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Communications  
Alliance LTD

Industry Code  
Telecommunications  
Consumer Protections Code  
C628:2012

MARCH 2013

a **fresh** approach to communications

## C628:2012 Telecommunications Consumer Protections Code

First published as C628:2007

Note: Due to an incorrect reference in clause (d) under Chapter 8 Rules, this clause was deleted and clause 8.1.1(a)(ii)B was amended on 9 July 2012.

**Communications Alliance Ltd ACN 078 026 507 (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.**

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## INTRODUCTORY STATEMENT

This Communications Alliance Telecommunications Consumer Protections (TCP) Code is a code of conduct designed to ensure good service and fair outcomes for all Consumers of Telecommunications Products in Australia.

All Carriage Service Providers who supply Telecommunications Products to Customers in Australia are required to observe and comply with the Code.

The Code is registered by the Australian Communications and Media Authority (ACMA), which has appropriate powers of enforcement. Compliance with the Code is monitored by Communications Compliance (CC).

### Our Key Commitments to Consumers

1. Consumers will enjoy open, honest and fair dealings with their Supplier, and have their privacy protected.
2. Consumers will receive clear, accurate and relevant information on products and services from their Supplier; before, during and, where appropriate, after the point of sale.
3. Consumers will have disputes resolved quickly and fairly by their Supplier.
4. Promotion of products and services by Suppliers will be clear, accurate and not misleading.
5. Disadvantaged and vulnerable consumers will be assisted and protected by appropriate Supplier policies and practices.
6. Consumers will receive an effective remedy from any Supplier who breaches the Code.
7. Suppliers will use monitoring and reporting tools to ensure successful implementation of the Code.

### Summary of Chapters

The chapters in this Code are summarised as follows:

#### General Rules

*This chapter sets out the general rules which will apply to each of chapters 4 to 9 of the Code.*

#### Consumer Sales, Service and Contracts

*This chapter sets out what Suppliers must do for Consumers in relation to retail sales and service, including regarding the provision of information, advertising, selling practices, contracting, dealing with Consumers with different needs and customer service.*

#### Billing

*This chapter sets out what Suppliers must do in relation to Billing and providing information about Bills and Charges to Customers arising out of the supply of Telecommunications Products.*

#### Credit and Debt Management

*This chapter sets out what Consumers are entitled to from Suppliers, and what Suppliers must do, in relation to the provision and management of credit in connection with the supply of Telecommunications Products, including the denial and restriction of access to Telecommunications Services for credit-related reasons and the application of a Supplier's Financial Hardship policy.*

#### Changing Suppliers

*This chapter sets out Consumer rights and Supplier obligations when Consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier. It also sets out Suppliers' obligations to Customers when a transfer of a Customer's Telecommunications Service arises as a result of the sale of a Supplier's business or a corporate reorganisation of the Supplier.*

#### Complaint Handling

*This chapter sets out what Consumers are entitled to from Suppliers, and what Suppliers must do, in relation to the handling and Resolution of Complaints in connection with the supply of Telecommunications Products, including requirements for managing, monitoring, analysing, recording and reporting Complaints.*

*This chapter specifically sets out the obligations for Suppliers to advise Consumers, in certain circumstances, of their options for external dispute resolution. The TIO is one such option. The TIO is an independent alternative dispute resolution scheme available free of charges to small business and residential Consumers in Australia. However the Supplier must be given a reasonable opportunity to settle a complaint with a Consumer before the TIO will become involved.*

#### Code Compliance and Monitoring

*This chapter sets out the compliance and monitoring arrangements that apply to this Code and requires Suppliers to implement a Code Compliance Framework which will:*

- encourage, monitor and enhance industry compliance with this Code;
- improve the levels of customer service and consumer protection enjoyed by users of Telecommunications Products in Australia;
- improve self-regulation by Suppliers;

- *enhance transparency regarding compliance with this Code; and*
- *provide Consumer confidence in the self-regulatory regime of which this Code forms a part and in the telecommunications industry's compliance with the Code.*

### **Clause Organisation**

The clauses in this Code are generally organised in two parts: a higher level outcome followed by some actions required of Suppliers to enable that outcome to be met.

### **Code Revision**

This Code replaces Code C628:2007. This Code is the result of a revision project headed by a Steering Group chaired by Ms Fay Holthuyzen and comprised of industry and consumer representatives, along with six Working Committees similarly composed. The revision was facilitated by Communications Alliance.

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# 1 GENERAL

## 1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997(Cth)* (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 in 2007, and its review in 2010 - 2012, has been facilitated by Communications Alliance through a Steering Committee comprising representatives from the telecommunications industry, consumer groups, the ACMA and ACCC, and an observer from the Department of Broadband, Communications and the Digital Economy.
- 1.1.3 This Code replaces TCP Code C628:2007 and the Guideline to TCP Code C628:2007, with effect from the date of registration by the ACMA.
- 1.1.4 The Code should be read in the context of other relevant codes and their guidelines.
- 1.1.5 The Code 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 *Competition and Consumer Act 2010* (Cth);
  - (d) the *Disability Discrimination Act 1992* (Cth);
  - (e) the *Racial Discrimination Act 1975* (Cth);
  - (f) any other relevant equal opportunity legislation;
  - (g) the *Privacy Act 1988* (Cth);
  - (h) the *Spam Act 2003* (Cth); and
  - (i) the *Do Not Call Register Act 2006* (Cth),and their related regulations, standards, determinations and codes.
- 1.1.6 If there is a conflict between the requirements of the Code and any requirement imposed on a Supplier by statute or by a Regulator, the Supplier will not be in breach of the Code by complying with the statute or the requirements of the Regulator.
- 1.1.7 Compliance with this Code does not guarantee compliance with any legislation or the requirements of any Regulator. The Code is not a substitute for legal advice.

## 1.2 Registration with ACMA

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 consumers and regulates matters relating to their relationship with their Carriage Service Providers.
- 1.3.4 This 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 Compliance with the Code

Suppliers are deemed to be compliant with this Code if they:

- 1.4.1 Achieve the outcomes formulated throughout chapters 4 to 9 (usually to be found at the third numbering level), e.g. "A Supplier must communicate its Offers in a way which is clear, accurate and not misleading, to allow Consumers to make informed choices."; and
- 1.4.2 Comply with the actions listed below the outcomes and which are usually introduced with the words "A Supplier must take the following actions to enable this outcome:..." or with similar words to that effect.

## **1.5 Commencement date**

Except as provided in this clause 1.5, this Code will commence on the day of registration with the ACMA.

For the purposes of Chapter 9, the Code Compliance Framework will not commence until that date which is 6 months after the date of registration of this Code with ACMA.

The obligations under clause 4.1.2 will not commence until that date which is 6 months after the date of registration of this Code with the ACMA.

The obligations under clauses 4.2.6 and 4.2.7 will not commence until that date which is 8 weeks after the date of registration of this Code with the ACMA.

The obligations under clause 5.3.1 (m) where relating to the provision of the total amounts of each of the two previous Billing Periods will not commence until that date which is 6 months after the date of registration of this Code with the ACMA.

The obligations under clause 6.5.2 in respect of both Included Value Plans and Post Paid Service broadband plans with an included data allowance will not commence until:

- For data allowance notifications (all Suppliers) – 12 months after the date of registration of this Code with the ACMA;
- For non-data expenditure notifications for Suppliers with 100,000 or more Included Value Plan services – 12 months after the date of registration of this Code with the ACMA; and
- For non-data expenditure notifications for Suppliers with less than 100,000 Included Value Plan services - 24 months after the date of registration of this Code with the ACMA.

## **1.6 Code review**

This version of the Code is the result of a revision conducted in 2010 - 2012, following registration of the TCP Code (C628:2007) by the ACMA in 2008. The Code will be reviewed every 5 years subsequently, or earlier in the event of significant developments that impact on the Code or a chapter within the Code. The provisions of Chapter 9 will be reviewed in 2 years following the date of commencement of the Code Compliance Framework referred to in clause 1.5 above.

## **1.7 Power of the Telecommunications Industry Ombudsman to handle complaints under the Code**

Under section 114 of the Act and subject to the consent of the TIO, the Code confers on the TIO the functions and powers of:

- (a) receiving;
- (b) investigating;
- (c) facilitating the resolution of;
- (d) making determinations in relation to;
- (e) giving directions in relation to; and
- (f) reporting on

Complaints made by the end users of a Listed Carriage Service about matters arising under or in relation to the Code, including compliance with the Code by those industry participants to whom the Code applies.



## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

For the purposes of this Code:

**ACCAN**

means the Australian Communications Consumer Action Network.

**ACCC**

means the Australian Competition and Consumer Commission.

**ACIF**

means the body formerly known as the Australian Communications Industry Forum which developed codes for the telecommunications industry.

**Acknowledging a Complaint**

means providing a Consumer with:

- (a) a unique reference number or such other means as will ensure the Supplier's ability to subsequently identify the Complaint and its subject matter;
- (b) an indicative timeframe for the Resolution of the Complaint;
- (c) information as to how a Consumer can obtain details of the Supplier's Complaint handling process as per 8.1.1.(b).

**ACMA**

means the Australian Communications and Media Authority.

**Act**

means the *Telecommunications Act 1997* (Cth).

**Action Plan**

means a plan submitted to the CC by a Supplier pursuant to clause 9.6.

**Advertising**

means marketing and promotional material (including electronic and online material) in relation to a Supplier's Telecommunications Products.

**Advocate**

means a person nominated by a Consumer to deal with a Supplier on the Consumer's behalf (but unlike an Authorised Representative, does not act as the Consumer's agent nor have authority to access any of the Consumer's account information from the Supplier).

**ASIC**

means the Australian Securities and Investments Commission.

**Australian Consumer Law**

means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Authorised Representative**

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

**Bill**

means an invoice from a Supplier which advises a Customer of the total of each Billed Charge.

**Bill Media**

means the method in which a Bill is communicated or delivered to the Customer, and its format.

**Billed Charge**

means a Charge that is due for payment by a Customer in respect of Telecommunications Products provided by a Supplier.

**Billing**

means any one, or a combination of, the following activities:

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

**Billing Accuracy**

means the validity of Charges and the correctness of the calculation of the Charges.

**Billing Address**

means the Customer's nominated address which is displayed on the Bill.

**Billing Complaint**

means a Complaint 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 Consumer for relevant information about a Bill, or Billing generally.

**Billing Name**

means the name of the Customer to whom the Bill is issued and delivered.

**Billing Option**

means a Billing related option offered by the Supplier that the Consumer may choose or nominate.

**Billing Period**

means a period of time in relation to which Billed Charges relate.

**Carriage Service Provider**

has the meaning given in the Act.

**Carrier**

has the meaning given in the Act.

**CC**

means Communications Compliance, the independent body which monitors and reports on Code compliance, the role and obligations of which are set out in Chapter 9 and Appendix 1 to this Code.

**Charge**

means the tariff or fee which a Supplier levies for the provision of a Telecommunications Product or a related transaction.

**Closed**

When used in connection with a Complaint, means that the Complaint is no longer open in the Supplier's complaint management system and either:

- (a) the Resolution has been implemented and no further work is required by the Supplier; or
- (b) the Supplier is unable to Resolve the Complaint and clauses 8.2.1(c), (d) or (e) apply and have been complied with.

**Code Compliance Framework**

means the framework for industry compliance with the Code which is described in chapter 9 of this Code, and is further illustrated in Appendix 2 to this Code.

**Competition and Consumer Act**

means the *Competition and Consumer Act 2010* (Cth).

**Complaint**

means an expression of dissatisfaction made to a Supplier in relation to its Telecommunications Products or the complaints handling process itself, where a response or Resolution is explicitly or implicitly expected by the Consumer.

An initial call to a provider to request a service or information or to request support is not necessarily a Complaint. An initial call to report a fault or service difficulty is not a Complaint. However, if a Customer advises that they want this initial call treated as a Complaint, the Supplier will also treat this initial call as a Complaint.

If a Supplier is uncertain, a Supplier must ask a Customer if they wish to make a Complaint and must rely on the Customer's response.

**Compliance Achievement Plan**

means a plan submitted to the CC by a Supplier pursuant to clause 9.5.

**Compliance Attestation**

means a statement by a Supplier, attested in the manner required by clause 9.4.1 and addressing the matters referred to in clause 9.3.1(b).

**Compliance Monitoring Request**

means a request from the CC to a Supplier for information relating to that Supplier's compliance with this Code.

**Compliance Plan**

means documentation prepared by a Supplier in accordance with clause 9.3.1(b).

**Consumer**

means:

- (a) an individual who acquires or may acquire a Telecommunications Product for the primary purpose of personal or domestic use and not for resale; or
- (b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:
  - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer 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.

A reference to a Consumer includes a reference to the Consumer's Authorised Representative.

A reference to a Consumer includes a reference to a Customer.

**Corporate Reorganisation**

means a reorganisation of the corporate group of which the Supplier is a part with the result that a Customer will be provided with Telecommunications Services by another supplier after that reorganisation is complete.

**Credit Assessment**

means the process by which a Supplier determines the level of credit to be provided by it (if any) to a Consumer.

**Credit Management**

means the process by which a Supplier:

- (a) helps Customers to manage their expenditure on Telecommunications Services;
- (b) manages any credit risk to the Supplier; and
- (c) collects outstanding debts from Customers, and former Customers.

**Credit Reporting Agency**

means an entity that carries on a credit reporting business as defined in the Privacy Act.

**Customer**

means a Consumer who has entered into a Customer Contract with a Supplier.

A reference to a Customer includes a reference to the Customer's Authorised Representative.

**Customer Contract**

means an arrangement or agreement between a Supplier and a Consumer for the supply of a Telecommunications Product to that Consumer. For the avoidance of doubt, unless stated otherwise, the Standard Form Customer Contract is a Customer Contract.

**Customer Information Compliance Statement**

means a Supplier's annual statement which specifies where Customers can access the Supplier's information which is required to be made publically available under this Code.

**Customer Service**

means services, other than Telecommunications Services, provided by a Supplier to a Customer, in connection with the Customer's use of the Supplier's Telecommunications Products and the Customer's Customer Contract with the Supplier.

**Direct Debit**

means a periodic payment that is automatically deducted by a Supplier from a Customer's nominated financial institution account, implemented by the Supplier at the Customer's request.

**Disconnection**

means the termination by a Supplier of a Customer Contract for a Telecommunications Service.

**Discount**

means a reduction in the Charge which is usually levied by a Supplier.

**Emergency Service Number**

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

**External Qualified Assessor**

means an assessor who:

- (a) is external to, and independent of, the Supplier;
- (b) is not with the Supplier's Immediate Circle;

- (c) in that Supplier's opinion, has suitable qualifications to assess that the Supplier's Compliance Plan has been prepared in accordance with principles and guidance outlined in the Australian Standard on Compliance Programs AS 3806 - 2006;
- (d) is a member of a professional organisation such as a professional auditing body or the Australian Compliance Institute; and
- (e) has been contracted by the Supplier to perform the role of External Qualified Assessor.

**Financial Hardship**

means a situation where:

- (a) a Customer is unable to discharge the financial obligations owed by the Customer under their Customer Contract or otherwise discharge the financial obligations owed by the Customer to a Supplier, due to illness, unemployment or other reasonable cause; and
- (b) the Customer believes that they are able to discharge those obligations if the relevant payment arrangements or other arrangements relating to the supply of Telecommunications Products by the Supplier to the Customer are changed.

**First Compliance Attestation**

means the initial Compliance Attestation provided in accordance with clause 9.4.1 of this Code.

**Force Majeure**

means an unforeseen or uncontrollable force or event, such as fire, flood, earthquake, storm or other disturbance, whether caused by the elements, an act of God, war, strike, lockout, riot, explosion, insurrection, governmental action or another event of the same kind, which is not reasonably within the control of a party.

**Fraud**

means dishonestly accessing or using any Telecommunications Products of a Supplier, or attempting to do so, with the intent of:

- (a) deceiving the Supplier or any other person;
- (b) not paying for the relevant Telecommunications Products; or
- (c) securing unlawful gain or advantage.

**Gaining Supplier**

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

**Guarantee**

means a guarantee of a Customer's obligations under a Customer Contract.

**Guarantor**

means an individual or company who guarantees a Customer's obligations under a Customer Contract.

**Hard Cap**

means a maximum amount applied to a Customer's use of Telecommunications Services, which cannot be exceeded.

**Immediate Circle**

has the meaning given in the Act.

**Included Value Plan**

means a mobile Post-Paid Service plan under which the Customer receives a larger amount of monthly included value than the minimum monthly Charge they pay (e.g. for \$50 per month, receive \$500 included value), to use on a combination of eligible services across Standard National Mobile Calls, Standard National Mobile SMS and national data usage, and the use of any of these three eligible services is not unlimited.

**Itemised**

means the detail(s) provided in relation to a particular Billed Charge.

**Itemised Billing**

means the provision of a Bill that includes details for each Billed Charge.

**Large Supplier**

means a Supplier with 100,000 services or more in operation.

**Listed Carriage Service**

has the meaning given in the Act.

**Material Change**

means a significant change to any of the following:

- (i) a Supplier's operations arising from new or changed activities or services,
- (ii) major changes to systems and processes relevant to the Supplier's Compliance Plan; or

(iii) major changes to compliance obligations under the Code which result in the need to review and update the Supplier's Compliance Plan.

**Metrics**

means performance measures relating to certain of the obligations of Suppliers under this Code, as required by CC from time to time.

**Offer**

means a current, standard in-market plan containing pricing that is made by a Supplier for the provision of Telecommunications Products, which is available to any individual Consumer or Consumers as a class and includes, without limitation such offers made in Advertising.

**Personal Information**

has the meaning given to it in the *Privacy Act*.

