



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

## **Consumer safeguard instruments: release of exposure draft**

**Telecommunications (Customer Service  
Guarantee - Retail Performance Benchmarks  
Instrument (No. 1) 2011 Exposure Draft**

**May 2011**

## 1. Overview of consumer safeguard instruments

The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (CCS Act) provides for the Minister to make a range of legislative instruments which are intended to enhance existing consumer safeguards, including the Universal Service Obligation (USO) and the Customer Service Guarantee (CSG).

Making these instruments represents the next step towards ensuring that the regulatory framework is robust, current service quality is maintained or improved and consumer access to basic voice services is protected as the industry transitions to the development of the National Broadband Network.

The changes will also assist the regulator, the Australian Communications and Media Authority (ACMA), to more effectively enforce consumer safeguard standards.

The reforms complement the Australian Government's announcement of 20 June 2010 that it will introduce a new regulatory, funding and institutional framework for the delivery of universal service outcomes and other public interest services from 1 July 2012.

The government's intention is to focus on those instruments which are most urgent while providing consumers with much-needed clarity around the safeguards available to them. Matters which fall into this category include instruments that will improve clarity around existing universal service arrangements, arrangements for payphones (including location criteria and performance benchmarks and standards), CSG performance benchmarks for retail services, establishment of a wholesale CSG standard and wholesale performance benchmarks, and instruments setting out provisions which may be subject to infringement notices issued by the ACMA and determining the amount of penalty for infringement notices.

The Telecommunications (Customer Service Guarantee - Retail Performance Benchmark) Instrument (No. 1) 2011 (the CSG Retail Benchmarks Instrument) Exposure Draft is at [Attachment A](#).

The CSG Retail Benchmarks Instrument sets out the extent to which a carriage service provider must meet the standards under the CSG when it supplies services to which the CSG applies. The CSG standards are set out in the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG Standard), made under section 115 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act) and include the timeframes required to connect a service, rectify faults and meet appointments.

## 2. Consultation process

The government invites interested stakeholders to comment on the Exposure Draft of the CSG Retail Benchmarks Instrument proposed to be made under subsection 117B(1) of the Consumer Protection Act.

Please make submissions in writing to:

The Manager  
Universal Access Section  
Networks Regulation Branch  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

Or send by email to [consumersafeguardsreform@dbcde.gov.au](mailto:consumersafeguardsreform@dbcde.gov.au)

The closing date for submissions is **5 pm Australian Eastern Standard Time on Friday, 3 June 2011.**

The department will publish all submissions on its website unless the submitter requests confidentiality.

The government intends to release exposure drafts of all the consumer safeguard instruments which it is planning to progress. Details of the consultation processes and exposure drafts will be available from the department's website at [www.dbcde.gov.au](http://www.dbcde.gov.au)

The government will also consult further on the future arrangements arising from the announcement on 20 June 2010 regarding reforms for the delivery of universal service outcomes to operate from 1 July 2012.

### **3. Legislative basis for the Retail CSG Benchmarks Instrument**

The CCS Act introduces a new provision, section 117B, of the Consumer Protection Act that enables the Minister to make performance benchmarks relating to a carriage service provider's compliance in meeting the CSG standards.

The CCS Act also introduces section 117C that requires a provider to meet the performance benchmarks set out in section 117B. The obligation to meet the benchmark is a service provider rule (see clause 1 of Schedule 2 to the *Telecommunications Act 1997* (Telecommunications Act)) and is subject to the standard enforcement mechanisms in that Act applying to service provider rules.

The Retail CSG Benchmarks Instrument Exposure Draft sets out the benchmarks proposed for the Minister to make under section 117B of the Consumer Protection Act.

#### **Policy intention**

Sections 117B and 117C of the Consumer Protection Act provide for an enforceable regulatory requirement for carriage service providers to meet or exceed CSG standards to a specified extent.

Under the existing regulatory arrangements, carriage service providers are required to pay each customer a specified financial damages payment in respect of a failure to meet a CSG standard. Sections 122 and 123 of the Consumer Protection Act expressly provide that a contravention of a CSG standard is not an offence or a breach of the service provider rules.

The benchmarks proposed in this instrument are intended to make enforceable the existing ACMA informal performance targets.

Monitoring by the ACMA has indicated that, to an extent, some providers are failing to meet the CSG standards and, in some cases, the ACMA's performance targets are not met.

