



Australian Government

Department of Communications

Consultation paper

Proposed measures for the Telecommunications Deregulation Bill No. 1 2014

April 2014

Introduction

The Australian Government has committed to reduce excessive regulation by \$1 billion per year to boost productivity and give businesses the flexibility to innovate in a globally competitive market. The Government has committed to reviewing existing regulatory arrangements to identify areas in which regulation is ineffective, out of date, imposes significant costs on industry that are not justified by the benefits, or creates uncertainty over obligations.

As part of the Government's deregulatory agenda, the Department of Communications (the Department) in consultation with industry and consumer stakeholders has identified a number of proposed deregulatory measures. The deregulatory measures seek to streamline and improve existing telecommunications regulation while maintaining baseline consumer safeguards.

The Department has bundled a range of issues in a single consultation process. Although these issues are varied, they share the common theme of being introduced in the less competitive telecommunications environment of the 1990s, and may no longer be relevant today. The Department will consult separately with stakeholders on other potential deregulatory measures within the Communications portfolio.

This consultation paper outlines proposals in the following areas:

1. Pre-selection
2. Confidentiality of telecommunications
3. Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act*
4. Customer Service Guarantee
5. Priority Assistance
6. Retail Price Controls
7. Local presence plan

We invite your comments at the public discussion board at <http://forum.communications.gov.au/deregulation>. The closing time for comments is 5pm AEST on Monday 5 May 2014.

Following consideration of the matters requiring legislation, the Government intends to consolidate the measures that are to be included in a 'Telecommunications Deregulation Bill No.1 2014', for introduction on the second Parliamentary Repeal Day in September or October 2014.

Reforms by the ACMA

The Australian Communications and Media Authority (ACMA) is also reviewing the potential to reform a number of regulatory measures relating to consumer information provision obligations and industry reporting requirements.

The primary forum to examine the current information provision requirements on industry is the jointly chaired ACMA and Communications Alliance Consumer Information Committee (CIC). The CIC has been meeting fortnightly since February 2014 to conduct a comprehensive review of current customer information obligations and develop a Customer Information Obligation Framework, including Best Practice Principles criteria, to assess current and future information obligations. The Customer Information Obligation Framework provides a key role for consideration of when information is relevant to consumers. The framework is being developed based on the principles of simplicity, control and flexibility. The CIC intends to seek comment on the framework then make recommendations on a final

framework, which will guide variations to industry codes and recommendations to Government and regulators about other mandatory information requirements.

The ACMA will release a companion document to this consultation paper that outlines proposals for regulatory reform. The document will seek stakeholder comments with a view to implementing initiatives at the second Parliamentary Repeal Day.

Disclaimer: This paper has been prepared for consultation purposes only and cannot be taken in any way as the Government's commitment to a particular course of action.

1. Pre-selection

Providers of standard telephone services (other than mobile services) are obligated to allow customers to pre-select a different service provider for long distance, international, and fixed to mobile calls, and certain operator assisted services, unless an exemption applies. The deregulatory proposal is to limit this pre-selection obligation to services delivered over the legacy copper network, as it is no longer an essential requirement in a more competitive market.

Policy intent

Part 17 of the *Telecommunications Act 1997* requires the ACMA to make a Determination that obligates providers of standard telephone services (STSs), other than mobile services, to allow end users to pre-select a different provider for long-distance, international and fixed to mobile calls. This pre-selection can occur for all the nominated calls or can occur on a call-by-call basis using an over-ride dial code. This Determination¹ has been in place since 1998, although pre-selection existed prior to that. Pre-selection can also play a role in some wholesale scenarios, such as those involving the use of the Originating Access service, particularly for corporate customers.

Pre-selection was an important competition measure when it was first introduced in the early 1990s, allowing consumers access to a range of service providers other than Telstra, but it is no longer important as a competition measure.

Case for deregulation

Pre-selection has decreased in popularity with the growth in access to competing services, and because consumers have opted for bundled service packages instead of separately contracting multiple providers. It is estimated that less than 1 per cent of STS customers now use pre-selection and the number continues to decline. Progressive deployment of the open-access wholesale-only NBN, which will give consumers access to competing providers who are able to offer bundled products, will further undermine the need for pre-selection.

While pre-selection capability is built into the Public Switched Telephone Network (PSTN)² infrastructure, it is not typically a feature of newer networks, such as fibre and wireless. Industry suggests that the cost of enabling pre-selection on non-PSTN networks could be millions of dollars for

¹ See *Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998*.

² Public Switched Telephone Network is a telephone network accessible by the public providing switching and transmission facilities utilising analogue and digital technologies.

each provider. Since there is virtually no market demand for pre-selection, this would impose an inappropriate cost on providers.

The pre-selection obligation (in circumstances where it applies) may also limit a provider's flexibility in delivering an STS to consumers. Since most non-PSTN networks cannot readily provide pre-selection, a carriage service provider (CSP) may be forced to use the PSTN in order to comply with the requirement, even though it may not be the most efficient means of delivering the service.

In mid-2012, the requirement to provide pre-selection functionality when supplying a STS was removed in respect to interim wireless services in new developments, pending the rollout of fixed-line infrastructure and, until 2015, for STS provided over the National Broadband Network (or an equivalent wholesale only network).

Pre-selection also plays a role in wholesale access arrangements, forming part of the Originating Access service which is a declared service under Part XIC of the *Competition and Consumer Act 2010*. In this context, it is used in combination with the local carriage and wholesale line rental declared services to provide a bundled package of access and voice services to end-users. The recent Australian Competition and Consumer Commission (ACCC) fixed services review draft report³ indicates an intention to maintain this regulation on copper, but not on the NBN, where the ACCC believes a competitive wholesale market is likely to emerge, making pre-selection unnecessary.

