

# Investigation Report

<b>Entities</b>	Telstra Corporation Limited ACN 051 775 556 Telstra Limited ACN 086 174 781 ( <b>Telstra</b> )
<b>Type of entity</b>	Carrier
<b>Relevant Legislation</b>	<i>Telecommunications Act 1997</i> <i>Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019</i>
<b>Date</b>	2 May 2024

## Findings

- The Australian Communications and Media Authority (**ACMA**) finds that Telstra contravened subsection 68(1) of *Telecommunications Act 1997* (**Act**) because it contravened:
  - > subsection 276(1) of the Act, and
  - > subsection 9(7) of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* (**Declaration**).

## Reasons

- The ACMA's findings, including the key elements which establish the contraventions, are based on the following information obtained from Telstra.
  - > Seven self-reports of potential non-compliance on 3 October 2022, 24 November 2022, 8 December 2022, 1 February 2023, 31 March 2023, 6 April 2023, and 16 October 2023.
  - > Responses to compulsory information gathering notices under section 521 of the Act on 9 December 2022 and 28 April 2023.
  - > Response to the ACMA preliminary findings on 28 April 2023.
  - > Supplementary submissions on 12 June 2023 and 15 September 2023.
  - > Response to the ACMA draft findings on 24 January 2024.

## Background and relevant provisions

- Telstra underwent a corporate restructure which came into effect on 1 January 2023. On this date, the ACMA understands the carrier and CSP functions passed from Telstra Corporation Limited to Telstra Limited. Unless otherwise stated, **Telstra** means Telstra Corporation Limited up to and including 31 December 2022 and Telstra Limited on and from 1 January 2023.
- Telstra holds a carrier licence issued under Division 3 of Part 3 of the Act and is therefore a carrier. It is also a carriage service provider (**CSP**) as defined at section 87 of the Act. As a carrier and CSP, Telstra is also an eligible person for the purposes of Part 13 of the Act, as defined at section 271 of the Act. This investigation concerns Telstra as a carrier and an eligible person (referred to in this report as **Telstra**). However, where the report refers to Telstra in its capacity as a CSP, the term **Telstra (CSP)** is used.
- Subsection 68(1) states a carrier must not contravene a condition of the carrier licence held by the carrier.
- The conditions of Telstra's carrier licence are set out in the Act, and in the Declaration which was declared by the Minister under subsection 63(2) of the Act, and which continues pursuant to section 63A of the Act.

### *Carrier licence conditions – the Act*

7. Section 61 of the Act states that a carrier licence is subject to conditions specified in Schedule 1.
8. Subclause 1(1) of Schedule 1 says a carrier must comply with the Act, which includes section 276 of the Act.
9. Subsection 276(1) of the Act requires that an eligible person must not, among other matters, disclose or use any information or document that:
  - (a) relates to: [...]
  - (iv) the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and
  - (b) comes to the person's knowledge, or into the person's possession:
    - (i) if the person is a carrier or carriage service provider – in connection with the person's business as such a carrier or provider.

### *Carrier licence conditions – the Declaration*

10. Section 9 of the Declaration requires Telstra to maintain an alphabetical public number directory. Telstra maintains the White Pages to meet this obligation.
11. Subsection 9(1) of the Declaration requires Telstra to produce the directory which includes all customers of CSPs supplied with [a standard telephone service], regardless of who supplies them with that service. That is, the White Pages includes data of Telstra (CSP) customers, and customers of other CSPs.<sup>1</sup>
12. Subsection 9(7) of the Declaration requires that Telstra 'must ensure, to the greatest extent practicable, that the directory does not include details of a customer whose number is an unlisted number' (**Requirement**).
13. The White Pages is published in hard copy and electronic format by Thryv Australia Pty Ltd (**Thryv**) (formerly Sensis Pty Ltd) under a commercial arrangement with Telstra. Regardless of this arrangement, Telstra is responsible for carrier licence obligations in relation to the White Pages.
14. Section 8 of the Declaration requires Telstra to make directory assistance services available to the end-users of standard telephone services supplied by Telstra. Telstra maintains a directory assistance database in fulfilment of this obligation. Its directory assistance database is used by Telstra agents to answer calls made to 1234, 12456 and 1223.
15. A listed number is one the customer agrees to make available (together with name and address details) for use in phone number directories and directory assistance services. An unlisted (or 'silent') number is where the customer does not agree to the number and related customer data being available for these purposes.<sup>2</sup>

