**EXPLANATORY STATEMENT**

Issued by the Australian Communications and Media Authority

***Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)***

*Telecommunications Act 1997*

**Purpose**

The purpose of the *Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)* (**Amendment Instrument**), made by the Australian Communications and Media Authority (**the ACMA**) under section 529 of the *Telecommunications Act 1997* (**Tel Act**),is to amend the:

* *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* (**CSG RKRs**); and
* *Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012* (**Payphone** **RKRs**);

to reduce the reporting obligations on those carriage service providers (**CSPs**) that the CSG RKRs and Payphone RKRs apply to, by reducing the frequency with which those CSPs have to report to the ACMA and also the level of disaggregation of the data required in those reports.

**Legislative Provisions**

The Amendment Instrument is made under subsection 529(1) of the Tel Act and subsection 33(3) of the *Acts Interpretation Act 1901*. Subsection 529(1) of the Tel Act 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 subsections 529(2A) and (2B), 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. Under paragraph 529(2D)(b) the rules may provide for the preparation of periodic reports relating to such regular intervals as are specified in the rules.

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.

The Amendment Instrument is a disallowable legislative instrument under the *Legislative Instruments Act 2003* (the **LIA**).

**Background**

In September 2011, the ACMA made the CSG RKRs which commenced on 1 October 2011 and require certain 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* (**CSG Benchmarks**); and
* prepare and give to the ACMA, reports in the form specified in the CSG RKRs consisting of information contained in those records.

It is only those CSPs that are subject to obligations under the CSG Benchmarks that have any obligations under the CSG RKRs. These CSPs are referred to as “qualifying carriage service providers” (**QCSPs**) in both the CSG RKRs and the CSG Benchmarks. QCSPs are those CSPs that supplied 100,000 “CSG services” or more on the last day of the financial year immediately preceding the relevant “benchmark period” specified in the CSG Benchmarks. This allows the ACMA to monitor and enforce compliance with the CSG Benchmarks.

The CSG Benchmarks set minimum performance benchmarks regarding compliance with the CSG Standard. The CSG Standard sets performance standards in relation to a range of customer service matters, including the keeping of appointments and the maximum timeframes that a CSP can take to connect services and rectify faults or service difficulties.

In January 2012, the ACMA made the Payphone RKRs for the purposes of ensuring that a primary universal service provider (**PUSP**) keeps the necessary records, and provides the ACMA with the necessary information, to enable the ACMA to effectively:

* monitor and enforce compliance with the benchmarks relating to payphones set by the Minister under section 12EE of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**TCPSS Act**); and
* discharge its obligation under paragraph 105(3)(ea) of the Tel Act, to monitor and report on the operation of the Universal Service Regime under Part 2 of the TCPSS Act.

The Payphone RKRs commenced on 1 February 2012 and require a PUSP to:

* keep and retain records in relation to compliance with the *Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011* (**Payphone Benchmarks**); and
* prepare and give to the ACMA, reports in the form specified in the Payphone RKRs and which consist of information contained in those records.

The Payphone Benchmarks determine standards relating to the rectification of faults or service difficulties with payphones and payphone carriage services, and minimum performance benchmarks for compliance by the PUSP with those standards.

The CSG RKRs and Payphone RKRs prescribe the frequency and form of reports that relevant CSPs must provide to the ACMA. Previously, the RKRs each required:

* reports to be provided to the ACMA on a six-monthly basis, with the reporting periods ending on 31 December and 30 June;
* reports to contain data on a quarterly basis within that six month period; and
* reports to include some data disaggregated on state, territory and national levels. Most metrics are required to be further disaggregated into geographic areas as required under the CSG Benchmarks and Payphone Benchmarks definitions and obligations (such as urban, (major and minor) rural and remote areas).

The Amendment Instrument amends the CSG RKRs and Payphones RKRs to simplify the reporting obligations by reducing the reporting periods and level of data disaggregation required in the reports.

