

Investigation Report

File No.	ACMA2021/305
Entity	Telstra Corporation Limited
ACN	051 775 556
Relevant Legislation	<i>Telecommunications Act 1997</i> <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> <i>Telecommunications (Customer Service Guarantee) Standard 2011</i>

Findings

The Australian Communications and Media Authority (**ACMA**) finds that between 1 July 2017 and 30 June 2021 Telstra Corporation Limited (ACN 051 775 556) (**Telstra**):

- > did not comply with subsection 117A(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**TCPSS Act**) on 67,390 occasions; and
- > as a consequence, has contravened subsection 101(1) the *Telecommunications Act 1997* (**the Telecommunications Act**) on 67,390 occasions.

Background

1. On 26 April 2021 Telstra notified the ACMA of a problem with data flows into its computer system used to assess liability for damages (payments) for not meeting performance standards in the *Telecommunications (Customer Service Guarantee) Standard 2011* (**CSG Standard**). These issues resulted in 22,341 customers on NBN services not being paid damages between November 2018 and March 2021 for connections not completed within the performance standards in the CSG Standard.
2. Telstra subsequently notified the ACMA of five more incidents resulting in CSG payments not being made to customers as required.
3. The Customer Service Guarantee (CSG) scheme is established under Part 5 of TCPSS Act. Section 117A of the TCPSS Act places obligations on carriage service providers (**CSPs**) to make decisions about accepting liability to pay damages under the CSG Standard, and mandates a timeframe for making such decisions.
4. On 22 August 2021 the ACMA commenced an investigation under section 510 of the Telecommunications Act to determine whether Telstra had complied with the timeframe requirements in section 117A of the TCPSS Act for the payment of CSG damages.

Relevant facts

5. Telstra supplies internet, landline and mobile services to the public. As such, Telstra is a CSP as defined in the Telecommunications Act.
6. The CSG Standard sets out guaranteed timeframes for CSPs to meet when connecting services (section 8), rectifying faults (section 11) and keeping appointments (section 17) relating to CSG Services.

7. A CSG Service is defined as an eligible telephone service that is supplied by a CSP to a customer of the provider. An eligible telephone service includes a standard telephone service as defined in section 6 of the TCPSS Act.
8. These performance standards must be met unless there is an exemption under Part 3 of the CSG Standard, a waiver under Part 5 applies, or if a CSP has made a reasonable offer to supply a customer with an interim or alternative service under section 7 of the CSG Standard.
9. As a CSP, Telstra is also required by subsection 101(1) of the Telecommunications Act to comply with the service provider rules.
10. Under subsection 98(1) of the Telecommunications Act, service provider rules include the rules set out in Schedule 2 to the Act. Clause 1 of Schedule 2 to the Telecommunications Act states that a service provider must comply with the Telecommunications Act and the TCPSS Act.

Incident 1

11. On 1 June 2021, Telstra advised the ACMA that the incident reported on 26 April 2021 (**Incident 1**) related to NBN services not being connected within the timeframe required under the CSG Standard, however affected customers did not receive a CSG damages payment due under Part 5 of the TCPSS Act.
12. Telstra also explained on 1 June 2021 that the underlying cause of Incident 1 was the extended length of its Telstra Smart Modem customer order number, which prevented customer data from flowing into Telstra's automated IT system for assessing liability for any CSG damages (**CSG payment assessment system**). This problem occurred between November 2018 and March 2021.
13. The problem was compounded by Telstra's failure to monitor and escalate the data flow issues appropriately after they were initially discovered by Telstra operational staff in February 2019. The underlying cause of the problem was addressed in March 2021.
14. On 14 September 2021 Telstra confirmed that, because of this data flow failure, the CSG payment assessment system could not make assessments of CSG liability for the 22,341 customers in Incident 1 within 14 days.
15. The total amount of damages involved was \$6,615,868, however this has now been paid to the affected Telstra customers.
16. Telstra has not examined the specific circumstances of each of the 22,341 affected customer services reported in Incident 1 to confirm that they were all subject to the CSG Standard. However, based on its analysis of the incident, Telstra has now treated all the customer services affected as if they were standard telephone services and covered by the CSG Standard for the purposes of determining whether it should have made CSG damages payments to the affected customers.
17. In making a decision to pay CSG damages payments to the 22,341 customers affected in Incident 1, Telstra also advised the ACMA that it had treated these services as if Telstra had not met the applicable performance standards in the CSG Standard.

Incidents 2 to 5

18. On 1 June 2021, Telstra notified the ACMA of three additional data flow incidents (Incidents 2, 3 and 4) that prevented customer data from reaching Telstra's automated CSG payment assessment system for processing. These additional data flow problems resulted in CSG damages not being paid to an additional 1,815 customers, amounting to \$239,162. These three additional incidents related to PSTN and NBN assurance (fault) rectification issues.
19. Those three incidents occurred between July 2019 and May 2021, although they were not all continuous throughout that period.
20. On 8 July 2021, Telstra advised the ACMA of a fifth data flow incident (Incident 5) that had affected 31,950 customers and related to NBN service connections. It caused a delay in these customers receiving CSG payments totalling \$3,191,027. This incident occurred between July 2017 and July 2018.
21. On 10 September 2021, Telstra advised the ACMA that it has paid all CSG damages due to the customers affected by Incidents 2 to 5.
22. Telstra has a high level of confidence that the customer services affected in Incidents 2 to 5 involved standard telephone services that were subject to the CSG Standard.
23. Similar to Incident 1, in making a decision to pay CSG damages to the customers affected in Incidents 2 to 5, Telstra has treated its conduct in relation to these services on the basis that it did not meet the applicable performance standards in the CSG Standard.

