

Investigation Report

Foxtel Management Pty Ltd's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

File No.	ACMA2017/869-9
Carriage service provider	Foxtel Management Pty Ltd
ACN	068 671 938
Type of services	Standard Telephone Service
Scope of Investigation	Compliance with clause 19 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Findings

1. The Australian Communications and Media Authority (**the ACMA**) finds that Foxtel Management Pty Ltd (**Foxtel**) has contravened:
 - paragraph 19(2)(a) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on three occasions on 1 September 2018 as Foxtel did not inform three prospective residential customers, who made an inquiry about the supply of a standard telephone service, that it does not offer priority assistance in connection with the service; and
 - paragraph 19(2)(b) of Schedule 2 to the Act on three occasions on 1 September 2018 as Foxtel did not inform three prospective residential customers, who made an inquiry about the supply of a standard telephone service, of the names of one or more carriage service providers (**CSPs**) from whom the prospective residential customer could obtain priority assistance in connection with a standard telephone service.
2. As a consequence of those contraventions, the ACMA also finds that Foxtel contravened subsection 101(1) of the Act on three occasions as it did not comply with the service provider rules that apply to it, namely the rules referred to in section 98 of the Act.
3. A table setting out the ACMA's findings is at Attachment A.

Background

4. Under section 510 of the Act, the ACMA has jurisdiction to investigate a potential contravention of the Act.
5. On 25 September 2018, the ACMA commenced an investigation under subsection 510(1) of the Act to test whether Foxtel was complying with the service provider rule in clause 19 of Schedule 2 to the Act, which requires CSPs that do not offer priority assistance to inform prospective residential customers that they do not offer this enhanced service, and to inform the prospective customer of at least one CSP from whom the customer can obtain priority assistance.
6. On the same day, the ACMA gave Foxtel a notice under section 521 of the Act (**the Notice**) requiring the provision of information and documents in relation to a sample of 10 inquiries by prospective residential customers for a standard telephone service, in order to assess compliance with clause 19 of Schedule 2 to the Act.

7. On 10 October 2018, Foxtel responded to the Notice.
8. On 21 December 2018, the ACMA sent its preliminary findings report to Foxtel and invited it to respond. On 30 January 2019, Foxtel provided the ACMA with a submission in response.

Relevant facts

9. Foxtel is a CSP within the meaning of the Act.¹ Foxtel supplies telephone and internet services to residential customers.
10. Priority assistance means the provision of the highest level of service practicably available at the time, supplied to priority customers in relation to new connections, fault repairs and service reliability of the standard telephone service at the priority customer's place of residence². Priority customers are customers who require the telephone to access emergency medical treatment or advice to reduce the possibility of death from a life-threatening illness.³
11. Telstra Corporation Limited is the only CSP required to provide priority assistance under the Act. Other CSPs may offer priority assistance services but are not obliged by regulation to do so. CSPs (other than Telstra) that offer priority assistance are required to comply with the industry code ACIF: C609:2007 *Priority Assistance for Life Threatening Medical Conditions* (the **Priority Assistance Code**).
12. Foxtel does not offer priority assistance.

Findings and reasons

Compliance with the Act

13. Subsection 101(1) of the Act requires that service providers (a term which includes CSPs) comply with the service provider rules that apply to them. Subsection 98(1) of the Act provides that the service provider rules include the rules set out in Schedule 2 to the Act. Clause 19 of Schedule 2 to the Act provides that if a CSP receives an inquiry from a prospective residential customer about the supply of a standard telephone service, and the CSP does not offer priority assistance, the CSP must:
 - (a) inform the prospective residential customer that the CSP does not offer priority assistance in connection with the service; and
 - (b) inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.
14. In making its findings, the ACMA considered the evidence gathered during the course of the investigation as summarised in Attachment A. The ACMA also considered Foxtel's submission dated 30 January 2019, in which Foxtel made no arguments against the findings set out below.

Breach findings

15. On the dates specified in column B of Attachment A, a prospective residential

¹ See section 87 of the Act

² Subclause 19(3) of Schedule 2 to the Act and clause 3.2 of the Priority Assistance Code.

³ Clause 3.2 of the Priority Assistance Code

customer, in a telephone call with a representative of Foxtel, made an inquiry about the supply of a standard telephone service.

16. In three instances, Foxtel's response described in column F of Attachment A did not meet the requirements of paragraph 19(2)(a) of Schedule 2 to the Act as Foxtel did not inform the prospective residential customer that it does not offer priority assistance in connection with the service.
17. In three instances, Foxtel's response described in column G of Attachment A did not meet the requirements of paragraph 19(2)(b) of Schedule 2 to the Act as Foxtel did not inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.
18. Accordingly, the ACMA is satisfied that Foxtel contravened clause 19 of Schedule 2 to the Act.

Findings - ACMA Investigation into Foxtel's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

Attachment A

A	B	C	D	E	F	G	H	I
Provider	Date	Plan	Test 1. Did the carriage service provider (CSP) receive an inquiry from a prospective residential customer about the supply of a standard telephone service? (paragraph 19(1)(a) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 3. Did the agent inform the prospective customer that the CSP does not offer Priority Assistance in connection with the service? (paragraph 19(2)(a) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Test 4. Did the CSP inform the prospective customer of the names of one or more CSPs who provide Priority Assistance? (paragraph 19(2)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>)	Findings	Comment
Foxtel (customer 2)	1/09/2018	NBN and Home Phone	Yes.	No	No. Foxtel did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Foxtel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new NBN service (internet and voice). Foxtel asked the prospective customer if there were any medical alarms at the prospective customer's premises. The prospective customer confirmed that they did not have any medical alarms. Foxtel did not advise the prospective customer that it does not offer priority assistance or inform the prospective customer of the names of one or more CSPs that provide priority assistance. Foxtel created an account for the customer.
Foxtel (Customer 5)	1/09/2018	NBN and Home Phone	Yes.	No	No. Foxtel did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Foxtel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new NBN service (internet and voice). Foxtel asked the prospective customer if there were any medical alarms at the prospective customer's premises. The prospective customer confirmed that they did not have any medical alarms. Foxtel did not advise the prospective customer that it does not offer priority assistance or inform the prospective customer of the names of one or more CSPs that provide priority assistance. Foxtel created an account for the customer.
Foxtel (Customer 8)	1/09/2018	NBN and Home Phone	Yes.	No	No. Foxtel did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Foxtel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new NBN service (internet and voice). Foxtel asked the prospective customer whether he had any medical or personal alarms connected in his house. The prospective customer confirmed he did not. Foxtel did not advise the prospective customer that it does not offer priority assistance or inform the prospective customer of the names of one or more CSPs that provide priority assistance. Foxtel created an account for the customer.

