

ACIF

AUSTRALIAN COMMUNICATIONS INDUSTRY FORUM

INDUSTRY CODE

CUSTOMER TRANSFER



Industry Code –*Customer Transfer*

Two new clauses on the handling of complaints under this Code were issued in draft form for public comment in August 2001 for inclusion in this Code.

First published as ACIF G546: April 2001.
Second edition as ACIF C542: October 2001

ISBN 1 74000 154 0

© Copyright Australian Communications Industry Forum
PO Box 444, Milsons Point NSW 1565

Disclaimers

1. Notwithstanding anything contained in these Guidelines:
 - (a) ACIF disclaims responsibility (including where ACIF or any of its officers, employees, agents or contractors has been negligent) for any direct or indirect loss, damage, claim, or liability any person may incur as a result of any:
 - (i) reliance on or compliance with this Code;
 - (ii) inaccuracy or inappropriateness of this Code; or
 - (iii) inconsistency of this Code with any law; and
 - (b) ACIF disclaims responsibility (including where ACIF or any of its officers, employees, agents or contractors has been negligent) for ensuring compliance by any person with this Code.
2. The above disclaimers will not apply to the extent they are inconsistent with any relevant legislation.

Copyright

This document is copyright. You may reproduce it only as necessary for the purposes of you or your organisation considering or pursuing compliance with this Code. You must not alter or amend this Code.



EXPLANATORY STATEMENT

BACKGROUND

Deregulation of the telecommunications industry has allowed the introduction of new industry participants and provided residential and business consumers with greater choice. Consumers are now able to transfer one or more of their telecommunications services from one supplier to another. However, the increased ease with which a customer can transfer service(s) to another supplier has led to the use of selling practices by some industry participants which may result in the transfer occurring without the customer's full knowledge or consent.

Section 112 of the *Telecommunications Act 1997* outlines the intention of Parliament that the telecommunications industry develops industry codes relating to telecommunications activities. Section 113 specifically lists 'churning' (customer transfer) as an example of the matters that may be dealt with by the development of an industry code.

The development of a code to address industry practices to obtain the transfer of a customer's service(s) has also been given a high priority by the telecommunications industry, consumer groups and regulatory agencies, including the Australian Competition and Consumer Commission (ACCC), the Australian Communications Authority (ACA) and the Telecommunications Industry Ombudsman (TIO).

The Australian Communications Industry Forum (ACIF) commissioned a research report from the Communications Law Centre (CLC) (see References, Section 4), that identified the key issues in industry selling practices that had been raised by consumers, industry participants and regulators. Those issues include the following matters, which are addressed by this code:

- unsolicited transfer of service(s);
- intrusion;
- harassment and coercion;
- failure to accurately identify the supplier of service(s);
- failure to accurately identify the service(s) being sold;
- cooling off period (where applicable); and
- lack of informed consent.

The CLC report identified that the most pressing issue was the selling practices used in the context of the transfer of service(s). Therefore, the Code prescribes specific rules dealing with customer transfer.

Code rules cover the relevant steps in a supplier's transfer of a customer's service(s), including:

- the methods used to identify the customer as authorised to request the transfer;
- the transfer process itself including the conduct of the sales representative and ensuring the customer is fully informed of and consents to the transfer;
- the methods used to verify the transfer;
- the methods used to confirm the transfer and notify the customer;
- the cooling off period (where applicable); and



- the access to and retention of documentation.

Code rules are divided into two sections: general Code rules that apply in all selling environments and cover all the relevant steps in transferring a customer's service(s) and specific Code rules that apply to the selling environment in which the transfer was initiated.

The development of this Code has been facilitated by ACIF through a Working Committee comprised of representatives from the telecommunications industry, Government regulatory agencies, the TIO and consumer groups.

CURRENT REGULATORY ARRANGEMENTS

Selling practices are covered by both legislation and industry codes. The main laws affecting selling practices in telecommunications are the Commonwealth *Trade Practices Act 1974*, particularly Part IVA on Unconscionable Conduct and Part V on Consumer Protection, State door-to-door and fair trading legislation, State contracts review legislation and State consumer credit legislation.

The ACIF C531:1999 *Commercial Churn* Industry Code and the ACIF C521:2000 *Customer Information on Prices, Terms and Conditions* Industry Code cover aspects of selling practices by industry participants. There are also other relevant industry Codes (see References, Section 4). The Australian Direct Marketing Association's (ADMA) Code of Conduct is also relevant, to its members, when the customer transfer occurs as a result of direct marketing by the service provider.

WHY CURRENT REGULATORY ARRANGEMENTS ARE INADEQUATE

The current regulatory arrangements are fragmented and inconsistent between states, especially in regard to the different requirements of State door-to-door and fair trading legislation. This may result in confusion amongst service providers and consumers alike, and increase both the costs of compliance and the possibility of non-compliance by the industry.

