

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) STANDARD 2011

Background

Under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act), the Australian Communications and Media Authority (the ACMA) has the power to make performance standards (CSG Standards) to be complied with by carriage service providers (CSPs) in relation to a range of customer service matters, including the period taken to comply with requests to connect customers and to rectify faults or service difficulties in relation to specified kinds of carriage services. The ACMA cannot make a CSG Standard unless it is directed to do so by the Minister under section 124 of the Act.

Under section 124 of the Act, the Minister may give the ACMA written directions about how it is to exercise its powers under Part 5 of the Act. In addition to making CSG Standards, the ACMA's powers under Part 5 of the Act include specifying a scale of damages for contraventions of standards and making provision for customers of CSPs to waive their protection and rights under Part 5 of the Act.

The *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999* (1999 Direction) was made on 11 December 1999 by the then Minister for Communications, Information Technology and the Arts under section 124 of the Act. The Minister gave the ACMA further directions in 2001, 2003 and 2006 amending the 1999 Direction.

In accordance with the 1999 Direction, the Australian Communications Authority (the ACA) (a predecessor regulator to the ACMA) made the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* on 6 July 2000. That Standard was amended in 2001, 2004 and 2006 in accordance with the subsequent Ministerial directions.

Subsection 125(2) of the Act provides that, if the Minister revokes a direction to the ACMA requiring it to make an instrument imposing a CSG standard, the ACMA must revoke the CSG standard that is in force because of the direction.

The 1999 Direction was revoked by the *Communications (Redundant Regulation) Instrument of Revocation (No. 1) 2009*. The revocation took effect on 24 December 2009, being the day after the instrument of revocation was registered on the Federal Register of Legislative Instruments (FRLI). The 2009 revocation instrument was made for the purposes of removing from FRLI a number of legislative instruments that were considered to be of no on-going effect and therefore redundant. The effect of subsection 125(2) of the Act was overlooked at the time the revocation instrument was made and the CSG Standard in force at the time has not been revoked.

To address this administrative oversight, the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011* (2011 Direction) was made by the Minister for Broadband, Communications and the Digital Economy under section 124 of the Act. The purpose of the 2011 Direction was to require the ACMA to make a new

instrument imposing standards under section 115 of the Act in the same terms as the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, as in force on 23 December 2009.

Under section 117 of the Act, the ACMA may specify a scale of damages for contraventions of CSG Standards. Under section 120 of the Act, 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 2011 Direction did not require the ACMA to specify matters under section 117 or section 120 of the Act, which are currently included in the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*. However, the ACMA may exercise its powers under sections 117 and 120 of the Act even if the Minister has not given the ACMA directions to do so.

The purposes of this instrument are to:

- (a) revoke the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, in accordance with subsection 125(2) of the Act;
- (b) make a standard under section 115 of the Act in the same terms as the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, as in force on 23 December 2009, in accordance with the 2011 Direction; and
- (c) to specify a scale of damages under section 117 of the Act for contraventions of CSG standards and to make provision under section 120 of the Act for CSP customers to waive their CSG protection and rights in the same terms as the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, thereby maintaining the status quo by continuing existing arrangements.

The name of the new CSG Standard is the *Telecommunications (Customer Service Guarantee) Standard 2011*.

Consultation

Previous instruments

Prior to making the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*, the ACA undertook consultation with the telecommunications industry and groups representing consumers of carriage services. Comments received from these groups were taken into account by the ACA when making that Standard.

In addition, before making the 2001, 2004 and 2006 amending Standards, based on the three Directions received from the Minister, the ACA or ACMA again consulted stakeholders and considered and applied (where appropriate) the comments and suggestions received during consultation on each of the three amending Standards.

Current instrument

In revoking the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* and making the new CSG Standard in the same terms, the ACMA did not undertake consultation. The new CSG Standard does not alter existing arrangements and is considered to be ‘machinery in nature’. This approach accords with section 18 of the *Legislative Instruments Act 2003*, which provides that consultation is not necessary where an instrument is of a machinery nature and does not substantially alter existing arrangements. As the overall impact of this regulatory proposal on CSPs is low, the ACMA sought and obtained a Regulatory Impact Statement

exemption from the Office of Best Practice Regulation on 21 February 2011 (Ref. ID: 12349).

