



## Remedial Direction issued under subclause 26(2) of Schedule 8 to the Broadcasting Services Act 1992

TO: Hubbl Pty Limited ACN 072 725 289

OF: 5 Thomas Holt Drive

Macquarie Park, NSW, 2113

### Direction

The Australian Communications and Media Authority (**the ACMA**) is satisfied that Hubbl Pty Limited (ACN 072 725 289) (**Hubbl**), an online content service provider, has contravened subclause 25(1) of Schedule 8 to the *Broadcasting Services Act 1992* (**the BSA**), details of which are found within the ACMA's investigation report for investigations BI-668, BI-669 and BI-670, and the ACMA's investigation report for investigation BI-672 (together, **the investigation reports**); and

HEREBY directs Hubbl under subclause 26(2) of Schedule 8 to the BSA, to take the actions specified below, directed towards ensuring that it does not contravene the *Broadcasting Services (Online Content Service Provider Rules) 2018* (**the Online Rules**), or is unlikely to contravene the Online Rules in the future.

Hubbl is an online content service provider which was previously named Streamotion Pty Limited. Hubbl is a wholly owned subsidiary of Foxtel Management Pty Limited ACN 068 671 938. One of the online content services provided by Hubbl is "Kayo", which provides live coverage of sporting events.

### *Independent audit*

1. Within 30 days from the date of this direction, Hubbl must, for the purposes of paragraph 5, provide the following to the ACMA for approval:
  - a. the name and qualifications of an independent auditor which Hubbl proposes be engaged to conduct the audit and prepare the written audit report required by this direction; and
  - b. the draft terms of reference for the independent auditor which must comply with paragraph 4.
2. Hubbl must provide a statement addressing whether Hubbl (or any of Hubbl's related bodies corporate) has a prior or existing relationship with the proposed auditor and advise of any potential conflicts of interest of the proposed auditor (or their employer). The statement must also include a description of the proposed auditor's experience which is relevant to the assessment of systems and processes for live coverage of sporting events by online content service providers and the placement of advertising or promotional content in such coverage.

3. Should the ACMA not approve the independent auditor proposed by Hubbl in accordance with paragraph 1, Hubbl must, within 30 days from when the ACMA gives written notice to that effect, propose an alternative independent auditor under paragraph 1.

*Terms of reference*

4. The terms of reference for the independent auditor, must include:
  - i. a requirement to assess the extent to which Hubbl's systems, processes and practices are directed towards ensuring Hubbl's compliance with the Online Rules – this will include (but is not limited to) the auditor running random audits of the functioning of the systems, processes and practices during a range of live sporting streams and assessing whether these are operating as intended and achieving compliance with the Online Rules, and conducting a review of the contraventions identified in the investigation reports to ascertain the factors which contributed to those contraventions;
  - ii. assessment of the quality of remedial actions, if any, that Hubbl has taken to date to address contraventions of the Online Rules, including (but not limited to) the contraventions identified in the investigation reports;
  - iii. assessment of the ability of Hubbl's systems, processes and practices to swiftly detect and address system failures that could potentially result in contraventions of the Online Rules;
  - iv. assessment of the quality of the processes in place, if any, to support communication between relevant employees, agents and contractors about actual or potential failures of systems which may potentially result in contraventions of the Online Rules, and to support communication of suggestions to rectify or improve such systems;
  - v. assessment of the effectiveness of existing training for Hubbl's relevant employees, agents and contractors to provide all teams and personnel who are involved in the delivery of gambling promotional content in conjunction with coverage of live sporting events using an online content service the requisite knowledge and understanding of the Online Rules and of Hubbl's systems, processes and practices to ensure compliance with the Online Rules;
  - vi. recommendations as to the improvement or maintenance of Hubbl's systems, processes and practices to ensure best practice compliance with the Online Rules;
  - vii. recommendations for improvements to training of Hubbl's relevant employees, agents and contractors to provide them with the requisite knowledge and understanding of the Online Rules and Hubbl's systems processes and practices to ensure compliance with the Online Rules; andmay also include:
  - viii. any other terms of reference which are considered to be appropriate by Hubbl or the independent auditor to assist in assessing Hubbl's capability to comply with the Online Rules, so long as these do not in any way limit the scope of the terms of reference in subparagraphs i – vii.

*Timeframes*

5. Hubbl must require that the independent audit be completed in accordance with the terms of reference, and the independent auditor's written report be provided to Hubbl, no later than 3 months after the day that Hubbl is provided with approval as contemplated in paragraph 1.
6. Hubbl must provide a copy of the audit report prepared by the independent auditor to the ACMA within 10 days of the completion date of the audit.

