

# INFRINGEMENT NOTICE

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

**To: Circles Australia Pty Limited (Circles)**  
**ACN 630 647 264**  
**Level 2**  
**50 Miller Street**  
**North Sydney NSW 2060**

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

I have reasonable grounds to believe that between 10 August 2021 and 24 November 2021, Circles Australia Pty Limited (ACN **630 647 264**) (**Circles**), in its capacity as a carriage service provider (**CSP**), contravened subsections 8(2) and 8(5) of the *Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020* (the **Standard**).

A contravention of the Standard is a contravention of subsection 128(1) of the *Telecommunications Act 1997* (the **Act**), being a civil penalty provision.

I therefore give Circles this Infringement Notice under section 572E of the Act in relation to specific alleged 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 Circles contravened the Standard by failing to implement the required additional identity verification obligations under the Standard for mobile services acquired by customers through its retail channel.

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

### **Penalty payable under this Infringement Notice**

In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is **\$199,800**. The penalty has been calculated in the table at Schedule 2 to this Infringement Notice.

### **Time for payment of the penalty**

The penalty should be paid **within 28 days** after the day on which this Infringement Notice is given.

The penalty should be paid to the Australian Communications and Media Authority, on behalf of the Commonwealth, into the account below within 28

days of receipt of the Notice. **Include** the narration "Circles - IN" with your payment.

ABN: [REDACTED]  
Financial Institution: [REDACTED]  
Branch: [REDACTED]  
BSB: [REDACTED]  
Account Number: [REDACTED]  
Account Name: [REDACTED]

You may ask for additional time to pay. Any request should be made to me as soon as possible, and no later than 28 days after the date this Infringement Notice is given.

**If the penalty is paid**

If you pay the penalty specified in this Infringement Notice within the time for payment (being within 28 days after the day on which this Infringement Notice is given, or, if applicable, within the longer period allowed under subparagraph 572F(1)(d)(ii) of the Act) and the Infringement Notice is not withdrawn, the matter will not be dealt with by the Federal Court of Australia under Part 31 of the Act. Your liability for the alleged contraventions, the subject of this Infringement Notice, will be discharged. No further proceedings will be taken with respect to the alleged contraventions.

Payment does not equate to a finding that the contraventions occurred. Payment is not an admission of liability.

**If the penalty is not paid**

If you do not pay the penalty within the time for payment, the ACMA may take action for the alleged contraventions.

That action may include the institution of civil penalty proceedings in the Federal Court. The penalties that the Federal Court can impose are potentially significantly higher than that in an Infringement Notice (see section 570 of the Act).

**Withdrawal of the infringement notice**

The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you wish to apply for withdrawal of the Infringement Notice, you should write to me as soon as practicable setting out the reasons for the request.

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 about this Infringement Notice, contact me on 1800 850 115 or by email at [Jeremy.Fenton@acma.gov.au](mailto:Jeremy.Fenton@acma.gov.au).



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Signature

Jeremy Fenton  
Authorised Infringement Notice Officer  
6 July 2022

## SCHEDULE 1

### Details of each of the alleged contraventions

In accordance with section 572F of the *Telecommunications Act 1997*, brief details of the alleged contraventions are set out below.

#### 1. Background

- 1.1. Circles Australia Pty Limited (ACN 630 647 264) (**Circles**), is an Australian proprietary company, limited by shares, with a registered office at 50 Miller Street North Sydney NSW 2060.
- 1.2. Circles supplies prepaid public mobile telecommunications services (being listed carriage services) to the public. It is a **CSP** within the meaning of section 87 of the Act and is a mobile CSP within the meaning of the Standard.
- 1.3. As a mobile CSP who supplies or arranges for the supply of public mobile telecommunications services, Circles is a participant in the section of the telecommunications industry to which the Standard applies and is required to comply with the Standard under subsection 128(1) of the Act.

