



**Australian Government**

**Australian Communications  
and Media Authority**

## **Direction under subsection 121(1) of the *Telecommunications act 1997***

TO: BKB Internet Pty Ltd  
ACN: 103984050  
OF: Level 4  
14 Queens Road  
Melbourne Vic 3000

I, Nerida O'Loughlin, delegate of the Australian Communications and Media Authority (ACMA), being satisfied in accordance with subsection 121(1) of the *Telecommunications Act 1997* (**the Act**) that BKB Internet Pty Ltd ACN: 103984050 (**BKB Internet**) has contravened and is continuing to contravene clauses 7.5.1, 7.5.2, 7.5.3, 7.5.4 and 7.6.1 of the *Telecommunications Consumer Protections Code* (C628:2007) (**the Code**);

HEREBY give notice under subsection 121(1) of the Act, directing BKB Internet to take such steps as are necessary to ensure that BKB Internet complies with the Code, in particular clauses 7.5 and 7.6 of the Code, by no later than 10 February 2009.

### **Details of the contraventions**

1. BKB Internet is a "carriage service provider" within the meaning of sections 7 and 87 of the Act.
2. As a "carriage service provider", BKB Internet is a "participant in a section of the telecommunications industry" within the meaning of section 111 of the Act (relevantly, section 110 of the Act defines "section of the telecommunications industry" and section 7 of the Act defines "telecommunications industry").
3. The Code was developed by Communications Alliance Ltd (ACN: 078 026 507), being a body or association that represents a section of the "telecommunications industry", and registered with ACMA under section 117 of the Act.
4. Clause 1.3.1 of the Code states that the Code applies to the carriage service providers section of the "telecommunication industry" under section 110 of the Act.
5. The Code applies to BKB Internet, as BKB Internet is a "carriage service provider" and a "participant in a section of the telecommunications industry".

6. In May 2008 ACMA staff commenced an audit of “carriage service provider’s” compliance with the financial hardship provisions in clauses 7.5 and 7.6 of the Code.
7. The results of ACMA’s audit indicated that BKB Internet has contravened and is continuing to contravene the Code.
8. Based on the information that was provided by BKB Internet to ACMA staff to date, it appears that BKB Internet do not:
  - (a) have a financial hardship policy as required by clause 7.5.1 of the Code;
  - (b) give customers a summary of their financial hardship policy in accordance with clauses 7.5.2 and 7.5.3 of the Code;
  - (c) when sending a reminder notice in writing, advise its customers of its financial hardship policy and how to obtain more details as required by clause 7.5.4 of the Code; and
  - (d) upon a customer's request, assess the customer's eligibility for assistance under BKB Internet’s Financial Hardship policy, taking into account the customer's individual circumstances in accordance with clause 7.6.1 of the Code.
9. Consequently, it appears that BKB Internet has contravened and is continuing to contravene clauses 7.5.1, 7.5.2, 7.5.3, 7.5.4 and 7.6.1 of the Code.

### **Contraventions of the Code**

Clauses 7.5.1, 7.5.2, 7.5.3, 7.5.4 and 7.6.1 of the Code apply to BKB Internet under clause 1.3 of the Code.

Based on the material presently before me, I am satisfied that BKB Internet has contravened and is continuing to contravene clauses 7.5.1, 7.5.2, 7.5.3, 7.5.4 and 7.6.1 of the Code.

### **Requirement to comply with this Direction**

Under subsection 121(2) of the Act, BKB Internet must comply with a direction under subsection 121(1) of the Act. Subsection 121(4) states that subsections 121(2) and (3) of the Act are civil penalty provisions.

### **Enforcement action**

If BKB Internet does not comply with this Direction, ACMA may take civil action in the Federal Court to recover a pecuniary penalty. Section 570 of the Act sets out the matters which the Federal Court must consider in determining pecuniary penalties. The maximum pecuniary penalty for one contravention by a body corporate is \$10 million.

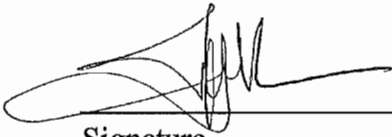
Pursuant to subsection 121(4) of the Act, ACMA may also take action to recover a pecuniary penalty for ancillary contraventions of a civil penalty provision, such as aiding, abetting, counselling or procuring a contravention of subsection 121(3) or being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of a civil penalty provision.

### Reconsideration of a decision

If you are dissatisfied with ACMA's decision to direct BKB Internet under subsection 121(1) of the Act, you may seek a reconsideration of the decision by ACMA under subsection 558(1) of the Act.

If upon reconsideration of ACMA's decision, you are dissatisfied with the ACMA's decision on the reconsideration:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and
- (b) you may request a statement under section 28 of that Act in relation to the decision on that reconsideration.



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Signature

Nerida O'Loughlin

Dated: 27/1/09.

General Manager

Industry Outputs Division

Delegate of the Australian Communications and Media Authority