

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Consumer Complaints) Record-Keeping Rules 2018

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* (the **Rules**) under subsection 529(1) of the *Telecommunications Act 1997* (the **Act**).

Pursuant to subsection 529(1) of the Act, the ACMA may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one or more specified carriage service providers to keep and retain records.

Subsection 529(4) of the Act provides that ACMA must not exercise its powers under this section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to the performance by the ACMA of any of the ACMA's telecommunications functions or the exercise by the ACMA of any of the ACMA's telecommunications powers.

Among the ACMA's telecommunications functions, as described in paragraphs 8(1)(b), (d), (g) and (i) of the *Australian Communications and Media Authority Act 2005*, are:

- to regulate telecommunications in accordance with the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- to advise and assist the telecommunications industry;
- to report to and advise the Minister in relation to matters affecting consumers, or proposed consumers, of carriage services;
- to make available to the public information about matters relating to the telecommunications industry; and
- to give advice to the public about matters relating to the telecommunications industry.

The records that are required to be kept pursuant to the Rules are relevant to the performance of these telecommunications functions as it is intended that the information contained in these records and reported to the ACMA pursuant to Part 4 of the Rules will be used to inform and assist the ACMA in the performance of these functions.

Purpose and operation of the instrument

The Rules build on existing record-keeping requirements and industry practices established by Chapter 8 of the *Telecommunications Consumer Protections Code (TCP Code)*.¹

The Rules are intended to increase transparency in relation to the handling of consumer complaints across the telecommunications industry. This will be achieved by requiring retail carriage service providers (**CSPs**) to report complaints data to the ACMA on a quarterly basis, enabling the ACMA to monitor complaint levels and assess both whole-of-industry and an individual providers' levels of responsiveness to, and resolution of, complaints.

The objectives of the Rules are to:

¹ See clause 8.4 in particular.

- enable the ACMA to monitor complaint levels and assess whole-of-industry and individual providers' levels of responsiveness to, and resolution of, complaints;
- assist the ACMA and industry to identify emerging complaint trends or regulatory issues;
- encourage industry to continue to focus efforts on effective management of complaints and their underlying causes;
- to the extent any information contained in or derived from complaint reports provided to the ACMA is made public, make the handling of consumer complaints across the telecommunications industry more transparent.

The obligation to keep records pursuant to the Rules will apply only to retail CSPs with 30,000 or more consumer services in operation on the last day immediately preceding the record-keeping period (described as “qualifying retail carriage service providers” in section 7).

Part 2 of the Rules imposes obligations on retail CSPs to keep a record of the number of services in operation (in total and by service type) being supplied by them. Qualifying retail CSPs must also keep a record of the number of complaints received by them in total in a record-keeping period and according to type of service, as well as the number of complaints referred to a provider by the Telecommunication Industry Ombudsman, the average number of days taken to resolve a non-Ombudsman referred complaint, the number of days it took to resolve at least 80% of non-Ombudsman referred complaints resolved by the provider during the record-keeping period and the top three non-Ombudsman referred complaint types by volume.

Part 3 of the Rules provides that records kept in accordance with Part 2, must be retained for a period of at least two years after the end of the record-keeping period for which the record was kept.

Part 4 contains provisions relating to the reporting of information to the ACMA.

Part 5 contains provisions relating to the conduct of an audit of a retail CSP's compliance with the Rules.

Schedule 1 to the Rules describes the information that must be contained in a complaints report which must be submitted to the ACMA.

A provision-by-provision description of the Rules is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the LA).

Documents incorporated by reference

The Rules incorporate the following Acts and legislative instruments or otherwise refers to them:

- the Act;
- the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*;
- the *Broadcasting Services Act 1992*;
- the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- the *Acts Interpretation Act 1901* (the AIA);
- the LA.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>).

