



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

The AUSTRALIAN COMMUNICATIONS AUTHORITY makes this Determination under subsection 99 (1) of the *Telecommunications Act 1997*.

Dated 2005

Chair

Deputy Chair

Australian Communications Authority

Contents

Part 1	Preliminary	
1.1	Name of Determination	4
1.2	Commencement	4
1.3	Interpretation	4
Part 2	Scope and objects of Determination	
2.1	Scope	7
2.2	Objects	7

		Page
Part 3	Prohibition and restriction on access to certain services	
Division 1	Prohibited content	
	3.1 Prohibited content	9
Division 2	Age-restricted services	
	3.2 Application of Division	9
	3.3 Prefixes for age-restricted services	10
	3.4 Access to age-restricted services	10
	3.5 Age verification compliance plan	12
	3.6 Auditing of age verification compliance plan	13
	3.7 Age verification records	13
Part 4	Chat services	
	4.1 Definitions	14
	4.2 Application of Part	14
	4.3 Safety requirements	14
	4.4 Safety measures compliance plan	16
	4.5 Auditing of safety measures compliance plan	17
Part 5	Other regulatory provisions	
Division 1	General	
	5.1 Definitions	18
	5.2 Compliance with self-regulatory scheme or default scheme	18
Division 2	Self-regulatory schemes	
Subdivision 1	Submission and approval of self-regulatory schemes	
	5.3 Submission of self-regulatory schemes	21
	5.4 Approval of self-regulatory schemes	22
Subdivision 2	Content of self-regulatory schemes	
	5.5 Content of self-regulatory schemes	23
	5.6 Complaints handling procedures	24
Subdivision 3	Changes to approved self-regulatory schemes	
	5.7 Submission of amendments of approved self-regulatory schemes	26
	5.8 Approval of amendments of approved self-regulatory schemes	26
	5.9 Withdrawing from approved self-regulatory schemes	28
	5.10 Joining approved self-regulatory schemes	28
	5.11 Revocation of approved self-regulatory schemes	29
	5.12 Submission of replacement self-regulatory schemes	29
Division 3	Default scheme	
	5.13 Default scheme	29

		Page
Part 6	Enforcement	
6.1	Interim notices	31
6.2	Final notices	32

Section 1.1

Part 1 Preliminary**1.1 Name of Determination**

This Determination is the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1)*.

1.2 Commencement

This Determination commences on the day after it is registered.

1.3 Interpretation

(1) In this Determination:

Act means the *Telecommunications Act 1997*.

age-restricted audio-visual service means a service that enables an end-user to access age-restricted content other than material supplied as part of a telephone sex service.

age-restricted content means material:

- (a) that has been classified MA 15+ or R 18+ by the Classification Board; or
- (b) that has not been classified by the Classification Board but, if it were to be, would likely be classified MA 15+ or R 18+.

age-restricted service means:

- (a) an age-restricted audio-visual service; or
- (b) an age-restricted text service.

age-restricted text service means a service supplied solely or primarily by way of a text service about which it would be concluded that a majority of persons who use the service are likely to do so with the sole or principal object of deriving sexual gratification from the service.

age verification compliance plan has the same meaning as in section 3.5.

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

chat service means a service that enables an end-user to send a message to 1 or more than 1 other end-user who can reply directly to the message.

Classification Board means the Classification Board established by section 45 of the *Classification (Publications, Films and Computer Games) Act 1995*.

classification guidelines means any guidelines, determined under section 12 of the *Classification (Publications, Films and Computer Games) Act 1995*, as in force from time to time.

Section 1.3

mobile carriage service provider means:

- (a) a carriage service provider who supplies a customer with a public mobile telecommunications service; or
- (b) a carriage service intermediary who arranges for the supply by a carriage service provider to a customer of a public mobile telecommunications service.

mobile premium service means:

- (a) a premium SMS or MMS service; or
- (b) a proprietary network service.

National Classification Code means the Code, set out in the Schedule to the *Classification (Publications, Films and Computer Games) Act 1995* as originally enacted, as amended in accordance with section 6 of the *Classification (Publications, Films and Computer Games) Act 1995*.

posting rules, of a chat service, means the rules governing the use of the chat service.

premium content service means a content service to which either of the following applies:

- (a) a charge for the supply of the service is expected to be included in a bill sent to a relevant customer of a mobile carriage service provider or any person acting on behalf of that provider;
- (b) a charge for the supply of the service is payable by a relevant customer to a mobile carriage service provider or any person acting on behalf of that provider:
 - (i) in advance; or
 - (ii) in any other manner.

premium SMS or MMS service means:

- (a) a carriage service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199; or
- (b) a content service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199.

prohibited content means material:

- (a) that has been classified X 18+ or RC by the Classification Board; or
- (b) that has not been classified by the Classification Board but, if it were to be, would likely be classified X 18+ or RC.

proprietary network means a telecommunications network used by a mobile carriage service provider that enables customers of that provider to access, by way of a mobile device, a premium content service that is not otherwise generally available.

proprietary network service means a public mobile telecommunications service that enables an end-user to access a proprietary network.

relevant customer means a customer of a mobile carriage service provider in relation to the supply of a premium content service.

safety measures compliance plan has the same meaning as in section 4.4.

Section 1.3

subscription service means a service that delivers material to a customer on an ongoing or periodic basis.

telephone sex service has the same meaning as in section 158J of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

text service means a service that provides no more than data, or no more than text (with or without associated still images).

Note The following terms are defined in the *Telecommunications Act 1997*:

- ACA
- carriage service
- carriage service provider
- content service
- content service provider
- public mobile telecommunications service
- service provider
- telecommunications network.

- (2) For this Determination, a content service provider who supplies a premium content service by way of a proprietary network service is taken to be a content service provider who supplies a mobile premium service.

Part 2 Scope and objects of Determination

2.1 Scope

- (1) Subsection 99 (1) of the Act provides that the ACA may make a written determination setting out rules that apply to service providers in relation to the supply of either or both of the following:

- (a) specified carriage services;
- (b) specified content services.

