

# Explanatory Statement

Issued by the authority of the Minister for Communications

*Telecommunications (Consumer Protection and Service Standards) Act 1997*

## ***Telecommunications (Customer Service Guarantee) Direction 2023***

### **Authority**

The *Telecommunications (Customer Service Guarantee) Direction 2023* (the Direction) is made under subsection 124(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1997* (the Act).

Part 5 of the Act creates a scheme so that performance standards (and associated benchmarks) can be applied to carriage service providers (CSPs). Section 124 of the Act provides authority for the Minister for Communications to direct the Australian Communications and Media Authority (ACMA) to make performance standards that CSPs must comply with. Under section 115 of the Act, the ACMA has the power to make such performance standards in relation to any matter concerning the supply of carriage services to customers, including connection, fault rectification and appointment-keeping. The ACMA can only make or vary performance standards if directed to do so by the Minister under section 124. The ACMA can also determine a scale of damages where performance standards are missed under section 117 and determine waiver provisions under section 120.

### **Purpose and operation**

The purpose of the Direction is to require the ACMA to remake the *Telecommunications (Customer Service Guarantee) Standard 2011* (the 2011 CSG Standard) largely as it exists for a period of three years, with some necessary updating and minor amendments. This will continue existing Customer Service Guarantee (CSG) arrangements, which set maximum timeframes for connection and repairs of retail fixed telephone services, including associated appointment-keeping arrangements. This decision follows a thematic review of the CSG framework and the individual instruments that are due to sunset on 1 October 2023. The Direction supersedes and so will revoke the earlier *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011*.

The 2011 CSG Standard also sets out compensation to be paid to individual consumers where relevant timeframes are not met. However, carriage service providers are not required to pay compensation if they offer to provide customers with an interim service (such as a mobile phone) or an alternative service (such as a call diversion to another landline or mobile service). The CSG Standard is complemented by CSG benchmarks made by the Minister (requiring 90% compliance with the CSG standards) and CSG record-keeping rules (RKR) made by the ACMA. The CSG arrangements complement the Universal Service Obligation (USO), under which Telstra has a statutory and contractual obligation to provide standard telephone services (STS) on reasonable request nationally.

Details of the Direction are set out in [Attachment A](#).

## Background

The CSG Standard, CSG benchmarks and CSG RKR are due to sunset on 1 October 2023 in accordance with the *Legislation Act 2003*. Accordingly, they were the subject of a thematic review of the CSG, which had regard to the details of the individual instruments as well as the scheme as a whole. The review considered the future role and utility of the CSG, noting arrangements have not been substantially changed since its introduction in 1997 and there have been significant changes in the industry over this time.

Notably, the CSG was originally put in place when Telstra operated the network over which voice services were delivered, and also supplied most of these services. However, most CSG services are now supplied over the National Broadband Network (NBN) or wholesale broadband networks operated by other Statutory Infrastructure Providers (SIPs), although Telstra still provides services over its own legacy copper and wireless networks in regional and remote areas outside the NBN fixed line footprint (around 8% of all premises nationally).

Following the thematic review, the Minister publicly indicated she would direct the ACMA to remake the 2011 CSG Standard for a further three years, with some minor amendments to update outdated terms and remove unnecessary provisions. This will continue protections for consumers, particularly for consumers of voice services in regional and remote areas that rely on Telstra's legacy networks. At the same time, the Government will further consider long-term arrangements while complementary protections at the wholesale level are bedded down.

To continue existing CSG arrangements, after the ACMA makes a new CSG Standard in accordance with the terms of this Direction, the Minister will need to consider remaking the existing CSG benchmarks and, similarly, the ACMA will also need to consider remaking existing CSG record-keeping rules.

## Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) undertook public consultation on the thematic review of the CSG from 17 February to 27 March 2023. The Department received 14 submissions, including from industry, government, consumer groups and members of the public. Submissions set out the varying perspectives of stakeholders on the CSG but agreed that timeframes for connections, repairs and appointments remain important for consumers. This is particularly the case for consumers of voice services in regional and remote areas outside the NBN fixed line footprint that rely on Telstra's legacy copper and wireless networks.

