

MEMORANDUM OF UNDERSTANDING
BETWEEN
AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY
AND
COMMUNICATIONS COMPLIANCE LTD
2013

CONTENTS

CONTENTS	2
PARTIES	3
PURPOSE AND SCOPE	3
FUNCTIONS OF THE PARTIES	3
RESPONSIBILITIES	4
NEW FUNCTIONS	5
COMMUNICATION	5
FACILITATING CONTACT WITH OTHER BODIES	6
FUNDING AND RESOURCES	6
INTELLECTUAL PROPERTY	6
DURATION OF THE MOU	6
REVIEW OF THE MOU	6
COMMENCEMENT	7
TERMINATION	7
CONTACT POINTS	7
SIGNATURES	8

PARTIES

The parties to this Memorandum of Understanding (**MOU**) are:

- the Australian Communications and Media Authority (the **ACMA**)
- Communications Compliance Ltd (ACN 159 298 638) (**CommCom**).

(together, the **Parties**).

Purpose and Scope

1. The purpose of this MOU is to implement the obligations in clauses A.1.4 and A.1.6 of Appendix 1 to the Telecommunications Consumer Protections Code C628:2012 (the **TCP Code**) which require CommCom to establish memoranda of understanding with key stakeholders to ensure efficient and effective inter-working with those stakeholders.
2. In particular, this MOU deals with the processes for the making of referrals by CommCom to the ACMA, for information sharing and for other operational matters.
3. This MOU does not limit any consultation requirements that are specified in legislation or regulation.
4. This MOU should be read in conjunction with the relevant provisions of the *Telecommunications Act 1997* (the Telecommunications Act), the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act) and the TCP Code. It is also subject to the requirements of the:
 - (a) *Australian Communications and Media Authority Act 2005* (the ACMA Act)
 - (b) *Privacy Act 1988*.
5. This MOU is not intended to create legally binding obligations on either Party.
6. Neither Party shall be required to discharge these responsibilities in the event of any major or unforeseen demands on their resources.

Functions of the Parties

ACMA

7. The ACMA is a statutory agency established under section 6 of the ACMA Act. Under section 8 of the Act, the ACMA is responsible for regulating telecommunications in accordance with the Telecommunications Act including investigating compliance with industry codes registered under Part 6 of that Act.
8. The TCP Code is an industry code registered by the ACMA on 1 September 2012 under Part 6 of the Telecommunications Act.

CommCom

**Memorandum of Understanding between the Australian Communications and Media
Authority and Communications Compliance Ltd**

9. CommCom is a body established by the telecommunications industry to monitor TCP Code compliance by telecommunications Suppliers in accordance with the Code Compliance Framework (the CC Framework) set out in Chapter 9 of the TCP Code, and, where it considers it appropriate, to refer a Supplier to the ACMA for investigation and enforcement.
10. CommCom's role also includes the provision of guidance related to TCP Code compliance.

Responsibilities

11. CommCom will make reasonable efforts to ensure that all reports to the ACMA of non-compliance with the CC Framework contain particulars of the correct legal entity for each provider.
12. CommCom will, before reporting non-compliance with the CC Framework to the ACMA, contact all Suppliers that have not submitted (as applicable) Customer Information Compliance Statements, Compliance Attestations and Statements of Independent Assessment, requesting submission of the required document to CommCom.
13. CommCom will provide the information it is required to provide to the ACMA under clause A.1.16 of Appendix 1 to the TCP Code by no later than 30 July each year.
14. CommCom, where it decides to refer or report a Supplier to the ACMA in accordance with Part B of Appendix 1 to the TCP Code, will do so in accordance with the following:
 - (a) Report those Suppliers that have submitted Compliance Achievement Plans, where CC is not satisfied with the progress and completion of a Supplier's Compliance Achievement Plan (clause B.1.2), within 20 days of a Supplier failing to respond to a written warning issued under clause B.1.5 of Appendix 1 of the TCP Code. The report should include the Supplier's details and the reason/evidence for CommCom's view that progress is not being rapidly remedied
 - (b) Report those Suppliers that have not submitted any of the required documents, that is, a Customer Information Compliance Statement, Compliance Attestation, Statement of Independent Assessment or Compliance Achievement Plan, no later than 20 days after a Supplier has failed to respond to a written warning issued under clause B.1.5 of Appendix 1 of the TCP Code.
 - (c) Report no later than 30 days after a Supplier has failed to respond to a Compliance Monitoring Request. The report should provide the Supplier's details and a copy of the Compliance Monitoring Request.
 - (d) Report no later than 30 days after CommCom has provided a written warning to a Supplier that it has found unsatisfactory progress with an Action Plan, in

accordance with clause B.1.3 of Appendix 1 of the Code. The report should include the details of the Supplier, the date of the written warning and the reason for CommCom's view that progress is not being rapidly remedied.

