

The Mobile Premium Services Industry Scheme

Simone Brandon reviews the Mobile Premium Services Industry Scheme approved by the ACMA in September 2006.

Introduction

The Mobile Premium Services Industry Scheme was approved by the Australian Communications and Media Authority (ACMA) on 28 September 2006 and is now in effect. The Scheme places obligations on carriage service providers and content service providers in relation to the provision of mobile premium services. The Scheme has a long history but could have a short future. So what is the Scheme and what does it achieve?

In June 2006 the Australian Government published the long awaited "Review of the Regulation of Content Delivered over Convergent Devices". When releasing the Review the Minister for Communications, Information Technology and the Arts announced that she would "soon" introduce legislative measures in relation to content delivered over convergent devices¹, including mobile devices. Pending these new legislative measures, the Mobile Premium Services Industry Scheme was registered by the ACMA.

Whilst the Scheme was made according to the requirements of the Mobile Premium Services Determination² issued in June 2005, the Scheme is the result of a two year collaborative industry effort. Representatives from each mobile carrier, the Australian Direct Marketing Association (representing premium SMS/MMS providers) and consumer groups worked together to formulate the Scheme. A public consultation process was also undertaken drawing comments from ACMA, the Office of Film and Literature Classification (OFLC), the Telecommunications Industry Ombudsman (TIO), Free TV, the Communications Law Centre, the Consumers' Telecommunications Net-

work and the Australian Consumers' Association.

The Determination and the Scheme

The Determination places obligations on content and carriage service providers, who supply mobile premium services, regarding:

- Access to adult content
- Age verification
- Use of restricted number ranges

- Safety in chat rooms
- Development of a self-regulatory scheme to address specified consumer protection matters

In this context a "mobile premium service" covers premium SMS or MMS and proprietary network services, that is, walled garden or portal content operated by mobile carriers, for example 3 mobile's *Planet 3* or *Vodafone live!*.

The Determination and the Scheme place obligations jointly or separately on carriage and content service providers. The arrangements recognise the respective roles of these parties in the supply chain, placing obligations where they are most appropriate.



The Scheme is intended provide benchmarks of behaviour for the supply of mobile premium services and address known consumer protection issues and complaint handling arrangements. The Determination set out an extensive list of matters to be dealt with by the Scheme and through close consultation with ACMA the Scheme has achieved this result. The Scheme covers the following issues:

- Informing customers
- Subscription services
- Opt-out mechanisms
- Assessment of content
- Chat room protective measures
- Advertising
- Complaint handling
- Take-down arrangements
- Compliance plans
- Membership obligations, including:
- Scheme amendments

The Scheme has been drafted to focus on defining desired outcomes via high level rules rather than prescribing detailed processes. Whilst it addresses the mandatory requirements of the Determination it does not overreach these requirements, given its intended use as an interim solution pending the government's longer-term regulatory framework review and now, proposed legislative changes.

Whilst the Scheme focuses on high-level rules in line with the requirements of the Determination, it was recognised that industry required a "how to" guide to assist in the implementation of those requirements. A companion document known as the "Guideline" was devised to provide clear, succinct rules and sufficient information on customer information and pricing messages, subscription services, advertising and content assessment, combined with practical examples. It is intended to become an industry benchmark document enforced via carrier contracts and used for complaint resolution.

The approved Scheme is the "default scheme" for the mobile industry as it is the first of its kind. Whilst the Determination allows for more than one scheme, the approval of another scheme would make industry operations more difficult. Once an organisation is a member of the Scheme, the Determination requires that a content service provider or mobile carriage service provider must not supply a mobile premium service unless the provider complies with the provisions of the Scheme.

The Scheme will sit under the auspices of the Australian Communications Industry Forum who will manage the on-going maintenance of the Scheme including keeping a list of members, considering compliance issues, promoting the Scheme and conducting awareness raising activities. Members of the Scheme will be involved in keeping the Scheme document up to date. Amendments must be agreed by members and submitted to ACMA for approval.

Some Highlights

Key concerns of the industry and consumers in relation to mobile premium services have traditionally been:

- Customer information
- Subscription services
- Complaints handling
- Content assessment

The Scheme, supported by the Guideline, comprehensively addresses these issues.

Customer information

Content Service Providers are required to implement appropriate mechanisms to inform customers, before accessing a service, of the actual charges to be incurred in a clear and unambiguous manner. Premium service fees cannot be charged for any service or message that a customer has not explicitly requested to be supplied.

Subscription services

Content Service Providers are required to implement appropriate mechanisms to inform customers of the charges to

be incurred for acquiring the subscription service, prior to the customer's first use of the service, and each time a service subscription is reactivated. There is also a requirement to implement appropriate mechanisms to enable customers to readily and conveniently discontinue a premium content service subscription at any time. For premium SMS and MMS services compliance with a universal "STOP" command is required. Premium content charges cannot be levied for processing an unsubscribe request or discontinuing a subscription service.

Complaints handling

It is essential to ensure that appropriate measures for consumer protection are in place, including an escalated complaints handling agency able to deal effectively with consumer complaints that cannot be resolved by the carrier/content service provider. The prime escalated complaints handling body under the Scheme is the TIO who has established processes and the required expertise for complaints resolution, and is well established within the consumer community. The use of the TIO also provides a one-stop shop for the resolution of customer complaints, building on the TIO's existing jurisdiction in relation to telecommunications related customer complaints.

