

MOBILE PREMIUM SERVICES INDUSTRY CODE (C637:2019)

EXPLANATORY STATEMENT

Introduction

This is the Explanatory Statement for the **Mobile Premium Services** Industry Code (C637:2019) (Code).

This Explanatory Statement outlines the purpose of the Code and the factors that have been taken into account in its revision.

The *Telecommunications Act 1997* (Cth) encourages self-regulatory processes. Communications Alliance has been at the forefront of these processes and has worked closely with providers, regulators, the Telecommunications Industry Ombudsman (TIO) and consumer groups to develop industry codes of practice dealing with issues which affect consumers. The focus of this work has been to ensure that the residential and small business segments have adequate consumer protections.

Background

The inaugural Mobile Premium Services Code was registered by the Australian Communications and Media Authority (ACMA) in May 2009. The Code was developed by a Communications Alliance working committee comprising representatives of industry and consumer groups in response to a growing number of complaints about Mobile Premium Services.

The registered Code is enforceable by the ACMA, allowing the ACMA to direct any providers operating within the industry to comply with the obligations stated in the Code and to take further enforcement action where required.

The Code is subject to review every 3-years or earlier if the circumstances require this.

Current regulatory arrangements

The currently registered Code defines mobile premium services as:

- (a) premium SMS or MMS services, meaning carriage services or content services supplied by way of a call to or from a Short Code with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) proprietary network services, meaning public mobile telecommunications services that enable an end-user to access a network used by a mobile carriage service provider that enables Customers of that provider to access (by way of a mobile device) a premium content service that is not otherwise generally available.

The Code sets out appropriate community safeguards and Customer service requirements for mobile premium services by:

- requiring suppliers to use appropriate advertising to assist Customers to make informed decisions about the use and cost of services;
- providing Customers with sufficient information to help enable them to make informed decisions about the use and cost of services;
- requiring suppliers to supply Mobile Premium Services in an appropriate manner;

- ensuring complaints are handled in an appropriate manner; and
- ensuring Customers can easily unsubscribe from subscription services and opt-out of marketing in relation to Mobile Premium Services.

Acknowledging the need for greater levels of transparency, Communications Alliance and industry developed an MPS Industry Register (the Register). The Register's function is to capture the contact details of suppliers of mobile premium services in Australia in order to provide an accessible mechanism for regulatory bodies to identify these parties. Code obligations pertaining to the Register stipulate that registration is mandatory prior to the supply of any mobile premium services in Australia. Under the Code, suppliers are obliged to ensure that all information retained in the Register is kept up-to-date, and further, suppliers must not undertake any commercial dealings with unregistered parties in the supply of mobile premium services.

The 19SMS website was also developed to provide a single point for consumers to access information about mobile premium services. New Code obligations relating to expenditure management information to be provided on the 19SMS website, place an obligation upon suppliers to provide consumers with visibility of the measures available to them to manage their expenditure on mobile premium services.

The Code is complemented by two Mobile Premium Services Determinations, made by the ACMA in 2010:

- *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)*, which requires all mobile carriage service providers to implement the capability to bar all premium SMS and MMS services and act on a request for such barring from a customer or potential customer; and
- *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*, which sets out two specific rules relating to the supply of mobile premium services:
 - (i) A 'Do Not Contract' rule which prohibits suppliers from contracting with a content supplier to deliver that content supplier's premium SMS/MMS services if the content supplier has not completed the Code registration process; and
 - (ii) A 'Do Not Bill' rule which states that mobile carriage service providers may be directed by the ACMA to suspend billing Customers for premium SMS/MMS services of a named content supplier or aggregator for a period of up to three years, where that content supplier or aggregator has been found by the ACMA to have breached the Code and behaved in a way that is significantly detrimental to consumers.

Following the making of these 2010 Mobile Premium Services Determinations the ACMA repealed the 2004 Determination.

Why current regulatory arrangements are inadequate

In recent years premium services available to be purchased and billed directly to a customer's bill (known as Premium Direct Billing Services) have increased but have operated outside the regulations in the Code and so have not been subject to the same level of consumer safeguards as Premium SMS.

Recent amendments made to the Telecommunications Consumer Protections (TCP) Code have seen the need for additional obligations relating to Premium Direct Billing Services and complaints handling for such services to be included in the TCP Code and MPS Code.

Decisions by several providers to stop supporting subscription premium services have also had a significant effect on the Mobile Premium Services landscape by reducing the number of service providers and services.

How the Code builds on and enhances the current regulatory arrangements

The amendments to the Code will provide for additional protection for consumers when purchasing services via Premium Direct Billing Services (also known as Direct Carrier Billing (DCB)). Premium Direct Billing Services will be treated in the same way as Premium SMS with respect to the advertising, providing service information, supplying the service, complaint handling and unsubscribe and opt-out mechanisms. A new default limit for the purchase of all premium services per month has been set at \$50, applying to new Customers for all carriage service suppliers. Additional protections to the way complaints made to providers are to be handled have also been introduced. Information provisions have been strengthened to ensure consumers are informed of their ability to bar premium services.

