

TIO Submission to the CommsAlliance consultation on Draft Industry Guideline DR G609:2017 *Priority Assistance for Life Threatening Medical Conditions*

1. Deregistering the Code will make legislated safeguards ineffective

- 1.1 In the absence of law reform, deregistering the *Priority Assistance for Life Threatening Medical Conditions Code* (ACIF C609: 2007) (**Code**) will make the legislated safeguards in Schedule 2, Part 6 of the *Telecommunications Act 1997* ineffective.
- 1.2 These legislated safeguards rely on a Code definition of 'priority assistance' and refer to the Code.

In the absence of law reform, deregistering the *Priority Assistance for Life Threatening Medical Conditions Code* (ACIF C609: 2007) (**Code**) will make the legislated safeguards in Schedule 2, Part 6 of the *Telecommunications Act 1997* ineffective.

These legislated safeguards rely on a Code definition of 'priority assistance' and refer to the Code.

The Code was registered under Part 6 of the *Telecommunications Act 1997* on 20 July 2007¹. This means the Code has been developed through a public consultation process and has been assessed by the Australian Communications and Media Authority (**ACMA**) as providing appropriate community safeguards².

The legislated safeguards in Schedule 2, Part 6 of the *Telecommunications Act 1997* require retail service providers (**RSPs**) to:

- comply with the Code if they offer priority assistance³; and
- if they do not offer priority assistance (as defined in the Code), redirect prospective consumers who enquire about these services to Telstra (or another equivalent priority assistance provider)⁴. This safeguard provides an additional protection to the *Australian Consumer Law*⁵, by seeking to ensure that priority assistance customers are connected with service providers who can actually cater to their specific needs before they enter into a customer contract.

Deregistering the Code will make these legislated safeguards ineffective.

2. It is premature to deregister the Code

- 2.1 Adjusting the safeguards for priority assistance customers is best left to the upcoming telecommunications safeguards review⁶.
- 2.2 The Code should remain in place until such time that there is certainty about regulatory developments that might affect priority assistance consumers .

Deregistering the Code is premature. Continuity of the existing safeguards for consumers who have, or who develop, a life-threatening illness, is important to avoid detriment to this group of consumers who are particularly vulnerable. Adjusting the safeguards for priority assistance consumers is best left

¹ *Telecommunications Act 1997*, section 136; <http://www.acma.gov.au/theACMA/Library/Corporate-library/Forms-and-registers/register-of-codes>

² *Telecommunications Act 1997*, section 117

³ *Telecommunications Act 1997*, Schedule 2, Part 6, clause 18

⁴ *Telecommunications Act 1997*, Schedule 2, Part 6, clauses 19 and 20; *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*, clause 19 and Schedule 4

⁵ *Competition and Consumer Act 2010*, Schedule 2, section 61

⁶ Productivity Commission, Final Inquiry Report *Review of the USO*, Recommendation 9.4

to the upcoming telecommunications safeguards review⁷ where the *Code* can be considered in the context of the broader suite of safeguards that apply to priority assistance consumers.

Consideration of the future of priority assistance safeguards should be assessed, by also reviewing:

- Schedule 2, Part 6 of the *Telecommunications Act 1997* (discussed above at Part 1 of this Submission); and
- Telstra's carrier licence conditions that sought to guarantee at least one provider of priority assistance at a time before the roll-out of the National Broadband Network.

The *Code* should remain in place until such time that there is certainty about regulatory developments that might affect priority assistance consumers.

In addition to the telecommunications safeguards review, other regulatory developments that might affect priority assistance consumers include:

- the Government's response to the Productivity Commission's recommendations following its inquiry into the telecommunications universal service obligation. Key recommendations include: replacing the current obligation with a *universal service policy objective*; and addressing the communications needs of 'special users' such as those with a life-threatening medical condition through special funding programs⁸; and
- the proposed introduction of a Statutory Infrastructure Provider (**SIP**) regime that would introduce a new statutory obligation on a SIP (the designated carrier of a specified area) to connect a consumer on the reasonable request of the consumer's RSP⁹. The proposed SIP regime allows for a range of subordinate legislation, rules and standards that might provide greater detail as to how the regime will operate.

