

COMMUNICATIONS
ALLIANCE LTD



INDUSTRY GUIDELINE
TELECOMMUNICATIONS CONSUMER
PROTECTIONS GUIDELINE
G631:2009

G631:2009 Telecommunications Consumer Protections Guideline

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INTRODUCTORY STATEMENT

The Telecommunications Consumer Protections (TCP) Code (C628:2007) replaces the following registered ACIF Codes:

1. Customer Information on Prices, Terms and Conditions Industry Code [ACIF C521:2004],
2. Credit Management Industry Code [ACIF C541:2006],
3. Billing Industry Code [ACIF C542:2003],
4. Customer Transfer Industry Code [ACIF C546:2007],
5. Complaint Handling Industry Code [ACIF C547:2004], and
6. Consumer Contracts Industry Code [ACIF C620:2005].

The purpose of moving to a single TCP Code is to:

- make it easier for consumers and their representatives and advocates to know their rights;
- ensure drafting consistency and deliver a consistent style and language;
- provide a consolidated single Code and Guideline document, using consistent definitions and terminology;
- separate out the rules from the procedures and highly prescriptive elements of the existing Codes; and
- allow suppliers to use their own systems and procedures to comply with the Code, rather than having to use prescribed methods of compliance.

The Guideline accompanies the TCP Code. The Guideline is designed to:

- aid in interpreting the TCP Code Rules; and
- provide examples of how a Supplier may choose to comply with the Rules.

The development of the TCP Code is a major strategic initiative for Communications Alliance and can be seen as a demonstrable outcome of a mature industry in the 10th anniversary of the *Telecommunications Act 1997* (Cth). The *Telecommunications Act* encourages self regulatory processes. Communications Alliance has worked closely with various stakeholders and interested parties to develop industry codes of practice dealing with issues which affect consumers. The focus of this has been to ensure that the residential and small business markets have adequate consumer protections. In developing the consolidated TCP Code, it became clear that this focus had not been reflected consistently in the six separate codes that the TCP Code will replace. The TCP Code addresses this inconsistency and clarifies that it applies to residential and small business customers.

The TCP Code is designed to preserve the rights and obligations set out in the six existing codes. New or modified obligations were considered to be outside the scope of this project. However, where identified, these have been noted on an 'Issues List' for future consideration.

Deirdre O'Connor
Chair

Telecommunications Consumer Protections Code Steering Committee

September 2007

2009 Revision

The Guideline was revised in June 2009 to ensure consistency with the Australian Standard *AS ISO 10002-2006 Customer satisfaction – Guidelines for complaints handling in organizations*, recognising that the Standard provides guidance on how an effective complaint handling system should operate.

Consumer Issues Reference Panel

June 2009

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* (Cth) (the Act) sets out the intention of the Commonwealth Parliament that bodies and associations representing sections of the telecommunications industry develop industry codes relating to the telecommunications activities of participants in those sections of the industry.
- 1.1.2 The development of the TCP Code and Guideline has been facilitated by Communications Alliance through a Steering Committee comprising representatives from the telecommunications industry and consumer groups.
- 1.1.3 The Code and Guideline should be read in the context of other relevant codes, guidelines and documents.
- 1.1.4 The Code and Guideline should be read in conjunction with related legislation, including:
- (a) the Act;
 - (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth);
 - (c) the *Trade Practices Act 1974* (Cth);
 - (d) State and Territory fair trading legislation, where relevant;
 - (e) State and Territory door-to-door sales legislation, where relevant;
 - (f) the *Disability Discrimination Act 1992* (Cth);
 - (g) the *Racial Discrimination Act 1975* (Cth);
 - (h) any other relevant equal opportunity legislation;
 - (i) the *Privacy Act 1988* (Cth);
 - (j) the *Spam Act 2003* (Cth); and
 - (k) the *Do Not Call Register Act 2006* (Cth).
- 1.1.5 If there is a conflict between the requirements of the Code and any requirement imposed on a Supplier by statute, the Supplier will not be in breach of the Code by complying with the statute.
- 1.1.6 Compliance with the Code does not guarantee compliance with any legislation. The Code is not a substitute for legal advice.

1.2 Registration with ACMA

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

1.3 Scope

- 1.3.1 The Code applies to the Carriage Service Providers section of the telecommunications industry under section 110 of the Act.
- 1.3.2 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.
- 1.3.3 The Code applies only to residential and small business customers and regulates matters relating to their relationship with their Carriage Service Providers.
- 1.3.4 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.

1.4 Objectives

- 1.4.1 The objectives of each chapter of the Code are detailed in that chapter and in the equivalent chapter of the Guideline.

1.5 Code review

- 1.5.1 The Code and Guideline will be reviewed after 2 years of the Code being registered by ACMA and every 5 years subsequently, or earlier in the event of significant developments that impact on the Code or Guideline or a chapter of the Code or Guideline.

2 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

2.1 Acronyms

For the purposes of this Guideline:

ACIF

means Australian Communications Industry Forum

ACMA

means Australian Communications and Media Authority.

TIO

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

2.2 Definitions

For the purposes of this Guideline:

Act

means the *Telecommunications Act 1997* (Cth).

Advertising Material

means advertising and promotional material in relation to a Supplier's Telecommunications Products.

Advocate

means a person nominated by a Customer with a special need, to assist them.

Authorised Customer

means a Customer who:

- (a) has a contract with a Supplier for a Telecommunications Service; and
- (b) is able to Transfer all or part of that Telecommunications Service to another Supplier.

A reference to an Authorised Customer does not include their Authorised Representative.

Authorised Representative

means the person who has the authority to deal with a Supplier on behalf of a Customer as their authorised agent.

Balance Triggered Automatic Top Up

means a feature of an account for a Pre-paid Service that adds a specified amount to that account when the balance of the account reaches a pre-determined level.

Bill

means an invoice or statement from a Supplier which advises a Customer of an amount due for payment.

Bill Media

means the way a Bill is delivered and its format.

Billed Charge

means the amount Billed to a Customer by a Supplier.

Billing

means:

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

other than in relation to international Telecommunications Services dependent on overseas providers.

Billing Accuracy

means the correctness of Charges.

Billing Address

means the Customer's nominated address to which the Bill is sent.

Billing Complaint

means an expression of dissatisfaction or grievance 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 Customer for relevant information about Billing.

Billing Name

means the name of the person or entity to whom the Bill is issued and delivered.

Billing Option

means a Billing related option the Customer may choose.

Billing Period

means a period of time in relation to which Charges are billed.

Bundled Contract

means a Contract under which a Supplier offers a package of goods or services, at least one of which is a Telecommunications Product, where it is technically feasible to separately supply the Telecommunications Products in the package.

Bundled Telecommunications Product

means a Telecommunications Product supplied under a Bundled Contract.

Carriage Good or Service

means a good or service provided by one Supplier to another under a wholesale arrangement.

Carriage Service Provider

has the meaning given by section 87 of the Act.

Carrier

has the meaning given by section 7 of the Act.

Charge

means the tariff or fee levied by a Supplier for the provision of a Telecommunications Product or transaction.

Code

means *C628:2007 Telecommunications Consumer Protections Code*.

Comparative Advertisement

means an advertisement which makes direct or implied comparisons between:

- (a) Suppliers; or
- (b) particular Telecommunications Products and other Telecommunications Products and/or associated prices, terms and conditions.

Complainant

means a person making a Complaint.

Complaint

means an expression of dissatisfaction made to a Supplier, in relation to:

- (a) carrying on business as a Carrier;
- (b) carrying on business as a Carriage Service Provider;
- (c) supplying a content service using a Listed Carriage Service; and/or
- (d) supplying a Telecommunications Product.

Consumer

means:

- (a) a person who acquires a Consumer Product for the primary purpose of personal or domestic use; or
- (b) a business or non-profit organisation which at the time it enters into the Consumer Contract:
 - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Consumer 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,

other than a person acquiring a Consumer Product for resale.

Consumer Contract

means an agreement between a Supplier and a Consumer for the supply of a Consumer Product, other than for the supply of content services by third parties who are not Carriage Service Providers.

Consumer Product

means:

- (a) a Carriage Service;
- (b) any other telecommunications related goods or services supplied under the contract for supply of the Carriage Service; and
- (c) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service within the meaning of the *Broadcasting Services Act 1992* (Cth)) provided by the Supplier in connection with the supply of the Carriage Service.

Contract

means an agreement between a Supplier and a Customer for the supply of a Telecommunications Product.

Credit Assessment

means a process a Supplier undertakes in considering the circumstances of a Customer to assess their level of credit risk.

Credit Management

means the process by which a Supplier:

- (a) helps Customers to manage their expenditure on Service;
- (b) manages credit risk; and
- (c) collects outstanding debt.

Credit Reporting Agency

means a corporation that carries on a credit reporting business as defined in section 6 of the Privacy Act.

Credit Reporting Code of Conduct

means a code of conduct issued by the Privacy Commissioner, under section 18A of the Privacy Act.

Customer

means a residential or small business customer who:

- (a) is party to a Contract; or
- (b) is eligible under the criteria set by a Supplier to enter into a Contract to acquire a Telecommunications Product, other than for the purposes of resale.

A reference to a Customer includes a reference to their Authorised Representative.

Direct Debit

means an automatic periodic payment from the Customer's nominated financial institution account, implemented by the Supplier at the Customer's request.

Disclaimer

means words used in Advertising Material which qualify, disclaim or add to the principal message or to a specific offer.

Disconnection

means the termination of a contract for a Service.

Discount

means a pricing offer resulting in a variation in the Customer's favour.

Door to Door Selling

means a mode of selling, offering or negotiating a Transfer of a Telecommunications Service conducted face to face at a Customer's place of residence or employment, except after an unsolicited request by a Customer to do so.

Electronic Bill

means a Bill using an electronic medium.

Emergency Service Number

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

Financial Hardship

means a situation where:

- (a) due to reasonable cause, a Customer is unable to discharge their financial obligations under their contract with the Supplier; and
- (b) the Customer reasonably expects to be able to discharge those obligations if payment or Service arrangements are changed.

Fixed Contract Period

means a fixed contract period, other than month to month.

Fraud

means dishonestly accessing or using a Supplier's Services, or attempting to do so, with the intent of:

- (a) deceiving the Supplier;
- (b) not paying for the Services or
- (c) securing unlawful gain.

Gaining Supplier

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

Guarantor

means an individual who guarantees a Customer's obligations under a contract with a Supplier for the supply of a Service.

Hard Cap

means a ceiling set on a Customer's expenditure so that the Customer's expenditure does not exceed a Limit.

Inform

means advise:

- (a) in Writing; or
- (b) verbally and confirm and record to provide an auditable record.

Itemisation

means detailing a particular Billed Charge.

Itemised Billing

means the inclusion in the Bill of details about a particular Billed Charge.

Limit

means the ceiling assigned to a Customer's spend with a Supplier, for the total of Unbilled Amounts accumulated during the billing cycle.

Listed Carriage Service

has the meaning given by section 16 of the Act.

Override Call

means a call made by a Customer by dialing a series of numbers to use the service of a particular Carriage Service Provider, other than the Customer's preselected Carriage Service Provider, on a per call basis.

Point of Sale

means the point at which the Sales Representative obtains informed consent in accordance with Code clause 8.1.3.

Pre-paid

means a product that is paid for in full by the Customer prior to the product being consumed, and is marketed as a Pre-paid product.

Pre-paid Service

means a Service that must be paid for by the Customer before it is used.

Priority Assistance

is as defined in ACIF C609:2007 *Priority Assistance for Life Threatening Medical Conditions* Industry Code.

Priority Customer

is as defined in ACIF C609:2007 *Priority Assistance for Life Threatening Medical Conditions* Industry Code.

Privacy Act

means the *Privacy Act* 1988 (Cth).

Provisional Priority Customer

is as defined in ACIF C609:2007 *Priority Assistance for Life Threatening Medical Conditions* Industry Code.

Restriction

means where access to one or more of a Supplier's available Services is limited or denied.

Rules

means the Supplier's obligations, which are in chapters 3 to 9 of the Code.

Sales Representative

means a person employed or contracted, directly or indirectly by a Supplier, to sell or offer to sell Telecommunications Products.

Savings Claim

means a representation made in Advertising Material that Customers may spend less by using a particular Telecommunications Product or Supplier.

Security Bond

means a payment lodged by a Customer with a Supplier to mitigate an assessed credit risk.

Special Offer

means an offer to give a discount or rebate from standard rates or charges for a limited period.

Standard Form of Agreement

has the meaning given by Part 23 of the Act.

Supplier

means a Carriage Service Provider.

Suspension

means where access to Services is prevented, except to Emergency Service Numbers.

Telecommunications Goods

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

Telecommunications Product

means Telecommunications Goods or a Telecommunications Service.

Telecommunications Service

Means:

- (a) a Listed Carriage Service or any service supplied in connection with that service;
- (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.

Telemarketing

means a mode of selling, offering or negotiating solicited by inbound or outbound voice telephone calls, whether or not the Authorised Customer and the Sales Representative have an existing relationship.

Third Party

means any organisation or individual other than the Supplier or Customer.

Third Party Charges

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

Timed Call

means a call for which a Charge depends on the duration of the call.

Trade Practices Act

means the *Trade Practices Act 1974* (Cth).

Transfer

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

Unbilled Amounts

means amounts relating to a Service which have been incurred by a Customer and of which the Supplier is aware, but which the Supplier has not yet billed.

Unsolicited Offer

means any spoken communication (or equivalent, such as Auslan) by a Supplier to a Customer, that is not initiated by the Customer, for the purpose of offering a Telecommunications Product:

- (a) during telemarketing;

- (b) during door to door sales at the Customer's place of residence or employment; or
- (c) in a public place.