7. Hubbl must implement audit recommendations within 6 months of receiving the independent audit report. If there are any recommendations that Hubbl cannot reasonably implement in the timeframe, Hubbl should record its reasons in a report and specify the time period within which it does propose to implement the recommendation(s). If there are any recommendations that Hubbl does not consider are reasonable to implement, it must record its reasons in a report.

### *Reports*

8. Hubbl must provide a written report to the ACMA within 30 days after the end of the 6-month period referred to in paragraph 7, which includes Hubbl's responses to all audit recommendations and any report required to be prepared under paragraph 7.
9. If Hubbl's report submitted in accordance with paragraph 8 does not fully address the implementation of a recommendation of the independent auditor, due to a delay in implementation of the recommendation, Hubbl must inform the ACMA in writing within 10 days after the delayed implementation of the recommendation, and include the date of implementation in its notification.
10. If Hubbl's report submitted in accordance with paragraph 8 does not fully address the implementation of a recommendation of the independent auditor, due to a delay in implementation of the recommendation, and Hubbl later decides to not implement the recommendation, Hubbl must inform the ACMA in writing within 10 days of that decision to not implement the recommendation, and provide its reasons for the decision in its notification.

### **TAKE NOTE**

11. Subclause 25(1) of Schedule 8 to the BSA provides that an online content service provider must not contravene the Online Rules. A contravention of section 12 or 15 of the Online Rules is therefore a contravention of subclause 25(1) of Schedule 8 to the BSA. Under subclause 26(1), if an online content service provider has contravened the Online Rules, then clause 26 applies.
12. Under subclause 26(2) of Schedule 8 to the BSA, the ACMA can give a provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the Online Rules, or is unlikely to contravene the Online Rules, in the future.
13. Subclause 26(4) of Schedule 8 to the BSA provides that an online content service provider must not contravene a direction given under subclause 26(2) of Schedule 8 to the BSA. Subclause 26(5) provides that subclause 26(4) is a civil penalty provision.
14. A body corporate that has contravened the civil penalty provision at subclause 26(4) of Schedule 8 to the Act, may be ordered by the Federal Court to pay to the Commonwealth such pecuniary penalty as the Court determines to be appropriate, up to a maximum of \$626,000 (see subsection 205F(5D) of the BSA). Subclause 26(6) provides that an online content service provider who contravenes subclause 26(4) commits a separate contravention of that subclause in respect of each day during which the contravention continues.

## **AAT REVIEW RIGHTS**

15. In accordance with section 204 of the BSA, Hubbl may make an application to the Administrative Appeals Tribunal (AAT) for a review of the ACMA's decision to give this remedial direction.
16. The AAT is an independent body. The AAT can, amongst other things:
  - confirm the ACMA's decision;
  - vary the ACMA's decision; or
  - set the ACMA's decision aside and replace it with its own decision.
17. An application to the AAT for review must be in writing. The AAT has a form for this purpose which may be used if preferred.
18. An application for review should be made within 28 days of being told about the decision. A \$1,082 application fee must be paid with the application. In certain circumstances, the AAT will reduce its application fee. If you wish to seek a reduction of the application fee, you can obtain the application form for this from the AAT.
19. The AAT website has more information at [www.aat.gov.au](http://www.aat.gov.au). For questions about the AAT's procedures or requirements, please contact the AAT on 1800 228 333 or at GPO Box 9955 in each capital city.

## **STATEMENT OF REASONS**

20. Attached to this direction is a statement setting out the reasons for the ACMA's decision to give Hubbl this direction.

## **CONTACTING THE ACMA**

21. Should you require further information, please contact:

Rochelle Zurnamer  
Executive Manager  
Gambling & Mis/Disinformation Branch  
Australian Communications and Media Authority  
65 Pirrama Road PYRMONT NSW 2009

Phone: [REDACTED]

Email: [REDACTED]

Dated this 21 day of May 2024

Carolyn Lidgerwood  
Carolyn Lidgerwood {May 21, 2024 10:40 GMT+10}  
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Creina Chapman  
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Member

Member

Australian Communications and Media Authority

## STATEMENT OF REASONS FOR DECISION TO GIVE HUBBL PTY LIMITED A REMEDIAL DIRECTION PURSUANT TO SUBCLAUSE 26(2) OF SCHEDULE 8 TO THE BROADCASTING SERVICES ACT 1992

Issued pursuant to section 205 of the *Broadcasting Services Act 1992* (the BSA).

