

Explanatory Statement

Issued by the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Customer Service Guarantee) Standard 2023

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Customer Service Guarantee) Standard 2023* (**the CSG Standard**) under sections 115, 117 and 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Under section 124 of the Act, the Minister may give a direction to the ACMA in relation to the use of its powers under Part 5 of the Act (including its powers under sections 115, 117 and 120 of the Act). Part 5 of the Act deals with the Customer Service Guarantee (**CSG**), which is the term used to describe a range of customer service performance standards which carriage service providers (**CSPs**) are required to comply with.

The Minister made the *Telecommunications (Customer Service Guarantee) Direction 2023* (**the CSG Direction**) on 17 July 2023 and it came into effect on 20 July 2023. The CSG Direction requires the ACMA to make a new standard in substantially the same terms as the *Telecommunications (Customer Service Guarantee) Standard 2011* (**the 2011 CSG Standard**) (as amended by the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* (**the 2011 CSG Amendment Standard**)), to be in place for a three year period. The 2011 CSG Standard was made under sections 115, 117 and 120 of the Act.

Under section 124 of the Act, the ACMA must comply with the CSG Direction in exercising its powers under Part 5 of the Act. The ACMA cannot make a standard under section 115 of the Act unless it has been directed to do so by the Minister.

Section 115 of the Act provides for the ACMA to make standards to be complied with by CSPs in relation to:

- (a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carriage services; and
- (b) the periods that CSPs may offer to customers when making those arrangements; and
- (c) the compliance by CSPs with the terms of those arrangements; and
- (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services, where the rectification follows the making of a customer report about a fault or service difficulty; and
- (e) the keeping of appointments to meet customers, or representatives of customers, where the appointment relates to:
 - (i) a connection of a kind covered by paragraph (a); or
 - (ii) a rectification of a kind covered by paragraph (d); and
- (f) any other matter concerning the supply, or proposed supply, of a carriage service to a customer.

Section 117 of the Act provides for the ACMA to specify a scale of damages for contraventions of standards under section 115 of the Act.

Section 120 of the Act allows that the ACMA may make provision for customers of CSPs to waive, in whole or in part, their protection and rights under Part 5 of the Act.

The CSG Standard repeals the 2011 CSG Standard, which was due to sunset on 1 October 2023.

Purpose and operation of the CSG Standard

The CSG Standard sets out the applicable CSG performance standards for telephone users, and therefore is a key telecommunications consumer safeguard. The CSG Standard sets out the standards for connection, appointment keeping, and fault or service difficulty repair. It also specifies the compensation available to customers under the Act when these standards are not met, and sets out the circumstances in which a consumer can agree to waive their rights under the CSG Standard.

The sunset date of both the 2011 CSG Standard and 2011 CSG Amendment Standard were aligned to 1 October 2023 by the *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021* on 18 March 2021 to enable a thematic review of CSG arrangements.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) completed the thematic review in June 2023. The CSG Direction was made following the thematic review, to provide for CSG arrangements to continue for an interim period of three years, while the Government considers long-term arrangements.

A provision-by-provision description of the CSG Standard is set out in **Attachment A**.

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

Documents incorporated by reference

The CSG Standard incorporates the following Acts and legislative instruments (including by adoption of definitions), or otherwise refers to them:

- the Act;
- the AIA;
- the LA;
- the *Telecommunications Act 1997 (Telecommunications Act)*; and
- the *Telecommunications (Emergency Call Service) Determination 2019*.

The Acts and legislative instruments listed above may be accessed, free of charge, from the Federal Register of Legislation (www.legislation.gov.au). The Acts and instruments listed above, where they are incorporated, are incorporated as in force from time to time, in accordance with section 589 of the Telecommunications Act.

An “urban centre” and a “locality” are defined for the purposes of section 14 and Part 2 of Schedule 1 to the CSG Standard, in subsection 14(6) of, and item 102 of Schedule 1 to, the CSG Standard. Both are to be determined in accordance with criteria used by the Australian Bureau of Statistics (ABS) for the most recent Australian Census. A note to each of those provisions refers to the publication “Australian Statistical Geography Standard (ASGS) Edition 3” as published by the ABS, which provides information about the method of delineation of urban centres and localities used by the ABS, together with a listing of current urban centres and localities. The criteria used by the ABS and the publication referred to are incorporated as in force or existing from time to time, in accordance with

section 589 of the Telecommunications Act. The publication referred to is available, free of charge, from the ABS website: www.abs.gov.au.

The 2011 CSG Standard is also incorporated by reference, as in force immediately before the day on which the New CSG Standard commences, to support transitional arrangements as set out in Part 6 of the CSG Standard. The 2011 CSG Standard is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the CSG Standard 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.

