

Mobile Premium Services Industry Scheme

Pursuant to the

Telecommunications Service Provider (Mobile Premium Services) Determination 2005 No.1

22 August 2006

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1 INTRODUCTION

On 29 June 2005, the Australian Communications Authority (**ACA**, now **ACMA**) made the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 No.1* (the **Determination**) under section 99 of the Telecommunications Act. This Determination specifies the minimum obligations on Carriage Service Providers and Content Service Providers intending to supply mobile premium services to the Australian marketplace.

The Determination was made pursuant to a Ministerial Direction to the ACA dated 13 May 2004¹ that was issued in response to emerging Government and community concerns that, with the continuing proliferation of mobile phone ownership generally, children may have broader access to material that was considered suitable only for adults. In particular, the Direction required that:

- adult services supplied by way of premium SMS and MMS services should only be accessible via specified number ranges;
- there be formal constraint on the supply of content that would otherwise be determined to be prohibited content; and
- appropriate access restrictions should apply to content services generally considered to be suitable only for adults.

Further to that Direction, the ACA noted additional concerns that it felt should also be addressed within the same Determination, including:

- concerns over the risk of paedophiles using certain content service types to "groom" children for purposes of illegal activities;
- concerns that customers may not be sufficiently informed of prices, terms and conditions associated with premium content services; and
- concerns that consumers were experiencing difficulties in cancelling subscriptions to certain premium service types.

Following a period of public consultation, the Determination included provisions covering these concerns, along with additional provisions addressing: unsubscribe mechanisms, complaints handling, and removal of content services, along with requirement for a self-regulatory framework ('Scheme') for the purposes of implementation and enforcement.

¹ Australian Communications Authority (Service Provider Determination) Direction 2004 – see: <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/asmade/bytitle/21F8475B2D815209CA256F7B0016A9D2?OpenDocument>

2 SCOPE

This Scheme is intended to apply to Carriage Service Providers, Content Service Providers and Content Providers choosing to become members of the Scheme. It is noted that a Carriage Service Provider may also act as a Content Service Provider in cases where they resell or provide content services.

In this Scheme, mobile premium services include the following content services for which a specific fee is charged in addition to the relevant basic carriage tariff:

- SMS and MMS services offered via circuit-switched carriage services;
- content services, such as alphanumeric text, video and audio/visual material, games, and other interactive applications offered via packet data carriage services.

This Scheme sets out the rules with which members of the Scheme are required to comply, and the procedures applicable to resolving customer complaints, removal of offending content services and other matters. A failure to comply with the rules of this Scheme, including failure to implement any remedy determined by the independent escalated complaints handling body, may be deemed a breach of the Determination for which penalties may be enforced by ACMA.

3 OBJECTIVES

The key objective of this Scheme is to establish a framework to implement appropriate community safeguards in relation to use of Mobile Premium Services, by making rules that:

- Prohibit and restrict certain mobile premium content services in accordance with the National Classification Code and community expectations about the accessibility of those services;
- Promote the safety of children in relation to mobile premium content services that might be used for illegal contact between children and adults;
- Ensure customers have sufficient information enabling them to make informed decisions about using mobile premium content services; and
- Ensure the availability of an independent complaints handling mechanism.

More specifically, the provisions of this Scheme are intended to provide that:

- Customers are sufficiently informed of the nature, prices, terms and conditions of premium content services at the point of sale, in advertising, and while using the services;
- Proper assessment of premium mobile content services is undertaken in accordance with appropriate community standards, to distinguish content considered suitable only for adults or that should not be made available at all;
- Customers can readily access an 'unsubscribe' mechanism for each premium content service, to discontinue a service and avoid incurring further premium charges;
- Persons under the age of 18 years should not have access to adult content, through implementation of appropriate age-verification mechanisms along with robust access controls;
- Appropriate safety measures and protection mechanisms are implemented to protect children from illegal intentions or activities of adults using mobile chat services;
- Customers have a convenient, fair and efficient means of resolving complaints arising in respect of premium content services; and
- Fair and efficient mechanisms exist for directing the removal of prohibited content services, or services accessible but determined to be unsuitable for access by persons under the age of 18 years.

This Scheme also specifies the conditions of membership of the Scheme, and the procedures for any amendment of the Scheme in the future.

4 PREMIUM SERVICE DESCRIPTIONS

4.1 Content versus Carriage

To assist understanding by both consumers and members of the industry, a clear distinction is made throughout this Scheme between the **content** services supplied to customers, and the means of delivering (or **carriage** of) those content services.

Content services include text, visual and audible information as well as applications that provide interactive advice, alerts, entertainment and transaction services. Charges for content services are determined by the relevant Content Service Provider and usually vary between different types of content and different content services – these charges are generally referred to as premium content tariffs or fees.

