

7 April 2014



**Telecommunications  
Industry  
Ombudsman**

**Simon Cohen**  
Ombudsman

Mr John Stanton  
Chief Executive Officer  
Communications Alliance Limited



Dear Mr Stanton

**Review of the Mobile Premium Services Code (C637:2011)**

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to contribute to Communications Alliance's scheduled review of the Mobile Premium Services (MPS) Code.

Please find enclosed the TIO's submission, which sets out:

- TIO complaints data and complaint issues relevant to mobile premium services
- Achievements of the MPS Code
- Areas for potential development of the MPS Code
- Suggestions for future proofing the MPS Code to ensure its ongoing value to the telecommunications industry.



Yours faithfully

Simon Cohen  
**Ombudsman**

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*"... providing independent, just, informal and speedy resolution of complaints"*

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Telecommunications Industry Ombudsman

# **Telecommunications Industry Ombudsman submission – Review of the Mobile Premium Services (MPS) Code**

April 2014



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## About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government.

For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90 per cent of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around seven per cent of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are progressed for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile, landline and mobile premium services (MPS), and by the types of issues that these complaints present. These issues include connection delays and fault repair, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or progressed (a complaint handling issue).

Further information about the TIO is available at [www.tio.com.au](http://www.tio.com.au).

## **TIO submission on the Review of the MPS Code 2011**

The TIO welcomes the opportunity to contribute to the review of the Mobile Premium Services (MPS) Code 2011.

We believe that the MPS Code continues to provide service providers and content providers with certainty on their obligations about mobile premium services, and to offer important safeguards for consumers. We consider that the MPS Code has achieved its key objectives since the last revision in 2011.

We set out in this submission:

- (a) TIO complaints data and complaint issues relevant to mobile premium services
- (b) Achievements of the MPS Code
- (c) Areas for potential development of the MPS Code
- (d) Suggestions for future proofing the MPS Code to ensure its ongoing value to the telecommunications industry.

We have provided examples of the issues outlined in (c) and (d) above, in the **Appendix** to this submission. These issues have been highlighted due to their often potentially systemic nature and the fact that they cause detriment to consumers.

We trust that the information in this submission will assist Communications Alliance in its review of the MPS Code.

