



Australian Government
Australian Communications
and Media Authority

Subsection 69(2) of the *Telecommunications Act 1997*

Direction in relation to paragraph 19(2)(b) of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*

TO: Telstra Corporation Limited ACN 051 775 556

OF: Level 41, 242 Exhibition Street, Melbourne, VIC, 3000

Background

The Australian Communications and Media Authority (**the ACMA**) has investigated whether Telstra Corporation Limited (ACN 051 775 556) (**Telstra**) contravened the *Telecommunications Act 1997* (**the Telecommunications Act**) by failing to comply with the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (**the Carrier Licence Conditions**) in not meeting its Priority Assistance (**PA**) obligations during the period 14 April 2017 to 11 July 2017. The investigation followed two incidents in 2017 where customers with chronic health conditions were unable to use their Telstra landline service to call for assistance.

Following the two incidents, Telstra conducted a review (**the Review**) of its end-to-end processes supporting its Priority Assistance Policy made under clause 19(2) of the Carrier Licence Conditions (**the PA Policy**). As a result of the Review and the ACMA's investigation, Telstra is implementing process and system changes designed to improve its PA processes.

Details of the contraventions

The ACMA found that Telstra did not adhere to its obligations under paragraph 19(2)(b) and the PA Policy between 14 April and 11 July 2017 in relation to the two services. Specifically, Telstra did not:

- (a) Provide information about PA to customers who called and enquired about PA under clause 2.4 of the PA Policy on eight occasions in relation to the two services; or
- (b) Implement the Emergency Medical Request procedures under clause 6 of the PA policy on nine occasions during enquiries made about the two services.

Noting the failure to adhere to its PA Policy and ensure PA customers are identified across the relevant periods in relation to the two services, the ACMA is satisfied that Telstra has contravened paragraph 19(2)(b) of the Carrier Licence Conditions by not implementing

arrangements for maximising service continuity to PA customers because it did not implement and maintain processes, systems and practices to ensure that PA customers can be identified and provided with PA in accordance with the PA Policy.

Failure to comply with the Carrier Licence Conditions is a contravention of subsection 68(1) of the Telecommunications Act.

DIRECTION

The ACMA, under subsection 69(2) of the Telecommunications Act, hereby directs Telstra to take the following action directed towards ensuring that it does not contravene paragraph 19(2) of the Carrier Licence Conditions, or is unlikely to contravene paragraph 19(2) of the Carrier Licence Conditions in the future, as required by subsection 68(1) of the Telecommunications Act:

1. Within 28 days from the date of this direction, Telstra must commission an independent person to audit and report in writing on:
 - (a) the extent to which Telstra's systems, processes and practices (including, without limitation, the training and scripts provided to Telstra contact staff and case managers) are directed toward ensuring Telstra's compliance with the PA Policy and PA obligations under the Carrier Licence Conditions;
 - (b) recommendations as to the improvement or maintenance of those systems, processes and practices; and
 - (c) the number of complaints made to Telstra since 1 October 2014, by or on behalf of a Priority Customer (as defined in clause 3 of the Carrier Licence Conditions) (**Priority Customer**) or a customer Telstra has been informed has an unexpected life threatening medical condition (**LTMC**), that raised questions as to whether the PA Policy was adhered to in relation to Telstra's dealings with the customer concerned.
2. In relation to each complaint that has been identified in the course of the independent audit referred to in paragraph 1(c), Telstra must also require the independent auditor:
 - (a) to investigate the circumstances and cause of each complaint; and
 - (b) include in the auditor's report a summary of Telstra's investigation of the complaint and any findings.
3. Telstra must require that the audit report referred to in paragraphs 1 and 2 be completed by no later than 12 October 2018 and it must provide a copy of the independent auditor's written report to Telstra's Board by no later than 9 November 2018.
4. Telstra must prepare a written response to any recommendations in the audit report referred to in paragraphs 1 and 2 and implement all reasonable recommendations. Where it regards any recommendation in the audit report as unreasonable, it must record the reasons for its view in the written response.

