



Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)

Telecommunications (Consumer Protection and Service Standards) Act 1999

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Standard under section 117 and paragraphs 125 (3) (a) and 125 (4) (a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 26th October 2006

CHRIS CHAPMAN
Chairman

LYN MADDOCK
Deputy Chair

Australian Communications and Media Authority

1 Name of Standard

This Standard is the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)*.

2 Commencement

This Standard commences on the day after it is registered.

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), after definition of *external plant facility*

insert

extreme weather conditions means weather conditions that meet one or more of the criteria specified in Schedule 3.

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

substitute

(c) that is supplied to a customer:

- (i) for a period that does not exceed 6 months from the time of the customer's request for the connection of a standard telephone service; or
- (ii) with the agreement of the customer, for a longer period.

[3] Subsection 4 (1), note 2

substitute

Note 2 Each of the following words and expressions used in this instrument has the meaning given by the *Telecommunications Act 1997*:

- ACMA
- carriage service
- carriage service provider
- carrier
- communications
- connected
- facility
- numbering plan
- public mobile telecommunications service
- telecommunications industry.

[4] Part 2, heading, note 1

substitute

Note 1 Section 115 of the Act provides for ACMA to make standards to be complied with by carriage service providers.

[5] Subsection 8 (1), note

omit

[6] Subsections 8 (2), (3) and (4)

substitute

- (2) For the purposes of paragraph (1) (a), an offer by a carriage service provider to supply a customer with an alternative service is a reasonable offer if the offer:
- (a) provides 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) provides 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.
- (3) For the purposes of paragraph (2) (b), a carriage service provider is taken to have supplied sufficient information to a customer about the functionality of a service, and the terms and conditions of supply of that service, if the carriage service provider has supplied to the customer details of:
- (a) any enhanced call handling features that may be supplied with the service; and
 - (b) charges payable by the customer; and
 - (c) connection timeframes; and
 - (d) the estimated period of supply of the service, taking into account the estimated time to repair or connect the service and the maximum period allowed for the supply of an interim service.
- (4) In determining whether a carriage service provider has contravened a performance standard in relation to a customer, regard must be had to whether the customer:
- (a) requested the carriage service provider in good faith to connect a specified service or rectify a fault or service difficulty; or
 - (b) unreasonably withheld agreement to arrangements, or an appointment, proposed by the carriage service provider; or
 - (c) missed an appointment with the provider without giving reasonable notice to the provider; or
 - (d) unreasonably refused permission to the provider to enter a site.
- (5) A carriage service provider must not, without the agreement of a customer, supply the customer with an interim service for a period exceeding 6 months from the time of the customer's request for the connection of a standard telephone service.

[7] After subsection 9 (2)

insert

Note Clause 2.4.3 of the instrument titled ‘TELSTRA’S Universal Service Obligation STANDARD MARKETING PLAN’ (as approved by the Australian Communications Authority on 30 October 2001 and subsequently varied) provides that, if Telstra cannot supply the standard telephone service on the date the customer requires it to be connected, Telstra will aim to supply the standard telephone service within one month (equivalent to 20 working days) from the date of the customer’s request.

[8] Sections 22, 23 and 24

substitute

22 Circumstances beyond the control of carriage service providers

- (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.

Note An exemption under subsection (1) operates on a provisional level from the time at which the provider first seeks to rely on it. The exemption will cease to be available if the carriage service provider fails to comply with the notification requirements in either subsection 23 (1) or 24 (1). See section 22A.

- (2) 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) a natural disaster that:
 - (i) causes mass outages of specified services; and
 - (ii) restricts connection to a specified service or rectification of a fault or service difficulty;
 - (c) extreme weather conditions that:
 - (i) cause mass outages of services; and
 - (ii) restrict connection to a specified service or rectification of a fault or service difficulty;
 - (d) 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;
 - (e) 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;
 - (f) a law of the Commonwealth, or of a State or a Territory, otherwise prevents the carriage service provider from complying with the performance standard.

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- (3) However, a carriage service provider is not exempt from compliance with the performance standard to the extent that:
 - (a) the non-compliance is due wholly or partly to the act or omission of another carriage service provider; and
 - (b) the exemption does not apply to the other carriage service provider.
 - (4) Also, a carriage service provider is not exempt from compliance with the performance standard unless the carriage service provider has procedures in place to ensure that the provider does not rely on the exemption in circumstances that are not beyond the control of the provider.
 - (5) In paragraph (2) (d):

public authority means:

 - (a) the Commonwealth or a State or Territory; or
 - (b) a Commonwealth, State or Territory authority, including:
 - (i) a police force or service; and
 - (ii) a fire service; and
 - (iii) an ambulance service; and
 - (iv) a local government authority.

