



GUIDELINE

**DEVELOPMENT OF TELECOMMUNICATIONS  
INDUSTRY CONSUMER CODES**

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## TABLE OF CONTENTS

This set of documents comprises seven parts -

<b>Part A</b>	An <b>overview</b> of the framework within which telecommunications codes of practice are to be developed	page 1
<b>Part B</b>	A set of <b>guiding principles</b> which are intended to serve as reference points for all consumer code development activities	page 5
<b>Part C</b>	<b>Operational principles</b> relating to specific aspects of code development activities	page 7
<b>Part D</b>	A <b>template</b> for consumer codes	page 11
<b>Part E</b>	A checklist for determining <b>priorities</b> for code development activities.	page 19
<b>Att. 1</b>	<b>Part 6 of the Telecommunications Act 1997</b> which deals with Industry Codes and Industry Standards.	page 21
<b>Att. 2</b>	A list of <b>Members</b> of the <b>Consumer Codes Working Group</b> ,	page 35

## INTRODUCTION

The new telecommunications legislation accords significant priority to industry self-regulation and provides for important delegation to the industry and relevant stakeholders of the development of consumer codes.

This package of documents is intended to be the first stage in the process of putting effect to the Government's self-regulatory policies in the consumer arena. It represents the consensus output of the representatives of those organisations that have participated in the initial meetings of the Consumer Codes Working Group.

## OVERVIEW

**A.1 BACKGROUND AND AIMS**

- This Guidelines document represents the first definitive step in the process of consumer code development and industry self regulation in the consumer area for telecommunications. It has been prepared by an informal but representative group of individuals and organisations, originally brought together under the auspices of the Network Interworking Industry Forum (NIIF) and continuing its work under the Australian Communications Industry Forum (ACIF) to progress the consumer aspects of self regulation, consistent with the new telecommunications legislation. The Group has taken the title of the Consumer Codes Working Group (CCWG).
- This document is designed to serve as a practical guide for those involved in the development of consumer codes of practice in the context of the new telecommunications regulatory environment. It provides guiding principles as well as a template to which it is intended that regard will be had in the development of consumer codes.
- Consumer codes of practice in telecommunications should set out the rules by which the industry will regulate the activities of its members to ensure delivery of maximum benefits to the community it serves. Codes should also set out the rights and obligations of all parties to transactions, as well as appropriate code administration and enforcement provisions. This document provides guiding principles which put effect to these objectives.
- Consistent with the new telecommunications legislation, this document provides an indication of the steps being taken as the industry moves towards self-regulation.
- The document ensures that the three perspectives of industry, consumer and government are taken account of and reconciled as part of the process of consumer code development.

**A.2 LEGISLATIVE FRAMEWORK - TELECOMMUNICATIONS ACT 1997**

The Second Reading Speech to the Telecommunications Bill 1996 sets out the Government's objectives in implementing a predominantly self-regulatory framework for the telecommunications industry. In particular, it details arrangements for the establishment of a codes of practice regime designed to provide a framework for industry self-regulation by means of industry-developed codes which are to be registered with the Australian Communications Authority (the ACA, which comprises the merged AUSTEL and the Spectrum Management Authority) <sup>1</sup>.

This regime takes account of the possibility that in some areas industry consensus might not be achievable, and thus safeguard provisions have been developed to enable the regulator to step in and establish standards. The clear signal is, however, that the industry is encouraged and expected to progress and resolve issues wherever possible in the absence of intervention.

The Government has stated that codes and standards should reflect the legitimate needs and interests of all industry stakeholders, if they are to work properly; and that consultation must occur with the industry, the public, representatives of consumer groups, the Telecommunications Industry Ombudsman (TIO), and, where privacy issues arise, the Privacy Commissioner, in the development of registered codes and the making of standards.

<sup>1</sup> References to AUSTEL/ACA within this paper represent AUSTEL staff views which in some instances may require ratification by the incoming Board of the new regulatory authority, the Australian Communications Authority. It is expected that this endorsement will be sought once that new Board has been established, which is expected to take place in June 1997.

The proposed arrangements are based on industry “sections” developing codes and registering them with the ACA. The ACA will be provided with safety net powers which may be used if self-regulation in an industry “section” has serious failings.

Industry codes will allow both existing matters, and any new matters that emerge in the post 1997 environment, to be dealt with by an appropriate level of regulation. Other matters will continue to be regulated under statute or in carrier licence conditions or service provider rules, for example: privacy; emergency calls; TIO participation and directory services. If other matters of a high level of importance arise the Minister may declare licence conditions or the ACA may determine service provider rules.

Below is an outline of Part 6 of the Telecommunications Act 1997, which deals with industry codes and industry standards -

- Bodies and associations that represent sections of the telecommunications industry may develop industry codes.
- Industry codes may be registered by the ACA.
- Compliance with an industry code is voluntary unless the ACA directs a particular participant in the telecommunications industry to comply with the code.
- The ACA has a reserve power to make an industry standard if there is no representative industry body in place to develop a code, where industry fails to comply with an ACA request for a code to be developed, or where it is assessed that a code is inadequate or it fails.
- Compliance with industry standards is mandatory. (Note: Industry standards provide a formal back-up to industry self-regulation by way of codes. It is intended that industry standards not be made unless industry self-regulation using codes fails.)

*[Further detail on the legislative provisions relating to industry self-regulation may be found in Attachment 1, which provides extracts from the Telecommunications Act 1997.]*

### **A.3 THE CONSUMER CODES WORKING GROUP AND ITS OPERATIONS UNDER THE AUSTRALIAN COMMUNICATIONS INDUSTRY FORUM (ACIF)**

The Australian Communications Industry Forum (ACIF) will undertake a major part of the management of the self-regulatory activities of the communications industry post 1 July 1997, including providing a framework within which technical standards and consumer codes of practice will be developed. It is intended that the ACIF will be representative of all sections of the industry, on both the supply and demand sides, and will serve as a major interface between the industry and the regulatory agencies, the Government, the Australian Communications Access Forum (ACAF) and the TIO.

The ACIF structure, its procedures and processes are currently being developed and refined as a matter of priority within the industry, in order to meet the tight time frames within which industry self-regulatory mechanisms need to be established.