Untimed Call

means a call where the Charge is not calculated by the duration of the call.

Verification

means the process which:

- (a) checks the Authorised Customer or their Authorised Representative's request to Transfer with the Customer, using a person or procedure independent of the Sales Representative who obtained the Transfer; and
- (b) occurs prior to the Transfer.

Wholesale Billing

means Billing or billing processes between Suppliers in relation to the supply of Carriage Goods or Services for use in connection with a Listed Carriage Service, or for use or resale by Carriage Service Providers.

Working Day

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

Writing

means a document sent by the Supplier to the last known:

- (a) address; or
- (b) email address or facsimile number the Customer has agreed to use instead;

of the Customer or, where relevant, the Guarantor, in the Supplier's records.

Written Notice

means providing the relevant information in writing by:

- (a) delivering it in person;
- (b) pre-paid post to the Consumer's address in the Supplier's records;
- (c) email, with the Consumer's prior consent;
- (d) including the information on or in a bill, including electronically where the Consumer has expressly consented to receiving an electronic bill; and

- (e) for pre-paid telecommunications services, otherwise making it available and informing the Consumer how to obtain it.

2.3 Interpretation

In this Guideline, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular include the plural and vice versa;
- (d) words importing persons include a body whether corporate, politic or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) 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 GUIDELINES

Q: When the Code refers to a Customer, does this include someone who purchases a Pre-paid Service?

A: Yes. A Customer includes the person in whose name a Pre-paid Service is activated.

Q: Who is a Carrier?

A: A Carrier is the person who owns the telecommunications network used to provide Customers with service. (See section 7 of the Act.)

Q: Who is a Carriage Service Provider?

A: A Carriage Service Provider is the person who contracts with Customers to provide a telecommunications service. (See section 87 of the Act.)

Q: What is a Listed Carriage Service?

A: A Listed Carriage Service is a service for carrying communications within Australia or between Australia and overseas. (See section 16 of the Act.)

Q: When the Code refers to legal requirements, what could these be?

A: This means legislation, regulatory requirements and the order of a court of competent jurisdiction or of a competent authority.

3.1 Plain language

Q: Do Contracts need to be in simple, plain language? (Code 3.1.1)

A: Yes. A Contract is a communication with a Customer and therefore must comply with Code clause 3.1.1.

3.2 Quality of information

Q: How should I deal with information provided to me by Customers? If I comply with the Code, will I have complied with all of my obligations to protect my Customers' privacy?

A: No. You must always deal with your Customers' personal information in accordance with the Privacy Act.

3.3 Access to Information

Q: How do I respond to requests for information from Customers in a way that is appropriate to their needs? (Code 3.3.1)

A: Some examples of responses appropriate for Customers with disabilities and Customers from non-English speaking backgrounds include:

- "Our TTY number is ###."
- "If you would like, we can provide you with a copy of the summary of the contract in Vietnamese."
- "If you require an interpreter for this information, please contact the interpreter service on ###."

Q: How should I make my website accessible? (Code 3.3.3)

A: Your website should be accessible in accordance with the Web Content Accessibility Guidelines published by the Worldwide Web Consortium (W3C), available at www.w3.org.

3.4 Complying with the law

Q: What are examples of situations where I need to consider my legal obligations in addition to the Code's requirements? (Code 3.4.1)

A: You should always consider whether any laws apply to your activities. Some examples of situations where you need to consider other laws include:

- The methods you use to check identity or authorisation must not breach any law including ensuring that people with disabilities or from non-English speaking backgrounds are not discriminated against.
- You must retain records of a Customer's Bill for a minimum period as required by law.
- You must ensure that Itemised details contained in previous Bills are available for a minimum period as required by law.
- You must ensure that your collection agents comply with the Trade Practices Act.
- You must not sell or assign any debt which cannot be collected due to statutory bars. Statutory bars to debt recovery may be under State or Territory legislation on limitation of actions.
- You must ensure that you comply with the law when providing a Customer's personal information to a Credit Reporting Agency.

Q: What privacy obligations should I be aware of? (Code 3.4.1)

A: Your privacy obligations are contained in the Privacy Act and Part 13 of the Act.

Credit Provider Determination No. 2006-4 (Classes of credit providers), which took effect on 1 September 2006 and expires on 31 August 2011, has the effect of

bringing suppliers under Part IIIA of the Privacy Act to the extent that they allow payment for goods or services after 7 days.

In particular:

1. A Supplier must ensure that the relevant provisions of Part IIIA of the Privacy Act and the Credit Reporting Code of Conduct, are observed in seeking a credit report or a commercial credit enquiry from external sources, and that all advice to the Customer and consents required from the Customer in relation to this information are in place. Examples of what this may require are set out below.
2. Section 18E(8)(c) of the Privacy Act provides that a credit provider must not give to a credit reporting agency personal information relating to an individual if the credit provider did not, at the time of, or before, acquiring the information, inform the individual that the information might be disclosed to a credit reporting agency.

Suppliers must not keep full copies of proof of identity documents where they are no longer required.

3. Where a Supplier undertakes Credit Assessment of a Customer and intends to use external information sources, the Supplier must ensure that the Customer is informed that personal identity information, and the fact of their application for credit, may be disclosed to external sources as part of the Credit Assessment process, and the nature of those sources in each specific circumstance. If a Supplier is a credit provider for the purposes of the Privacy Act, any disclosures to external sources must be in accordance with:
 - (a) One of the exceptions in section 18N(1) of the Privacy Act; and
 - (b) Part II of the Credit Reporting Code of Conduct.
4. Suppliers that are credit providers under the Privacy Act will have compliance obligations under the Privacy Act and the Credit Reporting Code of Conduct in relation to the detection and prevention of serious credit infringements.

5. The Privacy Act does not contain an exception that would generally allow a Customer's default information to be provided to external databases. If a Supplier is a credit provider for the purposes of the Privacy Act, any disclosures of a Customer's default information must be in accordance with:
 - (a) Part IIIA of the Privacy Act; and
 - (b) Part II of the Credit Reporting Code of Conduct.
6. The disclosure of a Customer's personal information to a Guarantor must be in accordance with:
 - (a) Part IIIA of the Privacy Act; and
 - (b) Part II of the Credit Reporting Code of Conduct.
7. Where the dispute involves a credit report from a Credit Reporting Agency, the Supplier should check:
 - (a) that its records in relation to information contained in the credit report are accurate; and
 - (b) whether it is obliged under the Privacy Act to notify the Credit Reporting Agency of certain information, before it refers information to the Credit Reporting Agency. The Supplier must inform the Customer before it refers information to the Credit Reporting Agency.
8. The Supplier must comply with its obligations under the National Privacy Principles in Schedule 3 of the Privacy Act in relation to the information it collects, uses and discloses about the Customer, where Part 111A of the Privacy Act or Part 11 of the Credit Reporting Code of Conduct do not regulate such collection, use or disclosure.

3.5 Dealing appropriately with Customers

Q: What kind of conduct might be unconscionable? (Code 3.5.1(b))

A: This could include taking advantage of a person who does not appear to understand the information provided due to illness, disability, age, intoxication or non-

proficiency in the language used by the Sales Representative.

3.6 Authorised Representatives and Advocates

Q: Can I always deal with an Authorised Representative instead of a Customer?

A: Wherever the term Customer (other than an Authorised Customer) is used in the Code or the Guideline, it includes a reference to an Authorised Representative of the Customer.

Note that some of the Rules specifically require you to deal with a particular individual. For example, many of the Rules in chapter 8 (Customer Transfer) require you to deal with a particular person (for example an Authorised Customer). If you deal with an Authorised Representative when the Rule states that you must deal with an Authorised Customer, you will be in breach of that Rule.

References to "Consumers" in chapter 5 (Consumer Contracts) are to "Consumers" as defined NOT Customers and therefore do not include Authorised Representatives.

Q: Do references to "Authorised Customer" also mean an "Authorised Representative"?

A: No. They are defined differently (see Chapter 1).

Q: Can I deal with an Advocate in the same way as an Authorised Customer?

A: No. An Advocate is not authorised to make changes to a Customer's account or Telecommunications Services, unless they are also the Customer's Authorised Representative.

4 CUSTOMER INFORMATION ON PRICES, TERMS AND CONDITIONS

Objectives

Chapter 4 of the Code sets out Rules relating to Customer information on prices, terms and conditions.

The objectives of that chapter of the Code are :

- *to set minimum standards for Suppliers to meet in telling Customers about the prices, terms and conditions of Telecommunications Products;*
- *to eliminate practices which deceive, mislead or confuse;*
- *to provide sufficient, accurate, current and relevant information to enable Customers to make an informed purchasing decision;*
- *to enhance Customer confidence and understanding of information by ensuring Suppliers avoid unnecessary complexity and use simple and straight forward language; and*
- *to recognise the legitimate business interests of Suppliers in a competitive environment.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

The Guidelines on prices, terms and conditions are:

4.1 Advertising Material

Q: What is Advertising Material?

A: Advertising Material includes:

- television;
- radio;
- press and magazine advertisements;
- direct mail;
- posters;
- brochures;
- packaging;
- billboards;
- cinema advertisements;
- advertorials;
- infomercials;
- promotional videos;
- website materials;
- signage;
- media releases;
- electronic mail;
- electronic news groups;
- short messaging services (SMS) and multimedia messaging services (MMS);
- bill messages and inserts; and
- any point of sale material.

Call connection fee (Code 4.1.1(b))

Q: How can I clearly communicate a call connection fee? (Code 4.1.1(b))

A: An example is:

- "Our rate is 20 cents per minute. A connection fee of 15 cents applies per call."

Limitations on period or quantity (Code 4.1.1(c))

Q: *Do I need to be able to continue supplying the goods or services at the price I advertise? (Code 4.1.1(c))*

A: Yes, for a reasonable period. The Trade Practices Act prohibits advertising the supply of goods or services at a specified price, when there are reasonable grounds, of which the Supplier is aware, for believing they will not be able to supply the goods or services at that price for a reasonable period.

Q: *What are some examples of how to communicate a limit on period or quantity? (Code 4.1.1(c))*

A: Examples include:

- "Available until 30 June or while stocks last."
- "Offer limited to the first 500 customers."

Limited class of Customers (Code 4.1.1(d))

Q: *What are some ways to clearly communicate that a Telecommunications Product is available only to a limited class? (Code 4.1.1(d))*

A: Examples include:

- "Available to approved customers only."
- "For residential customers only."
- "Only for customers with a total spend of over \$50 per month on long distance calls."

Details of Special Offer (Code 4.1.1(e))

Q: *What might be a condition or limitation on a Special Offer? (Code 4.1.1(e))*

A: Conditions or limitations on a Special Offer may include the time of day, the day or call destinations for which the Special Offer is available.

Conditions of connection to a Telecommunications Service (Code 4.1.1(f))

Q: *What are some ways to clearly state that an offer is conditional on the Customer connecting to a Telecommunications Service? (Code 4.1.1(f))*

A: Examples include:

- "The \$5 Galaxy handset is only available when you connect to our ### plan for 24 months."
- "Modem provided at no cost when you subscribe to our Heavenly Internet service for 12 months."

Q: *How should I set out the information required for an offer of Telecommunications Goods conditional on the Customer connecting to a Telecommunications Service? (Code 4.1.1(f))*

A: The way in which the information is stated may differ depending on the nature of the Advertising Material.

Savings Claim (Code 4.1.1(g))

Q: *How could I specify the service, rate or other matter on which a Savings Claim is based? (Code 4.1.1(g))*

A: Examples include:

- "Save between 10% to 50% off our normal rates."
- "Save 50% off our previous rates."
- "Save up to 50% this weekend on the cost of our long distance calls."
- "Save 15% on your long distance calls by subscribing to our mobile and long distance services."

Conditions on benefits (Code 4.1.1(h))

Q: *How can I clearly communicate conditions on free calls, credits or other benefits? (Code 4.1.1(h))*

A: Examples includes:

- "Up to #### credits/free calls per month if used within X days."
- "Ten free calls per month, subject to our fair use policy."

Conditions on components of Bundled Telecommunications Products (Code 4.1.1(i))

Q: *How might I clearly communicate conditions and costs which may apply to a Telecommunications Product component of a Bundled Telecommunications Product? (Code 4.1.1(i))*

A: For example, if Internet access is advertised at \$10 per hour but this is subject to registration costs and a fixed term contract, an example of how to clearly communicate the conditions and costs is:

- ""Conditions apply including minimum purchase of 10 hours, registration fee of \$X and cancellation fee of \$X if connection is cancelled within 12 months. Total minimum cost of 12 months is \$X."

Geographical or technical limitations (Code 4.1.1(j))

Q: What are examples of ways to clearly communicate geographical or technical limitations? (Code 4.1.1(j))

A: Examples include:

- "This ADSL service is only available in Sydney, Melbourne, Perth, Adelaide and Brisbane metro areas."
- "19## services are not available from payphones."

Content of Disclaimers (Code 4.1.3)

Q: Can I use a Disclaimer to comply with the Rules in clause 4.1?

A: Yes, but only if the Disclaimer complies with the Rules.

Q: How should I make a Disclaimer in printed Advertising Material clear and readily understandable? (Code 4.1.3)

A: You should ensure that the font size is at least:

- 10 point, where the Advertising Material is A4 size or greater; or
- 8 point, where the Advertising Material is less than A4 size but larger than a 50 square cm advertisement; or
- 6 point where the Advertising Material is of a size equal to 50 square cm or smaller,

by reference to the font size of Times New Roman, or equivalent size in any other font.