The New Standard

There are no substantive differences between the *Telecommunications (Customer Service Guarantee) Standard 2011* (the New Standard) and the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* (the former Standard). The new Standard is in the same terms as the former Standard other than to the extent noted below:

- The section numbers have been updated.
- An obsolete definition has been removed (see the definition of “designated basic rate ISDN service” in section 4 of the former Standard).
- Some Notes have been updated so that they refer to current instruments and documents.
- Transitional provisions have been included to ensure that processes that were in place, and protections that were available, under the former Standard will continue to be available under the new Standard.

Details of the New Standard—the *Telecommunications (Customer Service Guarantee) Standard 2011*—are set out in the Attachment.

ATTACHMENT

Notes on sections

Part 1 – Introductory

Section 1 – Name of instrument

Section 1 provides that the name of the instrument is the *Telecommunications (Customer Service Guarantee) Standard 2011*.

Section 2 – Commencement

Section 2 provides that the *Telecommunications (Customer Service Guarantee) Standard 2011* will commence on the day it is registered on the Federal Register of Legislative Instruments.

Section 3 – Revocation of *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*

Section 3 revokes the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*.

Section 4 – Interpretation

Section 4 defines the terms used in the *Telecommunications (Customer Service Guarantee) Standard 2011*.

Part 2 – Performance standards

Division 1 – Preliminary

Section 5 – Arrangements with customers

Section 5 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 5(3) requires a CSP to comply with arrangements it has made under this section.

Subsection 5(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 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 31(5), 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 two years.

Subsection 5(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 23 and

24, which deal with the procedures CSPs must follow if they intend to rely on an exemption.

Section 6 – Information to be given to customers

Section 6 places obligations on CSPs to inform customers about the CSG. Subsection 6(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. Subsection 6(2) requires a CSP to make the same information available to its customers every two years or on request by the customer (subsection 6(3)).

Section 7 – Cooperation of customers with carriage service providers

Section 7 sets out matters intended to protect a CSP in situations where the customer does not cooperate with the CSP.

Subsection 7(1) states that a CSG performance standard does not apply where the CSP has made a reasonable offer of an interim or an alternative service to the customer and the customer either refuses or accepts that offer. Definitions for interim and alternative service are included in section 4 of the CSG Standard. This provision is intended to allow CSPs to provide a customer with a temporary service in cases where they are unable to meet the CSG performance standard associated with the connection or rectification of a service.

Subsections 7(2) and 7(3) define a reasonable offer to supply an interim or alternative service and what information must be given to a customer regarding the functionality and the terms and conditions of supply for that service. The intention of these provisions is that a CSP must supply a customer with sufficient information about the proposal for the supply of an interim or alternative service so that a customer is able to make an informed choice.

Subsection 7(4) provides examples of certain circumstances where a CSP may be considered to have not contravened a CSG performance standard as a result of a customer failing to cooperate with the CSP.

Subsection 7(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 this arrangement.

Division 2 – Connection to specified services

Section 8 – Guaranteed maximum connection periods

Section 8 requires a CSP to comply with a request by a customer for connection to a specified service within the guaranteed maximum connection period.

Subsection 8(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 8(2) provides that the

guaranteed maximum connection period for a customer is to be determined in accordance with an approved standard marketing plan for a primary universal service provider for the relevant area.

Subsection 8(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 9.

Subsection 8(4) is a specific provision designed to protect the CSP in circumstances where a customer does not provide the CSP with sufficient information required to enable the connection.

Subsection 8(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 ensure that this standard does not apply to the transfer of services between CSPs — known more generally in the industry as ‘churn’.

