

**COMMUNICATIONS
ALLIANCE LTD**



INDUSTRY CODE

TELECOMMUNICATIONS CONSUMER
PROTECTIONS CODE

C628:2007

C628:2007 Telecommunications Consumer Protections Code

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INTRODUCTORY STATEMENT

The Telecommunications Consumer Protections Code (TCP) Code (C628:2007) replaces the following registered ACIF Codes:

1. Customer Information on Prices, Terms and Conditions Industry Code [ACIF C521:2004],
2. Credit Management Industry Code [ACIF C541:2006],
3. Billing Industry Code [ACIF C542:2003],
4. Customer Transfer Industry Code [ACIF C546:2007],
5. Complaint Handling Industry Code [ACIF C547:2004], and
6. Consumer Contracts Industry Code [ACIF C620:2005].

The purpose of moving to a single TCP Code is to:

- make it easier for consumers and their representatives and advocates to know their rights;
- ensure drafting consistency and deliver a consistent style and language;
- provide a consolidated single Code and Guideline document, using consistent definitions and terminology;
- separate out the rules from the procedures and highly prescriptive elements of the existing Codes; and
- allow suppliers to use their own systems and procedures to comply with the Code, rather than having to use prescribed methods of compliance.

The Telecommunications Consumer Protections Guideline (G631:2007) accompanies the Code. The Guideline is designed to:

- aid in interpreting the Code Rules; and
- provide examples of how a Supplier may choose to comply with the Rules.

The development of the TCP Code is a major strategic initiative for Communications Alliance and can be seen as a demonstrable outcome of a mature industry in the 10th anniversary of the *Telecommunications Act 1997* (Cth). The *Telecommunications Act* encourages self regulatory processes. Communications Alliance has worked closely with various stakeholders and interested parties to develop industry codes of practice dealing with issues which affect consumers. The focus of this has been to ensure that the residential and small business markets have adequate consumer protections. In developing the consolidated TCP Code, it became clear that this focus had not been reflected consistently in the six separate codes that the TCP Code will replace. The TCP Code addresses this inconsistency and clarifies that it applies to residential and small business customers.

The TCP Code is designed to preserve the rights and obligations set out in the six existing codes. New or modified obligations were considered to be outside the scope of this project. However, where identified, these have been noted on an 'Issues List' for future consideration.

Deirdre O'Connor
Chair

Telecommunications Consumer Protections Code Steering Committee

September 2007

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* (Cth) (the 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 has been facilitated by Communications Alliance through a Steering Committee comprising representatives from the telecommunications industry and consumer groups.
- 1.1.3 The Code and Guideline should be read in the context of other relevant codes, guidelines and documents.
- 1.1.4 The Code and Guideline 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 *Trade Practices Act 1974* (Cth);
 - (d) State and Territory fair trading legislation, where relevant;
 - (e) State and Territory door-to-door sales legislation, where relevant;
 - (f) the *Disability Discrimination Act 1992* (Cth);
 - (g) the *Racial Discrimination Act 1975* (Cth);
 - (h) any other relevant equal opportunity legislation;
 - (i) the *Privacy Act 1988* (Cth);
 - (j) the *Spam Act 2003* (Cth) and
 - (k) the *Do Not Call Register Act 2006* (Cth).
- 1.1.5 If there is a conflict between the requirements of the Code and any requirement imposed on a Supplier by statute, the Supplier will not be in breach of the Code by complying with the statute.
- 1.1.6 Compliance with this Code does not guarantee compliance with any legislation. The Code is not a substitute for legal advice.

1.2 Registration with ACMA

- 1.2.1 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 customers 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 Objectives

- 1.4.1 The objectives of each chapter are detailed in that chapter.

1.5 Code review

- 1.5.1 The Code and Guideline will be reviewed after 2 years of the Code being registered by ACMA and every 5 years subsequently, or earlier in the event of significant developments that impact on the Code or Guideline or a chapter within the Code or Guideline.

2 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

2.1 Acronyms

For the purposes of this Code:

ACIF

means Australian Communications Industry Forum.

ACMA

means Australian Communications and Media Authority.

TIO

means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme.

2.2 Definitions

For the purposes of this Code:

Act

means the *Telecommunications Act 1997* (Cth).

Advertising Material

means advertising and promotional material in relation to a Supplier's Telecommunications Products.

Advocate

means a person nominated by a Customer with a special need, to assist them.

Authorised Customer

means a Customer who:

- (a) has a contract with a Supplier for a Telecommunications Service;
and
- (b) is able to Transfer all or part of that Telecommunications Service to another Supplier.

A reference to an Authorised Customer does not include their Authorised Representative.

Authorised Representative

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

Bill

means an invoice or statement from a Supplier which advises a Customer of an amount due for payment.

Bill Media

means the way a Bill is delivered and its format.

Billed Charge

means the amount Billed to a Customer by a Supplier.

Billing

means:

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

other than in relation to international Telecommunications Services dependent on overseas providers.

Billing Accuracy

means the correctness of Charges.

Billing Address

means the Customer's nominated address to which the Bill is sent.

Billing Complaint

means an expression of dissatisfaction or grievance 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 Customer for relevant information about Billing.

Billing Name

means the name of the person or entity to whom the Bill is issued and delivered.

Billing Option

means a Billing related option the Customer may choose.

Billing Period

means a period of time in relation to which Charges are billed.

Bundled Contract

means a Contract under which a Supplier offers a package of goods or services, at least one of which is a Telecommunications Product, where it is technically feasible to separately supply the Telecommunications Products in the package.

Bundled Telecommunications Product

means a Telecommunications Product supplied under a Bundled Contract.

Carriage Service Provider

has the meaning given by section 87 of the Act.

Carrier

has the meaning given by section 7 of the Act.

Charge

means the tariff or fee levied by a Supplier for the provision of a Telecommunications Product or transaction.

Comparative Advertisement

means an advertisement which makes direct or implied comparisons between:

- (a) Suppliers; or
- (b) particular Telecommunications Products and other Telecommunications Products and/or associated prices, terms and conditions.

Complainant

means a person making a Complaint.

Complaint

means an expression of dissatisfaction made to a Supplier in relation to:

- (a) carrying on business as a Carrier;
- (b) carrying on business as a Carriage Service Provider;
- (c) supplying a content service using a Listed Carriage Service; and/or
- (d) supplying a Telecommunications Product.

Consumer

means:

- (a) a person who acquires a Consumer Product for the primary purpose of personal or domestic use; or
- (b) a business or non-profit organisation which at the time it enters into the Consumer Contract:
 - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Consumer 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,

other than a person acquiring a Consumer Product for resale.

Consumer Contract

means an agreement between a Supplier and a Consumer for the supply of a Consumer Product, other than for the supply of content services by third parties who are not Carriage Service Providers.

Consumer Product

means:

- (a) a Carriage Service;
- (b) any other telecommunications related goods or services supplied under the contract for supply of the Carriage Service; and
- (c) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service within the meaning of the *Broadcasting Services Act 1992* (Cth)) provided by the Supplier in connection with the supply of the Carriage Service.

Contract

means an agreement between a Supplier and a Customer for the supply of a Telecommunications Product.

Credit Assessment

means a process a Supplier undertakes in considering the circumstances of a Customer to assess their level of credit risk.

Credit Management

means the process by which a Supplier:

- (a) helps Customers to manage their expenditure on Services;
- (b) manages credit risk; and
- (c) collects outstanding debt.

Credit Reporting Agency

means a corporation that carries on a credit reporting business as defined in section 6 of the Privacy Act.

Customer

means a residential or small business customer who:

- (a) is party to a Contract; or
- (b) is eligible under the criteria set by a Supplier to enter into a Contract

to acquire a Telecommunications Product, other than for the purposes of resale.

A reference to a Customer includes a reference to their Authorised Representative.

Days

means elapsed days excluding gazetted public holidays counted from midnight on the day of the action, act or event.

Direct Debit

means an automatic periodic payment from the Customer's nominated financial institution account, implemented by the Supplier at the Customer's request.

Disclaimer

means words used in Advertising Material which qualify, disclaim or add to the principal message or a specific offer.

Disconnection

means the termination of a contract for a Service.

Discount

means a pricing offer resulting in a variation in the Customer's favour.

Door to Door Selling

means a mode of selling, offering or negotiating a Transfer of a Telecommunications Service conducted face to face at a Customer's place of residence or employment, except after an unsolicited request by a Customer to do so.

Electronic Bill

means a Bill using an electronic medium.

Emergency Service Number

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

Financial Hardship

means a situation where:

- (a) due to reasonable cause, a Customer is unable to discharge their financial obligations under their contract with the Supplier; and
- (b) the Customer reasonably expects to be able to discharge those obligations if payment or Service arrangements are changed.

Fixed Contract Period

means a fixed contract period, other than month to month.

Fixed Line Telephone Service

means:

- (a) a fixed local call service; or
- (b) a fixed long distance call service which does not require use of an override code.

Force Majeure

means an unforeseen or uncontrollable force or event, such as fire, flood, earthquake, storm or other disturbance 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 a Supplier's Services, or attempting to do so, with the intent of:

- (a) deceiving the Supplier;
- (b) not paying for the Services; or
- (c) securing unlawful gain.

Gaining Supplier

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

Guarantor

means an individual who guarantees a Customer's obligations under a contract with a Supplier for the supply of a Service.

Guideline

means *G631:2007 Telecommunications Consumer Protections Guideline*.

Hard Cap

means a ceiling set on a Customer's expenditure for the use of Services which is not intended to allow the Customer's expenditure to exceed the Limit.

Inform

means advise:

- (a) in Writing; or
- (b) verbally and confirm and record to provide an auditable record.

Itemisation

means detailing a particular Billed Charge.

Itemised Billing

means the inclusion in the Bill of details about a particular Billed Charge.

Limit

means the ceiling assigned to a Customer's spend with a Supplier, for the total of Unbilled Amounts accumulated during the billing cycle.

Listed Carriage Service

has the meaning given by section 16 of the Act.

Minimum Total Charge

means:

- (a) the total of any:
 - (i) equipment price;
 - (ii) connection fee;
 - (iii) compulsory periodic charges;
 - (iv) minimum usage charges; and
 - (v) other compulsory charges; or
- (b) a fixed contract price,

over any minimum or fixed period of the Contract.