The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the AIA, subsection 13(1) of the LA and section 589 of the Act. Subsection 589(1) of the Act provides that an instrument made under the Act may make provision in relation to a matter by

applying, adopting or incorporating (with or without modifications) provisions of any Act as in force or existing at a particular time or from time to time. In addition, section 10 of the AIA (as applied by paragraph 13(1)(a) of the LA) has the effect that, unless otherwise specified references to Acts or legislative instruments can be taken to be references to those instruments, as in force from time to time.

The legislative instruments listed above are incorporated as in force from time to time, in accordance with subsection 14(1) of the LA and section 589 of the Act. In relation to the incorporation of other documents, subsection 589(2) of the Act provides that an instrument made under the Act may make provision for certain matters by applying, adopting or incorporating (with or without modifications) matters contained in any other instrument or writing, as in force or existing at a particular time or from time to time, even if the other instrument or writing does not yet exist when the first instrument is made. In addition to the Acts and legislative instruments listed above, paragraph 11(2)(b) of the Rules refers to a form specified from time to time on the ACMA's website which may be accessed at <https://acma.gov.au>.

Consultation

Before the Rules were made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA consulted with industry stakeholders and the general public on the making of the Rules. Between 15 March and 16 April 2018, the ACMA conducted a public consultation process inviting submissions on the proposed instrument through the release of a draft version of the Rules together with a consultation paper on the ACMA's website.

The consultation paper noted that the proposed Rules were intended to complement the then draft *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the **Standard**). It described the ACMA's statutory powers and its rationale for making the Standard and the Rules that would take precedence over any code-based obligations in Chapter 8 of the TCP Code.

Interested stakeholders that were directly affected by the proposal were notified of the release of the consultation paper and invited to comment.

The ACMA received 13 submissions in response to the consultation paper. The ACMA considered all relevant issues raised by the submissions when finalising the form of the Rules.

Regulatory impact assessment

The Rules form part of a package of measures aimed at improving the experience of consumers moving to and using the national broadband network (NBN). Other parts of the package include three industry standards that the ACMA is making as required by the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* (the **Direction**). Under the Direction, the ACMA must make industry standards dealing with:

- the provision of information to consumers about retail services supplied over the NBN;
- the handling of complaints made by consumers to retail CSPs; and
- promoting the continuity of voice and broadband services.

In addition to these industry standards and the Rules, the ACMA is also making a service provider determination that would require CSPs to test new connections to the NBN to confirm that they are operational.

A Regulation Impact Statement (**RIS**) was prepared in relation to the Direction (OBPR Reference Number: 23048) and which applied to the proposal to make record-keeping rules in relation to complaints made to retail CSPs. As stated in the Explanatory Statement to the Direction:

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.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the Rules

Subsection 529(1) of the Act provides that the ACMA may, by written instrument, make rules for and in relation to requiring one or more specified carriers or one of more specified carriage service providers to keep and retain records.

The Rules aim to:

- enable the ACMA to monitor complaint levels and assess whole-of-industry and individual providers' levels of responsiveness to, and resolution of, complaints and service issues;
- assist the ACMA and industry with early identification of emerging complaint trends or regulatory issues;
- encourage industry to continue to focus efforts on effective management of complaints and their underlying causes;
- to the extent any information contained in or derived from complaint reports provided to the ACMA is made public, make the handling of consumer complaints across the telecommunications industry more transparent.

Human rights implications

The ACMA has assessed whether the Rules are compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not have any human rights implications that require further consideration.

Conclusion

The Rules are compatible with human rights as they do not raise any human rights issues.

Notes to the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*

Part 1–Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*.

Section 2 Commencement

This section provides for the instrument to commence on 1 July 2018.

Section 3 Authority

This section provides that the Rules are made under section 529 of the Act.

Section 4 Application of Record-Keeping Rules

This section provides that the Rules apply to retail carriage service providers (**retail CSPs**).

Section 5 Definitions

This section defines a number of key terms used throughout the Rules.