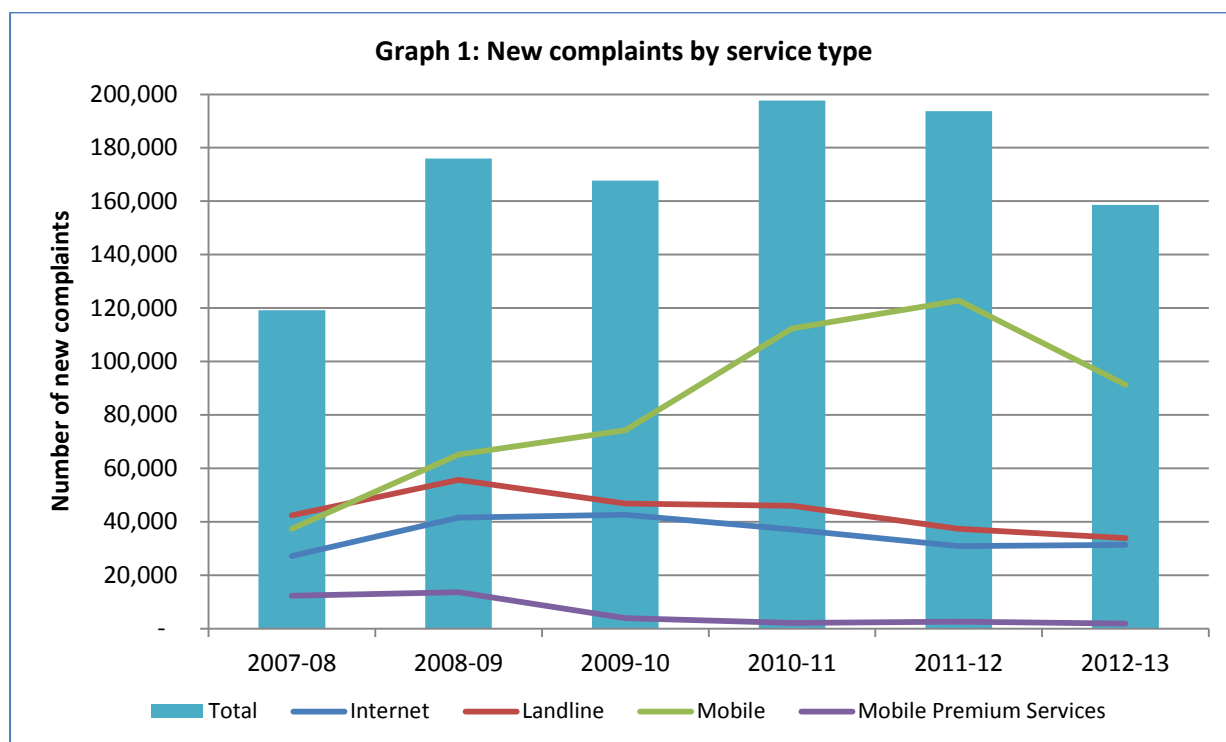
## Complaints to the TIO

### Overall trends for new complaints

When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO’s jurisdiction that the service provider has had an opportunity to consider, we record this as a ‘new complaint’.

The TIO recorded and handled 158,652 new complaints from small business and residential consumers in 2012-13. This compares with 167,772 new complaints recorded during 2009-10, 197,682 in 2010-11 and 193,702 in 2011-12. Over the first two quarters of 2013-14, we have recorded around 69,000 new complaints.

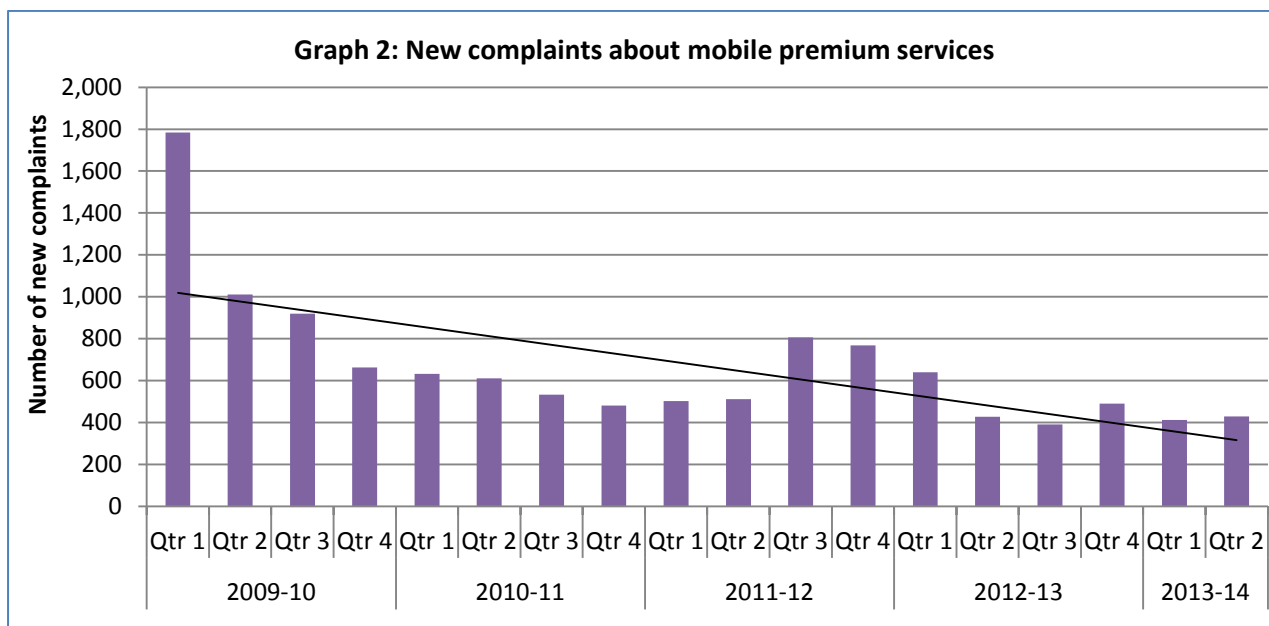
Graph 1 shows the breakdown of new complaints recorded by the TIO by service type – internet, landline, mobile and mobile premium services (MPS) – over the past six years.