Point of Sale

means the point at which the Sales Representative obtains informed consent in accordance with clause 8.1.3.

Pre-paid Service

means a Service that must be paid for by the Customer before it is used.

Privacy Act

means the *Privacy Act 1988* (Cth).

Restriction

means where access to one or more of a Supplier's available Services is limited or denied.

Rules

means the Supplier's obligations, which are in chapters 3 to 9.

Sales Representative

means a person employed or contracted, directly or indirectly by a Supplier, to sell or offer to sell Telecommunications Products.

Savings Claim

means a representation made in Advertising Material that Customers may spend less by using a particular Telecommunications Product or Supplier.

Security Bond

means a payment lodged by a Customer with a Supplier to mitigate an assessed credit risk.

Service

means a telecommunications product or service.

Special Offer

means an offer to give a discount or rebate from standard rates or charges for a limited period.

Standard Form of Agreement

has the meaning given by Part 23 of the Act.

Standard Telephone Service

has the meaning given by section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Supplier

means a Carriage Service Provider.

Suspension

means where access to Services is prevented, except to Emergency Service Numbers.

Telecommunications Goods

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

Telecommunications Product

means Telecommunications Goods or a Telecommunications Service.

Telecommunications Service

means:

- (a) a Listed Carriage Service or any service supplied 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.

Telemarketing

means a mode of selling, offering or negotiating solicited by inbound or outbound voice telephone calls, whether or not the Authorised Customer and the Sales Representative have an existing relationship.

Third Party Charges

means Charges Billed 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 depends on the duration of the call.

Trade Practices Act

means the *Trade Practices Act 1974* (Cth).

Transfer

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

Unbilled Amounts

means amounts relating to a Service which have been incurred by a Customer and of which the Supplier is aware, but which the Supplier has not yet billed.

Unsolicited Offer

means any spoken communication (or equivalent such as Auslan) by a Supplier to a Customer, that is not initiated by the Customer, for the purpose of offering a Telecommunications Product:

- (a) during telemarketing;
- (b) during door to door sales at the Customer's place of residence or employment; or
- (c) in a public place.

Untimed Call

means a call where the Charge is not calculated by the duration of the call.

Verification

means the process which:

- (a) checks the Authorised Customer or their Authorised Representative's request to Transfer with the Customer, using a person or procedure independent of the Sales Representative who obtained the Transfer; and
- (b) occurs prior to the Transfer.

Working Day

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

Writing

means a document sent by the Supplier to the last known:

- (a) address; or
- (b) email address or facsimile number the Customer has agreed to use instead

of the Customer or, where relevant, the Guarantor, in the Supplier's records.

Written Notice

means providing the relevant information in writing by:

- (a) delivering it in person;
- (b) pre-paid post to the Consumer's address in the Supplier's records;
- (c) email, with the Consumer's prior consent;
- (d) including the information on or in a bill, including electronically where the Consumer has expressly consented to receiving an electronic bill; and
- (e) for pre-paid telecommunications services, otherwise making it available and informing the Consumer how to obtain it.

2.3 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

The general rules in chapter 3 apply to each of chapters 4 to 9.

3.1 Plain language

3.1.1 A Supplier must communicate with its Customers in simple, plain language.

3.2 Quality of information

3.2.1 A Supplier must ensure that information provided to its Customers is accurate, relevant, current and timely.

3.3 Access to information

3.3.1 A Supplier must use reasonable endeavours to communicate with a Customer in a way that is appropriate to the Customer's communications 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 Customers with disabilities.

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

3.4 Complying with the law

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

3.5 Dealing appropriately with Customers

3.5.1 A Supplier must ensure that its Sales Representatives do not:

- (a) harass or coerce a Customer; or
- (b) engage in unconscionable conduct.

3.6 Authorised Representatives and Advocates

3.6.1 A Supplier's process for dealing with an Authorised Representative must include procedures to protect the Customer's privacy and confidentiality.

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

- 3.6.3 An Advocate is not authorised to make changes to a Customer's account or Telecommunications Services, unless they are also the Customer's Authorised Representative.

4 CUSTOMER INFORMATION ON PRICES, TERMS AND CONDITIONS

Summary

This chapter requires Suppliers to:

- *provide certain information to Customers; and*
- *ensure that Advertising Material is clear and accurate.*

Objectives

The objectives of this chapter are:

- *to set minimum standards for Suppliers to meet in telling Customers about the prices, terms and conditions of Telecommunications Products;*
- *to eliminate practices which deceive, mislead or confuse;*
- *to provide sufficient, accurate, current and relevant information to enable Customers to make an informed purchasing decision;*
- *to enhance Customer confidence and understanding of information by ensuring Suppliers avoid unnecessary complexity and use simple and straight forward language; and*
- *to recognise the legitimate business interests of Suppliers in a competitive environment.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

The Rules on Customer information on prices, terms and conditions are:

4.1 Advertising Material

4.1.1 **Content of Advertising Material:** Advertising Material must:

- (a) **Restrictions on offer:** clearly communicate any condition, limitation, qualification or restriction on an offer in a manner that is reasonable, having regard to the medium used and the intended audience;
- (b) **Call connection fee:** clearly communicate any call connection fee not included in any stated call rate, in a manner that is reasonable having regard to the medium used and the intended audience;
- (c) **Limitations on period or quantity:** if a Telecommunications Product is offered for a limited period or in a limited quantity, communicate that limitation;
- (d) **Limited class of Customers:** if a Telecommunications Product is available only to a limited class of Customers, clearly communicate the eligibility requirements;
- (e) **Details of Special Offer:** contain sufficient details of any Special Offer, including:
 - (i) its principal elements;
 - (ii) any conditions or limitations; and
 - (iii) any future start date and any known end date;
- (f) **Condition of connection to a Telecommunications Service:** if the offer of Telecommunications Goods is conditional on the Customer connecting to a Telecommunications Service, state so and in all printed Advertising Material (other than billboards, posters or similar), state:
 - (i) any minimum period for the Telecommunications Service connection;
 - (ii) any connection fees;
 - (iii) any monthly access fee;
 - (iv) any minimum monthly call fees or other compulsory payments;
 - (v) the minimum total cost over the minimum term of the Contract, if it can be calculated; and
 - (vi) if any fee applies for early termination of the Contract;

- (g) **Savings Claim:** specify the service, rate or other matter on which a Savings Claim is based;
 - (h) **Conditions on benefits:** clearly communicate any conditions, including time limits, caps or fair use policies, on free calls, credits or other benefits;
 - (i) **Conditions on components of Bundled Telecommunications Products:** clearly communicate any conditions and costs which may apply to any Telecommunications Product component of a Bundled Telecommunications Product; and
 - (j) **Geographical or technical limitations:** clearly communicate any geographical or technical limitations which substantially affect claimed availability or performance.
- 4.1.2 **Effect of Disclaimers:** A Disclaimer must not be used to negate the principal messages of Advertising Material.
- 4.1.3 **Content of Disclaimers:** Disclaimers must be clear and readily understandable, having regard to the type of Advertising Material, including the medium or format used and its intended audience.
- 4.1.4 **Placement of Disclaimers:** Disclaimers must:
- (a) be placed next to the offer;
 - (b) be linked to the offer by an asterisked footnote or other symbol; or
 - (c) form a visual or aural part of television and radio Advertising Material.
- 4.1.5 **Use of the term "free":** Where a Supplier uses the term "free" or an equivalent in its Advertising Material, it must ensure that:
- (a) the Telecommunications Product described as "free" or equivalent, is not subject to any charge, fee or cost;
 - (b) the Advertising Material identifies those elements that are referred to as "free" or equivalent;
 - (c) other conditions that qualify the offer are stated; and
 - (d) the prices of Telecommunications Products accompanying the offer are not inflated to cover some or all of the offer described as "free" or equivalent.
- 4.1.6 **Use of the term "unlimited":** Where a Supplier uses the term "unlimited" or an equivalent in its Advertising Material, it must ensure that it identifies which elements of the offer are "unlimited" and states any other conditions that may qualify the offer.
- 4.1.7 **Comparative Advertisement:** Comparative Advertisements must:

- (a) be clear what the preferred products are being compared with;
- (b) provide sufficient information so the comparison is clear; and
- (c) be based on accurate, current and relevant information.

4.2 Providing information

4.2.1 **On request:** If a Customer requests, a Supplier must:

- (a) **Product description:** provide the Customer with information about a Telecommunications Product they offer or refer the Customer to a third party who the Supplier reasonably believes can more appropriately do so;
- (b) **Operating instructions:** tell the Customer how to operate a Telecommunications Product;
- (c) **Information about the manufacturer:** tell the Customer the name of the manufacturer of any Telecommunications Goods it supplies to them;
- (d) **Contract terms:** provide the Customer with the terms of the Customer's Contract in writing, at no charge;
- (e) **Customer's consent to the Contract:** provide the Customer with a record or details of the Customer's consent to the Contract, where available;
- (f) **Bundled Contracts:** if it sells a Telecommunications Product forming part of a Bundled Contract separately, provide the price for its separate purchase;
- (g) **Customers with disabilities:** inform a Customer with a disability of any Telecommunications Product available from the Supplier which addresses the Customer's particular requirements and how to effectively use the Telecommunications Product;
- (h) **Charges:** tell the Customer the charges that may apply under a Contract, or their method of calculation;
- (i) **Warranties:** tell the Customer the details of any warranty that applies to Telecommunications Goods;
- (j) **Post sales support:** tell the Customer the contact details, and any fees or charges, for any available post sales support;
- (k) **Mobile coverage:** tell the Customer of the network coverage in Australia of a public mobile telecommunications service or provide a map or diagram of the coverage; and

- (l) **Resellers:** if acting as a reseller, provide the name of the principal Carrier whose network is used to provide the Telecommunications Service, unless the contract with the Carrier prohibits this.

4.2.2 **When making an Unsolicited Offer:** In making an Unsolicited Offer, a Supplier must ensure that its Sales Representative:

- (a) **Identity:** provides their name or other unique identifier and the identity of the Supplier;
- (b) **Purpose:** states the primary purpose of the Unsolicited Offer as soon as practicable;
- (c) **Description:** briefly describes the Telecommunications Product being offered, including any Minimum Total Charge; and
- (d) **Conditions:** states any conditions or restrictions that qualify the Unsolicited Offer.

