

## EXPLANATORY STATEMENT

Issued by authority of the Australian Communications and Media Authority

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

### TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) AMENDMENT STANDARD 2011 (No. 1)

#### Outline

The *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* (the Amendment Standard) amends the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG Standard). The Amendment Standard streamlines the requirements for seeking a written or oral waiver and updates the CSG Standard to reflect amendments to section 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*<sup>1</sup> (TCPSS Act) which commenced on 15 June 2011.

The Amendment Standard is made under section 120 of the TCPSS Act which allows the Australian Communications and Media Authority (the ACMA) to make provision for customers of carriage service providers to waive, in whole or in part, their protections and rights under the CSG Standard.

#### Background

The CSG Standard establishes performance standards for appointments, connections and the rectification of faults and service difficulties of specified standard telephone services.<sup>2</sup> If a service provider fails to meet the minimum performance standards, damages may be payable to the customer.

Under the CSG Standard, customers can waive in whole or in part, their CSG protections and rights. If such a waiver is agreed to by the customer, the service provider is not bound by, or required to comply with the CSG Standard in relation to the supply of that service to the extent of the waiver.

The Explanatory Memorandum to the Bill that introduced the amendments to section 120 of the TCPSS Act outlined the intention behind the changes to the waiver provisions:

*These changes aim to provide customers with an opportunity to consider the effect of waiving their rights, and the ability to make an informed choice. It is intended that a customer who is provided services by a carriage service provider under a standard form of agreement could still waive the Customer Service Guarantee, but the carriage service provider would need to obtain the consent through use of a separate document that includes a customer warning of the consequences of waiving their rights.*<sup>3</sup>

The amendments—which affect industry's obligations—introduced the following new provisions to the TCPSS Act:

- 120(4) A waiver must be in the form specified in the instrument.
- 120(5) The form must include a statement that summarises the consequences of the waiver.
- 120(6) A waiver must not be set out in a standard form of agreement formulated by a carriage service provider for the purposes of section 479 of the *Telecommunications Act 1997*.
- 120(7) A customer is not entitled to waive, in whole or in part, the customer's

<sup>1</sup> See Part 5 of Schedule 1 of the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

<sup>2</sup> Including maximum periods for appointments, connections and rectification, with compensation payable if these periods are exceeded.

<sup>3</sup> Item 235, *Explanatory Memorandum to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010*.

protection and rights under this Part in relation to a particular standard telephone service supplied, or proposed to be supplied, by the carriage service provider concerned if the service is supplied, or proposed to be supplied, in fulfilment of the universal service obligation.

In addition, new section 120A of the TCPSS Act clarifies that:

This Act does not prevent, and is taken never to have prevented, a carriage service provider from supplying, or proposing to supply, a particular carriage service to a customer on condition that the customer waives, in accordance with section 120, the customer's protection and rights under this Part in relation to the carriage service.

These amendments mean that processes for both written and oral waivers must include a statement that summarises the consequences of waiving rights under the CSG Standard and cannot be included in a standard form of agreement (SFoA) formulated for the purposes of section 479 of the *Telecommunications Act 1997*.

### **Object and Purpose**

The ACMA has made the Amendment Standard to implement the new legislative requirements, which commenced on 15 June 2011, and to ensure that the processes and information required in the CSG waiver provisions are relevant to the current market and assist customers in making informed decisions about waiving their CSG rights and protections.

In developing the Amendment Standard, the ACMA was guided by three overarching objectives:

- to make consistent, to the extent possible, the requirements for written and oral waivers;
- clear and unambiguous regulatory obligations for service providers which are relevant to the service offerings available in the current market; and
- a transparent basis on which consumers can provide informed consent to waive CSG protections.

Since the previous waiver provisions were introduced in July 2000, the market for fixed-line services has changed considerably with the take-up of cheaper Voice over Internet Protocol services (many offered on a no waiver, no service basis) increasing substantially. As a result, consumers are likely to be asked more frequently to consider waiving their CSG protections when signing up for services which include a fixed line telephone service.

