

## Investigation Report

### SpinTel Pty Ltd's compliance with clause 4.1.2(b) of the Telecommunications Consumer Protections Code C628:2019

<b>File No.</b>	ACMA2022/121
<b>Carriage service provider</b>	SpinTel Pty Ltd
<b>ACN</b>	082 087 689
<b>Scope of investigation</b>	Compliance with clause 4.1.2(b) of the Telecommunications Consumer Protections Code C628:2019

### Summary of findings

The Australian Communications and Media Authority (the **ACMA**) finds that SpinTel Pty Ltd (**SpinTel**) contravened clause 4.1.2(b) of the *Telecommunications Consumer Protections Code C628:2019* (the **TCP Code**) on 20 April 2022 by using the term 'unlimited' in an unqualified manner when referring to usage for its SIM Only Mobile Plans when the service was not genuinely unlimited.

### Background

1. 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.
2. On 29 March 2022, the ACMA commenced an investigation into SpinTel's compliance with clause 4.1.2(b) of the TCP Code.
3. The investigation follows a complaint the ACMA received on 16 February 2022, about the way SpinTel used the term 'unlimited' in its advertising of a SIM Only Mobile Plan, and information SpinTel provided to the ACMA on 16 March 2022 in response to the ACMA's enquiries about the complaint.
4. On 6 May 2022, the ACMA provided SpinTel with its preliminary view that it contravened clause 4.1.2(b) of the TCP Code. On 24 May 2022, SpinTel provided the ACMA with a submission in response.
5. In the course of this investigation, the ACMA examined:
  - (a) Information obtained from SpinTel on 16 March 2022, in response to enquiries made by the ACMA on 3 March 2022.
  - (b) A copy of advertising material for SpinTel's SIM Only Mobile Plans accessed by the ACMA on SpinTel's website on 20 April 2022.
  - (c) A copy of SpinTel's Acceptable Use Policy (**AUP**) accessed by the ACMA on SpinTel's website on 20 April 2022.
  - (d) SpinTel's submission to the ACMA's preliminary findings received on 24 May 2022.

## Findings and reasons

### ***TCP Code – Clause 4.1.2(b) (Proscribed content in advertising – use of term ‘unlimited’)***

6. Under clause 4.1.2(b) of the TCP Code, a supplier must not engage in selling practices (i.e. advertising) that use the term ‘unlimited’, or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network.
7. To determine SpinTel’s compliance with clause 4.1.2(b) of the TCP Code, the ACMA has assessed the following questions:
  - (a) Is SpinTel a CSP within the meaning of the Act and a supplier for the purposes of the TCP Code?
  - (b) Did SpinTel use the term ‘unlimited’ or an equivalent term in an unqualified manner when referring to usage in their advertising of its SIM Only Mobile Plans?
  - (c) Was the ordinary use of SIM Only Mobile Plans in Australia genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network?

### ***Is SpinTel a CSP within the meaning of the Act and a supplier for the purposes of the TCP Code?***

8. SpinTel provides internet and telephone services, which are listed carriage services<sup>1</sup>, to residential and small business consumers. It is therefore a CSP within the meaning of section 87 of the Act and a supplier for the purposes of the TCP Code.<sup>2</sup>

### ***Did SpinTel use the term ‘unlimited’ or an equivalent term in an unqualified manner when referring to usage in their advertising of its SIM Only Mobile Plans***

9. Yes. The advertising material for SpinTel’s SIM Only Mobile Plans accessed by the ACMA on 20 April 2022 (the **Advertising Material**) states that the plans include ‘Unlimited calls/texts’ for each of the five listed plans (see **Attachment A**). The Advertising Material does not contain any qualifications or exclusions in relation to the use of the term ‘unlimited’ for any of the five listed SIM-only plans.

### ***Is the ordinary use of the SIM Only Mobile Plans in Australia genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network?***

10. No. In its submissions to the ACMA on 16 March 2022, SpinTel provided a copy of its Critical Information Summary (**CIS**) setting out key terms for its Sim Only Mobile Plans. Relevantly, the Information About Pricing section of the CIS states that each plan has unlimited calls and texts. The AUP section in the CIS states:

When signing up to a SpinTel service you agree to the Acceptable Use Policy (AUP). The purpose of SpinTel’s AUP is to ensure all customers can access our services, and do not use our services in a manner that we consider ‘unreasonable’. The AUP outlines, restrictions associated with ‘commercial’, ‘excessive’, ‘unreasonable’, and ‘unlawful’ use of the SpinTel service. Breaching [*sic*] the AUP may result in SpinTel disconnecting your account. The see [*sic*] the full AUP please visit [spintel.net.au/aup](http://spintel.net.au/aup).

