Australian Government

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

# Thematic review of the Customer Service Guarantee (CSG)

## Consultation Paper

**FEBRUARY 2023**

Consultation opens: Friday, 17 February 2023

Consultation closes: Monday, 27 March 2023

Queries and submissions can be emailed to: usb@communications.gov.au.

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# Introduction

This paper seeks your views on a thematic review of the Customer Service Guarantee (CSG) for telecommunications and the various instruments that give it effect.

The paper provides:

- context for the review
- background on the CSG regulatory framework
- relevant industry developments
- potential future approaches to the CSG
- focused questions
- information on how to make comments
- further details of the CSG instruments.

The paper seeks your views on the future operation of the CSG overall, and the details of the subordinate legislation. Comments are sought by Monday, 27 March 2023.

# Context

The CSG is a retail-focused consumer protection that has been in place since 1997. Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) provides for performance standards to be made and compensation to be paid to consumers if those standards are not met. CSG performance standards have focused on the connection and repair of standard telephone services (STS), and associated appointment keeping. The CSG complements the Universal Service Obligation (USO) set out in the TCPSS Act. CSG benchmarks were introduced in 2011, otherwise many aspects of the CSG have not significantly changed in character since 1997.

Many aspects of detail of the CSG scheme are set out in subordinate instruments made by the Minister and the Australian Communications and Media Authority (ACMA). **Appendix A** has further detail on each of the CSG instruments.

In March 2021, the then Assistant Attorney-General made an instrument to defer and align the sunsetting dates for 4 instruments made under the CSG scheme.[1] These are the:

- Telecommunications (Customer Service Guarantee) Standard 2011 (the CSG Standard);
- Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1) (the CSG Amendment Standard);
- Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (the CSG Benchmarks Instrument)

Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 (the CSG RKRs). These instruments were due to cease or 'sunset' at different points in 2021, but are all now due to sunset from 1 October 2023 in accordance with the *Legislation Act 2003* (the Legislation Act).

This approach was adopted to provide time for a single thematic review of these instruments, including to have regard to wider changes taking place in the telecommunications industry. In this context, the department is now seeking stakeholder views on the future role of the CSG and the instruments that give effect to it.

Importantly, the 4 instruments due to sunset are underpinned by a Ministerial direction to the ACMA to make performance standards.

[1] *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021*

This is the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011.* While the direction is exempt from sunsetting[2], if broader changes to the CSG are considered appropriate the Minister would need to vary or repeal this direction, and the ACMA would then need to make any consequential changes to existing instruments to reflect that direction as required. As such the Ministerial direction is fundamental to, and should be considered to be part of, this thematic review. Equally, more significant change could require amendment of Part 5 of the TCPSS Act itself, and this could be considered if warranted.

While we are interested in arrangements for the future, some historical context may be useful in this instance.

Importantly, the CSG was established at a time where there was a very different industry structure. While there was some network competition (most notably from Optus's HFC network) and growing retail competition based on the Telstra network, Telstra still held a central position in the market. Notably, Telstra was a vertically integrated provider of fixed voice services, and the main provider of those services. That is, it operated the network over which the voice services were delivered, and supplied most of the voice services delivered. As a vertically integrated provider controlling the underlying network, Telstra was still able to undertake the work required at the network level needed to deliver the retail outcomes required by the CSG. Conversely, other service providers relying on the Telstra network required Telstra to undertake the work required at the network level for them to deliver the CSG. Two notable consequences of this were that the legislation enabled other service providers to seek contributions from Telstra when it failed to support CSG outcomes, and there was considerable scope for disagreement as to who was or was not responsible for breaches of the CSG, to the detriment of the customer's experience.

As discussed in more detail later in the paper, there are several significant changes that have bearing on the future of the CSG, most notably:

- the way that the community accesses and uses voice services has changed, including greater use of mobile services and use of broadband networks to support voice services
- most voice services are now supplied over the National Broadband Network (NBN) (or other similar networks that generally operate on a wholesale-only basis), affecting how retailers arrange to supply services to consumers
- for most of the population Telstra is no longer a vertically-integrated fixed voice network operator and retailer (which was the case when the CSG was first introduced)
- regulatory settings, particularly for the supply of wholesale supply of broadband services, under both the *Competition and Consumer Act 2010* and the *Telecommunications Act 1997*, have been adjusted to reflect these changes in the industry
- Telstra has restructured itself into multiple companies, including an infrastructure and service company, although Telstra has provided assurances regulated service delivery will be unaffected, and legislation has been put in place to underpin this.

Relevantly, NBN Co has been engaging with the Australian Competition and Consumer Commission (ACCC), industry and consumer groups on a revised Special Access Undertaking (SAU) under the access regime in Part XIC of the *Competition and Consumer Act 2010*. The SAU is intended to set long term parameters for the supply of wholesale NBN services.

On 29 November 2022, NBN Co lodged a variation to its Special Access Undertaking (SAU) with the ACCC. As part of the proposed variation, NBN Co is proposing to include in the SAU a range of wholesale performance standards (generally with 90% performance objectives) which include

[2] The *Legislation (Exemptions and Other Matters) Regulation 2015* provides that Ministerial directions are exempt from sunsetting

matters historically covered by the CSG, such as connection, repair and appointment timeframes, and payment (rebates) where these are not met.