**Post-Paid Service**

means a Telecommunications Product that can be used fully or in part prior to being paid for by the Consumer.

**Pre-Paid Service**

means a Telecommunications Product that must be paid for by the Consumer before it is used.

**Priority Assistance**

has the meaning given in the *Priority Assistance for Life Threatening Medical Conditions Code (ACIF C609:2007)*.

**Priority Assistance Customer**

means a Customer receiving Priority Assistance.

**Privacy Act**

means the *Privacy Act 1988 (Cth)*.

**Prominently Displayed**

means conspicuously presented in clear font and in a prominent and visible position that is appropriate for the Advertising medium in the main body of the Advertising.

**Regulator**

means any of the ACCC, ACMA, ASIC and any government body in any State or Territory responsible for the administration of all or part of the legislation referred to in clause 1.1.5.

**Residential Customer**

means a Customer that is an individual who acquires a Telecommunications Product for the primary purpose of personal or domestic use and not for resale under the standard terms and pricing for residential, non-business customers set out in the Supplier's Standard Form of Agreement.

**Resolution**

when used in connection with a Complaint, means the outcome of the bringing of that Complaint to a conclusion in accordance with the requirements of this Code. This does not mean that the outcome must be in favour of the Consumer.

The Resolution of a Complaint does not include the implementation of that Resolution.

**Resolve**

when used in connection with a Complaint, means the bringing of that Complaint to a conclusion in accordance with the requirements of this Code.

**Restriction**

means where access to one or more of a Supplier's available Telecommunications Products or an aspect of those Telecommunications Products is limited.

**Restriction Point**

means the point at which a Restriction is to occur.

**Retail Outlet**

means a retail premise that sells various goods and services in addition to Telecommunications Products.

**Rights Of Use Holder**

has the meaning given in the *Rights of Use of Numbers Code (ACIF C566:2005)*.

**Rules**

means the Supplier-specific obligations under this Code, which are in chapters 3 to 9.

**Sales Representative**

means a person employed or contracted, directly or indirectly, by a Supplier to sell including staff employed by a third party call centre to sell a Supplier's Telecommunications Products on behalf of that Supplier, offer to sell, or otherwise promote, Telecommunications

Products to Consumers as all or a substantial part of their role, other than a person who undertakes and completes a transaction for a Pre-paid Service for a Consumer at a cash register in a Retail Outlet.

**Security Deposit**

means a payment made by a Customer to a Supplier to mitigate a credit risk.

**Security Tools**

means tools to prevent unauthorised access to a Telecommunications Service.

**Shaping**

means where a Supplier deliberately controls the maximum data transfer rate on a broadband service when the Customer has exceeded the specified data allowance.

**Small Online Advertising**

means online strip, banner or tile Advertising or the equivalent.

**Small Supplier**

means a Supplier with less than 100,000 services in operation.

**Special Promotion**

means an offer of limited duration, limited quantity or offered to a limited sub-set of Consumers, (for example, a once-off promotion for members of a local gym or a special discount for the staff of a business customer of a Supplier), such as Discounts off Telecommunications Goods or components of Telecommunications Services.

**Spend Management Tools**

means a tool available to a Customer or applied by a Supplier to assist the Customer to take timely action to limit and/or manage their expenditure or usage allowance on a particular Telecommunications Product.

**Standard Form Customer Contract**

means the Supplier's current Standard Form of Agreement for contracting with Consumers.

**Standard Form of Agreement**

has the meaning given in the Act.

**Standard National Mobile Call**

means a mobile voice telephone call from a Supplier's mobile service to another Supplier's mobile service (off-net) during peak time where the calling and receiving parties are in Australia.

**Standard National Mobile SMS**

means a mobile short message containing a maximum of 160 characters from a Supplier's mobile service to another Supplier's mobile service (off-net) during peak-time where the sending and receiving parties are in Australia.

**Standard Telephone Service**

has the meaning given to it in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**Statement of Independent Assessment**

means a written statement by an External Qualified Assessor engaged by a Supplier confirming that the Supplier's Compliance Plan has been prepared in accordance with the principles and guidance outlined in the *Australian Standard on Compliance Programs AS 3806-2006* -, and that the External Qualified Assessor has determined that the implementation of the Compliance Plan by the Supplier will provide appropriate assurance on Code compliance.

**Substantiate**

means to provide the ACMA with information to support claims or representations made by a Supplier in Advertising.

**Supplier**

means a Carriage Service Provider.

**Suspension**

means the prevention of access to a Telecommunications Service, except to Emergency Service Numbers, by the Supplier.

**Telecommunications Goods**

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

**Telecommunications Product**

means Telecommunications Goods and/or a Telecommunications Service.

**Telecommunications Service**

means:

(a) a Listed Carriage Service or any service supplied by a Supplier in connection with that service; and

(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.

### **Text Advertising**

means

(a) Supplier-placed advertisements in newspapers, magazines and press inserts and Supplier-generated flyers, leaflets, brochures and catalogues.

(b) Supplier-placed outdoor static large format advertising, including advertisements displayed upon:

(i) public transport panels (e.g. buses, trains and trams);

(ii) outdoor street furniture; and

(iii) billboards;

(c) online advertisements on a Supplier's own website and Supplier-placed advertising on other online sites, other than Small Online Advertising.

### **Third Party Charges**

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

### **Timed Call**

means a call for which a Charge is calculated according to the duration of the call.

### **TIO**

means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme referred to in the Act.

### **Transfer**

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

### **Unbilled Charges**

means Charges relating to a Telecommunications Product which have been incurred by a Customer and of which the Supplier is aware, but which the Supplier has not yet included in a Bill.

### **Unfair**

has the meaning given to it in the Competition and Consumer Act.

### **Untimed Call**

means a call where the applicable Charge is not calculated according to the duration of the call.

### **Urgent Complaint**

means a Complaint where

(a) the Complaint is made by a Customer who has applied for or has been accepted as being in Financial Hardship under that Supplier's Financial Hardship policy and where the subject matter of the Complaint can reasonably be presumed to directly contribute to or aggravate the Financial Hardship of that Customer; or

(b) disconnection of a service is imminent or has occurred and where due process has not been followed; or

(c) it involves a Priority Assistance Customer and the service for which they are receiving Priority Assistance.

### **Verification**

means the process performed by a proposed Gaining Supplier prior to effecting a Transfer, pursuant to which such Gaining Supplier enlists a person or procedure (independent of the Sales Representative who procured the Transfer) to confirm with the Consumer the Consumer's request to Transfer.

### **Working Day**

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

## **2.2 Interpretation**

In the Code, 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 RULES

This chapter sets out the general rules which will apply to each of chapters 4 to 9 of the Code.

#### 3.1 Language

3.1.1 A Supplier must communicate with Consumers in plain language.

#### 3.2 Quality of information

3.2.1 A Supplier must provide accurate, relevant and current information to Consumers in a timely manner.

#### 3.3 Access to information

3.3.1 A Supplier must communicate with a Consumer in a way that is appropriate to the Consumer's communications needs including those with special needs.

3.3.2 Suppliers must have regard to ACIF G586:2006 *Disability Matters: Access to Communications Technologies for People with Disabilities and Older Australians* Industry Guideline when providing information to Consumers with disabilities.

3.3.3 A Supplier must ensure that Consumers can view and download all relevant terms and conditions of its Telecommunications Products from a website and that the website is accessible.

3.3.4 A Supplier should have regard to its web content complying with the *Web Content Accessibility Guidelines*, recognising that the baseline requirement in the Code constitutes compliance with the *Web Content Accessibility Guidelines Version 1.0*.

#### 3.4 Complying with the law

3.4.1 A Supplier must comply with all applicable laws in dealing with Consumers.

#### 3.5 Dealing appropriately with Consumers

3.5.1 A Supplier must ensure that its staff interact with Consumers courteously.

A Supplier must take the following actions to enable this outcome:

- (a) **Culture:** promote a culture within the Supplier's organisation where rudeness to Consumers, and/or non-compliance with this Code, are not acceptable and make staff aware that they will face disciplinary action for such behaviours; and
- (b) **Disciplinary action:** ensure appropriate action is taken against its staff who are rude to Consumers.

#### 3.6 Authorised Representatives

3.6.1 A Supplier must ensure that a Consumer can appoint an Authorised Representative to act on their behalf, if the Consumer requires.

3.6.2 A Supplier must advise the Consumer that a person made an Authorised Representative has the power to act on the Consumer's behalf as if they are the Consumer or, if the Authorised Representative has more limited rights, the level of access that the Authorised Representative has to the Customer's information.

#### 3.7 Advocates

3.7.1 A Supplier must ensure that a Consumer can easily use an Advocate to communicate with the Supplier, if the Consumer requires.

3.7.2 A Supplier may presume that an Advocate is not authorised to establish or make changes to a Customer's account or Telecommunications Services, unless the Advocate is also the Customer's Authorised Representative.

3.7.3 A Supplier must advise the Consumer that a person acting as their Advocate has no power to act on the Consumer's behalf and has no access to their information without the Consumer being present and agreeing to such action.

## 4 CONSUMER SALES, SERVICE AND CONTRACTS

### Summary

*This chapter sets out what Suppliers must do for Consumers in relation to retail sales and service, including regarding the provision of information, advertising, selling practices, contracting, dealing with Consumers with different needs and customer service.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

#### 4.1 Telecommunications Offers

- 4.1.1 **Communication of Offer:** A Supplier must communicate its Offers in a way which is clear, accurate and not misleading, to allow Consumers to make informed choices.

A Supplier must take the following actions to enable this outcome:

- (a) **Language:** use language to communicate its Offers (whether orally or in writing, including in the Supplier's Advertising) which is suited to the intended audience; and
- (b) **Clarity:** provide information about its Offers in a comprehensible, clear and accurate manner, without exaggeration or omission of key information.

- 4.1.2 **Summary of Offer:** A Supplier must provide a summary of each of its current Offers to allow Consumers to compare Offers provided by each Supplier which best suit their needs.

A Supplier must take the following actions to enable this outcome:

- (a) Content: ensure the summary of the Offer is called a "Critical Information Summary" and includes the following information in the following order:

- (i) includes a sub-heading 'Information About the Service', under which the following information is included:

- A. a description of the Telecommunications Service to be provided under the Offer;
    - B. whether the Offer depends on a bundling arrangement with other Telecommunications Services and, if so, a description of those other Services;
    - C. whether there is any Telecommunications Good that the Customer must take as a mandatory component of the Offer, (so the Consumer has no choice as to that Telecommunications Good), what the mandatory Telecommunications Good is and if the Charge for the mandatory Telecommunications Good is not already built into the Offer pricing disclosed in the summary of Offer, then the separate Charge for this mandatory Telecommunications Good;
    - D. the minimum term applicable in respect of the Product set out in the Offer;
    - E. the inclusions, exclusions and any important conditions, limitations, restrictions or qualifications for that Offer, where applicable; and

- (ii) includes a sub-heading 'Information About Pricing', under which the following information is included, where relevant:

- A. the minimum monthly Charge payable under the Offer (where calculable);
    - B. the maximum monthly charge payable where calculable;
    - C. the maximum Charge payable for early termination of the Offer;
    - D. where the Offer is not unlimited, the cost (prior to any discounts being applied) of making a 2 minute Standard National Mobile Call (including flagfall where applicable);
    - E. where the Offer is not unlimited, the cost (prior to any discounts being applied) of sending a Standard National Mobile SMS;
    - F. where the Offer is not unlimited, the cost (prior to any discounts being applied) of using one megabyte of data within Australia;
    - G. for an Included Value Plan, an estimate of the maximum number of Standard National Mobile Calls (each of two minutes in duration and including the flag-fall charge if applicable) that a Consumer may make within the Included Value Plan based on the cost described at clause 4.1.2(a)(ii)D and assuming the Customer does not use the included value for anything else using the wording "If you restricted your use solely to Standard National Mobile Calls each of 2 minute in duration, you could make x number of calls"; and

(iii) includes a sub-heading 'Other Information', under which the following information is included where relevant:

- A. a link to the area on the Supplier's website where the customer can obtain call and data usage information or instructions on where the customer can obtain call and data usage information;
- B. warnings about roaming costs (both international costs and the circumstances in which additional Charges may be imposed in Australia when the service roams onto a different network);
- C. customer service contact details;
- D. information about how to access internal dispute resolution processes; and
- E. contact details for the Telecommunications Industry Ombudsman.

(b) **Separate document:** for the avoidance of doubt,

- (i) a Critical Information Summary must be a separate document to the full contractual terms and conditions; and
- (ii) may include other information as the Supplier determines is appropriate.

(c) **Special Promotions:** supply a summary for the underlying Offer on which the Special Promotion is based noting that the Supplier is not required to provide details of the differences between the underlying Offer and the Special Promotion in that summary of the Offer.

(d) **Accessibility:** ensure that the summary of each of the Supplier's current Offers is:

- (i) readily accessible on the Supplier's website (including without limitation, a summary of each of the Supplier's current Offers for Pre-Paid Services);
- (ii) included as a link to the summary of the Offer where the Supplier advertises the Offer on the Supplier's website (other than online banner, tile, strip and pop-up Advertising where the link is not required); and
- (iii) is available free of charge at the Supplier's stores.

(e) **Provision prior to sale:** A Supplier must provide the summary of the Offer for Post-Paid Services free of charge to a Consumer prior to sale except:

- (i) where the sale falls within the scope of an unsolicited consumer agreement under the Australian Consumer Law and as a result the Consumer is entitled to a cooling off period, the Consumer will be provided with a copy of the relevant summary of the Offer after the sale at the same time as the relevant unsolicited consumer agreement and cancellation notice; or
- (ii) where the sale is carried out over the telephone and is not treated as an unsolicited consumer agreement under the Australian Consumer Law and the Consumer agrees to opt out of their right to receive all information contained in the summary of the Offer prior to sale, a Supplier must:
  - A. give the Consumer a general overview of the summary of the Offer prior to or at the point of sale and dispatch a copy of the summary of the Offer to the Consumer within 5 Business Days after the sale; and
  - B. not engage in practices that would encourage Consumers to opt out of receiving the summary of the Offer prior to the sale.

(f) **Comprehensible:** ensure that information contained in the summary of each Offer:

- (i) is comprehensible and drafted in plain language; and
- (ii) uses clear headings to identify the content contained in each section.

(g) **Length:** ensure that each summary of the Offer is no longer than two A4 pages when all its mandatory contents are included and is available as a standalone document.

(h) **Currency:** ensure that information contained in the summary of each Offer is current.

4.1.3 Other relevant information: A Supplier must provide other relevant information about Telecommunications Products currently offered by the Supplier beyond that which is covered in the summary of each Offer in a readily accessible way, to assist Consumers to assess those Telecommunications Products compared with other Telecommunications Products that the Consumer is investigating.

A Supplier must make available the following information on its website and without charge upon request to enable this outcome:

(a) **Product description:** a description of the key attributes of the Telecommunications Products offered by the Supplier;

(b) **Manufacturer:** the manufacturer's name for non-Supplier branded Telecommunications Goods supplied by a third party as part of the Supplier's Offers;

- (c) **Technical information:** the main features for any Telecommunications Goods forming part of a Supplier's Offers or where this information can be obtained by the Consumer;
- (d) **Billing and payments:** information on the Supplier's Bill formats, Billing Options, Billing Period and payments offered by the Supplier in relation to its Telecommunications Products;
- (e) **Usage:** information to assist Consumers to estimate what capacity they may need on a Telecommunications Product to meet their usage requirements;
- (f) **Warranties:** the details of warranties that apply to Telecommunications Goods, including references to Consumers' entitlements under the Competition and Consumer Act;
- (g) **Post-sales support:** details of any post-sales support for the Telecommunications Products and any fees or charges for post-sales support;
- (h) **Mobile coverage:** the network coverage in Australia for the Telecommunications Services, which may include a map or diagram of the mobile coverage;
- (i) **International Roaming:** information about whether a Consumer needs to take any action to activate international roaming on the Supplier's Telecommunications Product (such as applying for activation of this functionality with the Supplier) or deactivate international roaming and the basic Charges to send SMS, make and receive standard calls and for data usage on the Supplier's Telecommunications Product from different countries (including that roaming Charges may be higher than Charges for international calls from Australia and data usage may be more expensive, and that Customers may be charged for both making and receiving calls while overseas) in a prominent and/or easily navigable and/or easily searchable position on the Supplier's website; and
- (j) **Resellers:** if acting as a reseller, the name of the principal Carrier whose network is used to provide the Telecommunications Services (but ensuring it is clear to the Consumer that the reseller is responsible for the service to the Consumer and is not affiliated or related to the principal Carrier unless it in fact is).

4.1.4 **Meeting Consumer needs:** If a Consumer identifies a particular need to a Supplier, the Supplier must indicate if it has an Offer that may suit the Consumer's identified need and if the Supplier does indicate a particular Offer that may suit the Consumer's identified need, the Supplier must provide the Consumer with information about the particular Offer, to allow the Consumer to assess the suitability of that Offer against that need.

A Supplier must take the following actions to enable this outcome:

- (a) **Training:** train staff regarding how to understand Consumer needs and advise Consumers on the Supplier's suitable Offers;
- (b) **Information:** provide standard information about Offers which can meet common needs expressed by Consumers;
- (c) **Usage:** provide information that can help Consumers predict their average level of telecommunications usage and what Offers may be suitable for that level of usage; and
- (d) **Different needs:** assist Consumers to find out where to access information about Telecommunication Products which may suit specific needs, such as the disclosed needs of Consumers with a disability.

4.1.5 **Remedies for inaccurate information:** Where inaccurate information has been provided by a Supplier to a Customer regarding an Offer and the Customer has relied on it in making a purchasing decision to sign up to that Offer with the Supplier, the Supplier must provide the correct information and offer a remedy that is appropriate in the circumstances for that Customer.