Department CSG Thematic Review

The CSG Direction is prescriptive and limits the discretion the ACMA may exercise in making the CSG Standard. The prescriptive nature of the Direction means consultation on the substantive issues associated with the CSG occurred in relation to the Direction.

The Department undertook a 6-week public consultation on the CSG from 17 February to 27 March 2023. The thematic review received 14 submissions from industry, consumer and government groups and individuals. As a result of the consultative process, the Minister decided to issue the CSG Direction to the ACMA to remake the sunseting CSG Standard instrument for a period of three years, with necessary updates and minor amendments. During that period, further consideration by the Department of the long-term future of the CSG and how consumers can best be protected is to take place.

The public consultation and outcome is available online at www.infrastructure.gov.au/have-your-say/thematic-review-customer-service-guarantee-csg.

The Department announced the outcomes of the thematic review on 7 June 2023.

ACMA targeted CSG Standard consultation

The ACMA conducted targeted consultation between 28 July and 4 August 2023 with Telstra, Optus and the Australian Communications Consumer Action Network (ACCAN) on the proposed CSG Standard's suitability to meet the Direction.

Based on the prescriptive nature of the Direction, ACMA's extensive consultation and interaction with stakeholders broadly on telecommunications consumer protection in recent times, and the public consultation undertaken as part of the thematic review by the Department, a targeted consultation on the CSG Standard was considered suitable. Telstra was included, as it is the primary universal service provider and therefore the CSP which is most affected by the obligations set out in the CSG Standard (noting that services supplied in fulfilment of the universal service obligation, which requires certain public interest telecommunications services to be supplied to consumers, cannot be subject to any waiver of the protections in the CSG Standard). ACCAN was consulted as the peak telecommunications consumer group representing the consumers the CSG is designed to protect. Optus had previously indicated a preference to be consulted on the CSG as an affected stakeholder based on their legacy CSG customers.

None of the above stakeholders objected to the consultation draft CSG Standard. ACCAN provided a response stating it considered the consultation draft met the requirements of the Direction. Each of Telstra and Optus replied indicating they did not have concerns to raise regarding the CSG Standard.

Given the prescriptive nature of the CSG Direction, the minor or machinery nature of changes from the 2011 CSG Standard, and the flagged prospect of near-term reconsideration of the CSG, ACMA's targeted consultation indicated general acceptance of the CSG Standard.

Regulatory impact assessment

The Department considered whether a regulatory impact analysis process was required by engaging with the Office of Impact Assessment (**OIA**) in undertaking a preliminary assessment in relation to the Direction to make the CSG Standard. As the CSG Direction is prescriptive in nature and directs the ACMA to make minor or machinery changes, the OIA clarified that no regulatory impact analysis was required for the CSG Standard – OIA reference: 23-04883.

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 with human rights 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 CSG Standard

The CSG Standard replaces the 2011 CSG Standard (as amended by the 2011 CSG Amendment Standard). Both the 2011 CSG Standard and the 2011 CSG Amendment Standard are due to sunset on 1 October 2023. The anticipated outcome is the ongoing effective and efficient operation of the CSG performance standards which the ACMA is required, by the CSG Direction made under section 124 of the Act, to make and have in place on or before 1 October 2023.

Human rights implications

The ACMA has assessed whether the CSG Standard 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.

Having considered the likely impact of the CSG Standard and the nature of the applicable rights and freedoms, the ACMA has formed the view that the CSG Standard does not engage any of those rights or freedoms.

Conclusion

The CSG Standard is compatible with human rights as it does not raise any human rights issues.

Notes to the *Telecommunications (Customer Service Guarantee) Standard 2023*

Part 1 – Preliminary

Section 1 Name

This section provides the name of the instrument is the *Telecommunications (Customer Service Guarantee) Standard 2023*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

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

Section 3 Authority

This section identifies the provisions that authorise the making of the instrument, namely sections 115, 117 and 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act)*.

Section 4 Repeal of the *Telecommunications (Customer Service Guarantee) Standard 2011*

This section provides that the *Telecommunications (Customer Service Guarantee) Standard 2011 (F2011C00791)* is repealed.

Section 5 Repeal of this standard

This section provides that the standard is repealed the day after the end of the period of 36 months from the day of commencement.

Section 6 Definitions

This section defines key terms used throughout the instrument.

Other expressions used in the instrument are defined in the Act, the *Telecommunications Act 1997*, and the *Acts Interpretation Act 1901*.

Section 7 References to other instruments

This section has the effect that in the instrument, 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 or writing is a reference to that other instrument or writing as in force from time to time.

Part 2 – Performance Standards

Division 1 – Preliminary

Section 8 – Arrangements with customers

Section 8 provides that, in its dealings with customers, a CSP must make reasonable efforts to obtain the agreement of the customer, particularly in regard to the connection period and to the rectification period for faults or service difficulties. It is intended that CSPs should offer reasonable arrangements in relation to the period that may be taken by the CSP to connect a customer to a service and to rectify faults or service difficulties for the customer. Subsection 8(3) requires a CSP to comply with arrangements it has made under this section.

