

EXPLANATORY STATEMENT

TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) DIRECTION No. 1 of 1999 (AMENDMENT No. 1 of 2006)

Issued by authority of the Minister for Communications, Information Technology and the Arts

LEGISLATIVE BASIS

This Direction is made under section 124 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

Section 124 of the Act empowers the Minister for Communications, Information Technology and the Arts to give the Australian Communications and Media Authority (ACMA) written directions about the exercise of its powers under Part 5 of the Act, relating to the Customer Service Guarantee (CSG). Under subsection 125(3) of the Act, if the Minister varies a direction, ACMA must either vary the standard that is in force under section 115 of the Act because of the direction so that the standard complies with the varied direction; or revoke the standard and determine a new standard that so complies.

This Direction varies the Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 and requires ACMA to vary the *Telecommunications (Customer Service Guarantee) Standard (No. 2) 2000* (the CSG Standard) in accordance with the Direction. The CSG Standard sets out maximum timeframes within which eligible services should be connected and repaired, unless circumstances beyond the control of a provider, such as natural disasters or extreme weather conditions, prevents this. The CSG Standard also provides performance standards for the attendance of appointments. Under the CSG Standard, compensation is payable for breaches of CSG performance standards.

POLICY BASIS

This Direction requires ACMA to vary the CSG Standard to implement changes to:

- a. the arrangements for declaration of exemptions;
- b. the compensation levels payable for breaches of the CSG timeframes; and
- c. the arrangements for the provision of interim and alternative services.

The Government announced on 17 August 2005 that it would tighten the CSG to reduce the ability of carriage service providers to rely unnecessarily on Mass Service Disruption claims for exemption from fault repair and connection timeframes, in the case of predictable events.

To implement the Government's policy, eligibility to claim exemptions will be further limited by:

1. providing set criteria which must be met for an exemption to be claimed due to extreme weather; and

2. requiring carriage service providers to provide documentary evidence to substantiate that exemptions being claimed are as a result of circumstances beyond their control.

Subclause 22(1) of the CSG Standard provides for exemptions from the CSG Standard in the case of certain events. The exemptions may be being used inappropriately by carriage service providers to avoid meeting CSG timeframes. The inappropriate use of exemptions seems to occur in areas prone to excessive rain or lightening. The exemptions may also be a disincentive to carriage service providers to make reasonable investments in more practical network infrastructure.

Carriage service providers' reliance on the exemptions, particularly under paragraph 22(1A)(b) of the CSG Standard where not genuinely beyond the control of the provider reduces the effectiveness of the CSG as a consumer safeguard. This occurs in cases of weather events that are predictable because it may be within the control of the provider to guard against service disruptions from rain, lightning, storms and hail instead of claiming an exemption from the CSG.

Information to confirm circumstances including those outlined in the CSG exemption provisions is available in the public domain. A large amount of weather information is available on the Bureau of Meteorology website and is updated daily. Citation of post-fact weather information on the Bureau's website would be considered sufficient evidence to substantiate an exemption claim for the impact of extreme weather.

On 8 September 2005, the Government announced that it would increase the level of compensation payable under the standard by 21%.

The dollar value of CSG compensation has not previously been increased since 1998. The 21% increase will assist in maintaining the incentive value on providers to provide timely service.

In September 2001, as part of a range of changes to the CSG Standard, there was a Ministerial direction to the former Australian Communications Authority (ACA) to provide a definition of 'sufficient information' and 'reasonable offer' for the purposes of exemptions from the CSG performance standard where the CSP has made an offer of an interim or alternative service.

The ACA responded by providing a definition for 'reasonable offer' and 'sufficient information' in a Determination entitled *Telecommunications (Performance Standards) Determination 2002* ('the Determination').

Although this had the effect of providing a definition of these terms, the Senate Standing Committee on Regulations and Ordinances requested that the requirements of the Determination be incorporated into the CSG Standard. It is therefore appropriate that the CSG Standard be amended to reflect the Determination. The Direction will have the effect of requiring ACMA to incorporate the definitions of these terms in the Determination into the CSG Standard.

CONSULTATION

On 17 March 2006, the Department released a discussion paper for consultation on the proposed changes to the CSG. As part of this consultation, the Department received six submissions from stakeholders, and engaged in informal discussions with Telstra, Optus, ACMA and the Telecommunications Industry Ombudsman. Through these submissions and discussions, a range of suggestions was made about the proposed method of implementing the announced changes.

As a result of the consultation, two changes were made to the method of implementing the announced changes. They were:

1. removing the proposed limit of three claims for exemption that could be made on a CSG service in 12 months; and
2. providing that documentary evidence will only be required to substantiate exemption claims for extreme weather conditions.

NOTES ON CLAUSES

Clause 1 – Name of Direction

Clause 1 provides that this Direction may be cited as the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No.1 of 2006)*.

Clause 2 – Commencement

Clause 2 provides that this Direction commences the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Application

Clause 3 provides that this Direction applies to matters dealt with by the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999*, as amended by this Direction, which occur on or after 31 October 2006. This will allow sufficient time for ACMA to consult with carriage service providers on the implementation of changes to the CSG Standard before this date.

Clause 4 – Variation

Clause 4 provides that this Direction varies the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999*.

