

Remedial Direction issued under subsection 69(2) of the *Telecommunications Act 1997*

TO: Telstra Limited (ACN 086 174 781) (Telstra)
OF: Level 41, 242-282 Exhibition Street,
Melbourne VIC 3000

Background

The Australian Communications and Media Authority (the **ACMA**) is responsible for monitoring and enforcing compliance by carriers with their obligations under the *Telecommunications Act 1997* (the **Act**).

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 matter concerns conduct by Telstra in its capacity as a carrier and an eligible person (referred to in this Direction as **Telstra**). However, where the Direction refers to Telstra in its capacity as a CSP, the term **Telstra (CSP)** is used.

Subsection 68(1) states that 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 *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* (**Declaration**), which was declared by the Minister under subsection 63(2) of the Act, and which continues pursuant to section 63A of the Act.

Following an investigation into unlisted phone numbers and related customer data being disclosed in White Pages and used in Telstra's directory assistance database, the ACMA is satisfied that Telstra breached subsection 68(1) by:

- > failing to comply with the Act (see the licence condition in subclause 1(1) of Schedule 1 to the Act) in relation to its contravention of the primary disclosure and use requirements at subsection 276(1) of the Act, and
- > failing to comply with the licence condition in subsection 9(7) of the Declaration.

(see further details at paragraphs 19–29 below).

DIRECTION

1. The ACMA HEREBY directs Telstra under subsection 69(2) of the Act to take the specified action detailed below, directed towards ensuring that it does not breach subsection 68(1) by failing to comply with subsection 276(1) of the Act, and the carrier licence condition at subsection 9(7) of the Declaration, or is unlikely to breach these obligations, in the future.

Data reconciliation

2. By 1 July 2024, Telstra must compare data in its customer management systems with data for all Telstra (CSP) customers whose customer data is:
 - a) published in the White Pages, and
 - b) included in the database used for directory assistance services (**DA Database**)to identify whether the customer data of any customers with unlisted numbers is published in the White Pages and/or is included in the DA Database.
3. If the process at paragraph 2 identifies that customer data for Telstra (CSP) customers with unlisted numbers has been published in the White Pages and/or included in the DA Database, Telstra must:
 - a) within 2 business days remove the data from the White Pages online and/or the DA Database; and
 - b) take steps to ensure that the data is not published in the next and subsequent relevant White Pages hard copy volume/s (unless the customer subsequently requests the number associated with the data be listed).
4. From 1 July 2024, Telstra must compare Telstra (CSP) customer data, and White Pages and DA Database data, and take remedial action, as described at paragraphs 2 and 3, at least once every 6 months.

Training staff

5. By 1 September 2024, Telstra must ensure that:
 - a) its staff responsible for carrier licence condition compliance, and
 - b) staff of any third-party contracted by Telstra in connection with the fulfilment of its DA Database obligations and/or White Pages obligations (currently Thryv Australia Pty Ltd)understand Telstra's regulatory obligations under subsection 276(1) of the Act and subsection 9(7) of the Declaration, including by developing a training program directed to ensuring that staff are familiar with Telstra's related systems, processes and practices (the **Training Program**).
6. From 1 September 2024, Telstra must deliver the Training Program to any new staff with responsibilities set out at paragraph 5 on commencement, and to all staff with responsibilities set out at paragraph 5 at least annually.
7. Telstra must update the Training Program if its systems, processes and practices change, including as a result of recommendations of the Independent Reviewer under paragraph 11.

Independent Audit

8. Within 30 business days after the date of this Direction, Telstra must seek approval in writing from the ACMA to appoint a nominated, appropriately experienced and qualified independent person to review Telstra's systems, processes and practices (including the Training Program under paragraph 5) for ensuring compliance with subsection 276(1) of the Act and subsection 9(7) of the Declaration, specifically to ensure that, to the greatest extent practicable, unlisted number customer data is not published in the White Pages or included in the DA Database (**Independent Reviewer**).
9. If the ACMA does not approve the person for such appointment, Telstra must repeat this process within 5 business days of receiving the ACMA's refusal, until it has the ACMA's written approval.
10. Within 10 business days after the ACMA has given its approval under paragraph 9, Telstra must appoint the person approved by the ACMA to be the Independent Reviewer and include in the terms of the appointment of the Independent Reviewer a requirement that the Reviewer will provide a report to Telstra and the ACMA (at the same time), within 4 months of their appointment, including but not limited to the matters at paragraphs 4 and 5 (**Report**).
11. Telstra must cause the Independent Reviewer to audit, and provide the written Report to Telstra and the ACMA as outlined in paragraphs 8 and 10 on:
 - a) the extent to which Telstra's systems, processes and practices effectively ensure Telstra's compliance with the obligations at subsection 276(1) of the Act and subsection 9(7) of the Declaration, and
 - b) recommendations to improve and maintain the effectiveness of those systems, processes and practices.
12. Telstra must within 30 business days of receiving the Report prepare and provide to the ACMA a Draft Action Plan that:
 - a) sets out the changes that Telstra will make to its policies, procedures and governance controls in response to the recommendations made in the Report. Where Telstra regards any recommendation in the Report as unreasonable, or has decided not to implement a recommendation, it must record the reasons for its view in the Draft Action Plan; and
 - b) specifies the date by which each proposed action under the Draft Action Plan will be taken.
13. If the ACMA informs Telstra of proposed changes to the Draft Action Plan it considers reasonably necessary, Telstra must modify and resubmit the Draft Action Plan to the ACMA for approval within 7 business days.