The effect of the amendments to both the CSG RKRs and Payphones RKRs are to:

* require relevant CSPs only to report to the ACMA on a yearly basis within 40 working days after the end of the relevant benchmark period (which is aligned to the financial year);
* change the prescribed forms in relation to the relevant reports to remove the requirement for data to be disaggregated on a quarterly basis;
* change the prescribed forms in relation to the relevant reports to remove the requirement for data to be disaggregated on a State and Territory basis; and
* include an additional one-off reporting requirement for the benchmark period ending 30 June 2015 to cover the information that would have been provided in the six monthly report after 31 December 2014.

**Consultation**

Section 17 of 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.

In April 2014, the ACMA released a consultation paper proposing a number of reductions in reporting requirements for the telecommunications industry including proposals to change the CSG RKRs and Payphones RKRs. The release of this paper coincided with the Department of Communications related consultation process on reforming telecommunication consumer protections. The [consultation paper](http://acma.gov.au/~/media/Regulatory%20Frameworks/pdf/Proposals%20for%20Telecommunications%20reform_Final%20pdf.pdf) was published on the ACMA website.

There were 13 submissions received in response to the ACMA’s consultation paper including from Telstra, Optus, Vodafone, Communications Alliance, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission, the Telecommunications Universal Service Management Agency and the Australian Communication Consumers Action Network. Submissions are published on the ACMA’s [website](http://acma.gov.au/Industry/Telco/Carriers-and-service-providers/Annual-reporting-requirements/reducing-telecoms-reporting-requirements).

The submissions broadly supported the proposals relating to the CSG RKRs and Payphone RKRs. These submissions were considered when making the final instrument.

**Regulatory Impact Statement**

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed an opinion that the amendments proposed by the Amendment Instrument will have a minor and machinery impact on industry and on that basis, a Regulatory Impact Statement (**RIS**) is not required. The OBPR RIS reference number is ID 16669.

**Notes on instrument**

The provisions of the Amendment Instrument are described in Attachment 1.

**Statement of compatibility with human rights**

A Statement of Compatibility with Human Rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is set out in Attachment 2.

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**Attachment 1 - Notes on Instrument**

### *Section 1 Name of Rules*

This section provides that the title of the Rules is the *Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)*.

### *Section 2 Commencement*

This section provides that the Ruleswill commence on 30 September 2014.

### *Section 3 Amendment of Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 and the Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012*

This section provides that the CSG RKRs are amended in accordance with Schedule 1 and that the Payphone RKRs are amended in accordance with Schedule 2.

### *Schedule 1*

This schedule sets out the amendments to the CSG RKRs.

**Item [1]** amends the definition of ‘nominated area’ in section 3 of the CSG RKRs so that it refers to the whole of Australia. Previously, nominated area was defined in section 5 of the CSG RKRs as certain geographic areas divided on State and Territory lines. The effect of this change is that the compliance reports required under the CSG RKRs will no longer be required to include information on a State or Territory basis.

**Item [2]** repeals the definition of ‘quarter’. As the requirement to provide information in the compliance report in relation to each quarter is removed (see subsection 13(2) of the CSG RKRs), there is no need to have a definition of ‘quarter’.

**Item [3]** repeals the definition of ‘reporting period’. As the ‘reporting period’ is now aligned with the benchmark period (which is defined in section 3) there is no need to have a definition of ‘reporting period

**Item [4]** deletes section 5 which specified each area that was a ‘nominated area’ for the purposes of defining that term. The new definition of nominated area has been included in the section 3 definitions (see item 1).

**Item [5]** substitutes sections 6 and 7 with a new section 6 which combines the record keeping requirements in sections 6 and 7 into one section. The actual record keeping requirements have not changed – that is, QCSPs are still required to keep a record of the total number of CSG services supplied on a particular date across Australia (previously in section 6) and the number of CSG services supplied in urban, major rural, minor rural and remote areas (previously in section 7).

