

Background

The Customer Service Guarantee (CSG) is a legislated requirement aimed at improving industry performance in relation to fixed telephone connection and repair times. The CSG applies to all carriage service providers (CSPs) and sets out maximum timeframes within which eligible services should be connected and repaired, unless circumstances beyond the control of a CSP, such as natural disasters, prevent this. Performance standards also apply to the attendance of appointments. Compensation is payable for breaches of the CSG performance standards.

Exemptions from the CSG for Mass Service Disruptions (MSDs)

Problem

The *Telecommunications (Customer Service Guarantee) Standard 2002 (No. 2)* (the CSG Standard) and the Minister's CSG Direction provide for exemptions from CSG timeframes in the case of certain events. The exemptions may be being overused by CSPs to avoid meeting CSG timeframes. The overuse of exemptions particularly seems to occur in areas prone to excessive rain or lightening, such as the north of Australia, and where infrastructure is old or not weather proof. Exemptions may have the unintended effect of discouraging CSPs from making reasonable investments in more practical or weatherproof network infrastructure.

CSPs over-reliance on events beyond their control without regard to foreseeability and recurrence or the measures available to prevent or reduce the damage arising reduces the effectiveness of the CSG as a consumer safeguard. Events such as the wet season in the Northern Territory are predictable, and CSPs should not be avoiding their CSG obligations by relying on exemptions.

Objective

The objective of the CSG is to provide incentives for CSPs to provide a reasonable level of service to consumers.

The Explanatory Statement to the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 1997*, states that “the objective of the CSG is to impose a minimum level of performance on service providers ... so that the quality of that service should not deteriorate in any way but will improve significantly and should enable consumers to enjoy a reasonable level of service”. Part of this objective is fulfilled by standards that must be met in relation to repair and connection timeframes.

The objective of the CSG exemptions for MSDs is to allow the suspension of CSP compliance with performance standards in circumstances that are beyond their control.

To allow the CSG to continue to meet its objectives, on 17 August 2005, the Government announced that it will limit the situations in which CSPs can claim exemptions using MSD notices. The CSG will be tightened to ensure CSPs cannot unreasonably use the MSD notice arrangements for predictable weather events.

Identification of options

The available options include:

1. **Amend ACMA’s *Guide to the CSG Standard* to better clarify claimable circumstances.**
2. **Direct ACMA to amend the CSG Standard to provide objective criteria for what constitutes ‘extreme weather conditions’, and require CSPs to provide documentary evidence to substantiate that claims for these conditions meet the criteria;**
3. **Impose a cap of three MSDs that can be claimed on any CSG service in a 12 month period;**
4. **Direct ACMA to amend the CSG Standard to remove the arrangements for claiming MSDs.**

Assessment of impacts (costs and benefits):

Option 1 – Amend ACMA’s *Guide to the CSG Standard*

This option would require ACMA to amend its *Guide to the CSG Standard* to indicate that the arrangements for MSDs are not intended to apply to outages that occur as a result of predictable or routine weather events.

This option would guide CSPs on the use of exemptions with minimal regulatory interference or cost. However, it is unlikely that it would result in reduction in the claiming of MSDs for predictable or routine weather events. It may also result in an uneven protection of consumers, as CSPs may have different interpretations of how the Guide would operate.

CSPs would be unlikely to reduce their reliance on MSDs voluntarily because it may be seen as contrary to commercial interests.

The cost to ACMA of this measure would be minimal. The cost of allowing CSPs to determine their reliance on MSDs with regard to ACMA’s Guide would be minimal. Costs would be individually set and self managed. As profit making entities, CSPs are unlikely to restrict their reliance in a manner that is excessive or that incurs costs that cannot be recovered by other means.

The benefits to consumers achieved from this option would be negligible with such a reliance on industry to voluntarily reduce their reliance on the MSD arrangements.

Option 2 – Direct ACMA to amend the CSG Standard to provide objective criteria for what constitutes ‘extreme weather conditions’

The Direction would specify that the provisions for MSD exemptions be amended to provide objective criteria for what constitutes ‘extreme weather conditions’. The criteria, outlined in [Table 1](#), are based on the Bureau of Meteorology’s criteria for issuing a Severe Weather or Severe Thunderstorm Warning. This measure would assist interpretation of the CSG exemption arrangements. To enforce this option, CSPs would

be required to provide documentary evidence to substantiate that the circumstances being claimed for met the criteria.