Subsection 8(4) provides that CSPs must keep a record of the arrangements made with customers and must retain a copy of that record for a period of at least two years. This retention period has been selected as it is consistent with subsection 116(6) of the Act, which requires an action for damages to be instituted within a two-year period. See also subsection 35(1) of the CSG Standard, which requires the retention of records relating to the waiver by a customer of protection and rights under Part 5 of the Act for a period of at least two years.

Subsection 8(5) provides that if, when making arrangements with a customer, a CSP has relied on or is likely to rely on an exemption from compliance with the CSG Standard, the CSP must inform the customer of its reliance or likely reliance on the exemption. This is intended to achieve the objective of customers being informed of when a CSP is relying on or likely to rely on an exemption. See also sections 26 and 27 of the CSG Standard, which deal with notification requirements CSPs must follow in relation to reliance on an exemption.

Section 9 – Information to be given to customers

Section 9 places obligations on CSPs to inform customers about the CSG. Subsection 9(1) requires a CSP to provide written information to customers about the applicable performance standards, the CSP's obligations under those standards and the customer's entitlements to damages for contravention of a performance standard, as soon as practicable after connecting the customer to a CSG service. Subsections 9(2) and (3) require a CSP to make the same information available to its customers at least every two years and on request by the customer.

Section 10 – Cooperation of customers with carriage service providers

Subsection 10(1) sets out matters intended to provide reasonable exemptions to the performance standards for a CSP in certain cases – i.e. where a reasonable offer of an alternative or interim service has been made but declined by the customer, or where the customer accepts that offer and has been given sufficient information by the CSP about the service for the customer to make an informed judgment about whether to accept that offer. Definitions for interim and alternative service are included in section 6 of the CSG Standard. Subsection 10(1) is intended to allow CSPs to provide a customer with a temporary or alternative service in cases where they are unable to meet the CSG performance standard associated with the connection or rectification of a service.

Subsections 10(2) and 10(3) define a reasonable offer to supply an interim or alternative service including what options and information must be given to a customer regarding the benefits of the functionality and the terms and conditions of supply of that service. The intention of these provisions is that a CSP must supply a customer with sufficient information about a proposal for the supply of an interim or alternative service so that a customer is able to make an informed choice.

Subsection 10(4) sets out factors relating to the conduct of the customer which must be considered when determining whether a CSP has contravened a CSG performance standard in relation to the customer.

Subsection 10(5) provides that a CSP must not supply the customer with an interim service for a period of more than six months in lieu of the connection of a standard telephone service, unless the customer agrees with that arrangement.

Division 2 – Connection to specified services

Section 11 – Guaranteed maximum connection periods

Subsection 11(1) provides for the guaranteed maximum connection period for connections for sites where the service to be connected is in close proximity to an external plant facility used to supply the service and the facility has sufficient available capacity, to be determined under Part 2 of Schedule 1.

Where the site is not in close proximity to an external plant facility or where there is insufficient available capacity to supply the service, subsection 11(2) provides that the guaranteed maximum connection period for a customer is 20 business days.

Subsection 11(3) requires a CSP to comply with a request for connection by a customer within the guaranteed maximum connection period, unless arrangements for a shorter or longer connection period have been made with the customer under section 12.

Subsection 11(4) provides that a request to connect is only taken to have occurred when the customer has given the CSP the information it reasonably requires for those purposes.

Subsection 11(5) has been included to make it clear that the guaranteed maximum connection period is not intended to apply if a customer who is connected by a CSP to a specified service requests another CSP to supply the service. This provision is intended to clarify that this section does not apply to the transfer of services between CSPs — known more generally in the industry as ‘churn’.

Section 12 – Arrangements about connection periods

Subsection 12(1) provides that a CSP may make arrangements with a customer for a shorter connection period than the guaranteed maximum connection period which would otherwise apply under the CSG Standard. Subsection 12(2) provides that a CSP may make arrangements with a customer for a longer connection period than the guaranteed maximum connection period which would otherwise apply under the CSG Standard if that is what the customer wants, or in certain other (limited) circumstances where the customer has been made an offer to agree to a longer connection period. Before or when a customer accepts the CSP’s offer of a longer connection period, under subsection 12(3), the CSP must inform the customer that the arrangement will result in a connection being made outside the guaranteed maximum connection period and that the protections and rights under Part 5 of the Act will otherwise apply to the service being supplied.

Division 3 – Rectification of faults or service difficulties

Section 13 – Application of Division 3

Section 13 provides that Division 3 does not apply to a fault or service difficulty in relation to call barring or a limitation on the making of external calls if the service was supplied by the CSP with that feature because of the customer’s credit standing.