### New complaints about mobile premium services

From a high of over 13,000 new complaints in 2008-09, we have seen a positive and substantial decrease in new complaints about MPS since 2009-10 when the predecessor of the current MPS Code was introduced. This decrease stabilised at around 2,000 new complaints over the past three financial years. Over the first two quarters of 2013-14, we have recorded around 800 new complaints about MPS.

Graph 2 illustrates the decreasing number of new complaints to the TIO about MPS since 1 July 2009 when the predecessor of the current MPS Code was introduced. This decrease has stabilised over the past five quarters, with an average of around 430 new complaints about MPS per quarter.

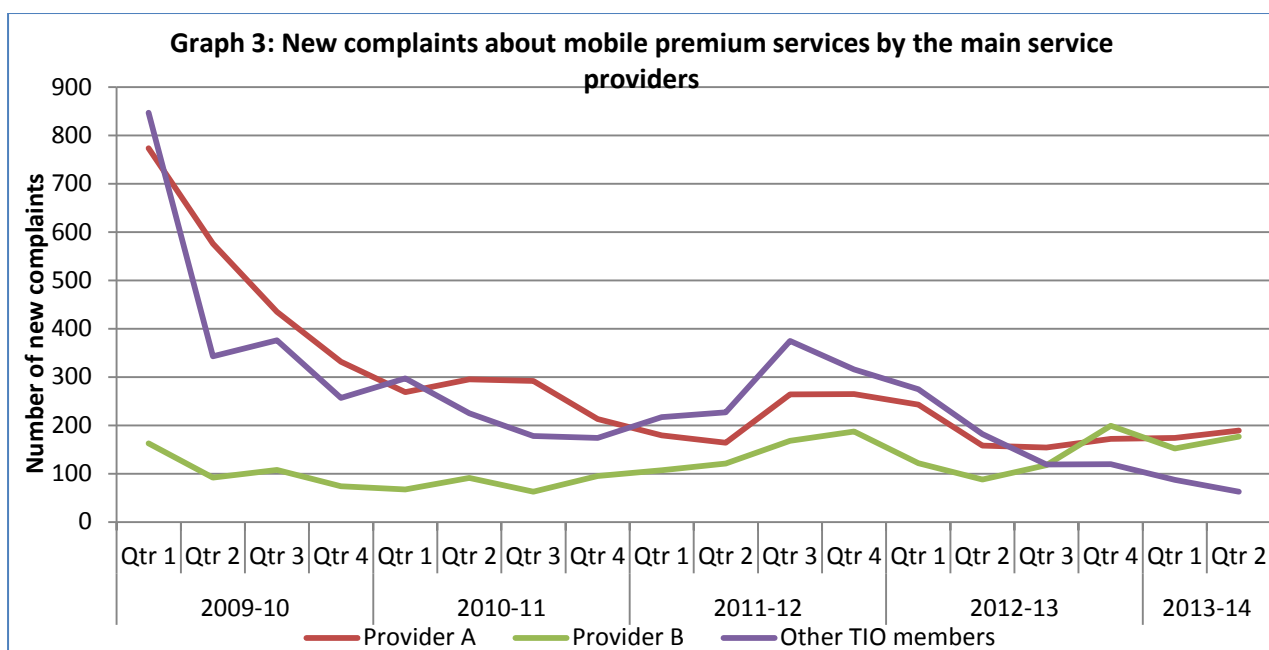


**MPS new complaints by service provider**

As highlighted above, we have seen a positive and substantial decrease in new complaints about MPS across the industry.

However, we have seen a recent increase – as indicated in Graph 3 – in MPS new complaints for two of the main service providers over the past five quarters, compared to a reducing trend for all other service providers. MPS new complaints for Provider A increased by around 19.6 per cent in Quarter 2 of 2013-14 compared to Quarter 2 of 2012-13, while Provider B’s MPS new complaints increased by around 101 per cent over this same period.