Table 1: Extreme Weather Criteria

Phenomenon	Criteria which must be met for weather to be ‘extreme’
Large Hail	Hail with a diameter of at least 2cm.
Heavy Rainfall	Rainfall that exceeds the 10 year average recurrence interval (ARI) – that is, the rainfall amount has a 10% or less probability of being exceeded in a year over a given duration. Heavy Rainfall is often conducive to flash flooding.
Flash Flood	A reported flash flood or Heavy Rainfall that is conducive to flash flooding.
Hazardous Winds	10 minute mean winds of 63km/h or more and or gusts of 90km/h or more.
Lightning	‘Cloud to ground’ lightning strikes.
Blizzard	Gale force winds (10 minute mean wind of 63km/h or more) combined with falling or blowing snow that reduces visibility to below 200m.
Tornado	All tornados.
Large Waves	Unusually large surf waves (surf exceeding 5m) expected to cause dangerous conditions on the coast and leading to significant beach erosion.
Storm Tide	Abnormally high tides caused by winds (expected to exceed highest astronomical tide).

Using a tightened form of the current CSG arrangements may reduce reliance on MSDs in predictable circumstances. This option would benefit consumers by allowing CSG compensation to more consumers whose services are affected by predictable weather related outages. This measure may also encourage CSPs to take reasonable measures to mitigate or prevent outages caused by routine weather events, further improving the services of consumers in areas prone to weather related outages.

It is expected that this measure will reduce the number of exemptions declared by industry each year. This may result in an increase for CSPs in penalties payable under the CSG as a consequence of them being unable to claim exemptions for outages caused by weather events which do not meet the criteria. It may also encourage CSPs to make further investment in maintaining and upgrading infrastructure.

The financial impact on industry of this option is difficult to calculate with certainty because outages caused by weather events are more frequent in some years than in others and networks perform differently in different circumstances. [Table 2](#) identifies the number of MSDs claimed per year in the last three years and a scaled comparison of the compensation payable by industry had events that did not meet the criteria been excluded as a percentage of claimable exemptions in those years.

Table 2: Extreme weather/natural disaster MSDs declared by all CSPs for all states and territories

Fiscal Year	Number of MSDs	Total Services affected	Average duration (working days)	Additional compensation (if all affected services due to predictable events)	Additional compensation (if 80% affected services due to predictable events)	Additional compensation (if 60% affected services due to predictable events)	Additional compensation (if 50% affected services due to predictable events)	Additional compensation (if 20% affected services due to predictable events)
2002-03	64	33,655	6	\$3,365,500.00	\$2,692,400.00	\$2,019,300.00	\$1,682,750.00	\$673,100.00
2003-04	130	116,059	7	\$16,248,260.00	\$12,998,608.00	\$9,748,956.00	\$8,124,130.00	\$3,249,652.00
2004-05	117	99,078	5	\$5,944,680.00	\$4,755,744.00	\$3,566,808.00	\$2,972,340.00	\$1,188,936.00
TOTAL	311	248,792		\$25,558,440.00	\$20,446,752.00	\$15,335,064.00	\$12,779,220.00	\$5,111,688.00

*33,655 x \$100 (5x12 + 1x40) = \$47,700 **116059 x \$140 (5x12 + 2x40) = \$124,460 ***99,078 x \$60 (5x12) = \$50,820

The financial impact on industry of this measure (over three years, based on 2002-03 to 2004-05 figures) would potentially be between \$5.1M and \$25.5M.

Option 3 – Impose a cap of three MSDs that can be claimed for extreme weather on any CSG service in a 12 month period

This measure would make it clear to a CSP whether or not they were eligible for an MSD exemption.

Using a tightened form of the current CSG arrangements may reduce reliance on MSDs, resulting in more comprehensive protection of consumers by the CSG. This option would benefit consumers by allowing the CSG to provide compensation to more of those consumers whose services are recurrently affected by weather related outages. This measure may also encourage CSPs to take reasonable measures to mitigate or prevent outages caused by extreme weather events, further improving the services of consumers in areas prone to weather related outages.