5. Telstra must provide a copy of the audit report referred to in paragraphs 1 and 2, and the written response referred to in paragraph 4, to the ACMA by no later than 30 November 2018.
6. Telstra must implement and maintain effective systems, processes and practices for ensuring compliance with the PA Policy. For the purpose of complying with, and to the extent necessary to comply with, the PA Policy, until 31 December 2020, these systems, processes and practices must include:
 - (a) systems, processes and practices designed to ensure that customers whom Telstra has been informed have a LTMC are provided with information about PA and how to register for PA, whether or not a problem exists with that customer's service;
 - (b) systems, processes and practices designed to ensure that Telstra will initiate the Emergency Medical Request procedures under the PA Policy, or otherwise respond quickly and appropriately to resolve requests for assistance, where a person is calling on behalf of a customer whom Telstra is informed has a LTMC and an urgent need for access to a working fixed voice service, whether or not that person is an authorised representative of the customer, appointed in accordance with Telstra's processes;
 - (c) systems, processes and practices designed to:
 - (i) maximise service continuity for Priority Customers as those customers' services are migrated to the National Broadband Network (NBN); and
 - (ii) ensure that Telstra adheres to the Emergency Medical Request Procedures for customers whom Telstra is informed have a LTMC and an urgent need for access to a working fixed voice service, as those customers' services are migrated to the NBN; and
 - (d) systems, processes and practices designed to ensure that Telstra's contact staff and case managers are provided with scripts and training on the PA Policy and the actions it requires them to take, including the correct handling of Priority Customer faults and Emergency Medical Requests from customers (or their agents) who have not registered for Priority Assistance.
7. Telstra must provide written quarterly reports to the ACMA on its compliance with paragraph 6 commencing with the quarter ending 31 March 2019. Each report must be provided no later than one month after the end of the quarter to which the report relates.
8. Telstra must keep records sufficient to demonstrate compliance with this direction and retain those records for at least 24 months after the date the record is created.

TAKE NOTE

9. Under subclause 19(2) of the Carrier Licence Conditions, Telstra is required to implement arrangements for maximising service continuity to priority customers. As part of these arrangements the licensee is required to:
 - (a) develop, implement and maintain a documented priority assistance policy; and
 - (b) develop, implement and maintain processes, systems and practices to ensure that priority customers can be identified and provided with priority assistance in accordance with the licensee's priority assistance policy.

10. Subsection 68(1) of the Telecommunications Act provides that a carrier must not contravene a condition of the carrier licence held by the carrier.
11. Under subsection 69(2) of the Telecommunications Act, the ACMA can direct a carrier to take specified action directed towards ensuring that the carrier does not contravene a condition of the carrier licence held by the carrier, or is unlikely to contravene a condition of the carrier licence held by the carrier, in the future.
12. Subsection 69(4) of the Telecommunications Act provides that a carrier must not contravene a direction given under subsection 69(2). Such a contravention is a contravention of the Telecommunications Act. It is a condition of the carrier licence that the carrier must comply with the Telecommunications Act (subsection 68(1) and Part 1 of Schedule 1). Failure to comply with a remedial direction to a carrier is a breach of that carrier's licence conditions. A corporation that has contravened subsection 68(1) of the Telecommunications Act may be ordered by the Federal Court to pay to the Commonwealth such pecuniary penalty as the Court determines to be appropriate, up to a maximum of \$10 million (section 570 of the Telecommunications Act).

REVIEW RIGHTS

AAT review

13. If Telstra is dissatisfied with the ACMA's decision upon reconsideration then, in accordance with section 562 of the Telecommunications Act, Telstra has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal (AAT).
14. The AAT is an independent body. The AAT can, amongst other things:
 - confirm the ACMA's decision;
 - vary the ACMA's decision; or
 - set the ACMA's decision aside and replace it with its own decision.
15. An application to the AAT for review must be in writing. The AAT has a form for this purpose which may be used if preferred.
16. An application for review should be made within 28 days of being told about the decision. A \$920 application fee must be paid with the application. If you want to apply for the application fee to be waived, you can obtain the application form for this from the AAT.
17. If not already provided, Telstra may also request a statement of reasons in relation to the decision on that reconsideration, under section 28 of the *Administrative Appeals Tribunal Act 1975 (AAT Act)*. Any such request should be made within 28 days of the reconsideration decision and addressed to the person whose contact details are included below in paragraph 23.

18. The AAT website has more information at www.aat.gov.au. For questions about the AAT's procedures or requirements, please contact the AAT on 1800 228 333 or at GPO Box 9955 in each capital city.

ACCESS TO DOCUMENTS

19. Telstra also has a right to seek access to documents about the decision to give this direction, or any associated reconsideration decision, under the *Freedom of Information Act 1982* (**FOI Act**). The application must be made to the ACMA in writing and you must:
- state that the request is an application for the purpose of the FOI Act;
 - provide sufficient information about the documents sought to be obtained as is reasonably necessary to enable the ACMA to identify them; and
 - give details of how notices under the FOI Act may be sent to you (e.g. postal address or email address).
20. The ACMA's website has more information on how to make an application at www.acma.gov.au.

MAKING A COMPLAINT

21. If you are dissatisfied with the way the ACMA handled this matter, you may contact the person whose details are provided below in paragraph 23.
22. A complaint may also be made to the Commonwealth Ombudsman. (The Ombudsman usually prefers that your concerns are raised with the ACMA first.) There is an office of the Commonwealth Ombudsman in each capital city. Further information may be obtained at www.ombudsman.gov.au or call 1300 362 072.

CONTACTING THE ACMA

23. Should you require further information, please contact:

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Original direction given on 5 July 2018, and variation to clause 6 occurred on 13 September 2018.