



Code of Practice Remedies Review

Submission by the Australian Communications Consumer Action Network
to the Telephone Information Services Standards Council (TISSC)



February 2011



About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Contact:

Elissa Freeman – Director of Policy & Campaigns

Suite 402, Level 4
55 Mountain Street
Ultimo NSW, 2007
Email: info@accan.org.au
Phone: (02) 9288 4000
Fax: (02) 9288 4019
TTY: 9281 5322

Introduction

ACCAN strongly supports TISSC and the important work that it has carried out in both handling complaints relating to the TISSC Code of Practice (the Code) and in monitoring industry compliance with Code rules. Both elements are important components of any industry scheme for compliance with codes.

We welcome this opportunity to comment on this review of TISSC remedies. We believe that the existing levels of complaint and accompanying definitions are not sufficiently clear and differentiated from one another. We believe that simplifying and clarifying remedies under the Code will assist consumers to better understand what industry behaviours are considered more or less serious and what actions TISSC will take in responses to Code breaches. We also believe that, by clarifying and simplifying the existing definitions, industry participants will more easily understand the behaviours expected of them and any penalties that will flow from non-compliance with Code rules.

Response to Code of Practice Remedies Review

1. Levels of Code Breaches

Currently, there are five levels of code breach,

- Minor breach
- Significant breach
- Moderately serious
- Serious
- Very serious

In ACCAN's view, there are too many levels of complaint with insufficient information to whether and in what circumstance a breach will be considered anything from minor to very serious. ACCAN believes that the number of levels could be reduced to three: minor, significant, and serious.

2. Definitions

We suggest the following definitions, based on existing definitions.

2.1 Minor

A technical, inadvertent breach that is unlikely to result in public harm.

2.2 Significant

A breach that causes some public harm, either through the omission of public information, or the provision of material that is inappropriate.

2.3 Serious

A breach that causes serious public harm, an especially flagrant breach or repeated breaches of the same or similar nature that cause some public harm.

3. Types of Breach

We believe that there should be some discretion for the TISSC arbitrator in determining the nature of the breach. It is very possible that, in some circumstances, a breach will cause little or no public harm but in other circumstances could cause significant harm. For guidance, however, we suggest the following.

3.1 Minor

The definition is fairly clear. This category is those breaches that are inadvertent and unlikely to have caused harm. We would also add a qualification that the industry provider responsible has taken the necessary steps, if relevant, to ensure the breach does not recur.

3.2 Significant

We suggest at least four types of breach that should be included in this category: failure to provide call costs, provision of misleading information, providing advertising that is unsuitable for children, and providing information of intimate sexual behaviour for sexual gratification. The additional component is that the relevant provider can demonstrate that they have taken steps to ensure that the breach does not recur.

3.3 Serious

This category should be reserved for breaches likely to cause serious harm to the public. This would include either call cost information that is significantly misleading to the public on costs they will incur, information that is made available to children that is highly unsuitable for children, and information on intimate sexual behaviour that is highly offensive. This category should also include repeated serious breaches of the same or similar nature.

4. Remedies

4.1 Minor

These breaches are largely inadvertent and because of this rectification of the breach such to ensure it will not recur should be sufficient.

4.2 Significant

If this breach relates either to the provision of misleading advertising or failure to provide call costs, the cost of the call should be refunded to the complainant. In addition, the provider must demonstrate to TISSC that the breach has been rectified within a set time.

4.3 Serious

Depending on the nature of the breach, the call costs must be refunded. In addition, rectification of the problem must be demonstrated within a short time frame, given the severity of the breach. If the information is particularly offensive, or particularly inappropriate for children, the Arbitrator should have discretion to suspend a particular service until rectification is demonstrated. If the breach is particularly flagrant, or repeated several times over a period, the Arbitrator should also have the power to recommend termination of the particular service.

5. Appeals

The existing appeals process, while providing natural justice to both parties, is expensive for many industry participants and may serve to deter them from using the process even though they have legitimate grounds for an appeal.

ACCAN would support the development of an interim (and perhaps in-house) appeal process that would be more accessible for industry participants.