



Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012

made under section 529 of the *Telecommunications Act 1997*

Compilation start date: 30 September 2014

Includes amendments up to: *Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)*.

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Part 1 Introduction

1 Name of Rules

These Rules are the *Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012*.

2 Commencement

These Rules commence on 1 February 2012.

Note: All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.

3 Definitions

(1) In these Rules, unless the contrary intention appears:

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

audit report means a report that includes the items specified in subsection 15(4).

benchmark period means the interim benchmark period or any subsequent benchmark period.

Benchmarks Instrument means the *Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011*.

compliance report means a report under section 10.

fault or service difficulty, in respect of a payphone or payphone carriage service, has the meaning given to the term “fault or service difficulty” in subsection 8(5) of the Benchmarks Instrument as affected by subsections 8(6), 8(7) and 8(8) of that instrument.

interim benchmark period means the period commencing on 1 February 2012 and expiring on 30 June 2012.

maximum rectification period has the meaning given in section 5.

nominated area means Australia.

payphone has the meaning given by section 9C of the TCPSS Act.

payphone carriage service has the meaning given by subsection 5(2) of the TCPSS Act.

payphone register has the meaning given in the *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*.

primary universal service provider has the meaning given by section 12A of the TCPSS Act.

rectification period means the period taken to rectify a fault or service difficulty relating to a payphone or payphone carriage service, excluding any period during which the primary universal service provider was not required to comply with a payphone benchmark standard in relation to the fault or service difficulty because of an exemption under paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instrument.

TCPSS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Telecommunications Act means the *Telecommunications Act 1997*.

(2) In these Rules, unless the contrary intention appears, the following terms have the meaning given to them in the Benchmarks Instrument:

- (a) major rural area;
- (b) minor rural area;
- (c) payphone benchmark standards;
- (d) remote area;
- (e) rural area;
- (f) subsequent benchmark period;
- (g) urban area; and
- (h) working day.

Note: Some of the words and expressions used in these Rules, such as the “ACMA”, have the same meaning as given by the Telecommunications Act.

4 Applicable payphone

A payphone is an *applicable payphone* if it is:

- (a) situated at a payphone site specified in a payphone register; and
- (b) provided in accordance with paragraph 9(1)(b) and subsection 9(2A) of the TCPSS Act.

Note: The Benchmarks Instrument applies with respect to a payphone that meets both of the criteria in paragraphs (a) and (b) above (see section 5 of the Benchmarks Instrument).

5 Maximum rectification period

Maximum rectification period, in relation to a fault or service difficulty in respect of a payphone or payphone carriage service, means the maximum period within which a primary universal service provider is required, by virtue of subsection 8(2) of the Benchmarks Instrument, to rectify that fault or service difficulty.

Part 2 Keeping of Records

7 Records relating to faults or service difficulties

(1) A primary universal service provider must, in relation to each report that it receives, or produces, of a fault or service difficulty in respect of:

- (a) an applicable payphone; or
 - (b) a carriage service supplied by means of an applicable payphone,
- keep a record of the matters prescribed in subsection (2).

(2) The matters prescribed for the purposes of subsection (1) are:

(a) if the primary universal service provider produced a report of the fault or service difficulty – the date and time at which the report was produced;

Note: In some cases, a report of a fault or service difficulty may be automatically generated by a primary universal service provider (see subsection 8(4) of the Benchmarks Instrument).

(b) if the primary universal service provider received a report of the fault or service difficulty –

- (i) the date and time at which the report was received; and
- (ii) if known - the name of the person who reported the fault or service difficulty;

Note: Subsection 8(3) of the Benchmarks Instrument provides that where a primary universal service provider receives a report and produces a report in respect of the same fault or service difficulty, the time frames stipulated in subsection 8(2) of the Benchmarks Instrument commence on the day after the first of those reports was received or produced (as the case may be).

(c) the location of the payphone or the payphone in respect of which the payphone carriage service is supplied;

(d) the date and time at which the maximum rectification period expires in relation to the fault or service difficulty;

Note: In circumstances where paragraph (g) or (h) below apply, the date and time at which the maximum rectification period expires may not be apparent for some time. The provider should record this information when the date and time become known.

