



Australian Government

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

Consumer safeguard instruments: release of exposure draft

Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011 Exposure Draft

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 to ensuring that the regulatory framework is robust, current service quality is maintained, and consumer access to basic voice services is protected as the industry adjusts 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 the much-needed clarity around the safeguards available to them. Matters which fall into this category include:

- instruments which 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
- an instrument determining the type of contravention and amount of penalty for infringement notices.

The Telecommunications Universal Service Obligation (Standard Telephone Service— Requirements and Circumstances) Determination (No. 1) 2011 (the Requirements and Circumstances Determination) Exposure Draft is the first instrument to be released for public consultation and is at [Attachment A](#).

The Requirements and Circumstances Determination sets out when the primary universal service provider, currently Telstra, is not required under the USO to provide a standard telephone service.

2. Consultation process

The government invites interested stakeholders to comment on the Exposure Draft of the Requirements and Circumstances Determination proposed to be made under subsections 9(2D) and 9(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (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

The closing date for submissions is **5 pm Eastern Daylight-saving Time on Friday 4 March 2011**.

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

Please note that the consultation period for this exposure draft is limited to a week because this instrument is intended to commence by 15 March 2011, the same day as the commencement of the universal service amendments in the CCS Act.

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.

It is intended that other consumer safeguard exposure draft instruments will have a standard four-week consultation period.

3. Legislative basis for the Requirements and Circumstances Determination

The CCS Act repeals subsections 9(2) and (3) of the Consumer Protection Act and substitutes new subsections which clarify the matters that are included in the USO.

New subsection 9(2) of the Consumer Protection Act requires the primary universal service provider to supply standard telephone services to people on request. The amendments provide the Minister for Broadband, Communications and the Digital Economy (the Minister) with the following new powers:

- (i) subsection 9(2D) enables the Minister, by legislative instrument to determine requirements for requests for a standard telephone service such as the form of the request or information to be provided in a request, and
- (ii) subsection 9(3) enables the Minister to determine circumstances under which an obligation to supply a standard telephone service under the USO does not arise.

For simplicity and clarity the Requirements and Circumstances Determination includes matters covered by both subsections 9(2D) and 9(3) of the Consumer Protection Act.

Policy intention

Section 9(1)(a) of the Consumer Protection Act provides for a USO to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

Under the previous regulatory arrangements the primary universal service provider had a wide discretion to make decisions on the extent and manner in which it fulfilled the USO through the Universal Service Policy document and Standard Marketing Plan¹. As a result, the universal service provider was only required to make reasonable endeavours to supply a service and had discretion in decision making on a case-by-case basis. In addition, the business practices embedded in the practical operation of these policies were not transparent and consumers had difficulty in understanding what the universal service provider was required to do.

¹ The Universal Service Policy and Standard Marketing Plan is on Telstra's website at www.telstra.com.au/abouttelstra/commitments/uso/

In the absence of the Minister making this instrument, the primary universal service provider would be required to meet each and every request for a universal service standard telephone service whether or not it is reasonable to do so. This is the reason why the commencement of the Requirements and Circumstances Determination is proposed for the same day as the commencement of Part 4 of Schedule 1 of the CCS Act.

The rules set out in the Requirements and Circumstances Determination make clear when a standard telephone service is required to be provided under the USO. These rules will also provide improved clarity for the ACMA, enabling it to more easily determine if the primary universal service provider has breached its obligations under the USO.

4. Outline of the Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011

The Requirements and Circumstances Determination has been drafted in two parts—a preliminary section, Part 1, setting out the name, commencement arrangements and definitions; and Part 2, consisting of Division 1 dealing with requirements for a request for the supply of a standard telephone service, and Division 2 dealing with circumstances in which the obligation to supply standard telephone services on request does not apply. Division 2 is further divided between circumstances which are either permanent or temporary in nature.

Commencement

The Requirements and Circumstances Determination is proposed to commence on the later of the day after it is registered on the Federal Register of Legislative Instruments or on the commencement of Part 4 of Schedule 1 to the CCS Act—that is, 15 March 2011.

Principal place of residence

Residency is established by reference to a minimum period of occupation for individuals and businesses and is proposed to be set at 183 days (6 months) per annum. A minimum period of continuous habitation is considered a reasonable measure of an address as a person's place of residence. The 183 day time period is consistent with existing time frames for the length of time for supplying an interim and alternative service under the Customer Service Guarantee, and is used in other legislation such as the *Income Tax Assessment Act 1956*.

Request

A request is the mechanism through which an obligation to supply a standard telephone service arises. The definition sets out the contact methods for ordering a standard telephone service based on methods which enable the primary universal service provider to clearly establish when a request was received and supply timeframes commence.

