



Telecommunications (Consumer Complaints) Record-Keeping Rules 2018

The Australian Communications and Media Authority makes the following Rules under section 529 of the *Telecommunications Act 1997*.

Dated: 4 June 2018

Nerida O'Loughlin
[signed]
Member

James Cameron
[signed]
Member/General Manager

Australian Communications and Media Authority

Part 1—Preliminary

1 Name

These Rules are the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*.

2 Commencement

These Rules commence on 1 July 2018.

Note: All legislative instruments are registered on the Federal Register of Legislation kept under the *Legislation Act 2003*, which may be accessed at www.legislation.gov.au.

3 Authority

These Rules are made under section 529 of the *Telecommunications Act 1997*.

4 Application of Record-Keeping Rules

These Rules apply to retail carriage service providers.

5 Definitions

In these Rules:

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997*.

active service means a service in relation to which a retail carriage service provider has issued an invoice to, or received a payment from, a consumer for the provision of that service to the consumer during the relevant record-keeping period.

complaint means an expression of dissatisfaction made to a retail carriage service provider in relation to its telecommunications products or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected by the consumer. It does not include an initial call to request information or support or to report a fault or service difficulty unless a consumer advises that they want that call treated as a complaint, and does not include an issue that is the subject of legal action.

complaints handling process means a consumer complaints handling process established by a carriage service provider pursuant to section 7 of the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

complaints report means a report under section 11.

complaint type means each category into which a retail carriage service provider classifies complaints under its complaints handling process.

consumer means:

- (a) an individual who acquires or may acquire a telecommunications product for the primary purpose of personal or domestic use and not for resale; or
- (b) a business or non-profit organisation which acquires or may acquire one or more telecommunications products which are not for resale and which, at the time it enters into the consumer contract:
 - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the consumer contract; and
 - (ii) has or will have an annual spend with the retail carriage service provider which is, or is estimated on reasonable grounds by the retail carriage service provider to be, no greater than \$20,000.

consumer contract means an arrangement or agreement between a retail carriage service provider and a consumer for the supply of a telecommunications product to that consumer, and includes a standard form of agreement formulated by a carriage service provider for the purposes of section 479 of the Act.

Fibre to the Building connection means a connection used by NBN Co to facilitate the supply of an NBN voice service or an NBN broadband service in a multi-dwelling unit, such as an apartment block or building of a similar type.

Fibre to the Curb connection means a connection used by NBN Co to facilitate the supply of an NBN voice service or an NBN broadband service where the connection between the distribution point unit and the network termination device uses a copper line that is owned or controlled by, or operated by or on behalf of, NBN Co and carries communications using very high speed digital subscriber line 2 (VDSL2) technology or successor technologies, to a premises.

Fibre to the Node connection means a connection used by NBN Co to facilitate the supply of an NBN voice service or an NBN broadband service where an existing copper network is used to make the final part of an NBN connection, from a nearby cabinet or micro-node to a premises.

Fibre to the Premises connection means a connection used by NBN Co to facilitate the supply of an NBN voice service or an NBN broadband service where an optic fibre line is run from the nearest available fibre node, to a premises.

fixed broadband service means a broadband carriage service supplied solely using a line or a combination of lines, but does not include an NBN broadband service.

fixed line telephone service means a voice service over a copper pair-based or hybrid fibre coaxial access network or a fixed line broadband service, including a fixed voice over internet protocol service, but does not include an NBN voice service.

fixed voice over internet protocol service means voice traffic inside data packets over an IP network—used to make telephone calls using a data network (such as the internet) instead of over a fixed-line public switched telephone network service, but does not include an NBN voice service.

fixed wireless internet connection means a connection used to supply an NBN broadband service where the connection between the antenna of a base station and an antenna located at premises is provided using a radiocommunication link that is owned or controlled by, or operated on behalf of, NBN Co.

