

Telecommunications Industry Ombudsman

# Submission to the CommsAlliance consultation on the Mobile Premium Services Code

May 2019

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# Introduction from the Ombudsman, Judi Jones

Thank you for inviting the Telecommunications Industry Ombudsman (**TIO**) to comment on proposed revisions to the *Mobile Premium Services Code* (DR C637:2019) (**draft Code**).

I am pleased to see in this version of the draft Code for consultation, partial adoption of my recommendations outlined in my submission to the discontinued 2017 consultation on *Mobile Premium Services Code* (DR C637: 2011, incorporating variation No. 1/2017).

I welcome changes in the draft Code that seek to modernise the Code by making it technology neutral. However, I believe the proposed revisions do not go far enough to properly future proof the Code over the three years it is intended to be in place.

Any revisions could be designed to more comprehensively safeguard residential, small business and Not For Profit consumers from 'bill shock' through unexpected third party charges on their mobile phone bill. Safeguards could also apply regardless of whether a consumer uses their smart phone to subscribe to third party content services by SMS or data connection (including mobile app and in-app purchases).

The need for fit for purpose safeguards could take into account future market developments, for example anticipated changes in consumer demand and use for smart phones and data services.

Recent research commissioned by the Australian Mobile Telecommunications Association (**AMTA**) finds consumers view their mobile device as a necessity, with 94 per cent of Australians taking their smart phone with them when they leave the house – more than those who take their wallet<sup>1</sup>.

The Australian Communications and Media Authority (**ACMA**) also reports increasing consumer use and demand with:

- 83 per cent (or approximately 15.97 million) of Australian adults having a smart phone in June 2018<sup>2</sup>; and
- an increase in mobile app subscriptions or pay-as-you-go content services for music, viewing entertainment, and news, as well as three in four Australians using mobile apps to communicate. Providers such as Facebook, Apple, Amazon, Netflix and Google are also reportedly offering more data driven services<sup>3</sup>.

**Appendix A** provides recent TIO complaints data about mobile premium services and direct carrier billing.

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<sup>1</sup> Deloitte Access Economics Report, *Mobile Nation 2019 – the 5G Future* (February 2019), 31 (research commissioned by AMTA). See: <http://www.amta.org.au/amta/news/52848.new-mobile-nation-report-the-5g-future>

<sup>2</sup> ACMA, *Communications Report 2017-2018* (15 February 2019), 33. See: <https://www.acma.gov.au/theACMA/communications-report>

<sup>3</sup> As above for note 2, 5, 53, 67-68 and 73

## Summary of recommendations

**Recommendation 1:** That the revised MPS Code be future proofed by covering third party charges arising from a mobile app or in-app purchase.

**Recommendation 2:** That the design of a proposed monthly MPS spend cap includes flexibility to adapt to consumer preferences and be compatible with general TCP Code protections.

# 1. Future proofing the MPS Code for mobile app and in-app purchases

The MPS Code could be future proofed by covering mobile app and in-app purchases.

The TIO's 2017 submission suggested this approach for confirmation of the Code's coverage and to create certainty.

There should be no carve out from the MPS Code's coverage for third party charges when customers make purchases using mobile phone apps, even if the customer has subscribed by setting up an account with Google Play, Apple Store, Netflix, Spotify, or other similar providers.

The TIO currently receives complaints from consumers about unexpected third party charges on their mobile phone bill arising from a mobile app or in-app purchase. Consumers may dispute with their retail service provider (who is billing for the premium service) that they ever subscribed for the premium service through an account they have with a 'play store'.

**Case study A** illustrates the difficulty a consumer can experience in having their complaint dealt with, when trying to dispute a subscription made through a mobile app or in-app purchase.

As **Case study A** shows, the customer may be referred between the in-app provider, the 'play store' (mobile app provider) and their retail service provider to challenge the disputed third party charge on their bill.

If the version of the MPS Code that is ultimately registered with the ACMA proceeds with such a carve out, retail service providers could interpret this category of complaint as being outside the types of third party billing disputes they must directly respond to under the proposed 2019 variations to the CommsAlliance *Telecommunications Consumer Protections Code (TCP Code)*. The TIO anticipates such an interpretation could raise associated arguments by providers about whether the TIO can continue to handle a complaint.

**Recommendation 1:** That the revised MPS Code be future proofed by covering third party charges arising from a mobile app or in-app purchase.

## **Case study A: Unexpected third party charges arising from a play store purchase**

In financial year 2018, Mary\* complained to the TIO about an unexpected third party charge on her RedTel\* mobile phone bill.

The disputed charge was a monthly \$30 subscription with an app called GoDatingPlus\*.

