**Explanatory Statement**

Issued by the authority of the Minister for Communications

*Telecommunications Act 1997*

*Telecommunications (**Complaints Handling Industry Standard Amendment) Direction 2024*

**Authority**

The *Telecommunications (Complaints Handling Industry Standard Amendment) Direction 2024* (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.

Subsection 33(3) of the *Acts Interpretation Act 1901* will apply to an industry standard already determined under subsection 125AA(1) of the Act, meaning that the power in subsection 125AA(1) is to be construed to be exercisable in the like manner and subject to like conditions (if any), to amend or vary any such instrument.

**Purpose and operation**

This instrument directs the ACMA to amend the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* to give effect to the objectives provided in section 6 of the Direction.

This instrument is a legislative instrument for the purpose of the *Legislation Act 2003.* However, this instrument is not subject to disallowance or sunsetting, as it is a direction by a Minister to a person or body (see item 2 of the table in section 9 and item 3 in the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Details of the Direction are set out in Attachment A.

**Background**

The way that Australians engage with their telecommunications products and services has evolved since the introduction of the *Telecommunications (Consumer Complaints Handling) Standard 2018* (2018 Standard), and the most recent amendment in 2020. Telecommunications services are now even more essential for participation in modern life. Consumers rely on telecommunications services to support work (including a significant increase in working-from-home), education, healthcare, banking, entertainment, community and government services.

This Direction has been made as part of the Australian Government’s Response to the Post-Incident Review of the Optus outage of 8 November 2023, undertaken by Mr Richard Bean (Optus Outage Review). Recommendation 12 of the Optus Outage Review recommended that the 2018 Standard and related Record Keeping Rules, the *Telecommunications (Consumer Complaints) Record Keeping Rules 2018,* be amended to ensure they account for the impacts of network outages and that the definition of complaint in the 2018 Standard meets community expectations in relation to crisis events.

The government’s response to Recommendation 12 provided that it would direct the ACMA to review the 2018 Standard to ensure it meets community expectations, specifically in regards to recourse when impacted by crises and outages. The government undertook to implement the recommendation within 12 months.

Consumer dissatisfaction with Optus’ response to the 8 November outage is well documented and it demonstrated a misalignment between consumer expectations and the complaints handling framework under the 2018 Standard. For example, as noted by the Telecommunications Industry Ombudsman (TIO) in its submission to the Optus Outage Review, the definition of ‘complaint’ under the 2018 Standard does not align with the standards the public would expect when contacting their provider to report a fault or service difficulty. Under the current definition of ‘complaint’, when a customer contacts their provider to seek to resolve a fault or service issue, their issue may not be considered a complaint unless the consumer advises that they want it to be treated as a complaint. The TIO highlighted that this is unlikely to be appropriate in a crisis situation because consumers are likely to expect that all contacts they make are ‘complaints’ about the situation, unless they expressly state they are not raising a complaint.

The TIO commissioned the Consumer Policy Research Centre (CPRC) to undertake social research examining challenges with telecommunications services in Australia and complaints processes from the consumer perspective. The CPRC research was derived from a nationally representative survey of 2,028 Australian residents with a phone or internet connection over an eight-day period in November 2023. The CPRC’s Report, *Barriers to Effective Dispute Resolution in the Telecommunications Industry, Key Insights Report*, was published in July 2024[[1]](#footnote-2). According to the CPRC Report, 31 per cent of the Australian population relies on telecommunications services to work online every day and 55 per cent of people use telecommunications services to search for information or to pay for essentials.

In light of consumers’ reliance on their telecommunications services, in considering the definition of ‘complaint’ under the 2018 Standard, it may be the case that all consumers are under the impression that when they contact their telecommunications provider to raise an issue, they expect their issue to be treated as a complaint without the need for an express statement to that effect.

More generally, the Direction contemplates a broad review of the 2018 Standard and provides the ACMA with significant flexibility – that is, to review and amend the 2018 Standard to give effect to objectives contained in the Direction. As outlined above, the Government’s response to the Optus Outage Review stipulates that “in considering the 8 November outage, it is appropriate to consider if the standard, and its related Record Keeping Rules, meet community expectations, specifically in regard to their recourse when impacted by outages.”

It is difficult to predict in advance what the ACMA’s review will uncover so it is important that the Direction does not unduly restrict/narrow the scope of what the ACMA can amend. It is also difficult to disentangle a review of the 2018 Standard to improve recourse regarding complaints about crises and outages from a general review of the 2018 Standard. By looking at the 2018 Standard broadly, the ACMA will ensure that the 2018 Standard is working well with respect to all complaint types, including for complaints related to network outages.

