

Investigation Report

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| File No. | ACMA2022/678 |
| Carriage service provider | Foxtel Management Pty Limited |
| ACN | 068 671 938 |
| Scope of investigation | Compliance with clauses 6.6.2, 6.7.1 and 6.7.5 of the Telecommunications Consumer Protections Code C628:2019 |

Summary of findings

1. The Australian Communications and Media Authority (**the ACMA**) finds that Foxtel Management Pty Ltd (**Foxtel**) contravened the Telecommunications Consumer Protections Code C628:2019 (**the TCP Code**) on 58 occasions between 21 August 2021 and 30 August 2022 by failing to comply with the following clauses in the TCP Code:
 - a. 6.6.2 on 20 occasions between 21 August 2021 and 28 June 2022 by failing to include in reminder notices sent by SMS to 20 customers a link to, or reference, its financial hardship policy and contact details as appropriate for SMS.
 - b. 6.7.1 on 20 occasions between 16 August 2022 and 30 August 2022 by failing to give 20 customers at least 5 working days' notice prior to the disconnection of their telecommunications service for credit and/or debt management reasons, in circumstances where clause 6.7.1(a) did not apply.
 - c. 6.7.5(f) on 18 occasions between 27 January 2022 and 23 August 2022 by failing to include information in the disconnection notice that legal action may be taken to recover the unpaid debt when notifying 18 customers about service disconnection.

Background

2. The TCP Code is registered under Part 6 of the *Telecommunications Act 1997* (**the Act**) and sets out rules that apply to all carriage service providers (**CSPs**) that supply telecommunications products to residential and small business consumers.
3. Foxtel is an Australian company that provides telephone and internet services, which are listed carriage services, to residential and small business customers. It is therefore a CSP within the meaning of section 87 of the Act and is a supplier for the purposes of the TCP Code.
4. On 21 September 2022, the ACMA issued Foxtel with a notice under subsection 521(2) of the Act (**the Notice**). The Notice required Foxtel to provide information and documents relevant to its compliance with the TCP Code, including copies of reminder notices and notices issued to customers that related to a decision by Foxtel to restrict, suspend, or disconnect a customer's telecommunications service due to credit and/or debt management reasons, most recently before 31 August 2022.

5. After considering the information provided by Foxtel in response to the Notice, the ACMA commenced an investigation under Part 26 of the Act into Foxtel's compliance with clauses 6.6 and 6.7 of the TCP Code.
6. On 7 March 2023, the ACMA sent its preliminary findings report to Foxtel and invited it to respond. On 22 March 2023, Foxtel provided the ACMA with a submission in response.
7. In the course of the investigation, the ACMA examined information obtained from Foxtel in response to the Notice, and Foxtel's submission of 22 March 2023 in response to the preliminary findings.
8. The ACMA also examined information provided by Foxtel on 3 March 2023 in relation to an IT issue that occurred on 16 August 2022 that resulted in Foxtel not issuing disconnection notices to some customers.

Final findings and reasons

9. Having assessed the information before it, the ACMA is of the view that Foxtel has contravened clauses 6.6, 6.7.1 and 6.7.5 of the TCP Code. Details of the contraventions are set out below.

TCP Code – Clause 6.6.2 – Reminder notices

10. Under clause 6.6.2 of the TCP Code, suppliers must, where issuing reminder notices by a method other than email or letter (such as SMS), include a link to, or reference, the financial hardship policy and contact details as appropriate for the communication method.
11. In its 22 March 2023 response, Foxtel submitted that the 20 SMS reminder notices identified by the ACMA included a link to a page on Foxtel's website where Foxtel's financial hardship policy 'was readily available'.
12. The ACMA notes that the link in question¹ directs to a page entitled 'Contact us for more help', which includes 7 Frequently Asked Question (**FAQ**) topics. One of these 7 FAQs – 'Can I request a payment extension or payment plan?' – includes the following text:

***Note:** Foxtel also offers arrangements for customers who are experiencing financial hardship. For more information, [click here](#).*

This text links to Foxtel's financial hardship policy² such that it appears the 20 customers identified by the ACMA were required to navigate to the policy via a minimum of 3 clicks through Foxtel's website.