A Supplier must take the following actions to enable this outcome:

- (a) **Remedies:** attempt to Resolve Complaints about inaccurate information by providing the Customer with the correct information verbally or in writing and a remedy that is appropriate in the circumstances for that individual Customer, which may include a right for the Customer to terminate the Customer Contract;
- (b) **Updating:** take reasonable steps to promptly update inaccurate information provided by the Supplier to Customers in writing (for example on the Supplier's website); and
- (c) **Continuous improvement:** monitor Complaints about inaccurate information and take steps to address any material issues regarding inaccurate information.

## 4.2 Advertising

4.2.1 **Content of Advertising:** A Supplier must include any important conditions, limitations, qualifications or restrictions about an Offer in its Advertising of the Offer, to allow Consumers to make informed choices and to avoid Consumers being misled.

A Supplier must not engage in the following practices to enable this outcome:

- (a) **Headline representations:** use headline representations as to a price or offer in circumstances where the overall impression of the price or offer is subsequently qualified by fine print terms and conditions that make it unlikely or impossible that a Consumer, by the ordinary use of their service, could reasonably achieve the benefits offered in the headline representation;

- (b) **Unlimited:** use the term 'unlimited' or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;
- (c) **No exceptions, exclusions or catches:** use the terms 'no exceptions', 'no exclusions' or 'no catches' or equivalent terms without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer;
- (d) **Free:** use the term 'free' or an equivalent term to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the Consumer over the life of the contract by way of higher costs, including by way of higher call charges, higher network access fees, higher early termination fees or higher unlock fees, compared to the costs that would be payable by the Consumer over the life of the contract were the handset or other hardware product or service not provided free of charge;
- (e) **Price per minute:** use headline representations as to a price per minute for mobile phone calls, or calls made using phone cards, in circumstances where there is insufficient disclosure of extra charges including flag fall or call connection fees or for non-standard calls;
- (f) **Bundled products or services:** use headline representations as to price for a particular product or service, unless that product or service is available for purchase at the advertised price without being part of a bundled product or service or the advertised price is clearly identified as the price for that product or service when purchased as part of a bundled product or service;
- (g) **Offer:** use headline representations as to prices for an Offer unless any exclusions are Prominently Displayed;
- (h) **Prices for data allowances:** use unqualified headline representations as to ongoing prices for specified data allowances in circumstances where the price for that data is likely to increase within a reasonable use period;
- (i) **Phone cards:** use headline representations as to the minutes of call time available on phone cards unless those minutes can be achieved by Consumers with ordinary use of the card;
- (j) **Network coverage:** advertise or promote network coverage unless the network coverage is generally available to Consumers in the claimed coverage area;
- (k) **Full minimum quantifiable price:** advertise or promote a periodic price to be paid for a Telecommunications Product without also Prominently Displaying (but not necessarily as prominent as the periodic price) the "single price" as defined in the Competition and Consumer Act; or
- (l) **Cap:** use the term "cap" to advertise:
  - (i) any new Offers launched after the date of registration of this Code unless the Offers contain a Hard Cap; and
  - (ii) any existing Offers in any television, radio and print advertising from the date which is 6 months after the date of registration of this Code, provided that a Supplier can still do the following at any time during the duration of this Code:
    - A. use the term "cap", or an equivalent term, to advertise existing Offers that contain a Hard Cap and
    - B. refer to existing, older Offers that use the term "cap", or an equivalent term, by their existing name in online information, billing information, Customer Contracts, reference materials for customers, partners and staff, and one-on-one communications with Customers.
- (m) **Basis of claims:** make claims in Advertising in relation to broadband speed, network coverage and other performance characteristics of a Telecommunications Product unless the Supplier is able to Substantiate such claims. (Suppliers must have regard to the ACCC Information Paper: HFC and Optical Fibre Broadband "Speed" Claims and the *Competition and Consumer Act 2010* when advertising or promoting broadband speeds or data transfer rates on their networks.)

4.2.2 **Advertising medium:** A Supplier must provide a level of detail in its Advertising which is appropriate to the manner in which the Advertising is displayed to Consumers.

A Supplier must take the following actions to enable this outcome:

- (a) **Clarity:** ensure the principal message and the main terms are captured in the body of the Advertising;
- (b) **Detail:** ensure that use of any disclaimers does not negate the principal message and main terms of the Advertising; and
- (c) **Format:** take into account the typical amount of time that Consumers are able to view the particular Advertising in deciding how much information to include in the Advertising.

4.2.3 **Special Promotions:** A Supplier must communicate any important limitations which apply to its Special Promotions so Consumers are informed of the limitations.

A Supplier must take the following actions to enable this outcome:

- (a) **Principal terms:** disclose the key terms of the Special Promotion and any key limitations, such as whether stocks are limited;

- (b) **Timeframes:** if the Special Promotion is to end within a short period of time, the Supplier must disclose the end date for the Special Promotion;
- (c) **Eligibility:** if there are special eligibility requirements, such as provision of coupons, bundling with other products and services or restriction to a specific class of Consumers, the Supplier must disclose each requirement of the Special Promotion; and

4.2.4 **Information to recontracting Customers:** At the time of recontracting, the Supplier must inform the Customer of features available on new plans that may not be available on their existing plan, including spend management notifications.

4.2.5 **Compliance Processes:** A Supplier must maintain and comply with adequate review processes to ensure that its Advertising complies with the law and this Code.

A Supplier must take the following actions to enable this outcome:

- (a) **Substantiate:** Substantiate a claim or representation made when Advertising when requested to do so in writing by the ACMA;
- (b) **Approval process:** maintain an approvals process in which its Advertising is reviewed by a person who has been trained in advertising laws to ensure it is not false or misleading and complies with this Code;
- (c) **Training for marketing staff:** provide training to marketing staff who prepare such Advertising on how to do so in compliance with advertising laws and this Code;
- (d) **Ongoing monitoring:** monitor complaints about its Advertising and address identified material non-compliance with advertising laws or this Code and retain records for at least two years evidencing it has complied with these requirements; and
- (e) **Records:** retain records of any identified material non-compliance with advertising laws and/or this Code and steps taken to address that non-compliance.

4.2.6 **Standard Charges for Text Advertising:** When advertising in Text Advertising the price or dollar value of either an Included Value Plan or a Post-Paid Service which is an internet plan with included data allowance, a Supplier must Prominently Display the standard pricing elements to assist Consumers to understand how the included value or allowance can be used.

A Supplier must take the following actions to enable this outcome:

- (a) **Included Value Plans:** Prominently Display in Text Advertising the following three standard pricing elements when advertising an Included Value:
  - (i) the cost (prior to any Discounts being applied) of making a 2 minute Standard National Mobile Call (including flagfall where applicable);
  - (ii) the cost (prior to any Discounts being applied) of sending a Standard National Mobile SMS; and
  - (iii) the cost (prior to any Discounts being applied) of using one megabyte of data within Australia,

provided that if any of the above usages are unlimited, the Supplier is not required to quote a cost for the type of usage that is unlimited in the Text Advertising.

- (b) **Post-Paid Internet Plans with an Included Data Allowance:** Prominently Display in Text Advertising the following standard pricing element when advertising the price or dollar value of a Post-Paid Service with such an internet plan:

- (i) the cost (prior to any Discounts being applied) of using one megabyte of data within Australia,

provided that if the above usage is unlimited, the Supplier is not required to quote a cost for the data usage that is unlimited in the Text Advertising.

- (c) **Standard Charges in Certain Text Advertising:** The standard charges referred to in clauses 4.2.6(a) and (b) above will be deemed to be Prominently Displayed in a single item of Text Advertising of 8 pages or more in length, provided they appear in a clearly referenced section of that item of Text Advertising.

4.2.7 **Standard Charges for Small Online Advertising:** When advertising in Small Online Advertising the price or dollar value of either an Included Value Plan or a Post-Paid Service which is an internet plan with included data allowance, a Supplier must ensure that the page to which the Small Online Advertising links displays more detailed pricing information and the standard pricing elements as described in clause 4.2.6 upon clicking through.

4.2.8 **Disclaimers:** A Supplier must ensure disclaimers are clear and understandable, having regard to the type of Advertising.

- (a) **Effect of disclaimers:** ensure a disclaimer does not negate the principal messages of Advertising; and
- (b) **Content of disclaimers:** ensure a disclaimer is clear and understandable, having regard to the type of Advertising, including the medium or format used and its intended audience.

## 4.3 Selling Practices

- 4.3.1 **Fair sales practices:** A Supplier must ensure its Sales Representatives (including those Sales Representatives located in call centres) promote and sell the Supplier's Telecommunications Products in a fair and accurate manner.

A Supplier must take the following actions to enable this outcome:

- (a) **Training for Sales Representatives:** ensure its Sales Representatives are appropriately trained on how to promote and sell its Telecommunications Products to Consumers in a fair and accurate manner;
- (b) **Ongoing monitoring:** ensure the conduct of its Sales Representatives is monitored periodically to see how they interact with Consumers, and take steps to address emerging or systemic deficiencies in the sales conduct; and
- (c) **Complaints:** monitor Complaints about the sales conduct of the Supplier's Sales Representatives and take steps to address emerging or systemic deficiencies in the sales conduct.

- 4.3.2 **Accurate descriptions of products:** A Supplier must provide information about its current Telecommunications Products in a comprehensible and truthful manner, without exaggeration or omission of key information that is reasonably likely to be important to that Consumer in reaching a purchasing decision in the circumstances.

A Supplier must take the following actions to enable this outcome:

- (a) **Training:** ensure its Sales Representatives have a good working knowledge of the Supplier's current Telecommunications Products;
- (b) **Staff information:** provide access to information for its Sales Representatives to refer to in order to assist in answering Consumer queries about the Supplier's Telecommunications Products; and
- (c) **Consumer information:** enable its Sales Representatives to give Consumers information, or refer them to where they can access information, about the Supplier's Telecommunications Products.

- 4.3.3 **Appropriate behaviour:** A Supplier must interact with Consumers courteously, and in a fair and accurate manner.

A Supplier must take the following actions to enable this outcome:

- (a) **Culture:** promote a sales culture within the Supplier's organisation where rudeness to Consumers, and/or non-compliance with this Code, is not acceptable and make Sales Representatives aware that they will face disciplinary action for such behaviours; and
- (b) **Disciplinary action:** ensure appropriate action is taken against its Sales Representatives if they are rude, harassing and/or engage in misleading conduct with Consumers.

- 4.3.4 **Consent:** A Supplier must obtain the Consumer's consent in a fair and accurate manner before the Consumer enters a Customer Contract with the Supplier.

A Supplier must take the following actions to enable this outcome:

- (a) **Consent:** confirm a Consumer wants to purchase the Supplier's Offer for a Post-Paid Service before completing the sale;
- (b) **Authority:** use reasonable endeavours to confirm that the Consumer has legal capacity to enter the relevant post-paid Customer Contract with the Supplier before completing the Customer Contract with the Consumer;
- (c) **Records:** keep records of basic details regarding the Consumer's consent to the sale of the Supplier's Telecommunications Products; and
- (d) **Refusals:** if a Supplier refuses to supply a Consumer with a Telecommunications Product for any reason, inform the Customer of the nature of those reasons.

- 4.3.5 **Promoting Transfers:** A Supplier must ensure communications with Consumers about Transfers are carried out in a fair and accurate manner, to allow a Consumer to make an informed choice about whether to undertake a Transfer to that Supplier or take up a Supplier's Offer.

A Supplier must take the following actions to enable this outcome:

- (a) **Identity:** ensure its Sales Representatives identify the Supplier that they represent when promoting Transfers with Consumers;
- (b) **Presentation:** ensure its Sales Representatives promote the Supplier's Offers to Consumers in a fair and accurate manner, when promoting Transfers;
- (c) **Place:** where its Sales Representatives promote Transfers to Consumers in person ensure that it is in locations that are appropriate; and
- (d) **Other Suppliers:** ensure its Sales Representatives do not mislead Consumers about other Supplier's Telecommunications

Products or the nature of the Supplier's affiliation or relationship with another Supplier when promoting Transfers.

- 4.3.6 **Recording calls:** A Supplier must inform a Consumer if the Supplier is recording a phone call between the Supplier and the Consumer.

A Supplier must take the following action to enable this outcome:

- (a) **Disclosure:** disclose to the Consumer that the phone call is being recorded by the Supplier.

## 4.4 Consumers with different needs

- 4.4.1 **Languages:** A Supplier must ensure that its Sales Representatives can communicate with Consumers effectively in English.

A Supplier must take the following actions to enable this outcome:

- (a) **English language abilities:** ensure its Sales Representatives who manage enquiries for Consumers are able to communicate effectively in the English language (recognising that Australia is a multicultural society and customer service staff may have non-Australian accents. This Code does not in any way promote or condone discrimination); and
- (b) **Other languages:** if a Supplier advertises its services in another language, then, for Consumers who do not speak English, the Supplier must provide reasonable information to assist such Consumers to find out where to obtain help in that advertised language in dealing with the Supplier, or appoint an Advocate to deal with the Supplier on their behalf.

- 4.4.2 **Consumers with disabilities:** A Supplier must make information available about any Telecommunications Products it offers which specifically suit the disclosed needs of a Consumer with a disability.

A Supplier must take the following actions to enable this outcome:

- (a) **Provision of information:** provide information about Telecommunications Products offered by the Supplier specifically for Consumers with different disabilities and how the Telecommunications Products operate, including, where the Supplier is supplying equipment, any information required to be supplied pursuant to the Information on *Accessibility Features for Telephone Equipment Industry Code (C625:2009)* and accompanying Guideline (G627:2011); and
- (b) **Access to information:** ensure this information is provided on the Supplier's website in a place which is readily accessible in accordance with the Web Content Accessibility Guidelines Version 1.0, or provide a contact number or email address to obtain the information.

- 4.4.3 **Disadvantaged or vulnerable Consumers:** A Supplier must take reasonable steps to cater for the needs of disadvantaged or vulnerable Consumers.

A Supplier must take the following action to enable this outcome:

- (a) **Training:** provide training to its Sales Representatives on how to interact with disadvantaged or vulnerable Consumers appropriately.

## 4.5 Customer Contracts

- 4.5.1 **Presentation:** A Supplier's Standard Form Customer Contract must be available on the Supplier's website where Consumers can easily locate, access and read them.

A Supplier must take the following actions to enable this outcome:

- (a) **Location:** make its Standard Form Customer Contracts available on its website in a place that is easy for Consumers to find them and provide a copy to the Customer upon request at no charge;
- (b) **Display:** display the Standard Form Customer Contracts on its website in a manner which is easy for Consumers to navigate and read; and
- (c) **Information on expired Offers:** retain on its website the sections of its Standard Form Customer Contracts that contain the terms of Offers which are withdrawn by the Supplier after the date that this Code takes effect, for so long as Customers continue to receive Telecommunications Products pursuant to those Offers to enable a response to Consumer queries about Offers which are no longer current.

- 4.5.2 **Content:** A Supplier's Standard Form Customer Contracts must be in plain language, clear, consistent and contain all the terms of the Supplier's Offers in a logical order.

A Supplier must take the following actions to enable this outcome:

- (a) **Language:** use plain language whenever possible in preparing its Standard Form Customer Contracts;
- (b) **Comprehensive:** ensure all contractual terms regarding an Offer are set out in the Supplier's Standard Form Customer Contract or are clearly incorporated by reference; and



(c) **Customer Specific Information:** make available information about the activation and expiry date of any current Customer Contract that the Customer has with the Supplier for a Telecommunications Product upon the Customer requesting this information from the Supplier.

4.5.3 **Unfair Terms:** A Supplier will not include terms which would be Unfair in its Standard Form Customer Contracts under the law.

To enable this outcome, without limiting the effect of the Unfair Contract Terms provisions contained in Part 2-3 of the Australian Consumer Law, or clause 4.5.3 of this Code, when assessing a term for unfairness a Supplier must consider whether the object or effect of the term is to:

(a) **Suspension of service:** permit the Supplier to indefinitely suspend all Telecommunication Services because of the Supplier's error or failure, or to charge the Customer a reconnection fee for a suspension caused by the Supplier's error or failure;

(b) **Penalty for breach:** require a Customer to pay a penalty for a breach, where the imposition of the penalty is inconsistent with the Unfair Contract Terms provisions in Part 2-3 of the Australian Consumer Law;

(c) **Extension of contract period:** permit the Supplier to renew or extend a fixed length Standard Form Customer Contract for a further term without obtaining the Customer's express consent a reasonable time before the renewal or extension, and in circumstances that would be inconsistent with the Unfair Contract Terms provisions in Part 2-3 of the Australian Consumer Law; and

(d) **Unilateral variation by Supplier:** permit the Supplier to unilaterally amend or vary the contract or any matters related to the contract, the characteristics of Telecommunications Products or price, during the term of a contract, in circumstances that would be inconsistent with the Unfair Contract Terms provisions in Part 2-3 of the Australian Consumer Law.

## 4.6 Customer Service

4.6.1 **Effective service:** A Supplier must ensure enquiries by Customers are dealt with by the Supplier in a timely and effective manner.

A Supplier must take the following actions to enable this outcome:

(a) **Access:** inform Customers how to contact the Supplier about Customer Service enquiries and the hours of operation of these contact methods;

(b) **Average wait times:** monitor average wait times experienced by Customers to communicate with a Supplier about a Customer Service enquiry and seek to keep the average wait times to a reasonable minimum in the circumstances;

(c) **First contact Resolution:** monitor and seek to increase the level of first contact Resolution of Customer Service enquiries by taking reasonable steps to understand the root causes for why enquiries cannot be Resolved at first contact and seeking to address those root causes;

(d) **Record keeping:** keep records of interactions between the Supplier and Customers in a system which is accessible to staff who are typically tasked with responding to such Customer Service enquiries, so staff have historical data to aid in assisting Customers; and

(e) **Training:** ensure that staff who are employed to deal with Customer queries are appropriately trained to address and seek to resolve common Customer queries.

