



Australian Government
Australian Communications
and Media Authority

Subsection 102(2) of the *Telecommunications Act 1997*

Direction in relation to clause 10 of Schedule 2 to the *Telecommunications Act 1997*

TO: Agile Pty Ltd ACN 080 855 321

OF: 65 Waterloo Road, Macquarie Park NSW 2113

Background

The Australian Communications and Media Authority (**the ACMA**) is responsible for monitoring and enforcing compliance by carriage service providers (**CSPs**) with their obligations under the *Telecommunications Act 1997* (**the Telecommunications Act**).

Telstra provides and maintains the Integrated Public Number Database (the IPND), in accordance with the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*. In that capacity, Telstra is hereafter referred to as the IPND Manager.

Agile Pty Ltd (ACN 080 855 321) (**Agile**) is a CSP as defined in section 87 of the Telecommunications Act. As a CSP, it is subject to the rule in subsection 101(1) of the Telecommunications Act, which requires it to comply with the 'service provider rules' applicable to it. The service provider rules, set out in section 98 of the Telecommunications Act, include those in Schedule 2 to the Telecommunications Act.

The ACMA has investigated whether Agile contravened the Telecommunications Act; in particular, whether Agile complied with clause 10 of Schedule 2 to the Telecommunications Act, which requires CSPs to give the IPND Manager the information it reasonably requires to provide and maintain the IPND, where a CSP supplies a carriage service to an end-user, and the end-user has a public number.

The ACMA found that, on multiple occasions, Agile failed to give the IPND Manager the information it reasonably required to provide and maintain the IPND, in breach of clause 10 of Schedule 2 to the Telecommunications Act, thereby contravening subsection 101(1) of the Telecommunications Act.

DIRECTION

The ACMA, under subsection 102(2) of the Telecommunications Act, hereby directs Agile to take the following action directed towards ensuring that it does not contravene clause 10 of Schedule 2 to the Telecommunications Act, or is unlikely to contravene that clause, in the future:

Independent Audit

1. Within 60 days from the date of this direction, Agile must commission an appropriately experienced and qualified independent person to audit and report to Agile in writing on:
 - (a) the efficacy of Agile's systems, processes and practices (including, without limitation, the training provided to Agile staff involved in customer data entry) that relate to Agile's compliance with the obligation in clause 10 of Schedule 2 to the Telecommunications Act; and
 - (b) recommendations to improve the efficacy of those systems, processes and practices.
2. Agile must ensure that the audit report referred to in paragraph 1 is completed and delivered to Agile by no later than 31 May 2019.
3. Agile must prepare a written response to any recommendations in the audit report referred to in paragraph 1 by 30 June 2019, and implement all reasonable recommendations in the audit report by no later than 31 December 2019. Where Agile regards any recommendation in the audit report as unreasonable, or has decided not to implement a recommendation, it must record the reasons for its view in the written response.

Reconciliations

4. Agile must undertake a reconciliation of its own services (including any services for which public number customer data is uploaded to the IPND on Agile's behalf by a third-party Data Provider¹) against the IPND, by 31 March 2019, and thereafter every quarter until 31 December 2019.
5. On completion of each reconciliation referred to in paragraph 4, Agile must produce a written report detailing at least the following information:
 - a) any discrepancies identified in the reconciliation process (including any services which have missing records or records with an incorrect connection status);
 - b) the date the discrepancy was identified;
 - c) a description of the action that has been taken to rectify the discrepancy, including updating the relevant IPND entry; and
 - d) the date the IPND was updated.
6. From the date of this direction, Agile must review the monthly Changed Data Provider

¹ 'Data Provider' is defined to mean a CSP who has an obligation to provide PNCD to the IPND Manager, or an entity acting on behalf of the CSP, and who is registered with the IPND Manager.

Reports² produced by the IPND Manager within 7 days of each monthly report being made available.

7. On completion of each review referred to in paragraph 6, Agile must produce a written report detailing at least the following information:
 - a) any Agile services that have been incorrectly overwritten in the IPND by another provider and the name of the provider;
 - b) any services of another provider that have been incorrectly overwritten in the IPND by Agile and the name of the provider; and
 - c) a description of the action that has been taken to rectify the discrepancy, including updating the relevant IPND entry and/or notifying the relevant provider.