Section 14 – Guaranteed maximum rectification periods

Section 14 requires a CSP to rectify a fault or service difficulty reported to the CSP by a customer within the applicable guaranteed maximum rectification period.

Subsection 14(2) provides that the guaranteed maximum rectification period for an urban centre with a population equal to or greater than 10,000 people, is set at the end of the first full business day after a customer report of a fault or service difficulty is received by the CSP.

The rectification of faults or service difficulties in an urban centre with a population of fewer than 10,000 people or a locality with a population of greater than 200 people, may take longer to rectify

because of the distances involved and possible need to transport specialist staff and equipment to the service site concerned. Due to this, subsection 14(3) provides that, except where sections 15 or 17 apply, the maximum guaranteed rectification period in these areas is 2 full business days after the CSP receives the customer report of a fault or service difficulty.

Subsection 14(4) sets out that, for sites other than those described in subsections 14(2) and 14(3), unless sections 15 or 17 apply, the maximum guaranteed connection period is 3 full business days after the CSP receives the report of the fault or service difficulty.

Subsection (5) requires the CSP to rectify the fault or service difficulty within the relevant guaranteed maximum rectification period for the site (subject to section 17).

Subsection (6) clarifies that the terms ‘urban centre’ and ‘locality’ are references to geographic areas defined as such by the Australian Bureau of Statistics (ABS) in relation to the most recent Australian Census. A note to the section provides a reference to the relevant ABS publication *Australia Standard Geographical Classification (ASGC) Edition 3*.

Section 15 – Sites to which subsection 14(3) or (4) applies

Section 15 applies to a fault or service difficulty in relation to a site mentioned in subsection 14(3) or 14(4) that can be rectified without external or internal plant work or the CSP attending the premises of the customer, or in circumstances where the service has been disconnected by the CSP due to an administrative error not involving damage to a facility.

Subsection 15(2) provides that the guaranteed maximum rectification period in these circumstances is the end of the first full business day after the CSP receives the report of the fault from the customer.

Subsection 15(3) provides that, if a person other than the customer reports a fault or service difficulty to the CSP on behalf of the customer, the guaranteed maximum rectification period begins when the fault or service difficulty is reported. This provision is intended to ensure the rectification period commences when the report of a fault or service difficulty is received, regardless of who has made the report.

Section 16 – Reports by carriage service providers of faults etc

Section 16 recognises situations in which one CSP (the first provider) becomes aware that there is a fault or service difficulty in the network of another CSP (the second provider) or that an act or omission of the second provider may contribute to the first provider contravening a CSG performance standard. Subsection 16(2) requires the first provider to report the matter to the second provider as soon as practicable after becoming aware of it.

Section 17 – Arrangements about rectification periods

Section 17 allows for arrangements to rectify a fault or service difficulty in a period that is shorter than the guaranteed maximum rectification period. Arrangements may also provide for a rectification period that is longer than the maximum rectification period if the customer wants the fault or difficulty to be rectified on a day after the end of that period. These provisions are intended to allow a degree of flexibility for CSPs to arrange faster rectification or for customers to arrange longer periods for rectification when that is what the customer prefers.

Division 4 – Appointments with customers

Section 18 – Interpretation

Subsection 18(1) provides that a reference to a customer of a CSP in Division 4 includes a reference to someone who represents the customer.

Subsection 18(2) provides that a reference to a proposed appointment in Division 4 includes reference to an appointment that is changed in accordance with subsection 19(4).

Section 19 – Making and changing appointments

Section 19 deals with the making and changing of appointments for connecting a specified service or for rectifying a fault or service difficulty, and requires a CSP to keep an appointment to which the CSP is a party.

Subsection 19(2) requires that the day and time proposed by the CSP for an appointment must be convenient for the customer.

Subsection 19(3) provides that the CSP may propose an appointment for a particular time of day or between 2 particular times of day not more than 5 hours apart.

Subsection 19(4) sets out the circumstances in which either party may change the day, time or location of the appointment – i.e. by giving at least 24 hours' notice of the change or by obtaining the agreement of the other party.

Subsection 19(5) requires a CSP to keep an appointment to which it is a party.

Section 20 – Criteria for determining whether an appointment is kept

Section 20 sets out the criteria for determining whether an appointment has been kept by a CSP. The criteria vary depending on whether the CSP makes an appointment for a particular time of day or for a period between two particular times of day and make allowances for circumstances where a CSP may have to travel a long distance to attend an appointment at a site located in a community with a population equal to or less than 2,500 people.

Under subsections 20(1) and 20(2), if a CSP makes an appointment for a particular time of day or for a period between two particular times of day that are not more than four hours apart, the CSP is taken to have kept the appointment if the provider is present at the site of the appointment not later than 15 minutes after the time of the appointment or after the end of the period, as the case may be.