NBN Co has also proposed its revised SAU will also include a mechanism for updating wholesale service levels over time, including if a change to service standards is required part way through a regulatory cycle for RSPs to comply with new retail service standards regulations[3]. The SAU process is due to be completed by mid-2023. Commitments under the SAU can also be replaced by standards, rules and benchmarks (SRBs) made by the Minister for Communications if this is considered warranted. A brief summary of key service level commitments included in NBN Co's SAU is at **Appendix B**, however, stakeholders should refer to the ACCC website to review the full proposed SAU variation, other supporting documents provided by NBN Co and a related ACCC consultation paper.

Clearly these underlying wholesale arrangements are important to the future role of the CSG, and ideally they would be more settled for this consultation. However, the consultation must be completed in time so that any necessary changes to the CSG legislation can be made before 1 October 2023, noting the sunsetting date cannot be deferred again under the Legislation Act. This means the two processes – consideration of the SAU and this review of the CSG – need to run in parallel. Stakeholders should therefore consider the CSG against the background of these wholesale arrangements and particularly the SAU.

While those interested are invited to provide such views on the CSG as they consider appropriate, the Department would find particularly helpful stakeholder views on the following questions:

- Does the CSG remain relevant and useful, noting the changes in the Australian telecommunications market place? Why/Why not?
- Are there other approaches to the CSG that should be considered? If so, what are these and why would these be preferable?
- 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)?
- 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?

This discussion paper proceeds on the basis that the CSG appears to remain relevant to the residual Telstra network outside the NBN fixed line network, but there may be other options in relation to the NBN and other similar networks that need to be considered.

Interested stakeholders should lodge their submissions by Monday, 27 March 2023, our preference is that submissions are submitted via email to usb@communications.gov.au or alternatively submitted via the Department's 'Have Your Say' page. Questions about this paper or the consultation process can also be directed to the above email address.

# Overview of the CSG regulatory framework

The CSG was originally introduced in 1997 to set requirements for the supply of STS (complementing the access arrangements provided under the Universal Service Obligation). This included setting timeframes for connection and repair of services, and the making and keeping of appointments. While some elements of the CSG have been adjusted over time, notably with the introduction of CSG benchmarks (discussed further below), the broad characteristics of the CSG have remained relatively unchanged since their introduction.

[3] nbn Special Access Undertaking Variation 2022 – Supporting submission, p.19

Under Part 5 of the TCPSS Act, the Minister for Communications may direct the ACMA to make performance standards that CSPs must comply with.[4] As a consequence, the ACMA can only make (or vary) CSG performance standards in accordance with a Ministerial direction. The current Ministerial direction, the *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011* (the CSG Direction), is exempt from sunsetting arrangements, but as it is pivotal to the overall scheme it is part of this review.

Performance standards can relate to connection, fault repair, the keeping of appointments or any other matter concerning the supply, or proposed supply, of a carriage service to a customer. If directed by the Minister to make performance standards, the ACMA can also determine a scale of damages (i.e. compensation) for breaches of those standards, as well as arrangements for customers of CSPs to waive their CSG rights in whole or in part (except for STS supplied by Telstra in fulfillment of the USO). The existing performance standards, compensation amounts and detailed waiver arrangements are set out in a single ACMA instrument, the *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard).

As part of a broader package of legislative reforms made in 2010[5], changes were made to allow the Minister to make minimum performance benchmarks in relation to compliance with the CSG standards. The *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (the CSG Benchmarks Instrument) commenced from 1 October 2011. These benchmarks were intended to provide a stronger incentive for larger providers in the industry to maintain and improve service quality, particularly during a period of change (while the NBN was being rolled out and customers were migrating to the network).

Beyond providing for subordinate instruments to be made by the ACMA or the Minister, Part 5 of the TCPSS Act also sets out a number of important process matters. These include processes and timeframes to be followed by CSPs in accepting and paying compensation to consumers, as well as right of contribution arrangements (which allow CSPs to seek to recover some or all of a CSG compensation payment if non-compliance was wholly or partly attributable to the actions of a second CSP).[6]

The CSG complements Telstra's requirements under the USO to provide people in Australia with access to voice services, regardless of where they live or work. Under the TCPSS Act, Telstra has a legislated requirement to provide STS (and payphones) on reasonable request nationally. Telstra has an existing contract with the Commonwealth to deliver the USO – the Telstra Universal Service Obligation Performance Agreement (TUSOPA) – which commenced in 2012 and runs to 2032. Where Telstra provides voice services under the USO, it must seek to meet the connection, repair and appointment-keeping standards set out in the CSG Standard (and the associated benchmarks).

Separate to the CSG arrangements, section 529 of the *Telecommunications Act 1997* allows the ACMA to make record keeping rules. The ACMA's *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* (the CSG RKRs) require larger CSPs to keep and retain information about compliance with CSG benchmarks, and report on this information annually to the ACMA.

