



AUSTRALIAN COMMUNICATIONS INDUSTRY FORUM

INDUSTRY CODE

Short Message Service (SMS) Issues

ACIF C580 DECEMBER 2002

Industry Code *Short Message Service (SMS) Issues*

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EXPLANATORY STATEMENT

BACKGROUND

This Code relates to the use of Short Message Service (SMS) for the delivery of marketing messages to mobile telephone customers. This Code addresses the transmission of short text or binary messages between customers who are served by the same or different carriers or carriage service providers (CSPs). This Code also addresses the ability of the recipient customers not to receive all such marketing messages except those that recipient customers specifically elect to receive or would reasonably expect to receive.

The use of SMS within Australia is expanding rapidly. It is anticipated that marketing via SMS will become increasingly popular to the industry due to its targeted effect. Like other forms of advertising, marketing via SMS is considered intrusive by some customers. Moreover, mobile telephones have limited capacity to store messages and recipients have no choice but to open them.

SMS is a store and forward service. That is, short messages are not sent directly from sender to recipient, but are sent via an SMS network (see Appendix A). Once the SMS network receives an SMS message it temporarily stores it and waits for the destination address and delivery routing requirements analysis to be completed before the message is forwarded to the intended destination. If the message cannot be delivered to the mobile telephone (e.g. due to the mobile telephone being switched off or network congestion) the SMS network will continue to make delivery attempts over some predetermined period (e.g. days) until the message either expires or the message has been successfully delivered. As such it is not possible to predetermine the time of delivery for any particular SMS message.

Section 112 of the *Telecommunications Act 1997* outlines the intention of Parliament that the telecommunications industry develops industry codes relating to telecommunications activities. Section 113 specifically lists 'the intrusive use of telecommunications by carriers or service providers' as an example of the matters that may be dealt with by the development of an industry code.

The development of a code to address marketing via SMS has also been given a high priority by the concerns raised within industry forums and the media regarding the delivery of unsolicited marketing messages via SMS. Additionally these factors have been identified internationally and many countries are currently considering or drafting codes relating to SMS for marketing.

The development of this Code has been facilitated by ACIF through a Working Committee comprised of representatives from the telecommunications industry, representatives from the marketing industry, Government regulatory agencies and consumer groups.

The Code rules cover the following key areas:

- sending of marketing messages by carriers and CSPs;
- carriers' and CSPs' arrangements with commercial message originators; and
- exemptions from marketing message rules for sending service related messages and messages concerning health, safety and law enforcement issues.

The mechanisms identified by the industry to date for effectively managing the delivery of SMS messages are based on two key approaches:

- (a) establishing a regulatory regime that requires carriers and CSPs to comply with certain rules in relation to sending marketing messages via SMS and to advise commercial message originators of those rules; and
- (b) implementing technical facilities, where appropriate, to automatically reject unsolicited SMS messages according to the address of the message originator and possibly other parameters.

This Code only addresses the regulatory regime identified in (a) above. An appropriate technical solution in relation to (b) above is not currently available but may be available in the future.

The Code does not deal with message originators sending SMS messages who do not have a commercial arrangement with a carrier or a CSP for the transmission of SMS messages (for example, message originators using GSM modems to send SMS messages, or SMS messages originating from overseas). The Code also does not deal with end users sending SMS messages from their mobile telephones.

CURRENT REGULATORY ARRANGEMENTS

Marketing and advertising practices are covered by both legislation and advertising industry codes of practice. The advertising industry also has codes of conduct relating to the content and delivery of marketing including:

- the Australian Direct Marketing Association's (ADMA) Code of Practice;
- the Telephone Information Services Standard Council (TISSC) Code of Practice; and
- the Advertising Codes of the Australian Association of National Advertisers.

The use of personal information is covered by legislation and industry codes. The main law affecting the use of personal information is the *Privacy Act 1988* (Cth), as amended by the *Privacy Amendment (Private Sector) Act 2000*, which includes the National Privacy Principles (NPPs). In the private sector, the NPPs cover aspects of the use, collection, storage and disclosure of personal information. Messages sent by carriers or CSPs to their customers are covered by the provisions of the *Privacy Act 1988*. The Privacy Commissioner's Guidelines to the National Privacy Principles consider the use of SMS for marketing. Under the requirements of the *Privacy Act 1988*, consent must be obtained prior to the use of personal information for marketing activities unless the marketing would be within the reasonable expectations of the individual or for direct marketing purposes subject to certain conditions.