**Items [6]** and **[7]** amendsection 13 to remove references to the ‘reporting period’ and to remove the requirement for applicable providers to prepare a compliance report for part of a benchmark period. A carriage service provider that is or was a QCSP in a benchmark period will now be required to prepare a compliance report in respect of that benchmark period. ‘Benchmark period’ has the meaning given to it in the CSG Benchmarks (see section 3 of the CSG RKRs), which is generally each financial year. Given that reports are now due on a yearly basis, for each benchmark period, there is no longer a need for reports to be prepared for part periods.

Because reports are now prepared in respect of a benchmark period, the concept of ‘reporting period’ is redundant and for this reason, subsection 13(3) has been repealed.

The compliance report must still contain the information prescribed in Schedule 1 and be in the form specified in Schedule 2.

**Item [8]** substitutes subsection 14(1) with a new subsection which requires a carriage service provider that is or was a QCSP for a benchmark period to give to the ACMA the compliance report required to be prepared under section 13, no later than 40 working days after the end of that benchmark period or such later time as agreed in writing by the ACMA. Given that reports are now required on a yearly basis, there is no need to retain the reference to part of a benchmark period in section 14.

**Item [9]** inserts a new Part 4A into the CSG RKRs. Part 4A requires a carriage service provider that is or was a QCSP for the benchmark period commencing 1 July 2014 and ending 30 June 2015 (the relevant benchmark period) to comply with additional reporting and record keeping requirements in respect of that period. This is an additional one-off requirement to capture the report that would have been provided for the six months ending 31 December 2014 of the information specified in Item 2 of Schedule 1 of the CSG RKRs as in existence prior to the commencement of the amendments. This requirement is in addition to the requirement in sections 13 and 14 (as amended) to prepare and give to the ACMA a compliance report in accordance with those sections for the relevant benchmark period. That is, for the relevant benchmark period a CSP will need to give to the ACMA two reports – a compliance report in accordance with section 14 and an additional one-off report in accordance with section 14A.

Section 14A requires that a provider that is or was a QCSP in the relevant benchmark period to prepare and give to the ACMA a one-off report containing the information specified in subsection (5), in the form of the Table specified in subsection (6). The information specified in subsection (5) is the number of CSG services supplied by the CSP on the last day of the financial year preceding the relevant benchmark period (that is, 30 June 2014) in each of the areas listed in paragraphs (a)-(f), where the CSP was obliged to comply with one or more of the standards in the CSG Benchmarks instrument in respect of its supply of those CSG services. This is the information that a CSP would have been required to report to the ACMA under Item 2 of Schedule 1 of the CSG RKRs as in force prior to the commencement of the amendments, after 31 December 2014.

The one-off report must be given to the ACMA in the same manner as the compliance report under section 14 (see subsection 14A(3)) but is required to be given on or before 1 December 2014. This is to enable the ACMA to consider whether or not a CSP is or was a QCSP in the relevant benchmark period prior to the end of the relevant benchmark period. This allows the ACMA to monitor and ensure compliance with the CSG Benchmarks in the relevant benchmark period.

Subsection (7) requires a QCSP for the relevant benchmark period to keep a copy of the information included in the one-off report, and subsection (8) requires the CSP to retain that record for at least 2 years after the end of the relevant benchmark period. These requirements mirror the record keeping requirements in Part 2 of the CSG RKRs.