Accordingly, the Ministerial direction to the ACMA, and the CSG Standard itself, are central to the operation of the CSG, noting that any changes to the standard would have implications for the CSG benchmarks. Any ACMA RKRs are similarly dependent on the other CSG instruments and their details.

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[4] See s115 and s124 of the TPCSS Act

[5] *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*

[6] Once a CSP accepts liability, it must automatically remit compensation without the consumer needing to take further action. However, CSPs must actively seek to recover compensation from a second CSP (i.e. it is not automatic).

Many definitions and concepts in the CSG Standard are also used and incorporated in other regulatory instruments related to the supply of STS, such as Telstra's carrier licence conditions.

The CSG has to date been limited to fixed voice services. It has not applied to broadband services. It was also not applied to mobile services 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.

# Relevant market developments

This section outlines some important changes in Australia's telecommunications marketplace relevant to the future operation of the CSG as background, to assist with any comments on the future role of the CSG and the need for possible change, whether to the CSG as a policy mechanism or to its details.

## Changing community use of voice services

While access to voice services under USO arrangements (and associated protections under the CSG) is still important to different consumer groups, including communities in regional and remote areas, the way consumers access voice services has significantly changed since the CSG was put in place. Recent ACMA research shows the use of fixed-line home phones has continually declined, with only approximately 36% of adult Australians now having a fixed voice service and approximately 63% relying solely on a mobile service to make voice calls at home (compared to 29% in 2015).[7]

By contrast, over 8 million premises have fixed broadband connections and there are over 30 million mobile services in operation. (Neither of these services are directly covered by the CSG.)

This suggests some consumers may prefer mobile services to having a dedicated fixed voice service at home, or may not wish to pay for multiple voice services. It is also the case that fixed broadband connections can also now be used in different ways to support voice communication, such as through Wi-Fi calling or voice over internet protocol (VoIP).

While the CSG arrangements are focused on providing for the prompt connection and repair of fixed voice services to premises, the CSG Standard provides flexibility for providers to offer interim or alternative voice services to consumers if they cannot meet the CSG connection or repair timeframes. In making such offers, the provider is required to provide an estimate of the time to repair or connect the CSG service. The Department understands interim services are typically offered over mobile networks, but interim services may also be offered over other networks (such as satellite). If accepted, interim services can be provided for up to 6 months, or longer if the customer agrees. Alternative services may include arrangements to redirect calls to another number. The CSG arrangements (i.e. access to compensation) do not apply where a customer rejects a reasonable offer of interim or alternative voice service or for periods where an interim or alternative service is being provided.

The Department understands that a proportion of consumers choose not to accept offers of interim or alternative services under CSG arrangements. This would suggest these consumers may have access to and are prepared to rely on mobile or other services, at least for a period, if there is a delay in having their fixed service connected or repaired.

In this context the CSG could be seen as less relevant as fewer people are using services to which the CSG applies, but conversely, they are using services without comparable protections.

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[7] ACMA, How Australians make voice calls at home, 20 October 2022

## NBN rollout and Telstra restructuring

When the CSG regime commenced in 1997, Telstra was the leading retail provider in the market, as well as the owner and operator of a national voice network. As a consequence, Telstra could readily fulfil its CSG obligations as an integrated retailer and wholesaler. However, significant reforms and changes have since occurred, including the rollout of the NBN.

NBN Co and other similar carriers generally operate on a wholesale basis, and NBN Co has specific non-discrimination obligations. NBN Co now provides the vast majority of fixed line connections in Australia. While these are fundamentally broadband services, they also support voice services. Telstra has also largely structurally separated by transferring distribution network assets to NBN Co and migrating its retail services to the NBN. In the main, this means Telstra, Optus[8] and any other retailers providing CSG eligible services are heavily reliant on NBN Co or another statutory infrastructure provider (SIP) to support and maintain the local networks now used to deliver CSG services. In this context, there has been greater focus on NBN Co and other SIPs supporting the outcomes the CSG has previously delivered.

However, outside the NBN fixed-line footprint, Telstra continues to deliver CSG services largely using its residual copper network across rural and remote areas of Australia (approximately 8% of premises). This means the CSG may remain more relevant in relation to this network.

More recently, Telstra has initiated a corporate restructure under which it has established a number of separate companies to focus on particular aspects of its business. This includes the establishment of separate companies to operate its network and to provide services. While this could raise questions about Telstra's ongoing delivery of outcomes under the CSG, Telstra has given undertakings that regulated service delivery will be unaffected and this has been backed up by new legislation[9]. As such, the restructure should not affect CSG delivery in the absence of other changes, but any views to the contrary in this regard would be welcome.

## Refocusing on wholesale services

Given the market structure that has evolved, with a greater separation of network operations and retail service supply, as flagged above, there has been a greater focus on supporting CSG-like connection and repair outcomes at the wholesale network level. This approach also protects consumers in relation to the underlying broadband connections and service, not just a voice service provided using that broadband service.