Enforceable performance benchmarks will provide an additional incentive for carriage service providers to meet the CSG standards and it is intended that this will result in additional benefits to consumers.

## **4. Outline of the Telecommunications (Customer Service Guarantee - Retail Performance Benchmarks Instrument (No. 1) 2011**

The CSG Retail Benchmarks Instrument is drafted in two parts. Part 1 sets out the name, commencement arrangements, definitions, and the service providers to whom the benchmarks will apply. Part 2, Division 1 deals with the benchmarks applying to connection periods, fault rectification and appointment-keeping and Part 2, Division 2 sets out circumstances where a breach occurs.

### **Commencement**

It is proposed that the CSG Retail Benchmarks Instrument will commence on 1 July 2011.

The ACMA may need to make record-keeping rules under s529 of the Telecommunications Act requiring carriage service providers to keep records relating to matters covered by this Determination. Such rules need to reflect the requirements of the final Determination made by the Minister and, therefore, may not be in place prior to this date.

The ACMA will give consideration to other steps to ensure monitoring can commence from 1 July 2011.

### **Qualifying carriage service providers**

Clauses 4 and 5 propose that the CSG Retail Benchmarks Instrument only apply to carriage service providers with large numbers of customers. This is to ensure that the regulatory burden of compliance is not excessive for smaller providers, while minimising the risk of non-compliance due to low levels of services provided or faults reported.

Clause 4 excludes carriage service providers that supply less than 100 000 specified CSG services.

Clause 5 provides that the benchmarks for:

- urban areas only apply to providers supplying a total of 10 000 or more CSG services in urban areas nationally
- major rural areas or minor rural areas only apply to providers supplying a total of 1000 or more CSG services in each of those areas nationally
- rural areas, that is, combined major and minor rural areas supplying a total of 1000 or more CSG services in the combined rural areas nationally, and
- remote areas only apply to providers supplying a total of 500 or more CSG services in remote areas nationally.

A carriage service provider must meet the national threshold (100 000 specified CSG services) before they are subject to the geographical category thresholds. For example, a carriage service provider supplying over 100 000 CSG service customers nationally would be required to meet the urban category benchmark if they had over 10 000 CSG service customers in urban areas nationally. However, if the number of national CSG service customers drops below 100 000, the carriage service provider will be excluded from assessment, even if it still has over 10 000 urban CSG service customers.

Services that are exempt from the CSG standards will not be included in the customer thresholds for so long as they are exempt. For example, instances where timeframes are not met due to circumstances beyond the control of carriage service providers, such as disruptions due to extreme weather, or where a customer is provided with more than five lines, will not be included.

Clause 3 provides that:

- an urban area is a centre with 10 000 people or more
- a major rural area is a centre or community grouping of between 2500 and 9999 people
- a minor rural area is a centre, locality or other community grouping with between 200 and 2499 people, and
- a remote area is an area which is not an urban, major rural or minor rural area.

These definitions mirror those in the CSG Standard.

## **Performance benchmarks**

Division 1 of Part 2 of the CSG Retail Benchmarks Instrument specifies that the performance benchmark for service connection, fault rectification and appointment-keeping by qualifying service providers is 90 percent. The benchmarks are applied to the categories depending upon whether the provider meets the thresholds specified in clause 5.

Clause 6 sets out the performance benchmarks for service connection. The benchmarks are required to be met or exceeded:

- for in-place connection requests — nationally (that is, all CSG services)
- for new connection requests — urban areas, major rural areas, minor rural areas and remote areas.

The terms 'in-place connection request' and 'new connection request' are defined in clause 3.

Clause 7 sets out the performance benchmarks for fault rectification. The benchmarks are required to be met or exceeded for new connections in urban areas, rural areas and remote areas.

Clause 8 sets out the performance benchmarks for appointment-keeping. The benchmarks are required to be met or exceeded for 'in-place' connections at a national level (that is, all CSG services). However, breaches of appointment-keeping are not included if they relate to a breach of a connection or fault-rectification timeframe.

These arrangements reflect the ACMA's existing informal targets and reporting requirements.

### **Contravention (Division 2, Part 2)**

Clause 9 of the instrument provides that any failure to meet or exceed each of the performance benchmarks is a separate contravention of the performance benchmarks.

# **ATTACHMENT A – exposure draft of the Telecommunications (Customer Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011**

Commonwealth of Australia

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

## **Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following instrument under subsection 117B(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 2011

STEPHEN CONROY  
Minister for Broadband, Communications and the Digital Economy

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### **Part 1 Preliminary**

#### **1 Name of instrument**

This Instrument is the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011*.

