hardship arrangement is unable to be completed.
- 7.7.2 **Restarting Credit Management action:** A Supplier can only restart Credit Management action when:
- a) either 7.7.1 a), b), or c) are met (as applicable to the Customer's, or former Customer's individual situation); and
  - b) the Supplier is unable, using reasonable steps, to make contact with the Customer, or former Customer.
- 7.7.3 **Prohibition on certain debt sale:** A Supplier must not sell the debt while an arrangement under a Financial Hardship policy is in place.

## **8 COMPLAINT HANDLING**

*Complaints Handling procedures are currently addressed by the ACMA's Telecommunications (Consumer Complaints Handling) Industry Standard 2018, which commenced on 1 July 2018.*

## 9 CHANGING SUPPLIERS

### Summary

*This chapter sets out Consumer rights and Supplier obligations when Consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier. It also sets out Suppliers' obligations to Customers when a transfer of a Customer's Telecommunications Service arises as a result of the sale of a Supplier's business or a corporate reorganisation of the Supplier, or when a Supplier proposes moving its Customers to a different wholesale network provider.*

*Suppliers should also have regard to the G651:2017 Customer Authorisation Guideline, which sets out additional information Gaining Suppliers should provide to Consumers before they agree to a Transfer, and the information to be obtained from the Customer or their Authorised Representative for a valid Customer Authorisation.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### 9.1 Obtaining Consent

- 9.1.1 A Gaining Supplier must use reasonable endeavours to ensure that a Consumer is only the subject of a Transfer by a Gaining Supplier if the Consumer has provided their consent to such Transfer.
- a) **Consent:** The Gaining Supplier must ensure that the Consumer provides consent to the Transfer; and
  - b) **Authorisation:** The Gaining Supplier must use reasonable endeavours to ensure that the person requesting the Transfer is the Rights Of Use Holder of the Telecommunications Service to be transferred, or is an Authorised Representative of that person.

### 9.2 Verification of Transfers

- 9.2.1 A Gaining Supplier must ensure that it uses appropriate procedures for the Verification of a Transfer, or an appropriate sample of Transfers, in all selling channels where the Gaining Supplier or its Sales Representative initiates the contact with the Consumer which leads to a Transfer request.

### 9.3 Process and information requirements for Transfers

- 9.3.1 **Promoting Transfers:** A Gaining Supplier must:
- a) **Identify:** ensure its Sales Representatives identify the Gaining Supplier that they represent when promoting Transfers with Consumers;
  - b) **Place:** where its Sales Representatives promote Transfers to Consumers in person, ensure that the promotions are conducted in locations that are appropriate; and

- c) **Identity:** keep records to enable it to identify the Sales Representative responsible for effecting a Transfer.

9.3.2 **Minimum information for Consumer:** Before initiating a Transfer or when requested by a Consumer, a Gaining Supplier must ensure that the Consumer receives at least the following information:

- a) **Identity of Gaining Supplier:** the name and contact details of the Gaining Supplier;
- b) **Subject to validation:** that the offer to Transfer the Telecommunications Service is subject to validating that it can be Transferred;
- c) **Service interruption or change:** whether there will be an interruption or change to the Telecommunications Service during or as a result of the Transfer process;
- d) **Equipment compatibility:** what type of equipment would be compatible with the Gaining Supplier's Telecommunications Service;
- e) **Equipment terms and conditions:** the relevant terms and conditions relating to any equipment purchased from the Gaining Supplier for use with the Telecommunications Service being Transferred; and
- f) **Penalties and fees:** that the Consumer may have to pay a penalty or cancellation fee to their existing Supplier, and that there may be other consequences if they are ending their existing Customer Contract with another Supplier early;
- g) **Notice of completion of the Transfer:** that the Gaining Supplier will use reasonable efforts to notify the Consumer of the completion of the Transfer on the day it occurs or, if completion of the Transfer relies on a third party, on the day the Gaining Supplier is advised that completion has occurred;
- h) **Lodging an inquiry or Complaint:** the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the Transfer if this process is different to the Gaining Supplier's normal Complaint handling process;
- i) **Ascertaining completion of the Transfer:** the mechanism by which the Consumer can ascertain that the Transfer has occurred; and
- j) **Terms and conditions:** any other terms and conditions of the Transfer.