15. CommCom will report to the ACMA by 1 September each year on industry-wide systemic compliance issues and emerging issues identified by CommCom in the previous twelve months.
16. The ACMA will:
 - (a) Endeavour to finalise investigations of instances of non-compliance with the CC Framework reported by CommCom in accordance with this MOU within 60 days of the date of the referral, or provide an explanation to CommCom as to why a matter is not to be investigated within 20 days of the referral.
 - (b) Publish on its website the outcomes of all investigations undertaken as a result of a referral from CommCom within 14 days of completion of the investigation, unless there is a legal reason not to do so.
 - (c) Where appropriate, the ACMA will highlight the mandatory nature of the TCP Code obligations including the interactions with CommCom required in accordance with the CC Framework.
17. The Parties will develop criteria to assist the decision-making of CommCom on whether, and in what circumstances, compliance issues should be identified as serious non-compliance and referred to the ACMA within an earlier timeframe than described in clauses 11 to 14.

New Functions

18. Should either party adopt new functions or responsibilities relevant to the matters covered by this document, discussions should be initiated among the parties to establish protocols for the sharing of information about the new functions or responsibilities.

Communication

19. Communication, consultation and information exchange shall be encouraged between officers of the Parties; however information provided pursuant to the arrangements set out in this MOU will be used only in the fulfilment of each agency's responsibilities.
20. The Parties will meet at least twice yearly to discuss industry-wide systemic compliance issues identified by each Party, and measures to address those issues during the life of the TCP Code, with a view to improving the TCP Code in future.
21. The Parties will meet quarterly to discuss their planned compliance activities, to ensure these are appropriately sequenced to allow efficient assessments of compliance and avoid duplication. The Parties will also discuss proposed public and industry education activities so to avoid duplication of effort.

**Memorandum of Understanding between the Australian Communications and Media
Authority and Communications Compliance Ltd**

22. The Parties will include a link to the website of the other Party on their respective websites in an appropriate location.
23. Nothing in this MOU prevents the provision of information and advice to the Minister under the ACMA Act, the Telecommunications Act or the TCPSS Act.

Facilitating Contact with other Bodies

24. Each Party may, in its discretion, refer the other Party to another body in its jurisdiction where that body is likely to have information or be able to assist the other Party in respect of a request for information, provided always that body reserves the right to decide whether or not to provide the requested assistance.

Funding and Resources

25. Each Party to this MOU will bear the costs of its commitments under this MOU.
26. Where the Parties jointly undertake a project, the relevant financial and administrative arrangements will be detailed in written communication and/or contracts (where required) and exchanged between officers of each Party.

Intellectual Property

27. Each Party to this MOU may share materials and resources in which they hold intellectual property rights with the other Party to this MOU, provided that the source of any such material is appropriately acknowledged.
28. The Parties will not provide material or resources in which the other Party holds intellectual property rights to a third party without first obtaining the consent of the Party holding those intellectual property rights.

Duration of the MOU

29. This MOU will have a term of five years from the date of commencement, unless:
 - (a) terminated by one or both Parties in accordance with clause 33
 - (b) the TCP Code is replaced by an equivalent industry code registered by the ACMA before the end of the term or substantial parts of the TCP Code are replaced with other instruments of regulation, for example, a standard.

Review of the MOU

30. The Parties will review the operation and effectiveness of this MOU every two years, or as agreed by the Parties, by a process agreed between the Parties.
31. Any term of this MOU may be amended or waived by the Parties' mutual consent in writing.

Commencement

32. This MOU will commence from the date it is executed by both Parties and shall remain in place for the term set out in clause 29 or until it is terminated by either Party in accordance with clause 33.

Termination

33. Either Party may terminate this MOU by giving thirty (30) days written notice to the other Party.

Contact Points

34. The ACMA contact point for this MOU is:

Contact Person	Mr Alan Chalmers, Manager, Consumer Interests Section (or such other person as nominated to CommCom by ACMA from time to time)
Address	PO Box 13112 Law Courts Melbourne 8010
Telephone	+61 3 9963 6841 (<i>direct</i>), +61 2 9963 6800 (<i>general</i>)
E-mail	alan.chalmers@acma.gov.au

35. The CommCom contact point for this MOU is:

Contact Person	Christiane Gillespie-Jones, Executive Director (or such other person as nominated to ACMA by CommCom from time to time)
Address	Level 9, 32 Walker St, North Sydney NSW 2060
Telephone	+61 402 473743 (<i>direct</i>), +61 498 745550 (<i>general</i>)
E-mail	christianegillespiejones@commcom.com.au

Signatures

Signed on this 6th day of February 2013
for and on behalf of the Australian Communications and Media

Chris Chapman

Chris Chapman, Chair



Signed on this 6th day of February 2013
for and on behalf of CommCom

Deirdre Mason

Deirdre Mason, Chair