

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (Amendment No. 1 of 2012)

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

Authority

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 (CSPs) with a performance standard in force under s115 of the Act. These minimum benchmarks are set out in the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (the Benchmarks Instrument).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides the following:

Where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of this Instrument is to amend the Benchmarks Instrument to clarify the scope of the definitions and terms used and consequently make the Benchmarks Instrument easier to interpret and apply.

The sections in the Instrument are individually discussed in the ‘Notes on Sections’, below.

Background

The Act provides the Australian Communications and Media Authority (ACMA) with the power to make telecommunications service standards. These standards are set out in the *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard). The CSG Standard applies to CSPs who supply standard telephone services and covers a range of customer service matters, including the timeframes to comply with requests to connect customers and to rectify faults or service difficulties.

Section 117B of the Act provides that the Minister may set minimum performance benchmarks for ensuring compliance with the CSG Standard. Subsections 117C(1) and (2) of the Act further provide that if an instrument under subsection 117B(1) is applicable to a CSP, the CSP must meet or exceed a minimum benchmark set by that legislative instrument. A failure of a CSP to meet or exceed any one of the specified performance benchmarks will constitute a contravention of the relevant performance benchmark and result in a breach of

the Act. As subsection 117C(2) of the Act is a listed infringement notice provision (provided in the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*), non-compliance with the Benchmarks Instrument is subject to graduated penalties (as set out in the *Telecommunications (Infringement Notice Penalties) Determination 2012*). This infringement notice regime is enforced by the ACMA. The ACMA may also take other enforcement action as it considers appropriate.

Currently, the Benchmarks Instrument sets performance benchmarks in relation to compliance by CSPs with the standard at subsection 8(3) of the CSG Standard. Subsection 8(3) of the CSG Standard provides that a CSP must comply with a request by a customer for connection in the guaranteed maximum connection period unless the arrangements in subsection 9 of the CSG Standard apply. Section 9 provides that arrangements to connect a customer of a CSP to a specified service may provide for connection in a period that is shorter than the guaranteed maximum connection period or, subject to certain qualifications, longer than the guaranteed maximum connection period. Schedule 1 to the CSG Standard sets out the guaranteed maximum connection periods; these vary depending on the population of the area at which the service is being supplied.

Given that arrangements under section 9 of the CSG Standard are excluded by the standard at subsection 8(3) of the CSG Standard, they are also not included when calculating whether a CSP has met or exceeded a performance benchmark.

The Benchmarks Instrument also sets minimum benchmarks in relation to compliance by CSPs with the standard at subsection 11(5) of the CSG Standard. Subsection 11(5) of the CSG Standard provides that a CSP must, in the relevant guaranteed maximum rectification period, rectify a fault or service difficulty that is reported to the CSP by a customer, unless arrangements under section 14 of the CSG Standard apply. Section 14 of the CSG Standard provides that arrangements may be made to rectify a fault or service difficulty within shorter or longer timeframes than the guaranteed maximum rectification period.

Given that arrangements under section 14 of the CSG Standard are excluded by the standard at subsection 11(5) of the CSG Standard, they are also not included when calculating whether a CSP has met or exceeded a minimum benchmark.

Consultation with relevant stakeholders indicates that a number of arrangements are made under sections 9 and 14 (including handling connection and rectification requests in a shorter timeframe than the guaranteed maximum connection/rectification period). The exclusion of arrangements under these sections of the CSG Standard from the performance benchmarks could impact on a CSP's ability to comply with the benchmarks, increase the costs of compliance and unfairly penalise CSPs. It may also result in the undesired consequence of CSPs choosing not to arrange to supply a service in a shorter timeframe to avoid possible non-compliance with the benchmarks.

Consultation did not raise similar concerns with arrangements to connect customers of a CSP in a longer timeframe than the guaranteed maximum connection period. However, if benchmarks are to be applied to arrangements to connect services in shorter timeframes, then they should also be applied to arrangements to connect services in longer timeframes (as these arrangements are made with the agreement of the customer). Ultimately, it would be in the interest of the end-user to ensure that a CSP meets the arrangement it has made with a

customer to connect a service, whether that is for a longer or a shorter timeframe, and that such arrangements are counted towards the performance benchmark.

