

## Final Investigation Report

### Optus Mobile Pty Ltd's compliance with clause 6.7.1 of the Telecommunications Consumer Protections Code C628:2019

<b>File No.</b>	ACMA2022/673
<b>Carriage service provider</b>	Optus Mobile Pty Ltd
<b>ACN</b>	054 365 696
<b>Scope of investigation</b>	Compliance with clause 6.7.1 of the Telecommunications Consumer Protections Code C628:2019

#### Summary of findings

1. The Australian Communications and Media Authority (**the ACMA**) finds that Optus Mobile Pty Ltd (**Optus**) contravened clause 6.7.1 of the Telecommunications Consumer Protections Code C628:2019 (**the TCP Code**) on 5 occasions between 16 June and 11 July 2022 by failing to give 5 customers at least 5 working days' notice prior to the restriction of their telecommunications service for credit and/or debt management reasons, in circumstances where clause 6.7.1(a) did not apply.

#### 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. Optus 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 Optus with a notice under subsection 521(2) of the Act (**the Notice**). The Notice required Optus 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 Optus to restrict, suspend or disconnect a customer's telecommunications service due to credit and/or debt management reasons.
5. After considering the information provided by Optus in response to the Notice, the ACMA commenced an investigation under Part 26 of the Act into Optus' compliance with clause 6.7.1 of the TCP Code.
6. On 15 February 2023, the ACMA sent its preliminary findings report to Optus and invited it to respond. On 3 March 2023, Optus provided the ACMA with a submission in response.
7. Following consideration of Optus's submission, the ACMA sent Optus revised preliminary findings on 10 May 2023. In the revised preliminary findings, the ACMA was of the preliminary view that Optus had breached clause 6.7.1 of the TCP Code on 5 occasions rather than the 24 occasions identified in the preliminary findings sent to

Optus on 15 February 2023. On 22 May 2023, Optus provided the ACMA with a submission in response to the revised preliminary findings.

8. In the course of the investigation, the ACMA has examined information obtained from Optus in response to the Notice, and Optus' submissions of 3 March 2023 and 22 May 2023 in response to the preliminary findings sent to Optus on 15 February 2023 and the revised preliminary findings sent to Optus on 10 May 2023.

### **Findings and reasons**

9. Having assessed the information before it, the ACMA finds that Optus contravened clause 6.7.1 of the TCP Code. Details of the contraventions are set out below.

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

10. Under clause 6.7.1, 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.
11. 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.
12. The Notice limited the scope of information and documentation to be provided by Optus to 2 cohorts of 10 customers each that Optus disconnected for credit and/or debt management reasons most recently before 31 August 2022, where clause 6.7.1(a) did not apply.
13. In its submission of 3 March 2023, Optus contested the conclusion in the ACMA's initial preliminary findings that it did not give 5 working days' notice prior to restricting the services of 5 customers, advising that:

This [the ACMA's] conclusion is not supported by the evidence, which shows that Optus provided the affected customers with more than 5 working days' notice that their account could be restricted or suspended. As provided to the ACMA in response to the s.521 Notice, our records show the affected customers received multiple communications from Optus relating to overdue bills from the time the bill was overdue for payment until the time the account was restricted or suspended.

Optus provides a graduated sequence of notifications to customers who have not paid their bill by the due date [...] The ACMA received the full suite of customer comms sent during the collections phase. Taken together, Optus considers that we communicate to, and give, the customer at least 5 working days' notice their service may be restricted or disconnected and so complies with the requirements in clause 6.7.1.
14. Optus further explained that in its view the notification requirements under clause 6.7.1 of the TCP Code can be met via a series of communications to the customer and that consequences of non-payment of the bills are not required to be included in a single communication.
15. The overarching requirement in clause 6.7 is that suppliers must ensure customers are given at least 5 working days' notice prior to restriction, suspension or disconnection of their telecommunications service for credit and/or debt management reasons.

