



## Infringement Notice

### *Do Not Call Register Act 2006*

I, Jeremy Fenton, an authorised officer for the purposes of clause 8, Schedule 3 to the *Do Not Call Register Act 2006* (the Act), having reasonable grounds to believe that 1st Energy Pty Ltd (Australian Company Number 604 999 706) has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (the Notice) under clause 2(1) of Schedule 3 to the Act to:

**1st Energy Pty Ltd ACN 604 999 706 (1st Energy)**

at

Level 4, 549 Little Collins Street  
Melbourne VIC 3000

#### **Details of Alleged Contraventions of Civil Penalty Provision**

It is alleged that 1st Energy contravened subsection 12(1) of the Act on 18 February 2016, by entering into a contract with another person where:

- > there was a reasonable likelihood that the other person would give effect to that contract by making telemarketing calls; and
- > there was a reasonable likelihood that some or all of those calls would be made to Australian numbers eligible to be entered on the Do Not Call Register; and
- > the contract did not contain an express provision requiring the other person to comply with the Act.

**Schedule 1** to the Notice sets out brief details of the alleged contraventions of the civil penalty provision.

#### **Amount of Penalty**

The total pecuniary penalty (the penalty) for the alleged contraventions of civil penalty provisions is \$2,100. The penalty is calculated in accordance with subclause 4(1) of Schedule 3 to the Act as set out in the table in paragraph 4.1 of Schedule 1 to the Notice.

## Payment of Penalty

The penalty should be paid to the Australian Communications and Media Authority (the ACMA), on behalf of the Commonwealth, by deposit into the following account within 28 days of receipt of the Notice. Please include the narration "1st Energy - UCE" with your payment:

**[REDACTED]**

If the penalty is paid to the ACMA, on behalf of the Commonwealth, within 28 days after the Notice is given to 1st Energy, the matters outlined in this Notice will not be dealt with by the Federal Court of Australia and any liability for the contraventions that are the subject of this notice will be discharged.

DATE: 23 September 2019

**[REDACTED]**

**Jeremy Fenton**  
Executive Manager  
Unsolicited Communications and Numbering Branch  
Australian Communications and Media Authority

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## SCHEDULE 1

### DETAILS OF CONTRAVENTIONS OF CIVIL PENALTY PROVISIONS

In accordance with clause 3 of Schedule 3 to the Act, brief details of the civil contravention are set out below.

#### 1. Background

- 1.1. 1st Energy is a company registered under the *Corporations Act 2001*, and its registered office is located at Level 4, 549 Little Collins Street Melbourne VIC 3000.
- 1.2. On 10 August 2018, the ACMA commenced an investigation into whether 1st Energy had contravened the Act.
- 1.3. Before commencing the investigation, the ACMA had received complaints from consumers alleging that telemarketing calls promoting 1st Energy's services had been made to numbers on the Register without the consent of the call recipient.

#### 2. Relevant civil penalty provision of the Act

- 2.1. Subsection 12(1) of the Act provides that a person must not enter into a contract or arrangement with another person where there is a reasonable likelihood that the other person would give effect to it by making telemarketing calls where there is a reasonable likelihood that some of those calls would be made to numbers eligible to be entered on the Do Not Call Register, and where the contract or arrangement does not contain an express provision requiring compliance with the Act.

#### 3. Matters giving rise to the Notice

- 3.1. On 18 February 2016, 1st Energy entered into a contract (the Contract) with Enxo Energy Pty Ltd trading as Energy Deal (Energy Deal) to *'provide sales services to 1st Energy and its energy plans.'*
- 3.2. Information provided to the ACMA by 1st Energy during the investigation showed that it *'enters into agreements with third-party sales force providers (sales partners) to conduct telemarketing sales on its behalf. 1<sup>st</sup> Energy does not conduct telemarketing calls itself.'*
- 3.3. Information provided by 1st Energy during the investigation demonstrates that Energy Deal was one of its "sales partners".
- 3.4. Information provided by 1st Energy about the content of the calls demonstrates that the purpose of the calls made pursuant to the Contract was to offer *'a market retail contract for the supply of electricity with 1st Energy'* and consequently those calls were 'telemarketing calls', as defined in section 5 of the Act.
- 3.5. As 1st Energy offers residential electricity supply to consumers in New South Wales, Victoria, Tasmania and Queensland, it is reasonably likely that some, or all, of the telemarketing calls would be made to Australian numbers primarily used for domestic purposes, which would be eligible to be entered on the Do Not Call Register.
- 3.6. The Contract does not contain an express provision to the effect that Energy Deal will comply with the Act.
- 3.7. Accordingly, there are reasonable grounds to believe that 1st Energy contravened subsection 12(1) of the Act on one occasion, as set out in paragraph 4.1 to the Notice.
- 3.8. Subsection 12(1) of the Act is a civil penalty provision, as per subsection 12(3) of the Act.

**4. The amount of the penalty**

4.1. The total penalty specified in the Notice is \$2,100, calculated in accordance with subclause 4(1) of Schedule 3 to the Act, as set out in the table below.

**Penalty for contraventions of subsection 12(1) of the Act**

<b>Date of contravention</b>	<b>Number of contraventions of subsection 12(1)</b>	<b>Penalty units</b>	<b>Amount of penalty unit</b>	<b>Penalty imposed</b>
18 Feb 2016	1	10	\$210	\$2,100
<b>Total</b>	<b>1</b>	<b>10</b>		<b>\$2,100</b>