22A Provisional exemption under section 22

- (1) A carriage service provider is taken to be exempt, on a provisional basis, from complying with a performance standard to the extent described in subsection 22 (1) during the period:
 - (a) starting when the provider first seeks to rely on the exemption; and
 - (b) ending when the provider first complies with subsection 23 (1), or complies with subsection 24 (1).
- (2) However, if the carriage service provider does not comply with either of sections 23 and 24:
 - (a) section 22 ceases to apply to the provider in relation to the provider's non-compliance with the performance standard; and
 - (b) the exemption under section 22 is taken never to have applied to the provider in relation to the provider's non-compliance with the performance standard.

Note Sections 23 and 24 provide different ways in which a carriage service provider may notify customers and/or ACMA.

- (3) If the provider complies with subsection 23 (1) or 24 (1):
 - (a) section 22 continues to apply to the provider in relation to the provider's non-compliance with the performance standard; and
 - (b) the exemption is taken not to be on a provisional basis from the time at which the provider complies with the subsection; and
 - (c) the provider may describe itself as having claimed the exemption.

Note Sections 23 and 24 provide different ways in which a carriage service provider may notify customers and/or ACMA.

23 Notice to particular customers of provisional exemption under section 22

- (1) A carriage service provider who is taken to be exempt, on a provisional basis, from complying with a performance standard to the extent described in subsection 22 (1) must give each customer to whom the exemption relates:
- (a) a statement in writing stating:
 - (i) the fact that the exemption is available to the provider under section 22; and
 - (ii) the grounds on which the exemption is based; and
 - (iii) if practicable, an estimate by the provider of the period of time for which the exemption will exist; and
 - (iv) the entitlement of the customer to dispute the exemption by:
 - (A) requesting the provider to reconsider whether the grounds mentioned in subparagraph (ii) are a proper basis for the exemption; and
 - (B) complaining to the TIO; and
 - (v) how a customer may contact the provider in relation to the exemption; and
 - (b) if the exemption relates to extreme weather conditions that cause mass outages of specified services and restrict connection to a specified service or rectification of a fault or service difficulty — evidence, in writing, that the weather conditions meet one or more of the criteria specified in Schedule 3.
- Note* For *extreme weather conditions* — see subsection 4 (1).
- (2) The carriage service provider must give the statement mentioned in paragraph (1) (a), and the evidence mentioned in paragraph (1) (b) (if applicable), to a customer:
- (a) if the grounds on which the exemption is based relate to circumstances mentioned in paragraph 22 (2) (e) or (f) — as soon as practicable, but in any event not later than 14 weeks after the first day on which the exemption becomes available to the provider under section 22; and
 - (b) in any other case — as soon as practicable, but in any event not later than 10 working days after the first day on which the exemption becomes available to the provider under section 22.
- (3) In estimating, for the purposes of subparagraph (1) (a) (iii), the period of time for which the exemption will exist, the carriage service provider must have regard to the following:
- (a) the effect, on the ability of the provider to comply with the relevant performance standard, of the circumstances that relate to the grounds on which the exemption is based;
 - (b) the resources that the provider would have to commit, proportionate to that effect, to:
 - (i) mitigate the consequences of the circumstances; and

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- (ii) minimise the duration of the circumstances.
- (4) A customer of a carriage service provider is not prevented from disputing an exemption only because the provider has complied with this section.

24 General notice of exemptions

- (1) A carriage service provider who is taken to be exempt, on a provisional basis, from complying with a performance standard to the extent described in subsection 22 (1) is not required to comply with section 23 if the carriage service provider:
- (a) as soon as practicable, but in any event not later than 9 working days after the first day on which the exemption becomes available to the provider under section 22, requests a publisher to publish the notice mentioned in subsection 25 (1); and
 - (b) as soon as practicable, but in any event not later than 8 working days after the first day on which the exemption becomes available to the provider under section 22, gives to ACMA and the TIO:
 - (i) a copy of the notice; and
 - (ii) the telephone numbers of customers to whom the exemption relates; and
 - (c) as soon as practicable, but in any event not later than 8 working days after the first day on which the exemption becomes available to the provider under section 22, provides on the internet the information that is published in the notice; and
 - (d) as soon as practicable, but in any event not later than 9 working days after the first day on which the exemption becomes available to the provider under section 22, gives each of its resellers who has customers likely to be affected by the exemption, a copy of the notice.