(e) the date and time at which the primary universal service provider rectified the fault or service difficulty;

(f) the rectification period in working days;

(g) if a law of the Commonwealth, a State or Territory prevents the primary universal service provider from complying with a payphone benchmark standard with respect to the rectification of the fault or service difficulty –

- (i) the name of that law;
- (ii) the reason why that law prevents the provider from complying with the payphone benchmark standard;

- (iii) the date on which the provider became prevented from complying with the payphone benchmark standard by reason of the law;
 - (iv) the date by which the provider anticipates that the fault or service difficulty will be rectified (if known); and
 - (v) the date and time at which the law ceased to prevent the provider from complying with the payphone benchmark standard;
- (h) if circumstances beyond the control of the primary universal service provider prevent the provider from complying with a payphone benchmark standard with respect to the rectification of the fault or service difficulty –
- (i) a description of those circumstances;
 - (ii) the reason why those circumstances prevent the provider from complying with the payphone benchmark standard;
 - (iii) the date on which those circumstances arose;
 - (iv) the date by which the provider anticipates that the fault or service difficulty will be rectified (if known); and
 - (v) the date and time at which the circumstances ceased to prevent the provider from complying with the payphone benchmark standard; and
- (i) whether the payphone to which the report relates, is located in:
- (i) an urban area;
 - (ii) a rural area; or
 - (iii) a remote area.

8 Records relating to a primary universal service provider's procedures

A primary universal service provider that claims it is exempt from compliance with the payphone benchmark standards by reason of subsection 6(1) of the Benchmarks Instrument, must keep records of the procedures that the provider has in place to ensure that it does not rely on an exemption in circumstances that are not beyond the provider's control.

Note: Subsection 6(3) of the Benchmarks Instrument provides that a primary universal service provider is not exempt from compliance with a payphone benchmark standard unless the provider has such procedures in place.

Part 3 Retention of Records

9 Period for retention of records

If, in a benchmark period, a primary universal service provider is required to keep a record of a matter described in Part 2, the primary universal service provider must retain that record for a period that expires no earlier than two years after the end of that benchmark period.

Note: For example, if in accordance with Part 2, a primary universal service provider keeps a record of a matter in the benchmark period commencing 1 July 2012 and ending 30 June 2013, that record must be retained until at least 30 June 2015.

Part 4 Reporting

10 Requirement to prepare compliance reports

- (1) A primary universal service provider must, in accordance with this section, prepare a compliance report in respect of each benchmark period.
- (2) A compliance report must:
 - (a) include the information specified in Schedule 1; and
 - (b) be in the form specified in Schedule 2.

11 Requirement to give compliance reports to the ACMA

- (1) A primary universal service provider must give to the ACMA a compliance report in respect of each benchmark period no later than 40 working days after the end of the benchmark period, or such later time as agreed in writing by the ACMA.
- (2) A compliance report must be given to the ACMA by both of the following means:
 - (a) electronic transmission to the email address published for the purposes of this paragraph from time to time on the ACMA website; and
 - (b) delivery, by hand or registered post, to an office of the ACMA.
- (3) A compliance report delivered under paragraph (2)(b) may be in an electronic format of a kind agreed in writing by the ACMA.

Part 5 Audit

12 Auditing of compliance with these Rules

- (1) Subject to subsection (4), the ACMA may, in accordance with subsections (2) or (3), by written notice given to a primary universal service provider, require the primary universal service provider to engage, at its own cost, an external auditor to audit the compliance of the primary universal service provider with these Rules.
- (2) The ACMA may require the primary universal service provider to obtain one initial audit in respect of each compliance report which the primary universal service provider is required to give to the ACMA under subsection 11(1).
- (3) The ACMA may require the primary universal service provider to obtain one follow-up audit in respect of each initial audit required under subsection (2) if the ACMA forms a view on reasonable grounds that the initial audit is inadequate.
- (4) The ACMA may only require an audit under subsection (1) if it forms a view on reasonable grounds that an audit is necessary.

