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Investigation Report

File No	ACMA2022/29
Carriage service provider	Exetel Pty Ltd
ACN	097 986 546
Scope of Investigation	Compliance with clause 10.4 of the Telecommunications Consumer Protections Code C628:2019 (**the TCP Code**)

Findings

1. The Australian Communications and Media Authority (the **ACMA**) finds that Exetel Pty Ltd (ACN 097 986 546) (**Exetel**) contravened clause 10.4 of the TCP Code because it did not provide Communications Compliance Ltd (**CommCom**) with prescribed statements regarding code compliance by the applicable date specified in clause 10.8 of the TCP Code, being 1 September 2021. The ACMA also finds that Exetel, in not complying with clause 10.4 of the TCP Code, contravened subsection 121(2) of the *Telecommunications Act 1997* (the **Act**).

Background

2. On 11 September 2019, the ACMA gave Exetel a direction under subsection 121(1) of the Act to comply with clause 10.4 of the TCP Code under subsection 121(1) of the Act as a result of contravening the equivalent provision of the previous version of the TCP Code.

3. On 30 March 2022, the ACMA commenced an investigation under section 510(c) of the Act to determine whether Exetel had complied with clause 10.4 of the TCP Code.

4. On the same day, the ACMA sent its preliminary findings report to Exetel and invited Exetel to respond by 13 April 2022.

5. On 19 April 2022, the ACMA sent a follow-up email to Exetel as no response to the preliminary findings had been received.

6. On 6 May 2022, Exetel responded to the preliminary findings report. Exetel did not dispute that it had not met its obligations under clause 10.4 of the TCP Code. However, Exetel, did set out a number of factors that it considered contributed to it not submitting the compliance attestation form for 2021.

7. Where a service provider does not comply with a subsection 121(1) direction it amounts to a breach of subsection 121(2) of the Act, which is a civil penalty provision (subsection 121(4) of the Act).

Reasons for findings

8. The Table below sets out the ACMA's final findings and the reasons for those findings.

TCP Code rule	Requirement	Reasons and finding
10.1	**Supplier obligations to comply and register** Suppliers with one or more	Exetel was a carriage service provider providing telecommunications services to residential and small business

	Customers must implement and comply with the Code Compliance Framework and register with Communications Alliance for compliance purposes.	consumers. It was therefore a 'supplier' under the TCP Code. The ACMA is satisfied that Exetel had one or more customers on 1 April 2021 on the basis of information it provided to the ACMA on 28 April 2021 and 19 July 2021 on the number of services it had in operation.
10.4 10.4.1(a)	**Code compliance statements** Suppliers must provide to CommCom prescribed statements regarding compliance with the TCP Code in the manner set out in this clause 10.4 and at the times set out in clause 10.8. A Supplier must: (a) **Compliance Attestation**: 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 10.8.1 and in the form required by CommCom.	As Exetel had one or more customers on 1 April 2021 it was required under clause 10.4 to provide CommCom with the prescribed statements regarding compliance with the TCP Code in accordance with the timeframes specified in clause 10.8.1 of the TCP Code.
10.8 10.8.2	**Supplier obligations to meet compliance attestation timeframes** Suppliers must meet the timeframes set out in this clause if they have one or more customers on 1 April each year. ***Date for provision of Compliance Attestation for all other suppliers***: If the supplier is not a small supplier as at 1 April, 1 September in the same year, or the following working day. Note: A 'Small Supplier' is defined in clause 2.1 of the TCP Code to mean a supplier with fewer than 3,000 services in operation.	On 1 December 2021, CommCom provided the ACMA with a list of suppliers that had lodged the prescribed statements regarding TCP Code compliance for 2021. Exetel was not on that list. Clause 10.8.2 of the TCP Code provides that the date for provision of the prescribed statements for a supplier that is not a small supplier as at 1 April, is 1 September in the same year. A supplier with more than 3,000 services in operation is not a small supplier. Exetel provided information to the ACMA on 28 April 2021 that indicated that it had more than 3,000 services in operation on 1 April 2021. Consequently, Exetel was required to provide CommCom the prescribed statements by 1 September 2021. Subsection 121(2) of the Act requires that a person must comply with a direction given under subsection 121(1) of that Act. On 11 September 2019, the ACMA gave Exetel a direction under subsection 121(1) of the Act to comply with clause 10.4 of the TCP Code. Exetel was

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In its response to the ACMA on 6 May 2022, Exetel did not dispute that it had not met its obligation under clause 10.4 of the TCP Code.

The ACMA is of the view that Exetel did not comply with clause 10.4 of the TCP Code, and in doing so contravened subsection 121(2) of the Act.</td></tr>
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