11. SpinTel advised that, in accordance with its AUP, a customer on a SIM-Only Mobile Plan is automatically suspended from making outbound calls for the duration of the

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<sup>1</sup> As defined in section 16 of the Act.

<sup>2</sup> Under the TCP Code, a ‘supplier’ means a CSP (see clause 2.1).

billing month, where their usage of the service is 20 times the average use of SpinTel's mobile customer base for the last 30 days.

12. The ACMA accessed the AUP (**Attachment B**) following the link identified in the CIS ([spintel.net.au/aup](http://spintel.net.au/aup)) on 20 April 2022 and considers that it sets out a number of exclusions which are not identified in the Advertising Material. Specifically, section 6.0 states:

#### 6.0 Mobile Phone

1. Mobile plans with unlimited value must not be used for commercial use. Breach of this will result in immediate termination of the account.
  2. In this paragraph, commercial purpose includes the following activities:
    1. Running a telemarketing business or call centre
    2. SIM boxing or using other devices
    3. Re-supplying or reselling the service
    4. Mobile phone usage in excess of 20 times the average usage of a SpinTel mobile customer is deemed Commercial and is in breach of this clause
    5. Other similar activities.
13. The ACMA finds that the application of this policy may result in the suspension of customers that exceed the stated usage threshold for deemed commercial calls and as a consequence SpinTel's SIM Only Mobile Plans are not *genuinely unlimited and not subject to exclusions*. Despite this, SpinTel's Advertising Material for its SIM Only Mobile Plans included the term 'unlimited' in an unqualified manner when referring to call usage.
  14. In its submission to the ACMA's preliminary findings, SpinTel accepted the ACMA's preliminary view that it had contravened clause 4.1.2(b) of the TCP Code. SpinTel advised that it was an unintentional error on its part. SpinTel further advised that it has amended its AUP so that its plans can now correctly be described as unlimited and that it will not regard services with high usage patterns as being in breach of its AUP.
  15. For the above reasons, the ACMA has found that SpinTel contravened clause 4.1.2(b) of the TCP Code on 20 April 2022.

SpinTel's SIM Only Mobile Plans advertising material accessed on 20 April 2022

The screenshot displays a web browser window at <https://www.spintel.net.au/home-mobile/plans>. The page features five mobile plan cards arranged horizontally. Each card lists the data allowance, monthly price, and a promotional offer for new registrations. A 'Buy Now' button is present at the bottom of each card. A 'PRODUCT REVIEW' badge is visible on the left side of the 5GB plan card.

Plan Name	Data Allowance	Monthly Price	Promotional Offer	Network	Other Features
5GB	5GB	\$12.95	DATA CAPPED: When you reach your limit	4G Network	No lock-in contract, Unlimited calls/texts
17GB	17GB	\$12.00	Enjoy \$8 off your Mobile Plan for first 6 mths, offer available for new registrations (usually \$20.00/mth)	4G Network	No lock-in contract, Unlimited calls/text
50GB	50GB	\$20.00	Enjoy \$15 off your Mobile Plan for first 6 mths, offer available for new registrations (usually \$35.00/mth)	4G Network	No lock-in contract, Unlimited calls/text
80GB	80GB	\$40.00	Enjoy \$10 off your Mobile Plan for first 6 mths offer available for new registrations (usually \$50.00/mth)	4G/5G Network	No lock-in contract, Unlimited calls/text
200GB	200GB	\$55.00	Enjoy \$10 off your Mobile Plan for first 6 mths offer available for new registrations (usually \$65.00/mth)	4G/5G Network	No lock-in contract, Unlimited calls/text

# ACCEPTABLE USE POLICY

This policy defines the actions that SpinTel considers to be abusive or inappropriate and, thus, strictly prohibited. Evidence of these actions is grounds for suspension of services pending investigation by SpinTel, and may result in the termination of the violating account(s). Under certain conditions, usage of accounts by methods not listed below may also be deemed abusive or inappropriate. Due to the nature of the Internet, all possible uses and subsequent actions cannot be listed. If you are not sure, call SpinTel on 1300 303 375 or email [abuse@spin.net.au](mailto:abuse@spin.net.au).