4.2.3 **When a Customer applies for a service:** At the time a Customer applies for a service, or otherwise as appropriate, a Supplier must inform a Customer of any options to limit access to the service and any charges for limiting access.

4.2.4 **Before entering a Contract:** Before a Customer enters a Contract:

All Contracts

- (a) a Supplier must:
 - (i) **Contract terms:** inform the Customer of:
 - (A) the parties to the Contract;
 - (B) its minimum term;
 - (C) any notice the Customer must give to terminate early; and
 - (D) any additional amount payable by the Customer if they terminate early, or the method of calculating that amount;
 - (ii) **Product description:** sufficiently describe each Telecommunications Product;
 - (iii) **Fitness for intended use:** if the Customer has stated the purpose for the use of the Telecommunications Product or that purpose has become apparent to the Supplier from interaction with the Customer, Inform the Customer of:
 - (A) anything reasonably known about the performance and/or availability of the Telecommunications Product that might affect

the Telecommunications Product's use for that purpose; and

- (B) any other Telecommunications Products needed for its use;
- (iv) **Post sales support availability:** inform the Customer if:
 - (A) there are material conditions or limitations on any post sales support; or
 - (B) post sales support will not be available;

Mobile network coverage

- (b) if entering a Contract for the supply of a mobile phone service in the Customer's presence, the Supplier must offer to show them the network coverage in Australia where the Customer indicates the service will generally be used;

Contracts with Minimum Total Charges

- (c) which is subject to a Minimum Total Charge over a fixed period, a Supplier must inform the Customer:
 - (i) of the Minimum Total Charge, or each component of the Minimum Total Charge, to enable the Customer to determine the Minimum Total Charge; and
 - (ii) whether the Minimum Total Charge or its components may vary during the Contract term;

Bundled Contracts

- (d) which is a Bundled Contract, a Supplier must inform the Customer of:
 - (i) any goods or services which the Customer must purchase to be eligible for a discount; and
 - (ii) the basis for calculating any discount if promoted to the Customer.

4.2.5 **Before or when entering a Contract:** Before or at the time a Customer enters into a Contract, a Supplier must offer to provide the Customer with general instructions on how to access or use the Telecommunications Product, but instructions on a Fixed Line Telephone Service need only be provided upon request.

4.2.6 **In the Contract:** Contracts must state:

Charges:

- (a) what charges may apply, including their amounts or manner of calculation;
- (b) what the charges relate to;

- (c) the frequency of the charge or the circumstance giving rise to the charge becoming payable;
- (d) the rights the Customer has if the charges are varied or other charges introduced;

Term and termination:

- (e) the commencement date (except if a Standard Form of Agreement) and any minimum term;
- (f) the circumstances in which a party has a right to terminate early;
- (g) what the Customer must do to exercise a termination right;
- (h) any additional amount payable by the Customer if it terminates the contract early, or the method for calculating that amount;
- (i) the conditions and duration of any renewal term;

Changes:

- (j) how the Contract may be changed;
- (k) any minimum notice period for changes;
- (l) how a Customer will be notified of changes; and
- (m) how the Customer may access the changed Contract terms.

4.3 Exceptions

- 4.3.1 A Supplier is not required to give a Customer information required by this chapter, unless required by law, if:
 - (a) the Customer is ineligible for the Telecommunications Product;
 - (b) the information is irrelevant to the Customer's use of the Telecommunications Product;
 - (c) it would breach a law relating to confidentiality or privacy;
 - (d) the request is frivolous or vexatious;
 - (e) the request is unduly onerous, having regard to the nature of the request and the information required;
 - (f) the Customer expressly informs the Supplier that it does not wish to receive the information; or
 - (g) it is reasonably impractical for the Supplier to provide the information before or at the time of entering the Contract, so long as the Supplier subsequently makes that information available.

4.4 Charges

- 4.4.1 If a Supplier charges a Customer for information provided under this chapter, it must limit the charges to the cost of providing the information.

5 CONSUMER CONTRACTS

Summary

This chapter requires Suppliers to ensure that the terms of their Consumer Contracts are:

- *fair; and*
- *clear and easy to follow.*

Objectives

The objectives of this chapter are to:

- *identify and prohibit the use of unfair terms in Consumer Contracts;*
- *provide an objective basis for determining whether a contractual term is unfair;*
- *state the minimum requirements for the format and structure of Consumer Contracts; and*
- *encourage the use of plain language.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

This chapter does not apply to Consumer Contracts entered into before 4 May 2005, other than Consumer Contracts for fixed line services provided under a Standard Form of Agreement.

The Consumer Contracts Rules are:

5.1 Unfair terms

Terms must not be Unfair

- 5.1.1 **Prohibition:** A term in a Consumer Contract must not be unfair.
- 5.1.2 **Meaning of unfair:** A term will be regarded as unfair if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the Consumer Contract to the detriment of the Consumer.
- 5.1.3 **Assessing terms for unfairness:** Without limiting clauses 5.1.1 and 5.1.2, when assessing a term for unfairness it is relevant to consider:
- (a) the circumstances in which the parties entered into the Consumer Contract, including whether the term was individually negotiated;
 - (b) whether the Consumer Contract complies with clause 5.2;
 - (c) whether the parties have acted in good faith; and
 - (d) whether the object or effect of the term is to:
 - (i) **Supplier's liability:** exclude or limit the Supplier's liability in a manner that is illegal, unclear or misleads the Consumer as to their legal rights;
 - (ii) **Suspension of service:** permit the Supplier to indefinitely suspend all services under the Consumer Contract;
 - (iii) **Reconnection fee:** permit the Supplier to charge the Consumer a reconnection fee for a suspension caused by the Supplier's error or failure;
 - (iv) **Refunds:** exclude or limit the Consumer's right to a pro-rata refund of charges incurred while a service is suspended, except where the suspension is:
 - (A) at the Consumer's request;
 - (B) for the Consumer's material breach of the Consumer Contract;
 - (C) due to a system or network outage for an insignificant period; or

- (D) of a component of the service because the Supplier reasonably believes that the Consumer represents a credit risk in relation to that component;
- (v) **Termination for convenience:** permit the Supplier to terminate a Consumer Contract for convenience:
 - (A) during a Fixed Contract Period; or
 - (B) at any other time, unless the Supplier gives the Consumer at least 30 days Written Notice and either refunds any unexpired pre-paid credits or, if the Consumer agrees, applies them to another service;
- (vi) **Penalty for breach:** require a Consumer to pay a fee for a breach that is not a genuine estimate of the Supplier's likely loss;
- (vii) **Extension of Fixed Contract Period:** permit the Supplier to renew or extend a Fixed Contract Period for a further Fixed Contract Period without obtaining the Consumer's express consent a reasonable time before the period expires;
- (viii) **Notice of Consumer's termination:** require the Consumer to give more than 30 days notice to terminate the Consumer Contract;
- (ix) **Unilateral variation by Supplier:** permit the Supplier to unilaterally amend or vary the characteristics of goods or services, including price, in a Consumer Contract with a Fixed Contract Period without:
 - (A) at least 21 days Written Notice to the Consumer; and
 - (B) offering the Consumer the right to terminate the Consumer Contract within 42 days of the date of the notice without incurring charges, other than usage or network access charges to the date the Consumer Contract ends and outstanding amounts for installation or for equipment compatible with other Suppliers' services ;
- (x) **Excluding remedies:** limit the Consumer's right to make a complaint or claim or otherwise try to exclude any other legal remedy they may have;
- (xi) **Excluding governing law/jurisdiction:** exclude the governing law or jurisdiction of the courts of the State or Territory in Australia in which the Consumer ordinarily resides;

- (xii) **Evidential requirements:** impose evidential burdens or limitations on the Consumer in legal proceedings;
- (xiii) **Payments following termination:** require the Consumer to pay early termination fees, unbilled charges or similar payments within an unreasonable period after termination;
- (xiv) **Enforcement by Supplier:** permit the Supplier to unilaterally determine or enforce a right or obligation without stating, in reasonable detail, what allows the Supplier to do so;
- (xv) **Intellectual property:** require the Consumer to assign, license or otherwise transfer intellectual property rights in relation to communications with other end-users to the Supplier, other than as reasonably required for the Supplier to perform its obligations;
- (xvi) **Suspension or termination for breach of other Consumer Contract:** permit the Supplier to suspend or terminate a service on the breach of another Consumer Contract between them, unless there are reasonable grounds for believing the Consumer represents a credit risk;
- (xvii) **Personal information:** permit the Supplier to collect personal information from the Consumer, other than as reasonably required to perform the Supplier's obligations, except where the Consumer can still acquire the service without providing the information; and
- (xviii) **Supplier's obligations:** permit the Supplier to avoid or limit the performance of its obligations under the Consumer Contract, to the Consumer's detriment.

Exceptions

- 5.1.4 **Price and features:** Terms as to price, features or their performance or operation, which are accurate in all material respects, are not relevant to the assessment of fairness.
- 5.1.5 **Other exceptions:** A term is not unfair to the extent its object or effect is to:
 - (a) **Permitted suspension, termination or restriction:** permit the Supplier to:
 - (i) suspend supply of goods or services for a reasonable period for operational reasons;
 - (ii) suspend or terminate the Consumer Contract for the Consumer's material breach;

- (iii) suspend a service if it reasonably suspects illegal conduct in relation to the service by any user;
 - (iv) terminate the Consumer Contract where evidence suggests illegal conduct in relation to the service by any user;
 - (v) suspend or restrict a service if it reasonably believes the Consumer represents a credit risk in relation to that service, if it has taken reasonable steps to give the Consumer notice;
 - (vi) appropriately suspend, restrict or terminate a service in accordance with an acceptable use policy, which complies with this chapter;
 - (vii) terminate the Consumer Contract or suspend or restrict the supply of goods or services in accordance with chapter 7 (Credit Management), for the Consumer's non-payment;
 - (viii) terminate the Consumer Contract or suspend performance if the Consumer dies or becomes bankrupt, insolvent or subject to a winding-up order or similar insolvency event, if the Supplier reasonably believes that it is unlikely to receive or retain amounts which are due and payable;
 - (ix) suspend or restrict the supply of a service if there are reasonable grounds to believe:
 - (A) there is a threat or risk to the security of the service or integrity of the network; or
 - (B) the service may cause death, personal injury or damage to property;
 - (x) suspend or restrict a service in an emergency, including to support emergency and other essential services;
 - (xi) terminate the Consumer Contract or to suspend, limit or vary the Consumer Contract or its performance to comply with legal requirements, to the extent they unavoidably require the Supplier to do so;
 - (xii) terminate the Consumer Contract or suspend or limit performance, if the Consumer resells the service or otherwise acts as a Carriage Service Provider;
 - (xiii) suspend, intercept or terminate a service as required or authorised by law;
- (b) **Permitted limitation of liability:** limit a Supplier's liability for failure to perform due to an event outside the Supplier's reasonable control;