In the context of this Scheme, carriage services include a wide variety of packet data delivery services (such as: SMS, MMS, USSD, GPRS, 1xRTT, EVDO, WAP, EDGE, and HSDPA, to name but a few) that are designed to transparently carry all types of packet data traffic. Carriage Service Providers generally cannot distinguish different types of content carried by their networks, and merely charge a fixed fee per data volume carried (for example, per kilobyte).² Aside from content specifically supplied by themselves, Carriage Service Providers do not set content fees, and are generally unaware of applicable third-party content fees in advance of each customer transaction posting.

4.2 Messaging Services

Messaging services are services that allow for the near-real-time interchange of short text and audio-visual files between customers, based on a store-and-forward delivery mechanism. Text-only messaging services are referred to as Short Message Services (SMS), while messaging services that allow a combination of audio-visual information and text are referred to as Multimedia Messaging Services (MMS).

Messaging services may be limited to 'one-to-one' message interchange between two customers, or may allow 'one-to-many' interchange between one message originator and many recipients. Those services offering 'one-to-many' interchange may take the form of either simple 'group' messaging based on the originator supplying multiple recipient addresses, or specific 'chat' services that facilitate automatic distribution of messages to all customers currently logged onto the service. Where these messaging services provide chat services as defined in the Determination, additional obligations apply.

² Note that Carriage Service Providers may instead offer a fixed (or 'flat') monthly tariff irrespective of the volume of data traffic carried (usually up to some maximum 'capped' aggregate monthly volume).

NOTE that 'one-to-one' messaging, and 'group' messaging based on a string of individual recipient addresses specified by the originator, are subject to the privacy provisions of the Telecommunications Act 1997 and the Privacy Act 1988. Monitoring or moderation of such messaging activities by third parties is permitted in limited circumstances under the legislation.

4.3 Chat Services

Chat services are a form of "bulletin board" service that allow customer messages to be posted for perusal and response by other customers currently logged into the service. There are many different types of chat services, including:

- Open, public chat services – which allow any customer to post an arbitrary message at any time;
- Themed chat services – such as 'virtual winebars', and gaming services;
- Targeted chat services – such as car parking services, dating and singles services;
- Special interest chat services – such as sports supporters, music lovers, car owners, investors, computer gaming enthusiasts, and hobbyists;
- Private, registration-only chat services – typically set up by members of local sports & recreational clubs, and private friend circles.

Some chat services may also allow customers to temporarily establish a 'virtual private room' within an otherwise public chat service, to deliberately limit the distribution of their messages to a smaller audience (sometimes to invitees only).

Chat services are premium content services (applications) generally offered on the basis of a period (eg. monthly) subscription fee charged to the customer. In addition, the customer will also usually incur standard data carriage charges for the delivery of both sent and received messages.

4.4 Portal Services

The Determination uses the term "proprietary network service". However in this Scheme the term "portal service" will be used to describe portal (or gateway) services that offer a central access point for multiple content services, which are generally presented by means of a visual menu displayed on the customer's handset. Customers can scroll through the listed menu multi-level hierarchy to access different content services via a single "click" on the chosen menu item.

Portal services can operate on the basis of providing a "payment service" for external Content Service Providers, where the Carriage Service Provider retains a portion of the premium content charge billed to the customer in return for the billing and remittance functions undertaken on behalf of the Content Service provider. In some cases the premium content charge may also cover the standard data carriage charges associated with the service delivery (carriage) function. In other cases it will be billed separately so that the customer will incur standard data carriage charges for delivery of content in addition to the premium content charge.

However, Carriage Service Providers may also be Content Service Providers in circumstances where they provide content services via their portal service in addition to carriage services.

4.5 Internet Access

The scope of the Determination extends to mobile premium services ie premium SMS or MMS services or proprietary network services, as defined. Schedule 5 of the Broadcasting Services Act 1992 regulates internet content, as defined. The Internet Industry Association has developed codes of practice in relation to internet content under that Act.

The following sections specify the substantive rules applying to the supply of mobile premium services by members of this Scheme:

5 INFORMING CUSTOMERS

This section defines the rules aimed at ensuring that customers are sufficiently informed of the costs, terms and condition associated with use of both single-transaction and subscription-based premium content services.

5.1 Service pricing

[Determination: §5.5(3)(d), §5.5(3)(e)]

- 5.1.1 Content Service Providers shall implement appropriate mechanisms to inform customers, before accessing a service, of the actual charges to be incurred for acquiring the premium content service, in a clear and unambiguous manner.
- 5.1.2 Where applicable, the mechanism used under clause 5.1.1 must include a clear message advising customers that, in using the service, they may become liable for additional charges, such as data carriage charges, for delivery of the service.
- 5.1.3 Customers shall not incur any premium content charges for receipt of service pricing information.
- 5.1.4 Where pricing information is supplied to customers, Content Service Providers shall provide a means for customers to decline the service, without incurring any premium content charges.