WHY CURRENT REGULATORY ARRANGEMENTS ARE INADEQUATE

While there are codes of conduct relating to the content and delivery of marketing information, they are generally applicable only to members of the relevant organisation.

The use of personal information to direct market individuals is covered by the *Privacy Act 1988*. However, the reference in the *Privacy Act 1988* to direct marketing does not deal specifically with SMS messages and does not cover some small businesses which may include many message originators of marketing messages, unless those small businesses collect or disclose personal information about another individual for a benefit, service or advantage without the person's consent.

There is a reference to the use of SMS for marketing in the Privacy Commissioner's Guidelines to the National Privacy Principles. However, the

reference is only in relation to the issue of whether prior consent has been obtained. Further, they are guidelines only and are not legally binding on any organisation using SMS for marketing purposes.

The current regulatory arrangements do not otherwise address the unique features and limitations of SMS as a marketing medium that are not found or contemplated in other media.

Due to the potentially intrusive nature of SMS marketing, it is considered that these features and limitations need to be addressed specifically.

HOW THE CODE BUILDS ON AND ENHANCES THE CURRENT REGULATORY ARRANGEMENTS

The Code rules provide practical and specific guidance in relation to the NPPs. The rules directly target all carriers and carriage service providers as well as indirectly targetting all other message originators seeking, through commercial arrangements with a carrier or carriage service provider, to use the mobile network for the delivery of marketing messages via SMS. The Code rules are also aimed at reducing the delivery of unsolicited marketing messages via SMS.

WHAT THE CODE WILL ACCOMPLISH - OBJECTIVES

The objectives of this Code are:

- to reduce the incidence of unsolicited marketing messages received by customers; and
- to promote the responsible use of SMS for marketing purposes.

HOW THE OBJECTIVES WILL BE ACHIEVED

The objectives will be achieved by the following:

- establishing the principles for sending messages via SMS,
- the application of those principles as Code rules that apply to carriers and CSPs sending marketing messages via SMS; and
- the provision by carriers and CSPs to message originators of the SMS Guideline which reflects those principles.

Registration of the Code by the ACA will ensure all carriers and carriage service providers can be directed to comply with Code rules. Registration will also allow the ACA to direct carriers and carriage service providers to ensure all Message Originators are informed of their obligations under the Code Guidelines.

ANTICIPATED BENEFITS TO CUSTOMERS

Anticipated benefits to consumers resulting from industry compliance with the Code include:

- customers can expect appropriate carrier and CSP behavior in the conduct of sending marketing messages via SMS;
- general moderation of the impact of unsolicited marketing messages via SMS on customers;
- provision of guidance for future developments in using technologies such as automated SMS messages to mobile telephones for marketing purposes;
- recipients will be able to identify the party sending them the SMS when sent by their carrier or CSP, or from a party which has commercial arrangements with a carrier or CSP;

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- recipients will be offered a method for opting out of receiving marketing messages from their carrier or CSP, or message originators who have commercial arrangements with carriers and CSPs; and
- the Code will provide customers with information on principles for sending SMS messages with which the following should comply:
 - carriers and CSPs; and
 - message originators with which carriers or CSPs have a commercial arrangement.

ANTICIPATED BENEFITS TO INDUSTRY

Compliance with the Code rules will provide the following benefits to industry:

- reduction of complaints to carriers and CSPs about unsolicited marketing messages;
- higher levels of customer confidence that they will not be a target for unsolicited marketing messages by buying a mobile telephone service; and
- greater confidence by the public in the telecommunications industry to self regulate contentious matters.

From a regulatory standpoint, the Code will provide a basis for preventing the delivery of unsolicited marketing messages via SMS either by carriers and CSPs or through the application of the SMS Guideline by other message originators.

ANTICIPATED COSTS TO INDUSTRY

It is expected that industry participants will incur initial and ongoing costs in relation to compliance with this Code.

Compliance with the Code in many cases will require existing carriers and CSPs to provide the SMS Guideline to message originators with which they have commercial arrangements as soon as practicable.