4.6.2 **Assessing performance:** A Supplier must seek feedback from Customers on how it deals with Customer enquiries and make improvements to its Customer Service processes and practices based on this feedback.

A Supplier must take the following actions to enable this outcome:

(a) **Customer feedback:** obtain feedback from Customers about how the Supplier deals with Customer enquiries; and

(b) **Improvements:** use this Customer feedback to identify any systemic issues and take reasonable steps to implement improvements.

4.6.3 **Personal information:** A Supplier must ensure that a Customer's or former Customer's Personal Information is protected from unauthorised use or disclosure and dealt with by the Supplier in compliance with all applicable privacy laws.

A Supplier must take the following actions to enable this outcome:

(a) **Storage:** have robust procedures for storing its Customers' Personal Information in its possession which are followed by its staff;

(b) **Security:** have robust procedures to keep its Customers' Personal Information in its possession secure and restrict access to personnel who are authorised by the Supplier; and

(c) **Breach:** ensure its staff understand that they may face disciplinary action if they breach the Supplier's privacy procedures, the Privacy Act or other privacy laws.

4.6.4 **Authority:** A Supplier must obtain appropriate authority before it accepts the appointment of a person as an Authorised Representative for a Customer, but not make the process of appointment difficult to complete.

A Supplier must take the following actions to enable this outcome:

- (a) **Authority:** ensure it obtains the Customer's authority or the appropriate other authority such as a copy of the relevant power of attorney, before accepting a person as the Authorised Representative for a Customer;
- (b) **Record keeping:** keep a record of the circumstances and when the Authorised Representative was appointed;
- (c) **Assistance:** provide Consumers with access to information about how to appoint an Authorised Representative and access to any relevant forms required to evidence the appropriate authority;
- (d) **Acknowledgement:** keep records of notification(s) to the Supplier of a relevant change in circumstance for a Customer, including the death of a Customer or the making of a guardianship order for a Customer; and
- (e) **Balance risks:** take reasonable steps to balance the risks of fraud, privacy and security of Customers with facilitating the appointment of Authorised Representatives.

4.6.5 **Customer Service Charter:** A Supplier may choose to have a Customer service charter.

A Supplier may take the following actions to enable this outcome:

- (a) **Content:** Make available a Customer service charter that addresses Customer service information such as:
  - (i) the channels through which Customer contact is supported;
  - (ii) what a Customer can expect when they make an enquiry using one of those channels;
  - (iii) what a Customer can expect when they make a complaint; and
  - (iv) the consequences, if any, of the Supplier failing to meet any commitments it has made.

## 5 BILLING

### Summary

*This chapter sets out what Suppliers must do in relation to Billing and providing information about Bills and Charges to Customers arising out of the supply of Telecommunications Products.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

*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.*

#### 5.1 Information for Consumers about charging and Bills

A Supplier must make available to Consumers information about its Billing procedures and any Billing Options prior to that Consumer becoming a Customer.

5.1.1 **Provision of information:** A Supplier must take the following actions to enable this outcome:

- (a) **Pricing, Billing and payment terms:** ensure that in the Supplier's information available online to a Customer that describes its Telecommunications Products, or on request consistent with clause 3.3.1, a Consumer may obtain information relevant to that Telecommunications Product or its Bill:
  - (i) on Charges and Discounts;
  - (ii) about its various Bill Media;
  - (iii) about any Billing Options;
  - (iv) regarding the Supplier's Billing Period policy; and
  - (v) relating to the Supplier's terms and conditions applicable to the Bill, any Billing Options, its frequency and its payment.

#### 5.2 Charging Policies and Rules, Charging for Bills

Subject to the exceptions in clauses 5.2.1(a) and (b), a Supplier must supply its Customers with a Bill using a Bill Media that the Customer has been advised of, and must make all information about a Customer's Billing available to that Customer.

5.2.1 **Providing Bills:** A Supplier must supply a Bill to a Customer, and where applicable a former Customer for each current Billing Period, except:

- (a) where
  - (i) the Customer pays by Direct Debit; and
  - (ii) the Charges for that Billing Period are for the same fixed amount in each Billing Period; and
  - (iii) the Customer and Supplier have agreed, in the Supplier's terms and conditions for the relevant Telecommunications Product or otherwise, that, although a Charge for that fixed amount will be payable by the Customer, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount; or
- (b) in respect of a Pre-Paid Service.

5.2.2 **Information required if no Bill:** If a Supplier does not issue a Bill, the Supplier must:

- (a) when clause 5.2.1(a) applies, obtain the Customer's prior consent to any Charge that will be applied in addition to the fixed amount; and
- (b) at the time of obtaining consent as per clause 5.2.2 (a) also advise the Customer how to contact the Supplier if they have a Billing Enquiry.

5.2.3 **Format of Bill Media:** A Supplier must offer its Customers the ability to receive a Bill and any Billing information in a Bill Media that the Customer is able to store and reproduce. Bill Media options may include, but are not limited to, any one or more of the following Bill Media:

- (a) paper form sent by regular post;
- (b) email; or
- (c) online.

5.2.4 **Changes to Bill Media:** If a Supplier proposes to change its Bill Media, it must inform the Customer:

- (a) of the proposed change to the Bill Media; and
- (b) of any options open to the Customer in relation to that change.

Prior to levying any Charge for the issue of a Bill in additional Bill Media; or in Bill Media different from the Supplier's usual Bill Media for that Customer in addition to complying with clause 5.6.1, the Supplier must inform the Customer of the amount of the Charge and its method of calculation.

5.2.5 **Presentation and Format:** A Supplier must lay out and format Bills so that a Customer may easily read and understand its Bill.

5.2.6 **Billing information provided free of Charge:** A Supplier following a Customer's request and irrespective of whether or not previously made available on a Bill or otherwise make available, in a format that is able to be read and understood, must provide to Customers and former Customers:

- (a) all Billing information related to that Customer's or former Customer's Telecommunications Service for a period of up to six years prior to the date the information is requested; and:
  - (i) that Billing information must be provided through one medium free of charge (e.g. via the Supplier's website or a Customer portal) for the period of up to 24 months prior to the date the Billing information request is received by the Supplier;
  - (ii) for information requested which is older than 24 months and up to six years from the date the Customer request is received by the Supplier, the Supplier may impose a Charge for the provision of this information;
  - (iii) where requested, the Supplier must include Itemised details of all Charges associated with the Telecommunications Service;
  - (iv) Customers may request provision of Billing information via other mediums and formats normally available from the Supplier (e.g. hardcopy bill re-prints) and Subject to clause 5.2.7, the Supplier may impose a Charge for the provision of this information.

5.2.7 **Cost of providing Billing information:** If a Charge for providing Billing information is applied by a Supplier in accordance with clause 5.2.6 above, it must be limited to the cost of providing the information.

5.2.8 **Cost of Billing Enquiry:** A Supplier which provides access to its Billing Enquiry point by telephone (including calls from a mobile phone) must provide such access at Untimed Call rates, unless agreed otherwise with the Customer.

5.2.9 **Cost of data containing Billing information:** If a Supplier is making information from, or about, a Bill, available in an electronic form, it must offer at least one method of accessing that information that does not involve Charges being imposed by that Supplier.

### 5.3 The Bill

A Supplier must ensure that its Bills for a Telecommunications Service contain relevant Billing information.

5.3.1 **Bill content requirements:** A Supplier must include in each Bill it issues, at least:

- (a) the Customer's or former Customer's Billing Name and Billing Address;
- (b) the Supplier's trading name and ACN and/or ABN;
- (c) the Bill issue date and sequential identification (such as Invoice numbering or dates) to enable a Customer, or former Customer, to readily identify if a previous Bill has not been received and readily determine the chronological order of Bills received;
- (d) the Billing Period;
- (e) an account reference number;
- (f) a Customer reference to be used when paying online, which is the same on each Bill for that Customer, or former Customer, for the same Telecommunications Products. A Supplier may, however, change the Customer reference from time to time when its circumstances require it (such as a change to its billing systems);
- (g) the current due date for the Billed Charges and the due date for any outstanding amount;
- (h) at least one free method of Bill payment;
- (i) advice regarding any additional Charges (e.g. credit card merchant fees) that will apply for any additional payment method;
- (j) the name of, or reference for, the agreement or plan to which the Bill relates;
- (k) any Charges that exceeded any spend limits or included allowance thresholds;

- (l) a description of the Charges included in the Bill including the total amount of the Bill, any applicable Discounts or credits being applied to the Bill or Charge, including any Third Party Charges;
- (m) for Bills that contain Charges for an Included Value Plan, the total amount of the Bill for of each the two previous Billing Periods;
- (n) for Bills that contain Charges for an Included Value Plan, a link to the area on the Supplier's website where the Customer can obtain call and data usage information or instructions on where the Customer can obtain call and data usage information;
- (o) a contact point for the Customer, or former Customer, to make Billing Enquiries that includes at least a telephone number;
- (p) a contact point for the Customer, or former Customer, to obtain pricing information if not available from the contact point described in clause 5.3.1(o);
- (q) the hours of operation of the contact point in clause 5.3.1(o) above, if the contact point is open less than 24 hours, 7 days a week;
- (r) the nature of any Charges applying to Billing Enquiry calls, including information about any Charge greater than the Supplier's local call tariff, or equivalent.

5.3.2 **Bills for new products, features or services:** A Supplier must not release a new product, feature or service, except as part of a free trial, without having appropriate Billing arrangements in place, unless the Supplier:

- (a) has agreed with a specific recipient Customer or group of recipient Customers to provide them with customised or limited Billing arrangements; and
  - (b) has clearly informed them of the details of the customised or limited Billing arrangements;
- prior to the Supplier providing, or the Customer accessing, the product, feature or service.

## 5.4 Timing of Bill

A Supplier must ensure that its Bills are delivered to Customers, and former Customers, in a timely manner.

5.4.1 **Timeliness of Bill issue:** Suppliers must issue a Bill to a Customer, or former Customer, within 10 Working Days after closure of the Billing Period, except when:

- (a) temporary system or processing problems or issues arise; or
- (b) a Force Majeure event occurs; or
- (c) a Supplier delays the issue of a Bill for Customer Service purposes);

and if any delay extends beyond 10 Working Days, the Customer must be granted an extension of time to pay of not less than the length of the delay.

5.4.2 **Timeliness for Billed Charges:** A Supplier must:

- (a) endeavour to incorporate all Charges relating to the current Billing Period into a Bill;
- (b) inform the Customer, or former Customer, that some Charges in a Bill may relate to a previous Billing Period; and
- (c) not Bill for Charges older than 160 days from the date the Charge was incurred for that Telecommunications Service.

5.4.3 **Allowable delays:** A Supplier will not breach clause 5.4.2 because of delays due to:

- (a) changes to the regulatory or legislative framework applicable to all Suppliers and one-off network infrastructure changes, where prior notice has been given to affected Customers, or former Customers; or
- (b) a Force Majeure event.

## 5.5 Verifying Charges

A Supplier must provide the Customer, or former Customer, with information to allow them to verify all Billing Charges.

5.5.1 **Supplier verification:** A Supplier must ensure it provides, and must be able to verify and demonstrate, Billing Accuracy except for inaccuracies caused by:

- (a) the Supplier's reliance on information provided by a person who is not its director, employee or agent;
- (b) an action or failure of another person who is not the Supplier's director, employee or agent; or
- (c) an accident, mistake or any matter beyond the Supplier's control, where the Supplier took reasonable care and precautions to avoid the inaccuracy.

5.5.2 **Verification of Charges:** A Supplier must ensure that sufficient information is readily available to the Customer, or former

Customer, to allow them to verify that Charges are correct and consistent with:

- (a) the Supplier's published or contracted Charges and Discounts; and
- (b) the Telecommunications Products which the Customer, or former Customer, has requested, used or contracted to receive.

5.5.3 **Itemised Charges:** A Supplier must ensure that Itemised details of all Charges relating to its Telecommunication Products are made available to the Customer, or former Customer, unless they have otherwise requested or agreed.

5.5.4 **Timed Calls:** A Supplier must supply or make available to the Customer, or former Customer, Itemised Timed Call Charges, unless they have otherwise requested or agreed.

5.5.5 **Notice period for Itemised Billing:** A Supplier must inform its Customers of any notice period required by the Supplier in order for the Supplier to provide Itemised Billing details to them.

## 5.6 Payment Options

A Supplier must facilitate the easy payment and verification of payment of Bills by its Customers.

5.6.1 **No Charges for Bill payment:** The Supplier must offer at least one method of payment for its Telecommunications Products that is free of charges imposed by the Supplier.

5.6.2 **Verifying payment:** A Supplier must provide a means by which a Customer, or former Customer, may easily verify any payments.

5.6.3 **Timeliness of Bill Payment Processing:** A Supplier must:

(a) note Bill payments in the Supplier's relevant system within 48 hours from the start of the next Working Day after the Supplier is formally notified of payment;

(b) apply payments received by the due payment date to the Customer's, or former Customer's account:

(i) prior to generating the subsequent Bill; or

(ii) within 5 Working Days of the payment being received by the Supplier,

whichever is sooner; and

(c) apply payments received after the due payment date within 5 Working Days of receiving the payment.

5.6.4 **Exceptions for Bill payment processing:** A Supplier will not breach clause 5.6.3 when:

(a) system or processing problems occur;

(b) the Supplier does not receive accurate, complete and timely information about payment for the Telecommunications Service; or

(c) a Force Majeure event occurs.

## 5.7 Direct Debit

A Supplier offering Direct Debit facility must ensure that its Customers, or former Customers, can, on request, verify all Charges and Direct Debit authorisation details.

5.7.1 **Direct Debit payment:** A Supplier offering Direct Debit as a payment facility for a Telecommunications Service must comply with the Customer's authorisation and:

(a) must ensure that the Customer, or former Customer, can access all Billing information on request and before the Direct Debit occurs;

(b) must ensure that the Customer, or former Customer, can, on request, verify that its Direct Debit arrangements are in accordance with their authorisation;

(c) except where clause 5.2.1(a) applies or where otherwise agreed between the Supplier and the Customer, must allow the Customer, or former Customer, not less than 10 Working Days to check the Bill or if no Bill is required, all applicable Charges, before the associated Direct Debit transaction occurs;

(d) subject to compliance with clause 5.4.1, must provide details of a Direct Debit transaction to the Customer, or former Customer's nominated financial institution in a timely manner, to ensure the transaction to take place as close as possible to the due date for payment;

(e) must ensure that a Customer, or former Customer, can readily cancel a Direct Debit authorisation by providing a simple mechanism (such as email or faxed request to do so); and

(f) must cancel a Direct Debit authorisation within 3 Working Days of receipt of the request detailed in clause 5.7.1(e) above.

## 6 CREDIT AND DEBT MANAGEMENT

### Summary

*This chapter sets out what Consumers are entitled to from Suppliers, and what Suppliers must do, in relation to the provision and management of credit in connection with the supply of Telecommunications Products, including the denial and restriction of access to Telecommunications Services for credit-related reasons and the application of a Supplier's Financial Hardship policy.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

#### 6.1 Access to Credit Management Information

Suppliers must ensure that a Consumer can readily access at no cost all information regarding a Supplier's:

- (a) Spend Management Tools; and
- (b) Security Tools.

6.1.1 A Supplier must take the following actions to enable this outcome:

- (a) **Ease of Access:** make the information referred to in clause 6.1.1(c) and 6.1.1(d) readily accessible on the Supplier's website;
- (b) **Availability of written information;** make the information referred to in clause 6.1.1(c) and 6.1.1(d) available in writing to a Consumer within 5 Working Days of a request from that Consumer;
- (c) **Spend Management Tools:** inform Customers about
  - (i) the availability of Spend Management Tools;
  - (ii) how to obtain assistance to use those Spend Management Tools; and
  - (iii) the cost of any Spend Management Tools offered directly by the Supplier; and
- (d) **Security Tools:** inform Customers about:
  - (i) the availability of Security Tools to prevent unauthorised access to or use of Telecommunications Services;
  - (ii) how to obtain assistance to use those Security Tools; and
  - (iii) the cost of any Security Tools offered directly by the Supplier.

#### 6.2 Responsible provision of Telecommunications Products

Suppliers must undertake a Credit Assessment before providing a Post-Paid Service to a Consumer, and explain the financial implications of the provision of that Post-Paid Service to a Customer or their Guarantor.

6.2.1 A Supplier must take the following actions to enable this outcome:

- (a) **Assess credit risk:** undertake a Credit Assessment;
- (b) **Inform Consumer of Credit Assessment:** inform the Consumer prior to or at the time of the Credit Assessment of its general nature and effect;
- (c) **Advising the Customer about liability:** where the Supplier is made aware by the Customer that the Customer is not going to be the principal end user of the Telecommunications Service, inform the Customer at the time it becomes aware (or as soon as practicable thereafter), that the Customer remains liable for the use of the Telecommunications Service;
- (d) **Requiring a Guarantee:** if a Supplier requires a Guarantee the Supplier must provide written advice to the Guarantor regarding the nature and effect of the Guarantee before the Guarantee is provided by the Guarantor and the Telecommunications Product is provided by the Supplier; and
- (e) **Cooling off period for Guarantor:** provide a Guarantor with a minimum 10 Working Days cooling off period in which the Guarantor may terminate the agreement for which the Guarantee is provided.