When Mary tried to cancel the monthly subscription directly with GoDatingPlus, GoDatingPlus referred Mary to play store, PlayPocket\*, because their customer records indicated she had subscribed using her PlayPocket account.

When Mary checked her PlayPocket account, she found no subscription listed and was redirected by PlayPocket to contact her mobile billing provider, RedTel.

As RedTel was unresponsive to Mary's attempts to have the third party billing charge cancelled, Mary contacted the TIO for help with her complaint.

\* Name of individuals, organisations and companies have been changed

## 2. Clarification of MPS Code provisions for TIO complaints handling

### 2.1 Design of the spend management tool to protect against MPS bill shock

The TIO welcomes the introduction of a requirement on the retail service provider to apply a new default cap on monthly spend for mobile premium service charges at the point of sale for a new customer mobile phone plan. This is in addition to the extension of the double opt-in subscription requirements in the draft Code to cover subscription by data connection, so the consumer is aware they have actively subscribed to a particular mobile premium service with a third party provider.

Consideration may need to be given to how this default cap on monthly MPS spend might interact with other relevant TCP Code obligations on retail service providers on the offering of general spend management tools, conducting a credit assessment, and hardship. We would not want to see situations where a rigid approach to a monthly premium service spend limit contributes to customer complaints about hardship.

We anticipate there could be complaints escalated to the TIO where the consumer disputes they consented to a higher cap limit, because the process could not sufficiently distinguish a child or non-account holder accidentally agreeing to a higher MPS spend limit. Clear authentication requirements will be required of the retail service provider to verify the customer's authorisation to increase monthly MPS spend.

There may be consumers that wish to have flexibility in setting the level of their default cap for a monthly MPS spend limit: whether this be at 'zero' or at setting much lower than \$50 (for example \$10 or \$20) monthly spend, or at a higher limit above \$50. The consultation document does not disclose what information has informed the basis for the industry-wide default monthly cap to be set at \$50 a month for a new residential customer's spend for mobile premium services.

While a \$50 monthly MPS spend cap could be a useful spend management tool for customers who can tolerate a level of unexpected charges, it may not be acceptable for other consumers. For example, parents who do not wish to find themselves liable for unexpected mobile premium service charges incurred by their children, or financially vulnerable consumers who may be experiencing hardship, or who are on low incomes. These customers may prefer instead to bar these services altogether to manage spending on their account, and prefer to be given this option at point of sale.

In financial year 2018, based on a sample of cases, the TIO closed complaints about unexpected third party MPS billing charges that ranged between \$5 to \$30 and \$50 to \$100 a month, and at the higher end over \$1,000 in disputed charges across monthly bills.

Consumers tell us they did not know they had agreed to a premium service and had no knowledge of subscription. Consumers may only become aware they have incurred an unexpected third party charge when they find they have insufficient credit on their pre-paid mobile plan, or receive unexplained third party charges on their post-paid mobile phone bill.

**Recommendation 2:** That the design of a proposed monthly MPS spend cap includes flexibility to adapt to consumer preferences and be compatible with general TCP Code protections.

## 2.2 Clear pathways for handling complaints about MPS

There could be greater simplification of the new rules for complaints handling in Chapter 6 of the draft Code if aggregators who receive customer complaints are required to redirect customers to the relevant retail service provider, instead of the third party content provider.

## 2.3 Meaning of 'the standard charge of an SMS'

To assist with TIO complaints handling, it would be helpful if the draft Code could clarify what the 'standard charge of an SMS' is, especially as it may change from time to time. Alternatively, the draft Code could state where this information may be found (e.g. at the 19SMS website).