These two providers were each responsible for around 40 per cent of MPS new complaints to the TIO in the first two quarters of 2013-14.





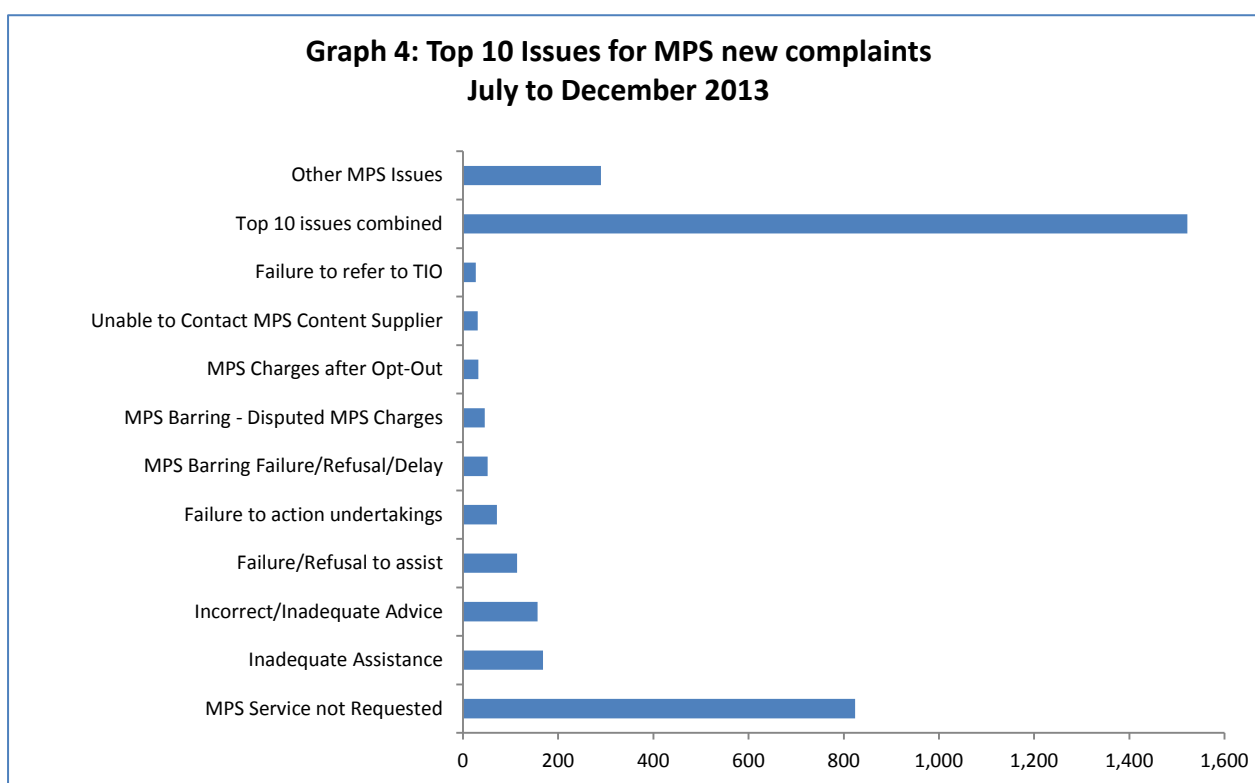
### Issues for MPS new complaints

The primary issue that consumers have continued to report to the TIO over the past five quarters remains disputed charges about MPS that consumers say they have not requested or consented to – forming around 43 per cent of all issues for MPS new complaints. This type of complaint issue has consistently remained the top issue – despite reducing volume of new complaints – about mobile premium services since 1 July 2009.

Other common complaint issues across the last five quarters relate to the alleged refusal or failure of carriage providers and content suppliers to:

- provide adequate assistance or advice to consumers about their MPS problems
- assist with resolving their MPS problems
- action the undertakings they make to resolve complaints, or
- apply MPS barring as requested.

Graph 4 illustrates the top 10 issues for MPS new complaints over the past two quarters (July to December 2013).