#### 9.4 Transfer validation

The Gaining Supplier must undertake activity to validate that the Telecommunications Service can be Transferred.

9.4.1 **Check accuracy:** A Gaining Supplier must check the accuracy of the Transfer details with the Consumer including at least:

- a) the name and address of the Consumer;
- b) the details of the Telecommunications Service and number, if applicable, to be Transferred; and
- c) the fact that the Telecommunications Service will be Transferred to the Gaining Supplier.

- 9.4.2 **Validate the Transfer:** A Gaining Supplier must validate that the Telecommunications Service can be Transferred.
- 9.4.3 **If validated:** A Gaining Supplier must, if the Telecommunications Service can be Transferred, undertake the Transfer as agreed with the Consumer.
- 9.4.4 **If not validated:** A Gaining Supplier must, if the Telecommunications Service cannot be Transferred, notify the Consumer and advise what this means for the Consumer, including, where applicable, what options are available to the Consumer.

## 9.5 Consumers to be kept informed

- 9.5.1 During the Transfer process, the Gaining Supplier must:
- a) **Transfer timing:** give the Consumer an indication of when the Transfer will take place including any applicable cooling off period, or other activity that may delay the commencement of the Transfer;
  - b) **Process changes:** keep the Consumer informed in a timely manner of any changes to the Transfer process which may affect the Consumer, including details of any process delays and changes to appointment times; and
  - c) **Time of completion:** keep the Consumer informed in a timely manner of any changes to the estimated time by which the Transfer will be completed.

## 9.6 Notification of completion of a Transfer

- 9.6.1 The Gaining Supplier must:
- a) **Same day notification:** use reasonable efforts to notify the Customer of the completion of the Transfer on the day it occurs or, if completion of the Transfer relies on a third party, on the day the Gaining Supplier is advised that completion has occurred; or
  - b) **Subsequent notification:** if the Gaining Supplier, having made reasonable efforts, is unable to provide notification at the time referred to above, notify the Customer of the completion of the Transfer within 5 Working Days of the time referred to above.

## 9.7 Keeping records regarding Transfers

A Gaining Supplier must keep records to enable a Customer to verify that the Transfer process was undertaken in accordance with this chapter.

- 9.7.1 The Gaining Supplier must create, and retain for a minimum of 2 years after the completion of the Transfer or as required by law, auditable records establishing that:
- a) **Information on Supplier:** the provision of information to the Customer regarding the identity of each Supplier's role in the delivery of the service proposed to be supplied by the Gaining Supplier was accurate;

- b) **Authorisation:** the person who authorised the Transfer advised the Gaining Supplier that they were authorised to do so; and
- c) **Compliance with requirements:** the Transfer was undertaken and advised to the Customer in accordance with this chapter.

## 9.8 Consumer access to records regarding Transfers

9.8.1 For a minimum of 2 years after the completion of a Transfer, a Gaining Supplier must:

- a) **Access to records:** provide the Consumer with access to the records maintained by the Gaining Supplier regarding the Transfer, including any voice recording of their Transfer request;
- b) **Form of access:** upon request by the Consumer, provide to the Consumer (or, with the Consumer's consent, to a nominated party) copies of records relating to that Consumer's Transfer in a format that is clear, unambiguous and easily understood by Consumers generally.

## 9.9 Sale of Supplier's business or Supplier reorganisation

If a Supplier proposes to Transfer a Customer's Telecommunications Service as the result of a sale of the Supplier's business or a Corporate Reorganisation, the Supplier must notify the Customer in writing prior to that Transfer being initiated.

The Supplier must ensure that that Customer may terminate its Customer Contract for that Telecommunications Service within the period specified in this clause 9.9.

