



Direction to comply with industry code

(Subsection 121(1) of the *Telecommunications Act 1997*)

TO: AO Australia Online Pty Ltd
ACN: 092 296 163

OF: Level 1, 418 High Street
Kew VIC 3101

Attention: Company Secretary

I, Nerida O'Loughlin, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied in accordance with subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) that AO Australia Online Pty Ltd (ACN: 092 296 163) (**Australia Online**):

- (a) is a participant in a particular section of the telecommunications industry; and
- (b) has contravened clauses 3.1.2(a)(i)(B), 3.1.2(a)(ii), 3.1.2(a)(iii), 3.1.2(d)(i), 3.1.2(d)(ii), 3.1.8, 3.1.9, 3.1.11, 3.2.4(a)(ii), 3.2.4(b)(i), 3.2.4(b)(ii), 3.2.4(c), 3.3.3(b), 3.3.3(b)(ii), 3.3.3(c), 3.3.3(e), 4.1.3(c), 4.1.3(f), 4.1.3(i), 4.1.5(b), 4.1.6(a), 4.1.7, 4.4.3(b), 4.4.6(c), 4.4.9, 5.1.8, and 7.2.5 of the *Mobile Premium Services Code (C637:2009)* (**the Code**), a Code registered under Part 6 of the Act which applies to participants in that section of the industry;

HEREBY give notice under subsection 121(1) of the Act, directing Australia Online to take such steps as are necessary to ensure that Australia Online complies with the Code, in particular clauses 3.1.2(a)(i)(B), 3.1.2(a)(ii), 3.1.2(a)(iii), 3.1.2(d)(i), 3.1.2(d)(ii), 3.1.8, 3.1.9, 3.1.11, 3.2.4(a)(ii), 3.2.4(b)(i), 3.2.4(b)(ii), 3.2.4(c), 3.3.3(b), 3.3.3(b)(ii), 3.3.3(c), 3.3.3(e), 4.1.3(c), 4.1.3(f), 4.1.3(i), 4.1.5(b), 4.1.6(a), 4.1.7, 4.4.3(b), 4.4.6(c), 4.4.9, 5.1.8, and 7.2.5 of the Code by no later than **close of business 7 September 2010**.

Details of the contraventions

1. Australia Online is a "content service provider" within the meaning of section 97 of the Act.

2. As a content service provider, Australia Online is a “participant in a section of the telecommunications industry” within the meaning of section 111 of the Act (relevantly, section 110 of the Act defines “section of the telecommunications industry” and section 7 of the Act defines “telecommunications industry”).
3. The Code was developed by Communications Alliance Ltd (ACN: 078 026 507), being a body or association that represents a section of the telecommunications industry, and registered with the ACMA under section 117 of the Act on 14 May 2009.
4. Clause 1.3.1(b) of the Code states that the Code applies to the content service providers section of the telecommunications industry under section 110 of the Act.
5. The Code applies to Australia Online as a content service provider and a participant in a section of the telecommunications industry.
6. For the purposes of the Code, Australia Online is considered a “Content Supplier” as defined in clause 2.2, as the services supplied by Australia Online are Mobile Premium Services (Premium SMS or MMS Service) supplied by way of a call to or from a Short Code with the prefix ‘199’.
7. On 9 September 2009, the ACMA commenced an investigation under paragraph 510(1)(c) of the Act into whether Australia Online was acting in compliance with the Code.
8. The investigation results indicated that Australia Online was in contravention of clauses 3.1.2(a)(i)(B), 3.1.2(a)(ii), 3.1.2(a)(iii), 3.1.2(d)(i), 3.1.2(d)(ii), 3.1.8, 3.1.9, 3.1.11, 3.2.4(a)(ii), 3.2.4(b)(i), 3.2.4(b)(ii), 3.2.4(c), 3.3.3(b), 3.3.3(b)(ii), 3.3.3(c), 3.3.3(e), 4.1.3(c), 4.1.3(f), 4.1.3(i), 4.1.5(b), 4.1.6(a), 4.1.7, 4.4.3(b), 4.4.6(c), 4.4.9, 5.1.8, and 7.2.5 of the Code.
9. Based on the conclusions of the investigation, I am satisfied that Australia Online was in contravention of:
 - a. clauses 3.1.2(a)(i)(B), 3.1.2(a)(ii), 3.1.2(a)(iii), 3.1.2(d)(i), 3.1.2(d)(ii), 3.1.8, 3.1.9, 3.1.11, 3.2.4(a)(ii), 3.2.4(b)(i), 3.2.4(b)(ii), 3.2.4(c), 3.3.3(b), 3.3.3(b)(ii), 3.3.3(c) and 3.3.3(e) of the Code in relation to the advertisement for the Mobile Premium Service supplied using the Short Code ‘1999 7070’; and
 - b. 4.1.3(c), 4.1.3(f), 4.1.3(i), 4.1.5(b), 4.1.6(a), 4.1.7, 4.4.3(b), 4.4.6(c), 4.4.9, 5.1.8, and 7.2.5 of the Code in relation to the Mobile Premium Service supplied using the Short Code ‘1999 7070’.
10. Relevantly; I am satisfied that Australia Online contravened:
 - a. clauses 3.1.2(a)(i)(B), 3.2.4(a)(ii), 3.3.3(b)(ii), 4.1.5(b) by failing to include clear, prominent and legible information in plain language on the price including the basis for calculating charges;
 - b. clause 3.1.2(a)(iii) by failing to include the specified information accurately and within sufficient proximity to the Short Code;
 - c. clauses 3.1.2(d)(ii), 3.2.4(b)(ii) by failing to clearly and legibly state how to unsubscribe from a subscription service;