### Achievements of the MPS Code

Generally, new complaints about MPS remain much lower than they were before the implementation of the current MPS Code and the disputed amounts in question are much less.

Prior to the MPS Code being implemented it was very common for the TIO to receive complaints involving thousands of dollars in dispute relating to MPS. Recent MPS complaints involved only a few amounts over \$500 and for the most part, the amounts in dispute were less than \$200.

These outcomes, fewer complaints and disputed amounts that are substantially less, are two outcomes that, in our view, can be directly linked to the MPS Code, and the companion MPS Barring Determination.

MPS new complaints as a whole remain at comparatively low levels and we therefore do not recommend the introduction of a range of additional obligations in the MPS Code. However, certain aspects of the MPS Code would benefit from clarification, particularly around the role that service providers play in providing information about MPS services and resolving consumer complaints about MPS. These are set out below.

## **Areas for potential development of the MPS Code**

### **Complaint handling obligations of service providers**

Our analysis of MPS complaints in preparation for this submission indicates that some consumers are told by their service provider that MPS is not the provider's responsibility. Consumers reported being advised by their service provider that it was 'just passing the charges on' or to go to the content provider if they wanted a refund of the disputed MPS charges. These complaints were only resolved after the TIO became involved at conciliation.

Complaint examples 1 – 3 in the **Appendix** illustrate this issue.

These examples indicate front line practices by some service providers that are at odds with their obligations under the MPS Code. These practices are also contrary to the obligations of the Telecommunications Consumer Protections (TCP) Code, which apply to service providers in addition to the obligations in the MPS Code.

Content providers should assist consumers in certain circumstances. However, service providers are responsible for both ensuring and demonstrating the accuracy of their billing and for helping resolve their customers' complaints about MPS. For this reason service providers must play a more active role in the resolution of MPS complaints, rather than as a neutral third party that is passing on the content charges.

We suggest that clause 6.1.9(c)(i) of the MPS Code be improved to clearly define when a service provider is required to step in to resolve MPS complaints not resolved by the content supplier, including where the resolution offered by the content provider is not fair, or effective, or offered within a reasonable time.

We also suggest that consideration be given to providing additional clarification around complaint handling obligations in clause 6.1.9, to reflect those outlined in clause 8.2.1(a)(iv) of the TCP Code. This includes obligations to make sure staff are aware of potential remedies, tailor remedies to address the root cause and address individual circumstances, and fix errors in current bills, in addition to any charges that are the subject of complaint.

### **Point of sale information about MPS and opt-in requests**

Other sections of the MPS Code that may require clarification include the information provision and double opt-in rules.

As indicated above (see Graph 4), the primary issue that consumers have continued to report to the TIO remains disputed charges about MPS that consumers say they have not requested or consented to.

The ongoing nature of this issue suggests the information provided to some consumers is still not sufficient to ensure they truly understand MPS. The lack of awareness around MPS may in part be a result of providers not complying with the MPS point of sale information rules and opt-in rules.

Complaint examples 4 – 7 in the **Appendix** highlight a range of consumer experiences that indicate that consumers would benefit from clearer information about MPS, including about opt-in rules.

We therefore suggest that consideration be given in the MPS Code to clearer rules about information provision and opt-in requirements to assist consumers make active, informed decisions about MPS. This could be achieved, for example, by clarifying the responsibility of service providers to give appropriate information to consumers about matters such as what MPS are, the opt-in rules, how to monitor MPS expense and how to bar an MPS service (as recommended in our 2011 submission to the MPS Code review). Examples of circumstances where providing this information might be appropriate include:

- when a consumer first contracts for or renews a mobile service capable of receiving premium services, or requests the removal of MPS barring
- when a consumer is first billed for a premium service, or
- when a consumer first disputes an MPS charge.

There is also an opportunity to further increase the transparency of any MPS charges, for example by requiring that any MPS charges are clearly distinguished on a consumer's bill and that they provide sufficient information to enable a consumer to verify the accuracy of the charges.

In addition, we suggest that the MPS Code could include appropriate cross-references to the point of sale information rules listed in the MPS Barring Determination.

