

# Draft R1



**DRAFT**

**INDUSTRY STANDARD**

**SHORT MESSAGE SERVICE (SMS) ISSUES**

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**\* NOTE**

**Replacement pages will be circulated for any amendment issued.**

## 1. Introduction

- 1.1 Text Messaging or Short Message Service (SMS) in Papua New Guinea has grown over the years since the liberalization of the ICT market, especially the mobile sector. The development of text messaging has resulted in the emergence of a number of concerns regarding the delivery of unsolicited messages including marketing messages via SMS.
- 1.2 National Information and Communications Technology Authority (NICTA) is mandated under the National Information and Communications Technology Act, 2009 (the Act) among others, to provide appropriate community safeguards for the end users in relation to any ICT activities and to ensure that ICT services of social importance are supplied as efficiently and economically as practicable and supplied at performance standard that reasonably meet social, industry and commercial needs of the people.
- 1.3 Under Section 213 (e) of the Act, NICTA has a 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.
- 1.4 This Industry Standard instrument is developed pursuant to section 226 (2)(b) of the Act to provide appropriate safeguards for the end users of services which support the reception of SMS messages.
- 1.5 The standards cover the Short Message (SMS) rules relating to the delivery of Marketing Messages to mobile telephone customers.
- 1.6 This standard should be read in conjunction with related legislation, including:
  - NICT Act, 2009;
  - NICT Radio Spectrum Regulation
  - NICTA Consumer Protection Rule;
  - NICTA Sim Card Regulation;
  - PNG Cybercrime Policy; and
  - Other relevant legislation.
- 1.7 If there is a conflict between the requirements of this Standard and any requirements imposed on a Supplier by statute, the Supplier shall not be in breach of this Standard by complying with the requirements of the statute.

## 2. SCOPE AND OBJECTIVES

### 2.1 Scope

2.1.1 This Standard applies to the following organisations

- (a) ICT Licensees; and
- (b) Network Service Providers.

These organisations are collectively referred to in this Standard as “Suppliers”.

2.1.2 The Standard covers the delivery of SMS which relate to the following ICT activities of Suppliers:

- (a) carrying on business as a ICT licensee;
- (b) carrying on business as a Network Service Provider; and
- (c) supplying goods or services for use in connection with the supply of a listed network service.

### 2.2 Objectives

2.2.1 The principal objective of this Standard is to ensure that, as far as practicable, end users of services which support the reception of SMS messages do not receive unsolicited SMS.

2.2.2 The objectives of this Standard include:

- (a) moderation of the impact of unsolicited SMS on end-users;
- (b) reduction of complaints by mobile phone users;
- (c) fostering an environment where SMS is recognized as a legitimate and safe commercial medium;
- (d) providing principles to guide the use of future technologies such as automated Marketing Messages via SMS to mobile telephones for marketing purposes.

## 3. DEFINITIONS AND ABBREVIATIONS

For the purposes of this Industry Standard unless contrary appears, the definitions and abbreviations provided hereunder are the definitions provided in the Act.

**Act** means the NICT Act 2009.

**Network Service Provider** means provider of Network Services.

**Network Service** has the meaning given in the Act

**MMA** means **Mobile Marketing Association**

**Marketing Message (MM)** means a Message sent via SMS that is designed to promote the sale of or demand for goods or services whether or not it invites or solicits a response from the Recipient.

*This may include messages from charities or political organisations or other non profit entities.*

**Message** means text or binary content generated from either a mobile telephone or customer application such as a web site, call/contact centre or PC terminal, and received by a mobile telephone or customer application.

**Message Originator** means a person or entity that has a specific commercial arrangement with a Supplier to send Messages via SMS but excludes Suppliers and end users of the mobile network.

**Recipient** means a person who receives a SMS, either intentionally or unintentionally.

**Recognised Identifier** means a symbol, series of characters or text that identifies the Message Originator or Supplier. The Recognised Identifier

(a) may be located either within the body of the Message or in the source field address; and

(b) can be either a combination of letters and/or numbers or the telephone number

that identifies the Message Originator or Supplier, or provides the Recipient with a means of contacting the Message Originator or Supplier in order to know the identity of the Message Originator or Supplier and to opt out of receiving further SMS.

**Service Related Message** means a Message originated by a Supplier and destined for one or more of its customers, relating to the service(s) that are currently being provided to those customers by that Supplier.

