
Submission

27 March 2023

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts
Via email: usb@communications.gov.au

Re: Thematic review of the Customer Service Guarantee

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) for the opportunity to comment on the Thematic review of the Customer Service Guarantee (**CSG**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

Access to reliable communications is vital for Australian consumers and critical to supporting social and economic participation. The CSG plays an important role in underpinning the delivery of fixed-line voice services to Australian consumers, regardless of whether they reside in regional, rural, remote or peri-urban areas. ACCAN considers that:

- The CSG framework should be retained.
- Short term amendments are required (**Attachment A**).
- Long term reform of the CSG is necessary (**Attachment B**).

The CSG framework should be retained

While ACCAN notes that the use of fixed-line voice services is declining, fixed-line services remain essential for Australians residing in locations with no, poor or limited mobile coverage. Further, older Australians, and people requiring Priority Assistance are heavily reliant and have a strong preference to retain their fixed-line services. The CSG continues to provide a critical safety-net for those consumers that depend upon their fixed-line service for their connectivity.

Whilst the Australian Communications Media Authority (**ACMA**) no longer publishes data on Telstra's performance against the CSG Standard, examination of the data published in 2020 showed the network to be reliable. For instance, the percentage of CSG services that experienced a fault between 2014-2019 was on average 1.6% every month. Between the same period, the percentage of time in a month that CSG services were available was on average 99.8%.¹

Indeed, Telstra states that the data they publish on their Network Reliability Framework shows that 'the vast majority of CSG services in any given month are fault-free and that where faults do occur,

¹ ACMA, 2020, *Communications report 18-19 Chapter 4 Data files*, <https://www.acma.gov.au/publications/2020-02/report/communications-report-2018-19> [accessed 15/03/2023].

they are fixed promptly'.² The above data, alongside ongoing compliance with the reliability benchmarks suggests that the network is holding up well and the framework is working to protect users of these services on average. That said, ACCAN regularly receives anecdotal reports of poor outcomes for individual consumers, including long timeframes for repair and rectification of services. Greater transparency could shed light on individual cases where the CSG framework is not working to effectively protect consumers.

Short term amendments are required

Prior to major reform, ACCAN recommends that:

- The CSG instruments are amended and remade for a period of 3 years. This should allow enough time for the development and implementation of the longer-term policy changes required.
- Amendments to the current framework should be made with the aim of improving transparency of the framework.

Allowing granular information on CSG compliance to be published will improve accountability and understanding of the framework's effectiveness. The merit of improving transparency of the framework will allow for more informed consideration regarding future changes to the CSG.

Long term reform of the CSG is necessary

We recognise that longer term reform of the CSG is required to ensure the framework keeps up to date with consumer expectations. ACCAN encourages the Department to conduct a full review and consultation with consumers, community organisations and industry prior to long term changes to the CSG. Long term reform of the CSG and the consumer safeguards framework should be carried out with the aim of:

- **Implementing appropriate Statutory Infrastructure Providers (SIP) standards, rules and benchmarks** – to address key reliability issues arising at the wholesale level.
- **Expanding CSG services to include broadband** – so that minimum service levels exist at the retail level. This will allow for back-to-back consumer protections between wholesale and retail services regardless of network or location.
- **Modernising adverse weather exemptions** - to ensure that the effects of climate change and increasing adverse weather events do not unduly reduce the scope of the CSG standard.
- **Reviewing compensation amounts** – to ensure that compensation for breaches of service standards reflects the economic and social costs faced by consumers from disconnection.

Response to discussion paper questions

1. *Does the CSG remain relevant and useful, noting the changes in the Australian telecommunications market place? Why/Why not?*

As mentioned previously, the CSG remains relevant and useful, however we consider that there is scope for modernisation in the next few years.

² Telstra, 'Network Reliability Framework for fixed voice services', <https://www.telstra.com.au/consumer-advice/customer-service/network-reliability> [accessed 15/03/2023].

2. *Are there other approaches to the CSG that should be considered? If so, what are these and why would these be preferable?*

ACCAN has provided our preferred approach to the CSG in this response, detailed in Attachment B. However, we consider that alternatives should be considered as part of a modernisation process that strengthens the existing framework.

