Faulty services or equipment

Complaints we receive involving faulty services or equipment include claims that:

- the coverage on a mobile, satellite, or wireless service is not consistent with what was promoted or promised at the point of sale
- there is a delay fixing faulty equipment that is bundled with a service, or supplied by a provider to access a telecommunications service
- there is a delay fixing a fault on a service
- a service has a recurring fault
- an enhanced call handling feature or add on service is faulty
- the data transfer speed on an internet service is slower than what was promoted or promised at the point of sale
- a service does not work because of a network outage
- a technician has not turned up for an appointment to repair a fault.

For complaints about faults on priority assistance services see our position statement Priority assistance services.

For complaints about connection delays and disconnection of services see our position statement Connection and disconnection of services.

See also our position statements on Pre-sale information or conduct and Contracts for more information.

In this position statement, a landline service is any service that could be used for voice telephony that is not a mobile service.

Laws, codes, and guidelines

The following laws and guidelines are relevant to faulty services or equipment:

- Competition and Consumer Act 2010, Schedule 2
  The Australian Consumer Law
- Telecommunications (Consumer Protection and Service Standards) Act 1999
- Telecommunications (Customer Service Guarantee) Standard 2011
- The common law of contracts
- NBN Co’s Wholesale Broadband Agreement 2015
- ACCC’s Consumer guarantees: A guide for businesses and legal practitioners 2010
- ACCC’s Consumer guarantees: A guide for consumers 2013
- ACCC Information Paper: HFC and Optical Fibre Broadband Speed Claims and the Competition and Consumer Act

This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.
Our approach

When we deal with complaints involving faulty services or equipment we consider the law, good industry practice, and fairness in all the circumstances.

The law

Faulty goods and services

The Australian Consumer Law sets out a number of consumer guarantees for goods and services. These include:

- If a provider supplies services to a consumer, and the consumer, expressly or by implication, makes known to the provider any particular purpose for which the services are being acquired by the consumer, there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.
- If a provider supplies goods to a consumer there is a guarantee that the goods are of acceptable quality, taking into account relevant circumstances, including the nature and price of the goods, as well as representations made by the provider or manufacturer.
- If a provider supplies goods to a consumer there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the provider represents that they are reasonably fit, as long as the consumer relied on (and it was reasonable to do so) the skill or judgment of the provider.

If a good or service fails to fulfil one of the consumer guarantees the Australian Consumer Law provides remedies to the consumer. The actual remedy depends on which guarantee is breached, the extent of the failure to meet the guarantee and what the consumer chooses to do, if relevant, in response to the failure.

The Australian Consumer Law also considers when the equipment is supplied in conjunction with a contract for services. In some circumstances the contract for the supply of services may be terminated if the law entitles the consumer to return the goods.

Consumer guarantees relating to goods or services cannot be excluded, restricted or modified by contract.

Repairing faults on CSG services and enhanced call handling features

Key obligations

The Telecommunications (Consumer Protection and Service Standards) Act sets out:

- a universal service regime to ensure that all people in Australia, wherever they reside or carry on business, have reasonable access to a standard telephone service, or an equivalent service if the person has a disability. A service supplied under this regime is called a USO service. USO service obligations only apply to the universal service provider. Telstra is the current universal service provider.
- that the ACMA can be directed to make standards about the timeframes for providers to rectify faults or service difficulties for specified kinds of services.
- that damages should be paid to a customer when a provider contravenes a standard.

The ACMA created the Customer Service Guarantee Standard to set out performance standards for repairing faults on CSG services. A CSG service is:

- an eligible telephone service for the purpose of voice telephony between end-users supplied with the same service, whether or not the end-users are connected to the same telecommunications network.
- an equivalent to voice telephony for a particular end-user with a disability, or
- a service that would be used for the purpose of voice telephony (or its equivalent for a particular end-user with a disability) but for the fact that it is used for some other purpose that is not:

- a mobile or satellite service, unless the mobile or satellite service has been offered as a USO service, or

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• a sophisticated business oriented service.

Most residential and small business landline services are CSG services.

The Customer Service Guarantee Standard also applies to enhanced call handling features. An enhanced call handling feature is any of the following when activated by a provider:

• call waiting
• call forwarding
• some call barring
• calling number display
• calling number display blocking.