The work of the CCWG has proceeded in parallel with the development of the ACIF and with the support and endorsement of the NIIF, the precursor to the ACIF. Under the ACIF structure, Reference Panels will be responsible for developing standards and codes of practice, including via the use of ad hoc Working Committees. It is envisaged that these Guidelines, as developed by the CCWG, distributed for public comment, and finalised following a public consultation process, will form the foundation for the ongoing work on consumer codes, pursuant to the ACIF structure.

#### **A.4 ACTIVITIES OF THE CONSUMER CODES WORKING GROUP TO DATE**

The Consumer Codes Working Group comprises representatives of the following organisations -

- AAP Telecommunications
- Australian Consumers Association (ACA)
- Australian Communications Authority (ACA) (merged AUSTEL/SMA post 1 July 1997)

*[Note: The abbreviation 'ACA' in these documents refers to the Australian Communications Authority]*

- Australian Competition and Consumer Commission (ACCC)
- Communications Law Centre (CLC)
- Consumers' Telecommunications Network (CTN)
- Link Telecommunications
- Optus
- Small Enterprise Telecommunications Centre Ltd (SETEL)
- Service Providers' Action Network (SPAN)
- Telstra
- Telecommunications Industry Ombudsman (TIO)
- TIO Board
- Vodafone

*[Working group members are provided in Attachment 2 to this document.]*

This document is the outcome of the work undertaken by the CCWG between September 1996 and May 1997, including the publishing and distribution of draft Guidelines in March 1997 to over 1,100 individuals and organisations. This was followed by public seminars on the Guidelines in Sydney and Melbourne in April, and written comments invited by the end of April 1997. This final version of the Guidelines document represents the end result of that process.

The CCWG intends to develop a comprehensive consultation strategy to ensure that future activities relating to the development of consumer codes will be made available for comment to as broad an audience as possible. The fundamental importance of consultation to the code development process is reflected throughout this document, and the CCWG will be working to develop as open and comprehensive a consultative process as possible, consistent with the CCWG's objectives.

Further information on the work of the CCWG may be obtained from the CCWG Secretariat or from members of the CCWG, as listed in Attachment 2.

#### **A.5 ONGOING ACTIVITIES OF CCWG**

The CCWG will continue to give attention to prioritising work plans, operational procedures and the structures to support code development work. The intention is to ensure that momentum is maintained in this critical area of industry self regulation.



## PART B GUIDING PRINCIPLES

**These principles are intended to apply uniformly to all code development activities, and to be the reference points against which to test such activities. They are viewed as fundamental to the development of codes.**

### **Consumer Benefit**

- Codes should be directed at maximising consumer benefit, having regard to public interest and community safeguard considerations.
- In maximising consumer benefit, regard is to be had to the need to avoid undue administrative and financial burdens to the industry.

### **Inclusiveness**

- Codes need to be developed on the basis of a co-operative and inclusive approach.
- Input should be sought from user groups.
- Input should also be sought from employees of companies involved in code implementation. Employee consultation is necessary in order to achieve a sense of ownership by those expected to adhere to the codes. This is an internal management issue, for companies to resolve based on their own specific requirements.
- Mechanisms set up to develop and administer codes should contain appropriate consumer/user and regulatory representation. These mechanisms should also provide scope for regulatory agencies to provide advice, consult with industry bodies and represent regulatory views as appropriate.
- Codes should reflect, to the appropriate extent, the needs of any relevant specific needs group.

### **Consistency**

- Codes ought to embody common structures and basic propositions, i.e. there ought to be no surprises in codes. Codes should be consistent with government policy and relevant regulatory and legislative instruments.
- Codes should also be consistent with each other, and as far as possible follow the Template in Section D. For example, there should be consistency in the complaints handling structure in all codes.

### **Responsiveness**

- Codes should address consumer concerns and industry issues, having regard to consumer and stakeholder priorities, and should respond to dynamic changes to service needs, delivered in a cost-effective way. Code development activities should also recognise the priorities of regulatory agencies and the ACIE.
- Codes should, where possible, be based on concrete data on the nature of the issue, for example complaint statistics held by members of the industry and government consumer affairs agencies. It is recognised that there may also be occasions where code development activities need to be proactive, anticipating potential issues of concern.

## **Clarity**

- In terms of clarity of the wording of code provisions, code rules should be clear and concise, and address specific issues.
- In terms of clarity of regulation, codes should have clear objectives, with well-defined roles and responsibilities for all participants, so that they give guidance and certainty to all those involved in dealings under the code.

## **Competitive Neutrality**

- Codes should be competitively neutral, neither favouring nor disadvantaging any particular industry participants. Codes should seek to promote pro-competitive outcomes, unless it can be shown that the code produces benefits for the public that justify a negative impact on competition.

## **Flexibility**

- Codes should set minimum acceptable standards (including, where feasible, measurable requirements). Members, while adhering to the code, would be encouraged to use innovative and efficient methods of achieving and exceeding these standards.
- A code should be written in terms that enable it to be quickly adapted to take into account a rapidly changing industry and consumer environment.

## **Operation**

- Codes should clearly set out the extent of coverage, their operation and the means of enforceability in the event of a breach.
- Codes should reflect the actual operation of business / transactional processes between customers and suppliers / service providers / carriers; in other words, codes should be implementable.

## **Accountability / Commitment**

- Industry participants to a code should clearly and publicly indicate their commitment and the means by which they will be held accountable to a code. Industry members should be encouraged to become code participants.
- Industry needs to be committed to development of a particular code and committed to achieving an outcome, otherwise codes will not work.

