

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority
TELECOMMUNICATIONS (CUSTOMER SERVICE GUARANTEE) AMENDMENT
STANDARD 2006 (No. 1)

Telecommunications (Consumer Protection and Service Standards) Act 1999

Legislative Basis

Under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ("the Act"), the Australian Communications and Media Authority (ACMA) has the power to make performance standards to be complied with by carriage service providers (CSPs) in relation to:

- a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carriage services; and
- b) the periods that CSPs may offer to customers when making those arrangements; and
- c) the compliance by CSPs with the terms of those arrangements; and
- d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services, where the rectification follows the making of a customer report about a fault or service difficulty; and
 - a. the keeping of appointments to meet customers, or representatives of customers, where the appointment relates to:
 - (i) a connection of a kind covered by paragraph (a); or
 - (ii) a rectification of a kind covered by a paragraph (d); and
- e) any other matter concerning the supply, or proposed supply, of a carriage service to a customer.

To that end, the *Customer Service Guarantee Standard 2000 (No. 2)* (the CSG Standard) provides consumer safeguards in relation to the supply and rectification of basic phone services.

On 14 July 2006, the Minister, through the *Telecommunications (Customer Service Guarantee) Direction No.1 of 1999 (Amendment No.1 of 2006)* ("the Direction"), varied the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999* under section 124 of the Act.

Subsection 125(3) of the Act provides that, if the Minister varies a direction, ACMA must either:

- vary the CSG Standard that is in force under section 115 of the Act because of the Direction so that the CSG Standard complies with the varied direction; or

- revoke the CSG Standard and determine a new standard that so complies.

ACMA has drafted a variation to the CSG Standard in accordance with the Direction. The name of the draft variation is the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No.1)* (“the Amendment Standard”).

In addition, under paragraph 125(4)(a) of the Act, ACMA has included some machinery amendments to the CSG Standard in the draft variation. Paragraph 125(4)(a) provides that ACMA may vary a section 115 standard “on its own initiative, but only in such a way that the varied standard still complies with the Direction”. .

Background

The Minister for Communications, Information Technology and the Arts directed the ACMA to develop the CSG Standard.

The intent of the Minister’s Direction of 14 July 2006 was to allow ACMA to implement changes to the arrangements for:

- claiming an exemption for “natural disasters” by making “extreme weather conditions” a separate criterion;
- the scale of damages that are payable for breaches of the CSG Standard (these have been increased); and
- provision of information about interim and alternative services.

Objective of Variation

The objective of the variation of the CSG Standard is to give effect to the Direction and to make minor amendments to the CSG Standard to ensure CSPs are providing a reasonable level of service to consumers in relation to connections and faults.

Consultation

Before making the Amendment Standard, ACMA consulted with the telecommunications industry and groups representing consumers of telecommunications services. As part of this consultation, ACMA published a media release inviting comments and wrote to selected stakeholders. ACMA staff also conducted a presentation via videoconference which offered a forum for stakeholders to discuss the proposed amendments. DCITA, Optus, the National Farmers’ Federation, the Small Enterprise Telecommunications Centre Limited (SETEL), Telstra and the Telecommunications Industry Ombudsman were represented at the forum.

ACMA considered and applied most of the comments and suggestions made during consultation.

Notes on the Subsections and Sections

Section 1 – Name of Standard

Section 1 provides that the name of the instrument is the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No.1)* (“the Amendment Standard”)

Section 2 - Commencement

The Standard commences on the day after it is registered in the Federal Register of Legislative Instruments.

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

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

Schedule 1 – Amendments

Item 1 Subsection 4 (1), after definition of *external plant facility*

Item 1 inserts a new definition for *extreme weather conditions* in the CSG Standard. The definition clarifies the circumstances under which a provider can claim an exemption for extreme weather conditions by specifying the circumstances that constitute extreme weather conditions in new Schedule 3. The definition is identical to the definition in the *Telecommunications (Customer Service Guarantee) Direction No.1 of 1999 (Amendment No.1 of 2006)* (“the Minister’s Direction”) at Item 3.

The definition refers to the newly inserted Schedule 3 and affects sections 22, 23, and 24 of the CSG Standard. This change means CSPs wishing to claim an exemption under section 22 of the CSG Standard due to extreme weather conditions will need to ensure that the weather conditions in question meet one or more of the criteria set out in Schedule 3 and that they have sufficient evidence to support the claim.