9.9.1 **Notification of Transfer:** Before the Transfer is initiated, a Supplier must notify the Customer in the manner in which the Supplier normally communicates with the Customer:

- a) that the Customer's Telecommunications Service will be Transferred to the Gaining Supplier as a result of a sale of the Supplier's business or a Corporate Reorganisation;
- b) of any details then known to the Supplier regarding how the Customer's Telecommunications Service may be the subject of a materially adverse effect regarding its features, characteristics or pricing as a result of the Transfer;
- c) of any impact this change has on the Customer's use of existing equipment;
- d) of the contact details of the Gaining Supplier;
- e) of the proposed date by which the Transfer will be completed;
- f) that the Supplier will use reasonable efforts to notify the Customer of the completion of the Transfer on the day it occurs;
- g) of the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the Transfer; and
- h) of the applicable termination rights for that Customer that may result from the Transfer, including the applicable notice period and contract termination charges for that Customer.

- 9.9.2 **Termination by a Customer:** A Supplier must ensure that, if so notified by the Customer who is exercising the applicable termination right, if any, as a result of a Transfer, the Supplier terminates the relevant Customer Contract relating to the Telecommunications Service within 5 Working Days of receiving the Customer's notice.
- 9.9.3 **Other requirements:** Provided that a Supplier complies with the terms of this clause 9.9 in circumstances where a Transfer of a Customer's Telecommunications Service arises as a result of a sale of the Supplier's business or a Corporate Reorganisation, the Supplier is not required to comply with the other provisions of this Chapter in relation to such a Transfer except for clauses 9.5, 9.6, and 9.8.

## 9.10 Move to different wholesale network provider

- 9.10.1 **Notification of move:** If a Supplier proposes to move its Customer base to an alternate wholesale network provider, the Supplier must, before the move is initiated, notify all its Customers in the manner in which the Supplier normally communicates with them:
- a) that the Customer's Telecommunications Service will be moved to the new wholesale network provider;
  - b) of any details then known to the Supplier regarding how the Customer's Telecommunications Service may be the subject of a materially adverse effect regarding its features, characteristics or pricing as a result of the move;
  - c) of any impact this move has on the Customer's use of existing equipment;
  - d) of any change in the contact details of the Supplier;
  - e) of the proposed date by which the move will be completed;
  - f) that the Supplier will use reasonable efforts to notify the Customer of the completion of the move on the day it occurs;
  - g) of the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the move; and
  - h) of the applicable termination rights for that Customer that may result from the move, including the applicable notice period and contract termination charges for that Customer.
- 9.10.2 **Termination by a Customer:** A Supplier must ensure that, if so notified by the Customer who is exercising the applicable termination right in clause 9.10.1, if any, as a result of the move, the Supplier terminates the relevant Customer Contract relating to the Telecommunications Service within 5 Working Days of receiving the Customer's notice.
- 9.10.3 Provided that a Supplier complies with the terms of this clause 9.10 in circumstances of a move to an alternate wholesale network provider, the Supplier is not required to comply with the other provisions of this chapter in relation to such a move except for clauses 9.5, 9.6, and 9.8.
- 9.10.4 Suppliers must not take any action that affects Telecommunications Services for which they are not the Supplier of that Telecommunications Service.

## 10 CODE COMPLIANCE AND MONITORING

### Summary

*This chapter sets out the compliance and monitoring arrangements that apply to this Code and requires Suppliers which have Customers to implement the Code Compliance Framework which will:*

- *encourage, monitor and enhance industry compliance with this Code;*
- *improve the levels of Customer service and consumer protection enjoyed by users of Telecommunications Products in Australia;*
- *improve self-regulation by Suppliers and transparency regarding compliance with this Code; and*
- *provide Consumer confidence in the self-regulatory regime of which this Code forms a part and in the telecommunications industry's compliance with this Code.*

*This chapter explains the actions that Suppliers are required to take under their Code Compliance Framework in order to comply with this Code. It is recognised that the complexity and formality of any processes or systems implemented by Suppliers to comply with the requirements of this Code will vary widely depending on the size, type and circumstances of the Supplier.*

