

***Legislation (Telecommunications Customer Service Guarantee Instruments)
Sunset-altering Declaration 2021***

REPLACEMENT EXPLANATORY STATEMENT

Issued by the Attorney-General in compliance with
section 15G of the *Legislation Act 2003*.

INTRODUCTION

The *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Declaration is subject to the disallowance provisions of the Legislation Act.

OUTLINE

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration, unless it was registered on 1 January 2005.

Under subsection 51A(1) of the Legislation Act, the Attorney-General may issue a declaration aligning the sunsetting days of two or more instruments, if satisfied on application by the rule-maker of the relevant instruments that:

- (a) all the instruments to be reviewed:
 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The day specified in the sunset-altering declaration must be 1 April or 1 October of a year that is up to five years later than the earliest sunsetting day of the instruments. The instruments will then be repealed on the day specified in the declaration instead of the previously scheduled sunsetting day of each instrument. This allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset, or to sunset earlier than the originally scheduled sunsetting day.

The objective of issuing a sunset-altering declaration is to facilitate either: the undertaking of a single review of the fitness-for-purpose of two or more thematically related legislative instruments; or the implementation of such a review's findings. This reduces administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing related legislation at different times.

The Declaration aligns the sunset dates of the following instruments (together, the CSG Instruments) to 1 October 2023:

- (a) the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (the CSG Benchmarks Instrument);
- (b) the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* (the CSG Amendment Standard);
- (c) the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* (the CSG RKR); and
- (d) the *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard).

The Customer Service Guarantee (CSG) is a safeguard for telephone users and has the greatest impact on Telstra as the Universal Service Provider. The CSG sets out timeframes for connection, fault repair and appointment keeping and providing for payments where these timeframes are not met. The CSG Instruments also provide the timeframes and performance benchmarks for connection and repair under the universal service obligation (USO) covering voice telephone services.

Deferring the sunset of the CSG Instruments will keep the CSG in operation pending a thematic review of the CSG Instruments by the new sunset day. The thematic review will be able to have regard to wider changes taking place in the telecommunications industry. The ongoing operation of the CSG will further support the Government's ongoing commitment to the USO and the wider Universal Service Guarantee (USG), of which the USO is now part, as indicated in the media release of the then Minister for Communications and Arts on 5 December 2018.

PROCESS BEFORE DECLARATION WAS MADE

Regulatory impact analysis

Sunset-altering declarations are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is ID 19486.

Consultation before making

Before the Declaration was issued, the Assistant Minister to the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Hon Paul Fletcher MP is the Minister for Communications, Urban Infrastructure, Cities and the Arts, and is the relevant rule-maker for the purposes of section 6 of the Legislation Act for the CSG Benchmarks Instrument. The Australian Communications and Media Authority (ACMA) is the relevant rule maker for the CSG Amendment Standard, the CSG RKR, and the CSG Standard.

The then Minister for Communications, Cyber Safety and the Arts (now the Minister for Communications, Urban Infrastructure, Cities and the Arts) and the Chair of ACMA jointly prepared and approved the application to the Attorney-General setting out the reasons in support of issuing the Declaration. In this instance, the application was considered by the Assistant Minister to the Attorney-General.

In preparing this application, the Minister and the Chair of ACMA had regard to relevant consultation undertaken over a number of years, including on the universal service obligation (USO) which the CSG supports, as well as the CSG itself. As such, the decision to defer the sunset of the CSG instruments is part of a broader policy reform process that has been underway for some time and is ongoing. This includes several interrelated parts including reform of the USO, implementation of the

statutory infrastructure provider (SIP) regime and the reform of legacy safeguards like the CSG. The Government has been undertaking extensive consultation with industry and the community on these broader policy reforms since at least 2015. In addition to two regional telecommunications reviews in 2015 and 2018 and a review of the USO by the Productivity Commission in 2016-17, the then Department of Communications and the Arts did further work on USO reform in 2018, and the Government also initiated the Consumer Safeguards Review in 2018. The report of Part B of the Consumer Safeguards Review, published in December 2019, goes directly to the future of the CSG.

The work described above has involved frequent engagement with the Australian Communications Consumer Action Network (ACCAN) and other members of the Regional, Rural and Remote Consumer Coalition (RRRCC). It is clear from this engagement they continue to support the current arrangements pending further review. Conversely, industry has called for further review and potential reform of these arrangements, but has not generally focused on their operational details, to which the CSG Instruments concerned here relate. In light of all this work the Government is confident it has a solid understanding of the view of industry and the wider community on the CSG and its interrelationship with other consumer safeguards.

