



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

TO: Tele-Talk Pty Ltd

OF: Unit 39, 26 MacPherson Street, WARRIEWOOD, NSW 2102

Attention: Mr Pulkit Gupta, Director

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Tele-Talk Pty Ltd (ACN: 169 434 655) (**Tele-Talk**), has contravened the *Telecommunications Consumer Protections Code (C628:2012)* (**the TCP Code**) as described below;

HEREBY direct Tele-Talk, 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 Tele-Talk to assess its compliance with clauses 4.1, 4.3, 7.2, 7.3, 7.4, 7.6 and 7.8 of the TCP Code. As a carriage service provider, Tele-Talk is a participant in the section of the telecommunications industry to which the TCP Code applies.
2. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 4.1.1 of the TCP Code, which requires a Supplier to communicate its Offers in a way that is clear, accurate and not misleading.
3. The ACMA is satisfied that between 1 July and 30 September 2014 Tele-Talk contravened clause 4.3.1 of the TCP Code, which requires a Supplier to ensure its Sales Representatives promote and sell its Telecommunications Products in a fair and accurate manner.
4. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 4.3.2 of the TCP Code, which requires a Supplier to provide information about its products in a comprehensible and truthful manner, without exaggeration or omission of key information that is reasonably likely to be important to that Consumer in reaching a purchasing decision in the circumstances.
5. The ACMA is satisfied that between 1 July and 30 September 2014 Tele-Talk contravened clause 4.3.3 of the TCP Code, which relevantly requires a Supplier to interact with Consumers in a fair and accurate manner.
6. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 4.3.4 of the TCP Code, which requires a Supplier to obtain the

Consumer's consent in a fair and accurate manner before the Consumer enters into a Customer Contract with the Supplier.

7. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 4.3.5 of the TCP Code, which requires a Supplier to ensure communications with Consumers about Transfers are carried out in a fair and accurate manner, to allow a Consumer to make an informed choice about whether to undertake a Transfer to that Supplier or take up a Supplier's Offer.
8. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 4.3.6 of the TCP Code, which requires a Supplier to inform a Consumer if the Supplier is recording a phone call between the Supplier and the Consumer.
9. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 7.2 of the TCP Code, which requires a Gaining Supplier to use reasonable endeavours to ensure that the Consumer is only the subject of a Transfer by a Gaining Supplier if the Consumer has consented to the Transfer.
10. The ACMA is satisfied that on 15 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 7.3.1(a) of the TCP Code, which requires a Gaining Supplier to inform the Consumer that they are entering into a new Customer Contract by agreeing to a Transfer.
11. The ACMA is satisfied that on 18 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 7.3.1(d) of the TCP Code, which requires a Gaining Supplier to ensure that the Customer is informed about whether there will be an interruption to the Telecommunications Service as a result of the transfer process.
12. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 7.3.1(g) of the TCP Code, which requires a Gaining Supplier to inform the Consumer that if the Telecommunications Service is Transferred, the Consumer may have to pay a penalty or cancellation fee to their existing Supplier, and that there may be consequences if they are ending their existing Customer Contract with another Supplier early.
13. The ACMA is satisfied that on 19 occasions between 5 September and 23 September 2014 Tele-Talk contravened clause 7.4.1(a)(ii), of the TCP Code, which requires a Gaining Supplier to inform Consumers at the time a Transfer is proposed that it will use reasonable efforts to notify the Consumer of the completion of the Transfer on the day it occurs, or, if completion of the transfer relied on a third party, on the day the Gaining Supplier is advised that it has occurred.
14. The ACMA is satisfied that on three occasions during 2014 Tele-Talk contravened clause 7.8.1 of the TCP Code, which requires a Gaining Supplier to create and retain for 2 years following completion of a Transfer auditable records establishing the Transfer was undertaken and advised to the Customer in accordance with Chapter 7 of the TCP Code.

Requirement to comply with this Direction

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

If Tele-Talk does not comply with this direction, the ACMA may apply to the Federal Court for an order that Tele-Talk 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, Tele-Talk may apply to the ACMA for the ACMA to reconsider the decision to give Tele-Talk a direction to comply under section 121 of the Act. 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 Tele-Talk is informed of the decision, unless the ACMA extends the period for making the application (subsection 558(3) of the Act).

If upon reconsideration the decision is affirmed or varied and Tele-Talk is dissatisfied with that decision, 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.

(Section 562 of the Act).



Signature

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

1 June 2015