Where printed Advertising Material uses multiple Disclaimers, the Disclaimers should be clearly indicated and readily understandable, including by content and the order in which the Disclaimers are listed.

You should ensure that a Disclaimer used in printed Advertising Material:

- appears in text which contrasts sufficiently in colour with its background to be clearly read; and
- is horizontal if the Advertising Material is in English, or as otherwise appropriate if the Advertising Material is in a language other than English.

Q: *How should I make a Disclaimer on a billboard clear and readily understandable? (Code 4.1.3)*

A: For billboards, you should ensure that any Disclaimer used is sufficiently clear and prominent to a person who is able to view the entire billboard.

Q: *How should I make a verbal Disclaimer on radio or television clear and readily understandable? (Code 4.1.3)*

A: For radio and television, you should ensure that any verbal Disclaimer used is stated at a speed and volume capable of being comprehended by the average listener.

Q: *How should I make a written Disclaimer in television, promotional video or cinema advertising clear and readily understandable? (Code 4.1.3)*

A: In all television, promotional video and cinema advertising where you use written Disclaimers, you should ensure that any written Disclaimer is of a size and duration capable of being read and comprehended by the average viewer.

Placement of Disclaimers (Code 4.1.4)

Q: *What are examples of acceptable placement of Disclaimers? (Code 4.1.4)*

A: Examples include:

- "Up to \$25 free calls per month (excluding operator assisted calls)."
- "84 cents a minute to the UK*."

* "Rates quoted exclude calls to and from mobiles and operator assisted calls."

Use of the term "free" (Code 4.1.5)

Q: *What are equivalents to the term "free"? (Code 4.1.5)*

A: Equivalents include "no cost", "no fee", "no charge" or "\$0".

Q: *How could I identify the elements of an offer that are free and conditions that qualify the offer? (Code 4.1.5)*

A: Examples include:

- "Free monthly access to voicemail (normal diversion and retrieval charges apply)."
- "Free monthly access to call diversion for 6 months (normal charges apply for each diverted call)."
- "Free installation of cable modem with our \$150 broadband plan."

Q: *What is an example of a condition that qualifies a "free" offer? (Code 4.1.5(c))*

A: An example is another Telecommunications Product that must be purchased with the "free" Telecommunications Product.

Use of the term "unlimited" (Code 4.1.6)

Q: *What is an example of stating which elements of the offer are "unlimited" and other conditions? (Code 4.1.6)*

A: An example is:

- "Unrestricted content download, subject to a 4 hour limitation on download time."

Comparative Advertisement (Code 4.1.7)

Q: *How can I make a Comparative Advertisement clear? (Code 4.1.7)*

A: When considering whether a Comparative Advertisement is clear, you should have regard to any claims made in the Comparative Advertisement and to:

- the purposes for which the preferred products and the compared products are ordinarily to be used;
- the features of the preferred products and the compared products; and
- whether, in relation to the compared product, other goods or services you offer would afford a more appropriate comparison.

4.2 Providing information

Q: *I need to provide information to a Customer. What might be an appropriate way to do so?*

A: Appropriate formats may include:

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

Q: *Chapter 4 of the Code requires me to provide information to a Customer. Can I provide it to that Customer's agent or representative?*

A: Yes. You will have complied if you have provided the information to that Customer's agent or representative.

Q: *How can I provide something "in writing" to a Customer?*

A: You should note that this is a different requirement from an obligation to provide something in "Writing" (as that term is defined). If you need to provide something in "writing", you could provide it:

- in hard copy and delivered in person, by post or any other commonly used method of delivery;
- by facsimile; or
- by any other technology agreed by the Customer, so long as it is capable of being reproduced in written form.

Q: *I sell my Telecommunications Products through a lot of different retailers including some that do not specialise in Telecommunications Products. Will I be in breach of the rules if they fail to provide a Customer with sufficient information?*

A: Not necessarily. Except for clause 4.2.2, the Rules in chapter 4 require you, the Supplier, to provide information. Therefore, unless the Rule specifically states otherwise, it does not make a difference how you do so.

Where it is not reasonable for one of your agents or Sales Representatives to hold information required to be provided under the Rules, you will not be in breach if the agent or Sales Representative refers a Customer to you for that information or knowledge. This is because the circumstances in which information is requested will determine the extent to which that information may be within their reasonable knowledge. This recognises that the level of knowledge of Sales Representatives in your own outlets will be different from that of sales people in a retailer that does not specialise in Telecommunications Products.

Providing information on request (Code 4.2.1)

Product description (Code 4.2.1(a))

Q: *What kind of third parties may be able to provide Customers with information about a Telecommunications Product? (Code 4.2.1(a))*

A: One example is the manufacturer of a Telecommunications Good.

Operating instructions (Code 4.2.1(b))

Q: *Do I need to provide the operating information directly to my Customers? (Code 4.2.1(b))*

A: If the relevant Telecommunications Products are Telecommunications Goods, you may comply with your

obligations by referring the Customer to the manufacturer for more detailed instructions.

Customer's consent to the Contract (Code 4.2.1(e))

Q: How can I record a Customer's consent to a Contract?(Code 4.2.1(e))

A: A record can include a copy of the Customer's signature on an application form or a voice recording.

Customers with disabilities (Code 4.2.1(g))

Q: What kind of Telecommunications Products might address the particular requirements of Customers with disabilities? (Code 4.2.1(g))

A: For a person who is deaf or with a hearing impairment, it may include an attachment that gives a noticeable visual indication that the telephone is ringing, or customer equipment with volume control so the person can raise the volume. For a person with a visual impairment, it may include customer equipment with large buttons.

Charges (Code 4.2.1(h))

Q: What is a way to inform a Customer of charges or their method of calculation? (Code 4.2.1(h))

A: An example is:

- "You will be charged ## cents per message sent for SMS messaging and ## cents each time you access your Voice Mail."

Q: Do I need to provide Customers with information about wholesale costs, network costs or access charges that I am required to pay? (Code 4.2.1(h))

A: No.

Resellers (Code 4.2.1(l))

Q: How might I provide the name of the principal Carrier when I am acting as a reseller? (Code 4.2.1(l))

A: Examples of how to provide this information include:

- "Your contract is with Universal Carriers. As part of providing your service, we mainly use the network of Heavenly Carriers."
- "We currently use the networks of a number of carriers, including Universal Carriers and Heavenly Carriers."
- "We are a re-seller of Jupiter's ADSL network, who in turn use parts of Neptune's network."

Providing information when making an Unsolicited Offer (Code 4.2.2)

Door-to-door sales

Q: Are "contract sales agreements" and "door-to-door" sales or trading covered by state and territory legislation considered to be Unsolicited Offers? (Code 4.2.2)

A: Yes.

Identification of Sales Representatives (Code 4.2.2(a))

Q: How might a Sales Representative identify themselves and the Supplier they work for when making an Unsolicited Offer? (Code 4.2.2(a))

A: An example is:

- "Hello, I'm Gary representing Universal Carriers."

Purpose of Unsolicited Offer (Code 4.2.2(b))

Q: How might a Sales Representative state the primary purpose of an Unsolicited Offer? (Code 4.2.2(b))

A: Examples include:

- "I'd like to talk to you about switching to ###."
- "I am calling to see if you are interested in signing up to ###."

Providing information when a Customer applies for a service (Code 4.2.3)

Q: What other ways may it be appropriate to inform Customers of options to limit access? (Code 4.2.3)

A: "Otherwise as appropriate" could include providing the information in a welcome pack, on request of the Customer, or when relevant circumstances arise for that Customer.

An example of informing the Customer of options is:

- "If you wish to bar access to premium rate services from this service, please contact us on ###."

Providing information before entering a Contract (Code 4.2.4)

All Contracts

Product description (Code 4.2.4(a)(ii))

Q: What is a sufficient description of a Telecommunications Product? (Code 4.2.4(a)(ii))

A: Examples include:

- "This is a long distance service where, once you subscribe, you can make national and international calls using an override code when you want to use us."
- "This is a high-speed internet service so that you can have faster access to the internet. The service permits you to use the telephone at the same time as you are on the internet."
- "This is a fixed telephone and cable internet service which offers local and long distance telephone calls and a high-speed connection to the internet."

If the Contract is a Bundled Contract, a sufficient description will include a sufficient description of each Telecommunications Product offered as part of the Bundled Contract.

Fitness for intended use (Code 4.2.4(a)(iii))

Q: How might I know a Customer's intended purpose for a Telecommunications Product?(Code 4.2.4(a)(iii))

A: You may know the purpose:

- because the Customer has stated it to you; or
- because the Customer's intended purpose has become apparent to you from your interaction with the Customer.

Q: How could I inform a Customer of limitations that might affect their intended purpose?(Code 4.2.4(a)(iii)(A))

A: Examples include:

- "The speed and capacity of data and internet services in your area may be affected by pair gain and RIM technologies and you may need to consider other products."
- "If you have a radio concentrator service, you need to ensure that your fax modem is compatible with that service."
- "This ADSL service may be incompatible with back to base security."
- "There is no local 'Point of Presence' (POP) in your area for our internet and other data services so you will need to make a long distance call to connect."
- "If you are using a satellite access network, you may experience delay in transmissions for certain services."

- "This handset may not be compatible with some hearing aids. You may need to seek special advice to ensure compatibility with your particular hearing aid."
- "We use a wide range of third party suppliers for our content which may vary from time to time."

Q: How could I inform a Customer of another Telecommunications Product needed for use? (Code 4.2.4(a)(iii)(B))

A: An example is:

"You will need a computer with ### or higher operating system, dial-up modem and software for web-surfing and email in order to use this dial-up internet service."

Mobile network coverage (Code 4.2.4(b))

Q: If a Customer accepts my offer to show them the network coverage in their area, how can I do that? (Code 4.2.4(b))

A: Offer to show the Customer a map or diagram indicating the network coverage in their area.

Contracts with Minimum Total Charges (Code 4.2.4(c))

Q: If I inform a Customer of each component of a Minimum Total Charge will I have complied with Code clause 4.2.4(c)(i)? (Code 4.2.4(c))

A: Yes, if you do so in a way that enables the Customer to determine the Minimum Total Charge. You should also ensure you comply with section 53C of the Trade Practices Act.

Bundled Contracts (Code 4.2.4(d))

Q: What are some ways to inform a Customer of goods or services they must purchase to be eligible for a discount in a Bundled Contract? (Code 4.2.4(d)(i))

A: Examples include:

- "To be eligible for our Super Discount Plan you must be pre-selected to us for long distance services and be connected to our mobile service."
- "To be eligible for a discount off your internet monthly access fees, you must also have your full telephone service with us."

Q: What are some ways to inform a Customer of the basis for calculating a discount in a Bundled Contract? (Code 4.2.4(d)(ii))

A: Examples include:

- "Your 15% discount applies to calls from your fixed line but not from your mobile."

- "If you do not use your \$30 free calls in any month, the unused portion is rolled over to your next account."

Providing information in the Contract (Code 4.2.6)

Q: Do special requirements apply if I use a Standard Form of Agreement? (Code 4.2.6)

A: Yes. Standard Forms of Agreement, including their summaries, need to comply with the *Telecommunications (Standard Form of Agreement Information) Determination 2003* or subsequent determinations made by the ACMA under section 480A of the Act.

Changes to Contract terms (Code 4.2.6(m))

Q: How might I tell a Customer how to access changed Contract terms? (Code 4.2.6(m))

A: An example is "A copy of amended terms and conditions are available at our offices and on our websites."

4.3 Exceptions

Q: Are there any laws which might require me to give a Customer information, even if one of the exceptions in chapter 4 (Customer Information) of the Code applies? (Code 4.3.1)

A: Yes. The National Privacy Principles in the Privacy Act require you to provide an individual with access to personal information you hold about them, on their request. There are a number of exceptions to this, such as where the request is frivolous or vexatious or the release of the information would prejudice negotiations with the individual.

Q: How might a Customer inform me that they do not wish to receive information? (Code 4.3.1(f))

A: Examples include:

- "I do not want to know anything further about international roaming."
- "I have already had this product in the past so I don't want any further information about it. Just sign me up."

Q: When might it be reasonably impracticable to provide information before entering a Contract? (Code 4.3.1(g))

A: Examples include where a Customer:

- purchases mobile pre-paid products or services at a convenience store;
- initiates use of a service using an override code;

- purchases a pre-paid phone card; or
- makes reverse charge calls.

Q: How could I subsequently make information available? (Code 4.3.1(g))

A: You could make the information available on a label on a starter pack, or information card by including wording such as:

- "For information about all our terms and conditions for this product, please call us on 1800 #### or check our website on www.###.com.au."

4.4 Charges

Q: Can I charge a Customer for accessing information? (Code 4.4.1)

A: The Code only allows you to charge your costs of providing the information. National Privacy Principle 4.4 in the Privacy Act specifically prohibits you from charging a Customer simply for lodging a request to access information.

5 CONSUMER CONTRACTS

Objectives

Chapter 5 of the Code sets out Rules relating to Consumer Contracts.

The objectives of that chapter of the Code are

- *to identify and prohibit the use of unfair terms in Consumer Contracts;*
- *to provide an objective basis for determining whether a contractual term is unfair; and*
- *to state the minimum requirements for the format and structure of Consumer Contracts;*
- *and encourage the use of plain language.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of this Guideline

This Guideline is designed to:

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

Guidelines

This chapter does not apply to Consumer Contracts entered into before 4 May 2005, other than Consumer Contracts for fixed line services provided under a Standard Form of Agreement.

