



# Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)

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

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this instrument under section 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 16<sup>th</sup> August 2011

*Chris Chapman*  
(signed)  
Member

*Richard Bean*  
(signed)  
Member/~~General Manager~~

Australian Communications and Media Authority

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## **1 Name of instrument**

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

## **2 Commencement**

This instrument commences on 1 October 2011.

*Note:* All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.

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*Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)*

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

Schedule 1 amends the *Telecommunications (Customer Service Guarantee) Standard 2011*.

### **4 Application**

The amendments to Part 5 of the *Telecommunications (Customer Service Guarantee) Standard 2011* specified in Schedule 1 apply in relation to waivers given after the commencement of this instrument.

## **Schedule 1 Amendment**

(section 3)

### **[1] Section 4, Note 1, after ‘universal service area’**

*insert*

- universal service obligation

### **[2] Part 5**

*substitute*

#### **Part 5 Waiver of protection and rights by customers**

*Note:* Subsection 120(1) of the Act 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 Act in relation to a particular carriage service supplied, or proposed to be supplied, by the carriage service provider concerned.

### **30 Application**

This Part does not apply 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.

*Note:* Subsection 120(7) of the Act provides that a customer is not entitled to waive, in whole or in part, the customer’s protection and rights under Part 5 of the Act 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.

### **31 Waivers**

- (1) Subject to section 30, a customer is entitled to waive, in whole or in part, their protection and rights under Part 5 of the Act in relation to a particular carriage service supplied, or proposed to be supplied, by a carriage service provider to the customer.
- (2) For subsection 120(4) of the Act, two forms of waiver are specified:

- (a) waivers in writing;
- (b) oral waivers.

*Waivers in writing*

- (3) For paragraph (2)(a), a customer may waive their protection and rights under Part 5 of the Act in writing, if:
  - (a) immediately before the time at which the customer consents to waiving their protection and rights, the carriage service provider gives the customer the information specified in subsection (5) in writing;
  - (b) the writing has a prominent title containing the word ‘waiver’;
  - (c) the carriage service provider records the customer’s written consent to the waiver including the date of the consent; and
  - (d) the written consent includes a statement that the customer understands the consequences of the waiver.

*Note 1:* Subsection 120(6) of the Act provides that 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*.

*Note 2:* Information in writing can be given to a customer electronically, such as where it is displayed on a website as part of an online sign-up process used to enter into an agreement for the supply of a carriage service to the customer.

*Note 3:* A customer may give written consent to a waiver electronically, including as part of an online sign-up process used to enter into an agreement for the supply of a carriage service to the customer.

*Oral waivers*

- (4) For paragraph (2)(b), a customer may waive their protection and rights under Part 5 of the Act by way of an oral waiver, if:
  - (a) immediately before the time at which the customer consents to waiving their protection and rights, the carriage service provider:
    - (i) gives the customer the information in paragraphs (5)(d), (5)(e) and (5)(f);
    - (ii) informs the customer of its obligation to give a written statement under subsection (7);
    - (iii) informs the customer of the customer’s right to withdraw consent to the waiver in the period mentioned in paragraph (8)(b); and
  - (b) the carriage service provider records the customer’s oral consent to the waiver including the date of the consent.

*Information to be given*

- (5) The following information must be given to the customer in the manner and at the times specified in this section:
  - (a) a description of the carriage service to which the waiver applies;
  - (b) the date when the waiver takes effect;
  - (c) the carriage service provider’s name and contact details;
  - (d) an explanation of the protection and rights afforded to a customer under this instrument;

- (e) a statement summarising the consequences of the waiver in relation to the particular carriage service to which the waiver applies; and
- (f) a statement that the customer is under no obligation to consent to the waiver.

*Summary of consequences of waiver*

- (6) For paragraph (5)(e), a statement summarising the consequences of the waiver is a statement of the protection and rights under Part 5 of the Act that would be retained, and those that would be forgone, as a result of the waiver, and which, at a minimum, includes:
  - (a) the performance standards that will apply to the carriage service, and those that will not apply, as a result of the waiver; and
  - (b) whether or not, as a result of the waiver, the customer will retain, or forgo, the customer's right to damages for contraventions of the performance standards that apply to the carriage service.

*Written statement for oral waivers*

- (7) If the customer's consent to a waiver is procured under subsection (4), the carriage service provider must, within 3 working days after the customer consents to the waiver, give to the customer a written statement which:
  - (a) has a prominent title containing the word 'waiver'; and
  - (b) contains the information specified in paragraphs (5)(a) to (5)(e).

*Date when waiver takes effect*

- (8) A waiver takes effect:
  - (a) in the case of a waiver procured under subsection (3), on the day on which the customer consents to the waiver; or
  - (b) in the case of a waiver procured under subsection (4), 5 working days after the day on which the customer consents to the waiver under that subsection, unless, before the end of that period, the customer withdraws their consent to the waiver.

## **32 Record keeping**

- (1) Carriage service providers must keep a copy of a record of a customer's waiver in accordance with subsections (2) and (3) for a minimum period of 2 years from the day on which the waiver takes effect.
- (2) In the case of a waiver procured under subsection 31(3), a record of a customer's waiver must include:
  - (a) the customer's name and contact details;
  - (b) a record of the customer's consent to the waiver including the date of the consent; and
  - (c) the information specified in subsection 31(5).
- (3) In the case of a waiver procured under subsection 31(4), a record of a customer's waiver must include:

- (a) the customer's name and contact details;
- (b) a record of the customer's consent to the waiver including the date of the consent; and
- (c) a copy of the written statement given to the customer under subsection 31(7).

*Note:* A record may be stored electronically.

**[3] After section 37**

*insert*

**Part 7 Transitional arrangements for amendments to Part 5**

**38 Definitions for Part 7**

In this Part:

***amendment day*** means the day on which the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* commences.

***former waiver provisions*** means Part 5 of the *Telecommunications (Customer Service Guarantee) Standard 2011* as in force immediately before the amendment day.

**39 Waivers under the former waiver provisions**

- (1) If:
- (a) a customer waived their protection and rights under Part 5 of the Act before the amendment day;
  - (b) the waiver was given in accordance with the former waiver provisions; and
  - (c) the waiver was in effect immediately before the amendment day,

the former waiver provisions apply to the waiver.

- (2) If:
- (a) a customer accepts a proposal made under subsection 31(1) of the former waiver provisions before the amendment day; and
  - (b) the period of 7 days referred to in subsection 31(4) of the former waiver provisions does not expire before the amendment day,

section 31 of the former waiver provisions applies in relation to the waiver.