As noted above, NBN Co has been engaging with the ACCC, industry and consumer groups on the terms of a proposed revised SAU. NBN Co is proposing[10] to include CSG-like service quality standards in areas such as connection, repair and appointment-keeping in the SAU and a mechanism to change these over time – a brief summary of its proposed arrangements is at **Appendix B**. NBN Co's aim is to have its SAU accepted and ready for implementation by 1 July 2023. The ACCC has also proposed detailed record-keeping rules relating to NBN Co's wholesale service standards.[11]

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[8] Since 12 September 2022, Optus has sought CSG waivers from new customers of fixed telephone services but the Department understands Optus is continuing to provide CSG services to pre-existing customers.
[9] *Telstra Corporation and Other Legislation Amendment Act 2021*
[10] NBN Co has proposed a mechanism where it can propose benchmark service standards for each regulatory cycle (3 to 5 years) under its Replacement Module Application, with the ACCC able to set new or alternative standards if the application is rejected. There will also be scope for the ACCC to set standards mid-cycle, either where NBN Co proposes improvements or the ACCC identifies that changes are necessary to address specific circumstances that have impacted retailers (i.e. new retail-level regulation or another systemic issue that has a material adverse impact).
[11] ACCC, Service quality and network performance Record Keeping Rule for superfast broadband networks

Wholesale service levels can also be dealt with in other ways, such as through the statutory infrastructure provider (SIP) regime. The SIP arrangements set out in Part 19 of the *Telecommunications Act 1997* provide that all premises in Australia are able to be connected to a fixed network and access superfast broadband services over that network upon reasonable request. NBN Co is the default SIP for all parts of Australia, however other network providers can also be SIPs, such as where they have been contracted to service premises in a new real estate development. SIPs must supply wholesale services that allow retail providers to provide services with peak speeds of at least 25 Mbps for uploads and 5 Mbps for downloads, and which (in most cases) are capable of supporting retail voice services. The SIP regime provides scope for the Minister to make standards, rules and benchmarks that would set minimum performance requirements for the networks and services offered by NBN Co and/or other SIPs.

These changes reflect the developments in the Australian telecommunications marketplace and provide new ways to deliver the outcomes the CSG has provided historically in a potentially more effective way by targeting the network operators able to deal with the matters the CSG is directed at.

# Potential future approaches to the CSG

While many of the changes discussed above relate to fixed broadband networks, Telstra still operates its own networks to provide voice services to 8% of premises in rural and remote Australia, and the CSG as it exists today may remain more relevant in this context.

More broadly, the changes described above point to a new approach to protecting consumers when they are using fixed telecommunications. This focuses on the provision and use of broadband services (both as services in themselves and as platforms for other services like voice) and on wholesale supply, in recognition that many issues arise at the wholesale level and may be beyond the direct control of retailers. The future of the CSG needs be considered in this context. Four possible options are canvassed below. These are provided to help stakeholders’ consideration and feedback. However, they should not be considered exhaustive or indicative of future Government policy. Stakeholders should feel free to comment on the advantages and disadvantages of these approaches, or to propose alternative approaches.

## Telstra legacy network

While there have been significant changes in the market place and a refocusing on broadband and wholesale mechanisms, Telstra continues to operate (under regulatory and contractual arrangements) networks that provide voice services to premises located beyond the NBN fixed line footprint (around 8% of all premises, which are typically in rural and remote areas). As noted above, these services are generally supplied by Telstra under the USO. The CSG is closely linked to the USO, supplementing its delivery, and being central in the assessment of performance for payment purposes. While not subject to the USO or CSG arrangements, ADSL broadband is also provided as a commercial legacy service to around 100,000 regional and remote premises.

In this context, the CSG would appear to have an ongoing role in relation to fixed voice services Telstra provides over these networks, suggesting the CSG instruments should be remade much in their current from or with some revisions to modernise them.

However, if this approach is compared to that which has emerged for wholesale broadband networks, consideration could be given to whether CSG-like safeguards should be applied to connections provided by Telstra, whether for fixed voice, or ADSL, and whether these might be better directed to the new Telstra infrastructure company, InfraCo. This would provide more holistic and equitable cover for those consumers dependent on that network for ADSL as well as voice. It could also provide greater support for other retailers using the Telstra network to provide voice in rural and remote areas or ADSL services. It would also provide for greater consistency between the treatment of the Telstra legacy network and the NBN and other comparable networks providing more equitable treatment for rural and remote consumers. Arguing against such changes, however, ADSL and the Telstra copper network may have a limited lifespan, reducing the potential benefit of such change noting the costs involved.

## Focusing on other wholesale networks

With the growing reliance on the NBN and other SIP networks to provide broadband, which also support voice, one approach to future service regulation could emphasise the role of delivery requirements at the wholesale level on NBN Co and other SIPs. These requirements would apply nationally, but could take account of differences between urban, regional, rural, remote and other areas.

This would be a significant advance for consumers. Consumers would receive protections for their broadband services, not just their fixed voice services, noting more fixed broadband services are now being delivered than CSG services, and broadband services support more uses than simple voice. However, these protections would still support the voice services delivered over those broadband networks.

This approach would reflect that most key activities associated with the connection and repair of voice and broadband services are now largely controlled in practice by NBN Co and other SIPs, rather than CSPs. The approach recognises that many of the issues of concern to consumers are determined by the operation of the underlying wholesale networks, and often those networks are the sole provider in an area and may face limited if any competition, particularly in the fixed line market.