The Guidelines on Consumer Contracts are:

5.1 Unfair terms

Q: In determining whether a business or non-profit organisation is a Consumer for the purposes of the Consumer Contracts Rules, how should I estimate its annual spend?

A: A Supplier should review the average annual spend of the business or non-profit organisation on the relevant Consumer Products for the previous 3 years, to see if the annual spend threshold is likely to be exceeded, excluding from the calculation:

- (a) any significant capital outlay;
- (b) content services provided by third parties who are not carriage service providers; and
- (c) subscription broadcasting services and/or subscription narrowcasting services within the meaning of the *Broadcasting Services Act 1992* (Cth), provided by a Carriage Service Provider.

Terms must not be unfair

Prohibition (Code 5.1.1)

Q: Are all terms in a Consumer Contract assessable for fairness? (Code 5.1.1)

A: Yes, except for terms as to price, or the performance or operation of features, as noted in Code clause 5.1.4.

Meaning of unfair (Code 5.1.2)

Q: Will all terms that cause an imbalance in the parties' rights and obligations be unfair? (Code 5.1.2)

A: No. Due to the nature of the Supplier/Consumer relationship, the rights and obligations of the parties will be inherently different. Some imbalances may be reasonable in the circumstances and not unfair. For example, as a Supplier you need to be able to respond to events which threaten the security of a network or to intervene if you suspect a Consumer's handset has been stolen and used without their consent.

Supplier's liability (Code 5.1.3(d)(i))

Q: *What are examples of terms that may exclude or limit my liability in an illegal, unclear or misleading manner? (Code 5.1.3(d)(i))*

A: Examples include:

- a term excluding liability for representations made by employees, agents, dealers or other contractors acting in the scope of their authority; and
- excluding liability in a manner contrary to law with a statement to the effect that "nothing above should be taken to reduce any rights that you may have at law".

Refunds (Code 5.1.3(d)(iv))

Q: *What is a material breach of Consumer Contract by a Consumer? (Code 5.1.3(d)(iv)(B) and 5.1.5(a)(ii))*

A: This would include their failure to comply with important obligations under the Consumer Contract, for example, the failure to pay amounts as and when due.

Q: *What is an insignificant period for a system or network outage? (Code 5.1.3(d)(iv)(C))*

A: This will depend on the type of service. A network outage will not be significant if the outage is short. Outages may be significant if they are short but persistent.

Q: *When is it reasonable for me to suspect a credit risk? (Code 5.1.3(d)(iv)(D), 5.1.3(d)(xvi), 5.1.5(a)(v) and 5.1.5(f))*

A: Reasonable grounds for suspecting a credit risk include:

- an unusually high volume or spend compared with previous account activity;
- the Consumer fails to respond to notices about unusually high volume or spend;
- the Consumer fails to pay a current bill and has a history of late payments, dishonoured payments or failures to pay;
- public notices suggesting pending insolvency or bankruptcy.

Q: *If I decide a Consumer represents a credit risk in relation to a component of a fixed line service, when might it be reasonable not to refund rental charges for the fixed line during the suspension? (Code 5.1.3(d)(iv)(D))*

A: It may be reasonable not to refund rental charges for fixed line services if you only suspended the Consumer's

access to international calls, not to other features of the service.

Termination for convenience (Code 5.1.3(d)(v))

Q: What is termination "for convenience"? (Code 5.1.3(d)(v))

A: When you terminate where there is no breach of the Consumer Contract by the Consumer and there is no other event which triggers the right to terminate.

Q: If I provide a pre-paid service, how do I give a Consumer Written Notice? (Code 5.1.3(d)(v)(B), 5.1.3(d)(ix)(A) and 5.1.5(k)(i))

A: You can make the information available through a website or a retail outlet or by informing the Consumer (by means of a text message, recorded message or in writing) how the Consumer can obtain the information.

Suspension or termination for breach of other Consumer Contract (Code 5.1.3(d)(xvi))

Q: What should I do if I have reasonable grounds for believing the Consumer represents a credit risk? (Code 5.1.3(d)(xvi))

A: Take action in accordance with chapter 7 of the Code.

Exceptions

Permitted suspension, termination or restriction (Code 5.1.5(a))

Q: What are reasonable steps to give a Consumer notice of a suspension or restriction to its service? (Code 5.1.5(a)(v))

A: Reasonable steps to give notice of such credit action are set out in chapter 7 (Credit Management) of the Code.

Q: What is an example of an acceptable use policy? (Code 5.1.5(a)(vi))

A: Acceptable use policies are usually terms of a Consumer Contract which impose limits in specific circumstances on a Consumer's use of a service, such as for network integrity, commercial, operational or legal reasons.

Permitted limitation of liability (Code 5.1.5(b))

Q: What are examples of events outside my reasonable control? (Code 5.1.5(b))

A: Examples include explosions, natural disasters, earthquakes, wars (declared or undeclared) or acts of God.

Unused services (Code 5.1.5(c))

Q: What is an example of a component of a service? (Code 5.1.5(c))

A: A message service.

Special offers (Code 5.1.5(d))

Q: What are examples of how to clearly state the terms of a special offer? (Code 5.1.5(d)(i))

A: Examples include:

- "Get 100 free SMS a month until 31 December"
- "2 free ringtones a month for the first 2 months"

where the price of SMS after 31 December and the cost of the ringtone after the first 2 months are notified to the Consumer or are included in your pricing plan.

Q: What are new technologies, features or services? (Code 5.1.5(d)(iii))

A: New technologies, features or services are those that:

- the industry has not generally previously offered Consumers; or
- you have not previously offered to Consumers generally, or to an individual class of Consumer.

Q: Does the exception for special offers of new technologies, features or services extend to pricing for other services the Consumer has with you? (Code 5.1.5(d)(iii))

A: No. This clause does not apply to aspects of services such as call costs (whether local or long distance), flag fall, voicemail deposit and retrieval, SMS or MMS fixed call cost, additional download charges for an internet service, or monthly access fees unless they relate to new features or services.

Q: How could I provide a Consumer with reasonable notice of the terms for special offers? (Code 5.1.5(d)(iii))

A: Ways to provide the reasonable notice include making the information available through your website or retail outlet and informing the Consumer (by means of a text message or otherwise in writing) how the Consumer can obtain the information.

Set-offs (Code 5.1.5(e))

Q: What happens if the final amount payable by the Consumer is greater than the security deposit? (Code 5.1.5(e)(ii))

A: If the final amount payable is more than the security, when the Consumer pays the difference, a set off will be taken to have occurred.

International services (Code 5.1.5(g))

Q: How should I provide information on the variable nature of prices for international services? (Code 5.1.5(g))

A: An example is: "International call rates are subject to variation. Please contact us to confirm any prices before calling or see our website at www.####.com.au."

Q: How should I provide information on the variable nature of prices for international roaming charges? (Code 5.1.5(g))

A: An example is: "International roaming rates are subject to variation. Please contact us to confirm any prices before travelling overseas or see our website at www.####.com.au for indicative pricing."

Ancillary services (Code 5.1.5(i))

Q: What is a charge for an ancillary service? (Code 5.1.5(i))

A: Charges for an ancillary service may include a billing fee or a credit card transaction fee.

Q: What might usage and network access fees include for these purposes?(Code 5.1.5(i)(i)(ii))

A: They could include fees or charges up to the date on which the Consumer Contract ends.

Content and premium services (Code 5.1.5(j))

Q: What is a clear statement that the price may change? (Code 5.1.5(j)(i))

A: An example of providing this information is "The price for ### content/premium service is \$2.00 and is subject to change."

Q: How could I provide a Consumer with reasonable notice? (Code 5.1.5(j)(ii))

A: You could make the information available through your website or retail outlet and inform the Consumer (by means of a text message or otherwise in writing) how they can obtain the information.

Changes by Supplier's supplier (Code 5.1.5(k))

Q: When might I acquire a carriage service from a third party? (Code 5.1.5(k))

A: An example is when you acquire local call access from a carrier and resell it to a Consumer.

Fixed Contract Period (Code 5.1.5(l))

Q: Can I still offer my Consumers alternative remedies in addition to an exit right? (Code 5.1.5(l))

A: Yes. This does not preclude the Supplier from offering the Consumer alternative remedies to address the impact of the change in addition to an exit right.

5.2 Presentation of Consumer Contract terms

Clear and consistent (Code 5.2.1)

Q: How can I ensure that the terms of a Consumer Contract are clear and consistent? (Code 5.2.1)

A: Ensure the terms:

- are clearly expressed by using words in their plain and ordinary meaning;
- are consistent in the use of definitions and other terminology; and
- where they have multiple valid interpretations, are completely defined and used consistently.

Q: What sort of terms might be unclear to Consumers if used inconsistently? How can I make them clear? (Code 5.2.1)

A: When you use terms such as kilobyte, megabyte or gigabyte, the terms should be defined in the Consumer Contract and used consistently in the Consumer Contract and all collateral material, ie, always using the decimal measurement or binary measurement.

Easy to follow (Code 5.2.2)

Q: How can I ensure that a document is easy to follow? (Code 5.2.2)

A: Take reasonable steps to ensure that it:

- is available in hard copy in a minimum 10 point font in Times New Roman (or equivalent size in any other font). If also available in electronic format, it should be capable of being printed in that font size. While a minimum 10 point font is recommended for contractual documentation, it is not required for those parts of documents which are used for information gathering purposes only, so long as the relevant part is legible. For example, the font size on an application form denoting "name", "address" or other information to be completed may be less than 10 point, so long as the overall layout is legible.
- avoids clauses or paragraphs which are too long;

- groups terms by subject matter or otherwise in a clear and logical order with subheadings;
- includes an index or table of contents where necessary for ease of reference;
- avoids excessive cross-referencing and the incorporation of terms from other documents which are not available or accessible to the Consumer at the same time;
- avoids unusual graphic fonts;
- uses clear and contrasting text and backgrounds;
- brings important terms to the attention of Consumers in a reasonable manner having regard to the length of the document and subject matter; and
- ensures that important terms are accessible and highlighted, such as by spacing, bolding or other format or layout techniques. Important terms include:
 - charges, their calculation and any preconditions to payment;
 - payment obligations (including time for payment, minimum payments and late payment fees);
 - the term of the Consumer Contract (including any minimum term) and how it may be terminated early, renewed or extended (including any notice periods);
 - termination rights (including any notice periods or fees and charges payable upon early termination);
 - how the Contract may be varied (including the minimum period of notice and how Consumers will be notified) and any rights for the Consumer to exit the Consumer Contract;
 - how Consumers may access the varied terms;
 - terms which impose liabilities upon the Consumer (in addition to the obligation to pay fees and charges) such as liability for damage to equipment or goods or charges for loss or failure to return Supplier property (eg, SIM cards);
 - conditions or restrictions on use of a service (eg limits on call volumes or downloads); and
 - privacy terms and conditions.

Q: *What formats will be considered "available in writing"? (Code 5.2.2)*

A: Terms are available in writing when they are printed in hard copy or available to be printed in hard copy.

Q: *Do I need to provide a summary of the material terms of the Consumer Contract to the Consumer? (Code 5.2.2)*

A: Schedule 1 of the *Telecommunications (Standard Form of Agreement Information) Determination 2003* specifies the terms and conditions of Standard Form of Agreements which need to be made available to customers in a written summary.

It also contains rules about notifying customers of changes to the terms and conditions in a Standard Form of Agreement.

Whether the Consumer Contract is a Standard Form of Agreement or not, it is recommended that Suppliers include a summary of the important terms such as those specified in Schedule 1 of the Determination (particularly if it is a lengthy document).

Q: *What is considered legible and easy to follow? (Code 5.2.2)*

A: What is legible and easy to follow will differ depending on the medium and format used.

Assistance services (Code 5.2.3)

Q: *Are there other obligations I need to consider when dealing with Consumers with disabilities or from non-English speaking backgrounds? (Code 5.2.3)*

A: Other obligations on the provision of information to people with disabilities and people from non-English speaking backgrounds are contained in *ACIF G586:2006 Disability Matters: Access to Communications Technologies for People with Disabilities and Older Australians Industry Guideline* and in chapter 4 of the Code.

Web content (Code 5.2.4)

Q: *Where can I find a copy of the Web Content Accessibility Guidelines? (Code 5.2.4)*

A: The Web Content Accessibility Guidelines are available at www.w3.org.

6 BILLING

Objectives

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

The objectives of that chapter of the Code are to enable Customers to understand and have confidence in their Bills by establishing a set of minimum standards to ensure that:

- *Customers can obtain information of their past and present usage of a telecommunications good or service;*
- *Customers can verify Billed Charges;*
- *Bills are easy to understand;*
- *Charges are billed, Bills are issued, and payments are credited in a timely manner.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

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.

The Guidelines on Billing are:

Q: Is this chapter intended to cover all Bills a Supplier issues to a Customer?

A: It is not intended to cover specific works and commercial arrangements which are not the Supplier's market offerings, such as:

- paid telecommunications consultancy;
- external works, for example a separately billed cable reticulation project;
- recoverable works, for example the cost of repairing a cable damaged by an external contractor; or
- fraudulent use of services.

It is also limited to Billing operations of Suppliers in Australia, and therefore will not cover international call types dependent on overseas providers. For example, the following may not be covered:

- international reverse charge calls;
- international mobile roaming calls;
- ship to shore calls; or
- international calling card calls.

Q: Which Rules have particular requirements for Direct Debit Customers?

A: The Rules in clauses:

- 6.2.3 (receiving Bills);
- 6.4.3 (Customer Verification);
- 6.5.1 (timeliness of Bill issue); and
- 6.5.3 (timeliness of providing details to Customer's financial institution)

are particularly relevant.