Section 9 – Arrangements about connection periods

Section 9 provides that the CSP may make arrangements with a customer for a shorter or longer connection period than the connection period set out in the CSG Standard. Subsection 9(2) provides that a CSP may make arrangements for a longer connection period than the guaranteed maximum connection period either where a customer wants a connection made after the end of the maximum connection period or where the CSP makes an offer to the customer and a significant number of other customers and offers a significant service benefit for acceptance of the longer connection period. Where a customer accepts the CSP’s offer of a longer connection period, under subsection 9(3) the CSP must inform the customer of the fact that the arrangement will result in a connection being made outside the guaranteed maximum connection period and what protections and rights under Part 5 of the Act will apply to the service being supplied.

Division 3 – Rectification of faults or service difficulties

Section 10 – Application of Division 3

Section 10 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 11 – Guaranteed maximum rectification periods

Section 11 requires a CSP to rectify a fault or service difficulty reported to the CSP by a customer within the applicable guaranteed maximum rectification period.

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 working 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,

except where section 12 applies, the maximum guaranteed rectification period in these areas is 2 full working days after the customer report of a fault or service difficulty.

For sites other than those described in subsections (2) and (3), unless section 12 applies, the maximum guaranteed connection period is 3 full working days after the report of the fault or service difficulty.

Section 12 – Sites to which subsection 11 (3) or (4) applies

Section 12 applies to a fault or service difficulty in relation to a site mentioned in subsection 11(3) or 11(4) that can be rectified without external or internal plant work or the CSP attending the premises of the customer or where the service has been disconnected by the CSP due to an administrative error not involving damage to a facility.

Subsection 12(2) provides that the guaranteed maximum rectification period in these circumstances is the end of the first full working day after the fault is reported to the CSP by the customer.

Subsection 12(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 provide customers located in these sites with flexible options for reporting faults or service difficulties.

Section 13 – Reports by carriage service providers of faults etc

Section 13 recognises situations in which one CSP (the first provider) uses the network facilities of another CSP (the second provider) to deliver services to its customers. The section applies where the first provider becomes aware that there is a fault or service difficulty in the network of 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 13(2) requires the first provider to report the matter to the second provider as soon as practicable after becoming aware of it.

Section 14 – Arrangements about rectification periods

Section 14 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 depending on the type of fault or service difficulty being experienced by the customer or the particular circumstances of the customer.

Division 4 – Appointments with customers

Section 15 – Interpretation

Subsection 15(1) provides that in Division 4 a reference to a customer of a CSP includes a reference to someone who represents the customer.

Subsection 15(2) provides that in Division 4 a reference to a proposed appointment includes reference to an appointment that is changed in accordance with subsection 16(4).

Section 16 – Making and changing appointments

Section 16 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.

Subsections 16(2) and 16(3) require that the day (and time of day) proposed by the CSP for an appointment must be convenient for the customer and that the CSP may propose an appointment at a particular time of day or period between 2 particular times of day not more than 5 hours apart.

Subsection 16(4) provides for changes to the day, time of day or location of the appointment by either party by giving at least 24 hours notice of the change or by obtaining the agreement of the other party.

Subsection 16(5) requires a CSP to keep an appointment to which it is a party.

Section 17 – Criteria for determining whether an appointment is kept

Section 17 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 makes 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 17(1) and 17(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 minute 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 17(3)).

Subsection 17(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 17(5) provides that if a CSP does not keep an appointment in accordance with this section, the CSP is taken to have missed the appointment. In determining whether a CSP has contravened this section, regard must be had to whether the customer cooperated with the CSP (note to subsection 17(5)).

Part 3 – Exemption from performance standards

Section 18 – Supply of more than 5 eligible telephone services

Section 18 is intended to limit the CSG to situations where the customer is unlikely to be in a strong bargaining position with the CSP due to the fact that only a small number of services are supplied (for example, residential and small business customers). The section limits the CSG to circumstances where a CSP supplies a customer with five or less eligible telephone services on separate lines.

Subsection 18(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 18(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 19 – Maintenance and upgrades

Section 19 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 19(2), an exemption under section 19 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 20 – Credit standing of customers

Section 20 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
- where the customer's service was disconnected due to non-payment of a charge for the connection or use of the service.

Section 21 – Circumstances beyond the control of carriage service providers

Section 21 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 21(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 21(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 Standard.