5.2 Service Provider Name & Contact Details

- 5.2.1 Carriage Service Providers and Content Service Providers shall implement appropriate mechanisms to ensure and make available by appropriate means at least one method of directly contacting the service provider.
- 5.2.2 For mobile premium messaging services, all advertisements must include the name and contact details of the relevant Content Provider or Content Service Provider.

5.3 Other terms & conditions

[Determination: §5.5(3)(h)]

- 5.3.1 Content Service Providers shall not supply any mobile premium service, nor send any messages, to a customer that has not explicitly requested such services.
- 5.3.2 Content Service Providers shall not charge customers a premium service fee for any service or message that a customer has not explicitly requested to be supplied.

- 5.3.3 Content Service Providers shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, before accessing a mobile premium service, of the nature and terms and conditions of use of each premium service.
- 5.3.4 Content Service Providers shall not impose a minimum term on any mobile premium service that extends beyond the period paid for by the customer such that the customer is required to pay a further amount to meet the minimum term.
- 5.3.5 Where a subscription fee is charged, Content Service Providers may provide for the automatic renewal of the mobile premium service provided the customer is notified prior to the commencement of the service and the requirements of Section 6 are met.
- 5.3.6 Content Service Providers shall not impose a premium service charge on any error messages³, irrespective of the cause of the error.
- 5.3.7 Appropriate mechanisms shall be implemented to inform customers, in a clear and unambiguous manner, before entering any competition or voting service, of the terms, conditions and refund arrangements applicable to the relevant service. A refund may be required to be given where the terms and conditions of supply for the relevant service are not met.
- 5.3.8 The terms and conditions referred to in clause 5.3.7 must outline the refund arrangements that will apply where the competition mechanics or voting conditions are altered in a material way prior to entry and reasonable steps have not been taken to inform the customer of the alteration.
- 5.3.9 In the case of refunds due to a customer, Content Service Providers shall make such a refund in monetary form either by issuing a direct credit against the customer's current account or by directly refunding the customer, for example by sending a cheque to the customer made out in his/her name. Refunds may only be offered by way of an in-kind replacement, substitute, or voucher where the customer has explicitly agreed.

³ Note that Carriage Service Providers may instead offer a fixed (or 'flat') monthly tariff irrespective of the volume of data traffic carried (usually up to some maximum 'capped' aggregate monthly volume).

5.4 Subscription Services

In addition to the preceding requirements, and in the particular case of subscription services:

- 5.4.1 Content Service Providers shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, of the charges to be incurred for acquiring the subscription service, prior to the customer's first use of the service, and each time a service subscription is renewed.
- 5.4.2 Content Service Providers shall implement appropriate mechanisms to ensure that customers can readily identify the relevant Service Provider's name and a means of contacting them, prior to the customer's first use of the service and each time the service subscription is renewed.
- 5.4.3 Content Service Providers shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, of the nature and terms and conditions of use of each premium service, prior to the customer's first use of the service and each time the service subscription is renewed.
- 5.4.4 For the purposes of this clause, a subscription service is not 'renewed' in the circumstances described in clause 5.3.5.

6 OPT-OUT MECHANISMS

This section defines the minimum requirements to provide customers with simple, convenient and effective means of cancelling any premium subscription service.

[Determination §5.5(3)(f), §5.5(3)(g)]

6.1 Customer Awareness

- 6.1.1 Content Service Providers shall implement appropriate mechanisms to enable customers to readily and conveniently discontinue a premium content service subscription at any time.
- 6.1.2 Content Service Providers shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, before accessing a mobile premium service, of the method to be used by customers to unsubscribe from the premium content service subscription.
- 6.1.3 Content Service Providers must provide information about how to unsubscribe from a subscription service on an ongoing basis and such information must be readily available:
 - (a) via a website;
 - (b) via the portal service; or
 - (c) by telephone.

6.2 Format of Customer Request

- 6.2.1 Premium messaging services shall be configured to allow customers to make a request to discontinue subscription to the service by entering the word 'STOP' in a message sent from the customer's handset to a destination number or address associated with the particular service. Where practical the configuration should enable customers to send the 'STOP' message in reply to the message providing the relevant service.
- 6.2.2 Portal content services shall allow customers to unsubscribe by entry of relevant information and submittal via:
 - (a) a website; or
 - (b) the portal service itself.

- 6.2.3 Content Service Providers of mobile premium services shall also offer a local or freecall number for use by customers wishing to make their unsubscribe request by personally speaking to an appropriate representative of the Service Provider, and shall:
- (a) ensure that this number is included in any advertising of premium content messaging services;
 - (b) ensure that this number is formally advised to the relevant Carriage Service Provider; and
 - (c) ensure that this number is staffed during the normal business hours comprised of: Monday to Friday, 9:00am ~ 5:00pm, except for gazetted national public holidays.

