**Explanatory Statement**

Issued by the authority of the Minister for Communications

*Telecommunications Act 1997*

***Telecommunications (Financial Hardship Industry Standard) Direction 2023***

**Authority**

The *Telecommunications (Financial Hardship Industry Standard) Direction 2023* (the Direction) is made by the Minister for Communications (the Minister) under subsection 125AA(4) of the *Telecommunications Act 1997* (the Act).

Subsection 125AA(4) of the Act enables the Minister to direct the Australian Communications and Media Authority (ACMA) to determine an industry standard that applies to participants in a specified section of the telecommunications industry, and deals with one or more matters relating to the telecommunications activities of those participants.

Subsection 125AA(1) of the Act provides that the ACMA may, by legislative instrument, determine an industry standard that applies to participants in a particular section of the telecommunications industry, and deals with one or more matters relating to the telecommunications activities of those participants. Subsection 125AA(5) of the Act provides that the ACMA can only determine an industry standard under subsection 125AA(1) if directed to do so by the Minister.

**Purpose and operation**

This instrument directs the ACMA to make an industry standard that requires carriage service providers to support customers who are (or may be) experiencing financial hardship through early identification and appropriate assistance. The instrument also directs that the standard deal with information that is provided to customers, and made available to customers and potential customers, relating to financial hardship matters. The industry standard will have due regard to the essential nature of telecommunications services and therefore focus on keeping customers connected to appropriate services for their needs. This also involves maintaining access to devices that enable connection to appropriate services – noting that debt and associated financial hardship can relate to equipment (for example, mobile handsets) that a customer has acquired from a carriage service provider.

This instrument is a legislative instrument for the purpose of the *Legislation Act 2003.* However, this instrument is not subject to disallowance, as it is a Direction by a Minister to a person or body (see item 2 of the table in section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Details of the Direction are set out in Attachment A.

**Background**

In 2022 and 2023, Australians have been facing increased cost of living pressures. The costs of housing, utilities, petrol and groceries have been rising disproportionately to wage growth, resulting in increased numbers of people having difficulty paying their bills and meeting their financial commitments. Telecommunication services are central to everyday life and staying connected is essential to support work, education, health, entertainment, community and government services.

The ACMA’s report, *Financial hardship in the telco sector: Keeping the customer connected,* released in May 2023, portrayed deficiencies in the way telecommunications providers engage with customers experiencing financial hardship. In particular, the report showed that the rates of consumers experiencing financial hardship are significant in the telecommunications sector and in turn, the expectations of consumers are not being met, with only a small proportion of customers receiving formal hardship support. It also indicated consumer awareness of financial hardship support was low. Further, where consumers did access financial hardship support, the report indicated that the arrangements were not flexible and adequately being tailored to meet a consumer’s individual circumstances.

While telecommunications services have not been a central contributor to the increase in household spending, the findings from the ACMA’s report, along with reports and feedback from consumer groups and advocates over an extended period, demonstrated that the current financial hardship rules in the *Telecommunications Consumer Protections Code* (TCP Code) C628:2019, are not working effectively to support vulnerable consumers.

This Directionrequires the ACMA to determine an industry standard that is to apply to carriage service providers in their dealings with residential, small business and not-for-profit customers. This Direction permits the ACMA to include rules and requirements in the industry standard for financial hardship assistance provided by carriage service providers to customers. In addition to prescribing the processes for assessment and provision of financial hardship assistance to customers, the industry standard can outline the rules on financial hardship policies, consumer access to information about financial hardship, processes for early identification of relevant consumers and staff training requirements for relevant staff engagement. The industry standard may also prescribe rules regarding credit management, including requirements about restriction, suspension, downgrading or disconnection of services in relation to customers experiencing financial hardship.

The Direction outlines the objectives that the industry standard must be drafted to achieve, including that consumers experiencing financial hardship be provided with adequate and appropriate support. Further, it makes it clear that providers must prioritise keeping the customer connected to appropriate services when making decisions about credit management action and that disconnection is to be a measure of last resort.

The expectation is that the ACMA will consider the extent to which any rules should be appropriately tailored to accommodate for the needs of different consumer cohorts, including consumers with a disability, First Nations consumers and those experiencing domestic and family violence. It is also anticipated that the ACMA will give due consideration to the appropriateness of language, for example, used in financial hardship policies and provision of information – noting that language such as ‘financial hardship’ can carry stigma and some customers may find it difficult to identify with this term.

The industry standard is to be determined by 15 February 2024 and commence in full by 29 March 2024 at the latest. The timeframe is reflective of the urgency created by the cost of living crisis and evidence from the ACMA’s report showing that clear, appropriate, and directly enforceable rules on financial hardship are needed as soon as possible.