Telstra has argued for the pre-selection obligation to either be lifted entirely or limited solely to STS delivered over the PSTN, to avoid an unnecessary regulatory burden and to allow providers more flexibility in designing and delivering voice services over alternative networks. The Australian Communications Consumer Action Network (ACCAN) and Communications Alliance support the second option.

Proposal

Amend pre-selection obligations in Part 17 of the *Telecommunications Act 1997* to only apply to Standard Telephone Services (STS) delivered over the Public Switched Telephone Network (PSTN).

Pre-selection has served its original purpose of enhancing competition in a developing market and is no longer an essential requirement. Restrictions to the PSTN will limit the effects of pre-selection to the legacy network it is already operating on, while exempting more advanced networks to which it is unsuited. Current users of pre-selection would continue to have access to pre-selection until the PSTN is replaced by the NBN in their area. Providers will not have to incur a sizeable expense to enable a capability for which there is little consumer demand. The amendment would ensure that any move to an NBN architecture which includes delivery over copper (such as fibre-to-the-node) would also be covered by the proposed exemption.

³ ACCC, www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-declaration-inquiry-2013/draft-report

2. Confidentiality of telecommunications

Privacy is an essential consumer protection. The *Privacy Act 1988* (the Privacy Act) regulates information handling across all sectors, and Part 13 of the *Telecommunications Act 1997* (Telecommunications Act) places additional obligations on telecommunications providers⁴ to maintain the confidentiality of information carried over the telecommunications network.

The deregulatory proposal is to repeal Part 13 of the Telecommunications Act (Part 13), as Privacy Act reforms have made many of the telecommunications-specific obligations in Part 13 largely redundant. Repealing Part 13 would remove compliance and record-keeping obligations on industry, while the Privacy Act would maintain strong consumer protections.

Policy intent

Telecommunications providers handle information relating to their customers when supplying telephone and internet services, including the content of phone calls or emails, the details of the phone or internet services supplied, or the details of a person (such as addresses or telephone numbers)⁵. Part 13 prohibits telecommunications providers from using or disclosing protected information relating to the content of a communication, the supply of a communication, or the personal affairs of a person, except in specified circumstances. For example, telecommunications providers are prohibited from disclosing their customers' details to a third party, unless an exception applies.

There are a broad range of exceptions in Part 13 that allow telecommunications providers to use and disclose information, including: with the consent of the individual concerned⁶; in the performance of duties as an employee or contractor; for business needs of other carriers or service providers; authorisation under law; and for the ACMA and ACCC to carry out their functions and powers.⁷

In addition, Part 13 regulates secondary use and disclosure of protected information and imposes record-keeping obligations on telecommunications providers on their disclosures:

- Under the secondary disclosure prohibitions, persons permitted to receive information in an exception under Part 13 are prohibited from using or disclosing the information they have received for purposes other than those for which the information was given.⁸ For example, when a telecommunications provider discloses customer information to a law enforcement agency as authorised under law (primary disclosure), the law enforcement agency can only use or disclose that information if also authorised under law (secondary use/disclosure).
- Under the record-keeping obligations, telecommunications providers must keep adequate records of disclosures made under most exceptions in Part 13 and retain the records for three years.⁹ Telecommunications providers must report to the ACMA the number of disclosures made during each financial year. Costs to industry include training staff to record disclosures, storing records relating to disclosures, obtaining legal advice, and reporting the number of disclosures to the ACMA

⁴ Including carriers, carriage service providers including Internet Service Providers (ISPs), emergency call persons, and their respective associates including employees and contractors. See section 271 of the Telecommunications Act.

⁵ Section 276 of the Telecommunications Act prohibits use and disclosure relating to the contents or substance of a communication; carriage services supplied, or the affairs or personal particulars of a person.

⁶ See Section 289 and Section 290 of the Telecommunications Act.

⁷ See Division 3, Subdivision A. For guidance on Part 13, see the ACMA Fact Sheet, Disclosure requirements under Part 13 of the Telecommunications Act, October 2013. www.acma.gov.au/theACMA/disclosure-requirements-part-13-telecommunications-act-1997-fact-sheet

⁸ See Section 296 of the Telecommunications Act.

⁹ See Division 5 of the Telecommunications Act – the record-keeping rules do not apply to section 279, 285, 285A, 290, 291 or 291A.

each financial year. The ACMA publicly reports the number of disclosures made under the exceptions in Part 13, including the number of disclosures authorised by law¹⁰.

Aside from Part 13, the Privacy Act also regulates the use and disclosure of information. The Privacy Act has a broad application and is not sector-specific. While there is substantial overlap between the two instruments, there are areas of legislative difference:

- The scope of information protected by Part 13 is broader than the information protected by the Privacy Act¹¹. The Privacy Act defines personal information as ‘information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual or reasonably identifiable individual’¹². Part 13 regulates the use or disclosure of the ‘affairs or personal particulars of a person,’ ‘carriage services supplied or intended to be supplied’ and ‘the contents or substance of a communication’. As such, the Privacy Act does not cover information such as statistical data or metadata where a person’s identity cannot be reasonably ascertained. In contrast, Part 13 covers this information.
- The Privacy Act covers businesses with an annual turnover of more than \$3 million and businesses that sell or purchase personal information, whereas Part 13 covers all telecommunications providers irrespective of their turnover. Whilst it is unclear how many providers are not covered by the Privacy Act, smaller telecommunications providers make up a very small market share¹³ and may have competitive pressures to provide comparable privacy protections to their larger competitors. Those providers that are not covered by the Privacy Act are able to ‘opt-in’ to the Privacy Act¹⁴ to signal to customers that they are committed to best practice in privacy.
- Part 13 imposes criminal penalties for breaches, and as such requires a higher standard of proof than the civil penalties in the Privacy Act¹⁵. The Privacy Act allows for fines of up to \$1.7 million¹⁶ to be issued to a body corporate.
- Part 13 regulates access to the Integrated Public Number Database (IPND), including by the emergency call service, the emergency warning service, location dependent carriage services, researchers and public number directory producers.
- Part 13 is industry specific, whereas the Privacy Act regulates privacy across all industry sectors. As such, Part 13 imposes compliance and reporting costs on the telecommunications industry that are not imposed on providers of services that are ‘over-the-top’ of a carriage service, such as many web-based Voice Over IP (VOIP) or communication apps. This creates regulatory distortions between similar services delivered in different ways.

