

INFRINGEMENT NOTICE

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

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

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, between 6 February 2023 and 15 December 2023, Telstra committed multiple contraventions of subsection 101(1) of the Act, being a civil penalty provision (**the contraventions**).

I give Telstra 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

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 \$394,380. Further detail about calculation of the penalty amount is set out in Schedule 1.

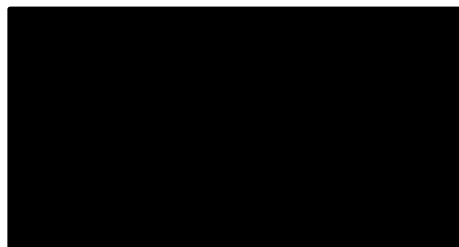
Time for payment of the penalty

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 'Telstra – MAS' 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is given (or within the longer period allowed under subparagraph 572F(1)(d)(ii) of the Act) and the Notice is not withdrawn, the matter will not be dealt with by the Federal Court under Part 31 of the Act.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.

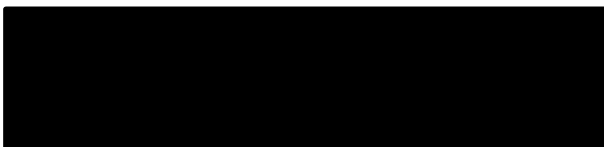
If you wish to apply for withdrawal of the Notice, you should write as soon as practicable setting out the reasons for the request. Your application should be addressed to me in the first instance.

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: 12 December 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. The *Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the Determination)* requires carriage service providers (**CSPs**) that supply NBN broadband and voice services to protect the continuity of services during a migration from a legacy network to the NBN. Among other things, the Determination requires CSPs to check the line speed of next-generation NBN broadband services¹ and provide remedies to the customer if the network is not capable of meeting the speed specified in the consumer's NBN plan.
- 1.2. The Determination is made under subsection 99(1) of the Act. As such, it is a service provider rule as defined in section 98 of the Act. CSPs are required to comply with service provider rules under subsection 101(1) of the Act.
- 1.3. Telstra is a registered company under the *Corporations Act 2001*, with a registered office at Level 41, 242-282 Exhibition Street, Melbourne, VIC 3000.
- 1.4. At the time of the contraventions, Telstra supplied mobile and internet services to the public. At the time of the contraventions, Telstra supplied internet and landline services using an NBN ethernet product. As such, Telstra is an NBN CSP as defined by section 5 of the Determination and must comply with the Determination.

2. Matters giving rise to the Notice

- 2.1. On 22 November 2023, Telstra notified the ACMA that it had identified 3 IT system issues that affected its compliance with the Determination. It advised that the issues caused maximum attainable speed (**MAS**) checks on some NBN services and the issuing of refunds to some customers to be delayed.
- 2.2. On 8 January 2024, the ACMA commenced an investigation under section 510 of the Act into Telstra's compliance with the Determination and Act, in relation to the issues reported in the 22 November 2023 letter.

3. Details of the contraventions

- 3.1. Subsection 14(2) of the Determination requires that as soon as practicable, and in any event within 20 working days, after a next-generation NBN broadband service becomes operational, an NBN CSP must perform, or arrange for the performance of, line capability testing in relation to the service.
- 3.2. Subsection 14(3) of the Determination requires that if a consumer's NBN service is found under subsection 14(2) to be not capable of meeting the applicable

¹ Next-generation broadband service is defined by regulation 4.2 of the *Telecommunications Regulations 2001* and generally refers to services that use part of the old copper network. On the NBN, this is FTTN, FTTC and FTTB technology types.

speed in the plan for the NBN service, within 5 working days of that assessment, the NBN CSP must notify that consumer of the MAS and offer specified remedies.

- 3.3. Subsection 15(1) of the Determination requires that an NBN CSP must not charge a consumer for an NBN service unless the service is operational and either the service is found under subsection 14(2) to meet the applicable speed, or 10 working days have passed since the consumer was notified under subsection 14(3) and they have not responded.
- 3.4. On 22 November 2023, Telstra reported to the ACMA that it had failed to comply with subsections 14(2), 14(3) and 15(1) of the Determination as a result of 3 system issues. Telstra provided further details about the NBN services impacted by these system issues during the course of the ACMA's investigation.
- 3.5. I therefore have reasonable grounds to believe that between 6 February 2023 and 15 December 2023, Telstra contravened subsections 14(2), 14(3) and 15(1) of the Determination.
- 3.6. In contravening the Determination, it is alleged that Telstra also contravened subsection 101(1) of the Act. Subsection 101(1) of the Act is a civil penalty provision (subsection 101(3) of the Act).
- 3.7. Subsections 14(2), 14(3) and 15(1) of the Determination are listed infringement notice provisions for the purposes of section 572E of the Act (see the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*).

4. The amount of the penalty

- 4.1. The total penalty specified in the Notice is \$394,380, calculated in accordance with section 572G of the Telecommunications Act, as set out in Table 1 below.
- 4.2. The details of each of the alleged contraventions specified in the infringement notice is set out in Schedule 2, below.

Table 1: Penalties for alleged contraventions of subsection 101(1) of the Act

Date of alleged contraventions	Number of alleged contraventions of subsection 101(1)	Penalty units²	Penalty³
15 December 2023	21	1,260	\$394.380

² The penalty is 60 penalty units per contravention in accordance with paragraph 572G(1)(b) of the Act.

³ At the time of the alleged contraventions, the amount of a penalty unit was \$313, as set by section 4AA of the *Crimes Act 1914*. The penalty is therefore calculated using the number of penalty units x \$313 (amount per penalty unit).

SCHEDULE 2

SPECIFIED ALLEGED CONTRAVENTIONS

	Unique Identifier	Date of breach	Provision of the Determination	Penalty units	Penalty
1		15/12/2023	14(3)	60	\$18,780
2		15/12/2023	14(3)	60	\$18,780
3		15/12/2023	14(3)	60	\$18,780
4		15/12/2023	14(3)	60	\$18,780
5		15/12/2023	14(3)	60	\$18,780
6		15/12/2023	14(3)	60	\$18,780
7		15/12/2023	14(3)	60	\$18,780
8		15/12/2023	14(3)	60	\$18,780
9		15/12/2023	14(3)	60	\$18,780
10		15/12/2023	14(3)	60	\$18,780
11		15/12/2023	14(3)	60	\$18,780
12		15/12/2023	14(3)	60	\$18,780
13		15/12/2023	14(3)	60	\$18,780
14		15/12/2023	14(3)	60	\$18,780
15		15/12/2023	14(3)	60	\$18,780
16		15/12/2023	14(3)	60	\$18,780
17		15/12/2023	14(3)	60	\$18,780
18		15/12/2023	14(3)	60	\$18,780
19		15/12/2023	14(3)	60	\$18,780
20		15/12/2023	14(3)	60	\$18,780
21		15/12/2023	14(3)	60	\$18,780
				Total	\$394,380