Hybrid Fibre Coaxial connection means a connection used by NBN Co to supply an NBN voice service or an NBN broadband service where the existing pay TV or cable network is used to make the final part of the NBN connection.

NBN means the national broadband network.

NBN broadband service means a broadband carriage service supplied using the NBN but it does not include an NBN voice only service.

NBN Co means NBN Co Limited (ACN 136 533 741) (even if its name is later changed).

NBN voice only service means a standalone voice telephony service supplied using the NBN.

NBN voice service means a voice telephony service supplied using the NBN.

Ombudsman referred complaint means a complaint received by the Telecommunications Industry Ombudsman, on receipt of which the Telecommunications Industry Ombudsman has referred the complaint back to the carriage service provider to give the carriage service provider another opportunity to resolve the complaint.

qualifying retail carriage service provider has the meaning given in section 7.

record-keeping period means a period of three months ending on 30 June, 30 September, 31 December or 31 March as the case may be.

retail carriage service provider means a carriage service provider that provides a carriage service directly to consumers.

satellite connection means a connection used to supply an NBN broadband service using the satellite network that is owned or controlled by, or operated by or on behalf of, NBN Co.

service in operation means a service that is both:

- (a) a telecommunications service; and
- (b) an active service.

Note: A service in operation can be pre-paid or post-paid, and it can be the subject of a contract of fixed duration or can be a service without a minimum term.

subscription broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

subscription television narrowcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

telecommunications goods means any goods supplied by a retail carriage service provider for use in connection with the supply of a telecommunications service, whether or not the goods are supplied in conjunction with, or separately from, a telecommunications service.

telecommunications product means telecommunications goods or a telecommunications service.

telecommunications service means:

- (a) a listed carriage service or any service supplied by a retail carriage service provider in connection with that service; and
- (b) a content service (other than a subscription broadcasting service or a subscription television narrowcasting service) provided by a retail carriage service provider in connection with the supply of a listed carriage service.

Note: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) carriage service;
- (b) carriage service provider;
- (c) content service;
- (d) listed carriage service;
- (e) public mobile telephone service;
- (f) Telecommunications Industry Ombudsman.

6 References to other instruments

In this instrument, unless the contrary intention appears:

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

Note 1: For references to Commonwealth Acts, or any other instruments, see section 589 of the Act, and section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

7 Qualifying retail carriage service provider

A retail carriage service provider is a **qualifying retail carriage service provider** for a record-keeping period if, on the last day immediately preceding the record-keeping period, the total number of services in operation supplied by the provider was 30,000 or more.

Part 2—Keeping of Records

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

- (1) For each record-keeping period, a qualifying retail carriage service provider must keep a record of the total number of services in operation supplied by the provider on the last day of the record-keeping period.
- (2) For each record-keeping period, a qualifying retail carriage service provider must keep a record of the number of each of the following types of services in operation supplied by the provider on the last day of the record-keeping period:
 - (a) fixed broadband services;
 - (b) fixed line telephone services;
 - (c) NBN broadband services connected by means of a:
 - (i) Fibre to the Building connection;
 - (ii) Fibre to the Curb connection;
 - (iii) Fibre to the Node connection;
 - (iv) Fibre to the Premises connection;
 - (v) fixed wireless internet connection;
 - (vi) Hybrid Fibre Coaxial connection;
 - (vii) satellite connection;
 - (viii) a connection type not referred to in subparagraphs (i) to (vii);
 - (d) NBN voice only services; and
 - (e) public mobile telecommunications services.

Note: A record must be kept of the number of services for each of the kinds of service connection in subparagraphs (c)(i) to (c)(viii).

