

# INFRINGEMENT NOTICE

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

**To:** **Southern Phone Company Limited**  
**ACN 100 901 184**  
**AGL Energy Ltd, Level 24, 200 George Street,**  
**Sydney NSW 2000**

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 on 21 November 2023, Southern Phone Company Limited (**Southern Phone**) committed 13 contraventions of subsection 128(1) of the *Telecommunications Act*, being a civil penalty provision (**the contraventions**).

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

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

### **Details of the contraventions under this Infringement Notice**

It is alleged that Southern Phone contravened subsection 128(1) of the *Telecommunications Act* by failing to comply with section 21 of the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (**Complaints Standard**), which requires carriage service providers (**CSPs**) to keep records that are sufficient to demonstrate compliance with Parts 2 to 5 of the *Complaints Standard* for two years, and to supply those records to the ACMA on request.

Schedule 1 of this Notice sets out 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 \$244,140. This penalty has been calculated as set out in Schedule 1 of this Notice.

### **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 this Notice being given.

**Please include** the narration 'Southern Phone IN – 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 this 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 this 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 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 this 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 this 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](mailto:jeremy.fenton@acma.gov.au).

[REDACTED]

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**Jeremy Fenton**  
Acting General Manager  
Consumer Division  
Authorised Infringement Notice Officer

Dated: 27 March 2024

## 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 Complaints Standard is an industry standard determined under subsection 125AA(1) of the Telecommunications Act and registered under Part 6 of the Act. It sets out rules that apply to participants in the telecommunications industry, including CSPs.
- 1.2. Subsection 128(1) of the Telecommunications Act requires that participants, including CSPs, in a particular section of the telecommunications industry must comply with any industry standard registered under Part 6 of the Act that applies to their section of the telecommunications industry. Subsection 128(3) provides that subsection 128(1) is a civil penalty provision.
- 1.3. At the time of the contraventions, Southern Phone provided internet, landline, and mobile services, which are listed carriage services, to the public. At the time of the contraventions, Southern Phone was therefore a CSP within the meaning of section 87 of the Telecommunications Act.
- 1.4. Section 21 of the Complaints Standard requires a CSP to keep records that are sufficient to demonstrate compliance with the requirements under Parts 2 to 5 of the Complaints Standard. Such records must be kept for two years from the creation of the record and supplied to the ACMA on request.
- 1.5. Paragraph 13(1)(j) of the Complaints Standard requires a CSP to complete all necessary actions to implement a proposed resolution to a complaint, within 10 working days of the consumer accepting that resolution, except where:
  - (i) otherwise agreed with the consumer;
  - (ii) the consumer agreed to undertake actions to implement the proposed resolution by a specified time, but did not complete the actions as agreed; or
  - (iii) the complaint is an urgent complaint and paragraph 13(1)(h) applies.

#### 2. Matters giving rise to the Notice

- 2.1. On 11 October 2023, the ACMA commenced an investigation into whether Southern Phone had contravened subsection 128(1) of the Telecommunications Act by not complying with the Complaints Standard.
- 2.2. On 21 November 2023, in response to an ACMA notice requiring information, Southern Phone advised the ACMA that in respect of 13 complaints received between 1 April 2023 and 30 June 2023 (inclusive) it did not have records of both the date the customer accepted the proposed resolution and the date when Southern Phone implemented that resolution. Accordingly, these records could not be supplied to the ACMA.
- 2.3. These records are necessary to demonstrate compliance with paragraph 13(1)(j) of the Complaints Standard for each complaint. By failing to keep these records for the required two-year period, and accordingly being unable to supply them to

the ACMA on written request, Southern Phone failed to comply with section 21 of the Complaints Standard on 13 occasions.

2.4. I therefore have reasonable grounds to believe that, on 21 November 2023,<sup>1</sup> Southern Phone contravened subsection 128(1) of the Telecommunications Act 13 times by not complying with section 21 of the Complaints Standard for each of the 13 complaints set out in Table 1.

### 3. The amount of the penalty

3.1. The total penalty specified in the Notice is \$244,140, 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 128(1) of the Telecommunications Act on 21 November 2023**

Complaint reference/unique ID	Number of alleged contraventions of subsection 128(1)	Penalty units <sup>2</sup>	Penalty
██████████	1	60	\$18,780
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██████████	1	60	\$18,780
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██████████	1	60	\$18,780
<b>Total</b>	<b>13</b>	<b>780</b>	<b>\$244,140</b>

<sup>1</sup> This is the date that Southern Phone advised the ACMA that the records could not be provided upon written request from the ACMA. The ACMA notes that the initial requirement to keep a record was likely breached earlier than 21 November 2023.

<sup>2</sup> The value of a penalty unit at the time of the alleged contraventions was \$313, as set by section 4AA of the *Crimes Act 1914*.