Excluded premises

This definition identifies types of premises at which the primary universal service provider will or will not be required to provide a standard telephone service. These definitions are based on existing business practices embedded in Telstra's Standard Marketing Plan and presume that premises are permanent, habitable, self-contained, safe and secure.

The primary universal service provider has no obligation to supply a USO standard telephone service to excluded premises which are defined as (amongst others):

- premises under construction or not compliant with applicable planning laws
- premises that are not permanent or self contained
- premises that are a portable home, shelter, a shed
- the premises are not the principal place of residence, and
- premises that are not capable of supporting independent living.

These exemptions reflect provisions in the primary universal service provider's USO policy statement.

The Requirements and Circumstances Determination also sets out residential premises that are explicitly not excluded premises—including a distinct flat, house or apartment, distinct residence (even if on the same land title), separate farm dwelling, distinct residence within a retirement village, permanent caravan, motor home or cabin, permanently moored vessel. These examples are currently included in the primary universal service provider's USO policy statement as premises to be supplied a USO standard telephone service, subject to other factors.

Information required for a request for standard telephone service (Division 1, Part 2)

It is proposed that request requirements will include standard information required by the primary universal service provider to establish where and when the service is required, the contact details and status of the prospective residential or business customer requesting the service. The requirements take into account existing obligations and business practices under the primary universal service provider's USO policy document and Standard Marketing Plan.

Subsection 4(f) enables the primary universal service provider to request other information it reasonably requires to supply the standard telephone service and to satisfy it that none of the circumstances under section 5 of the Requirements and Circumstances Determination apply.

Circumstances in which the obligation to supply standard telephone services on request does not apply (Division 2, Part 2)

Section 5 of the instrument sets out the range of circumstances in which the obligation to supply standard telephone services on request under the paragraph 9(1)(a) or subsection (2) of the Consumer Protection Act will not arise.

The approach adopted is to set out circumstances where it would not be reasonable to require the primary universal service provider to provide a standard telephone service. These take into account existing obligations and business practices applying under the primary universal service provider's existing USO policy document and Standard Marketing Plan. It also takes into account the primary universal service provider's past experience with a large range of requests for services in unreasonable circumstances. The circumstances are arranged between those of a continuing nature or those that are more transitory for which an obligation may arise at a later time.

The following are circumstances under which the primary universal service provider has no obligation to supply a standard telephone service:

- requests to supply an excluded premises as defined above
- an existing request for supply is pending for the same premises
- where the person requesting supply does not have the legal right to occupy the premises
- where the person requesting has demonstrated lack of credit worthiness or fails to provide the primary universal service provider with sufficient information to determine credit worthiness
- where the person making the request is suspected on reasonable grounds, of committing a fraud in relation to the request for the standard telephone service
- where the person making the request is under 18 years of age and not the legal owner or lessee of the premises, or
- where a reasonable offer to supply the standard telephone service to the premises was made and the person making the request has refused to accept the supply of the standard telephone service—this is intended to cover the situation where the proposed service uses fibre, but the person seeks access to a particular technology platform, such as copper.

The following are circumstances under which an obligation to supply a standard telephone service on request does not arise for any period during which the circumstance applies:

- the person making the request does not make available, at the person's expense, an electricity supply sufficient for the technology used to provide the standard telephone service
- the person making the request does not agree to provide or cover the cost of trenching

- the person making the request does not agree to the primary universal service provider's standard form of agreement for the installation and supply of the standard telephone service
- the person making the request does not provide identification
- access to the premises is not available
- the premises are not sufficiently secure to protect equipment such as satellite receivers, antenna or repeater equipment—for example, premises are not lockable when unattended or not entirely enclosed
- the location for which a service is requested raises significant environmental impact issues which require resolution, such as installation of a facility which is visually obtrusive (exposed and out of character with its surrounds)
- the location for which a service is requested would put employees/contractors at risk of hazardous conditions such as threats and unsanitary environments, or
- the installation or supply of the standard telephone service would contravene a law of the Commonwealth or the applicable state or territory.

Attachment A

Commonwealth of Australia

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following instrument under subsections 9(2D) and 9(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated 2011

STEPHEN CONROY
Minister for Broadband, Communications and the Digital Economy

Part 1 Preliminary

1 Name of instrument

This Instrument is the Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011.

2 Commencement

This Instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislative Instruments; or

- (b) the commencement of Part 4 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

3 Definitions

- (1) In this Instrument:

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

CSG Standard means a standard made pursuant to section 115 of the Act, as in force from time to time.