Note Subsection 118A (1) of the Act provides that if a carriage service provider (the *first provider*) contravenes a standard in force under section 115 of the Act and the contravention is wholly or partly attributable to one or more acts or omissions of another carriage service provider (the *second provider*), the second provider may be liable to pay damages to the first provider for the acts or omissions.

- (2) If the carriage service provider is a reseller, the reseller may comply with paragraphs (1) (a), (b) and (c) by taking the action required as soon as practicable, but in any event not later than 2 working days after the day when the reseller receives notice from the carriage service provider from whom it acquires the service (the *supplier*) that an exemption is available to the supplier 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 supplier.

- (3) As soon as practicable after a carriage service provider becomes aware that information given to ACMA and the TIO under paragraph (1) (b) is no longer current, or is otherwise inaccurate, the carriage service provider must:
- (a) give revised information (including a copy of any revision of a notice mentioned in subsection 25 (1)) to ACMA and the TIO in writing; and
 - (b) if there is a revision of a notice mentioned in subsection 25 (1):
 - (i) give a copy of the revision to each of its resellers who has customers likely to be affected by the exemption; and
 - (ii) provide on the internet the information that is contained in the revision.

[9] Paragraph 25 (2) (a)

omit

paragraphs 23 (2) (a), (b), (c) and (d); and

insert

subparagraphs 23 (1) (a) (i), (ii), (iii), (iv) and (v) and paragraph 23 (1) (b) (if applicable); and

[10] After subsection 25 (5)

insert

- (6) For paragraph (2) (a), the notice will be taken to contain the information referred to in paragraph 23 (1) (b) if the notice contains the address of an Internet website:
- (a) that is accessible by each customer of the carriage service provider; and
 - (b) on which the information referred to in paragraph 23 (1) (b) is made available.

[11] Section 27

substitute

27 Review of circumstances of certain exemptions

As regularly as practicable, a carriage service provider to which an exemption is available under section 22 must review the grounds on which the exemption is based to ensure that the estimated duration of the exemption is no longer than necessary.

[12] Part 4, heading, note

substitute

Note Section 117 of the Act provides that ACMA may specify a scale of damages for contravention of standards under section 115 of the Act.

[13] Part 5, heading, note

substitute

Note Section 120 of the Act provides that ACMA may make provision for customers of carriage service providers to waive their protection and rights.

[14] After section 30

insert

Part 6 **Transitional arrangements for Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)**

31 Definitions for Part 6

In this Part:

amended Standard means the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* as amended by the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)*.

commencement day means the day on which the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)* commences.

former Standard means the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* as in force immediately before the commencement day.

32 Exemptions relied upon under former Standard

(1) If:

- (a) a carriage service provider relied on an exemption under the former Standard before the commencement day; and
- (b) the provider had complied with section 23 or 24 of that Standard before the commencement day; and
- (c) the exemption was still available to the provider immediately before the commencement day;

subsection 22A (3) of the amended Standard is taken to apply in relation to the provider.

- (2) In addition to subsection (1), the provider may describe itself as having claimed the exemption in accordance with paragraph 22A (3) (c) of the amended Standard.
- (3) If:
 - (a) a carriage service provider relied on an exemption under the former Standard before the commencement day; and
 - (b) the provider had not complied with section 23 or 24 of that Standard before the commencement day; and
 - (c) the exemption was still available to the provider immediately before the commencement day;
 section 22A of the amended Standard applies in relation to the exemption.

33 Contraventions and damages

- (1) If a contravention set out in column 2 of item 201, 202, 203 or 204 of Part 2 of Schedule 2 to the former Standard (a *delay*) occurred, or first occurred, before the commencement day, the damages payable in relation to the contravention are to be worked out as if the former Standard had not been amended by the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)*.
- (2) If a contravention set out in column 2 of item 205 of Part 2 of Schedule 2 to the former Standard occurred before the commencement day, the damages payable in relation to the contravention are to be worked out as if the former Standard had not been amended by the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No. 1)*.