## PART C OPERATIONAL PRINCIPLES

### C.1 INITIATION OF A CODE

- (i) Initiation of codes should rest with industry and stakeholders, operating through, for example, the ACIF structure.
- (ii) Priorities for code development should be determined in accordance with an agreed framework. (refer Part E)
- (iii) Consistent with the intent of the post 1997 legislation (refer Attachment 1 for details), the ACA should intervene when -
  - a request by the ACA for an industry code to be developed by a body or association representing a particular section of the telecommunications industry is not complied with;
  - the ACA refuses to register a code;
  - no industry body or association is formed; or
  - the industry code fails.<sup>2</sup>

*2 AUSTEL staff have provided the following guidance as to a likely approach the ACA might take in relation to code compliance. It is expected that the ACA approach would be one of practical administration, i.e. in considering compliance at industry, individual participant or individual non-participant level, assessment of the issue should be in terms of whether there is significant detriment or potential detriment to the consumer protection intended by the registered code.*

*Consistent with this approach, if an issue is raised that a participant in a registered relevant code is contravening that code, the remedy should lie with the industry in its willingness to apply the appropriate sanctions included in the code. The MCCA guidelines for the preparation of industry codes stress the necessity for any code to be effective and accordingly the necessity for it to incorporate sanctions. If, in practice, the sanctions are not applied or are not effective, the ACA would have the ability to apply a number of options, including the following -*

- *it could advise the relevant code body that given its failure to enforce the code, the ACA is satisfied that the code is deficient. It may then give a notice requiring the deficiencies to be addressed within a given time. If not rectified to its satisfaction, there may then be grounds to bring into play the provisions of section 125 of the Telecommunications Act 1997 whereby ACA could develop a mandatory standard; or*
- *should ACA conclude that the nature of the contravention warranted such action, it could use the powers of section 122 to issue a formal warning to the party or it could direct its compliance with the code under section 121.*

*Should the industry party acting inconsistently with the provisions of the registered relevant code not formally subscribe to that code, the legislation enables the ACA to also issue a formal warning or direction to comply on the basis that such a party is a participant in the particular section of the telecommunications industry covered by the code. The ACA would have regard to the nature and frequency of such contrary acts as are available through such sources as its own records, the records of the TIO, of the code body and of other relevant bodies. It would then make an assessment as to whether the issue of a formal warning or of a direction was appropriate.*

*As to the situation where there is a concern as to compliance with the code at a more general level, the ACA would be able to consider the case on its merits having regard to the provisions of section 125(7) to determine whether the code should be regarded as deficient. The mechanisms for doing so and the options to address the issue would be as outlined in the previous paragraph. In considering an issue of this importance, the ACA would be able to consult widely with interested parties prior to reaching a conclusion.*

**C.2 INPUT TO CODE DEVELOPMENT**

- (i) The development of codes should be a process inclusive of all stakeholders. There should be participation by user and consumer representatives in code development, followed by comprehensive public consultation.
- (ii) Industry and stakeholder commitment is required before the ACA is approached to register a code.
- (iii) There should be an adequate structure, suitably funded, to enable an appropriate level of consumer/user input into and/or participation in the development and ongoing operation of codes.

**C.3 CHARACTERISTICS OF CODES**

- (i) Codes should be accessible and clear to all readers.
- (ii) Codes should be written in plain concise language so that the code can be readily understood and applied by its users and be made widely available free of charge and in a suitable format to end users.
- (iii) Existing national and international experiences in the development and promulgation of codes and standards should be considered where appropriate and relevant.
- (iv) In line with the MCCA guide on Fair Trading Codes of Conduct, each code should contain sections on -
  - scope - who it applies to and who is bound by the code
  - objectives - the expected outcomes
  - code rules - technical standards and minimum acceptable standards to be delivered by members of the industry
  - complaints, dispute procedures and sanctions, enforcement processes, appeal processes
  - administration of the code
  - information to consumers, publicity and reporting
  - monitoring, review and amendments
- (v) Codes should set out rights and obligations of all parties to the code and opportunities for redress where necessary.

**C.4 CODE REGISTRATION**

Each code should be registered with the ACA. Before registration of the code is sought from the ACA, it should be determined whether authorisation of the code by the ACCC is required, having regard to pre-authorisation considerations (noted in the ACCC paper “The role of the ACCC in the development of consumer codes for the telecommunications industry”).

### C.5 CODE ADMINISTRATION

Codes should be administered by a broadly representative entity which reflects an appropriate consumer focus with appropriate user and industry representation, and with the opportunity for regulatory consultation if required.

### C.6 CODE COMPLIANCE

Compliance with a code is in the first instance subject to industry self-regulation.

### C.7 CODE ENFORCEMENT

- (i) Consistent with section 121 of the Telecommunications Act 1997, the ACA may direct a party which is contravening a code to comply with that code, and any person so directed must comply with that direction.<sup>3</sup>
- (ii) Codes should be monitored on an ongoing basis and reviewed regularly, including ongoing monitoring of performance against codes and regular, accessible reporting of results to stakeholders
- (iii) Codes should include procedures for making necessary amendments based on monitoring and review outcomes.
- (iv) Enforcement should be efficient, effective, timely, fair and independent.

*3 The Explanatory Memorandum explains that "It is intended that compliance with industry codes be voluntary or as determined by the industry section subject to the code. It is envisaged, however, that where a code is effective and being complied with by a majority of participants to whom it applies, it may be appropriate to direct non-compliant persons to comply with the code. This may particularly apply when the person can give no good reason for non-compliance with the code. In this context, clause 119 [section 121 of the 1997 Act] allows the ACA to direct the person to comply with a code. This provides a back-up to self-regulation by allowing a person who refuses to comply with otherwise successful self-regulatory arrangements to be directed to comply with a code; in effect, compliance with the code becomes mandatory for that person."*



## **PART D TEMPLATE FOR CODES OF PRACTICE**

**Below are extracts from the ACCC and MCCA guides to the development and implementation of fair trading codes of conduct, with additions and amendments relevant to the telecommunications industry. The ACCC recommends that codes of practice should have the structure outlined.**

**In developing telecommunications-specific consumer codes, the Consumer Codes Working Groups should choose the requirements appropriate to the particular code under development, in order to ensure compliance with ACCC baseline requirements.**

### **SECTION 1 INTRODUCTION**

**(i) Background**

**(ii) Scope**

who it applies to and who is bound by the code

**(iii) Objectives**

the expected outcomes

**(iv) Definitions**

explaining technical words or abbreviations used

### **SECTION 2 CODE RULES**

Code rules can cover some matters related to technical standards (refer Part 6, provision of sections 115(2) and 115(3)) and / or minimum acceptable standards to be delivered by members of the industry, setting standards for such matters as are relevant to the code under development, including, for example -

- complaint handling
- means of resolving disputes
- product information
- price information for consumers
- performance capacity
- cooling off periods, where appropriate
- terms and conditions of supply
- delivery dates
- guarantees and warranties
- pre-payment protection
- availability of service outlets
- advisory services for customers
- advertising
- education of members and employees in the principles and procedures of the code to ensure that they are aware of it and practise it in their day-to-day dealings
- privacy protection.