Note 1 A determination must relate to a matter specified in the *Telecommunications Regulations 2001* or in section 346 of the Act (which relates to designated disaster plans) — see subsection 99 (3) of the Act.

Note 2 The ACA must consult with the Australian Competition and Consumer Commission before making a determination — see subsection 99 (4) of the Act.

- (2) This Determination sets out rules that apply to content service providers and mobile carriage service providers in relation to the supply of the following services:

- (a) premium SMS or MMS services;
- (b) proprietary network services.

Note The terms *premium SMS or MMS service* and *proprietary network service* are defined in subsection 1.3 (1).

Example of proprietary network services

A service (commonly referred to as a mobile portal that operates in a ‘walled garden’) that enables a customer of a mobile carriage service provider to access, from a mobile phone and via icons on the screen of the phone, a collection of content that is not generally accessible to persons who are not connected to the telecommunications network used by the mobile carriage service provider.

2.2 Objects

The objects of this Determination are:

- (a) to provide a framework within which appropriate community safeguards in relation to mobile premium services are established, by making rules:
 - (i) to prohibit, and restrict, certain mobile premium services, in line with the principles under the *Classification (Publications, Films and Computer Games) Act 1995* and with community expectations about the accessibility of those services; and
 - (ii) to promote the safety of children in relation to mobile premium services that might facilitate illegal contact between children and adults; and
 - (iii) to ensure that customers of mobile premium services are provided with information to enable them to make informed decisions about the use of the services; and

Section 2.2

- (iv) to ensure that an independent complaints handling mechanism is available to customers of mobile premium services; and
- (b) to provide a framework within which public interest considerations may be addressed without imposing undue financial and administrative burdens on participants in sections of the telecommunications industry, by making rules to promote the greatest practicable use of industry self-regulation in achieving the objects mentioned in paragraph (a).

Note The term *mobile premium service* is defined in subsection 1.3 (1) to mean a premium SMS or MMS service or a proprietary network service.

Part 3 Prohibition and restriction on access to certain services

Division 1 Prohibited content

3.1 Prohibited content

- (1) A content service provider or mobile carriage service provider must not supply a mobile premium service that enables an end-user to access prohibited content.
- (2) A mobile carriage service provider is taken not to have contravened subsection (1) if the mobile carriage service provider:
 - (a) does not know; and
 - (b) could not, with reasonable diligence, have ascertained; that it is supplying a mobile premium service that enables an end-user to access prohibited content.
- (3) For subsection (2), in determining whether a mobile carriage service provider could, with reasonable diligence, have ascertained that it is supplying a mobile premium service that enables an end-user to access prohibited content, the following matters are to be taken into account:
 - (a) whether the content service provider who supplied the mobile premium service is under any contractual obligation to notify the mobile carriage service provider of the nature of the content supplied;
 - (b) whether the mobile carriage service provider does any of the following:
 - (i) monitoring, or arranging for the monitoring of, advertisements for mobile premium services broadcasted on television or radio or appearing in newspapers or magazines where such advertisements are likely to be found;
 - (ii) checking, or arranging for the checking of, those advertisements against the content of the services being advertised;
 - (c) any other relevant matters.

Division 2 Age-restricted services

3.2 Application of Division

The following sections in this Division do not apply until 30 days after the day on which this Determination commences.

Section 3.3

3.3 Prefixes for age-restricted services

- (1) A content service provider or mobile carriage service provider must not supply an age-restricted service by way of a premium SMS or MMS service otherwise than on a number with the prefix 195 or 196.
- (2) A mobile carriage service provider is taken not to have contravened subsection (1) if the mobile carriage service provider:
 - (a) does not know; and
 - (b) could not, with reasonable diligence, have ascertained; that it is supplying an age-restricted service by way of a premium SMS or MMS service otherwise than on a number with the prefix 195 or 196.
- (3) For subsection (2), in determining whether a mobile carriage service provider could, with reasonable diligence, have ascertained that it is supplying an age-restricted service by way of a premium SMS or MMS service otherwise than on a number with the prefix 195 or 196, the following matters are to be taken into account:
 - (a) whether the content service provider who supplied the age-restricted service by way of the premium SMS or MMS service is under any contractual obligation to notify the mobile carriage service provider of the nature of the content supplied;
 - (b) whether the mobile carriage service provider does any of the following:
 - (i) monitoring, or arranging for the monitoring of, advertisements for mobile premium services broadcasted on television or radio or appearing in newspapers or magazines where such advertisements are likely to be found;
 - (ii) checking, or arranging for the checking of, those advertisements against the content of the services being advertised;
 - (c) any other relevant matters.

3.4 Access to age-restricted services

- (1) A mobile carriage service provider must not supply an age-restricted service by way of a mobile premium service to a customer unless:
 - (a) the mobile carriage service provider receives a request (whether orally or in writing) that the customer be given access to age-restricted services; and
 - (b) the mobile carriage service provider has verified that:
 - (i) the customer is at least 18 years old; and
 - (ii) the person making the request is the customer.

Section 3.4

- (2) For paragraph (1) (b), a mobile carriage service provider is taken to have verified the matters mentioned in subparagraphs (b) (i) and (ii) only if:
- (a) all of the following apply:
 - (i) at the time the mobile carriage service provider receives the request, the mobile carriage service provider knows, with reasonable certainty, that the customer is at least 18 years old;
 - (ii) the mobile carriage service provider has received evidence from the person making the request that he or she is the customer;
 - (iii) the nature of the evidence and the way in which it is given is such that it would be improbable or difficult for it to be held by a person other than the customer; or
 - (b) all of the following apply:
 - (i) at the time the mobile carriage service provider receives the request, the mobile carriage service provider does not know, with reasonable certainty, whether the customer is at least 18 years old;
 - (ii) the mobile carriage service provider has received evidence from the person making the request that he or she is the customer and is at least 18 years old;
 - (iii) the nature of the evidence and the way in which it is given is such that:
 - (A) it would be improbable or difficult for it to be held by a person other than a person who is the customer and is at least 18 years old; or
 - (B) it would be improbable or difficult for it to relate to a person who is not at least 18 years old, and there is no reasonable risk that the person making the request is not the customer to whom the evidence relates;
 - (iv) if sub-subparagraph (iii) (B) applies — the mobile carriage service provider has sent a confirmation, to the customer to whom the evidence relates, in a way that will ensure that the customer is informed that he or she is being given access to age-restricted services.