Implementing effective systems, process and practices

8. Agile must implement and maintain effective systems, processes and practices for ensuring compliance with clause 10 of Schedule 2 to the Telecommunications Act, including:
 - a) systems, processes and practices designed to ensure that accurate, complete and up to date public number customer data for all Agile services is uploaded to the IPND in the required timeframes;
 - b) systems, processes and practices designed to ensure that any upload of public number customer data to the IPND that generates an error notification from the IPND Manager is investigated and rectified (where rectification is within Agile's power) within one business day;
 - c) systems, processes and practices designed to ensure that Agile can readily identify its own connected services in its own systems to allow for accurate reconciliation of its services against the IPND;
 - d) systems, processes and practices designed to ensure that public number customer data uploaded to the IPND uses a unique CSP/Data Provider code combination, as assigned by the IPND Manager, to identify the CSP responsible for the accuracy and completeness of the IPND record and to identify the Data Provider responsible for uploading the data;
 - e) training for relevant staff on:
 - (i) the collection, provision, updating, correction and reconciliation of customer records;
 - (ii) processes for checking and correction of errors;
 - (iii) IPND-related regulatory obligations; and
 - (iv) the timing and importance of updates to the IPND.

Reporting

9. Agile must provide a copy of the audit report referred to in paragraph 1, and the

² The Changed Data Provider report is listed in the IPND Code as a monthly report issued by the IPND Manager which informs Data Providers of all numbers gained and lost in the last month.

written response referred to in paragraph 3, to the ACMA by no later than 31 July 2019.

10. Agile must provide the written report referred to at paragraph 5 to the ACMA within one month of each quarterly reconciliation.
11. At the same time Agile provides the written report referred to at paragraph 10, Agile must provide to the ACMA:
 - a) the written monthly reports referred to at paragraph 7; and
 - b) a written report on its compliance with the direction in paragraph 8.
12. Agile must keep records sufficient to demonstrate compliance with this direction and retain those records for at least 24 months after the date the record is created.
13. Any report provided to the ACMA in accordance with this direction must be in writing and signed by Agile's chief legal counsel or head of regulatory affairs.

TAKE NOTE

14. Section 98 of the Telecommunications Act sets out the service provider rules which are applicable to a CSP. This includes the service provider rule at clause 10 of Schedule 2 to the Telecommunications Act, which requires that if:
 - a) a CSP supplies a carriage service to an end-user; and
 - b) the end-user has a public number;the CSP must give the IPND Manager such information as it reasonably requires to provide and maintain the IPND.
15. Subsection 101(1) of the Telecommunications Act provides that a service provider must not contravene the service provider rules that apply to it.
16. Under subsection 102(2) of the Telecommunications Act, the ACMA can direct a service provider to take specified action directed towards ensuring that the service provider does not contravene a service provider rule, or is unlikely to contravene the rule, in the future.
17. Subsection 102(4) of the Telecommunications Act provides that a carrier must not contravene a direction given under subsection 102(2).

REVIEW RIGHTS

18. Agile may request the ACMA reconsider its decision to give the direction, by application in writing made within 28 days after being informed of the decision, in accordance with section 558 and Part 29 of the Telecommunications Act.
19. If Agile is dissatisfied with the ACMA's decision upon reconsideration then, in accordance with section 562 of the Telecommunications Act, Agile has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal.

ACCESS TO DOCUMENTS

20. Agile 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 and you must:

- state that the request is an application for the purpose of the FOI Act;
- provide sufficient information about the documents sought to be obtained 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).

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

MAKING A COMPLAINT

22. If you are dissatisfied with the way the ACMA handled this matter, you may contact the person whose details are provided below in paragraph 24.

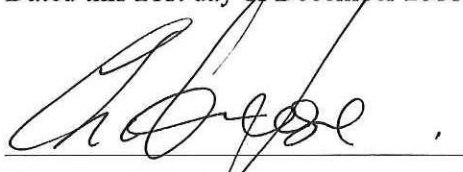
23. A complaint may also be made to the Commonwealth Ombudsman. (The Ombudsman usually prefers that your concerns are raised with the ACMA first.) There is an office of the Commonwealth Ombudsman in each capital city. Further information may be obtained at www.ombudsman.gov.au or call 1300 362 072.


CONTACTING THE ACMA

24. Should you require further information, please contact:


Executive Manager
Unsolicited Communications and Numbering Branch
Australian Communications and Media Authority
PO Box 13112 Law Courts
Melbourne, VIC 8010
Ph: (03) 9963 6800
Email: ipnd@acma.gov.au

Dated this 21st day of December 2018


Signature of Member


Name (Please Print)


Signature of Member/
General Manager


Name (Please Print)