Such requirements would cover broadband data services generally rather than the voice services which they support. That is, they would cover the connection and supply of broadband data services, their repair in the event of a fault, and the keeping of appointments (much like the CSG) and other matters relevant to the performance of services such as service availability and fault rates.

NBN Co has commercial arrangements in place to pay rebates where it fails to meet a range of performance requirements. Where rebates are paid, it generally requires these (or a fair value benefit) to be passed through to end-users. These rebates would serve much the same purpose as CSG compensation payments.

NBN Co and other SIPs are already required to publish their terms and conditions for supplying services to their wholesale customers. Typically, these include requirements/matters of the kind covered by the CSG and any related rebates. On 29 November 2022, NBN Co lodged a revised SAU with the ACCC including a number of service standards largely reflecting its wholesale broadband agreement version 4 (WBA4). These could be used as its basic requirements. Other SIPs could also lodge SAUs. SAUs could be complemented or replaced by SIP standards, rules and benchmarks (SRBs), if considered more appropriate. In the absence of SAUs, SRBs could be put in place.

On this foundation, there would be 4 main options when it comes to the CSG.

First, with wholesale arrangements like these in place, the CSG might be considered unnecessary because the work it does is effectively being done through these wholesale arrangements. In this context, the CSG could be allowed to lapse in relation to voice services provided over these networks. However, consumers could be concerned that the effectiveness of the arrangements is dependent on NBN Co and other SIPs keeping in place effective wholesale safeguards or the Government imposing safeguards on them. The success of the approach would also depend on competition between RSPs giving them the incentive to provide equivalent protections to their retail customers.

Second, as noted above, there may be concerns that there would be insufficient incentives for RSPs to provide the performance outcomes they are receiving from NBN Co and SIPs to their consumers. This might be addressed by placing new requirements on RSPs to ensure these performance outcomes are made available to their customers, or there is at least transparency as to what outcomes the RSPs will provide. Depending on the detail of the retail requirements, there are various existing mechanisms that could be potentially used, but service provider rules would likely be the most effective. This new mechanism would be designed to work back-to-back, with the wholesale arrangements that have evolved.

Third, the proceeding approach would have many similarities with the existing CSG, but another option could be to explicitly rewrite the CSG so it worked, back-to-back, with the wholesale arrangements that have evolved. This would require the CSG to be modified to apply to broadband services generally (not just voice) and to recognise rebates provided by NBN Co and other SIPs.

Fourth, the existing CSG arrangements could be retained in much the same form as they exist today, or with only necessary revisions. This would mean consumers with broadband services would rely on the new protections available under undertakings from NBN Co or SIPs, but there would continue to be additional protections for users of fixed voice services. The instruments that are due to sunset could be remade, either in their existing form or with some amendments to update specific provisions, based on stakeholder feedback. One issue that would need to be considered is the alignment and interaction of CSG timeframes and those offered by NBN Co and other SIPs, noting RSPs may have difficulty meeting CSG requirements that are not supported by NBN Co and other SIPs. CSG payments may also need to be aligned with rebates being proposed by NBN Co and other SIPs or to take account of them in determining payments. For example, if a rebate was paid by NBN Co or another SIP and paid to the end consumers it may be appropriate for that amount to be deducted from any CSG payment.

If this last option were adopted and any CSG requirements applying to Telstra's legacy network outside the NBN fixed line footprint were retained, there may be merit in keeping both sets of arrangements aligned as much as possible. While there may be some merit and attraction in having 'back to back' arrangements as per options 3 and 4, a potential issue would be accommodating situations where multiple parties, including intermediaries, are involved in supplying wholesale services.[12]

# Details of the CSG instruments if remade

The Australian telecommunications industry has changed significantly since the CSG was introduced over 20 years ago but the CSG, by contrast, has changed little. New regulatory arrangements have evolved to provide greater protections for users of fixed broadband services, and whether these arrangements need to be refined further, potentially displacing the CSG, is a threshold issue in this discussion paper.

As noted above, the CSG will likely need to continue to apply to the Telstra legacy network servicing the 8% of premises in rural and remote Australia outside the NBN Co fixed line footprint. You may also wish to consider if the CSG should continue in much of its current form in relation to the NBN Co fixed line footprint (as per option 4 above). In these instances, we would appreciate hearing any

[12] In many cases, CSPs will contract directly with wholesaler providers such as NBN Co, however in some cases there may be intermediaries or aggregators involved.

views you have on the details of the CSG as it is drafted now, as well as how it might need to be remade. This could include issues such as:

- the services the CSG applies to
- the matters that standards and benchmarks under the CSG apply to (e.g. currently connections, repairs and appointments)
- the details of the standards and benchmarks that apply under the CSG (e.g. the number of days for connections and repairs, and timeframes for arranging and keeping appointments and that these are met in 90% of cases)
- the levels of compensation
- waiver parameters
- scope for providers to claim localised or mass service disruption exemptions, and associated notification and publication requirements.

# Next steps

Stakeholder views are important to the future of the CSG arrangements and the individual instruments that give effect to it.

