EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications (Customer Service Guarantee) Record-Keeping Rules Amendment 2012 (No. 1)

Telecommunications Act 1997

Purpose

On 26 September 2011, the Australian Communications and Media Authority (ACMA) made the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 (Rules). The Rules commenced on 1 October 2011.

The Rules require certain carriage service providers (CSPs) to:

- keep and retain records in relation to compliance with the Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard) and the Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (CSG Benchmarks); and
- prepare and give to the ACMA, reports in the form specified in the Rules consisting of information contained in those records.

It is only those CSPs that are subject to obligations under the CSG Benchmarks that have any obligations under the Rules. These CSPs are referred to as “qualifying carriage service providers” (QCSPs) in both the Rules and the CSG Benchmarks. QCSPs are those CSPs that supplied 100,000 “CSG services” or more on the last day of the financial year immediately preceding the relevant “benchmark period” specified in the CSG Benchmarks.

The purpose of the Telecommunications (Customer Service Guarantee) Record-Keeping Rules Amendment 2012 (No. 1) (Amendment Instrument) is to amend the Rules to make complementary changes following the making of the Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (Amendment No. 1 of 2012) (Benchmarks Amendment). The Amendment Instrument also clarifies and simplifies the scope and application of the Rules.

Legislative Provisions

The Amendment Instrument is made under subsection 529(1) of the Telecommunications Act 1997 (Tel Act). Subsection 529(1) allows the ACMA to make rules for and in relation to requiring one or more specified carriers or one or more specified CSPs to keep and retain records. Under subsections 529(2A) and (2B), such record-keeping rules may also require those carriers or CSPs to prepare reports consisting of information contained in those records, and to give any or all of the reports to the ACMA.

Subsection 529(4) limits the scope of the ACMA’s power, such that the ACMA cannot make record-keeping rules requiring the keeping or retention of records unless the records contain,
or will contain, information that is relevant to the performance of the ACMA’s telecommunications functions or the exercise of the ACMA’s telecommunications powers.

Background

Under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the ACMA is empowered to make performance standards to be complied with by CSPs in relation to specified customer service matters. The ACMA has exercised this power to make the CSG Standard. The CSG Standard sets performance standards in relation to a range of customer service matters, including the keeping of appointments and the maximum timeframes that a CSP can take to connect services and rectify faults or service difficulties.

The CSG Benchmarks set minimum performance benchmarks regarding compliance with the CSG Standard. Failure by a QCSP to meet or exceed any one of the specified performance benchmarks will constitute a contravention of the relevant performance benchmark. Current QCSPs are Telstra, Optus, iiNet, and Primus.

Upon commencement of the CSG Benchmarks, arrangements made under sections 9 and 14 of the CSG Standard were excluded from assessment against the performance benchmarks.

Section 9 of the CSG Standard refers to arrangements to connect a customer of a carriage service provider to a service in a period that is shorter or longer than the maximum timeframe (the *guaranteed maximum connection* period) specified in the CSG Standard. In contrast, section 14 refers to arrangements to rectify a fault or service difficulty providing for rectification in a period that is shorter or longer than the maximum timeframe (the *guaranteed maximum rectification* period) specified in the CSG Standard.

The Benchmarks Amendment amends the CSG Benchmarks so that arrangements made under sections 9 and 14 of the CSG Standard are included when calculating whether a QCSP has met or exceeded a minimum benchmark.

The Amendment Instrument makes complementary amendments to the Rules, which both simplify and enhance performance recording and reporting. The Amendment Instrument also incorporates other minor drafting and clarifying changes.

The key changes include:

- performance in relation to connections will be reported at an aggregate level, irrespective of whether the connection is completed in timeframes that were subject to an arrangement (under section 9 of the CSG Standard), or those completed in timeframes subject to the guaranteed maximum connection period (as specified in Part 2 of Schedule 1 to the CSG Standard);
- performance in relation to faults will be reported at an aggregate level, irrespective of whether the fault is completed in timeframes that were subject to an arrangement (under section 14 of the CSG Standard), or those completed in timeframes subject to the guaranteed maximum rectification period (as specified in section 11 of the CSG Standard);
- performance in meeting the timeframes specified in Telstra’s Standard Marketing Plan (as required by subsection 8(2) of the CSG Standard) is no longer required to be reported under the Rules (however performance must still be recorded).
Consultation

Section 17 of the Legislative Instruments Act 2003 (LIA) requires that, before making a legislative instrument, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

Consultation with stakeholders occurred throughout most of 2012, leading to a targeted consultation process involving Telstra, Optus, iiNet, Primus and the Australian Communications Consumer Action Network, which was undertaken from 12 June 2012 to 19 June 2012. Consultation material was also published on the ACMA website.

A short formal consultation period was required to ensure the alignment of the commencement of the amended Rules with the commencement of the amended CSG Benchmarks on 1 July 2012. If commencement were to be delayed, the ACMA would need to rely on other information gathering methods to obtain the necessary data for assessment of a QCPS’s performance. Delays would also create uncertainty for QCSPs as to their obligations.

Two submissions were received – from Optus and Telstra. A number of amendments to the instrument were made in response to matters raised in the submissions. For example:

- The definitions of “in-place connection request” and “new connection request” in the CSG Benchmarks were incorporated into the Rules and relevant provisions were redrafted to ensure that records were kept and reported upon in relation to “in-place connection requests” and “new connection requests”.
- A separate provision was inserted to specifically refer to the keeping of records for CSG services required to be connected in the guaranteed maximum connection period specified in subsection 8(2) of the CSG Standard. (Noting that QCSPs are not required to report on CSG services connected in the guaranteed maximum connection period specified in subsection 8(2) of the CSG Standard.)