Incident 6

24. On 6 August and 17 November 2021, Telstra provided information about a sixth incident (Incident 6), which resulted in Telstra making delayed payments of CSG damages to 11,284 customers after their NBN service customer orders were not assessed for CSG damages liability.
25. Telstra advised that the services of 7,294 customers were either not connected or did not have their fault rectified within the timeframes required by the CSG Standard. Telstra's CSG payment assessment system incorrectly identified these services as not needing to be assessed, or being ineligible, for CSG payments.
26. Appointments with customers to connect services were also not kept within CSG Standard timeframes 3,990 times. Telstra advised that CSG payments were not made after the missed appointments because it had incorrectly identified the customer orders involved as not being eligible for payment under the CSG Standard.
27. Incident 6 occurred between 1 October 2018 and 30 June 2021 and involved CSG damages totalling \$392,754.
28. Telstra has advised that it has a high level of confidence that that all instances included in Incident 6 involved standard telephone services. Telstra has treated them as if they were subject to the CSG Standard for the purposes of determining whether it should have made CSG payments to the affected customers.

Telstra's response to the preliminary findings

29. Telstra provided a response to the ACMA's preliminary investigation findings on 17 December 2021.
30. Telstra did not contest the preliminary findings. It acknowledged that it had not complied with subsection 117A(1) of the TCPSS Act between 1 July 2017 and 30 June 2021 and, as a consequence, had contravened subsection 101(1) of the Telecommunications Act.
31. Telstra also accepted the ACMA's characterisation of the six incidents which resulted in the 67,390 occasions where Telstra failed to accept liability to pay CSG damages within the required timeframe.

Findings and reasons

Compliance with subsection 117A(1) of the TCPSS Act

32. Part 5 of the TCPSS Act contains the Customer Service Guarantee, which sets out rules about payment of damages to customers when performance standards in the CSG Standard are not met by a CSP.
33. Section 116 of the TCPSS Act sets out when CSPs are liable to pay damages for breaching performance standards in the CSG Standard:
 - (1) If:
 - (a) a carriage service provider contravenes a standard in force under section 115; and
 - (b) the contravention relates to a particular customer;the carriage service provider is liable to pay damages to the customer for the contravention.
 - (2) The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale in force under section 117.
34. The CSG Standard is a standard in force under subsection 115(1) of the TCPSS Act and specifies damages payable if CSPs do not meet performance standards relating to delay in rectifying faults or service difficulties for CSG services.
35. Subsection 117A(1) of the TCPSS Act sets out when a CSP must make a decision about whether to accept liability for damages under the CSG scheme:
 - (1) If, at a particular time, a carriage service provider first has reason to believe that an event has occurred that is reasonably likely to result in the carriage service provider being liable to pay damages to a particular customer under section 116, then, within 14 days after that time, the carriage service provider must decide whether to accept that liability.
36. Telstra has treated customer services identified in all six incidents on the basis that they all involved standard telephone services, and that these were subject to the performance standards in the CSG Standard.
37. Telstra has now made CSG payments to the customers identified in Incidents 1 to 6 as if Telstra had not met the performance standards applicable under the CSG Standard in relation to those customer services.
38. On the basis that Telstra has:

- a. since acted for all practical purposes as if it had not met the performance standards under the CSG Standard in relation to the customer services across the six incidents; and
 - b. the CSG Standard is a standard in force under section 115 of the TCPSS Act, a liability arose to pay damages for breaching performance standards in the CSG Standard under section 116 of the TCPSS Act.
39. For each of the customers affected in the six incidents reported, Telstra had all the customer order data available within its records and IT systems. Consequently, Telstra should therefore have had reason to believe that events had occurred that were reasonably likely to result in it being liable to pay damages to a particular customer under section 116.
 40. However, in Incidents 1 to 5, Telstra's CSG payment assessment system did not receive all the data necessary to make a decision about whether it was liable to pay damages for breaching the performance standards in the CSG Standard. In the sixth incident, the CSG payment assessment system relied on incorrect information (which was within Telstra's control to correct) that the customer services involved did not need to be assessed, or were ineligible, for CSG damages payments. As a result, none of the customer orders affected by these six incidents were assessed for CSG damages liability within 14 days of the event that gave rise to each liability.
 41. The ACMA has found that, for each of the customer services affected in each of the six incidents reported, Telstra had reason to believe that an event had occurred that was reasonably likely to result in it being liable for CSG damages but it did not make the required decision about liability within 14 days of each event.
 42. Telstra therefore did not comply with subsection 117A(1) of the TCPSS Act for each of the customers affected. This corresponds to 67,390 breaches of subsection 117A(1) of the TCPSS Act between 1 July 2017 and 30 June 2021.

Compliance with subsection 101(1) of the Telecommunications Act: Requirement to comply with service provider rules

43. As set out in paragraphs 9 and 10, Telstra must comply with the service provider rules.
44. For the reasons set out above, the ACMA has also found that Telstra contravened subsection 101(1) of the Telecommunications Act on 67,390 occasions between 1 July 2017 and 30 June 2021 because it did not comply with subsection 117A(1) of the TCPSS Act.