#### **2 Commencement**

This Instrument commences on 1 July 2011.

#### **3 Definitions**

(1) In this Instrument, unless the contrary intention appears:

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

**appointment-keeping performance standard** has the meaning given by subsection 8(1) of this Instrument.

**connection period performance standard** has the meaning given by subsection 6(1) of this Instrument.

**CSG Standard** means the *Telecommunications (Customer Service Guarantee) Standard 2011*, as in force from time to time.

**in-place connection request** means a request made by a customer to a carriage service provider for connection to a CSG service where the carriage service provider is required to comply with the request in the guaranteed maximum connection period at item 201 of Schedule 1 to the CSG Standard.

**major rural area** means an urban centre or other recognised community grouping with a population greater than 2,500 but less than 10,000 people.

**minor rural area** means an urban centre, locality or other recognised community grouping with a population of greater than 200 but not more than 2,500 people.

**new connection request** refers to a request made by a customer to a carriage service provider for connection to a CSG service where the carriage service provider is required to comply with the request in the guaranteed maximum connection period at item 202 of Schedule 1 to the CSG Standard.

**qualifying carriage service provider** has the meaning given by section 4 of this Instrument.

**rectification period performance standard** has the meaning given by subsection 7(1) of this Instrument.

**remote area** means a geographic area which is not an urban area, major rural area or minor rural area.

**rural area** means an area that is either a major rural area or a minor rural area.

**urban area** means an urban centre with a population equal to or greater than 10,000 people.

- (2) For the purposes of this Instrument, a **benchmark period** is:
- (a) the period from the commencement of this Instrument until the end of the financial year during which this Instrument commences; and
  - (b) each later financial year.

**Note 1** A number of words and expressions used in this Instrument have the meaning given by the CSG Standard, including:

- CSG service
- customer
- fault or service difficulty
- guaranteed maximum connection period
- guaranteed maximum rectification period
- locality

- performance standard
- urban centre

**Note 2** A number of words and expressions used in this Instrument have the meaning given by the *Telecommunications Act 1997*, including:

- carriage service provider
- wholesale carriage service
- wholesale customer

## **4 Qualifying carriage service providers**

A carriage service provider is a *qualifying carriage service provider* for a benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 100,000 CSG services or more where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.

## **5 Location-specific thresholds**

- (1) For the purposes of this Instrument, a qualifying carriage service provider for a benchmark period meets the urban area services threshold for that benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 10,000 CSG services or more in urban areas where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.
- (2) For the purposes of this Instrument, a qualifying carriage service provider for a benchmark period meets the major rural area services threshold for a benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 1000 CSG services or more in major rural areas where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.
- (3) For the purposes of this Instrument, a qualifying carriage service provider for a benchmark period meets the minor rural area services threshold for that benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 1000 CSG services or more in minor rural areas where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.

- (4) For the purposes of this Instrument, a qualifying carriage service provider for a benchmark period meets the rural area services threshold for that benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 1000 CSG services or more in rural areas where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.
- (5) For the purposes of this Instrument, a qualifying carriage service provider for a benchmark period meets the remote area services threshold for that benchmark period if, on one or more days of the financial year preceding that benchmark period, the carriage service provider supplied 500 CSG services or more in remote areas where the carriage service provider was obliged to comply with any one or more of the performance standards in respect of the carriage service provider's supply of those CSG services.

## **Part 2            Retail Performance Benchmarks**

*Note 1* Subsection 117B(1) of the Act provides that the Minister may, by legislative instrument, set minimum benchmarks in relation to the compliance by carriage service providers with a standard in force under section 115 of the Act.

*Note 2* Subsections 117C(1) and 117C(2) of the Act provide that if an Instrument under subsection 117B(1) of the Act is applicable to a carriage service provider, the carriage service provider must meet or exceed a minimum benchmark set by that legislative instrument.

*Note 3* Under subsection 115(2A) of the Act the CSG Standard does not apply in relation to a matter concerning the supply, or proposed supply, of a wholesale carriage service. As a consequence, this Instrument does not apply to a carriage service provider to the extent that the provider supplies, or proposes to supply, a wholesale carriage service to a wholesale customer.

*Note 4* The benchmarks in this Instrument only apply in relation to compliance with a performance standard to the extent that a carriage service provider is required to comply with a performance standard under the CSG Standard.