There are also modest privacy provisions in the Telecommunications Consumer Protection (TCP) Code, which binds all telecommunications providers.¹⁷ Communications Alliance is reviewing the TCP Code in consultation with the ACMA for the purpose of deregulatory reform.

¹⁰ ACMA Communications Report 2012-13. Table 2.2, Disclosures under the *Telecommunications Act 1997*.

¹¹ ALRC, *For Your Information: Australian Privacy Law and Practice* (Report 108), August 2008, 71.21.

¹² For more information see OAIC, *What is covered by privacy*. www.oaic.gov.au/privacy/what-is-covered-by-privacy

¹³ For example, The ACMA Communications Report 2012-13 found that there were 419 fixed internet ISPs operating in Australia (a subset of the entities caught by Part 13) as of June 2013. 215 ISPs have 1-100 subscribers each. However, the top five ISPs (Telstra, Optus, iiNet, TPG and M2 Group) have a total of 7.76 million subscribers.

¹⁴ See OAIC, *Opt-in Register*. www.oaic.gov.au/privacy/applying-privacy-law/privacy-registers/opt-in-register

¹⁵ Note that as per section 295, the defendant bears the evidential burden of proof in relation to an exception in Part 13 and chapter 4 of the TIA Act.

¹⁶ OAIC, *Privacy Law Reform – Get In on the Act*, May 2013. www.oaic.gov.au/news-and-events/speeches/privacy-speeches/privacy-law-reform-get-in-on-the-act

¹⁷ See Clause 3.6.3 of the TCP Code.

Case for deregulation

Whilst Part 13 imposes compliance costs on industry, the evidence suggests that Part 13 has not been effective in providing privacy protections for telecommunications users. At the same time, the Privacy Act has proven to be an effective consumer protection measure. There are a range of factors that suggest that the repeal of Part 13 would not have a material impact on the privacy of telecommunications users.

- **Lack of enforcement:** Aside from the IPND provisions, there has never been an investigation into an alleged breach of Part 13. While Part 13 might establish a baseline level of conduct in the telecommunications sector, it is not clear that Part 13 has improved privacy practices in the telecommunications industry. Furthermore, the lack of case law indicates that Part 13's application remains uncertain.

In contrast, the Office of the Australian Information Commissioner (OAIC) is an active enforcer of the Privacy Act, and has taken action against a number of telecommunications providers¹⁸. The privacy reforms that came into effect on 12 March 2014 further strengthen the Privacy Commissioner's enforcement powers.¹⁹ For example, the Privacy Commissioner can conduct Performance Assessments of private sector organisations to determine whether providers are handling personal information in accordance with the new Australian Privacy Principles and has a range of other enforcement options (such as enforceable undertakings and significant civil penalties).

- **Overlap with the Privacy Act:** Much of the information protected in Part 13 is regulated by the Privacy Act, such as the primary and secondary use and disclosure of personal information including names, addresses and telephone numbers. When Part 13 came into force, the Privacy Act applied to the public sector and only very limited parts of the private sector. However, the Privacy Act was amended in 2000²⁰ to extend coverage to many private sector organisations, including the telecommunications sector. There is now substantial overlap between the Privacy Act and Part 13. Services that consumers are already using, such as many web-based VOIP services, are regulated by the Privacy Act and not Part 13.

With the exception of small businesses, telecommunications providers must comply with both Acts, which can create confusion and inconsistency. A report by the UNSW Cyberspace Law and Policy Centre found that the current privacy complaint handling arrangements in the communications sector spread across the OAIC, the Telecommunications Industry Ombudsman (TIO) and the ACMA can lead to uncertain and inconsistent outcomes for consumers.²¹ Reducing the number of Government bodies that deal with privacy complaints would lead to a more consistent complaint handling approach and less need for co-ordination across complaints bodies.

- **Convergence:** The telecommunications sector has undergone substantial changes over the last thirty years. In contrast, the obligations in Part 13 have been largely carried over from earlier legislation²², and have remained mostly static. Convergence is blurring the boundaries between the telecommunications sector and other sectors, and the sector-specific approach of Part 13 may no longer be of relevance. In contrast, the Privacy Act has a principles-based approach to handling

¹⁸ See for example: OAIC, Telstra breaches privacy of 15775 customers. <http://www.oaic.gov.au/news-and-events/media-releases/privacy-media-releases/telstra-breaches-privacy-of-15-775-customers>

¹⁹ See *Privacy Amendment (Enhancing Privacy Protection) Act 2012*. Section 28A; Division 1A.

²⁰ OAIC, History of the Privacy Act. www.oaic.gov.au/privacy/history-of-the-privacy-act

²¹ Cyberspace Law and Policy Centre, 'Communications privacy complaints: In search of the right path', 2010.

²² See section 88 of the Telecommunications Act 1991 which provided that carriers' employees were not to disclose or use the contents of communications. Section 88 re-enacted provisions similar to Section 97 of the Australian Telecommunications Corporation Act 1989, section 37 of the OTC Act 1946, and section 17 of the AUSSAT Act 1984 which imposes duties of the employees of Telecom, OTC and AUSSAT respectively.

personal information that provides greater flexibility and opportunity to adapt to a convergent communications environment.