### **Compliance monitoring**

The current Industry Compliance Reporting obligations in the MPS Code are quite minimal when contrasted to the compliance monitoring framework in the TCP Code.

A number of the TIO case studies indicate ongoing, albeit very reduced, issues about sign-up, billing and complaint handling for these services that suggest compliance could be improved. This review provides an opportunity to assess the effectiveness of this reporting process, including against the more comprehensive approach taken in the TCP Code.

### **Suggestions for future proofing the MPS Code**

#### **Apps and in-app purchases**

The TIO has noted both consumers and service providers may find it difficult to distinguish between apps and MPS, including whether a third party charge is for a mobile application or for MPS content.

Service providers may also be uncertain about whether the MPS Code applies to an app complaint. The experiences of consumers with app related issues are similar to those reported by MPS users.

Complaint examples 8 – 10 in the **Appendix** demonstrate consumer and service provider experiences with apps and the similarities to MPS.

The review of the MPS Code provides an opportunity to consider its potential application to mobile apps and in-app purchases – where content providers pass on app or in-app charges via the consumers' mobile bills. This would afford consumers of mobile apps similar protections to users of MPS. This would also assist providers resolve complaints about mobile apps by clarifying the processes for this service.

### **MPS Barring**

In our October 2011 submission to the draft MPS Code we suggested aspects of the MPS Barring Determination could be codified into the MPS Code. Our view has not changed, and we believe providing a single, cohesive and standalone document on MPS issues would benefit both consumers and industry.

For example, it does not appear that service providers are consistently offering MPS barring to consumers at the point of sale, or within five days of the commencement of a service. We continue to receive complaints where service providers have denied that barring can be applied to a mobile service and subsequently a consumer has incurred MPS charges that they dispute. In our experience, if service providers are meeting the obligations of the MPS Barring Determination and offering barring at the point of sale, it would likely reduce complaints about disputed MPS charges even more significantly.

Complaint examples 11 – 13 in the **Appendix** illustrate some of the experiences by consumers and providers with MPS barring.

We suggest that consideration again be given to including key obligations of the MPS Barring Determination in the MPS Code, or alternatively, the MPS Code could include appropriate cross-references to the MPS Barring Determination rules.

## Appendix: MPS Complaint Examples

### Complaint handling practices of service providers

#### Example 1

Consumer A sought the TIO's assistance about a \$3 MPS charge that appeared on his bill each month and his service provider had not been able to fix. He claimed to have never requested MPS.

When the TIO provided referral to a senior level within the service provider, Consumer A claims he was given a \$20 credit and was told the issue was between him and the content supplier. He went to the content supplier's website where he input his phone number to cancel the subscription but the website said it did not recognise his number. He then attempted to call the content supplier, but despite several calls he had never been able to speak to anyone.

Consumer A tried to return to his service provider for assistance but once again it referred him to the content supplier rather than undertake to resolve the complaint itself.

After Consumer A returned to the TIO and we commenced conciliation, the provider offered a refund of all MPS charges incurred to date and to apply MPS barring on his service.

#### Example 2

Consumer B contacted his carriage provider to query why his last two bills were high and was told that \$143.88 of the charges were for an MPS subscription. Consumer B said that he had never heard of or signed up for the content service, and accordingly refused to pay the \$143.88.

Consumer B claims that his carriage provider told him that he would need to contact the content supplier. When he did this he was told by the content provider that he had given them authorisation to charge his account. Consumer B insisted that he had not done so.

The content supplier was unwilling to resolve the complaint so Consumer B contacted his carriage provider. He says his carriage provider would not assist either and instead referred him back to the content supplier.

Consumer B contacted the TIO because the \$143.88 has been referred by his carriage service provider to a debt collection agency. Consumer B has not contacted the TIO after referral to a senior level within the service provider.

#### Example 3

Consumer C wished to know why he was getting higher than expected bills and discovered he was being charged for MPS.

Consumer C told the TIO that when he called his service provider to complain he was told that 'the charges have nothing to do with us' and was given the number for a USA-based content provider. When he contacted the content provider it told him that it could not provide evidence he subscribed to MPS. He claims he then went back to his service provider who declined to refund him the amount in dispute.

