

Investigation Report

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

File No.	ACMA2017/869-5
Carriage service provider	TPG Internet Pty Ltd
ACN	068 383 737
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 TPG Internet Pty Ltd (**TPG**) has contravened paragraph 19(2)(b) of Schedule 2 to the *Telecommunications Act 1997 (the Act)* on 10 occasions on 1 September 2018 as TPG 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 TPG 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 TPG 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 a prospective customer of at least one CSP from whom the customer can obtain priority assistance.
6. On the same day, the ACMA gave TPG 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 15 October 2018, TPG responded to the Notice.
8. On 19 December 2018, the ACMA sent its preliminary findings report to TPG and invited it to respond. On 18 January 2019, TPG provided a submission to the ACMA.

Relevant facts

9. TPG is a CSP within the meaning of the Act.¹ TPG supplies telephone and internet services to residential and small business 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 residence.² 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. TPG 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 TPG's submission dated 18 January 2019, in which TPG made no arguments against the findings set out below.

Timing of information to be provided

15. In TPG's submission, it suggested that the requirements of clause 19 of Schedule 2 to the Act would be met as long as the information required to be provided to the prospective customer was provided before TPG established an account for the customer.
16. It can be inferred from the language used in clause 19 that the relevant information must be supplied before a prospective residential customer becomes an actual

¹ See section 87 of the Act.

² Subclause 19(3) of Schedule 2 to the Act and clause 3.2 of the industry code *ACIF: C609:2007 Priority Assistance for Life Threatening Medical Conditions (the Priority Assistance Code)*.

³ Clause 3.2 of the Priority Assistance Code

customer by agreeing to a contract for the supply of a standard telephone service. In instances where that occurs after more than one interaction with the CSP, the clause 19 obligations may not be breached if the relevant information is provided before a contract is entered into. However, it is possible that some inquiries that meet the criteria in subclause 19(1) will not progress to the stage of entry into a contract.

17. The importance of priority assistance being available to those who need it, and the obvious purpose of clause 19, give rise to a strong inference of a legislative intention that the clause 19(2) obligations are enlivened at the time a CSP, which does not offer priority assistance, receives an inquiry from a prospective residential customer about the supply of a standard telephone service. If the prospective customer is one who wants a priority assistance service, he or she should be informed straightaway of the CSP's position so no further time is wasted, and the prospective customer can move on to a CSP which does provide priority assistance. Therefore, the ACMA considers that CSPs should provide the required information to the prospective residential customer at the time he or she inquires about the service.

Breach findings

18. On 1 September 2018 as specified in column B of Attachment A, 10 prospective residential customers contacted TPG by telephone to make an inquiry about the supply of a standard telephone service.
19. In all 10 instances, TPG'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 because, although TPG did inform the prospective residential customers that it did not offer priority assistance in connection with its standard telephone services, TPG did not inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer could obtain priority assistance in connection with a standard telephone service.
20. Accordingly, the ACMA is satisfied that TPG contravened clause 19 of Schedule 2 to the Act.

Findings - ACMA Investigation into TPG'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 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
TPG (call 1)	1/09/2018	NBN and Home Phone bundle	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an NBN service (voice and internet). TPG confirmed that the service came with a home phone. TPG discussed the plan details with the prospective customer. TPG asked the prospective customer to listen to a recorded message of the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that provide priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG asked the prospective customer to acknowledge that TPG did not supply a battery back up for the service and that if the power went out the service would also not work. TPG set up an account for the prospective customer.
TPG (call 2)	1/09/2018	ADSL plan with phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an NBN service (voice and internet). TPG discussed the plan options with the prospective customer who decided to purchase an ADSL service that was NBN ready. TPG asked the prospective customer to listen to a recorded message of the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.

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TPG (call 3)	1/09/2018	NBN and Home Phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer attempted to purchase an NBN service (voice and internet) online. TPG confirmed the plan details and asked the prospective customer to listen to an automated message which included the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.
TPG (call 4)	1/09/2018	NBN and Home Phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an NBN service (voice and internet). TPG discussed the plan options with the prospective customer who decided to purchase a ADSL service (voice and internet). TPG asked the prospective customer to listen to a recorded message of the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.

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TPG (call 5)	1/09/2018	NBN and Home Phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about a new home phone and internet service. The prospective customer advised that she was a current Telstra customer and that her premises were in a black spot with limited internet and phone reception. TPG discussed plan options with the prospective customer and assisted the prospective customer to select an NBN (voice and internet) plan. TPG asked the prospective customer to listen to a recorded message of the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.
TPG (call 6)	1/09/2018	ADSL plan with phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an internet bundle service (voice and internet). TPG discussed the various plan options with the prospective customer and assisted the prospective customer to select a plan. TPG asked the prospective customer to listen to a recorded message of the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.

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TPG (call 7)	1/09/2018	NBN and Home Phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an internet bundle service (voice and internet). The prospective customer was asked to listen to an automated message which included the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.
TPG (call 8)	1/09/2018	ADSL plan with phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an internet bundle service (voice and internet). The prospective customer was asked to listen to an automated message which included the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.
TPG (call 9)	1/09/2018	ADSL plan with phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an internet bundle service (voice and internet). The prospective customer was asked to listen to an automated message which included the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.

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TPG (call 10)	1/09/2018	ADSL plan with phone	Yes	No	Yes	No. TPG 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 Part 6 Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about an internet bundle service (voice and internet). The prospective customer was asked to listen to an automated message which included the terms and conditions of the service. The terms and conditions specified that TPG does not support the priority assistance scheme. The recording did not advise the prospective customer about other CSPs that offer priority assistance. The recording advised the prospective customer to keep a mobile phone charged to ensure they were able to make calls, including emergency calls, during a power outage. TPG set up an account for the prospective customer.

