

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Broadband, Communications and the Digital Economy

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Customer Service Guarantee - Retail Performance Benchmarks Instrument (No. 1) 2011

Section 117B(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('the Act') provides that the Minister for Broadband, Communications and the Digital Economy may, by legislative instrument, set minimum benchmarks in relation to compliance by carriage service providers with a performance standard in force under s115 of the Act.

The purpose of this Instrument is to set minimum performance benchmarks that will apply to the retail service standards applying to carriage service providers covered by the *Telecommunications (Customer Service Guarantee) Standard 2011* ('the CSG Standard'), made under s115 of the Act.

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA - see paragraph 6(a) of the LIA).

Legislative background

The Act provides the Australian Communications and Media Authority (ACMA) with the power to make telecommunications service standards. These standards are to be complied with by carriage service providers who provide a specified service under the CSG Standard. The CSG Standard applies to carriage service providers who supply standard telephone services, including voice grade services and services used to access the internet or for fax machines, or who provide any other service covered by the CSG Standard.

The CSG Standard encourages improvements in service delivery and guards against poor performance in relation to the provision of telecommunication services. The CSG Standard requires carriage service providers to meet maximum time frames for standard telephone and related services in relation to:

- connecting a service,
- repairing a fault or service difficulty, and
- attending appointments with customers.

Carriage service providers are required to provide customers with financial compensation when the performance standards are not met.

Section 117B of the Act provides that the Minister may set minimum performance benchmarks for ensuring compliance with the CSG Standard. An instrument under section 117B may be of general application or may be limited as provided in the instrument.

Subsections 117C(1) and (2) of the Act further provide that if an instrument under subsection 117B(1) is applicable to a carriage service provider, the carriage service provider must meet or exceed a minimum benchmark set by that legislative instrument.

Under this instrument, performance benchmarks apply on a financial year basis (or part thereof if the instrument was not in force for the whole of a financial year in the year in which the benchmarks initially apply).

A failure of a carriage service provider to meet or exceed any one of the specified performance benchmarks relating to a particular location will constitute a contravention of the relevant performance benchmark and result in a breach of the Act.

Consultation

An exposure draft of the instrument was released for public consultation on 6 May 2011. At the close of the deadline on 3 June 2011, four responses had been received. Submissions were made by Optus, Primus, the Australian Communications Consumers Action Network and the Telecommunications Industry Ombudsman.

As the regulator with responsibility for overseeing the compliance and enforcement of the Instrument, the ACMA was regularly consulted during the drafting of the Instrument. Similarly, as the carrier with the largest number of customers using CSG services, Telstra was also consulted during the course of drafting. Accordingly, the final Instrument incorporates drafting suggestions proposed by both organisations.

Following consultation, a number of changes were made to the exposure draft version of the Instrument. The Instrument has been re-drafted to change the commencement date to 1 October 2011 (from 1 July 2011) to provide CSPs with sufficient time to undertake any necessary administrative, system or procedural changes to enable compliance with the new performance benchmarks. In addition, an amendment has been made so that a CSP will only be considered to be a 'qualifying carriage service provider' if it meets or exceeds the CSG customer threshold on the last day of the financial year preceding a benchmark period. Under the exposure draft, it would have qualified if it had met or exceeded the threshold on any day during the preceding financial year.

The Office of Best Practice Regulation has determined that a regulation impact statement (RIS) does not need to be prepared for the instrument. A RIS was prepared for the primary legislation from which the instrument is derived, the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

Commencement

The instrument is to commence on 1 October 2011, which will enable carriage service providers to undertake any necessary administrative, system or procedural changes to comply with the new performance benchmarks.

Details of the accompanying Determination are set out in the Attachment.

Details of the *Telecommunications (Customer Service Guarantee - Retail Performance Benchmarks) Instrument (No. 1) 2011*

1 Name of instrument

Section 1 provides that the name of this instrument is the *Telecommunications (Customer Service Guarantee - Retail Performance Benchmarks) Instrument (No. 1) 2011*.

2 Commencement

Section 2 provides that the instrument will commence on 1 October 2011.

3 Definitions

Section 3(1) sets out definitions of the key terms used in the Instrument.

The terms *appointment-keeping performance standard*, *connection period performance standard* and *rectification period performance standard* are defined in the same way as in the CSG Standard, being a requirement for a carriage service provider to:

- comply with a customer's request to be connected to a specified service within the guaranteed maximum timeframe (connection period performance standard);
- rectify a fault or service difficulty reported to it by a customer within the guaranteed maximum timeframe (rectification period performance standard); and
- keep an appointment to which a carriage service provider is a party (appointment-keeping performance standard).

An *in-place connection request* is a connection request at a site that has had a previously working standard telephone service. A *new connection request* is a connection request that requires a carriage service provider to undertake significant infrastructure works (such as extending a distribution line via trenching or poles) to provide a connection.

Subsection 3(2) provides that where the Instrument uses expressions that are also used in the CSG Standard, those expressions have the same meaning in the CSG Standard, unless the contrary intention appears. Some examples of terms used in this Instrument which are intended to have the same meaning as in the CSG Standard include:

- CSG service;
- customer;
- fault or service difficulty;
- guaranteed maximum connection period;
- guaranteed maximum rectification period;
- locality; and
- performance standard.

4 Qualifying carriage service providers

Section 4 provides that the performance benchmark only applies to a 'qualifying carriage service provider', being those carriage service providers who supply 100,000 telecommunication services (where those services are covered by a standard under the CSG Standard) on the last day of the financial year preceding a benchmark period.

The figure of 100,000 CSG Standard services is set as the qualifying threshold as it is deemed to achieve the appropriate balance between consumer interests and efficiency concerns. The threshold

is low enough to capture the larger carriage service providers that cover the majority of customers using CSG services; however, it is high enough to exclude smaller carriage service providers from the regulatory burden of complying with the performance benchmarks.