The sunsetting regime in the Legislation Act generally requires that consideration be given to repealing instruments (or allowing them to sunset) if they are no longer relevant. However, as discussed, we are first and foremost interested in the future role of the CSG overall as a policy mechanism, with the instruments that give effect to it being a subsequent matter.

In all cases, if there are to be any significant changes – such as replacing, repealing or significantly adjusting the CSG and relevant instruments – then that in and of itself would take some time to progress, and other practical implementation issues would likely need to be managed. For example, the ACMA and industry may need some lead time to adjust existing systems and processes, and to effectively communicate changes to the community more generally. Stakeholders are therefore encouraged to consider and comment on what practical issues might arise under different approaches, and how they might best be managed.

Subject to stakeholder feedback on different approaches, it may be that CSG instruments need to be retained, at least in the short term, until alternative arrangements can be further developed and implemented. Stakeholders should also consider putting forward views on the usefulness of each of the existing individual CSG instruments, and, as appropriate, any suggestions on how and why the approach and drafting of instruments might be adjusted or improved.

Stakeholders are welcome to put forward their views on the CSG as they wish. If it is of assistance, they could consider the following focal questions:

- Does the CSG remain relevant and useful, noting the changes in the Australian telecommunications market place? Why/Why not?
- Are there other approaches to the CSG that should be considered? If so, what are these and why would these be preferable?
- Are different approaches potentially required for the NBN and similar networks as opposed to the fixed line voice network still operated by Telstra outside NBN Co's fixed line footprint?
- 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?

Stakeholders that have any questions on this paper or the consultation process can direct these in the first instance to usb@communications.gov.au. If helpful, Departmental staff can arrange to discuss issues individually or with groups of stakeholders during the consultation period. Submissions can be lodged electronically via the Department's 'Have Your Say' page or sent to the email above.

| Milestone | Date |
| --- | --- |
| Consultation paper released | 17 February 2023 |
| Submissions due | 27 March 2023 |
| The Minister announces next steps | Q2 2023 |
| CSG instrument(s) revised if/as needed | Q2-Q3 2023 |
| Instruments sunset or remade | Before 1 October 2023 |

# Appendix A: Overview of the CSG instruments

The existing CSG framework consists of 5 instruments, as detailed in the table below.

Based on the CSG Direction, other requirements are set out in the CSG Standard as well as 3 supporting instruments. These last 4 instruments are each due to sunset on 1 October 2023.

| Instrument | Sunset date |
|---|---|
| *Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011* (the CSG Direction) | Exempt from sunsetting |
| *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard) | 1 October 2023 |
| *Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1)* (the *CSG Amendment Standard*)[13] | 1 October 2023 |
| *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (the *CSG Benchmarks Instrument*) | 1 October 2023 |
| *Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011* (the *CSG RKRs*) | 1 October 2023 |

## The CSG Direction

The CSG Direction is a Ministerial direction that requires the ACMA to make CSG performance standards.

Under section 124 of the TCPSS Act, the ACMA must comply with such a direction and it can only make (or vary) a CSG standard in accordance with such a Ministerial direction. The CSG Direction is exempt from sunsetting provisions.

The CSG Direction is simple in that it directs the ACMA to make a standard in the same terms as the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)*[14], as in force on 23 December 2009. As such, the full effect of the Direction can be ascertained from the outline of the CSG Standard provided below. The Direction also means the substance of the CSG has not changed significantly since 2000.

## The CSG Standard

### Performance standards

Under the CSG Standard, CSPs providing CSG-eligible services are required to meet maximum timeframes for connection, fault rectification and appointment-keeping, as set in the tables below.

Timeframes vary across urban, rural and remote areas, recognising the distances involved and given CSPs may need to arrange to transport any necessary infrastructure or technicians to the location. CSPs may also arrange to connect or repair services in a shorter timeframe than specified in the CSG Standard, while a customer may also nominate or agree to a longer timeframe.[15]

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[13] The CSG Amendment Standard does not need to be remade as it had the effect of amending the waiver requirements within the CSG Standard.

[14] https://parlinfo.aph.gov.au/parlInfo/download/publications/tabledpapers/HSTP09970_1998-01/upload_pdf/9970_1998-01.pdf;fileType=application%2Fpdf#search=%22publications/tabledpapers/HSTP09970_1998-01%22

[15] Longer timeframes may be arranged where a customer requests a connection or repair be made on a specific day after the specified timeframe, or where a customer accepts an offer by a CSP for a longer timeframe and the customer would obtain substantial benefit as a result (i.e. cheaper price).

CSPs do not have to meet the maximum timeframes or pay compensation if they have made a reasonable offer to supply an interim service (such as a mobile or satellite service at standard landline rates) or an alternative service (such as a call redirection to a mobile or additional landline service). When offering these services, a CSP must provide a range of information, including about the service features, charges payable, and the estimated period the service will be supplied for.

While the CSG standard applies to services provided to individuals and small businesses, it does not cover 'sophisticated business-oriented services' or customers with more than 5 telephone lines.