Subsection 21(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 21(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 reasonable procedures to ensure they limit the extent to which circumstances beyond their control affect their ability to meet the performance standard.

Section 22 – Provisional exemption under section 21

Section 22 provides for CSPs to claim an exemption from compliance with the CSG Standard (as described in subsection 21(1)) on a provisional basis from the time the CSP seeks to rely on the exemption claimed until such time as the CSP either complies with the customer notification provisions in relation to the exemption set out in sections 23 and 24 or fails to comply with these notification provisions.

Where a CSP does not comply with either section 23 or 24, under subsection 22(2), the exemption claimed under section 21 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 23 – Notice to particular customers of provisional exemption under section 21

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 who proposes to rely on an exemption from compliance with the CSG Standard must either comply with the notification requirements set out in section 23 of the CSG Standard relating to direct notification of a customer, or with the general notification procedures specified under section 24. 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 chooses to comply with the notification provisions of section 23, under subsection 23(1), each customer to whom the exemption relates must be given a statement in writing setting out: that the exemption is available to the provider under section 21; the grounds on which the exemption is based; the estimated period of time for which the exemption will exist (if practicable); the entitlement of the customer to dispute the exemption by taking the matter up with the provider or complaining to the Telecommunications Industry Ombudsman (TIO); information about how the customer may contact the CSP in relation to the exemption; and where the exemption relates to extreme weather, evidence in writing that the weather conditions meet one or more of the criteria specified in Schedule 3.

Subsection 23(2) prescribes the timing for notice given under section 23. 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 within 10 working days after the first working day on which the exemption becomes available.

Subsection 23(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 23(4) provides that compliance with section 23 does not prevent a customer from disputing the exemption claimed by the CSP.

Section 24 – 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 24 provides that a CSP is not required to comply with the notification provisions set out in section 23 if the CSP:

- requests publication of a notice as set out in subsection 25(1) no later than 9 working 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 working 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 working 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 set out in subsection 25(1) within 9 working days after the first day on which the exemption becomes available to the CSP.

Subsection 24(2) provides that a reseller may comply with the general notice provisions of section 24 by publishing a notice, advising the ACMA and the TIO of the reliance upon the exemption and posting the notice on the internet within 2 working 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 24(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 25 – Public notification

The intention of this provision is to ensure that the notice (as set out in subsection 25(1)) is published in a newspaper 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 25 applies where a CSP is relying upon the general notice provisions set out in section 24 and is publishing a notice in a newspaper.

Subsection 25(1) provides that the notice must be published in at least 1 edition of a daily newspaper circulating in the capital of a State or Territory, if a customer to whom the exemption relates resides in the capital, or in a region, if a customer to whom the exemption applies usually resides in that region.

Subsection 25(2) provides that the notice must contain the same information provided in a notice under section 23 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 25(3) provides that each notice must be given a unique identifier and subsection 25(4) provides that a CSP must provide a customer with a copy of a notice under this section on request.

Subsection 25(5) provides that for the purposes of a notice, the information relating to the evidence requirements for an exemption claimed (in relation to extreme weather) can be provided by including in the notice details of the address of an internet website, accessible by customers of the CSP, which contains evidence of the relevant extreme weather events .

Section 26 – Cessation of exemptions

Section 26 provides that, where the circumstances giving rise to the availability of an exemption cease to exist, the exemption will cease to exist.

Section 27 – Review of circumstances of certain exemptions

Section 27 provides that, where a CSP is relying upon an exemption due to circumstances beyond the CSPs control (as provided for in section 21), 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 28 – Temporary exemptions

Section 28 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 28(2) sets out that an application by a CSP for a temporary exemption must be in writing and must include: details of the geographic area for which the exemption is sought; the period for which the exemption is sought; details of the number of current CSG services of the CSP in the relevant geographic area and the number of services the CSP estimates it will provide for the period of the exemption; and any other information that the ACMA requests to determine the application.