### 1. DECISION

- 1.1 For the reasons set out below, the Australian Communications and Media Authority (the ACMA) has decided to give Hubbl Pty Limited (Hubbl) a remedial direction, under subclause 26(2) of Schedule 8 to the BSA, directed towards ensuring that Hubbl does not contravene the *Broadcasting Services (Online Content Service Provider Rules) 2018* (the Online Rules), or is unlikely to contravene the Online Rules, in the future.
- 1.2 A statement of the reasons for the ACMA's decision is set out below in accordance with section 205 of the BSA.

### 2. RELEVANT LEGISLATIVE PROVISIONS

- 2.1 Between 5:00am and 8:30pm, section 12 of the Online Rules prohibits an online content service provider from providing gambling promotional content on an online content service in conjunction with live coverage of a sporting event, from 5 minutes before the scheduled start of the sporting event until 5 minutes after the conclusion of the sporting event.
- 2.2 Between 8:30pm and 5:00am, section 15 of the Online Rules restricts the provision of gambling promotional content on an online content service in conjunction with live coverage of a sporting event. A limited prohibition exists, with gambling promotional content permitted to be provided in conjunction with live coverage of sporting events during certain breaks, depending on the kind of gambling promotional content that is being provided.
- 2.3 Subclause 25(1) of Schedule 8 to the BSA states that an online content service provider must not contravene the Online Rules.
- 2.4 Clause 26 of Schedule 8 to the BSA states that if an online content service provider has contravened, or is contravening, the Online Rules, the ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the Online Rules, or is unlikely to contravene the Online Rules, in the future.
- 2.5 Section 204 of the BSA provides that a person to whom a remedial direction is given, may make an application to the Administrative Appeals Tribunal (AAT) for a review of the decision to give the direction under subclause 26(2) of Schedule 8 to the BSA.
- 2.6 Section 205 of the BSA provides that if the ACMA makes a decision that is reviewable under section 204 of the BSA, the ACMA is to include in the document by which the decision is notified:
  - (a) a statement setting out the reasons for the decision; and
  - (b) a statement to the effect that an application may be made to the AAT for a review of the decision.

### 3. BACKGROUND

#### *Hubbl*

- 3.1 Hubbl is an online content service provider which was previously named Streamotion Pty Limited. Hubbl is a subsidiary of Foxtel Management Pty Limited ACN 068 671 938. One of the online content services provided by Hubbl is “Kayo”, which provides live coverage of sporting events.

#### *Investigation 1*

- 3.2 In May 2023, the ACMA commenced an investigation under section 170 of the BSA into Hubbl’s compliance with the Online Rules.
- 3.3 The initial investigation related to complaints received by the ACMA regarding gambling promotions provided by Hubbl in conjunction with live coverage of the following sporting events:
- Day 2 of the 3<sup>rd</sup> Cricket Test, Australia v India
  - Day 5 of the 4<sup>th</sup> Cricket Test, Australia v India
  - Port Adelaide v Brisbane AFL match
- 3.4 The live coverage of the abovementioned sporting events was provided on Hubbl’s Kayo online content service on 2 March 2023, 13 March 2023 and 18 March 2023 respectively.
- 3.5 Following receipt of information provided by Hubbl that confirmed that there were additional live sporting events affected by contravening gambling advertisements, referred to as the ‘iOS’ issue, the ACMA broadened the scope of its investigation.
- 3.6 The findings of that investigation are detailed in a combined ACMA Investigation Report BI-668, BI-669 and BI-670 which was sent to Foxtel Pty Ltd, Hubbl’s parent company, on 30 April 2024 (**Investigation Report 1**).

#### *Investigation 2*

- 3.7 In June 2023, the ACMA commenced an investigation under section 170 of the BSA into Hubbl’s compliance with the Online Rules.
- 3.8 The investigation related to a complaint received by the ACMA regarding gambling promotions provided by Hubbl in conjunction with the Port Adelaide v West Coast Eagles AFL match on 22 April 2023 seen on Kayo.
- 3.9 The finding of that investigation is detailed in the ACMA’s Investigation Report BI-672 which was sent to Foxtel Pty Limited on 19 December 2023 (**Investigation Report 2**).

### 4. EVIDENCE AND REASONS FOR DECISION TO GIVE A REMEDIAL DIRECTION

#### *Evidence*

- 4.1 In reaching its decision to give a remedial direction under subclause 26(2) of Schedule 8 to the BSA, the ACMA had regard to the documents and information referred to below:

### ***Investigation 1***

- (a) separate complaints about the individual matches received by the ACMA on 6 March 2023, 14 March 2023 and 20 March 2023 respectively
- (b) submissions from Hubbl to the ACMA dated 29 March 2023, 4 April 2023 and 12 April 2023 respectively (responding to emails from the ACMA requesting information dated 9 March 2023 and 14 March 2023 respectively)
- (c) the submission from Hubbl to the ACMA dated 30 June 2023, including documents provided by Hubbl as attachments to that submission
- (d) the submission from Hubbl to the ACMA dated 25 October 2023
- (e) documents from Hubbl to the ACMA dated 9 February 2024 (responding to emails from the ACMA requesting information dated 30 November 2024)
- (f) documents from Hubbl to the ACMA dated 7 March 2024 (responding to emails from the ACMA requesting information dated 5 March 2024)
- (g) the submission from Hubbl to the ACMA dated 8 May 2024
- (h) Investigation Report 1.

