



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Thematic review of the Customer Service Guarantee

ACCC Submission

March 2023

Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' thematic review of the Customer Service Guarantee (CSG).

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair, and informed Australian markets, including telecommunications markets.

Telecommunications services are essential. They support a vast range of access to Government services, work, business, education, health, and entertainment needs.

Consumer safeguards in telecommunications are complex and span a range of instruments and codes. The CSG is set out in five regulatory instruments made by the Minister for Communications and the Australian Communications and Media Authority (ACMA).¹ These instruments are due to sunset or cease on 1 October 2023.

Significant changes have occurred within the telecommunications market since the CSG was originally introduced. The ACCC therefore supports a comprehensive review of the CSG, which we see as an opportunity to ensure that future safeguards are fit for purpose and maximise outcomes for consumers.

ACCC views

Key points

The ACCC considers that some form of customer service guarantee safeguards will continue to be vital in ensuring that all consumers are protected by clear performance standards. We also consider that a future guarantee framework should:

- encompass fixed line telephone services and broadband services
- align wholesale and retail service standards and delineate, where relevant, responsibilities between wholesale and retail service providers
- prevent service providers from seeking verbal waivers of guarantee rights from end users
- include compensation that adequately reflects the opportunity cost to end users whose services are not connected or fixed within the timeframes set out in the guarantee framework.

Our views on each of these points are detailed below.

¹ This differs from the current service standards regime for the NBN. Service standards for NBN are currently set out in NBN Co's commercial agreement with its wholesale customers. NBN Co is proposing to incorporate their service standards within its Special Access Undertaking which the ACCC is currently considering. For further details, see the NBN service standards section in this paper.

A revised customer service guarantee safeguard should apply to broadband as well as fixed voice services

The CSG was originally introduced in 1997 and has remained relatively unchanged since then. Among other things, the CSG sets out timeframes for connection and repair of services, and the making and keeping of appointments, with compensation payable to end users if a carriage service provider does not meet these timeframes. Critically, the CSG applies only to fixed line voice services; and does not apply to broadband or mobile services.²

Since 1997, significant developments have taken place in telecommunications markets in Australia. Two of these developments are particularly relevant to this review of the CSG.

1. End user's reliance on fixed line services provided through Voice over Internet Protocol (VoIP) has vastly increased³

The first significant development relevant to the review of the CSG is the changing technology relied on for voice calls in Australia. When initially developed, the CSG related to Telstra's copper network for voice services which, in 1997, was ubiquitous. However, as a consequence of the NBN roll-out, most copper services in Australia have been disconnected.⁴ The copper lines which remain in service are largely those which fall outside the NBN fixed line footprint, and are generally in regional or remote areas, where there may be no, or poor, mobile phone coverage. People living in these areas often need to keep a fixed-line voice service due to lack of mobile service coverage, and in some cases unreliable or sub-standard internet solutions.

The remaining fixed voice services are today provided over VoIP. The ACMA has reported that in 2020, there were 9.5 million fixed line services in Australia, 71% of which were VoIP,⁵ which is now largely provided over the NBN. Noting that the Telecommunications Industry Ombudsman recorded 17,628 residential complaints in 2021-22 relating to internet fault and connections,⁶ we are concerned that some of these incidents may have impacted end user's ability to make voice calls via fixed line VoIP. This indicates that there may be a significant number of consumers experiencing issues with fixed line services who are not protected by safeguards.

We also highlight that a significant proportion of consumers using fixed line voice services are over the age of 55 and include 83% of Australians over the age of 75.⁷ We consider this cohort of users may be particularly vulnerable, given that most are on fixed incomes, and many rely on fixed-line services as a secure means of telecommunications.

Consequently, it is the ACCC's view that any reduction in safeguards under a revised customer service guarantee is likely to disproportionately affect people living in regional or remote areas, or older Australians. The ACCC considers that avoiding this eventuality should be of primary concern in the development of any new safeguards.

² The ACMA has explained that mobile services are excluded because they involve different connection and repair processes – i.e. these matters are managed separately and typically they do not require a technician to visit a premise.

³ In this submission, references to services provided over VoIP refer to fixed voice services only. Therefore, this does not include 'over the top' services, for example those provided through programs such as Skype or WhatsApp.

⁴ The remaining services are scheduled to be progressively disconnection by the end of 2024: Telstra NBN rollout and disconnection dates, managed disconnection dates list, <https://www.telstrawholesale.com.au/nbn/nbn-rollout-schedule.html>.

⁵ ACMA, *Trends and Developments in Telecommunications 2020-21*. The number of fixed line services has since decreased to 6.4 million: ACCC, *Communications Market Report 2021-22*. We consider it likely that the proportion of VoIP services has not decreased since 2020.

⁶ Telephone Industry Ombudsman, *Annual Report 2021-22*, p.77.

⁷ ACMA, *Communications Report 2018-2019*, February 2020, p.73.