This policy covers all services provided by SpinTel, and is deemed to be part of the Terms and Conditions.

## 1.0 General Services

### 1. E-mail

1. SPAM Email:  
Clients are prohibited from sending unsolicited email messages to multiple recipients (commonly termed "spam"). Email may not be sent to individuals who do not wish to receive it. Clients may not use their account to accept replies from SPAM mail sent through other Service Providers.
2. Malicious Email:  
Clients are prohibited from sending malicious mail bombing (flooding a user's email box with a large volume of email), and the sending of harassing messages.
3. Chain Letters:  
Clients are prohibited from forwarding chain letters. Since SPAM email, chain letters and malicious email abuse system resources and compromise the integrity of SpinTel managed networks, SpinTel reserves the right to charge users for improper use of email services. SpinTel may charge up to \$100.00 per unsolicited

message sent from the SpinTel network to any point on the Internet or connected networks.

4. Header Information may not be forged.  
All email exiting the SpinTel network must include a proper email header indicating the proper origin of the email. SpinTel has the right to refuse email sent to or received by the SpinTel network which includes a forged or otherwise false header.
5. A SpinTel SMTP gateway may not be used as a relay for emails originating from non SpinTel controlled networks. SpinTel restricts access to its SMTP servers to SpinTel controlled networks. All unauthorised attempts to use SpinTel's SMTP gateway are recorded.

## **2. IRC (Internet Relay Chat)**

1. IRC robots ("bots" or "clones") may not be run from a SpinTel shell account or on any resource on a SpinTel managed network.  
Clients must abide by the rules and regulations governing the IRC server to which they are connected.

## **3. Proxies and Web Browsing**

1. SpinTel reserves the right to redirect HTTP requests to a proxy server so the proxy server can retrieve the requested URL.  
Use of the proxy servers is restricted to those clients within a SpinTel controlled network.

## **4. Shell Access**

1. SpinTel reserves the right to remove Shell Access from a Client.
2. Programs (perl/shell scripts, binaries) are not to be run without prior authorisation.
3. The use of CGI and perl scripts is permitted for websites.
4. Unless authorised, shell accounts may not run programs that provide network services, such as IRC or MUD servers.
5. Use of Shell Access is restricted to connections from within a SpinTel controlled network.

## **5. Dial-Up**

1. Dial-up accounts should not be left connected unless actively used. SpinTel at its discretion may disconnect the dial-in session should it be idle.

## **6. Data storage and Distribution.**

1. Clients may not use SpinTel storage facilities or communication services (including World Wide Web, Gopher, email, USENET or FTP) to store and/or distribute copyrighted software or documentation or other material, unless authorised to do so by the copyright owner. SpinTel reserves the right to remove any data that violates these conditions.
2. SpinTel reserves the right to remove data from storage facilities as required to by law.

## **2.0 Residential Voice over IP (VoIP)**

1. Residential VoIP services must not be used for commercial or business use. Breach of this will result in immediate termination of the account.
2. In order to prevent misuse, SpinTel may automatically terminate calls if they exceed 60 minutes in one session/call without warning.
3. SpinTel reserves the right to discontinue or disconnect a customer's VoIP service without notice if it breaches the Acceptable Use Policy (AUP).
4. A national call means a standard national call where the person making the call is not making the call for any commercial purpose.
5. A mobile call means a standard mobile call where the person making the call is not making the call for any commercial purpose.
6. National calls exclude calls to:
  1. Operator assistance
  2. Directory assistance
  3. Telephone number that begins with a 19 prefix
  4. Numbers initiated by dialling an override code, for example 1456
  5. Mobile Phones
7. In this paragraph, commercial purpose includes the following activities:
  1. Calls made for a business operated at home

2. Running a telemarketing business or call centre
  3. Re-supplying or reselling the service
  4. Other similar activities
8. Unlawful or Inappropriate Use:  
If SpinTel determines that you have used our service for an unlawful or inappropriate purpose, we may disconnect or cancel your account without notice and provide supporting evidence to law enforcement agencies. If SpinTel determines that the use or content does not conform to the requirements in this agreement or that it interferes with our ability to provide service to you or others, we may also disconnect or cancel your account without notice.
9. Violation of laws of jurisdictions:  
If SpinTel determines that you have used our service in violation of laws of jurisdictions outside of our service areas we reserve the right to cancel or disconnect your service and provide supporting evidence to law enforcement agencies.

