

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011

Telecommunications Act 1997

Purpose

The Australian Communications and Media Authority (**ACMA**) has made the *Telecommunications (Customer Service Guarantee Record-Keeping) Rules 2011* (**Rules**) for the purposes of ensuring that specified carriage service providers (**CSPs**) keep the necessary records, and provide to the ACMA the necessary information, to enable the ACMA to effectively:

- monitor and enforce compliance with the benchmarks relating to customer service set by the Minister under section 117B of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**TCPS Act**); and
- discharge its obligation to monitor and report on industry performance as provided for in the *Australian Communications and Media Authority Act 2005* and the *Telecommunications Act 1997* (**Tel Act**).

The Rules require specified CSPs to:

- keep and retain records in relation to compliance with the *Telecommunications (Customer Service Guarantee) Standard 2011* (**CSG Standard**) and the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (**Retail CSG Benchmarks**); and
- prepare and give to the ACMA, reports in the form specified in the Rules and which consist of information contained in those records.

Legislative Provisions

The Rules are made under subsection 529(1) of the Tel Act. Subsection 529(1) allows the ACMA to make rules for and in relation to requiring one or more specified carriers or one or more specified CSPs to keep and retain records. Under subsection 529(2A), such record-keeping rules may also require those carriers or CSPs to prepare reports consisting of information contained in those records, and to give any or all of the reports to the ACMA.

Subsection 529(4) limits the scope of the ACMA's power, such that the ACMA cannot make record-keeping rules requiring the keeping or retention of records unless the records contain, or will contain, information that is relevant to the performance of the ACMA's telecommunications functions or the exercise of the ACMA's telecommunications powers.

Background

Consumer safeguard reforms

The ACMA's power in section 529 to make record-keeping rules was enlarged by the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010 (CCS Act)*. Relevantly, the CCS Act amended section 529 in a manner empowering the ACMA to make record-keeping rules requiring that:

- reports be prepared on the basis of information contained in those records; and
- those reports be given to the ACMA.

The amendment to section 529 of the Tel Act formed part of a broader package of measures implemented to strengthen consumer safeguards relating to the Universal Service Obligation (USO), the Customer Service Guarantee and Priority Assistance and included:

- enabling the Minister to specify standards, terms and conditions of services, connection and repair periods, and reliability requirements of the standard telephone service under the USO;
- enabling the Minister to specify minimum performance benchmarks in meeting the CSG Standard with significant penalties to promote compliance;
- clarifying the operation of provisions allowing providers to contract out of the CSG Standard to ensure that the provider may only do so with the customer's agreement;
- enabling the ACMA to issue infringement notices; and
- requiring providers who do not offer a Priority Assistance service to inform customers of providers from whom the customer can purchase a priority assistance service if they require it.

As noted, the CCS Act amended the TCPSS Act to enable the Minister, by legislative instrument, to set minimum benchmarks concerning compliance with a section 115 retail performance standard (section 117B). The standard currently in force under section 115 is the CSG Standard.

Retail CSG Benchmarks

In the Retail CSG Benchmarks, the Minister determined minimum retail performance benchmarks applying from 1 October 2011 for compliance by specified CSPs with the CSG Standard. Under subsection 117C(2) of the TCPSS Act, a CSP must meet or exceed the minimum retail performance benchmarks.

With the commencement of the Retail CSG Benchmarks, the ACMA has the power to take enforcement action where a CSP has failed to meet the benchmarks. In order to monitor performance and if necessary take enforcement action, the ACMA requires reliable records to be both kept and reported upon by industry. The range of enforcement options for non-compliance with benchmarks and standards includes formal warnings, infringement notices¹, remedial directions and commencing civil penalty proceedings.

The Rules

In the Retail CSG Benchmarks, the Minister determined minimum retail performance benchmarks applying from 1 October 2011 for compliance by specified CSPs with the CSG

¹ This is subject to subsection 12EC(9) of the TCPSS Act being declared a listed infringement notice provision by the ACMA for the purposes of subsection 572E(7) of the Act.

Standard. Under subsection 117C(2) of the TCPSS Act, a CSP must meet or exceed the minimum retail performance benchmarks.

A CSP is a qualifying carriage service provider (QSP) for a benchmark period if, on the last day of the financial year preceding that benchmark period, the CSP supplied 100,000 CSG services or more where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the CSP's supply of those CSG services².

Compliance with the Rules is a requirement of section 530 of the Tel Act, and making an incorrect record is an offence under section 531. The range of enforcement options for non-compliance includes formal warnings, infringement notices (subject to the Rules being a listed infringement notice provision by the ACMA for the purposes of subsection 572E(7) of the Tel Act), remedial directions and initiating civil penalty proceedings.

Reporting periods and level of disaggregation

Under the Rules, a QSP must provide performance reports for each six month period ending on 31 December and 30 June. Unless otherwise agreed by the ACMA in writing, a QSP must provide reports to the ACMA within 40 working days of the end of each six month period.