The previous waiver provisions had different requirements for written and 'other' waivers. For example, an explanation of the CSG protections retained and forgone, as well as the demonstration of a significant service benefit and a cooling off period, applied to 'other' waivers but not written waivers. The different requirements led to some confusion about the requirements for a valid waiver.

The ACMA has reviewed the waiver provisions to ensure that they are consistent with the new requirements of section 120 of the TCPSS Act and impose clearer and more consistent regulatory requirements.

As part of the process identifying potential issues, prior to the making of the Amendment Standard, the ACMA commissioned research on informed consent<sup>4</sup> which examined whether consumers wanted a cooling-off period in potentially high-pressure situations that could include entering a contract for a telecommunications service. One finding of the research was that consumers regard a cooling-off period as an important safeguard because it allows them to consider information about the service in their own time and to make a more informed decision to either accept or reject an agreement. The research also found that typical situations which may hinder understanding of the information provided by the salesperson, include the speed with which sales people talk (including over the phone), the difficulty of understanding

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<sup>4</sup> 'Community research on informed consent', *Qualitative research report*, ACMA, March 2011

complex information provided orally and the pressure that many people feel to conclude the transaction in a timely manner.

These factors made it timely to amend the waiver provisions so that they encompassed all legislative requirements, were relevant to current market service offerings and fulfilled their role to protect the consumers in making informed decisions about the provision of their telecommunications services.

### **Public Consultation**

The ACMA commenced development of the new waiver provisions for the CSG Standard with the public release of a consultation paper and the draft Amendment Standard on 24 May 2011 for a six week period and invited submissions by 5 July 2011. The ACMA also consulted on a one-on-one basis with industry participants, consumer groups and the Telecommunications Industry Ombudsman.

The consultation paper on the draft Amendment Standard sought comments on the following questions:

- What is the minimum amount of information that must be provided by industry to customers to allow them to make an informed decision about waiving their CSG protections?
- Should a cooling-off period be retained for oral waivers?
- Should the cooling-off period be shortened to five working days?
- Are there any other issues that should be considered as part of the development of amendments to the cooling-off period, such as provisions which may extend the cooling-off period in the event that the customer does not receive a document?
- Should the requirement to demonstrate a significant service benefit be removed?

The ACMA received seven submissions from the telecommunications industry and consumer interest groups.

Taking submitter comments into account, the ACMA refined the Amendment Standard to reflect the following key points:

- the provision of specific information for both written and oral waivers;
- adoption of a cooling-off period of five working days where consent to waive CSG rights is given orally;
- removal of the requirement to demonstrate a significant service benefit where consent to waive rights is given orally; and
- clarification that consent to waive rights can be given electronically.

### **Regulatory Impact**

Following a preliminary regulatory impact assessment, the Office of Best Practice Regulation determined that the regulatory changes made in the Amendment Standard are minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required.<sup>5</sup>

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<sup>5</sup> Office of Best Practice Regulation, Regulatory Impact Statement Exemption reference number ID: 12161.

## Notes on sections

### Section 1      Name of instrument

The instrument is called the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)*.

### Section 2      Commencement

The instrument commences on 1 October 2011.

### Section 3      Amendment to Telecommunications (Customer Service Guarantee) Standard 2011

Schedule 1 of the instrument amends the CSG Standard.

### Section 4      Application

The amendments to Part 5 of the CSG Standard specified in Schedule 1 of the instrument apply to waivers given after the commencement of the instrument.

### Schedule 1      Amendment

**Item [1]** inserts a new term, 'universal service obligation' into Note 1 of section 4 of the CSG Standard. Note 1 provides that certain expressions used in the CSG Standard have the meaning given by the TCPSS Act.

**Item [2]** substitutes Part 5 of the CSG Standard with a new Part 5 which outlines the waiver provisions. The note under the heading to Part 5 reiterates the content of subsection 120(1) of the TCPSS Act which provides that the ACMA may, by written instrument, make provision for customers of carriage service providers to waive, in whole or in part, their protection and rights under Part 5 of the TCPSS Act in relation to a particular carriage service supplied, or proposed to be supplied, by a carriage service provider.

