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SECTION A - INTRODUCTION

This Code of Practice comprises rules relating to the supply of premium rate telephone information services. Compliance with the Code is required through the service agreement between each service provider and a carriage service provider.

A.1 SCOPE

The Code applies to all service providers in relation to the supply of premium rate services in Australia.

A.2 OBJECTIVES

The Code is intended to ensure a fair, reputable telephone information service industry and the protection of consumers by:

- (a) providing consumers with sufficient information to make informed choices about using premium rate services;
- (b) establishing minimum standards for the supply of premium rate services;
- (c) ensuring that premium rate services directed at children are delivered, promoted and advertised responsibly;
- (d) ensuring that the content of premium rate services reflects the contemporary attitudes of Australian society; and
- (e) ensuring that minors are not exposed to unsuitable material that may be contained in premium rate services.

A.3 DEFINITIONS AND ABBREVIATIONS

AANA is the Australian Association of National Advertisers

ACCC is the Australian Competition and Consumer Commission

ACMA (the) is the Australian Communications and Media Authority

Advertisement is matter which draws or is likely to draw the attention of the public, or a member or a segment of it, to a premium rate service in a manner calculated to promote, directly or indirectly, that premium rate service

Appeal is a document that complies with F.4.5 of this Code

Call segment is a part of a variable charge service that is subject to a single tariff rate

Caller to caller service is a premium rate service that provides a communication between the caller and one other caller (formerly Chat service)

Carriage service provider is a carriage service provider under the *Telecommunications Act 1997* (Cth) to which telephone numbers beginning with "190" prefix codes have been allocated or transferred

Children's premium rate service is a premium rate service that, wholly or in part, is aimed at, or would reasonably be expected to attract, people under 14 years of age

Closed user access service is a premium rate service that is only made available on condition that:

- (a) each customer has been issued with a Personal Identification Number (PIN), or provided with some other means of limiting access to other people; and
- (b) the Personal Identification Number (PIN), or other means of limiting access, must be used to access the service

Code of Practice and all references to 'the Code' or 'this Code' is the TISSC Code of Practice unless a contrary intention is shown

Conference service is a premium rate service that provides a conversation between a caller and two or more other callers

Data service is a premium rate service that involves the transmission of information to a calling party in data format and includes a premium rate service that provides access to Internet content

Dollar / \$ is the lawful currency of Australia

Fax on demand service is a service where a caller initiates the transmission of a facsimile to a nominated number via a premium rate service

Free TV Australia is the organization representing all of Australia's free-to-air television licensees

Fund raising means soliciting or asking for financial support for a cause or enterprise, and includes competitions aimed at raising money for a cause

GST is the goods and services tax and has the meaning given it in *A New Tax System (Goods & Services Tax) Act 1999*

Inbound Fax Service is a service where a caller transmits information via facsimile to a premium rate service

Information provider is a person or organisation, engaged by a service provider, who supplies or arranges the supply of the content of a premium rate service

Internet dialler is software that is activated by the user and pre-configured to cause a modem connection to the Internet via a 190 number to access a defined sub-set of sites

Internet dialler service is a service accessed by an Internet dialler

Internet service provider has the meaning given in clause 8 of the *Broadcasting Services Amendment (Online Services) Act 1999*

Live call segment is a call segment that contains live content

Live service is a premium rate service that provides a conversation with a calling party that is not pre-recorded

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Mass calling service is a premium rate service involving a competition that is capable of generating 300 call attempts per minute, or such other number of call attempts as agreed with a carriage service provider

Message introduction is:

- (a) a recorded preamble included in the message introduction period;
- (b) the first screen of a data service; or
- (c) information transmitted at the commencement of a fax service

Message introduction period is the period at the commencement of a premium rate service, prior to the commencement of the fixed fee or per minute cost of the premium rate service

Minor is a person under the age of 18

Notice of Intention to Appeal is a document that complies with F.4.2 of this Code

OFLC is the Office of Film and Literature Classification

Parental guidance service is a premium rate service where an advertisement for the service is reasonably likely to attract or encourage a significant number of persons under 14 years of age to call the service

Premium rate service is a service that:

- (a) is charged at a premium rate: and
- (b) is accessed by using telephone numbers beginning with “190” prefix codes

Professional information or advice is information or advice provided by a professionally skilled or appropriately qualified expert or specialist, who is registered with an appropriate, recognised professional association

Prohibited and potential prohibited content has the meaning given in Clauses 20 and 21, Schedule 7 of the *Broadcasting Services Act (1992)*

Recorded call segment is a call segment that contains recorded content

Recorded service means a recorded premium rate service, such service being accessed by utilising telephone numbers beginning with the prefix 190

Refund means a payment to or on behalf of a complainant or account holder of an amount up to but not exceeding the amount which the complainant or account holder has paid or is liable to pay to the carriage service provider in relation to the service complained of

Restricted access system has the meaning given in Clause 14, Schedule 7, *Broadcasting Services Act (1992)*

Service agreement is an agreement between a carriage service provider and a service provider for the supply of a premium rate service

Service content is any information or material made available on a premium rate service

Service provider is an entity that has entered into a service agreement with;

a carriage service provider to supply a premium rate service; or

a carriage service provider that supplies a premium rate service.

Short duration service is a recorded service that cannot exceed 180 seconds in duration.

Subscription television premium rate back channel service is a service where a set-top television unit connects to a premium rate service and provides a return path also through the set-top unit, without disclosing the dialed service number, as a means of billing user initiated activity.

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Telephone sex service has the meaning given in Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)

Television advertisement is an advertisement included in a television broadcasting service.

Television advertisements may be broadcast on commercial broadcasting services, subscription broadcasting services, narrowcasting services and the Special Broadcasting Service (SBS)

TIO is the Telecommunications Industry Ombudsman

TISSC is the Telephone Information Services Standards Council

Variable charge service is a premium rate service with the facility for the charge to be varied during a call

Video service means a service accessible from a 3G mobile handset, which consumers access by making a video call to a 190 number

A.4 INTERPRETATIONS

A.4.1 Premium rate services aimed at children

A premium rate service is deemed to be aimed at children under 14 years of age if 50% or more of the readers or viewers of a publication or program that includes an advertisement for the service are under 14 years of age.

A.4.2 Advertisements likely to attract children

In determining whether an advertisement is reasonably likely to attract or encourage people under 14 years of age to call a premium rate service, the following factors may be taken into consideration:

- (a) the nature of the publication or program;
- (b) the context within the publication or program;
- (c) the target audience;

- (d) statistics relating to the actual audience;
- (e) the type of prize or promotional item on offer and its potential attractiveness to children under 14 years of age;
- (e) the layout or presentation of the advertisement; and
- (f) any other relevant factors.

A.4.3 Costs include GST - in this Code, all references to cost are references to the GST-inclusive cost of a call or service.

A.4.4 Transaction screen will be interpreted as the screen of a subscription television premium rate back channel service which instructs the user of the action to take on the remote handset to proceed to interact with the service.

A.4.5 Name of service provider or information provider in display advertising

A service provider or information provider may use an abbreviation of its name or its registered trade name if the abbreviation or registered trade name is registered with the White Pages telephone directory, so that service provider or information provider contact details can be obtained from:

- a) The White Pages print telephone directory;
- b) The White Pages online directory;
- c) The White Pages Directory Assistance telephone service.

SECTION B - GENERAL CODE RULES

PART 1 – SERVICE CONTENT RULES.

B.1.1 Offensive, unsuitable and unlawful content

A premium rate service must not include service content that:

- (a) is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults;
- (b) is likely to be, having regard to the contemporary attitudes of Australian society, unsuitable for minors. (This paragraph does not apply to telephone sex services, services subject to a restricted access system, closed user access services or therapeutic or counselling services);
- (c) promotes, incites or instructs in matters of crime;
- (d) describes, incites or promotes unlawful sexual activity;
- (e) promotes or incites violence against any person or group, or incites racial hatred;
- (f) causes unnecessary alarm, distress or panic;
- (g) breaches, incites or encourages breaches of a law of the Commonwealth, or a law of the States or Territories of Australia; or
- (h) breaches a code of practice that applies to the premium rate service.

B.1.2 False, misleading, deceptive and out of date material

A premium rate service must not include service content that:

- (a) is false, misleading or deceptive, or likely to mislead or deceive; or

- (b) is out of date, having regard to information generally available, subsequently published, or released, or made available.

B.1.3 Intimate sexual content

B.1.3.1 Premium rate services shall not include material which describes intimate sexual behaviour, which a caller is likely to call for the principal purpose of deriving sexual gratification.

B.1.3.2 B.1.3.1 does not include services supplied by a person registered or licensed as a medical practitioner, where the dominant purpose of the premium rate service is to provide clinical, medical or other professional advice, or the service is available on a 1901 prefix or subject to a restricted access system.

B.1.4 Premium rate services not to act as billing mechanism for material unsuitable for minors that is downloaded to mobile handsets

A premium rate service must not act as a billing mechanism for material downloaded to mobile handsets, such as ring-tones and wallpapers, that is likely to be, having regard to the contemporary attitudes of Australian society, unsuitable for minors. (This paragraph does not apply to services subject to a restricted access system)

SECTION B – GENERAL CODE RULES

PART 2 – OPERATIONAL AND CONSUMER RULES

B.2.1 Delays in service delivery

A premium rate service shall not be unreasonably delayed or prolonged, including, without limitation, placing a caller on hold, in a queue or causing any unnecessary delay to caller connection, except where a caller is not charged and is pre-advised that there will be no charge.