- (c) **Unused services:** impose a reasonable termination or expiry date for services or components of services not being used by a Consumer, if the Consumer Contract:
 - (i) enables the Consumer to calculate the termination or expiry date;
 - (ii) discloses the Consumer's right to obtain a credit or rebate for any amount paid in advance; and
 - (iii) in the case of pre-paid services, ensures termination for lack of usage does not occur prior to the agreed expiry date of any credit;
- (d) **Special offers:** make legitimate special offers for goods or services with terms which apply only for a limited period, if:
 - (i) the terms for the special offer period are clearly stated; and
 - (ii) the terms that apply after the special offer expires form part of the Consumer Contract; or
 - (iii) the special offer is for new technologies, features or services:
 - (A) the Supplier gives the Consumer reasonable notice of the terms to apply after the special offer period expires; and
 - (B) the Consumer may elect not to use the goods or services that are the subject of the special offer without attracting additional charges.
- (e) **Set-offs:** limit the Consumer's right to offset amounts payable against amounts the Supplier owes the Consumer, so long as:
 - (i) the Supplier agrees at the Consumer's request to offset any deposit held as security against amounts payable when the contract terminates;
 - (ii) the amount payable by the Consumer in full and final payment of their account is not greater than the security deposit; and
 - (iii) the Consumer provides all consents or authorisations the Supplier reasonably requires;
- (f) **Security bond:** require payment of a security bond if there are reasonable grounds to believe the Consumer is a credit risk;
- (g) **International services:** permit the Supplier to vary the prices of international services or international roaming charges, if:

- (i) the variable nature of the prices is clearly stated and forms part of the Consumer Contract; and
 - (ii) the prices are available to the Consumer;
- (h) **Taxes:** permit the Supplier to introduce or vary a fee or charge to pass on a tax imposed by law;
- (i) **Ancillary services:** permit the Supplier to vary or impose a fee or charge for an ancillary service if:
 - (i) the Supplier has offered the Consumer use of a reasonable alternative at no additional charge; or
 - (ii) the Consumer has been given a right to terminate the Consumer Contract without additional charge, other than usage and network access charges;
- (j) **Content and premium services:** permit the Supplier to vary the price of a content or premium service where the Supplier relies on a third party for the service and the third party increases its price to the Supplier, if:
 - (i) the service was offered with a clear statement that the price may change;
 - (ii) within a reasonable period of any proposed price increase, the Supplier provides reasonable notice of the increase to a Consumer who has used the service within the previous six months; and
 - (iii) the Consumer is able to elect not to use the service without attracting any additional charges;
- (k) **Changes by Supplier's supplier:** where the Supplier acquires a carriage service from a third party (other than its related body corporate) for resale, permit the Supplier to vary a term in the Consumer Contract because of amendment to its contract with the third party, if it:
 - (i) issues prior Written Notice to the Consumer, explaining the variation and its effect; and
 - (ii) offers the Consumer the right to terminate the Consumer Contract within 42 days of the date of the notice, without incurring charges, other than:
 - (A) usage or network access charges to the date the Consumer Contract ends; and
 - (B) outstanding amounts for installation costs or for equipment, compatible with other Suppliers' services; and
- (l) **Fixed Contract Period:** permit the Supplier to vary the price or other characteristics of goods and services in a Consumer Contract with a Fixed Contract Period, where

the variation is likely to benefit or have a neutral or minor detrimental impact on a Consumer. Where a Consumer demonstrates that a change has had more than a minor detrimental impact, the Supplier must offer the Consumer the right to terminate the Consumer Contract without incurring fees or charges, other than:

- (i) usage or network access charges to the date the Consumer Contract ends; and
- (ii) outstanding amounts for installation costs or for equipment compatible with other Suppliers' services.

5.2 Presentation of Consumer Contract terms

Clear language

- 5.2.1 **Clear and consistent:** A Supplier must ensure that the terms of a Consumer Contract are clear and consistent.

Format and style

- 5.2.2 **Easy to follow:** A Supplier must ensure that the terms of a Consumer Contract and any document which contains the material terms of the Consumer Contract, are available in writing, are legible and are easy to follow.

Information Accessibility

- 5.2.3 **Assistance services:** A Supplier must include in the Consumer Contract, or in a document made available or accessible to the Consumer at the same time as the Consumer Contract:
- (a) a contact number for the Supplier's customer assistance line (including, if any, a telephone typewriter (TTY) number);
 - (b) the contact telephone number of the National Relay Service; and
 - (c) the contact telephone number of the Translating & Interpreting Service.
- 5.2.4 **Web content:** If the terms of a Consumer Contract are made available on the Supplier's website, the terms must be accessible in accordance with the Web Content Accessibility Guidelines published by the World Wide Web Consortium (W3C).

5.3 Code compliant Consumer Contracts

- 5.3.1 If a Carriage Service Provider entered into a Consumer Contract other than for fixed line services:

- (a) before 4 May 2005; and
- (b) for a Fixed Contract Period

the Carriage Service Provider must provide the Consumer with Written Notice a reasonable time before the Fixed Contract Period expires, that a Consumer Contract complying with this chapter is available.

6 BILLING

Summary

This chapter requires Suppliers to:

- *carry out Billing in a certain way and within certain timeframes;*
- *provide Customers with Billing information; and*
- *include particular information on Customers' Bills.*

Objectives

The objectives of this chapter are to enable Customers to understand and have confidence in their Bills by establishing a set of minimum standards to ensure that:

- *Customers can obtain information of their past and present usage of telecommunications goods or services;*
- *Customers can verify Billed Charges;*
- *Bills are easy to understand; and*
- *Charges are billed, Bills are issued, and payments are credited in a timely manner.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

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.

The Rules on Billing are:

6.1 Billing information

6.1.1 A Supplier must:

- (a) **Information about current Bill:** ensure that Customers can obtain information relevant to their current Bill or any item of its content;
- (b) **Pricing and payment terms:** ensure that Customers can readily access information:
 - (i) on prices and Discounts relevant to their service or Bill; and
 - (ii) relating to the Supplier's terms and conditions associated with payment;
- (c) **Requested information:** on a Customer's request, provide the Customer with information about:
 - (i) the Supplier's Billing terms and conditions;
 - (ii) any available enhanced Billing service; and
 - (iii) relevant Billing Options;
- (d) **Changes in Billing frequency:** prior to or when introducing any change to:
 - (i) the Supplier's Billing Period policy; or
 - (ii) the terms and conditions relating to Billing frequency, inform any Customer affected by the change;
- (e) **Customer awareness:** inform Customers of their responsibility to advise their Supplier of relevant changes to the Customer's telecommunications service and equipment inventory; and
- (f) **On termination:** advise a Customer who has requested termination of their service, that they may receive additional bills.

6.1.2 **Exceptions:** A Supplier need not provide Billing information on the Bill if:

- (a) the Customer's request is frivolous or vexatious;

- (b) the information is not relevant to the Customer's use of the related goods or services;
- (c) it would breach obligations of confidentiality; or
- (d) it would breach any law.

6.1.3 **Itemised Charge details:** A Supplier must ensure that Itemised Charge details relating to the current Bill are available.

6.2 Billing Options and format

6.2.1 **Providing Bills:** Subject to clause 6.2.2, a Supplier may choose not to provide a Bill for goods or services.

6.2.2 **Agreement on providing Bills:** A Customer and Supplier may agree, in the Supplier's terms and conditions for the product or otherwise, that a Customer will incur a Charge without a Bill being issued.

6.2.3 **Direct Debit Customers:** A Supplier:

- (a) need not print a Bill for a Customer paying a Charge by Direct Debit, if the Charge does not vary from period to period and the Customer is informed of the decision;
- (b) must, despite this, ensure that Direct Debit Customers can receive a Bill on request; and
- (c) must comply with the Rules in clauses 6.4.3 and 6.5.3 in relation to Direct Debit Customers.

6.2.4 **Contact details if no Bill:** If a Supplier does not issue a Bill, the Supplier must clearly advise the Customer how to contact the Supplier.

6.2.5 **Information on Billing Options:** A Supplier must inform a Customer:

- (a) of relevant Bill Media available to the Customer, including associated terms and conditions;
- (b) of how the Supplier will inform the Customer of any change to the Bill Media;
- (c) of any options open to the Customer in relation to that change; and
- (d) prior to levying any Charge for Bills issued:
 - (i) in additional Bill Media; or
 - (ii) in Bill Media different from the Supplier's usual Bill Medium for that Customer

of the amount of the Charge and its method of calculation.

6.2.6 **Electronic Bills:** A Supplier must advise Customers who choose to view or receive an Electronic Bill that its presentation may be adversely affected by equipment or conditions beyond the Supplier's control.

6.2.7 **Presentation and Format:** A Supplier must present and format Bills so that Customers can easily read and understand them.

6.3 The Bill

6.3.1 **Descriptions in Bills:** A Supplier must ensure that items and categories in the Bill are described in sufficient manner and detail to enable the Customer to identify the individual components and readily understand them.

6.3.2 **Bill content requirements:** On each Bill it issues, a Supplier must include at least:

- (a) the Customer's Billing Name and Billing Address;
- (b) the Supplier's trading name and ACN and/or ABN;
- (c) a Bill reference number and/or Customer account reference;
- (d) the Billing Period;
- (e) a description of the Charges and credits being Billed, including any Third Party Charges;
- (f) the total amount Billed, applicable credits, payments or Discounts and the net amount payable by the Customer;
- (g) the Bill issue date;
- (h) the current Billed Charges due date and any outstanding amount due date;
- (i) at least one method of Bill payment;
- (j) 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;
- (k) a contact point for Customers to make Billing Enquiries. The contact point must include a telephone number if the Bill is for a telephone service. For other services, if an email contact point is listed on the bill, a telephone number or mailing address for Billing Enquiries must also be listed;
- (l) a contact point for Customers to obtain pricing information if not available from the contact point described in 6.3.2(k); and
- (m) its hours of operation, if the contact point is open less than 24 hours, 7 days a week.