6.3 Service Provider Response

- 6.3.1 Upon receipt of a customer request to discontinue a premium content service subscription, Content Service Providers shall cease further supply of the service by 6pm on the next business day.
- 6.3.2 Upon receipt of a customer request to discontinue a premium content service subscription, Content Service Providers shall not post any further charges to the customer's account in respect of the service unless the customer actively 'renews' the service.

6.4 Fees for Opt-out Requests

- 6.4.1 Content Service Providers shall not impose any premium content charge for processing an unsubscribe request⁴ or discontinuing a subscription service.

⁴ Determination §5.5(4) specifies that a content service provider is not taken to be charging a customer a premium rate for sending the STOP message if (a) the command can be issued without using a premium SMS or MMS service, and the charge is not more than the usual cost of making a call in the same as was used to send the message; or (b) in any other case – a refund is given to the customer to reimburse the customer for any cost above the usual cost.

7 ASSESSMENT OF CONTENT SERVICES

This section defines the minimum process to be adopted for assessment of content supplied by way of mobile premium services.

[Determination §5.5(3)(c)]

7.1 Film and Computer Games Classification Guidelines & Certifications

- 7.1.1 The Guidelines for the Classification of Films and Computer Games 2005 as amended from time to time, which operate under the Commonwealth Classification (*Publications, Films and Computer Games*) Act 1995, shall be the basis on which premium content is to be assessed by members of the Scheme.
- 7.1.2 In determining whether premium content services are prohibited or should only be made available to customers aged 18 years or older, members of this Scheme shall refer the relevant content services to a certified assessor.
- 7.1.3 A certified assessor is a person who has the following qualifications:
- (d) is an Australian resident; and
 - (e) has been a member of the Classification Board for at least 12 months within the last 2 years; or
 - (f) has completed a training course approved by the Director of the Classification Board and remains certified by the Director of the Classification Board or other body designated by ACMA; or
 - (g) has obtained a written exemption from the Director of the Classification Board or other body designated by ACMA from completing a training course and certification referred to in (c) above, within the previous 12 months.

7.2 Prohibited Content

Premium content services offering content that is or is reasonably likely to be assessed as X18+ or RC shall not be made available to customers under any circumstances by Content Service Providers via any mobile carriage service.

7.3 Age-restricted Content

Premium content services that are or are reasonably likely to be assessed as MA15+ or R18+ shall only be made available via appropriate access control mechanisms to customers verified as aged 18 years or over, in accordance with the age-verification procedures required by the Determination.

8 CHAT SERVICE PROTECTIVE MEASURES

This section defines the minimum requirements applicable to the supply of mobile premium service chat applications.

[Determination §4.3, §5.5(3)(i), §5.5(3)(j)]

8.1 Chat service

“Chat Service” is defined in the Determination to mean “a service that enables an end-user to send a message to 1 or more than 1 other end-user who can reply directly to the message”.

8.2 Conditions of Use

8.2.1 Content Service Providers must establish terms and condition of use applicable to the use of a chat service and shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, of those terms and conditions prior to their first use of the chat service.

8.2.2 Content Service Providers shall implement appropriate mechanisms to inform customers, in a clear and unambiguous manner, of the posting rules each time they log in to use the chat service, at no cost to the customer.

8.3 Protective & Safety Measures

8.3.1 Providers of chat services have obligations to implement appropriate safety measures in accordance with the requirements of the Determination and the Safety Measures Notice issued by ACMA.

9 ADVERTISING OF CONTENT SERVICES

This section defines the minimum requirements applicable to the advertising of mobile premium services.

[Determination: §5.5(3)(a)]

9.1 Minimum Advertising Requirements

- 9.1.1 This section 9.1 applies to Content Service Providers seeking to use advertising as the mechanism to comply with the obligations imposed by Section 5 in relation to informing customers. This section does not apply to any other advertising, unless it is used to meet those obligations.
- 9.1.2 Advertising of mobile premium content services shall include clear and accurate information in regard to the:
- (a) premium service fees that will be charged to customers accessing or using the service;
 - (b) nature of the service, including whether it is an age-restricted service and/or a subscription service;
 - (c) closing date of any time-sensitive activity, such as competitions and voting services;
 - (d) other terms and conditions for using the service; and
 - (e) name and contact details of the Content Provider or Content Service Provider offering the service.

9.2 Age-restricted Services

[Determination: §5.5(3)(b)]

Advertising of age-restricted mobile premium content services shall clearly and unambiguously indicate the nature of the services and must explicitly notify customers that the services are suitable for persons aged 18 years or over only.

9.3 Services for children

[Determination: §5.5(3)(b)]

- 9.3.1 A **service for children** is a service where the placement, context and content of an advertisement for the service is reasonably likely to attract or encourage a significant number of persons under 15 years of age to use the service.
- 9.3.2 An advertisement for a service for children must contain a warning to the effect: "If you are under 15 you must ask the account holder before using this service".