#### 6.3 Provision of information where service is Restricted at the time of application

Suppliers must provide Consumers seeking a Telecommunications Service with information about a decision taken by the Supplier in relation to a Restriction placed on the supply of or access to a Telecommunications Service at the time the Telecommunications Service is applied for.

6.3.1 A Supplier must take the following actions in relation to a Consumer seeking a Telecommunications Service to enable this outcome:

- (a) **Explain Restrictions at time of application:** explain to the Consumer the general nature of the reasons for the Restriction, including:
  - (i) **Telecommunications Services:** which of the Supplier's Telecommunications Services the Consumer will have access to after the Restriction is applied;
  - (ii) **Removal of Restrictions:** if applicable, how a Consumer may have the Restriction removed;
  - (iii) **Who may remove Restrictions:** if the Restriction can be removed by anyone other than the Consumer;
- (b) **Oral advice of Restriction:** where the Consumer is informed orally of the Restriction and the reasons for it, the Supplier must make attempts to ascertain whether the Consumer has understood the oral advice given.
- (c) **Written advice of Restriction:** upon request, the Supplier must provide the information in clause 6.3.1(a) to the Consumer in writing.

## 6.4 Security deposit

In the event that a Security Deposit is required by a Supplier, the Supplier must provide the Consumer with information about the terms of that Security Deposit, including the circumstances in which the Security Deposit may accrue interest, be forfeited or be repaid.

6.4.1 A Supplier must take the following actions to enable this outcome:

- (a) **Requirement for a Security Deposit:** base the requirement for a Security Deposit on the outcome of a Credit Assessment conducted in relation to the Consumer and the Telecommunications Product to be acquired by the Consumer;
- (b) **Prior agreement to Security Deposit:** obtain the Consumer's prior agreement as to the circumstances in which the Security Deposit or part thereof will be forfeited. In the absence of such agreement, the Supplier may decline to supply to the Consumer the relevant Telecommunications Product;
- (c) **Repayment and interest information:** within 10 Working Days of the Supplier receiving the Security Deposit, advise the Consumer in writing of repayment and interest arrangements and the account to which the Security Deposit will be applied;
- (d) **Opportunity to pay:** before accessing the Security Deposit, advise the Consumer that the Security Deposit will be accessed within 5 Working Days and provide an opportunity for the Consumer to pay within that period; and
- (e) **Repayment to the Customer:** repay to the Customer the amount of the Security Deposit (or the balance then remaining), and interest accrued in relation to it, within 10 Working Days of the Customer:
  - (i) satisfactorily completing the terms of the Security Deposit arrangements; or
  - (ii) ceasing to receive the relevant Telecommunications Products from the Supplier.

## 6.5 Spend Management Tools

Suppliers must provide Spend Management Tools.

6.5.1 A Supplier must take the following actions to enable this outcome:

- (a) **Description of tools:** provide a comprehensive description of its Spend Management Tools in a readily accessible position on its website;
- (b) **Delay of unbilled usage information:** in the description of Spend Management Tools referred to in clause 6.5.1(a) above, inform Customers of the approximate delay of any unbilled usage information provided including for the notifications referred to in clauses 6.5.2(a), 6.5.2(b) and 6.5.2(c);
- (c) **Limitation of unbilled usage information:** in the description of Spend Management Tools referred to in clause 6.5.1(a) above, inform Customers of any usage types that may not be included in the unbilled usage information provided (such as usage incurred outside Australia, premium service and other third party charges, etc.). This must include details of usage types not included in the usage notifications referred to in clauses 6.5.2(d), 6.5.2(e) and 6.5.2(f); and
- (d) **Tools for Customers without internet access:** ensure that Customers who obtain services other than internet services from the Supplier have access to at least one Spend Management Tool which is not dependent on the Customer having internet access.

6.5.2 **Usage Notifications:** For each Residential Customer who receives either an Included Value Plan or a Post-Paid Service for a broadband plan with an included data allowance from a Supplier:

- (a) where there is no Hard Cap (in relation to the allowance for calls/SMS), Shaping (data allowance) and/or equivalent measure that applies to the plan,
- (b) the usage type in question under the plan is not unlimited, and
- (c) in relation to Included Value Plans, where such plans were launched by the Supplier after 1 March 2012,



then a Supplier must provide an electronic notification to that Post-Paid Service no later than 48 hours after the Customer has reached the following point each month:

- (d) 50% of the expenditure and/or the data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first);
- (e) 85% of the expenditure and/or the data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first);
- (f) 100% of the expenditure and/or the data allowance which forms part of the included value in their plan (and if only one notification is sent by the Supplier, then whichever threshold occurs first).

and the Supplier must also inform the Residential Customer at the time of sending the 100% notification of the following information, (either as part of the notification, or via an included link in the notification, or separate to the notification):

- (g) the Charges applying once 100% of the included value or data allowance has been used;
- (h) that the information in the above notification may be up to 48 hours old; and
- (i) that the notification does not include calls or SMS to overseas or usage outside Australia.
- (j) **Platform-based notifications:** send the above usage notifications:
  - (i) via SMS or email for national voice calls and national SMS usage on Included Value Plans;
  - (ii) via SMS or email for national data usage on Included Value Plans; and
  - (iii) via email for national data usage on internet plans;

unless the Residential Customer chooses a different option that the Supplier has made available to receive these notifications.

**6.5.3 Customer options:** In respect of the notifications specified in clause 6.5.2, a Supplier may at its discretion make available and allow its Residential Customers the choice of:

- (a) not receiving all or some of the notifications;
- (b) receiving more notifications;
- (c) receiving notifications at different usage points; and/or
- (d) receiving usage notifications via a different method,

provided that the Supplier must:

- (e) where a Customer has made a choice, make a record of that Residential Customer's choice from time to time under this clause 6.5.3 and retain the records for the duration of the relevant Customer Contract; and
- (f) not engage in practices that would encourage its Residential Customers to opt out of receiving all or some of the notifications specified in clause 6.5.2.
- (g) **Scope:** For avoidance of doubt, the mandatory usage notifications referred to in clause 6.5.2 and 6.5.3:
  - (i) only apply to national calls, SMS and data usage in Australia and do not cover any usage whilst overseas or calls or SMS sent to overseas; and
  - (ii) must be provided by Suppliers free of Charge.

**6.5.4 Other Spend Management Tools:** Suppliers must offer at least one additional Spend Management Tool to their Customers.

Suppliers must take the following actions to enable this outcome:

- (a) While features of Suppliers' Spend Management Tools will vary between Suppliers, in addition to the required usage notifications referred to in clause 6.5.2, a Supplier must also make available to Customers at least one of the following:
  - (i) the ability for Customers to access usage information that is near to real-time information e.g. ideally no older than 48 hours;
  - (ii) the ability for Customers to choose a product that features either cessation of a Telecommunications Service or of an aspect of a Telecommunications Service within an advised timeframe, or another form of control that limits use of the Telecommunications Service in such a way as to stop charges for that Telecommunications Service exceeding an agreed spend limit within the relevant Billing Period;
  - (iii) call barring or Restrictions on certain Telecommunications Services (e.g. for more expensive Telecommunications Services);
  - (iv) providing usage charge advice before or during the use of a high value Telecommunications Service;

- (v) prepaid services (except those with a balance triggered automatic top up that has no limitations set on the automatic top up), which would not be deemed to meet the requirements of acting as a Spend Management Tool);
- (vi) Hard Caps;
- (vii) reducing broadband internet download speed when a usage limit is reached.

or any other Spend Management Tool the Supplier may choose to offer.

## 6.6 Access to information about payment and debt collection processes

Suppliers must, at no cost, provide Customers with timely access to such information as is necessary to allow a Customer to be informed of a Supplier's payment and debt collection processes.

6.6.1 A Supplier must take the following actions to enable this outcome:

- (a) **Information about payment difficulties:** provide timely access to and information regarding, processes to assist Customers who are experiencing difficulties paying their Bills; and
- (b) **Bill payment information:** at the time of, or before, the issue to the Customer of the first Bill by the Supplier, advise Customers in general terms of:
  - (i) the time they have to pay for Telecommunications Services;
  - (ii) their obligation to pay Bills for Telecommunications Services by the due date;
  - (iii) any processes the Supplier has for:
    - A. interim Billing or changes in the Billing Period;
    - B. following up overdue Bills;
    - C. assisting Customers who experience difficulties paying their Bills, including where to access the Supplier's Financial Hardship policy as referred to in clause 6.12.
  - (iv) the effect of part payment of a Bill and any method used by the Supplier for allocating amounts received; and
  - (v) the fact that non-payment or repeated late payment of Bills may have an effect on the provision of current or future Telecommunications Services to the Customer.

## 6.7 Notice to restrict, suspend or disconnect a service

Suppliers must ensure Customers are given adequate notice regarding a decision by the Supplier to Restrict, Suspend or disconnect their Telecommunications Service for credit and/or debt management reasons.

6.7.1 A Supplier must take the following actions to enable this outcome:

- (a) **Pre-conditions for disconnection, suspension or restriction:** only disconnect, Suspend or Restrict a Telecommunications Service for credit and/or debt management reasons, without first informing the Customer, if:
  - (i) the Supplier assesses that the Customer or the account status presents an unacceptably high credit risk to the Supplier;
  - (ii) the Supplier reasonably suspects fraud or attempted fraud; or
  - (iii) the Customer has nominated to the Supplier a Restriction Point and the Customer has reached that Restriction Point;
- (b) **Notice of disconnection, suspension or restriction:** unless subclause 6.7.1(a) applies, give the Customer at least 5 Working Days' notice prior to the Suspension, disconnection or Restriction of the Telecommunications Service, including an indication of the earliest date the disconnection, Suspension or Restriction could occur and the date of issue of correspondence if they are informed in writing. When notifying a Customer about a Supplier's Restriction, Suspension or disconnection of the Customer's Telecommunications Service, the Supplier must:
  - (i) make reasonable attempts to ascertain whether the Customer has understood any oral advice given;
  - (ii) ensure that attempts to inform are directed to the Customer;
  - (iii) ensure that the primary method of notification used is a format reasonably acceptable to the Customer based on their usage history; and
  - (iv) advise the Customer of the Supplier's Financial Hardship Policy in case they need such assistance; and
  - (v) advise the Customer of any impacts the Restriction, Suspension or Disconnection may have on other services the Customer has with the Supplier.
- (c) **Ongoing Charges:** advise the Customer of any on-going or additional Charges that will still apply whilst the Telecommunications Service is Restricted or Suspended;

- (d) **Disconnection notice:** send a separate written disconnection notice, not just a Bill, to the Customer and any relevant Guarantor prior to disconnecting the Telecommunications Service. The notice of disconnection must inform the Customer and Guarantor that, after disconnection has occurred:
- (i) the Customer's Telecommunications Service plan and/or Telecommunications Product (and/or, where applicable, telephone number), may no longer be available;
  - (ii) information about the consequences of non-payment, including that the Customer's default leading to the disconnection may be disclosed to a Credit Reporting Agency and/or collection agency and/or debt buyer and may be added to the Customer's credit file with a Credit Reporting Agency;
  - (iii) the debt may be passed to a collection agency and/or debt buyer;
  - (iv) legal action may be taken to recover the unpaid debt
- and of how the Customer may access the Supplier's Financial Hardship policy.

## 6.8 Fair Credit Management process

Suppliers must ensure that Customers and former Customers are treated with fairness in relation to the Credit Management process.

6.8.1 A Supplier must take the following actions to enable this outcome:

- (a) **Review:** following a Customer's request, review any decision to Restrict, Suspend or disconnect the Telecommunications Service and inform the Customer of the outcome of that review. If the review is not undertaken and completed by the Supplier at the time of the Customer's request, the Supplier must notify the Customer at that time when the review will be completed;
- (b) **Advise of dispute resolution options:** following a review as referred to in clause 6.8.1(a) above, if the Customer remains dissatisfied with the outcome of the review, advise the Customer of how they can make a Complaint;
- (c) **Supplier's mistake:** not impose a reconnection Charge following Suspension or disconnection if it resulted from the Supplier's mistake;
- (d) **Credit Management Charges:** not impose Credit Management Charges unless the Charges are a reimbursement of the Suppliers costs and the Customer or former Customer is advised of its amount or method of calculation;
- (e) **Issues following sale of debt:** Resolve any Billing Complaint or Telecommunications Service issues that arise after a debt has been sold or assigned to a third party;
- (f) **Default listed in error:** where a Supplier becomes aware that a Customer or former Customer has been default listed in error, inform the Credit Reporting Agency within 1 Working Day;
- (g) **Updates to Credit Reporting Agencies:** ensure that it has a process for updating its Customers' or former Customers' credit information with a Credit Reporting Agency as soon as practicable, unless the Privacy Act or its associated codes or regulations specify a timeframe for such notification, in which case that requirement must be followed;
- (h) **Failure to pay through no fault of Customer:** where a Customer or former Customer can demonstrate that they have taken all reasonable steps to pay a known due debt but the Bill has not been paid due to the fault of a third party or the Supplier, the Supplier must ensure that:
  - (i) if the Customer or former Customer has been default listed with a Credit Reporting Agency as a result, it notifies the Credit Reporting Agency within 1 Working Day;
  - (ii) no additional Credit Management Charges apply; and
  - (iii) no other credit related disadvantages arise for the Customer or former Customer.

## 6.9 Credit management for disputed amounts

Suppliers must ensure that Credit Management action and reporting is not undertaken in relation to a specified disputed amount that is the subject of an unresolved Complaint.

6.9.1 A Supplier must take the following actions to enable this outcome:

- (a) **amounts that are the subject of an open Complaint:** not take Credit Management action in relation to a specified disputed amount that is the subject of an unresolved Complaint in circumstances where the Supplier is aware that the dispute has not been Resolved to the satisfaction of the Consumer and is being investigated by the Supplier, the TIO or a relevant recognised third party;
- (b) **Timing of commencement of Credit Management action:** advise the Customer or former Customer when the Supplier will commence any Credit Management action after that dispute has been Resolved;
- (c) **Separation of debts:** take steps to ensure that debts sold or assigned to third parties or listed with a Credit Reporting

Agency do not include any specified disputed amounts that are the subject of an unresolved Complaint; and

- (d) **Amounts not the subject of unresolved Complaint:** where part of an amount on a Bill is the subject of an unresolved Complaint, advise the Customer or former Customer that Credit Management action may be undertaken in relation to those amounts which are not the subject of that unresolved Complaint.

## 6.10 Debt collection

Suppliers must ensure that their arrangements with debt collection agents include provisions which comply with the requirements of legislation, and debt collection codes and guidelines as determined from time to time by recognised bodies such as the ACCC and ASIC.

6.10.1 A Supplier must take the following actions to enable this outcome:

- (a) **Pre-condition for referral to debt collection:** ensure that Credit Management is carried out in accordance with the requirements of this chapter prior to referring the Customer's or former Customer's debt to a debt collection agency, listing a Customer or former Customer default with a Credit Reporting Agency, or selling the debt;
- (b) **Collection activities:** while ever it is in force, adopt best practice as set out in the ACCC guideline "*Debt collection guideline for collectors and creditors: joint publication by ACCC and ASIC*" issued in October 2005 when collecting amounts due;
- (c) **Disadvantaged and vulnerable Customers:** in their collection activities, while ever it is in force, adopt best practice as set out in the ACCC Compliance Guide "*Don't take advantage of disadvantage: a compliance guide for businesses dealing with disadvantaged or vulnerable consumers when collecting amounts due*" issued on 15 August 2005;
- (d) **Internal dispute resolution:** require that all of the Supplier's debt collection activities have an internal dispute resolution process;
- (e) Debt buyers: only sell a debt to a debt buyer if that debt buyer is a member of an ASIC approved external dispute resolution scheme; and
- (f) Notification of sale of debt: notify the Customer or former Customer in writing within 25 Working Days that the debt has been sold, or arrange for the purchaser of the debt to do so.

## 6.11 Financial Hardship policy

Suppliers must have a Financial Hardship policy and ensure that it is easy for Consumers to find and access.

6.11.1 A Supplier must take the following actions to enable this outcome:

- (a) **Accessibility of Financial Hardship policy:** ensure that its Financial Hardship policy is readily accessible on the Supplier's website;
- (b) **Contact details:** provide, on the Supplier's website, relevant contact details of staff with whom the Customer or former Customer may discuss the Financial Hardship policy;
- (c) **Community financial counsellor:** provide, on the Supplier's website, details of a source at which the Consumer or former Customer can locate contact details of community financial counsellors or consumer advocates who deal with financial difficulty matters;
- (d) **Summarising the Financial Hardship policy:** provide a summary to a Customer, or former Customer, (either in writing or verbally) of how the Supplier's Financial Hardship policy may assist them:
- (i) upon request;
  - (ii) when the Customer, or former Customer indicates to the Supplier that they are experiencing Financial Hardship; or
  - (iii) if the Supplier considers the Customer, or former Customer, may be eligible for the policy.
- (e) **Summary of Financial Hardship policy:** provide at least the following information as part of the Financial Hardship policy summary;
- (i) options available to the Customer, or former Customer, to assist with their management of Financial Hardship as it relates to their use of Telecommunications Services (e.g. spend controls, Restriction of service);
  - (ii) available times for contact with the Supplier regarding the Financial Hardship policy;
  - (iii) information that the Supplier might require a Customer, or former Customer, to provide to make an assessment of Financial Hardship under the Financial Hardship policy, e.g. income details, details of the Telecommunications Service (telephone number, broadband) and most recent contact details; and
  - (iv) generally how the Supplier makes an assessment of Financial Hardship under the Financial Hardship policy;
- (f) **Reminder notice:** where issuing written reminder notices, advise the Customer, or former Customer, of the Supplier's

Financial Hardship policy and how to obtain more details on it; and

- (g) **Training of staff:** ensure that the Supplier's staff who are directly involved in applying the Financial Hardship policy are appropriately trained.