Specific Guidelines explaining how the Rules in clauses 6.2.3, 6.4.3 and 6.5.1 apply to Direct Debit transactions follow in this chapter.

Q: *Does this chapter cover my relationship with other Suppliers?*

A: It does not deal with inter-carrier or Wholesale Billing practices, except where specified.

The occasions where the chapter does cover interactions with other Suppliers are limited to where they may directly impact Customers, such as timeliness of Billing and information transfer between Suppliers under clause 6.5.7.

Q: *Is a Pre-paid product offering a contract?*

A: Yes and therefore someone who enters a contract with you by purchasing a Pre-paid product you offer, such as a Pre-paid calling facility, will be your Customer.

Q: *Do I have a contract with someone who initiates an Override Call to use my service?*

A: You do. This is considered to be entering into a contract on a call by call basis. Therefore that person will be your Customer.

Q: *Does this chapter tell me how to deal with Billing complaints?*

A: While the Billing chapter provides some information, other obligations for handling Customers' Billing complaints are contained in chapter 9 (Complaint Handling) of the Code. You should note that a request for information is not to be considered a complaint.

Q: *If I send a notification message, for example by SMS, email or voice message, to tell or remind a Customer that payment is due, is that a Bill for the purposes of this chapter?*

A: No. Such a notification or reminder is not a Bill.

Q: *Are there other laws which may impact the way I Bill?*

A: Yes. One of these is the *Disability Discrimination Act 1992 (Cth)*.

6.1 Billing information

Requested information (Code 6.1.1(c))

Q: *What is an example of an enhanced Billing service? (Code 6.1.1(c)(ii))*

A: One example is a service which provides detailed or further analysis of Billing information.

Q: *What is an example of a Billing Option? (Code 6.1.1(c)(iii))*

A: Allowing Customers to choose the frequency of their Billing, such as monthly or quarterly.

Changes in Billing frequency (Code 6.1.1(d))

Q: What might cause a change in Billing frequency? (Code 6.1.1(d))

A: Billing frequency may be affected by:

- credit management factors;
- your marketing strategy;
- your operating practice; or
- telephone number changes and network infrastructure changes.

On termination (Code 6.1.1(f))

Q: What information might be needed from a Customer to ensure they receive additional Bills after termination?(Code 6.1.1(f))

A: You should advise the Customer to contact you if their contact details change, to ensure delivery of additional Bills.

Itemised Charge details (Code 6.1.3)

Q: Do I need to make details of any Charges for Third Party Telecommunications Products available to my Customers?(Code 6.1.3)

A: Yes. A Charge includes all tariffs or fees that you levy for the provision of Telecommunications Products, including Third Party Telecommunications Products.

6.2 Billing Options and format

Direct Debit Customers (Code 6.2.3)

Q: What kinds of Direct Debit arrangements could a Customer have in place? (Code 6.2.3)

A: A Direct Debit could involve the Customer paying their entire Bill on the due date or paying regular fixed amounts on an agreed date.

Information on Billing Options (Code 6.2.5)

Q: What are some different types of Bill Media and Bill formats? (Code 6.2.5)

A: A Bill format includes a summary Bill and a Bill with partial or full itemisation. Bill Media includes paper, online, by email or electronic storage media.

Electronic Bills (Code 6.2.6)

Q: What are examples of Electronic Bills? (6.2.6)

A: Electronic Bills include electronic tape or disk, or online information transfer.

Q: What factors could adversely affect the presentation of an Electronic Bill? (Code 6.2.6)

A: The presentation of Electronic Bills may be affected by the type and quality of the Customer's equipment. A Customer's equipment could cause consequential presentation distortions that are not the Supplier's responsibility.

6.3 The Bill

Descriptions in Bills (Code 6.3.1)

Q: How can I present terms and categories of a Bill in sufficient detail to enable the Customer to readily understand the Bill? (Code 6.3.1)

A: Sufficient detail includes:

- Where applicable and practicable, presenting Charges in logical sections with suitable descriptions to aid Customer understanding. Examples of logical sections and descriptions includes:
 - call type Charges;
 - service Charges;
 - Third Party Charges;
 - usage plans for example capped plans; and
 - Charges for non-telecommunications products and services, for example insurance for mobile handsets.
- Describing an adjustment or credit in sufficient detail to enable Customer understanding.
- Stating the value of Discounts provided.
- Differentiating between the due dates of outstanding amounts and current Billed Charges.
- Providing additional information in the Bill or in separate documentation such as a standard Customer brochure, to assist Customers to better understand the Bill and its content, and your charging and Billing practices.

Bill content requirements (Code 6.3.2)

Q: Is the Billing Address always a physical address? (Code 6.3.2(a))

A: The Billing Address may be the Customer's location or service address. For Electronic Bills, it may be an email address.

Q: Is the Billing Name always the name of the person who uses the Service? (Code 6.3.2(a))

A: Not always. The Billing Name may or may not be the lessee, owner or user of the Service.

Q: I am required to include a description of the Charges on each Bill. Does this include details of Pre-paid calls? (6.3.2(e))

A: Details of calls made through the use of Pre-paid calling facilities need not be included in a Customer's Bill.

Q: How should I notify a Customer of Charges for calls to my Billing Enquiry number? (Code 6.3.2(j))

A: Examples of appropriate notifications on a Bill include:

- "a timed call charge may apply";
- "calls to ### ## are time charged"
- "international call charges apply"
- "long distance call rates apply for calls originating outside (location)"

Billing content prohibition (Code 6.3.3)

Q: The name of a called individual cannot be included in a Bill. What about business names? (Code 6.3.3)

A: If an individual's name comprises or is included in a business or company name, the business or company name can be listed.

6.4 Verification of Charges

Supplier verification (Code 6.4.1)

Q: Billing Accuracy requires Charges to be correct. What does this include? (Code 6.4.1)

A: It includes that the Bill is consistent with what the Customer has requested, purchased, acquired or used, and that it complies with your contracted or published pricing.

Q: How can I ensure overall Billing Accuracy? (Code 6.4.1)

A: Methods that may be employed to ensure overall Billing Accuracy include:

- Compliance with the *ACIF C518:2006 Call Charging and Billing Accuracy Code*.
- Certification of the Charging and Billing process with the Australian and International Quality Standard AS/NZS ISO 9001.
- Compliance with the Australian Standard Guidelines AS 3905.9 for Telecommunications Call Charging and Billing.
- Effective quality assurance techniques as an inherent part of Billing operations.

For non-call Charges such as service and equipment Charges, service provision fees and line rentals, Billing Accuracy relies on both you and the Customer keeping accurate, up to date records and keeping each other informed of changes to the Customer's inventory and associated pricing, terms and conditions. For example:

- A Customer who no longer requires or uses a rented telephone handset should advise you of this and return the handset.
- You should advise Customers of new prices or new terms and conditions for your goods and services, such as through a press advertisement.

Q: *How should I verify Billing Accuracy for an individual Customer? (Code 6.4.1)*

A: Verification for an individual Customer will depend on the circumstances and be consistent with your Charges.

Customer verification of Charges (Code 6.4.2)

Q: *What must a Customer be able to verify? (Code 6.4.2)*

A: All Charges, including Third Party Charges, together with the Itemisation of Charges Billed.

Q: *How may I ensure that sufficient information is readily available to my Customers for verification purposes? (Code 6.4.2)*

A: Information may be provided either in or with the Bill, or be otherwise readily available, such as through your:

- Billing Enquiry number;
- website;
- brochures; or
- other information on Pre-paid services.

If the Charges are Third Party Charges, an Itemised Bill containing sufficient information could include:

- Third Party identification or provider name;
- Telecommunications Product;
- number called;
- call duration;
- date/time; and
- Charge

if the Third Party service provider has provided this information to you.

In the case of Third Party Charging, information can be obtained from the relevant Third Party.

Customer verification of Direct Debit arrangements (Code 6.4.3)

Q: Where can I find more information on Direct Debit transactions and authorisations? (Code 6.4.3)

A: Regulations governing Direct Debit transactions, including Customer authorisation, are contained in the Australian Payments Clearing Association Ltd "Procedures for Bulk Clearing Systems". See www.apca.com.au.

Itemised Charges (Code 6.4.4)

Q: Do all Bills need to include Itemised Charges? (Code 6.4.5 and 6.4.6)

A: Unless the Customer agrees or requests otherwise, Itemised Charges need to be provided, but they do not need to be provided in the Bill itself.

Q: What should I tell a Customer who agrees that Itemised Charges need not be provided? (Code 6.4.5 and 6.4.6)

A: You should make sure they understand that the information is available if they want it, and tell them how they can get it.

Q: How long must a Supplier ensure that Itemised details contained in previous Bills are available?

A: For the minimum period required by law.

Q: What details should be included with Itemised Billing? (Code 6.4.4)

A: For Timed Calls, details include the amount billed, the start time and date of the call, the call duration and the number called.

For customer equipment and other non-call Charges, Itemisation involves a listing of each item for which a Charge is Billed, and the amount Billed.

Packages including a fixed-price component may not require Itemisation of component product and service usage within the fixed price component.

Notice period for Itemised Billing (Code 6.4.8)

Q: Why might notice be required to obtain Itemised Billing information? (Code 6.4.8)

A: Itemised details for particular products or call types may not be captured or processed by a Supplier as a routine activity. Advance notice may therefore be required in order to provide Itemised Billing to a Customer.

6.5 Billing timeliness

Timeliness of Bill issue (Code 6.5.1)

Q: Do the requirements for timeliness of Bills only apply to Bills issued directly to Customers? (Code 6.5.1)

A: No. It also applies to Bills to other Suppliers, in order to enable the other Suppliers to meet their timely Billing obligations to their Customers.

Q: Do the requirements for timeliness of Bills apply to Bills paid by Direct Debit (Code 6.5.1)

A: Yes.

Q: What are some examples of value-added information? (Code 6.5.1(b))

A: Examples include:

- call analyses; or
- historical or trending information

which require additional processing efforts.

Q: What are some examples of system or processing problems? (Code 6.5.1(c))

A: Examples include:

- a system breakdown; or
- abnormally high processing volumes.

Q: Why might I wish to delay Bill issue for Customer service purposes? (Code 6.5.1(d))

A: For example, as part of your quality assurance activities.

Q: What are some examples of Bill Media where longer processing times may be required (Code 6.5.1(e))

A: Examples include:

- online;
- electronic storage media;
- braille Bills;
- large print Bills; and
- Bills in other languages.

Delayed Bill issue (Code 6.5.2)

Q: Why is it important to promptly rectify Billing delays? (Code 6.5.2)

A: To minimise the impact on Customers.

Timeliness of Billed Charges (Code 6.5.4)

Q: Will any agreement I have with another Supplier regarding the exchange of Billing information override my obligation to Bill in a timely manner? (Code 6.5.4)

A: No, it will not.

Q: How might I inform Customers that some Charges may relate to a previous Billing Period? (Code 6.5.4(b))

A: This notification:

- may be stated in the Bill or otherwise be readily available; and
- may state that delays in Billing for some charges could be due to delays by other Suppliers providing relevant Billing information.

Q: Are delayed Billing arrangements with other Supplier governed by this Code? (Code 6.5.4(c))

A: No. The on-Billing, payment and commercial arrangements between Suppliers in relation to late Billing are matters for bilateral contracts and arrangements.

Allowable delays (Code 6.5.5)

Q: When might I agree with the Customer to delay Charges? (Code 6.5.5(a))

A: For example, if you have agreed to an instalment arrangement, you may incorporate the agreed instalment amount in relation to the total Charge into each Bill issued at the agreed intervals. In the case of White Pages directory Charges, this is the case even though the

Charge date is 30 days after the closing date of the directory.

Q: What are some examples of possible Customer initiated changes? (Code 6.5.5(b)(iii))

A: Examples include changes to

- the end of Billing Period date;
- Billing frequency; or
- consolidated account arrangements.

Exceptions for exchange between Suppliers (Code 6.5.8)

Q: What are some examples of system or processing problems that could occur? (Code 6.5.8(b))

A: Examples include:

- problems due to a system breakdown; or
- abnormally high processing volumes.

Q: Is a Supplier relieved from complying with Chapter 6 because it is relying on Billing Information from another Supplier?

A: No.

Exceptions for Bill payment processing (Code 6.5.10)

Q: What are some examples of system or processing problems that could occur? (Code 6.5.10(b))

A: Examples include:

- a system breakdown;
- abnormally high processing volumes; or
- processing problems by or involving a Bill payment agency, such as Australia Post, a news agency or a bank.

6.6 Payment

Verifying payment (Code 6.6.2)

Q: What are examples of methods a Customer can use to verify payment? (Code 6.6.2)

A: Examples include:

- you acknowledging payment in the Customer's next available Bill;

- the Customer calling your Billing Enquiry contact point for information; or
- the Customer making an online Billing Enquiry, such as using the internet or an interactive voice response service.

Q: What happens if the Customer experiences payment difficulties?

A: Customers' rights and Suppliers' obligations when the Customer is experiencing payment difficulties are detailed in chapter 7 (Credit Management) of the Code.

Q: If a Customer has incurred no Charges in the current Billing period, there are no outstanding payments and no payment is made, do I need to acknowledge this?

A: No. No acknowledgement of "nil payment" is required.

6.7 Charges for Billing information

Generally no Charge for Billing information (Code 6.7.1)

Q: Can I Charge a Customer for lodging a request for information? (Code 6.7.1)

A: No. National Privacy Principle 4.4 in the Privacy Act specifically prohibits you from charging a Customer simply for lodging a request to access information.