- 6.3.3 **Billing content prohibition:** A Supplier must not include the name of any called individual in a Bill unless agreed by that individual.
- 6.3.4 **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 appropriate Billing arrangements in place, unless the Supplier:
- (a) has agreed with a specific Customer or group of Customers to provide it 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.

6.4 Verifying Charges

- 6.4.1 **Supplier verification:** A Supplier must ensure 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 their 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.
- 6.4.2 **Customer verification of Charges:** A Supplier must ensure that sufficient information is readily available to the Customer to allow them to verify that Charges are correct and consistent with:
- (a) the Supplier's published or contracted prices and Discounts; and
 - (b) what the Customer has requested, used or contracted to receive.
- 6.4.3 **Customer verification of Direct Debit arrangements:** A Supplier must ensure that a Customer can verify that its Direct Debit arrangements are in accordance with their authorisation.
- 6.4.4 **Itemised Charges:** A Supplier must ensure that a Customer has access to Itemised details of all Charges relating to a Standard Telephone Service in accordance with clause 6.4.5 or 6.4.6.
- 6.4.5 **Timed Calls:** A Supplier must give the Customer Itemised Timed Call Charges for the current Billing Period, unless the Customer otherwise requests or agrees.

- 6.4.6 **Untimed Calls:** On a Customer's request, a Supplier must provide Itemised call details for Untimed Calls, including local calls.
- 6.4.7 **Itemised details of past Charges:** A Supplier must ensure that Itemised details of past Charges are readily available to the Customer for at least 2 Billing Periods prior to the current Billing Period. The Supplier may need prior notice to do so.
- 6.4.8 **Notice period for Itemised Billing:** A Supplier must inform Customers of any notice period required to obtain Itemised Billing.

6.5 Billing timeliness

- 6.5.1 **Timeliness of Bill issue:** Suppliers must process and issue Bills to their delivery contractor or mechanism within 10 Working Days after closure of the Billing Period, except when:
 - (a) the Customer has agreed otherwise;
 - (b) value-added information is included in or with the Bill, which requires additional processing efforts;
 - (c) system or processing problems occur;
 - (d) a Supplier delays Bill issue for Customer service purposes;
 - (e) the Bill Media used requires a longer processing time; or
 - (f) a Force Majeure occurs.
- 6.5.2 **Delayed Bill issue:** If unforeseen events delay Bill issue, a Supplier must endeavour to rectify the situation in a timely manner.
- 6.5.3 **Direct Debits:** A Supplier must:
 - (a) ensure it complies with clause 6.5.1 to enable the Customer to check the Bill before the Direct Debit transaction occurs; and
 - (b) provide details of a Direct Debit transaction to the Customer's nominated financial institution in a timely manner, to enable the transaction to take place as close as possible to the due date for payment.
- 6.5.4 **Timeliness for Billed Charges:** A Supplier must:
 - (a) endeavour to incorporate all Charges relating to the current Billing Period into a Bill;
 - (b) inform Customers that some Charges in a Bill may relate to a previous Billing Period;
 - (c) not delay the Billing of Charges to another Supplier in the Billing chain by more than 95 days from the date the Charge was incurred by the Customer;

- (d) not Bill for Charges older than 190 days from the date the Charge was incurred by the Customer; and
- (e) not Bill White Pages directory Charges older than 220 days from the directory's public closing date.

6.5.5 **Allowable delays:** A Supplier will not breach clause 6.5.4:

- (a) if the delay was previously agreed by the Customer; or
- (b) because of delays due to:
 - (i) charges being suspended while under dispute between Suppliers;
 - (ii) back-dated credits and rebilling following late advice to the Supplier of a change of lessee or an insolvency;
 - (iii) Customer initiated changes;
 - (iv) changes to the Telecommunications Numbering Plan 1997 and one-off network infrastructure changes, where prior notice has been given to affected Customers; or
 - (v) a Force Majeure.

6.5.6 **Resuming Billing after Suspension:** Where Charges are suspended due to a dispute between Suppliers:

- (a) where reasonable and practicable, a Supplier must notify Customers materially affected by the dispute that there are Charges incurred or being incurred, for which they may be billed once the dispute is resolved; and
- (b) where possible, a Supplier must provide an estimate of the Charges and timeframe for resolution of the dispute.

6.5.7 **Timeliness between Suppliers:** Suppliers must:

- (a) ensure that Billing Name and Billing Address information exchanged between Suppliers for Billing purposes is accurate and complete, and exchange is finalised within the following timeframes:
 - (i) 95% within 5 Working Days; and
 - (ii) 100% within 10 Working Daysfrom the date the Supplier receives a request for the information; and
- (b) process and issue to the receiving Supplier any usage records, Charges and credits which are provided through a daily electronic interface within the following timeframes:
 - (i) 95% within 5 Working Days; and

- (ii) 100% within 10 Working Days

of the usage records, Charges and credits being successfully rated and matched to the relevant account.

6.5.8 **Exceptions for exchange between Suppliers:** A Supplier will not breach clause 6.5.7 when:

- (a) there is a different agreement between Suppliers;
- (b) system or processing problems occur;
- (c) unforeseen events delay Bill issue, in which case the Supplier must endeavour to rectify the situation in a timely manner; or
- (d) a Force Majeure occurs.

6.5.9 **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 account:
 - (i) prior to generating the subsequent Bill; or
 - (ii) within 5 Working Days of the Customer's payment transaction,

whichever is sooner; and

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

6.5.10 **Exceptions for Bill payment processing:** A Supplier will not breach clause 6.5.9 when:

- (a) there is a different agreement with the Customer;
- (b) system or processing problems occur;
- (c) the Supplier does not receive accurate, complete and timely information about a Customer's payment; or
- (d) a Force Majeure occurs.

6.6 Payment

6.6.1 **Standard Telephone Service Bills:** For a Standard Telephone Service, payment by mail must be one of the payment options, unless the Customer agrees otherwise.

6.6.2 **Verifying payment:** A Supplier must ensure that a Customer can verify their payment.

6.7 Charging for Billing information

6.7.1 **Generally no Charge for Billing information:** A Supplier must provide information on Billing and prices without Charge, except where:

- (a) the Supplier has previously informed the Customer of the amount of the Charge or how it will be calculated;
- (b) the Charge is limited to the reasonable cost of providing the information;

and at least one of the following applies:

- (i) the information provided is a Billing service marketed by the Supplier and ordered by the Customer;
- (ii) the request is significantly higher in volume or complexity than usual and would involve the Supplier undertaking substantially greater effort, or would jeopardise the standard of customer service provided to other Customers;
- (iii) a Customer's commercial agent requests copies of numerous Bills spanning a number of years; or
- (iv) the request is for a copy of Bills and the Supplier incurs extra cost as a result.

6.7.2 **Charges for Itemisation:** A Supplier must ensure that Itemised Charge details relating to the current Bill are available without Charge, except:

- (a) for a charge to recover high unit costs involved in a particular type of Itemisation; or
- (b) if a Customer's request for information on Itemised Charge details is frivolous or vexatious,

in which case the Charge must comply with clause 6.7.1 (a) and (b).

6.7.3 **Charges for Itemisation to resolve a Billing Complaint:** A Supplier must not Charge for providing Itemisation in an endeavour to resolve a Billing Complaint relating to:

- (a) the most recently issued quarterly Bill;
- (b) the two most recently issued monthly Bills; or
- (c) where a Bill is not issued, Charge information relating to the 2 months prior to the date the Billing Complaint was lodged with the Supplier.

6.7.4 **Cost of Billing Enquiry:** Access to a Supplier's Billing Enquiry point must be provided at reasonable cost unless previously agreed between the Customer and Supplier and documented in the Supplier's terms and conditions.

6.8 Privacy, confidentiality and security

6.8.1 **Privacy:** A Supplier must protect the privacy of each Customer's Billing and related personal information.

6.9 Authorised Representatives

6.9.1 **Formal authorisation:** For the purposes of this chapter, a Supplier must ensure that Authorised Representatives are formally authorised by the Customer.

7 CREDIT MANAGEMENT

Summary

This chapter requires Suppliers to:

- *undertake appropriate Credit Assessment;*
- *provide credit control tools;*
- *implement Credit Management processes; and*
- *have a Financial Hardship policy.*

Objectives

The objectives of this chapter are to:

- *set out minimum standards of Credit Management practice;*
- *provide Customers with information, a clear understanding of their options and a guide to minimum standards they can expect;*
- *provide for the use of tools to manage Customers' expenditure on Services; and*
- *ensure policies are in place to assist Customers experiencing Financial Hardship.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

The Rules on Credit Management are:

7.1 Credit Assessment

- 7.1.1 **Credit Assessment rule:** If a Customer applies to a Supplier for the supply of a Service, the Supplier must:
- (a) undertake an appropriate Credit Assessment to determine whether to supply a Service to that Customer; or
 - (b) supply a Service which includes measures to effectively limit the Customer's expenditure or usage by:
 - (i) a Hard Cap;
 - (ii) a Pre-paid Service;
 - (iii) the barring of international and premium service calls;
 - (iv) reducing broadband internet download speed on reaching a limit; or
 - (v) any other equivalent measure.
- 7.1.2 **Credit Assessment process:** Where a Supplier undertakes a Credit Assessment, the Supplier must Inform the Customer, at the time of the Credit Assessment, of its general nature and effect.

7.2 Results of Credit Assessment

- 7.2.1 **Restricted access:** If access to Services is Restricted by the Supplier as a result of its Credit Assessment and Restricted Services have not previously been supplied to the Customer, the Supplier must Inform the Customer at the time they are imposed:
- (a) of the Restrictions or conditions to be imposed upon access to the Service;
 - (b) of the general nature of the reasons for these Restrictions; and
 - (c) if applicable, how the Customer may access Services which have been Restricted.
- 7.2.2 **Security Bond:** If a Supplier requires a Customer to provide a Security Bond, the Supplier must:
- (a) base the requirement on the Credit Assessment;
 - (b) Inform the Customer in Writing prior to collecting the Security Bond, that the Supplier may use it to offset any undisputed amount the Customer owes;
 - (c) advise the Customer in Writing within 14 days of receiving the Security Bond, of repayment and interest arrangements

and the account to which the Security Bond will be applied; and

- (d) repay the amount of the Security Bond and interest accrued to the Customer, within 10 Working Days of the Customer:
 - (i) satisfactorily completing the terms of the Security Bond arrangements; or
 - (ii) ceasing to receive Services from the Supplier.