- **Improved competition and innovation:** The telecommunications sector has undergone substantial changes since telecommunications-specific legislation was introduced, such as the privatisation of Telstra, business diversification, and the entry of new industry participants.²³ A more competitive market has made product differentiation²⁴ and innovation more important to telecommunications providers. Repealing Part 13 would reduce the compliance burden on industry and lower barriers to entry that could lead to better services and greater choice. A similar effect has emerged in the email services market not bound by Part 13. In this case, some providers offer a free email service and that access users' information to deliver advertising services, which have proven very popular. At the other end of the spectrum, other providers offer a paid service and do not access their users' information. In this market, the regulatory landscape has enabled innovation and new services.

The Australian Law Reform Commission's (ALRC) 2008 review of privacy law concluded that there is a clear need to reform Part 13. The ALRC found that the scope of a number of the provisions in Part 13 is unclear, particularly the exceptions to the use and disclosure offences.²⁵ The ALRC saw merit in a single regime under the Privacy Act but concluded that Part 13 should continue to exist and recommended that Part 13 be redrafted to achieve greater logical consistency, simplicity and clarity.²⁶ Since the release of the ALRC's report in 2008, the Government has undertaken considerable reforms of the Privacy Act and has strengthened the powers of the Privacy Commissioner.

Overall, although Part 13 imposes a compliance burden on industry, it has not shown to be effective in providing practical privacy protections. The Privacy Act has proven far more important in protecting privacy, and provides protections for consumers across all sectors, including those very similar to the telecommunications industry. The OAIC has established a well-recognised role in considering digital privacy issues and pursuing alleged breaches. In this context, repealing Part 13 provides the largest overall net benefit.

Proposal

Repeal most of Part 13 of the Telecommunications Act. Provisions in the Privacy Act would continue to regulate the use and disclosure of personal information handled by telecommunications providers.

- Record-keeping obligations on telecommunications providers (Division 5 of Part 13) would be removed.
- IPND obligations relating to use and disclosure (Sections 277, 285, 285A, 291A, 299A and 302A) and a scheme for the ACMA to grant authorisations (Division 3A) would be retained in a modified form, pending the outcome of the Government's IPND review.
- Prohibitions on the disclosure of telecommunications information to law enforcement agencies would be retained, except where otherwise authorised by law or under a warrant.
- Consequential amendments to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* may be necessary to ensure that it is clear that disclosure of information can continue to support disclosures in the public interest (for example, to protect a person's life).

²³ ALRC, For Your Information: Australian Privacy Law and Practice (Report 108), August 2008, 72.52.

²⁴ Greater competition enables greater scope for product differentiation – Telstra has recently issued a transparency report, providing information to its customers about its legal obligations as a carrier. See <http://exchange.telstra.com.au/2014/03/07/telstra-launches-transparency-report/>

²⁵ ALRC, For Your Information: Australian Privacy Law and Practice (Report 108), August 2008, 71.60.

²⁶ ALRC, For Your Information: Australian Privacy Law and Practice (Report 108), August 2008. 71.49 and Recommendation 71-1.

Repealing Part 13 would lower compliance costs in the telecommunications sector, allowing for lower costs and more innovative services. Furthermore, the telecommunications sector will have the same privacy responsibilities as companies in other industries that they compete with.

If Part 13 were to be repealed, the ACMA's enforcement functions in relation to Part 13 (aside from any IPND-related functions) would cease. The OAIC would continue to enforce the Privacy Act and manage privacy complaint handling. A number of provisions in Part 13 would be retained or dealt with under other regulatory mechanisms:

- IPND arrangements, predominantly in Sections 277, 285, 285A, 291A, 299A and 302A and Division 3A of Part 13, would be retained in another form to ensure that IPND information is disclosed appropriately. The Department is currently reviewing the IPND to ensure that arrangements remain relevant and can adapt to changes in the telecommunications sector. Depending on the outcome of that review and the continued operation of the IPND, there would need to be obligations imposed to ensure that IPND information can only be disclosed in certain circumstances.
- It would be necessary to maintain prohibitions on the disclosure of telecommunications information to law enforcement agencies, except where authorised (such as under a law or warrant). This proposal does not suggest changes to Section 313 of Part 14 of the Telecommunications Act regarding the obligations of telecommunications providers to assist in national interest matters, and would seek to maintain the relationship between the Telecommunications Act and the *Telecommunications Interception and Access Act 1979*.
- There are exceptions in Part 13 that allow use and disclosure in a number of emergency situations (sections 286 – 288). If the prohibitions on disclosure were removed from Part 13, use and disclosure in these situations would still be permitted. However, it may be desirable to insert provisions into the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to avoid any doubt that use or disclosure could occur in emergency situations.

3. Part 9A of the Telecommunications (Consumer Protection and Service Standards) Act

Part 9A regulates the supply of telephone sex services via a standard telephone service. It is proposed to repeal Part 9A as most adult entertainment services are now provided online or via mobile devices and apps.

Policy intent

Part 9A was an amendment to the *Telecommunications Consumer Protection and Service Standards Bill 1998* before it was passed through Parliament in 1999. The amendment sought to provide a regulatory solution to address community concern that telephone sex services were too easily accessed by children of standard telephone service customers. At the time, there had been a steady increase in complaints about telephone sex services since the introduction of premium rate services in 1990-91.

Part 9A regulates the supply of telephone sex services via a standard telephone service in two key ways:

- By prohibiting a carriage service provider from billing a customer in relation to the supply of a telephone sex service unless the telephone sex service was supplied using a specific number range (that is, the 1901 prefix, or another prefix determined by the Minister for Communications or the ACMA).

- By prohibiting tying the supply of telephone sex services with the supply of any other goods or services.

Case for Deregulation

There has been a noticeable decline in complaints with very few, if any, current complaints relating to telephone sex services. Removal of Part 9a will not result in these services re-emerging as they have become redundant due to the increase in services online. Since the introduction of Part 9A in 1999, online and mobile apps have become the preferred means for accessing adult entertainment services.²⁷ Since 2000, Telstra has been the only operator in this market.

