

## Investigation Report

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

File No.	ACMA2017/869-10
Carriage service provider	Spintel Pty Ltd
ACN	082 087 689
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 Spintel Pty Ltd (**Spintel**) has contravened:
  - paragraph 19(2)(a) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on five occasions between 2 September 2018 and 3 September 2018 as Spintel did not inform five 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 10 occasions between 2 September 2018 and 3 September 2018 as Spintel did not inform 10 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 Spintel contravened subsection 101(1) of the Act on 10 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 determine whether Spintel 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 Spintel 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 7 October 2018, Spintel responded to the Notice.
8. On 21 December 2018, the ACMA sent its preliminary findings report to Spintel and invited it to respond. On 14 January 2019 Spintel provided a submission in response.

#### **Relevant facts**

1. Spintel is a CSP within the meaning of the Act<sup>1</sup>. Spintel supplies telephone and internet services to residential and small business customers.
2. 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 residence.<sup>2</sup> 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.<sup>3</sup>
3. 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)*.
4. Spintel does not offer priority assistance.

#### **Findings and reasons**

##### ***Compliance with the Act***

5. Subsection 101(1) of the Act which 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.
6. 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 Spintel's submission dated 14 January 2019, in which Spintel made no arguments against the findings set out below.

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<sup>1</sup> See section 87 of the Act.

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

<sup>3</sup> Clause 3.2 of the Priority Assistance Code

***Breach findings***

9. On the dates specified in column B of Attachment A, a prospective residential customer, in a telephone call with a representative of Spintel, made an inquiry about the supply of a standard telephone service.
10. In five instances, Spintel'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 Spintel did not inform the prospective residential customer that it does not offer priority assistance in connection with the service.
11. In 10 instances, Spintel'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 Spintel 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.
12. Accordingly, the ACMA is satisfied that Spintel contravened clause 19 of Schedule 2 to the Act.



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

Attachment A

A	B	C	D	E	F	G	H	I
Provider	Date contacted	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
Spintel Call 1 (136855)	12:38pm 02/09/2018	Broadband bundle with home phone	Yes.	No.	Yes.	No. Spintel did not inform the prospective customer of the names of one or more CSPs who provide Priority Assistance.	Breach of paragraph 19(2)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new NBN service (voice and internet). Spintel played an automated recording that included the terms and conditions of the proposed service. The recording advised the prospective customer that Spintel does not offer priority assistance and that the prospective customer's current CSP may provide priority assistance. The recording also advised the prospective customer to advise Spintel if they required priority assistance. The recording did not inform the prospective customer of the names of one or more CSPs that provide priority assistance. Spintel asked the prospective customer to read the full terms and conditions available on Spintel's website prior to using the service. These include the following information and advice: "If you have a diagnosed life-threatening medical condition, your current provider may offer you Priority Assistance. Spintel does not provide Priority Assistance. Please advise your representative should you require Priority Assistance". The ACMA notes that the terms and conditions do not contain information of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.
Spintel Call 2 (136857)	01:14pm 02/09/2018	Broadband bundle with home phone	Yes.	No.	Yes.	No. Spintel did not inform the prospective customer of the names of one or more CSPs who provide Priority Assistance.	Breach of paragraph 19(2)(b) of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new NBN plan (voice and internet). Spintel played an automated recording to the prospective customer that included the terms and conditions of the service. The recording stated that Spintel does not offer priority assistance and that the prospective customer's current CSP may provide priority assistance. The recording advised the prospective customer to advise Spintel if they required priority assistance. Spintel did not inform the prospective customer about the names of one or more CSPs that provide priority assistance. Spintel asked the prospective customer to read the full terms and conditions of the service prior to using the service. Spintel created an account for the customer.

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Spintel Call 3 (101296)	03:09pm 02/09/2018	Broadband bundle with home phone	Yes.	No.	No. Spintel did not inform the prospective customer that it does not offer Priority Assistance in connection with the service as required.	No. Spintel 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about a new internet and phone service. Spintel asked the prospective customer whether he would like to listen to an automated recording of the terms and conditions or whether he would agree to read the terms and conditions at a later time. The prospective customer advised that he would read the terms and conditions at a later time. Spintel did not inform the prospective customer that Spintel does not offer a priority assistance service. Further, Spintel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.
Spintel Call 4 (136899)	09:40am 03/09/2018	Broadband bundle with home phone	Yes.	No.	No. Spintel did not inform the prospective customer that it does not offer Priority Assistance in connection with the service as required.	No. Spintel 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about a new internet and phone service. Spintel asked the prospective customer whether he would like to listen to an automated recording of the terms and conditions or whether he would agree to read the terms and conditions at a later time. The prospective customer advised that he would read the terms and conditions at a later time. Spintel did not inform the prospective customer that Spintel does not offer a priority assistance service. Further, Spintel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.
Spintel Call 5 (136901)	10:08am 03/09/2018	Broadband bundle with home phone	Yes.	No.	No. Spintel did not inform the prospective customer that it does not offer Priority Assistance in connection with the service as required.	No. Spintel 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about a new internet and phone service. Spintel asked the prospective customer whether he would like to listen to an automated recording of the terms and conditions or whether he would agree to read the terms and conditions at a later time. The prospective customer advised that he would read the terms and conditions at a later time. Spintel did not inform the prospective customer that Spintel does not offer a priority assistance service. Further, Spintel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.