B.2.1.1 Recorded Services with live operator options – delays in connection to operator

Connection time to an operator on recorded services with live operator options must be limited to a maximum period of 24 seconds from the time the consumer selects the live operator option.

B.2.2 Message introduction period

A premium rate service, other than:

- (a) a mass calling service;
- (b) a short duration service; or
- (c) a closed user access service that complies with paragraph C.6.1

must be preceded by a message introduction period.

B.2.3 Premium rate services with a message introduction period

A premium rate service with a message introduction period must include a message introduction that states:

- (a) the name of the service;

- (b) the fixed cost of the service or the rate of the charge per minute; and
- (c) the action required to proceed with the call, such as dialling “0”.

B.2.4 Services with a message introduction period – Callers action to proceed

A premium rate service with a message introduction period must require the caller to take some positive action, such as dialling “0”, to proceed with the call and accept the fixed or timed cost of the service. If the caller does not take the required action to proceed, the call must be disconnected before the commencement of the fixed or time rate charging.

B.2.5 CONFERENCE AND CALLER TO CALLER SERVICES

B.2.5.1 Introductory message

Where a live service involves the facility of live conference or one to one caller communication, the service provider must ensure that at the beginning of the service or live one to one option, a recorded message is played advising callers that:

- (a) they must be over 18 years of age to proceed with the call;
- (b) they must be the bill payer or have the bill payer’s permission;
- (c) first names only are to be used by callers;
- (d) callers must not disclose their, or any other party or parties’ address or telephone numbers (home or work or mobile)
- (e) calls to conference services and introductory messages on caller to caller services will be monitored; and
- (f) calls may be recorded for service purposes.

B.2.6 CONFERENCE SERVICES

B.2.6.1 The following conditions apply to a conference service that is not a closed user access service:

- (a) a caller must give a positive response that he or she is 18 years of age or older before joining a conference service;
- (b) if the caller does not confirm that he or she is 18 years of age or older, the call must be immediately disconnected;
- (c) a supervisor must be available at all times;
- (d) if the supervisor reasonably suspects that a caller is under the age of 18 years, the caller must be immediately disconnected;
- (e) the supervisor must disconnect offensive or aggressive callers; and
- (f) the supervisor must, so far as reasonably possible, ensure that the content of the service does not breach this Code.

B.2.6.2 Conference services – callers joining the service

A conference service that is not a closed user access service must:

- (a) play the introductory message to each new caller joining the service;
- (b) request that each caller give a positive response that they are 18 years of age or older before joining the service; and
- (c) inform each caller that any conversation may be overheard by callers who have not identified themselves.

B.2.6.3 Conference services – monitoring requirements

A conference service that is not a closed user access service must:

- (a) ensure a monitor/supervisor is available and monitors all

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callers' conversations at all times;

- (b) ensure that monitors/supervisors disconnect offensive or aggressive callers (including callers who communicate in an offensive or aggressive fashion as referred to in B.2.6.1 (e), request modifications to the call content and, if required, act as a facilitator; and
- (c) supervisors/monitors must ensure that callers comply with the matters covered in B.2.6.1 a-b and d-f.

B.2.6.4 Conference services – audible warning to existing callers

A conference service must give an audible warning to existing callers when a new caller joins the service.

B.2.7 CALLER TO CALLER SERVICES

B.2.7.1 Recorded introductions to be approved

All recorded introductions left by callers must be monitored and either approved or deleted prior to being heard by other callers, to ensure compliance with B.2.5.1 (a), (c) and (d).

B.2.8 SERVICES CONTAINING SCIENTIFIC, STATISTICAL OR OTHER RESEARCH DATA

Source of data

A premium rate service that contains scientific, statistical or other research data must include a message introduction that states the source of the data with sufficient particularity to permit for its identification.

B.2.9 PARENTAL GUIDANCE SERVICES

Warning

A parental guidance service must contain a warning, at the beginning of the service, that callers under 14 years of age must

not use the service without the permission of a responsible adult. The message must state that:

“If you are under 14 and do not have your parents' permission, hang up now”.

B.2.10 SERVICES CONTAINING PROFESSIONAL INFORMATION OR ADVICE

B.2.10.1 Basis of expertise

A premium rate service that contains professional information or advice must:

- (a) include a message introduction that clearly indicates:
 - (i) the level of expertise of the person, having regard to, but not limited to, academic qualifications, professional training or professional experience; and/or
 - (ii) the identity of the professional association, statutory authority or government department or other organisation, that is responsible for providing or endorsing the information or advice;
- (b) include, after the message introduction, a more detailed statement of the specific qualifications of the person or accreditation of the organisation responsible for the information or advice; and
- (c) if the service contains professional advice, include a warning that the caller should not act upon the advice without first consulting a suitably qualified person.

B.2.11 SERVICES INVOLVING COMPETITIONS OR GAMES

B.2.11.1 Cost of call information

Where a premium rate service involves a competition, contest or game that does not require a permit from a State or Territory gaming authority the caller must, at the beginning of the service be informed of the maximum cost of the call.

B.2.12 SERVICES INVOLVING FUND RAISING

B.2.12.1 Caller information

Where premium rate service involves fund raising in such a way that a donation is debited to the subscriber's telephone account the caller must, at the beginning of the service, be informed of:

- (a) the identity of the beneficiary or beneficiaries of the donation; and
- (b) a telephone number to call for more details of the beneficiary or beneficiaries.

B.2.13 SHORT DURATION SERVICE

B.2.13.1 Caller information

A short duration service must contain a clear message, at the beginning of the service, stating:

- (a) the name of the service: and
- (b) the cost of the call to the service.

B.2.14 MAXIMUM DURATION of per minute timed calls

A premium rate service that is not charged at a fixed rate, other than a variable charge service, shall be disconnected after 60 minutes from the time of connection to the service. Where the

charge is greater than \$4.40 per minute, the service shall be disconnected 30 minutes after the time of connection to the service.

B.2.15 PER MINUTE TIMED SERVICES that cost more than \$2.75 per minute and may exceed 5 minutes

A timed service charged at more than \$2.75 per minute that may exceed 5 minutes must comply with paragraphs B.2.16.1 and B.2.16.2, or with Paragraph B.2.17

B.2.16.1 PER MINUTE TIMED SERVICES that cost more than \$2.75 per minute and may exceed 5 minutes – tone to be played

Where the cost of a service that is not charged at a fixed rate is more than \$2.75 per minute, and the service may exceed 5 minutes, a clear and audible “three beep tone” must be played at the end of the first 5 minutes and at 5 minute intervals thereafter.

B.2.16.2 PER MINUTE TIMED SERVICES that cost more than \$2.75 per minute and may exceed 5 minutes – warning announcement regarding 3 beep tone

The following announcement must be played during the message introduction period, or immediately after the caller takes a positive action to accept the charges such as dialing “0”

“Throughout this call you will hear a 3 beep tone every 5 minutes”

B.2.17 PER MINUTE TIMED SERVICES that cost more than \$2.75 per minute and may exceed 5 minutes – warning to be given

Where the cost of a service that is not charged at a fixed rate is more than \$2.75 per minute, and the service may exceed 5 minutes, a warning must be given stating:

a. the time elapsed so far; and

b. the charges for the service incurred so far.

A warning must be given within the first 5 minutes of the call, and within 5 minute intervals thereafter.

SECTION C - PARTICULAR SERVICE RULES

C.1 RECORDED SERVICES

C.1.1 Recorded Services that cost more than \$0.82 in total – message regarding cost of service

Where the total cost of a recorded service could be more than \$0.82 the caller must, at the beginning of the service, be informed of either:

- (a) the cost per minute of calls to the service; or
- (b) the total cost of the service.

C.1.2 Recorded services that exceed 10 minutes – callers action to proceed

A recorded service that may exceed 10 minutes, and is not charged at a fixed maximum rate, must require the caller to take some positive action, such as dialling “0”, within the first 10 minutes and within 10 minute intervals after that for the duration of the call. If the caller does not take the required action to proceed, the call must be immediately disconnected.

C.1.3 Recorded per minute timed calls

The following condition applies to all "per minute" timed recorded services. Where the service may exceed 10 minutes, within the first 10 minutes of the call and within 10 minute intervals after that, the caller must be:

- (i) clearly informed of the duration of the call and the cost of the call so far; and
- (ii) requested to take some positive action, such as dialling “0”, to proceed with the call.

C.2 LIVE SERVICES

C.2.1 Calls to a live service outside published operating hours

Where a call is made to a live service outside the advertised operating hours published by the information provider, and no after-hours operator is available, the caller must either:

- (a) receive a ring tone for 90 seconds; or
- (b) be provided with a message introduction that includes:
 - (i) the name of the information provider;
 - (ii) the hours of operation of the service;
 - (iii) advice to call back during operating hours; and
 - (iv) the cost of the call to the service.

C.2.2 Calls to a live service not preceded by a recorded menu where all lines are busy

Where a call is made to a live service not preceded by a recorded menu and all available lines are busy, or all operators are engaged, the caller must receive a busy tone, at no cost to the caller, unless the call is queued.