13 Audit terms of reference

- (1) This section applies to a primary universal service provider that has received a notice given under subsection 12(1).
- (2) The primary universal service provider must, no later than 21 days after receipt of the notice, or such longer period as the ACMA may agree in writing, give to the ACMA draft terms of reference of the audit.
- (3) The ACMA may, by written notice given to the primary universal service provider:
 - (a) approve the draft terms of reference; or
 - (b) require the primary universal service provider to make changes to the draft terms of reference.
- (4) Within 14 days after receipt of a notice given under paragraph (3)(b), or such longer period as the ACMA may agree in writing, the primary universal service provider must provide to the ACMA revised terms of reference.
- (5) The ACMA may, by written notice given to the primary universal service provider:
 - (a) approve the revised terms of reference; or
 - (b) specify the terms of reference of the audit, provided that it has formed the view on reasonable grounds that the revised terms of reference do not give effect to the changes notified under paragraph (3)(b).
- (6) The terms of reference of the audit must include:
 - (a) the objectives of the audit;
 - (b) the format of the auditor's opinion;
 - (c) the auditing standard or standards in accordance with which the audit must be conducted; and

- (d) a timetable for the conduct of the audit, including the date by which the audit report is to be provided by the auditor to the primary universal service provider.

Note: Section 15 sets out requirements relating to the provision of audit reports to the ACMA.

- (7) The objectives of the audit must include determining whether the primary universal service provider:
 - (a) has prepared a compliance report required under section 10; and
 - (b) kept any records of a kind described in Part 2 required under these Rules, in accordance with the requirements of these Rules.

14 Nomination of auditor

- (1) This section applies to a primary universal service provider that has received a notice under paragraph 13(3)(a), 13(5)(a) or 13(5)(b), as the case may be.
- (2) The primary universal service provider must, no later than 21 days after receipt of the notice, or such longer period as the ACMA may agree in writing, notify the ACMA in writing of its choice of auditor.
- (3) The ACMA may, by written notice given to the primary universal service provider:
 - (a) approve the choice of auditor; or
 - (b) reject the choice of auditor.
- (4) Within 14 days after receipt of a notice given under paragraph (3)(b), or such longer period as the ACMA may agree in writing, the primary universal service provider must notify the ACMA in writing of a new choice of auditor.
- (5) The ACMA may, by written notice given to the primary universal service provider:
 - (a) approve the new choice of auditor; or
 - (b) require the primary universal service provider to contract with a specified auditor or any auditor from a specified group of auditors.
- (6) The primary universal service provider must take all necessary steps to ensure that the auditor:
 - (a) complies with the applicable terms of reference under section 13; and
 - (b) is able to form an opinion in relation to the achievement of the objectives of the audit referred to in subsection 13(7).

15 Requirement to provide audit report to the ACMA

- (1) This section applies to a primary universal service provider if sections 12, 13 and 14 apply to the primary universal service provider.
- (2) Upon receipt by the primary universal service provider of the audit report from the auditor, the provider must, within 14 days, or such longer period as the ACMA may agree in writing, give the audit report to the ACMA.
- (3) The primary universal service provider must take all necessary steps to ensure that the auditor provides an audit report meeting the description in subsection (4).
- (4) For the purposes of this section, an *audit report* must include:
 - (a) an audit plan outlining the scope and coverage of the audit;
 - (b) an audit memorandum stating how the audit scope and objectives have been applied; and
 - (c) an expression of opinion as to whether the primary universal service provider has:
 - (i) prepared a compliance report required under section 10; and
 - (ii) kept any records of a kind described in Part 2 required under these Rules, in accordance with the requirements of these Rules.

Schedule 1 Information to be included in a compliance report

1 Information relating to the primary universal service provider and benchmark period

A compliance report must include:

- (a) the name of the primary universal service provider;
- (b) the ABN of the primary universal service provider;
- (c) the date on which the compliance report was prepared; and
- (d) the start and end dates of the benchmark period.