*The role of the independent body, Communications Compliance, which has been created to monitor Code compliance by Suppliers, is described in Appendix 1 to this Code.*

*For the benefit of Suppliers, a flowchart describing the attestation and lodgement process is included in Appendix 2 to this Code.*

### Overview

*The Code Compliance Framework comprises a number of elements as set out in this chapter, including obligations of Suppliers to:*

- *register with Communications Alliance for compliance purposes;*
- *promote awareness of this Code to their Customers and communicate the requirements of this Code to relevant staff;*
- *implement processes and systems to ensure compliance with the requirements of this Code and, in certain circumstances, prepare a Compliance Plan;*
- *provide certain statements annually to Communications Compliance;*
- *in certain circumstances, provide to Communications Compliance a Compliance Achievement Plan;*
- *respond to Compliance Monitoring Requests from Communications Compliance and, if necessary, provide an Action Plan; and*
- *comply with directions and requests given by, and provide Metrics to, Communications Compliance from time to time.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

## 10.1 Supplier obligations to comply and register

Suppliers with one or more Customers must implement and comply with the Code Compliance Framework and register with Communications Alliance for compliance purposes.

10.1.1 A Supplier must take the following actions to enable this outcome:

- a) **Code Compliance Framework:** implement and comply with the obligations applicable to them contained in the Code Compliance Framework set out in this chapter;
- b) **Registration by Supplier with Communications Alliance:** within two months of the ACMA's approval of Variation No.1/2016 of this Code or one month after the Supplier first acquires Customers (whichever occurs later), supply the following information in writing to Communications Alliance:
  - (i) a statement that the Supplier is providing this information in accordance with clause 9.1.1 of this Code (and in so doing the Supplier accepts that Communications Alliance will forward this information to Communications Compliance to facilitate Communications Compliance's performance of its functions which may include publication of the information in paragraph (ii) below);
  - (ii) the legal name, the ACN or ABN, and all relevant business names, of the Supplier and the URL of the home page of the website of each of its relevant businesses;
  - (iii) contact details for a nominated staff member of the Supplier (including name, title, address, telephone number and email address); and
- c) **Change of registration:** notify Communications Alliance, in writing, within one month of changes to the information previously provided under clause 9.1.1 (b).

## 10.2 Promoting Code awareness

Suppliers must promote awareness of the Code to their Customers and communicate the requirements of the Code to relevant staff.

10.2.1 A Supplier must take the following actions to enable this outcome:

- a) **Code awareness for Customers:** promote the Code to its Customers (which may be performed by making available the brochure referred to in the Guidance note at the end of clause 9.8); and
- b) **Code awareness for staff:** communicate the requirements of the Code to relevant staff and ensure that staff are trained regarding the Supplier's processes for compliance with provisions of the Code relevant to their functions.

## 10.3 Code compliance processes and plan

Suppliers must implement processes and systems that ensure compliance and some Suppliers must prepare a Compliance Plan.

10.3.1 A Supplier must take the following actions to enable this outcome:

- a) **Compliance processes:** implement processes and systems that ensure compliance with the requirements of this Code; and
- b) **Compliance Plan:** if not a Small Supplier, prepare and maintain a documented Compliance Plan which outlines the initiatives of the Supplier supporting compliance with the provisions of the Code and which is prepared in a manner consistent with the principles and guidance provided in the Compliance Standard.

## 10.4 Code compliance statements

Suppliers must provide to Communications Compliance prescribed statements regarding Code compliance in the manner set out in this clause 9.4 and at the times set out in clause 9.8.

A Supplier must take the following actions to enable this outcome.