Example of ways that comply with subparagraph (b) (iv)

Confirmation by way of a printed message on the customer's telephone account or credit card statement.

Example of ways that do not comply with subparagraph (b) (iv)

Confirmation only by way of a SMS message sent to the customer's mobile phone.

- (3) A mobile carriage service provider is taken not to have contravened subsection (1) if the mobile carriage service provider:
- (a) does not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that it is supplying an age-restricted service by way of a mobile premium service to a customer other than a customer who has requested access to the service and is at least 18 years old.

Section 3.5

- (4) For subsection (3), in determining whether a mobile carriage service provider could, with reasonable diligence, have ascertained that it is supplying an age-restricted service by way of a mobile premium service to a customer other than a customer who has requested access to the service and is at least 18 years old, the following matters are to be taken into account:
- (a) whether the content service provider who supplied the age-restricted service by way of the mobile premium service is under any contractual obligation to notify the mobile carriage service provider of the nature of the content supplied;
 - (b) whether the mobile carriage service provider does any of the following:
 - (i) monitoring, or arranging for the monitoring of, advertisements for mobile premium services broadcasted on television or radio or appearing in newspapers or magazines where such advertisements are likely to be found;
 - (ii) checking, or arranging for the checking of, those advertisements against the content of the services being advertised;
 - (c) any other relevant matters.

3.5 Age verification compliance plan

- (1) This section applies to a mobile carriage service provider who supplies an age-restricted service by way of a mobile premium service.
- (2) A mobile carriage service provider must have a plan (an *age verification compliance plan*) that specifies the following:
- (a) the measures (*age verification measures*) that the mobile carriage service provider adopts to ensure compliance with subsection 3.4 (1);
 - (b) the procedures to be followed by employees and agents of the mobile carriage service provider to implement the age verification measures;
 - (c) the measures that will enable the mobile carriage service provider to assess the effectiveness of its employees and agents in implementing the age verification measures;
 - (d) the measures that will enable the mobile carriage service provider to remove, without delay, a customer's access to a mobile premium service, if the customer's access is given in contravention of subsection 3.4 (1);
 - (e) the measures that will:
 - (i) enable the mobile carriage service provider to identify any fault in the design of the measures and procedures mentioned in paragraphs (a) to (d); and
 - (ii) ensure that appropriate action is taken to remedy the fault identified;
 - (f) the procedures for conducting periodic internal audits of the measures and procedures mentioned in paragraphs (a) to (e);

- (g) the procedures to be followed to ensure that:
 - (i) a written report is made of each internal audit mentioned in paragraph (f); and
 - (ii) the report is given to a person who has the authority to implement, on behalf of the mobile carriage service provider, any recommendation in the report that will ensure compliance with subsection 3.4 (1).

3.6 Auditing of age verification compliance plan

- (1) This section applies to a mobile carriage service provider who supplies an age-restricted service by way of a mobile premium service.
- (2) To ensure compliance with subsection 3.4 (1), the ACA may, by giving at least 3 business days written notice, request the mobile carriage service provider to make the age verification compliance plan available for auditing by the ACA.
- (3) A mobile carriage service provider must comply with a request made under subsection (2).

Note A decision by the ACA to make a request under subsection (2) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

3.7 Age verification records

- (1) This section applies to a mobile carriage service provider who supplies an age-restricted service by way of a mobile premium service.
- (2) A mobile carriage service provider must keep sufficient records to show how the matters mentioned in subparagraphs 3.4 (1) (b) (i) and (ii) are verified in relation to each customer given access to age-restricted services.
- (3) For subsection (2), a record is sufficient if it contains information that verifies the matters mentioned in subparagraphs 3.4 (1) (b) (i) and (ii).

Example

A record that the mobile carriage service provider has sighted a driver licence is not sufficient. The record must include the customer's name and licence number and may, but need not, include a copy of the licence.

Note The *Privacy Act 1988* has rules about keeping records of personal information.

- (4) A mobile carriage service provider must:
 - (a) keep a record required under subsection (2) for at least 2 years after the record is made; and
 - (b) produce the record on request by the ACA for a purpose relating to this Determination.

Note A decision by the ACA to make a request under paragraph (4) (b) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

Section 4.1

Part 4 Chat services

4.1 Definitions

In this Part:

safety measures notice means the document by that name, published by the ACA, as existing from time to time, that sets out measures that a content service provider may adopt to minimise the potential for illegal contact between children and adults through the use of chat services.

safety standard means an Australian Standard, as existing from time to time, that:

- (a) sets out measures that would minimise the potential for illegal contact between children and adults through the use of chat services; and
- (b) is specified by the ACA as being consistent with the objects of this Determination.

Note If the ACA intends to specify an Australian Standard as being consistent with the objects of this Determination, the ACA will notify content service providers and mobile carriage service providers who supply chat services by way of mobile premium services of its intention in advance.

4.2 Application of Part

The following sections in this Part do not apply until 60 days after the day on which a safety measures notice is first published by the ACA.

4.3 Safety requirements

- (1) A content service provider or mobile carriage service provider must not supply a chat service by way of a mobile premium service:
 - (a) unless:
 - (i) there is in place, for the chat service, 1 or more of the following measures (*safety measures*):
 - (A) measures set out in the safety measures notice;
 - (B) other measures that would minimise the potential for illegal contact between children and adults through the use of the chat service; and
 - (ii) the safety measures adopted for the chat service are at least commensurate with the risks of the service being used to facilitate illegal contact between children and adults; or
 - (b) if there is a safety standard — unless the service provider meets the requirements of the standard that are applicable to the chat service.

