

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Consumer Complaints Handling) Industry Standard Variation 2020 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has determined the *Telecommunications (Consumer Complaints Handling) Industry Standard Variation 2020 (No. 1)* (the **instrument**) under subsection 125AA(1) of the *Telecommunications Act 1997* (the **Act**), in accordance with sections 5 and 8 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* (the **Direction**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

The Minister has the power under subsection 125AA(4) of the Act to direct the ACMA to:

- (a) determine a standard under subsection 125AA(1) of the Act that:
 - (i) applies to participants in a specified section of the telecommunications industry;
 - (ii) deals with one or more specified matters relating to the activities of those participants; and
- (b) do so within a specified period.

The Direction was given to the ACMA by the Minister under subsection 125AA(4) of the Act and commenced on 23 December 2017.

Subsection 5(1) of the Direction 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 Direction.

Relevantly, section 8 of the Direction requires the ACMA to determine an industry standard relating to the handling of consumer complaints by carriage service providers (CSPs) and carriers.

Subsection 8(1) of the Direction requires the ACMA to determine an industry standard that:

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

Relevantly, paragraphs 8(2)(a) to (c) of the Direction provide that the industry standard must, among other things, deal with:

- (a) requirements for CSPs to establish a consumer complaints handling process, including minimum requirements in relation to timeliness, accessibility and transparency of that process;
- (b) a requirement that a consumer complaints handling process established in accordance with the standard must be free of charge to consumers;
- (c) requirements for CSPs to manage, monitor, analyse, record and report consumer complaints, including requirements for response times for steps in the consumer complaints handling process to be completed.

Subsection 125AA(5) of the Act provides that the ACMA must determine an industry standard under subsection 125AA(1) in accordance with a direction under subsection 125AA(4).

The ACMA made the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the **Standard**) consistent with the requirements in sections 5 and 8 of the Direction and it commenced on 1 July 2018.

The ACMA is also directed under subsection 5(4) of the Direction to vary an industry standard made under Part 2 of the Direction, as it considers necessary from time to time, in a like manner and subject to like conditions specified in subsection 5(1). Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, 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.

The instrument relies upon subsection 5(4) of the Direction and subsection 33(3) of the AIA to vary the Standard, as considered necessary by the ACMA, in a like manner and subject to the conditions imposed under sections 5 and 8 of the Direction.

Purpose and operation of the instrument

Background

Relevant background regarding the history and making of the Standard is set out in the Explanatory Statement to the Standard and the Direction, which background is also relevant to the instrument.

In mid-2018, the ACMA made several rules to improve the experience of consumers in transitioning to the NBN. These were informed by an industry information gathering exercise in 2017 and consumer research in late 2017 and early 2018. The rules were designed to resolve issues in relation to consumer complaints handling across the telecommunications industry, the provision of information that would enable consumers to directly compare service offerings, service continuity and fault rectification. They comprise the following:

- the Standard
- the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Consumer Information Standard**)
- the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (the **Service Continuity Standard**)
- the *Telecommunications Service Provider (NBN Service Migration) Determination* (the **Service Migration Determination**)
- the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* (the **Complaints RKR**s).

In January 2019 the ACMA decided to undertake a post-implementation review of the above instruments (the **review**), excluding the Complaints RKR (the **NBN consumer experience rules**).

The objective of the review was to ensure the rules were, almost a year following their introduction:

- achieving their intended outcomes/ particularly in light of changes to the NBN environment and
- operating in an efficient and effective manner.

The changes made to the Standard by the instrument support the above objectives. The key changes include:

- The definition of “consumer” in section 5 of the Standard has been revised to increase the threshold of the estimated annual spend that a business or non-profit organisation has with a retail CSP from \$20,000 to \$40,000. This will align the definition of “consumer” with that in the revised *Telecommunications Consumer Protections Code C628:2019* (the **TCP Code**).
- Changes that were made to simplify and clarify obligations, including:

- to the complaints handling process in sections 8 and 9 so that a CSP’s consumer-focussed complaints handling process includes processes and timeframes that are relevant for consumers and does not include content that would be more appropriate in a CSP’s internal process documents
- to clarify the process and timeframes for CSPs to resolve complaints about billing errors in sections 13 and 14.

