



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

TO: PIPE Networks Pty Limited ACN 099 104 122

OF: 65 Waterloo Road North Ryde NSW 2113

I, Jennifer McNeill, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that PIPE Networks Pty Limited (**PIPE Networks**):

- has contravened the *Mobile Phone Base Station Deployment Code (C564:2011)* (**the Deployment Code 2011**) as described below; and
- the conduct described below would also have contravened the *Mobile Phone Base Station Deployment Code (C564:2018)* (**the Deployment Code 2018**) if it occurred after the Deployment Code 2018 was registered,

HEREBY Direct PIPE Networks, under subsection 121(1) and subsection 121(1B) of the *Telecommunications Act 1997* (**the Act**), to comply with clause 5.2 of the Deployment Code 2018.

### Details of the contraventions

1. The ACMA has investigated PIPE Networks' compliance with relevant provisions of the Deployment Code 2011 in respect of two proposed deployments of mobile phone radiocommunications infrastructure. As a licensed telecommunications carrier that installs and operates mobile phone radiocommunications infrastructure, PIPE Networks is a participant in the section of the telecommunications industry to which the Deployment Code 2011 applied.
2. In regard to the proposed deployment at 56 Delhi Street, Lidcombe NSW 2141, the ACMA is satisfied that PIPE Networks contravened:
  - a. clause 6.4.1(a) of the Deployment Code, by failing to include information about the proposed location in the information provided to Council and Interested and Affected parties.
  - b. clause 6.4.5(a) of the Deployment Code, by failing to have a website that includes the address of the proposed site.
3. In regard to the proposed deployment at 45 Maling Road, Canterbury VIC 3126, the ACMA is satisfied that PIPE Networks contravened:
  - a. clause 6.7.3(d) of the Deployment Code, by failing to state a range of likely dates for commencement of construction, where construction is intended, in its report.
  - b. clause 6.7.5(a) of the Deployment Code, by failing to give the report to the Council before it commenced work on the proposed facility.
  - c. clause 6.7.5(b) of the Deployment Code, by failing to update its website where construction is intended to reflect any changes in the likely date range for the commencement of construction.

- d. clause 6.7.7 of the Deployment Code, by failing to keep its website up-to-date with significant developments, such as delays or deferrals.
4. On 17 December 2018, the Deployment Code 2011 (the original code) was replaced with the Deployment Code 2018 (the replacement code). Clause 5.2 of the replacement code includes requirements for carriers to provide specified information about a proposal to install small mobile phone radiocommunications infrastructure, provide a likely timeframe for when construction is to commence, unless the carrier decides not to proceed with the construction and to not proceed with installation until specified obligations have been met.
5. Had PIPE Networks' conduct described in paragraphs 2 and 3 occurred after the replacement code was registered, PIPE Networks could have been given a direction under subsection 121(1) of the Act for failing to comply with clause 5.2 of the replacement code.

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

Under subsection 121(2) of the Act, PIPE Networks must comply with a direction under subsection 121(1) of the Act.

If PIPE Networks does not comply with this direction, the ACMA may apply to the Federal Court for an order that PIPE Networks pay the Commonwealth a pecuniary penalty in respect of its contravention of a civil penalty provision (subsection 121(4) and section 570 of the Act).

### **Reconsideration of a decision**

If PIPE Networks is dissatisfied with the decision to give this direction, it may seek reconsideration of the decision by the ACMA under subsection 558(1) of the Act by making an application in writing to the ACMA, which sets out the reasons for the application. There is no application fee. If PIPE Networks requests reconsideration of the ACMA's decision to give this direction, the ACMA will reconsider its decision, taking into account any further submissions made by PIPE Networks. The ACMA may affirm, vary or revoke its decision to give this direction.

The ACMA must make a decision in response to an application under subsection 558(1) of the Act within 90 days after receiving the application. Any such application must be made within 28 days after the date on which this notice of decision is given to PIPE Networks and addressed to the person whose contact details are included below.

If not already provided, PIPE Networks may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the *Administrative Appeals Tribunal Act 1975 (AAT Act)*. Any such request should be made within 28 days of the reconsideration decision and addressed to the person whose contact details are included below.

### **AAT review**

If PIPE Networks is dissatisfied with the ACMA's decision on reconsideration then, in accordance with section 562 of the Act, PIPE Networks has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal (**AAT**).

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.

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.

An application for review should be made within 28 days of being told about the reconsideration decision. An \$920 application fee must be paid with the application. If you want to apply for the application fee to be waived, you can obtain the application form for this from the AAT.

The AAT website has more information at <http://www.aat.gov.au/>. If you have any questions about the AAT's procedures or requirements, please contact the AAT. You can call the AAT on 1800 228 333. The postal address for the AAT is GPO Box 9955 in each capital city.

### **Access to documents**

PIPE Networks also has a right to seek access to documents about the decision to give this direction, or any associated reconsideration decision, under the *Freedom of Information Act 1982 (FOI Act)*. The application must be made to the ACMA in writing (there is no special form and you must:

- state that the request is an application for the purpose of the FOI Act;
- provide sufficient information about the documents you want to obtain as is reasonably necessary to enable the ACMA to identify them; and
- give details of how notices under the FOI Act may be sent to you (e.g. postal address or email address).

The ACMA's website has more information on how to make an application at [www.acma.gov.au](http://www.acma.gov.au).

### **Making a complaint**

If you are dissatisfied with the way the ACMA handled this matter, you may contact the person whose details are provided below.

A complaint may also be made to the Commonwealth Ombudsman (the Ombudsman usually prefers that your concerns are raised with the ACMA first). There is an office of the Commonwealth Ombudsman in each capital city. Further information may be obtained at [www.ombudsman.gov.au](http://www.ombudsman.gov.au) or call 1300 362 072.

### **Contacting the ACMA**

Should you require further information, please contact:

Silvia Superina  
Manager  
Networks and National Interests Section  
PO Box 13112 Law Courts  
Melbourne, VIC 8010  
Ph: (03) 9963 6861  
Email: [silvia.superina@acma.gov.au](mailto:silvia.superina@acma.gov.au)

  
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Signature

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

17 December 2018