**SECTION 3 ADMINISTRATION****(i) Complaint handling**

The telecommunications industry has its own formal complaint handling scheme, the Telecommunications Industry Ombudsman (TIO) Scheme, which has been established to provide free, independent, just, informal and speedy resolution of complaints and disputes regarding telecommunications services. Operating as an office of last resort for customers who have first given their telephone company a reasonable opportunity to resolve their complaints, it is independent of government, carriers, service providers and other interested bodies, and accessible to residential and small business consumers of telecommunications services who remain dissatisfied after lodging a complaint with their telephone company. This Scheme will continue under the new legislative regime. Moreover, the TIO may also accept powers and functions under industry codes and industry standards. It is envisaged that one of the functions to be conferred on the TIO will be the handling of consumer complaints about breaches of industry codes or standards.

Separate from the TIO scheme is the requirement that codes of practice themselves include appropriate complaint-handling procedures. In developing such procedures, regard should be had to the Australian Standard on Complaints Handling (AS 4269), and also to the draft Commonwealth Government benchmarks for industry-based consumer dispute schemes.

Matters that should be covered in complaint handling procedures include, but are not limited to:

- who handles complaints initially
- what time limits should be imposed on responding to a complaint
- whether there should be an informal committee of review within a firm if a consumer remains unsatisfied and which senior personnel it should comprise
- the obligation to give consumers reasons in writing if a complaint is rejected
- remedies available to consumers for replacement or repair of products or for monetary compensation - and whether there are any limits on monetary compensation
- the requirement to provide guidance and assistance to consumers about how to make a complaint
- methods for collecting data on the numbers and types of complaints and the response rates and time taken in handling them
- processes to resolve a dispute as to the correct interpretation of a code provision (including processes to revise codes if necessary).

**(ii) Collection of statistics on complaints handled**

Information collected should include:

- the number of complaints lodged by whom (residential consumers, small business, other industry members, etc.) and against whom
- the number and percentage of complaints by subject matter
- the number and percentage found to be in breach of the code and why
- the number and percentage found not to be in breach of the code and why
- the time taken to deal with complaints against target and percentage performance
- how many items were monitored under each category
- how many breaches were found through monitoring

- number and type of sanctions imposed and remedies given
- number of matters outside the terms of reference and the reasons for the matter being outside the terms of reference.

### (iii) Sanctions

The code must establish procedures:

- to identify breaches;
- to hear the case against the member and to provide an opportunity for response;
- to decide on a penalty appropriate to the nature and seriousness of the breach (for example, censure, warning, corrective advertisement or withdrawal of infringing advertisements, fine, suspension or expulsion, directions regarding the offender's compliance system)
- to give a member an opportunity to appeal to an independent body against a ruling, especially for suspension or expulsion.

In developing procedures relating to sanctions, regard should be had to the role of the TIO in dealing with consumer disputes. Procedures should therefore clearly distinguish between sanctions for industry disputes and the measures adopted by the TIO for resolving or determining consumer complaints.

The advice of the ACCC should be sought if sanctions are to include suspension or expulsion of industry members.

### (iv) Administration of the Code

Subject to the final arrangements settled on for the ACIE, the administration body should have an independent chair and consumer/user representation to enhance the credibility of the code. In some cases, the administration body should also include a representative of a consumer affairs agency or other regulatory agency in an ex officio basis.

The plan for administration should be set out in the code document. While responsibilities of administration bodies will vary from industry to industry, typically they will include:

- monitoring and reporting on compliance
- promoting, assisting and checking in-house compliance systems used by participants<sup>4</sup>
- obtaining from members adequate finance for administering the code and preparing budgets and financial reports
- appointing a conciliator or complaints body to handle disputes between members and consumer complaints
- arranging publicity for the code
- making provision for employee awareness of the code
- imposing agreed sanctions on members for breaches of the code (Note: To ensure an appropriate level of independence, it may be preferable to delegate this function to a suitable third party.)
- conducting periodic reviews of the effectiveness of the code and its procedures and recommending amendments if necessary
- preparing annual and other reports on the operation of the code.

<sup>4</sup> The ACCC advises that a standard on compliance systems is currently being developed by Standards Australia.

**Section 4 PUBLICITY AND REPORTING**

A code should set out:

- how the industry is to publicise its code, not just on its commencement but continually
- what kinds of information members of the industry and consumers should be given, and how to access and use such information
- how and when consumers should be made aware of their rights and all the steps in the complaints process.

Publicity material needs to be written in plain English. Some of it might also be produced in other languages, especially information on dispute resolution.

As part of publicity but also independently of it, the code should include requirements for the industry association to report publicly, particularly to relevant interests, at least annually.

Issues covered in a report might include:

- identified breaches of the code and the remedial action taken
- publicity and education programs
- steps taken to address identified systemic complaints
- statistics on complaints and disputes, and their resolution, classified in appropriate detail
- monitoring of adherence to industry standards of quality, safety and conduct and to the principles and procedures of the code
- whether performance indicators have been met
- steps taken by industry participants in the development of in-house compliance systems
- costs and other details of administration
- continuous improvement in code principles and administration.

**Section 5 MONITORING, REVIEW AND AMENDMENTS****(i) Monitoring**

Monitoring a code for compliance needs to be carried out regularly, systematically and visibly.

The procedures set out in the code should cover such matters as:

- whether the code is addressing the problems it was designed to deal with
- whether the code's terms of reference or objects are adequate to address current marketplace problems
- whether members are complying with it
- whether the rules are causing difficulties
- whether the complaints handling system is working
- whether the code has introduced anti-competitive effects or other market problems
- who should conduct the monitoring.