The Government has been clear on its policy position as a result of this work. In December 2018, it confirmed it was introducing a new Universal Service Guarantee (USG) for broadband as well as voice, which would be supported by the new SIP regime and incorporate the existing USO. It indicated the USO would remain in place in its existing form as an important consumer safeguard, particularly for rural and remote consumers, until there was a robust and proven alternative. A Departmental summary report on the development of the USG¹ was published in late 2018.

The CSG is an important adjunct to the USO, providing the timeframes and performance benchmarks for connection and repair of voice telephone services. It is also an important consumer protection in its own right.

It is also important to note that a Ministerial Direction to the ACMA, the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011*, which is pivotal to the CSG, is not subject to sunset, and as such would have required the ACMA to have kept a CSG standard in place beyond its nominal sunset date.

The Government has also indicated it is committed to looking for better ways to deliver the USG and to put in place a more forward looking consumer safeguards regime, which was subsequently reflected in the Part B report. However, until these wider reforms are more advanced, the Government considers legacy measures, including the CSG, must remain in place to maintain consumer protections.

Another relevant factor was the impact of COVID-19. Due to both national and localised lockdowns, the telecommunications industry was under significant operational pressures for large parts of 2020. This would have impacted on industry's capacity to engage in a further earlier review. Moreover, due to COVID-19 consumers were, and continue to be, more and more dependent on basic connectivity and the protection offered by the CSG. In light of this, the decision to seek an alignment of sunset dates was agreed in late 2020.

Accordingly, a review of the individual instruments was not undertaken in advance of the original sunset dates, given the significant consultation over a number of years on the CSG and related policy matters, such as the USO, as described above. The level of consultation undertaken was similar, if not greater, to what would otherwise occur through a thematic review.

¹ www.communications.gov.au/documents/development-universal-service-guarantee-summary-report

However, prior to the Minister and the ACMA Chair writing to the Attorney-General regarding the thematic review of the CSG Instruments, the Department of Infrastructure, Transport, Regional Development and Communications also canvassed a thematic review of the CSG Instruments with Telstra, given the CSG has the greatest impact on Telstra as the Universal Service Provider. Where Telstra provides standard telephone services (STS) under the USO, it must generally meet the connection, repair and appointment keeping timeframes set out in the CSG standard, or pay compensation. In contrast, other providers have no statutory requirement to provide STS, and where they do, they may seek full or partial waivers from the CSG obligations. Telstra did not raise any significant concerns. Prior to the making of this Declaration the Department also confirmed with ACCAN its support for continuation of the CSG Instrument pending further review. ACCAN is Australia's peak body for consumer representation in communications.

Broader consultation with relevant or affected stakeholders will occur as part of the proposed thematic review which will need to take place before the proposed new sunseting date. The thematic review will allow the views of all stakeholders about the CSG to be fully explored, including providing an opportunity for industry and other stakeholders to raise any specific operational issues about the CSG not previously surfaced.

The review will be most productive if implementation of the SIP regime is further advanced, and so the exact timing for a review will need to take this into account. Given the likely range of stakeholder views and the need to consider four related instruments, public consultation as part of the review is anticipated to take around six months to complete. As such, if it cannot be started sooner, the review will need to start no later than late 2022 or early 2023.

Accordingly, further consultation on the Declaration was considered unnecessary. Any replacement instruments would be subject to parliamentary oversight, including whether adequate consultation occurred with persons likely to be affected by the instruments.

Statutory preconditions relevant to the Declaration

In order to align the sunseting day of two or more instruments, the Attorney-General must be satisfied on written application from the relevant rule-maker that the statutory conditions in paragraphs 51A(1)(a) and (b) of the Legislation Act are met. The statutory conditions are that:

- (a) all the instruments to be reviewed:
 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In terms of process, the Legislation Act requires:

- (a) the responsible rule-maker to apply to the Attorney-General,
- (b) the Attorney-General to be satisfied of the statutory conditions, and
- (c) the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The Declaration aligns the sunset dates for the CSG Instruments to enable ACMA and the Department of Infrastructure, Transport, Regional Development and Communications to complete a thematic review.

As noted above, the relevant rule-makers for the CSG Instruments jointly prepared and approved an application to the Attorney-General seeking an alignment of the relevant sunset dates. In this instance, the application was considered by the Assistant Minister to the Attorney-General.