When the TIO referred the complaint back to Consumer C's provider at Level 1, the provider only offered to waive \$205 of the disputed MPS (total in dispute was \$513.60). Consumer C was still receiving the disputed MPS despite having been told when he first complained to his provider that the unwanted MPS would be blocked.

When the TIO progressed the complaint for conciliation, the service provider responded with an offer to refund the disputed charges in full and to apply MPS barring.

#### Point of sale information and opt-in rules

##### Example 4

Consumer D says she received a message on WhatsApp (free messaging mobile application) on her mobile and that it said the following:

"Last 10 minutes left.

Would you like a free one year WhatsApp membership?

Type OK and send it SMS to SHORTCODE from your mobile phone.

WhatsApp Account: XXXXXXXXXX."

Consumer D says she followed these instructions but instead of re-subscribing her to WhatsApp (which she knew was free), she started being charged for her messages.

Consumer D contacted her carriage provider about these charges and asked for these charges to be stopped. It was then that she found out that she had been signed up to a quiz subscription by a content provider. Her carriage provider sent her a number to call the content provider, which she did. The content provider emailed the consumer and said they would refund her money but she did not hear from them again.

After referral to a senior level within the carriage provider by the TIO, the carriage provider offered to refund the premium charges and applied MPS barring.

##### Example 5

Consumer E sought the assistance of the TIO in relation to \$300 of MPS charges. She says that in July 2013 she entered an online trivia competition on her computer and was asked to enter her mobile number before competing (which she assumed was so she could be contacted if she won). Consumer E then proceeded to receive and answer the trivia questions by way of her computer.

According to Consumer E, the terms and conditions did mention mobile charges were applicable but she thought this did not apply to her because she was playing from a computer rather than a mobile handset. She then received various text messages. After sending STOP in July 2013 she claimed she received an opt-out confirmation message, but she said the MPS continued until August 2013. When she contacted her carriage provider to dispute the MPS charges, it advised her that 'they are just passing on the charges as the charges are not their charges'.

After referral to a senior level within her provider by the TIO, Consumer E returned with her complaint unresolved as her provider had asked her to deal with the content provider.

During the TIO conciliation, the provider offered to refund most of the disputed MPS charges, as it

had sent her the \$30 expenditure notifications. The provider also offered to apply MPS barring.

#### **Example 6**

Consumer F called her provider to query her higher than usual bills and discovered she was being charged over \$200 for MPS. Consumer F claims she never subscribed to the MPS, but that she did fill out some details online for her son's soccer club and this required her to enter her mobile number. Consumer F claims that after this she began to receive messages about a competition to win a car, but she never responded and deleted the messages as soon as they came.

Consumer F claims her carriage provider agreed to credit her \$119 but said she had to call the content providers herself for any further refunds. She claims that one content provider promised her a cheque and the other promised a 50% discount, but neither of these promises were followed through with. No explanations were provided by her carriage provider or content provider as to how she had been subscribed for the MPS.

After the TIO referred the consumer to a senior level within her carriage provider, her provider offered to unsubscribe her from all MPS, apply MPS barring and refund all MPS charges.

#### **Example 7**

Consumer G approached the TIO for assistance because he said he was being harassed by debt collectors about mobile service charges related to MPS fees that he could not afford.

Consumer G said his sole income is a disability pension. In addition to being signed up to a \$100 per month plan, he unwittingly signed up to a dating service without understanding it was MPS and would cause him to be charged \$800 in excess of his plan. Consumer G claimed the MPS charges were more than he could afford, and when he could not keep up the repayments his service was disconnected and contract termination fees applied. After this he was threatened with legal action, contacted 5-8 times per day by debt collectors and eventually default listed.

After the TIO progressed the complaint for conciliation, the service provider agreed to recall the debt from the debt collector, waive the outstanding charges and remove the default listing.

### **Mobile apps and in-app purchases**

#### **Example 8**

Consumer H contacted the TIO because every day he was being sent a text message with weather information at a cost of \$0.30 per message, and says that this had been going on for two months. Consumer H says he is almost 74 years old and only has the mobile for emergencies as he is very sick. He claims he never requested the weather messages.

