



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

TO: Digital Technologies & Telecommunications Pty Ltd (ACN 081 278 677)

OF: PO Box 603 Drummoyne NSW 2047

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Digital Technologies & Telecommunications Pty Ltd t/a Airlan (**Airlan**), has contravened the *Telecommunications Consumer Protections Code (C628:2015)* (**the TCP Code**) as described below;

HEREBY Direct Airlan, under subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) to:

- (a) comply with clause 6.11.1(a) of the TCP Code, by no later than 31 August 2018;
- (b) comply with clause 9.1.1 (b) of the TCP Code, by no later than 31 July 2018; and
- (c) comply with all other provisions of the TCP Code, as in force from time to time.

Details of the contraventions

1. The ACMA has investigated Airlan's compliance with clauses 6.11.1(a), 9.1.1(b) and 9.4.1(a) of the TCP Code. As a carriage service provider providing telecommunications services to residential and/or small business consumers, Airlan is a participant in the section of the telecommunications industry to which the TCP Code applies.
2. The ACMA is satisfied that Airlan contravened clause 6.11.1(a) of the TCP Code, which requires that a supplier ensure that its Financial Hardship Policy is readily accessible on its website. The ACMA reviewed Airlan's website on 15 May 2018 and could not find a Financial Hardship Policy.
3. The ACMA is satisfied that Airlan contravened clause 9.1.1(b) of the TCP Code, by failing to register with Communications Alliance within two months of the ACMA's approval of Variation No. 1/2016 of the TCP Code (being 3 May 2016) or one month from first acquiring customers, whichever occurs later.
4. The ACMA is satisfied that Airlan contravened clause 9.4.1(a) of the TCP Code, which requires that a supplier provide Communications Compliance Ltd (**CommCom**) with prescribed statements regarding code compliance by the due date required under clause 9.8.1 of the TCP Code. Airlan failed to provide CommCom with such statements in 2017.

Requirement to comply with this Direction

Under subsection 121(2) of the Act, Airlan must comply with a direction under subsection 121(1) of the Act.

If Airlan does not comply with this direction, the ACMA may apply to the Federal Court for an order that Airlan pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (subsection 121(4) and section 570 of the Act).

Reconsideration of a decision

If Airlan is dissatisfied with the decision to give this direction, it may seek reconsideration of the decision by the ACMA under subsection 558(1) of the Act by making an application in writing to the ACMA, which sets out the reasons for the application. There is no application fee. If Airlan requests reconsideration of the ACMA's decision to give this direction, the ACMA will reconsider its decision, taking into account any further submissions made by Airlan. The ACMA may affirm, vary or revoke its decision to give this direction.

The ACMA must make a decision in response to an application under subsection 558(1) of the Act within 90 days after receiving the application. Any such application should be made within 28 days after the date on which this notice of decision is given to Airlan, and addressed to the person whose contact details are included below.

If not already provided, Airlan may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the *Administrative Appeals Tribunal Act 1975 (AAT Act)*. Any such request should be made within 28 days of the reconsideration decision and addressed to the person whose contact details are included below.

AAT review

If Airlan is dissatisfied with the ACMA's decision on reconsideration then, in accordance with section 562 of the Act, Airlan has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal (**AAT**).

The AAT is an independent body. The AAT can, amongst other things:

- confirm the ACMA's decision;
- vary the ACMA's decision; or
- set the ACMA's decision aside and replace it with its own decision.

An application to the AAT for review must be in writing. The AAT has a form for this purpose which may be used if preferred.

An application for review should be made within 28 days of being told about the decision. An \$920 application fee must be paid with the application. If you want to apply for the application fee to be waived, you can obtain the application form for this from the AAT.

The AAT website has more information at www.aat.gov.au. If you have any questions about the AAT's procedures or requirements, please contact the AAT. You can call the AAT on 1800 228 333. The postal address for the AAT is GPO Box 9955 in each capital city.

Access to documents

Airlan also has a right to seek access to documents about the decision to give this direction, or any associated reconsideration decision, under the *Freedom of Information Act 1982 (FOI Act)*. The application must be made to the ACMA in writing (there is no special form and you must:

- state that the request is an application for the purpose of the FOI Act;
- provide sufficient information about the documents you want to obtain as is reasonably necessary to enable the ACMA to identify them; and
- give details of how notices under the FOI Act may be sent to you (e.g postal address or email address).

The ACMA's website has more information on how to make an application at www.acma.gov.au.

Making a complaint

If you are dissatisfied with the way the ACMA handled this matter, you may contact the person whose details are provided below.

A complaint may also be made to the Commonwealth Ombudsman (the Ombudsman usually prefers that your concerns are raised with the ACMA first). There is an office of the Commonwealth Ombudsman in each capital city. Further information may be obtained at www.ombudsman.gov.au or call 1300 362 072.

Contacting the ACMA

Should you require further information, please contact:

Peter Sutton

Manager

Telecommunications, Compliance, Enforcement and Education Section

PO Box 13112 Law Courts

Melbourne, VIC 8010

Ph: (03) 9963 6950

Email: peter.sutton@acma.gov.au



Signature

Jennifer McNeill

General Manager

Content, Consumer and Citizen Division

Delegate of the Australian Communications and Media Authority

16 July 2018