Submissions also placed a strong emphasis on dealing with these matters effectively at the network or wholesale level, although there were mixed views about the long-term need for retail CSG arrangements in future.

ACMA views were sought on the detail of the Direction. In preparing the Direction, the Department sought views on the detail of a draft Direction from key stakeholders that made submissions to the CSG thematic review. No substantive concerns were raised about the proposed detailed drafting of the Direction. Some stakeholders that provided comments also reiterated support expressed in their submissions for future reform of CSG arrangements.

## **Regulatory Impact Statement**

The Office of Impact Analysis (OIA) has assessed the proposal as having a no more than minor regulatory impact and advised no IA was required (OIA reference: 23-04883).

## **Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

## Attachment A

### Details of the *Telecommunications (Customer Service Guarantee) Direction 2023*

#### Section 1 – Name

Section 1 provides that the name of the Direction is the *Telecommunications (Customer Service Guarantee) Direction 2023*.

#### Section 2 – Commencement

Section 2 provides that the Direction will commence on the day after it is registered on the Federal Register of Legislation.

#### Section 3 – Authority

Section 3 states that the Direction is made under section 124 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

#### Section 4 – Definitions

Section 4 sets out definitions for key terms used in the Direction.

The term *Act* is defined to mean the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The term *ACMA* is defined to mean the Australian Communications and Media Authority.

The term *CSG Standard* is defined to mean an instrument made under sections 115, 117 and 120 of the Act.

The term *new CSG Standard* is defined to mean the legislative instrument to be made by the ACMA subject to the direction in section 6.

The term *2011 CSG Amendment Standard* is defined to mean the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)*.

The term *2011 CSG Standard* is defined to mean the *Telecommunications (Customer Service Guarantee) Standard 2011*.

The term *TIO* is defined to mean the Telecommunications Industry Ombudsman.

#### Section 5 – Schedules

Section 5 provides that each instrument that is specified in a given Schedule to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

#### Section 6 – Direction to make a new CSG Standard

Subsection 6(1) directs the ACMA to make a new CSG Standard to commence on or before 1 October 2023 in substantially the same terms as the 2011 CSG Standard, subject to the

terms set out in the Direction (subsection 6(2) and Schedule 1).

For avoidance of doubt, subsection 6(1) specifies that the terms of the 2011 CSG Standard includes all amendments made by the *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* (the 2011 CSG Amendment Standard). The 2011 CSG Amendment Standard was made by the ACMA in 2011 to streamline the waiver requirements in the 2011 CSG Standard and update it to reflect amendments to section 120 of the Act.

Subsections 6(2) and 6(3) set out the broad terms in which the ACMA must make the new CSG Standard.

Paragraph 6(2)(a) provides that the ACMA must ensure the new CSG standard repeals the existing 2011 CSG Standard, in accordance with subsection 125(2) of the Act.

Paragraph 6(2)(b) provides that the new CSG Standard must cease 36 months (i.e. three years) after commencement. The standard sunseting date for legislative instruments is 10 years under the *Legislation Act 2003*, as was the case for the CSG instruments made in 2011. However, the Minister has decided to rollover CSG arrangements for a shorter period to provide ongoing protections for consumers while complementary safeguards at the wholesale level are bedded down and longer-term reform is considered in more detail.

Paragraph 6(3)(a) provides that in making the new CSG Standard, the ACMA is able to correct any grammatical, typographical and formatting errors it identifies in the 2011 CSG Standard.

Paragraph 6(3)(b) provides that the ACMA may insert additional notes to provisions in the new CSG Standard, where it considers reasonable.

Paragraph 6(3)(c) provides that the ACMA may make any formatting changes that it considers reasonable when making the new CSG Standard. Whereas paragraph 6(3)(a) allows the ACMA to correct formatting errors that may be present in the 2011 CSG Standard, this provision is intended to allow the ACMA to address any formatting issues that may be caused as a result of making a new CSG Standard by the terms of this Direction, such as the renumbering of provisions due to the removal of specific provisions.

Paragraph 6(3)(d) provides that the ACMA must also include any transitional matters which it considers reasonable, including but not limited to accommodating for the repeal of the 2011 CSG Standard and the 2011 CSG Amendment Standard. Schedule 1 of the Direction also includes specific directions to the ACMA to address transitional matters, which are detailed further below.