Section 4.3

- (2) A content service provider or mobile carriage service provider is not taken to have contravened paragraph (1) (a) in relation to a chat service unless:
- (a) the ACA is satisfied, when auditing the safety measures compliance plan under section 4.5, that the safety measures adopted for the chat service are not at least commensurate with the risks of the service being used to facilitate illegal contact between children and adults; and
 - (b) the ACA has notified the service provider of its decision.

Note A decision by the ACA under subsection (2) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (3) For subsection (2), in determining whether the safety measures adopted for the chat service are at least commensurate with the risks of the service being used to facilitate illegal contact between children and adults, the ACA must take into account the following:
- (a) the extent to which the safety measures adopted for the service:
 - (i) reflect the measures set out in the safety measures notice; and
 - (ii) are effective in minimising the potential for illegal contact between children and adults through the use of the service;
 - (b) any relevant advice or information from the Australian Federal Police relating to the adoption of safety measures, the protection of children, ways in which illegal contact between children and adults can be facilitated, or other relevant matters;
 - (c) any other relevant matters.
- (4) In assessing the risks of the service being used to facilitate illegal contact between children and adults for this section, both of the following are to be taken into account:
- (a) the likelihood of the service being so used;
 - (b) the magnitude of any consequences of the service being so used.
- (5) A mobile carriage service provider is taken not to have contravened subsection (1) if the mobile carriage service provider:
- (a) does not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that it is supplying a chat service by way of a mobile premium service without meeting the requirements under paragraph (1) (a) or (b).
- (6) For subsection (5), in determining whether a mobile carriage service provider could, with reasonable diligence, have ascertained that it is supplying a chat service by way of a mobile premium service without meeting the requirements under paragraph (1) (a) or (b), the following matters are to be taken into account:
- (a) whether the content service provider who supplied the chat service by way of the mobile premium service is under any contractual obligation to notify the mobile carriage service provider of the nature of the operation of the chat service, including any requirements for safety measures;

Section 4.4

- (b) any other relevant matters.

4.4 Safety measures compliance plan

- (1) This section applies to a content service provider who supplies a chat service by way of a mobile premium service.
- (2) A content service provider must have a plan (a *safety measures compliance plan*) that includes the following:
 - (a) for each chat service supplied by the content service provider:
 - (i) the measures (*compliance measures*) that the content service provider adopts to ensure compliance with subsection 4.3 (1); and
 - (ii) if paragraph 4.3 (1) (a) applies:
 - (A) an analysis of the risks of the service being used to facilitate illegal contact between children and adults, including a description of the nature of the risks, the likelihood of the service being so used and the magnitude of any consequences of the service being so used; and
 - (B) a statement setting out how the safety measures adopted for the service address those risks and minimise the potential for illegal contact between children and adults;
 - (b) the procedures to be followed by employees and agents of the content service provider to implement the compliance measures;
 - (c) the procedures to be followed in selecting people who are to be engaged to implement the compliance measures to ensure that they are suitable for implementing the compliance measures;
 - (d) the procedures to be followed to ensure that employees and agents who are to be engaged to implement the compliance measures are adequately trained to implement the compliance measures;
 - (e) the measures that will enable the content service provider to assess the effectiveness of its employees and agents in implementing the compliance measures;
 - (f) the procedures for:
 - (i) reporting, to the relevant authority, any use of a chat service that might facilitate illegal contact between children and adults; and
 - (ii) co-operating with the relevant authority in investigating the use of the chat service;
 - (g) the measures that will:
 - (i) enable the content service provider to identify any fault in the design of the measures and procedures mentioned in paragraphs (a) to (f); and
 - (ii) ensure that appropriate action is taken to remedy the fault identified;
 - (h) the procedures for conducting periodic internal audits of the measures and procedures mentioned in paragraphs (a) to (g);

Section 4.5

- (i) the procedures to be followed to ensure that:
 - (i) a written report is made of each internal audit mentioned in paragraph (h); and
 - (ii) the report is given to a person who has the authority to implement, on behalf of the content service provider, any recommendation in the report that will ensure compliance with subsection 4.3 (1).

4.5 Auditing of safety measures compliance plan

- (1) This section applies to a content service provider who supplies a chat service by way of a mobile premium service.
- (2) To ensure compliance with subsection 4.3 (1), the ACA may, by giving at least 3 business days written notice, request the content service provider to make the safety measures compliance plan available for auditing by the ACA.
- (3) A content service provider must comply with a request made under subsection (2).

Note A decision by the ACA to make a request under subsection (2) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

Part 5 Other regulatory provisions

Division 1 General

5.1 Definitions

In this Part:

approved self-regulatory scheme means a self-regulatory scheme approved under section 5.4, as amended under section 5.8.

default scheme has the same meaning as in section 5.13.

member, of a self-regulatory scheme, means a content service provider or mobile carriage service provider (whether described as a member or otherwise) who has joined the scheme.

nominated member, in relation to a self-regulatory scheme, means a content service provider or mobile carriage service provider who is identified under the scheme as having the authority to act on behalf of all members of the scheme in relation to the matters under sections 5.4 and 5.8.

recognised standard means the Australian Standard AS 4269 entitled 'Complaints handling', as existing from time to time.

5.2 Compliance with self-regulatory scheme or default scheme

- (1) The following subsections do not apply until 60 days after the first day on which there is a default scheme.
- (2) A content service provider or mobile carriage service provider must not supply a mobile premium service unless:
 - (a) for a service provider to whom an approved self-regulatory scheme applies — the service provider complies with the provisions of the approved self-regulatory scheme; or
 - (b) in any other case — the service provider complies with:
 - (i) the provisions of the default scheme; and
 - (ii) any contractual obligation imposed on the service provider in relation to the funding of the relevant review body for handling complaints about mobile premium services supplied by the service provider.

Note 1 For provisions relating to approved self-regulatory schemes, see Division 2.