## 6.12 Fair and timely Financial Hardship assessment

Suppliers must assess the Customer's or former Customer's eligibility for assistance under the Supplier's Financial Hardship policy in a fair and timely manner.

6.12.1 A Supplier must take the following actions to enable this outcome:

- (a) **Information required:** inform the Customer, or former Customer, of the information which the Supplier requires to assess their eligibility for assistance under the Financial Hardship policy and inform them that the assessment may be based on the information provided by them or other information available to the Supplier;
- (b) **Provision of information for assessment:** inform the Customer, or former Customer:
- (i) that, if the Supplier requires supporting documentation from a Customer, or former Customer, to assess their eligibility for assistance under the Financial Hardship policy, the Customer, or former Customer, must send the documentation to a specific contact point. The Supplier must accept such documentation via:
    - A. a postal address;
    - B. facsimile; or
    - C. email;and provide the Customer, or former Customer, with details for those contact points as preferred by the Customer, or former Customer.
  - (ii) if the information provided by the Customer, or former Customer, is not sufficient to make an assessment of eligibility under the Financial Hardship policy and of what other information is needed to make such an assessment;
  - (iii) that, where the requested information is not provided, an assessment may not be made;
  - (iv) how long it will take to make an assessment for assistance; and
  - (v) that the provision of false or incomplete information may result in the Supplier cancelling any hardship arrangements;
- (c) **Understanding:** in relation to the provision of information referred to at clauses 6.12.1(a) and 6.12.1(b), the Supplier must make attempts to ascertain whether the Customer, or former Customer, has understood the information provided by and contained in requests being made by the Supplier;
- (d) **Timing of assessment:** ensure that an assessment regarding eligibility for assistance under a Financial Hardship policy is made within 7 Working Days after receipt of the final information from the Customer, or former Customer,;
- (e) **Failure to meet criteria:** inform the Customer, or former Customer, immediately if assistance will not be given where it is clear to the Supplier that the Customer, or former Customer, does not meet assistance criteria;
- (f) **Flexible repayment options;** where possible provide flexible repayment options to meet the Customer's individual circumstances;
- (g) **No charge for assessment:** not charge for an assessment of, or subsequently for administration of, an arrangement under a Financial Hardship policy; and
- (h) **Changed circumstances:** review the arrangements if the Customer notifies the Supplier that the Customer, or former Customer's circumstances have changed.

## 6.13 Communication of Financial Hardship arrangements

Suppliers must communicate to a Customer all necessary details of a Customer's arrangements under a Financial Hardship policy.

6.13.1 A Supplier must take the following actions to enable this outcome:

- (a) **Arrangement details:** supply to a Customer, or former Customer's details of the Financial Hardship arrangement on request in writing and through any other means agreed between the Customer, or former Customer and the Supplier;
- (b) **Rights and obligations:** inform the Customer, or former Customer of their rights and obligations under the Financial Hardship arrangement, including without limitation that they have an obligation to promptly advise a Supplier if their circumstances change during the term of the Financial Hardship arrangement;
- (c) **Duration of arrangement:** advise the Customer, or former Customer of the duration of the Financial Hardship arrangement or of the review date of the arrangement;

- (d) **Commencement of arrangement:** ensure that the Financial Hardship arrangement will not commence unless the Customer, or former Customer, indicates their acceptance; and
- (e) **Timing of communication:** advise the Customer, or former Customer of the matters referred to in clause 6.13.1(a) to (c) within 7 Working Days of the Supplier and the Customer, or former Customer agreeing to the specific Financial Hardship arrangements.

#### 6.14 Credit Management in Financial Hardship

Suppliers must suspend Credit Management actions whilst an arrangement under a Financial Hardship policy being discussed or is in place unless the Customer or former Customer agrees otherwise or there is a breach by the Customer, or former Customer, of that arrangement.

6.14.1 A Supplier must take the following actions to enable this outcome:

- (a) **Suspension of Credit Management action:** suspend Credit Management action whilst an arrangement under a Financial Hardship policy is being discussed or is in place unless:
  - (i) the Customer, or former Customer, does not meet their obligations under the arrangement. In that event, if the Customer, or former Customer, does not contact the Supplier to discuss a new arrangement, the Supplier must take reasonable steps to contact the Customer, or former Customer, before taking Credit Management action;
  - (ii) the Supplier decides it is reasonable to do so given the circumstances, e.g. to prevent a further increase in the debt owed; or
  - (iii) the Customer, or former Customer, agrees that the arrangement is unable to be completed;
- (b) **Restarting Credit Management action:** restart Credit Management action when one or more of the above conditions are met (as applicable to the Customer's, or former Customer's individual situation) and the Supplier is unable, using reasonable steps, to make contact with the Customer, or former Customer; and
- (c) **Prohibition on certain debt sale:** not sell the debt while an arrangement under a Financial Hardship policy is in place.

## 7 CHANGING SUPPLIERS

### Summary

*This chapter sets out Consumer rights and Supplier obligations when Consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier. It also sets out Suppliers' obligations to Customers when a transfer of a Customer's Telecommunications Service arises as a result of the sale of a Supplier's business or a corporate reorganisation of the Supplier.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

#### 7.1 New Relationship

A Gaining Supplier must ensure that, when effecting a Transfer, it complies with all requirements of other chapters of this Code which apply to the establishment of a new relationship with the Consumer.

#### 7.2 Obtaining Consent

A Gaining Supplier must use reasonable endeavours to ensure that a Consumer is only the subject of a Transfer by a Gaining Supplier if the Consumer has provided their consent to such Transfer.

7.2.1 A Gaining Supplier must take the following steps to enable this outcome:

- (a) **Consent:** the Gaining Supplier must ensure that the Consumer provides consent to the Transfer; and
- (b) **Authorisation:** the Gaining Supplier must use its reasonable endeavours to ensure that person requesting the Transfer is the Rights Of Use Holder of the Telecommunications Service to be transferred, or is authorised to do so.

#### 7.3 What Constitutes Consent

A Gaining Supplier must take all reasonable steps to ensure that the consent obtained from a Consumer to undertake a Transfer is informed consent.

7.3.1 A Gaining Supplier must, before initiating a Transfer, inform the Consumer of the following and must not effect the Transfer until the Consumer subsequently agrees to the Transfer. The Gaining Supplier must inform the Consumer:

- (a) **New Customer Contract:** that the Consumer is entering into a new Customer Contract by agreeing to the Transfer;
- (b) **Details of services:** of the details of the Consumer's Telecommunications Service being transferred;
- (c) **Identity of Gaining Supplier:** of the identity of the Gaining Supplier;
- (d) **Service interruption:** whether there will be an interruption to the Telecommunications Service as a result of the Transfer process;
- (e) **Equipment compatibility:** as to what type of equipment would be compatible with the Gaining Supplier's Telecommunications Service;
- (f) **Equipment terms and conditions:** of the relevant terms and conditions relating to any equipment purchased from the Gaining Supplier for use with the Telecommunications Service being Transferred; and
- (g) **Penalties and fees:** that the Consumer may have to pay a penalty or cancellation fee to their existing Supplier, and that there may be other consequences if they are ending their existing Customer Contract with another Supplier early.

#### 7.4 Information to be provided regarding a Transfer

A Gaining Supplier must ensure that a Consumer receives information about:

- (a) the Gaining Supplier;
- (b) the Transfer process; and
- (c) lodging a Complaint about the Transfer process if this process is different to the Gaining Supplier's normal Complaint handling process;

at the time at which a Transfer is proposed by or on behalf of the Gaining Supplier or is requested by the Consumer.

7.4.1 A Gaining Supplier must take the following steps to enable this outcome at the time at which a Transfer is proposed by or on behalf of the Gaining Supplier or is requested by the Consumer.

- (a) **Minimum information:** make available at least the following information to the Consumer:

- (i) the contact details of the Gaining Supplier;
  - (ii) that the Gaining Supplier will use reasonable efforts to notify the Consumer of the completion of the Transfer on the day it occurs or, if completion of the Transfer relies on a third party, on the day the Gaining Supplier is advised that completion has occurred;
  - (iii) the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the Transfer if this process is different to the Gaining Supplier's normal Complaint handling process; and
  - (iv) the mechanism by which the Consumer can ascertain that the Transfer has occurred;
- (b) **Check accuracy:** check the accuracy of the Transfer details with the Consumer including at least:
- (i) the name and address of the Consumer;
  - (ii) the details of the Telecommunications Service and number, if applicable to be Transferred;
  - (iii) the identity of the Gaining Supplier; and
  - (iv) the fact that the Telecommunications Service will be Transferred to the Gaining Supplier; and
- (c) provide the Consumer with the terms and conditions of the Transfer and a summary of the Transfer details.

## 7.5 Transfer Validation

A Gaining Supplier must advise the Consumer that the offer to Transfer the Telecommunications Service is subject to validating that it can be Transferred.

A Gaining Supplier must take the following action to enable this outcome:

- 7.5.1 The Gaining Supplier must undertake activity to validate that the Telecommunications Service can be Transferred.
- 7.5.2 Upon validating that the Telecommunications Service can be Transferred the Gaining Supplier must undertake the Transfer as previously agreed with the Consumer.
- 7.5.3 Where a Telecommunications Service cannot be Transferred the Supplier must notify the Consumer and advise what this means for the Consumer, including, where applicable, what options are available to the Consumer.

## 7.6 Consumers to be kept informed

During the Transfer process, the Gaining Supplier must keep the Consumer informed of any changes to the Transfer process which may affect the Consumer, or changes to the estimated time by which the Transfer will be completed.

- 7.6.1 The Gaining Supplier must take the following actions during the Transfer process to enable this outcome:
  - (a) **Transfer timing:** give the Consumer an indication of when the Transfer will take place including any applicable cooling off period, or other activity that may delay the commencement of the Transfer; and
  - (b) **Process changes:** keep the Consumer informed in a timely manner of any changes to the Transfer process which may affect the Consumer, including details of any process delays and changes to appointment times; and
  - (c) **Time of completion:** keep the Consumer informed in a timely manner of any changes to the estimated time by which the Transfer will be completed.

## 7.7 Notification of completion of a Transfer

A Gaining Supplier must notify the Customer when a Transfer is complete.

- 7.7.1 The Gaining Supplier must take the following actions to enable this outcome:
  - (a) **Same day notification:** use reasonable efforts to notify the Customer of the completion of the Transfer on the day it occurs or, if completion of the Transfer relies on a third party, on the day the Gaining Supplier is advised that completion has occurred; or
  - (b) **Subsequent notification:** if the Gaining Supplier, having made reasonable efforts, is unable to provide notification at the time referred to above, notify the Customer of the completion of the Transfer within 5 Working Days of the time referred to above.

## 7.8 Keeping Records regarding Transfers

A Gaining Supplier must keep records to enable a Customer to verify that the Transfer process was undertaken in accordance with this chapter.

- 7.8.1 The Gaining Supplier must create, and retain for a minimum of 2 years after the completion of the Transfer or as required by law, auditable records establishing that:



- (a) **Authorisation:** the person who authorised the Transfer advised the Gaining Supplier that they were authorised to do so; and
- (b) **Compliance with requirements:** the Transfer was undertaken and advised to the Customer in accordance with this chapter.

## 7.9 Accessing Records regarding Transfers

A Gaining Supplier must, at the request of the Consumer, provide the Consumer with access to records maintained by the Gaining Supplier regarding a Transfer for a minimum period of 2 years following completion of the Transfer.

7.9.1 The Gaining Supplier must take the following actions to enable this outcome:

- (a) **Access to records:** for a minimum of 2 years after the completion of the Transfer, provide the Consumer with access to the records maintained by the Gaining Supplier regarding the Transfer, including any voice recording of their Transfer request;
- (b) **Form of access:** If the Consumer requests, for a minimum of 2 years after the completion of the Transfer a Gaining Supplier must provide to the Consumer (or, with the Consumer's consent, to a nominated party) either electronic or written copies of records relating to that Consumer's Transfer in a format that is clear, unambiguous and easily understood by Consumers generally.

## 7.10 Verification of Transfers

A Gaining Supplier is responsible for the acts or omissions of its Sales Representatives engaged in undertaking a Transfer.

7.10.1 A Gaining Supplier must ensure that it uses appropriate procedures for:

- (a) **Verification:** the Verification of a Transfer, or an appropriate sample of Transfers, in all selling channels where the Gaining Supplier or its Sales Representative initiates the contact with the Consumer which leads to a Transfer request; and
- (b) **Identity of Sales Representative:** identifying the Sales Representative responsible for effecting a Transfer.

## 7.11 Sale of Supplier's Business or Supplier Reorganisation

If a Supplier proposes to Transfer a Customer's Telecommunications Service as the result of a sale of the Supplier's business or a Corporate Reorganisation, the Supplier must notify the Customer in writing prior to that Transfer being initiated. The Supplier must ensure that that Customer may terminate its Customer Contract for that Telecommunications Service within the period specified in this clause 7.11.

7.11.1 A Supplier must take the following actions to enable this outcome:

- (a) **Notification of Transfer:** before the Transfer is initiated, notify the Customer in the manner in which the Supplier normally communicates with the Customer:
  - (i) that the Customer's Telecommunications Service will be Transferred to the Gaining Supplier as a result of a sale of the Supplier's business or a Corporate Reorganisation;
  - (ii) of any details then known to the Supplier regarding how the Customer's Telecommunications Service may be the subject of a materially adverse effect regarding its features, characteristics or pricing as a result of the Transfer;
  - (iii) of any impact this change has on the Customer's use of existing equipment;
  - (iv) of the contact details of the Gaining Supplier;
  - (v) of the proposed date by which the Transfer will be completed;
  - (vi) that the Supplier will use reasonable efforts to notify the Customer of the completion of the Transfer on the day it occurs;
  - (vii) of the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the Transfer; and
  - (viii) of the applicable termination rights for that Customer that may result from the Transfer, including the applicable notice period and contract termination charges for that Customer.
- (b) **Termination by a Customer:** ensure that, if so notified by the Customer who is exercising the applicable termination right, if any, as a result of a Transfer, the Supplier terminates the relevant Customer Contract relating to the Telecommunications Service within 5 Working Days of receiving the Customer's notice.

7.11.2 Provided that a Supplier complies with the terms of this clause 7.11 in circumstances where a Transfer of a Customer's Telecommunications Service arises as a result of a sale of the Supplier's business or a Corporate Reorganisation, the Supplier is not required to comply with the other provisions of this Chapter in relation to such a Transfer except for clauses 7.6, 7.7 and 7.9.

## 7.12 Change of Wholesale Provider

If a Supplier proposes to move their Customers to an alternate wholesale network provider, the Supplier must notify all Customers being moved in the manner in which the Supplier normally communicates with them prior to that change being initiated.

7.12.1 A Supplier must take the following actions to enable this outcome:

- (a) **Notification of Transfer:** before the Transfer is initiated, notify all its Customers in the manner in which the Supplier normally communicates with them:
- (i) that the Customer's Telecommunications Service will be moved to the new network;
  - (ii) of any details then known to the Supplier regarding how the Customer's Telecommunications Service may be the subject of a materially adverse effect regarding its features, characteristics or pricing as a result of the Transfer;
  - (iii) of any impact this change has on the Customer's use of existing equipment;
  - (iv) of any change in the contact details of the Supplier;
  - (v) of the proposed date by which the move will be completed;
  - (vi) that the Supplier will use reasonable efforts to notify the Customer of the completion of the move on the day it occurs;
  - (vii) of the appropriate contact details for lodging an inquiry or a Complaint about any aspect of the change of wholesale supplier; and
  - (viii) of the applicable termination rights for that Customer that may result from the move, including the applicable notice period and contract termination charges for that Customer.
- (b) **Termination by a Customer:** ensure that, if so notified by the Customer who is exercising the applicable termination right, if any, as a result of a Transfer, the Supplier terminates the relevant Customer Contract relating to the Telecommunications Service within 5 Working Days of receiving the Customer's notice.

7.12.2 Provided that a Supplier complies with the terms of this clause 7.12 in circumstances of a change of a wholesale network provider, the Supplier is not required to comply with the other provisions of this Chapter in relation to such a move except for clauses 7.6, 7.7 and 7.9.

7.12.3 Suppliers must not take any action that affects Telecommunications Services for which they are not the Supplier of that Telecommunications Service.

## 8 COMPLAINT HANDLING

### Summary

*This chapter sets out what Consumers and former Customers are entitled to from Suppliers, and what Suppliers must do, in relation to the handling and Resolution of Complaints in connection with the supply of Telecommunications Products. This chapter sets out the requirements for managing, monitoring, analysing, recording and reporting Complaints.*

*This chapter specifically sets out the obligations for Suppliers to advise Consumers and former Customers, in certain circumstances, of their options for external dispute resolution. The TIO is one such option. The TIO is “an independent alternative dispute resolution scheme available free of charges to small business and residential Consumers in Australia”. However the Supplier must be given a reasonable opportunity to settle a complaint with a Consumer before the TIO will become involved.*

*The requirements set out in this chapter have been developed having regard to the Australian Standard – Complaint Handling AS ISO 10002-2006.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

This chapter does not apply to:

- (a) Complaints or specific Consumer issues that are subject of legal action;
- (b) Complaints made in respect of, or on behalf of Consumers by entities levying fees or charges for their services, other than legal practitioners; and
- (c) Complaints made under the *Mobile Phone Base Station Deployment Code (C564:2011)*.

The processes specified in this chapter apply to all other Complaints including TIO Complaints, received by a Supplier after the commencement of this Code. However the timeframes specified in this Chapter do not apply to TIO Complaints. The TIO sets its own timeframes and they must be complied with in the case of TIO Complaints.