### Maximum connection timeframes

| Size of community | In place connections | New service connections<br>Close to infrastructure and spare capacity | New Service connections<br>Without infrastructure or spare capacity |
|---|---|---|---|
| **Urban**<br>**(10,000+ people)** | Up to 2 business days | Up to 5 business days | Up to 20 business days |
| **Major rural**<br>**(2501 to 9999 people)** | Up to 2 business days | Up to 10 business days | Up to 20 business days |
| **Minor rural**<br>**(201 to 2500 people)** | Up to 2 business days | Up to 15 business days | Up to 20 business days |
| **Remote**<br>**(up to 200 people)** | Up to 2 business days | Up to 15 business days | Up to 20 business days |

### Maximum fault rectification timeframes

| Size of community | Repair timeframe |
|---|---|
| **Urban (10,000+ people)** | End of next business day |
| **Rural (201 to 9999 people)** | Up to 2 business days |
| **Remote (up to 200 people)** | Up to 3 business days |

### Appointment keeping timeframes

| Size of community | Repair timeframe |
|---|---|
| **Specific time** | Up to 15 minutes after the appointment time |
| **Up to 4 hours** | Within the appointment window (+15 minutes) |
| **Between 4 and 5 hours** | Within the appointment window |
| **Between 4 and 5 hours**<br>***Where a provider has to travel a long distance*** | Within the appointment window (+45 minutes) |

## Compensation

Unless an interim or alternative service has been offered, where a CSP fails to meet a maximum timeframe within the CSG standard, it must pay damages (compensation) to the relevant customer. The amounts payable are set out in the tables below.

Compensation must be paid directly and automatically to end-users, with no requirement for an end-user to report the missed performance standard or request compensation. In practice, compensation may be in the form of credit on a customer's bill, rather than a standalone payment.

### Residential and charity customers

| Services delayed | Compensation for first 5 business days (per business day) | Compensation after first 5 business days (per business day) |
|---|---|---|
| **Connection or repair of a standard telephone service** | $14.52 | $48.40 |
| **Connection or repair of 1 enhanced call handling feature to an existing service** | $7.26 | $24.20 |
| **Connection or repair of 2 or more enhanced call handling feature to an existing service** | $14.52 | $48.40 |
| **Not keeping an appointment** | $14.52 (for each missed appointment) | |

### Business customers

| Services delayed | Compensation for first 5 business days (per business day) | Compensation after first 5 business days (per business day) |
|---|---|---|
| **Connection or repair of a standard telephone service** | $24.20 | $48.40 |
| **Connection or repair of 1 enhanced call handling feature to an existing service** | $12.10 | $24.20 |
| **Connection or repair of 2 or more enhanced call handling feature to an existing service** | $24.20 | $48.40 |
| **Not keeping an appointment** | $24.20 (for each missed appointment) | |

## Exemptions and waivers

The CSG timeframes can be suspended where a CSP identifies circumstances beyond its reasonable control that prevent compliance with the CSG. Common examples can include extreme weather, a natural disaster or network damage caused by a third-party. Where a CSP claims such an exemption, it is required to either notify individual customers in writing, or if a large number of customers are affected (commonly referred to as a ‘mass service disruption’), the CSP must publish a specified range of information about the circumstances within certain timeframes, and provide a copy to the ACMA and the Telecommunications Industry Ombudsman.

The CSG Standard also allows CSPs (except for Telstra given its USO obligations) to seek waivers from customers to give up some or all of their rights under the CSG. The Department understands that most providers of voice services now seek CSG waivers from new customers. CSPs can accept both written and oral waivers, providing the customer has been provided with specified information, including information about their rights and the potential implications of signing a waiver.

# Performance benchmarks

The CSG Benchmarks instrument requires qualifying CSPs to exceed CSG timeframes in 90% of cases, on both a national basis and within urban, rural and remote areas.

A CSP is required to meet the benchmarks if it supplies at least 100,000 CSG services in an annual benchmark period. The Department understands that Telstra and Optus are currently the only two qualifying CSPs subject to CSG benchmarks. Qualifying CSPs must meet a 90% performance benchmark for each of the following activities:

- new connections for each of urban, major rural, minor rural and remote areas
- in-place connections in all areas
- fault rectifications for each of urban, rural and remote areas
- appointment-keeping in all areas

Additional thresholds apply to the location-specific benchmarks, as detailed in the table below.

### Appointment keeping timeframes

| Community | Qualification threshold |
|---|---|
| **Urban (10,000+ people)** | 10,000 CSG services |
| **Major rural (2501-9999 people)** | 1,000 CSG services |
| **Minor rural (201 to 2500 people)** | 1,000 CSG services |
| **Rural (201-9999 people)** | 1,000 CSG services |
| **Remote (up to 200 people)** | 500 CSG services |

There have been no recent cases of qualifying providers failing to meet these benchmarks.[16] Although the benchmarks require CSPs to comply with performance standards in 90% of cases, there is limited visibility of 'tail' compliance (i.e. the specific performance of CSPs where maximum timeframes are not met) and the extent to which customers are left waiting for delayed service connections and fault repairs after the timeframes have been missed.

