

INFRINGEMENT NOTICE

NOTICE UNDER SECTION 572E OF THE *TELECOMMUNICATIONS ACT 1997* (CTH)

To: Lycamobile Pty Ltd
ACN 139 717 212
Unit 2
1B Kleins Road
NORTHMEAD NSW 2152

I, Cathy Rainsford, am an authorised infringement notice officer of the Australian Communications and Media Authority (**ACMA**).

I have reasonable grounds to believe that on 17 May 2021 and 26 November 2021, Lycamobile Pty Ltd (ACN 139 717 212) (**Lycamobile**), in its capacity as a carriage service provider, contravened the remedial direction given to Lycamobile by the ACMA under subsection 102(2) of the *Telecommunications Act 1997* (**Act**) on 13 January 2021 (**remedial direction**), which is a contravention of subsection 102(4) of the Act, being a listed infringement notice provision (**the contraventions**).

I give Lycamobile this Infringement Notice under section 572E of the Act in relation to the contraventions.

In giving this Infringement Notice I have had regard to the *Telecommunications (Infringement Notices) Guidelines 2022*.

Details of the contraventions

It is alleged that Lycamobile contravened subsection 102(4) of the Act on two occasions by failing to comply with the timeframe specified at paragraph 12 and paragraph 20 of the remedial direction.

Schedule 1 to this Infringement Notice sets out brief details of the contraventions.

Penalty payable under this Infringement Notice

In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is \$26,640. The penalty has been calculated as set out in Schedule 2 to this Infringement Notice.

Time for payment of the penalty

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

Please note that if this Infringement Notice is withdrawn, the ACMA may consider taking action for the alleged contravention(s), the subject of this Infringement Notice.

Enquiries concerning the Infringement Notice

If you have any enquiries or questions about this Infringement Notice contact me on +61 2 6219 5500 or by email at Cathy.Rainsford@acma.gov.au.



Signature (Authorised Infringement Notice Officer)

Cathy Rainsford
General Manager
Content and Consumer Division
Australian Communications and Media Authority
Authorised Infringement Notice Officer
13 May 2022

SCHEDULE 1

Details of each of the contraventions

In accordance with section 572F of the Telecommunications Act (**the Act**), brief details of the contraventions are set out below.

1. Background

- 1.1. Lycamobile Pty Ltd (ACN 139 717 212) (**Lycamobile**) is an Australian proprietary company, limited by shares, with a registered office at Unit 2, 1B Kleins Road, Northmead, NSW, 2152.
- 1.2. Lycamobile offers prepaid mobile carriage services (being listed carriage services) to the public and is therefore a CSP within the meaning of section 87 of the Act.
- 1.3. On 3 December 2020, the ACMA found that Lycamobile had contravened:
 - a. the *Telecommunications (Service Provider— Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* (the Prepaid Determination);
 - b. the IPND service provider rule set out in subclause 10(2) of Part 4 of Schedule 2 to the Act (**IPND service provider rule**); and
 - c. the Industry Code (C555:2020) Integrated Public Number Database (IPND) (**IPND Code**).
- 1.4. In response, the ACMA:
 - a. gave Lycamobile a remedial direction under subsection 102(2) of the Act (**remedial direction**) on 13 January 2021 for the contraventions of the Prepaid Determination;
 - b. gave Lycamobile a direction to comply with the IPND Code under subsection 121(1) of the Act on 13 January 2021(**direction to comply**);
 - c. gave Lycamobile an infringement notice specifying contraventions totalling \$604,800 for breaches of the IPND service provider rule (paid in April 2021); and
 - d. accepted, from Lycamobile, an enforceable undertaking on 13 May 2021 in relation to Lycamobile's IPND obligations (**enforceable undertaking**).
- 1.5. On 16 December 2021, the ACMA commenced a second investigation following ongoing indications Lycamobile was not complying with its IPND obligations and its continued failure to comply with the remedial direction and enforceable undertaking. The ACMA investigated whether Lycamobile had contravened:
 - > the IPND service provide rule in clause 10 of Schedule 2 to the Act;
 - > the IPND Code and consequently the direction to comply with the IPND Code given to Lycamobile under subsection 121(1) of the Act on 13 January 2021; and
 - > the remedial direction given to Lycamobile under subsection 102(2) of the Act on 13 January 2021.

