



# PAUL FLETCHER MP

Federal Member for Bradfield  
Minister for Communications,  
Urban Infrastructure,  
Cities & the Arts

MC21-004914

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House  
Canberra ACT 2600

Dear Chair

Concetta

Thank you for your letter of 17 June 2021 to Senator the Hon Amanda Stoker Assistant Minister to the Attorney-General seeking advice on the *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021* (the Declaration).

As the issues you have raised go to the detail of consultation undertaken, broader policy matters and timing of a future thematic review, Assistant Minister Stoker has asked that I respond in consultation with the Australian Communications and Media Authority (ACMA).

The Declaration aligns the sunseting dates of the following instruments (together, the CSG Instruments) to 1 October 2023 in order to keep the instruments in operation until a thematic review is conducted. These are the:

- (a) Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (the CSG Benchmarks Instrument);
- (b) Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1) (the CSG Amendment Standard);
- (c) Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 (the CSG RKR); and
- (d) Telecommunications (Customer Service Guarantee) Standard 2011 (the CSG Standard).

I am the relevant rule-maker for the purposes of Section 6 of the *Legislation Act 2003* (the Legislation Act) for the CSG Benchmarks Instrument. The ACMA is the relevant rule maker for the CSG Amendment Standard, the CSG RKR, and the CSG Standard.

Section 51A of the Legislation Act provides that an alignment of sunseting dates of two or more instruments can occur where these will be subject to a single review (often referred to as a ‘thematic review’), and that aligning the sunseting dates will facilitate the undertaking of the review or the implementation of a review’s findings. Broadly, I would note that alignment of sunseting dates can offer policy synergies and efficiency benefits both to Government and to stakeholders by allowing related instruments to be considered as a whole.

### *Adequacy of consultation and broader policy matters*

I note the Committee has sought information on whether consultation was undertaken in relation to the Declaration with affected stakeholders other than Telstra, and if not, the reason broader consultation with other affected parties was considered unnecessary given the Declaration provides a significant extension of two years or more to four instruments of significance to the telecommunications industry.

The Explanatory Statement (ES) for the Declaration sets out that focused consultation occurred with Telstra prior to the Declaration being made, and the reason for this was the CSG has the greatest impact on Telstra as the Universal Service Provider.

Where Telstra provides standard telephone services (STS) under the Universal Service Obligation (USO), it must generally meet the connection, repair and appointment keeping timeframes set out in the CSG standard, or pay compensation. In contrast, other providers have no statutory requirement to provide STS, and where they do, they may seek full or partial waivers from the CSG obligations.

The ES also sets out that prior to the making of the Declaration, the Department of Infrastructure, Transport, Regional Development and Communications (the Department) also confirmed with the Australian Communications Consumer Action Network (ACCAN) its support for continuation of the CSG instruments pending further review. ACCAN is Australia's peak body for consumer representation in communications.

The ES also indicates that in making the application for the alignment, that the Chair of ACMA and I both had regard to relevant consultation undertaken over a number of years. The decision to defer the sunseting of the CSG instruments is part of a broader policy reform process that has been underway for some time and is ongoing. This includes several interrelated parts including reform of the USO, implementation of the statutory infrastructure provider (SIP) regime and the reform of legacy safeguards like the CSG.

The Government has been undertaking extensive consultation with industry and the community on these broader policy reforms since at least 2015. In addition to two regional telecommunications reviews in 2015 and 2018 and a review of the USO by the Productivity Commission in 2016-17, the then Department of Communications and the Arts did further work on USO reform in 2018 and the Government initiated the Consumer Safeguards Review in 2018. The report of Part B of the Consumer Safeguards Review, published in December 2019, goes directly to the future of the CSG. In light of all this work the Government is confident it has a solid understanding of the view of industry and the wider community on the CSG and its interrelationship with other consumer safeguards.

The Government has been clear on its policy position as a result of this work. In December 2018, it confirmed it was introducing a new Universal Service Guarantee (USG) for broadband as well as voice, which would be supported by the new SIP regime and incorporate the existing USO. It indicated the USO would remain in place in its existing form as an important consumer safeguard, particularly for rural and remote consumers, until there was a robust and proven alternative.

As noted in the ES for the Declaration, the CSG is an important adjunct to the USO, providing the timeframes and performance benchmarks for connection and repair of voice telephone services. It is also an important consumer protection in its own right.

It is also important to note that a Ministerial Direction to the ACMA, the Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011, which is pivotal to the CSG, is not subject to sunseting, and as such would have required the ACMA to have kept a CSG standard in place beyond its nominal sunset date.

However, the Government has also indicated it is committed to looking for better ways to deliver the USG and to put in place a more forward looking consumer safeguards regime, which was subsequently reflected in the Part B report.

While this wider reform work is taking time, there is progress. The SIP regime commenced from 2020 and the Government is currently considering stakeholder feedback in response to its consultation on draft standards, rules and benchmarks for SIPs. However, until these wider reforms are more advanced, the Government considers legacy measures, including the CSG, must remain in place to maintain consumer protections. Again, this is canvassed in the ES.

### *Timing of a future thematic review*

I note that the Committee has sought information on:

- when the decision was made to conduct a thematic review of the CSG instruments, and the reason this review was not commenced earlier prior to the instruments' original sunset dates;
- when this review will commence; and
- the likely timeframe for this review to be completed.

A review of the individual instruments was not undertaken in advance of the original sunset dates, given the significant consultation over a number of years on the CSG and related policy matters, such as the USO, as described above. The level of consultation undertaken was similar, if not greater, to what would otherwise occur through a thematic review.

Another relevant factor was the impact of COVID-19. Due to both national and localised lockdowns, the telecommunications industry was under significant operational pressures for large parts of 2020. This would have impacted on industry's capacity to engage in a further earlier review. Moreover, due to COVID-19 consumers were, and continue to be, more and more dependent on basic connectivity and the protection offered by the CSG. In light of this, the decision to seek an alignment of sunseting dates was agreed in late 2020.

As the Committee is aware, the Declaration means the four CSG instruments must be collectively reviewed no later than 1 October 2023. As noted above, the thematic review will also need to consider the existing Ministerial CSG Direction, which is not subject to sunseting. The thematic review will allow the views of all stakeholders about the CSG to be fully explored, including providing an opportunity for industry and other stakeholders to raise any specific operational issues about the CSG not previously surfaced.

The ACMA Chair and I are keen for the review to take place as soon as practical. The review will be most productive if implementation of the SIP regime is further advanced, and so the exact timing for a review will need to take this into account. Given the likely range of stakeholder views and the need to consider four related instruments, public consultation as part of the review is anticipated to take around six months to complete. As such, if it cannot be started sooner, the review will need to start no later than late 2022 or early 2023.

Thank you for bringing the Committee's concerns to my attention, and I trust this information is of assistance.

A copy of this letter has been provided to the Assistant Minister to the Attorney-General, Senator the Hon Amanda Stoker and the Chair of the Australian Communications and Media Authority (ACMA), Ms Nerida O'Loughlin PSM, for their information.

Paul Fletcher

16 / 7 / 2021