

# Explanatory Statement

Issued by the authority of the Minister for Communications

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

## ***Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 2023***

### **Authority**

The *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 2023* (the Instrument) is made under subsection 117B(1) 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). Under section 115 of the Act, the Australian Communications and Media Authority (ACMA) has the power to make performance standards that CSPs must comply in relation to any matter concerning the supply of carriage services to customers, including connection, fault rectification and appointment-keeping. The ACMA may also determine a scale of damages for breaches of CSG standards, and determine CSG waiver provisions under sections 117 and 120. The ACMA can only make or vary performance standards if directed to do so by the Minister for Communications under section 124. Section 117B provides that the Minister may set minimum benchmarks in relation to compliance with performance standards in force under section 115.

### **Purpose and operation**

The Instrument sets minimum performance benchmarks in relation to compliance by qualifying CSPs with retail performance standards set out in the Customer Service Guarantee (CSG) Standard.

The CSG Standard requires CSPs to meet performance standards (i.e. maximum timeframes) for connection, repair and associated appointment-keeping for fixed telephone services. CSPs must also pay compensation to individual consumers where standards are not met, unless they offer 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 arrangements complement the Universal Service Obligation (USO), under which Telstra has a statutory and contractual obligation to provide STS on reasonable request nationally.

The Instrument complements the CSG Standard by requiring qualifying CSPs to meet CSG standards in 90% of cases. A CSP is a qualifying CSP and required to meet the benchmarks for an annual benchmark period (i.e. financial year) if it supplies at least 100,000 CSG services in the previous financial year. Additional thresholds also apply to performance benchmarks for different geographic areas. The benchmarks apply to in-place connections and appointment-keeping on a national basis, while separate benchmarks apply in urban, rural and remote areas for fault rectification, and in urban, major rural, minor rural or remote area for new connections.

Overall, the CSG benchmarks provide a broad incentive for larger providers in the industry to comply with the performance standards set out in the CSG Standard in at least 90% of cases, and maintain and improve service quality. The ACMA is responsible for monitoring and enforcing compliance with the benchmarks.

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

## **Background**

The instruments that set out the operative details of the CSG framework are due to sunset on 1 October 2023 in accordance with the *Legislation Act 2003*. This includes the previous iteration of this Instrument – the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (the 2011 CSG Benchmarks Instrument) – as well as the *Telecommunications (Customer Service Guarantee) Standard 2011* (the 2011 CSG Standard) and the *Telecommunications Customer Service Guarantee) Record-Keeping Rules 2011* (the 2011 CSG RKR). 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 made the *Telecommunications (Customer Service Guarantee) Direction 2023*. This directs 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.

Accordingly, the Minister has also decided to remake the 2011 CSG Benchmarks Instrument largely as it exists for a period of three years, with some necessary updating and minor amendments. To continue existing CSG arrangements in full, the ACMA will also need to consider remaking the 2011 CSG RKR.

## **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.

Most stakeholders did not comment specifically on the CSG Benchmarks. Some consumer groups did raise concerns about the risk of poor ‘tail’ compliance (i.e. the specific performance of CSPs where maximum timeframes are not met), with some submissions recommending that higher benchmarks be applied (e.g. 95%) as part of broader recommendations to strengthen CSG obligations in some areas. Telstra also suggested the CSG benchmarks be reviewed to account for changes in population distribution and raised concerns about increasing difficulties it faces to reach 90% compliance (due to the decline of CSG services on its legacy networks and a higher proportion of its remaining customers located in remote areas). These changes have not been progressed at this time, noting the Minister’s broader decision to roll over the CSG instruments for a further three years to continue protections while long-term arrangements are considered in more detail.

In preparing the Instrument, the Department sought views on the detail of a draft instrument from the ACMA, Telstra and Optus. No issues were raised.

### **Impact Analysis**

The Office of Impact Analysis (OIA) assessed the proposal to remake the sunseting Instrument as having a more than minor impact on businesses, community organisations or individuals compared to the status quo that the Instrument is not in place. However, as the remaking of the Instrument makes no significant changes, consistent with OIA guidance, the Department provided certification of its assessment that the regulations in the Instrument are operating efficiently and effectively, in lieu of further impact analysis.

### **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](#).

## **Details of the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 2023***

### **Part 1 – Preliminary**

#### **Section 1 – Name**

Section 1 provides that the name of the Instrument is the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 2023*

#### **Section 2 – Commencement**

Section 2 provides that the Instrument will commence on the day after it is registered.

#### **Section 3 – Authority**

Section 3 states that the Instrument is made under subsection 117B(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

#### **Section 4 – Definitions**

Subsection 4(1) sets out definitions for key terms used in the Instrument.