It is expected that the ACMA will undertake a comprehensive review of the 2018 Standard and make amendments in line with the objectives in the Direction. Evidence suggests there is room to improve complaints handling within the telecommunications sector. For example, the ACMA’s ‘*What consumers want – Consumer expectations for telecommunications safeguards’* position paper[[2]](#footnote-3), notes the number of customer complaints to the TIO about telecommunications providers not taking action or delaying action, and complaints about providers agreeing to a resolution but not putting it in place have consistently been high over several years. It is expected that the review of the 2018 Standard will consider whether aspects of the 2018 Standard enable these outcomes. In particular, ensuring that the rules are consumer-focused, ensuring the timely resolution of complaints and that issues and resolutions are recorded and provided to the consumer.

Additionally, the recent CPRC research highlights a range of areas where the 2018 Standard does not appear to be supporting consumers. In particular, the CPRC research found that while telecommunications challenges are common (55 per cent of people reported experiencing a telecommunications challenge in the 12 months prior to the survey period) less than half (46 per cent) of those who experienced a telecommunications challenge lodged a complaint. The research found that 40 per cent of those who did not lodge a complaint despite experiencing a telecommunications challenge did not believe their complaint would make a difference.

The CPRC research also revealed that amongst those that did complain to their telecommunications provider, less than half (42 per cent) were satisfied with the process. Specifically, people were frustrated by their telecommunications provider’s lack of timeliness, responsiveness, communication and transparency. Only 30 per cent of people agreed their telecommunications provider helped them understand their rights.

The ACMA’s review is expected to consider feedback from consultation and evidence regarding the effectiveness of the 2018 Standard in line with the objectives in the Direction. Relevant evidence may include findings from ACMA’s compliance and enforcement activities and reports and submissions from the TIO and other relevant stakeholders.

Under the Act, compliance with industry standards is mandatory. A range of enforcement options apply to non-compliance with industry standards under the Act, including infringement notices and civil penalties.

**Impact Analysis**

The Office of Impact Analysis advised that an Impact Analysis was not required for the Direction (OIA reference: OIA24-07466). The Office of Impact Analysis will consider the appropriate requirements for the industry standard made in accordance with the Direction, in due course.

**Consultation**

Consultation on the proposed Direction was undertaken with the ACMA, the TIO, the Australian Communications Consumer Action Network, 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 (Complaints Handling Industry Standard Amendment) Direction 2024***

**Section 1 – Name**

This section provides that the name of the Direction is the *Telecommunications (Complaints Handling Industry Standard Amendment) Direction 2024*.

**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).

This section sets out a number of definitions for the purposes of the instrument, including:

* ***2018 Standard*** means the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.
* ***Consumer*** has the same meaning as in the 2018 Standard.
* ***Provider*** means carriage service providers and carriers responsible for network units that are used in the supply of services by carriage service providers.

**Section 5 – Direction to the ACMA**

Subsection 5(1) of the instrument provides that the Minister directs the ACMA to amend the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (2018 Standard) under subsection 125AA (1) to give effect to the objectives in subsection 6 of the Direction.

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) provides that the amendments to the 2018 standard are to be determined by 30 April 2025. Once made, the standard must commence in full at the earliest practical opportunity and no later than 30 June 2025. This timeframe meets the Government’s commitment in its response to the Optus Outage Review which was for the ACMA to review and to make appropriate changes to the 2018 standard within 12 months.

Subsection 5(3) of the instrument provides that the ACMA may vary the 2018 industry standard in future without the need for a further Ministerial direction, so long as the resulting industry standard continues to comply with, and meet the objectives in subsection 6(1) of the Direction.

Subsection 5(4) (a) and (b) provides that the 2018 Standard may be amended to deal with matters differently for different classes of providers. Further, it may exempt certain classes of carriers or 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 providers in a manner that reflects, for example, the services they provide. It may also allow, for example, certain obligations to be targeted to larger or small providers as appropriate.

Subsection 5(4)(c) provides that the resulting Standard may be amended to deal with matters differently for different classes of consumers.

**Section 6– Objectives and content of the standard**

*Objectives of the standard*

Subsection 6(1) outlines the objectives the 2018 Standard is to be amended to give effect to, in relation to the telecommunications activities of providers.

Subparagraph 6(1)(a) requires the 2018 Standard to be amended to ensure the definition of ‘complaint’ appropriately includes consumers who contact, or attempt to contact a provider in relation to a network outage.