### 8.1 Provision of a Complaint handling process that is accessible, transparent and free of charge

Suppliers must provide Consumers with a Complaint handling process that:

- (a) is accessible, transparent and easily understood by Consumers and former Customers;
- (b) is free of charge, other than as expressly provided for in this chapter; and
- (c) provides for the courteous, timely and fair Resolution of Complaints.

8.1.1 A Supplier must take the following actions to enable this outcome:

(a) **Implement a process:** implement, operate and comply with a Complaint handling process that:

(i) is Consumer focused and easy to use;

(ii) is free of charge, other than for:

A. the call costs referred to in clause 8.1.1(a)(vii)A;

B. the provision of information where:

- a Consumer or former Customer requests access to information held by the Supplier about the Consumer or former Customer which was collected by the Supplier more than 2 years prior to the date of the request, unless the Complaint relates to an interference with the privacy of the Consumer under the Privacy Act by the Supplier; or
- the free provision of the information in the form or quantities requested is inconsistent with the Supplier's Standard Form Customer Contract or the relevant summary of the Offer referred to in clause 4.1.2, unless the Complaint relates to an interference with the privacy of the Consumer under the Privacy Act by the Supplier;

in which circumstances, the Supplier may levy a charge to recover its costs. The Supplier must inform the Consumer or former Customer of the proposed charge and notify the Consumer or former Customer of the option to pursue the Complaint and pay the charge or to discontinue the Complaint. The Supplier must tell the Consumer or former Customer about the options for external dispute resolution before levying any Charge under this paragraph.

(iii) is approved by, and provides that, the Chief Executive Officer (or equivalent) of the Supplier is responsible for ensuring its implementation, operation and compliance in accordance with the requirements of this chapter;

(iv) is under the direction of a senior manager who is responsible for maintaining its effective and efficient operation in

- accordance with the requirements of this chapter;
- (v) clearly states that Consumers or former Customers have a right to make a Complaint and that a proposed Resolution must be accepted by a Consumer or former Customer before a Supplier is required to implement it;
  - (vi) specifies the response times for individual steps in the management of Complaints;
  - (vii) is accessible including:
    - A. providing a number which is free, local or at low cost when accessed from the service provided by the Supplier;
    - B. setting out how, when and where a Consumer or former Customer can make and monitor the progress of a Complaint;
    - C. allowing a Complaint to be made by letter, telephone, fax, online or email;
    - D. where a Supplier has retail operations, allowing a Complaint to be made in person in store;
    - E. providing assistance to a Consumer or former Customer to formulate, lodge and progress a Complaint including to Consumers or former Customers with disabilities, Consumers or former Customers suffering hardship and Consumers or former Customers from non-English speaking backgrounds;
    - F. allowing Consumers or former Customer to use an Authorised Representative and/or an Advocate to make a Complaint; and
    - G. setting out the circumstances in which a Complaint will be treated as urgent and how the management of Urgent Complaints differs from other Complaints;
  - (viii) requires all Complaints to be:
    - A. Resolved in an objective, efficient and fair manner; and
    - B. escalated and managed under the Supplier's internal escalation process if requested by the Consumer or a former Customer.
  - (ix) provides for investigation of Complaints to an extent commensurate with the seriousness of the Complaint, while acknowledging that Suppliers may choose to Resolve a Complaint commercially to the satisfaction of the Consumer or former Customer without an investigation;
  - (x) is transparent, including:
    - A. providing an internal prioritisation process which is clear and accessible to Consumers or former Customers;
    - B. providing an internal escalation process which is clear and accessible to Consumers or former Customers;
    - C. providing clear and accessible information about options for external dispute resolution including the TIO;
    - D. requiring Consumers or former Customers to be advised of the Resolution of their Complaint; and
    - E. prohibiting a Supplier from cancelling a Consumer's Telecommunications Service only because, being unable to Resolve a Complaint with their Supplier, that Consumer pursued their options for external dispute resolution;
  - (xi) meets the minimum performance standards of Complaint management, Complaint analysis, resourcing and record keeping set out in clauses 8.2 to 8.5 below;
- (b) **Document the process:** document their Complaint handling process and make it available to staff, Consumers, former Customers and other stakeholders in a summary form that is:
- (i) concise but as a minimum sets out the matters specified in clause 8.1.1(a);
  - (ii) easy to understand;
  - (iii) free of charge;
  - (iv) available in hard copy free of charge upon receipt of a request for a single copy from Consumers or former Customers who do not have easy access to the internet;
  - (v) available in soft copy, which is in a readily accessible position on the Supplier's website; and
  - (vi) in appropriate different formats, to ensure that the Supplier meets the commitment to servicing the needs of Consumers or former Customers with disabilities and Consumers or former Customers from non-English speaking backgrounds in accordance with this chapter;
- (c) **Ensure awareness and visibility:** ensure their staff who have direct contact with Consumers or former Customers, including personnel working for contractors, understand the Supplier's Complaint handling process, their responsibilities under it and are able to identify and record a Complaint.

(d) **Monitor and report:** formally monitor and report

(i) at least annually to the Chief Executive Officer (or equivalent) regarding their compliance with their Complaint handling process and opportunities for improvement; and

(ii) on a quarterly basis to the Supplier's senior management regarding the matters set out in this chapter.

## 8.2 Complaint management

Consumers or former Customers who make a Complaint to a Supplier will be treated with fairness and courtesy, and their Complaint will be dealt with objectively and efficiently by the Supplier.

8.2.1 A Supplier must take the following actions to enable this outcome:

(a) **Demonstrate fairness, courtesy, objectivity and efficiency:** Suppliers must demonstrate fairness and courtesy, objectivity, and efficiency by:

(i) Acknowledging a Complaint:

A. immediately where the Complaint is made in person or by telephone;

B. within 2 Working Days of receipt where the Complaint is made by:

- email;
- being logged via the Supplier's website or another website endorsed by the Supplier for that purpose;
- post; and
- telephone and a message is recorded without direct contact with a staff member of the Supplier.

(ii) where possible, seeking to Resolve a Complaint on first contact;

(iii) implementing a process for the identification and management of Urgent Complaints;

(iv) requiring the appropriate Resolution of Complaints including:

A. ensuring relevant staff are aware of the potential remedies available to Resolve a Complaint;

B. tailoring any remedy offered to address the root cause of the Complaint and to address the individual circumstances of the Consumer or former Customer where these have been advised to the Supplier;

C. where the Complaints are indicative of a wider problem or issue, addressing the root cause of the problem or issue; and

D. resolving Billing errors in current Bills;

(v) not taking Credit Management action in relation to a specified disputed amount that is the subject of an unresolved Complaint in circumstances where the Supplier is aware that the Complaint has not been Resolved to the satisfaction of the Consumer and is being investigated by the Supplier, the TIO or a relevant recognised third party;

(vi) delaying commencement of any legal proceedings while a Complaint is being handled internally and for 7 Working Days after a Consumer or former Customer is advised of the outcome of their Complaint;

(vii) advising the Consumer or former Customer of the proposed Resolution of their Complaint within 15 Working Days from the date the Complaint is received in accordance with clause 8.2.1 (a);

(viii) for Urgent Complaints, providing confirmation of the proposed Resolution of the urgent aspects of the Complaint and, if accepted by the Consumer, implementing the urgent aspects of the Resolution within 2 Working Days after the date the Complaint is received;

(ix) where a Supplier does not believe the Complaint can be Resolved in 15 Working Days (or within 2 Working Days for the urgent aspects of an Urgent Complaint) the Supplier must, advise the Consumer or former Customer before Working Day 15 (or Working Day 2 for Urgent Complaints), of:

A. the reasons for the delay;

B. the specific timeframe for completion of the Resolution; and

C. if the anticipated delay is a further 10 Working Days or more and is not the result of a declared mass service disruption, advising the Consumer or former Customer of their options for external dispute resolution including the TIO;

(x) advising Consumers or former Customers of any delays to promised timeframes;

(xi) providing a means for the Consumer or former Customer to monitor the Complaint's progress;

- (xii) advising Consumers or former Customers in everyday language of the Resolution of their Complaint, as soon as practicable after the Supplier completes its investigation of the Complaint;
  - (xiii) completing all necessary actions to deliver the Resolution offered within 10 Working Days of the Consumer's or former Customer's acceptance of that Resolution unless:
    - A. otherwise agreed with the Consumer or former Customer; or
    - B. the actions are contingent on actions by the Consumer or former Customer that have not been completed;
  - (xiv) only Closing a Complaint with the consent of the Consumer or former Customer or if clauses 8.2.1(c),(d) or (e) below have been complied with; and
  - (xv) where a Complaint is Closed with the consent of the Consumer or former Customer, at the Consumer's or former Customer's requests, providing a written confirmation of the Resolution of that Complaint to be sent the Consumer or former Customer within 5 Working Days.
- (b) **Respond to dissatisfaction with timeframes:** If a Consumer tells the Supplier that they are dissatisfied with the timeframes that apply to the management of a Complaint or seek to have a Complaint treated as an Urgent Complaint, the Supplier must tell the Consumer about the Supplier's internal prioritisation and internal escalation processes. If, after internal prioritisation and internal escalation the Consumer remains dissatisfied, the Supplier must tell the Consumer of the options for external dispute resolution, including the TIO.
- (c) **Respond to dissatisfaction with progress or outcome:** If a Consumer or former Customer tells the Supplier that they are dissatisfied with the progress or Resolution of a Complaint or asks about their options to pursue a Complaint further, the Supplier must tell them about:
- (i) the Supplier's internal escalation process; and
  - (ii) the options for external dispute resolution including the TIO.
- (d) **Address frivolous Complaints:** If, after careful consideration and appropriate internal escalation, a Supplier concludes that a Complaint is frivolous or vexatious and that it can do nothing more to assist the Consumer or former Customer or that, in view of the Consumer's or former Customer's behaviour, it chooses not to deal with the Consumer or former Customer any further, it must inform the Consumer or former Customer in writing of the reasons and tell them about the options for external dispute resolution including the TIO. A Supplier is not then required to accept any further Complaints from that Consumer or former Customer on the same or similar issues other than in the course of an external dispute resolution process.
- (e) **Attempt to make contact:** If a Supplier is unable to contact a Consumer or former Customer to discuss their Complaint, or to advise them of the proposed Resolution of their Complaint, the Supplier must write to the Consumer or former Customer at their last known address, state that they were unable to contact them, provide details of those contact attempts and provide an invitation to contact the Supplier to discuss the Complaint within a specific timeframe of no less than 10 Working Days.

### 8.3 Complaint analysis

Suppliers must implement processes and undertake analysis of their Complaint information to identify and prevent the recurrence of Complaints arising from systemic issues.

8.3.1 A Supplier must take the following actions to enable this outcome:

- (a) **Identification of problems:** Suppliers must implement processes, procedures or systems to identify and address recurring problems and systemic issues. Suppliers must:
  - (i) classify and analyse Complaints at least every 3 months to identify recurring problems and issues including areas of non-compliance with this Code;
  - (ii) monitor Complaints to identify emerging issues requiring specific attention and address those as soon as practicable; and
  - (iii) monitor and record progress to address areas requiring attention.
- (b) **Notifying management:** Suppliers must ensure there is a process for the rapid and effective management of, and notification to appropriately senior management of any significant Complaints or Complaint issues.

### 8.4 Resourcing of Complaint handling processes

Suppliers must ensure that their Complaint handling processes are resourced to ensure that they will meet their obligations under this Code.

8.4.1 A Supplier must take the following actions to enable this outcome:

- (a) **Resourcing:** resource the Complaint handling process to ensure that all Complaints are dealt with in accordance with the requirements of this chapter and this Code and any additional requirements of its Complaint handling process;

- (b) **Monitor resourcing:** monitor its performance under this clause on a quarterly basis to ensure appropriate resources are in place and take prompt action where this is not the case;
- (c) **Skilled staff:** ensure staff with Complaints management responsibilities are trained and supervised, have the authority to Resolve Complaints and have the necessary interpersonal and communication skills, to ensure that the Supplier's obligations under this chapter are met;
- (d) **Avoid conflicts of interest:** ensure that the Complaint is not investigated by staff with a direct involvement in the circumstances of the Complaint.

## 8.5 Record Keeping

Suppliers must keep records of Complaints which:

- (a) include identification of the Consumer or former Customer making the Complaint, the nature of the Complaint, the steps taken to address the Complaint and the Resolution, if any of the Complaint; and
- (b) enable the Supplier to manage, monitor, analyse, record and report on Complaints.

8.5.1 A Supplier must take the following actions to enable this outcome:

- (a) **Systematic record keeping:** make and keep systematic records of Complaints including:
  - (i) a unique reference number or such other means as will ensure the Supplier's ability to subsequently identify the Complaint and its subject matter;
  - (ii) the issues raised as part of the Complaint;
  - (iii) the requested Resolution;
  - (iv) the due date for a response;
  - (v) the results of any investigation;
  - (vi) the proposed Resolution of the Complaint including any associated commitments and the date this is communicated to the Consumer or former Customer;
  - (vii) the Supplier's reasons for proposing its Resolution;
  - (viii) the Consumer's or former Customer's response to the proposed Resolution of the Complaint, any reasons given by the Consumer or former Customer and if they have requested the Resolution in writing, that this request has been made;
  - (ix) the implementation of any required actions;
  - (x) the underlying cause of the Complaint; and
  - (xi) copies of any correspondence sent by or to the Consumer.
- (b) **Monitor progress:** Suppliers must monitor the progress of a Complaint and any commitments made to the Consumer or former Customer in relation to a Complaint;
- (c) **Enable reporting:** be able to report compliance with the Complaints management timeframes set out in clause 8.2.1 above;
- (d) **Record retention:** without limiting the Supplier's obligations at law, including under the Privacy Act, retain this information for at least two years;
- (e) **Maintain confidentiality:** Suppliers not subject to the requirements of the Privacy Act must ensure personal information concerning a Complaint is not disclosed except as required to manage a Complaint with the TIO or with the express consent of the Consumer.

## 9 CODE COMPLIANCE AND MONITORING

### Summary

*This chapter sets out the compliance and monitoring arrangements that apply to this Code and requires Suppliers to implement a Code Compliance Framework which will:*

- *encourage, monitor and enhance industry compliance with this Code;*
- *improve the levels of Customer service and consumer protection enjoyed by users of Telecommunications Products in Australia;*
- *improve self-regulation by Suppliers;*
- *enhance transparency regarding compliance with this Code; and*
- *provide Consumer confidence in the self-regulatory regime of which this Code forms a part and in the telecommunications industry's compliance with the Code.*

*This chapter explains the actions that Suppliers are required to take under their Code Compliance Framework in order to comply with the Code. The role of the independent body, Communications Compliance (CC), which has been created to monitor Code compliance by Suppliers, is described in Appendix 1 to this Code.*

### Overview

*The Code Compliance Framework comprises a number of elements as set out in this chapter, including obligations of Suppliers to:*

- *promote awareness of the Code to its Customers and to communicate the requirements of the Code to its staff;*
- *have processes and systems in place to ensure compliance with the requirements of this Code;*
- *prepare a Customer Information Compliance Statement and a Compliance Plan;*
- *provide certain statements annually to the CC;*
- *in certain circumstances, provide to the CC a Compliance Achievement Plan;*
- *respond to Compliance Monitoring Requests from the CC and, if necessary, to provide an Action Plan in relation to those Compliance Monitoring Requests;*
- *comply with directions given by the CC from time to time; and*
- *provide Metrics to the CC.*

### General Rules

*The general rules in chapter 3 apply in addition to the Rules in this chapter.*

### Rules

#### 9.1 Code Compliance Framework

Subject to clause 1.5 of the Code, Suppliers must implement and comply with the obligations applicable to them contained in the Code Compliance Framework set out in this chapter and in Appendix 2 to this Code.

#### 9.2 Promoting Code awareness

Suppliers must promote the awareness of the Code to their Customers and communicate the requirements of the Code to their staff.

9.2.1 A Supplier must take the following actions to enable this outcome:

- (a) **Code awareness for Customers:** promote the Code to its Customers to ensure its Customers and the broader community are aware of the consumer safeguards, obligations and benefits included in the Code;
- (b) **Code awareness for staff:** communicate the requirements of the Code to its staff and ensure that relevant staff are trained regarding the provisions of the Code.

#### 9.3 Code compliance processes

Suppliers must have processes and systems in place to ensure compliance with the requirements of this Code, and must prepare a Customer Information Compliance Statement and a Compliance Plan.

9.3.1 Suppliers must take the following actions to enable this outcome:

- (a) **Customer Information Compliance Statement:** provide a Customer Information Compliance Statement to the CC annually, the first such Customer Information Compliance Statement to be provided to the CC within 7 months of the date of registration of this Code;



- (b) **Compliance Plan:** prepare and maintain a documented Compliance Plan which outlines the initiatives of the Supplier supporting compliance with the provisions of the Code and which is prepared in a manner consistent with the principles and guidance provided in the *Australian Standard on Compliance Programs AS 3806 – 2006*.

#### 9.4 Code compliance statements

Suppliers must provide to the CC prescribed statements regarding Code compliance, which statements are to be prepared and provided to CC depending on the nature of the Supplier, in the manner and times set out in this clause 9.4.

