



Telecommunications (Customer Service Guarantee) Amendment Standard 2004 (No. 1)

The AUSTRALIAN COMMUNICATIONS AUTHORITY makes this instrument under sections 115 and 120 and paragraph 125 (3) (a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 2004

Chair

Deputy Chair

Australian Communications Authority

1 Name of instrument

This instrument is the *Telecommunications (Customer Service Guarantee) Amendment Standard 2004 (No. 1)*.

2 Commencement

This instrument commences on the date of its notification in the *Gazette*.

3 Amendment of *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*

Schedule 1 amends the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)*.

Schedule 1 Amendments

(section 3)

[1] Subsection 4 (1), definition of *enhanced call handling feature*

omit

features:

insert

features when activated by a carriage service provider:

[2] Section 7

omit

[3] Subsection 9 (5)

omit

service without connecting the customer to the

[4] Subsection 12 (2)

omit

1

insert

the first full

[5] Paragraph 12 (3) (b)

omit

equal to or

[6] Subsection 12 (3)

after

2

insert

full

[7] Subsection 12 (4)

after

of 3

insert

full

[8] Subsection 13 (2)

omit

1

insert

the first full

[9] Subsection 22 (1)

substitute

- (1) A carriage service provider is exempt from complying with a performance standard to the extent that non-compliance with the standard is a result of:
- (a) circumstances beyond the control of the carriage service provider; or
 - (b) the need to move staff or equipment to an area affected by circumstances beyond the control of the provider.
- (1A) Circumstances beyond the control of the provider may include (but are not limited to) the following circumstances:
- (a) damage to a facility of the carriage service provider that is not caused by the carriage service provider;
 - (b) natural disasters, or extreme weather conditions, that:
 - (i) cause mass outage of specified services; and
 - (ii) restrict connection to a specified service or rectification of a fault or service difficulty;
 - (c) the carriage service provider is requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a fault or service difficulty;
 - (d) the carriage service provider is prevented from connecting a specified service, or rectifying a fault or service difficulty, because the provider is unable to obtain lawful access to land or a facility;
 - (e) a law of the Commonwealth, or of a State or a Territory, otherwise prevents the carriage service provider from complying with the performance standard.

[10] Paragraph 24 (1) (a)

omit

publishes

insert

as soon as practicable, but in any event within 4 working days after the first day when the provider proposes to rely on the exemption, requests a publisher to publish

[11] Paragraph 24 (1) (b)

after

as soon as practicable,

insert

but in any event within 3 working days after the first day when the provider proposes to rely on the exemption,

[12] Paragraph 24 (1) (c)

before

provides

insert

as soon as practicable, but in any event within 3 working days after the first day when the provider proposes to rely on the exemption,

[13] After subsection 24 (1)

insert

- (1A) A carriage service provider that is a reseller may comply with paragraphs (1) (a), (b) and (c) by taking the action required as soon as practicable, but in any event within 2 working days after the day when the provider receives notice from the carriage service provider from whom it acquires the service (the *supplier*) that the supplier proposes to rely on an exemption under section 22.

Note It would be sufficient, for compliance with paragraph (1) (a), for a notice published by the reseller to make reference to the notice published by the carriage service provider from whom the reseller acquires the service.

- (1B) A carriage service provider who proposes to rely on an exemption under section 22 must give notice of its proposal to each of its resellers who have customers likely to be affected by the provider's reliance on the exemption, as soon as practicable, but in any event within 4 working days after the first day when the provider proposes to rely on the exemption.

Note A reseller who receives a notice under subsection (1B) and has customers who will be affected by the provider's reliance on the exemption may agree with the provider to issue a joint notice for paragraph 24 (1) (a).

[14] Subsection 25 (3)

omit

[15] After section 27

insert

27A Temporary exemptions

- (1) A carriage service provider may apply to the ACA for a temporary exemption from compliance with performance standards.
- (2) An application must:
 - (a) be in writing; and
 - (b) describe the geographic area for which the exemption is sought; and
 - (c) state the period for which the exemption is sought; and
 - (d) give details of the current number of CSG services the provider supplies in the geographic area for which the exemption is sought; and
 - (e) give details of the number of CSG services the provider estimates it will supply in the geographic area for which the exemption is sought at the end of the period for which the exemption is sought; and
 - (f) give any additional information requested by the ACA so that it can determine the application.
- (3) The ACA must not grant a temporary exemption to a carriage service provider that applies under this section unless it is satisfied that:
 - (a) the provider is not a primary universal service provider; and
 - (b) the provider has a small share in the market for CSG services in the geographic area for which the exemption is sought; and
 - (c) the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought.
- (4) In deciding whether the proposed exemption is likely to result in a net benefit to end-users in the geographic area for which the exemption is sought, the ACA must consider the following matters:
 - (a) the extent to which the proposed exemption would lower the cost of entering or competing in the market for CSG services in the geographic area;
 - (b) the extent to which the proposed exemption would be likely to promote sustainable competition for CSG services nationally and in the geographic area;
 - (c) the extent to which the proposed exemption would be likely to result in service improvements for end-users, including lower prices, increased quality of service and increased choice of service;
 - (d) the number of CSG services affected, or likely to be affected, by the proposed exemption;

- (e) the proportion of the market for CSG services in that area likely to be affected by the proposed exemption;
 - (f) the proportion of the market for CSG services in Australia generally likely to be affected by the proposed exemption;
 - (g) the proposed exemption period;
 - (h) any other matters that the ACA thinks relevant.
- (5) The grant of a temporary exemption:
- (a) must be in writing; and
 - (b) must describe the geographic area for which the exemption is granted; and
 - (c) must state the period for which the exemption is granted; and
 - (d) must not be for more than 5 years; and
 - (e) may be subject to conditions, including conditions about when the exemption will end; and
 - (f) must be subject to a condition that the provider must comply with subsection (8).
- (6) For paragraph (5) (c), the period for which the exemption is granted may differ from the period specified in the application.
- (7) A temporary exemption:
- (a) takes effect from the date that it is granted or a date specified in the grant, whichever is the later; and
 - (b) does not affect any right, obligation or liability that arose before the exemption took effect.
- (8) A carriage service provider that has been granted a temporary exemption must notify those customers to whom it supplies a CSG service within the geographic area described in the exemption (including prospective customers), and who are likely to be affected by the exemption, of the following matters:
- (a) that the provider has been granted a temporary exemption from the performance standards by the ACA;
 - (b) a summary of the performance standards;
 - (c) the protection and rights of a customer that would be foregone if the customer entered into a contract for the supply of a CSG service with the provider;
 - (d) the period for which the exemption has been granted;
 - (e) the geographic area to which the exemption applies;
 - (f) how a customer (including a prospective customer) can get more information about a temporary exemption and its effect on the protection and rights of a customer.

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- (9) For subsection (8), the notification must:
- (a) be given to a customer by the provider before the customer enters into a contract with the provider for the supply of a CSG service; and
 - (b) be included in the contract for supply of a CSG service; and
 - (c) be made available on the Internet; and
 - (d) be made available to any person on request.
- (10) The ACA may, on application by or on behalf of a carriage service provider, renew a temporary exemption for a further period of up to 5 years.
- (11) This section applies to an application to renew a temporary exemption in the same way that it applies to an application for a temporary exemption.

[16] Subsection 29 (1), at the foot

insert

Note A waiver may be given electronically — see *Electronic Transactions Act 1999*, subsections 9 (1) and 10 (1).

[17] Schedule 1, paragraph 202 (b)

omit

not greater

insert

less