Teresa Corbin
Chair
OCR/P/WC22 SMS Working Committee

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1. INTRODUCTION AND REGISTRATION WITH THE ACA

1.1. Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* sets out the intention of the Commonwealth Parliament that bodies and associations in the telecommunications industry develop industry codes relating to the telecommunications activities of those bodies.
- 1.1.2 The development of this Code has been facilitated by the Australian Communications Industry Forum (ACIF) through a Working Committee comprised of representatives from the telecommunications industry, direct marketing industry, Government regulatory agencies and consumer groups.
- 1.1.3 This code covers the Short Message Service (SMS) rules relating to the delivery of Marketing Messages to mobile telephone customers.
- 1.1.4 This Code should be read in the context of other relevant Codes and Guidelines, including the Australian Direct Marketing Association Code of Practice, the Telephone Information Services Standard Council Code of Practice, the Advertising Codes of the Australian Association of National Advertisers, and ACIF G562:2000 *Electronic Customer Authorisation* Industry Guideline.
- 1.1.5 This Code should be read in conjunction with related legislation, including:
- the *Telecommunications Act 1997*;
 - the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
 - the *Privacy Act 1988*.
- 1.1.6 If there is a conflict between the requirements of this Code and any requirements imposed on a Supplier by statute, the Supplier will not be in breach of this Code by complying with the requirements of the statute.
- 1.1.7 Statements in boxed text are a guide to interpretation only and not binding as Code rules.

1.2. Registration with ACA

- 1.2.1 This Code is registered with the Australian Communications Authority pursuant to section 117 of the *Telecommunications Act 1997*.

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2. SCOPE AND OBJECTIVES

2.1 Scope

2.1.1 This Code applies to all Signatories and, upon registration with the Australian Communications Authority, to the following organisations

- (a) Carriers; and
- (b) Carriage Service Providers.

These organisations are collectively referred to in this Code as “Suppliers”.

2.1.2 The Code covers the delivery of Marketing Messages transmitted via SMS which relate to the following telecommunications activities of Suppliers, as defined in section 109 of the Act:

- (a) carrying on business as a Carrier;
- (b) carrying on business as a Carriage Service Provider; and
- (c) supplying goods or services for use in connection with the supply of a listed carriage service.

2.2 Objectives

2.2.1 The principal objective of this Code is to ensure that, as far as practicable, end users of services which support the reception of SMS messages do not receive unsolicited SMS Marketing Messages.

2.2.2 The Code objectives include:

- (a) moderation of the impact of unsolicited SMS on end-users;
- (b) reduction of complaints to Suppliers;
- (c) reduction of the congestion that may otherwise result from unsolicited SMS Messages on Suppliers’ networks;
- (d) fostering an environment where SMS is recognised as a legitimate commercial medium;
- (e) consistency with the *Privacy Act 1998* having regard to the National Privacy Principles, which require that a Supplier must protect the privacy of each Customer’s mobile number and any arrangements it has made with the Customer to provide Marketing Messages; and
- (f) providing principles to guide the use of future technologies such as automated Marketing Messages via SMS to mobile telephones for marketing purposes.

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3. PARTICIPANTS

The group that developed this Industry Code consisted of the following organisations and their representatives:

Representative	Organisation	Membership
Teresa Corbin (Chair)	Consumers' Telecommunications Network	Voting
Tony Galati	Telstra	Voting
Beth MacKenzie	Australian Telecommunications Users Group	Voting
Amar Toor/Carol Lewer	Optus	Voting
Graham Wallace/Jennifer Wilson	Legion Interactive	Voting
Julian Gorman	Vodafone	Voting
Scott McClellan/Jodie Sangster	Australian Direct Marketing Association	Voting
Stewart Wallace	Telstra	Non-Voting
Tony Brown	Australian Communications Authority	Non –Voting

Holly Raiche of ACIF supplied project management support.

4. DEFINITIONS AND ABBREVIATIONS

For the purposes of this Industry Code, the following definitions and abbreviations apply:

ACA means the Australian Communications Authority.

ACIF means the Australian Communications Industry Forum.

Act means the *Telecommunications Act 1997* (Cth).

Carriage Service Provider or **CSP** has the meaning given by section 87 of the Act.

Carrier has the meaning as given in section 7 of the Act.

Marketing Message means a Message sent via SMS that is designed to promote the sale of or demand for goods or services whether or not it invites or solicits a response from the Recipient.

This may include messages from charities or political organisations or other non profit entities.

Message means text or binary content generated from either a mobile telephone or customer application such as a web site, call/contact centre or PC terminal, and received by a mobile telephone or customer application.

Message Originator means a person or entity that has a specific commercial arrangement with a Supplier to send Messages via SMS but excludes Suppliers and end users of the mobile network.