3. Replacing the *Code* with a Guideline is a backwards regulatory step

3.1 Replacing the *Code* with the proposed *Priority Assistance for Life Threatening Medical Conditions Guideline* (DR G609:2017) (**Guideline**) is a backwards regulatory step.

3.2 It would effectively replace enforceable industry standards with 'statements of expectation' and introduce lower standards of safeguard than currently applicable under the *Code*.

Replacing the *Code* with the proposed *Priority Assistance for Life Threatening Medical Conditions Guideline* (DR G609:2017) (**Guideline**) is a backwards regulatory step.

It would effectively replace enforceable industry standards with 'statements of expectation' and introduce lower standards of safeguard than currently applicable under the *Code*.

The safeguards in the *Code* recognise:

- the potential for irreversible serious harm to customers with life-threatening medical conditions, should the consumer be unable to access a properly working telecommunications service and this results in personal injury or death; and
- the 'critical' service and information needs of these consumers, who may be particularly vulnerable.

The *Code* sets out minimum industry-wide standards to safeguard priority assistance consumers. These standards of compliance are enforceable by the ACMA¹⁰.

⁷ As above, note 6

⁸ Productivity Commission, Final Inquiry Report *Review of the USO*, Recommendations 5.1 and 7.6

⁹ Productivity Commission, Final Inquiry Report *Review of the USO*, Recommendation 7.1; *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017*, Schedule 3

¹⁰ *Telecommunications Act 1997*, sections 121 and 122; <http://www.acma.gov.au/theACMA/Library/Corporate-library/Forms-and-registers/register-of-telecommunications-industry-codes-and-standards>

In moving to a *Guideline* the ‘must’ obligations in the *Code* have been redrafted as ‘*should*’ obligations and greater industry discretion introduced.

If the *Guideline* were to proceed, currently enforceable industry standards would become unenforceable ‘statements of expectation’. This would remove an important incentive for industry to comply and may place vulnerable consumers at risk, especially with respect to the mandated timeframes for connection, fault rectification and interim services. This is discussed further at Part 4 of this Submission.

Consideration of whether this particular safeguard should become at industry’s discretion, could benefit from broader discussion as part of the upcoming telecommunications safeguards review (See Part 2 of this Submission).

The proposed *Guideline* will introduce lower standards of safeguard than currently applicable under the *Code* with respect to the following:

<p>Loss of ‘provisional’ status for applicants</p>	<p>Under the proposed <i>Guideline</i>:</p> <ul style="list-style-type: none"> • applicants will no longer be entitled to ‘provisional’ priority assistance status and RSPs will be able to self-determine how long they take to process an application¹¹; • in cases of unexpected urgent medical requests, where the customer is not already a priority assistance customer, the RSP may respond to the request on a <i>case by case</i> basis and consider whether the customer already has access to a reliable mobile phone service¹²; and • a customer will have 28 calendar days within which to make a priority assistance application¹³ (a much shorter timeframe than the <i>at least</i> 42 calendar days under the <i>Code</i> for ‘provisional’ priority assistance status¹⁴).
<p>Reduced urgency in flagging customers</p>	<p>Under the proposed <i>Guideline</i> an RSP should update their database system to flag the customer as a priority assistance customer within five business days of the receipt of the customer application and if they are not the carrier, notify the carrier within the end of the next business day¹⁵.</p> <p>This is a significant change from the <i>Code</i> requirement that an RSP immediately identify the customer on their system as a priority assistance customer on receipt of the customer’s advice (which may be before an application is made) and if the RSP is not the carrier, notifying the carrier by the end of the next business day¹⁶.</p>
<p>Lesser requirement to ensure service reliability</p>	<p>The <i>Code</i> currently requires a carrier to assess whether the service meets the reliability service requirements in the <i>Code</i> within five business days of receiving a request for priority assistance from the customer’s RSP¹⁷.</p> <p>Under the proposed <i>Guideline</i>, this obligation would be replaced with an expectation that the carrier and customer’s RSP take reasonable steps to identify and rectify the conditions contributing to reduced reliability¹⁸.</p>
<p>Connection, fault rectification and interim service timeframes become indicative</p>	<p>The <i>Code</i> sets maximum timeframes of 24 hours (for urban and rural customers) and 48 hours (for customers in remote areas) within which a priority assistance customer (whether ‘provisional’) must be connected, have faults rectified or be provided with an interim service¹⁹.</p> <p>While the 24 and 48 hour timeframes have been retained in the <i>Guideline</i>²⁰, the requirements have been redrafted as ‘should’ obligations. This makes the timeframes indicative, rather than maximum prescribed timeframes.</p>