*For example, network related messages (eg, network outages and service faults, etc), emergency situations, and billing or feature related messages that are provided to the customer by that Supplier.*

**SMS** means Short Message Service and refers to the ability to send and receive messages to and from a customer's mobile telephone.

**Supplier** means an ICT Licensee or Network Service Provider.

## **4. SHORT MESSAGE SERVICE**

Suppliers use SMS as an advertising means to inform and advise customers of the different types of promotional services available. It is also important that customers are safeguarded from unnecessary or unsolicited SMS as Marketing Messages that continue to be a nuisance to customers.

### **4.1 Sending of Marketing Messages**

#### **4.1.1 Prohibition of Marketing Messages**

A Supplier must not send its Marketing Messages to Recipients unless:

- (a) the Recipient has requested the Marketing Message;
- (b) the Recipient has provided the Supplier with prior consent to send such Marketing Messages.

#### **4.1.2 Recipient's Right to Opt-out**

A Supplier must implement an appropriate means of allowing the Recipient to notify the Supplier not to send further Marketing Messages to the Recipient. The means must be:

- (a) easy to use by the Recipient;
- (b) minimise any inconvenience; and
- (c) be provided at low no cost to the Recipient.

#### **4.1.3 Compliance with Opt-out Notices**

A Supplier must comply as soon as practicable with any notice it receives under Clause 4.1.2 and not send further Marketing Messages to the Recipient the Supplier fills requirement of Clause 4.1.1.

#### **4.1.4 Frequency of the Marketing Message**

Recipients who wish to receive marketing message are required to be provided by the Suppliers an option on how often a marketing message should be received. For ease of convenience, when a new SIM and or mobile is being bought and registered, the customer must be advised amongst others the frequency of MM during registration.

### **4.2 SMS Guideline**

4.2.1 A Supplier which supplies SMS services for Message Originators for commercial/marketing purposes must :

- (a) provide a copy of its SMS Guideline to each Message Originator; and
- (b) inform each Message Originator that, unless it complies with the SMS Guideline, the Supplier may be required under this Standard to withdraw supply of its SMS services. .

### **4.3 Sending of Marketing Messages**

4.3.1 Marketing messages may not be timed to be delivered between 19:00 and 06:00 hours, unless explicitly agreed to by the Recipient, or unless delivery during this period forms part of the upfront description of the service.

4.3.2 Message alerting or notifying of an emergency related to health, fire or security are exempt from the restriction in Clause 4.3.1.

#### **4.4 Identification of Spam**

4.4.1 Any Marketing Message is considered unsolicited or mobile spam unless;

- (a) the recipient has given consent to receive or has requested the message;
- (b) the recipient has had a direct and recent prior commercial relationship with the message originator and the recipient contact details were obtained in a clear and transparent manner.

#### **4.5 Sending of multiple message to a subscriber**

4.5.1 Supplier shall desist from repetitively or continuously sending message to a subscriber encouraging directly or indirectly the subscriber to call or send a message to a premium rate number unless has fulfilled requirements in clause 4.1.

#### **4.6 Reminder Message**

4.6.1 Each supplier shall send a reminder to all its subscription service(s) customers informing them of the service subscribed to, the tariff associated with the service, the identity of the respective supplier and how to unsubscribe from the service.

4.6.2 The message sent in relation to 4.6.1 shall be sent within 30 days of the initial subscription message and thereafter, once every calendar month.

#### **4.7 Message Delivery**

4.7.1 Delivery of SMS advertisement message should be consistent with the MMA Global Code of Conduct.

#### **4.8 Power to Handle Industry Complaints under this Standard**

Complaints may be made under this Standard to NICTA Consumer Affairs branch regarding the contravention of this Standard by a Supplier.

#### **4.9 Bulk SMS advertisement by Message Originators**

Message originators must seek consent from the consumers to send bulk advertising messages to their phones.

### **5. Enforcement**

5.1 Where NICTA establishes that a supplier has contravened provision of these standards, NICTA shall undertake enforcement proceedings against the supplier based on the provisions of the NICTA enforcement regime and commensurate to the significance of the violation.

### **6. Standard Review**

6.1 Review of this Standard will be conducted 12 months after the registration of this standard on NICTA public register and subsequently every two years.