## **Schedule 1 – Terms of new CSG Standard**

Schedule 1 sets out a number of specific directions to the ACMA to make amendments to certain provisions of the 2011 CSG Standard when making the new CSG Standard. These directions are set out in a table with 23 items, which are detailed below. The Direction clarifies that none of the specific directions limit ACMA's ability to make other minor changes of the types specified in subsection 6(3) of the Direction.

Item 1 directs the ACMA to update some existing references in section 2 of the 2011 CSG

Standard. Items 1(a) and (b) require ACMA to replace references to the “Federal Register of Legislative Instruments” with references to the “Federal Register of Legislation”, and replace all references to the “Legislative Instruments Act 2003” with references to the “Legislation Act 2003”. These changes reflect that the names of the register and Act were changed in 2016 by the *Acts and Instruments (Framework Reform Act) 2015*. Additionally, item 1(c) requires ACMA to remove an outdated URL ([www.frli.gov.au](http://www.frli.gov.au)) from the note in section 2. Given paragraph 6(3)(b) discussed above, the ACMA can otherwise consider the merits of whether a note with an updated URL to the register would usefully be included in making the new CSG Standard. As at July 2023, the existing URL for the register is [www.legislation.gov.au](http://www.legislation.gov.au).

Item 2 directs the ACMA to remove the redundant section 3 of the 2011 CSG Standard, which revoked the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* (the 2000 CSG Standard). The ACMA will similarly be required to repeal the 2011 CSG Standard under paragraph 6(2)(a) as described above.

Item 3 directs the ACMA to make a number of changes to the list of definitions provided at subsection 4(1) of the 2011 CSG Standard.

Item 3(a) directs the ACMA to remove the note to the definition of the term ‘CSG service’, which clarifies that the CSG Standard does not apply to “sophisticated business-oriented services (for example, CVPN services and similar services)”. It is considered unnecessary to retain this note as the CSG does not apply where a provider supplies five or more eligible voice services, and it is well understood by consumers and industry that the CSG has been focused on the supply of basic voice services to residential customers and small businesses.

Item 3(b) directs the ACMA to add a definition for the term ‘business day’ as having the same meaning as in section 2B of the *Acts Interpretation Act 1901*. This definition of ‘business day’ is equivalent to the definition of ‘working day’ included in the 2011 CSG standard. The term ‘business day’ reflects current drafting conventions for Commonwealth legislation and instruments. Accordingly, item 3(h) directs the ACMA to also remove the definition of the term ‘working day’.

Item 3(c) directs the ACMA to amend the definition of the term ‘exemption’ so that it means an exemption made under the new CSG Standard or under the 2011 CSG Standard. The existing definition of the term in the 2011 CSG Standard is set out to mean ‘an exemption under Part 3’ of that Standard. Given the term is also used in Part 6 to describe exemptions provided under the ‘former Standard’, the amendment is necessary to ensure the transitional arrangements set out at Part 6 of the new CSG Standard capture exemptions relied upon under both versions of the Standard.

Item 3(d) directs the ACMA to add a definition for the term ‘new CSG Standard’ to have the same meaning as defined in the Direction (as set out further above).

Items 3(e) and 3(f) direct the ACMA to remove the definitions of the terms ‘remote location’ and ‘standard zone’. These terms were used in an earlier version of the CSG Standard (the 2000 CSG Standard), but are not used in the 2011 CSG Standard.

Item 3(g) directs the ACMA to remove the definition of the term ‘satellite service’. The term is currently defined to mean the same as set out in subsection 106(4) of the Act. Given that note 1 of subsection 4(1) provides a list of expressions that have the same meaning as in the

Act, it is considered more appropriate to include the term in that list rather than setting out the definition in full. Accordingly, as detailed below, item 3(j) directs the ACMA to also add ‘satellite service’ to Note 1.

Item 3(i) directs the ACMA to add a definition for the term ‘2011 CSG Standard’ to have the same meaning as defined in the Direction (as set out further above).