Proposal

Repeal Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* concerning the regulation of telephone sex services supplied via a standard telephone service.

The decline in demand for telephone sex services due in part to the evolution of online and smartphone access to adult premium services, coupled with the minimal impact on consumers, makes this unnecessary regulation.

4. Customer Service Guarantee

The Customer Service Guarantee (CSG) sets maximum timeframes that carriage service providers (CSPs) must meet when connecting telephone services, repairing faults and keeping appointments with customers in urban, rural and remote areas. Three overarching issues are limiting the effectiveness of the existing CSG. Firstly, it contains several outdated provisions. Secondly, it does not deal well with situations where retail services are supplied using wholesale inputs from another provider. Thirdly, it imposes an appreciable compliance burden on carriage service providers. It is proposed to make the CSG a more market-based instrument which allows CSPs to negotiate timeframes with customers, remove outdated provisions, and repeal the CSG performance benchmarks.

Policy Intent

The CSG was introduced as a consumer protection measure in 1996 in the lead-up to the privatisation of Telstra. The current *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard), made by the ACMA under ministerial direction, provides guaranteed maximum timeframes which CSPs must meet when connecting a standard telephone service (STS), repairing STS faults and keeping appointments with customers in urban, rural and remote areas. CSPs who fail to meet CSG timeframes are required to pay compensation to affected customers, unless a CSG waiver is in place or a relevant exemption applies.

There have been a number of changes to the CSG since it was introduced, the most significant being the introduction of enforceable performance benchmarks in October 2011. The benchmarks require larger CSPs to adhere to CSG timeframes in 90 per cent of cases on both a national basis and in urban, rural and remote areas. The ACMA has also made record-keeping rules in relation to the benchmarks, which CSPs are also required to comply with. The CSG Standard and benchmarks also act as performance metrics that are used to assess Telstra's performance under a contract for the supply of standard

²⁷ For example, an *Adelaide Advertiser* article (09/01/11) reports that print advertisements for phone sex services (usually listed through newspaper and magazine classifieds) declined by almost 65 per cent since 2005 (475 ads per week to around 169 per week in 2011).

telephone services under the Universal Service Obligation (USO), administered by the Telecommunications Universal Service Management Agency (TUSMA).

Case for deregulation

The current CSG Standard was developed when the Australian telecommunications market was dominated by a single vertically integrated monopoly provider, Telstra, which owned a near-ubiquitous copper telephone network. The market was characterised by limited competition and alternative infrastructure. The CSG Standard timeframes have not been significantly adjusted since the late 1990s and therefore reflect the timeframes applicable to the supply of services by Telstra over its own network. Given the significant changes to the Australian telecommunications market since the CSG was first introduced, and the ongoing rollout of the National Broadband Network, it is prudent to consider the appropriateness of a retail-level CSG as regulatory instrument in the long term.

Three overarching issues which are limiting the effectiveness of the current CSG Standard:

1. Outdated terminology and provisions;
2. The inability of carriage service providers to guarantee connection and repair timeframes when supplying services using wholesale inputs from another party; and
3. The significant costs faced by CSPs in complying with the CSG Standard and CSG Benchmarks.

Examples of outdated provisions and terminology include the requirement to publish mass service disruption (MSD) notices in a newspaper, references to Telstra's USO standard marketing plan and the application of the CSG Standard to the supply of enhanced call handling features such as call waiting or calling number display. The Omnibus Repeal Bill, introduced into the Parliament on 19 March 2014, proposes to remove from a range of primary legislation the requirements to publish MSD notices in newspapers. It would also remove the requirement on Telstra to have a USO standard marketing plan. It is therefore appropriate to remove references to the standard marketing plan and publication in newspapers from the CSG Standard. The provision of enhanced call handling features is now subject to industry codes and it is therefore no longer necessary for these to be regulated by the CSG Standard.

As noted earlier, the current CSG Standard reflects the timeframes applicable to the supply of services by Telstra over its own network. CSPs generally only meet CSG timeframes where they have their own infrastructure in place (e.g. Telstra over its fixed-line networks, Optus over its HFC network and iiNet over the TransACT fixed-line network) or they resell basic services over those networks. Where CSPs rely on wholesale inputs to deliver services, they will either negotiate longer timeframes or ask their customers to waive the CSG. The main reason for this is that the timeframe for the wholesale supply may be longer than the CSG timeframe. For example, the majority of access seekers currently supply retail fixed-line telephony services using the unconditioned local loop service (ULLS). The timeframes for the supply of a new ULLS are much longer than the timeframes for connecting a standard telephone service, and are set through an industry code. As a result CSPs using a ULLS to supply telephony usually negotiate longer timeframes with their customers or make it a condition of supply that customers waive their rights under the CSG Standard. The use of waivers has increased substantially in recent years and it now appears that only a few CSPs are actually supporting the CSG timeframes. This casts doubt on the effectiveness of the Standard as a consumer safeguard.

A number of industry stakeholders, including Telstra, Optus and Communications Alliance, have made submissions to the Department arguing that the CSG imposes large compliance costs on CSPs. Compensation payments are one major cost area associated with the CSG, and the ACMA's latest *Communications Report* shows that the total value of compensation payments increased to \$7.89 million in 2012-13, up from \$5.77 million in 2011-12. CSPs such as Optus have also argued in a 2013

submission to the Government that the 2011 introduction of retail performance benchmarks and associated record keeping rules have served to further increase the administrative burden for industry.

Telstra has stated in submissions to the Government that the administrative costs of the CSG are difficult to quantify. However, Telstra has identified a range of potential savings that could be achieved if the CSG were to be removed entirely. Broadly speaking, these are costs associated with reporting on CSG compliance, managing compensation payments and operating relevant information technology systems to support such activities. Given the difficulties in quantifying administrative costs, submissions from industry stakeholders on this issue would be welcome.