9.4 “Free” services

- 9.4.1 Advertisements offering “free” services shall clearly and unambiguously state the terms and conditions of the services, including whether the supply of the “free” service is conditional on the customer also accepting any other service for which a premium content fee will be incurred.

9.5 Format of Advertisements

- 9.5.1 Print advertisers should be aware of the requirements of the ACIF Code C521:2004 Customer Information on Prices, Terms and Conditions.⁵ The obligations imposed by this Code may be directly enforced by the TIO.
- 9.5.2 All other advertising shall adopt appropriate formats to inform customers in a clear and convenient manner of the information required to be provided in accordance this Scheme.

⁵ Determination §5.5(4) specifies that a content service provider is not taken to be charging a customer a premium rate for sending the STOP message if (a) the command can be issued without using a premium SMS or MMS service, and the charge is not more than the usual cost of making a call in the same as was used to send the message; or (b) in any other case – a refund is given to the customer to reimburse the customer for any cost above the usual cost.

10 COMPLAINTS HANDLING

This section defines the rules applicable to resolving customer complaints – including both the initial investigation by the relevant Service Provider, as well as the approach to be adopted by the escalated complaints handling body.

[Determination §5.6(1)(a), §5.6(1)(b), §5.6(1)(d), §5.6(1)(e), §5.6(1)(f), §5.6(1)(g), §5.6(1)(h), §5.6(1)(i), §5.6(1)(j)]

10.1 Customer Awareness

[Determination §5.6(1)(a)]

10.1.1 Carriage Service Providers and Content Service Providers shall implement the following measures as a minimum to ensure that customers are made aware of the options available for resolving any complaints:

- (a) provide a clear description on a readily accessible Internet site of the options and process implemented by the service provider for handling of complaints including time limits applicable for making a complaint;
- (b) provide information about the role and the contact details of the escalated complaints handling body specified in this Scheme on a readily accessible Internet site.

10.2 Initial Investigations

[Determination §5.6(1)(b) , §5.6(1)(c)]

10.2.1 Carriage Service Providers and Content Service Providers shall investigate a complaint if the complaint is made:

- (a) for content assessment complaints, within 30 days from receipt of the relevant content;
- (b) for all other complaints, within 12 months from when the charge is incurred.

The time limit may be extended at the Carriage Service Provider's or Content Service Provider's discretion.

10.2.2 Carriage Service Providers and Content Service Providers shall make genuine efforts to resolve all customer complaints prior to referring the customer to the escalated complaints handling body.

10.2.3 Carriage Service Providers and Content Service Providers need not investigate any complaints that are reasonably determined to be frivolous, vexatious or not made in good faith.

10.2.4 Carriage Service Providers and Content Service Providers shall maintain appropriate and accurate records of the complainant's name, address and contact details, date of complaint, nature of complaint, and a running log of actions undertaken to resolve the complaint.

10.2.5

- (a) Where the Carriage Service Provider receives the initial complaint and the complaint is in relation to an aspect of the mobile premium service under the control of the Content Service Provider, the Carriage Service Provider will refer the complaint to the Content Service Provider in a timely manner to give the Content Service Provider an opportunity to propose a resolution to the complaint.
- (b) The relevant Carriage Service Provider or Content Service Provider must propose a resolution of an initial complaint within a period of not more than thirty (30) calendar days after the initial complaint is received.
- (c) If the relevant Service Provider is unable to propose a resolution to the complaint within thirty calendar days, then advice shall be given to the customer that they may refer their complaint to the escalated complaints handling body.

10.2.6 If the Consumer is not satisfied with the response to the complaint, or 30 calendar days have elapsed since the complaint was lodged with the Carriage Service Provider or Content Service Provider, the complaint may be escalated to the escalated complaints handling body by the complainant.

10.2.7 If a Carriage Service Provider or Content Service Provider receives a complaint from a customer alleging that a Content Provider has provided a service containing Mobile Content that:

- (a) has not been assessed as Restricted Content when it should have been so assessed; or
- (b) has been assessed as Restricted Content when it should have been assessed as Prohibited Mobile Content; and
- (c) the Carriage Service Provider or Content Service Provider reasonably believes that the complaint has been made in good faith and is not vexatious or frivolous,

then the Carriage Service Provider or Content Service Provider will re-assess that Content or refer the complaint to the Content Provider for re-assessment where the Content Provider undertook the original assessment.