Existing industry codes also do not cover all of the issues identified by the CLC Report or highlighted by the regulators. For example, the ACIF Code on commercial churn (see References, Section 4) covers the relationship between industry participants but not the relationship between a service provider and customer. While the ACIF Code on prices, terms and conditions (see References, Section 4) does provide for a customer to be informed of the service(s) being provided, it does not cover the issues of customer identification, service provider conduct, ensuring a customer's informed consent to a transfer, or the verification of the transfer. While the ADMA Code covers some of the issues highlighted in service provider selling practices, that Code applies only to ADMA members, which may not cover many industry participants.

HOW THE CODE BUILDS ON AND ENHANCES THE CURRENT REGULATORY ARRANGEMENTS

The Code establishes baseline rules for practical, fair trading practices to protect consumers against the unauthorised transfer or attempted transfer of their telecommunications service(s) from one service provider to another.

The Code rules rely, at times, on state fair trading and door-to-door legislation as it exists in different states. The Code does, however, build on existing regulatory arrangements by providing a minimum set of standards to ensure that all transfers of a customer from one service provider to another in the telecommunications industry occur after authorisation has been obtained by



appropriate means and with the customer's informed consent. Minimum standards are also set requiring suppliers to put in place appropriate verification procedures and to take steps to confirm, document and notify the customer of the transfer.

The Code rules ensure that all industry participants will have clear standards to follow when transferring a customer's service(s) from one provider to another. Customers will also have a consistent set of minimum standards of behaviour that they can expect from all industry participants when they transfer service(s).

WHAT THE CODE WILL ACCOMPLISH - OBJECTIVES

This Code seeks to minimise the incidence of the improper transfer of a customer from one service provider to another without the customer's full knowledge and consent. This in turn will increase consumer confidence in the telecommunications industry and potentially result in greater fluidity in the market as customers have more faith in the transfer process.

Code compliance will, among other things, ensure that:

- sales representatives are appropriately trained prior to soliciting transfers;
- steps are followed to identify the authorised customer;
- an appropriate verification process is in place; and
- customers are duly notified of the transfer.

The Code applies in all selling environments but should have particular impact in those selling channels that have been identified as problem areas such as door-to-door, community selling and telephone soliciting. Specific rules have been developed for each key selling channel to supplement the general rules that apply across all selling channels. The Code will offer protection to consumers transferring fixed, mobile and data service(s) in all channels.

HOW THE OBJECTIVES WILL BE ACHIEVED

The Code rules set out the minimum requirements that service providers must adopt when transferring the service(s) of a customer and include the following:

- **Identification of the Authorised Customer.** Code rules ensure that service providers take steps to ensure that the customer with whom they are dealing has the authority to transfer the service(s).
- **Customer Transfer Process.** Code rules set out standards of conduct to ensure that customers are not harassed or coerced into agreeing to a transfer of service(s); that in all sales environments the sales approach is appropriate, and that the customer is informed of all relevant information on the transfer of the service(s) so as to have given informed consent to the transfer.
- **Verification.** Code rules ensure that a sample of the transfer requests are verified by a process that is independent of the process undertaken by the original sales representative.

Although the Code places obligations on a supplier, it is recognised that agents of suppliers carry out much of the selling activities. However, the general law of agency may make suppliers responsible for the activities of dealers and agents. In addition the Code places special obligations on suppliers for the training and conduct of their agents.

Upon registration of the Code by the ACA, it will become possible for the ACA to direct any member of the industry, whether a signatory or not, to comply with the Code. ACIF will monitor Code signatories' performance against the Code and will require any Code signatory whose compliance appears to be inadequate to address any problems or difficulties. This will be in accordance with the ACIF *Code Administration and Compliance Scheme*.



The Code will be reviewed within twelve months of its registration by the ACIF.

ANTICIPATED BENEFITS TO CUSTOMERS

The Code, by providing industry participants with a minimum set of standards for the protection of consumers against the unauthorised transfer or attempted transfer of their service(s) from one service provider to another, will both encourage and enforce improved industry practices. Other anticipated benefits to consumers resulting from industry compliance with the Code include:

- customers will be better informed about the service(s) which they may transfer;
- customers can expect appropriate service provider behaviour in the conduct of the transfer; and
- customers will have access to a service provider's auditable records of the transfer.

The Code itself will also provide customers with information on the practices they should expect in the marketplace for the transfer of telecommunications services. This will provide customers with a higher level of confidence in the industry.

ANTICIPATED BENEFITS TO INDUSTRY

Improved performance in regard to customer transfer will have both market and operational benefits as a consequence of this Code, as follows:

- reduction of incidents of invalid customer transfers;
- higher levels of customer satisfaction, with implications for industry participants' market share;
- fewer customer complaints about customer transfer matters, resulting in lower costs; and
- greater certainty regarding the minimum level of standard expected in the customer transfer process.

From a regulatory standpoint, the Code will provide a basis for improved performance by service providers in relation to customer transfer such that there will be less cause for intervention by the TIO and the regulators.

ANTICIPATED COSTS TO INDUSTRY

It is expected that industry participants will incur initial and ongoing costs in relation to compliance with this Code.

Compliance with the Code in many cases will require existing service providers to modify their customer transfer policies and operating practices. The processes associated with customer transfer are highlighted, including staff education, training, and the need to build the necessary functionality into customer transfer processes and systems.