SCHEDEULE 1 – AMENDMENTS

Item 1, definition of ACA

Item 1 removes the definition of ACA and provides that ACMA has the same meaning as in the *Australian Communications and Media Authority Act 2005* (the ACMA Act). Section 3 of the ACMA Act defines ACMA to mean the Australian Communications and Media Authority. As a result of the ACMA Act, on 1 July 2005 the former Australian Broadcasting Authority and the former Australian Communications

Authority were merged to form a single communications regulator, to be known as ACMA.

Item 2, replacement of ACA with ACMA

Item 2 replaces a reference to the ACA with a reference to ACMA.

Item 3, definition of *extreme weather conditions*

Item 3 inserts a definition to specify that extreme weather conditions means weather conditions that meet one or more of the criteria specified in Schedule 3 to the Direction. The criteria are based on the Bureau of Meteorology's Severe Weather and Severe Thunderstorm Warning criteria and have been developed in consultation with the Bureau of Meteorology. This definition relates to the amendments at items 12, 14 and 16 of the Schedule to this Direction and will assist in the interpretation of current CSG exemption arrangements.

Items 4 to 11, replacement of ACA with ACMA

Items 4 to 11 replace references to the ACA with references to ACMA.

Item 12, substitution of subclause 17(1)

Item 12 substitutes subclause 17(1) to separate the provisions on the exemption of carriage service providers from compliance with the CSG due to natural disasters from the provisions on their exemption from compliance with the CSG due to extreme weather conditions.

Item 13, replacement of reference to 1(c) with 1(d)

Item 13 replaces a reference to paragraph 1(c) with a reference to paragraph 1(d) as a consequence of the amendment made by item 12.

Item 14, substitution of subclause 17(5)

Item 14 substitutes subclause 17(5) to provide that if a provider's claim for exemption from CSG performance standards relates to extreme weather conditions that cause mass outages of services and restrict rectification or connection activities, the provider must provide each affected customer with evidence, in writing, to substantiate that the claim meets one or more of the criteria in Schedule 3. Subclause 17(6) of the current CSG Direction provides that a carriage service provider is not required to comply with this notification procedure if the provider complies with other procedures referred to in subclause (7) (see item 16 below).

Item 15, replacement of ACA with ACMA

Item 15 replaces a reference to the ACA with a reference to ACMA.

Item 16, insertion of paragraph 17(7)(aa)

Item 16 inserts new paragraph 17(7)(aa) to provide that if the provider's claim for exemption relates to extreme weather conditions that cause mass outages of services and restrict rectification or connection activities, performance standards must require the provider to publish evidence to substantiate that the claim meets one or more of the criteria in Schedule 3. The notification procedure under subclause 17(7) of the current CSG Direction is an alternative to the notification procedure under subclause 17(5) (see item 14 above).

Items 17 to 27, replacement of ACA with ACMA

Items 17 to 27 replace references to the ACA with references to ACMA.

Item 28, omission of note to subclause 22(2)

Item 28 omits the note to subclause 22(2). This note states that "the ACA may make a written determination specifying what constitutes a reasonable offer of an interim service or an alternative service for the purposes of paragraph (2) (a)". This note is no longer necessary, as these specifications are covered in this Direction at item 29.

Item 29, insertion of subclause 22(2A)

To address a concern of the Senate Standing Committee on Regulations and Ordinances (discussed above) item 29 inserts new subclause 22(2A) that specifies that a reasonable offer by a carriage service provider to supply a customer with an alternative service must:

- (a) provide the customer with a choice between an interim service and an alternative service to enable the customer to make an informed judgement about the relative merits of both service offerings; and
- (b) provide sufficient information about how the functionality and the terms and conditions of supply of the alternative service would be of benefit to the customer, relative to an interim service.

Item 30, omission of the note to subclause 22(3)

Item 30 omits the note to subclause 22(3). This note states that "the ACA may make a written determination specifying what constitutes sufficient information for the purposes of paragraph (3) (b)". This note is no longer necessary, as these specifications are covered in this Direction at item 31.

Item 31, insertion of subclause 22(3A)

To address a concern of the Senate Standing Committee on Regulations and Ordinances (discussed above), item 31 inserts new subclause 22(3A) that specifies that sufficient information supplied to the customer about the functionality of an interim or alternative service, must include details of:

- (a) any enhanced call handling services that may be supplied with the service; and
- (b) charges payable by the customer; and
- (c) connection timeframes; and

- (d) the estimated period of supply of the service, taking into account the estimated time to repair or connect the service, and the maximum period allowed for the supply of an interim service.

Item 32, substitution of Schedule 2, Part 2

Item 32 substitutes the scale of damages with a new scale of damages.

Part 2 of Schedule 2 of the Direction contains a table which outlines the damages payable for breaches of the CSG timeframes. The new penalty amounts inserted by 32 are 21% higher than those in the current Direction. As indicated above, the dollar value of CSG compensation has not previously been increased since 1998. The 21% increase will assist in maintaining the incentive value on carriage service providers to provide timely service.

Item 33 – insertion of Schedule 3

Item 33 inserts Schedule 3 after Schedule 2. Schedule 3 outlines the criteria for extreme weather conditions. This Schedule relates to the new definition of extreme weather conditions in item 3 and is relevant to the amendments in items 12, 14 and 16 of the Schedule to this Direction.

To tighten the arrangements for exemptions, empirical definitions have been provided to specify what constitutes extreme weather. As indicated above, the criteria are based on the Bureau of Meteorology's Severe Weather and Severe Thunderstorm Warning criteria and have been developed in consultation with the Bureau of Meteorology