

## Investigation Report:

<b>File No.</b>	ACMA2024/1122
<b>Carriage Service Provider</b>	Pennytel Australia Pty Ltd
<b>ACN</b>	166 566 632
<b>Relevant Legislation</b>	<i>Telecommunications Act 1997</i> <i>Telecommunications (Financial Hardship) Industry Standard 2024</i>

## Findings

The Australian Communications and Media Authority (**ACMA**) finds that Pennytel Australia Pty Ltd (**Pennytel**) contravened subsection 128(1) of the *Telecommunications Act 1997* (**the Act**) by failing to comply with paragraph 7(1)(a) of the *Telecommunications (Financial Hardship) Industry Standard 2024* (**the Financial Hardship Standard**) on 23 May 2024.

## Background

1. On 31 August 2023, the Minister for Communications made the *Telecommunications (Financial Hardship Industry Standard) Direction 2023* which directed the ACMA to determine a standard under subsection 125AA(1) of the Act, dealing with:
  - (a) information relating to financial hardship matters that was to be provided by carriage service providers (**CSPs**) to customers and made available to customers, and potential customers;
  - (b) support to be provided by CSPs to customers who are, or may be, experiencing financial hardship.
2. On 1 February 2024, the ACMA made the Financial Hardship Standard under subsection 125AA(1) of the Act. The Standard commenced on 29 March 2024. The new rules in the Standard replace and enhance previous financial hardship measures set out in the Telecommunications Consumer Protections Code C628:2019 (**the TCP Code**).
3. On 21 May 2024, the ACMA commenced an investigation into Pennytel's compliance with paragraph 7(1)(a) of the Financial Hardship Standard. The ACMA audited 48 telcos including Pennytel, which disclosed evidence that led the ACMA to believe that Pennytel may not have complied with requirements in the Financial Hardship Standard. Specifically, that Pennytel failed to establish and publish a payment assistance policy and a summary of that policy on their website that meets the minimum requirements of Part 2 of the Financial Hardship Standard.
4. On 27 May 2024, the ACMA provided its preliminary findings report to Pennytel and invited it to respond. Pennytel did not contest the ACMA's preliminary findings

and confirmed by email dated 14 June 2024 that it had updated its Policy and Policy Summary to address the issues raised in the preliminary findings report.

## Findings and Reasons

### Section 128 of the Act

5. Section 128 of the Act states that if an industry standard that applies to participants in a particular section of the telecommunications industry is registered under Part 6 of the Act, each participant in that section of the industry must comply with the standard.
6. The Financial Hardship Standard is an industry standard determined under subsection 125AA(1) of the Act and registered under Part 6 of the Act.
7. Paragraph 4(a) of the Financial Hardship Standard provides that for the purpose of subsection 125AA(1) of the Act, this industry standard applies to participants in the telecommunications industry, being CSPs that supply telecommunications products to residential, small business and not-for-profit customers.
8. Pennytel is a CSP that supplies internet and mobile services to the public. As a participant in the section of the telecommunications industry to which the Financial Hardship Standard applies, Pennytel is required to comply with the Financial Hardship Standard.

### *Paragraph 7(1)(a) of the Financial Hardship Standard*

9. Paragraph 7(1)(a) of the Financial Hardship Standard provides that CSPs that offer to supply telecommunications products to consumers under a consumer contract must establish a payment assistance policy (**Policy**) that meets the minimum requirements in Part 2 of the Standard. These minimum requirements relate to the content to be included in the Policy and the accessibility and promotion of the Policy.
10. On 23 May 2024, the ACMA accessed Pennytel’s Policy through Pennytel’s website at <https://www.pennytel.com.au>. On 23 May 2024, the ACMA reviewed Pennytel’s Policy and formed the view that Pennytel contravened paragraph 7(1)(a) of the Financial Hardship Standard for the reasons set out below. A copy of Pennytel’s Policy that the ACMA assessed is at **Attachment A**.

## Breach findings

<b>Provision of <i>Financial Hardship Standard</i></b>	<b>Requirement</b>	<b>ACMA findings and reasons</b>
Paragraph 8(1)(d)	A Policy must be accurate and up to date	<p>Pennytel’s website indicates that its Policy was last updated on 18 May 2022.</p> <p>Pennytel’s Policy is not accurate and up to date as it does not meet a range of content requirements as outlined in the rows below.</p> <p>Consequently, Pennytel’s Policy has not been updated to meet the minimum</p>