In particular, **active service** is defined to mean a service for which a retail CSP has issued an invoice to, or has received a payment from, a consumer during the relevant record-keeping period. This definition is intended to cover all retail telecommunications services including pre-paid and post-paid services.

Also, **service in operation** is defined to mean a service that is both a telecommunications service and an active service. A qualifying retail carriage service provider will consequently only be required to report on telecommunications services for a record-keeping period which meet the definition of **active service**.

Section 6 References to other instruments

This section provides that in the Rules, as permitted by section 589 of the Act, and unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time.

Section 7 Qualifying retail carriage service provider

This section specifies that if on the last day of a record-keeping period a retail CSP supplies more than 30,000 services in operation, then that retail carriage service provider will be a **qualifying retail carriage service provider** for the following record-keeping period.

Part 2– Keeping of Records

Section 8 Records relating to the number of services supplied during a record-keeping period

This section requires qualifying retail CSPs to keep records relating to the number of services in operation supplied during a record-keeping period.

Subsection 8(1) requires qualifying retail CSPs to keep a record of the total number of services in operation supplied by the provider, as determined on the last day of the record-keeping period.

Subsection 8(2) requires that the total number of services recorded in accordance with subsection (1) be categorised in accordance with specified types of services in operation. A qualifying retail CSP must keep a record of the number of services for each type of service connection supplied during a record-keeping period.

Section 9 Records relating to complaints received

This section requires qualifying retail CSPs to keep records in relation to complaints received during each record-keeping period.

Subsection 9(1) requires qualifying retail CSPs to keep a record of complaints received in relation to the total number services in operation identified in subsection 8(1). For each record-keeping period, providers must keep records of the following:

- the total number of complaints received, excluding Ombudsman referred complaints;
- the total number of Ombudsman referred complaints referred by the Telecommunications Industry Ombudsman;
- the average number of days it took the service provider to resolve a complaint, excluding Ombudsman referred complaints;
- the number of days within which there was a resolution of at least 80% of the complaints, excluding Ombudsman referred complaints, resolved by the provider during the record-keeping period; and
- the top three complaint types of which the provider receives the greatest number of complaints, excluding Ombudsman referred complaints, in descending order.²

Subsection 9(2) provides that qualifying retail CSPs must keep a record of the number of complaints received for each type of service in operation specified in subsection 8(2). Ombudsman referred complaints are excluded from the number of complaints required to be recorded here.

Where the complaint relates to one of the types of NBN broadband service referred to in paragraph 8(2)(c), subsection 9(3) requires qualifying retail CSPs to keep records of the number of complaints received in relation to the type of service according to the complaint categories set out in paragraphs 9(3)(a) to (c). Ombudsman referred complaints are excluded from the number of complaints required to be recorded here.

Where the complaint relates to an NBN voice only service, subsection 9(4) requires qualifying retail CSPs to keep records of the number of complaints received according to the complaint categories set out in paragraphs 9(4)(a) and (b). Ombudsman referred complaints are excluded from the number of complaints required to be recorded here.

² The term “complaint type” is defined in section 5 by reference to the categories identified in a CSP’s complaints handling process pursuant to the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

Attachment B to this Explanatory Statement contains two tables providing visual representations of the data points that must be reported to the ACMA by qualifying retail CSPs at the conclusion of each record-keeping period.

Part 3 – Retention of Records

Section 10 Period for retention of records

This section provides that the minimum period of time that a record is required to be kept by a qualifying retail CSP is two years.

Part 4 - Reporting

Section 11 Requirement to prepare complaints reports

Subsection 11(1) provides that a retail CSP that is or was a qualifying retail CSP for a record-keeping period must prepare a complaints report for that record-keeping period.

Subsection 11(2) describes the content of a complaints report, including that the complaints report must contain the information itemised in Schedule 1 of the Rules, and requires the report to be in the form specified from time to time on the ACMA's website.