### *Telstra notifications and investigation commencement*

16. On 3 October 2022, Telstra advised the ACMA of Telstra's potential non-compliance in relation to the publication of unlisted number customer data in the White Pages.
17. The ACMA commenced an investigation into Telstra's compliance with the relevant provisions of the Act and the Declaration on 3 November 2022. [REDACTED]

<sup>1</sup> Subsection 9(1) of the Declaration states: *The licensee [Telstra] must produce an alphabetical public number directory:*

- (a) annually; and
- (b) on substantially the same basis as the licensee produced and distributed a directory in 1997; and
- (c) in volumes by geographic area; and
- (d) subject to subsection 9(7)—that includes all customers of carriage service providers supplied with an [standard telephone service], regardless of who supplies them with that service.

<sup>2</sup> See the definition of *unlisted number* in section 4 of the Declaration and the definitions of *Listed Number*, *Listed Entry*, *Unlisted Number*, and *Unlisted Entry* in Industry Code C555:2020 Integrated Public Number Database.

**Compliance with primary disclosure/use requirements**

18. The ACMA has considered whether Telstra complied with the requirement in subsection 68(1) that it must comply with the Act (see subclause 1(1) of Schedule 1 to the Act) in relation to its compliance with the primary disclosure/use requirements at subsection 276(1) of the Act.

**Table 1: Assessment of compliance with subsection 276(1)**

<p>Is Telstra an eligible person for the purposes of Part 13 of the Act?</p>	<p>Yes. Telstra holds a carrier licence issued under Division 3 of Part 3 of the Act and is therefore a carrier. It is also a <b>CSP</b> as defined at section 87 of the Act. As a carrier and CSP, Telstra is an eligible person for the purposes of Part 13 of the Act.</p>
<p>Did Telstra disclose or use information that relates to the personal particulars (including any unlisted telephone number or any address)?</p>	<p>Yes. Based on information obtained from Telstra [REDACTED], Telstra:</p> <ul style="list-style-type: none"> <li>&gt; disclosed the unlisted telephone numbers, names and addresses of <b>24,005</b> customers in the White Pages. 23,262 of these were Telstra (CSP) customers and 743 were customers of other CSPs. [REDACTED]</li> <li>&gt; included the unlisted telephone numbers and addresses of <b>139,402</b> Telstra (CSP) customers in the database Telstra uses for its directory assistance services (to answer calls to 1234, 12456 and 1223). The ACMA considers the inclusion of the unlisted data in the directory assistance amounts to the data being used by Telstra.</li> </ul>
<p>Did the information come into Telstra's possession in connection with its business as a carrier?</p>	<p>Yes. Sections 8 and 9 of the Declaration require Telstra to maintain an alphabetical public number directory and to make directory assistance services available to end-users of standard telephone services supplied by Telstra. Telstra maintains the White Pages and a directory assistance database to meet these obligations. The information came into Telstra's possession for both purposes as a carrier.</p>
<p>Do any of the exceptions to the primary disclosure/use offences at section 276 set out in Division 3 of Part 13 apply?</p>	<p>No. The ACMA does not consider any of the exceptions in Division 3 of Part 13 of the Act apply to either the disclosure of unlisted number customer data in the White Pages or the use of unlisted number customer data for Telstra's directory assistance database.</p>

19. Accordingly, the ACMA finds that Telstra contravened subsection 68(1) on **163,407** (24,005 + 139,402) occasions by not complying with the Act (see subclause 1(1) of Schedule 1 to the Act) because of its non-compliance with the primary disclosure/use requirements at subsection 276(1) of the Act.

## Compliance with Carrier Licence Conditions

20. The ACMA has also considered whether Telstra complied with the requirement in subsection 68(1) of the Act that it must not contravene a condition of the carrier licence, of which the requirement in subsection 9(7) of the Declaration is one. That is, did Telstra ensure, to the greatest extent practicable, that the directory (the White Pages) did not include details of a customer whose number is an unlisted number?