C.3 VARIABLE CHARGE SERVICES

C.3.1 Introductory message

A variable charge service must include a message introduction, at the beginning of the service, which states:

- (a) that the rate at which a call is charged may vary during the call;
- (b) the fixed cost or cost per minute of the initial call segment; and

- (c) the action required to proceed with the call, such as dialling “0”.

C.3.2 Message required when cost is varied

A variable charge service must include a message, each time the charge for the call is varied, which clearly states:

- (a) the description of the next call segment;
- (b) the fixed cost or cost per minute of the next call segment; and
- (c) the action required to proceed with the call and accept the charge, such as dialling “0”.

C.3.3 Caller action required when variation to service occurs

A variable charge service must require the caller to take some positive action to proceed with the call, such as dialling “0”, at the beginning of the service and each time the charge is varied during the call.

C.3.4 Recorded call segments of variable charge services

Clause C.1.3 applies to a recorded call segment of a variable charge service as if a reference to a “recorded service” or “service” were a reference to a “recorded call segment”.

C.3.5 Per minute timed live call segments of variable charge services – requirement for 3 beep tone to be played

Clause B.2.16.1 applies to a per minute timed live call segment of a variable charge service as if a reference to a “per minute timed live service” were a reference to a “per minute live call segment” and a reference to a “call” were a reference to a “call segment”.

C.3.6 Per minute timed live call segments of variable charge services that cost more than \$2.75 per minute and may exceed 5 minutes tone to be played

Where the cost of a per minute live call segment of a variable charge service (that is not charged at a fixed rate) is more than \$2.75 per minute, and the per minute live call segment may be longer than 5 minutes, a clear and audible “three beep tone” must be played at the end of the first 5 minutes of the service and at 5 minute intervals after that.”

C.3.7 Maximum charge for variable charge service

The maximum charge for a variable charge service is \$165.

C.4 DATA SERVICES

C.4.1 Data services – introductory message

A data service must be preceded by a message introduction that clearly states:

- (a) the name of the service or the name of the information provider;
- (b) the cost of the service;
- (c) advice that the service will automatically disconnect after 5 minutes of non-activity;
- (d) a service log-on prompt; and
- (e) advice to log-off when finished.

C.4.2 Disconnection of data services

A data service must automatically disconnect after 5 minutes of non-activity.

C.5 FAX SERVICES

C.5.1 FAX ON DEMAND SERVICES

C.5.1.1 Message introduction

A fax on demand service must be preceded by a transmitted message introduction or a recorded message introduction that identifies the information provider, and when a service is acting in a bureau capacity, states the name of the information provider.

C.5.1.2 Specialist information or advice

A fax on demand service containing specialist information or advice involving scientific, statistical or other research data must state the source of the data with sufficient particularity to permit for its identification.

C.5.1.3 Fax header

A message from a fax on demand service must be preceded by a fax header which provides:

- (a) the name of the service;
- (b) the approximate cost of the call to the service; and
- (c) the number of pages in the fax.

The header must consist only of text in a minimum font size of 10 points and a maximum of 12 points except for one information provider logo not exceeding 25 mm square.

The header should not form any part of the transmitting terminal identification.

C.5.1.4 No unnecessary delay

A fax on demand service must not place a caller on hold, use call queuing devices or cause any unnecessary delay to caller connection.

C.5.2 INBOUND FAX SERVICES

C.5.2.1 Information box

Material faxed to an Inbound Fax Service by a caller must include in a box at the top of the material to the full width of the document:

- (a) a statement, in a minimum of 12 point print size stating the cost per minute or fixed rate cost of the service; and
- (b) a statement that transmission of the inbound fax indicates acceptance of these charges.

C.5.2.2 No unnecessary delay

An Inbound Fax service must not place a caller on hold, use call queuing devices or cause any unnecessary delay to caller connection.

C.5.2.3 Paragraphs B.2.3 and B.2.4 of the Code do not apply

The provisions of B.2.3 and B.2.4 of the Code of Practice do not apply to inbound fax services.

C.6 CLOSED USER ACCESS SERVICES

C.6.1 Message introduction not necessary

Where a caller to a closed user access service has been informed of:

- (a) the approximate cost of a call to the service; and
- (b) how to use a Personal Identification Number (PIN) to access the service;

the service does not need to include a message introduction.

C.6.2 Call duration information not necessary

Where a caller to a closed user access service has been informed of the approximate cost of a call to the service, the caller does not need to be informed of the duration of the call.

C.7 CHILDREN'S PREMIUM RATE SERVICES

C.7.1 Maximum costs of children's premium rate services

- (a) Where a children's premium rate service is charged at a fixed rate, the total cost of a call must not exceed \$1.10;
- (b) Where a children's premium rate service is not charged at a fixed rate, the cost of a call must not exceed \$1.05 per minute and the total cost of the call must not exceed \$3.30.

C.7.2 Children's premium rate services that cost more than \$0.55

Where the cost of a call to a children's premium rate service exceeds \$0.55, the service must include a message introduction that states the total cost of the call.

C.7.3 Message introduction warning

A children's premium rate service with a message introduction period must contain a message introduction warning that callers under 14 years of age must not use the service without the permission of a responsible adult. The message must state that:
"If you are under 14 and do not have your parents' permission, hang up now."

C.7.4 Restrictions on content

A children's premium rate service must not:

- (a) contain any statement encouraging children to call the same premium rate service again, or to call any other premium rate service;

- (b) suggest that children buy any product, or encourage children to persuade parents, or other adults, to buy a product; or
- (c) offer cash prizes, or any other prizes that are unsuitable for children.

C.7.5 Advertisements for children’s premium rate services must not encourage repeat calling

An advertisement for a children’s premium rate service must not contain any statement designed to or likely to encourage repeat calling of the service, or designed to or likely to encourage children to call any other premium rate services.

C.7.6 Advertisements for premium rate services must warn children

An advertisement for a children’s premium rate service must contain a warning that callers under 14 years of age must not use the service without the permission of a responsible adult. The warning must state that:

“If you are under 14 you must ask your parents' before calling this service”.

C.7.7 Advertisements for premium rate services must not suggest children buy any product

Advertisements for children’s services must not suggest that children buy any product, or encourage children to persuade parents, or other adults, to buy a product.

C.7.8 Advertisements for premium rate services must not offer eligibility for cash prizes or any prize unsuitable for children

Advertisements for children’s services must not offer eligibility for cash prizes, or any other prizes that are unsuitable for children, as a result of calling the service.

C.8 INTERNET DIALLER SERVICES

The following paragraphs of the Code of Practice relate exclusively to Internet Dialler Services, and constitute the standards to be complied with by Service Providers providing such services. Such compliance is required pursuant to the relevant clauses of the Service Agreement, which each Service Provider enters into with a Carrier.

C.8.1 Service Providers must use their best endeavours to ensure that web links or references to Internet Dialler software do not contain false or misleading statements concerning the cost of accessing the Premium Rate Service.

C.8.2 Premium Rate Internet Dialler software must display the following message in a separate fixed dialogue box ("the call cost dialogue box") prior to connection to the service:

| | |
|---|-----------------|
| THIS SERVICE IS NOT FREE | |
| CONNECTION TO THIS SERVICE IS ON TELEPHONE 190- --- --- AND IS CHARGED AT \$---- PER MINUTE TO YOUR TELEPHONE BILL | |
| I ACCEPT AT \$.... PER MINUTE | |
| EXIT | CONTINUE |

or in the case of a service charged at a fixed rate call cost:

| |
|--|
| <p>THIS SERVICE IS NOT FREE</p> <p>CONNECTION TO THIS SERVICE IS ON TELEPHONE NUMBER 190- --- --- AND IS CHARGED AT \$---- FIXED RATE TO YOUR TELEPHONE BILL</p> <p>I ACCEPT AT \$....</p> <p><input type="button" value="EXIT"/> <input type="button" value="CONTINUE"/></p> |
|--|

- C.8.2.1** To connect to the premium rate service the user must be required to click the "CONTINUE" box. If the user clicks on the "EXIT" box, the Internet Dialler software must immediately be disconnected and the existing Internet service provider default settings maintained.
- C.8.2.2** The header message "THIS SERVICE IS NOT FREE" must appear in upper case bold and prominent font, extending to the full width of the call cost dialogue box. The remaining text in the call cost dialogue box must be in Arial font, 16 point size. The call cost dialogue box must have a contrasting plain background clear of any other text, graphics, code or other representations.
- C.8.2.3** The call cost dialogue box must display the entire premium rate telephone number on which the service will be billed and the per minute or fixed rate call cost of the service.