10.2.8

- (a) The Carriage Service Provider or Content Service Provider will, as soon as practicable and in any event within one business day of receipt of a complaint that satisfies clause 10.2.7, have the content reassessed by a certified assessor.
- (b) If the content is not reassessed within 1 business day, the Content Service Provider must remove public access to the particular mobile content until the reassessment process outlined in this clause has been satisfied.
- (c) If, following a reassessment, the certified assessor determines that the mobile content was inaccurately assessed, it shall advise the Carriage Service provider or Content Service Provider who will inform the customer and the Content Provider of the new assessment as soon as practicable. The Carriage Service Provider or Content Service Provider will then deal with the Mobile Content in accordance with the reassessment by the certified assessor.
- (d) If, following a reassessment, the certified assessor determines that the mobile content was accurately assessed, it shall advise the Carriage Service Provider or Content Service Provider who will inform the customer as soon as practicable. The mobile content may be treated as it had been treated previously.

10.3 Escalated Complaints Handling Body

[Determination §5.6(1)(d) , §5.6(1)(f), §5.6(1)(g), §5.6(1)(h) , §5.6(1)(i)]

- 10.3.1 For the purposes of this Scheme, the escalated complaints handling body is the entity named in Item 1 of Schedule 1 of this Scheme. The escalated complaints handling body shall be impartial in handling complaints and process and handle customer complaints in accordance with Australian Standard AS4269 entitled "Complaints Handling".
- 10.3.2 In the first instance, complaints by consumers must be made to the Carriage Service Provider or the Content Service Provider. If the escalated complaints handling body receives a complaint in the first instance it must refer it to the Carriage Service Provider.
- 10.3.3 The escalated complaints handling body must investigate the complaint and determine the complaint within the time frame stipulated by the escalated complaints handling body's administrative requirements, or 90 days, whichever is the shorter period.

- 10.3.4 Where the escalated complaints handling body involves the Carriage Service Provider in the investigation of the complaint and the complaint is in relation to an aspect of the mobile premium service under the control of the Content Service Provider, the Carriage Service Provider will refer the questions or issues raised by the escalated complaints handling body to the Content Service Provider in a timely manner to give the Content Service Provider an opportunity to propose a resolution to the complaint.
- 10.3.5 The escalated complaints handling body will not investigate any complaints that it determines to be frivolous, vexatious or not made in good faith.
- 10.3.6 In investigating and resolving a complaint, the escalated complaints handling body:
- (a) may obtain advice from the Classification Board regarding the classification of content about which a complaint is made and may rely on advice from the Classification Board in determining a complaint;
 - (b) may report a complaint to ACMA if it is of the opinion that it is appropriate for ACMA to investigate the matter about which the complaint is made provided that matters relating to the assessment of the content of a content service are referred to ACMA;
 - (c) may give directions, in connection with a complaint, to ensure compliance with this Determination, including directions to the relevant members⁶ to remove specified content, or to remove access to specified content, of the premium service about which the complaint is made;
 - (d) must ensure that a determination of a complaint, if implemented, will result in compliance with the Determination by the relevant members.

NOTE: An example of a complaint that would be referred to ACMA under clause 10.3.6(b) is a complaint made in relation to whether the content provided by the relevant service should be assessed as prohibited or age-restricted content under the Determination.

Failure by a Content Service Provider or Carriage Service Provider to implement a direction determined under this Scheme by the escalated complaints handling body within a period specified by that body constitutes a breach of the Determination, and may be subject to penalties imposed directly by ACMA.

⁶ "relevant member" in relation to a complaint, means a member of the Scheme who supplied the premium service about which the complaint is made.

- 10.3.7 The escalated complaints handling body must, within 30 days after a reporting period, provide to ACMA a statement of the types and number of complaints received by it in the reporting period.⁷
- 10.3.8 The escalated complaints handling body may set up a mechanism for internal review of complaints referred to it.
- 10.3.9 The escalated complaints handling body may audit a relevant member's age verification compliance plan or safety measures compliance plan.

10.4 Directions & Costs

- 10.4.1 Where the direction of the escalated complaints handling body involves the payment of fines or compensation, and the complaint was in relation to an aspect of the mobile premium service under the control of the Content Service Provider, the Carriage Service Provider may pass through those amounts to the Content Service Provider, plus any escalated complaints handling fees and charges, provided the Carriage Service Provider does not profit from passing on these costs and has paid the fine or compensation to the escalated complaints handling body and/or complainant in the first instance.

10.5 Appeals against Directions

- 10.5.1 Where the procedures of the escalated complaints handling body allow for an appeal against a direction to be made, appeals may be lodged in accordance with those procedures.

⁷ "reporting period" means each consecutive period of 3 months starting from the beginning of the commencement of the Scheme.

11 SERVICE REMOVAL PROCEDURES

This section defines the procedures and circumstances applicable to removal of access and/or removal of content services where such action is considered appropriate.

[Determination §5.6(1)(c)]

11.1 Take-down Directions

- 11.1.1 The escalated complaints handling body may issue directions to a Content Service Provider to take down any mobile premium service determined to be in breach of the Scheme.
- 11.1.2 Upon receipt of a direction from the escalated complaints handling body to take down a service determined to be in breach of the Scheme, the relevant service provider(s) shall implement and comply with such a direction within the timeframe specified in the direction.