Ewan Brown

Chairman

CCRP/WC6 – *Customer Transfer* Working Committee



TABLE OF CONTENTS

<u>EXPLANATORY STATEMENT</u>	<u>i</u>
<u>BACKGROUND</u>	<u>i</u>
<u>CURRENT REGULATORY ARRANGEMENTS</u>	<u>ii</u>
<u>WHY CURRENT REGULATORY ARRANGEMENTS ARE INADEQUATE</u>	<u>ii</u>
<u>HOW THE CODE BUILDS ON AND ENHANCES THE CURRENT REGULATORY ARRANGEMENTS</u>	<u>ii</u>
<u>WHAT THE CODE WILL ACCOMPLISH - OBJECTIVES</u>	<u>iii</u>
<u>HOW THE OBJECTIVES WILL BE ACHIEVED</u>	<u>iii</u>
<u>ANTICIPATED BENEFITS TO CUSTOMERS</u>	<u>iv</u>
<u>ANTICIPATED BENEFITS TO INDUSTRY</u>	<u>iv</u>
<u>ANTICIPATED COSTS TO INDUSTRY</u>	<u>iv</u>
<u>1. INTRODUCTION AND REGISTRATION WITH ACA</u>	<u>1</u>
<u>1.1. Introduction</u>	<u>1</u>
<u>1.2. Registration with ACA</u>	<u>1</u>
<u>2. SCOPE AND OBJECTIVES</u>	<u>2</u>
<u>2.1 Scope</u>	<u>2</u>
<u>2.2 Objectives</u>	<u>2</u>
<u>3. PARTICIPANTS</u>	<u>3</u>
<u>4. REFERENCES</u>	<u>5</u>
<u>5. DEFINITIONS AND ABBREVIATIONS</u>	<u>7</u>
<u>6. CUSTOMER TRANSFER – GENERAL RULES</u>	<u>9</u>
<u>6.1 Application of General Rules</u>	<u>9</u>
<u>6.2 Authorised Customer Identification</u>	<u>9</u>
<u>6.3 Informed Consent</u>	<u>9</u>
<u>6.4 Disclosure of Information</u>	<u>10</u>
<u>6.5 General Conduct.</u>	<u>10</u>
<u>6.6 Cooling off periods</u>	<u>11</u>



INDUSTRY CODE

6.7	Confirmation	11
6.8	Verification	11
6.9	Notification	12
6.10	Retention of Records.	12
6.11	Customer Access To Information	12
7.	CUSTOMER TRANSFER – CHANNEL SPECIFIC RULES	13
7.1	Application of these Rules	13
7.2	Door to Door Sales	13
7.3	Telemarketing	14
7.4	ELECTRONIC DATA COMMUNICATIONS	15
8.	CODE ADMINISTRATION AND COMPLIANCE	17



1. INTRODUCTION AND REGISTRATION WITH ACA

1.1. Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* sets out the intention of the Commonwealth Parliament that bodies and associations in the telecommunications industry develop industry codes relating to the telecommunications activities of those bodies.
- 1.1.2 The development of this Code has been facilitated by the Australian Communications Industry Forum (ACIF) through a Working Committee comprised of representatives from the telecommunications industry, Government regulatory agencies, the Telecommunications Industry Ombudsman and consumer groups.
- 1.1.3 This Code covers Supplier processes involved in the Transfer of a Customer's Telecommunications Service(s) from one Supplier to another.
- 1.1.4 This Code should be read in the context of other relevant Codes and Guidelines, including the ACIF C531: 1999 **Commercial Churn** Industry Code, ACIF C540: 1999 **Local Number Portability** Industry Code, ACIF G562: 2000 **Electronic Customer Authorisation** Industry Guideline, ACIF C523: 1999 **Protection of Personal Information of Customers of Telecommunications Providers** Industry Code, ACIF C515: 1998 **Preselection – Single Basket/Multi Service Deliverer** Industry Code; and ACIF G521: 2000 **Customer Information on Prices, Terms and Conditions** Industry Guideline.
- 1.1.5 This Code should be read in conjunction with related legislation, including:
 - the *Telecommunications Act 1997*;
 - the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
 - the *Trade Practices Act 1974*; and
 - State and Territory legislation on Fair Trading and Door to Door Selling.
- 1.1.6 If there is a conflict between the requirements of this Code and any requirements imposed on a Supplier by statute, the Supplier will not be in breach of this Code by complying with the requirements of the statute.
- 1.1.7 Statements in boxed text are a guide to interpretation only and not binding as Code rules.

1.2. Registration with ACA

- 1.2.1 This Code is registered with the Australian Communications Authority pursuant to section 117 of the *Telecommunication Act 1997* (Cth).



2. SCOPE AND OBJECTIVES

2.1 Scope

2.1.1 This Code is applicable to the following sections of the telecommunications industry under section 110 of the *Telecommunications Act 1997*. They are collectively referred to as “Suppliers”:

- (a) Carriers; and
- (b) Carriage Service Providers.

