



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

TO: GigaComm Pty Ltd (ACN 630 583 998)  
OF: Suite 2  
2 Meaden Street  
Southbank VIC 3006

### DIRECTION

I, Cathy Rainsford, delegate of the Australian Communications and Media Authority (**the ACMA**) under subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) hereby direct GigaComm Pty Ltd (ACN 630 583 998) (**GigaComm**) to comply with clause 10.4 of the Telecommunications Consumer Protections Code (C628:2019) (**the TCP Code**).

### Background

Following an investigation, a delegate of the ACMA found that GigaComm has contravened clause 10.4 of the TCP Code by failing to lodge an annual compliance attestation statement with Communications Compliance (**CommCom**) in the manner set out in clause 10.4 and at the times set out in clause 10.8 and failed to take the actions set out in clause 10.4.1 to enable that outcome.

### TCP Code requirements around providing annual compliance attestation to CommCom

Under clause 10.4 of the TCP Code, a supplier must provide to CommCom prescribed statements regarding Code compliance in the manner set out in clause 10.4 and at the times set out in clause 10.8 and must take the actions set out in clause 10.4.1 to enable that outcome.

### 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, GigaComm is also a supplier to which the TCP Code applies.
2. The ACMA has investigated GigaComm's compliance with clause 10.4 of the TCP Code, which states that a supplier must provide to CommCom prescribed statements regarding Code compliance in the manner set out in clause 10.4 and at the times set out in clause 10.8 and must take the actions set out in clause 10.4.1 to enable that outcome.
3. Specifically, clause 10.4.1(a) of the TCP Code states that a supplier must provide to CommCom a compliance attestation which has been endorsed by the chief executive

officer or a senior manager of the supplier, by the date each year specified in clause 10.8.1 and in the form required by CommCom.

4. A supplier that has one or more customers on 1 April each year is required to provide the statements prescribed in clause 10.4.1 to CommCom by the relevant date under clause 10.8.1 of the TCP Code.
5. The ACMA is satisfied that GigaComm had one or more customers on 1 April 2021, but nevertheless failed to provide a compliance attestation form for the 2022 period to CommCom.
6. Accordingly, the ACMA is satisfied that GigaComm contravened clause 10.4 of the TCP Code by not providing the compliance attestation statement in accordance with the timing requirements in clause 10.8.1 as required by clause 10.4.1(a) of the TCP Code.

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

Under subsection 121(2) of the Act, GigaComm must comply with a direction under subsection 121(1) of that Act. If GigaComm 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 GigaComm pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (subsection 121(4) and section 570 of the Act).

### **Reconsideration of a decision**

If GigaComm 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 GigaComm (unless the ACMA extends this period) and be addressed to the person whose contact details are included below. There is no application fee.

If GigaComm 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 GigaComm. 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 GigaComm applies for a reconsideration of the ACMA's 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* (AAT Act), GigaComm may apply to the Administrative Appeals Tribunal for review of the decision on that reconsideration. If not already provided, GigaComm 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 30 day of March 2023



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