- C.8.3** After the user has clicked “CONTINUE” on the call cost dialogue box, a further separate fixed dialogue box (“the confirmation dialogue box”) must display the following message:

**I AM THE BILL PAYER, OR I HAVE
THE BILL PAYER’S PERMISSION
TO ACCEPT THESE CHARGES**

YES

EXIT

- C.8.3.1** Charging for the service must not commence until the user has clicked on the “YES” box to proceed.
- C.8.3.2** Text in the confirmation dialogue box must be in Arial font, 16 point size. The confirmation dialogue box must have a contrasting plain background, clear of any other text, graphics, code or other representation.
- C.8.4** Dialling and modem tones are not to be suppressed.
- C.8.5** Service Providers must use their best endeavours to minimise delays in providing access to site content.
- C.8.6** Diallers must not allow access to sites which are generally free through other means of connection.
- C.8.7** A digital timer clock must be displayed on the title bar of the dialler application window indicating the duration of connection to the premium rate service in the case of services charged at a per minute rate.
- C.8.8** Where the duration of the premium rate service may exceed 10 minutes, and the cost of the service is not charged at a fixed rate, a separate dialogue box (“the call duration box”) stating the length of time the user has been connected to the service, containing an

"OK" button must be displayed at regular intervals of time not exceeding 10 minutes from the commencement of connection of the premium rate service and repeated at intervals of not greater than 10 minutes thereafter.

- C.8.8.1** The user must click on the "OK" button to remove the call duration box.
- C.8.8.2** The call duration box must not be obscured by any other windows, graphics, text, code or other representations.
- C.8.8.3** Text contained in the call duration box must be in Arial font, with a minimum of 16 point size, on a contrasting plain background clear of any other text, graphics, or code.
- C.8.9** Calls must disconnect if the service is left idle by the customer for five (5) minutes.
- C.8.10** Internet diallers must not permanently re-configure a user's computer to make a premium rate number a default setting.
- C.8.11** Internet diallers must not activate a premium rate service remotely without the intervention and informed consent of the user.
- C.8.12** Service providers must supply TISSC with correct web addresses for all Internet diallers connected to their premium rate services.
 - C.8.12.1** If the web address or the number of an Internet dialler service is changed, the service provider must notify TISSC within five working days of the change.

SECTION D - PRIVACY

D.1 Unreasonable invasions of privacy

A Premium Rate Service must not unreasonably invade privacy.

D.2 Privacy Amendment (Private Sector) Act 2000

A service provider must comply with the provisions of the *Privacy Amendment (Private Sector) Act 2000*.

SECTION E - ADVERTISING RULES

E.1 Compliance with AANA Code of Ethics

Without in any way limiting the application of this Code, an advertisement for a premium rate service must comply with the AANA Advertiser Code of Ethics as published at www.advertisingstandardsbureau.com.au and with the advertising codes of other relevant professional bodies.

E.2 Content of advertisements

E.2.1 Compliance with classification laws

Without in any way limiting the application of this Code, an advertisement for a premium rate service, other than a television advertisement, must comply with relevant classification laws, including the national classification scheme administered by the Australian Attorney-General's Department.

E.2.2 Further requirements

The following content requirements also apply:

No advertisement shall;

- (a) incite or encourage violence or brutality against any person or group;
- (b) cause unnecessary alarm, distress or panic;
- (c) incite or encourage dangerous or harmful behaviour or practices;
- (d) incite or encourage breaches of those laws of the Commonwealth of Australia or those laws of any State or Territory which are applicable to the advertisement;
or

- (e) breach a code of practice of any professional organisation whose rules have any operation in relation to the premium rate service.

E.3 Content of television advertisements

Without in any way limiting this Code, a television advertisement for a premium rate service must comply with relevant broadcasting laws, standards and codes of practice, including the Free TV Australia Code of Practice as published at www.freetv.com.au.

E.4 False, misleading or deceptive advertisements

An advertisement for a premium rate service shall not be false, misleading or deceptive, or likely to mislead or deceive.

E.5 Outdated advertisements

An advertisement for a premium rate service shall not contain material that is out of date, having regard to information generally available, subsequently published, or released or made available.

E.6 Call cost information

An advertisement for a premium rate service must include correct, legible, prominent and clear information about the cost of calls. The information must state either the fixed cost of the call or the cost per minute of the call.

E.6.1 Advertising of variable call costs

The service provider must ensure that all advertising for variable cost calls contains correct, legible, prominent and clear pricing information which states "\$ per minute or \$ fixed cost access, variable cost options".

E.7 When cost of call is altered

If the cost of a call is altered, an advertisement for a premium rate

service must, as soon as practicable, be amended to reflect the alteration.

E.8 Cost of calls from mobile telephones and payphones

E.8.1 General advertising rules

If a premium rate service may be called from a mobile telephone, an advertisement for the service must include a statement that a higher rate applies to calls from a mobile telephone. If a premium rate service may be called from a payphone, an advertisement for the service must include a statement that a higher rate applies to calls from a payphone.

E.8.2 Text advertising

Where a service is advertised in newspaper classifieds, the wording can be abbreviated to “pay/mob extra”. All other text advertising, including television advertising, must contain the wording “higher from pay/mobile phones”.

E.9 Display of call cost information

An advertisement for a premium rate service that contains visual material must be set out so that the cost of a call:

- (a) always runs in the same direction in which the call number is displayed;
- (b) is on the same page as the call number; and
- (c) is displayed in close proximity to the call number.

E.10 Advertisements with multiple call numbers

Where multiple call numbers are advertised, a single reference to the cost of a call is displayed in close proximity to the call number if:

- (a) the numbers are advertised on one page in one advertisement;

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(Incorporating amendments of April 2002; October 2002; April 2003; October 2003; April 2004; August 2004; Special January 2005; March 2005; September 2005; August 2006; November 2006; April 2007; June 2007; October 2007; October 2008; June 2010; October 2010; December 2011)

History of Amendments listed on Pages 72-74

For a detailed index see pages 61-71 at the rear of this Code

- (b) the numbers are charged at the same rate; and
- (c) the cost of the call:
 - (i) is stated in text of a size that is readable and of similar size to that used in the advertisement
 - (ii) is stated in bold print; and
 - (iii) is stated in a prominent position in relation to the call numbers.

E.11 Size of call cost information in print advertising

A print advertisement for a premium rate service must display the cost of a call as follows:

- (a) a minimum of 6 point print size must be used;
- (b) if the size of a call number in the advertisement is between 24 point and 48 point print size, the cost must be a minimum of 25% of the size of the call number; and
- (c) if the print size of a call number in the advertisement is over 48 point type size, the cost must be a minimum of 12 point print size.

E.12 Size of call cost information in television, cinema, Internet, indoor and outdoor advertisements

The cost of a call displayed in a television, cinema, Internet, indoor or outdoor advertisement must be a minimum of 50% of the print size used for the call number and must be displayed in close proximity to the premium rate number.

E.13 Duration of call cost information in television, cinema and Internet advertisements

A television, cinema or Internet advertisement for a premium rate service must display the premium rate service number and the approximate call cost information for a period of at least ten (10) seconds. If the telephone number is displayed for longer than ten (10) seconds, the approximate call cost information must be displayed for the same length of time that the telephone number appears.

E.14 Radio and telephone advertisements

An advertisement for a premium rate service that is communicated in a solely aural medium, such as radio or telephone, must comply with paragraphs E.6 to E.8 inclusive, to the maximum extent reasonable and appropriate, including a clear and correct reference to the approximate call costs.

E.15 Advertisements for parental guidance services

An advertisement for a parental guidance service must contain a warning that callers under 14 years of age must not use the service without the permission of a responsible adult. The warning must state:

“If you are under 14 you must ask your parents before calling this service”.

A television or radio advertisement must contain the above message as a spoken warning.

E.16 Advertisements for services containing professional information or advice

An advertisement for a premium rate service that contains professional information or advice must clearly indicate:

- (a) the identity and relevant professional qualifications and experience of the person; and/or

- (b) the identity of the professional association, statutory authority or government department that is responsible for providing or endorsing the information.

E.17 Advertisements for services involving fund raising

An advertisement for a premium rate service that involves fund raising must include a warning that minors should seek the permission of a responsible adult before calling the service.

E.18 Services to be provided on advertised call number

Where a premium rate service is advertised under a particular premium rate number(s), the service must be provided on that premium rate number(s).

E.19 Closing date of competition services

E.19.1 Electronic media

The closing date of competition services advertised on television, cinema and radio must be clearly displayed or announced during the advertisement.

E.19.2 Print media

The closing date of competition services advertised in all forms of print and on line advertising must be clearly displayed in the advertisement adjacent to the call cost information.

E.20 Advertisements distributed by fax

All advertisements for a premium rate service distributed by fax must:

- (a) include a return fax or telephone number on a 1300 or a 1800 prefix, enabling recipients to be deleted from the fax distribution list at no more than the cost of a local call;

- (b) include the following statement in a minimum of 14 point size:
 “To be removed from the fax distribution list for this advertising, please fax your number to or call 1300/1800 xxx xxx.”
- (c) the service provider must ensure compliance with such a request within two (2) working days of receipt of the removal notice
- (d) display the cost of a call as follows:
 - (i) the call cost must be in close proximity to the service number;
 - (ii) a minimum of 14 point print size must be used;
 - (iii) where the call number is in excess of 28 point print size, the call cost must be displayed in print size equal to 50% of the service number.

E. 21 Advertisements for Subscription Television Premium Rate Back Channel Services

- E.21.1** Call cost information setting out the cost of calls, and stating either the fixed cost of the call or the cost per minute of the call, must appear on the first screen promoting the service, and must also be displayed on the transaction screen
- E.21.2** The words displaying call cost information must be in a minimum size of 20 TV lines.
- E.21.3** Advertising must clearly state that the call costs will be charged to the subscriber’s telephone account

E.22 Inclusion of service provider or information provider name

All advertisements, except for newspaper non-display classifieds, must include the name of the service provider or information provider. The party who is best placed to assist customers with inquiries about the advertising and the service content should be the party named in the advertisement. The party's name should be

prominent, legible, clear and in the same direction as the text of the advertisement. The party named in the advertisement must have an Australian contact point.