Notes: Carriage Service Providers include Internet Service Providers

2.1.2 This Code deals with the Transfer of Telecommunications Service(s) in relation to telecommunications activities by Suppliers, as defined in Section 109 of the *Telecommunications Act 1997*, including the following:

- (a) carrying on business as a Carrier; or
- (b) carrying on business activities as a Carriage Service Provider; or
- (c) supplying Goods or Service(s) for use in connection with the supply of a Listed Carriage Service.

2.2 Objectives

2.2.1 The objectives of this Code are to minimise the incidence of, and provide protection to, consumers against the unauthorised Transfer of their Telecommunications Service(s) from one Supplier to another by establishing procedures for Suppliers to:

- (a) identify the Authorised Customer;
- (b) inform Customers of all relevant terms and conditions of the Transfer and Supplier contact details;
- (c) ensure appropriate conduct of Suppliers’ Sales Representatives;
- (d) confirm the components of the Transfer to the Customer;
- (e) Verify the Transfer through independent means;
- (f) Notify the Customer of the completion of the Transfer;
- (g) maintain records of the Transfer process; and
- (h) provide Customer access to Supplier’s records of the Transfer.



3. PARTICIPANTS

The group that developed this Industry Code consisted of the following organisations and their representatives:

Name	Organisation
Ewan Brown (Chair Person)	Small Enterprise Telecommunications Centre Limited
Xavier Shea (Deputy Chair)	AAPT
Ian Somerville (Scribe)	Telstra
Gary Goldsworthy/Jane van Beelen,	Telstra
Carolyn Bartsch / Joe Havloujian	Telstra
Pat McCarthy	Pacific Access
Cameron Sojan/ Andrew Dreghorn	Cable & Wireless Optus
Keith Wiggins/Phil Silva	PSI Pacific Pty Ltd
Helen Campbell/Teresa Corbin	Consumers' Telecommunication Network
Mina Clonardis/Robert Hartkopf	Primus Telecom
Jamie Potter	CPM
Mathew Deighton	Redfern Legal Centre
Pat McNamara	Small Enterprise Telecommunications Centre Limited
Peter Sutton	Australian Communications Authority (ACA)
Shane Adams / Catherine Dermody	Australian Competition and Consumer Commission
John Pinnock/ Alex Buchanan	Telecommunications Industry Ombudsman

Holly Raiche of ACIF supplied project management support.





4. REFERENCES

The following publications have been used as reference documents in this Code:

- (a) Communications Law Centre, *Research Project Report: Consumer Experiences with Selling Practices*, August 1999
- (b) *Door To Door Sales: Interim Code of Conduct*, 1 November 1999, prepared by AAPT, Cable & Wireless Optus and Primus Telecom
- (c) *Telecommunications Act 1997* (Cth)
- (d) *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)
- (e) *Trade Practices Act 1974* (Cth)
- (f) State and Territory Fair Trading legislation and State and Territory Door to Door Trading legislation
- (g) *Disability Discrimination Act 1992* (Cth)
- (h) *Racial Discrimination Act 1975* (Cth)
- (i) ACIF C515: 1998 *Preselection – Single Basket/Multi Service Deliverer* Industry Code
- (j) ACIF C523: 1999 *Protection of Personal Information of Customers of Telecommunications Providers* Industry Code
- (k) ACIF C531: 1999 *Commercial Churn* Industry Code
- (l) ACIF C540: 1999 *Local Number Portability* Industry Code
- (m) ACIF C521: 2000 *Customer Information on Prices, Terms and Conditions* Industry Code
- (n) ACIF G562: 2000 *Electronic Customer Authorisation* – Industry Guideline
- (o) ACIF C570: 2001 *Mobile Number Portability* Industry Code
- (p) Australian Direct Marketing Association, *Direct Marketing Code of Practice*, February 2000
- (q) Department of the Treasury, *Building Consumer Sovereignty in Electronic Commerce: A Best Practice Model for Business*, May 2000.





5. DEFINITIONS AND ABBREVIATIONS

In this Code, the following words have the meanings as documented below, unless a contrary intention is stated in the text of the Code:

ACA means the Australian Communications Authority.

ACIF means the Australian Communications Industry Forum.

Act means the *Telecommunications Act 1997* (Cth).

Authorised Customer means a Customer who:

- (a) has a contract with a Supplier for access to a Telecommunications Service(s); and
- (b) has the authority through that contract to authorise the Transfer of all or part of that Service(s) to another Supplier.

Authorised Representative means the person who is legally authorised by the Authorised Customer to act on behalf of the Authorised Customer on a bona fide matter concerning the Transfer from one Supplier to another. Wherever the term Authorised Customer is used in the Code, the term Authorised Representative can also be read.

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

Carriage Service Provider has the meaning given by section 87 of the Act.

Carrier has the meaning given by section 7 of the Act.

Customer means any contactee including an actual or potential Customer, only in relation to a Telecommunications Service(s) for a residential or small business purpose, and does not include another Supplier acquiring a Telecommunications Service(s) in its capacity as a Carriage Service Provider for the purpose of resale.

Door to Door Selling means a mode of selling, offer or negotiation to Transfer a Telecommunications Service(s) where conducted face to face at the place of residence or employment of a Customer, but excludes where there has been an unsolicited request by a Customer to a Supplier to enter into negotiations for supply of Telecommunications Service(s) at the place of residence, employment or business of the Customer.