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Provider	Date contacted	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 Telecommunications Act 1997)	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) of Schedule 2 to the Telecommunications Act 1997)	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 Telecommunications Act 1997)	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 Telecommunications Act 1997)	Findings	Comment
Spintel Call 6 (136908)	11:26am 03/09/2018	Broadband bundle with home phone	Yes.	No.	Yes.	No. Spintel did not inform the prospective customer of the names of one or more CSPs who provide Priority Assistance.	Breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer contacted Spintel to ask about a new NBN service (internet and voice). Spintel played an automated recording to the prospective customer that included the terms and conditions of the service. The recording stated that Spintel does not offer priority assistance and that the prospective customer's current CSP may provide priority assistance. The recording advised the prospective customer to advise Spintel if they required priority assistance. Spintel did not inform the prospective customer about the names of one or more CSPs that provide priority assistance. Spintel asked the prospective customer to read the full terms and conditions of the service prior to using the service. Spintel created an account for the customer.
Spintel Call 7 (136910)	11:29am 03/09/2018	Broadband bundle with home phone	Yes.	No.	No. Spintel did not inform the prospective customer that it does not offer Priority Assistance in connection with the service as required.	No. Spintel 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about an internet and home phone bundle. Spintel asked if the prospective customer wanted to listen to an automated recording of the terms and conditions or whether the prospective customer would prefer to read the terms and conditions on its website. The prospective customer elected to read the terms and conditions on the website. Spintel did not inform the prospective customer that Spintel does not offer a priority assistance service. Further, Spintel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.
Spintel Call 8 (35788)	01:39pm 03/09/2018	Broadband bundle with home phone	Yes.	No.	Yes.	No. Spintel did not inform the prospective customer of the names of one or more CSPs who provide Priority Assistance.	Breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	Spintel advised the prospective customer that she would need a new home phone number at the new property. Spintel played an automated recording to the prospective customer that included the terms and conditions of the service. The recording stated that Spintel does not offer priority assistance and that the prospective customer's current CSP may provide priority assistance. The recording advised the prospective customer to advise Spintel if they required priority assistance. Spintel did not inform the prospective customer about the names of one or more CSPs that provide priority assistance. Spintel asked the prospective customer to read the full terms and conditions of the service prior to using the service. Spintel created a new account for the customer.

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Spintel Call 9 (136941)	03:39pm 03/09/2018	Broadband bundle with home phone	Yes.	No.	Yes.	No. Spintel did not inform the prospective customer of the names of one or more CSPs who provide Priority Assistance.	Breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about a new internet and voice service. Spintel played an automated recording to the prospective customer that included the terms and conditions of the service. The recording stated that Spintel does not offer priority assistance and that the prospective customer's current CSP may provide priority assistance. The recording advised the prospective customer to advise Spintel if they required priority assistance. Spintel did not inform the prospective customer about the names of one or more CSPs that provide priority assistance. Spintel asked the prospective customer to read the full terms and conditions of the service prior to using the service. Spintel created an account for the customer.
Spintel Call 10 (136963)	08:16pm 03/09/2018	Broadband bundle with home phone	Yes.	No.	No. Spintel did not inform the prospective customer that it does not offer Priority Assistance in connection with the service as required.	No. Spintel 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 Telecommunications Act 1997 and breach of paragraph 19(2)(b) of Schedule 2 to the Telecommunications Act 1997	The prospective customer asked about a new internet and phone service. Spintel asked the prospective customer whether he would like to listen to an automated recording of the terms and conditions or whether he would agree to read the terms and conditions at a later time. The prospective customer advised that he would read the terms and conditions at a later time. Spintel did not inform the prospective customer that Spintel does not offer a priority assistance service. Further, Spintel did not inform the prospective customer of the names of one or more CSPs who provide priority assistance. Spintel created an account for the customer.