

The New Mobile Premium Services Code

Sydney

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Mobile Premium Services – the new Regulatory Regime

On 18 May 2009, the Australian Communications and Media Authority (ACMA) announced a new set of regulatory measures in respect of Mobile Premium Services (MPS). The centrepiece of the regulatory strategy is the registration of the Mobile Premium Services Code (Code) under the co-regulatory provisions of the *Telecommunications Act 1997* (Cth) (Act).

The Code was developed under the auspices of Communications Alliance through a working committee comprising representatives from all relevant sectors of the mobile premium services industry and consumer groups.

Persons to whom and services to which the new Code applies

The Code places obligations on carriage service providers, content service providers and others (including content aggregators) in relation to the provision of mobile premium services and takes effect from 1 July 2009. These services include broadcasting services, information and entertainment services and other on-line services.

The Code also imposes obligations on content aggregators. A content aggregator is a person who aggregates content supplied by content supplier(s) and then typically contracts to supply that content to a carriage service provider for on-sale to the end customer.

A mobile premium service includes a premium SMS or MMS Service, which is a service supplied by way of a call to or from a short dial code with a prefix 191-199. It also includes proprietary network services.

Structure and key terms of the new Code

The Code:

- covers key aspects of consumer engagement in relation to MPS, from rules relating to advertising and the provision of service information, the supply of the MPS itself, to the handling of complaints and unsubscribe and opt-out mechanisms;

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- automatically applies to all suppliers in the MPS chain (carriage service providers, content aggregators and content service providers);
- will be included by carriers and aggregators in supply contracts; and
- may be enforced by ACMA giving a direction under section 121 of the Act, failure to comply with which may give rise to civil penalties of up to \$250,000 per contravention.

Context of the Code

- The Code replaces the previous Mobile Premium Services Industry Scheme (MPSI Scheme) which had operated under a service provider determination under section 99 of the Act (Determination). The Scheme:
 - covered both content and consumer engagement issues for MPS; and
 - was enforced primarily through its incorporation into MPS contracts between carriers and content aggregators and providers.
- The MPSI Scheme required service providers to give their mobile customers clear and transparent information about the costs and terms and conditions on which mobile premium services are offered. The MPSI Scheme was self-regulatory, in that it was only binding on service providers that chose to become members of the MPSI Scheme. The Communications Alliance Limited was responsible for the administration of the MPSI Scheme.
- In late 2007, the *Broadcasting Services Act 1992* (Cth) (BSA) was amended to create a new Schedule 7, dealing with content services delivered via carriage service. The Internet Industry Association then created a Content Services Code that was registered under Schedule 7 in June 2008. The Content Services Code covered much of the ground dealt with in content regulation areas of the MPSI Scheme. As a result, the Determination and the MPSI Scheme were amended to remove this content regulation material.
- Given the removal of such material from the Determination and the MPSI Scheme, a decision was taken to amend the structure of the MPS regulation to prepare and seek registration of the Code.

Key substantive changes

The primary consumer protection changes in the transition from the Scheme to the Code are as follows:

- **Register:** every content supplier and content aggregator is required to register itself and provide prescribed details of itself on the Communications Alliance register. The register is designed to operate as a comprehensive source of detailed information on the providers of individual MPS services.
- **Advertising:** significant changes to advertising requirements, including specific obligations in relation to the layout of TV, print, online and radio advertising. There is a prohibition on advertising that is targeted at audiences under 15 and additional requirements where the audience may include consumers under 18.
- **Double Opt in:** a key requirement for subscription MPS is that, following the initial request by a consumer to subscribe for the service, the consumer is required to opt-in in response to a second confirmation message sent to the consumer's handset.

- **Expenditure Management:** there are strict requirements for notifications to consumers for each incremental spend of \$30 within a calendar month, as well as a requirement to give a 30-day notification of total spend on each MPS service.
- **Short code look up:** content suppliers and aggregators must supply all short code details to Communications Alliance for inclusion on the short code lookup tool located at www.19sms.com.au. This provision is designed to assist consumers in identifying and locating the correct content provider of services.
- **Complaint Handling:** there are detailed requirements for handling of complaints including the obligation on content suppliers to have a live staffed helpline (at local call or free call rates) from 9am to 5pm Australia EST on all business days. Content suppliers must advise end carriage service providers of details of the helpline. End carriage suppliers and aggregators must take reasonable steps to pass on the helpline details to any person who makes a complaint to them about the service.
- **Unsubscribe/opt-out rules:** there are detailed obligations on content suppliers in terms of acting on unsubscribe requests in a timely fashion.

Accompanying regulatory measures

The other measures announced by the ACMA on 18 May 2009 were as follows:

- ACMA intends to create a new Service Provider Determination to complement the Code, which will:
 - require mobile carriers to implement call barring mechanisms for MPS on their mobile networks on or before 1 July 2010, allowing consumers a choice to block such services should they so desire; and
 - require all MPS content providers to become registered on an industry register to be established by Communications Alliance; and
 - provide rules for the deregistration of content providers, meaning that non-compliant operators will be prevented from supplying services in the Australian MPS market; and
- ACMA will develop a comprehensive framework for the monitoring of MPS services and compliance with the Code and service provider determination.

Review of the Code

The operation and effectiveness of the Code is to be reviewed in 12 months.

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