Once the ACMA approves the Draft Action Plan, this will be deemed the Final Action Plan.

14. Telstra must implement the Final Action Plan within the timeframes specified in the Final Action Plan, or within such varied timeframes as approved by the ACMA in writing.

Reporting and record-keeping

15. Telstra must provide a report to the ACMA within 6 months of the Final Action Plan being approved, and subsequent reports in 6 monthly intervals thereafter (**Periodic Reports**) until such time as a Periodic Report demonstrates all actions in the Final Action Plan have been fully implemented, that includes:
 - a) an update as to how Telstra has implemented the actions contained in the Final Action Plan; and
 - b) the steps Telstra has taken or proposes to take if any of the changes or actions outlined in the Final Action Plan have not been completed by the agreed date/s.
16. Telstra must keep, and provide to the ACMA on request, records sufficient to demonstrate compliance with this Direction and retain those records for at least 24 months after the date the record is created.

ADMINISTRATIVE ARRANGEMENTS

17. This Direction commences on the date it is given by the ACMA and continues until such time as a Periodic Report demonstrates all actions in the Final Action Plan have been fully implemented.
18. Any notice, variation to a timeframe or approval required or permitted to be given by the ACMA under this Direction must be in writing and may be given by any ACMA Member or by any ACMA staff member who is a member of the Senior Executive Service.

TAKE NOTE

Carrier licence conditions – the Act

19. Section 61 of the Act states that a carrier licence is subject to conditions specified in Schedule 1.
20. Subclause 1(1) of Schedule 1 says a carrier must comply with the Act, which includes section 276 of the Act.
21. 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

22. Section 9 of the Declaration requires Telstra to maintain an alphabetical public number directory. Telstra maintains the White Pages to meet this obligation.
23. 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.
24. 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'.
25. 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.
26. A listed number is one the customer agrees to make available (together with name and address details) for 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.
27. Subsection 68(1) of the Act states a carrier must not contravene a condition of the carrier licence held by the carrier.
28. If a carrier has contravened or is contravening a carrier licence condition, under subsection 69(1) of the Act, the ACMA may direct a carrier to take specified action directed towards ensuring that the carrier does not contravene the condition, or is unlikely to contravene the condition, in the future.
29. Subsection 69(4) of the Act provides that a carrier must not contravene a direction given under subsection 69(2). Such a contravention is a contravention of the Act, and therefore a breach of the carrier licence condition (see subclause 1(1) of Schedule 1 to the Act). Subsection 68(1) of the Act provides that a carrier must not contravene a licence condition. Subsection 68(1) is a civil penalty provision (see subsection 68(3) of the Act). Consequently, a corporation that has contravened the carrier licence condition may be ordered by the Federal Court to pay to the Commonwealth such pecuniary penalties as the Court determines to be appropriate up to a maximum of \$10 million per contravention (see section 570 of the Act).

REVIEW RIGHTS

30. Telstra may request that the ACMA reconsider its decision to give this direction by application in writing made within 28 days of being informed of the decision, in accordance with section 558 of the Act.

31. If Telstra is dissatisfied with the ACMA's decision upon reconsideration then it may:
- a) subject to the Administrative Appeals Tribunal Act 1975 (**the AAT Act**), apply to the Administrative Appeals Tribunal for review of the reconsideration decision; and
 - b) request a statement under section 28 of the AAT Act in relation to that decision.
(section 562 of the Act).

CONTACTING THE ACMA

32. Should you require further information, please contact:

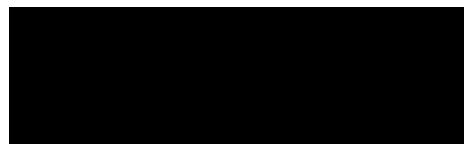
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Signature of Member

Samantha Yorke

Name (Please Print)



Signature of General Manager

Cathy Rainsford

Name (Please Print)

Dated this 17 day of May

2024