2. End users' reliance on broadband connectivity more broadly has also significantly increased

The second significant development relevant to the review of the CSG is the change in consumer needs and expectations around broadband connectivity and reliability. In comparison to 1997, in which fewer than 860,000 Australian households had internet access,⁸ consumer and small business reliance on internet connectivity has increased significantly over time.

The COVID-19 pandemic drove further growth in Australians' online activity and shifted norms around working and studying flexibly and from home, reinforcing the criticality of reliable broadband connection. This is reflected in the most recent ACMA research into consumer use of internet services, which found that 99% of Australians had used the internet within the previous six months, all of whom used it to access email, while 65% accessed video conferencing, 52% accessed telehealth services, 45% worked from home, and 28% studied from home.⁹

In light of these significant developments, and to reflect growing consumer and small business reliance on broadband connectivity, the ACCC considers any future customer service guarantee safeguards should apply to both fixed voice telephone services and broadband services, including those provided over the NBN.

If the guarantee framework is extended to broadband services, the Department will need to consider which metrics would be appropriate. The technical differences between these technologies may require different service standards, and the standards will also need to be compatible with relevant wholesale level obligations.

For example, metrics relating to connecting an enhanced call handling feature such as call waiting are not relevant to broadband. Instead, it may be appropriate that standards for broadband include service metrics for rectifying faults affecting speed, dropouts and congestion. Broadband service standards should also reflect the different access technologies available, such as fibre to the home or fixed wireless.

A revised customer service guarantee safeguard should align wholesale and retail obligations

When the CSG was first implemented in 1997, it was designed for voice services provided by Telstra as a single vertically integrated network operator selling both retail and wholesale services. Since then, the industry structure has changed significantly. However, the CSG continues to be an important part of the broader consumer framework insofar as fixed line voice services are supplied over the NBN.

We recognise that consideration of the NBN in the design of the CSG, as well as the separation of the NBN supply chain into wholesale and retail segments introduces an additional layer of complexity and the need for coordination between the different segments of the supply chain. It is therefore important that arrangements for future customer service guarantee safeguards at both the wholesale and retail level are appropriately aligned such that any safeguards that are imposed at the retail level are supported at the wholesale level. This would allow the safeguards to operate effectively and consistently and ensure that costs are borne by the responsible parties over the supply chain.

⁸ Australian Bureau of Statistics, Australian Social Trends 1999, Lifestyle: Information technology in the home: In February 1998, 854,000 Australian households had internet access.

⁹ ACMA, *How we use the internet*, December 2022, <https://www.acma.gov.au/publications/2022-12/report/communications-and-media-australia-how-we-use-internet>.

We also note that being referred from retailer to wholesaler and back again in an attempt to resolve an issue with their service is a point of frustration for many end-users. As we have previously discussed,¹⁰ this is a concern with the existing CSG arrangements.

The ACCC considers that future customer service guarantee safeguards should set out clear delineations of responsibility, where possible, to ensure that obligations fall on the entity who is best placed to address the issue, and to maximise outcomes for end users. This should be informed by consultation with retail service providers (RSP) and the Telecommunications Industry Ombudsman. RSPs and the Ombudsman are likely to hold insights into the extent to which end user complaints about faults and connections derive from wholesale rather than retail issues, and are able to provide insights into the broader end-user experience.

A revised customer service guarantee safeguard should not allow for verbal waiver of customer entitlements

Subsection 120(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* provides that the ACMA may, by written instrument, make provision for customers of carriage service providers to waive, in whole or in part, their CSG protection and rights.

The ACMA has developed such a written instrument, which is set out in part 5 of the Telecommunications (Customer Service Guarantee) Standard 2011. Under part 5, customers of service providers other than Telstra can waive their CSG rights, and the ACCC understands that many providers have encouraged their customers to do so.

We appreciate that asking end users to waive their CSG rights, particularly the right to compensation if set timeframes for rectifying issues are not met, offers the opportunity to increase choice and competition in the market by allowing providers to offer a broader range of quality of services and associated prices.

However, we note that there are a range of consequences associated with asking consumers to waive their CSG rights and that these need to be better understood by retail service providers. We recommend that these are looked at more closely to ensure that all consumers, particularly vulnerable groups are given the opportunity for informed consent.

In particular, the ACCC considers there to be an issue within part 5, whereby service providers are able to seek verbal CSG waivers from end users. The ACCC holds concerns that a verbal waiver process may not allow all end users to fully appreciate the rights that they are waiving.

The ACCC considers that waivers to an entitlement to safeguards should only be able to be sought in a transparent manner, through a written waiver document published in plain English or through a plain language translated document. The waiver document should be issued separately from the general terms and conditions of a service contract. This would provide end users with the ability to consider exactly which rights they are agreeing to waive, which is particularly important if future customer service guarantee safeguards apply to broadband as well as fixed line voice services. To ensure compliance with written waiver rules, service providers should retain records of end user's written consent to waive their rights. Further, the ACCC recommends that the Department consider an approach whereby guarantee rights cannot be waived absent a direct benefit to the end user in exchange for that waiver.

¹⁰ ACCC submission to Part B of the Consumer Safeguards Review – Reliability of services, January 2019.