Q: When may a request for a copy of a Bill incur extra cost? (Code 6.7.1(c)(iv))

A: A request for a copy of a Bill may require additional manual or production efforts, archive recovery or courier deliveries, involving additional costs, such as:

- information requiring extensive collection and collation by the Supplier;
- itemisation of Billed Charges beyond that normally provided (for example for local calls); or
- enhanced Electronic Billing and analysis capabilities.

Charges for Itemisation (Code 6.7.2)

Q: Can I Charge for Itemisation of old Bills? (Code 6.7.2)

A: Yes. This Rule relates to the current Bill. You may Charge for providing Itemised details for Bills prior to the most recent Bill if a Customer requests these details. For example, a Charge may be levied when a Customer or Customers' commercial agent seeks Charge details going back a number of years.

Q: In what kinds of situations could a Charge be applied due to high unit costs? (Code 6.7.2(a))

A: Examples include:

- A Charge may be levied for the provision of an Itemised bill or separate listing of Untimed Call details or where a Bill is not issued for that product.
- A Charge may be levied when providing Itemised details for high volumes of particular types of Timed Calls or transactions, such as ISDN Timed local Calls.

6.8 Privacy, confidentiality and security

No guidance is provided in this section.

6.9 Authorised Representatives

Formal authorisation (Code 6.9.1)

Q: In order to deal with a Customer's Authorised Representative, do I need to get the Customer's formal authorisation in writing?

A: You may require the authorisation to be provided in writing, but it need not be.

7 CREDIT MANAGEMENT

Objectives

Chapter 7 of the Code sets out Rules relating to Credit Management.

The objectives of that chapter of the Code are to:

- *set out minimum standards of Credit Management practice;*
- *provide Customers with information, a clear understanding of their options and a guide to minimum standards they can expect;*
- *provide for the use of tools to manage Customers' expenditure on Services; and*
- *ensure policies are in place to assist Customers experiencing Financial Hardship.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

The Guidelines on Credit Management are:

7.1 Credit Assessment

Credit Assessment rule (Code 7.1.1)

Q: What is an appropriate Credit Assessment? (Code 7.1.1(a))

A: It, at least, must comply with your obligations under the Privacy Act in relation to the Customer's personal information. For example, you must ensure that you only provide information to a credit reporting agency in accordance with your obligations under the Privacy Act, including the obligations noted in the Guidelines to Code 3.4.1 above.

Q: If I make credit control tools available, do I still need to undertake a Credit Assessment? (Code 7.1.1(b))

A: You might, depending on the individual circumstances. The availability of credit control tools does not remove the obligation to conduct a Credit Assessment when required.

Q: How can I determine how extensive a Credit Assessment of a Customer needs to be? (Code 7.1.1)

A: Credit control tools that enable the Customer or you to monitor usage on an ongoing basis may be a factor to consider in determining how extensive the Credit Assessment needs to be.

Credit Assessment process (Code 7.1.2)

Q: What might I consider when undertaking a Credit Assessment of a Customer? (Code 7.1.2)

A: When undertaking a Credit Assessment you may consider:

- the Customer's history and experience with the Service, if any;
- the Customer's payment history with you;
- the Customer's employment history;
- the Customer's income;
- the Customer's residential history;
- a credit check with a Credit Reporting Agency; or
- an appropriate check with another third party.

Q: What should I tell a Customer if I undertake a credit check with a Credit Reporting Agency as part of the Customer's Credit Assessment? (Code 7.1.2)

A: When undertaking a credit check with a Credit Reporting Agency, you should advise the Customer that the inquiry may be recorded on the credit information file the Credit Reporting Agency may maintain about them.

7.2 Results of Credit Assessment

Restricted access (Code 7.2.1)

Q: How might a Customer access a Service that I have Restricted because of their Credit Assessment? (Code 7.2.1(c))

A: Examples of ways a Customer might gain access to Services that have been Restricted because of their Credit Assessment include:

- using pre-payment methods;
- establishing an acceptable credit history with you;
- using an alternate Supplier;
- using a Pre-paid calling card; or
- paying a Security Bond.

Security Bond (Code 7.2.2)

Q: What happens to the Security Bond if the Customer has their Services Suspended or Disconnected due to non-payment? (Code 7.2.2)

A: If the Customer has their Service Suspended or Disconnected, you may use the Security Bond to offset any undisputed amount the Customer owes.

Advice to Guarantors (Code 7.2.3)

Q: What is appropriate advice to a Guarantor? (Code 7.2.3)

A: Appropriate advice to a Guarantor includes:

- the amount of the guarantee, where known;
- the period and extent of the guarantee, where known; and
- that the Guarantor could be liable for the full amount of the debt.

Advising the Customer about risks (Code 7.2.5)

Q: When might I need to advise a Customer who is not going to be the principal end user of a Service about their potential liability and risk? (Code 7.2.5)

A: Examples include:

- An adult, such as a parent or grandparent, advises you that they want to obtain a mobile service on behalf of an underage user.
- A Customer advises you that they are arranging a mobile service as a gift for another person.

Refusal to supply Service (Code 7.2.6)

Q: Does the Customer have a right to access their credit information file from me, as well as the file maintained by a Credit Reporting Agency? (Code 7.2.6(a)(iv))

A: Yes. See Code clause 7.9.1(a).

7.3 Credit Control tools

Security tools (Code 7.3.1)

Q: What are some examples of security tools used to prevent unauthorised access to or use of Services? (Code 7.3.1)

A: Appropriate security tools will depend on the nature of the Service. Appropriate security tools may include:

- mobile phone blocking using a phone's International Mobile phone Equipment Identifier (IMEI);
- blocking access to Services when you are notified of a problem such as the loss or theft of a phone;
- the use of a PIN or password to access a Service; and
- firewalls and virus protection for internet services.

Customer request for Suspension (Code 7.3.2)

Q: What is an example of when a Customer may ask me to Suspend their Service? (Code 7.3.2)

A: An example is if their handset is lost or stolen.

Unbilled Amounts (Code 7.3.3)

Q: What is current information on Unbilled Amounts? (Code 7.3.3(a))

A: The information is current if it is the most recent information available to you, recognising that you might experience delays in receiving information (for example information relating to international roaming services, reseller services and 190 services.)

Q: How might I provide Customers with access to information on Unbilled Amounts? (Code 7.3.3(a))

A: You may give them access online, via a call centre, your retail premises or through meters designed to record Service usage.

Credit control by Suppliers (Code 7.3.4)

Q: *What are some examples of credit control tools I might apply to manage a Customer's expenditure? (Code 7.3.4)*

A: Examples of appropriate credit control tools include:

- call barring or Restrictions on certain Services (for example more expensive Services);
- providing call charge advice during the course of a premium services call;
- Pre-paid Services, except those with a Balance Triggered Automatic Top Up;
- Hard Caps;
- reducing broadband internet download speed when a usage limit is reached; or
- notifying a Customer when a particular spend or usage level has been reached independently of enquiry or request by the Customer.

Q: *How can I determine what are appropriate credit control tools for a particular Customer? (Code 7.3.4)*

A: You should consider which credit control tools may be appropriate following a Customer's initial application for supply, following Credit Assessment or at any time during the provision of Services to the Customer. In considering what is appropriate, you should bear in mind the objectives listed in the introduction to this chapter.

Credit control by Customers (Code 7.3.5)

Q: *What are some examples of credit control tools I might make available for Customers to use? (Code 7.3.5)*

A: Examples of credit control tools include:

- optional call barring or Restrictions on access to certain Services;
- optional Hard Cap;
- Pre-paid Services;
- providing call charge advice during the course of a premium services call;
- optional reduction of broadband internet download speed when a usage limit is reached;

- opt-in Services in which a Customer may request which elements of a Service they wish to receive;
- access to current information on the Customer's Unbilled Amounts; or
- notifying Customers of their current Unbilled Amounts on request.

Credit control tools list (Code 7.3.6)

Q: How might I make my list of credit control tools publicly available? (Code 7.3.6)

A: The list should be available on your website and also be provided on request. You should provide Communications Alliance with an appropriate link or details on how Customers can access the information.

Options for Customers to Restrict access (Code 7.3.7)

Q: When might it be appropriate to Inform a Customer about options for Restricted access? (Code 7.3.7)

A: An appropriate time may be when the Customer applies for the Services or when the Customer's circumstances suggest that such information is appropriate. Also consider your information obligations under chapter 4 (Customer Information on Prices, Terms and Conditions).

Q: What are examples of possible options for Restricting access? (Code 7.3.7(b))

A: Examples include:

- where access restrictions can be applied on the Customer's Service for specified service types using PIN control features or on an opt in/opt out basis; and
- exchange barring.

Information on Restricted access (Code 7.3.8)

Q: What is an example of a Restriction that does not apply to all Services or circumstances? (Code 7.3.8(a))

A: Examples include:

- If a Customer requests local call access only, in which case you should tell the Customer that access to operator calls (for example reverse charge calls) is still available.
- A Customer may still be able to make calls through other Suppliers, even though you have put a Restriction in place.

7.4 Credit Management

Payment difficulties (Code 7.4.1)

Q: What payment difficulties might a Customer encounter? (Code 7.4.1)

A: In addition to Financial Hardship problems, payment difficulties may arise from a variety of causes, including where a Customer receives a bill that is significantly larger than the Customer anticipated.

Q: How might I assist Customers who are experiencing payment difficulties? (Code 7.4.1)

A: Examples include:

- granting requests for extensions of time to pay; and
- payment plan options.

Timing of Credit Management (Code 7.4.2)

Q: If I outsource any of my Credit Management activities, do I still need to ensure that the Credit Management processes in chapter 7 of the Code are followed? (Code 7.4.2)

A: Yes. You must ensure the processes are followed, irrespective of outsourcing.

Q: Are debt collection agents always external contractors? (Code 7.4.2(a))

A: No. For the purposes of the Code, debt collection agents can be internal to a Supplier or externally contracted.

Prior to or when taking Credit Management action (Code 7.4.3)

Q: What format should I use to advise Customers? (Code 7.4.3)

A: You should advise Customers using the same medium you normally use with them.

Informing a Customer about Restriction, Suspension or Disconnection (Code 7.4.4)

Q: What is an example of making a reasonable attempt to ascertain whether a Customer has understood verbal advice? (Code 7.4.4(a))

A: "Do you understand that your telephone service will be Suspended/ Restricted/ Disconnected as from DD/MM/YY?"

Q: What are examples of acceptable formats to Inform a Customer of Restriction, Suspension or Disconnection? (Code 7.4.4(c))

A: Examples include:

- For Customers using paper bills, you might send a letter.
- For Customers who use mobile services, you should send an SMS only where there is an established history of SMS usage.
- For Customers with internet/online billing, you might send an email.

Prior to Suspending or Disconnecting (Code 7.4.5)

Q: *What are financial counsellors or consumer advocates and how can I get more information about this? (Code 7.4.5(a))*

A: Financial counsellors are trained and accredited to work in the local community to provide remedial, preventative and advocacy services for people in financial distress (or who are in danger of entering financial distress) with a focus on people of low income. They are generally funded by State and Federal Governments and services are provided free of charge.

A financial counsellor works with a Customer to clarify and analyse their financial situation, explain financial and legal documents and processes, and identify and discuss options for resolving financial problems.

While a financial counsellor may assist the Customer in negotiating with creditors, the Customer is always in control over what course of action will be taken.

In some States, consumer advocates offer advice about consumer rights to Customers.

For your local service contact your local social services, or the following:

QLD:	Financial Counselling Association of Queensland - (07) 3321 3192
NSW:	Credit and Debt Helpline - 1800 808 488
ACT:	Care Financial Counselling - (02) 6257 1788
VIC:	Financial and Consumer Rights Council - (03) 9663 2000
TAS:	Anglicare Financial Counselling - 1800 243 232 or (03) 6234 3510
SA:	Uniting Care Wesley Adelaide - (08) 8202 5180
WA:	Financial Counsellors Resource Project - (08) 9221 9411
NT:	Anglicare Financial Counselling - 1800 898 500 or (08) 8943 2673

Q: *How should I advise the Customer of the role of community counsellors and consumer advocates? (Code 7.4.5(a))*

A: An example is:

"A community financial counsellor or consumer advocate may be able to help you with your financial situation. Contact your local community services department or financial counsellor or consumer advocate."

Q: *How could I advise a Customer of the effect that non-payment of one of their Services may have on other Services they also have with me? (Code 7.4.5(c))*

A: An example is:

"Failure to pay your mobile account may result in Credit Management action in relation to the landline service you have with us."

Restricting a Service (Code 7.4.6)

Q: *What are reasonable steps to Inform a Customer of the Supplier's intention to Restrict a Service? (Code 7.4.6(a))*

A: Examples include advice in writing or 2 or more phone calls.

Q: *What are the Emergency Service Numbers? (Code 7.4.6(c), 7.4.7(d))*

A: The Telecommunications Numbering Plan 1997 (section 3.24) specifies that 000 is the primary Emergency Service Number while 106 and 112 are secondary Emergency Service Numbers.

Suspending a Service (Code 7.4.7)

Q: *What are reasonable attempts to Inform a Customer of an impending Suspension? (Code 7.4.7(a))*

A: Examples include 2 or more attempts to contact via letter, phone or otherwise.

Q: *If a Customer requests a review of a Suspension decision, what should I tell them? (Code 7.4.7(b))*

A: The information you give them should include the likely time within which the review will be completed (normally within 2 Working Days).

Q: *What is an example of how a Supplier could Inform a Customer of the Suspension consequences of non-payment? (Code 7.4.7(c)(i))*

A: You could tell the Customer that "You will not be able to make phone calls (in the case of a land line service) until your payment is received."