Subsection 28(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; that 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 28(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. These matters include: the extent to which the proposed exemption would lower the cost of entering or competing in the market in the geographic area; the extent to which the exemption would be likely to promote competition for CSG services; the extent to which the exemption would be likely to result in service improvements for end users; as well as consideration of issues around the number of services and proportion of the CSG market in the geographic area and nationally that would be affected by the exemption; and the proposed exemption period.

Subsection 28(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) and the conditions to which the temporary exemption is subject.

Subsection 28(6) provides that the period for which the exemption is granted by the ACMA may differ from that specified in the application.

Subsection 28(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 28(8) provides that a CSP that has been granted a temporary exemption must notify the customers to whom it supplies 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 28(9) sets out how the information referred to in subsection 28(8) must be provided.

Subsection 28(10) provides that the ACMA may renew a temporary exemption upon application from the CSP for a further period of 5 years.

Subsection 28(11) provides 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.

Part 4 – Damages

Section 29 – Categories of contraventions and damages

Section 29 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 for 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

Section 30 – Waivers in writing

Section 30 is made under section 120 of the Act, which provides that the ACMA may make provisions for customers of CSPs to waive their protection and rights under Part 5 of the Act in relation to specified services supplied or offered to be supplied by the CSP.

It is a requirement under subsection 30(1) that confirmation of the waiver is in writing and is signed and dated by the customer.

Subsection 30(2) provides that where a waiver is in writing (including where it is given electronically), the document must clearly identify the customer, the CSP and the service to which the waiver applies.

Section 31 – Other waivers

Section 31 provides for a CSP to propose to customers that they waive their rights and protection under Part 5 of the Act, other than by a written signed waiver (for example, over the telephone).

Subsection 31(2) requires a waiver proposal by a CSP to state the protection and rights of the customer that would and would not be foregone as a result of accepting the proposal. Paragraph 31(2)(c) requires that a proposal under section 30 provides that the customer obtain a significant service benefit (such as a substantially cheaper price) as a result of accepting the proposal. This provision is designed to ensure customers are provided with sufficient information to make a decision about a waiver proposal.

Subsection 31(3) requires a CSP to provide written information about the waiver, containing the information set out in subsection 31(2), to the customer as soon as practicable after the customer accepts the waiver proposal. The purpose of this information is also to confirm the details of the offer agreed to by the customer.

Subsection 31(4) provides that the waiver takes effect 7 days after the CSP provides the customer with the written statement of the proposal unless the acceptance of the waiver proposal is withdrawn prior to that time.

Subsection 31(5) requires CSPs to keep a record of a waiver by a customer for not less than two years.

Part 6 – Transitional arrangements

Section 32 – Definitions for Part 6

Section 32 includes definitions (for the transitional provisions) for the transition to the *Telecommunications (Customer Service Guarantee) Standard 2011*.

Section 33 – Exemptions relied upon under pre-31 October 2006 Standard

Section 33 provides that the transitional arrangements that were in force under the former Standard continue to apply.

Section 34 – Exemptions relied upon under former Standard

Section 34 provides that where an exemption was available under the former Standard, it will continue to be available under the new Standard.

Section 35 – General notice of exemptions under former Standard

Section 35 provides that information given under section 24 of the former Standard will be taken to have been given under section 24 of the new Standard.

Section 36 – Contraventions and damages payable under pre-31 October 2006 Standard

Section 36 provides that the transitional arrangements that were in force under the former Standard continue to apply.

Section 37 – Contraventions and damages payable under former Standard

Section 37 provides that where damages were available in respect of a contravention of the former Standard, the former Standard continues to apply so that damages will continue to be available, and will be calculated in accordance with the former 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. It provides reference to an Australian Bureau of Statistics publication which gives additional information on the current method of delimitation of urban centres and localities.

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 working 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 working 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 working 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 sites with fewer than 200 people is within 15 working days of the customer’s request.

Schedule 2 – Categories of contravention of performance standards and damages

Part 1 – Interpretation

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 or 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. Paragraph (2) of item 101 notes 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.

Items 102 and 103 clarify the three categories of customers 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 4. This Schedule is intended to provide clarity around the exemption declaration process by providing empirical definitions to specify what constitutes extreme weather.