If a CSP makes an appointment for a period between two particular times of day that are more than four but not more than five hours apart, the CSP is taken to have kept the appointment if the provider is present at the site of the appointment within that period (subsection 20(3)).

Subsection 20(4) provides that if the CSP makes an appointment for a period between two particular times of day that are more than four but not more than five hours apart and the appointment is at a site located in a community with a population equal to or less than 2,500 people and the CSP has to travel a long distance to attend the site, the provider is taken to have kept the appointment if the provider is present at the site not later than 45 minutes after the end of the period.

Subsection 20(5) provides that if a CSP does not keep an appointment in accordance with section 20, the CSP is taken to have missed the appointment. The note to subsection 20(5) makes it clear that, in determining whether a CSP has contravened section 20, section 10 of the CSG Standard is relevant (i.e. regard must be had to whether the customer cooperated with the CSP, taking into account the factors set out in subsection 10(4)).

Part 3 – Exemption from performance standards

Section 21 – Supply of more than 5 eligible telephone services

This section limits the CSG to circumstances where a CSP supplies a customer with five or less eligible telephone services on separate lines.

Subsection 21(1) exempts a CSP from compliance with a CSG performance standard if the CSP is supplying the customer with more than five eligible telephone services at one time.

Subsection 21(2) exempts a CSP from compliance with a CSG performance standard (for all services provided to the customer) if the CSP is already supplying a customer with five eligible services and arrangements are made for the supply of one or more additional services to the customer.

Section 22 – Maintenance and upgrades

Section 22 provides that a CSP is exempt from complying with a CSG performance standard (in relation to the supply of a specified service to a customer) to the extent that non-compliance with the standard is the result of maintenance or upgrading of a facility or network used to provide the service.

However, under subsection 22(2), an exemption under section 22 can only be claimed for non-supply of a service where the CSP has given the customer reasonable notice of the non-compliance.

This exemption has been included to ensure that CSPs are not unfairly penalised for planned outages to complete maintenance work or facility upgrades and to ensure they give customers reasonable notice of the non-compliance.

Section 23 – Credit standing of customers

Section 23 provides that a CSP is exempt from compliance with the CSG performance standards where:

- a CSP has reasonable grounds to believe that the customer would be unable or unwilling to pay for a charge for connection or use of the service; or
- subject to compliance by the CSP with various notification, procedural and review rights requirements, where the customer's service was disconnected (and remains disconnected) due to non-payment of a charge for the connection or use of the service.

Section 24 – Circumstances beyond the control of carriage service providers

Section 24 recognises that circumstances may arise which are beyond the control of CSPs and prevent compliance with the CSG Standard. It provides, under such circumstances, for affected CSPs to rely on an exemption from compliance with the CSG Standard and sets out procedures that they must comply with when relying on an exemption.

Subsection 24(1) provides that a CSP is exempt from complying with the CSG Standard to the extent that non-compliance is a result of circumstances beyond the control of the CSP or where the non-compliance is the result of the need to move staff or equipment to an area affected by circumstances beyond the CSP's control.

Subsection 24(2) provides a non-exhaustive list of circumstances which may be considered beyond the control of the provider including: damage to a facility not caused by the CSP; natural disasters; extreme weather conditions; requests by public authorities to provide emergency communications to assist emergency action thus restricting connections and rectification of faults and service difficulties; inability to obtain lawful access to land; and the operation of a law of the Commonwealth, or a State or Territory preventing the CSP from complying with the CSG Standard.

Subsection 24(3) provides that a CSP (the first provider) is not exempt from compliance with the CSG Standard to the extent that the first provider's non-compliance is due wholly or partly to acts or omissions of another provider (the second provider), and the exemption is not applicable to the second provider.

Subsection 24(4) provides that a CSP is not exempt from compliance with the CSG Standard unless it has procedures in place for the purpose of ensuring that it does not rely on the exemption in circumstances that are not beyond its control. This section is intended to ensure providers have in place procedures to help ensure that the section 24 exemption is not mistakenly or improperly relied on.

Section 25 – Provisional exemption under section 24

Section 25 provides for CSPs to claim an exemption (as described in subsection 24(1)) from compliance with the CSG Standard on a provisional basis from the time the CSP seeks to rely on the

exemption claimed until the CSP complies with the customer notification provisions in relation to the exemption set out in section 26 or 27.

Where a CSP does not comply with either section 26 or 27, under subsection 25(2), the exemption claimed under section 24 will cease to apply and will be taken never to have applied in relation to the CSP's non-compliance with the CSG performance standard.

Section 26 – Notice to particular customers of provisional exemption under section 24

This provision is intended to ensure that customers are kept informed when a CSP seeks to claim an exemption from a CSG performance standard due to circumstances beyond its control.

