



## Formal Warning under subsection 103(1) of the *Telecommunications Act 1997*

TO: Dataphone Pty Ltd (ACN 050 323 950)

OF: Suite 2, Unit 7  
19 Mitchell Drive  
East Maitland  
NSW, 2320

The Australian Communications and Media Authority (the **ACMA**), being satisfied for the reasons explained in the ACMA's investigation report sent to Dataphone Pty Ltd (**Dataphone**) on 6 July 2020, that Dataphone contravened subsection 101(1) of the *Telecommunications Act 1997* (the **Act**) by failing to comply with subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);

HEREBY issues Dataphone a formal warning under subsection 103(1) of the Act for its failure to comply with section 101 of the Act and section 128 of the TCPSS Act.

### Details of the contravention

#### *Obligation*

Subsection 101(1) of the Act provides that a service provider must comply with the service provider rules that apply to the provider. Subsection 98(1) provides that the service provider rules include the rules set out in Schedule 2 to the Act. Clause 1 of Schedule 2 to the Act provides that a service provider must comply with the Act, which is defined to include the TCPSS Act.

Subsection 128(1) of the TCPSS Act provides that an eligible carriage service provider (**CSP**) must enter into the Telecommunications Industry Ombudsman (**TIO**) scheme.

Under subsection 103(1) of the Act, the ACMA can issue a formal warning to a service provider if the service provider contravenes a service provider rule.

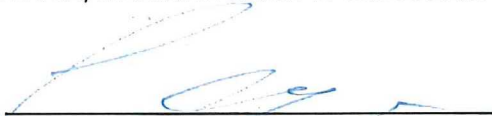
#### *Investigation*

The ACMA received a referral from the TIO on 23 December 2019 alleging that Dataphone was an eligible CSP and had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act. Following an investigation, preliminary findings were made by the ACMA that it was reasonable to assume that Dataphone was an eligible CSP and required to join the TIO scheme.

A copy of the preliminary investigation report was given to Dataphone on 27 April 2020. In response, Dataphone advised that it would make an application to join the TIO scheme.

The TIO confirmed that Dataphone had joined the TIO scheme on 25 May 2020.

For the period September 2019 to 25 May 2020, that Dataphone was an eligible CSP and did not join the TIO scheme, it contravened subsection 128(1) of the TCPSS Act, and thereby failed to comply with the service provider rule set out in clause 1 of Schedule 2 to the Act, in contravention of subsection 101(1) of the Act.



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Signature of Member

Creina Chapman  
Name (Please Print)



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Signature of Member/  
~~General Manager~~

JAMES CAMERON  
Name (Please Print)