Proposals

- Reform the CSG Standard to allow CSPs to negotiate timeframes and compensation arrangements directly with customers. At the same time, remove the ability of CSPs to ask customers to waive their CSG rights. It may be appropriate, however, given the more limited nature of competition in rural and remote areas of Australia, to retain current timeframes in those areas for a transitional period (e.g. until the NBN rollout is complete).
- Remove outdated provisions from the CSG Standard.
- Repeal the CSG performance benchmarks.

The proposed option is to reform the CSG Standard to reduce CSPs' compliance costs and address their inability to meet regulated timeframes over infrastructure they do not control.

Under this approach, CSPs would be required to include timeframes for connection, fault repair and appointment-keeping in their retail service contracts, and to compensate customers when these timeframes are not met. Providers would then be permitted to negotiate the precise timeframes and nature of compensation with their customers, though a set of default timeframes and compensation rates could still be provided in the instrument as a safety net. CSPs' ability to waive the CSG would be removed, as it would become redundant in an environment where timeframes are entirely negotiable.

This approach would have the added benefit of improving transparency, promoting consumer choice and ensuring all customers receive guaranteed service levels for their standard telephone services. However, this approach may not lead to adequate safeguards being in place in areas where there are reduced levels of retail competition, such as in rural and remote Australia. Consequently, it may be appropriate to retain the existing timeframes in those areas for a transitional period. For example, when the NBN rollout is complete a number of retail providers will be able to offer services throughout Australia, and at that time CSPs could be permitted to negotiate timeframes directly with their customers in rural and remote Australia.

Developing these changes to the CSG Standard will take until the end of 2014. The outdated provisions would, however, be repealed in the short term. The CSG performance benchmarks may also be subject to repeal. However, in relation to the delivery of the services in accordance with the STS USO, any final timing on the removal of performance benchmarks could be subject to renegotiation of performance arrangements, including reporting and performance metrics contained in TUSMA's contract with Telstra.

5. Priority Assistance

Priority Assistance (PA) is an enhanced telephone connection and repair service that Telstra is required to offer to people diagnosed with a life-threatening medical condition who are at risk of suffering a rapid deterioration in that condition. A number of changes are proposed to safeguard the integrity of PA services and ensure it operates as efficiently and effectively as possible.

Policy intent

PA was introduced in 2002 following the Boulding case in which a young boy died from a severe asthma attack in circumstances where his family was unable to call an ambulance because of a faulty home telephone. This case led to calls for greater certainty that people with life-threatening medical conditions who require access to a standard telephone service can have services connected or repaired as quickly as practicable.

In 2002, the Government included a new condition in Telstra's Carrier Licence Conditions to require Telstra to have an effective policy for offering priority assistance services to persons with a life-threatening medical condition. Telstra's arrangements for priority assistance are set out in its *Priority Assistance for Individuals* policy. This policy is appended to Telstra's Universal Service Obligation (USO) Standard Marketing Plan and its USO Policy Statement.

Under the policy, Telstra must connect or repair a standard telephone or equivalent service within a timeframe of 24 hours (in urban or rural areas) or within a timeframe of 48 hours (in remote areas) for PA customers. These timeframes are shorter than those set out more generally in the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG standard).

Only Telstra has a regulatory obligation to provide PA services. Other carriage service providers or carriers may choose to provide priority assistance services to their customers, but are not obliged to do so. If a non-Telstra Retail Service Provider chooses to offer PA, it must comply with a code developed by the industry association, Communications Alliance, *ACIF C609:2007 Priority Assistance for life-threatening medical conditions*. However, at present no service providers offer a Code-compliant PA service, although some are understood to maintain this as a legacy service.

Case for deregulation

Priority Assistance is an important consumer safeguard for people with life-threatening medical conditions, and the service will be maintained. The proposed changes to PA are designed to ensure that it is provided as efficiently and effectively as possible to customers who are in genuine need and who meet the eligibility criteria.

One example of the way in which PA may not be provided as efficiently or effectively as possible is its current validation scheme. Telstra estimates that more than 70 per cent of new PA customers, or around 70,000 customers each year, claim PA status on a provisional basis but do not subsequently validate this status by providing a completed PA application form. Despite this, Telstra is still required to provide a PA service to these non-validated customers. This can have an adverse impact on the level of service provided to genuine PA customers and other non-PA customers. As Telstra accepts in good faith a customer who claims PA, customers who are assigned PA status when they request a new connection or report a fault have the same rights as validated PA customers. Although Telstra removes a PA claimant from its database if the claimant has not validated their PA status, this only occurs after Telstra

has provided the PA service. According to Telstra, the extra cost of servicing non-genuine PA customers is approximately \$1 million per annum.

Proposals

Amend Telstra's Priority Assistance (PA) Policy to make the following changes:

1. Transition from the current post-validation scheme to a scheme in which most customer validation is based on pre-registration.
2. Allow Telstra to use a variety of communication methods to contact provisional PA customers about validating their status.
3. Allow Telstra to offer customers a choice between an interim or an alternative service if there is likely to be a major delay in their permanent service being connected or repaired.
4. Allow greater flexibility for customers to revalidate their PA status, including online validation and, in certain circumstances, self-attestation by the PA customer that they still meet the eligibility criteria.
5. Provide the flexibility to apply an appropriate timeframe depending on the duration of the customer's medical condition.
6. Remove the *Eligibility Criteria* and *Eligible Medical Conditions* from being an attachment to the PA Policy and incorporate these into the actual policy.
7. Remove the statutory declaration form from the PA application form.
8. Clarify that PA does not apply to a person in a medical care facility, such as an aged care home.
9. Clarify that PA may in certain circumstances be provided over a mobile phone or other wireless technology.