9 Records relating to complaints received

- (1) In relation to the services in operation referred to in subsection 8(1), for each record-keeping period, a qualifying retail carriage service provider must keep records of:
 - (a) the total number of complaints, excluding Ombudsman referred complaints, received by the provider during the record-keeping period;
 - (b) the total number of Ombudsman referred complaints referred by the Telecommunications Industry Ombudsman during the record-keeping period;

- (c) the average number of days taken to resolve a complaint, excluding Ombudsman referred complaints, resolved by the provider during the record-keeping period;

Note: A carriage service provider has certain obligations in relation to resolving complaints under the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

- (d) 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;

Example: If 1000 complaints were resolved during the period and 800 of those complaints were resolved within 4 days or fewer, then the number for the purposes of paragraph (d) would be 4.

- (e) in descending order, the top three complaint types by volume, excluding Ombudsman referred complaints, of which the provider received complaints during the record-keeping period.
- (2) In relation to each of the types of service in operation referred to in subsection 8(2) during the record-keeping period, a qualifying retail carriage service provider must keep records of the number of complaints, excluding Ombudsman referred complaints, received by the provider during the record-keeping period.
 - (3) In relation to each of the types of NBN broadband services mentioned in paragraph 8(2)(c), a qualifying retail carriage service provider must keep records of the total number of complaints, excluding Ombudsman referred complaints, received by the provider during the record-keeping period regarding:
 - (a) connection to the service;
 - (b) faults with the service; and
 - (c) speed of the service.
 - (4) In relation to NBN voice only services supplied by a qualifying retail carriage service provider, the provider must keep records of the total number of complaints, excluding Ombudsman referred complaints, received by the provider during the record-keeping period regarding:
 - (a) connection to the service; and
 - (b) faults with the service.

Part 3—Retention of Records

10 Period for retention of records

If, in a record-keeping period, a retail carriage service provider is required to keep a record of a matter described in Part 2, the retail carriage service provider must retain that record for a period of at least two years after the end of the record-keeping period for which the record was kept.

Part 4—Reporting

11 Requirement to prepare complaints reports

- (1) A retail carriage service provider that is or was a qualifying retail carriage service provider for a record-keeping period must, in accordance with this section, prepare a complaints report in respect of that record-keeping period.
- (2) A complaints report must:
 - (a) include the information specified in Schedule 1; and
 - (b) be in the form specified from time to time on the ACMA's website at <https://acma.gov.au>.

12 Requirement to give complaints reports to the ACMA

- (1) A retail carriage service provider that is or was a qualifying carriage service provider for a record-keeping period must give to the ACMA a complaints report in respect of that record-keeping period no later than 30 days after the end of the record-keeping period.
- (2) A complaints report must be given to the ACMA by electronic transmission by completing the form published for the purposes of this paragraph from time to time on the ACMA's website at <https://acma.gov.au>, or by such other method as approved by the ACMA.

Part 5—Audit

13 Auditing of compliance with these Rules

- (1) This section applies to a retail carriage service provider that is or was a qualifying carriage service provider for a record-keeping period.
- (2) Subject to subsection (5), the ACMA may, in accordance with subsection (3) or (4), by written notice given to the retail carriage service provider, require the provider to engage, at its own cost, an external auditor to audit the compliance of the provider with these Rules.
- (3) The ACMA may require the retail carriage service provider to obtain one initial audit in respect of one or more record-keeping periods specified by the ACMA in respect of which the provider was required to give a complaints report to the ACMA under subsection 12(1).
- (4) The ACMA may require the retail carriage service provider to obtain one follow-up audit in respect of each initial audit required under subsection (3) if the ACMA forms a view on reasonable grounds that the initial audit is inadequate.
- (5) The ACMA may only require an audit under section (2) if it forms a view on reasonable grounds that an audit is necessary.