Consumers should not have to know the appropriate process for ensuring their communication with their telecommunications provider is classified as a ‘complaint’ and therefore attract the protections and processes of the 2018 Standard. As outlined above, the TIO has raised concerns about the current definition of ‘complaint’, that is, when a customer contacts their provider to seek to resolve an issue, their issue may not be considered a complaint unless the consumer advises that they want it to be treated as a complaint.

While subparagraph 6(1)(a) specifically refers to network outages, it is expected that when considering the objectives outlined under subparagraph 6(1)(c), the ACMA will consider the definition of ‘complaint’ and its application for all consumers.

Subparagraph 6(1)(b) provides that the 2018 Standard is to be amended to ensure that providers appropriately prioritise complaints from consumers affected by network outages. This does not mean that all complaints relating to an outage must be treated as ‘urgent’. It means the ACMA should consider, for example, whether certain complaints related to crises and outages need to be triaged above others, and which complaint types could be managed through standard processes.

Subparagraph 6(1)(c)(i) provides that the 2018 Standard is to be amended to ensure that providers have in place, and implement complaints handling policies and processes that are fit-for-purpose. Fit-for-purpose is intended to ensure that the amending standard results in providers implementing complaints handling policies and processes that meet the reasonable expectations of consumers.

Subparagraph 6(1)(c)(ii) provides that the 2018 Standard is to be amended to ensure that providers have in place, and implement, complaints handling policies and processes that provide for consumer focused, efficient, effective and professional handling and resolution of consumer complaints. This is intended to ensure that the amending standard facilitates resolution of complaints as quickly and as reasonably possible but also effectively, noting a balance may sometimes need to be struck between these objectives. However, there are clearly benefits for both consumers and providers that complaints are dealt with quickly and appropriately and that they do not result in recurring or entrenched issues.

The term ‘consumer focused’ is intended to ensure that the amending standard considers the consumer needs and preferences with a view to enhancing the consumer experience and minimising inconvenience and negative impacts.

Subparagraph 6(1)(c)(iii) provides that the 2018 Standard is to be amended to ensure that providers have in place, and implement, complaints handling policies and processes that provide for transparency. While there are measures in the 2018 Standard that go to transparency, the ACMA will need to consider options for improving these rules. For example, this could include ensuring that consumers receive records of communications regarding their complaint, updates and a record of the resolution in writing.

Subparagraph 6(1)(c)(iv) provides that the 2018 Standard is to be amended to ensure that providers have in place, and implement, complaints handling policies and processes that provide for appropriate processes for internal escalation of complaints. This relates to escalation arrangements within a provider’s internal complaints process, for example, if the complaint cannot be resolved by the staff member initially responsible for resolving the matter.

Subparagraph 6(1)(c)(v) provides that providers should have in place, and implement, complaints handling policies and processes that ensure consumers are provided with clear and sufficient information at appropriate times in relation to avenues for external dispute resolution (namely, the TIO) where the complaint cannot be resolved in the first instance via the provider’s internal dispute resolution processes.

While the escalation to the TIO is undertaken by the customer, this is intended to ensure that the provider adequately informs the consumer of their ability to escalate their complaint to external dispute resolution, at appropriate times in the complaints process. While the 2018 Standard includes such a requirement, according to TIO data, there is a low level of awareness of the TIO amongst telecommunications consumers. For instance, according to the 2024 CPRC research, only 10 per cent of consumers who made a complaint to their telecommunications provider, escalated their complaint to the TIO. Additionally, even in the circumstances where a consumer had a long running complaint (over 30 days) they typically continued to deal exclusively with their telecommunications provider – potentially demonstrating a lack of awareness of alternative dispute resolution options.

*Content of the standard*

Paragraph 6(2) outlines the matters that the amended 2018 Standard required by section 5 can include, in relation to the telecommunications activities of providers. It will be a matter for the ACMA to determine the content of the standard, having regard to the objectives set out in subsection 6(1), but subsection 6(2) provides a non-exhaustive list of matters that the standards may include rules on, as they relate to the telecommunications activities of providers. The matters listed are considered to be an example of the sorts of matters that would give effect to the objectives provided in s 6(1) of the Direction. It is intended that the ACMA will consider whether these matters would be appropriate for inclusion.

Subparagraph 6(2)(a)(i) provides that the amended 2018 Standard can include rules requiring user-friendly policies and processes for making complaints. This is intended to ensure that the amending standard provides for policies and processes that are not unduly cumbersome or a practical barrier to complaints.

