

## Investigation Report

### Australian Private Networks Pty Ltd's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

<b>File No.</b>	ACMA2017/869-15
<b>Carriage service provider</b>	Australian Private Networks Pty Ltd, trading as Activ8me
<b>ACN</b>	103 009 552
<b>Type of services</b>	Standard Telephone Service
<b>Scope of Investigation</b>	Compliance with clause 19 of Schedule 2 to the <i>Telecommunications Act 1997</i>

#### Findings

- The Australian Communications and Media Authority (**the ACMA**) finds that Australian Private Networks Pty Ltd (**Activ8me**) has contravened:
  - paragraph 19(2)(a) of Schedule 2 to the *Telecommunications Act 1997* (**the Act**) on seven occasions between 3 September 2018 and 5 September 2018 as Activ8me did not inform seven prospective residential customers, who made an inquiry about the supply of a standard telephone service, that it does not offer priority assistance in connection with the service; and
  - paragraph 19(2)(b) of Schedule 2 to the Act on seven occasions between 3 September 2018 and 5 September 2018 as Activ8me did not inform seven prospective residential customers, who made an inquiry about the supply of a standard telephone service, of the names of one or more carriage service providers (**CSPs**) from which the prospective residential customer could obtain priority assistance in connection with a standard telephone service.
- As a consequence of those contraventions, the ACMA also finds that Activ8me contravened subsection 101(1) of the Act on seven occasions as it did not comply with the service provider rules that apply to it, namely the rules referred to in section 98 of the Act.
- A table setting out the ACMA's findings is at Attachment A.

#### Background

- Under section 510 of the Act, the ACMA has jurisdiction to investigate a potential contravention of the Act.
- On 25 September 2018, the ACMA commenced an investigation under subsection 510(1) of the Act to determine whether Activ8me was complying with the service provider rules in clause 19 of Schedule 2 to the Act, which requires CSPs that do not offer priority assistance to inform prospective residential customers that they do not offer this enhanced service, and to inform the prospective customer of at least one CSP from whom the customer can obtain priority assistance.
- On the same day, the ACMA gave Activ8me a notice under section 521 of the Act (the Notice) requiring the provision of information and documents in relation to a

sample of 10 inquiries by prospective residential customers for a standard telephone service, in order to assess compliance with clause 19 of Schedule 2 to the Act.

7. On 2 October 2018, Activ8me responded to the Notice.
8. On 19 December 2018, the ACMA sent its preliminary findings report to Activ8me and invited it to respond. On 11 January 2019, Activ8me provided its submission in response.

#### **Relevant facts**

9. Activ8me is a CSP within the meaning of the Act<sup>1</sup>. Activ8me supplies telephone and internet services to residential and small business customers.
10. Priority assistance means the provision of the highest level of service practicably available at the time supplied to priority customers in relation to new connections, fault repairs and service reliability of the standard telephone service at the priority customer's place of residence.<sup>2</sup> Priority customers are customers who require the telephone to access emergency medical treatment or advice to reduce the possibility of death from a life-threatening illness.<sup>3</sup>
11. Telstra Corporation Limited is the only CSP required to provide priority assistance under the Act. Other CSPs may offer priority assistance services but are not obliged by regulation to do so. CSPs (other than Telstra) that offer priority assistance are required to comply with the industry code *ACIF: C609:2007 Priority Assistance for Life Threatening Medical Conditions (the Priority Assistance Code)*.
12. Activ8me does not offer priority assistance.

#### **Findings and reasons**

##### ***Compliance with the Act***

13. Subsection 101(1) of the Act requires that service providers (a term which includes CSPs) comply with the service provider rules that apply to them. Subsection 98(1) of the Act provides that the service provider rules include the rules set out in Schedule 2 to the Act. Clause 19 of Schedule 2 to the Act provides that if a CSP receives an inquiry from a prospective residential customer about the supply of a standard telephone service, and the CSP does not offer priority assistance, the CSP must:
  - (a) inform the prospective residential customer that the CSP does not offer priority assistance in connection with the service; and
  - (b) inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.
14. In making its findings, the ACMA considered the evidence gathered during the course of the investigation as summarised in Attachment A. The ACMA also considered Activ8me's submission dated 11 January 2019, in which Activ8me made no arguments against the findings set out below.