The rationale for these proposals is as follows:

1. Transitioning from the current post-validation scheme to a pre-registration scheme will reduce opportunities for ineligible customers to take advantage of the accelerated connection and repair timeframes offered by PA. Post-facto ratification would still be available in emergencies, but Telstra would have clearer rights to recover its full costs from customers who use post-facto ratification but do not subsequently validate their eligibility.
2. Allowing Telstra to use a variety of communication methods to contact provisional PA customers about validating their status will maximise Telstra's opportunities for contacting its PA customers.
3. Allowing Telstra the ability to offer customers a choice between an interim or an alternative service if there is likely to be a significant delay in their permanent service being connected or repaired will enable greater choice for customers.
4. Enabling flexible methods for customers to revalidate their PA status, including online validation and, in certain circumstances, self-attestation by the PA customer that they still meet the eligibility criteria, will encourage greater opportunities for customers to revalidate their PA status.
5. Enabling flexibility for telecommunications providers to apply an appropriate timeframe depending on the duration of the customer's medical condition will ensure that PA only applies to people with current medical conditions.

6. Removing the *Eligibility Criteria* and *Eligible Medical Conditions* from being an attachment to the PA Policy and incorporating these into the actual PA policy will make it much easier for customers to refer to these documents.
7. Removing the statutory declaration form from the PA application form will tighten up the verification process. Customers will still be able to use a statutory declaration if necessary.
8. Clarifying that the PA does not apply to a person in a medical care facility will help ensure PA is provided to those who do not already have accelerated response arrangements. Medical care facilities are already highly likely to have accelerated response arrangements with service providers.
9. Clarifying that PA may in certain circumstances be provided over a mobile phone or other wireless technology recognises that there will be circumstances where it is more appropriate to provide PA using non fixed-line services.

A number of changes were made to Telstra's Carrier Licence Conditions as part of the first tranche of deregulatory measures in the first Parliamentary Repeal Day. The most substantive of these changes were the removal of the requirement for Telstra's PA policy to be appended to its Standard Marketing Plan, clarification that the timeframes for PA services only apply to those services supplied over Telstra's network, removal of a number of PA reporting requirements imposed on Telstra and removal of the requirement for post-facto ratification.

The first change outlined above has made Telstra's PA policy a standalone document and has enabled changes to be made to its PA policy without having also to obtain the ACMA's approval for the entire Standard Marketing Plan. This was a lengthy process that imposed a significant compliance burden on Telstra.

The most substantive of the proposed changes to Telstra's PA policy is to allow Telstra to introduce a pre-registration scheme to validate PA customers. Similar requirements apply in state government schemes that operate in the electricity sector. This will substantially reduce opportunities for ineligible applicants to take advantage of PA services by requiring the majority of claimants to validate their eligibility before they receive PA services. Post-validation would be available in clear emergency situations, for example where a customer needs a service repaired and advises Telstra that he or she has a life-threatening medical condition. However, if the customer does not subsequently validate their eligibility, Telstra will, as is currently the case, be able to recover the full cost of the service from the customer.

The amendments to Telstra's licence conditions took effect on 21 March 2014. Telstra is expected to submit a variation to its PA policy to the Minister for approval during the next few months.

6. Retail Price Controls

Telstra is subject to Retail Price Control (RPC) arrangements for services such as local, national and international call costs and phone line rental costs. It is proposed to repeal the current RPCs as consumers now have access to greater choices in a more competitive telecommunications environment.

Policy intent

Under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the Minister for Communications may determine by a legislative instrument that Telstra's retail services are subject to

price control arrangements. RPCs are comprised of ‘baskets of services’. The first basket of services consists of local calls, national long-distance and fixed-to-mobile calls (grouped as ‘trunk’ calls), international calls and line rentals. The second basket of services regulates the price of Telstra’s basic line rental pre-select product offered to residential customers (HomeLine Part). The third basket of services consists of the basic line rental product supplied to business customers and charity customers (BusinessLine Part). There are also price controls for connection products, directory assistance, untimed local calls, payphones, uniform national pricing, schools and charity line rentals and any increases in residential line rentals subject to the ACCC being satisfied that Telstra is offering a low income package.

RPCs for Telstra have been in place in some form since 1989 and focus on markets where there is less competition, notably fixed line telephony and regional areas. For example, the Extended Zone Agreement between TUSMA and Telstra is used as the key RPC mechanism for ensuring the maintenance of call prices in less competitive markets including regional and remote areas. RPCs were put in place at the time to restrain Telstra’s pricing power and market dominance in fixed line telephony. RPCs also sought to ensure that low-income consumers could afford access to telephone services. The Australian Competition and Consumer Commission (ACCC) is responsible for monitoring and annually reporting on Telstra’s compliance with the RPCs.

The RPCs that currently apply to Telstra are set out in the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the Principal Determination). The most recent amendment to the Principal Determination was the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)* (the Amendment Determination). These controls are due to expire on 30 June 2014.

Case for deregulation

Since the introduction of RPCs in 1989 there have been substantial developments in the telecommunications market that indicate that price controls are no longer relevant. The market has developed from the provision of a single telecommunications service, fixed line services, delivered by a single provider, Telecom, to a vibrant and competitive market. People are able to communicate through fixed line services, mobile communications services, naked DSL (voice services through VoIP) and VoIP services. As a result, there is an ongoing decline in fixed line services and an increase in the number of mobile and wireless services with both of these trends set to accelerate. Other key trends as at June 2013²⁸ include the following:

- The average prices for fixed voice services decreased by 3.2 per cent from 2011-12.
- There were twice as many mobile services as compared to fixed line services in Australia.
- 3.68 million Australians aged over 18 did not have a fixed line service (an increase of 18 per cent from the previous year).
- 79 per cent of Australians continue to have a fixed line service.
- The number of call minutes from fixed line services fell to 25.6 billion from 61.2 billion in 2008.
- Telstra remained the dominant provider of retail fixed line voice services with a market share of 63 per cent (down 3 per cent from 2011-12).