Item 2 Subsection 4 (1), definition of *interim service*, paragraph (c)

Item 2 substitutes a new paragraph (e) to omit subparagraph (c)(i) from the definition *interim service*. It is consequential to removing subsection 8(2) from the CSG Standard as the relevant time periods elapsed 12 months after 14 April 2003.

Item 3, Subsection 4 (1), Note 2

Item 3 inserts a reference to “ACMA” in the note under subsection 4(1) which lists the expressions used in the CSG Standard that are defined in the *Telecommunications Act 1997*.

The definition of ACA has been replaced with a reference to ACMA which has the same meaning as in the *Australian Communications and Media Authority Act 2005* (“the ACMA Act”). Section 3 of the ACMA Act defines ACMA to mean the Australian Communications and Media Authority. ACMA is the result of the merging of the former Australian Broadcasting Authority and the former Australian Communications Authority.

Item 4 Part 2 - heading, Note 1

Item 4 omits “ACA” and inserts “ACMA” into Note 1 under the Part 2 heading. This amendment is consistent with Items 5 of the Direction.

Item 5 Subsection 8 (1), note

Item 5 omits the note under subsection 8(1) as a result of Items 29, 30 and 31 of the Direction. The note referenced ACMA’s power to make a written determination specifying what constitutes a reasonable offer of an interim service or an alternative service. As “a reasonable offer” is now specifically defined by subsection 8(2) of the CSG Standard (see Item 6 of the Amendment Standard), the note is no longer necessary.

Item 6 Subsections 8 (2), (3) and (4)

In September 2001, as part of a range of changes to the CSG Standard, there was a Ministerial direction to the former Australian Communications Authority (ACA) to provide a definition of the terms “sufficient information” and “reasonable offer”. The ACA responded by providing definitions in a Determination - the *Telecommunications (Performance Standards) Determination 2002* (“the Determination”). Although the Determination defined the terms, the Senate Standing Committee on Regulations and Ordinances requested that the requirements of the Determination be incorporated into the CSG Standard when it was next amended. Items 29 and 31 of the Direction gives effect to the Senate Standing Committee recommendation and requires ACMA to incorporate the definitions into the CSG Standard.

To give effect to Item 29 of the Direction, subsection 8 (2) of the CSG Standard identifies that a “reasonable offer” must

- a) provide the customer with a choice between an interim service and an alternative service to enable the customer to make an informed judgment about the relative merits of both services as offered; and
- b) provide sufficient information about how the functionality and the terms and conditions of supply of the alternative service would be of benefit to the customer, relative to an interim service.

Subsection 8(3) gives effect to Item 31 of the Direction by setting out the details that must be provided to a customer in order for the CSP to be taken to have supplied sufficient information about the functionality of the service and the conditions of supply of that service under paragraph 8(2)(b). The details include:

- (a) any enhanced call handling features that may be supplied with the service;

- (b) charges payable by the customer;
- (c) connection timeframes; and
- (d) the estimate period of supply of the service, taking into account the estimated time to repair or connect and the maximum period for supply of an interim service.

In addition, existing subsection 8(2) of the CSG Standard has been omitted as the time periods, referenced in the subsection, elapsed 12 months after 14 April 2003.

Subsection 8(4) is identical to existing subsection 8(3) of the CSG Standard. Subsection 8(5) is substantively the same as existing subsection 8(4) with the exception that paragraph 4(b) has been omitted as a consequence of the removal of subsection 8(2).

Item 7 After subsection 9 (2)

Section 9(2) states that the “guaranteed maximum connection period” is determined in accordance with an approved standard marketing plan for a primary universal service provider if the provisions of subsection 9(1) are not met. Telstra is currently the primary universal service provider for Australia and its Universal Service Obligation Standard Marketing Plan provides that the relevant timeframe is 20 working days.

On 12 October 2005, the Prime Minister announced the appointment of a taskforce to identify practical options for alleviating the compliance burden on business from Government regulation. The report (*Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (“the report”)) was delivered to the Prime Minister and Treasurer on 31 January 2006. The report discussed “guaranteed maximum connection timeframes” for sites not in close proximity to available infrastructure. The Government’s response to the report advised that it considered that no change in the current arrangements relating to connection times is required but that ACMA should amend the CSG Standard to make it easier for service providers to identify the applicable timeframe in the approved standard marketing plan.

The note, in Item 7, has been added after subsection 9(2) of the CSG Standard to assist CSPs other than the universal service provider to identify the applicable timeframe.