7.2.3 **Advice to Guarantors:** If a Supplier requires a formal guarantee as security for any Service, the Supplier must provide appropriate advice to the Guarantor in Writing of the nature and effect of the guarantee before the Service is provided.

7.2.4 **Use of the term "Guarantor":** A Supplier must not use the term Guarantor to describe the Customer.

7.2.5 **Advising the Customer about risks:** Where the Supplier knows that the Customer is not going to be the principal end user of a Service, the Supplier must Inform the Customer of their potential liability and risk before the Service is provided.

7.2.6 **Refusal to supply Service:** If a Supplier refuses to supply a Service:

- (a) at least partly because of information provided by a Credit Reporting Agency, the Supplier must Write to the Customer within 7 Days and tell them:
 - (i) that the application for Service has been refused;
 - (ii) that the refusal was based wholly or partly on information given to the Supplier by a Credit Reporting Agency;
 - (iii) the name and address of the Credit Reporting Agency; and
 - (iv) of their right to access their credit information file maintained by the Credit Reporting Agency;
- (b) for any other reason, the Supplier must Inform the Customer of the nature of the reasons.

7.3 Credit Control tools

7.3.1 **Security tools:** Suppliers must notify Customers about:

- (a) the availability of security tools to prevent unauthorised access to or use of Services;
- (b) how to obtain assistance to use them; and
- (c) the cost of any security tools offered directly by the Supplier.

- 7.3.2 **Customer request for Suspension:** If a Customer requests a Supplier to Suspend a Service, before Suspension occurs, the Supplier must Inform the Customer of any fees or charges they are required to pay during Suspension.
- 7.3.3 **Unbilled Amounts:** A Supplier must:
- (a) provide Customers with access to current information on Unbilled Amounts on their account; and
 - (b) if it promotes a Limit to monitor a Customer's Unbilled Amounts and a Customer selects that option, inform the Customer of:
 - (i) whether the Limit is a guideline for Credit Management action or a Hard Cap;
 - (ii) the value of the Limit and if and how the Limit might change from time to time;
 - (iii) any exceptions to the Limit; and
 - (iv) what will happen once the Limit has been reached.
- 7.3.4 **Credit control by Suppliers:** A Supplier must have credit control tools in place which the Supplier applies, without charge, for the purpose of managing a Customer's expenditure, where appropriate.
- 7.3.5 **Credit control by Customers:** A Supplier must make credit control tools available to Customers to assist them to manage their expenditure.
- 7.3.6 **Credit control tools list:** A Supplier must make a current list of the credit control tools it offers publicly available.
- 7.3.7 **Options for Customers to Restrict access:** A Supplier must Inform a Customer at the appropriate time:
- (a) of the Supplier's Services to which they have access;
 - (b) if there are options for Restricting access to the Services; and
 - (c) any charges for those options.
- 7.3.8 **Information on Restricted access:** Where a Customer has elected to Restrict access to a Supplier's Service, the Supplier must inform the Customer:
- (a) of any of the Supplier's Services, or other circumstances which the Supplier knows about, to which the Restriction does not apply; and
 - (b) if the Restriction can be removed by anyone other than the Customer.

7.4 Credit Management

- 7.4.1 **Payment difficulties:** A Supplier must have and inform Customers about, processes to assist Customers who are experiencing difficulties paying their accounts.
- 7.4.2 **Timing of Credit Management:** Suppliers must ensure that Credit Management under this chapter is carried out prior to:
- (a) referring the Customer debt to a debt collection agent; and
 - (b) listing a Customer default with a Credit Reporting Agency.
- 7.4.3 **Prior to or when taking Credit Management action:** A Supplier must advise Customers prior to taking Credit Management action, or at the appropriate time, of the general nature and effect of:
- (a) the time they have to pay for Services;
 - (b) their obligation to pay by the due date;
 - (c) any processes the Supplier has for:
 - (i) interim billing or changes in the billing cycle for Credit Management purposes;
 - (ii) follow up of overdue accounts; and
 - (iii) assisting Customers who are experiencing difficulties in paying their accounts, including the Supplier's Financial Hardship policy;
 - (d) part payment of a bill in circumstances where a number of Services are combined on one bill, and any method for allocating amounts received; and
 - (e) the reasons for the Supplier's actions.
- 7.4.4 **Informing a Customer about Restriction, Suspension or Disconnection:** When Informing a Customer about a Supplier's Restriction, Suspension or Disconnection of the Customer's Service, the Supplier must:
- (a) make reasonable attempts to ascertain whether the Customer has understood any verbal advice given;
 - (b) ensure that attempts to Inform are directed to the Customer; and
 - (c) ensure that the primary method used is in a format reasonably acceptable to the Customer based on their usage history.

- 7.4.5 **Prior to Suspending or Disconnecting:** Prior to Suspending or Disconnecting a Service, a Supplier must make reasonable attempts to advise the Customer of:
- (a) the role of community financial counsellors and consumer advocates in dealing with financial matters;
 - (b) options in respect to repayment processes; and
 - (c) the effect non-payment may have on other Services the Customer has with the Supplier.
- 7.4.6 **Restricting a Service:** A Supplier must:
- (a) subject to clause 7.4.8, take reasonable steps to Inform a Customer of the Supplier's intention to Restrict a Service prior to Restricting it;
 - (b) if Restricting a Customer's access to Services due to Credit Management processes (other than Restrictions imposed following Credit Assessment when the Customer first applied for the Service), Inform the Customer of:
 - (i) any Restrictions or conditions to be imposed upon access; and
 - (ii) if applicable, how they might restore access;
 - (c) ensure that Emergency Service Numbers can be accessed from a Restricted Service.
- 7.4.7 **Suspending a Service:** A Supplier must:
- (a) subject to clause 7.4.8, make reasonable attempts to Inform the Customer of the Supplier's impending Suspension of the Customer's Services, at least 7 days prior to the Suspension, including by indicating:
 - (i) the earliest date on which the Suspension could occur; and
 - (ii) the date of issue of the correspondence, if they are Informed in Writing;
 - (b) on a Customer's request, review the Suspension decision within a reasonable time and promptly Inform the Customer of the outcome;
 - (c) prior to Suspending a Service, make reasonable attempts to Inform the Customer:
 - (i) of the consequences of non-payment;
 - (ii) of any ongoing charges that will still apply;
 - (iii) that the Supplier has a Financial Hardship policy that may enable certain Customers to enter a financial

arrangement to avoid further Credit Management action; and

(iv) that a summary of that policy is available on request; and

(d) ensure that Emergency Service Numbers can be accessed from a Suspended service, where relevant.

7.4.8 **Suspension or Restriction without notice:** A Supplier:

(a) may only Suspend or Restrict a Service without Informing the Customer if the Supplier:

(i) assesses that the Customer or the account status presents an unacceptably high credit risk to the Supplier; or

(ii) reasonably suspects Fraud or attempted Fraud;

(b) at the Customer's request, must promptly review its decision to Suspend or Restrict the Service; and

(c) must not impose a reconnection fee or charge following such action if it resulted from the Supplier's mistake.

7.4.9 **Disconnection:** A Supplier must:

(a) make reasonable attempts to Inform a Customer of a decision to Disconnect the Customer's Service, at least 7 Days prior to Disconnection;

(b) in Informing the Customer:

(i) indicate the earliest date on which the Disconnection could occur; and

(ii) include the date of issue of the correspondence, if they are Informed in Writing;

(c) at the Customer's request, promptly review its decision to Disconnect;

(d) send a separate Disconnection notice, not just a Bill, in Writing to the Customer prior to Disconnecting the Service, unless the Customer was previously advised in Writing under clause 7.4.7 or 7.4.9(a);

(e) prior to Disconnecting, make reasonable attempts to Inform the Customer and any Guarantor:

(i) of all consequences to them of non-payment;

(ii) that default information may be used for internal purposes;

(iii) of any process enabling Customers to arrange a repayment plan for outstanding amounts following

Disconnection, prior to the Supplier commencing external recovery or legal action;

- (iv) in Writing that:
 - (A) their telephone number may no longer be available after Disconnection;
 - (B) default information may be disclosed to external parties or a Credit Reporting Agency;
 - (C) the debt may be referred to an external collection agent; and
 - (D) legal action may be taken to recover the unpaid debt.

7.4.10 **Credit Management action over disputed amounts:** A Supplier must:

- (a) not take Credit Management action in relation to genuinely disputed amounts while the dispute is being investigated and remains unresolved by the Supplier, TIO or relevant recognised agency; and
- (b) advise the Customer when it will commence any Credit Management action after the dispute has been determined.

7.4.11 **Fees or charges for Credit Management action:** A Supplier must not impose a Credit Management fee or charge unless:

- (a) it has advised the Customer in Writing of its amount or method of calculation;
- (b) the fee or charge is provided for in the Customer's contract; and
- (c) the fee or charge only relates to the Supplier's reasonable costs.

7.4.12 **Fees or charges for early termination:**

If:

- (a) a Customer requests early termination of their contract; or
- (b) the Supplier invokes early termination of the contract,

the Supplier must Inform the Customer of the fees and charges the Customer is required to pay in that event.