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<sup>1</sup> See section 87 of the Act.

<sup>2</sup> Subclause 19(3) of Schedule 2 to the Act and clause 3.2 of the industry code *ACIF: C609:2007 Priority Assistance for Life Threatening Medical Conditions*.

<sup>3</sup> Clause 3.2 of the *Priority Assistance Code*

***Breach findings***

15. On the dates specified in column B of Attachment A, a prospective residential customer, in a telephone call with a representative of Activ8me, made an inquiry about the supply of a standard telephone service.
16. In seven instances, Activ8me's response described in column F of Attachment A did not meet the requirements of paragraph 19(2)(a) of Schedule 2 to the Act, as Activ8me did not inform the prospective residential customer that it does not offer priority assistance in connection with the service.
17. In seven instances, Activ8me's response described in column G of Attachment A did not meet the requirements of paragraph 19(2)(b) of Schedule 2 to the Act, as Activ8me did not inform the prospective residential customer of the names of one or more CSPs from whom the prospective residential customer can obtain priority assistance in connection with a standard telephone service.
18. Accordingly, the ACMA is satisfied that Activ8me contravened clause 19 of Schedule 2 to the Act.



Findings - ACMA Investigation into Activ8me's compliance with clause 19 of Schedule 2 to the *Telecommunications Act 1997*

Attachment A

A	B	C	D	E	F	G	H	I
Provider	Date contacted	Plan	Test 1. Did the carriage service provider (CSP) receive an inquiry from a prospective residential customer about the supply of a standard telephone service? (paragraph 19(1)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 3. Did the agent inform the prospective customer that the CSP does not offer Priority Assistance in connection with the service? (paragraph 19(2)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 4. Did the CSP inform the prospective customer of the names of one or more CSPs who provide Priority Assistance? (paragraph 19(2)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Findings	Comment
Activ8me - 30057641 (Call 1)	5/09/2018	Home Phone	Yes	No	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer asked about switching their home telephone to Activ8me. During the call the prospective customer agreed to sign up for the home phone plan. Activ8me directed the customer to its website to view the Critical Information Summary (CIS) and confirmed that an email including the CIS would be sent to the customer. The customer agreed to move forward with her application for the service. Activ8me did not inform the prospective customer that it did not offer priority assistance. Further, Activ8me did not inform the prospective customer about a CSP who provides priority assistance. It is also noted that neither the CIS nor the email sent to the customer informed the customer that Activ8me does not offer priority assistance or informed the customer of a CSP who does provide priority assistance.
Activ8me - 30026536 (call 2)	5/09/2018	Home Phone	Yes	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised that she was intending to switch from her current telephone provider to Activ8me. During the call, the prospective customer agreed to sign up for the phone line plan offered by Activ8me. Activ8me referred the prospective customer to the Activ8me website to view the CIS which Activ8me advised would also be emailed to her. The prospective customer confirmed and agreed to move forward with her application for the service. Activ8me did not inform the prospective customer that Activ8me did not offer priority assistance. Further, Activ8me did not inform the prospective customer about a CSP who provides priority assistance. It is also noted that neither the CIS nor the email sent to the customer informed the customer that Activ8me does not offer priority assistance or informed the customer of a CSP who does provide priority assistance.

