

## Investigation Report

<b>File No.</b>	ACMA2020/183
<b>Entity</b>	Bottle Communications Pty Ltd
<b>ACN</b>	128 153 891
<b>Scope of Investigation</b>	Compliance with subsection 128(1) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	Compliance with the carrier licence condition at clause 1 of Schedule 1 to the <i>Telecommunications Act 1997</i>

### Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Bottle Communications Pty Ltd (ACN 128 153 891) (**Bottle Communications**) has contravened:

- (a) subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the carrier licence condition set out at clause 1 of Schedule 1 to the *Telecommunications Act 1997* (the **Telecommunications Act**); and
- (c) subsection 68(1) of the *Telecommunications Act*,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

### Background

1. On 3 March 2020, the ACMA received a referral from the TIO alleging that Bottle Communications had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
2. The TIO contacted Bottle Communications by email on 17 December 2019 to inform Bottle Communications that, as it holds a carrier licence under the Telecommunications Act, it is required to become a member of the TIO scheme. The TIO subsequently discussed the TIO membership requirements with Bottle Communications over the telephone on the same day. The TIO made a number of further attempts to contact Bottle Communications, most recently by telephone on 10 January 2020. However, no TIO membership application was received by the TIO prior to its referring this matter to the ACMA.
3. The ACMA investigated the TIO referral and on 23 April 2020 the ACMA sent its preliminary findings report to Bottle Communications, inviting it to respond by 8 May 2020.
4. In response to the preliminary findings report, on 23 April 2020 Bottle Communications advised the ACMA that it thought it had joined the TIO scheme last year. Further, Bottle Communications indicated that it would contact the TIO to clarify its membership status and join the TIO scheme if required. On 29 May 2020, Bottle Communications advised the ACMA that it had just applied to join the TIO scheme as the TIO had earlier confirmed that it was not currently a member of the scheme.
5. On 28 July 2008, Bottle Communications was granted a carrier licence by the ACMA (see subsection 5(1) of the TCPSS Act and section 7 of the Telecommunications Act).

### **Legislative framework**

6. Under paragraph 510(1)(aa) of the Telecommunications Act, the ACMA may investigate a matter where it has reason to suspect that a person may have contravened the TCPSS Act.
7. Section 128 of the TCPSS Act requires each carrier and eligible carriage service provider to join the TIO scheme. A carrier means the holder of a carrier licence (see subsection 5(1) of the TCPSS Act and section 7 of the Telecommunications Act).
8. When a carrier contravenes subsection 128(1) of the TCPSS Act it also contravenes the carrier licence condition set out at clause 1 of Schedule 1 to the Telecommunications Act and subsection 68(1) of the Telecommunications Act.

### **Findings and reasons**

9. Bottle Communications has held a carrier licence under the Telecommunications Act since 28 July 2008 (carrier 252 on the register) (<https://www.acma.gov.au/register-carrier-licences-and-nominated-carrier-declarations>).
10. Bottle Communications advised the ACMA that it applied to join the TIO scheme on 29 May 2020.
11. The TIO advised that Bottle Communications joined the TIO scheme on 29 May 2020.
12. For the above reasons, for the period 28 July 2008 to 29 May 2020 that Bottle Communications was a carrier and did not join the TIO scheme, it contravened subsection 128(1) of the TCPSS Act, and thereby failed to comply with the carrier licence condition set out at clause 1 of Schedule 1 to the Telecommunications Act, in contravention of subsection 68(1) of the Telecommunications Act.