11.2 Access Removal Directions

- 11.2.1 Where the relevant Content Service Provider refuses to take down a service or does not respond to a direction within by 6pm on the next business day, or cannot otherwise be contacted, the escalated complaints handling body is empowered to issue a direction to a Carriage Service Provider to remove access to the service determined to be in breach of the Scheme.
- 11.2.2 Upon receipt of a direction from the escalated complaints handling body to remove access to a service determined to be in breach of the Scheme, the relevant service provider(s) shall implement and comply with such a direction by 6pm on the next business day.
- 11.2.3 Where a Carriage Service Provider has complied in good faith with a direction issued by the escalated complaints handling body to remove access to a service, then the relevant Content Service Provider agrees not to pursue civil legal proceedings against the Carriage Service Provider in relation to the removal of customer access to the relevant service.

12 COMPLIANCE PLANS

12.1 Age Verification Compliance Plan

- 12.1.1 Carriage Service Providers shall develop and maintain a compliance plan describing the procedures, systems and processes associated with ensuring compliance with the age-verification requirements of this Scheme and the Determination.
- 12.1.2 The age verification compliance plan must comply with the requirements set out in the Determination.

12.2 Safety Measures Compliance Plan

- 12.2.1 Content Service Providers shall develop and maintain a compliance plan describing the procedures, systems and processes associated with ensuring compliance with the chat service protective requirements of the Scheme, and taking into account the guidance provided by the Safety Measures Notice issued by ACMA.
- 12.2.2 The safety measures compliance plan must comply with the requirements set out in the Determination.

13 MEMBERSHIP OF THE SCHEME

[Determination §5.5(2)(a), §5.5(2)(b), §5.5(2)(d)]

13.1 Membership Eligibility & Representation

13.1.1 Membership of this Scheme is open to all Carriage Service Providers, Content Service Providers, and Content Providers supplying services to the Australian mobile content market.

13.2 Binding on Members

[Determination §5.5(2)(a)]

13.2.1 This Scheme is agreed by the members and the escalated complaints handling body to be binding on them, to the extent permitted under the laws of the Commonwealth.

13.3 Copies of Scheme

[Determination §5.5(2)(d)]

13.3.1 Members of the Scheme are required to make a copy of the Scheme available on the Internet for inspection by the public.

13.4 Membership Obligations

[Determination §5.5(2)(b)]

13.4.1 Where the escalated complaints handling body is supported by a funding arrangement that will ensure it is sufficiently resourced to handle complaints in accordance with the recognised standard, that funding arrangement will be supported as required under that arrangement. If there is no such funding arrangement, the following provisions of this clause will apply where agreed by a committee comprising equal representation of Carriage Service Providers and Content Services Providers (the "Committee").

13.4.2 Members of this Scheme agree to promptly contribute upon commencement of the Scheme and each anniversary thereafter, until such time as they formally resign from the scheme in writing, an equal share of the forecast annual fixed costs of the escalated complaints handling body associated with the operation of this Scheme. The Committee shall annually determine by consensus the value of each share of fixed costs.

13.4.3 Members of this Scheme agree to pay the variable cost of each escalated complaint lodged with the escalated complaints handling body, excepting complaints deemed by the escalated complaints handling body to be frivolous, vexatious or not made in good faith. The value of the variable cost of complaints shall be determined on the basis of actual variable costs incurred by the escalated complaints handling body.

- 13.4.4 Members of this Scheme agree to pay a fixed 'fine' for each complaint determined by the escalated complaints handling body as a breach of this Scheme. The Committee shall annually determine by consensus the value of the fixed 'fine' applicable to each complaint.

14 AMENDMENT OF THE SCHEME

[Determination §5.5(2)(c)]

- 14.1.1 This Scheme will be formally reviewed by the Committee within 12 months from the date of implementation. In reviewing the Scheme and in considering any proposed changes to it, the members will consult with ACMA.
- 14.1.2 In addition, members of the Scheme can submit proposals regarding amendments to the Scheme to the Scheme Custodian listed under Item B in the Schedule attached to this document. Scheme members will meet at least annually to discuss proposed amendments. If majority support is achieved for the acceptance of the amendment, then members will proceed with seeking approval of the amendment by ACMA, including making a decision about the nature and extent of any additional industry or public consultation, having regard to the type of amendment proposed, the extent to which it varies the Scheme, and the urgency of the amendment.

15 GUIDELINES

- 15.1.1 The members of this Scheme intend to develop a set of guidelines that will assist members in fulfilling their obligations under this Scheme ("Guidelines"). The Guidelines do not form part of this Scheme. Typically the Guidelines will be enforced via contract between Scheme members.
- 15.1.2 The Guidelines will be reviewed periodically by the Committee. The Committee may seek input from other interested parties as it deems appropriate. The Committee must ensure that all amendments made to the Guideline are consistent with the rules of the Scheme and the objects of the Determination.
- 15.1.3 In contracts for the provision of mobile premium services, Carriage Service Providers will refer to, be consistent with and not contradict the Guidelines.