14 Audit terms of reference

- (1) This section applies to a retail carriage service provider that has received a notice given under subsection 13(2).
- (2) The retail carriage service provider must, no later than 21 days after receipt of the notice, or such longer period as the ACMA may agree in writing, give to the ACMA draft terms of reference of the audit.
- (3) The ACMA may, by written notice given to the retail carriage service provider:
 - (a) approve the draft terms of reference; or
 - (b) require the provider to make changes to the draft terms of reference.
- (4) Within 14 days after receipt of a notice given under paragraph (3)(b), or such longer period as the ACMA may agree in writing, the retail carriage service provider must provide to the ACMA revised terms of reference.
- (5) The ACMA may, by written notice given to the retail carriage service provider:
 - (a) approve the revised terms of reference; or
 - (b) specify the terms of reference of the audit, provided that it has formed the view on reasonable grounds that the revised terms of reference do not give effect to the changes notified under paragraph (3)(b).
- (6) The terms of reference of the audit must include:
 - (a) the objectives of the audit;
 - (b) the format of the auditor's opinion;
 - (c) the auditing standard or standards in accordance with which the audit must be conducted; and
 - (d) a timetable for the conduct of the audit, including the date by which the audit report is to be provided by the auditor to the retail carriage service provider.

Note: Section 16 sets out requirements relating to the provision of audit reports to the ACMA.

- (7) The objectives of the audit must include determining whether the retail carriage service provider:
 - (a) has prepared any complaints reports required under section 11; and
 - (b) kept any records of a kind described in Part 2 required under these Rules, in accordance with the requirements of these Rules.

15 Nomination of auditor

- (1) This section applies to a retail carriage service provider that has received a notice under paragraph 14(3)(a), 14(5)(a) or 14(5)(b), as the case may be.

- (2) The retail carriage service provider must, no later than 21 days after receipt of the notice, or such longer period as the ACMA may agree in writing, notify the ACMA in writing of its choice of auditor.
- (3) The ACMA may, by written notice given to the retail carriage service provider:
 - (a) approve the choice of auditor; or
 - (b) reject the choice of auditor.
- (4) Within 14 days after receipt of a notice given under paragraph (3)(b), or such longer period as the ACMA may agree in writing, the retail carriage service provider must notify the ACMA in writing of a new choice of auditor.
- (5) The ACMA may, by written notice given to the retail carriage service provider:
 - (a) approve the new choice of auditor; or
 - (b) require the provider to contract with a specified auditor or any auditor from a specified group of auditors.
- (6) The retail carriage service provider must take all necessary steps to ensure that the auditor:
 - (a) complies with the applicable terms of reference under section 14; and
 - (b) is able to form an opinion in relation to the achievement of the objectives of the audit referred to in subsection 14(7).

16 Requirement to provide audit report to the ACMA

- (1) This section applies to a retail carriage service provider if sections 13, 14 and 15 apply to the provider.
- (2) Upon receipt by the retail carriage service provider of the audit report from the auditor, the provider must:
 - (a) within 14 days; or
 - (b) or such longer period as the ACMA may agree in writing, give the audit report to the ACMA.
- (3) The retail carriage service provider must take all necessary steps to ensure that the auditor provides an audit report meeting the description in subsection (4).
- (4) For the purposes of this section, an **audit report** must include:
 - (a) an audit plan outlining the scope and coverage of the audit;
 - (b) an audit memorandum stating how the audit scope and objectives have been applied; and
 - (c) an expression of opinion as to whether the retail carriage service provider has:
 - (i) prepared any complaints reports required under section 11; and
 - (ii) kept any records of a kind described in Part 2 required under these Rules, in accordance with the requirements of these Rules.

Schedule 1 – Information to be included in a complaints report

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

A complaints report must include:

- (a) the name of the retail carriage service provider;
- (b) the ABN of the retail carriage service provider;
- (c) the date on which the complaints report was prepared; and
- (d) the start and end dates of the record-keeping period.

2 Information relating to the supply of services

A complaints report must include, in respect of the record-keeping period covered by the report, all of the records kept pursuant to section 8 of these Rules.

3 Information relating to complaints received

A complaints report must include, in respect of the record-keeping period covered by the report, all of the records kept pursuant to section 9 of these Rules.