Note 2 For provisions relating to the default scheme, see Division 3.

- (3) A content service provider or mobile carriage service provider is not taken to have contravened this Determination for non-compliance with the provisions of an approved self-regulatory scheme unless:
 - (a) the non-compliance would, apart from this section, be a contravention of this Determination; or

Section 5.2

- (b) the non-compliance is of:
 - (i) a funding requirement mentioned in paragraph 5.5 (2) (b); or
 - (ii) a requirement of the relevant complaints handling procedures; or
- (c) all of the following apply:
 - (i) the relevant review body has made a determination of a complaint, about a mobile premium service supplied by the service provider, to the effect that the service provider has not complied with the provisions of the approved self-regulatory scheme;
 - (ii) either:
 - (A) there is no mechanism, under the relevant complaints handling procedures, for internal review of complaints by the review body; or
 - (B) there is such a mechanism, but the service provider has not sought an internal review in accordance with the mechanism;
 - (iii) the service provider has not, within the time specified by the relevant review body, complied with a direction given, in connection with the determination, to the service provider by the relevant review body;
 - (iv) the ACA is satisfied, and has notified the service provider of its decision, that:
 - (A) the relevant review body has complied with the requirements of the relevant complaints handling procedures mentioned in paragraph 5.6 (1) (h); and
 - (B) the determination of the relevant review body is the correct or preferable decision; or
- (d) all of the following apply:
 - (i) there is a mechanism, under the relevant complaints handling procedures, for internal review of complaints by the review body;
 - (ii) either a complainant or the service provider has, in accordance with the mechanism, sought an internal review of a complaint about a mobile premium service supplied by the service provider;
 - (iii) the relevant review body has, under the internal review, made a determination of the complaint to the effect that the service provider has not complied with the provisions of the approved self-regulatory scheme;
 - (iv) the service provider has not, within the time specified by the relevant review body, complied with a direction given, in connection with the determination, to the service provider by the relevant review body;

Section 5.2

- (v) the ACA is satisfied, and has notified the service provider of its decision, that:
 - (A) the relevant review body has complied with the requirements of the relevant complaints handling procedures mentioned in paragraph 5.6 (1) (h); and
 - (B) the determination of the relevant review body is the correct or preferable decision.

Note A decision of the ACA under subparagraph (c) (iv) or (d) (v) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (4) A content service provider or mobile carriage service provider is not taken to have contravened this Determination for non-compliance with the provisions of the default scheme unless:
 - (a) the non-compliance would, apart from this section, be a contravention of this Determination; or
 - (b) the non-compliance is of a requirement of the relevant complaints handling procedures; or
 - (c) all of the following apply:
 - (i) the relevant review body has made a determination of a complaint, about a mobile premium service supplied by the service provider, to the effect that the service provider has not complied with the provisions of the default scheme;
 - (ii) either:
 - (A) there is no mechanism, under the relevant complaints handling procedures, for internal review of complaints by the review body; or
 - (B) there is such a mechanism, but the service provider has not sought an internal review in accordance with the mechanism;
 - (iii) the service provider has not, within the time specified by the relevant review body, complied with a direction given, in connection with the determination, to the service provider by the relevant review body;
 - (iv) the ACA is satisfied, and has notified the service provider of its decision, that:
 - (A) the relevant review body has complied with the requirements of the relevant complaints handling procedures mentioned in paragraph 5.6 (1) (h); and
 - (B) the determination of the relevant review body is the correct or preferable decision; or
 - (d) all of the following apply:
 - (i) there is a mechanism, under the relevant complaints handling procedures, for internal review of complaints by the review body;
 - (ii) either a complainant or the service provider has, in accordance with the mechanism, sought an internal review of a complaint about a mobile premium service supplied by the service provider;

- (iii) the relevant review body has, under the internal review, made a determination of the complaint to the effect that the service provider has not complied with the provisions of the default scheme;
- (iv) the service provider has not, within the time specified by the relevant review body, complied with a direction given, in connection with the determination, to the service provider by the relevant review body;
- (v) the ACA is satisfied, and has notified the service provider of its decision, that:
 - (A) the relevant review body has complied with the requirements of the relevant complaints handling procedures mentioned in paragraph 5.6 (1) (h); and
 - (B) the determination of the relevant review body is the correct or preferable decision.

Note A decision of the ACA under subparagraph (c) (iv) or (d) (v) is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

(5) In this section:

relevant complaints handling procedures means:

- (a) for a service provider to whom an approved self-regulatory scheme applies — the complaints handling procedures set out in the approved self-regulatory scheme; or
- (b) in any other case — the complaints handling procedures set out in the default scheme.

relevant review body means the review body established or nominated under the relevant complaints handling procedures.

Division 2 Self-regulatory schemes

Subdivision 1 Submission and approval of self-regulatory schemes

5.3 Submission of self-regulatory schemes

- (1) This section applies to a content service provider or mobile carriage service provider who supplies, or intends to supply, a mobile premium service.
- (2) A content service provider or mobile carriage service provider may submit a proposed self-regulatory scheme to the ACA for approval under section 5.4.
- (3) If a proposed self-regulatory scheme is submitted by a nominated member on behalf of all members of the scheme, the scheme is taken to have been submitted by each service provider who is a member of the scheme.

Section 5.4

5.4 Approval of self-regulatory schemes

- (1) Subject to subsections (2), (3) and (4), the ACA must approve, or refuse to approve, a proposed self-regulatory scheme within 60 days after the day on which the scheme is submitted to the ACA for approval.

Note A decision by the ACA to approve, or to refuse to approve, a proposed self-regulatory scheme is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (2) The ACA may, within the 60 days period mentioned in subsection (1), request a service provider who is a member of the scheme to give to the ACA, within a reasonable period specified by the ACA, further information about the scheme.