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Provider	Date contacted	Plan	Test 1. Did the carriage service provider (CSP) receive an inquiry from a prospective residential customer about the supply of a standard telephone service? (paragraph 19(1)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 3. Did the agent inform the prospective customer that the CSP does not offer Priority Assistance in connection with the service? (paragraph 19(2)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 4. Did the CSP inform the prospective customer of the names of one or more CSPs who provide Priority Assistance? (paragraph 19(2)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Findings	Comment
Activ8me - 30063423 (Call 3)	5/09/2018	Home Phone	Yes	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised that she was intending to switch from her current telephone provider to Activ8me. The prospective customer agreed to sign up for the phone line plan offered by Activ8me. Activ8me referred the prospective customer to the Activ8me website to view the CIS which Activ8me advised would also be emailed to her. The prospective customer confirmed and agreed to move forward with her application for service. Activ8me did not inform the prospective customer that Activ8me did not offer priority assistance. Further, Activ8me did not inform the prospective customer about a CSP who provides priority assistance. It is also noted that neither the CIS nor the email sent to the customer informed the customer that Activ8me does not offer priority assistance or informed the customer of a CSP who does provide priority assistance.
Activ8me - 30070028 (Call 4)	5/09/2018	NBN and Home Phone	Yes	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer inquired about a new NBN service that also came with a home phone. The prospective customer agreed to sign up for the phone line plan offered by Activ8me. Activ8me referred the prospective customer to the Activ8me website to view the CIS which Activ8me advised would also be emailed to her. The prospective customer confirmed and agreed to move forward with her application for service. Activ8me did not inform the prospective customer that Activ8me did not offer priority assistance. Activ8me did not inform the prospective customer about a CSP who provides priority assistance. It is also noted that neither the CIS nor the email sent to the customer informed the customer that Activ8me does not offer priority assistance or informed the customer of a CSP who does provide priority assistance.

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Provider	Date contacted	Plan	Test 1. Did the carriage service provider (CSP) receive an inquiry from a prospective residential customer about the supply of a standard telephone service? (paragraph 19(1)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 2. Does the provider offer Priority Assistance? (paragraph 19(1)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 3. Did the agent inform the prospective customer that the CSP does not offer Priority Assistance in connection with the service? (paragraph 19(2)(a) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Test 4. Did the CSP inform the prospective customer of the names of one or more CSPs who provide Priority Assistance? (paragraph 19(2)(b) Schedule 2 to the <i>Telecommunications Act 1997</i> )	Findings	Comment
Activ8me - 30068566 (Call 5)	4/09/2018	NBN and Home Phone	Yes.	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer called Activ8me in relation to an existing NBN service that she purchased and requested a landline to be added to the service. Activ8me advised that it would set up the landline service. Activ8me did not inform the customer that Activ8me does not offer priority assistance. Further, Activ8me did not inform the customer about a CSP who does offer priority assistance.
Activ8me - 30070008 (Call 6)	3/09/2018	NBN and Home Phone	Yes.	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer inquired about switching to Activ8me for NBN and landline services. Activ8me confirmed the plan the prospective customer had selected. Activ8me referred the prospective customer to its website to view the CIS and confirmed a copy would be sent to the customer via email. The prospective customer accepted this and agreed to move forward with the application for service. Activ8me did not inform the customer that it did not offer priority assistance. Further, Activ8me did not inform the customer about a CSP who does offer priority assistance. It is also noted that neither the CIS nor the email sent to the customer informed the customer that Activ8me does not offer priority assistance or informed the customer of a CSP who does provide priority assistance.
Activ8me - 30006727 (Call 7)	3/09/2018	Home Phone	Yes	No.	No. Activ8me did not inform the prospective customer that it does not offer priority assistance in connection with the service.	No. Activ8me did not inform the prospective customer of the names of one or more CSPs who provide priority assistance.	Breach of paragraph 19(2)(a) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i> and Breach of paragraph 19(2)(b) of Part 6 of Schedule 2 to the <i>Telecommunications Act 1997</i>	The prospective customer advised Activ8me that he received an email from Activ8me about changing his phone plan over to a \$55 per month service. Activ8me confirmed the plan selected by the prospective customer. Activ8me confirmed the phone line had been changed over. Activ8me did not inform the customer that it does not offer priority assistance. Further, Activ8me did not inform the customer of a CSP who does offer priority assistance.