7.4.13 **Collection agents:** A Supplier must ensure that its:

- (a) compliance arrangements with debt collection agencies require that the collection methods employed are not:

- (i) harsh and unconscionable at law, constitute undue harassment or are otherwise unlawful;
 - (ii) disreputable or offensive; or
 - (iii) inconsistent with the standards approved by any relevant industry body; and
 - (b) debt collection agents comply with accepted professional and ethical standards for collection of debts and have:
 - (i) compliance systems which accord with the principles of the current Australian Standard on Compliance Programs; and
 - (ii) complaints handling processes which generally accord with the current Australian Standard on Complaints Handling.
- 7.4.14 **Other third party action:** A Supplier must take all reasonable steps to:
- (a) ensure that debts:
 - (i) sold or assigned to third parties; or
 - (ii) listed with a Credit Reporting Agency;do not include any unresolved service or billing issues involving disputed account balance amounts; and
 - (b) resolve any billing or service issues that arise after an amount has been sold or assigned to a third party.
- 7.4.15 **Updates to Credit Reporting Agencies:** A Supplier must ensure that it has a process for updating its Customers' credit information with a Credit Reporting Agency as soon as practicable unless Part 111A of the Privacy Act and the Credit Reporting Code of Conduct specify a time frame for such notification in which case that requirement should be followed.
- 7.4.16 **Mistaken default listing of a Customer:** Where a Supplier becomes aware that a Customer has been default listed in error, the Supplier must inform the Credit Reporting Agency within 1 Working Day.
- 7.4.17 **Failure to pay through no fault of Customer:** Where a Customer can demonstrate that they have taken all reasonable steps to pay a known due debt, but the account has not been paid due to the fault of a third party or the Supplier, the Supplier must ensure that:
- (a) if the Customer has been default listed as a result, it notifies the Credit Reporting Agency within 1 Working Day;
 - (b) no additional charges arise; and

- (c) no other credit related disadvantages arise for the Customer.

7.5 Financial Hardship policy

- 7.5.1 **Financial Hardship policy:** A Supplier must have a Financial Hardship policy that:
 - (a) provides for training of staff who will be applying the policy;
 - (b) is sufficiently flexible to accommodate the circumstances of individual Customers;
 - (c) ensures that a Customer can contact appropriate employees of the Supplier if experiencing Financial Hardship; and
 - (d) includes options for managing a Customer's Financial Hardship.
- 7.5.2 **Summarising the policy to Customers:** A Supplier must give a Customer a summary of how the Supplier's Financial Hardship policy may assist Customers:
 - (a) on the Customer's request;
 - (b) when the Customer indicates to the Supplier that they are experiencing Financial Hardship; or
 - (c) if it considers the Customer may be eligible for the policy.
- 7.5.3 **Minimum content of summary:** This summary must include:
 - (a) contact details to obtain more information about the Supplier's Financial Hardship Policy; and
 - (b) options for managing Financial Hardship.
- 7.5.4 **Written reminder notices:** When a Supplier sends a reminder notice in Writing, it must advise the Customer of the Supplier's Financial Hardship Policy and how to obtain more details.
- 7.5.5 **No charge for Financial Hardship policy implementation:** A Supplier must not impose any charge on Customers for the implementation of their Financial Hardship policy.

7.6 Financial Hardship assessment

- 7.6.1 **Assessing eligibility:** Upon a Customer's request, a Supplier must assess the Customer's eligibility for assistance under the Supplier's Financial Hardship policy, taking into account the Customer's individual circumstances.
- 7.6.2 **Supporting documentation:** If a Supplier requires supporting documentation from a Customer to assess their application, the Supplier must advise the Customer to send the documentation to a specific contact point, and provide their:

- (a) postal address; and
- (b) facsimile number or email address.

7.7 Financial Hardship arrangements

7.7.1 **Flexible arrangements:** A Supplier must ensure that any Financial Hardship arrangements agreed with a Customer are sufficiently flexible to take account of the Customer's individual circumstances.

7.7.2 **Customer information:** A Supplier must:

- (a) Inform the Customer of the agreed terms of the Financial Hardship arrangements;
- (b) ensure the Customer is aware of their rights and obligations under any Financial Hardship arrangement;
- (c) at the time a Financial Hardship arrangement is implemented, advise the Customer to contact them if the Customer's circumstances change during the term of the arrangement; and
- (d) be willing and able to review the arrangements if the Customer's circumstances change.

7.8 Credit Management action during Financial Hardship arrangement

7.8.1 A Supplier must not undertake Credit Management action while a Financial Hardship arrangement is being actively discussed with a Customer or during the course of the arrangement unless:

- (a) the Customer breaches the terms of the Financial Hardship arrangement. In that event, if the Customer does not contact the Supplier to discuss a new arrangement, the Supplier must take reasonable steps to contact the Customer before taking Credit Management action;
- (b) it would be reasonable in the circumstances; or
- (c) the Customer agrees at that time.

7.9 Credit information

7.9.1 Subject to the provisions of the Privacy Act, a Supplier:

- (a) must ensure that a Customer can obtain information held by the Supplier relating to their credit history or credit standing; and
- (b) in supplying that information, must not impose a fee or charge on the Customer, except:
 - (i) for abnormal costs of supplying the information;

- (ii) if the fee or charge is not excessive; and
- (iii) if the Supplier has Informed the Customer at the time of, or prior to, imposing the fee or charge of the amount or method of its calculation.

8 CUSTOMER TRANSFER

Summary

This chapter requires Suppliers:

- *and their Sales Representatives to behave in a certain manner when approaching Customers to seek a Transfer; and*
- *to implement appropriate procedures to solicit, complete and record Transfers.*

Objectives

The objectives of this chapter are to minimise unauthorised Transfers, by establishing procedures for Suppliers to:

- *identify the Authorised Customer;*
- *inform Customers of all relevant terms and conditions of the Transfer and Supplier contact details;*
- *ensure appropriate conduct of Sales Representatives;*
- *confirm the components of the Transfer to the Customer;*
- *verify the Transfer through independent means;*
- *notify the Customer of the completion of the Transfer;*
- *maintain records of the Transfer process; and*
- *provide Customer access to Supplier's records of the Transfer.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

The Rules on Customer Transfer are:

8.1 All selling channels

8.1.1 **Requirements for Sales Representatives:** A Supplier must ensure that its Sales Representatives:

- (a) identify themselves, the Supplier and the purpose of any visit or call;
- (b) present the Supplier's Telecommunications Service in a clear, truthful and honest manner without exaggeration;
- (c) maintain strict confidentiality;
- (d) leave premises visited for Door to Door Selling if the Customer requests;
- (e) receive induction and training prior to soliciting Transfers, using current, complete and accurate materials that remain available to them, including training on:
 - (i) relevant areas of trade practices, fair trading and door to door sales legislation; and
 - (ii) this chapter; and
- (f) if referring to another Supplier's Telecommunications Service:
 - (i) refer to a public document source and its date;
 - (ii) inform the Customer that the information may vary depending on the terms of the contract between the Customer and Supplier; and
 - (iii) refer only to comparisons that are relevant to the proposed Transfer.

8.1.2 **Prohibitions on Sales Representatives:** A Supplier must ensure that its Sales Representatives do not:

- (a) solicit orders in inappropriate places; or
- (b) mislead Customers if referring to another Supplier's Telecommunications Service; or
- (c) mislead or misrepresent the Supplier's affiliation with other Suppliers.

8.1.3 **Before a Transfer:** A Gaining Supplier must:

- (a) take all reasonable steps to ascertain the name of the Authorised Customer;

- (b) ensure the Service remains in the name of that Authorised Customer, even if dealing with an Authorised Representative;
- (c) take all reasonable steps to ensure that the person who authorises the Transfer is the Authorised Customer or their Authorised Representative;
- (d) obtain consent to a Transfer from the Authorised Customer or their Authorised Representative; and
- (e) take all reasonable steps to ensure that the consent obtained is informed consent. Informed consent will occur when, before seeking agreement to the Transfer, the Gaining Supplier informs the Authorised Customer or their Authorised Representative of the following and the Authorised Customer or their Authorised Representative clearly conveys agreement to the Transfer:
 - (i) that the Authorised Customer is entering into a new contract by agreeing to the Transfer;
 - (ii) which Telecommunications Service is being transferred;
 - (iii) the terms and conditions of the Transfer;
 - (iv) the identity of the Gaining Supplier;
 - (v) whether equipment they have for their existing service will be compatible with the Gaining Supplier's service;
 - (vi) the relevant terms and conditions relating to any Telecommunications Goods purchased from the Gaining Supplier for use with the Telecommunications Service being Transferred; and
 - (vii) that there may be consequences arising from their existing Telecommunications Services contract, which the Customer must check.

8.1.4 **At the Point of Sale:** At the Point of Sale, a Gaining Supplier must:

- (a) make available at least the following information to the Authorised Customer or their Authorised Representative:
 - (i) the contact details of the Gaining Supplier;
 - (ii) the appropriate contact details for lodging an inquiry or a complaint about any aspect of the Transfer;
 - (iii) that they will be notified within 10 Working Days of the Transfer taking place; and
 - (iv) the mechanism by which the Customer can ascertain that the Transfer has occurred;

- (b) check the accuracy of the Transfer details with the Customer including at least:
 - (i) the name and address of the Authorised Customer;
 - (ii) the Telecommunications Service and number to be Transferred;
 - (iii) the identity of the Gaining Supplier; and
 - (iv) the fact that the Telecommunications Service will be Transferred to a new Supplier; and
- (c) provide Customers Transferred through retail outlet and Door to Door Selling channels, with a summary of these Transfer details.

8.1.5 **After the Transfer:** A Gaining Supplier must:

- (a) within 10 Working Days of the Transfer, advise the Authorised Customer:
 - (i) that the Transfer has been completed; and
 - (ii) if the Gaining Supplier will not bill the Authorised Customer, the name of the organisation that will do so,
- (b) create and retain auditable records for a minimum of 2 years, or as required by law, establishing that:
 - (i) the person who authorises the Transfer is the Authorised Customer or their Authorised Representative; and
 - (ii) the Transfer is authorised and advised in accordance with this chapter;
- (c) provide the Authorised Customer or their Authorised Representative with access to the record and any voice recording of their Transfer request;
- (d) keep a record of the Authorised Customer or Authorised Representative's consent to the Transfer; and
- (e) have effective procedures in place to ensure that:
 - (i) the Customer is informed that they can request not to receive further marketing approaches in one or more sales channels; and
 - (ii) the Customer is not contacted if they have made such a request.