Section 12 Requirement to give complaints reports to the ACMA

Subsection 12(1) requires a retail CSP that is or was a qualifying retail CSP for a record-keeping period to provide a complaints report to the ACMA, no later than 30 days after the end of that record-keeping period.

Subsection 12(2) details the electronic method which retail CSPs must use to provide the complaints report to the ACMA.

Part 5 - Audit

Section 13 Auditing of compliance with these Rules

Section 13 provides the ACMA with the power to require an audit for a qualifying retail CSP for a record-keeping period to ensure that they are compliant with the Rules. This section details how the ACMA may commence an audit process, and when a follow up audit may be required, as well as the threshold for the ACMA to commence an audit process.

Subsection 13(1) provides that section 13 applies to a retail CSP that is or was a qualifying retail CSP for the record-keeping period.

Subsection 13(2) provides that the ACMA may by notice in writing require a retail CSP to engage, at its own cost, an external auditor to conduct an audit of its compliance with the Rules. This subsection is subject to the qualification contained in subsection 13(5).

Subsection 13(3) provides that the ACMA's power to require a retail CSP to obtain an initial audit extends to one or more record-keeping periods where the retail CSP was required to provide a complaints report to the ACMA.

Subsection 13(4) provides the ACMA with the power to require a retail CSP to obtain a follow up audit in the event that the ACMA forms the view that the initial audit is inadequate.

Subsection 13(5) provides that the ACMA's power to commence an audit process only exists in circumstances where the ACMA forms a view on reasonable grounds that an audit is necessary.

Section 14 Audit terms of reference

Section 14 establishes a time line for the audit to take place. It imposes obligations on the retail CSP to comply with certain deadlines to ensure that the audit process is conducted efficiently and in a timely manner. The various deadlines set out in this section apply unless the ACMA has agreed in writing to an alternative deadline.

Subsection 14(1) notes that section 14 applies to a retail CSP that has received written notice from the ACMA in accordance with section 13(2).

Subsection 14(2) provides a time limit of 21 days after the receipt of the notice for retail CSPs to provide the ACMA with draft terms of reference for the audit.

Subsection 14(3) requires the ACMA to provide written notice to the retail CSP to confirm that it either approves the draft terms of reference or that it requires the provider to make changes to the draft terms of reference.

Subsection 14(4) provides that, within 14 days of receipt of a notice from the ACMA under paragraph 14(3)(b), requiring changes to the draft terms of reference, the retail CSP must provide the revised terms of reference to the ACMA.

Subsection 14(5) applies in circumstances where the ACMA has required a retail CSP to provide revised terms of reference under paragraph 14(3)(b). Under this subsection and following receipt of the revised terms of reference, the ACMA may either approve the revised terms of reference, or specify terms of reference of the audit where it has formed the view that the revised terms of reference do not give effect to the changes notified in the paragraph 14(3)(b) notice.

Subsection 14(6) particularises the requirements for the terms of reference of the audit including describing the objective of the audit, the relevant auditing standards and the timetable for conduct of the audit.

Subsection 14(7) specifies that the objectives of the audit for the purposes of paragraph 14(6)(a) must include determining whether the retail CSP has prepared any complaints reports under section 11 and kept records, in accordance with the requirements of the Rules.

Section 15 Nomination of auditor

Section 15 outlines the process for nominating an auditor, including the relevant time frames.

Subsection 15(1) provides that section 15 applies to retail CSPs that have received a written notice from the ACMA in accordance with paragraphs 14(3)(a), 14(5)(a) or 14(5)(b).

Subsection 15(2) requires a retail CSP to notify the ACMA of its choice of auditor within 21 days of receiving the relevant notice.

Subsection 15(3) provides that the ACMA may provide written notice to the retail CSP to confirm that it either approves of the retail CSP's choice of auditor or rejects the retail CSP's choice of auditor.