13. In its 22 March 2023 response, Foxtel also submitted that it has nevertheless amended the reminder notices it sends to customers to include an explicit reference to its financial hardship policy and a link to other relevant information on its website, via which customers may access the policy.
14. The ACMA considers that compliance with clause 6.6.2 requires that the content of the reminder notice explicitly references, or includes a direct link to, the supplier's financial hardship policy. None of the 20 reminder notices issued to the 20 customers listed in **Attachment A** between 21 August 2021 and 28 June 2022 referenced Foxtel's financial hardship policy nor, as discussed at paragraph 12, did they include a direct link to the policy.

¹ <http://fox.tl/contact>

² <https://www.foxtel.com.au/about/legal-stuff/financial-hardship-policy.html>, accessed 12 April 2023.

15. Accordingly, the ACMA finds that, for the reasons set out above and in **Attachment A**, Foxtel contravened clause 6.6.2 on 20 occasions between 21 August 2021 and 28 June 2022 by failing to issue reminder notices to 20 customers that include a link to, or reference, its financial hardship policy.

TCP Code – Clause 6.7.1 – Prior notice of restriction, suspension or disconnection action

16. Under clause 6.7.1 of the TCP Code, suppliers must give customers at least 5 working days' notice prior to the restriction, suspension or disconnection of the telecommunications service for credit and/or debt management reasons, unless clause 6.7.1(a) applies.
17. Clause 6.7.1(a) states that a supplier may only restrict, suspend, or disconnect a telecommunications service for credit and/or debt management reasons without first informing the customer if:
 - a. the supplier assesses that the customer or the account status presents an unacceptably high credit risk to the supplier;
 - b. the supplier reasonably suspects fraud or attempted fraud; or
 - c. the customer has nominated to the supplier a restriction point and the customer has reached that restriction point.
18. The Notice limited the scope of information and documentation to be provided by Foxtel to 2 cohorts of 10 customers each that Foxtel disconnected for credit and/or debt management reasons most recently before 31 August 2022, where clause 6.7.1(a) did not apply.
19. The overarching requirement in clause 6.7 is that suppliers must ensure customers are given adequate notice regarding a decision by the supplier to restrict, suspend or disconnect their telecommunications service for credit and/or debt management reasons.
20. It is the ACMA's view that to achieve compliance with clause 6.7.1 the supplier must not take any action to restrict, suspend or disconnect the service until the required 5 working days' notice period has elapsed.
21. It is also the ACMA's view that the requirement to give 5 working days' notice prior to the relevant action excludes both the date of issue of the notice and the date of the relevant action (that is, the restriction, suspension or disconnection).
22. In its 22 March 2023 response, Foxtel submitted that 19 of the 20 instances³ identified by the ACMA in its preliminary report do not represent 'systemic non-compliance or disregard for the TCP Code' because they were the result of 'an inadvertent and isolated IT error'. Foxtel also submitted that the customers in question were each 'previously put on notice' because they had been sent reminder and restriction notices and Foxtel had made two attempts to contact them via telephone regarding their overdue accounts.
23. The ACMA is of the view that in order for a supplier to give customers at least 5 working days' notice prior to restriction, suspension, or disconnection of the service for credit or debit management reasons, in compliance with clause 6.7.1:
 - a. the supplier's restriction, suspension, or disconnection notice must include an explicit statement to the customer that their service *will be* restricted, suspended, or disconnected on or after a specified date or time period.

³ Foxtel's submissions at paragraph 7 of its 22 March 2023 response regarding the remaining instance are addressed in Attachment B.