9.4.1 A Supplier must take the following actions to enable this outcome:

- (a) **Compliance Attestation:** Provide a First Compliance Attestation to the CC which has been endorsed by the chief executive officer or a senior manager of the Supplier, within 7 months of Code registration, and then provide a Compliance Attestation annually thereafter;
- (b) **Statement of Independent Assessment:** as a Large Supplier provide a Statement of Independent Assessment to the CC at the same time as providing the First Compliance Attestation pursuant to clause 9.4.1(a), which Statement of Independent Assessment must state that an External Qualified Assessor has determined that the Supplier's documented Compliance Plan has been prepared in a manner consistent with the principles and guidance provided in the *Australian Standard on Compliance Programs AS 3806 – 2006*;
- (c) **Material Changes:** Where any Material Changes are made
- (i) by a Large Supplier, that Supplier must provide to the CC a further Statement of Independent Assessment regarding the details of the Material Change at the time the Material Changes are implemented.
  - (ii) by a Small Supplier, that Small Supplier must provide to the CC a further Compliance Attestation regarding the details of the material change at the time the Material Changes are implemented.
- (d) **Contents of Compliance Attestation:** if it is required to be provided by this clause 9.4, ensure that the Compliance Attestation includes:
- (i) confirmation that a review has been undertaken by the Supplier regarding its compliance with the Code;
  - (ii) confirmation of the Supplier's compliance with the Code;
  - (iii) assertion that the Supplier's Compliance Plan has been prepared in a manner consistent with the principles and guidance provided in the Australian Standard on Compliance Programs AS 3806 – 2006; and
  - (iv) other than in relation to an Initial Compliance Attestation, a report on the Supplier's compliance with its Compliance Plan during the preceding year, including details of any significant changes to the Supplier's business structure and operations that are relevant, and any feedback to the CC regarding suggested improvements to the Code Compliance Framework and/or the compliance requirements of the Code.

#### 9.5 Compliance Achievement Plans

If a Supplier is unable to submit to the CC a Customer Information Compliance Statement, a Compliance Attestation or a Statement of Independent Assessment (if required) at the times required by this chapter 9, the Supplier must submit to the CC a Compliance Achievement Plan detailing how and when actions will be taken to comply with the relevant Code requirement.

9.5.1 A Supplier must take the following actions to enable this outcome:

- (a) **Inability to provide statements to the CC:** if a Supplier cannot provide the Customer Information Compliance Statement, Compliance Attestation or Statement of Independent Assessment (if required) to the CC in the timeframe required in clause 9.4, provide a Compliance Achievement Plan to the CC (with contents and in a form acceptable to the CC) identifying the Code provision with which the Supplier does not comply and detailing the actions to be taken to become compliant and the expected timeframe for completion of those actions;
- (b) **Monitoring and Reporting on Compliance Achievement Plan:** if the Supplier provides a Compliance Achievement Plan to the CC pursuant to clause 9.5.1(a), monitor progress and report regularly on its progress under the Compliance Achievement Plan to the CC.

#### 9.6 Compliance Monitoring Requests

Suppliers must respond to a Compliance Monitoring Request received by them from the CC in relation to this Code and provide an Action Plan if required by clause 9.6.1.

9.6.1 A Supplier must take the following actions to enable this outcome:

- (a) **Compliance Monitoring Requests:** respond to Compliance Monitoring Requests from the CC by the date specified by the CC for such a response;
- (b) **Action Plan as a result of a Compliance Monitoring Request:** if a Supplier's response to a Compliance Monitoring

Request indicates that the Supplier cannot comply with all or part of the relevant aspects of the Code that are the subject of that Compliance Monitoring Request, provide an Action Plan to the CC (within the time required by, and with contents and in a form acceptable to, the CC) detailing the actions to be taken by the Supplier to address any compliance failure or other issues identified through the Compliance Monitoring Request, including the expected time for completion of those actions. The Supplier must include in the Action Plan details of planned remedial measures; and

- (c) **Monitoring and Reporting on Action Plan:** if the Supplier provides an Action Plan to the CC, monitor progress and report regularly on its progress under the Action Plan to the CC.

## 9.7 Suppliers obligations regarding the CC

Suppliers must do all things reasonably necessary to assist the CC to perform its functions as set out in Appendix 1 to the Code and in CC's operating plan from time to time.

9.7.1 A Supplier must take the following actions to enable this outcome:

- (a) **Comply with directions:** comply in a timely manner with all directions given by the CC to the Supplier which are consistent with obligations in this Code or which may be given pursuant to the operating plan of the CC; and
- (b) **Metrics:** provide to the CC annually, or more frequently if required by the CC, a report in a format required by the CC reporting on the Metrics which relate to that Suppliers compliance to this Code.

## **GUIDANCE**

### **Brochure and Compliance Tools**

- *Communications Alliance, in consultation with Consumer representatives, will prepare a plain language brochure for Consumers, explaining the key Consumer safeguards provided by the Code. While not an enforceable obligation of this Code, Suppliers should, as and when requested by Communications Alliance, contribute to the development of that brochure and make it available to Consumers through their stores, dealers, websites and other appropriate channels accessible by Consumers*
- *Communications Alliance will work with the CC to make tools available to Suppliers to assist them in meeting their obligations under the Code Compliance Framework.*
- *Suppliers should assist Communications Alliance to evaluate the benefits of implementing a wider awareness campaign to ensure the broader community understands the Code and what it means.*

## APPENDIX 1

### Role and Obligations of Communications Compliance

#### A. ROLE

**A1** The CC will:

- A.1.1** subject to its constitution, be governed by a 3 member board consisting of two directors who will nominate an Executive Director. The two directors are the chair from time to time of Communications Alliance and a person nominated by Consumer representatives. The day to day functions of the CC will be coordinated by a committee comprising the Executive Director, 2 representatives nominated by the telecommunications industry through a nomination process conducted by Communications Alliance, and 2 representatives nominated by Consumers through a nomination process to be conducted by a consumer organisation. That committee will report to the board of the CC;
- A.1.2** be primarily responsible for overseeing the conduct of the Code Compliance Framework;
- A.1.3** develop its own website on which to publish useful information for Consumers and annual statements provided by Suppliers pursuant to Chapter 9 of the Code. This website will:
- (a) be stand-alone and independent (i.e. not part of another organisation's website);
  - (b) comply with web accessibility standard in this Code;
  - (c) have an easy-to-remember URL;
  - (d) be regularly updated;
  - (e) contain content which clearly explains the purpose of the website and the telecommunications regulatory and self-regulatory framework; and
  - (f) contain links to the websites of:
    - (i) ACMA;
    - (ii) ACCC;
    - (iii) Communications Alliance;
    - (iv) TIO; and
    - (v) ACCAN;
- A.1.4** establish memoranda of understanding with the key stakeholders – the TIO, ACMA and ACCC – that will be designed to ensure efficient and effective inter-working with those stakeholders to avoid duplication of effort, ensure appropriate information flows and expedite coordinated actions. The memoranda of understanding should also be designed to assist the identification of any industry-wide systemic compliance weaknesses, the development of measure to address these, and the identification of potential future improvement to existing Code provisions.
- A.1.5** without limiting paragraph A.1.4, establish a memorandum of understanding with the TIO which, without limitation will enable the CC to obtain monthly or quarterly reporting from the TIO regarding TIO complaint statistics. This reporting will not necessarily be limited to published TIO data. It will be sought in a format that will best assist the CC in its compliance monitoring responsibilities and help identify issues which might need to be the subject of Compliance Monitoring Requests to Suppliers;
- A.1.6** without limiting paragraph A.1.4, establish a memorandum of understanding with the ACMA which, without limitation, deals with the process for making referrals to the ACMA, for information sharing and for other operational matters;
- A.1.7** without limiting paragraph A.1.4, establish a memorandum of understanding with the ACCC which, without limitation, deals with the process for making referrals to the ACCC, for information sharing and for other operational matters;
- A.1.8** meet with Communications Alliance and endeavour to agree the scope of the Metrics within 6 months of the date of this Code;
- A.1.9** communicate to Suppliers regarding their obligations to provide the following to support their compliance with the Code:
- (a) a Customer Information Compliance Statement;
  - (b) if applicable an Initial Compliance Attestations and annual Compliance Attestations and, if so required by chapter 9 of the Code, a Statement of Independent Assessment;

- (c) responses to Compliance Monitoring Requests;
- (d) Compliance Achievement Plan, and regular reports in relation to Compliance Achievement Plans as required by Chapter 9 of the Code;
- (e) Action Plans, and regular reports in relation to Action Plans as required by Chapter 9 of the Code; and
- (f) a report in relation to the Metrics relating to this Code.

The content of these requests will be determined by the CC and be based on information provided by the TIO, the ACMA and the CC's own knowledge of other external factors;

- A.1.10** publish on its website a list of the Suppliers which have submitted Compliance Attestations and Compliance Achievement Plans;
- A.1.11** publish on its website the information provided by Suppliers in their Customer Information Compliance Statements and Compliance Attestations;
- A.1.12** publish on its website a list of the Suppliers which have not, on or after that date which is 12 months after Code registration, submitted a Compliance Attestation or, if previously required by the CC, a Compliance Achievement Plan or Action Plan, including a description of the nature of the non-compliance;
- A.1.13** publish on its website a list of Suppliers which have been referred to the ACMA for further investigation and potential enforcement action as a result of Code compliance issues.
- A.1.14** publish on its website the URL details of Suppliers who have submitted a Compliance Attestation, or a Compliance Achievement Plan as the case may be;
- A.1.15** publish on its website guidance notes and case studies which may be of use to Suppliers in their compliance with the Code;
- A.1.16** submit reports annually (or more regularly as may be agreed) to the ACMA, confirming which Suppliers have submitted (as required in chapter 9 of the Code) Customer Information Compliance Statements, Compliance Attestations and Statements of Independent Assessment;
- A.1.17** work with Communications Alliance to make tools available to Suppliers to assist Suppliers in meeting their obligations under the Code Compliance Framework; and
- A.1.18** investigate the potential to create compliance incentives to encourage positive moves by Suppliers toward achieving compliance with all of the requirements of the Code.

## OBLIGATIONS B

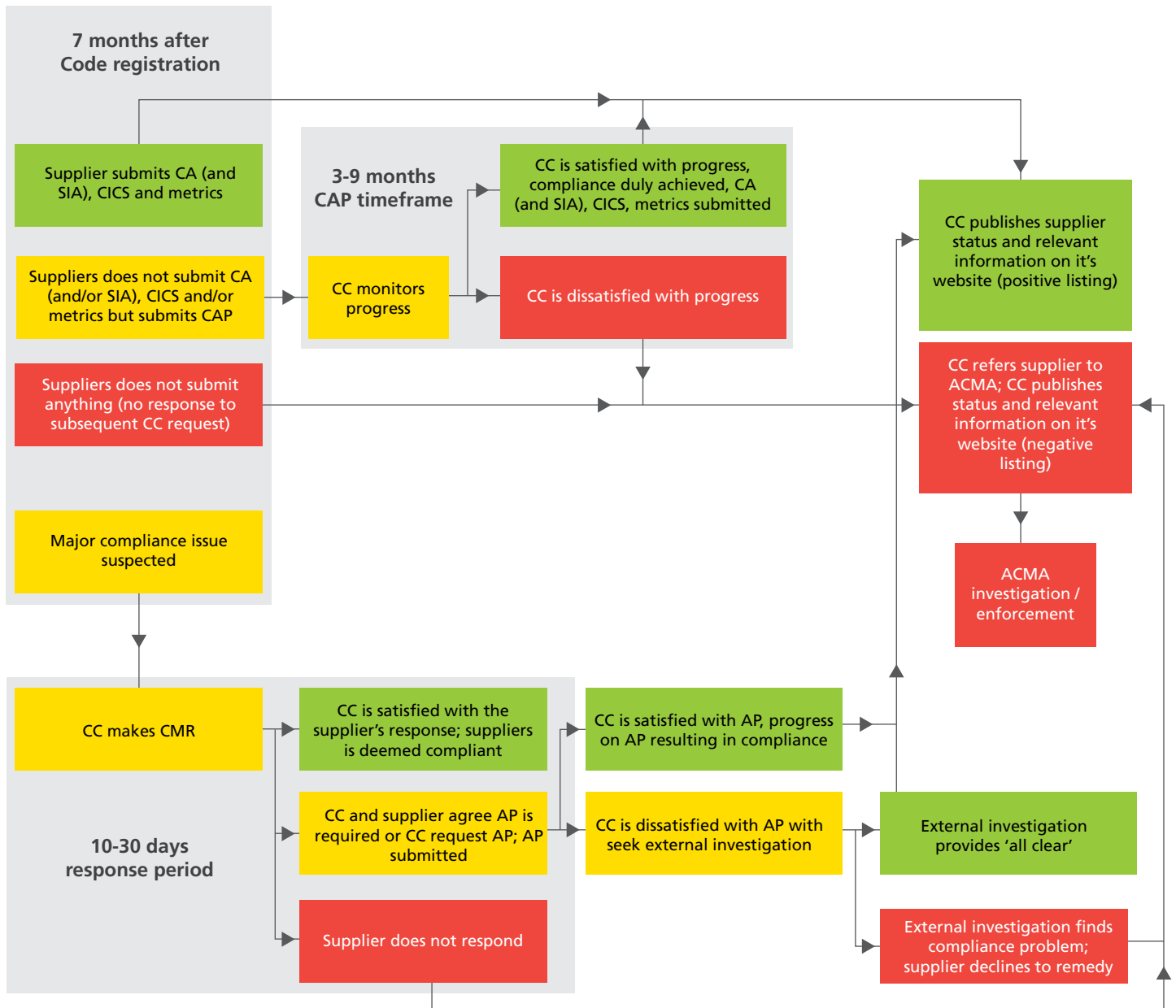
### B1 Code enforcement

- B.1.1** The obligations on the CC will be outlined more fully in its constitutional documents. In exercising its discretion on such issues as whether to refer a Supplier to the ACMA for investigation or enforcement, the CC will take account of factors including but not limited to:
  - the seriousness of any compliance breach;
  - the degree of Consumer detriment caused by the non-compliance; and
  - the extent to which the breach can be speedily rectified.
- B.1.2** If a Supplier cannot provide the Customer Information Compliance Statement, Compliance Attestation or Statement of Independent Assessment (if required) to the CC in the required timeframe, the CC will either require the Supplier to provide a Compliance Achievement Plan and subsequently make requests of the Supplier so that the CC may monitor progress of the Supplier against the Compliance Achievement Plan, or refer the Supplier to the ACMA. If the CC is not satisfied with the progress and completion of a Supplier's Compliance Achievement Plan, the CC will report the Supplier to the ACMA for further investigation by the ACMA, unless the CC can be satisfied that the progress against the Achievement Plan is being rapidly remedied.
- B.1.3** If a Supplier's response to a Compliance Monitoring Request indicates that the Supplier cannot comply with all or part of the relevant aspects of the Code that are the subject of that Compliance Monitoring Request, the CC will either require the Supplier to provide an Action Plan and subsequently make requests of the Supplier so that the CC may monitor progress of the Supplier against the Action Plan, or refer the Supplier to the ACMA. If the CC is not satisfied with the progress and completion of a Supplier's Action Plan, the CC will report the Supplier to the ACMA for further investigation by the ACMA, unless the CC can be satisfied that the progress against the Action Plan is being rapidly remedied.
- B.1.4** Notwithstanding paragraphs B.1.1 and B.1.2, but subject to paragraph B.1.4, the CC may report a Supplier to the ACMA for further investigation by the ACMA in relation to any matter. The CC will develop clear and transparent

criteria to assist decision-making on whether and in what circumstances compliance issues should be referred to the ACMA. CC will prepare relevant guidance information on this topic to distribute to Suppliers.

- B.1.5** The CC will not report a Supplier to the ACMA without prior written warnings being given to the Supplier and the Supplier being afforded an opportunity to provide the required compliance information to the CC.
- B.1.6** The CC may, after consultation with a Supplier, decide to undertake a targeted investigation of the Supplier at the Supplier's expense (including using external consultants), following receipt of information in relation to an alleged non-compliance with the Code by the Supplier. The outcome of that investigation, or the Supplier's refusal to cooperate with the CC in relation to that proposed or actual investigation, may result in a referral of a Supplier to the ACMA.
- B.1.7** Where information received from the TIO gives the CC reason to suspect serious non-compliance, the CC will make a Compliance Monitoring Request to the Supplier
- B.1.8** Code enforcement will continue to be the prime responsibility of the ACMA. The CC will assist the ACMA in this role by sharing information about non-compliant Suppliers with the ACMA.

## APPENDIX 2 FLOWCHART



- AP = Action Plan
- CA = Compliance Attestation
- CAP = Compliance Achievement Plan
- CC = Communications Compliance
- CICS = Customer Information Compliance Statement
- CMR = Compliance Monitoring Request
- SIA = Statement of Independent Assessment

## PARTICIPANTS

The Steering Group responsible for the revisions made to this Code consisted of the following organisations and their representatives:

Organisation	Membership	Representative
	Chair(Non-voting)	Fay Holthuyzen
Australian Communications Consumer Action Network	Voting	Teresa Corbin
Australian Communications and Media Authority	Non-voting	Kath Silleri
Australian Competition & Consumer Commission	Non-voting	Paul Zawa
Communications Alliance	Non-voting	John Stanton
Consumer Law Centre	Voting	Michael Fraser
Department of Broadband, Communications and the Digital Economy	Observer	Keith Besgrove
Primus	Voting	John Horan
Telstra	Voting	Jane van Beelen

This Steering Group was chaired by Fay Holthuyzen. Christiane Gillespie-Jones of Communications Alliance provided project management support.

The Working Committees responsible for the revisions made to this Code consisted of the following organisations and their representatives (all non-voting):

Organisation	Representative
Australian Communications Consumer Action Network	Elissa Freeman
Australian Communications Consumer Action Network	Jonathan Gadir
Australian Council of Social Service	Chris Dodds
Communications Law Centre	Scott Reid Barnes
Community Telco	Alex Trantor
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Telstra	Mark McGraw
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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.

Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

It is committed to the achievement of the policy objective of the *Telecommunications Act 1997* - the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry.



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