



Australian Consumers' Association
ABN 35 799 246 568 ACN 000 281 925

***Australian Consumers' Association's comments on the Telephone Information Services Standards Council's (TISSC) Mobile Premium Services Draft Code of Practice
January 2006***

The Australian Consumers' Association (ACA) is a not-for-profit organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. The ACA is funded primarily through subscriptions to its magazines, book publications, fee-for-service testing and related other expert services. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

ACA welcomes the opportunity to comment on the the TISSC Draft Mobile Premium Services Code of Practice ("the Draft Code"). We make the following general points before commenting on the specific provisions of the Code:

▪ **Strengthening consumer representation in telecommunications**

As noted in the joint consumer group report *Consumer Driven Communications: Strategies for Better Representation*¹ (December 2004), processes designed to encourage and enable effective and informed consumer representation and participation are vital for achieving effective regulatory outcomes. As the telecommunications market is complex and constantly changing, there is a need to strengthen the position of consumers and consumer organisations to ensure they are heard and able to exert influence in policy development. Avenues of early input into regulatory and code development and revision processes must be provided by regulatory and complaints handling bodies.

▪ **Complaints Handling – The benefits of a “One Stop Shop”**

At present making a complaint about telecommunications matters is too complicated. There should be a “one stop shop” for resolution of consumer complaints in communications. The DCITA², regulators, consumers and all other related industry stakeholders should work together to develop the most appropriate way of achieving this. As mentioned in *Consumer Driven Communications Strategies for Better Representation*, one approach would be to expand the jurisdiction of the TIO to allow the TIO to evolve into a ‘Communications Industry Ombudsman’. In the absence of a single complaints handling body, the TISSC should work with the TIO and review the government agenda to establish a single entry point as has been seen in relation to financial services complaints.

▪ **Enforcement and complaints**

The Code is not as clear as it should be in relation to the separate issues of compliance with consumer protection standards and resolution of consumer complaints. There needs to be provisions to respond to

- a) situations where there is one or a few complaints about a practice, contract term or behaviour by an industry member which affects a larger number of consumers, and,
- b) situations where there are no complaints yet the Code has been breached.

¹ Available: <http://www.choice.com.au/viewArticle.aspx?id=104448&catId=100387&tid=100008&p=1>

² Federal Department of Communications, Information Technology and the Arts.



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The Code should include “systemic issue” provisions similar to those that apply to financial service industry external dispute resolution schemes under the Corporations Act. The complaints handling body (here TISSC) should be obliged to report systemic issues that come to its attention as a result of a consumer complaint or otherwise to ACMA. ACMA should take responsibility for ensuring compliance with and enforcement of the code. Complaints about code non-compliance usually indicate there are systemic problems in the industry that the government regulator should deal with directly.

▪ **A Single Consumer Code**

There is a lack of clarity around consumer safeguards in the telecommunications sector, particularly in relation to consumer codes. A single consumer code that embraces all consumer-related issues. We favour the argument that a single consumer code will better address difficulties in compliance and enforcement.

However, as a single code could take some time to develop, we agree with the recommendation in the *Consumer Driven Communications Report* that the ACMA should develop a “Consumer Protection Standard” that outlines the cornerstones of consumer protection and leaves the rest of the more prescriptive detail to remain in separate codes. It is with this understanding that we have taken the opportunity to submit our specific responses to the Draft Code.

Section A

Clause A.1.3

“and” should be inserted between provision b and c in the Footnote:

In order to meet the obligation to inform consumers of provisions in A.1.3 (a) and (b), carriage service providers/content service providers need to:

- a. ensure the customer service representative handling the complaint informs the consumer at the point at which resolution is offered, supporting this with training and scripts;*
- or include the information in written advice to the complainant in response to as complaint;*
- b. include the information in point of sale advertising; and*
- c. include the information on the Carriage Service Provider/Content Service Provider’s website.*

Clause A.2 - Objectives

An additional objective, (f) should be included:

“Providing consumers with effective ways to resolve disputes with content services providers and carriage service providers in relation to premium mobile services”.



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**Clause A.3 –
Definitions and
abbreviations**

The meaning of “**age restricted content**” should be included in Code - users of the Code should not have to refer to the determination. For example: “*Age-restricted content has the meaning given to that term in the determination, that is, age restricted content means material that (a) has been classified MA 15+ or R 18+ by the Classification Board; or (b) that has not been classified by the Classification Board but, if it were to be, would likely to be classified MA 15+ or R 18+.*”.

