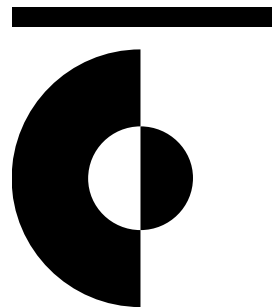


4 December 2007



**Telecommunications  
Industry  
Ombudsman**

**Deirdre O'Donnell**  
Ombudsman

Mr Vince Humphries  
Manager  
Education and Telephone Content Section  
Australian Communications and Media Authority  
NewContentRegulation@acma.gov.au

Dear Vince,

Thank you for inviting the TIO to comment on the Changes to the Restrictions on Access to Mobile Premium Service Consultation Paper. In this submission I have commented only on those issues which are relevant to the TIO.

### **Remaining provisions and functions of the MPS Determination**

The TIO notes the proposal to replace the remaining provisions of the Determination and MPSI Scheme with a Code under Part 6 of the *Telecommunications Act 1997* (the Act), and understands that the proposal recognises that as mobile content issues are now dealt with under Schedule 7 of the *Broadcasting Services Act*, the remaining mobile premium service issues may be more appropriately dealt with under a Part 6 code. As the TIO's complaints mainly relate to those remaining provisions, it seems unlikely that the change would have any significant impact on the way in which the TIO deals with complaints about mobile premium services.

Under this proposal, rather than deal with complaints as the escalated complaints handling body under the MPSI Scheme, the TIO would instead deal with complaints via the usual conferral of power mechanisms embedded in the code, as per section 114 of the Act.

If the decision were made to replace the Scheme with a Code under Part 6, I believe that a prerequisite of the code should be that there is no lessening of consumer protection as currently provided under both the MPSI Scheme and the MPSI Guideline. Amongst other things, this would require that the code apply to both carriage service providers and content providers. The TIO recognises, however, that there may currently be some duplication between the MPSI Scheme and existing ACIF codes - such as in relation to complaint handling - which could be addressed via cross referencing between the new code and existing codes. The TIO also supports ACMA's view that the MPSI Scheme should remain in effect until the new code is registered.

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**Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787**

**Website:** [www.tio.com.au](http://www.tio.com.au)  
**Email:** [tio@tio.com.au](mailto:tio@tio.com.au)

**Postal address:**  
PO Box 276  
COLLINS ST WEST VIC 8007

**Street address:**  
Level 3  
595 Collins Street  
MELBOURNE VIC 3000

**Tel freecall\*:** 1800 062 058  
Fax freecall\*: 1800 630 614  
Telephone: (03) 8600 8700  
Fax: (03) 8600 8797

\*calls from mobile phones may incur charges

## **Variation to the Telecommunications Numbering Plan – ‘195’ and ‘196’ prefixes**

The TIO agrees that the Numbering Plan is the logical instrument to specify the prefixes on which age-restricted SMS and MMS service are permitted. Whilst noting the proposed variation, I am concerned that the proposed definition in the dictionary for premium SMS or MMS service is the same definition as is currently in the Determination. The TIO considers this definition to be problematic because it refers only to ‘calls *to* a number’ with the requisite prefix, whereas most premium SMS are billed for (and content provided on) the return text. The definition does not cover services where the premium SMS is used as the billing mechanism only.

The TIO is concerned that this definition may result in the unintended exclusion of certain services. An example is a reverse charge service which allows users to make a reverse charge phone call to a mobile phone via a 1800 number. Once the call is concluded, the recipient of the call is then billed for the associated charges by way of one or more SMS charged at a fixed rate to their mobile phone. It is arguable that because the SMS itself is simply the billing mechanism and not the means of supplying the reverse charge call service, it may not be captured by the existing definition.

I trust these comments are of use. Please contact Silvia Superina on (03) 8600 8723 if you have any questions.

Yours sincerely

Deirdre O’Donnell  
**Ombudsman**