¹¹ *Priority Assistance for Life Threatening Medical Conditions Guideline*, clause 4.15

¹² *Priority Assistance for Life Threatening Medical Conditions Guideline*, clause 4.12

¹³ As above, note 12

¹⁴ *Priority Assistance for Life Threatening Medical Conditions Code*, clauses 4.1, 4.10.8 and Appendix B

¹⁵ *Priority Assistance for Life Threatening Medical Conditions Guideline*, clause 5.1

¹⁶ *Priority Assistance for Life Threatening Medical Conditions Code*, clause 5.1

¹⁷ *Priority Assistance for Life Threatening Medical Conditions Code*, clauses 4.7.2 – 4.7.3

¹⁸ *Priority Assistance for Life Threatening Medical Conditions Guideline*, clauses 4.7.2 – 4.7.3

¹⁹ *Priority Assistance for Life Threatening Medical Conditions Code*, clauses 4.2 – 4.4 and 4.6

²⁰ *Priority Assistance for Life Threatening Medical Conditions Guideline*, clauses 4.2 – 4.4 and 4.6

4. The impact of the Guideline on TIO complaints handling

- 4.1 The proposed *Guideline* introduces uncertainty as to the standard of compliance required of an RSP and carrier when providing priority assistance.
- 4.2 This may make it more difficult to apply the *Guideline* consistently across different scenarios and to provide certainty to service providers about the TIO's approach to complaints.

Whenever the TIO receives complaints about priority assistance, the TIO treats them as 'urgent'²¹.

The TIO receives approximately 100 to 200 consumer complaints per annum in which the urgency of having a telecommunications service because of serious health issues is raised. These are considered as priority assistance complaints.

Typical priority assistance complaints involve the following issues:

- delayed consideration or rejection of an application to become a priority assistance consumer;
- an RSP failing to identify the consumer (or a member of the household) as having a life threatening medical condition and therefore needing priority assistance;
- delays or failure to connect the service, rectify faults or ensure service reliability.

The proposed *Guideline* introduces uncertainty as to the standard of compliance required of an RSP and carrier when providing priority assistance. This is because the change to 'statements of expectation' (Part 3 to this Submission), transform the requirements from being determinative to only being indicative of industry 'good practice'²².

This may make it more difficult to apply *the Guideline* consistently across different scenarios and to provide certainty to service providers about the TIO's approach to complaints. The TIO notes there is no equivalent *Code* three year record-keeping obligation²³ in the *Guideline*. Notwithstanding this, if RSPs cannot provide copies of the consumer's application (and supporting medical documentation) to the TIO, the TIO may apply its current complaints handling processes and draw conclusions about the conduct of the RSP when making an evidence-based decision about the complaint²⁴.

²¹ *Telecommunications Consumer Protection Code* (C628:2015), clause 2 and Chapter 8

²² TIO Terms of Reference, clause 1.5

²³ *Priority Assistance for Life Threatening Medical Conditions Code*, clause 5.11

²⁴ TIO Terms of Reference, clauses 1.5 and 3; TIO's Procedure on *How we handle complaints* (see: <http://www.tio.com.au/about-us/policies-and-procedures/evidence-and-decision-making>)