Consultation also did not raise any concerns with arrangements to rectify faults or service difficulties in shorter or longer timeframes than the guaranteed maximum rectification period. However, it would again be in the interest of the end-user to ensure that a CSP meets the arrangement it has made with the customer and that such arrangements are counted towards the relevant performance benchmark.

Consequently, the Government is proposing to amend the Benchmarks Instrument so that arrangements for shorter or longer timeframes under sections 9 and 14 of the CSG Standard are included when calculating the benchmarks under sections 6 and 7 of the Benchmarks Instrument.

The relevant benchmark date against which compliance is to be assessed is the ‘connection period performance standard’ or the ‘rectification period performance standard’ as defined in the amendments. If an arrangement is not made under section 9 or section 14 of the CSG Standard, the nominated guaranteed maximum connection period and guaranteed maximum rectification period, as per subsections 8(3) and 11(5) respectively, remain applicable for assessment of benchmark compliance.

Consultation

The Department of Broadband, Communications and the Digital Economy (‘the Department’) sought comments on the proposed amendments from the CSPs that supply more than 100,000 CSG-eligible standard telephone services on a national basis, and are thereby subject to the Benchmarks Instrument. These CSPs are iiNet, Optus and Telstra. The Department also consulted TPG, as a larger CSP that may potentially become subject to the Benchmarks Instrument, and the Australian Communications Consumer Action Network.

Telstra and Optus responded to the Department. Both supported the proposed amendments, while also raising the burden of compliance with reporting requirements under Record-Keeping Rules for the Benchmarks Instrument (administered by the ACMA).

The Department also consulted the ACMA in relation to the proposed amendments, and the ACMA itself consulted CSPs on benchmark reporting under the ACMA’s Record-Keeping Rules.

Regulatory impact

The Office of Best Practice Regulation (the OBPR) has agreed that the regulatory changes arising from the Instrument are minor or machinery in nature and that no further regulatory impact analysis is required. The OBPR regulatory impact statement exemption number is ID 13892.

Statement of compatibility with human rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Instrument amends the Benchmarks Instrument to clarify the definitions and terms used, to make the Benchmarks Instrument easier to interpret and apply. There are no substantial changes to the operation of the Instrument.

The Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

Notes on Sections

Section 1 provides that the name of the Instrument is the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (Amendment No. 1 of 2012)*.

Section 2 provides that the Instrument commences on 1 July 2012.

Section 3 provides that the Benchmarks Instrument is amended as set out in the Schedule to the Instrument.

Schedule 1 sets out the amendments to the Benchmarks Instrument.

Item [1] omits the definitions of:

- ‘connection period performance standard’;
- ‘in-place connection request’;
- ‘new connection request’; and
- ‘rectification period performance standard’,

and replaces these with new definitions for:

- ‘connection period performance standard’;
- ‘in-place connection’;
- ‘in-place connection request’;
- ‘new connection request’; and
- ‘rectification period performance standard’.

The new definitions do not substantively change the operation of the Benchmarks Instrument. Rather, these new definitions clarify the scope and intent of the performance benchmarks.

In particular, the amendments clarify that:

- connection and rectification requests that are handled in a shorter timeframe than the guaranteed maximum connection period (GMCP) or the guaranteed maximum rectification period (GMRP), in accordance with subsection 9(1) and paragraph 14(a) (respectively) of the CSG Standard, are counted towards the connection period performance standard and rectification period performance standard; and
- connection and rectification requests that, with the agreement of the customer, are handled in a longer timeframe than the GMCP or GMRP, in accordance with subsection 9(2) and paragraph 14(b) (respectively) of the CSG Standard, are also counted towards the connection period performance standard and rectification period performance standard.

Items [2] and [3] update references to the connection period performance standard and rectification period performance standard in subsections 6(1) and 7(1) of the Benchmarks Instrument, in line with the amendments to the definitions outlined in item [1].