A revised customer service guarantee safeguard should include revised compensation where appropriate

The ACCC notes that the compensation payable for breaches of the Telecommunications (Customer Service Guarantee) Standard 2011 has not been varied since the Standard was introduced in 2011.

We see this review of the CSG as an opportunity to consider the compensation payable when service providers do not meet the required standards. It may be appropriate that compensation be reviewed to ensure it reflects the opportunity costs to consumers and small businesses as a consequence of delays to their connections or for missed appointments. We also consider that increased compensation may provide greater incentives for service providers to meet their obligations under future any customer service guarantee safeguards.

The ACCC is currently considering related matters

The ACCC considers that any revised customer guarantee framework needs to reflect the regulatory arrangements that have emerged over the past decade, as well as account for related matters currently under consideration.

The ACCC is currently considering NBN service levels, broadband service level record keeping and reporting, and the 2023 declaration inquiry into the existing fixed line declarations.

NBN service levels

NBN Co's 2013 Special Access Undertaking (Undertaking) establishes a framework for regulating access to the NBN at the wholesale level. In November 2022, NBN Co submitted a variation proposing amendments to the current Undertaking, including the establishment of benchmark wholesale service standards. The benchmark standards would set a floor for the supply terms that NBN Co would make available to retailers. Importantly, the benchmark standards would not prevent NBN Co from offering better service standards.

For an initial regulatory cycle from 2023-2026, NBN Co is proposing that the benchmark service levels be based on the standards specified in its current commercial access agreement, known as the Wholesale Broadband Agreement version 4 (WBA4). Similar to the CSG, NBN Co's WBA4 service levels include timeframes for making connections, fault rectification, and attending appointments. The proposed Undertaking variation also includes commitments regarding corrective action and compensation or rebates to retail service providers if certain service levels are not met.

The variation proposal also includes a mechanism to update the benchmark standards in future regulatory cycles. As such, from 2026 the benchmark standards could be updated periodically, including where reasonably necessary to support retailers meeting their regulatory obligations such as under the CSG or a future guarantee framework.

The ACCC is currently considering NBN Co's variation proposal. Further information can be found on the ACCC website.¹¹

¹¹ See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-sau-variation-november-2022>.

Broadband service level record keeping and reporting

The ACCC is also progressing work to increase service quality monitoring and reporting for the NBN and other wholesale broadband network providers with the development of a new record keeping rule.

The record keeping rule intends to collect and publicly report service quality and network performance information from NBN Co. Over time, the record keeping rule will also apply to non-NBN broadband networks, with an initial focus on the larger networks.

In addition to increasing the transparency of service quality and network performance, the record keeping rule will enable future benchmarking of service performance across wholesale broadband networks and assist with identifying systemic issues regarding service quality.

The ACCC released a consultation paper in December 2022 outlining several aspects of service quality and network performance, and related service level metrics, as well as the data that we propose be collected. The proposed service quality aspects and metrics, are similar to those currently included in the CSG, and have been expanded to consider other aspects such as:

- connections
- faults including service dropouts and recurring faults
- appointments
- network outages
- network performance including speed capability
- services attracting NBN Co rebates when service levels are not met
- corrective action taken by NBN Co to ensure its performance objectives are met.

We are currently assessing submissions in response to our consultation paper. Further information can be found on the ACCC website.¹²

2023 fixed line services declaration inquiry

The existing declaration relating to the seven regulated fixed line services¹³ is due to expire in 2024. The ACCC will commence an inquiry in 2023 to examine whether these service declarations remain appropriate given the broader telecommunications market changes, including the completion of the NBN build and the near-completion of the NBN roll-out.

We anticipate that any decision made to either re-declare these services, or to allow the declarations to lapse, will have implications for how voice services are provided on fixed line services going forward. If the ACCC does re-declare the services, we will commence an access determination inquiry to determine the regulated terms and conditions of access. As part of this process, the ACCC may decide to set regulated service standards if deemed necessary. This may overlap with any metrics considered as part of a revised CSG.

¹² See <https://www.accc.gov.au/regulated-infrastructure/about-regulated-infrastructure/regulatory-projects/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks>.

¹³ The ACCC regulates a range of Telstra legacy fixed line wholesale access services, specifically the unconditioned local loop service (ULLS), line sharing service (LSS), public switched telephone network originating access (PSTN OA) service, public switched telephone network terminating access (PSTN TA) service, wholesale line rental (WLR) service, local carriage service (LCS) and wholesale ADSL service: <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/non-nbn-fixed-line-services-access-regulation>.

We do emphasise, however, that under the Universal Service Guarantee, Telstra is expected to maintain its copper network outside NBN Co's fixed line footprint until 2032.¹⁴ This means that any customer service guarantee safeguard will remain relevant to fixed line services offered over the legacy network for at least the next decade.

¹⁴ Australian Government, Universal Service Guarantee, September 2021
<https://www.infrastructure.gov.au/sites/default/files/documents/universal-service-guarantee-usg-3september2021.pdf>.