A CSP which proposes to rely on an exemption from compliance with the CSG Standard must either comply with the notification requirements set out in section 26 of the CSG Standard relating to direct notification of a customer, or with the general notification procedures specified under section 27. These notification requirements prescribe the information that a CSP must provide to customers, the manner in which the information is to be provided and the time frames for the provision of the information.

Where a CSP seeks to rely on a provisional exemption under section 24, each customer to whom the exemption relates must be given a statement in writing setting out various matters relating to the exemption claim including how the customer can dispute the claim.

Subsection 26(2) prescribes the timing for notices given under section 26. Where the exemption relates to the CSP's inability to obtain lawful access to a site or where the operation of the law of the Commonwealth, a State or a Territory prevents compliance with the CSG performance standard, notice must be given to the affected customer as soon as practicable, but no later than 14 weeks after the first day on which the exemption becomes available to the CSP. For all other circumstances, the CSP is required to give notice to the affected customer as soon as practicable, but in any event within 10 business days after the first business day on which the exemption becomes available.

Subsection 26(3) sets out matters that a CSP must consider in estimating the duration of the exemption. These include the resources that the CSP would have to commit to mitigate the consequences and minimise the duration of the circumstances on which the exemption is based. This provision has been included to ensure that as far as practicable, exemption claims are not open-ended.

Subsection 26(4) provides that compliance with section 26 does not prevent a customer from disputing the exemption claimed by the CSP.

Section 27 – General notice of exemptions

This provision is intended to provide a CSP with flexibility in regard to notifying its customers of its intention to claim an exemption from the CSG performance standards when a large number of its customers may have been affected by the circumstances which resulted in the exemption being claimed.

Section 27 provides that a CSP is not required to comply with the notification provisions set out in section 26 if the CSP:

- publishes a notice as set out in subsection 28(1) (the notice) no later than 9 business days after the first day on which the exemption becomes available to the CSP;
- provides the ACMA and the TIO with a copy of the notice and details of the telephone numbers of customers to whom the exemption relates within 8 business days after the first day on which the exemption becomes available to the CSP;
- provides on the internet, the information that is to be published in the notice within 8 business days after the first day on which the exemption becomes available to the CSP; and

- provides each of its resellers (with customers likely to be affected), a copy of the notice within 9 business days after the first day on which the exemption becomes available to the CSP.

Subsection 27(2) provides that a reseller may comply with the general notice provisions of section 27 by publishing a notice, advising the ACMA and the TIO of the reliance upon the exemption and publishing the notice information on the internet within 2 business days of receiving the notice from its supplier. This provision is intended to give resellers additional time to assess their potential liability and claim an exemption from the CSG performance standards in circumstances where a supplier (which supplies services to the reseller on a resale basis) has claimed an exemption.

Subsection 27(3) requires that, where a CSP becomes aware that the information provided to the ACMA and the TIO is no longer current or is otherwise inaccurate, the CSP must provide revised information to the ACMA and the TIO, give revised information to its affected resellers and provide on the internet the information that is contained in the revised notice.

Section 28 – Public notification

The intention of this provision is to ensure that the notice (as set out in paragraph 27(1)(a)) is published on the carriage service provider's website that is easily accessible to the customer and that the notice contains sufficient information to inform the affected customer of the circumstances surrounding, and the details of, the exemption claimed.

Section 28 applies where a CSP is relying upon the general notice provisions set out in section 27 and is publishing a notice.

Subsection 28(1) provides that the notice must be published on the carriage service provider's website that is accessible by each of its customers.

Subsection 28(2) provides that the notice must contain the same information provided in a notice under section 26 as well as details of the specific services and ranges of telephone numbers to which the exemption relates, the approximate number of affected services, location information and details of how a customer may contact the CSP in relation to the exemption claimed.

Subsection 28(3) provides that each notice must be given a unique identifier and subsection 28(4) provides that a CSP must provide a customer with a copy of a notice under this section on request.

Section 29 – Cessation of exemptions

Section 29 provides, in effect, that where the circumstances giving rise to the availability of an exemption cease to exist, the exemption will cease to exist.

Section 30 – Review of circumstances of certain exemptions

Section 30 provides that, where a CSP is relying upon an exemption due to circumstances beyond the CSP's control (as provided for in section 24), the CSP must review the grounds for the exemption as regularly as practicable, to ensure that the estimated duration of the exemption is no longer than is necessary.

Section 31 – Temporary exemptions

Section 31 provides for certain CSPs to apply for, and for the ACMA to grant, temporary exemptions from compliance with the CSG Standard. The intent of this section is to mitigate the possible negative impacts, for both industry members and consumers, of a general application of the performance standards preventing new CSPs entering the market for CSG services.

Subsection 31(2) sets out the requirements for an application for a temporary exemption.