A number of other issues raised in submissions were outside scope – that is, some of the issues raised in submissions could not be addressed by amendment of the Rules.

The ACMA is satisfied that consultation has been conducted in accordance with the requirements of section 17 of the LIA.

Regulation Impact

The Office of Best Practice Regulation (OBPR) has considered the matter and formed an opinion that the Rules amendment will have a minor and machinery impact on industry. The OBPR RIS exemption number is ID 13918.

Notes on sections

The provisions of the Rules amendment are described in Attachment 1

Statement of compatibility with human rights

Notes on Sections

Part 1 Introduction

Section 1 Name of Rules
This section provides that the title of the Rules is the Telecommunications (Customer Service Guarantee) Record-Keeping Rules Amendment 2012 (No. 1).

Section 2 Commencement
This section provides that the Telecommunications (Customer Service Guarantee) Record-Keeping Rules Amendment 2012 (No. 1) will commence on 1 July 2012 or the day after registration on the Federal Register of Legislative Instruments, whichever last occurs.

Section 3 Amendment of Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011
This section provides that the Rules are amended in accordance with Schedule 1.

Schedule 1
This schedule sets out the amendments to the Rules.

Item [1] substitutes paragraphs 3(2)(a)–(f) with new paragraphs 3(2)(a)–(i). The effect of this item is to include the following additional definitions from the CSG Benchmarks: “in-place connection”, “in-place connection request”, and “new connection request”.

Item [2] substitutes sections 8 and 9 to make minor adjustments to the operation of those sections and adds a new section 9A.

Section 8 has been amended so that, for the purposes of section 8, the guaranteed maximum connection period is the period that applies in relation to an in-place connection request by reference to subsection 8(1) of, and item 201 of Schedule 1 to, the CSG Standard. The guaranteed maximum connection period will therefore, not include the period specified in subsection 8(2) of the CSG Standard.

Section 9 has been amended so that, for the purposes of section 9 the guaranteed maximum connection period is the period that applies in relation to a new connection request by reference to subsection 8(1) of, and item 202 of Schedule 1 to, the CSG Standard. The guaranteed maximum connection period will therefore, not include the period specified in subsection 8(2) of the CSG Standard.

The connections in sections 8 and 9 relate to sites in close proximity to an external plant facility used to supply the service, and where the facility has sufficient capacity available to supply the service when the request is made.

Section 9A requires a QCSP to keep records where CSG services are required to be connected in the guaranteed maximum connection period specified in subsection 8(2) of the CSG Standard. This clarifies that where subsection 8(1) of the CSG Standard does not apply, and the guaranteed maximum connection period is determined in accordance with Telstra’s Universal Service Obligation Standard Marketing Plan as amended, records must be kept.

The new item 3 requires reporting of performance information relating to in-place connection requests. This clarifies that a compliance report must include:

- the number of requests that were complied with and not complied with, which were required to be complied with in a guaranteed maximum connection period specified in item 201 of Schedule 1 to the CSG Standard (currently 2 days) or a period arranged under section 9 of the CSG Standard; and
- the number that were not complied with where non-compliance was wholly or partly attributable to one or more acts or omissions by another carriage service provider.

Performance must be reported at an aggregate level, irrespective of whether the connection was completed in that guaranteed maximum connection period or a period made by arrangement under section 9 of the CSG Standard. Information about compliance with requests within the guaranteed maximum connection period under subsection 8(2) of the CSG Standard does not need to be reported under the Rules.

The new item 4 requires reporting of performance information relating to new connection requests. This clarifies that a compliance report must include:

- the number of requests that were complied with and not complied with, which were required to be complied with in a guaranteed maximum connection period specified in item 202 of Schedule 1 to the CSG Standard (currently 2 to 15 days depending on the area), or a period arranged under section 9 of the CSG Standard; and
- the number that were not complied with where non-compliance was wholly or partly attributable to one or more acts or omissions by another carriage service provider.

Performance must be reported at an aggregate level, irrespective of whether the connection was completed in that guaranteed maximum connection period or a period made by arrangement under section 9 of the CSG Standard. Information about compliance with requests within the guaranteed maximum connection period under subsection 8(2) of the CSG Standard does not need to be reported under the Rules.

Item [4] substitutes paragraphs 5(1)(b) and (c) of Schedule 1 on reporting performance information relating to faults or service difficulties. This clarifies that a compliance report must include:

- the number of requests that were complied with and not complied with, which were required to be complied with in a guaranteed maximum rectification period or a period formally arranged under section 14 of the CSG Standard; and
- the number that were not complied with where non-compliance was wholly or partly attributable to one or more acts or omissions by another carriage service provider.

Performance must be reported at an aggregate level, irrespective of whether the fault was completed in the guaranteed maximum rectification period or a period made by arrangement under section 14 of the CSG Standard.

Item [5] substitutes Tables 3, 4 and 5 in Schedule 2 specifying the format of the compliance report in those tables relating to in-place connection requests, new connection requests and faults or service difficulties, and provides instructions for completion.

Item [6] adds Note 3 under Table 4 of Schedule 2 to provide some further explanation regarding entries in the rows marked “Number (did not comply)”. The note clarifies that such
entries must include any appointments that are taken to have been missed in a period due to acts or omissions by another carriage service provider.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Customer Service Guarantee) Record-Keeping Rules Amendment 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument


There are also several miscellaneous minor drafting and clarifying changes. There are no substantial changes to the operation of the Rules.

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.