Gaining Supplier means the Supplier to which Telecommunications Service(s) are to be Transferred.

Informed Consent means as defined in Clause 6.3.2.

Listed Carriage Service means as defined in section 16 of the Act.

Notification means the process whereby the completion of the Transfer is advised to the Authorised Customer.

Point of Sale means the point at which the Sales Representative obtains Informed Consent.

Retail Outlets covers any outlets selling Telecommunications Goods and Service(s). Retail Outlets include:

- (a) branded and general shops;
- (b) booths in public places;
- (c) community centres;
- (d) exhibitions and shows; and



INDUSTRY CODE

(e) any other approaches to Customers in public places.

Sales Representative means a person employed or contracted, directly or indirectly by a Supplier, for the purpose of selling or offering to sell Telecommunications Service(s).

Supplier means a Carrier or Carriage Service Provider.

Telecommunications Good means a good supplied for use in connection with a Listed Carriage Service.

Telecommunications Service means

- (a) a Listed Carriage Service; or
- (b) a service(s) supplied in connection with a Listed Carriage Service.

Telemarketing means a mode of sale, offer or negotiation solicited via inbound or outbound voice telephone calls, whether or not the Authorised Customer and the Sales Representative have an existing relationship.

Transfer means the transfer of all or part of a Customer's Telecommunications Service(s) from one Supplier to the Gaining Supplier as specified by the Authorised Customer. This includes Local Number Portability, Inbound Number Portability, Preselection, Unconditioned Local Loop Service, Commercial Churn, Local Call Resale and Mobile Number Portability.

Verification means the process whereby the Authorised Customer's request to Transfer their Telecommunications Service(s) to another Supplier is checked with the Customer by a person or procedure independent of the Sales Representative who obtained the Transfer, prior to the implementation of the Transfer.



6. CUSTOMER TRANSFER – GENERAL RULES

The following general rules seek to ensure that the Gaining Supplier's Transfer of a Customer's Telecommunications Service(s) is an authorised Transfer. An authorised Transfer occurs when all of the following components are satisfied:

- (a) the Authorised Customer is identified;
- (b) the details of the Transfer are checked with the Customer;
- (c) the Authorised Customer has given Informed Consent to the Transfer;
- (d) any applicable cooling off period has elapsed and the Authorised Customer has not rescinded his or her consent; and
- (e) the applicable process of Verification has taken place.

6.1 Application of General Rules

6.1.1 The general rules apply in each of the selling channels including:

- (a) Door to Door;
- (b) Telemarketing;
- (c) Retail Outlets;
- (d) Electronic Data Communications; and
- (e) direct mail.

6.1.2 For additional rules relating to specific selling channels, see Section 7 of this Code.

6.2 Authorised Customer Identification

6.2.1 A Gaining Supplier must take all reasonable steps to ensure that the person who authorises the Transfer is the Authorised Customer.

Example:

For residential Customers, ask if the Customer is the person whose name appears on the telephone bill.

In the case of a small business, the following procedures are recommended to identify the Authorised Customer within that business:

- *seek to identify the name and position of the person within the business who has responsibility for dealing with telecommunications matters;*
- *ascertain whether that person has the authority to authorise a change in one or more Telecommunications Service(s) for the business; and*
- *communicate with that person in order to authorise the Transfer of Service.*

6.3 Informed Consent

6.3.1 A Gaining Supplier must take all reasonable steps to ensure that the Authorised Customer gives Informed Consent to the Transfer.

6.3.2 Informed Consent occurs when:

- (a) the Supplier informs the Authorised Customer:
 - i. that the Authorised Customer is Transferring a Telecommunications Service(s) from their existing Supplier to the Gaining Supplier;
 - ii. which Telecommunications Service(s) is being transferred;



- iii. the terms and conditions of the Transfer;
 - iv. the identity of the Gaining Supplier;
 - v. the relevant terms and conditions relating to any Telecommunications Good or Goods purchased for the express use in conjunction with the relevant Telecommunications Service(s) being Transferred;
 - vi. that there may be consequences from the Transfer arising from their existing Telecommunications Service(s) contract, and that it is the Customer's responsibility to check the terms and conditions of any existing contracts relevant to the Service(s) being Transferred; and
- (b) the Authorised Customer has conveyed agreement to the Transfer and relevant terms and conditions applicable to this Transfer.

6.3.3 A Gaining Supplier must create and retain a record of the Authorised Customer's consent to the Transfer.

6.4 Disclosure of Information

- 6.4.1 A Gaining Supplier must, at the Point of Sale, make available at least the following information to the Authorised Customer:
- (a) the contact details of the Supplier;
 - (b) the appropriate contact details for lodging an inquiry or a complaint about any aspects of the Transfer;
 - (c) that they will be notified within ten Business Days of the Transfer taking place; and
 - (d) the mechanism by which the Customer can ascertain that the Transfer has occurred.