Note A decision by the ACA to request further information is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (3) If the ACA has requested further information under subsection (2) in relation to the scheme:
- (a) the 60 days period mentioned in subsection (1) does not include any day during part of which any further information is yet to be provided; and
 - (b) if no information has been given to the ACA within the period specified by the ACA, the submission is taken to have been withdrawn.
- (4) If the ACA neither approves, nor refuses to approve, a proposed self-regulatory scheme within the 60 days period, the ACA is taken, at the end of that period, to have refused to approve the scheme.
- (5) The ACA may approve a proposed self-regulatory scheme only if the ACA is satisfied that:
- (a) there has been adequate consultation, with the public and the industry, regarding the scheme; and
 - (b) the scheme meets the requirements of section 5.5; and
 - (c) the scheme, if implemented, will be consistent with the objects of this Determination.
- (6) The ACA must give written notice of its decision to each service provider who is a member of the scheme.
- (7) If the ACA refuses to approve a proposed self-regulatory scheme, it must give written notice of the reasons for that refusal to each service provider who is a member of the scheme.
- (8) If the scheme is submitted by a nominated member on behalf of all members of the scheme, a notice given under subsection (6) or (7) to the nominated member is taken to have been given to each service provider who is a member of the scheme.

- (9) If the ACA approves a proposed self-regulatory scheme, the approved self-regulatory scheme starts to apply to each service provider who is a member of the scheme, at the later of:
- (a) 30 days after the day on which the scheme is approved; and
 - (b) the beginning of the day on which subsection 5.2 (2) starts to apply.

Subdivision 2 Content of self-regulatory schemes

5.5 Content of self-regulatory schemes

- (1) For paragraph 5.4 (5) (b), a scheme meets the requirements of this section only if the scheme meets the requirements of subsections (2) and (3).
- (2) A scheme meets the requirements of this subsection only if all of the following apply:
- (a) the provisions of the scheme are binding on:
 - (i) the members of the scheme; and
 - (ii) the review body established or nominated under the complaints handling procedures set out in the scheme;
 - (b) the scheme sets out the funding requirements that will ensure that the review body is sufficiently resourced to handle complaints in accordance with the recognised standard;
 - (c) the scheme sets up a mechanism for dealing with proposed amendments of the scheme;
 - (d) the members of the scheme are required to make a copy of the scheme available on the Internet for inspection by the public.
- (3) A scheme meets the requirements of this subsection only if all of the following apply:
- (a) content suppliers are required, in relation to promotional material advertising a mobile premium service, to give accurate information to a customer about the fees and charges, and other terms and conditions, for using the service;
 - (b) the scheme sets out the requirements in relation to promotional material advertising an age-restricted service, or a service for children, supplied by way of a mobile premium service, and the requirements are consistent with the objects of this Determination;
 - (c) the scheme sets out the procedures for assessing, in accordance with the National Classification Code and the classification guidelines, the content of a mobile premium service that is likely to be prohibited content or age-restricted content;
 - (d) content suppliers are required to inform a customer, before the customer first uses a mobile premium service or at the time the customer accesses the service, about the fees and charges for using the service;

Section 5.6

- (e) content suppliers are required to give information about fees and charges in a way that is clear and unambiguous;
 - (f) content suppliers are required to inform a customer, before the customer first uses a subscription service supplied by way of a mobile premium service or at the time the customer accesses the service, how to discontinue the service;
 - (g) content suppliers are required to have the facilities to enable a customer to discontinue a premium SMS or MMS service:
 - (i) by issuing the keypad command specified by the scheme; and
 - (ii) without being charged a premium rate for issuing the command;
 - (h) the scheme sets out, in relation to a mobile premium service that enables a customer to vote or enter a competition by way of a call to the service, the terms and conditions of use of the service, including:
 - (i) the circumstances under which members must refund to a customer the cost of using the service; and
 - (ii) how a refund is to be made;
 - (i) the scheme sets out the terms and conditions of use of a chat service supplied by way of a mobile premium service, including provisions that require content suppliers to inform a customer, at no cost to the customer, of the posting rules of the chat service;
 - (j) the scheme sets out the procedures (*complaints handling procedures*) for handling complaints, about mobile premium services, that meet the requirements of section 5.6.
- (4) For subparagraph (3) (g) (ii), a content supplier is not taken to be charging a customer a premium rate for issuing the keypad command if:
- (a) the command can be issued without using a premium SMS or MMS service, and the charge is not more than the usual cost of making a call in the same way as was used to issue the command; or
 - (b) in any other case — a refund is given to the customer to reimburse the customer for any cost above the usual cost.
- (5) In this section:
- content supplier* means a member who is a content service provider.

5.6 Complaints handling procedures

- (1) For paragraph 5.5 (3) (j), the complaints handling procedures set out in a scheme meet the requirements of this section only if all of the following apply:
- (a) the procedures require members to inform a complainant about the complaints handling procedures, including information about the role and contact details of the review body mentioned in paragraph (d);
 - (b) the procedures require relevant members to investigate and resolve a complaint within a specified period;

- (c) the procedures set out the circumstances under which relevant members are required to remove the content, or remove access to the content, of a mobile premium service about which a complaint is made, while the complaint is being resolved;
 - (d) the procedures provide for the establishment or nomination of a review body that is sufficiently independent from the members to be impartial in handling complaints;
 - (e) the procedures confer rights on a complainant, who is not satisfied with the resolution of the complaint by the relevant members, to refer the complaint to the review body within a specified period;
 - (f) the procedures confer powers and functions on the review body:
 - (i) to investigate a complaint; and
 - (ii) to determine a complaint within a specified period; and
 - (iii) to obtain advice from the Classification Board regarding the classification of the content of the mobile premium service about which a complaint is made; and
 - (iv) to rely on an advice from the Classification Board in determining a complaint; and
 - (v) to audit a relevant member's age verification compliance plan or safety measures compliance plan; and
 - (vi) to give directions, in connection with a complaint, to ensure compliance with this Determination, including directions to the relevant members to remove specified content, or to remove access to specified content, of the mobile premium service about which the complaint is made;
 - (g) the procedures confer discretion on the review body:
 - (i) to set up a mechanism for internal review of complaints by the review body; and
 - (ii) to report a complaint to the ACA if the review body is of the opinion that it is appropriate for the ACA to investigate the matter about which the complaint is made;
 - (h) the procedures require the review body:
 - (i) to be impartial in handling complaints; and
 - (ii) to handle complaints in accordance with the recognised standard;
 - (i) the procedures require the review body to ensure that a determination of a complaint, if implemented, will result in compliance with this Determination by the relevant members;
 - (j) the procedures require the review body to provide to the ACA, within 30 days after a reporting period, a statement of the types and number of complaints received by the review body in the reporting period.
- (2) In this section:
- relevant member***, in relation to a complaint, means a member of the scheme who supplied the mobile premium service about which the complaint is made.

