

23 August 2012

MyCRA Pty Ltd  
246 Stafford Road  
Stafford, QLD 4053

Attention: Mr Graham Leslie Doessel, Director

ACMA file reference: ACMA2012/779

Dear Mr Doessel

### **Formal warning under Section 41 of the *Spam Act 2003***

On 22 June 2012, the Australian Communications and Media Authority (ACMA) commenced an investigation into MyCRA Pty Ltd ACN 140 783 446 (MyCRA) for alleged contraventions of the *Spam Act 2003* (Spam Act).

The ACMA has now completed the investigation and has found that MyCRA has contravened subsection 18(1) of the Spam Act on three occasions, as detailed below.

In response to this finding, the ACMA is issuing MyCRA with a formal warning (Attachment A) under section 41 of the Spam Act.

### **Particulars of contraventions**

The ACMA has based its decision on the outcome of the investigation on the following:

1. The ACMA has investigated three complaints from consumers alleging that they had received commercial electronic messages (CEMs) by SMS, promoting MyCRA's products or services, which did not include a functional unsubscribe facility.
2. Information and documents obtained by the ACMA during the investigation showed that, between 24 January 2012 and 1 June 2012 (the relevant period), MyCRA sent the CEMs to the following relevant mobile numbers:
  - i. +61 434 609 237 on 24 January 2012
  - ii. +61 414 599 019 on 28 February 2012
  - iii. +61 412 179 306 on 1 June 2012.
3. On 18 July 2012, the ACMA wrote to MyCRA informing it that the ACMA may make an adverse finding based on the information gathered in the course of its investigation in regard to SMS messages sent during the relevant period. In accordance with subsection 512(5) of the *Telecommunications Act 1997* (Telecommunications Act), MyCRA was given an opportunity to make

submissions to the ACMA. A written submission was received by the ACMA on 1 August 2012.

4. In its submission, MyCRA stated that its SMS messages are sent with 'MyCRA' or 'MyCRAupdate' in the sender identification field of its messages.
5. In considering MyCRA's submission, ACMA acknowledges that the use of the sender identification field may be sufficient to comply with subsection 17(1) of the Spam Act.
6. MyCRA also stated that it had been concerned to learn that the CEMs did not include an unsubscribe facility. However, it did not provide any evidence to establish that CEMs sent to the relevant mobile numbers during the relevant period had included a functional unsubscribe facility.
7. In considering MyCRA's submission, the ACMA has reviewed the content of the CEMs and is satisfied that they did not contain a functional unsubscribe facility.

### **Issue of a formal warning**

In issuing a formal warning to MyCRA, the ACMA has taken the following into account:

- MyCRA has cooperated with the ACMA during the course of the investigation
- The investigation was limited to three CEMs
- MyCRA has stated that its CEMs now include an unsubscribe facility.

The ACMA takes compliance with the Spam Act very seriously and expects MyCRA to comply with the Spam Act in the future. Should there be any further contraventions, the ACMA may take into account any prior contravention of the Spam Act when determining appropriate enforcement action.

### **Closure of current investigation**

This formal warning concludes the ACMA's current investigation into MyCRA's compliance with the Spam Act.

Should MyCRA have any questions about ongoing compliance with the Spam Act, please contact Tina Nabb on (03) 9963 6766.

Yours sincerely



**Vince Humphries**  
**Executive Manager**  
**Unsolicited Communications Branch**  
**Australian Communications & Media Authority**

## Formal warning

### Section 41 of the *Spam Act 2003*

TO: MyCRA Pty Ltd ACN 140 783 446  
OF: 246 Stafford Road  
Stafford, QLD 4053

ATTENTION: Mr Graham Leslie Doessel, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that MyCRA Pty Ltd ACN 140 783 446 (MyCRA) has contravened subsection 18(1) of the *Spam Act 2003* (Spam Act):

HEREBY issue MyCRA a formal warning under section 41 of the Spam Act for three contraventions of subsection 18(1) of the Spam Act, being a civil penalty provision.

#### ACMA investigation

On 22 June 2012, the ACMA commenced an investigation into allegations that MyCRA may have contravened subsection 18(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages that did not contain an unsubscribe facility.

#### Obligations imposed under subsection 18(1) of the Spam Act

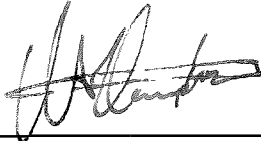
1. Subsection 18(1) of the Spam Act provides that:
  - (1) a person must not send, or cause to be sent, a commercial electronic message that:
    - (a) has an Australian link; and
    - (b) is not a designated commercial electronic messageunless:
    - (c) the message includes:
      - (i) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message; or
      - (ii) a statement to similar effect.
    - (d) the statement is presented in a clear and conspicuous manner; and
    - (e) the electronic address is reasonably likely to be capable of receiving:
      - (i) The recipient's unsubscribe message (if any); and
      - (ii) A reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message;at all times during a period of at least 30 days after the message is sent; and
    - (f) the electronic address is legitimately obtained; and

- (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

**Details of the contraventions**

- (ii) This investigation takes into account complaints made to the ACMA and information provided by MyCRA. The ACMA has concluded that:
- a. MyCRA sent three electronic messages, with an Australian link, between 24 January 2012 to 1 June 2012;
  - b. the messages were commercial electronic messages as defined in section 6 of the Spam Act; and
  - c. the messages did not contain a functional unsubscribe message as required by subsection 18(1) of the Spam Act.

Dated this 23<sup>rd</sup> day of August 2012



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**Vince Humphries**  
**Delegate of the Australian Communications and Media Authority**