16. The ACMA is of the view that the intention of clause 6.7.1 is to ensure that customers are given adequate notice regarding an actual decision by a supplier to restrict, suspend or disconnect their service, opposed to a notice which merely indicates that a service may be restricted, suspended or disconnected.
17. Consequently, it is the ACMA's view that in order for a supplier to give a customer at least 5 working days' notice prior to taking the relevant action (to restrict, suspend, or disconnect the service) for credit or debit management reasons, in compliance with clause 6.7.1:
  - 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 if payment is not received from the customer. 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
  - the relevant action should not occur for at least 5 working days' after the supplier has notified the customer of its decision.
18. In its submission of 22 May 2023, Optus similarly contested the conclusions in the ACMA's revised preliminary investigation report. Optus argued that it met the obligation in clause 6.7.1 in relation to the 5 impacted customers because:
  - it sent all 5 customers a minimum of 10 notifications prior to restricting their services
  - the phrase '*to keep your services up and running, please pay \$x...*' used in notices' it provided to these 5 customers well before the restrictions took place, is an explicit statement to them that their service will be restricted
  - the messages sent to the 5 customers contain a link to further information on its website that explicitly describes the action to be taken if the bill is not paid.
19. Optus also concluded that to suggest that these 5 customers were not sufficiently notified before action was taken is not supported by the agreed facts.
20. The ACMA does not consider that the phrase '*to keep your services up and running, please pay \$x...*' conveys to the customer that Optus has made a decision to restrict their service, as it is too vague and imprecise.
21. It is also ACMA's view that the notification obligation in clause 6.7 must be met in a single notification to the customer. That is, in one notice a supplier must give 'adequate notice' by: communicating that decision clearly and giving the customer sufficient prior notice (clause 6.7.1); taking certain precautions (clause 6.7.2); and providing the customer with information that will assist them to understand their situation and to take action to avoid restriction or suspension (clauses 6.7.3. and 6.7.4).
22. In its response, Optus also disputed the ACMA's interpretation of the 5 working days' notice requirement of clause 6.7.1. Optus submitted that it considers the calculation of 5 working days could be interpreted to include the date of issue of the notice, especially where the notice is delivered using a communications method that is capable of being received instantaneously like SMS and email.
23. In light of the significant impact on a customer of restricting, suspending, or disconnecting their service, the ACMA is of the view that it is appropriate to adopt an interpretation of clause 6.7.1 that is most beneficial to consumers whom the TCP Code is intended to protect.

24. The ACMA therefore maintains the view that the requirement to give a minimum of 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.
25. In the 5 cases identified and for the reasons given above and at **Attachment A**, the ACMA does not accept that the earlier notifications as submitted by Optus gave the requisite notice prior to restriction because they did not include an explicit statement to the customer that their service will be restricted.
26. Accordingly, the ACMA finds that, in the 5 cases identified at **Attachment A**, Optus contravened clause 6.7.1 on 5 occasions between 16 June 2022 to 11 July 2022 by failing to give 5 customers at least 5 working days' notice prior to the restriction of their telecommunications service for credit and/or debt management reasons where clause 6.7.1(a) did not apply.