Section 5.7

reporting period means each consecutive period of 3 months starting from the beginning of the day on which subsection 5.2 (2) starts to apply.

Note The powers and functions to deal with a complaint under the complaints handling procedures are in addition to any power and function of the ACA to investigate a matter about which a complaint is made.

Subdivision 3 Changes to approved self-regulatory schemes

5.7 Submission of amendments of approved self-regulatory schemes

- (1) This section applies if members of an approved self-regulatory scheme propose to amend the scheme.
- (2) The members must:
 - (a) submit any proposed amendment of the scheme to the ACA for approval under section 5.8; and
 - (b) include a statement whether the proposed amendment is required urgently to ensure that the supply of mobile premium services will be consistent with the objects of this Determination.
- (3) If the proposed amendment is submitted by a nominated member on behalf of all members of the scheme, the proposed amendment is taken to have been submitted by each service provider who is a member of the scheme.

5.8 Approval of amendments of approved self-regulatory schemes

- (1) Subject to subsections (2), (3) and (4), the ACA must approve, or refuse to approve, any proposed amendment within 28 days after the day on which the proposed amendment is submitted to the ACA for approval.

Note A decision by the ACA to approve, or to refuse to approve, the proposed amendment is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (2) The ACA may, within the 28 days period mentioned in subsection (1), request a service provider who is a member of the scheme to give to the ACA, within a reasonable period specified by the ACA, further information about the proposed amendment.

Note A decision by the ACA to request further information is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

- (3) If the ACA has requested further information under subsection (2) in relation to the proposed amendment:
 - (a) the 28 days period mentioned in subsection (1) does not include any day during part of which any further information is yet to be provided; and
 - (b) if no information has been given to the ACA within the period specified by the ACA, the submission is taken to have been withdrawn.

- (4) If the ACA neither approves, nor refuses to approve, any proposed amendment within the 28 days period, the ACA is taken, at the end of that period, to have refused to approve the proposed amendment.
- (5) The ACA may approve any proposed amendment of an approved self-regulatory scheme only if the ACA is satisfied that:
 - (a) there has been adequate consultation, with the public and the industry, regarding the proposed amendment, unless:
 - (i) the approved self-regulatory scheme, amended as proposed, will not differ significantly from the current approved self-regulatory scheme; or
 - (ii) the ACA is satisfied that the proposed amendment is required urgently to ensure that the supply of mobile premium services will be consistent with the objects of this Determination; and
 - (b) the approved self-regulatory scheme, amended as proposed, meets the requirements of section 5.5; and
 - (c) the approved self-regulatory scheme, amended as proposed, if implemented, will be consistent with the objects of this Determination.
- (6) The ACA must give written notice of its decision to each service provider who is a member of the scheme.
- (7) If the ACA approves the proposed amendment, the written notice must state whether the ACA is satisfied that the proposed amendment is required urgently to ensure that the supply of mobile premium services will be consistent with the objects of this Determination.
- (8) If the ACA refuses to approve any proposed amendment, it must give written notice of the reasons for that refusal to each service provider who is a member of the scheme.
- (9) If the proposed amendment is submitted by a nominated member on behalf of all members of the scheme, a notice given under subsection (7) or (8) to the nominated member is taken to have been given to each service provider who is a member of the scheme.
- (10) If the ACA approves any proposed amendment, the approved self-regulatory scheme, amended as proposed, starts to apply to each service provider who is a member of the scheme:
 - (a) 14 days after the day on which the proposed amendment is approved; or
 - (b) if the notice given under subsection (7) states that the ACA is satisfied that the proposed amendment is required urgently to ensure that the supply of mobile premium services will be consistent with the objects of this Determination — from the beginning of the day after the day on which the notice is given.

Section 5.9

5.9 Withdrawing from approved self-regulatory schemes

- (1) This section applies to a content service provider or mobile carriage service provider (a *withdrawing member*) who:
 - (a) is a member, but not the only member, of an approved self-regulatory scheme; and
 - (b) no longer wishes the scheme to apply to it; and
 - (c) may, under the scheme, withdraw from the scheme.

Note If a service provider is the only member of the scheme and no longer wishes the scheme to apply to it, the scheme is to be revoked under section 5.11 or subsection 5.12 (4).

- (2) The withdrawing member must:
 - (a) give written notice to the ACA of its withdrawal from the scheme; and
 - (b) provide evidence to the ACA that its withdrawal is in accordance with the scheme.
- (3) The approved self-regulatory scheme ceases to apply to the withdrawing member:
 - (a) from the beginning of the day specified in the notice as the day on which the withdrawing member is to cease to be a member of the scheme; or
 - (b) if no day is specified — 30 days after the day on which the notice and evidence is received by the ACA.

5.10 Joining approved self-regulatory schemes

- (1) This section applies to a content service provider or mobile carriage service provider (a *joining member*) who:
 - (a) is not a member of any approved self-regulatory scheme; and
 - (b) wishes an approved self-regulatory scheme to apply to it; and
 - (c) may, under the scheme, join the scheme.
- (2) The joining member must:
 - (a) give written notice to the ACA of its joining the scheme; and
 - (b) provide evidence to the ACA that its joining the scheme is in accordance with the scheme.
- (3) The approved self-regulatory scheme starts to apply to the joining member:
 - (a) from the beginning of the day specified in the notice as the day on which the joining member is to become a member of the scheme; or
 - (b) if no day is specified — 30 days after the day on which the notice and evidence is received by the ACA.