Subsection 15(4) provides that within 14 days after receipt of a notice under paragraph 15(3)(b), rejecting the retail CSP's choice of auditor, the retail CSP must notify the ACMA in writing of a new choice of auditor.

Subsection 15(5) provides that the ACMA may, by written notice, either approve the retail CSP's new choice of auditor or otherwise require the retail CSP to engage a specific auditor or select an auditor from a specified group of auditors.

Subsection 15(6) obliges a retail CSP to ensure that the auditor conducting the audit complies with the terms of reference in accordance with section 14, and is able to form an opinion regarding the achievement of the objectives referred to in subsection 14(7).

Section 16 Requirement to provide audit report to the ACMA

This section outlines the required process of a retail CSP providing an audit report to the ACMA.

Subsection 16(1) notes that section 16 applies to a retail CSP in the event that sections 13, 14 and 15 also apply to the retail CSP.

Subsection 16(2) provides that once a retail CSP has received the audit report from the auditor, the retail CSP must provide the ACMA with the audit report within 14 days, or such longer period where extended by the ACMA.

Subsection 16(3) obliges a retail CSP to ensure that the auditor conducting the audit provides an audit report that complies with the requirements of subsection 16(4).

Subsection 16(4) provides that an audit report must include:

- an audit plan outlining the scope and coverage of the audit;
- an audit memorandum stating how the audit scope and objectives have been applied; and
- an expression of opinion as to whether the retail carriage service provider has:
 - prepared any complaints reports required under section 11; and
 - kept any records of a kind described in Part 2 required under these Rules, in accordance with the requirements of the Rules.

Schedule 1 – Information to be included in a complaints report

Schedule 1 describes the information required to be included in a complaints report, in particular the records collected and kept by a retail CSP for the purpose of complying with sections 8 and 9 of the Rules.

Item 1 Information relating to the retail carriage service provider and record-keeping period

This item sets out the administrative information that must be included in a complaints report. The retail CSP must record the details listed in paragraphs (a) to (d).

Item 2 Information relating to the supply of services

This item requires that a complaints report must include all records kept pursuant to section 8 of the Rules for the record-keeping period. This includes all information relating to the number and types of services supplied by the provider on the last day of the record-keeping period.

Item 3 Information relating to complaints received

This item requires that a complaints report must include all records kept pursuant to section 9 of the Rules for the record-keeping period. This includes all information relating to the number and types of complaints received by the retail CSP during the record-keeping period.

Service type	No. of services in operation (subsection 8(2))	No. of complaints received (subsection 9(2))*	No. of complaints relating to connection to the service (subsections (9(3) and (4))*	No. of complaints relating to faults (subsections 9(3) and (4))*	No. of complaints relating to speed (subsection 9(3))*
No. of Services in operation (s 8(1))	Ombudsman referred complaints received* (s 9(1)(a))	No. of complaints referred to Ombudsman (s 9(1)(b))	Average no. of days taken to resolve a complaint* (s 9(1)(c))	within which 80% of complaints resolved* (s 9(1)(d))	Top three complaint types by volume* (s 9(1)(e))
•	•	•	•	•	•

Attachment B

Data points that must be reported to the ACMA by qualifying retail CSPs at the conclusion of each record-keeping period

Table 1

NOTE: categories marked ‘*’ exclude Ombudsman referred complaints

Table 2

Fixed broadband services	•	•			
Fixed line telephone services	•	•			
NBN FTTB	•	•	•	•	•
NBN FTTC	•	•	•	•	•
NBN FTTN	•	•	•	•	•
NBN FTTP	•	•	•	•	•
NBN fixed wireless internet	•	•	•	•	•
NBN HFC	•	•	•	•	•
NBN satellite	•	•	•	•	•
NBN voice only services	•	•	•	•	
Public mobile telecommunications services	•	•			

NOTE: categories marked ‘*’ exclude Ombudsman referred complaints