6.5 General Conduct.

- 6.5.1 A Supplier must ensure that its Sales Representatives:
- (a) present the Supplier's Service(s) in a clear, truthful and honest manner without exaggeration;
 - (b) maintain strict confidentiality; and

Example: A Sales Representative should not tell a Customer that a specific person or persons have already decided to change their Supplier without that person's prior express consent.

- (c) do not mislead or misrepresent the Supplier's affiliation with any other Suppliers.

6.5.2 A Supplier must ensure that its Sales Representatives do not:

- (a) harass or coerce a Customer; or
- (b) engage in unconscionable conduct.

Example: taking advantage of a person who does not appear to understand the information provided due to illness, disability, age, non - proficiency in the language used by the Sales Representative or because they are under the influence of intoxicants.

6.5.3 A Supplier must ensure that its Sales Representatives do not solicit orders in inappropriate places.

Example: on street corners, in public buildings, in or outside places of worship.

6.5.4 A Supplier must ensure its Sales Representatives receive induction and training prior to soliciting Transfers. This training must include relevant



areas of Trade Practices and Fair Trading /door to door legislation, and this Code.

- 6.5.5 A Supplier must ensure its training materials are current, complete, accurate and available to its Sales Representatives.
- 6.5.6 A Supplier must ensure that its Sales Representatives, if referring to another Supplier's Telecommunications Service(s):
 - (a) do not mislead Customers in any form or manner;
 - (b) refer to a public document source and a valid date of such document;
 - (c) inform the Customer that although this is the reference made, this may vary, dependant on the contract or terms of the relationship between the Customer and Supplier; and
 - (d) refer only to comparisons that are relevant to the Transfer being made or attempted.

6.6 Cooling off periods

- 6.6.1 A Gaining Supplier must ensure that the Customer has been given all information regarding any cooling off period and rights of cancellation, if applicable, under any legislation relevant to the sales channel being utilised.

6.7 Confirmation

- 6.7.1 A Gaining Supplier must, at the Point of Sale, check the accuracy of the details of the Transfer with the Customer. The details must include:
 - (a) the name and address of the Authorised Customer;
 - (b) the Telecommunications Service(s) and related number(s) to be Transferred;
 - (c) the identity of the Gaining Supplier who will supply the Telecommunications Service(s); and
 - (d) the fact that the Telecommunications Service(s) will be Transferred.
- 6.7.2 In the case of Door to Door and Retail Outlet selling channels, a Supplier must ensure that its Sales Representatives provide to the Customer a summary record of the Transfer including the details in 6.7.1.

6.8 Verification

- 6.8.1 A Supplier must ensure that it has appropriate procedures for the Verification of a Transfer or a sample of Transfers in all selling channels where the Customer contact with the Supplier or the Sales Representative was solicited by the Supplier or the Sales Representative. Where a Customer invites a Sales Representative to visit but that invitation arises from a communication initiated by the Supplier or Sales Representative, then the visit by the Sales Representative shall be regarded as unsolicited by the Customer.

Example: Selling channels where the Customer contact with the Supplier or Sales representative is not solicited by the Supplier or the Sales Representative include Retail Outlets, Direct Mail and Telemarketing, where the customer initiates contact with the Supplier. If a Supplier or Sales Representative telephones a Customer and makes an appointment for a Sales Representative to visit the Customer, then that visit shall be considered to be unsolicited by the Customer.

- 6.8.2 The proportion of Transfers Verified must be related to the level of unauthorised Customer Transfer complaints in a statistically significant



manner and relate to the number of internal complaints received by the Supplier.

Where Suppliers are experiencing apparently high levels of unauthorised Transfers, a greater number of Transfers should be Verified. Where a Supplier experiences high or increasing levels of unauthorised Transfers in a particular selling environment, a higher proportion of Transfers should be Verified in that selling environment.

- 6.8.3 A Supplier must ensure that its methods to check the person who authorises the Transfer are not in breach of the relevant legislation.

Example: The *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975*.

6.9 Notification

- 6.9.1 A Gaining Supplier(s) must issue advice to the Authorised Customer of the completion of the Transfer within ten (10) Business Days of the Transfer. The advice will include the identity of the billing organisation, if different to the Gaining Supplier.

6.10 Retention of Records.

- 6.10.1 A Gaining Supplier must create and retain records, which are auditable, for a minimum of two (2) years, or as required by legislation, in relation to:
- (a) establishing that the person who authorises the Transfer is the Authorised Customer;
 - (b) establishing that the Transfer is authorised in accordance with the relevant Code rules; and
 - (c) establishing that Notification has occurred.

6.11 Customer Access To Information

- 6.11.1 A Gaining Supplier must make available, on request by the Authorised Customer, any material relevant to the contract for the Telecommunications Service(s).
- 6.11.2 A Supplier must ensure that an Authorised Customer has access to the record, either electronic or written, of the Authorised Customer's request to Transfer their Telecommunications Service(s).
- 6.11.3 A Supplier must provide its records relevant to the Transfer, either in electronic or written form, to the Authorised Customer or with the Customer's consent, to a nominated party, in a format that is clear, unambiguous and easily understood.