2 Performance information relating to faults or service difficulties

(1) A compliance report must include, in respect of the benchmark period covered by the report, the following information in relation to each area described in sub-item (2):

- (a) the number of times that the primary universal service provider was required to comply with a payphone benchmark standard during the benchmark period;

Note: This number would include all of those faults or service difficulties in respect of which the provider was required to comply with a payphone benchmark standard before the expiration of the benchmark period.

- (b) of those times referred to in paragraph (a) –

- (i) the number of times that the provider complied with that payphone benchmark standard; and

Note: This number would include the number of times (if any) that the provider complied with that payphone benchmark standard following a period (in this or a previous benchmark period) during which the provider was exempt from compliance with that standard because of paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instrument.

- (ii) the number of times that the provider did not comply with that payphone benchmark standard; and

Note: This number would include the number of times (if any) that the provider did not comply with that payphone benchmark standard following a period (in this or a previous benchmark period) during which the provider was exempt from compliance with that standard because of paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instrument.

- (c) the number of times that the provider was not required to comply with a payphone benchmark standard in relation to a fault or service difficulty reported during the benchmark period or a previous benchmark period, because of an exemption under paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instrument.

Note: This number would include all instances in which the provider was not required to comply with a payphone benchmark standard, irrespective of

whether or not the provider has subsequently become required to comply with that standard.

- (2) For the purposes of sub-item (1), the areas are:
 - (a) the nominated area; and
 - (b) each of the following areas within the nominated area:
 - (i) remote areas;
 - (ii) rural areas; and
 - (iii) urban areas.

3 Exemptions – information about whether procedures in place

If the provider claims that it was not required, during the benchmark period, to comply with a payphone benchmark standard in relation to a fault or service difficulty reported during the benchmark period or a previous benchmark period, because of an exemption under paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instrument – a compliance report must specify whether the provider has procedures in place to ensure that the provider does not rely on the exemption in circumstances that are not beyond its control.

Schedule 2 Form of Compliance Report

Instructions for completion of this form -

- All fields in the tables must be completed (nil returns must be specified where appropriate).

Table 1 - Information relating to the primary universal service provider and the benchmark period

Name of primary universal service provider	
ABN of primary universal service provider	
Date on which compliance report was prepared	
Start and end dates for the benchmark period	

Note: The information to be included in Table 1 is the information referred to in item 1 of Schedule 1.

Table 2 – Performance information relating to faults or service difficulties

For benchmark period ending [insert]						
Nominated area	Schedule 1 reference	Description	Urban areas	Rural areas	Remote areas	Total
Australia	2(1)(a)	Number (required to comply)				
	2(1)(b)(i)	Number (complied)				
	2(1)(b)(ii)	Number (did not comply)				
	2(1)(c)	Number (not required to comply – exemption)				

Note: The information to be included in Table 2 is the information referred to in item 2 of Schedule 1.

Table 3 – Information confirming existence of procedures (where exemptions relied upon)

For benchmark period ending:	
Does the provider have procedures in place to ensure that the provider does not rely on an exemption under paragraph 6(1)(a) or 6(1)(b) of the Benchmarks Instruments in circumstances that are not beyond its control?	

Note: The information to be included in Table 3 is the information referred to in item 3 of Schedule 1.

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012*.

Table of Instruments

Title	FRLI registration date	Commencement date	Application, saving and transitional provisions
Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012	25 January 2012 (see F2012L00082)	1 February 2012	----
Telecommunications (Customer Service Guarantee and Payphone Performance Benchmarks) Record-Keeping Rules Amendment 2014 (No.1)	22 August 2014 (see F2014L01105)	30 September 2014	----

Endnote 2 – Amendment history

This endnote sets out the amendment history of the *Telecommunications (Payphone Performance Benchmarks) Record-Keeping Rules 2012*.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
s.3	am. No.1 of 2014.
s.6	rep. No.1 of 2014.
Part 4	
s.10	am. No.1 of 2014.
s.11	am. No.1 of 2014.
Schedule 1	
Schedule 1	am. No.1 of 2014.
Schedule 2	
Schedule 2	am. No.1 of 2014.