3. *Are different approaches potentially required in relation to the NBN and similar networks as opposed to the fixed line voice network still operated by Telstra outside NBN Co's fixed line footprint (where voice services subject to the CSG are still primarily supplied over Telstra's copper network)?*

ACCAN considers that consumers would benefit from uniformity between broadband networks and voice services, noting that many voice services are now delivered over broadband networks. We are not aware of any technical reasons as to why broadband services should warrant a different approach to CSG services.

Different approaches could potentially be followed if the network is capable of achieving higher reliability service standards. For example, consumers expect that the NBN, as a newly built network, should have greater reliability than copper networks. However, it is important that the minimum standard across all networks is appropriate to protect consumers from poor reliability.

4. *If there is an ongoing role for the CSG, are there any changes required to the details of the subordinate legislation that give effect to it? If so, what and why?*

See Attachment A for information detail regarding changes to the subordinate legislation.

We thank the Department for the opportunity to comment on the thematic review of the CSG. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me on [REDACTED].

Yours sincerely,

[REDACTED]
[REDACTED]

Attachment A: Short term amendments to the CSG

Improvements to reporting

Currently compliance reporting only requires details of whether a qualifying carriage service provider (CSP) has met the CSG benchmark standards.³

In instances where a qualifying CSP has failed to comply with a CSG timeframe, ACCAN considers that there is merit in the CSP reporting the extent of the failure. Thus, schedule 1 of the *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* should be extended to include:

- Each instance of where the CSP has failed to meet a timeframe as specified by the CSG standard.
- The number of working days between the date and time at which the guaranteed maximum connection or fault rectification period expired and the date and time at which the connection or fault rectification took place.

These changes will allow for closer examination of the effectiveness of the framework and inform future reform.

Allowing the ACMA to publish data

In 2019, the Telecommunications Act was amended to remove the reporting requirement for the adequacy of each carrier's and each carriage service provider's compliance with its obligations to industry standards.⁴

ACCAN notes that in 2022, the Department consulted on an exposure draft which would reinstate powers that would allow the ACMA to disclose information that relates to the affairs of a carriage service provider.⁵ ACCAN is supportive of the exposure draft. We encourage the Department to expedite the progress of the *Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022*.

We note that whilst the exposure draft intends to give the ACMA power to publish information regarding many issues covered by the CSG such as faults and service difficulties, rectification and service activation and provisioning, it does not include information regarding compensation paid.

While the exposure draft details the Minister's ability to determine additional matters that the ACMA can disclose, we consider there would be benefit in the *Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022* including a provision which explicitly allows for the publication of compensation amounts paid for missed service standards.

³ Schedule 1, Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011.

⁴ *Communications Legislation Amendment (Deregulation and Other Measures) Act 2019*.

⁵ *Telecommunications Legislation Amendment (Statutory Infrastructure Provides and Other Measures) Bill 2022 Exposure Draft*.

Attachment B: Long term changes to the CSG

Implementing appropriate SIP Standards, Rules and Benchmarks

All consumers receiving broadband services should be protected by Statutory Infrastructure Provider standards, rules, and benchmarks.

ACCAN regularly hears from consumers and members regarding issues of reliability on broadband networks. Last year, a number of reliability issues made the top 10 issues for internet services complaints that the TIO received, including:

- No or delayed action by provider – 43.1%
- Intermittent service or dropouts – 29.2%
- No phone or internet service – 17.0%
- Slow data speed – 15.7%
- Delay establishing a service – 14.2%
- Inadequate fault testing – 7.3%
- Missed appointment – 6.8%⁶

A significant proportion of the forementioned issues could be addressed with adequate standards and benchmarks at the network level.

We note that in 2021, the Department consulted on a draft *Telecommunications (Statutory Infrastructure Providers – Standards, Rules and Benchmarks) Determination 2021*.⁷ The draft determination is a significant step forward in ensuring telecommunications services are reliable and consumer's expectations are being met regardless of which network serves them. We encourage the Department to prioritise progress of the draft determination.

In setting appropriate standards, the Department should find an appropriate balance between technical limits and consumer need. It is ACCAN's position that the timeframes for connection and fault rectification for broadband services should be closely aligned with the timeframes currently set out in the CSG. This will ensure that as we progress to different technologies, consumer protections do not weaken.

Expanding CSG services to include broadband

The CSG framework should be expanded to include broadband services as well as voice services. This would ensure that once nationwide wholesale service standards, rules and benchmarks are in place, there is a transparent streamlined mechanism that deals with the tension between wholesale and retail end-user obligations.