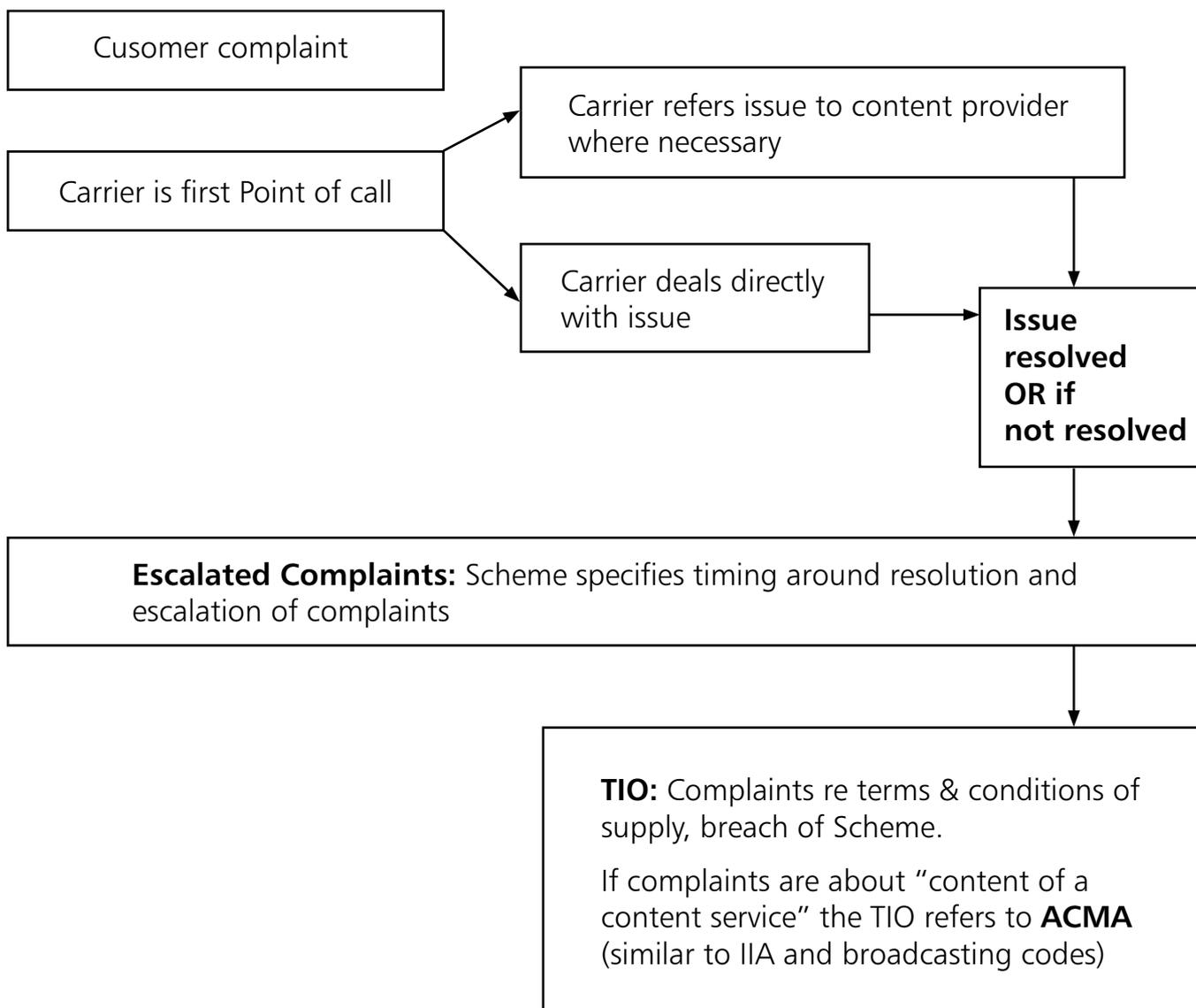
Content assessment

Under the Determination, content that falls within the MA15+ and R18+ classifications must be restricted to users 18 years and over, and only accessible following an age verification process. In determining whether premium content falls within this category, Scheme members are required to refer the relevant content services to a certified assessor. The mobile industry worked with the OFLC during 2005 to devise training for certified assessors. So far more than 100 people have attended training and are implementing these skills to assess mobile content appropriately.

The Future

Currently there is a great disparity in the regulation of content, depending on the means of its access by viewers.

How Would Consumer Complaints Be Handled?



Consider a film distributor who wishes to make a film available at the cinema, for download on its website, for distribution via mobile devices and for viewing on television. Say the film is classified as MA15+ by the OFLC. The following legal restrictions apply:

- **Cinema:** under cinema regulation viewers under 15 years of age must be accompanied by a parent or adult guardian.³
- **Internet:** under Internet regulation there is no requirement to restrict viewers by age.⁴
- **Mobile:** under the Determination the film must be restricted to viewers 18 years or over.

- **Television:** under television regulation the film could only be shown between 9pm and 5am.⁵

The Review stated that a future objective should be to harmonise the regulation of communications content and to reduce the complexity encountered by consumers, industry and regulators. Given the length of time taken to review the regulation of content delivered over convergent devices there is an understandable expectation from industry that the clear need for a consistent regulatory framework is recognised and that such a framework will be developed. What the government does next remains to be seen.

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(Endnotes)

¹ Media Release "New safeguards for emerging audio-visual content" 14 June 2006

³ *Telecommunications Service Provider (Mobile Premium Services) Determination (No. 1) 2005*

⁴ *See the Guideline for the Classification of Films and Computer Games 2005*

⁵ See Schedule 5 to the *Broadcasting Services Act 1992*

⁶ See the *Commercial Television Industry Code of Practice*