(In some cases it could be left to the code administration committee. In other cases or on other occasions, it could be wiser to use an independent body. The monitoring body could have non-industry and consumer representation.)

- how frequently the monitoring should be undertaken  
(It needs to be ongoing but if there are indications of considerable non-compliance, monitoring should be undertaken more frequently.)

### **(ii) Reviewing**

Performance indicators should be developed and implemented as a means of measuring the effectiveness of the Code's operation. Examples include:

- a high level of awareness of the code amongst participants and other interested parties;
- easy accessibility of the code to consumers;
- decreased level of complaints received on specific issues;
- responsiveness of service providers to complaints.

Subject to the final structure settled under the ACIE, scope may exist for setting up a Reference Committee made up of representatives of the user/community/consumer sector, relevant government agencies, and the code participants/service providers. Such a committee could be useful for:

- keeping the relevant interest groups up to date on developments;
- using as a sounding board for code rules/service standards and other issues;
- allowing for concerns to be raised at every stage;
- providing a forum for issues from different perspectives to be raised so that the different interests get a better understanding of the other's perspectives.

Redrafted code rules/service standards could also be referred to the Reference Committee for their input and update.

A code must provide for a review of its operation at specified intervals, for example every three years, or as needed. The process should involve consultation with every group affected by the code. Outside representatives could be included on the review panel or an outside body could be engaged to conduct the review independently.

The code should require that the review consider at least the following matters:

#### *Effectiveness*

- Are the code principles, rules and administration procedures appropriate?
- Is the code being implemented and observed by participating firms?
- Are the market problems being corrected?
- Are the benefits outweighing the costs?
- Has the operation of the code affected competition beneficially or adversely?
- Has the code unintentionally created new market problems?
- Are industry members, whether code signatories or not, opting out and breaking the code? Are they being regulated by the appropriate government agency?
- Are the terms of reference or objects dealing with current marketplace problems?

## *Complaint handling*

- Does each firm have a complaints system which meets the essential element requirements of the Australian Standard on Complaints Handling (AS 4269)?
- Has there been a change in the number and type of complaints?
- Is data on complaints being fed back to members to change practices which cause complaints or to train staff how to avoid situations that lead to complaints?
- Are procedures for lodging complaints simple, easily accessible and well-publicised?
- Is there a streamlined process for referring complaints to the appropriate body if they are mis-directed?
- Do consumers have easy access to the complaints handling system? Are they satisfied with it?
- Are complaints being handled promptly?
- Are the internal and external complaints bodies able to make decisions independently, without pressures from elsewhere?
- Has the industry been called upon to impose sanctions? Did they work?
- Are the level and range of remedies adequate to deal with consumer problems?

## *Compliance*

- What is the overall level of compliance with the code by industry participants?
- What compliance system does each participant have in place to ensure compliance with the code?

## *Administration*

- Is the code administration, including complaints handling, adequately resourced to achieve the desired outcomes?
- What are the running costs of administering the code? What sort of costs are being imposed on members? Are lower cost options available?
- Is the code administration body providing regular reports on how the code is operating?

## *Visibility*

- What is the awareness of the code? Groups concerned include
  - members of industry
  - employees
  - consumers
- How effective is publicity about the code?

## *Monitoring*

- Is effective monitoring being undertaken to ensure compliance with the code?

*Consultation*

- How much consultation has there been with members and consumers?

*Outside representation*

- How effective has outside representation been?
- Are outside representatives satisfied that they can contribute adequately?

**(iii) Amending**

The code should include procedures for making necessary amendments. The procedures should require:

- consultation with members, government agencies and consumers during the framing of the amendment to ensure that it can work, is acceptable, and will not create other difficulties.
- adequate publicity for the amendments.

The Reference Committee (referred to above in subsection (ii), 'Reviewing') may have a role to play in the development and implementation of amendment procedures, subject to final arrangements for operation under the ACIF.

For codes registered with the ACA, section 120 of the Telecommunications Act 1997 provides that changes to such codes are to be achieved by replacement of the code. However, when changes are of a minor nature, requirements for consultation which normally apply in this case do not apply. The Explanatory Memorandum states that this is intended to limit consultation to when matters of substance arise, and thus to facilitate the making of minor changes to registered codes.



## PART E. FRAMEWORK FOR IDENTIFYING A NEED FOR A CODE, AND PRIORITISING CODE DEVELOPMENT

### E.1 IS A CODE OF PRACTICE REQUIRED?

Reference to the following points will assist in determining whether it is appropriate to address a consumer issue or activity via a code of practice -

- (i) Need to protect all stakeholders, including industry participants, consumers and users, against potential or actual financial loss
- (ii) Need to protect against supplier not providing services in line with stated terms and conditions.
- (iii) Need to protect against invasion of personal privacy or inappropriate disclosure of personal information.
- (iv) Need to protect against deceptive behaviour or false or misleading representation.
- (v) Need to provide for improved mechanisms for addressing after sales or post contractual difficulties.
- (vi) Need to identify and allocate liability for faults, errors, etc.
- (vii) Need to provide information to consumers (facilitating informed choice) and industry participants (increasing awareness of obligations).
- (viii) Need to promote honesty and fairness in trading and/or encouragement of compliance with the law (e.g. the consumer protection provisions of the Trade Practices Act).
- (ix) Need to facilitate -
  - improved access to services and products
  - improved standards of quality and safety of services and products
  - enhanced range of services and products available
  - greater consumer convenience
  - increased choice of suppliers, dealers etc.
  - improved standards of information disclosure and sufficiency of representations about comparison of services/prices etc.

*(Other key determinants include the Telecommunications Act 1997; any ACA or ACCC guidelines; feedback from the ACIF Representative Council; or from the TIO.)*

### E.2 PRIORITISING CODE DEVELOPMENT ACTIVITIES.

Reference to the following points will assist in assessing priority for the development of codes of practice -

- (i) Is there an identifiable need for measures to address the issue, evidenced by frequent/serious/excessive consumer complaints regarding the issue (e.g. complaints received by telecommunications complaint handling bodies, representatives of consumer interests and Federal Government Agencies, service provider associations, Privacy Commissioner, etc.)?
- (ii) Would the implementation of a code of practice facilitate pro-competitive outcomes?
- (iii) Is impact systemic and / or does potential impact extend to large numbers of consumers in one or multiple industry sectors, or is the impact detrimental to a particular segment of the community?