7. CUSTOMER TRANSFER – CHANNEL SPECIFIC RULES

7.1 Application of these Rules

- 7.1.1 The general rules in Section 6 apply in each of the selling channels covered by Clause 6.1.1 and must be read in conjunction with the rules in this Section. The rules in this Section are in addition to the rules in Section 6. These rules apply only to the selling channel in which the Transfer of Telecommunications Service(s) was initiated.

7.2 Door to Door Sales

- 7.2.1 **Identification of Authorised Customer:** To establish that the Sales Representative is dealing with the Authorised Customer, a Supplier must ensure that its Sales Representatives take the following steps:
- (a) request the Customer shows a recent telephone bill, relating to the Telecommunications Service(s) to be Transferred; or
 - (b) where the Customer does not supply a recent telephone bill, request the Customer provides another form of identification.

Example: Driver's licence, birth certificate, other photographic identification or Australian Business name/number.

- 7.2.2 **Disclosure of Information:** The Gaining Supplier must ensure that the notice of the right to rescind the contract supplied to the Customer is in the prescribed form as required by any applicable legislation.
- 7.2.3 The Gaining Supplier must ensure that the contract for the Transfer of Telecommunications Service(s) complies with the requirements of any relevant legislation.
- 7.2.4 **Failure to comply with legal requirements:** If the Gaining Supplier fails to comply with the relevant legislation the Authorised Customer may rescind the contract, within the time specified in any applicable legislation, without charge, except as may be allowed under applicable legislation.
- 7.2.5 Where the supply of the Telecommunications Service(s) is rescinded due to failure to comply with any applicable legislation, the Gaining Supplier must, if required by legislation, return or refund to the Customer any money paid and restore the Telecommunications Service(s).
- 7.2.6 **Sales Conduct:** A Supplier must ensure that its Sales Representatives:
- (a) identify themselves and the Supplier they represent and indicate the purpose for making the visit;
 - (b) maintain strict confidentiality; and
 - (c) leave a Customer's premises immediately upon request.
- 7.2.7 A Supplier must ensure that its Sales Representatives do not solicit orders in inappropriate places.

Example: in nursing homes and residential care facilities, unless prior consent is obtained from appropriately authorised persons.



- 7.2.8 **Cooling-off period:** Before the expiration of the cooling off period the Authorised Customer may rescind the contract without having to give the Gaining Supplier reasons beyond any required by legislation.
- 7.2.9 The Gaining Supplier must not complete the Transfer prior to the expiration of the cooling-off period, except as may be allowed under applicable legislation.
- 7.2.10 If the contract is cancelled within the cooling off period, a Supplier must not seek or knowingly retain payment for Telecommunications Service(s) supplied under that contract except as may be allowed under legislation.
- 7.2.11 A Supplier must not accept a waiver of the cooling off period by the Authorised Customer, except as may be allowed under relevant legislation.
- 7.2.12 **Verification:** A Gaining Supplier must not seek to use the means of Verification to preclude the application of the Door to Door Code rules.

Example: A Supplier cannot assert that a Door to Door cooling off period does not apply because the sale is Verified by telephone.

7.3 Telemarketing

- 7.3.1 **Disclosure of Information:** A Supplier must ensure that, at the earliest opportunity in an outbound telemarketing call, the Sales Representative provides the following information to the Customer and repeats it if the Customer at any time requests:
 - (a) the contact name of the person making the telephone call;
 - (b) the business that the Sales Representative represents; and
 - (c) the purpose of the telephone call.
- 7.3.2 A Supplier must ensure that where the purpose of a call is to elicit a Transfer, its Sales Representative does not represent that they are undertaking market research or offering a product for free if it is not the case.
- 7.3.3 A Supplier must ensure that its Sales Representative provides their name and contact details for the Supplier, including a telephone number, to Customers who request such information.
- 7.3.4 A Supplier must ensure that the Sales Representative receives the Customer's verbal consent to record the conversation or gives the Customer the opportunity to opt out of recording.
- 7.3.5 **General Conduct:** A Supplier must ensure that all unsolicited telephone calls to a Customer are not made on gazetted public holidays in the place where the call is received.
- 7.3.6 **Recording Voice Authorisation to Transfer the Customer's Service(s):** A Supplier must ensure that the scripting and recording provides a Customer with the opportunity to accept or decline the Sales Representative's offer.
- 7.3.7 If the authorisation for the Transfer is documented by the Supplier at the Point of Sale, a Supplier must collect the information in a form that is secure, relevant, comprehensible and accessible.
- 7.3.8 A Supplier must ensure that its Sales Representative records the Customer's voice authorisation to Transfer their Service(s). The recording must include:



- (a) the Customer's name
- (b) the Customer's consent to Transfer;
- (c) the Customer's acknowledgment that, by this recording, the Transfer is authorised;
- (d) the Telecommunications Service(s) being Transferred; and
- (e) the name of the Gaining Supplier.

7.3.9 **Documentation and Suppliers' Retention of Records:** A Supplier must ensure that, if it seeks to rely upon an electronic authorisation, it is able to show that it has complied with any applicable legal requirements in relation to disclosure to the Customer of the terms and conditions of the relevant Transfer.