Item 3(j) directs the ACMA to make amendments to note 1 to subsection 4(1), which sets out a list of terms that have the same definition as in the Act. The ACMA will be required to remove references to the terms ‘approved standard marketing plan’ and ‘universal service area’. The inclusion of these terms in subsection 4(1) is unnecessary as they are only used at subsection 8(2), and the direction at item 6 of the table in the Direction requires the ACMA to amend this provision in a way that will remove references to the terms (as described further below). Item 3(j) also directs the ACMA to add ‘satellite service’ to note 1 (this is described further above).

Item 4 directs the ACMA to remove references to ‘working day’ and replace with ‘business day’ in subsection 4(2) of the 2011 CSG Standard. The rationale for this change is detailed further above. The table also includes other directions (items 7(a), 8, 10, 11, 13, 22 and 23) for the ACMA to make this change in the following sections of the 2011 CSG Standard:

- section 11 of Division 3, Part 2
- section 12 of Division 3, Part 2
- section 23 of Part 3
- section 24 of Part 3
- section 31 of Part 5
- Part 2 of Schedule 1
- Part 2 of Schedule 2.

Item 5 directs the ACMA to make a minor amendment to the note in section 6 of the 2011 CSG Standard. This section sets out requirements for CSPs to inform customers about the protections provided for by the CSG Standard, including the performance standards that apply to their services, the obligations of the provider, and the customer’s entitlements to damages for contravention of a standard. The ACMA will be required to amend the note that provides an example of information to be given to customers in writing, so that the reference to “in a telephone directory” will be replaced with “on a carriage service provider’s website”. This change reflects that there is now less reliance on printed phone directories, and websites are now commonly used by industry to provide many consumers with ready access to information. However, the fundamental requirement for providers to ensure relevant information is provided in writing is unchanged.

Item 6 directs the ACMA to make amendments to subsection 8(2) of the 2011 CSG Standard which will see the removal of references to Telstra’s USO standard marketing plan that was previously applicable. Under previous arrangements that were still in place when the 2011 CSG Standard commenced, Telstra was required to publish a standard marketing plan that set out the terms of how it would fulfil its USO obligations, to be approved by the ACMA as the regulator. These requirements were removed from the Act in 2014 under Part 8 of the *Omnibus Repeal Day (Autumn 2014) Act 2014*. Subsection 8(2) of the 2011 CSG Standard sets out the guaranteed maximum connection period that applies if a premise is not in close proximity to existing infrastructure or the network has no spare capacity, which is “in accordance with an approved standard marketing plan for a universal service provider”. A

note is also included to specify that, according to Telstra's USO standard marketing plan, if Telstra cannot supply the service on the date the customer requires it to be connected, it will aim to supply it within one calendar month (equivalent to 20 working days) from the date of the customer's request. Given this plan no longer applies, the ACMA will be required to remove this note and amend subsection 8(2) so that the guaranteed maximum connection period in this case is simply 20 business days.

Item 7(b) directs the ACMA to make an amendment to the note at subsection 11(6) of the 2011 CSG Standard to update the reference to the Australian Bureau of Statistics (ABS) publication, which provides information about how the ABS classifies geographical areas such as an 'urban centre' and 'locality'. The note is considered helpful as the sections of the CSG Standard that set out the maximum connection, fault rectification and appointment-keeping timeframes refer to geographical areas as defined by the criteria used by the ABS for the most recent Australian census. Accordingly, the ACMA will be required to refer to the updated publication – the 'Australian Statistical Geography Standard (ASGS) Edition 3'. Item 21 of the table in the Direction includes an equivalent direction for the ACMA to update the same reference at the note to subsection 102(2) of Part 1, Schedule 2 of the 2011 CSG Standard.

Item 9 directs the ACMA to remove references to the *Telecommunications (Emergency Call Service) Determination 2009* in section 19 of the 2011 CSG Standard, and replace with references to the *Telecommunications (Emergency Call Service) Determination 2019*.