### 10.4.1 A Supplier must:

- a) **Compliance Attestation:** provide to Communications Compliance a Compliance Attestation which has been endorsed by the chief executive officer or a senior manager of the Supplier, by the date each year specified in clause 9.8.1 and in the form required by Communications Compliance;
- b) **Contents of Compliance Attestation:** if it is required to be provided by this clause 9.4, ensure that the Compliance Attestation includes:
  - (i) confirmation that a review has been undertaken by the Supplier regarding its compliance with the Code;
  - (ii) if a Small Supplier, either:
    - A. confirmation that the Supplier's processes and systems referred to in clause 9.3.1 (a) are implemented to ensure full compliance with this Code; or
    - B. confirmation that the Supplier's processes and systems referred to in clause 9.3.1 (a) are implemented in a manner which ensure compliance with some Code requirements but do not yet ensure full compliance (**Partial Confirmation**);
  - (iii) if not a Small Supplier, either:
    - A. confirmation that the Supplier's processes and systems, including those set out in its Compliance Plan, have been prepared and designed and are implemented to ensure full compliance with this Code; or
    - B. confirmation that the Supplier's processes and systems, including those set out in its Compliance Plan, have been prepared and designed and are implemented in a manner which ensure compliance with some Code requirements but do not yet ensure full compliance (**Partial Confirmation**);
  - (iv) if not a Small Supplier, an assertion that the Supplier's Compliance Plan has been prepared in a manner consistent with the principles and guidance provided in the Compliance Standard; and

- (v) other than in relation to a First Compliance Attestation, a report on the Supplier's compliance with its Compliance Plan during the preceding year; and
  - c) **Statement of Independent Assessment:** if a Large Supplier, provide to Communications Compliance a Statement of Independent Assessment at the same time as providing the First Compliance Attestation pursuant to clause 9.4.1 (a), which Statement of Independent Assessment must state that an External Qualified Assessor has determined that:
    - (i) the Supplier's documented Compliance Plan has been prepared in a manner consistent with the principles and guidance provided in the Compliance Standard; and
    - (ii) the implementation of the Compliance Plan by the Supplier will provide appropriate assurance on Code compliance.
- 10.4.2 **Material Changes:** If a Supplier makes or is subject to any Material Change, the Supplier must, within one month of the time the Material Change is implemented, provide to Communications Compliance a statement which:
- a) describes the Material Change and its effect on the Supplier's compliance with this Code; and
  - b) details the actions to be taken to ensure continued compliance with this Code and the expected timeframe for completion of those actions.

## 10.5 Compliance Achievement Plans

If a Supplier does not submit to Communications Compliance a Compliance Attestation or a Statement of Independent Assessment (if required) required by this chapter 9, or submits a Compliance Attestation with a Partial Confirmation, the Supplier must submit to Communications Compliance a Compliance Achievement Plan detailing how and when actions will be taken to comply with the relevant Code requirement(s).

10.5.1 A Supplier must take the following actions to enable this outcome:

- a) **Failure to submit a statement to Communications Compliance:** if a Supplier does not, by the date required in clause 9.8.1, submit to Communications Compliance a Compliance Attestation or Statement of Independent Assessment (if required), or submits a Compliance Attestation with a Partial Confirmation, provide a Compliance Achievement Plan to Communications Compliance;
- b) **Compliance Achievement Plan:** ensure that the Compliance Achievement Plan (if required):
  - (i) has contents, and is in a form, acceptable to Communications Compliance;
  - (ii) is provided by the date by which the Compliance Attestation was required to be submitted;
  - (iii) identifies the Code provision(s) with which the Supplier does not comply; and
  - (iv) details the actions to be taken to become compliant and the expected timeframe for completion of those actions; and

- c) **Monitoring and reporting on Compliance Achievement Plan:** if the Supplier provides a Compliance Achievement Plan to Communications Compliance pursuant to clause 9.5.1 (a), monitor progress and report regularly on its progress under the Compliance Achievement Plan to Communications Compliance.

## 10.6 Compliance Monitoring Requests

Suppliers must respond to a Compliance Monitoring Request received from Communications Compliance in relation to this Code and provide an Action Plan if required by clause 9.6.1.