### 3.0 Business Voice over IP (VoIP)

1. SpinTel reserves the right to discontinue or disconnect a customer's Business VoIP service without notice, if it breaches the Acceptable Use Policy (AUP).
2. A national call means a standard national call where the person making the call is not engaging in unreasonable use of the small to medium business offer.
3. A mobile call means a standard mobile call where the person making the call is not engaging in unreasonable use of the small to medium business offer.
4. National calls exclude calls to:
  1. Operator assistance
  2. Directory assistance
  3. Telephone number that begins with a 19 prefix
  4. Initiated by dialling an override code for example: 1456
5. The free call offer applies to standard calls for the purpose of you making calls for business purposes, but not for the purposes of re-sale, re-supply or commercial exploitation.
6. We consider your use of the service to be unreasonable if you make or receive calls on our network for any commercial or non-ordinary purpose.
7. Non-ordinary purpose includes:
  1. Running a telemarketing business or call centre



2. Using the service in connection with a device that switches or re-routes to or from our network or the network of any supplier
  3. Resupplying or reselling the service
  4. Wholesale any service
  5. Other activity which would not be reasonably regarded as ordinary business use
8. Unlawful or Inappropriate Use: If SpinTel determines that you have used our service for an unlawful or inappropriate purpose we may disconnect or cancel your account without notice and provide supporting evidence to law enforcement agencies. If SpinTel determines that the use or content does not conform to the requirements in this agreement or that it interferes with our ability to provide service to you or others we may also disconnect or cancel your account without notice.
9. Violation of laws of jurisdictions: If SpinTel determines that you have used our service in violation of laws of jurisdictions outside of our service areas we reserve the right to cancel or disconnect your service and provide supporting evidence to law enforcement agencies.

## 4.0 Home Phone

1. A local call means a standard local call where the person making the call is at their home and is not making the call for any commercial purpose.
2. A national call means a standard national call where the person making the call is not making the call for any commercial purpose.
3. Local and National calls exclude calls to:
  1. Operator assistance
  2. Directory assistance
  3. Telephone number that begins with a 19 prefix
  4. Numbers initiated by dialling an override code, for example 1456
  5. Mobile Phones
4. In this paragraph, commercial purpose includes the following activities:
  1. Calls made for a business operated at home
  2. Running a telemarketing business or call centre
  3. Resupplying or reselling the service

#### 4. Other similar activities

### 5.0 Business Phone

1. A local call or national call describes a call where the person making the call is at their place of business and is not engaging in unreasonable use of the small to medium business offer.
2. Local and National calls exclude calls to:
  1. Operator assistance
  2. Directory assistance
  3. Telephone number that begins with a 19 prefix
  4. Initiated by dialling an override code, for example 1456
3. If a free call offer is supplied, it applies to standard calls for the purpose of you making calls for business purposes, but not for the purposes of resale, resupply or commercial exploitation.
4. We consider your use of the service to be unreasonable if you make or receive calls on our network for any commercial or non-ordinary purpose.
5. Non-ordinary purpose includes:
  1. Running a telemarketing business or call centre
  2. Using the service in connection with a device that switches or re-routes to or from our network or the network of any supplier
  3. Resupplying or reselling the service
  4. Wholesale any service
  5. Other activity which would not be reasonably regarded as ordinary business use

### 6.0 Mobile Phone

1. Mobile plans with unlimited value must not be used for commercial use. Breach of this will result in immediate termination of the account.
2. In this paragraph, commercial purpose includes the following activities:
  1. Running a telemarketing business or call centre
  2. SIM boxing or using other devices
  3. Re-supplying or reselling the service

4. Mobile phone usage in excess of 20 times the average usage of a SpinTel mobile customer is deemed Commercial and is in breach of this clause
5. Other similar activities
3. Unreasonable and excessive use is defined when the Customer is deemed to have an impact on SpinTel, or our Host networks, or if through excessive usage is considered detrimental to our other customers.
4. Violation of laws of Unlawful or Inappropriate Use: If SpinTel determines that you have used our services for an unlawful or inappropriate purpose, we may disconnect or cancel your account without notice and provide supporting evidence to the appropriate law enforcement agencies.
5. Unreasonable use: If SpinTel determines that the use or content is unreasonable and does not conform to the requirements in this agreement or that it interferes with our ability to provide service to you or others, we may disconnect or cancel your account with a minimum 30 days' notice.