The reasons for these changes are set out in the section on Consultation.

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

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

Documents incorporated by reference

The instrument does not incorporate any document by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA and subsection 125AA(3) of the Act.

The ACMA’s review of the Standard was informed by submissions received as part of an extensive two-stage consultation process (detailed below), the ACMA’s experience in monitoring compliance with the rules and recommendations regarding the Standard from Part A of the Consumer Safeguards Review conducted by the then Department of Communications and the Arts.

On 8 August 2019, the ACMA released a discussion paper seeking stakeholder views about the effectiveness and efficiency of the NBN consumer experience rules.

The ACMA received seven submissions from industry and consumer advocacy groups, including the Telecommunications Industry Ombudsman (**TIO**) and the Australian Communications Consumer Action Network (**ACCAN**). After the consultation period, all non-confidential submissions were made publicly available on the ACMA website.

On 17 December 2019, the ACMA undertook a further consultation process with stakeholders and the general public on the proposed revisions to the NBN consumer experience rules (see: <https://www.acma.gov.au/consultations/2019-12/proposed-revisions-nbn-consumer-experience-rules-consultation-422019>). The ACMA also consulted with Communications Alliance Ltd (**Communications Alliance**), as required by subsection 125AA(3) of the Act. As a part of this process, the draft proposed variations to the Standard (and the other NBN consumer experience rules) were made available through the ACMA’s website.

The ACMA received eight submissions from government, industry and consumer advocacy groups, including the Australian Competition and Consumer Commission, the TIO and ACCAN. After the consultation period, all non-confidential submissions were made publicly available on the ACMA website.

The ACMA considered all relevant issues raised by the submissions when making the instrument.

A broad range of feedback regarding the NBN consumer experience rules was received in response to consultation. However, only minor suggested changes to the Standard were received during consultation.

Below is a summary of comments received during consultation about the main variations proposed to the Standard:

- Industry bodies (Communications Alliance, Optus and Telstra) supported revisions to the definition of “consumer” in the Standard to align with the revised TCP Code.

- ACCAN suggested replacing the phrase “special needs” in section 8 of the Standard with “accessibility requirements” as the latter is the preferred language in the disability sector. This change has been made to the requirements for a CSP’s complaints handling process (section 8) and the same wording has been included in changes to section 11.
- Communications Alliance and Optus noted that some providers do not use a “reference number” to identify complaints. Optus suggested replacing “reference number” with “identifier”. Staff consider the use of the term “measure” is vague and does not have to be “unique”. Therefore, sections 8, and 20 have been varied to require CSPs to give complaints “a unique reference number or some other unique identifier”.
- Communications Alliance and Optus recommended a delayed commencement period of three months for the instrument to allow time for industry to implement changes required to respond to the variations, including: the revision of procedures, published documents, changes to IT systems and websites, and staff training. The ACMA’s analysis of the information provided indicated that a three month implementation period would be appropriate to accommodate the practical tasks providers would need to undertake to become compliant with the revised Standard. In July 2020, Communications Alliance revised its request for an implementation period from three months to six months due to the ongoing effects of the COVID-19 pandemic on industry. The revised definition of “consumer” will commence on 14 December 2020, to align with the commencement of that definition in all the NBN consumer experience rules. The remaining provisions of the instrument will commence on 1 April 2021.