SCHEDULE 1

A. Escalated Complaints Handling Body:

Telecommunications Industry Ombudsman Ltd

B. Scheme Custodian:

Australian Communications Industry Forum Limited

C. Scheme Members:

Mobile carriers

Mr Brian Currie General Manager Regulatory Affairs Hutchison 3G Australia Pty Limited Building A 207 Pacific Hwy St Leonards NSW 2065	Mr Gary Smith Manager, Regulatory Operations Optus Mobile Pty Limited PO Box 1 North Sydney NSW 2059
Ms Marissa Wong Regulatory Advisor Telstra Corporation Limited 11/231 Elizabeth Street Sydney NSW 2000	Dr Matthew Pearce Regulatory & Policy Advisor Virgin Mobile (Australia) Pty Limited Level 8 213 Miller Street North Sydney NSW 2060
Ms Georgia-Kate Schubert General Manager, Public Policy Vodafone 799 Pacific Highway Chatswood NSW 2067	

Content service providers/content providers

<p><u>mBlox Australia</u></p> <p>301/50 Burton Street Sydney NSW 2010</p> <p>Contact: Hugh Haley, Country Manager</p> <p>Email: hugh.haley@mblox.com</p>	<p><u>Information Dialling Services Pty Ltd</u></p> <p>52-60 Ashford Avenue Milperra NSW 2214</p> <p>Contact: Bridget Holland, General Manager or Sam Galea, Consultant</p> <p>Email: bridget.holland@idstxt.com.au or sam.galea@idstxt.com.au</p>
<p><u>iTouch Australia Pty Ltd</u></p> <p>PO 1438 North Sydney NSW 2059</p> <p>Contact: Derek Trau, General Manager Products and Services</p> <p>Email: derek.trau@itouch.com.au</p>	<p><u>Netsize Pty Ltd</u></p> <p>Suite 301, 781 Pacific Highway Chatswood NSW 2067</p> <p>Contact: Peter Egberts – Business Development Director</p> <p>Email: pegberts@netsize.com</p>
<p><u>B33hive Pty Ltd</u></p> <p>Suite 504, 282 Oxford Street Bondi Junction Sydney NSW 2022</p> <p>Contact: Andrew Cuccurullo</p> <p>Email: ac@b33hive.com</p>	<p><u>InPho Interactive</u></p> <p>PO Box 47 Alexandria NSW 2015</p> <p>Contact: Bruce Allison – Business Development Manager</p> <p>Email: brucea@inpho.com.au</p>
<p><u>5th Finger</u></p> <p>Suite 304, 19a Boundary Street Darlinghurst NSW 2010</p> <p>Contact: Luke Forman</p> <p>Email: luke.forman@5thfinger.com</p>	<p><u>Mobile Messenger</u></p> <p>Level 1, 225 Miller Street North Sydney NSW 2060</p> <p>Contact: David Cornford</p> <p>Email: david.cornford@mobilemessenger.com.au</p>

<p><u>Mobile 365 Pty Ltd</u></p> <p>Level 3, 10 Bridge Street Sydney NSW 2000</p> <p>Contact: Cameron Franks</p> <p>Email: cameron.franks@mobile365.com</p>	<p><u>Legion Interactive</u></p> <p>Level 8, 155 George Street Sydney NSW 2000</p> <p>Contact: Valentina Borbone</p> <p>Email: vborbone@legioninteractive.com.au</p>
<p><u>Dialect Interactive</u></p> <p>Level 9, 190 George Street Sydney NSW 2000</p> <p>Contact: Karen Temple</p> <p>Email: temple@dialectinteractive.com.au</p>	<p><u>Mobile Active Ltd</u></p> <p>Level 10, Suite 1004 100 William Street Kings Cross NSW 2010</p> <p>Contact: Neil Wiles</p> <p>Email: n.wiles@mobileactive.com.au</p>
<p><u>Communicator Interactive</u></p> <p>Level 8, 9-13 Young Street Circular Quay Sydney 2000</p> <p>Contact: Cathy Chipizubov</p> <p>Email: cathy@communicator.com.au</p>	

VERSION HISTORY

Date	Version	Reviewer Name	Comments/Changes
291006	220806	Jeni Floyd Communications Alliance Scheme Custodian	220806 Version of MPSS Scheme amended to change references from Mobile Premium Services Self-Regulatory Scheme to Mobile Premium Services Industry Scheme (MPSI Scheme) to ensure consistency with the Determination (as amended on 280906) and TIO terminology. Changes appear in header/title page and name of document. No other changes made.
030707	220806	Jeni Floyd Communications Alliance Scheme Custodian	Reformatting of entire document completed to tidy up format and layout. All numbering and text remains the same.