That is, the notice should clearly convey to the customer that the supplier has made a decision to restrict, suspend, or disconnect their service on or after the relevant date if payment is not received from the customer, and

- b. the relevant action should not occur for at least 5 working days after the supplier has notified the customer of its decision.
24. The ACMA does not accept Foxtel's submission that putting customers 'on notice' regarding their overdue accounts via earlier reminder and restriction notices satisfies the requirement to notify the customer that Foxtel has made a decision to disconnect their service, as required by clause 6.7.1.
 25. Given the above, and for the reasons set out in **Attachment B**, the ACMA finds that Foxtel contravened clause 6.7.1 on 20 occasions between 16 August 2022 and 30 August 2022 by failing to give 20 customers at least 5 working days' notice prior to the disconnection of their telecommunications service for credit and/or debt management reasons, in circumstances where clause 6.7.1(a) did not apply.

TCP Code – Clause 6.7.5(f) – Content of disconnection notice – legal action may be taken

26. Under clause 6.7.5(f) of the TCP Code, if a supplier is notifying a customer about a disconnection of the customer's telecommunications service by email or letter, the supplier must inform the customer that legal action may be taken to recover the unpaid debt.
27. Foxtel states on its website⁴ that 'we may take legal action regarding the outstanding account'.
28. In its 22 March 2023 response, Foxtel submitted that the 18 email disconnection notices provided in response to the Notice, included a link to a page on its website which includes a statement advising customers with overdue accounts that Foxtel may take legal action. The ACMA notes that the link in question⁵ directs to the same page discussed at paragraph 12.
29. In its response, Foxtel also submitted that it has implemented updates to the disconnection notice template to include a statement that "Foxtel may also take legal action to recover the outstanding balance."
30. The ACMA considers that providing a link to the requisite information on Foxtel's website without including any reference to that information in the notice itself does not constitute 'informing the customer that legal action may be taken' and consequently it does not satisfy the requirement of clause 6.7.5(f) in relation to disconnection notices issued via email or letter.
31. The ACMA finds, for the reasons above and as set out in **Attachment A**, Foxtel contravened clause 6.7.5(f) of the TCP Code on 18 occasions between 27 January 2022 and 23 August 2022 by failing to include information that legal action may be taken to recover the unpaid debt when notifying 18 customers about service disconnection.

⁴ <https://help.foxtel.com.au/s/article/a7V2P00000001y7UAA/help-with-overdue-accounts>, accessed 1 February 2023 and 13 April 2023.

⁵ foxtel.com.au/overdue

Compliance with clauses 6.6 and 6.7 of the TCP Code

| A | B | C | D | E |
|--------------------|--|---|---|--------------------------------|
| Clause of TCP Code | Obligation | Customer Key: • Financial Hardship (FH) • Non-Financial Hardship (Non FH) | Particulars of contraventions | Date of contraventions |
| 6.6.2 | <p>Reminder notices</p> <p>If the Supplier issues the reminder notice by a method other than email or letter, they must include a link to, or reference, the Financial Hardship policy and contact details as appropriate for the communication method.</p> | <p><u>FH</u></p> <ol style="list-style-type: none"> 1. [REDACTED] 2. [REDACTED] 3. [REDACTED] 4. [REDACTED] 5. [REDACTED] 6. [REDACTED] 7. [REDACTED] 8. [REDACTED] 9. [REDACTED] 10. [REDACTED] <p><u>Non-FH</u></p> <ol style="list-style-type: none"> 1. [REDACTED] 2. [REDACTED] 3. [REDACTED] 4. [REDACTED] 5. [REDACTED] 6. [REDACTED] 7. [REDACTED] | <p>The 20 reminder notices issued by SMS to the 20 customers listed in column C state:</p> <p><i>16141173 Foxtel here. Your account 16141173 remains overdue. Payment is now required urgently to prevent your package being reduced. To pay by card or request payment plan click here http://fxtl.tv/jehdvk. Need help? http://fox.tl/contact</i></p> <p>These 20 reminder notices do not contain a link to, or reference, the financial hardship policy. The ACMA considers that to meet the requirements of clause 6.6.2 the content of the reminder notice must explicitly reference the supplier's financial hardship policy or include a direct link to the financial hardship policy. Accordingly, the ACMA finds that Foxtel contravened clause 6.6.2 when issuing 20 reminder notices to the 20 customers identified in column C of this table.</p> | 21 August 2021 to 28 June 2022 |