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 terms *appointment-keeping performance standard*, *connection period performance standard* and *rectification period performance standard* are defined to mean the respective performance standards for appointment-keeping, connection and fault rectification specified in the CSG Standard for which the benchmarks in the Instrument apply.

The term *carriage service provider* is defined to mean the same as in section 87 of the *Telecommunications Act 1997*.

The term *CSG service* is defined to mean the same as in the CSG Standard.

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

The term *in-place connection* is defined to mean the same as described in the CSG Standard. The CSG Standard describes this as a connection at a site that has previously had a working standard telephone service, which can be automatically reconnected or reactivated by a CSP. Accordingly, the Instrument defines *in-place connection request* as meaning a request by a customer for such a connection.

The term *new connection request* is defined to mean a request by a customer for a CSP to connect a service at a site that does not already have a connection in place and which is also in close proximity to existing infrastructure that can support the connection (such as external

plant facilities).

The term *new CSG Standard* is defined to mean the legislative instrument made by ACMA subject to the direction in section 6 of the *Telecommunications (Customer Service Guarantee) Direction 2023*.

The definition for the term *qualifying carriage service provider* provides that the performance benchmarks in relation to a benchmark period (i.e. financial year) set out in the Instrument apply to any CSPs who supply 100,000 CSG services on the last day of the previous financial year. The purpose of the qualifying threshold of 100,000 CSG services is to limit the application of the performance benchmarks set out in the Instrument to large CSPs that supply a significant number of CSG services. As at July 2023, Telstra and Optus are the only CSPs who have recently met this threshold. The Instrument also sets additional thresholds that apply for the location-specific benchmarks as set out at section 6.

Definitions are also provided for the different types of geographic areas for which location-specific benchmarks apply. The population size of a given area dictates whether it is considered an *urban area* (pop. 10,000 or more), *rural area* (201-9,999), *major rural area* (2,501-9,999), *minor rural area* (201-2,500), or *remote area* (200 or less) for the purpose of the Instrument. The meaning of each of these terms is the same as in the CSG Standard.

Subsection 4(2) provides that where the Instrument uses expressions that are also used in the CSG Standard, those expressions have the same meaning as in the CSG Standard, unless the contrary intention appears. This reflects that the CSG Standard sets out the operative details of the CSG framework, including the definitions of many terms that are also used in the Instrument. Some examples of terms used in the Instrument which are intended to have the same meaning as in the CSG Standard include:

- customer;
- enhanced call handling feature;
- fault or service difficulty;
- guaranteed maximum connection period;
- guaranteed maximum rectification period;
- locality; and
- performance standard.

Subsection 4(3) provides that a benchmark period is taken to mean the period covering the financial year in which the Instrument commences as well as the period covering each subsequent financial year. Given the Instrument will commence during the 2023-24 financial year, this provision ensures the first benchmark period includes the full financial year from July 2023 until 30 June 2024. Subsection 4(3) is intended to ensure continuity between the 2011 CSG Benchmarks Instrument (which will be repealed) and the 2023 Instrument, as the 2023 Instrument includes the same benchmarks and thresholds as otherwise set out within the 2011 Instrument, and will not result in any change in requirements for qualifying carriage service providers.

## **Section 5 – Schedules**

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

## **Section 6 – Location-specific thresholds**

Section 6 sets out the location-specific thresholds that determine whether a CSP is eligible to comply with a performance benchmark in relation to services supplied in a particular type of geographic area (e.g. rural area). As set out in sections 8 and 9 of the Instrument, performance benchmarks for individual types of geographic areas apply in relation to compliance with some performance standards in the CSG Standard, such as in relation to new connection requests and fault rectifications (but not for in-place connection requests or appointment-keeping where benchmarks apply nationally). The location-specific thresholds need to be considered alongside the overall threshold of 100,000 CSG services set out in the definition for *qualifying carriage service provider* at subsection 4(1).

The location-specific thresholds are set to ensure CSPs are not required to meet performance benchmarks for individual types of geographic areas in which they supply a small number of services (even if they meet the overall threshold of 100,000 CSG services).

For a given benchmark period (financial year), a CSP is required to comply with a performance benchmark in relation to a particular type of geographic area if it meets the specified threshold of CSG services supplied in that type of geographic area on the last day of the previous financial year.

The location-specific thresholds are as follows:

- urban areas – 10,000 CSG services
- major rural areas – 1,000 CSG services
- minor rural areas – 1,000 CSG services
- rural areas – 1,000 CSG services
- remote areas – 500 CSG services

## **Section 7 – Repeal**

Section 7 provides that the Instrument will be repealed 36 months after the commencement of the new CSG Standard the ACMA makes in accordance with the *Telecommunications (Customer Service Guarantee) Direction 2023* commences. This will ensure the new Benchmarks Instrument is repealed at the same time as the new CSG Standard.