- E.22.1** In cases where the name of the service provider or information provider is abbreviated in accordance with paragraph A.4.5, then the additional wording “provided by” must be placed before the abbreviated name.

E.23 Advertisements with multiple call numbers – inclusion of service provider or information provider name

Where multiple call numbers operated by the same service provider or information provider are advertised, a single reference to the service provider or information provider name is sufficient if:

- a) The call numbers are advertised on one page in one advertisement block;
- b) The service provider or information provider name is stated in bold print in a minimum of 8 point size;
- c) The service provider or information provider name runs in the same direction as the text of the advertisement.

E.24 Missed call marketing

Premium rate services must not be marketed by means of short duration calls to mobile phones, resulting in the registration of a missed call announcement on the mobile phone, in circumstances where:

- The call is deliberately terminated so that the recipient is unlikely to be able to answer the call;
- A return call to the registered missed call number accesses a message advertising a premium rate service.

E.25 Advertisements for video services

Advertising for a premium rate service must include a legible, prominent and clear statement informing consumers that 3 G handsets are required to access the service as follows: “3G phone required to access video”.

SECTION F - COMPLAINTS PROCEDURES AND REMEDIES

F.1 Complaints to be made to TISSC

Complaints regarding a possible breach of the Code of Practice must be made to TISSC.

F.1.1 Who may complain?

A complaint may be made by any person or organisation, including a carriage service provider, a service provider, an information provider, TISSC or any member of the public.

F.1.2 Complaints may be in any form

A complaint may be made in any form, including by writing or telephone.

F.1.3 Time limit on investigation of complaints

TISSC can investigate a complaint if the complaint is made within 12 months of the complainant becoming aware of the circumstances surrounding the complaint. The time limit may be extended by a further 12 months at the Arbitrator's discretion

F.2 REFERRAL TO OTHER AUTHORITIES

F.2.1 Referral of possible contraventions of the law

A complaint relating to a possible contravention of a Commonwealth, State, Territory or local government law or regulation may be referred by TISSC to:

- (a) the relevant carriage service provider; and/or
- (b) any relevant authority.

F.2.2 Notification of possible contraventions of the law

If the Arbitrator determines that a complaint relates to a premium rate service that may be provided in contravention of the law, the Arbitrator must notify:

- (a) the service provider; and
- (b) the relevant carriage service provider.

F.2.3 Referral of telephone sex service complaints to the ACMA

If the Arbitrator determines that a complaint relates to a premium rate service that is or could be a telephone sex service and that is or may be provided in contravention of the law, the Arbitrator must refer the matter to the ACMA.

F.2.4 Referral of complaints regarding Internet content

A complaint relating to Internet content that may be unlawful under Schedule 7 of the *Broadcasting Services Act 1992 (Cth)* and that is accessed by means of a premium rate service may be referred to:

- (a) the service provider;
- (b) the relevant carriage service provider; and
- (c) the ACMA.

F.2.4.1 Referral of complainants to the ACMA regarding Internet content

Complainants concerned about prohibited or potentially prohibited content accessed via the Internet shall be referred to the ACMA for appropriate action under the *Broadcasting Services Act 1992 (Cth)*.

F.2.5 Referral of complaints to TIO

A complaint relating to the cost of a premium rate service included in a bill from a carriage service provider may be referred to the TIO.

F.2.6 TISSC may defer action pending outcome of legal proceedings

If a matter that is under investigation by TISSC is also specifically under consideration by the ACCC, or by any court or tribunal, the Chairman may defer action pending the outcome of the proceedings.

F.3 INVESTIGATIONS AND COMPLAINT PROCEDURES

F.3.1 Investigation of complaints

The Arbitrator must investigate each complaint concerning a possible breach of the Code of Practice.

F.3.2 Notification of investigation

Where the Arbitrator is investigating a likely breach of the Code of Practice, the Arbitrator must promptly notify the service provider in writing of the alleged breach or the nature of the complaint. The notice shall specify the form in which the service provider may make representations and the period in which representations may be made.

F.3.3 Opportunity to make representations

Before the Arbitrator makes a determination, the service provider must be given an opportunity to make representations to the Arbitrator. The representations must be made in the form, and within the period, specified by the notice provided by the Arbitrator in accordance with F.3.2.

F.3.4 Requests for further information

The Arbitrator may, during the course of an investigation, request further information from the service provider. A notice requesting further information must be in writing and must specify a period of not less than two working days within which the service provider must respond to the request.

F.3.5 No response to request for further information

If the service provider does not respond to a request for further information within the time specified in the notice, the Arbitrator may make a determination without giving the service provider further opportunity to make representation.

F.3.6 Determination of breach

Following the process set out in F.3.1 to F.3.5, the Arbitrator must make a determination as to whether there has been a breach of the Code of Practice. The determination must have regard to any representation or information made by the service provider pursuant to clause F.3.3 or F.3.4.

F.3.7 Unauthorised/unpaid website advertising

Where the Arbitrator is satisfied that an advertisement appearing on a website was neither authorised nor paid for by either a Service Provider or Information Provider, the Arbitrator has the discretion not to determine a breach subject to the following conditions:

- a) the Service Provider provides a signed, written statement to TISSC that the advertisement was neither authorised nor paid for by either the Service Provider or Information Provider;
- b) The Service Provider provides a signed, written undertaking to TISSC:
 - i) In which the service provider undertakes to implement all reasonable steps to correct the advertising, including contacting the website operator by telephone or email to request such changes, and providing copies of such correspondence to the TISSC Arbitrator; and
 - ii) The statement and undertaking are either on the pro forma downloadable from www.tissc.com.au, or encompass the same wording as used in the pro forma.

The Arbitrator is satisfied that the Service Provider has complied or will comply within a reasonable timeframe with the undertaking referred to in (b) (i).

F.3.8 Imposition of a remedy

Once the Arbitrator has made a determination that a breach of the Code of Practice has occurred, the Arbitrator may impose one or more of the remedies set out at F.7.2 of this Code of Practice.

F.3.9 Notification of determination

The Arbitrator must notify the service provider and the complainant in writing of the determination and any remedy imposed.

Where the remedy requires action by a carriage service provider, the notification shall advise the carriage service provider of the period in which the remedy must be implemented.

The notification must advise the service provider of the right to an appeal.

F.3.10 Determination is binding

Subject to the right to make an appeal pursuant to clause F.4.1, the final determination of the Arbitrator and any remedy imposed by the Arbitrator shall be final and binding on the service provider.

F.3.11 Arbitrator may withdraw determination

The Arbitrator may, at his /her discretion, withdraw a determination made pursuant to F.3.6 and/or a remedy imposed pursuant to F.3.7

F.3.12 Failure to comply with procedures does not invalidate final determination

Subject to the determination of an appeal by the Appeals Arbitrator pursuant to clause F.4.15, failure by the Arbitrator or

TISSC to comply strictly with the investigation and complaint procedures does not invalidate, or in any way affect, a determination of the Arbitrator or the imposition of a remedy.

F.3.13 Extension of time limits

Any time limits specified under the investigations and complaint procedures may be extended by the Arbitrator, and any such extension shall be communicated in writing to the relevant parties.

F.4 APPEAL PROCEDURES

F.4.1 Appeals

A service provider may only appeal against the determination of the Arbitrator and against the imposition of a remedy in accordance with the appeal procedures set out below.

F.4.2 Notice of Intention to Appeal

A Notice of Intention to Appeal may be lodged following notification of the determination. If a Notice of Intention to Appeal is lodged, it must be lodged in writing to the Chairman of TISSC within three working days of the service provider receiving notification of the determination and the Notice must state whether the service provider wishes to seek a hearing.

F.4.3 Lodging appeal if no notice of intention

If no Notice of Intention to Appeal is to be lodged and the service provider wishes to appeal a determination, an Appeal that complies with F.4.5 must be lodged with the Chairman of TISSC within three working days of the service provider receiving notification of the determination.

F.4.4 Lodging appeal following notice of intention

If a Notice of Intention to Appeal is lodged and the service provider wishes to proceed with an appeal then an Appeal that complies

with F.4.5 must be lodged in writing to the Chairman of TISSC within two working days of lodging the Notice of Intention to Appeal.

F.4.5 Form of appeal

An appeal must be in writing and:

- (a) be accompanied by a payment of the fee of \$3,000 in cash or bank cheque;
 - (a)(i) *for a trial period commencing 12 December 2011 until 11 December 2012, the fee in F.4.5(a) will be \$500.*
- (b) set out the grounds of appeal upon which the determination of the Arbitrator and/or the imposition of any remedy is being appealed;
- (c) confirm whether a hearing in accordance with the procedures set out in F.4.13 to F.4.13.7 is required; and
- (d) contain any submissions or argument the appellant relies on in support of the appeal and at any hearing in accordance with the procedures set out in F.4.13 to F.4.13.7.