## 7.0 Home Broadband

1. Home Broadband and Home Bundles may be utilised for residential use only.
2. If SpinTel suspects that your usage of the service may be of an unlawful nature, or may infringe any person's intellectual property rights, we reserve the right to refuse you access to the service. We may also suspend the service immediately without notice to you.
3. Excessive Use:  
We may limit, suspend or terminate your Home Broadband if you:  
Cause significant network congestion, disruption or otherwise adversely affect our Network; excessively use the capacity or resources of our Network in a manner which may hinder or prevent us from providing services to other customers or which may pose a threat to the integrity of our Network or systems.  
Adversely affect another person's use of or access to the Fair Use Services  
If your upload data is two times that of your download we may limit, suspend or terminate your Home Broadband  
If you download and upload Data, in total, exceeds five times

the average SpinTel Broadband user

Example of Excessive Use For example, if the average SpinTel Home Broadband user downloads and uploads, in total, 200 Gigabytes per calendar month, but your usage is more than 1000 Gigabytes per month, your total usage will be more than 5 times the average user (200 Gigabytes X 5 = 1000 Gigabytes).

## 8.0 System and Network Security

1. Clients may not attempt to circumvent the security of any host, network or account on the Internet. This includes, but is not limited to accessing data not intended for the Client, entering a system the Client is not authorised to access, using 'packet sniffers' and similar programs to acquire account passwords, or probing the security of a SpinTel network or other networks.
2. SpinTel reserves the right to remove any software which may aid in the violation of System Security.
3. Clients are responsible for account password(s), and must choose a sufficiently secure password and must not give their password to anyone not directly associated with their company or organisation. Passwords should not consist of words found in a dictionary.  
Passwords should include a combination of numbers and letters, upper and lower case letters, and/or symbols.  
Passwords can be changed at any time on the SpinTel website by the Client.
4. Clients are responsible for all activity through their Internet connection. Clients should not allow easy access to their connection by leaving an unsupervised computer connected, 'hard coding' passwords within their Internet dialler software, or saving account information and passwords in an area that is accessible to non-authorised users.
5. All passwords stored on the SpinTel network are encrypted. If a password is lost, a Client's only recourse is to request a password change by calling SpinTel Accounts on 1300 303 375. Password changes via telephone are subject to an identity check. For the security of the Client if any doubt of the caller's identity exists, SpinTel reserves the right to refuse the password change. In this instance the Client must

submit a written, signed request by fax or post.

All lost password changes for Clients that are businesses must fax or post a request on Company Letterhead from the person/s who started the account, or an authorised representative.

6. Immediately upon being notified that a Client's password has been lost or a Client's account has been compromised, SpinTel will change a Client's password to protect system security.

## 9.0 Other Networks and Network Resources

1. When connected to outside hosts or networks, through FTP, Telnet, rlogin or a similar protocol, or when using resources of an outside host or network (through the WWW, gopher or similar protocol), the Client must obey the Acceptable Use Policies of such networks, in addition to complying with this Acceptable Policy.
2. Clients must not partake in activities on other networks or through external network resources that could jeopardise the safety or security of SpinTel managed networks.
3. Clients must abide by the applicable State or country laws governing the host or network.

## 10.0 General Behaviour and Conduct

1. SpinTel reserves the right to disconnect or discontinue providing a customer any services without notice if it breaches the Acceptable Use Policy (AUP).
2. Criminal activities, especially those in relation to Part 10.6 of The Criminal Code, will be reported.
3. Clients must not transmit any menacing, abusive, or defamatory material.
4. Clients must not engage in any menacing, abusive or defamatory behaviour towards our staff.
5. Clients must not use their services in a way which makes it unsafe for others, or risks damage to property.