

21 April 2010

iiNet Limited
LEVEL 1, 502 HAY STREET
SUBIACO, WA 6008
Attention: Company Secretary

Dear Company Secretary,

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

I enclose a notice under subsection 121(1) of the *Telecommunications Act 1997* directing iiNet Limited (ACN 068 628 937) to comply with the Telecommunications Consumer Protections Code C628:2007 (the 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 Alan Chalmers, Manager, Consumer Interests Section on (03) 9963 6841 or at alan.chalmers@acma.gov.au.

In order for the Australian Communications and Media Authority (the ACMA) to assess whether iiNet Limited has complied with the direction, you should provide documentary evidence of compliance with clauses 9.1.8(b) and 9.1.8(c) of the Code for the quarter ending 30 June 2010 (April, May and June inclusive) to the ACMA by **COB 28 July 2010**.

The reports should include details of how iiNet Limited:

- classified and analysed complaints as per clause 9.1.8(b) of the Code; and
- addressed areas requiring attention as per clause 9.1.8(c) of the Code.

The information should be provided to:

The Manager
Consumer Interests Section
Australian Communications and Media Authority
PO Box 13112 Law Courts
MELBOURNE VIC 8010

Yours sincerely



Olya Booyar
General Manager
Content, Consumer and Citizen Division



Australian Government
**Australian Communications
and Media Authority**

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

TO: iiNet Limited (ACN 068 628 937)

OF: LEVEL 1, 502 HAY STREET, SUBIACO, WA 6008

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 iiNet Limited (ACN 068 628 937), has contravened clauses 9.1.8(b) and 9.1.8(c) of the *Telecommunications Consumer Protections Code (C628:2007) (the Code)*;

HEREBY give notice under subsection 121(1) of the Act, directing iiNet Limited to take such steps as are necessary to ensure that iiNet Limited complies with clauses 9.1.8(b) and 9.1.8(c) of the Code, by no later than **28 July 2010**.

Details of the contraventions

1. iiNet Limited is a “carriage service provider” within the meaning of section 87 of the Act.
2. As a carriage service provider, iiNet Limited 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 iiNet Limited 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 various provisions of the billing and complaint handling chapters of the Code.
7. The results of the ACMA's audit indicated that iiNet Limited has contravened certain provisions of the Code.
 - (a) Based on the information obtained by staff of the ACMA to date, it appears that iiNet Limited has, classified complaints at monthly intervals (as required by 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).
8. Consequently, it appears that iiNet Limited has contravened clauses 9.1.8(b) and 9.1.8(c) of the Code.

Contraventions of the Code

Clauses 9.1.8(b) and 9.1.8(c) of the Code apply to iiNet Limited under clause 1.3 of the Code.

Based on the material presently before me, I am satisfied that iiNet Limited has contravened clauses 9.1.8(b) and 9.1.8(c) the Code.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, iiNet Limited 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 iiNet Limited 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 iiNet Limited 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
20 April 2010

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