

Explanatory Statement

Telecommunications Act 1997

Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017

Issued by the Authority of the Minister for Communications

Purpose

The *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* is made by the Minister for Communications under subsection 125AA(4) of the *Telecommunications Act 1997*.

The purpose of this instrument is to direct the Australian Communications and Media Authority (ACMA) to make standards under subsection 125AA(1) which impose requirements on certain carriers and carriage service providers in relation to the services they provide, in order to improve consumer experiences with services supplied using the national broadband network (NBN).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* requires the ACMA to make industry standards that are to apply to certain carriers and carriage service providers, broadly dealing with:

- helping consumers to make informed decisions about NBN services prior to entering a contract with a carriage service provider for the supply of those services;
- promoting the continuity of provision (or facilitation of provision) of voice and broadband services by carriers and carriage services providers;
- ensuring the professional, effective and efficient handling of complaints about the supply of services by carriers and carriage service providers.

The reasons for these standards are set out below.

Provision of Information

Clause 4.1.1 of the Telecommunications Consumer Protections Code (TCP Code) requires carriage service providers to provide consumers with a Critical Information Summary setting out particular information. Clause 4.1.2(e) of the Code also currently requires carriage service providers to make available information to assist consumers to estimate what capacity they may need on a telecommunications product to meet their usage requirements.

However, the Code provisions were developed at the start of the decade and are currently heavily focused on information to assist consumer understanding and to address comparison of post-paid mobile phone offers. There is a gap in information to assist consumers seeking to understand and compare NBN services and products, particularly information about speed tiers. The information currently being provided by carriage service providers providing retail services using the NBN does not sufficiently enable consumers to understand the broadband

service that will best meet their online requirements. Stronger obligations are required to drive better consumer understanding and choice of NBN products.

Division 2 of Part 2 of the instrument sets out matters to be dealt with in an industry standard in order to impose stronger, more harmonised and consumer-focussed approach obligations on carriage service providers to providing consumer information about NBN services and the use-case for different speed tier products.

Continuity of Service

There are currently no legislative ‘service continuity standards’ applicable across industry in relation to transition of services from legacy services to the NBN.

Disconnection from a legacy service for the purposes of connection to the NBN may involve having voice or broadband services switched off in advance of a working NBN service (either because disconnection has occurred in error or because there is a delay or technical fault that prevents successful NBN migration). This type of disconnection may be particularly disruptive for consumers (including business), and where possible, it would be preferable that consumers can reconnect to a legacy service if there will be an unreasonable delay until an NBN connection is operative.

Division 3 of Part 2 of the instrument sets out matters to be dealt with in a standard to require carriers and carriage service providers to provide continuity of voice and broadband services to consumers in certain circumstances.

Complaints Handling

While chapter 8 of the TCP Code is a comprehensive set of rules for carriage service providers who provide retail services, based on the Australian Standard on Complaint Handling, there are currently gaps in complaints handling processes, including as a result of supply chain complexities.

Division 4 of Part 2 of the instrument sets out matters to be dealt with in an industry standard to address persistent flaws in complaints handling processes, particularly around provision of information on timeframes for resolution of issues with retail services, and the provision of assistance with resolving complaints by wholesale carriage service providers to retail carriage service providers.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared in relation to this instrument (OBPR Reference number: 23048). The RIS considered options for targeted regulatory measures to improve the NBN consumer experience.

The RIS concluded that the regulatory impacts of this instrument are on business providing retail telecommunications services over the NBN, NBN Co Limited, and other suppliers in the NBN supply chain. The average annual regulatory costs to these businesses were estimated to be \$1.49 million. There are no regulatory impacts on community organisations or individuals.

Consultation

The Australian Competition and Consumer Commission and the ACMA were consulted on the proposed regulatory measures which are dealt with by the Direction.

Notes on Sections

Part 1—Introduction

Section 1 – Name

This section provides that the name of the instrument is the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*.

Section 2 – Commencement

This section provides that the instrument will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the instrument is made under subsection 125AA(4) of the *Telecommunications Act 1997*.

Section 4 – Definitions

This section sets out a number of definitions for the purposes of the instrument.