Subsection 31(3) provides that the ACMA may only grant a temporary exemption from the CSG Standard where it is satisfied that: the CSP is not the primary universal service provider; the CSP only has a small share of the market in the geographic area for which the exemption is sought; and the

proposed exemption is likely to result in a net benefit to the end-users in the geographic area for which the exemption is sought.

Subsection 31(4) sets out the matters that the ACMA must consider in determining whether there is a net benefit to end-users to be derived from the proposed exemption.

Subsection 31(5) sets out that a temporary exemption must be in writing, must describe the geographic area for which it is granted and the period for which it is granted (no longer than 5 years); may be subject to conditions; and must be subject to a condition requiring compliance with subsection 31(8).

Subsection 31(6) provides that the period for which the exemption is granted by the ACMA may differ from that specified in the application.

Subsection 31(7) provides that a temporary exemption takes effect on the later date of either the time of the grant or a date specified in the grant and does not affect rights, obligations and liabilities that arose before the exemption took effect.

Subsection 31(8) provides that a CSP that has been granted a temporary exemption must notify the affected customers and prospective customers to whom it supplies or may supply a CSG service with details of the exemption including the rights and protections foregone by the customer as a result of entering into a contract with the supplier, the period of the exemption and how the customer can get more details about the exemption.

Subsection 31(9) sets out how the information referred to in subsection 31(8) must be provided.

Subsection 31(10) provides that the ACMA may renew a temporary exemption upon application from the CSP for a further period of up to 5 years.

Subsection 31(11) has the effect that, in considering an application for an extension of a temporary exemption, the ACMA must take into account the same factors as it did in its consideration of the grant of the original temporary exemption.

Reconsideration of refusal

Subsection 31(12) introduces a mechanism for a carriage service provider to apply in writing for the ACMA to reconsider a decision to refuse to grant an exemption under subsection (1) or to refuse to renew an exemption under subsection (10).

Subsection 31(13) sets out the form and timing requirements for a request under subsection (12).

Where an application is made under subsection 31(13), subsection 31(14) requires the ACMA to reconsider the original decision within 90 days and either affirm the original decision, or revoke the original decision and grant the exemption or renew the exemption.

Subsection 31(15) sets out the requirement for the ACMA to provide written notice to the CSP of its decision under subsection (14) and, if its decision is to affirm the original decision, of the CSP's right to seek review of that decision under subsection 31(16).

Subsection 31(16) provides that a CSP may apply to the Administrative Appeals Tribunal for review of a decision by the ACMA under subsection 31(14) to affirm an original decision.

Part 4 – Damages

Section 32 – Categories of contraventions and damages

Section 32 is made under section 117 of the Act, which provides that the ACMA may specify a scale of damages for contravention of service standards under section 115 of the Act, and provides that the categories of contraventions and corresponding damages payable are set out in Part 2 of Schedule 2 of the CSG Standard.

Part 5 – Waiver of protection and rights by customers

The note under the heading to Part 5 reiterates the content of subsection 120(1) of the Act which provides that the ACMA may, by written instrument, make provision for customers of CSPs to waive their protection and rights under Part 5 of the Act in relation to specified services supplied or proposed to be supplied by a CSP.

Section 33 – Application

Section 33 provides that the waiver provisions in Part 5 of the Standard do not apply to standard telephone services supplied, or proposed to be supplied, in fulfilment of the universal service obligation. This reflects the wording of subsection 120(7) of the Act. The universal service obligation requires that certain public interest telecommunications services be supplied by the primary universal service provider and it is not intended that customers of these services be able to waive their CSG rights.

Section 34 – Waivers

Section 34 sets out detailed requirements in relation to customer waivers.

Subsection 34(1) provides that, subject to section 33, a customer is entitled to waive, in whole or in part, their CSG protections and rights in relation to a carriage service supplied by a CSP.

Subsection 34(2) specifies that customers may waive their protections and rights under Part 5 of the Act in writing or orally.

Waivers in writing

Subsection 34(3) specifies the requirements for a valid waiver provided in writing.

Written waivers take effect on the day the customer consents to the waiver under paragraph 34(8)(a).

Oral waivers

Subsection 34(4) sets out the circumstances in which an oral waiver is valid. Oral waivers take effect 5 business days after the day on which the customer consents to the waiver under subsection 34(4) unless the customer withdraws their consent prior to the end of that period (see paragraph 34(8)(b)).

Information to be given

Subsection 34(5) sets out the information that must be provided to a customer regarding a written or oral waiver (as applicable). This is intended to enhance the customer's understanding of the CSG Standard, the service to which the waiver applies and the consequences of a waiver and to assist in the provision of informed consent.

