



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

TO: Netbay Internet Pty Ltd (ACN 093981321)

OF: Suite 105 991 Whitehorse Rd
BOX HILL VIC 3128

Attention: Mr Keith Lam, Director

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Netbay Internet Pty Ltd (ACN 093981321) (**Netbay Internet**), has contravened the *Telecommunications Consumer Protections Code (C628:2012)* (**the TCP Code**) as described below;

HEREBY direct Netbay Internet, under subsection 121(1) of *the Telecommunications Act 1997* (**the Act**) to comply with the TCP Code.

Details of the contraventions

1. The ACMA has investigated Netbay Internet's compliance with clauses 9.3.1(a) and 9.4.1(a) of the TCP Code. As a carriage service provider, Netbay Internet is a participant in the section of the telecommunications industry to which the TCP Code applies.
2. The ACMA is satisfied that Netbay Internet contravened clause 9.3.1(a) of the TCP Code which requires that a supplier provide a Customer Information Compliance Statement to Communications Compliance annually (with the first such Customer Information Compliance Statement to be provided to Communications Compliance within seven months of the registration of the TCP Code). The ACMA is satisfied that Netbay Internet is a supplier, as defined in the TCP Code and had not submitted a Customer Information Compliance Statement as at 1 April 2014.
3. The ACMA is satisfied that Netbay Internet contravened clause 9.4.1(a) of the TCP Code which requires that a supplier provide a Compliance Attestation to Communications Compliance, which has been endorsed by the chief executive officer or a senior manager of the supplier, annually (following an initial attestation within seven months of the registration of the TCP Code). The ACMA is satisfied that Netbay Internet had not submitted an annual Compliance Attestation as at 1 April 2014.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, Netbay Internet must comply with a direction under subsection 121(1) of the Act.

If Netbay Internet does not comply with this Direction, the ACMA may apply to the Federal Court for an order that Netbay Internet 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

Under subsection 558(1) of the Act, Netbay Internet may apply to the ACMA for the ACMA to reconsider the decision to direct Netbay Internet to comply with the TCP Code. The application must be submitted in writing to the ACMA and must set out the reasons for the application (subsection 558(2) of the Act). The application must be made within 28 days after Netbay Internet is informed of the decision (subsection 558(3) of the Act).

If Netbay Internet is dissatisfied with the ACMA's decision on reconsideration, it may:

- (a) subject to the *Administrative Appeals Tribunal Act 1975* (the **AAT Act**), apply to the Administrative Appeals Tribunal for review of the reconsideration decision, and
- (b) request a statement under section 28 of the AAT Act in relation to that decision.



Signature

Jennifer McNeill
General Manager
Content, Consumer and Citizen Division
Delegate of the Australian Communications and Media Authority

27 August 2014