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997*.

legacy network means one or more network units used by a carriage service provider to supply a legacy service.

legacy service means:

- a legacy service within the meaning given to that term in Part 4 of the *Telecommunications Regulations 2001*; and
- a telecommunications service supplied using a hybrid fibre-coaxial network.

national broadband network has the same meaning as in the *National Broadband Network Companies Act 2011*.

NBN means the national broadband network.

The note to this section informs the reader that a number of expressions used in the instrument are defined in the Act, including: carriage service provider; carrier; hybrid fibre-coaxial network; network unit; and use.

Part 2—Direction to the ACMA

Division 1—Direction

Section 5 – Direction on industry standard

Subsection 125AA of the Act: allows the Minister to direct the ACMA to determine a standard by legislative instrument that applies to participants in a particular section of the telecommunications industry, and deals with one or more matters relating to the telecommunications activities of those participants (paragraph 125AA(4)(a)); and, empowers the ACMA to make such a standard if directed to do so by the Minister (subsections 125AA(1) and (5)).

Subsection 5(1) of the instrument provides that the Minister directs the ACMA to determine an industry standard under subsection 125AA(1) of the Act that complies with Divisions 2, 3 and 4 of Part 2 of the instrument. Divisions 2, 3 and 4 of the instrument set out the participants in sections of the telecommunications industry that an industry standard is to apply to, and the matters relating to the telecommunications activities of those participants with which the standard must deal. The note to subsection 5(1) clarifies that the ACMA may comply with the subsection (and the direction) by determining one or more industry standards.

Under the Act, if the Minister directs the ACMA to make such a standard, the Minister may also direct that the ACMA is to do so within a specified period (paragraph 125AA(4)(b)).

An industry standard referred to in subsection 5(1) is to be determined no later than six months after the commencement of this direction to allow sufficient time for the ACMA to undertake consultation on the making of the standard (paragraph 5(2)(a)). Once made, the standard must commence in whole or in part no later than three months later (paragraph 5(2)(b)). This ensures that there will be sufficient time for industry to adjust to the new obligations imposed, but ensure that these obligations will be in force as soon as practicable to achieve the desired policy outcomes.

Subsection 5(3) directs the ACMA to consider conferring functions and powers on the Telecommunications Industry Ombudsman (TIO) in determining a standard for the purposes of subsection 5(1). The note to this subsection informs the reader that, if the TIO consents, an industry standard may confer functions and powers on the TIO, in accordance with section 114 of the Act.

Subsection 5(4) provides that the ACMA is directed to vary an industry standard, or standards, as it considers necessary from time to time, in a like manner and subject to like conditions specified in subsection (1). The note to subsection 5(4) informs the reader that the power to make an instrument includes a power to vary that instrument in a like matter under subsection 33(3) of the *Acts Interpretation Act 1901*.

The ACMA is empowered to make an industry standard of the type referred to in subsection 5(1) under subsection 125AA(1) of the Act, but can only do so where directed by the Minister (subsection 125AA(4)). Subsection 5(4) of the instrument ensures, for expediency, that the ACMA can vary the instrument in future without the need for a further Ministerial direction, to ensure that an industry standard continues to comply with, and meet the policy intent behind, Divisions 2, 3 and 4 of the instrument.

Division 2—Industry standard relating to the provision of information and advice by carriage service providers

Section 6 – Standard on consumer information

This section provides that the ACMA must determine an industry standard that: applies to carriage service providers in relation to services supplied by those providers using the NBN (paragraph 6(1)(a)); and, deals with information and advice that carriage service providers should provide or make available to consumers to help consumers to make informed decisions about NBN services prior to entering a contract with a carriage service provider for the supply of those services (paragraph 6(1)(b)).

Subsection 6(2) provides that, without limiting paragraph 6(1)(b), an industry standard must deal with the following specific matters;

- minimum requirements for information and advice to be provided to consumers about service supplied using the NBN (paragraph 6(2)(a));
- requirements in relation to when the information and advice about the services is to be provided (paragraph 6(2)(b)); and
- requirements in relation to the manner in which that information or advice is to be provided (paragraph 6(2)(c)).