F.4.6 Appeals against determinations of related breaches

Each individual appeal must be accompanied by a fee of \$3,000. If, however, an appeal is made against multiple determinations of similar or related breaches of the Code of Practice, a single fee of \$3,000 shall apply.

F.4.7 Notification of carriage service provider

On the fourth working day after notification of the determination, TISSC must notify the relevant carriage service provider, in writing, that:

- (a) a Notice of Intention to Appeal was received;
- (b) no Notice of Intention to Appeal was received;
- (c) an Appeal was received; or
- (d) no Appeal was received.

F.4.8 Advice to carriage service provider

When a Notice of Intention to appeal has been lodged and the service provider lodges an appeal (pursuant to F.4.4 and F.4.5), TISSC must promptly notify the relevant carriage service provider, in writing, that the Notice of Intention to Appeal and the appeal has been received. When an appeal is deemed to be withdrawn (pursuant to F.4.10), TISSC must also promptly notify, in writing, the relevant carriage service provider.

F.4.9 No disconnection of service pending determination of appeal

A carriage service provider that receives notification of an appeal from TISSC (pursuant to F.4.7 and/or F.4.8) must not disconnect, or otherwise render inoperative, the service that is the subject of the appeal until the appeal has been determined or the appeal is deemed to be withdrawn (pursuant to F.4.10). If the carriage service provider has taken action against the service before receiving notification of an appeal, the carriage service provider must immediately reinstate the service without cost to the service provider, except when disconnected or otherwise rendered inoperative under emergency procedures set out in paragraphs F.6.5 and F.6.6.

F.4.10 Deemed withdrawal of appeal

An appeal is deemed to be withdrawn if any of the procedures set out in F.4.2 to F.4.6 are not complied with.

F.4.11 Referral to Appeals Arbitrator

Upon receiving a Notice of Intention to appeal or an appeal, the Chairman of TISSC shall notify the Appeals Arbitrator by the close of business on the next working day.

F.4.12 Consideration of appeal

- (a) The Appeals Arbitrator must use his/her best endeavours to determine an appeal within three working days of TISSC referring the appeal to the Appeals Arbitrator. The Chairman of TISSC may, however, request that an appeal be considered within ten working hours of the Appeal being referred to the Appeals Arbitrator who must use his/her best endeavours to determine the Notice of appeal within the requested time.
- (b) When a hearing takes place, the Appeals Arbitrator must use his/her best endeavours to conduct the hearing and determine the appeal within seven working days of the Chairman of TISSC referring the appeal to the Appeals Arbitrator.

F.4.13 Hearing procedures

If the service provider seeks a hearing in accordance with F.4.5, the hearing may be held at such time and place and upon such date (subject to the time constraints for the determination of an appeal imposed by F.4.12 (b)) by teleconference or in such other way as the Appeals Arbitrator shall direct and the Appeals Arbitrator shall notify the Chairman of TISSC of such arrangements.

F.4.13.1 the hearing shall be conducted with as little formality as procedural fairness and natural justice permits, and court rules of evidence shall not apply.

F.4.13.2 the appellant has carriage of his her or its own case, and is not entitled to be legally represented at the hearing.

- F.4.13.3** **grounds of appeal** which have not been set out in the Appeal in accordance with F.4.5 may not be introduced during the hearing.
 - F.4.13.4** **the Arbitrator** may attend a hearing at the request of the Appeals Arbitrator or at his/her own election.
 - F.4.13.5** **an electronic recording** must be made of the hearing.
 - F.4.13.6** **a copy of the electronic recording** of the hearing will be provided to the Appellant.
 - F.4.13.7** **no more than one hearing** will be allowed in relation to an appeal.
- F.4.14** **Nature of hearing**
- The hearing will be in the nature of a reconsideration of the Arbitrator's determination and will not involve a review of the exercise of any discretion given to the Arbitrator under F3.1 to F3.5.

F.4.15 **Determination of appeal**

- (a) Subject to F.4.12, the Appeals Arbitrator must determine an appeal and notify the Chairman within three working days of the hearing or referral of the Appeal by the TISSC Chairman to the Appeals Arbitrator, if no hearing is requested.
- (b) The Chairman of TISSC must notify the service provider and relevant carriage service provider upon receiving notice of the determination from the Appeals Arbitrator;
- (c) Within seven working days of any hearing or ten working days of referral of the appeal by the TISSC Chairman to the Appeals Arbitrator if no hearing is requested, the Appeals Arbitrator will make available a written determination, including the reasons for the determination.

F.4.16 Notification of determination

The determination of the appeal (pursuant to F.4.15 (a)) must be sent by TISSC to the service provider by facsimile, courier, post or e-mail. The following will be conclusive evidence of receipt of a determination of an appeal:

- a. if the determination has been faxed, a “completed” transaction report;
- b. If the determination has been sent by courier, a receipt of the courier company;
- c. if the determination has been sent by post, a receipt of Australia Post; or
- d. if the determination has been sent by e-mail, a copy is to be posted and a receipt obtained from Australia Post.

A copy of the determination must be sent in writing to the relevant carriage service provider and the Arbitrator.

F.4.17 Extension of time limits

Any time limits specified under the appeal procedures may be extended by the Chairman of TISSC and the relevant parties shall be informed of such extensions.

F.4.18 Refund if appeal upheld

If an appeal is upheld, the appeal fee will be refunded.

F.4.19 Legal fees and associated costs of appellant

Any legal fees and associated costs incurred by the appellant are to be borne by the appellant

F.5 IMPLEMENTATION OF A DETERMINATION .

F.5.1 Implementation of remedy by carriage service provider

Subject to F.5.2, a carriage service provider shall implement any remedy or remedies determined by the Arbitrator on the third working day following after whichever of the following applies:

- (a) notification, pursuant to paragraph F.4.7, that an Arbitrator's determination has not been appealed;
- (b) receipt of a copy of the determination of an appeal, pursuant to clause F.4.15; or
- (c) notification of the determination of an appeal by the Chairman of TISSC, pursuant to clause F.4.15 (b).

F.5.2 Variation of period for implementing remedy

Clause F.5.1 does not apply if TISSC notifies a carriage service provider of any other specified period in which a remedy is to be implemented. In that case, the carriage service provider must implement the remedy within the period specified by TISSC.

F.5.3 Carriage service provider prevented from implementing remedy

A carriage service provider is not required to implement a remedy if it is prevented from doing so because of:

- (a) an event to which force majeure applies under its service agreement with the service provider; or
- (b) a requirement under a law, regulation, court order, or other legal instrument, including a direction from the

relevant Minister of the Commonwealth of Australia or the ACMA.

F.5.4 Reconnection of service following notification of rectification

Where a carriage service provider implements a remedy to suspend a service until a breach of the Code of Practice is rectified, TISSC must notify the carriage service provider in writing as soon as the service has been rectified. The carriage service provider must reconnect the service as soon as possible after receiving notification from TISSC that the breach has been rectified.

F.6 EMERGENCY PROCEDURES

F.6.1 Objective of emergency procedures

The emergency procedures enable a premium rate service that breaches the Code of Practice to be disconnected by a carriage service provider within 24 hours of TISSC receiving a complaint or initiating an investigation.

F.6.2 When TISSC may use emergency procedures

TISSC may decide to apply the emergency procedures if it considers that:

- (a) there may have been a serious breach of the Code of Practice;
- (b) the content of a premium rate service, or advertising for a premium rate service, may present a danger to the health or safety of any person, or the community;
or
- (c) the content or any other aspect of a premium rate service is otherwise not in the public interest.

F.6.3 Notification of emergency procedures

Where TISSC decides to apply the emergency procedures:

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- (a) it may initiate an immediate investigation of the potential breach; and
- (b) it must use its best endeavours to contact the service provider to advise that the emergency procedures have been initiated.

F.6.4 Service provider must withdraw service and/or advertisement

A service provider that is advised that the emergency procedures have been initiated must immediately withdraw a premium rate service and/or advertisement that are under investigation.

F.6.5 Request to disconnect service

If TISSC is unable to contact the service provider, or the service provider refuses to withdraw the service or advertisement, TISSC must notify the relevant carriage service provider of the potential breach and request that the service be disconnected.

F.6.6 Disconnection of service

A carriage service provider that receives a request (under F.6.5) to disconnect a service may disconnect the service without further notifying the service provider.

F.6.7 Notification of service provider

Where a carriage service provider disconnects a service pursuant to the emergency procedures, TISSC must notify the service provider in writing of the alleged breach or the nature of the complaint. The notice shall require the service provider to provide a written response within a period specified by TISSC.

F.6.8 TISSC may extend time limits

Any time limits specified under the emergency procedures may be extended at the discretion of the TISSC Chairman and relevant parties shall be informed of any such extension.

F.6.9 Further investigations and determinations

Where TISSC has applied the emergency procedures to a premium rate service, the Arbitrator may initiate a further investigation of the complaint or possible breach. Following further investigation, the Arbitrator may make a determination and determine a remedy, in addition to any action that has already been determined or taken under clause F.6. TISSC must notify the service provider and the relevant carriage service provider in writing of any determination and any remedy determined by the Arbitrator.