# Record-keeping rules

The CSG RKRs require larger CSPs that are subject to the CSG benchmarks to keep and retain information about compliance with the maximum timeframes set out in the CSG standard. CSPs must also provide annual compliance reports to the ACMA.[17] This is intended to assist the ACMA to monitor and enforce compliance with the CSG benchmarks.

The CSG RKRs also include provisions that allow the ACMA to require a CSP to undertake an external audit of its compliance with the RKRs and provide the associated report to the ACMA.

[16] Telstra was issued with an infringement notice and paid a $510,000 penalty in January 2014 for failing to meet the new connection benchmark in urban areas (88.6%) in 2012-13. In that same year, Telstra was given a formal warning for not meeting the new connection benchmark in remote areas (89%).

[17] A CSP qualifies for the RKRs for a given financial year ('benchmark period') if it supplied 100,000 CSG services on the last day of the previous financial year.

# Appendix B: Service level commitments in NBN Co’s proposed SAU variation

NBN Co’s Special Access Undertaking (SAU) variation sets out a number of proposed benchmark service standards for connection, repair and appointment-keeping for its wholesale services. NBN Co states it will aim to meet each of the service standards in at least 90% of cases. Similarly matters relating to connection, repair and appointments related to supply of voice services have historically been dealt with via retail obligations set out in the CSG.

NBN Co would be required to offer access seekers service levels that are no less favourable than the benchmark standards in the SAU. NBN Co’s proposed service levels in these areas are briefly summarised below, but stakeholders should refer to the proposed SAU variation and associated documents available from the ACCC website.

For the first regulatory cycle (commencing 1 July 2023), NBN Co proposes to include benchmark service standards mostly based on the service levels it offers in its existing Wholesale Broadband Agreement (WBA4).

In contrast to the CSG (where timeframes are set according to different geographic categories), NBN Co’s service levels for connection and faults also differ depending on the access technology used (i.e. whether it is within the fixed line, fixed wireless or satellite footprint).[18]

## Fault rectification timeframes

**Proposed maximum fault rectification timeframes**

| Type of community | Fault rectification timeframe<br>Fixed line and fixed wireless networks | Fault rectification timeframe<br>Satellite network |
|---|---|---|
| **No attendance required** | 1 business day | 1 business day |
| **Urban** | 1 business day | 3 business days |
| **Rural** | 2 business days | 3 business days |
| **Remote** | 3 business days | 4 business days |
| **Isolated^** | N/A – as isolated areas are a subset of the satellite footprint | 10 business days |
| **Limited access^** | N/A – as limited access areas as a subset of the satellite footprint | N/A# |

*^ and # are explained under the Connections timeframe table below.*

[18] NBN Co’s connection timeframes generally differ depending on the type of connection, such as whether it can be made without attending the premise or if it requires additional equipment or routine construction.

## Connection timeframes

NBN Co's proposed SAU variation details both standard and accelerated connection timeframes. Accelerated connections are set at one business day shorter than equivalent connection timeframes under the CSG, but are only available within NBN Co's fixed line footprint.

### Proposed maximum timeframes—standard connections

| Community/connection | Connection timeframe Fixed line network | Connection timeframe Fixed wireless network | Connection timeframe Satellite network |
|---|---|---|---|
| **No attendance required** | 1 business day | 1 business day | 1 business day |
| **Urban (10,000+)** *Premises has network connection but needs additional equipment* | 9 business days | 9 business days | 20 business days |
| **Urban (10,000+)** *Routine work required to connect premises to the network* | 14 business days | 9 business days | 20 business days |
| **Rural (200-9,999 people)** *Premises has network connection but needs additional equipment* | 14 business days | 14 business days | 20 business days |
| **Rural (200-9,999 people)** *Routine work required to connect premises to the network* | 19 business days | 14 business days | 20 business days |
| **Remote (up to 199 people)** *Premises has network connection but needs additional equipment* | 19 business days | 19 business days | 20 business days |
| **Remote (up to 199 people)** *Routine work required to connect premises to the network* | 19 business days | 19 business days | 20 business days |
| **Isolated^** | N/A | N/A | 35 business days |
| **Limited access^** | N/A | N/A | N/A# |

*^ NBN Co defines an Isolated area as any area within its satellite footprint which is considered 'very remote' or 'remote' using the ARIA+ remoteness index. NBN Co defines a limited access area as an area within its satellite footprint that cannot be reasonably accessed via road (i.e. requires access by sea or air).*

*# NBN Co's proposed SAU variation does not include any service levels for limited access areas, however under WBA4 it aims to meet an operational target of 90 calendar days for both connections and fault rectification.*

**Proposed maximum timeframes – accelerated connections†**

| Community | Accelerated connection timeframe |
|---|---|
| **Urban (10,000+ people)** | 4 business days |
| **Major rural (2,501-9,999 people)** | 9 business days |
| **Minor rural (201 to 2,500 people)** | 14 business days |

† *As accelerated connections are only available for connections within the NBN fixed-line footprint, no service level commitments are provided for accelerated connections in remote, isolated or limited access areas.*

## Appointment keeping

NBN Co's proposed maximum timeframes for appointment-keeping are the same as the CSG requirements set out in **Appendix A**.