5.11 Revocation of approved self-regulatory schemes

- (1) This section applies if all members (the *revoking members*) of an approved self-regulatory scheme no longer wish the scheme to apply to them.
- (2) The revoking members must give written notice to the ACA of the revocation of the scheme.
- (3) The approved self-regulatory scheme ceases to apply to the revoking members:
 - (a) from the beginning of the day specified in the notice as the day on which the approved self-regulatory scheme is to be revoked; or
 - (b) if no day is specified — 30 days after the day on which the notice is received by the ACA.

5.12 Submission of replacement self-regulatory schemes

- (1) This section applies if all members of an approved self-regulatory scheme (the *current scheme*) wish to replace the current scheme with another self-regulatory scheme.
- (2) The members of the current scheme must submit, for approval under section 5.4, a proposed self-regulatory scheme (the *replacement scheme*) that is expressed to replace the current scheme.
- (3) If a replacement scheme is submitted by a nominated member on behalf of all members of the scheme, the scheme is taken to have been submitted by each service provider who is a member of the scheme.
- (4) If the ACA approves a replacement scheme under section 5.4, the current scheme is taken to have been revoked immediately before the time when the replacement scheme starts to apply to each service provider who is a member of the scheme.

Division 3 Default scheme

5.13 Default scheme

- (1) If the MPSI scheme is approved under section 5.4:
 - (a) the approved MPSI scheme, to the extent that it deals with the matters mentioned in subsection 5.5 (3), is to be the default scheme for the purposes of this Part; and
 - (b) the ACA must, as soon as possible after the MPSI scheme is approved and before subsection 5.2 (2) starts to apply, make the content of the default scheme available on the Internet for inspection by:
 - (i) content service providers and mobile carriage service providers who supply mobile premium services; and
 - (ii) the public.

Section 5.13

- (2) If the approved MPSI scheme is amended under section 5.8:
 - (a) the default scheme is taken to be amended accordingly; and
 - (b) the ACA must, as soon as possible after the approved MPSI scheme is amended and before the amendment starts to apply, make the content of the amendment, or of the amended scheme, available on the Internet for inspection by:
 - (i) content service providers and mobile carriage service providers who supply mobile premium services; and
 - (ii) the public.
- (3) If the approved MPSI scheme is revoked under section 5.11 or subsection 5.12 (4), the validity of the default scheme is not affected.
- (4) In applying the default scheme to a content service provider or mobile carriage service provider, the approved MPSI scheme is to apply to the service provider as if the service provider were a member of the approved MPSI scheme.
- (5) In this section:

approved MPSI scheme means the MPSI scheme approved under section 5.4, as amended under section 5.8.

MPSI scheme means the self-regulatory scheme known as the ‘Mobile Premium Services Industry Scheme’ developed by the Telephone Information Services Standards Council, members of the Australian Mobile Telecommunications Association and members of the Australian Direct Marketing Association.

Part 6 Enforcement

6.1 Interim notices

- (1) If the ACA is satisfied that a mobile premium service supplied by a content service provider is reasonably likely to have been supplied in contravention of this Determination, the ACA may give the content service provider:
 - (a) if the content of the service is stored by the content service provider — a written notice (an *interim take-down notice*) directing the content service provider to remove the content while the matter is being investigated; or
 - (b) in any other case — a written notice (an *interim access-removal notice*) directing the content service provider to remove access to the content while the matter is being investigated.
- (2) If:
 - (a) the ACA is satisfied that a mobile premium service is reasonably likely to have been supplied in contravention of this Determination, but for whatever reason the ACA is unable to give an interim take-down notice or interim access-removal notice to the content service provider who supplied the content of the service; or
 - (b) the content service provider to whom an interim take-down notice or interim access-removal notice is given fails to comply with the notice by 6pm on the next business day after the notice is given;the ACA may give a written notice (an *interim access-removal notice*) to a mobile carriage service provider who supplied access to the content, directing the mobile carriage service provider to remove access to the content while the matter is being investigated.
- (3) If the ACA gives a mobile carriage service provider an interim access-removal notice in relation to the content of a mobile premium service supplied by the mobile carriage service provider, the ACA may give a written notice (an *interim access-removal notice*) to any other mobile carriage service provider:
 - (a) directing the other mobile carriage service provider to remove access to the content while the matter is being investigated, if the other mobile carriage service provider is supplying access to the content; and
 - (b) directing the other mobile carriage service provider not to supply access to the content while the matter is being investigated, if the other mobile carriage service provider is not supplying access to the content.
- (4) A service provider must comply with an interim take-down notice or interim access-removal notice given to the service provider until the ACA notifies the service provider of the result of the investigation.

Section 6.2

Note 1 If a mobile premium service is supplied in contravention of this Determination, the ACA may give directions under section 102 of the Act and issue formal warnings under section 103 of the Act.

Note 2 A decision by the ACA to give an interim take-down notice or interim access-removal notice is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

6.2 Final notices

- (1) The following subsections apply if:
 - (a) the ACA is satisfied that a mobile premium service supplied by a mobile carriage service provider is supplied in contravention of this Determination; and
 - (b) for whatever reason the ACA is unable to direct the content service provider who supplied the content of the service to remove the content or to remove access to the content.
- (2) The ACA may give a written notice (a *final access-removal notice*) to any other mobile carriage service provider who supplies a mobile premium service, directing the mobile carriage service provider not to supply a mobile premium service that gives access to the content.
- (3) A mobile carriage service provider must comply with a final access-removal notice given to the mobile carriage service provider.

Note 1 A decision by the ACA to give a final access-removal notice is a reviewable decision under paragraph 1 (g) of Part 1 of Schedule 4 to the Act.

Note 2 If a mobile premium service is supplied in contravention of this Determination, the ACA may also give directions under section 102 of the Act and issue formal warnings under section 103 of the Act.