Following a consideration of comments received during consultation, not all proposed variations have been made. These include the following proposed revisions:

- It was decided not to adopt the proposal to expand the definition of “complaint” to allow the TIO to make complaints directly to providers on behalf of a complainant in circumstances where a customer has been unable to successfully lodge a complaint with the CSP. Communications Alliance and Optus considered this change to be unnecessary arguing that it would add significant complications and risk of fraud. The ACMA agreed with Communications Alliance’s submissions that the TIO has established processes in place to submit formal complaints on behalf consumers and noting the ‘Enquiry Referral’ process established under the TIO’s complaint handling procedure.
- A proposed change to paragraph 10(g) to require a CSP’s public facing complaints handling process to state that complaints are classified into different categories and include a description of each category was not adopted. Optus considered that any requirement to include information about how a CSP categorises complaints into the external facing consumer complaints handling process was unnecessary, such information being best placed in a CSP’s internal policies. Paragraph 10(g) has been repealed because this information is not relevant for consumers in a CSP’s outwardly facing complaints handling process. The operative requirements have been re-introduced in subparagraph 11(b)(iii) to include a description of each category of complaint in the CSP’s documented internal processes which deal with complaint classification.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have more than a minor regulatory impact on businesses, community organisations or individuals (OBPR reference number 25870).

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 in **Attachment B** has been prepared to meet that requirement.

Notes to the *Telecommunications (Consumer Complaints Handling) Industry Standard Variation 2020 (No. 1)*

Part 1—Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Consumer Complaints Handling) Industry Standard Variation 2020 (No. 1)*.

Section 2 Commencement

This section provides for the variations set out in Schedule 1 to the instrument to commence on 1 April 2021, with the exception of the variation to the definition of consumer in section 5, which commences on 14 December 2020.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section provides that the instrument is made under subsection 125AA(1) of the *Telecommunications Act 1997* (the **Act**) and in accordance with sections 5 and 8 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*.

Section 4 Variations

This section provides that the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the **Standard**) is varied in accordance with Schedule 1.

Schedule 1

This schedule sets out the variations to the Standard.

Item [1] varies subparagraph (b)(ii) of the definition of “consumer” in section 5 of the Standard so that it aligns with that in the *Telecommunications Consumer Protection Code C628:2019* (the **TCP Code**). The revision increases the estimated annual spend that a business or non-profit organisation may have with a carriage service provider (**CSP**) and still be considered a “consumer” from \$20,000 to \$40,000. The revised TCP Code definition of “consumer” commenced on 1 January 2020. The revised definition of “consumer” for the purposes of the Standard will align with the revised definition in the TCP Code.

Item [2] varies section 5 of the Standard by inserting a new definition of “documented internal process”. The revision has been made in response to changes made to paragraph 8(2)(b) of the Standard and clarifies that a “documented internal process” means a CSP’s documented internal processes mentioned in paragraph 11(b) of the revised Standard.

Item [3] varies the definition of “internal escalation process” in section 5 of the Standard to replace the reference to “paragraph 10(b)” with a reference to “subparagraph 11(b)(ii)” — to align with the changes made to move the operative requirements about a CSP’s internal processes from section 10 to section 11.

Item [4] varies the definition of “internal prioritisation process” in section 5 of the Standard to replace the reference to “paragraph 10(a)” with a reference to “subparagraph 11(b)(i)” — to align with the changes made to move the operative requirements about a CSP’s internal processes from section 10 to section 11.

Item [5] varies paragraph 7(1)(b) of the Standard to ensure that a CSP is required to implement the minimum requirements for consumer complaints handling. Previously, a CSP was required to comply

with the minimum requirements as set out in its complaints handling process. However, if a CSP's complaint handling process was non-compliant with the minimum requirements set out in section 8, then the CSP was not directly required to comply with those minimum requirements, notwithstanding that such non-compliance would contravene paragraph 7(1)(a), which requires that a CSP must "establish a complaints handling process that includes the minimum requirements for consumer complaints handling". The variation addresses this issue and clarifies the intent of paragraph 7(1)(b) of the Standard.

Item [6] varies section 8 of the Standard to make minor clarifications to the minimum requirements regarding accessibility in a CSP's complaints handling process. For example: paragraph 8(1)(j) has been revised to clarify that a complaints handling process must set out the times during which a consumer can make a complaint and contact the CSP about their complaint by telephone or online.

Changes have been made to the language of the existing subparagraph 8(1)(k)(i), which has been transposed to the new subparagraph 8(1)(l)(ii), to replace the phrase "special needs" with "accessibility requirements". The wording has been adjusted to adopt the preferred language in the disability sector.