²⁸ ACMA, ACMA Communications Report 2012-13, Chapter 1, November 2013.

Competition within the telecommunications market and wholesale level regulation of Telstra's infrastructure has resulted in Telstra consistently pricing under the regulated retail price caps, further indicating that indicates that RPCs are no longer necessary.

Proposal

Amend the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 2005* to repeal the Retail Price Controls.

The case for deregulation is supported by the ACCC and Telstra. Telstra has advised that the regulatory burden of RPCs costs Telstra \$100,000 per annum. The Department has appointed an economic consultant to analyse the existing RPCs, including an assessment of both economic and social policy objectives.

7. Local presence plan

Clause 32 of Telstra's Carrier Licence Conditions places an obligation on Telstra to maintain a local presence in regional, rural and remote Australia. As part of this condition, Telstra must develop a three year plan on how it meets this obligation and submit an annual report. It is proposed to maintain the requirement for a local presence, but remove the requirement for the development of a local presence plan and its annual reporting requirements. This is because Telstra has a regional, rural and remote presence as part of its core strategy, and also must adhere to a number of other consumer safeguards.

Policy intent

The Regional Telecommunications Inquiry in 2002 recommended that a licence condition be imposed on Telstra to maintain a local presence in rural, regional and remote Australia. This came into effect in 2005 with the introduction of Clause 32 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*. Clause 32 specifies the following obligations:

- To maintain an ongoing local presence in regional, rural and remote Australia.
- To have a local presence plan that sets out Telstra's strategies to maintain its local presence.

The local presence plan requirement was introduced because of Telstra's rural and regional presence and its role as the primary universal service provider. No other carrier is bound by such a requirement.

Case for deregulation

As evidenced by Telstra's Country Wide Network, Telstra has the strongest rural and regional presence of any Australian telecommunications provider. Telstra is required to submit a draft local presence plan to the Minister for Communications for approval every three years. This necessitates the following activities:

- Stakeholder consultations for a minimum of six weeks every three years in order to formulate the local presence plan.
- Annual reporting to the Minister for Communications and the ACMA on progress against the local presence plan.
- Publishing the local presence plan and annual review on its website.

This licence condition imposes an administrative burden on Telstra, but a number of caveats relating to the local presence plan dilute its real world impact so that it may not work effectively as a key reason for Telstra's local presence. These caveats state that Telstra must maintain its local presence to the extent that it:

(a) is broadly compatible with the licensee's overall commercial interests; and

(b) is not unduly prescriptive and does not impose undue financial and administrative burdens on the licensee.

There are a number of relevant consumer safeguards in place which operate separately from the local presence plan. These include the USO, the Network Reliability Framework (NRF) and Priority Assistance.

Proposal

Maintain the requirement for a local presence, but remove the requirement in Clause 32 of Telstra's Carrier Licence Conditions for the development of a local presence plan and annual reporting requirements.

The local presence plan and reporting requirements provide no practical measurable effect on Telstra's services or business model in regional, rural and remote Australia. Telstra has maintained a strong presence in regional, rural and remote as part of its core strategy. For example, Telstra's mobile coverage that covers 99.3% of the Australian population is part of its competitive strategy in the mobile market. Telstra has also broadened the scope of its 4G network to better cater for increasing mobile use in regional areas. In addition, the legislative requirements imposed on Telstra through the USO and other instruments ensure that regional consumer safeguards are still in place.

Terminology

The **Australian Communications and Media Authority (ACMA)** is an independent statutory authority that regulates communications in Australia, including the regulation of telecommunications service providers (carriers, carriage service providers and content service providers).

The **Australian Law Reform Commission (ALRC)** is an independent statutory authority that reviews Commonwealth laws in Australia.

Carriage Service Provider is a person that supplies, or proposes to supply, a listed carriage service to the public, as defined in Section 7 of the Telecommunications Act 1997. This includes Internet Service Providers. Examples are Telstra, Optus, Vodafone Hutchison Australia, Virgin Mobile, AAPT and iiNet.

Carrier is the holder of a carrier licence granted by the ACMA. Examples are Telstra, Optus and Vodafone Hutchison Australia.

The Customer Service Guarantee (CSG) provides guaranteed maximum timeframes which carriage service providers must meet when connecting a standard telephone service (STS), repairing STS faults and keeping appointments with customers in urban, rural and remote areas.

The Integrated Public Number Database (IPND) contains records of Australian telephone numbers and associated customer details, used primarily for emergency call service, emergency warning, law enforcement and national security purposes, but also for location dependent carriage services, research and for the creation of public number directories. The IPND is maintained by Telstra as part of its Carrier Licence Conditions.

The Office of the Australian Information Commissioner (OAIC) is Australia's national privacy and freedom of information regulator. The Commissioners of the OAIC have a range of investigation and enforcement powers under the Privacy Act 1988 and compliance monitoring functions under the Telecommunications Act 1997.

Priority Assistance (PA) is an enhanced telephone connection and repair service for people diagnosed with a life-threatening medical condition and at risk of suffering a rapid, life-threatening deterioration in their condition.

Public Switched Telephone Network (PSTN) is a telephone network accessible by the public providing switching and transmission facilities utilising analogue and digital technologies.

Standard Telephone Service (STS) is a carriage service for the purpose of voice telephony communication between end-users supplied with the same service. The full definition is in Section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Universal Service Obligation (USO) is the obligation placed on universal service providers to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Telstra is the sole universal service provider.²⁹

²⁹ For more information, see ACMA, Universal Service Obligations. www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Obligations/universal-service-obligation-obligations-i-acma