The bi-annual report must include the submission of two quarterly sets of data. That is, each report will contain data disaggregated for the preceding two financial quarters.

The Rules require some of the reported information to be disaggregated into state or territory, national and community size classification (Urban, Major Rural, Minor Rural, Rural and Remote areas in accordance with the Retail CSG Benchmarks definitions and obligations).

Fulfilment of Requests that overlap two reporting periods

Where fulfilment of a CSG performance obligation (connection, fault rectification or appointment) spans two reporting periods, the performance for that specific job should be reported in the later period.

QSPs must send reports prepared under the Rules to an email address published on the ACMA's website as well as provide a hard copy (hand delivered or by registered post to an office of the ACMA).

Consultation

Section 17 of the *Legislative Instruments Act 2003* (the LIA) requires that before making a legislative instrument, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

A consultation package with consultation paper and summary of the Rules was issued for public comment from 9 August 2011 to 6 September 2011. The consultation package was posted on the ACMA website on 9 August 2011 and specific contact was made with carriage service providers likely to be affected by the Rules. The Australian Communications Consumer Action Network (the peak consumer representative group) was also consulted. Alerts regarding this consultation package were also sent to the Communications Alliance,

² Section 4 of the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011*.

the Telecommunications Industry Ombudsman and the Australian Competition and Consumer Commission.

Submissions received raised a number of issues. Some elements of the submissions involved matters that were outside the scope of the consultation or related to Ministerial instruments and could not be considered in relation to the development of the final instrument.

Key issues arising from the consultation and the ACMA's response are as follows:

- *The need for state/territory disaggregation of data* was queried given that the CSG Retail Benchmarks relate to national performance. The ACMA has retained this requirement in the final instrument as this data is required for the ACMA's reporting and compliance monitoring functions. The data required replicates the data sets currently collected by the ACMA from industry under informal arrangements;
- *The need for quarterly data was questioned* with submitters asserting that the provision of data sets showing six monthly performance would be adequate for monitoring purposes. The ACMA has retained this requirement in the final instrument to facilitate the continuation of trend analysis including seasonal fluctuations particularly in Minor Rural and Remote areas. The issue of seasonal fluctuations that affect the annual figures may advantage the QSP, and may also have a bearing whether enforcement action should be taken;
- *The time allowed for submission of reporting* was questioned with submitters seeking that this be extended from 30 to 40 working days. The ACMA has adjusted the final instrument to provide 40 working days for the submission of reporting;
- *The nomination of auditors and audit requirements* were queried. In response to this, the ACMA has adjusted the drafting of the final instrument to allow for QSPs to nominate auditors for ACMA approval. The audit provisions of the final instrument also provide for audits only in circumstances where the ACMA forms a view on reasonable grounds that an audit is necessary;
- *The cost of adjustments to IT systems* was raised by several submitters. The ACMA acknowledges that there are likely to be costs relating to systems modifications. However, in drafting the instrument it has sought to replicate data sets that are already provided by QSPs and, where a new data requirement has been created, that any new reporting is essential to the ACMA's monitoring of compliance with the CSG Standard and the Retail CSG Benchmarks.

Accordingly, the ACMA is satisfied that consultation has been conducted in accordance with the requirements of section 17 of the LIA.

Regulation Impact

The Office of Best Practice Regulation has considered the matter and formed an opinion that the Rules will have minor and machinery impact on industry. The OBPR RIS exemption number is ID 12699.

Details of the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011

Notes on Sections

Part 1 Introduction

Section 1 *Name of Rules*

This section provides that the title of the Rules is the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011*.

Section 2 *Commencement*

This section provides for the Rules to commence on 1 October 2011 or the day after registration on the Federal Register of Legislative Instruments, whichever last occurs.

Section 3 *Definitions*

This section defines words and expressions used in the Rules. Unless the contrary intention appears, expressions used in the Rules have the meanings given to them in the Tel Act, the Retail CSG Benchmarks or the CSG Standard.

Section 4 *Qualifying carriage service providers*

This section defines a qualifying carriage service provider for a benchmark period (**QSP**), using a definition which corresponds with section 4 of the Retail CSG Benchmarks, as having supplied 100,000 or more CSG services on the last day of the financial year preceding that benchmark period where it was obliged to comply with CSG performance standards.

Section 5 *Nominated areas*

By operation with Schedule 1, this section requires a QSP to disaggregate recorded data on a national basis and on a state or territory basis when it reports to the ACMA under Part 4 of the Rules.

Part 2 Keeping of Records

This Part deals with the recording by a QSP of its performance against certain Retail CSG Benchmarks requirements. As the Retail CSG Benchmarks only contain benchmarks in relation to CSG services, QSPs will have to ensure that their record-keeping systems are capable of differentiating between requests that relate to CSG services and requests that relate to enhanced call handling features (as defined in the CSG Standard).