10.6.1 A Supplier must take the following actions to enable this outcome:

- a) **Compliance Monitoring Requests:** respond to Compliance Monitoring Requests from Communications Compliance in accordance with Table 1 in clause 9.8.2;
- b) **Inability to comply:** if a Supplier's response to a Compliance Monitoring Request indicates that the Supplier cannot comply with all or part of the relevant aspects of the Code that are the subject of that Compliance Monitoring Request, provide an Action Plan to Communications Compliance;
- c) **Action Plan:** ensure that the Action Plan (if required):
  - (i) has contents, and is in a form, acceptable to Communications Compliance;
  - (ii) is provided in accordance with Table 1 in clause 9.8.2;
  - (iii) details the actions to be taken by the Supplier to address any compliance failure or other issues identified through the Compliance Monitoring Request, including the expected time for completion of those actions;
  - (iv) details the planned remedial measures; and
- d) **Monitoring and Reporting on Action Plan:** if the Supplier provides an Action Plan to Communications Compliance, monitor progress and report regularly on its progress under the Action Plan to Communications Compliance.

## 10.7 Supplier obligations regarding Communications Compliance

Suppliers must do all things reasonably necessary to assist Communications Compliance to perform its functions as set out in Appendix 1 to the Code.

10.7.1 A Supplier must take the following actions to enable this outcome:

- a) **Comply with directions:** comply with all reasonable directions given by Communications Compliance to the Supplier which are consistent with obligations in this Code in accordance with Table 1 in clause 9.8.2;
- b) **Metrics:** provide to Communications Compliance annually, or more frequently if required by Communications Compliance, a report in a format required by Communications Compliance reporting on the Metrics which relate to that Supplier's compliance to this Code; and

- c) **Comply with requests:** comply with all reasonable requests made by Communications Compliance to the Supplier which are consistent with obligations in this Code in accordance with Table 1 in clause 9.8.2.

## 10.8 Supplier obligations to meet timeframes

Suppliers must meet the timeframes set out in this clause.

- 10.8.1 **Date for provision of attestation statements:** A Supplier, if it has one or more Customers on 1 April each year, must provide the statements prescribed in clause 9.4.1 by the following dates:
- a) if the Supplier is a Small Supplier as at 1 April and has not by 1 April submitted to Communications Compliance an Attestation Deferral Notice:
    - 1 April in the same year;
  - b) if the Supplier is a Small Supplier as at 1 April and has by 1 April submitted to Communications Compliance an Attestation Deferral Notice:
    - 1 September in the same year;
  - c) if the Supplier is not a Small Supplier as at 1 April:
    - 1 September in the same year.
- 10.8.2 **Timeframe to comply:** Suppliers must comply with requests and directions from Communications Compliance within the timeframes specified in Table 1.

**Table 1**

<b>Requirement</b>	<b>Timeframe</b>
Complying with a request from Communications Compliance or providing a document to Communications Compliance under clause 10.6.1	Within 30 days (or as otherwise agreed)
Complying with a direction from Communications Compliance under clause 10.7.1	Within 30 days (or as otherwise agreed)
Complying with any reasonable request from Communications Compliance under clause 10.7.1	Within 14 days (or as otherwise agreed)

### **GUIDANCE**

#### **Brochure and Compliance Tools**

- *Communications Alliance, in consultation with Consumer representatives, has prepared a plain language brochure for Consumers, explaining the key Consumer safeguards provided by the Code. While not an enforceable obligation of this Code, Suppliers should, as and when requested by Communications Alliance, contribute to the development of that brochure and make it available to their Customers.*

- *Communications Alliance works with Communications Compliance to make tools available to Suppliers to assist them in meeting their obligations under the Code Compliance Framework.*
- *Suppliers should, as and when requested by Communications Alliance, contribute to a wider awareness campaign to ensure the broader community understands the Code and what it means.*

## **APPENDIX 1 ROLE OF COMMUNICATIONS COMPLIANCE**

### **Summary**

*This Appendix informs providers about the function and activities of Communications Compliance, and does not restrict or instruct its activities. This Appendix is supplementary to Chapter 9 of the Code.*

Communications Compliance publishes updated information on their compliance and education activities on its website, [www.CommCom.com.au](http://www.CommCom.com.au).