New section 30 provides that the waiver provisions in Part 5 of the CSG Standard do not apply to standard telephone services supplied, or proposed to be supplied, in fulfilment of the universal service obligation. This reflects the wording in subsection 120(7) of the TCPSS Act.

New section 31 sets out detailed requirements in relation to customer waivers. Subsection 31(1) provides that, subject to section 30, a customer is entitled to waive, in whole or in part, their CSG protections and rights in relation to a carriage service supplied by a carriage service provider.

Subsection 31(2) specifies that customers may waive their protections and rights under Part 5 of the TCPSS Act in writing or orally.

#### *Waivers in writing*

Subsection 31(3) specifies that for a waiver in writing to be valid:

- a) the service provider must, immediately prior to the time at which the customer consents to the waiver, provide the customer with all of the information specified in subsection 31(5). Note 2 to this subsection clarifies that this information may be provided to the customer electronically;
- b) the written information provided to the customer must have a prominent title with the word 'waiver' in it;
- c) the service provider must record the customer's consent to the waiver and the date on which it was provided. Note 3 to subsection 31(3) provides that written consent to a waiver may be given electronically.

Further, for waivers in writing, paragraph 31(8)(a) specifies that a written waiver takes effect on the day the customer consents to the waiver.

#### *Oral Waivers*

Subsection 31(4)(a) provides that an oral waiver is valid, if immediately before the time the customer consents to the waiver:

- a) the customer is provided with the information specified in paragraphs 31(5)(d) to 31(5)(f);
- b) the service provider informs the customer of its obligation to provide the customer with a written statement under subsection 31(7), which provides the customer with information about the waiver within three working days after the customer has consented to the waiver – this is to ensure that the customer is fully informed prior to the end of cooling-off period allowed for oral waivers under paragraph 31(8)(b) about the consequences of a waiver; and
- c) informs the customer of their right to withdraw consent to the waiver within the five working day cooling-off period mentioned in paragraph 31(8)(b).

The purpose of subsection 31(5) is to specify the information that must be provided to a customer when seeking a written or oral waiver (as applicable). This is intended to enhance the customer's understanding of the CSG Standard, the service to which the waiver applies and the consequences of a waiver and assist in the provision of informed consent.

The purpose of paragraph 31(5)(e), which requires the provision of a statement summarising the consequences of the waiver, is to provide the customer with information directly related to the service to which the waiver applies. More detail about what a statement summarising the consequences of a waiver must include is specified at subsection 31(6). This information is provided to customers who consent to a waiver in written form at the time they sign up (immediately before they consent to the waiver). For customers who consent to a waiver orally, this information is provided to them immediately before they consent to the waiver and in writing within three days of their consent, along with the other information outlined in paragraph 31(7)(b).

New section 32 imposes record keeping requirements on carriage service providers in relation to both written and oral waivers. The purpose of subsection 32(1) is to ensure service providers keep a copy of the record of a customer's waiver in accordance with subsection 32(2) or 32(3) (as the case may be) for a minimum of two years from the day on which the waiver takes effect.

Subsection 32(2) specifies the record and information to be retained for written waivers, being, the customer's name and contact details, a record of the customer's consent, including the date of consent and all of the information specified in subsection 31(5).

Subsection 32(3) specifies the record and information to be retained for oral waivers being, the customer's name and contact details, a record of the customer's consent, including the date of consent, and a copy of the written statement provided to the customer under subsection 31(7).

The note to section 32 provides that records may be stored electronically.

**Item [3]** inserts some transitional arrangements relevant to the Amendment Standard. New section 38 provides definitions for the terms 'amendment day' and 'former waiver provisions'.

New section 39 provides for transitional arrangements to take into account the substitution of the former waiver provisions with the arrangements set out in the new Part 5 of the CSG Standard.

If a waiver is given under Part 5 of the TCPSS Act in accordance with the former waiver provisions and is in effect before the amendment day then the former waiver provisions apply. Where a waiver is given under the former subsection 31(4) and the cooling-off period of 7 days does not expire until after the amendment day then the former waiver provisions apply in relation to the waiver.