F.6.10 Appeals against emergency procedures

A service provider may appeal against a decision to disconnect a service pursuant to the emergency procedures, or against a determination of the Arbitrator pursuant to clause F.6.9. The appeal procedures apply to appeals arising out of the emergency procedures as if a notice under clauses F.6.7 or F.6.9 were a notification of a determination under clause F.3.8

F.7 REMEDIES

F.7.1 Powers of Arbitrator

Where the Arbitrator determines that there has been a breach of the Code of Practice, the Arbitrator may:

- (a) determine an appropriate remedy; or
- (b) decide not to determine a remedy.

F.7.2 Determination of remedies

The Arbitrator may determine one or more of the following remedies:

- (a) if there is any breach of the Code of Practice, the service provider may be required to rectify the breach within a period specified by the Arbitrator;

- (b) if there is a minor breach, the service provider may be required to provide a refund to a complainant;
- (c) if there is a significant breach:
 - (i) the service provider may be required to provide a refund to a complainant; and/or
 - (ii) the service may be suspended until the breach is rectified, or for a period as specified by the Arbitrator;
- (d) if there is a moderately serious breach:
 - (i) the service provider may be required to provide a refund to a complainant; and/or
 - (ii) the service may be suspended until the breach is rectified, or for a period as specified by the Arbitrator;
- (e) if there is a serious breach:
 - (i) the service provider may be required to provide a refund to a complainant; and/or
 - (ii) one or both of the following:
 - (A) the service may be suspended until the breach is rectified, or for a period as specified by the Arbitrator; or
 - (B) the service may be terminated;
- (f) if there is a very serious breach:
 - (i) the service provider may be required to provide a refund to a complainant; and/or
 - (ii) one or more of the following:

- (A) the service may be suspended until the breach is rectified, or for a period as specified by the Arbitrator;
- (B) the service may be terminated;
- (C) the service and services deemed to be held in breach in terms of Paragraph F.7.4 may be terminated;
- (D) the carriage service provider may be requested to terminate a service agreement.

F.7.3 Level of breach

TISSC has established the following criteria to provide guidance to service providers in relation to the likely seriousness of a breach of the Code of Practice:

- (a) **a minor breach** is a technical, inadvertent breach of the Code of Practice that is unlikely to have resulted in public harm;
- (b) **a significant breach** is a breach of the Code of Practice involving the omission of basic information that causes some public harm, or some other breach that may cause some public harm;
- (c) **a moderately serious breach** is a breach of the Code of Practice that causes limited public harm;
- (d) **a serious breach** is a breach of the Code of Practice that causes public harm, or a breach that repeats breaches of the same or similar nature;
- (e) **a very serious breach** is a breach of the Code of Practice that causes considerable public harm, or an especially flagrant breach that repeats breaches of the same or similar nature.

The Arbitrator shall have regard to these criteria in exercising his/her discretion in determining the seriousness of any breach but may also consider any other relevant factor.

F.7.4 Telephone numbers held to be in breach

Where the Arbitrator determines that there has been a breach of the Code of Practice in relation to any service, the remedy is deemed to apply to each of the following telephone numbers relating to that service:

- (a) the telephone number or numbers specified in the complaint, or subject to investigation by TISSC;
- (b) in relation to a premium rate service other than a live service, any other telephone number provided by the same service provider that provides access to content that is the same as that available on the specified number; and
- (c) in relation to a live service, any other telephone number provided by the same service provider, that provides access to content that:
 - (i) is supplied by the same information provider; and
 - (ii) is substantially the same as that available on the specified number.

F.7.4.1

With reference to F.7.4 (b) and (c):

- (a) The remedy cannot be applied retrospectively.
- (b) The Arbitrator must give the Service Provider notification that the breach and remedy may apply to the service on a different number. The Service Provider must be given a period of 3 working days to respond, before such a determination can be made by the Arbitrator.
- (c) A limit of 90 days applies from the date of the original determination of the breach and remedy on a service, to the transfer of the determination to the service on the different number.

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F.7.5 Bundling of complaints

Where a breach of the Code of Practice has already been determined in relation to a service, the Arbitrator may apply the remedy of a refund to all complaints concerning that service arising out of the same breach of the Code of Practice during the period prior to the rectification of the breach.

F.7.5.1

Before applying the remedy to the complaints referred to in F.7.5 the Arbitrator must notify the service provide in writing that:

- a. the Arbitrator has received further complaints concerning the service arising out of the same breach of the Code of Practice, with the notice to specify the number of such complaints received;
- b. the Arbitrator intends to apply the remedy of a refund to all such complaints in accordance with F.7.5; and
- c. the service provider may make representations to the Arbitrator before the Arbitrator applies the remedy to the complaints referred to in the notice, with such notice to specify the form in which and period within which such representations may be made.

F.7.5.2

If the service provider makes representations to the Arbitrator in the form and within the period specified in the notice referred to in F.7.5.1, then the Arbitrator must have regard to these representations made by the service provider before applying the remedy to the complaints referred to in F.7.5.

F.7.5.3

The Arbitrator must notify the service provider and the complainants in writing of any remedy imposed under F.7.5. The notification must advise the service provider of the right to appeal.

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F.7.5.4

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Section G **REVIEW AND AMENDMENTS**

G.1 **REVIEW**

The Code of Practice will be reviewed periodically.

G.2 **AMENDMENTS**

G.2.1 **Determination of amendments**

Amendments to this Code of Practice must be approved by the TISSC Council.

The Council may consider amendments at any time however amended versions of the Code will normally be issued in April and October each year.

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 Premium rate service
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 Prohibited and potential prohibited content
 Recorded call segment
 Recorded service
 Refund
 Restricted Access System
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- (iii) in prominent position
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- F.2 REFERRALS TO OTHER AUTHORITIES** Pages 40-42
- F.2.1 Referral of possible contraventions of the law
 - (a) to relevant carriage service provider
 - (b) to relevant authority.
- F.2.2 Notification of possible contraventions of the law
 - (a) to service provider and
 - (b) carriage service provider.

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History of Amendments listed on Pages 72-74

For a detailed index see pages 61-71 at the rear of this Code

- F.2.3 Referral of telephone sex service complaints to the ACMA
- F.2.4 Referral of complaints regarding Internet content
 - (a) to service provider
 - (b) to carriage service provider
 - (c) to the ACMA
- F.2.4.1 Referral of complainants to the ACMA re Internet content
- F.2.5 Referral of complaints to TIO
- F.2.6 TISSC may defer action pending outcome of legal proceedings

F.3 INVESTIGATIONS AND COMPLAINTS PROCEDURES Pages 42-45

- F.3.1 Investigation of complaints
- F.3.2 Notification of investigation
- F.3.3 Opportunity to make representations
- F.3.4 Requests for further information
- F.3.5 No response to request for further information
- F.3.6 Determination of breach
- F.3.7 Unauthorised/unpaid Website advertising
- F.3.8 Imposition of remedy
- F.3.9 Notification of determination
- F.3.10 Determination is binding
- F.3.11 Arbitrator may withdraw determination
- F.3.12 Failure to comply with procedures does not invalidate final determination
- F.3.12.3 Extension of time limits

F.4 APPEAL PROCEDURES Pages 45-51

- F.4.1 Appeals
- F.4.2 Notice of intention to appeal
- F.4.3 Lodging appeal if no notice of intention
- F.4.4 Lodging appeal following notice of intention
- F.4.5 Form of appeal
 - (a) fee of \$3,000;
 - (a) (i) *Trial 12 months from 12/12/11 fee to be \$500*
 - (b) grounds of appeal
 - (c) written submission
 - (d) any request for an oral representation (hearing)
- F.4.6 Appeals against determinations of related breaches
- F.4.7 Notification of carriage service provider
- F.4.8 Advice to carriage service provider
- F.4.9 No disconnection of service pending determination of appeal
- F.4.10 Deemed withdrawal of appeal
 - withdrawn if F4.2 to F4.6 not complied with
- F.4.11 Referral to Appeals Arbitrator
- F.4.12 Hearing of appeal
- F.4.13 Hearings (Oral representation)
 - F.4.13.1 Rules of Evidence shall not apply
 - F.4.13.2 Representation
 - F.4.13.3 No new grounds of appeal
 - F.4.13.4 Arbitrator may attend