*Obligations imposed under subsection 8(5) of the Standard*

- 1.4. Subsection 8(5) of the Standard provides that:  
*A mobile carriage service provider must not proceed with a mobile service number port unless one of the additional identity verification processes in subsection (2) or (3) has been used by the gaining carriage service provider.*
- 1.5. Subsection (2) of the Standard describes additional identity verification processes that can be used by a mobile CSP to confirm the requesting person is the rights of use holder of the mobile service number to be ported.
- 1.6. 'Mobile CSP', 'mobile service number', 'port', 'requesting person' and 'gaining carriage service provider' are all defined in section 6 of the Standard.

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

- 2.1. On 20 December 2021, the ACMA commenced an investigation following intelligence that indicated Circles was the gaining mobile CSP in alleged fraudulent mobile phone number ports that occurred in August and November 2021.
- 2.2. The ACMA found that:
  - 2.2.1. Circles contravened subsections 8(2) and 8(5) of the Standard<sup>1</sup> between 26 October 2020 and 20 December 2021
  - 2.2.2. in each case Circles was the gaining carriage service provider in relation to the ported mobile service numbers, and
  - 2.2.3. in each case Circles did not use any one of the additional identity verification processes described in subsection 8(2) of the Standard to confirm that the requesting person was the rights of

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<sup>1</sup> Failing to comply with an industry standard is a breach of subsection 128(1) of the Act. Subsection 128(1) is a civil penalty provision.

use holder for the mobile service numbers to be ported through its retail channel<sup>2</sup>.

- 2.3. Circles submitted that it failed to implement pre-porting checks for its retail channel because it neglected to implement an SMS one-time passcode process. Circles was made aware of the issue by another CSP on 25 November 2021, approximately 12 months after its retail channel was made available to consumers.
- 2.4. The ACMA is consequently satisfied that that Circles did not comply with subsections 8(2) and 8(5) of the Standard between 26 October 2020 and 20 December 2021.
- 2.5. As a consequence of failing to comply with the Standard, the ACMA also found that Circles contravened subsection 128(2) of the Act which is a civil penalty provision.
- 2.6. The dates and public numbers associated with the alleged contraventions specified in the Infringement Notice are set out at Schedule 2 below.

### **3. The amount of the penalty**

- 3.1. The total penalty specified in the Infringement Notice is \$199,800 calculated in accordance with section 572G of the Act, as shown in the table set out at Schedule 2 below.

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<sup>2</sup> Circles' retail channel is when a customer buys a Circles SIM card through a 3rd-party physical store and requests a mobile phone number to be ported into Circles.

## SCHEDULE 2

### Penalties for alleged contraventions of subsection 128(1) of the *Telecommunications Act 1997*

Item	Date of alleged contravention	Mobile phone number	Penalty Units <sup>3</sup>	Penalty
1	07-Aug-21	██████████	60	\$13,320
2	10-Aug-21	██████████	60	\$13,320
3	12-Aug-21	██████████	60	\$13,320
4	12-Aug-21	██████████	60	\$13,320
5	16-Aug-21	██████████	60	\$13,320
6	19-Aug-21	██████████	60	\$13,320
7	02-Sep-21	██████████	60	\$13,320
8	06-Sep-21	██████████	60	\$13,320
9	10-Sep-21	██████████	60	\$13,320
10	14-Sep-21	██████████	60	\$13,320
11	23-Sep-21	██████████	60	\$13,320
12	15-Oct-21	██████████	60	\$13,320
13	15-Oct-21	██████████	60	\$13,320
14	22-Nov-21	██████████	60	\$13,320
15	24-Nov-21	██████████	60	\$13,320
<b>Total penalty</b>				<b>\$199,800</b>

<sup>3</sup> The value of a penalty unit at the time of the contravention is \$222. Subsection 572G(1)(b) specifies that an infringement notice given to a body corporate must be a pecuniary penalty equal to 60 penalty units. Therefore 60 penalty units x \$222 = \$13,320.