It is assumed that this measure will reduce the volume of exemptions declared by industry each year. This may result in an increase for CSPs in penalties payable under the CSG as a consequence of them being unable to claim exemptions for events in areas that experience recurrent weather related outages. It may also encourage CSPs to make further investment in maintaining and upgrading infrastructure.

The financial impact on industry of this option is difficult to calculate with certainty because outages caused by weather are more frequent in some years than in others and networks perform differently in different circumstances. Table 2 identifies the number of MSDs claimed per year in the last three years and a scaled comparison of the compensation payable by industry had a percentage of exemptions not been claimable because they breached the quota in those years.

Imposing a cap on the number of MSDs claimable for extreme weather conditions may have the unintended effect of preventing CSPs from claiming exemption to the CSG timeframes in circumstances which are genuinely beyond their control.

Option 4– Amend the CSG Standard to prohibit claims for all MSDs.

The Minister could direct ACMA to remove the provisions relating to MSDs from the CSG Standard. This would prohibit CSPs from claiming exemptions from the CSG timeframes in any circumstances beyond their control.

This option would benefit consumers by allowing the CSG to protect those consumers whose services are affected by extreme events. This measure may also encourage CSPs to take reasonable measures to mitigate or prevent outages before an event, further improving the services of consumers. Consumers would benefit from this option through an increase in the numbers of customers protected by CSG timeframes and the possibility of more robust network infrastructure and more reliable telephone services.

From the information in [Table 2](#), the financial impact on industry of this measure (over three years, based on 2002-03 to 2004-05 figures) would potentially be \$25.5 million.

The arrangements for MSDs are included in the CSG Standard to ensure that CSPs are not unfairly penalised for circumstances that are genuinely beyond their control or for withdrawing service as part of a planned outage in order to complete maintenance work or facility upgrades. If the thresholds of performance standards under the CSG are too high, compliance will be difficult and costs for CSPs will increase markedly.

Analysis of options

Allowing industry to self-determine their reliance on MSDs, either through self-regulation or through amendments to ACMA’s CSG guide, is unlikely to have an impact on the number of MSDs claimed for predictable events.

Imposing a cap on the number of MSDs claimable for extreme weather conditions may have the unintended effect of preventing CSPs from claiming exemption to the CSG timeframes in circumstances which are genuinely beyond their control.

It is not appropriate to completely remove the provisions for claiming MSDs. The arrangements for MSDs are included in the CSG Standard to ensure that CSPs are not unfairly penalised for circumstances that are genuinely beyond their control or for withdrawing service as part of a planned outage in order to complete maintenance work or facility upgrades.

The proposal to provide objective criteria to define ‘extreme weather conditions’ for the purposes of the CSG Standard requires minimal amendments to the CSG Direction and Standard, as well as minimal changes to existing CSP and ACMA processes. In addition, enforcement can be enhanced by requiring CSPs to provide documentary evidence to substantiate that the weather conditions being claimed for met the criteria.

Preferred option

On balance Option 2 is the preferred option as it provides the best certainty for consumers with minimal cost to or impact on industry.

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.

In relation to MSDs carriers raised strong concerns about imposing any sort of quota on the amount of MSD claims that could be made in a 12 month period. The carriers argued that:

1. that imposing the limit would not act as an incentive for Telstra to improve infrastructure;
2. the limit will penalise them for putting the safety of staff, and the integrity of networks, over the need to meet CSG timeframes; and
3. an extreme weather event could occur after three exemptions had been claimed for unrelated extreme weather in the previous 12 months.

Implementation and review

The Minister will direct ACMA to change the CSG Standard by amending Direction. The required actions to implement the changes are:

1. The Minister to direct ACMA to tighten the CSG arrangements, by amending the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 1999*;
2. ACMA to make changes to the *Telecommunications (Customer Service Guarantee) Standard (No. 2) 2000* pursuant to the Minister's direction; and
3. ACMA to amend the CSG guide provided to industry in consultation with DCITA.