

21 May 2010

Omnicall Australia Pty Ltd
ACN: 073 987 890
15 Wosley Place
Rowville VIC 3178

Attention: Company Secretary

Dear Company Secretary,

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

I refer to the Australian Communications and Media Authority's (ACMA) investigation under section 510(1) of the *Telecommunications Act 1997* (the Act) into compliance with the Mobile Premium Services Code C637:2009 (MPS Code) referenced in letters to you dated 6 October 2009 and 16 February 2010.

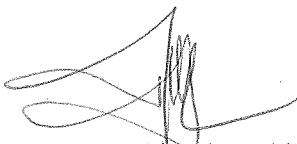
The ACMA has completed its investigation, and the final report concludes that Omnicall Australia Pty Ltd breached clause 3.1.2(d)(i) of the MPS Code. A copy of the final investigation report is attached for your information.

Under section 121(1) of the Act, if the ACMA is satisfied that a person has contravened an industry code, the ACMA may, by written notice, direct the person to comply with the code.

I hereby enclose such a notice directing Omnicall Australia Pty Ltd (ACN 073 987 890) to comply with the MPS Code.

You should read the direction accompanying this letter carefully. If you have any concerns you may wish to seek legal advice. If you have any queries about this direction, please contact Sandra Campbell, Senior Investigator, New Communication Issues and Safeguards Section on (03) 9963 6829 or at sandra.campbell@acma.gov.au.

Yours sincerely



Nerida O'Loughlin
General Manager
Digital Economy Division



Direction to comply with industry code

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

TO: Omnicall Australia Pty Ltd
ACN 073 987 890

OF: 15 Wolseley Place
Rowville VIC 3178

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 Omnicall Australia Pty Ltd (ACN:073 987 890) (**Omnicall Australia**):

- (a) is a participant in a particular section of the telecommunications industry; and
- (b) has contravened clause 3.1.2(d)(i) 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 Omnicall Australia to take such steps as are necessary to ensure that Omnicall Australia complies with the Code, in particular clause 3.1.2(d)(i) of the Code, by no later than **close of business 7 June 2010**.

Details of the contraventions

1. Omnicall Australia is a "content service provider" within the meaning of section 97 of the Act.
2. As a content service provider, Omnicall Australia 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 Omnicall Australia as a content service provider and a participant in a section of the telecommunications industry.
6. For the purposes of the Code, Omnicall Australia is considered a "Content Supplier" as defined in clause 2.2, as the service supplied by Omnicall Australia is a Mobile Premium Service (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 section 510(1)(c) of the Act into whether Omnicall Australia was acting in compliance with the Code.
8. The investigation results indicated, amongst other things, that Omnicall Australia was in contravention of clause 3.1.2(d)(i) of the Code.
9. Omnicall Australia contravened clause 3.1.2(d)(i) of the Code by failing to clearly and legibly state a customer helpline number in an advertisement for its mobile premium services published in the August 2009 edition of the magazine 'Ralph'.
10. Based on the material before me, I am satisfied that Omnicall Australia contravened clause 3.1.2(d)(i) of the Code by failing to state the customer helpline number in advertisements for its services.

TAKE NOTE:

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

4. If Omnicall Australia does not comply with this Direction, the ACMA may take civil action in the Federal Court to recover pecuniary penalties against Omnicall Australia in accordance with section 570 of the Act.
5. The maximum pecuniary penalty for one contravention by a body corporate is \$250,000.

REVIEW RIGHTS

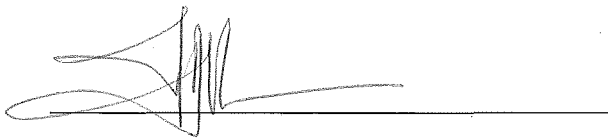
As a person affected by the decision, if you are dissatisfied with the delegate's decision to direct Omnicall Australia under subsection 121(1) of the Act, you may apply to the ACMA for reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

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*, (the AAT Act) 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 the AAT Act in relation to the decision on that reconsideration.

Dated this 21st day of May 2010



Nerida O'Loughlin
Delegate of the Australian Communications and Media Authority