2. Matters giving rise to the Notice

- 2.1. Subsection 101(1) of the Act provides that CSPs must comply with the service provider rules that apply to them. Subsection 98(1) of the Act provides that the service provider rules include those set out in Schedule 2 to the Act. Clause 1 of Schedule 2 to the Act provides that CSPs must comply with the Act.
- 2.2. If a CSP has contravened, or is contravening, a service provider rule, the ACMA can give a remedial direction under subsection 102(2) of the Act requiring the CSP to take specified action directed towards ensuring the CSP does not contravene the service provider rule in the future.
- 2.3. Subsection 102(4) of the Act provides that a CSP must not contravene a direction given to it under subsection 102(2).
- 2.4. As set out above, on 13 January 2021, the ACMA gave Lycamobile the remedial direction under subsection 102(2) of the Act for the contraventions of the Prepaid Determination.
- 2.5. Despite the ACMA's regular reminders to Lycamobile about Lycamobile's obligations under the remedial direction, Lycamobile did not comply with the specified timeframes for actions in the remedial direction on two occasions.
- 2.6. Therefore, the ACMA has reasonable grounds to believe that Lycamobile has contravened the remedial direction and consequently subsection 102(4) of the Act on two occasions on 17 May 2021 and 26 November 2021.
- 2.7. Subsection 102(4) of the Act is a listed infringement notice provision for the purposes of section 572E of the Telecommunications Act¹ (see the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*).
- 2.8. The dates and actions relevant to the alleged contraventions are set out in Schedule 2 to this Infringement Notice.
- 2.9. In contravening subsection 102(4) of the Act, Lycamobile has also contravened subsection 101(1) of the Act, which requires a CSP to comply with service provider rules.
- 2.10. Subsection 101(1) of the Act is a civil penalty provision, as per subsection 101(3) of the Act.

3. The amount of the penalty

- 3.1. The total penalty specified in the Notice is \$26,640 calculated in accordance with section 572G of the Act, as shown in the tables at Schedule 2 below.

¹ Subsection 102(4) of the Act had been a listed infringement notice provision in the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011* for more than three months before the alleged contraventions took place. The *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022* (which commenced on 26 March 2022) replaces the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*. Subsection 102(4) continues to be a listed infringement notice in the replacement instrument.

SCHEDULE 2

Penalties for alleged contraventions of subsection 102(4) of the *Telecommunications Act 1997.*

	Deliverable under the remedial direction	Date of alleged contravention /date deliverable was due	When the deliverable was received by the ACMA	Penalty Units ²	Penalty
1.	Paragraph 12 By no later than 17 May 2021, Lycamobile must provide the ACMA with a written outline of a training program that includes details of the obligations imposed on Lycamobile under the Prepaid Determination	17 May 2021	20 May 2021 ³	60	\$13,320
2.	Paragraph 20 Within one month of the completion of the recommendations in the approved project plan in paragraph 7, Lycamobile must provide a written report to the ACMA detailing: (a)The carriage service numbers and dates of activation of any prepaid mobile carriage services activated between 13 January 2021 and the completion of the recommendations in the approved project plan, where the activations may not be compliant with the Prepaid Determination; and (b)the actions Lycamobile has undertaken or will undertake to ensure that the prepaid mobile carriage services in paragraph 20(a) are compliant with the Prepaid Determination, including the dates of those actions.	26 November 2021 ⁴	3 December 2021	60	\$13,320
Total penalty					\$26,640

² The penalty unit which applied at the time of the alleged contraventions was \$222, as set by section 4AA of the *Crimes Act 1914* and the *Notice Of Indexation Of The Penalty Unit Amount*.

³ Although the ACMA does not have an approval role for the training outline, the ACMA wrote to Lycamobile on 30 June 2021 to advise that there were several deficiencies in the document. For example, sections 6.1 and 6.4 of the Prepaid Determination were not covered. The ACMA asked Lycamobile to consider how it would address the omissions in the modified project plan.

⁴ The final recommendation in the approved project plan was completed by 26 October 2021. The written report was due by 26 November 2021.