## Appendix A: TIO complaints data about MPS

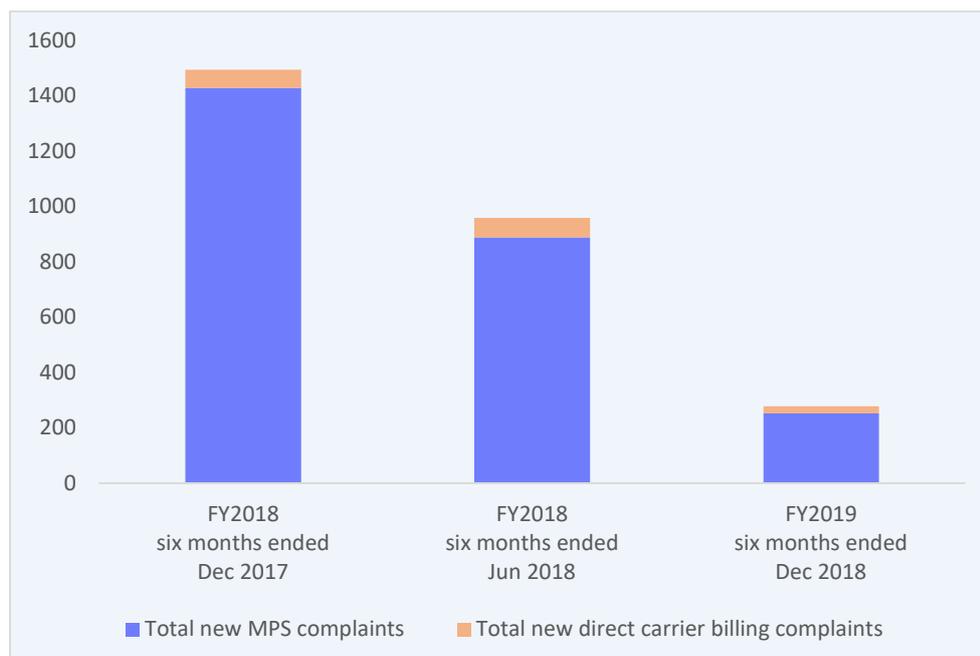
As **Figure 1** shows, the number of new complaints to the TIO about mobile premium services and direct carrier billing declined in the 18 months between 1 July 2017 and 31 December 2018.

While the number of new complaints to the TIO reflects a small proportion of our overall caseload (under 2%), the decline may be attributable to two major providers ceasing to offer certain third party services and having to undertake a consumer refund program in response to regulator action<sup>4</sup>.

Research commissioned by ACCAN also indicates that unexpected third party charges are often unchallenged by consumers and do not progress to the TIO<sup>5</sup>. Other reasons for the low incidence of TIO complaints may include the low value of the unexpected charge and the fact that mobile service providers refer consumers to the third party content provider to dispute the charge.

Consistent with new complaints received, **Figure 2** shows a decline in the number of MPS cases the TIO closed that progressed to conciliation or investigation.

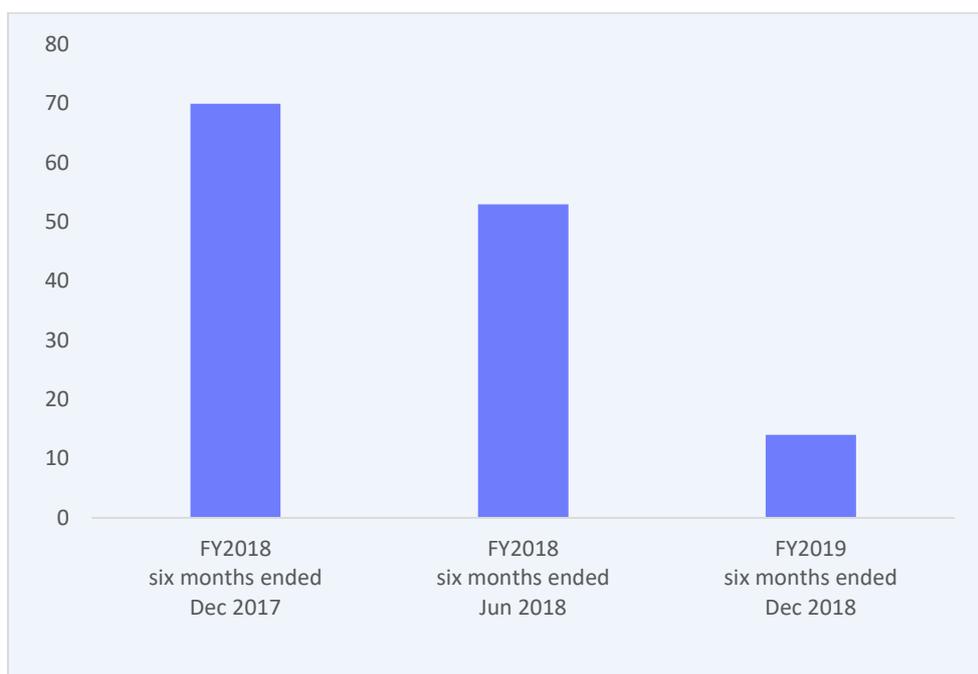
**Figure 1: New complaints to the TIO about MPS and direct carrier billing**



<sup>4</sup> ACCC v Telstra Corporation Limited [2018] FCA 571; ACCC v Optus Mobile Pty Ltd [2019] FCA 106

<sup>5</sup> Ipsos, *Mobile third party billing – Consumer experiences and expectations* (June 2017), (research commissioned by ACCAN)

**Figure 2: Closed cases about MPS**



Note: From 1 July 2017, the TIO introduced a new approach for capturing and recording complaints. This means the data presented in this **Figure 2** is not directly comparable with **Figure 1**.