Compliance with industry standards is mandatory. A range of enforcement options apply to industry standards under the Act, including infringement notices and civil penalties. In making the industry standard, the ACMA may consider conferring powers and functions on the Telecommunications Industry Ombudsman in respect of consumer complaints about financial hardship. However, the ACMA is expected to ensure any conferral operates effectively (and without duplication) with other instruments and processes, including the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

**Impact Analysis**

An Impact Analysis will be undertaken on the industry standard and in consultation with stakeholders (OIA reference: OIA23-05109).

**Consultation**

Consultation on the proposed Direction was undertaken with the ACMA, the Telecommunications Industry Ombudsman, the Australian Communications Consumer Action Network and other consumer groups, the First Nations Digital Inclusion Advisory Group, Communications Alliance and members of the telecommunications industry.

**Statement of compatibility with human rights**

As section 42 of the *Legislation Act 2003* does not apply to this instrument, being exempted under Part 4 of the *Legislation (Exemption and Other Matters) Regulation 2015*, a statement of compatibility with human rights is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* .

**Attachment A**

**Details of the *Telecommunications (Financial Hardship Industry Standard) Direction 2023***

**Section 1 – Name**

This section provides that the name of the Direction is the *Telecommunications (Financial Hardship Industry Standard) Direction 2023*.

**Section 2 – Commencement**

This section provides that the Direction commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section states that the Direction is made under subsection 125AA(4) of the *Telecommunications Act 1997*.

**Section 4 – Definitions**

This section sets out definitions for terms used in the Direction.

The note to this section informs the reader that a number of expressions used in the instrument are defined in the *Telecommunications Act 1997* (the Act).

For the purposes of interpreting the Direction, where a term or expression is not defined in the Act, it is intended to be interpreted with regard to its ordinary meaning.

**Section 5 – Direction to the ACMA on financial hardship matters**

This section provides that the Minister directs the ACMA to determine an industry standard under subsection 125AA(1) of the Act that deals with support to be provided by carriage service providers to customers who are, or may be experiencing financial hardship.

The industry standard is also to deal with carriage service providers providing information on financial hardship related matters to their customers and making information available to customers and potential customers.

Under the Act, if the Minister directs the ACMA to make such a standard, the Minister may also direct that the ACMA is to do so within a specified period (paragraph 125AA(4)(b)).

Subsection 5(2) of the Direction provides that the industry standard is to be determined by 15 February 2024. The industry standard is to commence in full at the earliest practical opportunity, but by 29 March 2024, at the latest. This is intended to balance the availability of appropriate financial hardship support for consumers as soon as possible with giving the ACMA appropriate time to develop the industry standard, and carriage service providers time to implement changes as needed. In this regard, we note that carriage service providers are already required to comply with financial hardship rules under the TCP Code.

Subsection 5(3) confirms that the ACMA may vary the resulting industry standard over time – as long as the amended standard complies with this instrument.

**Section 6 – Application of the standard**

This section provides that the standard is to apply to carriage service providers in their interactions with residential, small business, and not-for-profit customers. These terms have not been defined in the Direction as they will be defined in the industry standard.

Paragraphs 6(2)(a) and (b) provide that the standard may deal with matters differently for different classes of carriage service providers or exempt certain classes of carriage service providers from particular provisions of the standard. This section is designed to ensure the ACMA has the authority to appropriately target rules to appropriate carriage service providers in a manner that reflects, for example, the services they provide.

**Section 7 – Objectives and content of the standard**

*Objectives of the standard*

Subsection 7(1) outlines the objectives the standard is to give effect to in relation to the telecommunications activities of carriage service providers.

Paragraph 7(1)(a) seeks to ensure that customers and potential customers are aware of available financial hardship assistance, by requiring carriage service providers to promote that information and also make it readily available (for example, on their website).

Paragraph 7(1)(b) highlights the need for carriage service providers to be proactive and seek to identify customers who may be experiencing financial hardship early, to stop debt and associated issues escalating. Paragraph 7(1)(b) also highlights the need for carriage service providers to assist those customers. This is intended to include (as appropriate) processes such as directing the customer to the relevant staff of the provider; providing the customer with relevant financial hardship information and avoiding the need for the customer to repeat their story to multiple staff within the carriage service provider.