- (iv) Do the issues primarily concern residential or small business consumers? (refer to section 112(3)(b) of the Telecommunications Act 1997)
- (v) Does the practice impact upon an industry sector or multiple sectors e.g. credit management, or does it relate to a single product or service?
- (vi) Are there existing policies, minimum standards or existing codes of practice in the industry sector or sectors? Are they deficient? Would refinement be possible quickly?
- (vii) Are there industry or other legislative requirements which would facilitate development of the code?
- (viii) Are there other established and more appropriate mechanisms for dealing with such issues?
- (ix) Are there changes taking place within the industry which add weight to the need to address the specific issue?
- (x) Will the code rules rectify systemic and recurring problems?
- (xi) Is there potential for a problem to emerge regarding the issue, considering:
  - industry trends
  - emerging industry products and techniques
  - consumer preferences and concerns
  - problems that have emerged in other jurisdictions?

## PART 6-INDUSTRY CODES AND INDUSTRY STANDARDS

### Division 1-Simplified outline

#### 106 Simplified outline

The following is a simplified outline of this Part.

- Bodies and associations that represent sections of the telecommunications industry may develop industry codes.
- Industry codes may be registered by the ACA.
- Compliance with an industry code is voluntary unless the ACA directs a particular participant in the telecommunications industry to comply with the code.
- The ACA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

### Division 2-Interpretation

#### 107 Industry codes

For the purposes of this Part, an industry code is a code developed under this Part (whether or not in response to a request under this Part).

#### 108 Industry standards

For the purposes of this Part, an industry standard is a standard determined under this Part.

#### 109 Telecommunications activity

For the purposes of this Part, a telecommunications activity is an activity that consists of:

- (a) carrying on business as a carrier; or
- (b) carrying on business as a carriage service provider; or
- (c) supplying goods or services for use in connection with the supply of a listed carriage service; or
- (d) supplying a content service using a listed carriage service; or
- (e) manufacturing or importing customer equipment or customer cabling; or
- (f) installing, maintaining, operating or providing access to:
  - (i) a telecommunications network; or
  - (ii) a facility;

used to supply a listed carriage service.

#### 110 Sections of the telecommunications industry

- (1) For the purposes of this Part, sections of the telecommunications industry are to be ascertained in accordance with this section.

- (2) For the purposes of this Part, each of the following groups is a section of the telecommunications industry:
  - (a) carriers;
  - (b) service providers;
  - (c) carriage service providers;
  - (d) carriage service providers who supply standard telephone services;
  - (e) carriage service providers who supply public mobile telecommunications services;
  - (f) content service providers;
  - (g) persons who perform cabling work (within the meaning of Division 9 of Part 21);
  - (h) persons who manufacture or import customer equipment or customer cabling.
- (3) The ACA may, by written instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of telecommunications activity constitute a section of the telecommunications industry for the purposes of this Part.
- (4) The section must be identified in the determination by unique name and/or number.
- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the telecommunications industry determined under subsection (3):
  - (a) need not be mutually exclusive; and
  - (b) may consist of the aggregate of any 2 or more sections of the telecommunications industry mentioned in subsection (2) or determined under subsection (3); and
  - (c) may be subsets of a section of the telecommunications industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).
- (8) A copy of a determination under subsection (3) is to be published in the Gazette.

#### **111 Participants in a section of the telecommunications industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the telecommunications industry, the person is a participant in that section of the telecommunications industry.

Division 3-General principles relating to industry codes and industry standards

#### **112 Statement of regulatory policy**

- (1) The Parliament intends that bodies or associations that the ACA is satisfied represent sections of the telecommunications industry should develop codes (industry codes) that are to apply to participants in the respective sections of the industry in relation to the telecommunications activities of the participants.
- (2) The Parliament intends that the ACA, in exercising its powers under sections 117, 118, 119, 123, 124 and 125, will act in a manner that, in the opinion of the ACA, enables public interest considerations to be addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the telecommunications industry.

- (3) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the telecommunications industry, the ACA must have regard to:
- (a) the number of customers who would be likely to benefit from the code or standard concerned; and
  - (b) the extent to which those customers are residential or small business customers; and
  - (c) the legitimate business interests of participants in sections of the telecommunications industry; and
  - (d) the public interest, including the public interest in the efficient, equitable and ecologically sustainable supply of:
    - (i) carriage services; and
    - (ii) goods for use in connection with carriage services; and
    - (iii) services for use in connection with carriage services;
 in a manner that reflects the legitimate expectations of the Australian community.
- (4) Subsection (3) does not, by implication, limit the matters to which regard may be had.

**113 Examples of matters that may be dealt with by industry codes and industry standards**

- (1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the telecommunications industry is involved.
- (3) The examples are as follows:
  - (a) telling customers about:
    - (i) goods or services on offer; and
    - (ii) the prices of those goods or services; and
    - (iii) the other terms and conditions on which those goods or services are offered;
  - (b) giving customers information about performance indicators customers can use to evaluate the quality of services;
  - (c) regular reporting to customers about performance against those performance indicators;
  - (d) the internal handling of customer complaints;
  - (e) reporting about customer complaints;
  - (f) privacy and, in particular:
    - (i) the protection of personal information; and
    - (ii) the intrusive use of telecommunications by carriers or service providers; and
    - (iii) the monitoring or recording of communications; and
    - (iv) calling number display; and
    - (v) the provision of directory products and services;

- (g) the “churning” of customers;
- (h) security deposits given by customers;
  - (i) debt collection practices;
- (j) customer credit practices;
- (k) disconnection of customers;
- (l) ensuring that customers have an informed basis on which to enter into agreements of a kind mentioned in paragraph 22(2)(d) or (e) or 4(a) (which deal with boundaries of telecommunications networks);
- (m) the quality of standard telephone services;
- (n) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services;
- (o) the timeliness and comprehensibility of bills;
- (p) the procedures to be followed in order to generate standard billing reports to assist in the investigation of customer complaints about bills.