We do not think that the term “**escalated complaint**” is a very consumer-friendly term. We suggest TISSC reconsiders or changes the use of the term. Complaints schemes in other industries, such as financial services have not seen the need to use this term.

The terms “**parental guidance service**” should be expanded upon, for example, the question of whom and how it is determined should be made clear.

Please note that we support the Communications Telecommunications Network’s comments on Clauses A.1 (scope and to whom the Code applies to), A.1.1 (a) (ii) and A.1.3.

Section B

**Clause B.1 –
Offensive, unsuitable
and unlawful content**

Whilst the list of legislation and codes of practice are very useful, it may be beneficial to articulate further steps on how to ensure compliance by carriage service providers and content service providers.

**Clause B.2 –
Out of date material
and delays in service**

What “out of date” means should be clearly stated.

Section C

Clause C.1.2

The \$10.00 limit suggested in the Draft Code is too high and should be reduced to \$5.00. Instructions on how to stop the service should be provided.

**Clause C.1.4 –
Cost of error
and confirmation
messages**

We do not see any logical reason why consumers should pay to respond to an error message. This is especially if the consumer did not make the error.

Clause C.2.2.1

We are concerned that consumers may be convinced into nominating a higher spend level than they are capable of supporting. Extra safeguards should be put in place to ensure that this does not occur, for example, performing a credit assessment.

Clause C.2.3.1 (a)

The term “generic stop command” should be defined explicitly. If it means to send a text with the word ‘stop’ in reply to any message, then this should be articulated in the Code.



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Clause C.2.3.3 Use of the “stop” command should not incur any charges (see comments on C.2.3.1 (a)).

Clause C.2.4 – No minimum term This provision should also be intended to include subscription services subscribed over the Internet, but delivered by SMS. The wording should be changed to make this intent explicit.

Clause C.3.1.3 This provision should include: *“The prompt or inducement message must include a statement that the message is sent in association with a premium service and the applicable charges”*.

Please note we support comments made by the CTN on Clauses C.2.3.4.2, C.3.1.3, and C.4.1.

Section D

Clause Part 2 – Subscription Services We are concerned that the rules in this section are not as stringent the Operational and Consumer Rules in Part 1 of Section D.

Clause 2.2.1 – Termination of Subscription services Recipients should **not** be charged a data carriage charge for unsubscribing to a subscription service.

Clause D.2.3 “and” should follow “(c) via a mobile device”.

Section E

Clause E.1.2 Cost information should be clearly publicised next to the service offered.

Clause E.1.9.2 “and” should be inserted between provisions (a) and (b).

Clause E.1.12 – Subscription services advertised in conjunction with free offers When a subscription service is advertised in conjunction with a free offer, and provision of the free offer is conditional on the consumer subscribing to the subscription service, the offer is not actually free and the advertising is misleading. This type of advertising should be explicitly prohibited.

Clause E.3.1 (b) The word “club” should not be used as it is likely to be misleading.



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Section F

- Part F.1** As abovementioned, “**escalated complaints**” is not an appropriate term to use.
- Clause F.1.1** There should be a statement about who may be complained about, that is, any content service provider or carriage service provider that provides or carries premium mobile services in Australia.
- Clause F.1.10 – Referral of individual escalated complaints to ACMA** This clause states: “*In accordance with Part 5, 5.6 (g) (ii) of the Determination, TISSC will refer escalated complaints to ACMA which it deems appropriate for ACMA to investigate*”. We think this should be in addition to, not in substitution for TISSC providing a remedy for the consumer.
- F.1.11 – Reporting requirements to ACMA** TISSC should also report the outcomes of complaints and the remedies provided. Reporting should be made public, regularly and in a timely manner.
- F 6.7 – Disconnection of service** “may” should be changed to “must”.
- F.7.2 – Fines** **The proposed level of fines is completely inadequate.** Fines should not be fixed. They should be applied having regard to the seriousness of the breach of the Code and constitute a significant penalty.

Please note we support CTN’s comments on Clauses F.1.5, F.1.9, F.3.5, F.3.10, F.3.13, F.4, F.6.4, F.7.2.1, F.7.3 and F.7.7.

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