

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

TO: Real Sim Pty Ltd
OF: 821 Gympie Road
Lawnton, QLD, 4501

I, Jonquil Ritter, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that:

- (a) Real Sim Pty Ltd (ACN 133 257 342) (**Real Sim**), contravened clause 9.4 of the Telecommunications Consumer Protections Code (C628:2015) (**the TCP Code 2015**) as described below; and
- (b) the conduct described below would also have contravened clause 10.4 of the Telecommunications Consumer Protections Code (C628:2019) (**TCP Code 2019**), if it occurred after the TCP Code 2019 was registered,

DIRECT Real Sim, under subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) (as allowed by subsection 121(1B)) to comply with clause 10.4 of the TCP Code 2019.

Details of the contraventions


1. The ACMA has investigated Real Sim's compliance with clause 9.4 of the TCP Code 2015, which stated that a supplier must provide to Communications Compliance (**CommCom**) prescribed statements regarding Code compliance in the manner set out in clause 9.4 and at the times set out in clause 9.8, and must take the actions set out in clause 9.4.1 to enable that outcome.
2. Specifically, clause 9.4.1(a) of the TCP Code 2015 stated that a supplier must provide to CommCom a compliance attestation which has been endorsed by the chief executive officer or a senior manager of the supplier, by the date each year specified in clause 9.8.1 and in the form required by CommCom.
3. A supplier that had one or more customers on 1 April each year was required to provide the statements prescribed in clause 9.4.1 to CommCom by the relevant date under clause 9.8.1 of the TCP Code 2015.
4. The TCP Code 2015 applied to Real Sim because it was a carriage service provider providing telecommunications services to residential and/or small business consumers.
5. The ACMA is satisfied that Real Sim had one or more customers on 1 April 2018, but nevertheless failed to provide a compliance attestation form for the 2018 period to CommCom.
6. Accordingly, the ACMA is satisfied that Real Sim contravened clause 9.4 of the TCP Code 2015 by not providing the compliance attestation statement by 1 September 2018 in accordance with the timing requirements in clause 9.8.1 as required by clause 9.4.1(a) of the TCP Code 2015.

Requirement to comply with this Direction

7. Under subsection 121(2) of the Act, Real Sim must comply with a direction under subsection 121(1) of that Act.
8. If Real Sim does not comply with this direction, the ACMA may apply to the Federal Court for an order that Real Sim 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).

Review rights

9. If Real Sim is dissatisfied with this decision, it may seek a 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, within 28 days after the date on which this notice of this decision is given to Real Sim.
10. If Real Sim is dissatisfied with the ACMA's decision upon reconsideration, then subject to the *Administrative Appeals Tribunal Act 1975* (the **AAT Act**), it may apply to the Administrative Appeals Tribunal for review of the decision, within 28 days of the date on which notice of the ACMA's decision on reconsideration is given to Real Sim. Real Sim may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the AAT Act.



Signature

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

11 September 2019