Recipient means a person who receives a Marketing Message, either intentionally or unintentionally.

Recognised Identifier means a symbol, series of characters or text that identifies the Message Originator or Supplier. The Recognised Identifier

(a) may be located either within the body of the Message or in the source field address; and

(b) can be either a combination of letters and/or numbers or the telephone number that identifies the Message Originator or Supplier, or provides the Recipient with a means of contacting the Message Originator or Supplier in order to know the identify of the Message Originator or Supplier and to opt out of receiving further SMS.

Service Related Message means a Message originated by a Supplier and destined for one or more of its customers, relating to the service(s) that are currently being provided to those customers by that Supplier.

For example, network related messages (eg, network outages and service faults, etc), emergency situations, and billing or feature related messages that are provided to the customer by that Supplier.

Signatory means an organisation that signs up to this Code under the ACIF Code Administration and Compliance Scheme.

SMS means Short Message Service and refers to the ability to send and receive messages to and from a customer's mobile telephone.

Currently a single Short Message can be up to 160 characters of text length. Future developments may support a single short message greater than 160 characters.

SMS Guidelines refers to the guidelines in Appendix B of this Code.

Supplier means a Carrier or Carriage Service Provider.

In this Code, unless the contrary appears:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) words in the singular includes the plural and vice versa;
- (c) words importing persons include a body whether corporate, politic or otherwise; and
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, officer, employee, volunteer, agent and/or subcontractor (including but not limited to, persons taking by novation) and assigns.

5. RULES

5.1 Sending of Suppliers' Marketing Messages

5.1.1 Recognised Identifier

A Supplier must include a Recognised Identifier in all its Marketing Messages. The Recognised Identifier must be in a form which reasonably enables a Recipient to identify or directly contact the Message Originator or Supplier.

5.1.2 Prohibition of Marketing Messages

A Supplier must not send its Marketing Messages to Recipients unless:

- (a) the Recipient has requested the Marketing Message;
- (b) the Recipient has provided the Supplier with prior consent to send such Marketing Messages; or
- (c) the Supplier complies with the provisions of Clause 2.1 (a) or Clause 2.1 (c) of the National Privacy Principles, as contained in Schedule 3 of the *Privacy Act 1988*.

5.1.3 Recipient's Right to Opt-out

A Supplier must implement an appropriate means of allowing the Recipient to notify the Supplier not to send further Marketing Messages to the Recipient. The means must be:

- (a) easy to use by the Recipient;
- (b) minimise any inconvenience; and
- (c) be provided at low cost to the Recipient.

Example: provision of a freecall number.

5.1.4 Compliance with Opt-out Notices

A Supplier must comply as soon as practicable with any notice it receives under Clause 5.1.3 and not send further Marketing Messages to the Recipient unless and until the Recipient requests or consents to receiving further Marketing Messages.

Typically this should be possible within 48 hours.

5.2 Enforcement of SMS Guideline

5.2.1 A Supplier which supplies SMS services to Message Originators for commercial purposes must :

- (a) provide a copy of the SMS Guideline to each Message Originator to whom the Supplier supplies SMS services for commercial purposes; and
- (b) inform each Message Originator that, unless it complies with the SMS Guideline, the Supplier may be required under this Code to withdraw supply of the SMS service to the Message Originator.

5.2.2 If a Supplier reasonably believes a Message Originator has not complied with the SMS Guideline, the Supplier must, at a minimum:

- (a) in the case of a single contravention or one of a minor nature, write a letter to the Message Originator pointing out the requirements for the Message Originator to comply with the SMS Guideline; and

(b) in the case of a systemic contravention, write a formal letter warning the Message Originator that if it does not comply with the SMS Guideline, the Supplier may suspend or terminate the supply of SMS services.

5.2.3 Where a Message Originator has not complied with a formal warning issued under Clause 5.2.2(b), a Supplier must consider taking appropriate action, which may include suspension or termination of SMS services to that Message Originator.

5.3 Exclusions from Marketing Messages Rules

5.3.1 Service Related Messages

Clauses 5.1.2 to 5.1.4 of the Code do not apply to Service Related Messages sent by a Supplier via SMS to its customers.

5.3.2 Health, Safety and Law Enforcement Messages

Clauses 5.1.2 to 5.1.4 do not apply to Messages sent by a Supplier via SMS to its Customers which are in accordance with Clause 2.1 (d), (e), (f), (g) or (h) of the National Privacy Principles, as contained in Schedule 3 of the *Privacy Act 1988*.