On consideration of this application, the Assistant Minister to the Attorney-General was satisfied that the criteria in paragraphs 51A(1)(a) and (b) of the Legislation Act were met.

Statement of Reasons for issuing of the Declaration

For the purposes of subsection 51A(4) of the Legislation Act, this section sets out the statement of reasons for the issue of the Declaration.

As outlined above, the Declaration aligns the sunset dates for the CSG Instruments to enable ACMA and the Department of Infrastructure, Transport, Regional Development and Communications to complete a thematic review of the instruments. In their application, the relevant rule-makers for the CSG Instruments propose that the CSG Instruments be the subject of a thematic review because the instruments work as a coordinated package as follows:

- the CSG Standard (and CSG Amendment Standard) determines the key timeframes and damages regime (damages payable for contravention of performance standards) applying to carriage service providers (CSP) in the provision of voice phone services, and
- the CSG Benchmarks Instrument and CSG RKR support performance levels and monitoring and reporting on the overall performance of larger CSPs against the CSG Standard.

Aligning the sunset dates of the CSG Instruments will allow sufficient time for the review to be undertaken and for any resulting legislative package to be developed to implement the outcomes of the review. The review will consider if the CSG Instruments are to be repealed, allowed to sunset, or to be remade or amended.

As such, the sunset-altering instrument is consistent with the policy intent of the sunset regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

More information

Further details on the provisions of the Declaration are provided in [Attachment A](#).

The CSG Instruments which are the subject of the Declaration, and which will now all sunset on 1 October 2023, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the Declaration, and from ACMA and the Department of Infrastructure, Transport, Regional Development and Communications about the CSG Instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021* (the Declaration) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview of the Declaration

The Declaration is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). Under that subsection, the Attorney-General can align the sunseting days of two or more legislative instruments if satisfied that:

- (a) all the instruments to be reviewed:
 - i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In this instance, the Assistant Minister to the Attorney-General is performing the functions of the Attorney-General under the Legislation Act.

The day specified in the sunset-altering declaration must be 1 April or 1 October of a year that is up to five years later than the earliest sunseting day of the instruments. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the previously scheduled sunseting day. The instruments specified in the Declaration are:

- (a) the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011*;
- (b) the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)*;
- (c) the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011*; and
- (d) the *Telecommunications (Customer Service Guarantee) Standard 2011*.

The Declaration aligns the sunseting dates of the above instruments (the CSG Instruments) to 1 October 2023. The objective of issuing the Declaration is to facilitate the undertaking of a single thematic review into the fitness-for-purpose of the CSG Instruments. This will reduce administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing the related legislation at different times.

Human Rights Implications

The Statement of Compatibility with Human Rights for a sunset-altering declaration focuses on the effect of the aligning instrument, rather than the continuing operation of the instruments that have been aligned. The Declaration itself is machinery in nature. It does not alter the arrangements in place under the CSG Instruments, but extends the operation of the CSG Instruments to 1 October 2023.

Before issuing the Declaration, the Assistant Minister to the Attorney-General was satisfied that all instruments specified in the Declaration would be subject to a single thematic review. A thematic review is an effective mechanism for determining whether the instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of the instruments and, where appropriate, reducing unnecessary regulation. The human rights impact of the CSG Instruments will be considered during the proposed review, and addressed in the Statement of Compatibility of each replacement instrument.

Conclusion

The Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act, as it does not raise any human rights issues.

NOTES ON THE DECLARATION**Section 1 Name**

This section provides for the Declaration to be named the *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021*. The Declaration may be cited by that name.

Section 2 Commencement

This section provides for the Declaration to commence on the day after it is registered.

Section 3 Authority

This section provides that the Declaration is made under subsection 51A(1) of the *Legislation Act 2003*.

Section 4 Repeal of instruments to facilitate review etc.

This section provides that the following instruments are repealed by section 51A of the *Legislation Act 2003* on 1 October 2023:

- (a) the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011*;
- (b) the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)*;
- (c) the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011*; and
- (d) the *Telecommunications (Customer Service Guarantee) Standard 2011*.

1 October 2023 is the aligned sunset day for those instruments, which would otherwise have sunset on 1 April 2021 and 1 October 2021, variously.

Section 5 Repeal of this instrument

This section provides that the Declaration is repealed at the start of 2 October 2023.