Paragraph 7(1)(c) provides that the standard should ensure that the eligibility criteria and assessment processes related to financial hardship have appropriate regard to the essential nature of carriage services. The phrase ‘essential nature of carriage services’ relates to telecommunications being an essential part of everyday life, and the central role that staying connected to appropriate services plays in supporting education, work and access to critical services for consumers. In that regard, paragraph 7(1)(c) is intended to encourage carriage service providers to prioritise keeping customers connected to appropriate services, and associated devices for utilising those services, when developing and applying their eligibility criteria and assessment processes.

Additionally, financial hardship may be defined broadly, and regard can be given to other vulnerability or relevant factors when considering what constitutes risks of financial hardship, for example, customers experiencing domestic and family violence or customers with disabilities. The bar for accessing financial hardship assistance should not be set too high.

Paragraph 7(1)(d) envisages that carriage service providers should offer payment plans and other arrangements to customers experiencing financial hardship that are appropriate and tailored to the individual customer’s circumstances. This way, the customer has the best chance of meeting their obligations and paying their debt.

Paragraph 7(1)(e) provides that the standard should give effect to the objective that carriage service providers should prioritise keeping the customer connected to appropriate services (and associated devices) when undertaking credit management action – for example, disconnecting, restricting, suspending or downgrading services. The emphasis should be on keeping customers connected to appropriate services for each customer’s needs.

*Content of the standard*

Subsection 7(2) outlines the basket of matters that the standard can include, in relation to the telecommunications activities of carriage service providers.

Paragraph 7(2)(a) provides that the standard can require carriage service providers to establish written financial hardship policies that include processes for assisting customers who are, or may be, experiencing financial hardship. The paragraph also allows the ACMA to include any other requirements related to financial hardship policies that it deems appropriate – for example, the required form of the policy document. This paragraph is designed to give the ACMA flexibility to determine appropriate requirements around hardship policies.

Paragraph 7(2)(b) provides that rules can be included on the way carriage service providers deliver information to customers, and potential customers, about the financial hardship assistance they offer, and related matters (which might extend to providing contact information for relevant staff of the carriage service provider, or contact information for the Telecommunications Industry Ombudsman and support services such as financial counselling services). This covers both active provision of information and also publishing information, for example, on the provider’s website.

Paragraph 7(2)(c) provides that the standard can require carriage service providers to have processes in place for proactively identifying customers who may be experiencing financial hardship. For example, this may include where the customer has missed a payment, or makes enquiries about cheaper options. It also allows for rules that ensure carriage service providers reconsider and reevaluate the customer’s circumstances and arrangements over time, for example, to ensure assistance remains appropriate – noting that financial hardship can be long or short term and stressors can change over time.

Paragraph 7(2)(d) provides that the standard can include requirements for appropriate customer service for customers who are or may be experiencing financial hardship, including methods of contact, staff behaviour and customer service by contact centre staff and retail staff in stores.

Paragraph 7(2)(e) provides that the standard can include requirements and processes for the assessment and provision of financial hardship assistance to customers. This goes to ensuring it is clear when and how customers in financial difficulty can access financial hardship assistance, and may go to other things like timeframes for undertaking assessments, also for communicating the outcomes of assessments and rights and obligations under agreed hardship arrangements. It could also include requirements for how the assistance is provided, and as per the objectives, this could include rules about appropriately tailored assistance.

Paragraph 7(2)(f) provides that the standard can also deal with requirements for staff conduct and training in both identifying and supporting customers who are or may be experiencing financial hardship. This training would underpin the delivery of that support, as outlined in above paragraphs.

Paragraph 7(2)(g) provides that the standard can deal with requirements for credit management action undertaken by, or on behalf of, the carriage service provider in relation to customers experiencing financial hardship, including appropriate protections related to the restriction, suspension, downgrading or disconnection of a service.

Paragraph 7(2)(h) provides that the ACMA may include rules on other matters that the ACMA considers necessary to meet the objectives set out at subsection 7(1) when making a standard in accordance with subsection 5(1) of the Direction. This ensures that the ACMA has flexibility to include appropriate rules and accommodate for issues uncovered during consultations, while being appropriately limited by the stated objectives in subsection 7(1) and the overarching Direction in subparagraph 5(1).

Subsection 7(3) provides that the ACMA may deal with arrangements for handling customer complaints about financial hardship matters and may confer functions and powers on the Telecommunications Industry Ombudsman. The ACMA is expected to ensure any conferral operates effectively (and without duplication) with other instruments and processes, including the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

The note to this paragraph informs the reader that, if the Telecommunications Industry Ombudsman consents, an industry standard may confer functions and powers on the Telecommunications Industry Ombudsman, in accordance with section 114 of the Act.

Subsection 7(4) provides that the ACMA may define any terms it considers appropriate or necessary in the standard that are not defined in section 4 of the Direction.