Subparagraph 8(1)(m) has been replaced with subparagraph 8(1)(n)(i) which clarifies the obligation to communicate to the consumer an acknowledgement of the receipt of complaints that were unable to be resolved in the first instance and how they can be monitored by the consumer. Consistent with the language used in subparagraph 8(1)(n)(i), subsection 12(1) and paragraph 20(b) have been varied to require a CSP to communicate to consumers "a unique reference number or some other unique identifier" for their complaint.

Item [7] varies section 9 of the Standard to require that a complaints handling process must identify the time periods associated with each step set out in subsection 12(2), paragraphs 13(1)(g), (h) and (j) and section 14 on the basis that those are the timeframes that are relevant for consumer information in the complaints handling process..

Item [8] varies section 10 of the Standard so that a CSP's consumer-focused complaints handling process does not include content that would be more appropriate in a CSP's internal process documents. The use of the phrase "easy to understand" in the Standard was designed to ensure that a CSP's complaints handling process is easily understood by consumers. The introduction of the phrase "in plain language" mirrors the equivalent language in clause 3.1.1 of the TCP Code.

Item [9] varies section 11 as a consequence of the changes made to section 10. Paragraph 11(b) reintroduces and clarifies the operative requirement that a CSP must have internal systems and processes in place for complaints management.

Item [10] varies section 12 to clarify the requirements imposed on a CSP to acknowledge complaints. Industry submissions to the December 2019 consultation noted that not all CSPs use a number as a unique identifier. Therefore, subsection 12(1) has been varied to require a CSP to give complaints "a unique reference number or some other unique identifier".

Item [11] varies paragraph 13(1)(f) of the Standard to require that a CSP must resolve complaints about alleged billing errors no later than the end of the billing period immediately following the consumer's current billing period, or within 40 calendar days, whichever occurs first. The maximum timeframe of 40 calendar days has been introduced to ensure that customers who are billed infrequently do not have to wait an unreasonably long time for credit to be applied to their accounts.

Item [12] varies subsections 14(2) and (3) to set out the requirements for a CSP to provide advice to a consumer about delays to the timeframes for resolving complaint so as to align with the new timeframes in paragraph 13(1)(f).

Item [13] varies section 15 to clarify the requirements and timeframes for a CSP to advise a consumer of internal and external escalation processes, including the TIO, when a consumer:

- communicates to a CSP that they are dissatisfied with the response times that apply to the handling or management of their complaint;
- communicates to a CSP that they reasonably want their complaint to be assessed and treated as an urgent complaint;
- communicates to a CSP that they are dissatisfied with the progress or resolution of a complaint; and
- enquires about their options to pursue a complaint further.

The variation clarifies the policy intent by inserting an operative provision for a CSP, in addition to the requirement to explain the prioritisation or escalation process for complaints to consumers, to prioritise or escalate the complaint in accordance with that process where appropriate.

Item [14] varies section 17 to adjust the timeframes associated with a CSP's attempts to contact a consumer to discuss their complaint or to advise them of the proposed resolution of their complaint. The requirement for there to be at least 5 separate attempts with each attempt on a separate calendar day, over a total period of not more than 10 calendar days has been included so that the timeframe aligns with the TIO's referral timeframes.

Item [15] varies paragraph 19(c) to clarify that CSPs are not just required to monitor problems and issues relating to complaints handling but to also take steps to address them.

Item [16] varies section 20 to clarify that if a consumer makes a complaint the CSP must keep a record of the complaint which includes a description of the agreed, as distinct from the proposed, resolution of the complaint. Paragraph 20(b) has also been varied to require CSPs to give complaints "a unique reference number or some other unique identifier".

Item [17] varies section 21 to make a minor editorial change to clarify the requirements that are imposed on a CSP to keep records that are sufficient to demonstrate its compliance with the requirements under Parts 2 to 5 of the Standard for at least two years from the date of creating the record, and make those records available to the ACMA on request.