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

principal place of residence means the place that, as at the date of the request, the person making the request resides, or intends to reside, for 183 days or more per annum.

Priority Assistance has the meaning given by subsection 19(3) of Schedule 2 to the *Telecommunications Act 1997*.

request means a request for ordering a standard telephone service made using the primary universal service provider's website, by telephone, or in person at a retail centre.

- (2) For the purposes of this Instrument, a premises is an **excluded premises** if the premises satisfies one or more of the following criteria:

- (a) the premises is under construction;
- (b) the premises is not fully completed;
- (c) the premises does not comply with all applicable planning laws;
- (d) the premises is a structure other than a residence, dwelling or business premises (for example, a builder's pole or fence);
- (e) the premises is not self-contained;
- (f) the premises is not a permanent structure;
- (g) the premises does not have access to permanent sanitation facilities;
- (h) the premises is:
 - (i) a portable home; or
 - (ii) a shelter; or
 - (iii) a shed (including a site shed, dairy shed, farm shed, garden shed, or worker's shed); or
 - (iv) a rotunda; or

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- (v) a lean-to, humpy, or a tent; or
 - (vi) a building site office; or
 - (vii) a donga; or
 - (viii) an elevator; or
 - (ix) a vehicle (other than a motorhome or caravan described under paragraph 3(e) or 3(f)); or
 - (x) emergency accommodation; or
 - (xi) a boat on dry land; or
 - (xii) a moored boat (other than a permanently moored boat); or
 - (xiii) a shipping container; or
 - (xiv) a cubby house; or
 - (xv) an outhouse or a shower block; or
 - (xvi) an annexe;
 - (i) the premises is a residential premises but is not the principal place of residence of the person making the request;
 - (j) the premises is a residential premises but does not have access to facilities capable of supporting independent living;
 - (k) the premises is a business premises but the person making the request does not intend to carry on business for 183 days or more per annum at that premises; or
 - (l) if the premises is a residential premises and it is not a premises that is covered by subsection 3(3).
- (3) A premises is covered by this subsection if the premises is:
- (a) a distinct house, flat or apartment; or
 - (b) a distinct residence (even if the residence does not have a separate land title to the main residence on the relevant land, for example, a granny flat); or
 - (c) a separate farm dwelling; or
 - (d) a distinct residence within a retirement village or nursing home; or
 - (e) a caravan, motorhome or cabin permanently situated at a caravan park, where the person requesting the supply of a standard telephone service to that premises is a permanent or long-term resident of the caravan park; or

- (f) a caravan or motorhome situated on owner occupied land or leased land, provided the person making the request has resided, or intends to reside, in the caravan or motorhome at that site for 183 days or more per annum; or
- (g) a permanently moored boat; or
- (h) a distinct residence in a mining or isolated community occupied, or intended to be occupied, for more than 6 consecutive months.

Note The following expressions used in this determination have the same meaning as in the Act:

- carriage service provider
- standard telephone service.

Part 2 Requirements and Circumstances

Division 1 Requirements for a request for supply of a standard telephone service

4 Request requirements

For the purposes of subsection 9(2C) of the Act, a request for the supply of a standard telephone service (whether or not bundled with other products or services) must comply with the following requirements:

- (a) the request must include the full name of the person making the request;
- (b) the request must include the location of the premises where the standard telephone service is to be supplied;
- (c) the request must state the date upon which the person making the request requires the standard telephone service at the premises;
- (d) if the request relates to the supply of a standard telephone service to business premises, where reasonably required by the primary universal service provider, the request must be accompanied by written documentation verifying that a business is carried on permanently at the premises specified in the request;
- (e) the request must be accompanied by all other information the primary universal service provider has requested that it reasonably requires for the purpose of supplying a standard telephone service and a service connection for that standard telephone service;

- (f) the request must be accompanied by all other information the primary universal service provider has requested that it reasonably requires to be satisfied that the circumstances specified in section 5 do not apply.

Division 2 Circumstances in which the obligation to supply standard telephone services on request does not apply

5 No obligation to supply a standard telephone service in certain circumstances

- (1) For the purposes of subsection 9(2E) of the Act, an obligation to supply a standard telephone service on request does not arise under subsections 9(1)(a) or 9(2) of the Act if any of the following circumstances applies to a request:
 - (a) the premises specified in the request at which the standard telephone service is to be supplied is an excluded premises;
 - (b) at the time the request is made, there is a request which is pending for the supply of a standard telephone service at the same premises, whether the pending request is with the primary universal service provider or another carriage service provider, and whether it was made by the person making the first-mentioned request or a third party;
 - (c) the person making the request does not have the legal right to occupy the premises specified in the request;
 - (d) the person making the request has a demonstrated lack of credit worthiness based on prior credit history with the primary universal service provider or which has been obtained from an independent credit rating agency;
 - (e) both:
 - (i) the guaranteed maximum connection periods in Division 2 of Part 2 of the CSG Standard apply to the primary universal service provider in relation to the request; and
 - (ii) the primary universal service provider is exempt from complying with those performance standards under section 21 of the CSG Standard;
 - (f) the person making the request is suspected, on reasonable grounds, of committing a fraud in relation to the request for the standard telephone service;