Division 3—Industry standard relating to continuity of voice and broadband services

Section 7 – Standard on promoting continuity of voice and broadband services

This section provides that the ACMA must determine an industry standard that:

- applies to: carriage service providers in relation to services they supply using a legacy network; carriage service providers in relation to the services they supply using the NBN; carriers to the extent that those carriers supply legacy services; and NBN Co Ltd in its capacity as a carrier (paragraph 7(1)(a)); and
- deals with the provision of voice and broadband services by persons listed in paragraph 7(1)(a) to consumers in areas where legacy services are readily able to be supplied and the area has been declared ready for service by NBN Co Limited (paragraph 7(1)(b)).

Subsection 7(2) provides that, without limiting paragraph 7(1)(b), an industry standard must deal with the following specific matters:

- requirements for the supply to a consumer of a legacy service that is a voice service, broadband service, or both, to their premises using a legacy network, where it is not possible to obtain a working voice or broadband service on the NBN, including in the following circumstances:
 - where the migration of a legacy service to the NBN has been unsuccessful, and is unlikely to be successful within a reasonable period of time; and
 - where the migration of a legacy service to the NBN has been successful, but a voice service or broadband service cannot be supplied on the NBN for an unreasonable period of time, and it remains readily feasible to supply legacy service to that premises (paragraph (7(2)(a)));
- processes for the reconnection of legacy services if required in accordance with a requirement for the purposes of paragraph 7(2)(a), including timeframes for the completion of those processes (paragraph 7(2)(b));
- requirements for persons listed in paragraph 7(1)(a) to nominate a contact point for coordination activities in relation to reconnection of legacy services, including who that nomination must be communicated to and in what manner (paragraph 7(2)(c)).

In relation to subparagraphs 7(2)(a)(i) and (ii), these are intended to be the most common situations in which a legacy service would be required to be supplied. However, there may be other situations in which a legacy service should be, or continue to be, supplied because it is not possible to obtain a working voice or broadband service on the NBN; for that reason, these subparagraphs are not exhaustive.

Division 4—Industry standard relating to handling of consumer complaints

Section 8 – Standard on ensuring professional, effective and efficient handling of complaints

This section provides that the ACMA must determine an industry standard that:

- applies to carriage service providers, and carriers responsible for network units that are used in the supply of services (paragraph 8(1)(a)); and
- deals with ensuring consumer complaints about the supply of services by persons listed in paragraph 8(1)(a) are handled in a professional, effective and efficient manner (paragraph 8(1)(b)).

Subsection 8(2) provides that, without limiting paragraph 8(1)(b), the standard must deal with:

- requirements for carriage service providers to establish a consumer complaints handling process, including minimum requirements in relation to accessibility and transparency of that process (paragraph 8(2)(a));
- a requirement that a consumer complaints handling process established in accordance with the standard must be free of charge to consumers (paragraph 8(2)(b));
- requirements for carriage service providers to manage, monitor, analyse, record and report consumer complaints, including response times for steps in the consumer complaints handling process to be completed (paragraph 8(2)(c));
- requirements that, where a carriage service provider (the first carriage service provider) supplies a carriage service that is involved (directly or indirectly) in the supply of a retail carriage service to consumers by a retail carriage service provider, the first carriage service provider must provide assistance to the retail carriage service provider, and any other carriage service provider who supplies a service that is involved (directly or indirectly) in the supply of the retail carriage service, to resolve any complaint received by the retail carriage service provider in relation to the retail carriage service (paragraph 8(2)(d));
- requirements that, where a carrier is responsible for a network unit that is used by a carriage service provider (a retail carriage service provider) to supply a carriage service to consumers (a retail carriage service), or to supply a carriage service that is involved (directly or indirectly) in the supply of a retail carriage service, the carrier must provide relevant assistance to the retail carriage service provider, and any other carriage service provider who supplies a carriage service that is involved (directly or indirectly) in the supply of that retail carriage service, in managing and resolving any complaint received by the retail carriage service provider in relation to the retail carriage service (paragraph 8(2)(e)).