



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

TO: The Trustee for M & E Alchi Family Trust

OF: Suite 101, 304-318 The Kingsway Way, CARINGBAH, NSW 2229

Attention: Mr Mark Alchi, Managing Director

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that The Trustee for M & E Alchi Family Trust (ABN: 428 4272 1401) (**the Trustee**), has contravened the *Telecommunications Consumer Protections Code (C628:2012)* (**the TCP Code**) as described below;

HEREBY direct the Trustee, 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 the Trustee, who operates a business known as Business Class Telecom (**BCT**), to assess its compliance with clauses 4.3, 7.2, 7.3, 7.4 and 7.8 of the TCP Code. As a carriage service provider, the Trustee is a participant in the section of the telecommunications industry to which the TCP Code applies.
2. The ACMA is satisfied that the Trustee contravened clause 4.3.6 of the TCP Code which requires a supplier to advise consumers that calls are being recorded. The ACMA is satisfied that the Trustee failed to comply with this requirement on 22 occasions between 9 October 2013 and 4 December 2013.
3. The ACMA is satisfied that the Trustee contravened clause 7.2.1(a) of the TCP Code which requires a supplier to take reasonable steps to ensure that the consumer has consented to the transfer. The ACMA is satisfied that the Trustee failed to comply with this requirement on eight occasions between 9 October 2013 and 4 December 2013.
4. The ACMA is satisfied that the Trustee contravened clause 7.3.1(b) of the TCP Code which requires a supplier to ensure that the consumer was informed of the details of the service being transferred prior to initiating the transfer. The ACMA is satisfied that the Trustee failed to comply with this requirement on one occasion on 31 October 2013.
5. The ACMA is satisfied that the Trustee contravened clause 7.3.1(c) of the TCP Code which requires the supplier to ensure that the consumer is informed of the identity of the gaining supplier before initiating the transfer. The ACMA is satisfied that the Trustee failed to comply with this requirement on eight occasions between 9 October 2013 and 4 December 2013.

6. The ACMA is satisfied that the Trustee contravened clause 7.3.1(d) of the TCP Code which requires a supplier to ensure that the customer was informed about whether there would be an interruption to the telecommunications service as a result of the transfer process. The ACMA is satisfied that the Trustee failed to comply with this requirement on 27 occasions between 9 October 2013 and 4 December 2013.
7. The ACMA is satisfied that the Trustee contravened clause 7.3.1(g) of the TCP Code which requires a supplier to inform its customers that they may have to pay a penalty or cancellation fee to their existing supplier. The ACMA is satisfied that the Trustee failed to comply with this requirement on 27 occasions between 9 October 2013 and 4 December 2013.
8. The ACMA is satisfied that the Trustee contravened clause 7.4.1(a)(ii) of the TCP Code which requires a supplier to use reasonable efforts to notify consumers of the completion of the transfer on the day it occurred, or, if completion of the transfer relied on a third party, on the day the Trustee was advised that it had occurred. The ACMA is satisfied that the Trustee failed to comply with this requirement on 27 occasions between 9 October 2013 and 4 December 2013.
9. The ACMA is satisfied that the Trustee contravened clause 7.4.1(a)(iv) of the TCP Code which requires the supplier to make available information about the mechanism by which the consumer can ascertain that the transfer has occurred. The ACMA is satisfied that the Trustee failed to comply with this requirement on 27 occasions between 9 October 2013 and 4 December 2013.
10. The ACMA is satisfied that the Trustee contravened clause 7.4.1(b)(ii) of the TCP Code which requires a supplier to check with the consumer the accuracy of the service details and number to be transferred. The ACMA is satisfied that the Trustee failed to comply with this requirement on one occasion on 31 October 2013.
11. The ACMA is satisfied that the Trustee contravened clause 7.8.1 of the TCP Code which requires a supplier to create and retain auditable records establishing the transfer was undertaken in accordance with chapter 7 of the TCP Code on one occasion.

Requirement to comply with this Direction

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

If the Trustee does not comply with this direction, the ACMA may apply to the Federal Court for an order that the Trustee 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, the Trustee may apply to the ACMA for the ACMA to reconsider the decision to direct the Trustee 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 the Trustee is informed of the decision (subsection 558(3) of the Act).

If the Trustee 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 November 2014