- (g) the person making the request is under 18 years of age and is not the legal owner or lessee of the premises specified in the request for the standard telephone service;
 - (h) the request is a request by a carriage service provider other than the primary universal service provider for the supply of a standard telephone service for the purpose of that carriage service provider supplying a standard telephone service to its customer;
 - (i) the installation or supply of the standard telephone service would contravene a law of the Commonwealth, or the applicable State or Territory;
 - (j) the primary universal service provider has made a reasonable offer to supply the standard telephone service to the premises and the person making the request has refused to accept the supply of the standard telephone service.
- (2) For the purposes of subsection 9(2E) of the Act, an obligation to supply a standard telephone service on request does not arise under subsections 9(1)(a) or 9(2) of the Act for any period during which any of the following circumstances applies to a request:
- (a) the person making the request does not make available, at the expense of the person making the request, an electricity supply sufficient for the technology used to provide the standard telephone service at the premises;
 - (b) where lead-in cabling is required to be installed to permit the primary universal service provider to supply a standard telephone service in response to the request, the person making the request does not:
 - (i) supply, agree to pay the costs of supplying, or arrange for the payment of the costs of supplying, suitable trenching to house underground cabling between the point that the cable enters the property and the point that the cable enters the building; or
 - (ii) erect, agree to pay the costs of erecting, or arrange for the payment of the costs of erecting, poles at the premises if it is not reasonably feasible to have underground cables;
 - (c) the person making the request does not agree to the primary universal service provider's standard form of agreement for the installation and supply of the standard telephone service;
 - (d) the person making the request does not provide identification;
 - (e) unimpeded ingress and egress to the premises or the land leading to the premises is not available to enable the primary universal service provider to

access power or infrastructure as necessary for the installation of a standard telephone service,

- (f) in the reasonable opinion of the primary universal service provider, the premises specified in the request for the standard telephone service is not sufficiently secure for the housing of telecommunications equipment, taking into consideration the nature of the premises (including whether it is in a remote area and whether it is permanently occupied);
- (g) the installation or supply of a standard telephone service would put employees of the primary universal service provider or the public at risk of exposure to unreasonable health or safety risks;
- (h) all of the following conditions are met:
 - (i) the guaranteed maximum connection periods in Division 2 of Part 2 of the CSG Standard apply to the primary universal service provider in relation to the request;
 - (ii) the primary universal service provider is exempt from complying with those connection standards under section 22 or section 22A of the CSG Standard;
 - (iii) the primary universal service provider has complied with the applicable requirements of sections 23, 24 and 27 of the CSG Standard;
- (i) the installation of a standard telephone service at the proposed location would not be in the interests of public safety;
- (j) installation or supply of a standard telephone service would put the employees or contractors of the primary universal service provider at risk of being exposed or subject to:
 - (i) threatening or intimidating conduct or threatening behaviour by the person making the request, other persons or animals on the premises specified in the request for the standard telephone service or on the property on which the premises is located; or
 - (ii) unhealthy or unsanitary environments at the premises specified in the request for the standard telephone service or at the property on which the premises is located, including those which arise from waste, infestation, chemical hazards or other hazardous conditions; or
 - (iii) injury due to poor building structures, an unsafe building space or

substandard electrical fittings;

(k) there are significant environmental impact issues relating to the supply of the standard telephone service;

(l) both:

(i) the consent or authority of any person other than the person making the request is required before the primary universal service provider is authorised to perform the works necessary to install the standard telephone service, including any consent or authority that is required:

- i. to access any premises or facilities (such as common property); or
- ii. to temporarily or permanently locate equipment at a location (such as an equipment room or a part of a premises not owned by the person making the request); and

(ii) that consent or authority is not provided; or

(m) where the premises specified in the request for the supply of a standard telephone service already receives the supply of a standard telephone service:

(i) by a carriage service provider other than the primary universal service provider except where:

- i. the person making the request, or another person residing at the premises, requests Priority Assistance; and
- ii. that carriage service provider does not offer Priority Assistance; or

(ii) by the primary universal service provider in fulfilment of the universal service obligation.