**Item [10]** substitutes Schedule 1 of the CSG RKRs. Schedule 1 sets out the information that must be included in a compliance report that a QCSP is required to prepare and provide under sections 13 and 14 of the CSG RKRs. The main amendments made to Schedule 1 are to:

* remove references to ‘reporting period’ in Item 1 given that CSPs will now be required to report in relation to the benchmark period;
* amend item 2 of Schedule 1 to:
  + remove the reference to a compliance report in respect of a reporting period that ends on 31 December. This aligns with the move to yearly reporting with periods ending 30 June in line with the benchmark period;
  + remove the word ‘preceding’ and replace it with the word ‘of’, wherever occurring. This change is necessary to align with the change to annual financial yearly reporting; and
  + combine the requirements in paragraphs (a) and (b) into one for clarity;
* remove references to ‘quarter’ in items 3, 4, 5 and 6 in Schedule 1 and substitute ‘benchmark period’ wherever occurring. This has the effect of removing the requirement for QCSPs to provide the relevant information in the compliance reports on a quarterly basis. Rather, items 3, 4, 5 and 6 as amended require QCSPs to include the information specified in items 3, 4, 5 and 6 for the entire benchmark period covered in their compliance reports; and
* remove the reference to ‘each nominated area’ and substitute ‘the nominated area’ (wherever occurring), in items 3, 4, 5 and 6 of Schedule 1. This aligns with the change in the definition of ‘nominated area’ (see item 1) to mean the whole of Australia, such that compliance reports no longer require disaggregated information on a State or Territory basis.

Drafting amendments have also been made to items 3, 4, 5 and 6 to make the reporting obligations clearer and avoid unnecessary repetition. These amendments do not change the information required to be included in a compliance report.

**Items [11] – [20]** amend Schedule 2 of the CSG RKRs. Schedule 2 sets out the required form of the compliance reports that QCSPs are required to prepare and provide under sections 13 and 14 of the CSG RKRs.

**Item [11]** deletes the second dot point from the introductory text in Schedule 2 to remove references to end dates of quarters.

**Item [12]** substitutes Table 1 of Schedule 2 (including the heading and note) with a new table 1 which does not contain references to the ‘reporting period’.

**Item [13]** amendsthe wording in Table 2 of Schedule 2 to omit the words ‘financial year preceding’. This aligns with the move to annual reporting per benchmark period.

**Item [14]** deletes the previous Note 1 to Table 2 in Schedule 2 which referred to reporting periods ending on 31 December.

**Item [15]** substitutes a new Table 3 in Schedule 2 which does not include the need for compliance reports to include information per quarter per State/Territory location, and refers to the ‘benchmark period’ rather than the ‘quarter ending period’ This table provides compliance data to assess QCSP performance relating to ‘in-place connection’ requirements under the CSG Benchmarks.

**Item [16]** amends Table4in Schedule 2 to remove the requirement for compliance reports to provide information per quarter and also per State/Territory location. This table provides compliance data to assess QCSP performance relating to ‘new connection’ requirements under the CSG Benchmarks.

**Item [17]** deletes Note 4 to Table 4 of Schedule 2, which referred to quarterly reporting.

**Item [18]** substitutes a new Table5in Schedule 2 which does not include the requirement for compliance reports to include information per quarter and also per State/Territory location, and refers to the ‘benchmark period’ rather than the ‘quarter ending period’. This table provides compliance data to assess QCSP performance relating to ‘faults or service difficulties’ requirements under the CSG Benchmarks.

**Item [19]** deletes Note 4 to Table 5 of Schedule 2, which referred to quarterly reporting.

**Item [20]** substitutes a new Table 6 in Schedule 2 which does not include the requirement for compliance reports to include information per quarter and also per state/territory location and refers to the ‘benchmark period’ rather than the ‘quarter ending period’. This table provides compliance data to assess QCSP performance relating to ‘appointment keeping’ requirements under the CSG Benchmarks.

### *Schedule 2*

This schedule sets out the amendments to the Payphone RKRs.

**Item [1]** amends the definition of ‘nominated area’ in section 3 of the Payphone RKRs so that it refers to the whole of Australia. Previously, nominated area was defined in section 6 of the Payphone RKRs as certain geographic areas divided on State and Territory lines. The effect of this change is that compliance reports required under the Payphone RKRs will no longer be required to include information disaggregated on a State or Territory basis.

