



Australian Government
**Australian Communications
and Media Authority**

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

TO: Soul Communications Pty Ltd (ACN 085 089 970)

OF: 65 Waterloo Road
North Ryde NSW 2113

Attention: Company Secretary

I, Olya Booyar, 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 Soul Communications Pty Ltd (ACN 085 089 970), has contravened clause 9.1.8 of the *Telecommunications Consumer Protections Code (C628:2007) (the Code)*;

HEREBY give notice under subsection 121(1) of the Act, directing Soul Communications Pty Ltd to take such steps as are necessary to ensure that Soul Communications Pty Ltd complies with clause 9.1.8 of the Code, by no later than **12 July 2010**.

Details of the contraventions

1. Soul Communications Pty Ltd is a “carriage service provider” within the meaning of section 87 of the Act.
2. As a carriage service provider, Soul Communications Pty Ltd 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 telecommunications industry under section 110 of the Act.

5. The Code applies to Soul Communications Pty Ltd as a carriage service provider and a participant in a section of the telecommunications industry.
6. In 2009, staff of the ACMA commenced an audit of compliance by certain carriage service providers with clause 9.1.8 of the Code.
7. The results of the ACMA's audit indicated that Soul Communications Pty Ltd has contravened the Code.
8. Based on the information obtained by staff of the ACMA to date, it appears that Soul Communications Pty Ltd :
 - (a) has, in respect of complaints resolved at first point of contact, implemented processes, procedures or systems to facilitate the identification of recurring or systemic problems and prevent recurrence, and has classified complaints at monthly intervals (as required by paragraph (a), and the first part of paragraph (b), of clause 9.1.8 of the Code); but
 - (b) has not analysed complaints at least every three months and addressed areas requiring attention as soon as practicable (as required by the second part of paragraph (b), and by paragraph (c), of clause 9.1.8 of the Code).
9. Consequently, it appears that Soul Communications Pty Ltd has contravened clause 9.1.8 of the Code.

Contraventions of the Code

Clause 9.1.8 of the Code applies to Soul Communications Pty Ltd under clause 1.3 of the Code.

Based on the material presently before me, I am satisfied that Soul Communications Pty Ltd has contravened clause 9.1.8 of the Code.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, Soul Communications Pty Ltd 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 Soul Communications Pty Ltd 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.

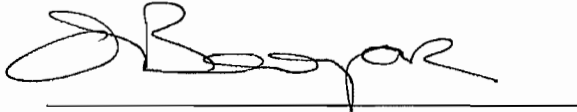
Pursuant to subsection 121(4) of the Act, the ACMA may also take action to recover a pecuniary penalty for ancillary contraventions of a civil penalty provision, such as aiding, abetting, counselling or procuring a contravention of subsection 121(3) or being in any way, directly or indirectly, knowingly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

Olya Booyar
08 April 2010

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