8.1.6 **Verification:** A Supplier must ensure that it has appropriate procedures for:

- (a) Verifying a Transfer, or an appropriate sample of Transfers, in all selling channels where the Supplier or its Sales Representative initiates the contact with the Customer; and
 - (b) identifying the Sales Representative responsible for effecting a Transfer.
- 8.1.7 **Customer's right to rescind:** An Authorised Customer may rescind a contract before any relevant cooling off period expires, without giving the Gaining Supplier reasons other than those required by law.
- 8.1.8 **Cooling off period requirements:** A Gaining Supplier must ensure that:
 - (a) the Customer has been given all information about any cooling off period and rights of cancellation which arise under legislation relating to the relevant sales channel; and
 - (b) notice to the Customer of the right to rescind the contract is in any form required by law.
- 8.1.9 **Cooling off period prohibitions:** Except as allowed by law, a Gaining Supplier must not:
 - (a) complete a Transfer prior to the expiry of the cooling off period;
 - (b) seek or knowingly retain payment for any Telecommunications Services supplied under a contract cancelled within the cooling off period; or
 - (c) accept a waiver of a cooling off period.
- 8.1.10 **Authorised Representatives:** For the purposes of this chapter, a Supplier must ensure that Authorised Representatives are legally authorised by the Customer.

8.2 Telemarketing

- 8.2.1 **Consent to recording:** A Supplier must ensure that its Sales Representative obtains the Customer's consent to recording the Telemarketing call or gives the Customer the opportunity to opt out of recording.
- 8.2.2 **Declining an offer:** A Supplier must ensure that Telemarketing calls provide a Customer with the opportunity to accept or decline the Sales Representative's offer.
- 8.2.3 **Authorisation:** A Supplier must ensure that its Sales Representative records the Customer's voice authorisation to Transfer during a Telemarketing call, including at least:
 - (a) the Customer's:
 - (i) name;

- (ii) consent to Transfer;
- (iii) acknowledgement that the Transfer is authorised;
- (b) the Telecommunications Service being Transferred;
- (c) the name of the Gaining Supplier; and
- (d) a summary or the name of the service package that the Customer has agreed to accept.

8.3 Access to information

8.3.1 **On request:** If an Authorised Customer or their Authorised Representative requests:

- (a) a Gaining Supplier must make any material relevant to the contract for Telecommunications Services available; and
- (b) a Supplier must provide either electronic or written copies of records relating to a Transfer in a format that is clear, unambiguous and easily understood, to the Authorised Customer, their Authorised Representative or, with the Authorised Customer's consent, to a nominated party.

9 COMPLAINT HANDLING

Summary

This chapter requires Suppliers to:

- *establish appropriate complaint handling processes; and*
- *make information about these processes available to Customers and to the TIO.*

Objectives

The objectives of this chapter are that Suppliers have Complaint handling processes that maintain and enhance Customer satisfaction through:

- *recognising, promoting, and protecting Customer's rights;*
- *providing an efficient, fair and accessible mechanism for handling Complaints;*
- *providing information on their Complaint handling processes; and*
- *monitoring Complaints to improve the quality of Telecommunications Products.*

General Rules

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

Relationship with the Guideline

Suppliers must comply with the Rules and must be able to demonstrate that they have done so.

While not mandatory, it is expected that Suppliers will have regard to the Guideline in deciding how they will comply with the Rules.

Purpose of the Guideline

The Guideline is designed to:

- *aid in interpreting the Rules; and*
- *provide examples of how a Supplier may choose to comply with the Rules.*

Rules

This chapter does not apply to:

- (a) Complaints that are the subject of legal action;
- (b) Complaints made in respect of or on behalf of Customers by entities levying fees or charges for their services, other than legal practitioners; and
- (c) Complaints made under *ACIF C546:2004 Deployment of Mobile Phone Network Infrastructure*.

The Complaint handling Rules are:

9.1 Complaint handling processes and policies

9.1.1 **Complaint handling processes:** Suppliers must demonstrate a commitment at all levels of their organisation to efficient, fair and courteous resolution of Complaints. This must include having a Complaint handling process:

- (a) acknowledging the right to complain;
- (b) servicing the needs of people with disabilities and from non-English speaking backgrounds;
- (c) recognising the need for fairness to all parties involved;
- (d) providing adequate resources with the authority to resolve Complaints and achieve any outcomes;
- (e) providing appropriate and systematic record keeping of Complaints and their outcomes, including those resolved at first contact;
- (f) recording, actioning and monitoring undertakings made to a Customer to resolve a Complaint;
- (g) including an escalation process;
- (h) including the referral of Complaints about others' Telecommunications Products to appropriate organisations; and
- (i) having regard to the Australian Standard – Complaints Handling AS ISO 10002-2006.

9.1.2 **Complaint handling policies:** Suppliers must have documented Complaint handling policies that:

- (a) are publicised to Customers and to staff;
- (b) include information about the right to complain;
- (c) include information on how, when and where to make a Complaint; and

(d) are made available to Customers upon request, in hard copy unless otherwise agreed.

9.1.3 **Changing processes:** If a Supplier varies its Complaint handling process:

(a) it must reflect this in information it provides within 60 days of the change or as soon as practicable after that time; and

(b) if the variation is significant and affects its Customers' access to the process, the Supplier must inform Customers within 16 weeks of the change.

9.1.4 **Advising the TIO:** Suppliers must give the TIO a copy of their internal Complaint handling policy and advise the TIO of any significant changes within 7 days of the change, or as soon as practicable after that time.

9.1.5 **Compatible fault handling processes:** Fault and Complaint handling processes must:

(a) be compatible and transparent to the Customer, as far as possible; and

(b) have the capacity to determine and resolve Complaints.

9.1.6 **Demanding payments:** While a Complaint is being investigated, Suppliers must not demand payment of genuinely disputed amounts that are the subject of the Complaint.

9.1.7 **Retaining records:** Without limiting Suppliers' obligations at law, including under the Privacy Act, Suppliers must retain material recorded during the Complaint handling process for at least 2 years after the Complaint is closed.

9.1.8 **Causes of complaints:** To identify recurring or systemic problems and prevent recurrence, Suppliers must:

(a) for Complaints resolved at the first point of contact, implement processes, procedures or systems to facilitate this;

(b) classify and analyse Complaints at least every 3 months; and

(c) address areas requiring attention as soon as practical.

9.2 Making Complaints

9.2.1 **Assisting Customers:** Suppliers must reasonably assist Customers to formulate and lodge Complaints if they request.

9.2.2 **Lodgement methods:** Suppliers must provide free or low cost, flexible methods of lodging Complaints.

9.2.3 **Using Representatives:** Suppliers must ensure Customers can use an Authorised Representative and/or Advocate to make a

Complaint, if a means of authorisation can be easily established and verified.

- 9.2.4 **Acknowledging Complaints:** Suppliers must acknowledge written Complaints within 5 Working Days of their receipt, in writing if the Complainant requests.
- 9.2.5 **Resolving Complaints:** Where possible, Suppliers must seek to resolve a Complaint on first contact. Complaints must be finalised within 30 days or as soon as practicable in all the circumstances.
- 9.2.6 **Timeframe updates:** Suppliers must make every reasonable effort to advise Customers within 5 Working Days of receiving Complaints, of their complexity and a possible timeframe for finalisation. Suppliers must keep Complainants advised of timeframe delays and the Complaint's progress.
- 9.2.7 **Progress updates:** Suppliers must enable Customers to inquire about a Complaint's progress.
- 9.2.8 **Advising outcomes:** Suppliers must advise Customers of the outcome of their Complaint, in writing if the Customer requests.
- 9.2.9 **Frivolous complaints:** If, after careful consideration and appropriate escalation, a Supplier dismisses a Complaint as frivolous or vexatious, it must inform the Customer of the reasons and their external avenues of recourse.

9.3 Complaint Handling charges

- 9.3.1 **Imposing charges:** Suppliers must not impose a Complaint related charge or penalty except for a charge imposed:
- (a) after discussing it with the Customer and informing them of it in writing;
 - (b) if the investigative/handling process for the Complaint is sufficiently onerous;
 - (c) if the charge is reasonable in the circumstances; and
 - (d) after giving the Complainant the option to pursue the Complaint and pay the charge, discontinue the Complaint or take the matter to the TIO.
- 9.3.2 **Refunding charges:** If a Complaint is upheld, the Supplier must refund any Complaint related charge paid by the Customer within 30 days.

9.4 Escalating Complaints

- 9.4.1 **Dissatisfied Complainants:** If a Customer indicates to the Supplier that they are dissatisfied with the outcome of a Complaint, the Supplier must advise them of:
- (a) the Supplier's internal escalation process; and

(b) their external avenues of recourse.

9.4.2 **External recourse:** If a Customer asks about their external avenues of recourse, the Supplier must provide information about them.

10 CODE ADMINISTRATION AND COMPLIANCE

10.1 Communications Alliance Code Administration and Compliance Scheme

10.1.1 Under Communications Alliance Industry Code Signatory arrangements, signatories to this Industry Code are subject to the *Code Administration and Compliance Scheme (G514:2003)* Industry Guideline (the Scheme). Accordingly, all signatories who are bound by this Code are also bound by the Scheme.

10.2 Powers of the Telecommunications Industry Ombudsman to handle complaints under the Code

10.2.1 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.

10.3 Power to handle industry complaints under this Code

10.3.1 A member of the industry (or a voluntary or non-profit consumer organisation or similar body) may complain directly to Communications Alliance about a contravention of this Code by a signatory to this Code.

10.3.2 A member of the industry (or a voluntary or non-profit consumer organisation or similar body) may also complain to ACMA about a contravention of this Code by a signatory to this Code. ACMA may refer the complaint to Communications Alliance under the power granted to ACMA in section 514 of the Act, subject to Communications Alliance agreeing to accept the referral. Without limiting the grounds on which Communications Alliance may withhold its agreement to accept a referral, Communications Alliance may withhold its agreement where it considers that the complaint can be more conveniently dealt with in another forum or that handling the complaint may impose an unreasonable cost burden on Communications Alliance.

- 10.3.3 Communications Alliance must handle complaints under clause 10.3.1 or 10.3.2 in accordance with the provisions of the Code Administration and Compliance Scheme (G514:2003).

PARTICIPANTS

The Steering Committee that developed the Code consisted of the following organisations and their representatives:

Organisation	Representative
Ewan Brown	SETEL
Teresa Corbin	CTN
Neil Mounsher	Telstra
Simone Newton	ENGIN

The following organisations and their representatives were members of the Steering Committee until the public comment phase of the Code's development:

Nick Moustakas	Communications Law Centre
Robyn Ziino	AAPT

This Steering Committee was chaired by Deirdre O'Connor. Jeni Floyd of Communications Alliance provided project management support.

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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