To qualify, a carriage service provider must meet the threshold on the final day of the financial year preceding a benchmark period. This condition eases the regulatory burden on carriage service providers so that they are only required to undertake a single assessment to determine if they meet the qualifying threshold for a financial year.

5 Location-specific thresholds

Section 5 provides for a location-specific threshold to determine eligibility for carriage service providers as the basis by which to assess their compliance with a performance standard in relation to telecommunication services provided in a particular geographic area. These location-specific thresholds apply in addition to benchmarks applying to service delivery at a national level.

Performance benchmarks apply in relation to services provided by carriage service providers in the following localities:

- urban areas (being an urban centre with a population equal to or greater than 10,000 people);
- major rural area (being an urban centre or other recognised community grouping with a population greater than 2,500 but less than 10,000 people);
- minor rural area (being an urban centre, locality or other recognised community grouping with a population greater than 200 but not more than 2,500 people);
- rural area (being a major rural or minor rural area); and
- remote area (being a geographic area which is not an urban area, major rural area or a minor rural area).

This section provides that a carriage service provider meets a geographic area services threshold if, on the last day of the financial year preceding a benchmark period, it supplied the specified number of CSG services in the relevant area as follows:

- in an urban area – 10,000 CSG services;
- in a major rural area – 1,000 CSG services;
- in a minor rural area – 1,000 CSG services;
- in a rural area – 1,000 CSG services; and
- in a remote area – 500 CSG services.

The threshold levels are set so as to ensure larger carriage service providers (who have the majority of CSG customers) are captured by the threshold whilst not capturing smaller carriage service providers for whom the compliance burden would be relatively greater.

Part 2 Retail Performance Benchmarks

Part 2 provides details on the specific retail performance benchmarks applying to the CSG Standard. Benchmarks apply to the standards relating to a carriage service provider's level of response to customer requests for connection (the connection period performance standard), the extent to which a carriage service provider has rectified faults or service difficulties (the rectification period standard) and the extent to which appointments have been kept to which a carriage service provider is a party (the appointment keeping performance standard).

Note 1 clarifies that under subsection 115(2A) of the Act, the CSG Standard does not apply in relation to a matter concerning the supply, or proposed supply, of a wholesale carriage service. The effect of this provision is that the instrument and the retail service performance benchmarks

provided under it do not apply to a carriage service provider to the extent that the carriage service provider supplies, or proposes to supply, a wholesale carriage service to a wholesale customer.

Note 2 clarifies that a performance benchmark only applies to a corresponding performance standard where a carriage service provider is required to meet that standard in accordance with the CSG Standard. Consequently, the exemptions under the CSG Standard, such as for example when there are circumstances beyond the control of the carriage service provider, or when there is an agreement between the carriage service provider and the customer to amend the timeframe for the connection of a new service, would also flow through to the performance benchmarks. Services that have been subject to any exemptions under the CSG Standard would not be counted in determining whether a carriage service provider meets or exceeds a performance benchmark.

Division 1 Performance benchmarks

6 Performance benchmark for connection period performance standard

Section 6 requires a carriage service provider to meet the guaranteed maximum timeframe for connecting a telephone or other telecommunication service outlined in the connection period performance standard in at least 90% of all in-place connection requests it receives throughout Australia.

If a carriage service provider meets the location-specific threshold for an urban, major rural, minor rural or remote area, section 6 requires a carriage service provider to meet the connection period performance standard in at least 90% of all new connection requests it receives in that area.

7 Minimum benchmarks for rectification performance standard

Section 7 requires a carriage service provider to meet the guaranteed maximum timeframe for rectifying faults or service difficulties under the rectification performance standard in at least 90% of all rectification requests it receives for particular geographic areas throughout Australia.

If a carriage service provider meets the location-specific threshold for an urban, major rural, minor rural or remote area, section 7 requires a carriage service provider to meet the rectification period performance standard in at least 90% of all rectification requests it receives in that area.

Unlike the connection performance benchmark, which assesses a carriage service provider's compliance in major and minor rural areas *separately*, the rectification performance benchmark makes no distinction between 'major' and 'minor' rural areas; hence the combining of those two discrete areas into a single 'rural' areas category. This reflects existing reporting arrangements between the ACMA and carriage service providers.

The rectification performance benchmark does not apply to faults relating to enhanced call handling (ECHF) features on services that include an ECHF. This is in recognition that a fault in an ECHF does not materially affect the ability of a telephone to make or receive a telephone call. In addition, a primary universal service provider is not required to keep records of ECHF 'faults'. As a consequence, there is no numerical data on which to base a performance standard and subsequent performance benchmark.

A note to the section clarifies that cases of rectification relating to an inoperative ECHF (specified in the CSG Standard) are not included in the calculation to determine a carriage service provider's compliance with the performance benchmark.

8 Performance benchmark for appointment-keeping performance standard

Section 8 requires a carriage service provider to meet the guaranteed maximum timeframe for keeping appointments to which a carriage service provider is a party under the appointment-keeping

performance standard in at least 90% of all appointments it is required to attend with customers throughout Australia. The performance benchmark is only applied at a national level; it is not applied to particular geographic areas. This reflects existing reporting arrangements between the ACMA and carriage service providers.

Division 2 Compliance

9 Contravention of a performance benchmark

Division 2 deals with breaches of a performance benchmark.

Section 9 provides that, where a carriage service provider fails to meet or exceed any one of the performance benchmarks set out in the instrument, this will amount to a breach of the relevant performance benchmark.

The effect of this section is that such a breach will also amount to a breach of the *Telecommunications Act 1997* which requires compliance with both the Act and any instrument made under it.