Item [18] varies paragraph 26(d) to require that a CSP or carrier must acknowledge the receipt of a request for reasonable assistance within 2 working days.

Item [19] varies paragraph 26(e) to require that a CSP or carrier must advise the indicative response timeframes for responding to a request for reasonable assistance as soon as practicable.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications (Consumer Complaints Handling) Industry Standard Variation 2020 (No. 1)

Overview of the instrument

The ACMA has determined the *Telecommunications (NBN Consumer Information) Industry Standard Variation 2020 (No. 1)* (the **instrument**) under subsection 125AA(1) of the *Telecommunications Act 1997* (the **Act**). The purpose of the instrument is to vary the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the **Standard**).

Subsection 125AA(1) of the Act provides that the Australian Communications and Media Authority (the **ACMA**) may, by legislative instrument, determine an industry standard setting out rules that deal with one or more matters relating to a participant in a particular section of the telecommunications industry to which the Standard applies. Subsection 125AA(5) of the Act provides that the ACMA must not determine a standard unless it does so after receiving written direction from the Minister.

The Standard sets out a regulatory framework for Carriage Service Providers (**CSPs**) when dealing with customer complaints.

Part 2 of the Standard requires a CSP to establish a complaints handling process that includes minimum requirements for complaints handling relating to accessibility, timeliness, transparency, and to comply with those requirements.

Part 3 of the Standard imposes requirements on CSPs regarding the management of complaints and response times, including the prioritisation and escalation of complaints. Part 4 of the Standard contains provisions requiring CSPs to establish processes, procedures and systems for monitoring and analysing their complaints records to attempt to identify systemic issues and problems and prevent them from recurring.

Part 5 of the Standard sets out the requirements for CSPs to keep records of complaints for at least two years. Part 6 of the Standard imposes requirements on CSPs and carriers to provide reasonable assistance to retail CSPs and keep records demonstrating compliance with Part 6, to ensure upstream providers (such as NBN Co Limited), and other intermediaries provide reasonable assistance to retail CSPs and the Telecommunication Industry Ombudsman to resolve consumer complaints.

The variations made by the instrument are minor and designed to clarify or simplify some of the existing requirements on CSPs, including to:

- provide accessibility information and timeframes that are relevant to consumers in the CSP's externally facing complaints handling policy. Documented internal processes are required to provide information more relevant for CSP staff;
- insert an operative provision for CSPs to prioritise or escalate complaints where appropriate;
- clarify that CSPs are required not just to monitor problems and issues relating to complaints handling but to take action to address them;
- clarify that if a consumer makes a complaint the CSP must keep a record of the complaint which includes a description of the agreed resolution of the complaint;
- require a CSP to give complaints a unique reference number or some other unique identifier consistent with other requirements in the Standard.

Human rights implications

The ACMA has assessed whether the instrument is 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.

In the Statement of Compatibility with Human Rights for the Standard, the ACMA formed the view that the Standard engaged the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (**the ICCPR**).

Right to privacy

Article 17 of the ICCPR provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 17 of the ICCPR (like Article 16 of the Convention on the Rights of the Child and Article 22 of the Convention on the Rights of Persons with Disabilities) protects the right to freedom from unlawful or arbitrary interference with privacy. Certain provisions in the Standard could be considered to limit the right to privacy. However, the right to privacy is not an absolute right and a limitation is not incompatible with the right itself.

The ACMA considers that the instrument also engages the right to privacy in so far as it makes minor variations to the provisions in the Standard requiring CSPs to collect and use personal information regarding complaints from consumers for at least two years, to identify systemic issues and problems, and prevent those systemic issues and problems, and related complaints, from recurring.

For the same reasons as are set out in the Statement of Compatibility with Human Rights for the Standard, the ACMA considers that the requirements are reasonable, necessary, and proportionate.

Conclusion

The instrument is compatible with human rights as any interference with privacy which it may entail is neither unlawful nor arbitrary, but reasonable, necessary and proportionate to its legitimate purposes.