

INFRINGEMENT NOTICE

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

To: Optus Mobile Pty Limited ACN 054 365 696 (Optus Mobile)
'Building C' Level 4
1-7 Lyonpark Road
Macquarie Park NSW 2113

I, Cathy Rainsford, 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 Act**).

I have reasonable grounds to believe that, on 8 November 2023, Optus Mobile committed multiple contraventions of subsection 148(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**TCPSS Act**), being a civil penalty provision (**the contraventions**).

I give Optus Mobile this Infringement Notice (**the Notice**) under section 572E of the Act in relation to the 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 Optus Mobile contravened subsection 148(1) of the TCPSS Act because it contravened section 15, paragraph 27(2)(b) and subsection 28(1) of the Determination. Schedule 1 of this Notice sets out the 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 Act, the penalty payable under this Notice is \$11,098,980. Further detail about calculation of the penalty amount is set out in Schedule 1.

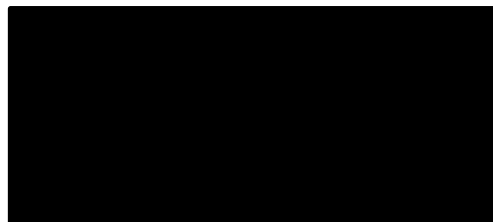
Time for payment of the penalty

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 the Notice being given.

Please include the narration 'Optus Mobile – NIS' with your payment.

ABN:
Financial Institution:
Branch:
BSB:
Account No:
Account Name:



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 the 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 Act) and the Notice is not withdrawn, the matter will not be dealt with by the Federal Court under Part 31 of the 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 does not equate to a finding that the contraventions occurred. 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 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 the 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 the 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 02 6219 5500 or by email at cathy.rainsford@acma.gov.au.



Cathy Rainsford
General Manager
Consumer Division
Authorised Infringement Notice Officer

Dated: 4 November 2024

SCHEDULE 1

DETAILS OF ALLEGED CONTRAVENTIONS OF CIVIL PENALTY PROVISION

In accordance with section 572F of the Act, brief details of the alleged contraventions are set out below.

1. Background

- 1.1. Optus Mobile is a registered company under the *Corporations Act 2001*, with a registered office at 'Building C', Level 4, 1-7 Lyonpark Road, Macquarie Park NSW 2113.
- 1.2. The *Telecommunications (Emergency Call Service) Determination 2019 (the Determination)* imposes requirements on carriers, carriage service providers (CSPs) and the emergency call persons in relation to access, carriage, handling and transfer of calls to the emergency call service.
- 1.3. The Determination is made under subsection 147(1) of the TCPSS Act. Carriers and CSPs are required to comply with the Determination under subsection 148(1) of the TCPSS Act.
- 1.4. At the time of the contraventions, Optus Mobile was a licensed carrier that also supplied mobile and mobile internet services to the public. As such, Optus Mobile is a carrier and CSP as defined by section 7 of the Act and must comply with the Determination.

2. Matters giving rise to the Notice

- 2.1. On 8 November 2023, the Optus network experienced a nation-wide outage affecting Optus fixed phone, internet and mobile services (**the outage**). The outage also impacted CSP resellers of Optus' network. The outage commenced around 4am AEDT and continued for approximately 12 hours, with services being restored by 4pm AEDT the same day.
- 2.2. On 13 November 2023, the ACMA commenced an investigation under section 510 of the Act into Optus Mobile's compliance with the Determination, TCPSS Act and Act, in relation to the 8 November 2023 outage.

3. Details of the alleged contraventions

- 3.1. Section 15 of the Determination requires a CSP to ensure that an end-user who makes an emergency call to 000 or 112 on a service supplied by the CSP is given access to the emergency call service.
- 3.2. Paragraph 27(2)(b) of the Determination requires a carrier or CSP to notify third party CSPs in relation to whom there is an obligation to provide access to networks and facilities about a significant network outage, as soon as possible after becoming aware of the outage.
- 3.3. Subsection 28(1) of the Determination requires a CSP to, as soon as practicable after becoming aware of a significant network outage, undertake a welfare check on end-users who made an unsuccessful emergency call during the outage using a service supplied by the CSP.

- 3.4. The ACMA's investigation found that on 8 November 2023, Optus Mobile failed to notify third party CSPs about the outage, as required by paragraph 27(2)(b) of the Determination. The investigation also found that end-users using services supplied by Optus Mobile made unsuccessful emergency calls during the outage and were not able to access the emergency call service, as required by section 15 of the Determination. Optus Mobile did not undertake a welfare check as described in subsection 28(1) of the Determination on some of these end-users.
- 3.5. I therefore have reasonable grounds to believe that on 8 November 2023, Optus Mobile contravened section 15, paragraph 27(2)(b) and subsection 28(1) of the Determination.
- 3.6. In contravening the Determination, it is alleged that Optus Mobile also contravened subsection 148(1) of the TCPSS Act. Subsection 148(1) of the TCPSS Act is a civil penalty provision for the purposes of section 572E of the Act (see subsections 148(4) of the TCPSS Act and 572E(9) of the Act).

4. The amount of the penalty

- 4.1. The total penalty specified in the Notice is \$11,098,980, calculated in accordance with section 572G of the Telecommunications Act.
- 4.2. The details of each of the alleged contraventions of subsection 148(1) of the TCPSS Act specified in the infringement notice is set out in Schedule 2. Each of the alleged contraventions occurred on 8 November 2023.