

## Formal Warning

### Section 41 of the *Spam Act 2003*

**To:** Careers Australia Group Limited  
ACN 122 171 840

**Of:** Level 6, 515 St Pauls Terrace  
Fortitude Valley QLD 4006

**Attention:** Mr Walter Gilmore, Company Secretary

I, Jeremy Fenton, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that Careers Australia Group Limited ACN 122 171 840 (Careers Australia), has contravened paragraphs 17(1)(a), 17(1)(b), and 18(1)(c) of the *Spam Act 2003* (Spam Act):

**HEREBY** issue Careers Australia a formal warning under section 41 of the Spam Act, for one or more contraventions of each of paragraphs 17(1)(a), 17(1)(b), and 18(1)(c) of the Spam Act, being civil penalty provisions (see Attachment A).

#### ACMA Investigation

On 1 December 2016, the ACMA commenced an investigation into Careers Australia for alleged contraventions of the Spam Act following receipt of complaints by the ACMA.

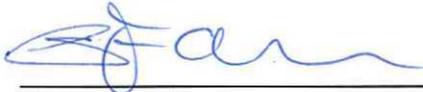
#### Details of the contraventions

As a result of its investigation into this matter, and taking into account complaints made to the ACMA, and information provided by Careers Australia, the ACMA has determined that:

- a. Careers Australia sent, or caused to be sent, one or more short message service (SMS) messages between:
  - i. 1 October 2016 and 29 October 2016 (inclusive) as part of an electronic SMS campaign;
  - ii. 1 July 2016 and 31 October 2016 (inclusive), being free text SMS sent by Careers Australia's individual sales agents (the relevant messages).
- b. the relevant messages were for the purpose of:
  - i. offering to supply Careers Australia's services. As such, the relevant messages were 'commercial electronic messages' (CEMs) within the meaning of the Spam Act; or

- ii. providing factual information about Careers Australia, with the addition of the name of the authoriser (Careers Australia). Therefore, the relevant messages were 'designated CEMs' within the meaning of clause 2 of Schedule 1 to the Spam Act;
- c. the relevant messages had an Australian link;
- d. one or more the relevant messages (CEMs) did not clearly and accurately identify the authoriser of the message, in contravention of paragraph 17(1)(a) of the Spam Act
- e. one or more of the relevant messages (CEMs and designated CEMs) did not include accurate information about how the recipient can readily contact the authoriser of the message, in contravention of paragraph 17(1)(b) of the Spam Act
- f. one or more of the relevant messages (CEMs) did not include a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the authoriser of the message (or similar statement), in contravention of paragraph 18(1)(c) of the Spam Act.

Dated this 20<sup>th</sup> day of July 2017



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**Jeremy Fenton**

**Delegate of the Australian Communications and Media Authority**

## Attachment A - Relevant provisions of the Spam Act

Subsection 17(1) of the Spam Act provide that:

- (1) A person must not send, or cause to be sent, a commercial electronic message that has an Australian link unless:
  - (a) the message clearly and accurately identifies the individual or organisation who authorised the sending of the message; and
  - (b) the message includes accurate information about how the recipient can readily contact that individual or organisation;

[. . .]

- (7) Subsections (1) and (5) are civil penalty provisions.

'Commercial electronic message' is defined in section 6 of the Spam Act.

Subsection 18(1) of the Spam Act provides that:

- (1) A person must not send, or cause to be sent, a commercial electronic message that:
  - (a) has an Australian link; and
  - (b) is not a designated commercial electronic message;unless:
  - (c) the message includes:
    - (i) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message; or
    - (ii) a statement to similar effect; and
  - (d) the statement is presented in a clear and conspicuous manner; and
  - (e) the electronic address is reasonably likely to be capable of receiving:
    - (iii) the recipient's unsubscribe message (if any); and
    - (iv) a reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message;at all times during a period of at least 30 days after the message is sent; and
  - (f) the electronic address is legitimately obtained; and
  - (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

[. . .]

- (8) Subsections (1) and (6) are civil penalty provisions.

'Designated commercial electronic message' is defined in section 2 of Schedule 1 of the Spam Act and section 1 of Schedule 1 of the Spam Act states that designated commercial electronic messages must comply with section 17.