



INFRINGEMENT NOTICE

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

To: Telstra Corporation Limited (Telstra)
ACN 051 775 556
Level 41, 242 Exhibition Street
Melbourne VIC 3000

I, Jeremy Fenton, am an authorised infringement notice officer of the Australian Communications and Media Authority (**the ACMA**) for the purpose of section 572L of the *Telecommunications Act 1997* (**the Telecommunications Act**).

I have reasonable grounds to believe that, between 6 November 2022 and 10 November 2022, Telstra committed multiple contraventions of subsection 121(2) of the *Telecommunications Act*, being a civil penalty provision (**the contraventions**).

I give Telstra this Infringement Notice (**the Notice**) under section 572E of the *Telecommunications Act* in relation to the contraventions.

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

Details of the contraventions under this Infringement Notice

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

Penalty payable under this Infringement Notice

In accordance with paragraph 572G(1)(b) of the *Telecommunications Act*, the penalty payable under this Notice is \$3,010,320. Further detail about calculation of the penalty amount is set out in Schedule 1.

Time for payment of the penalty

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

The penalty should be paid to the ACMA, on behalf of the Commonwealth, into the account below within 28 days of the Notice being given.

Please include the narration 'Telstra – TCES' with your payment.

ABN:	[REDACTED]
Financial Institution:	[REDACTED]
Branch:	[REDACTED]
BSB:	[REDACTED]
Account No:	[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 Notice is given.

If the penalty is paid

If you pay the penalty specified in the Notice within the time for payment (being within 28 days after the day on which this Notice is given (or within the longer period allowed under subparagraph 572F(1)(d)(ii) of the Telecommunications Act) and the Notice is not withdrawn, the matter will not be dealt with by the Federal Court under Part 31 of the Telecommunications Act. Your liability for the alleged contraventions, the subject of this Notice, is 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 Court can impose are potentially significantly higher than that in an Infringement Notice (see section 570 of the Telecommunications Act).

Withdrawal of the Infringement Notice

The ACMA may withdraw this 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 Notice was given.

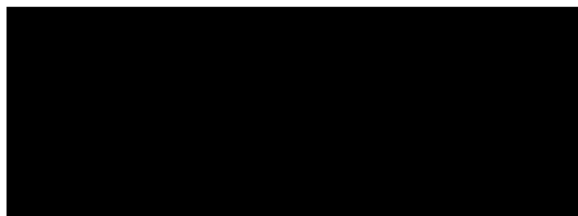
If you wish to apply for withdrawal of the Notice, you should write as soon as practicable setting out the reasons for the request. Your application should be addressed to me in the first instance.

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

Please note that if this Notice is withdrawn, the ACMA may consider taking action for the alleged contraventions, the subject of this Notice.

Enquiries concerning the Infringement Notice

If you have any enquiries or questions about this Notice, contact me on telephone 03 9963 6909 or by email at jeremy.fenton@acma.gov.au.



Jeremy Fenton

Acting General Manager
Consumer Division
Authorised Infringement Notice Officer

Dated: 2 November 2023

SCHEDULE 1

DETAILS OF CONTRAVENTIONS OF CIVIL PENALTY PROVISION

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

1. Background

- 1.1. The Telecommunications Consumer Protections Code C628:2019 (**the TCP Code**) is registered under Part 6 of the Telecommunications Act and sets out rules that apply to all carriage service providers (**CSPs**) that supply telecommunications products to residential and small business consumers. These CSPs are referred to as 'suppliers' in the TCP Code.
- 1.2. Telstra is a registered company under the *Corporations Act 2001*, with a registered office at Level 41, 242 Exhibition Street, Melbourne, VIC 3000.
- 1.3. At the time of the contraventions, Telstra provided mobile phone and broadband services to residential and small business customers. At the time of the contraventions, Telstra was therefore a CSP within the meaning of section 87 of the Telecommunications Act and a supplier for the purposes of the TCP Code.
- 1.4. On 21 September 2020, the ACMA gave Telstra a direction under subsection 121(1) of the Telecommunications Act (**the Direction**) to comply with clause 5.5.1 of the TCP Code.
- 1.5. Clause 5.5.1 of the TCP Code states that a supplier must ensure that it provides, and must be able to verify and demonstrate, billing accuracy except for inaccuracies caused by:
 - (a) the supplier's reliance on information provided by a person who is not its director, employee or agent;
 - (b) an action or failure of another person who is not the supplier's director, employee or agent; or
 - (c) an accident, mistake or any matter beyond the supplier's control, where the supplier took reasonable care and precautions to avoid the inaccuracy.

2. Matters giving rise to the Notice

- 2.1. On 27 July 2023, Telstra reported to the ACMA that it had continued to charge customers in error for inactive ADSL services between 2012 and 2022.
- 2.2. On 1 August 2023, the ACMA commenced an investigation into whether Telstra had contravened the Telecommunications Act by not complying with the Direction.
- 2.3. Information obtained during the investigation showed that Telstra was not able to provide, verify and demonstrate billing accuracy in bills issued to 226 customers between 6 November 2022 and 10 November 2022 (**the 226 bills**), contrary to the requirements of clause 5.5.1 of the TCP Code. There is no evidence before the ACMA to suggest that any of the exceptions in clauses 5.5.1(a) to (c) of the TCP Code apply in relation to the 226 bills, and Telstra has not made any such submission during the investigation.

- 2.4. In order to comply with the Direction given to Telstra on 21 September 2020, Telstra was required to comply with clause 5.5.1 of the TCP Code from that date onwards. The 226 inaccurate bills were issued after that date.
- 2.5. Subsection 121(2) of the Telecommunications Act states that a person must comply with a direction under subsection 121(1) of the Telecommunications Act. Subsection 121(4) provides that subsection 121(2) is a civil penalty provision.
- 2.6. I therefore have reasonable grounds to believe that, between 6 November 2022 and 10 November 2022, Telstra contravened subsection 121(2) of the Telecommunications Act 226 times by not complying with clause 5.5.1 of the TCP Code and, as a consequence, not complying with the Direction given under subsection 121(1).

3. The amount of the penalty

- 3.1. The total penalty specified in the Notice is \$3,010,320, calculated in accordance with section 572G of the Telecommunications Act, as set out in Table 1 below.

Table 1: Penalties for alleged contraventions of subsection 121(2) of the Telecommunications Act

Date of alleged contraventions	Number of alleged contraventions of subsection 121(2)	Penalty units¹	Penalty
6 November 2022	62	3,720	\$825,840
8 November 2022	61	3,660	\$812,520
10 November 2022	103	6,180	\$1,371,960
Total	226	13,560	\$3,010,320

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$222, as set by section 4AA of the *Crimes Act 1914*.