The purpose of paragraph 34(5)(e), which requires the provision of a statement summarising the consequences of the waiver, is to provide the customer with information directly related to the service to which the waiver applies. More detail about what a statement summarising the consequences of a waiver must include is specified at subsection 34(6). This information is required to be provided to customers who consent to a waiver in written form at the time they sign up (immediately before they consent to the waiver). For customers who consent to a waiver orally, this information is required to be provided to them immediately before they consent to the waiver and in writing within three business days of their consent, along with the other information outlined in paragraph 34(7)(b).

Section 35 – Record keeping

Section 35 imposes record keeping requirements on CSPs in relation to both written and oral waivers. The purpose of section 35(1) is to ensure service providers keep a copy of the record of a customer's waiver in accordance with subsection 35(2) or 35(3) (as the case may be) for a minimum of two years from the day on which the waiver takes effect.

Subsection 35(2) specifies the record and information to be retained for written waivers.

Subsection 35(3) specifies the record and information to be retained for oral waivers.

Part 6 – Transitional arrangements

Section 36 – Definitions for Part 6

Section 36 provides a definition for commencement day (in respect of the CSG Standard) to support the transitional provisions in Part 6.

Section 37 – Exemptions relied upon under 2011 CSG Standard

Section 37 has the effect that where an exemption was available under the 2011 CSG Standard, it will continue to be available under the CSG Standard.

Section 38 – General notice of exemptions under 2011 CSG Standard

Section 38 provides that information given under paragraph 24(1)(b) of the 2011 CSG Standard will be taken to have been given under paragraph 27(1)(b) of the CSG Standard.

Section 39 – Contraventions and damages payable under 2011 CSG Standard

Section 38 provides that where damages were available in respect of a contravention of the 2011 CSG Standard, and were not paid prior to the commencement of the CSG Standard, the 2011 CSG Standard applies in respect of that contravention, so that damages will continue to be available and will be calculated in accordance with the 2011 CSG Standard.

Schedule 1 – Guaranteed maximum connection periods – sites in close proximity to external plant facilities

Part 1 – Interpretation

Item 101 – References to in-place connections

Item 101 explains the meaning of an ‘in-place’ connection as referred to in Part 2 of Schedule 1 as the connection of a specified service at a site where a previous working CSG service has been cancelled and is available for automatic reconnection or reactivation by a CSP.

Item 102 – References to geographic areas

Item 102 explains the meaning of ‘urban centre’ and a ‘locality’ referred to in Part 2 of Schedule 1, noting that both are geographic areas defined as such by the Australian Bureau of Statistics (ABS) in relation to the most recent Australian Census. A note to the item provides a reference to the relevant ABS publication *Australia Standard Geographical Classification (ASGC) Edition 3*.

Part 2 – Guaranteed maximum connection periods

Item 201 – Sites with in-place connections

Item 201 specifies that the guaranteed maximum connection period for an ‘in-place’ connection is within two business days after the CSP receives the customer request.

Item 202 – Other sites

Item 202 specifies the guaranteed maximum connection periods for four site categories according to population parameters. These are specified for areas where an ‘in-place’ connection is not applicable.

Paragraph 202(a) provides that the guaranteed maximum connection period for sites with a population of equal to or greater than 10,000 people is not later than 5 business days after the CSP receives the request.

Paragraph 202(b) provides that the guaranteed maximum connection period for sites with a population of greater than 2,500 people but less than 10,000 is not later than 10 business days after the CSP receives the request.

Paragraphs 202(c) and (d) provide that the guaranteed maximum connection period for sites with a population between 200 and 2,500 people, and any other sites not covered by paragraphs (a) or (b), is within 15 business days of the customer's request.

Schedule 2 – Categories of contravention of performance standards and damages

Part 1 – Interpretation

Item 101 – References to delays

Item 101 explains the meaning of 'delay' when referred to in Part 2 of Schedule 2 in relation to the connection of service, rectification of service, and the keeping of appointments, with a delay referring to the CSP exceeding the guaranteed maximum connection period or guaranteed maximum rectification period for a specified service or the CSP failing to comply with an arrangement made by the CSP with the customer for a connection or fault rectification on a particular day or in a particular period. Subitem 101(2) provides that, where a carriage service provider provides an interim service for the duration of the delay, a reference to a delay will not be reference to a contravention of the CSG Standard.

Item 102 – References to residential/charity customers

Item 102 defines two of the three categories of customers referred to in Part 2 of Schedule 2.

Item 103 – References to business customers

Item 103 defines the remaining category of customer referred to in Part 2 of Schedule 2.

Part 2 – Contraventions and damages

This Part sets out the categories of contraventions for which damages are payable and the corresponding damages payable.

Schedule 3 – Criteria for extreme weather conditions

Schedule 3 contains the criteria for the definition of extreme weather conditions in section 6. This Schedule is intended to provide clarity around the exemption declaration process by providing empirical definitions of what constitutes extreme weather.