**114 Industry codes and industry standards may confer powers on the Telecommunications Industry Ombudsman**

- (1) If the Telecommunications Industry Ombudsman consents, an industry code or industry standard may confer functions and powers on the Telecommunications Industry Ombudsman.
- (2) The continuity of a consent under subsection (1) is not affected by:
  - (a) a change in the occupancy of the position of Telecommunications Industry Ombudsman; or
  - (b) a vacancy in the position of Telecommunications Industry Ombudsman that does not continue for more than 4 months.

**115 Industry codes and industry standards not to deal with certain design features and performance requirements**

- (1) For the purposes of this Part, an industry code or an industry standard has no effect:
  - (a) to the extent (if any) to which compliance with the code or standard is likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
    - (i) to have particular design features; or
    - (ii) to meet particular performance requirements; or
  - (b) to the extent (if any) to which it deals with the content of content services.
- (2) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which compliance with the code or standard is likely:
  - (a) to have the indirect effect of requiring customer equipment, customer cabling, a telecommunications network or a facility to have particular design features that relate to:
    - (i) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services; or
    - (ii) the quality of standard telephone services; or

- (iii) a matter specified in the regulations; or
- (b) to have the direct or indirect effect of requiring customer equipment, customer cabling, a telecommunications network or a facility to meet performance requirements that relate to:
  - (i) the accuracy of billing of customers of carriage service providers in relation to the supply of standard telephone services; or
  - (ii) the quality of standard telephone services; or
  - (iii) a matter specified in the regulations.
- (3) The rule in subsection (1) does not apply to an industry code or an industry standard to the extent (if any) to which the code or standard deals with a matter referred to in paragraph 113(3)(f).

**116 Industry codes and industry standards not to deal with matters dealt with by codes and standards under Part 9 of the Broadcasting Services Act**

For the purposes of this Part, an industry code or an industry standard that deals with a matter relating to a content service has no effect to the extent (if any) to which the matter is dealt with by a code registered, or standard determined, under Part 9 of the Broadcasting Services Act 1992.

**Division 4-Industry codes**

**117 Registration of industry codes**

- (1) This section applies if:
  - (a) the ACA is satisfied that a body or association represents a particular section of the telecommunications industry; and
  - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the telecommunications activities of those participants; and
  - (c) the body or association gives a copy of the code to the ACA; and
  - (d) the ACA is satisfied that:
    - (i) in a case where the code deals with matters of substantial relevance to the community-the code provides appropriate community safeguards for the matters covered by the code; or
    - (ii) in a case where the code does not deal with matters of substantial relevance to the community-the code deals with the matters covered by the code in an appropriate manner; and
  - (e) the ACA is satisfied that, before giving the copy of the code to the ACA:
    - (i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and

- (f) the ACA is satisfied that, before giving the copy of the code to the ACA:
    - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
  - (g) the ACA is satisfied that the ACCC has been consulted about the development of the code; and
  - (h) the ACA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the code; and
    - (i) the ACA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the code; and
  - (j) in a case where the code deals with a matter set out in paragraph 113(3)(f)-the ACA is satisfied that the Privacy Commissioner has been consulted about the development of the code.
- (2) The ACA must register the code by including it in the Register of industry codes kept under section 136.
  - (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
  - (4) If:
    - (a) an industry code (the new code) is registered under this Part; and
    - (b) the new code is expressed to replace another industry code;
 the other code ceases to be registered under this Part when the new code is registered.

**118 ACA may request codes**

- (1) If the ACA is satisfied that a body or association represents a particular section of the telecommunications industry, the ACA may, by written notice given to the body or association, request the body or association to:
  - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the telecommunications activities of those participants; and
  - (b) give the ACA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The ACA must not make a request under subsection (1) in relation to a particular section of the telecommunications industry unless the ACA is satisfied that:
  - (a) the development of the code is necessary or convenient in order to:
    - (i) provide appropriate community safeguards; or
    - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
  - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.

- (4) The ACA must not make a request under subsection (1) in relation to a code if:
  - (a) the code would deal with a matter referred to in paragraph 113(3)(f) (which relates to privacy); and
  - (b) compliance with the code would be likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
    - (i) to have particular design features; or
    - (ii) to meet particular performance requirements.

However, this rule does not apply if the ACA is satisfied that the benefits to the community from the operation of the code would outweigh the costs of compliance with the code.

- (5) The ACA may vary a notice under subsection (1) by extending the period specified in the notice.
- (6) Subsection (5) does not, by implication, limit the application of subsection 33(3) of the Acts Interpretation Act 1901.
- (7) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

**119 Publication of notice where no body or association represents a section of the telecommunications industry**

- (1) If the ACA is satisfied that a particular section of the telecommunications industry is not represented by a body or association, the ACA may publish a notice in the Gazette:
  - (a) stating that, if such a body or association were to come into existence within a specified period, the ACA would be likely to give a notice to that body or association under subsection 118(1); and
  - (b) setting out the matter or matters relating to telecommunications activities that would be likely to be specified in the subsection 118(1) notice.
- (2) The period specified in a notice under subsection (1) must run for at least 60 days.

**120 Replacement of industry codes**

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, section 117 has effect, in relation to the registration of the code, as if paragraphs 117(1)(e) and (f) had not been enacted.

*Note: Paragraphs 117(1)(e) and (f) deal with submissions about draft codes.*

**121 Directions about compliance with industry codes**

- (1) If:
  - (a) a person is a participant in a particular section of the telecommunications industry; and
  - (b) the ACA is satisfied that the person has contravened or is contravening an industry code that:

- (i) is registered under this Part; and
- (ii) applies to participants in that section of the industry;

the ACA may, by written notice given to the person, direct the person to comply with the industry code.

- (2) A person must comply with a direction under subsection (1).
- (3) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
  - (d) conspire with others to effect a contravention of subsection (2).
- (4) Subsections (2) and (3) are civil penalty provisions.

*Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.*

## **122 Formal warnings-breach of industry codes**

- (1) This section applies to a person who is a participant in a particular section of the telecommunications industry.
- (2) The ACA may issue a formal warning if the person contravenes an industry code registered under this Part.