**Table 2: Assessment of compliance with subsection 9(7) of the Declaration**

<p>Were details of customers whose numbers were unlisted numbers included in the directory maintained by Telstra under section 9 of the Declaration (known as the White Pages)?</p>	<p>Yes.</p> <p>Based on information obtained from Telstra, [REDACTED] Telstra included details of 24,005 customers whose numbers were unlisted in the White Pages. 23,262 of these were Telstra (CSP) customers and 743 were customers of other CSPs. [REDACTED]</p>
<p>Did Telstra ensure, to the greatest extent practicable, that the directory (the White Pages) did not include details of a customer whose number is an unlisted number?</p>	<p>No.</p> <p>Telstra has described contractual obligations and technical processes it has in relation to the Requirement. The ACMA considers that these are inadequate by themselves, and they were manifestly insufficient to prevent the inclusion of the details of customers whose numbers were unlisted that have been considered within this investigation.</p> <p>The ACMA considers comprehensive and robust processes, procedures, systems and practices, and related oversight and assurances, are required to meet an obligation to protect the privacy, and sometimes safety, of customers.</p> <p>See paragraphs 21 – 30 below for further detail.</p>

21. During the investigation, the ACMA obtained from Telstra copies of process documents which set out how unlisted numbers are dealt with in information flows to Thryv and its contract with Thryv for publication of the White Pages (**White Pages Agreement**), which states, in summary, that:
- > Telstra (CSP) will ensure that data it supplies to Thryv does not include unlisted number data, and that it will notify Thryv if a number becomes unlisted after it is supplied to Thryv, and
  - > Thryv must use its best efforts to ensure that it does not publish any unlisted number data.
22. Telstra described its processes to accurately capture a customer's preference for a listed or unlisted number when a customer starts a service with Telstra (CSP).
23. Telstra also stated that it has implemented measures to comply that the ACMA understands to be recent, and, in any case, post the commencement of this investigation. Telstra stated:
- > it has 'commenced a listing notification program' to send annual reminders to Telstra (CSP) customers with 'eligible products' related to free White Pages listings that they are listed in the White Pages.
  - > if a Telstra (CSP) customer disconnects or removes a listing from a service that has an associated White Pages paid listing charge, they receive an automatic notification (SMS or email) reminding them of the paid listing, and advising them to contact Thryv to cancel the paid listing if they wish to do so.
24. In the ACMA's view, the qualification 'greatest extent practicable' in the Requirement means there may be some limitations to what Telstra can do or put into practice to comply. However, while contractual obligations and technical processes are a reasonable and appropriate part of meeting the Requirement, they were, in this matter, inadequate by themselves, and they were insufficient

to, on multiple occasions, prevent details of customers whose numbers were unlisted numbers from being included in the White Pages.

25. To be compliant with a requirement designed to protect the privacy, and sometimes safety, of consumers to the 'greatest extent practicable', necessitates comprehensive and robust processes, procedures, systems and practices, including related oversight and assurances to regularly assure Telstra that any contractual and process arrangements are operating effectively.
26. Further, the ACMA's view is that compliance practices must account for the fact that customers can change their listing preferences at any time.
27. Telstra's measures to comply with the Requirement must also address other CSPs' customer data, and for the reasons outlined above, go beyond a mere contractual obligation, noting:
  - > that Telstra is required under the Declaration to include the data of other CSPs' customers in the White Pages, and
  - > the important consumer safeguard to which the Requirement is directed.
28. While Telstra submitted it had robust systems in place directed at meeting the Requirement, it also noted:

*We accept that, in the context of our assurance systems and processes, we did not ensure, to the greatest extent practicable, that the White Pages did not include unlisted number customer data because we did not take proactive steps to confirm that:*

- *the information in the White Pages reflects the listing status in Telstra's systems in relation to Telstra's customers; and*
  - *the information in the White Pages reflects the information provided by other CSPs to Thryv in relation to their customers.*
29. Accordingly, the ACMA finds that from July 2013 to July 2023, Telstra contravened subsection 68(1) of the Act which states a carrier must not contravene a condition of the carrier licence held by the carrier because it contravened subsection 9(7) of the Declaration by failing to ensure, to the greatest extent practicable, that the directory (the White Pages) did not include details of a customer whose number is an unlisted number, impacting **24,005** unlisted numbers.