Consumer H says his service provider told him to text STOP, but he says the weather message cannot be responded to and does not contain a phone number for him to text STOP. He also says his service

provider says the messages are his problem and it can't help him.

When the TIO progressed the case for conciliation, the provider's response states the messages are actually from an app that Consumer H has unwittingly downloaded, and the app can only be disabled by way of Consumer H's handset. Eventually the service provider was able to identify the app provider by way of its network wholesaler, who in turn was able to stop the unwanted messages. The service provider also provided a refund of Consumer H's disputed charges.

#### **Example 9**

Consumer I received a bill in January 2013 containing \$238 of MPS when all of her mobile services were supposed to be MPS barred. When she took her bill to the store of her service provider to dispute it Consumer I claimed she was told she had to contact the service provider by telephone instead, and she must request MPS barring again.

Consumer I says she continued to receive MPS and each month she would call her service provider to have the charges waived. Her provider issued her with a new phone number to see if that would stop the MPS, but they continued.

When the TIO progressed the complaint for conciliation, it was discovered the reason why barring was unsuccessful was because the content service was not MPS, but rather an app the consumer had accidentally downloaded. As a resolution to her complaint, Consumer I was allowed to cancel her contract without penalty (pending the return of her mobile handset). She was also sent a cheque for the disputed premium content charges she had paid.

#### **Example 10**

Consumer J disputed MPS charges on his account (which he obtained for his child) and agreed to a waiver of MPS charges and barring of future MPS as a resolution. Consumer J then came to the TIO because he has been billed for MPS again despite the barring.

During conciliation by the TIO, it was revealed that the new premium services charges had been purchased by way of a mobile app/proprietary network service supplied on all phones sold by the provider. As access to this premium content could not be barred by the service provider as per the consumer's request, the provider agreed to cancel Consumer J's mobile service contract without termination fees.

### **MPS barring**

#### **Example 11 (presented in the consumer's own words)**

"My son's phone number has been charged for content purchases through a 3rd party which he did not sign up for. Since day number 1, I have contacted my service provider to have these charges clarified and there is no-one that can or will assist me. One month I am told we can bar content purchases, which never happened because I was billed over and over again. The next time I was told I these were premium texts which were also barred against the number – that never fixed the



problem.

I am going around and around in circles, talking with supervisors and managers in store and also in the carriage provider's call centre and this has been going on since June 2013. My carriage provider has told me to contact the content provider who never answers their phone. I have left many, many messages and have only received 1 phone call back. They just told me to email the phone number affected and what charges are being disputed. I did just that, but the email bounced back!

I am so frustrated with the level of service I am offered and the lack of action taken to resolve this issue. I have taken the initiative of calling my service provider over and over again only to be given conflicting advice and information."

The consumer did not return to the TIO after referral to a senior level within his carriage provider in November 2013.

**Example 12 (presented in the consumer's own words)**

"My 13 year old disabled son's prepaid phone credit was disappearing rapidly, and he vehemently denied spending it, although he did say he had been getting some "junk" messages which he had deleted. I did not see these. I contacted my carriage provider three times over the issue, and received the assurance that while they could and had added a premium SMS bar to the phone (which I had requested and believed was in place when I first activated the phone) to prevent further credit being stolen this way, that I needed to contact the content provider directly to ask for a refund of the charges made for the MPS.

I called the content supplier and spoke with the representative (who was unable to give me a reference number), and explained the situation. After some 14 minutes, she offered a \$30 refund cheque "in good faith", asserting her company had been "providing a service" in the premium SMS messages, even though 3 or 4 had been received in the space of less than a minute with no time to respond."

The consumer did not return to the TIO after referral to a senior level within her carriage provider in July 2013.

**Example 13**

Consumer K contacted the TIO because he wished to have MPS barring applied to his service and his provider told him that it did not offer barring.

When the TIO progressed Consumer K's complaint to conciliation, the service provider responded that it could not stop access to MPS from its end. After the TIO provided information to the service provider's staff about the existence of the MPS Code and the MPS Barring Determination, MPS barring was applied in accordance with Consumer K's original request.