

# ACIF C620:2005 CONSUMER CONTRACTS INDUSTRY CODE



## SUMMARY

### Scope of the Code

The Code applies to all contracts of carriage service providers (CSPs) (including internet service providers) with consumers for the supply of:

- carriage services (including fixed line, mobile and internet);
- other telecommunications goods or services under a contract which also supplies a listed carriage service;
- content services supplied by the CSP in connection with the supply of the carriage service, but excluding contracts for the supply of subscription television services.

A consumer is defined as:

- a person who acquires the service for the primary purpose of personal or domestic use; or
- small businesses that have an annual spend of less than \$20,000 with the CSP.

### Key Provisions

The Code provides that:

- a term in a consumer contract must not be unfair;
- a consumer contract must comply with requirements to ensure its intelligibility and accessibility (see further discussion below for both of these requirements).

### Commencement

The Code commences on its registration by the ACA, but allows for a period of grace of six months from registration to enable CSPs time to replace their existing documentation. The Code has been submitted to the ACA for registration, a process that generally takes two months.

All contracts entered into after the date of registration must comply with the Code within six months. This will require a replacement contract within the six-month period if the original contract entered into after registration is not Code-compliant.

In relation to contracts entered into before registration:

- contracts for fixed line services must be compliant within 6 months of registration;
- for all other contracts, the CSP must either make the contract compliant within 6 months of registration or offer the customer a compliant contract within 6 months (or, in the case of a fixed term contract which extends beyond the 6 months, offer a compliant contract prior to the end of the fixed term).

### Enforceability of the Code

Upon its registration, the ACA can direct any CSP to comply with the Code, regardless of whether the CSP is a signatory to the Code. The Code also confers jurisdiction on the Telecommunications industry ombudsman (TIO) under the Code. The TIO can make binding determinations on CSPs in relation to compliance with the Code.

## **Is a Contract Term Fair Under the Code?**

The underlying test as to whether a term in a contract is unfair is:

*A term is unfair if, contrary to good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.* (This is the same test for fairness of contract terms as provided in recent amendments to the Victorian *Fair Trading Act 1999*.) The price and features of a telecommunications service at the point of sale are not relevant to the assessment of fairness of contract terms, provided they are accurately stated.

The Code sets out detailed practical examples (in clause 6.2) of when a term may be considered unfair. It also sets out detailed examples (in clause 6.3) of when a term is not to be considered unfair. These provisions should be read carefully as they provide a checklist against which existing contracts can be assessed for compliance with the code.

One of the important tests for fairness relates to terms that allow variation of contract terms. CSPs must ensure that if they unilaterally vary the price or characteristics of the goods or services, customers are notified of the change and given time in which to terminate the contract (with no penalty for doing so) if the change would be to the detriment of the customer. The Code provides exceptions to the general rule, allowing situations when unilateral variation of a contract will not be considered unfair, including special offers, international price call changes, and variation of ancillary charges such as credit card transaction fees or third party charges.

Other terms that would be considered as unfair under the Code include the exclusion of supplier liability, limitation of a customer's legitimate rights, suspension of service, and termination of the contract in circumstances set out in the Code.

## **Requirements for Intelligibility and Accessibility**

CSPs must ensure the terms of their contract are clearly stated and avoid the use of complex and technical terms as far as reasonably possible. There are a number of prescriptive requirements, for example, the minimum font size required. Important terms such as charges and the term of the contract must be readily accessible.

CSPs must ensure their contracts are reasonably accessible to customers, including customers from a non-English speaking background or with a disability.

The presentation requirements are set out in clause 7 of the Code and provide a checklist against which existing contracts can be assessed for compliance with the code.

## **Further information**

Copies of the Code may be accessed from ACIF's website [www.acif.org.au](http://www.acif.org.au)

The date of registration will be publicised by the ACA through a press release, and through ACIF publications including ACIF's electronic newsletter *Activate*. If you would like to subscribe to *Activate* please email [acif@acif.org.au](mailto:acif@acif.org.au)

The Code will be reviewed after two years of operation.