



## Direction under subsection 121(1) of the *Telecommunications Act 1997*

TO: SpinTel Pty Ltd (ACN 082 087 689)

OF: Suite 601, Level 6, 50 York Street,  
Sydney, NSW 2000 Australia.

### DIRECTION

I, Cathy Rainsford, delegate of the ACMA, hereby direct SpinTel Pty Ltd (**SpinTel**) to comply with clause 4.1.2(b) of the *Telecommunications Consumer Protections Code* (C628:2019) (the **TCP Code**) under subsection 121(1) of the Act *Telecommunications Act 1997* (the **Act**).

### Background

Following an investigation, a delegate of the Australian Communications and Media Authority (the **ACMA**) found that SpinTel Pty Ltd has contravened clause 4.1.2(b) of the TCP Code by using the term 'unlimited' in an unqualified manner when referring to usage for its SIM Only Mobile Plans when the service was not genuinely unlimited.

The investigation followed a complaint the ACMA received in February 2022, about the manner in which SpinTel used the term 'unlimited' in its advertising of a SIM Only Mobile Plan, and information SpinTel provided to the ACMA in March 2022, in response to the ACMA's enquiries about the complaint.

The following direction relates to the contravention of the TCP Code identified during the ACMA's investigation.

### TCP Code requirements around advertising

Chapter 4.1 of the TCP Code sets out certain requirements that suppliers must adhere to when advertising their services to customers

Clause 4.1.2 sets out a range of proscribed advertising content and associated practices. Relevantly, clause 4.1.2(b) provides that a supplier must not engage in selling practices (i.e. advertising) that use the term 'unlimited', or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network.

### Details of the contraventions

1. The TCP Code is an industry code registered by the ACMA under Part 6 of the Act. As a carriage service provider (**CSP**), within the meaning of section 7 of the Act, SpinTel is also a supplier to which the TCP Code applies.
2. The ACMA has investigated SpinTel's compliance with clause 4.1.2(b) of the TCP Code.
3. The advertising material for SpinTel's SIM Only Mobile Plans accessed by the ACMA on 20 April 2022 (**the Advertising Material**) states that the plans include 'Unlimited calls/texts' for each of the

five listed plans. The Advertising Material did not contain any qualifications or exclusions in relation to the use of the term 'unlimited' for any of the five listed SIM-only plans.

4. SpinTel advised that, in accordance with its Acceptable Use Policy, a customer on a SIM-Only Mobile Plan is automatically suspended from making outbound calls for the duration of the billing month, where their usage of the service is 20 times the average use of SpinTel's mobile customer base for the last 30 days.
5. The ACMA is satisfied that SpinTel's Acceptable Use Policy on 20 April 2022 listed exclusions which were not identified in the Advertising Material, with the result that SpinTel's SIM Only Mobile Plans were not genuinely unlimited and not subject to exclusions.
6. Accordingly, the ACMA is satisfied that SpinTel contravened clause 4.1.2(b) of the TCP Code on 20 April 2022 when it used the term 'unlimited' in an unqualified manner in its Advertising Material when referring to call usage.
7. Further details about the contravention are set out in the investigation report provided with this Direction.

#### **Requirement to comply with this Direction**

Under subsection 121(2) of the Act, SpinTel must comply with a direction under subsection 121(1) of that Act. If SpinTel does not comply with this direction, the ACMA may issue an infringement notice relating to the contravention (subsection 572E(1) of the Act) or apply to the Federal Court for an order that SpinTel pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (see subsection 121(4) and subsection 571(1) of the Act).

#### **Reconsideration of a decision**

If SpinTel is dissatisfied with the decision to give this direction, it may seek reconsideration of the decision by the ACMA under subsection 558(1) of the Act by making an application in writing to the ACMA, which sets out the reasons for the application. Any such application must be made within 28 days after the date on which this notice of decision is given to SpinTel (unless the ACMA extends this period), and be addressed to the person whose contact details are included below. There is no application fee.

If SpinTel requests reconsideration of the ACMA's decision to give this direction, the ACMA will reconsider its decision, taking into account any further submissions made by SpinTel. The ACMA must affirm, vary or revoke its decision to give this direction (see subsection 559(1) of the Act). The ACMA must make a decision in response to an application under subsection 558(1) of the Act within 90 days after receiving the application.

If SpinTel applies for a reconsideration decision under subsection 558(1) of the Act and is dissatisfied with the ACMA's decision on the reconsideration, subject to the *Administrative Appeals Tribunal Act 1975* (the **AAT Act**), SpinTel may apply to the Administrative Appeals Tribunal for review of the decision on that reconsideration. If not already provided, SpinTel may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the AAT Act. Any such request should be made within 28 days of the reconsideration decision and addressed to the person whose contact details are included below.

#### **Making a complaint**

Any complaint about the way the ACMA handled this matter may be directed to the person whose details are provided below.

A complaint may also be made to the Commonwealth Ombudsman (the Ombudsman usually prefers that any concerns are raised with the ACMA first). There is an office of the Commonwealth

Ombudsman in each capital city. Further information may be obtained at [www.ombudsman.gov.au](http://www.ombudsman.gov.au) or call 1300 362 072.

**Contacting the ACMA**

Should you require further information, please contact:

Peter Sutton  
Manager  
Telecommunications Compliance and Enforcement Section  
PO Box 13112 Law Courts  
Melbourne, VIC 8010  
Ph: (03) 9963 6950  
Email: [peter.sutton@acma.gov.au](mailto:peter.sutton@acma.gov.au)

This 15 day of June 2022



Cathy Rainsford  
General Manager  
Content and Consumer Division  
Delegate of the Australian Communications and Media Authority