## **Division 5-Industry standards**

123 ACA may determine an industry standard if a request for an industry code is not complied with

- (1) This section applies if:
  - (a) the ACA has made a request under subsection 118(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the telecommunications industry; and
    - (ii) deal with one or more matters relating to the telecommunications activities of those participants; and
  - (b) any of the following conditions is satisfied:
    - (i) the request is not complied with;
    - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request-any of those indicative targets were not met;
    - (iii) the request is complied with, but the ACA subsequently refuses to register the code; and
  - (c) the ACA is satisfied that it is necessary or convenient for the ACA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or

- (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an industry standard.
- (3) Before determining an industry standard under this section, the ACA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
- (4) A standard under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**124 ACA may determine industry standard where no industry body or association formed**

- (1) This section applies if:
  - (a) the ACA is satisfied that a particular section of the telecommunications industry is not represented by a body or association; and
  - (b) the ACA has published a notice under subsection 119(1) relating to that section of the industry; and
  - (c) that notice:
    - (i) states that, if such a body or association were to come into existence within a particular period, the ACA would be likely to give a notice to that body or association under subsection 118(1); and
    - (ii) sets out one or more matters relating to the telecommunications activities of the participants in that section of the industry; and
  - (d) no such body or association comes into existence within that period; and
  - (e) the ACA is satisfied that it is necessary or convenient for the ACA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an industry standard.
- (3) A standard under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**125 ACA may determine industry standards where industry codes fail**

- (1) This section applies if:
    - (a) an industry code that:
      - (i) applies to participants in a particular section of the telecommunications industry; and
      - (ii) deals with one or more matters relating to the telecommunications activities of those participants;
- has been registered under this Part for at least 180 days; and

- (b) the ACA is satisfied that the code is deficient (as defined by subsection (7)); and
  - (c) the ACA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (d) that period ends and the ACA is satisfied that it is necessary or convenient for the ACA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an industry standard.
- (4) If the ACA is satisfied that a body or association represents that section of the industry, the ACA must consult the body or association before determining an industry standard under subsection (3).
- (5) A standard under subsection (3) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
- (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (7) For the purposes of this section, an industry code that applies to participants in a particular section of the telecommunications industry and deals with one or more matters relating to the telecommunications activities of those participants is deficient if, and only if:
- (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.

#### **126 Industry standards not to be determined for certain privacy matters**

The ACA must not determine an industry standard if:

- (a) the standard would deal with a matter referred to in paragraph 113(3)(f) (which relates to privacy); and
- (b) compliance with the standard would be likely to have the effect (whether direct or indirect) of requiring customer equipment, customer cabling, a telecommunications network or a facility:
  - (i) to have particular design features; or
  - (ii) to meet particular performance requirements.

However, this rule does not apply if the ACA is satisfied that the benefits to the community from the operation of the standard would outweigh the costs of compliance with the standard.

#### **127 Industry standards not to be determined during the first 180 days after commencement**

The ACA must not determine an industry standard during the first 180 days after the commencement of this section.

**128 Compliance with industry standards**

- (1) If an industry standard that applies to participants in a particular section of the telecommunications industry is registered under this Part, each participant in that section of the industry must comply with the standard.
- (2) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).
- (3) Subsections (1) and (2) are civil penalty provisions.

*Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.*

**129 Formal warnings-breach of industry standards**

- (1) This section applies to a person who is a participant in a particular section of the telecommunications industry.
- (2) The ACA may issue a formal warning if the person contravenes an industry standard registered under this Part.

**130 Variation of industry standards**

- (1) The ACA may, by written instrument, vary an industry standard that applies to participants in a particular section of the telecommunications industry if it is satisfied that it is necessary or convenient to do so to:
  - (a) provide appropriate community safeguards in relation to one or more matters relating to the telecommunications activities of those participants; and
  - (b) otherwise regulate adequately those participants in relation to one or more matters relating to the telecommunications activities of those participants.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**131 Revocation of industry standards**

- (1) The ACA may, by written instrument, revoke an industry standard.
- (2) If:
  - (a) an industry code is registered under this Part; and
  - (b) the code is expressed to replace an industry standard;
 the industry standard is revoked when the code is registered.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

**132 Public consultation on industry standards**

- (1) Before determining or varying an industry standard, the ACA must:
  - (a) cause to be published in a newspaper circulating in each State a notice:
    - (i) stating that the ACA has prepared a draft of the industry standard or variation; and
    - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and
    - (iii) specifying the place or places where the copies will be available; and
    - (iv) inviting interested persons to give written comments about the draft to the ACA within the period specified under subparagraph (ii); and
  - (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subsection (1), the ACA must have due regard to those comments in determining or varying the industry standard, as the case may be.
- (5) In this section:

State includes the Northern Territory and the Australian Capital Territory.

**133 Consultation with ACCC and the Telecommunications Industry Ombudsman**

- (1) Before determining or varying an industry standard, the ACA must consult the ACCC and the Telecommunications Industry Ombudsman.
- (2) Before revoking an industry standard under subsection 131(1), the ACA must consult the ACCC and the Telecommunications Industry Ombudsman.

**134 Consultation with Privacy Commissioner**

- (1) This section applies to an industry standard that deals with a matter set out in paragraph 113(3)(f).
- (2) Before determining or varying the industry standard, the ACA must consult the Privacy Commissioner.
- (3) Before revoking the industry standard under subsection 131(1), the ACA must consult the Privacy Commissioner.

**135 Consultation with consumer body**

- (1) Before determining or varying an industry standard, the ACA must consult at least one body or association that represents the interests of consumers.
- (2) Before revoking an industry standard under subsection 131(1), the ACA must consult at least one body or association that represents the interests of consumers.

**Division 6-Register of industry codes and industry standards**

136 ACA to maintain Register of industry codes and industry standards

- (1) The ACA is to maintain a Register in which the ACA includes:
  - (a) all industry codes required to be registered under this Part; and
  - (b) all industry standards; and
  - (c) all requests made under section 118; and
  - (d) all notices under section 119; and
  - (e) all directions given under section 121.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 53 of the Australian Communications Authority Act 1997:
  - (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.



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