5.3.3 Recognised Identifier

A Supplier must include a Recognised Identifier in all Messages sent via SMS under Clause 5.3.1 or 5.3.2. The Recognised Identifier must be in a form which reasonably enables a Recipient to identify the Supplier.

6. CODE ADMINISTRATION AND COMPLIANCE

6.1 Code Administration and Compliance Scheme

- 6.1.1 Under ACIF Code signatory arrangements, Signatories to this Code are subject to ACIF's Code Administration and Compliance Scheme (August 2001) (the Scheme). Accordingly, all Signatories who are bound by this Code are also bound by the Scheme.

6.2 Powers Of The Telecommunications Industry Ombudsman To Handle Complaints Under This Code

- 6.2.1 Under section 114 of the *Telecommunications Act 1997* and, subject to consent by the Telecommunications Industry Ombudsman, this Code confers on the Telecommunications Industry Ombudsman the functions and powers of:

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

complaints made by the end users of carriage service about matters arising under or in relation to this Code, including compliance with the Code by those industry participants to whom this Code applies.

6.3 Power To Handle Industry Complaints Under This Code

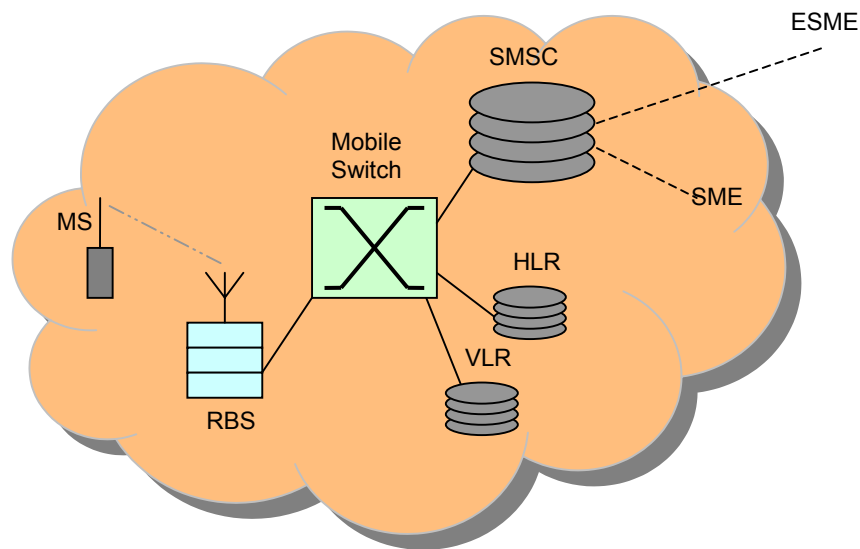
- 6.3.1 Complaints may be made under this Code to ACIF about a contravention of this Code by a Signatory to this Code:
- (a) by a member of the industry (or coalition of consumer representatives) (an Industry Complaint²); or
 - (b) by referral from the ACA of an Industry Complaint under the power granted to the ACA in section 514 of the *Telecommunications Act 1997*, subject to ACIF's agreement to accept the referral. Without limiting the grounds on which ACIF may withhold its agreement to accept a referral, ACIF may withhold its agreement where it considers that the complaint can be more conveniently dealt with in another forum or that handling the complaint may impose an unreasonable cost burden on ACIF.
- 6.3.2 ACIF must handle complaints under Clause 6.3.1(a) or (b) of this Code in accordance with the provisions of the ACIF G514:2001 Code Administration and Compliance Scheme.

6.4 Code Review

- 6.4.1 Review of this Code will be conducted after 12 months of the Code being registered by the Australian Communications Authority and every two years subsequently.