### **Functions**

Communications Compliance is responsible for overseeing the Code Compliance and Monitoring Framework as set out in Chapter 9 of this Code.

Communications Compliance undertakes education, investigation and audit activities year-round to enhance industry compliance with Code obligations. Its activities are primarily informed by the annual Compliance Attestation lodgement process, which may highlight areas where there is evidence of isolated or systemic non-compliance.

Communications Compliance may also seek information from a Supplier via a Compliance Monitoring Request, and may direct a Supplier to comply with one or more Code obligations where there is evidence of non-compliance.

Communications Compliance also produces and publishes guidance notes and material to assist Suppliers in fulfilling their compliance obligations as set out in the Code.

### **Referrals to the ACMA**

Code enforcement is the prime responsibility of the ACMA. Communications Compliance supports the ACMA in this role by sharing information about possible non-compliant Suppliers.

Suppliers that breach their Code obligations through non-lodgement of an annual Compliance Attestation are formally referred to the ACMA.

Suppliers may also be referred to the ACMA where:

- a Supplier refuses to heed a Communications Compliance direction to address non-compliance;
- Communications Compliance is not satisfied with the progress of a Supplier's Compliance Achievement Plan or Action Plan; or
- Communications Compliance otherwise suspects a Supplier is failing to comply with its obligations under the Code.
- 

Suppliers referred to the ACMA may be subject to further investigation by the ACMA and, if the ACMA finds a breach of the Code has occurred, enforcement action.

### **Website and Supplier Portal**

Communications Compliance publishes on its website guidance, templates, and other beneficial collateral to assist Suppliers to engage with the annual Compliance Attestation lodgement process.

Communications Compliance also publishes on its website lists of Suppliers:

- that have fulfilled their annual Compliance Attestation lodgement obligations under Chapter 9 of the Code;
- that have been subject to formal enforcement action by the ACMA as a result of failure to meet their obligations under the Code; and
- that have been found to have instances of gross or systemic non-compliance as a result of investigations undertaken by Communications Compliance, either during or outside of the annual attestation and assessment period, and who were then formally referred to the ACMA.

Engagement with Suppliers in relation to the annual Code Compliance Attestation Lodgment is primarily conducted via the Communications Compliance CSP Portal, <https://csp.commcom.com.au>. The portal also contains additional information to assist Suppliers with their Code compliance obligations.

### **Transparency**

Communications Compliance prepares and publishes an annual report on activities it has undertaken during the preceding year in relation to industry compliance with the Code.

Communications Compliance also publishes its key areas of focus for the year ahead, which are determined in consultation with key stakeholders.

### **MOU**

Communications Compliance maintains memoranda of understanding (MOU) with key stakeholders – the TIO, ACMA, ACCC, ACCAN, and Communications Alliance. The MOU are designed to ensure efficient and effective working relationships with stakeholders to avoid duplication of effort, ensure appropriate information exchange and expedite coordinated actions.

## APPENDIX 2 PARTICIPANTS

Working Committee 84 responsible for the revisions made to Code C628:2015 Incorporating Variation No.1/2017 resulting in the publication of Code C238:2018 consisted of the following organisations and their representatives:

<b>Organisation</b>	<b>Membership</b>	<b>Representative(s)</b>
ACCAN	Voting	Teresa Corbin, Una Lawrence
ACCC	Non-voting	Clare O'Reilly, Neha Gosain
ACMA	Non-voting	Vince Humphries, Kelly Mudford
Communications Alliance	Non-voting	John Stanton
Department of Communications and the Arts	Non-voting	Kathleen Silleri, Nikki Vajrabukka, Andrew Mitchell
inbox	Voting	Geena Kordek
Legal Aid NSW	Voting	Jenny Lovric
Optus	Voting	Ana Tabacman, Amar Singh
Telstra	Voting	Trevor Hill, Dan Mandaru
Vodafone Hutchison Australia	Voting	Alexander R. Osborne

That Working Committee was chaired by Independent Chair Fay Holthuyzen. Jessica Curtis of Communications Alliance provided project management support.

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

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

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

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



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