Item 8 Sections 22, 23 and 24

Item 8 omits sections 22, 23 and 24 to give effect to Item 12 of the Direction which separates “extreme weather conditions” from “a natural disaster”. Subsection 22(2) achieves this by inserting a new paragraph (c) for “extreme weather conditions”.

The amendments mean that when a CSP claims an exemption under section 22 as a consequence of a natural disaster or extreme weather conditions, it will need to notify which of the two conditions is the basis of the claim for exemption. CSPs can refer to Schedule 3 of the CSG Standard to determine whether or not the “extreme weather conditions” criteria are met for particular circumstances.

In addition, ACMA has renumbered section 22 and inserted a note after subsection 22(1) that refers to new section 22A.

(New) SECTION 22A – Provisional exemption under section 22

New section 22A has been inserted so that an exemption is provisional until such time as the CSP complies with the notification requirements under section 23 or 24. This inclusion is a result of the terminology used in Item 14 of the Direction and is inserted to better give effect to subclauses 17(1), 17(4) and 17(5) of the Direction. This also ensures consistency between the terminology used in the Direction and in the CSG Standard. This change imposes no additional administrative burden on CSPs in relation to the notification requirements. It does however improve the way that the CSG Standard reflects the Direction, in relation to the status of an exemption, before and after the notification provisions have been complied with. Upon complying with the notification provisions, the exemption under section 22 continues to apply to the CSP in relation to the provider's non-compliance with a performance standard. If the provider fails to comply with the notification requirements, the provisional exemption ceases to be available and will be taken to have never been available to the provider. Once a provider complies with the notification requirements, the exemption under section 22 continues to apply.

A provisional exemption starts when the provider first seeks to rely on the exemption. This will usually be the first day of the period of time for which the exemption will exist, which the CSP must provide in its statement of writing to the customer under subparagraph 23(1)(a)(iii) or in its notice published under paragraph 24(1)(a).

SECTION 23 – Notice to particular customers of provisional exemption under section 22

Section 23 outlines the requirements for a provider when notifying a customer of an exemption. As a consequence, references in existing paragraph 23(3)(a) to paragraphs 22(1)(d) or (e) now refer to paragraphs 22(2) (e) or (f).

Paragraph 23(1)(a) is substantially the same as existing subsection 23(2) of the CSG Standard. Paragraph 23(1)(b) inserts an additional requirement for CSPs to provide each affected customer with evidence in writing for an exemption that relates to extreme weather conditions. Information to confirm the grounds on which an exemption is claimed, including those outlined in the CSG Standard, is available in the public domain. A large amount of weather information is available on the Bureau of Meteorology website and is updated daily. Citation of post-fact weather information on the Bureau's website would be considered sufficient evidence to substantiate an exemption claim for the impact of extreme weather.

Subsection 23(2) has been amended to provide greater certainty for when CSP's must provide customers with a written notice. Previously, the provision referred to "the day on which the provider first takes action affecting the customer in reliance on the exemption". A more objective criterion has been inserted by referencing "the first day on which the exemption becomes available to the provider under section 22". A consequence of this change is that in some instances exemptions may become available to the provider on the same day as the circumstances that would result in the CSP's non-compliance with the standard. That is, the same day as the actual event. Due to this change, the time period for giving notice, has been slightly increased to give providers a reasonable time within which to work out when the exemption became available and to prepare the written notices. The changes seek to balance the need for certainty in the standard with providing a reasonable time to CSPs for

informing affected customers of the exemption. Subsection 23(3) is substantially the same as existing subsection 23(4) and subsection 23(4) is identical to existing subsection 23(5) of the CSG Standard.

SECTION 24 – General notice of exemptions

The numbering in section 24 has been amended to avoid confusion in relation to existing subsections 24(1A) and 24(1B) of the CSG Standard. In addition, to clarify the intention of section 23 and 24, instances of the phrase “after the first day on which the provider proposes to rely on the exemption” have been replaced with “after the first day on which the exemption becomes available to the provider” in subsection 24(1). As with subsection 23(2), this has been done to provide greater certainty for when CSPs must request a publisher to publish the notice mentioned in subsection 25(1). The periods here have also been increased to give providers a reasonable time to work out when the exemption became available and to prepare the notice.

Subsection 24(1B) has been renumbered as subsection 24(1)(d) and provides the obligation and timeframes for CSPs to advise resellers of exemptions which may affect their customers. This provision aims to ensure that resellers are not disadvantaged by being unable to rely on an exemption due to lack of notice from a supplier.