- d. clauses 3.1.2(a)(ii), 3.2.4(b)(i) and 3.3.3(b) by failing to include clear, prominent and legible information in plain language that the service is a subscription service;
- e. clause 3.1.8 and 3.1.9 by failing to ensure that the required information was provided when the term “free” or equivalent is used in an advertisement for Mobile Premium Services;
- f. clause 3.1.11 by failing to ensure that an advertisement was not confusing, misleading or deceptive;
- g. clause 3.3.3(c) by failing to provide details of the ‘STOP’ message;
- h. clause 3.3.3(e) by failing to ensure that the word “subscription” or “subscribe” was clearly stated to convey the activation method;
- i. clause 4.1.3(c), 4.1.3(f) and 4.1.3 (i) by failing to clearly inform the Customer of all charges that may be incurred for its supply, all applicable terms and conditions and the name and contact details of the Content Supplier, prior to supplying the Service;
- j. clause 4.16(a) by failing to provide information at no charge about how to unsubscribe from the Subscription Service, prior to supply of the Service;
- k. clause 4.17 by failing to send the Customer a warning about the danger of disclosing personal details via the chat service and advise the Customer not to do so, prior to supplying the Subscription Service
- l. clause 4.4.6(c) by failing to state that the customer is “subscribed to” that particular premium messaging subscription service and/or its relevant Short Code in a standard, dedicated, SMS message containing an expenditure update;
- m. clause 4.4.3(b) for failing to send the Customer the required standard, dedicated, SMS subscription confirmation message prior to supplying the Subscription Service;
- n. clause 4.4.9 by failing to ensure that all messages sent to the Customer contained sufficient information to enable the Customer to identify and contact the Content Supplier;
- o. clause 5.1.8 by failing to send the required standard, dedicated, SMS error message at no charge; and
- p. clause 7.2.5 by failing to send the required standard, dedicated, SMS unsubscribe confirmation message.

TAKE NOTE:

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

Under subsection 121(3) a person must not:

- (a) aid, abet, counsel or procure,
- (b) induce, whether by threats or promises or otherwise,
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to; or
- (d) conspire with others to effect;

a contravention of the requirement in subsection 121(2).

Subsection 121(4) states that subsections 121(2) and (3) of the Act are civil penalty provisions.

If Australia Online does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover pecuniary penalties against Australia Online in accordance with section 570 of the Act.

The maximum pecuniary penalty for one contravention by a body corporate is \$250,000.

REVIEW RIGHTS

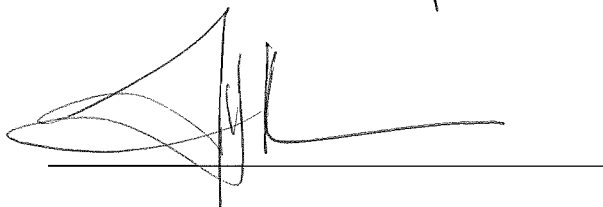
As a person affected by the decision, if you are dissatisfied with the delegate's decision to direct Australia Online under subsection 121(1) of the Act, you may apply to the ACMA for reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

An application for reconsideration must be made **within 28 days** after you are informed of the delegate's decision to issue the Direction (subsection 558(3) of the Act).

If you are dissatisfied with the ACMA's decision on the reconsideration of the delegate's decision:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration under section 562 of the Act; and
- (b) you may request a statement under section 28 of that Act in relation to the decision on that reconsideration.

Dated this 23rd day of August 2010



Nerida O'Loughlin

Delegate of the Australian Communications and Media Authority