Timeframes set at the network level create a ceiling for retail service providers (**RSPs**) to make service level commitments yet there is no guarantee that RSPs will match these timeframes. Whilst

⁶ Telecommunications Industry Ombudsman, 2022, *Annual Report*, https://www.tio.com.au/sites/default/files/2022-09/4097_TIO_AR_22_FA-WEB.pdf [Accessed 23/03/2023].

⁷ Department of Infrastructure, Transport, Regional Development and Communications, 2021, *Telecommunications (Statutory Infrastructure Providers – Standards, Rules and Benchmarks) Determination 2021 consultation paper*, <https://www.infrastructure.gov.au/sites/default/files/documents/consultation-paper-telecommunications-statutory-infrastructure-providers-standards-rules-and-benchmarks-determination-2021.pdf> [Accessed 16/03/2023].

there is competition at the retail level for broadband there are certain features of this market which result in weak signals from consumers to RSPs regarding service quality including information asymmetries, behavioural biases, and barriers to switching. ACCAN encourages the department to look beyond market structure and consider whether the features of the telecommunications market lend itself to benefiting from regulated retail service level commitments.

Modernising adverse weather exemptions

The Department should create a framework which appropriately addresses adverse weather exemptions so that consumers can have confidence that everything reasonably possible was done to minimise service disruptions.

Currently, a CSP is exempt from complying with a CSG performance standard if non-compliance results from circumstances out of the CSP's control. Additionally, a CSP is exempt if they are required to move staff or equipment to areas affected by severe weather conditions.⁸ Circumstances beyond the control of the provider may include but are not limited to a natural disaster or extreme weather conditions that cause mass outages of service and restrict connection or fault rectification.

The Standard does not allow exemption from compliance unless the CSP has procedures in place to ensure that the provider does not rely on the exemption in circumstances that are not beyond the control of the provider.

ACCAN recommends that the adverse weather exemptions be examined with the aim of aligning the framework with best practice in other regulated essential service sectors. For example, in the energy sector for each force majeure event, service providers must provide information regarding the steps taken to address the outage, the length of time until the relevant equipment was restored, what additional steps could have been undertaken and the reasons why these actions were not taken.⁹

Furthermore, in determining whether to accept or reject a force majeure exclusion claim, the Australian Energy Regulator (**AER**) will consider the following:

- Was the event unforeseeable and its impact extraordinary, uncontrollable and not manageable?
- Does the event occur frequently? If so, how did the impact of the particular event differ?
- Could the network, in practice, have prevented the impact (not necessarily the event itself)?
- Could the network have effectively reduced the impact of the event by adopting better practices?

The AER may reject a force majeure exclusion claim where it considers that the network has provided insufficient justification that force majeure applies to the event. As part of a reformed framework the ACMA should be empowered to investigate exemption requests to ensure disruptions are legitimately caused and could not have reasonably been avoided.

⁸ *Telecommunications (Customer Service Guarantee) Standard 2011*, Section 21(1).

⁹ AER, 2015, *Service target performance incentive scheme version 5*, <https://www.aer.gov.au/system/files/AER%20-%20STPIS%20version%205%20%28corrected%29%20-%2030%20September%202015.pdf> [accessed 23/03/2023].

Reviewing compensation amounts

The CSG framework should include an appropriate level of compensation to accurately account for the cost to consumers and small businesses of not being connected to voice or broadband networks.

ACCAN considers that the Department should set the level of compensation based on evidence. For example, in 2017, Ofcom set appropriate compensation amounts informed by three separate types of survey evidence:

- **Reasonable compensation** – consumers who had experienced service quality problems were asked what level of compensation would have been enough to compensate them for that problem.
- **Willingness to Pay** – Respondents were asked to imagine they had experienced a specific service quality problem and then to report how much they would be willing to pay for faster repair or provisioning.
- **Component based** – survey responses were used to estimate individual components of harm (such as time spent to restore the service) and then combined to create a final estimate.

Ofcom's estimate was also informed by benchmarks across other essential services and international communication sectors.¹⁰ ACCAN considers that the Bureau of Communications, Arts and Regional Research could conduct similar studies to inform appropriate future compensation amounts.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

¹⁰ Ofcom, 2017, *Automatic compensation. Protecting consumers from service quality problems*, https://www.ofcom.org.uk/_data/assets/pdf_file/0026/107693/Statement-automatic-compensation.pdf [Accessed 23/03/2023].