A. APPENDIX – BRIEF DESCRIPTION OF SMS STORE-AND-FORWARD FUNCTION

The SMS feature of public cellular networks functions as a store-and-forward messaging facility, that is, short messages are not sent directly from sender to recipient, but via an SMS Network. Once the SMS Network receives an SMS message it temporarily stores it, waits for the destination address and delivery routing requirements analysis to be completed, before the message is forwarded to the intended destination. If the message cannot be delivered to the mobile terminal (eg due to the mobile terminal being switched off, network congestion etc) the SMS Network will attempt to deliver the message for predetermined network set period (eg days) until it expires or the message has been delivered



Legend:

SMSC	Short Message Service Centre – the store-and-forward messaging centre
MS	Mobile Station
RBS	Radio Base Station
HLR	Home Location Register – validates MS within their ‘home’ region
VLR	Visitor Location Register – validates ‘visiting’ MS by temporary storage of validation data sourced from their respective HLR when the MS first appears in this region.
SME	Short Message Entity – a source of SMS messages within the network (e.g. Voicemail notification)
ESME	External Short Message Entity – an external source of SMS messages (e.g. stock quote service)

B. APPENDIX: SMS GUIDELINE FOR COMMERCIAL MESSAGE ORIGINATORS

1. DEFINITIONS

Marketing Message means a Message sent via SMS that is designed to promote the sale of or demand for goods or services whether or not it invites or solicits a response from the recipient.

This may include messages from charities or political organisations or other non profit entities.

Message means text or binary content generated from either a mobile telephone or customer application such as a web site, call/contact centre or PC terminal, and received by the mobile telephone or customer application.

Message Originator means a person or entity that has a commercial arrangement with a Supplier to send Messages via SMS but excludes Suppliers and end users of the mobile network.

Recipient means a person who receives a Marketing Message, either intentionally or unintentionally.

Recognised Identifier means a symbol, series of characters or text that identifies the Message Originator. The Recognised Identifier

(c) may be located either within the body of the Message or in the source field address; and

(d) can be either a combination of letters and/or numbers or the telephone number that identifies the Message Originator, or provides the Recipient with a means of contacting the Message Originator in order to know the identify of the Message Originator and to opt out of receiving further SMS.

SMS means Short Message Service and refers to the ability to send and receive messages to and from a customer's mobile telephone.

Currently a single Short Message can be up to 160 characters of text length. Future developments may support a single short message greater than 160 characters.

SMS Guideline refers to the guideline in Appendix B of this Code.

Supplier means a Carrier or Carriage Service Provider.

2. GUIDELINE

2.1 Recognised Identifier

Message Originators should include a Recognised Identifier in all their Marketing Messages. The Recognised Identifier should be in a form which reasonably enables a Recipient to identify or directly contact the Message Originator.

2.2 Prohibition of Marketing Messages

Message Originators should not send Marketing Messages to Recipients via SMS unless:

- (a) the Recipient has requested the Marketing Message;
- (b) the Recipient has provided the Message Originator with prior consent to send such Marketing Messages; or

- (c) the Message Originator complies with the provisions of Clause 2.1 (a) or Clause 2.1 (c) of the National Privacy Principles, as contained in Schedule 3 of the *Privacy Act 1988*.

2.3 Recipient's Right to Opt-out

Message Originators should implement an appropriate means of allowing the Recipient to notify the Message Originator not to send further Marketing Messages. The means should be:

- (a) easy to use by the Recipient;
- (b) minimise any inconvenience; and
- (c) be provided at low cost to the Recipient..

Example. provision of a freecall number.

2.4 Compliance with Opt-out Notices

The Message Originator should comply as soon as practicable with any notice it receives under Clause 5.1.3 and not send further Marketing Messages to the Recipient unless and until the Recipient requests or consents to receiving further Marketing Messages.

Typically this should be possible within 48 hours.

ACIF is an industry owned, resourced and operated company established by the telecommunications industry in 1997 to implement and manage communication self-regulation within Australia.

ACIF's role is to develop and administer technical and operating arrangements to foster a thriving, effective communications industry serving the Australian community through

- the timely delivery of Standards, Codes and other documents to support competition and protect consumers;
- driving widespread compliance; and
- the provision of facilitation, coordination and implementation services to enable the cooperative resolution of strategic and operational industry issues.

ACIF comprises a Board, an Advisory Assembly, four standing Reference Panels, various task specific Working Committees, a number Industry Facilitation/Coordination Groups and a small Executive.

The ACIF Standards and Codes development process involves the ACIF Board, Reference Panels, Working Committees and the ACIF Executive. The roles and responsibilities of all these parties and the required operating processes and procedures are specified in the ACIF Operating Manual.

ACIF Standards, Codes and other documents are prepared by Working Committees made up of experts from industry, consumer, government and other bodies. The requirements or recommendations contained in ACIF published documents are a consensus of views of representative interests and also take into account comments received from other stakeholders.

Care should be taken to ensure that material used is from the current version of the Standard or Industry Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact ACIF.



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