Item 12 directs the ACMA to make amendments to section 25 of the 2011 CSG Standard, which currently sets out the requirement for CSPs to provide notification of mass exemptions it has claimed through publication in a local daily newspaper. Under item 12(a), the ACMA will be required to amend subsection 25(1) to remove this requirement and replace it with a requirement for CSPs to publish such notices on their own website. This change reflects that customers may not consume daily local newspapers as they may have in the past, given changing readership patterns and many papers reducing publication schedules or moving to online publication. Additionally, item 12(b) directs the ACMA to remove subsection 25(5), which currently allows CSPs to meet this notification requirement by publishing the relevant information online on their website, providing that an accessible web link is still published in a local daily newspaper. This is redundant given the amendment set out at item 12(a) and described above.

Items 14-20 direct the ACMA to make a number of amendments to existing transitional arrangements currently set out at Parts 6 and 7 of the 2011 CSG Standard. Parts 6 and 7 were included to address potential issues caused by the transition to a new CSG Standard, particularly in relation to how requirements related to exemptions and damages payable are applied. The amendments are necessary to update the transitional arrangements to reflect the transition between the 2011 CSG Standard and the new CSG Standard that the ACMA will be required to make.

Items 14(a-d) direct the ACMA to make amendments to section 32 of Part 6 of the 2011 CSG Standard, which provides a brief list of definitions for terms used in Part 6. The ACMA will be required to update the definition of 'commencement day' to refer to the day the new CSG Standard commences, and remove the definition of 'pre-31 October 2006 Standard' which is redundant. Additionally, the ACMA will be required to remove the definitions of 'former Standard' and 'new Standard', as the replacement terms '2011 CSG Standard' and 'new CSG Standard' will instead be defined in the main list of definitions in subsection 4(1)

of the new CSG Standard. Accordingly, items 16, 17(a) and (b) and 19(a) and (c) also direct the ACMA to make amendments to Part 6 to replace existing references to ‘new Standard’ with ‘new CSG Standard’, as well as existing references to ‘former Standard’ with ‘2011 CSG Standard’. Item 17(c) and (d), in combination with items 17(a) and (b) discussed above, will require the ACMA to amend existing references in section 35 of Part 6. This will ensure any exemptions claimed in accordance with relevant provisions under the 2011 CSG Standard, including by providing supporting information to the TIO and the ACMA, will be taken to continue once the new CSG Standard commences.

Items 15, 18, 19(b) and 20 collectively remove outdated transitional arrangements that will no longer be applicable in the context of a new CSG Standard. The ACMA will be required to remove:

- section 33 of Part 6
- section 36 of Part 6
- paragraph 37(b) of Part 6 (which refers exclusively to section 36)
- Part 7

## **Schedule 2 – Repeals**

Section 1 of Schedule 2 provides that the Direction repeals the existing *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011*. This Direction, made in 2011 by the then-Minister for Broadband, Communications and the Digital Economy, directed the ACMA to make a CSG standard in the same terms as those contained in the 2000 CSG Standard. It is exempt from sunset. Accordingly, it is necessary to repeal the 2011 Direction as it is made redundant by the new Direction (and its terms).

### **Statement of Compatibility with Human Rights**

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

#### ***Telecommunications (Customer Service Guarantee) Direction 2023***

The *Telecommunications (Customer Service Guarantee) Direction 2023* 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 Direction**

The *Telecommunications (Customer Service Guarantee) Direction 2023* (the Direction) is a direction to the Australian Communications and Media Authority (ACMA) to remake the *Telecommunications (Customer Service Guarantee) Standard 2011* (the 2011 CSG Standard) largely as it exists for a further three years, with some necessary updating and minor revisions.

The purpose of the Direction is to continue consumer protections provided under the Customer Service Guarantee (CSG) scheme, which regulates the timeframes for connection, repairs and appointments for retail fixed telephone services. Under the terms of the Direction, the ACMA will be required to make a new CSG Standard in largely the same terms as the 2011 CSG Standard. This includes setting out the maximum timeframes for connection, repair and appointment-keeping that carriage service providers must meet, as well as the compensation that must be paid to individual consumers where these standards are not met. The ACMA will be required to make some minor amendments to the 2011 CSG Standard to remove provisions that are no longer necessary and update references that are out of date.

#### **Human rights implications**

The Direction does not directly engage any of the applicable rights or freedoms.

#### **Conclusion**

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