Subparagraph 6(2)(a)(ii) provides that the amended 2018 Standard can include requirements to ensure that providers complaints handling policies are made available and displayed, for example, in a prominent part of the telecommunications provider’s website. This is about transparency and customer information/education.

Subparagraph 6(2)(a)(iii) provides that the amended 2018 Standard can include requirements related to the accessibility of policies and processes. This goes to both the provision of information about policies and processes, and the operation of policies and processes. In its June 2023 Systemic Report, the TIO noted that provider accessibility was the third most common type of systemic issue investigated between July 2020 and April 2023. Systemic investigations involved inaccessible customer service, incorrect or unclear communications, and inflexible identity verification practices. These issues prevent consumers from getting help from their providers or from accessing their account.

Additionally, the CPRC research indicates that the complaints handling framework may not be appropriately accessible and user friendly for people experiencing difficult life circumstances. These difficulties can include financial and non-financial hardship such as a major illness, mental health challenge, death of a relative or close friend, job loss, insecure housing, family or domestic violence or natural disaster. The research revealed that 76 per cent of Australians experienced financial or non-financial difficulties in the past year – with those experiencing a difficulty relying more heavily on telecommunication services, and were more likely to experience issues with their telecommunication provider, compared to those who were not experiencing a difficulty.

Subparagraph 6(a)(iv) provides that the amended 2018 Standard can include requirements to proactively provide consumers with information on their complaints handling processes and options for external dispute resolution. This goes to the general objective about transparency of complaints handling processes, ensuring customers are aware of their rights and obligations – overcoming information asymmetry.

Subparagraph 6(2)(b) provides that requirements can be made for the resolution of complaints that are commensurate with keeping customers connected to an essential service. That is, the amended 2018 Standard for resolving complaints should appropriately acknowledge the essential character of the telecommunications service and the impact on the consumer where there is loss or degradation of service. The timeframes under the 2018 Standard for standard or non-urgent complaints accommodate timeframes for acknowledgement, resolution and implementation of a proposed resolution which can accumulate to over five weeks to resolve.

According to the CPRC Report, close to a third of people who made a complaint reported that their telecommunications provider took longer than a week to resolve their complaint, with more than a fifth experiencing unresolved or lengthy resolution times of more than 30 days (23 per cent) with some significantly longer and up to 260 days.

Subparagraph 6(2)(c)(i) and (ii) provides that the amended 2018 Standard can require providers to have complaints management policies and processes that prioritise resolving the complaint quickly and that minimises waiting time, call transfers and consumers dealing with multiple persons to resolve their complaint. This is intended to ensure, for example, that when a complaint is received, an accurate record of the complaint is made and the complaint is transferred to the relevant area for response. This is to minimise call wait times while the consumer is seeking to resolve their complaint and to avoid the consumer having to repeat themselves multiple times. When handled poorly these issues not only cause frustration and disruption for consumers but can also act as barriers to making and resolving complaints.

Subparagraph 6(2)(c)(iii) provides that the amended 2018 Standard can require providers to have complaints management processes that keep the consumer updated and informed about the progress of their complaint and resolution. This communication should also ideally occur via the customers preferred mode of communication. Information and updates should also ideally be recorded, for example provided in writing. This might capture information on the progress of the complaint and any actions required to be undertaken by the consumer to ensure the complaint is resolved as quickly as possible.

Currently, the 2018 Standard includes an obligation to seek to try to resolve complaints on the first contact but there is no benchmark for the number of contacts for complaints that are not resolved on the first contact. For complaints that are not resolved in the first instance, the onus is currently on the customer to seek updates. In the absence of recording contacts in writing, it can be difficult for consumers to track their complaint.

Subparagraph 6(2)(d) provides that the ACMA may include rules on other matters that the ACMA considers give effect to the objectives set out at subsection 6(1) when amending the 2018 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 6(1) and the overarching Direction in subparagraph 5(1).

Subsection 6(3) provides that in amending the 2018 Standard, the ACMA may define any terms it considers appropriate or necessary that are not defined in section 4 of the Direction.

Subsection 6(4) provides that the ACMA may confer functions and powers on the TIO. 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*.

1. Barriers to Effective Dispute Resolution in the Telecommunications Industry, Key Insights Report, Telecommunications Industry Ombudsman and Consumer Policy Research Centre, July 2024. [↑](#footnote-ref-2)
2. What consumers want – Consumer expectations for telecommunications safeguards – A position paper for the telecommunications sector, July 2023, Australian Communications and Media Authority, p 24. [↑](#footnote-ref-3)