A note has also been inserted under subsection 24(1) which explains the right of contribution scheme established by section 118A of the *Telecommunications (Consumer Protections and Service Standards) Act 1999*.

Subsection 24(3) is the renumbered version of existing subsection 24(2). It includes an additional requirement so that where CSPs revise a notice mentioned in subsection 25(1) they must give their resellers, who have customers likely to be affected by the exemption a copy of the revision and provide on the internet the information contained in the revision. Resellers require the additional information in order to make a decision on whether, as a result of the new information, to now rely, or continue to rely, on an exemption under section 22 in circumstances where they have previously decided not to do so.

Item 9 Paragraph 25 (2) (a)

Item 9 amends paragraph 25(2)(a) so it that references to cross-references subparagraphs 23(2)(a)(i), (ii), (iii), (iv), (v) and subsection 23(b) (if applicable). It is consequential to the renumbering of section 23.

Item 10 After subsection 25(5)

Item 10 inserts an additional subsection at the end of section 25. This is so CSPs claiming an exemption, for extreme weather conditions that cause mass outages of services and restrict rectification or connection activities, may comply with the requirement to publish the evidence referred to in paragraph 23(1)(b). CSPs comply by providing on the notice the address of an Internet website from which the evidence referred to in paragraph 23(1)(b) is available. The evidence referred to in paragraph 23(1)(b) is evidence substantiating the claim that the weather conditions meet one or more of the criteria in Schedule 3. This amendment reflects Item 16 of the Direction.

Item 11 Section 27 – Review of circumstances of certain exemptions

Item 11 amends section 27 for consistency with other amendments. In particular, the words "relying" and "circumstances" respectively have been replaced with the words "available" and "grounds" as these are used in the Direction.

Items 12 and 13 Parts 4 and 5, heading, note

The Notes have been amended to reference ACMA instead of ACA.

Item 14 After section 30

Item 14 inserts a new Part 6 into the CSG Standard. The Part contains three new sections with transitional provisions. Section 31 includes definitions for the transitional provisions. Section 32 gives effect to new section 22A and section 33 results from a request by industry to clarify when the new scale of damages takes effect.

Section 32 Exemptions relied upon under former Standard

Subsection 32(1) applies if a CSP was relying on an exemption under the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)* before the commencement of the Amendment Standard and had complied with either section 23 or section 24. In that instance, the provider is taken to have complied with the new subsection 22A (3) and may under subsection 32(2) describe itself as having claimed the exemption.

Similarly, subsection 32(3) applies in relation to an exemption where the CSP was relying on an exemption under the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)* and had not complied with section 23 or 24 and the exemption was still available prior to the commencement of the Amendment Standard. In that instance, the transitional provision makes it clear that section 22A of the Amendment Standard applies to the CSP in relation to the exemption, so that exemption will be provisional until the CSP meets the notification requirements in sections 23 or 24.

Section 33 Contraventions and damages

Subsection 33(1) provides that where a contravention in items 201, 202, 203 and 204 of Part 2 of Schedule 2 to the CSG occurred before the commencement day of the Amendment Standard, the damages payable are to be worked out as if the CSG Standard had not been amended by the Amendment Standard.

Subsection 33(2) includes a similar provision in relation to items 205 where a delay occurred, or first occurred, before the commencement day of the Amendment Standard.

Item 15 Schedule 2, Part 2

Part 2 of schedule 2 outlines the damages payable for breaches of the CSG timeframes. The Amendment Standard increases the damages payable consistently with Item 32 of the Direction. The new rates incorporate an increase of approximately 21%.

Item 16 After Schedule 2

Item 16 inserts a new Schedule 3 containing the criteria for the definition of *extreme weather conditions* in section 4. The Schedule is substantially the same as the Schedule 3 in Item 33 of the Direction and is intended to tighten the arrangements for exemptions by providing empirical definitions to specify what constitutes extreme weather. The criteria are based on the Bureau of Meteorology’s Severe Weather and Severe Thunderstorm Warning criteria and have been developed in consultation with the Bureau of Meteorology.

Item 17 Section 27 – Review of circumstances of certain exemptions

Item 17 omits instances of “ACA” under section 27A (1), (2), (3), (4), (4) (h), (8) (a), and (10) and inserts “ACMA”. ACMA has the same meaning as in the *Australian Communications and Media Authority Act 2005* (“the ACMA Act”). Section 3 of the ACMA Act defines ACMA to mean the Australian Communications and Media Authority.