## **Part 2 – Retail Performance Benchmarks**

Part 2 provides the details of the specific performance benchmarks that apply to the performance standards set out in the CSG Standard.

Benchmarks apply to compliance by qualifying CSPs with the performance standards set out in the CSG Standard for customer requests for connections (both new connections and in-place connections), the rectification of faults or service difficulties and the keeping of appointments. In all cases, the benchmark is 90% compliance with the relevant performance standard in the CSG Standard.

### **Division 1 – Performance benchmarks**

#### **Section 8 – Performance benchmarks for connection period performance standard**

Section 8 sets out the performance benchmarks that apply to compliance with performance standards in the CSG Standard for the connection of services.

In relation to in-place connections, qualifying CSPs are required to comply with the relevant connection performance standard in at least 90% of cases nationally.

In relation to new connections, if a qualifying CSP meets the location-specific threshold for an urban, major rural, minor rural or remote area, it must comply with the relevant connection performance standard in at least 90% of cases in that particular type of area.

## **Section 9 – Performance benchmarks for rectification period performance standard**

Section 9 sets out the performance benchmarks that apply to compliance with performance standards in the CSG Standard for the rectification of faults or service difficulties.

If a qualifying CSP meets the location-specific threshold for an urban, rural or remote area, it must comply with the relevant rectification performance standard in at least 90% of cases in that particular type of area. Whereas the connection performance benchmark separately assesses compliance in ‘major rural’ and ‘minor rural’ areas, the rectification performance benchmark combines these two types of areas into a single ‘rural’ category.

Subsection 9(3) clarifies that the rectification performance benchmark does not apply to specific faults relating to an enhanced call handling feature (ECHF). As set out in the CSG Standard, an ECHF includes any call waiting, forwarding and barring feature, as well as any feature that enables a customer to identify the number of an incoming call or prevent the display of their number to someone who they have called. While a CSP is not required by the CSG Standard to offer ECHFs to customers, any ECHF that a CSP may elect to offer is subject to the requirements in the CSG Standard to meet maximum timeframes and pay compensation to customers where timeframes are missed. However, the exclusion of these types of faults from this Instrument recognises that a fault of an ECHF does not materially impact the ability of a telephone to make or receive a call.

## **Section 10 – Performance benchmark for appointment-keeping performance standard**

Section 10 sets out the performance benchmark that applies to compliance with the appointment-keeping performance standard in the CSG Standard. Qualifying CSPs are required to comply with the appointment-keeping standard (i.e. keep an appointment with a customer) in at least 90% of cases. This benchmark is applied at a national level and not to particular geographic areas.

## **Division 2 – Compliance with performance benchmarks**

### **Section 11 – Contravention of a performance benchmark**

Section 11 provides that, where a CSP fails to meet or exceed any one of the performance benchmarks set out in the Instrument (at sections 8-10), it will constitute a separate contravention of the relevant performance benchmarks. The effect of this is that each failure to meet a benchmark will be taken to be a separate breach of subsection 117C(2) of the Act. Accordingly, the ACMA could take enforcement actions against each individual contravention of a performance benchmark.

## **Schedule 1 – Repeals**

Schedule 1 repeals, in its entirety, the previous iteration of the Instrument – the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011*.

### Statement of Compatibility with Human Rights

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

#### ***Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 2023***

The *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument 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 – Retail Performance Benchmarks) Instrument 2023* (the Instrument) sets minimum performance benchmarks in relation to compliance by qualifying carriage service providers (CSPs) with retail performance standards made under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1997*.

The CSG Standard requires CSPs to meet performance standards (i.e. maximum timeframes) for connection, repair and associated appointment-keeping for fixed telephone services. The Instrument complements these arrangements by requiring qualifying CSPs to meet the maximum timeframes in at least 90% of cases. The benchmarks apply either on a national basis, or for separate types of geographic areas (such as urban, rural and remote areas). A CSP is required to meet the benchmarks for an annual benchmark period (i.e. financial year) if it supplies at least 100,000 CSG services in the previous financial year, while additional thresholds also apply to the benchmarks for different geographic areas.

These requirements provide a broad incentive for larger providers in the industry to comply with the performance standards set out in the CSG Standard, and maintain and improve service quality. The ACMA is responsible for monitoring and enforcing compliance with the benchmarks.

#### **Human rights implications**

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

#### **Conclusion**

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