Section 6 *Records relating to the number of CSG services supplied*

This section deals with the recording by a QSP of the total number of CSG services that it supplied on the last day of each financial year preceding a benchmark period. This information will be relevant to establishing whether a carriage service provider is a QSP under the definition at section 4 of the Rules and section 4 of the Retail CSG Benchmarks.

Section 7 Records relating to location-specific thresholds

This section deals with the recording by a QSP of the number of CSG services that it supplied under the following categories: urban, major rural, minor rural, rural and remote areas (as defined in the Retail CSG Benchmarks).

This relates to section 5 of the Retail CSG Benchmarks, which provides that a CSP meets a geographic area services threshold for a benchmark period if, on the last day of the financial year preceding the 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.

Section 8 Records relating to in-place connections

This section sets out the record-keeping requirements for a request by a customer to a QSP for a CSG service to be connected at a site that has an in-place connection.

Amongst other record-keeping requirements, if there is a failure to comply with the CSG Standard regarding such a request which is wholly or partly due to the acts or omissions of another CSP, certain information regarding that failure must be recorded.

Section 9 Records relating to new connections

This section sets out the record-keeping requirements regarding a request by a customer to a QSP for a CSG service to be connected at a site that does not have an in-place connection.

Amongst other record-keeping requirements, if there is a failure to comply with the CSG Standard regarding such a request which is wholly or partly due to the acts or omissions of another CSP, certain information regarding that failure must be recorded.

Section 10 Records relating to reports of faults or service difficulties

This section sets out the record-keeping requirements regarding a fault or service difficulty report made by a customer to a QSP.

Amongst other record-keeping requirements, if there is a failure to comply with the CSG Standard regarding such a report which is wholly or partly due to the acts or omissions of another CSP, certain information regarding that failure must be recorded.

This section defines a “fault or service difficulty report” so as not to include enhanced call handling features, which are excluded under subsection 7(3) of the Retail CSG Benchmarks.

Section 11 Records relating to the making and keeping of appointments

This section sets out the record-keeping requirements regarding a connection or rectification appointment involving a QSP.

Amongst other record-keeping requirements, if there is a failure to comply with the CSG Standard regarding such an appointment which is wholly or partly due to the acts or omissions of another CSP, certain information regarding that failure must be recorded.

Part 3 Retention of Records

Section 12 Period for retention of records

A QSP is required to retain records for a benchmark period for two years from the end of the benchmark period.

Part 4 Reporting

Section 13 Requirement to prepare compliance reports

This section sets out the frequency of reporting which a QSP must follow.

The information to be included in the compliance reports is contained in Schedule 1, and the required format is set out in Schedule 2.

Section 14 Requirement to give compliance reports to the ACMA

This section sets out the timing and method for a QSP to give a compliance report to the ACMA. QSPs are required give compliance reports to the ACMA no later than 40 working days after the end of the relevant reporting period or such later time as agreed in writing by the ACMA. The compliance reports must be sent by email to an address advised by the ACMA on its website. It must also be delivered by hand or by registered post. The ACMA may agree in writing to the delivery of a compliance report in an electronic format (for example stored on a CD or DVD).

Part 5 Audit

Section 15 Auditing of compliance with the Rules

If the ACMA forms a view on reasonable grounds that an audit is necessary, it may write to a QSP requiring it to engage an auditor to conduct an audit of the QSP's compliance with the Rules. If the ACMA forms a view on reasonable grounds that the initial audit is inadequate, it may require a follow-up audit.

Section 16 Audit terms of reference

A QSP that has received an audit notice is required to provide draft terms of reference for the audit to the ACMA for approval.

The ACMA may require the QSP to make changes to the draft terms of reference. If the revised terms do not give effect to the changes required by the ACMA and are rejected, the ACMA may specify the terms of reference for the audit.

This section specifies timescales for the above approval process as well as certain matters that must be included in the terms of reference and the objectives of the audit.

Section 17 Nomination of auditor

A QSP that has received an audit notice is required to provide its choice of auditor to the ACMA for approval.

The ACMA may require the QSP to choose another auditor and if the ACMA rejects the second choice, it may specify an auditor to conduct the audit, or require the QSP to choose an auditor from a specified group of auditors.

This section specifies timescales for the above approval process and sets out the QSP's obligation to take steps to ensure that the audit achieves its purpose.

Section 18 Requirement to provide audit report to the ACMA

Where a QSP has been audited, the QSP is required to submit a copy of the audit report to the ACMA within 14 days of its receipt, unless a longer period is allowed by the ACMA.

This section also sets out details of what the audit report must include.

Schedule 1 – Information to be included in a compliance report

Schedule 1 sets out the information to be included in a compliance report under section 13.

Schedule 2 – Form of compliance report

This Schedule specifies the format of the compliance report in tables and provides instructions for completion.