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History of Amendments listed on Pages 72-74

| | | |
|------------|---|-------------|
| F.4.13.5 | Proceedings recorded | |
| F.4.13.6 | Appellant issued with recording copy | |
| F.4.13.7 | Only one hearing | |
| F.4.14 | Nature of hearing | |
| F.4.15 | Determination of appeal | |
| | (a) notification to Chairman | |
| | (b) Chairman notify the service provider and carriage service provider | |
| | (c) within 10 days, Appeals Arbitrator written determination | |
| F.4.16 | Notification of determination –method of transmission | |
| F.4.17 | Extension of time limit | |
| F.4.18 | Refund if appeal upheld | |
| F.4.19 | Legal fees and associated costs of appellant | |
| F.5 | IMPLEMENTATION OF A DETERMINATION | Pages 51-52 |
| F.5.1 | Implementation of remedy by carriage service provider | |
| F.5.2 | Variation of period for implementing remedy | |
| F.5.3 | Carriage service provider prevented from implementing remedy | |
| F.5.4 | Reconnection of service following notification of rectification | |
| F.6 | EMERGENCY PROCEDURES | Pages 52-54 |
| F.6.1 | Objective of emergency procedures | |
| F.6.2 | When TISSC may use emergency procedures. | |
| F.6.3 | Notification of emergency procedures | |
| F.6.4 | Service provider must withdraw service or advertisement | |
| F.6.5 | Request to disconnect service | |
| F.6.6 | Disconnection of service | |
| F.6.7 | Notification of service provider | |
| F.6.8 | TISSC may extend time limits | |
| F.6.9 | Further investigations and determinations | |
| F.6.10 | Appeals against Emergency Procedures | |
| F.7 | REMEDIES | Pages 54-59 |
| F.7.1 | Powers of Arbitrator | |
| F.7.2 | Determination of remedies | |
| | (a) if there is any breach | |
| | (b) if there is a minor breach | |
| | (c) if there is a significant breach | |
| | (d) if there is a moderately serious breach | |
| | (e) if there is a serious breach | |
| | (f) if there is a very serious breach | |
| F.7.3 | Level of breach | |
| | (a) a technical, inadvertent breach – minor | |
| | (b) an omission of basic information that causes some public harm – significant | |
| | (c) limited public harm – moderately serious | |
| | (d) public harm, or repeats breaches of the same - serious | |
| | (e) considerable public harm, that repeats breaches of the same or | |

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History of Amendments listed on Pages 72-74

similar nature – very serious

- F.7.4 Telephone numbers to be held in breach
 - (a) specified in complaint or subject to TISSC investigation
 - (b) substantially the same as on the specified number
 - (c) live service

- F.7.4.1 Qualification of F.7.4
 - (a) remedy not retrospective
 - (b) 3 working days response
 - (c) Limit of 90 days

- F.7.5 Bundling of accounts
- F.7.5.1 Arbitrator to notify service provider re (a) further complaints; (b) intends to apply a refund; (c) service provider may make representations
- F.7.5.2 Arbitrator to have regard to representations
- F.7.5.3 Arbitrator is to notify service provider and complainants. Notice to contain advise to service provider of right to appeal
- F.7.5.4 Any appeal from imposition of remedy is to be governed by F.4

Section G Review and amendments

- G.1** **REVIEW** Page 60

 - G.2** **AMENDMENTS** Page 60
 - G.2.1 When amendments may occur
-

CODE ISSUE NUMBER AND DATE

Number 1 of January 2002 – Inaugural version

- Number 1 of January 2002 – April 2002 version
- Number 1 of January 2002 – October 2002 version
- Number 1 of January 2002 – April 2003 version
- Number 1 of January 2002 – October 2003 version
- Number 1 of January 2002 – April 2004 version
- Number 1 of January 2002 – August 2004 version
- Number 1 of January 2002 – January 2005 version
- Number 1 of January 2002 – March 2005 version
- Number 1 of January 2002 – September 2005 version
- Number 1 of January 2002 – August 2006 version
- Number 1 of January 2002 – November 2006 version
- Number 1 of January 2002 – April 2007 version
- Number 1 of January 2002 – June 2007 version
- Number 1 of January 2002 – October 2007 version
- Number 1 of January 2002 – October 2008 version
- Number 1 of January 2002 – June 2010 version
- Number 1 of January 2002 – October 2010 version
- Number 1 of January 2002 – December 2011 version

HISTORY OF CHANGES TO THE CODE

New Code January 2002

April 2002

- a. amendment to definition “Caller to caller service”
- b. amendment to preamble of B.2.5.1 “conversation” changed to “communication”
- c. amendment to B.2.7.1 – added words “to ensure compliance with B.2.5.1 (a), (c), and (d)”

October 2002

- a. amendment to C.8.2 – to include provisions for fixed rate Internet Diallers
- b. amendment to C.8.7 – to include provisions for fixed rate Internet Diallers
- c. new paragraph E.20 – new instructions re Advertisements for premium rate numbers distributed by fax
- d. new paragraph E.21 – new provisions re the inclusion of service provider name on advertising

April 2003

- a. amendment to E.20 – to allow deletion from fax distribution list by telephone 1300/1800 in addition to deletion by fax
- b. amendment to F.7.4 – “substantially the same” removed from sub paragraph (b)
- c. new paragraph F.7.4.1 – circumstances under which F.7.4 (b) and (c) can be applied
- d. new paragraph F.7.5 – outlining the circumstances under which the remedy of a refund can be applied to complaints of a similar nature on the same service

October 2003

- a. new sub paragraph F.7.2 (f) (ii) (C) replacing the existing paragraph and incorporating the new Remedy of terminating a service or services deemed to be held in breach in terms of Code Paragraph F.7.4. The existing paragraph now becomes F.7.2 (f) (ii) (D).

April 2004

- a. Amendment to definition of advertisement
- b. New sub paragraph (d) to Para. E.20 detailing how costs must be displayed on promotional faxes

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- c. New paragraph F3.10 enabling Arbitrator to withdraw a determination pursuant to F.3.6 and F.3.7. F.3.10 and F.3.11 re-numbered to F.3.11 and F.3.12 without amendment to text
- August 2004**
- a. new definition “Subscription television premium rate back channel service”
 - b. New paragraph A.4.4 interpretation of Transaction screen
 - c. New paragraphs C.7.7 and C.7.8 – limitations on advertising to children – no encouragement to buy goods; no cash or other prizes unsuitable for children
 - d. New paragraphs E.21.1; E.21.2; E.21.3 – advertising requirements for subscription television premium rate back channel services
- January 2005**
- a. New Paragraph B.1.3 – Paralleling Telephone sex legislation
- March 2005**
- a. Definition of a refund
 - b. “Anonymous” complaints not accepted by TISSC
- September 2005**
- a. New Paragraph A.4.5 – Name of service provider interpretation
 - b. New paragraph B.1.4 – Acting as a billing mechanism for downloading material unsuitable to minors to mobile handsets – not allowed
 - c. B.2.14 – Former paragraph C.1.4 transferred to this point without alteration
 - d. Existing C.1.5 re-numbered C.1.4
 - e. E.22 amended to specify manner in which Service Provider name is displayed
 - f. New paragraph E.23 – Basis on which a single service provider name can be used on block advertisements
- August 2006**
- a. A.4.5 – Name of Service Provider or Information Provider in display advertising – basis abbreviation or use of Trade name
 - b. B.2.1.1 - Delays in connection to live operator on recorded services where a live operator option exists
 - c. Paragraphs C.1.3 (b), C.1.4, C.2.5 to be deleted – C.2.3 and C.2.4 to be moved to Section B and re-numbered as B.2.15 and B.2.16 and amended – C.1.3 (a) to be amended and re-numbered as C.1.3 – Basis for progressive time signals and costs
 - d. Paragraphs C.3.5 and C.3.6 amended to incorporate time warnings on variable Charge Services
 - e. E.22 and E.23 - Service provider or Information Provider name on advertisements – must have Australian Contact Point
 - f. F.7.5 – Expanded provisions re bundling of complaints
- November 2006**
- a. E.24 – New provision covering “Missed Call” promotions
 - b. F.4.5 and F.4.6 – Reduction of the Appeal Fee to \$3,000 (previously \$5,000)
- April 2007**
- a. Definition – New definition for “Video Service”
 - b. E.25 – Advertising requirement for “Video Service”
 - c. F.7.2 – Amendments to paragraph to clarify process
- June 2007**
- a. B.2.16 – amendment to the placing of the 3 beep tone warning on services
 - b. E.22.1 – new sub paragraph dealing with abbreviated names in display advertising
- October 2007**
- a. Definition of a “minor” – new

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History of Amendments listed on Pages 72-74

- b. Definition “prohibited and potential prohibited content” – amended definition
 - c. Definition “Restricted access system” – new
 - d. B1.1 (b) – reference to “restricted access system” included
 - e. B.1.3.2 - reference to “restricted access system” included
 - f. B.1.4 - reference to “restricted access system” included

 - g. E.2.1 – reference to Australian Government Attorney-General’s Department included
 - h. F.2.4 – reference to legislation amended
 - i. F.2.4.1 – reference to legislation amended
- October 2008**
- a. Inclusion of new paragraph F.3.7 dealing with unauthorized/unpaid web advertising
(Note: Pro forma statement placed on TISSC’s website)
 - c. Existing paragraphs F.3.7 to F.3.12 re-numbered F.3.8 to F.3.13
- June 2010**
- a. B.2.3 – text clarified
 - b. B.2.15 – refers to compliance with B.2.16.2 or B.2.17 regarding warnings to callers
 - c. B.2.16.1 – old B.2.15 re-numbered
 - d. B.2.16.2 – re 3 beep tone warning required OR comply with B.2.17
 - e. B.2.17 – Alternate to 3 beep tone requirements of B.2.16.1/2 – advice of elapsed time and progress cost
 - f. C.1.2 – Recorded services - amended caller requirements to proceed – to be played within 10 minutes and within each subsequent 10 minutes
 - g. C.1.3 – Recorded services - amended cost advice/elapsed time/caller requirement to proceed – to be played within 10 minutes and within each subsequent 10 minutes including the requirement for caller to press “0” or similar to proceed
- October 2010**
- a. E.10 (c) (i) – wording amended to clarify meaning
- December 2011**
- a. F.7.4 (a) (i) – Appeal fee \$500 for trial period 12/12/11 to 11/12/12