**Timeframes**

For a CSG service or enhanced call handling feature, if a fault does not require external or internal plant work, or does not require the provider to attend the premises, the fault must be rectified by the end of the first full business day after the customer reports the fault.

For all other faults on CSG services or enhanced call handling features, the fault must be rectified within the **guaranteed maximum rectification period** as follows:

<table>
<thead>
<tr>
<th>Location of the consumer’s service</th>
<th>Maximum rectification period</th>
</tr>
</thead>
<tbody>
<tr>
<td>in an urban centre with a population of 10,000 people or more</td>
<td>the end of the first full business day after the customer reports the fault</td>
</tr>
<tr>
<td>in an urban centre with a population of less than 10,000 people, or a locality or other recognised community of more than 200 people</td>
<td>the end of the second full business day after the customer reports the fault</td>
</tr>
</tbody>
</table>

Arrangements to rectify a fault may provide for rectification in a period that is longer than the guaranteed maximum rectification period if the consumer wants the fault to be rectified on a day after the end of the period. Arrangements to rectify a fault may also provide for rectification in a period that is shorter than the guaranteed maximum rectification period.

**Exemptions**

A provider may be exempt from these performance standards, including when:

• the consumer has agreed to waive their rights under the Customer Service Guarantee Standard
• the number of standard telephone services at the property is six or more
• the provider cannot meet a performance standard because of maintenance or upgrading of a facility or network that is used to supply the service
• the provider has made a reasonable offer to supply an interim or alternative service, or
• the provider cannot meet a performance standard because of:
  a) circumstances beyond its control, or
  b) the need to move staff or equipment to an area affected by circumstances beyond its control.

Examples of circumstances beyond the provider’s control may include:

• damage to a facility not caused by the provider
• a natural disaster causing mass outages

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Faulty services or equipment

- extreme weather conditions causing mass outages.

An **interim service** is a service that gives a consumer a service for telephony (or the equivalent for a person with a disability), and does not cost any more than the CSG service requiring repair. For example, a satellite phone, or free diversion to a mobile phone charged at local call rates. An interim service does not have to provide data transmission, or an enhanced call handling feature, unless this is required to deliver an equivalent service to a person with a disability.

An **alternative service** is a service that gives a consumer access to a telephone service. It does not need to be charged at the same rate as the CSG service requiring repair. An example is call diversion to a mobile phone charged at mobile rates.

**Good industry practice**

**Fault repair of National Broadband Network services**

NBN Co’s Wholesale Broadband Agreement Service Level Schedule describes the service levels that apply to repairing faults on NBN Co products and services. It sets out the performance objectives that NBN Co will aim to achieve for certain service levels, and describes the wholesale and retail obligations for taking corrective action or compensating providers under the Customer Service Guarantee Standard when NBN Co has contributed to a delay in repairing a fault.

**TIO view**

**Faulty equipment**

When equipment becomes faulty the consumer should contact the provider as soon as possible to report the fault. It may sometimes be reasonable for the provider to organise the return of the equipment at its cost, so it can assess the fault.

In some circumstances the **Australian Consumer Law** allows a consumer to reject the faulty equipment and return it to the provider instead of having it repaired. When deciding the consumer’s entitlements under the law, the consumer and provider need to consider the nature of the fault and the extent of any failure to meet a consumer guarantee.

When equipment has been supplied as part of a bundled contract and it is faulty, it may be more appropriate to resolve the fault issues by considering the contract as a whole, for example by releasing a consumer from contract with no exit fees, instead of refunding a portion of outstanding equipment payments. When a provider releases a consumer from contract because of faulty equipment we generally expect the consumer to return the equipment. The provider should pay for any reasonable costs associated with returning the equipment.

**Faults on CSG services and enhanced call handling features**

**Ongoing or recurring faults**

Some faults, for example recurring or ongoing faults, are difficult to assess according to the Customer Service Guarantee Standard. We deal with these types of matters on a case by case basis.

We will consider:

- the frequency and nature of the fault
- when and how often the fault was reported
- what the provider has done to rectify any underlying causes of the fault
- the quality of the service between faults
- how the fault has impacted on the consumer’s ability to use their service over the relevant period of time.