[15] Schedule 2, Part 2

substitute

Part 2 Contraventions and damages

Item	Contraventions	Damages
201	Delay in connecting a CSG service, whether or not the service includes an enhanced call handling feature	The damages payable, for each working day of delay, to the customer who requested the connection are: <ul style="list-style-type: none"> (a) in the first 5 working days of delay: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$14.52; and (ii) if the customer is a business customer — \$24.20; and (b) after the first 5 working days of delay — \$48.40

Item	Contraventions	Damages
202	Delay in connecting an enhanced call handling feature to an existing CSG service	<p>The damages payable, for each working day of delay, to the customer who requested the connection are:</p> <ul style="list-style-type: none"> (a) in the first 5 working days of delay, if 2 or more features have not been connected: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$14.52; and (ii) if the customer is a business customer — \$24.20; and (b) in the first 5 working days of delay, if paragraph (a) does not apply: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$7.26; and (ii) if the customer is a business customer — \$12.10; and (c) after the first 5 working days of delay: <ul style="list-style-type: none"> (i) if 2 or more features have not been connected — \$48.40; and (ii) if subparagraph (i) does not apply — \$24.20
203	Delay in rectifying a fault or service difficulty of a CSG service, whether or not the service includes an enhanced call handling feature	<p>The damages payable, for each working day of delay, to the customer whose service required rectification are:</p> <ul style="list-style-type: none"> (a) in the first 5 working days of delay: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$14.52; and (ii) if the customer is a business customer — \$24.20; and (b) after the first 5 working days of delay — \$48.40

Item	Contraventions	Damages
204	Delay in rectifying a fault or service difficulty of an enhanced call handling feature of a CSG service that does not prevent operation of the service	<p>The damages payable, for each working day of delay, to the customer whose service required rectification are:</p> <ul style="list-style-type: none"> (a) in the first 5 working days of delay, if 2 or more enhanced call handling features have not been rectified: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$14.52; and (ii) if the customer is a business customer — \$24.20; and (b) in the first 5 working days of delay, if paragraph (a) does not apply: <ul style="list-style-type: none"> (i) if the customer is a residential/charity customer — \$7.26; and (ii) if the customer is a business customer — \$12.10; and (c) after the first 5 working days of delay: <ul style="list-style-type: none"> (i) if 2 or more features have not been rectified — \$48.40; and (ii) if subparagraph (i) does not apply — \$24.20
205	Missing an appointment on a day that is not a day in relation to which damages calculated in accordance with item 201, 202, 203 or 204 are payable	<p>The damages payable, for each missed appointment, to the customer with whom the appointment was made are:</p> <ul style="list-style-type: none"> (a) if the customer is a residential/charity customer — \$14.52; and (b) if the customer is a business customer — \$24.20

[16] After Schedule 2

insert

Schedule 3 Criteria for extreme weather conditions

(subsection 4 (1), definition of **extreme weather conditions**)

1. Large hail, being hail with a diameter of at least 2 centimetres.
2. Heavy rainfall, being rainfall that exceeds the 10 year average recurrence interval (ARI) (the rainfall amount that has a probability of 10% or less of being exceeded in a year over a given duration).

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3. Flash flood, being a reported flash flood, or reported heavy rainfall that is conducive to flash flooding.
 4. Hazardous winds, being gale force winds (10 minute mean winds of at least 63 kilometres per hour) or gusts of wind of at least 90 kilometres per hour.
 5. Lightning, being ‘cloud to ground’ lightning strikes.
 6. Blizzard, being gale force winds (10 minute mean winds of at least 63 kilometres per hour) combined with falling or blowing snow that reduces visibility to less than 200 metres.
 7. Tornado.
 8. Large waves, being unusually large surf waves (surf exceeding 5 metres) expected to cause dangerous conditions on the coast and leading to significant beach erosion.
 9. Storm tides, being abnormally high tides caused by winds and expected to exceed highest astronomical tide.

[17] Further amendments

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Subsection 27A (1)	the ACA	ACMA
Paragraph 27A (2) (f)	the ACA	ACMA
Subsection 27A (3)	The ACA	ACMA
Subsection 27A (4)	the ACA must	ACMA must
Paragraph 27A (4) (h)	the ACA thinks	ACMA thinks
Paragraph 27A (8) (a)	the ACA	ACMA
Subsection 27A (10)	The ACA	ACMA