		requirements under the Financial Hardship Standard.
Subparagraph 8(1)(g)(i)	<p>The Policy must be made clearly available to the public on the provider's website and on an app if the provider uses an app:</p> <p>(i) via a direct hyperlink from the home page of the website</p>	<p>Pennytel's Policy was found via a hyperlink titled 'Legal Information' on Pennytel's home page, available at <a href="http://www.pennytel.com.au">www.pennytel.com.au</a>, and then via a drop-down list under the heading 'Financial' on Pennytel's 'Legal Information' webpage (see Attachment B).</p> <p>Consequently, the Policy was not made clearly available via a direct hyperlink from Pennytel's home page as required.</p> <p>Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum accessibility requirement under paragraph 8(1)(g) of the Financial Hardship Standard.</p>
Subparagraph 8(1)(g)(ii)	<p>The Policy must be made clearly available to the public on the provider's website and on an app if the provider uses an app:</p> <p>(ii) in a concise summary form on the same web page or location that the information about how to make an application and payment assistance policy are kept.</p> <p>Section 13 sets out what must be included in the summary referred to in subparagraph 8(1)(g)(ii).</p>	<p>Pennytel does not have a summary of its Policy available on its website.</p> <p>See Attachment C: screenshot of Pennytel's 'Legal Information' webpage evidencing Pennytel does not have a Policy Summary.</p> <p>Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 13(a), and thus does not meet the minimum requirements under subparagraph 8(1)(g) of the Financial Hardship Standard.</p>
Paragraph 9(c)	<p>A Policy must include a statement of intention, which expressly recognises:</p> <p>(i) that the goal of the Policy is to prioritise keeping customers experiencing financial hardship connected; and</p> <p>(ii) that disconnection will only be used by the provider as a measure of last resort</p>	<p>Pennytel's Policy states that Pennytel is committed to finding a sustainable solution. A copy of Pennytel's Policy is available at Attachment A.</p> <p>However, Pennytel's Policy does not state that disconnection will be used as a measure of last resort.</p> <p>For paragraph 9(c) to be satisfied, both requirements in subparagraph 9(c)(i) and (ii) must be met. As subparagraph 9(c)(ii) has not been met, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the</p>

		minimum content requirement under paragraph 9(c) of the Financial Hardship Standard.
Paragraph 9(d)	The Policy must state that customers have a right to apply for financial hardship assistance	<p>Pennytel's Policy advises customers to contact Pennytel immediately if they are having difficulty paying their bill.</p> <p>However, Pennytel's Policy does not state that customers have a right to apply for financial hardship assistance.</p> <p>Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 9(d) of the Financial Hardship Standard.</p>
Paragraph 9(g)	The Policy must set out information on support services for customers in financial hardship, including how the customer can contact financial counselling services, and the Telecommunications Industry Ombudsman (the TIO)	<p>Pennytel's Policy does not set out information on how customers can contact the TIO.</p> <p>Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 9(g) of the Financial Hardship Standard.</p>
Paragraph 10(e)	<p>The Policy must ensure that the processes referred to in paragraphs 9(a) to (f) are accessible to consumers with disabilities, from cultural or linguistically diverse backgrounds or with other special needs.</p> <p><i>The Explanatory Statement to the Financial Hardship Standard, (section 10 - Minimum content requirements – applications), states, “[f]or example, offering the payment assistance policy and applications form (if applicable) in common community languages such as Arabic, Greek, Vietnamese and Mandarin, including information about translation services that may</i></p>	<p>Pennytel's Policy does not contain any information to assist consumers with disabilities or from cultural or linguistically diverse backgrounds to access the Policy. For example:</p> <ul style="list-style-type: none"> <li>• no common community language translations are available</li> <li>• there is no information about any interpreter services</li> <li>• no information or weblinks to the National Relay Service are included.</li> </ul> <p>Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 10(e) of the Financial Hardship Standard.</p>

	<i>be available, or including the number of an interpreter service”.</i>	
Paragraph 11(d)	The Policy must state that customers seeking short term assistance or who are a victim survivor of domestic or family violence are not required to provide evidence to support their application	Pennytel's Policy does not state that customers seeking short term assistance or who are a victim survivor of domestic or family violence are not required to provide evidence to support their application for financial assistance.  Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 11(d) of the Financial Hardship Standard.
Paragraph 12(b)	The Policy must set out the process by which the customer can make a complaint to the TIO for external dispute resolution	Pennytel's Policy does not include information about how customers can make a complaint to the TIO.  Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 12(b) of the Financial Hardship Standard.
Paragraph 12(c)	The Policy must state that making a complaint <ul style="list-style-type: none"> <li>• to the provider about a decision in relation to their application or seeking review of that decision, or</li> <li>• to the TIO,</li> </ul> does not prevent the customer from agreeing to an arrangement for financial hardship assistance	Pennytel's Policy does not include the required statement.  Therefore, based on its review of Pennytel's Policy on 23 May 2024, the ACMA finds that it does not meet the minimum content requirement under paragraph 12(c) of the Financial Hardship Standard.

## Conclusion

Based on its review of Pennytel's Policy on 23 May 2024, for the reasons set out above, the ACMA finds that Pennytel has not complied with paragraph 7(1)(a) of the Financial Hardship Standard, as it has not established a payment assistance policy that complies with the minimum requirements in Part 2 of the Financial Hardship Standard. Consequently, the ACMA finds that Pennytel has contravened subsection 128(1) of the Act as it has not complied with paragraph 7(1)(a) of the Financial Hardship Standard.

## ATTACHMENTS

Attachment A: Pennytel's Policy

Attachment B: Pennytel's website home page as at 23 May 2024

Attachment C: Pennytel's 'Legal Information' webpage as at 23 May 2024