**Item [2]** repeals the definition of ‘quarter’. As the requirement to provide information in the compliance report in relation to each quarter has been removed, there is no need to have a definition of ‘quarter’.

**Item [3]** repeals the definition of ‘reporting period’. As the ‘reporting period’ is now aligned with the benchmark period (which is defined in section 3) there is no need to have a definition of ‘reporting period’.

**Item [4]** repeals section 6 which provided the meaning of ‘nominated areas’. The new definition of nominated area has been included in section 3 (see item 1).

**Item [5]** substitutes the reference to ‘reporting period’ in subsection 10(1) with ‘benchmark period’.

**Item [6]** repeals subsection 10(3) which defined ‘reporting period’ as six monthly periods ending in June and December. As the reporting requirements are now aligned with the benchmark period (that is on a yearly basis) there is no longer a need for a separate ‘reporting period’ to be defined in the instrument.

**Item [7]** substitutes a new subsection 11(1) which replaces references to ‘reporting period’ with ‘benchmark period’.

**Items [8] to [10]** amend Schedule 1 of the Payphone RKRs. Schedule 1 sets out the information that must be included in the compliance report that the PUSP is required to prepare and provide under sections 10 and 11 of the Payphone RKRs.

**Item [8]** substitutes a new item 1 of Schedule 1 which omits references to ‘reporting period’.

**Item [9]** substitutes a new item 2 of Schedule 1. The main changes to item 2 are to:

* replace references to ‘quarter’ with ‘benchmark period’. This has the effect of removing the requirement for the PUSP to provide the relevant information in the compliance report on a quarterly basis, instead only requiring it to include information for the whole benchmark period; and
* amend the wording in sub-item 2(2) to be consistent with the change in the meaning of ‘nominated area’ as described at item 1. As ‘nominated area’ now refers to the whole of Australia, sub-item 2(2) requires the compliance report to include the information set out at sub-item 2(1) for the whole nominated area, as well as for the remote, rural and urban areas (as defined in the Payphone Benchmarks) within the nominated area.

**Item [10]** amendsitem 3 of Schedule 1 to remove the reference to a ‘quarter’ and substitute ‘benchmark period’, wherever occurring.

**Items [11] – [16]** amend Schedule 2 of the Payphone RKRs. Schedule 2 sets out the required form of the compliance reports that the PUSP is required to prepare and provide under sections 10 and 11 of the Payphone RKRs.

**Item [11]** deletes the second dot point from Schedule 2 to remove references to the end dates of relevant quarters.

**Item [12]** substitutes a new Table 1 of Schedule 2 (including the heading and note) with a new table 1 which does not contain references to the ‘reporting period’.

**Item [13]** substitutes a new Table 2 of Schedule 2 which does not include references to reports being by quarters and also to remove the requirement for information to be provided by State/Territory location. This table provides compliance data to assess PUSP performance relating to payphone ‘faults or service difficulties’ requirements under the Payphone Benchmarks.

**Item [14]** deletes Note 2 to Table 2 in Schedule 2 which referred to reports being provided quarterly.

**Item [15]** amends Table 3 in Schedule 2 to substitute the reference to ‘quarter’ with ‘benchmark period’ to remove the requirement to provide quarterly reports. This table provides compliance information to assess whether the PUSP has relevant procedures where exemptions are relied upon.

**Item [16]** deletes Note 2 to Table 3 in Schedule 2 which referred to reports provided quarterly.

Attachment 2

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)***

This Legislative 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 2011.*

**Overview of the Legislative Instrument**

The *Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)* amends the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* and the *Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012* (the Record-Keeping Rules) to simplify reporting requirements to remove the requirements to report on a six-monthly basis with information for each State and Territory and move to annual reporting on a national basis.

There are no substantial changes to the operation of the Record-Keeping Rules.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.