If a recurring fault is the same or similar to a fault that the consumer has already reported to the provider and that the provider has not rectified, we will consider the consumer’s eligibility for compensation under the Customer Service Guarantee Standard from the time of the first fault report until the time the fault is actually rectified.

It is always important that the consumer reports faults to their provider, especially if the fault is recurring or ongoing.

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Interim and alternative services

An offer of an interim or alternative service must be reasonable.

An offer of an interim service may not be reasonable if, for example, the interim service is a mobile service and mobile coverage at the consumer’s premises is inadequate.

If a consumer turns down an offer of an interim or alternative service based on information given by the provider that the faulty service is due to be repaired in the near future, we expect the provider to re-offer an interim or alternative service if there are further delays. In these circumstances, if the provider does not re-offer an interim or alternative service, we will consider the consumer’s eligibility for compensation under the Customer Service Guarantee Standard.

Circumstances beyond a provider’s control

If a provider claims an exemption because of circumstances beyond its control, the provider must be able to show that the fault repair delay is a direct result of the circumstances beyond its control, or having to relocate staff and equipment to deal with the problem. If no causal link exists, the consumer may be eligible for compensation under the Customer Service Guarantee Standard for the period of the delay.

Data speed and coverage

Data speed and coverage can be affected by a number of factors, some of which may be outside the provider’s control to address. When a provider is not able to rectify a data speed or coverage issue within a reasonable time because of circumstances it says are outside its control, the outcome of a complaint will usually depend on:

- the extent to which the consumer is able to use or derive any benefit from the service
- the circumstances that the provider says are outside its control
- the accuracy of the information about speed or coverage given to the consumer at point of sale (for example, was the consumer shown a coverage map or guaranteed coverage in certain areas?), and
- any representations the provider made about the quality of service the consumer would receive.

In considering complaints about coverage, we will also consider matters such as:

- if the consumer specifically told the provider where and how they would be using the service
- where the consumer is trying to use the service
- if the consumer has moved, and
- if the standard of service has changed.

When the quality of a consumer’s service does not meet the quality that was promoted or promised at the point of sale it may be reasonable for a provider to consider either releasing the consumer from contract without exit fees, or reducing the service charges to match the drop in quality.

See our position statement Pre-sale information or conduct for more information about information given at point of sale.

Outages

Where practicable, providers should schedule any planned maintenance that might affect telecommunications services for off peak hours, and mitigate the effects of planned outages by giving reasonable notice to consumers who will be affected. Planned outages should be as short in duration as practicable, and take into account any commitments or representations the provider made at point of sale about the service quality the consumer would receive.

Where practicable, providers should also notify affected consumers if a planned outage extends for longer than expected, and keep them updated as to when the outage is likely to be rectified.

Service charges

Other than reasonable outages, a consumer should not be charged for any period where they cannot use their service at all because of a fault or outage. Examples of a reasonable outage include a short, planned upgrade scheduled for the middle of the night or a short, unplanned outage that is fixed within a day.

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Disputes about the cause of faults – independent technicians and covering costs

If the consumer and provider disagree about the cause of a fault, either party may organise an independent technician to attend the premises. In some cases we may expect the provider to pay for this, including when this is agreed to by the provider or if the cause of the fault is found to be the provider’s responsibility.

Dealing with a dispute

To assess a complaint involving faulty services or equipment we may ask for information from the consumer and provider, including:

- What is the fault?
- How does it affect the way the consumer uses the service or equipment?
- Pre-sale, what information did the provider give the consumer about service quality?
- What have the provider and consumer done since the fault began?
- Was the fault fixed and if so, when?

We may also ask for documents, such as copies of:

- technicians’ fault reports
- invoices for fault assessment if relevant
- evidence of usage both before and after the fault began.

Outcomes

When a faulty service or equipment has not been rectified:

- within legislated timeframes if applicable, or
- by an agreed date, or if there is no agreed date, within a reasonable time in the circumstances

the provider should address the impact of the delay on the consumer. This may involve:

- fixing the fault
- offering an interim service
- waiving service charges
- releasing a consumer from contract without exit fees
- paying compensation.

Remedies under the Australian Consumer Law may also apply for any failure of a consumer guarantee.

For a CSG service or enhanced call handling feature, compensation under the Customer Service Guarantee Standard may be payable to the consumer if a provider did not meet a legislated performance standard.

Effective date: 11 March 2016

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