What the Code will accomplish

The revised Code aims to further enhance existing community safeguards via the introduction of new requirements on suppliers, and the inclusion of Premium Direct Billing services. Consistency with the Telecommunications Consumer Protection (TCP) Code amendments will assist suppliers in interpreting and implementing Code rules. These benefits are targeted at further reducing the numbers of complaints made to the TIO in relation to mobile premium services.

Anticipated benefits to consumers

Consumers are anticipated to benefit from the following enhanced requirements in the Code:

- inclusion of Premium Direct Billing Services in all rules relating to advertising, providing service information, supplying a Mobile Premium Service, complaint handling and mechanisms to unsubscribe and opt-out of Mobile Premium Services. This will ensure that Premium Direct Billing Services are treated in the same way as Premium Messaging Services with respect to consumer safeguards and obligations on relevant suppliers;
- new default spend limit for new Customers to assist with spend management and the avoidance of bill shock;
- an obligation for End Carriage Suppliers that include Third Party Charges on a Customer's bill to address all enquiries and resolve all complaints they receive relating to those Third Party Charges directly with their Customer.
- updates to the provision of information regarding Mobile Premium Services and the options available to Customers in relation to the barring of Mobile Premium Services.

Anticipated benefits to industry

Certainty around the consistent approach to all Premium Services offered will allow industry to align their processes in the provision of these services, along with the handling of complaints.

Increased confidence from Customers in the use of Mobile Premium Services will also be beneficial.

Anticipated costs to industry

Industry participants will incur initial and ongoing costs in relation to compliance with this Code. These will include costs associated with education and training of staff, development or enhancement of policies and procedures, new compliance reporting requirements,

additional messaging requirements, and the development or modification of internal systems.

New suppliers will need to ensure that compliance with the Code is built into their processes and systems.

Privacy considerations

Industry suppliers are still required to meet all information collection and provision obligations at law, including the requirements of Australian Privacy Principles 5 and 11 and other relevant Australian Privacy Principles as per the *Privacy Act 1988* (Cth).

Consumers of mobile premium services have a right of recourse to direct complaints to the Office of the Australian Information Commissioner where the complaint is related to privacy matters.

Other public interests benefits or considerations

Those carriage service providers who currently undertake independent Code compliance monitoring activities, Telstra, Optus and Vodafone Hutchison Australia, have stated in Section 1.8 of the revised draft Code their commitment to continue to undertake these activities.

2014 Variation

In 2014 a scheduled review resulted in the following amendments being made by way of a Variation of the Code:

- reference to redundant National Privacy Principle 1 in the Code's Explanatory Statement replaced with reference to Australian Privacy Principle 5 along with a new reference to Australian Privacy Principle 11;
- new drafting in Section 7 to protect Customers from being charged a Premium Fee of more than 25c to opt-out of marketing messages;
- inclusion of new obligations in Sections 4 and 6 that require carriage service providers and Aggregators to provide specific information on the availability of MPS barring when a customer makes an MPS related inquiry or complaint; and
- removal of industry compliance reporting requirements.

2019 Revision

The 2019 revision introduces the following amendments to the registered Code:

- new definition of Premium Service;
- new definition of Mobile Premium Services to include Premium Direct Billing Services;
- new definition of Premium Direct Billing Service to distinguish these services from Premium Messaging Services. These services were previously not included in the scope of the Code;
- inclusion of Premium Direct Billing Services in all rules relating to advertising, providing service information, supplying a Mobile Premium Service, complaint handling and mechanisms to unsubscribe and opt-out of Mobile Premium Services. This will ensure that Premium Direct Billing Services are treated in the same way as Premium Messaging Services with respect to consumer safeguards and obligations on relevant suppliers;
- updates to the provision of information regarding Mobile Premium Services and the options available to Customers in relation to the barring of Mobile Premium Services;

- new definition of Registration-only Digital Content Services. It should be noted that while charges for these services are able to be billed directly to a Customer's mobile bill, these services require users to create an account directly with the service provider before they can access and be charged for the service. For this reason these services are not included in the scope of the Code. This includes, for example, apps available from Google Play, the Apple Store and Netflix;
- new provision for all End Carriage Suppliers to set a default spend limit, for new residential Customers, of \$50 per month for Premium Services;
- addition of the term 'Personal Information' and relevant clause to align with *the Privacy Act 1988*;
- removal of the term 'Free Msg' to avoid confusion some consumers are experiencing and to improve the information communicated to consumers;
- new definition of Third Party Charge.