Suspension of Restriction without Notice (Code 7.4.8)

Q: What is a prompt review of a decision? (Code 7.4.8(b))

A: A review would normally take place within 2 Working Days.

Disconnection (Code 7.4.9)

Q: What are reasonable attempts to Inform a Customer of a decision to Disconnect? (Code 7.4.9(a))

A: A reasonable attempt may include advice in writing or 2 or more phone calls.

Q: How could I Inform a Customer or Guarantor of the consequences of non-payment? (Code 7.4.9(e)(i))

A: Examples of what you could tell them include:

- "You will not be able to make or receive any calls, including to Emergency Service Numbers."
- "You will lose your phone number."
- "You will lose access to your email address."

Consequences of non-payment include the consequences for other Services the Customer has with the Supplier.

Q: Are there any other consequences of Disconnection? (Code 7.4.9)

A: Priority Assistance ceases at the time of Disconnection unless it is a relocation where the Provisional Priority Customer or Priority Customer remains with the same Supplier.

Credit Management action over disputed amounts (Code 7.4.10)

Q: Where there are some disputed amounts and some undisputed amounts owing, can I begin Credit Management action in relation to the undisputed amounts? (Code 7.4.10)

A: Yes. You are not prevented from taking Credit Management action in relation to the undisputed amounts owing.

Collection agents (Code 7.4.13)

Q: What should debt collection agents not do? (Code 7.4.13)

A: Examples of things they should not do include:

- Take collection actions that conflict with the Trade Practices Act or the ACCC-ASIC *Debt Collection Guideline: for collectors and creditors*.
- Use forms of notification that are misleading:

- in appearance (for example they make themselves out to be Court documents when they are not);
 - in content; or
 - to actual amounts due (for example lead the reader to the belief that costs are due when in fact they are not).
- Continue collection activities for debts incurred prior to bankruptcy where a Customer is known to be bankrupt.
 - Demand payment of debts from third parties or contact third parties when there is no entitlement to do so.
 - Fail to have compliance checklists pursuant to applicable standards.
 - Breach guidelines issued under any relevant State legislation on private agents or commercial agents, or under fair trading legislation.

Other third party action (Code 7.4.14)

Q: What happens if a Customer complains about a debt that has already been sold or assigned? (Code 7.4.14(b))

A: If a Customer's complaint relates to debts that have been sold or assigned to a third party, and it cannot be resolved directly with a Supplier, the TIO is able to investigate the matter.

Failure to pay through no fault of Customer (Code 7.4.17)

Q: When could I be at fault for my Customer's failure to pay? (Code 7.4.17)

A: Examples include:

- where you failed to send the bill to the address provided by the Customer; or
- where you sent an incorrect bill to the Customer.

Q: When might an account be unpaid despite the Customer having taken all reasonable steps to pay it? (Code 7.4.17)

A: An example is where the failure to pay was due to the fault of a third party such as a bank or payment agency.

Q: What are additional charges? (Code 7.4.17(b))

A: Additional charges can include disconnection fees, reconnection fees, late payment fees, early termination fees and interest charges.

Q: What are other credit related disadvantages? (Code 7.4.17(c))

A: An example is additional difficulty the Customer would have in obtaining new or altered Services with you.

7.5 Financial Hardship policy

Financial Hardship policy (Code 7.5.1)

Q: How can I create a Financial Hardship policy? (Code 7.5.1)

A: You should refer to the ACIF Guide for a Financial Hardship Policy for further information.

Q: Are there any other things I should consider when setting up my financial hardship program? (Code 7.5.1)

A: Yes. Where possible, you should consider supplying a direct line to financial counsellors.

Minimum content of summary (Code 7.5.3)

Q: What are some of the options I need to provide for managing Financial Hardship? (Code 7.5.3(b))

A: Some options are set out in clause 7.7 of the Code.

7.6 Financial Hardship assessment

Q: In deciding whether a Customer is suffering from Financial Hardship, what are reasonable causes of a Customer being unable to discharge their financial obligations?

A: Reasonable causes include:

- illness; or
- unemployment.

Q: Is Financial Hardship limited to hardship of short duration?

A: No. Financial Hardship can be of limited or long term duration.

Supporting documentation (Code 7.6.2)

Q: When might I require supporting documentation from a Customer? (Code 7.6.2)

A: You 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.

7.7 Financial Hardship arrangements

Customer information (Code 7.7.2)

Q: When I Inform a Customer of the agreed terms of a Financial Hardship arrangement, what information should I include? (Code 7.7.2(a))

A: You should include information about the amount and frequency of the payment terms. If the Customer requests it, you should provide this in Writing.

7.8 Credit Management action during Financial Hardship arrangement

Q: Am I allowed to list a debt with a Credit Reporting Agency while a Financial Hardship arrangement is being actively discussed with a Customer or during the course of the arrangement? (Code 7.8.1)

A: No. The prohibition on undertaking Credit Management action during that time includes listing a debt with a Credit Reporting Agency.

Q: In what circumstances might it be reasonable to take Credit Management Action? (Code 7.8.1(b))

A: It may be reasonable in the circumstances if it was to prevent the Customer falling further into debt.

7.9 Credit information

Q: What is an excessive fee or charge? (Code 7.9.1)

A: A fee or charge above the reasonable costs of providing the information.

8 CUSTOMER TRANSFER

Objectives

Chapter 8 of the Code sets out Rules relating to Customer Transfer.

The objectives of that chapter of the Code are to minimise unauthorised Transfers, by establishing procedures for Suppliers to:

- *identify the Authorised Customer;*
- *inform Customers of all relevant terms and conditions of the Transfer and Supplier contact details;*
- *ensure appropriate conduct of Sales Representatives;*
- *confirm the components of the Transfer to the Customer;*
- *verify the Transfer through independent means;*
- *notify the Customer of the completion of the Transfer;*
- *maintain records of the Transfer process; and*
- *provide Customer access to Supplier's records of the Transfer.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

This Guideline is designed to:

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

Guidelines

The Guidelines on Customer Transfer are:

Q: I need to provide information to a Customer. What might be an appropriate way to do so?

A: Appropriate formats may include:

- verbally;
- in writing; or
- electronically.

Q: When might a Transfer arise?

A: A Transfer might arise in a variety of different contexts, including:

- local number portability;
- inbound number portability;
- pre-selection;
- issues relating to internet services including broadband;
- commercial churn;
- local call resale; and
- mobile number portability.

Q: Are there other codes or documents that provide me with information about my obligations in those contexts?

A: Yes. There are a number of codes and other documents dealing with these contexts. They include:

- the Australian Direct Marketing Association (ADMA) Code of Practice;
- *ACIF C531:2005 Commercial Churn*;
- *ACIF C515:2005 Pre-selection*;
- *ACIF 540 2007 Local Number Portability*; and
- *ACIF G562:2000 Electronic Customer Authorisation Industry Guideline*.

8.1 All selling channels

Q: Do the rules in section 8.1 apply to all my selling channels? (Code 8.1)

A: Yes. The rules in section 8.1 are general rules applying to all selling channels including:

- Door to Door Selling;
- Telemarketing;
- retail outlets (anywhere that your Telecommunications Goods and Services are sold) including:
 - branded and general shops;
 - booths in public places;
 - community centres;
 - exhibitions and shows; and
 - any other approaches to Customers in public places.
- electronically (i.e. email); and
- direct mail.

There are also specific rules relating to Telemarketing in section 8.2.

Requirements for Sales Representatives (Code 8.1.1)

Q: Can a Sales Representative disclose information about other people to a potential Customer? (Code 8.1.1(c))

A: If an individual has decided to change their Supplier, the Sales Representative should not tell a Customer that the person has decided to change Suppliers, without that person's prior express consent.

Prohibitions on Sales Representatives (Code 8.1.2)

Q: Are there inappropriate places to solicit orders? (Code 8.1.2(a))

A: Yes. Examples include:

- on street corners;
- in public buildings;
- in or outside places of worship; or
- in nursing homes and residential care facilities, without gaining the express approval of the facility's management.

Before a Transfer (Code 8.1.3)

Q: How can I obtain information to ascertain the name of the Authorised Customer? (Code 8.1.3(a))

A: You will mostly rely on information provided by the person with whom you are dealing.

Q: *When I am dealing with a residential Customer, how should I ensure that a person who authorises a Transfer is the Authorised Customer or their Authorised Representative? (Code 8.1.3(c))*

A: The following or similar questions could be asked:

- "Are you the account holder?"
- "Are you the person who is authorised to Transfer the Service?"

If the answer to the question is NO, either ask to speak with the person who is authorised or cease the Transfer process.

If the answer is YES, ask the following additional question:

- "Will you accept responsibility for transferring the service to us?"

Q: *When dealing with a small business, how should I ensure that a person who authorises a Transfer is the Authorised Customer or their Authorised Representative? (Code 8.1.3(c))*

A: The following procedures are recommended:

- Seek to identify the name and position of the person within the business who has the delegated authority to make decisions in relation to telecommunications matters, then communicate with that person in order to authorise the transfer.

The following questions may be used:

- "Are you the person authorised by your company to make changes to your company's services?"

If the answer is NO, either ask to speak with the person who is authorised or cease the Transfer process. If they answer YES, ask the following question:

- "Will you accept responsibility for transferring your company's telephone service/s to us?"

Q: *How could I ensure that the Authorised Customer or Authorised Representative clearly conveys their agreement to the Transfer? (Code 8.1.3(e))*

A: An example of ensuring the Authorised Customer or their Authorised Representative clearly agrees is:

- "By signing this Transfer Authority, you agree that #### will Transfer your telecommunications service to it."

Q: *What are examples of the terms and conditions of Transfer that might need to be disclosed in order to obtain informed consent to the Transfer? (Code 8.1.3(e)(iii))*

A: This might include the time taken to effect the Transfer or the expiry of any cooling off period.

Q: *What are some ways to inform the Authorised Customer or Authorised Representative whether equipment they have will be compatible with the new service? (Code 8.1.3(e)(v))*

A: Examples include:

- "You must have an ADSL2 modem in order to use this ADSL2 service."
- "Our service requires that you use a <Brand X> Modem. If you do not currently own a <Brand X> modem you must seek further advice from us in order to find out if your current equipment is compatible with our service."

Q: *When could consequences arise from the Customer's existing contract? (Code 8.1.3(e)(vii))*

A: An example is if the Customer is not allowed to Transfer a part of their service under their existing contract. An attempt to do so may result in their existing Supplier imposing an exit fee (or other charge) or reversing the Transfer.

At the Point of Sale (Code 8.1.4)

Q: *What are retail outlets? (Code 8.1.4 (c))*

A: Retail outlets are any outlets selling Telecommunications Goods and Services including:

- branded and general shops;
- booths in public places;
- community centres;
- exhibitions and shows; and
- any other approaches to Customers in public places.

After the Transfer (Code 8.1.5)

Q: *Should I keep an electronic record of authorisation? (Code 8.1.5 (b))*

A: Yes. If you wish to rely on electronic authorisation, you will need to be able to show that you have complied with any applicable legal requirements for disclosing the relevant terms and conditions to the Customer.

Q: *Should I keep voice recordings of a request to Transfer and how should I give a Customer access to those? (Code 8.1.5(c))*

A: Yes. If you have a voice recording, provide a copy or play back the recording to the Customer within a reasonable time of their request to hear it. If the Customer consents, you may provide it to or play it for a nominated party. Factors that will be taken into account in determining if the time is reasonable include:

- how long ago the recording was made;
- the age and accessibility of the recording and
- whether there is a dispute regarding the Transfer.

Q: *What formats should I use to provide information on opting out? (Code 8.1.5(f)(i))*

A: You should provide information on how to opt out of marketing approaches generally via:

- details on your website;
- privacy brochures – eg privacy policies/collection statements;
- if a Customer specifically requests information, in a telephone call, face to face, by direct mail etc, where appropriate; and
- by Customer correspondence, where appropriate.

Verification (Code 8.1.6)

Q: *Can I use Verification to avoid the application of other Rules in chapter 8? (Code 8.1.6)*

A: No. You cannot use Verification to avoid complying with any of the Rules. For example, you cannot assert that a Door to Door Selling cooling off period does not apply because you Verified the sale by telephone.

Q: *When will I or my Sales Representative have initiated contact with a Customer? (Code 8.1.6(a))*

A: Situations include:

- Door to Door sales;
- cold canvassing and
- outbound telemarketing calls.

Q: *When will the Customer have initiated contact? (Code 8.1.6(a))*

A: Situations include when a Customer:

- requests a visit by you to their premises;
- responds to direct mail or other marketing activity;
- makes an inbound call to you or contacts you online; and
- enters your shop, a licensed shop or dealer.

Q: What is an appropriate sample of Transfers? (Code 8.1.6(a))

A: An appropriate sample of Transfers will be statistically proportional to the level of unauthorised Customer Transfer complaints in a particular selling environment. If you are experiencing apparently high levels of unauthorised Transfers, more Transfers should be Verified.

8.2 Telemarketing

Q: What other obligations should I be aware of when Telemarketing (Code 8.2)?

A: The *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* specifies obligations for Telemarketing.

Q: If my Sales Representative is making a telemarketing call to elicit a Transfer do they need to say so? (Code 8.2)

A: Yes. Section 6(1)(c) of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* requires that your Sales Representative states the purpose of the call. You therefore need to ensure that the stated purpose is accurate. Where the purpose of a call is to elicit a Transfer, ensure that your Sales Representative does not represent that they are undertaking market research or offering a product for free if it is not the case.

