

21 April 2010

Edirect Pty Ltd  
52 PELHAM STREET  
CARLTON, VIC 3053  
Attention: Company Secretary

Dear Company Secretary,

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

I enclose a notice under subsection 121(1) of the *Telecommunications Act 1997* directing Edirect Pty Ltd (ACN 108 532 083) trading as VIPtelmobile to comply with the Telecommunications Consumer Protections Code C628:2007 (the Code).

You should read the direction accompanying this letter carefully. If you have any concerns you may wish to seek legal advice. If you have any queries about this direction, please contact Alan Chalmers, Manager, Consumer Interests Section on (03) 9963 6841 or at [alan.chalmers@acma.gov.au](mailto:alan.chalmers@acma.gov.au).

In order for the Australian Communications and Media Authority (the ACMA) to assess whether Edirect Pty Ltd has complied with the direction, you should provide documentary evidence of compliance with clause 9.1.8(b) of the Code for the quarter ending 30 June 2010 (April, May and June inclusive) to the ACMA by **COB 28 July 2010**.

The reports should include details of how Edirect Pty Ltd classified and analysed complaints as per clause 9.1.8(b) of the Code.

The information should be provided to:

The Manager  
Consumer Interests Section  
Australian Communications and Media Authority  
PO Box 13112 Law Courts  
MELBOURNE VIC 8010

Yours sincerely



Olya Booyar  
General Manager  
Content, Consumer and Citizen Division



**Australian Government**  
**Australian Communications  
and Media Authority**

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

TO: Edirect Pty Ltd (ACN 108 532 083)

OF: 52 PELHAM STREET, CARLTON, VIC 3053

Attention: Company Secretary

I, Olya Booyar, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied in accordance with subsection 121(1) of the *Telecommunications Act 1997 (the Act)* that Edirect Pty Ltd (ACN 108 532 083) trading as VIPtelmobile, has contravened clauses 6.3.1 and 9.1.8(b) of the *Telecommunications Consumer Protections Code (C628:2007) (the Code)*;

HEREBY give notice under subsection 121(1) of the Act, directing Edirect Pty Ltd to take such steps as are necessary to ensure that Edirect Pty Ltd complies with clause 9.1.8(b) of the Code, by no later than **28 July 2010**.

### **Details of the contraventions**

1. Edirect Pty Ltd is a “carriage service provider” within the meaning of section 87 of the Act.
2. As a carriage service provider, Edirect Pty Ltd 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 the ACMA under section 117 of the Act on 18 May 2008.
4. Clause 1.3.1 of the Code states that the Code applies to the carriage service providers section of the telecommunications industry under section 110 of the Act.
5. The Code applies to Edirect Pty Ltd as a carriage service provider and a participant in a section of the telecommunications industry.

6. In 2009, staff of the ACMA commenced an audit of compliance by certain carriage service providers with various provisions of the billing and complaint chapters of the Code.
7. The results of the ACMA's audit indicated that Edirect Pty Ltd has contravened a provision of the Code.
8. Based on the information obtained by staff of the ACMA to date, it appears that Edirect Pty Ltd :
  - (a) has, performed some classification and analysis of complaints at various intervals; but
  - (b) has not classified and analysed complaints at least every three months and addressed areas requiring attention as soon as practicable (as required by paragraph (b) of clause 9.1.8 of the Code).
9. Consequently, it appears that Edirect Pty Ltd has contravened clause 9.1.8(b) of the Code.

### **Contraventions of the Code**

Clause 9.1.8(b) of the Code applies to Edirect Pty Ltd under clause 1.3 of the Code.

Based on the material presently before me, I am satisfied that Edirect Pty Ltd has contravened clause 9.1.8(b) of the Code.

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

Under subsection 121(2) of the Act, Edirect Pty Ltd 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 Edirect Pty Ltd does not comply with this Direction, the 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, the 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 the ACMA's decision to direct Edirect Pty Ltd under subsection 121(1) of the Act, you may seek a reconsideration of the decision by the ACMA under subsection 558(1) of the Act.

If upon reconsideration of the 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

Olya Booyar  
20 April 2010

General Manager  
Content, Consumer and Citizen Division  
Delegate of the Australian Communications and Media Authority