## Compliance with clause 6.7.1 of the TCP Code

Customer	Date of restriction notice	Actual date customer's service was restricted	Did Optus provide the required 5 working days' notice prior to restriction of the telecommunications service as required by clause 6.7.1?
1: Acc A3 (Financial Hardship customer)	23/6/22	29/6/22 - this is 3 working days from date of notice.	<p><b>Restriction:</b> No. This is because the restriction occurred within 5 working days of Optus's notification being given, when clause 6.7.1 requires the restriction not to occur for at least 5 working days after the supplier's notification has been given.</p> <p>The ACMA's review of the notifications Optus provided to the customer between 16/5/22 and 29/6/22 (the date the customer's service was restricted) as detailed in Appendix 1 indicates that Optus first advised the customer on 23/6/22 of its decision that the customer's service <i>will</i> be restricted on or after a specified date or time period if payment is not received. As none of the earlier notifications advised the customer that their service <i>will</i> be restricted, on or after a specified date or time period, if payment is not received, none of these notifications function as relevant notification for purposes of compliance with clause 6.7.1</p>
2: Acc A6 (Financial hardship customer)	27/6/2022	2/7/22 - this is 3 working days from date of notice.	<p><b>Restriction:</b> No. The restriction occurred 3 clear working days after the notice was given, in contravention of clause 6.7.1 which requires the restriction not to occur for at least 5 working days after the supplier's notification has been given.</p> <p>The ACMA's review of the notifications Optus provided to the customer between 5/5/22 and 2/7/22 (the date the customer's service was restricted) as detailed in Appendix 2 indicates that Optus first advised the customer on 27/6/22 of its decision that the customer's service <i>will</i> be restricted on or after a specified date or time period if payment is not received. As none of the earlier notifications</p>

Customer	Date of restriction notice	Actual date customer's service was restricted	Did Optus provide the required 5 working days' notice prior to restriction of the telecommunications service as required by clause 6.7.1?
			advised the customer that their service <i>will</i> be restricted, on or after a specified date or time period, if payment is not received, none of these notifications function as relevant notification for purposes of compliance with clause 6.7.1
3: Acc A9 (Financial hardship Customer)	20/6/2022	25/6/22 - this is 3 working days from date of notice.	<p><b>Restriction:</b> No. This is because the restriction occurred within 5 working days of Optus's notification being given, when clause 6.7.1 requires the restriction not to occur for at least 5 working days after the supplier's notification has been given.</p> <p>The ACMA's review of the notifications Optus provided to the customer between 4/5/22 and 25/6/22 (the date the customer's service was restricted) as detailed in Appendix 3 indicates that Optus first advised the customer on 20/6/22 of its decision that the customer's service <i>will</i> be restricted on or after a specified date or time period if payment is not received. As none of the earlier notifications advised the customer that their service <i>will</i> be restricted, on or after a specified date or time period, if payment is not received, none of these notifications function as relevant notification for purposes of compliance with clause 6.7.1</p>
4: Acc B2 (Non-financial hardship customer)	16/06/2022	22/06/22 – this is 3 working days from date of notice.	<p><b>Restriction:</b> No. This is because the restriction occurred within 5 working days of Optus's notification being given, when clause 6.7.1 requires the restriction not to occur for at least 5 working days after the supplier's notification has been given.</p> <p>The ACMA's review of the notifications Optus provided to the customer between 26/5/22 and 22/6/22 (the date the customer's service was restricted) as detailed in Appendix 4 indicates that Optus first advised the customer on 16/6/22 of its decision that the customer's service <i>will</i> be restricted on or after a specified date or time period if</p>

Customer	Date of restriction notice	Actual date customer's service was restricted	Did Optus provide the required 5 working days' notice prior to restriction of the telecommunications service as required by clause 6.7.1?
			payment is not received. As none of the earlier notifications advised the customer that their service <i>will</i> be restricted, on or after a specified date or time period, if payment is not received, none of these notifications function as relevant notification for purposes of compliance with clause 6.7.1.
5: Acc B10 (Non-financial hardship customer)	6/7/2022	11/7/22 - this is 2 working days from date of notice.	<p><b>Restriction:</b> No. This is because the restriction occurred within 5 working days of Optus's notification being given, when clause 6.7.1 requires the restriction not to occur for at least 5 working days after the supplier's notification has been given.</p> <p>The ACMA's review of the notifications Optus provided to the customer between 14/6/22 and 11/7/22 (the date the customer's service was restricted) as detailed in Appendix 5 indicates that Optus first advised the customer on 6/7/22 of its decision that the customer's service will be restricted on or after a specified date or time period if payment is not received. As none of the earlier notifications advised the customer that their service will be restricted, on or after a specified date or time period, if payment is not received, none of these notifications function as relevant notification for purposes of compliance with clause 6.7.1</p>