Authorisation (Code 8.2.3)

Q: What is an example of an authorisation? (Code 8.2.3)

A: An example of ensuring that all elements of the Customer's authorisation are recorded is:

- "Please state your full name, including title – for example, Miss Martha Brown."
- "Welcome to the <Supplier Name> voice recording. Please respond to the following questions after the tone. <Supplier Name> voice recording will record your voice for the purpose of authorising <Supplier Name> to carry your international and national long distance calls, calls to mobiles and operator assisted calls and bill your local call service. This authorisation is not a trial. It is not a request for further information. By

proceeding, you are agreeing to have <Supplier Name> carry your long distance service and bill your local call service. Do you agree to proceed on this basis?"

- "Do you certify that you are the account holder of the local call service(s) and you are authorised to transfer the long distance and local call service(s) to <Supplier Name>?"
- "Please state which long distance offer you would like to select. Please state which local call plan you would like to select."

9 COMPLAINT HANDLING

Objectives

Chapter 9 of the Code sets out Rules relating to Complaint handling.

The objectives of the Code are that Suppliers have Complaint handling processes that will maintain and enhance Customer satisfaction through:

- *recognising, promoting, and protecting Customer's rights;*
- *providing an efficient, fair and accessible mechanism for handling Complaints;*
- *providing information on their Complaint handling processes; and*
- *monitoring Complaints to improve the quality of Telecommunications Products.*

Relationship with the Code

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to this Guideline in deciding how they will comply with the Rules.

Purpose of this Guideline

This Guideline is designed to:

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

Guidelines

This chapter does not apply to:

- (a) Complaints that are the subject of legal action;
- (b) Complaints made in respect of or on behalf of Customers by entities levying fees or charges for their services, other than legal practitioners; and
- (c) Complaints made under *ACIF C546:2004 Deployment of Mobile Phone Network Infrastructure*.

The Guidelines on Complaint handling are:

9.1 Complaint handling processes and policies

Q: Is there anything else that I should consider when formulating my Complaint handling processes and policies?

A: Other requirements that you should consider include:

- the *Telecommunications (Standard Form of Agreement Information) Determination 2003* requires that you include information in Standard Form of Agreement summaries about your internal Complaints handling processes; and
- the AS ISO 10002-2006: Customer satisfaction – Guidelines for complaints handling in organizations contains general guidance on appropriate Complaint Handling processes and practices.

Complaint handling processes (Code 9.1.1)

Q: How far should my "commitment to efficient, fair and courteous resolution of Complaints" extend? (Code 9.1.1)

A: It should include commitment by your Chief Executive Officer(s) or ruling body.

Q: How can I ensure that my Complaint handling process is responsive to my Customers' needs? (Code 9.1.1)

A: Every reasonable effort should be made to investigate all the relevant circumstances and information surrounding a complaint. Receipt of each Complaint should be acknowledged to the Complainant promptly. Where practicable, Complaints should be addressed promptly in accordance with their urgency. For example, significant health and safety issues should be processed immediately. Complainants should be treated courteously and be kept informed of the progress of their Complaint throughout the Complaint handling process. Providing reasons as to why a certain decision has been made may assist in the resolution of the Complaint. The

Complaint handling process should be efficient, fair and reasonable.

Q: *What are some ways to service the needs of people with disabilities and from non-English speaking backgrounds? (Code 9.1.1(b))*

A: Some ways to do so might include:

- providing an enquiry line, including direct TTY access via a local or toll free number.
- providing language and sign language interpreters.
- directing Customers to specialist advocacy or peer support community organisations.

Q: *How can I keep appropriate and systematic records? (Code 9.1.1(e))*

A: Your records should include the following:

- when a Complaint is resolved on first contact, at a minimum, record that contact was made by a Complainant and its nature.
- when a Complaint is resolved on first contact and the Customer requests that it be recorded as a Complaint, record the Complaint including its nature and outcome.
- when a Complaint is not resolved on first contact, record the Complaint including its nature and outcome.

Q: *How can I monitor undertakings made to Complainants? (Code 9.1.1(f))*

A: If possible, use systems solutions such as the use of follow ups and reminder prompts or other alternative mechanisms.

Your procedure for monitoring undertakings may include the following elements:

- assess the range of remedies/action;
- co-ordinate the delivery of a Complaint action plan;
- agree timeline with Customer;
- establish deadlines;
- identify actions to monitor;
- record follow-up requirements;
- ascertain if remedy accepted/not accepted by Customer;

- determine next escalation level, where appropriate;
- contact relevant areas and review progress;
- inform the Customer;
- verify actions are completed;
- contact Customer to follow-up;
- assess satisfaction; or
- weekly monitoring of open complaints/expired deadlines.

Q: *What kinds of Complaints should I refer elsewhere? (Code 9.1.1(h))*

A: Where the Complaint is about a Telecommunications Product which is not your responsibility.

Q: *If I need to refer a Complaint elsewhere, to whom should I refer it? (Code 9.1.1(h))*

A: To the organisation which can address the Complainant's concerns.

Q: *Where does the concept of continual improvement fit into an organisation's Complaint process and what role should senior management play in the Complaint handling process? (Code Rule 9.1.1(i))*

A: Senior management of the organisation should, as a minimum, ensure the continual improvement of the Complaint handling process should be a permanent objective of the organisation.

Senior management have a key role in ensuring the success of any organisation's Complaint handling process. By way of example, senior management should be responsible for:

- (a) ensuring that the Complaint handling process and objectives are established within the organisation;
- (b) ensuring that the Complaint handling process is planned, designed, implemented, maintained and continually improved in accordance with the Complaint handling policy of the organisation;
- (c) identifying and allocating the management resources needed for an effective and an efficient Complaint handling process;

- (d) ensuring the promotion and awareness of the Complaint handling process and the need for a Customer focus throughout the organisation;
- (e) ensuring that information about the Complaint handling process is communicated to customers, Complainants, and, where applicable, other parties directly concerned in an easily accessible manner;
- (f) appointing a Complaint handling management representative and clearly defining his or her responsibilities and authority;
- (g) ensuring that there is a process for rapid and effective notification to senior management of any significant Complaints;
- (h) periodically reviewing the Complaint handling process to ensure that it is effectively and efficiently maintained and continually improved to develop fair and reasonable outcomes for your Customers.

Q: *In developing and building a Complaint handling process, what are some of the key areas of focus that should be addressed in the planning and design phase? (Code Rule 9.1.1(i))*

A: The organisation should plan and design an effective and efficient Complaint handling process in order to increase Customer loyalty and satisfaction, and also to improve the quality of the products and services provided. The process should be fair and reasonable.

Senior management should ensure that the planning of the Complaint handling process is carried out in order to maintain and increase Customer satisfaction. The Complaint handling process may be linked to and aligned with other processes of the quality management system of the organisation.

In order to ensure that the Complaint handling process operates effectively and efficiently, senior management should assess the needs for resources and provide them. These include resources such as personnel, training, procedures, documentation, specialist support, materials and equipment, computer hardware and software, and finances.

Q: *What sort of information should be recorded and maintained in relation to an effective Complaint handling process? (Code Rule 9.1.1(f))*

A: The detail will, in part, reflect the size and scope of an organisation's operation and Customer base.

Where practicable, upon reporting of the initial Complaint, the Complaint must be recorded with supporting information and a unique identifier code. The record of the initial Complaint should identify any information necessary for the effective handling of the Complaint including the following:

- a description of the Complaint and relevant supporting data;
- the remedy sought by the Complainant;
- the products or related organisation practices complained about;
- the due date for a response;
- information on internal people, department, branch and market segment relevant to the Complaint;
- immediate action taken (if any).

The Complaint should be tracked from initial receipt through the entire process until the Complainant is satisfied or the final decision is made.

Complaint handling policies (Code 9.1.2)

Q: How should I publicise my policy? (Code 9.1.2(a))

A: It is recommended that you publicise your Complaints handling policies in as many media and formats as reasonably practicable. This may include:

- telephone directory information pages or listings;
- information printed on accounts;
- information printed on service guarantees;
- information printed on product/service brochures;
- advertising material;
- customer service guides;
- internet web pages.

Q: What sort of information on how, when and where to make a Complaint should I include? (Code 9.1.2(c))

A: It is recommended that you ensure that your Customers can easily identify where a Complaint may be lodged. They will need to know:

- the Complaint lodging process;
- hours of operation; and
- offices or locations at which Complaints can be lodged.

References to "customer service" or "complaints" will be more helpful than to "general inquiries".

Telling the Customer to quote their name, telephone number, Complaint reference number or other identifier during future enquiries will assist a timely and accurate response.

Retaining records (Code 9.1.7)

Q: Does the Privacy Act require me to destroy information?

A: National Privacy Principle 4.2 requires you to take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

Causes of complaints (Code 9.1.8)

Q: What is a systemic problem? (Code 9.1.8)

A: A systemic problem represents the failure of your systems, processes or practice which causes detriment to a significant number or class of Customers.

Q: How do I identify recurring or systemic problems? (Code 9.1.8)

A: You might identify a systemic problem following the receipt and investigation of multiple Complaints of a similar nature. Alternatively, you might identify a systemic problem as a result of investigating a single Complaint.

You should undertake root cause analysis to identify trends and causes of Complaints.

Processes, procedures and systems to help identify recurring or systemic problems may include:

- internal feedback;
- systems monitoring to identify software or hardware issues and actioning appropriately where they impact a significant number of Customers;
- analysing data from other sources, eg rebates;
- Customer surveys;
- feedback during Telecommunications Product trials and launches; and

- review and use TIO statistics.

You should also note the guidance on record keeping in the Guideline to 9.1.1(e).

9.2 Making Complaints

Q: Is a request for information a Complaint?

A: No. A request for information is not, of itself, a Complaint.

Assisting Customers (Code 9.2.1)

Q: How can I assist my Customers to formulate and lodge complaints? (Code 9.2.1)

A: Keep in mind that there may be a number of reasons for a Customer requesting assistance, such as language problems or disability.

You may assist your Customers by providing information on what you need from the Customer to progress the Complaint.

You are only required to provide reasonable assistance in formulating and lodging a Complaint. This does not require you to provide resources to compile claims on the Customer's behalf.

Lodgment methods (Code 9.2.2)

Q: How should Complaints be lodged? (Code 9.2.2)

A: To ensure that Customers are not discouraged from making a Complaint and to help you to meet your obligation to provide free or low cost methods of lodging Complaints, you should consider providing a toll free or local call cost phone or fax number, e-mail address, street or mailing address or Internet web page form.

Acknowledging Complaints (Code 9.2.4)

Q: Must the acknowledgement always be in writing? (Code 9.2.4)

A: No. The acknowledgement need only be in writing if the Complainant requests.

Q: Do I need to acknowledge verbal Complaints? (Code 9.2.4)

A: No. Verbal complaints are taken as acknowledged at the time they are made.

Resolving Complaints (Code 9.2.5)

Q: When may it not be practicable to finalise a Complaint within 30 days? (Code 9.2.5)

A: Reasons may include where information is needed from another Supplier.

Progress updates (Code 9.2.7)

Q: *How can I enable a Customer to enquire about a Complaint's progress? (Code 9.2.7)*

A: You should provide the Customer with sufficient information to ensure they can effectively inquire about the progress of the Complaint.

Advising outcomes (Code 9.2.8)

Q: *Do I always need to advise a Customer of the outcome of their Complaint in writing? (Code 9.2.8)*

A: No. You must always advise them of the outcome, but this only needs to be in writing if the Customer requests.

9.3 Complaint Handling charges

Imposing charges (Code 9.3.1)

Q: *Can I Charge Customers for making a Complaint to my organisation? (Code 9.3.1)*

A: No – you should not be charging Customers for simply lodging a Complaint with your organisation. However, in certain circumstances, the Code allows you to impose a Charge for specific aspects of the Complaint investigation. For example, where the Customer requests certain action or documentation from you that would not normally be required in the investigation of their Complaint. Charges must only be imposed in compliance with Code rule 9.3.1.

Q: *What are some examples of sufficiently onerous processes? (Code 9.3.1(b))*

A: Examples include:

- (a) where a Customer requests use of line analysis equipment for the same number more than once within a 6 month period; or
- (b) where a Customer instigates a Complaint process that requires the retrieval of archived records more than 2 years old; or
- (c) where a Customer requests large amounts of documentation or past Bills to present to a commercial billing organisation, e.g. a 'Bill Buster' company, or similar.

9.4 Escalating Complaints

Dissatisfied Complainants (Code 9.4.1)

Q: When should I escalate a Customer's Complaint? (Code 9.4.1)

A: Reasons may include:

- (a) it is too complex, due to time, knowledge, experience, delegation or authority constraints;
- (b) resolution options have been exhausted;
- (c) the Customer requests this; or
- (d) it has not been resolved in the required timeframe.

Q: Do I need to advise a Customer about their external avenues of recourse while I am still investigating the Complaint internally? (Code 9.4.1(b))

A: Your internal escalation process should be reasonably exhausted prior to advising the Customer of external options, unless the Customer asks about them.

Q: What external avenues of recourse does a Customer have? (Code 9.4)

A: External avenues of recourse may include:

- (a) the TIO;
- (b) ACMA;
- (c) the Telephone Information Service Standards Council;
- (d) the OPC; or
- (e) the Australian Direct Marketing Association.

Q: If a Customer chooses to have a privacy Complaint considered by the TIO can they still make a Complaint to the OPC?

A: Yes. The Customer retains their right to make a Complaint about the same matter to the OPC.

PARTICIPANTS

The Steering Committee that developed the Code and this Guideline consisted of the following organisations and their representatives:

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Ewan Brown	SETEL
Teresa Corbin	CTN
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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.

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