7.3.10 **Customer Access to Records:** A Gaining Supplier must be able to, within a reasonable time, provide a copy of the actual voice recording, or be prepared to play back the actual voice recording, to the requesting Customer or, with the Customer's consent, to a nominated party.

***Example:** The following will be taken into account in determining if the time taken is reasonable: how long ago the recording was made, the age and accessibility of the recording and whether there is a dispute regarding the Transfer.*

7.4 ELECTRONIC DATA COMMUNICATIONS

- 7.4.1 **Scope:** This channel covers solicited and unsolicited offers to Transfer Telecommunications Service(s) via electronic messaging services such as email and Short Message Services (SMS), website offers, and offers via facsimiles and online telemarketing.
- 7.4.2 A Supplier must only send offers to Transfer Telecommunications Service(s) via electronic messaging (such as email and SMS) to people:
- (a) with whom they have an existing relationship; or
 - (b) who have elected to receive offers via this form of electronic messaging.
- 7.4.3 A Supplier must provide simple procedures which enable Customers to discontinue receiving offers to Transfer Telecommunications Service(s) via electronic messaging.
- 7.4.4 **Informed Consent:** A Supplier must ensure that the Customer can view all relevant terms and conditions of the Telecommunications Service(s) on the website and that the website is accessible. The terms and conditions must be written in plain English.
- 7.4.5 A Supplier must ensure that all relevant terms and conditions of the Telecommunications Service(s) can be downloaded.



INDUSTRY CODE

- 7.4.6 A Supplier must ensure that the website makes it clear to the Customer the distinction between browsing and making a Transfer commitment.
- 7.4.7 **Disclosure of Information:** If Transfer is available via a website, a help contact telephone number for assistance must be featured on the website and the hours of business when help is available must be stated.
- 7.4.8 Where email is used by a Customer to effect a Transfer, a Supplier must provide the Customer with options as to the format in which the terms and conditions are supplied.

Example: A Supplier should ensure that the website contains a “print” prompt or a recommendation to encourage the Customer to produce a record of the Transfer transaction.



8. CODE ADMINISTRATION AND COMPLIANCE

- 8.1.1 Under ACIF's Code signatory arrangements, signatories to the *Customer Transfer* Industry Code are subject to ACIF's Code Administration and Compliance Scheme (August 2001). Accordingly, all signatories who are bound by this Code are also bound by the Scheme.
- 8.1.2 Review of this Code will be conducted by ACIF 12 months after registration by the ACA, and every two years subsequently
- 8.1.3 Power of the Telecommunications Industry Ombudsman to handle complaints under this Code

Under section 114 of the *Telecommunications Act 1997* and, subject to consent by the Telecommunications Industry Ombudsman, this Code confers on the Telecommunications Industry Ombudsman the functions and powers of:

- (a) receiving;
- (b) investigating;
- (c) facilitating the resolution of;
- (d) making determinations in relation to;
- (e) giving directions in relation to; and
- (f) reporting on

complaints made by the end users of carriage services about matters arising under or in relation to this Code, including compliance with the Code by those industry participants to whom this Code applies.

- 8.1.4 Power to handle industry complaints under this Code

Complaints may be made under this Code to ACIF about a contravention of this Code by a Signatory to this Code:

- (a) by a member of the industry (or coalition of consumer representatives) (an "**Industry Complaint**"); or
- (b) by referral from the ACA of an Industry Complaint under the power granted to the ACA in section 514 of the *Telecommunications Act 1997*, subject to ACIF's agreement to accept the referral. Without limiting the grounds on which ACIF may withhold its agreement to accept a referral, ACIF may withhold its agreement where it considers that the complaint can be more conveniently dealt with in another forum or that handling the complaint may impose an unreasonable cost burden on ACIF.

ACIF must handle complaints under (a) or (b) in accordance with the provisions of the ACIF G514:2001 **Code Administration and Compliance Scheme**.



INDUSTRY CODE

The Australian Communications Industry Forum Ltd (ACIF) is a communications self-regulatory body established in 1997 by the industry to manage communications self-regulation within Australia.

The primary role of ACIF is to develop and administer Standards, Industry Codes and industry support services that promote both the long-term interest of end-users and the efficiency and international competitiveness of the Australian communications industry.

ACIF is an industry initiative, funded and resourced by the industry, with a membership that encompasses all industry sectors. ACIF comprises a Board, Advisory Assembly, Executive, six standing Reference Panels and a number of task-specific Working Committees.

Standards and Industry Codes are prepared by Working Committees made up of experts from industry, consumer, government, and other bodies. The requirements or recommendations contained in ACIF's published documents are a consensus of views of representative interests and also take into account comments received from other sources.



Care should be taken to ensure that material used is from the current version of the Standard or Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact ACIF.



Published by:

**THE AUSTRALIAN COMMUNICATIONS
INDUSTRY FORUM LTD**

Level 9, 32 Walker Street
North Sydney NSW 2060

Correspondence: PO Box 444
Milsons Point NSW 1565

Telephone: (02) 9959 9111
Facsimile: (02) 9954 6136

E-mail: acif@acif.org.au

Web Site: <http://www.acif.org.au/>