### **Division 1            Performance benchmarks**

#### **6 Performance benchmarks for connection period performance standard**

- (1) Each of the benchmarks at subsections (2) and (3) are minimum benchmarks for the purposes of section 117B of the Act in relation to compliance by carriage service providers with the standard at subsection 8(3) of the CSG Standard (*connection period performance standard*).

- (2) A qualifying carriage service provider must comply with the connection period performance standard in respect of at least 90 percent of the total number of in-place connection requests that:
  - (a) are subject to the connection period performance standard; and
  - (b) are required to be complied with by the carriage service provider during a benchmark period.
  
- (3) A qualifying carriage service provider must comply with the connection period performance standard in respect of at least 90 percent of:
  - (a) if the carriage service provider meets the urban area services threshold for a benchmark period—the total number of new connection requests from customers in urban areas that:
    - (i) are subject to the connection period performance standard; and
    - (ii) are required to be complied with by the carriage service provider during the benchmark period; and
  - (b) if the carriage service provider meets the major rural area services threshold for a benchmark period—the total number of new connection requests from customers in major rural areas that:
    - (i) are subject to the connection period performance standard; and
    - (ii) are required to be complied with by the carriage service provider during the benchmark period; and
  - (c) if the carriage service provider meets the minor rural area services threshold for a benchmark period—the total number of new connection requests from customers in minor rural areas that:
    - (i) are subject to the connection period performance standard; and
    - (ii) are required to be complied with by the carriage service provider during the benchmark period; and
  - (d) if the carriage service provider meets the remote area services threshold for a benchmark period—the total number of new connection requests from customers in remote areas that:

- (i) are subject to the connection period performance standard; and
- (ii) are required to be complied with by the carriage service provider during the benchmark period

## **7 Minimum benchmarks for rectification period performance standard**

- (1) Each of the benchmarks at subsection (2) are minimum benchmarks for the purposes of section 117B of the Act in relation to compliance by carriage service providers with the standard at subsection 11(5) of the CSG Standard (*rectification period performance standard*).
- (2) A qualifying carriage service provider must comply with the rectification period performance standard in respect of at least 90 percent of:
  - (a) if the carriage service provider meets the urban area services threshold for a benchmark period—the total number of faults or service difficulties reported by customers located in an urban area, excluding faults or service difficulties relating to an inoperative enhanced call handling feature on services that include an enhanced call handling feature, that:
    - (i) are subject to the rectification period performance standard; and
    - (ii) are required to be rectified by the carriage service provider in the benchmark period; and
  - (b) if the carriage service provider meets the rural area services threshold for a benchmark period—the total number of faults or service difficulties reported by customers located in a rural area, excluding faults or service difficulties relating to an inoperative enhanced call handling feature on services that include an enhanced call handling feature, that:
    - (i) are subject to the rectification period performance standard; and
    - (ii) are required to be rectified by the carriage service provider in the benchmark period; and
  - (c) if the carriage service provider meets the remote area services threshold for a benchmark period—the total number of faults or service difficulties reported by customers located in a remote area, excluding faults or service difficulties relating to an

inoperative enhanced call handling feature on services that include an enhanced call handling feature, that:

- (i) are subject to the rectification period performance standard; and
- (ii) are required to be rectified by the carriage service provider in the benchmark period.

*Note* In calculating a carriage service provider's compliance with the rectification period performance standard under this section it is not necessary to include a fault or service difficulty relating to an inoperative enhanced call handling feature as referred to in paragraph (f) of the definition of fault or service difficulty at section 4 of the CSG Standard.

## **8 Performance benchmark for appointment-keeping performance standard**

- (1) The benchmark at subsection (2) is a minimum benchmark for the purposes of section 117B of the Act in relation to compliance by carriage service providers with the standard at subsection 16(5) of the CSG Standard (*appointment-keeping performance standard*).
- (2) A qualifying carriage service provider must comply with the appointment-keeping performance standard in respect of at least 90 percent of the total number of appointments to which the carriage service provider is a party that:
  - (a) are subject to the appointment-keeping performance standard; and
  - (b) are required to be kept by the carriage service provider during a benchmark period.

## **Division 2 Compliance with performance benchmarks**

### **9 Contravention of a performance benchmark**

Each instance of a carriage service provider failing to meet or exceed any one of the performance benchmarks in sections 6, 7 or 8 constitutes a separate contravention of the relevant performance benchmark.