### ***Investigation 2***

- (a) a complaint received by the ACMA on 28 April 2023
- (b) the submission from Hubbl to the ACMA dated 15 May responding to an email from the ACMA requesting information dated 28 April 2023
- (c) the submission from Hubbl to the ACMA, including a copy of the live broadcast stream dated 5 July 2023
- (d) the submission from Hubbl to the ACMA dated 19 July 2023
- (e) the submission from Hubbl to the ACMA dated 18 August 2023
- (f) Investigation Report 2
- (g) the submission from Hubbl to the ACMA dated 15 January 2024
- (h) the submission from Hubbl to the ACMA dated 8 May 2024.

### ***Findings on material facts***

4.2 Having regard to the evidence outlined in paragraph 4.1, the ACMA made the following factual findings:

- (a) Hubbl provided gambling promotional content on its online content service, Kayo, in conjunction with live coverage of numerous sporting events, in the prohibited period between 5:00 am and 8:30 pm;

(b) Hubbl otherwise provided gambling promotional content in conjunction with live coverage of numerous sporting events between 8:30 pm and 5:00 am which contravened the restrictions in Part 4 of the Online Rules; and

(c) accordingly, Hubbl contravened sections 12 and 15 of the Online Rules.

4.3 The basis for these factual findings is set out in the Investigation Reports 1 and 2.

***Reasons for the decision***

4.4 Having made the finding that Hubbl contravened sections 12 and 15 of the Online Rules on multiple occasions, the ACMA had a number of enforcement options available to it, including instituting court proceedings seeking civil penalties, issuing an infringement notice or giving a remedial direction.

4.5 The ACMA recognises that Hubbl:

(a) was cooperative with the ACMA's investigation;

(b) has indicated it did not deliberately contravene the Online Rules;

(c) has already taken some steps to address its failure to comply with the Online Rules.

4.6 For these reasons, the ACMA did not decide to take enforcement action in the form of instituting court proceedings seeking a civil penalty order or issuing Hubbl with an infringement notice in relation to contraventions of the Online Rules (which in turn result in a contravention of subsection 25(1) of Schedule 8 to the BSA).

4.7 The ACMA considers that it is appropriate to take enforcement action in this case and has made the decision to exercise its discretion under subclause 26(2) of Schedule 8 to the BSA, to give a remedial direction, for the following reasons:

(a) compliance with the Online Rules is an important part of the regulatory scheme established by the BSA;

(b) the Online Rules have been in effect since September 2018 and Hubbl has had sufficient time to ensure that it had systems and processes in place to ensure compliance with its obligations under the Online Rules;

(c) although Hubbl subsequently identified many contraventions of the Online Rules and cooperated with the ACMA by providing details of these, this only occurred after the contraventions about which the ACMA received complaints were brought to the attention of Hubbl by the ACMA. Hubbl did not have sufficient systems and processes in place to ensure compliance with its obligations under the Online Rules, nor to identify that there had been a failure to comply with those Online Rules;

(d) given the apparent failure in Hubbl's systems and processes to ensure compliance with its obligations under the Online Rules, the actions specified in the remedial direction are directed towards ensuring Hubbl's future compliance with the Online Rules by requiring an independent assessment of those systems and processes, as well as relevant training; and

(e) the need to deter Hubbl from contravening the Online Rules and the need for Hubbl to understand the importance of compliance in this context.

4.8 The ACMA considers that a remedial direction is an appropriate and proportionate enforcement mechanism in this case, as compliance with the direction will:

(a) require Hubbl to take the specified action which is directed towards ensuring that Hubbl does not contravene the Online Rules or is unlikely to contravene the Online Rules in the future;

(b) help to ensure that Hubbl implements effective systems which will enable it to monitor compliance with the Online Rules; and

(c) help to ensure that Hubbl implements a system designed to give Hubbl's employees, agents and contractors knowledge and understanding of the requirements of the Online Rules, in so far as those requirements are relevant to the duties of the employees, agents or contractors concerned.

4.9 In summary, the ACMA considers that giving a direction to Hubbl is an appropriate enforcement outcome and that, in light of the factors mentioned above, this level of enforcement response adequately addresses the seriousness of the contravention.