



Australian Government
**Australian Communications
and Media Authority**

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

TO: Mr Jason Kenneth McKay (ABN 29 915 448 876)
Trading as 'Web Ace' (BN 10790172)

OF: 43/20 Royal Street
EAST PERTH WA 6004

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 Mr Jason Kenneth McKay (ABN 29 915 448 876), trading as 'Web Ace' (BN 10790172) (**Mr Jason McKay**), has contravened and is continuing to contravene clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the *Telecommunications Consumer Protections Code (C628:2007)* (**the Code**);

HEREBY give notice under subsection 121(1) of the Act, directing Mr Jason McKay to take such steps as are necessary to ensure that Mr Jason McKay complies with the Code, in particular clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the Code, by no later than **5 August 2009**.

Details of the contraventions

1. Mr Jason McKay is a "carriage service provider" within the meaning of sections 7 and 87 of the Act.
2. As a "carriage service provider", Mr Jason McKay 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 18 May 2008.
4. Clause 1.3.1 of the Code states that the Code applies to the carriage service providers section of the "telecommunication industry" under section 110 of the Act.

5. The Code applies to Mr Jason Kenneth McKay, as Mr Jason McKay is a “carriage service provider” and a “participant in a section of the telecommunications industry”.
6. In September 2008 the ACMA staff commenced an audit of “carriage service provider’s” compliance with certain billing and complaint handling provisions in the Code.
7. The results of the ACMA’s audit indicated that Mr Jason McKay has contravened and is continuing to contravene the Code.
8. In May 2009 an investigation was commenced into Mr Jason McKay’s compliance with the Code, specifically clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the Code.
9. Based on the information obtained by staff of the ACMA to date, it appears that Mr Jason McKay does not:
 - (a) ensure that a customer can verify that its direct debit arrangements are in accordance with their authorisation as required by clause 6.4.3 of the Code;
 - (b) ensure compliance with clause 6.5.1 of the Code by enabling a customer to check the bill before a direct debit transaction occurs in accordance with clause 6.5.3(a) of the Code;
 - (c) have a complaints handling process that provides adequate resources to persons with the authority to resolve complaints and achieve any outcomes as required by clause 9.1.1(d) of the Code;
 - (d) have documented complaint handling policies that:
 - (i) are publicised to customers and to staff;
 - (ii) include information about the right to complain;
 - (iii) include information on how, when and where to make a complaint;
 - (iv) are made available to customers upon request, in hard copy unless otherwise agreedin accordance with clause 9.1.2 of the Code;
 - (e) give the TIO a copy of Mr Jason McKay’s internal complaint handling policy and advise the TIO of any significant changes within 7 days of the change, or as soon as practicable after that time in accordance with clause 9.1.4 of the Code;
 - (f) identify recurring or systemic problems and prevent recurrence by:
 - (i) implementing processes, procedures or systems to facilitate complaints being resolved at the first point of contact;
 - (ii) classifying and analysing complaints at least every 3 months; and
 - (iii) addressing areas requiring attention as soon as practicalas required by clause 9.1.8 of the Code;

- (g) acknowledge written complaints within 5 working days of their receipt, in writing if the complainant requests, in accordance with clause 9.2.4 of the Code;
- (h) where possible, seek to resolve a complaint on first contact or finalise complaints within 30 days or as soon as practicable in all the circumstances, as required by clause 9.2.5 of the Code;
- (i) make every reasonable effort to advise customers within 5 working days of receiving complaints, of their complexity and a possible timeframe for finalisation, or keep complainants advised of timeframe delays and the complaint's progress as required by clause 9.2.6 of the Code;
- (j) enable customers to inquire about a complaint's progress in accordance with clause 9.2.7 of the Code; and
- (k) advise customers of the outcome of their complaint, in writing if the customer requests, as required by clause 9.2.8 of the Code.

10. Consequently, it appears that Mr Jason McKay has contravened and is continuing to contravene clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the Code.

Contraventions of the Code

Clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the Code apply to Mr Jason McKay under clause 1.3 of the Code.

Based on the material presently before me, I am satisfied that Mr Jason McKay has contravened and is continuing to contravene clauses 6.4.3, 6.5.3(a), 9.1.1(d), 9.1.2, 9.1.4, 9.1.8, 9.2.4, 9.2.5, 9.2.6, 9.2.7 and 9.2.8 of the Code.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, Mr Jason McKay must comply with a direction under subsection 121(1) of the Act. Subsection 121(4) states that subsections 121(2) and (3) of the Act are civil penalty provisions.

Enforcement action

If Mr Jason McKay does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover a pecuniary penalty. Section 570 of the Act sets out the matters which the Federal Court must consider in determining pecuniary penalties. The maximum pecuniary penalty for one contravention by a body corporate is \$10 million.

Pursuant to subsection 121(4) of the Act, the ACMA may also take action to recover a pecuniary penalty for ancillary contraventions of a civil penalty provision, such as aiding, abetting, counselling or procuring a contravention of subsection 121(3) or being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of a civil penalty provision.

Reconsideration of a decision

If you are dissatisfied with the ACMA's decision to direct Mr Jason McKay under subsection 121(1) of the Act, you may seek a reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

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

- (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.



Signature

Nerida O'Loughlin

Dated: 21/07/09

General Manager

Industry Outputs Division

Delegate of the Australian Communications and Media Authority