| A | B | C | D | E |
|--------------------|---|--|---|-----------------------------------|
| Clause of TCP Code | Obligation | Customer Key: <ul style="list-style-type: none"> • Financial Hardship (FH) • Non-Financial Hardship (Non FH) | Particulars of contraventions | Date of contraventions |
| | | 8. [REDACTED] 9. [REDACTED] 10. [REDACTED] | | |
| 6.7.5(f) | <p>Content of Disconnection notice: If notifying a Customer about a Supplier's Disconnection of the Customer's Telecommunications Service, send a separate Disconnection notice, not just a Bill, to the Customer and any relevant Guarantor prior to Disconnecting the Telecommunications Service. The notice of Disconnection, if issued by email or letter, must inform the Customer and Guarantor of the following, in addition to the information under 6.7.3:</p> <p style="padding-left: 40px;">f) that legal action may be taken to recover the unpaid debt</p> | <p><u>FH</u></p> 1. [REDACTED] 2. [REDACTED] 3. [REDACTED] 4. [REDACTED] 5. [REDACTED] 6. [REDACTED] 7. [REDACTED] 8. [REDACTED] 9. [REDACTED] 10. [REDACTED] <p><u>Non-FH</u></p> 1. [REDACTED] 2. [REDACTED] | <p>The 18 disconnection notices issued by email to the 18 customers listed in column C do not contain information for affected customers that legal action may be taken to recover the unpaid debt associated with the disconnection.</p> <p>The ACMA considers that, to meet the requirements of clause 6.7.5(f), the content of the disconnection notice must explicitly state that legal action may be taken to recover the unpaid debt. Accordingly, the ACMA finds that Foxtel contravened clause 6.7.5(f) when issuing 18 disconnection notices to the 18 customers identified in column C of this table.</p> | 27 January 2022 to 23 August 2022 |

| A | B | C | D | E |
|--------------------|------------|---|-------------------------------|------------------------|
| Clause of TCP Code | Obligation | Customer Key: <ul style="list-style-type: none"> • Financial Hardship (FH) • Non-Financial Hardship (Non FH) | Particulars of contraventions | Date of contraventions |
| | | 3. [REDACTED] 4. [REDACTED] 5. [REDACTED] 6. [REDACTED] 7. [REDACTED] 8. [REDACTED] | | |

Compliance with clause 6.7.1 of the TCP Code

| Customer | Date of disconnection notice | Actual date customer's service was disconnected | Did Foxtel provide the customer at least 5 working days' notice (i.e., excluding date notice issued and date disconnection occurred, as applicable) prior to the disconnection of the telecommunications service for credit and/or debt management reasons as required clause 6.7.1? |
|--------------------------|-------------------------------------|---|--|
| 1: ██████ (Non-FH) | 23/08/22 | 30/08/22* | No. The disconnection notice gave only 4 working days' notice prior to service disconnection, when clause 6.7.1 requires such a notice to give at least 5 working days' notice. |
| 9: ██████ # (Non-FH) | No notice of disconnection provided | 24/08/22 | No. Foxtel did not provide any notice of disconnection. |
| 10: ██████ # Non-FH) | No notice of disconnection provided | 24/08/22 | No. Foxtel did not provide any notice of disconnection. |
| Additional 17 customers# | No notice of disconnection provided | Not provided | No. Foxtel did not provide any notice of disconnection. |

* In its 22 March 2023 response to the ACMA's preliminary findings, Foxtel corrected information it had provided under the Notice in relation to the date this customer's service was disconnected. Whereas under the Notice, Foxtel advised that disconnection occurred on 29 August 2022, it has now advised that disconnection occurred on 30 August 2022.

Foxtel has explained that it did not provide a disconnection notice to these customers because the disconnection notices scheduled to be sent on 16 August 2022 were not sent to its mailing team for fulfilment, due to an IT error on that date.