



## Direction to comply with industry code

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

TO: Azspa Pty Ltd  
ACN: 083 030 657

OF: 49 Sinclair Drive, Bonny Hills, NSW 2445

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 Azspa Pty Ltd (ACN 083 030 657) (**Azspa**):

- (a) is a participant in a particular section of the telecommunications industry; and
- (b) has contravened clauses 5.1.8 and 7.1.3(a)(ii) of the *Mobile Premium Services Code (C637:2009)* (**the Code**), an industry 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 Azspa to take such steps as are necessary to ensure that Azspa complies with the Code, in particular clauses 5.1.8 and 7.1.3(a)(ii) of the Code by no later than **close of business 7 December 2010**.

### Details of the contraventions

1. Azspa is a "content service provider" within the meaning of section 97 of the Act.
2. As a content service provider, Azspa 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 Azspa as a content service provider and a participant in a section of the telecommunications industry.
6. For the purposes of the Code, Azspa is considered a "Content Supplier" as defined in clause 2.2, as the content services supplied by Azspa are Mobile Premium Services (Premium SMS or MMS Service) being a content service supplied by way of a call to or from a Short Code with the prefix '199'.
7. On 13 May 2010, the ACMA commenced an investigation under paragraph 510(1)(c) of the Act into whether Azspa was acting in compliance with the Code.
8. The investigation results indicated that Azspa was in contravention of clauses 5.1.8 and 7.1.3(a)(ii) of the Code.
9. Based on the conclusions of the investigation, I am satisfied that Azspa was in contravention of:
  - a. Clauses 5.1.8 and 7.1.3(a)(ii) of the Code in relation to the Mobile Premium Service supplied using the Short Code '1990 3000'.
10. Relevantly, I am satisfied that Azspa contravened:
  - a. Clause 5.1.8 by failing to send the required standard, dedicated, SMS error message at no charge; and
  - b. Clause 7.1.3(a)(ii) by charging mobile content fees for a 'STOP' message.

**TAKE NOTE:**

Under subsection 121(2) of the Act, Azspa 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 Azspa does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover pecuniary penalties against Azspa in accordance with section 571 of the Act.

Section 570 of the Act sets out matters which the Federal Court must consider in determining pecuniary penalties. The maximum pecuniary penalty payable under section 570(1) by a body corporate is \$250,000 for each contravention.

## REVIEW RIGHTS

As a person affected by the decision, if you are dissatisfied with my decision to direct Azspa Pty Ltd 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 the period specified in subsection 558(3) of the Act.

If you are dissatisfied with the ACMA's decision on the reconsideration of my 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; and
- (b) you may request a statement under section 28 of that Act in relation to the decision on that reconsideration.

Dated this 23<sup>rd</sup> day of November 2010

A handwritten signature in black ink, appearing to read 'Nerida O'Loughlin', written over a horizontal line.

Nerida O'Loughlin

**Delegate of the Australian Communications and Media Authority**