



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Telstra's Structural Separation Undertaking

Annual compliance report 2021–22

2023

Acknowledgment of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission
Ngunnawal
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Executive Office

2 March 2023

The Hon. Michelle Rowland MP
Minister for Communications
Parliament House
CANBERRA ACT 2600

Dear Minister

ACCC report on Telstra's compliance with its Structural Separation Undertaking for 2021-22

The Australian Competition and Consumer Commission (ACCC) is required under section 105C of the *Telecommunications Act 1997* (the Act) to monitor and report each financial year on breaches by Telstra of an undertaking in force under section 577A of the Act (Telstra's Structural Separation Undertaking).

I am pleased to enclose the ACCC's report for the 2021-22 financial year. Please note that subsection 105C(3) of the Act requires you to table the report in each House of the Parliament within 15 sitting days of that House after receiving the report.

Yours sincerely

Gina Cass-Gottlieb
Chair

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Executive Summary

The ACCC accepted a Structural Separation Undertaking (the Undertaking) from Telstra in 2012. The Undertaking is an important component of the economic reform of fixed line telecommunications services that is being realised via the progressive migration of fixed voice and broadband services to the National Broadband Network (NBN).

Among other things, the Undertaking gives confidence that Telstra will not favour its own retail businesses. It also provides consumers with reasonable protections from losing access to legacy services, through no fault of their own, until the final disconnection date applicable to their area.

Telstra's Migration Plan provides details of the commitments Telstra has agreed to in its Undertaking. Telstra's compliance with its Migration Plan obligations forms part of the compliance monitoring and reporting processes as set out in the Undertaking.

Section 105C of the *Telecommunications Act 1997* (the Act) provides that each financial year, the ACCC must monitor and report to the Minister for Communications on any breaches by Telstra of the Undertaking. The Minister must table the report in Parliament within 15 sitting days of receiving it.

This annual compliance report covers the period between 1 July 2021 and 30 June 2022. For the year, Telstra reported:

- 4 types of non-compliance with both Part C of the Undertaking and the Migration Plan
- 3 types of non-compliance with the Migration Plan only
- 2 force majeure events and one excluded event due to the ongoing impact of the COVID-19 pandemic, the impacts of flooding in Queensland and New South Wales, and NBN Co's pause on accepting new hybrid fibre coaxial (HFC) connection orders.

Telstra also informed the ACCC of its intention to not comply with the Undertaking on 2 occasions where this would have placed end-users at risk of losing their telecommunications service. These include instances where, for example, Telstra notified us that strict compliance with its obligations to disconnect customers would put end-users in an unacceptable situation through no fault of their own.

Telstra's compliance with its obligations in 2021–22 has been satisfactory overall. Many instances of Telstra's non-compliance with both Part C of the Undertaking and the Migration Plan occurred due to actions taken by Telstra to ultimately protect consumers from disconnection where no alternative service was available. The instances of non-compliance with the Migration Plan only reflect the scale of the migration process, and some were attributable to non-human processes.

In February 2022, the ACCC approved a formal variation to the Migration Plan.¹

¹ See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/telstras-migration-of-fixed-line-services/telstras-migration-plan/variation-approved-2>.

1. Compliance with Part C of the Undertaking

This chapter sets out the matters relating to compliance with Part C of the Undertaking. This is Telstra's obligation to not supply any non-exempt services² to retail customers in Australia using a non-exempt network³ over which Telstra is in a position to exercise control. Generally, this refers to areas within the NBN fixed line footprint.

As Part D of the Undertaking has now ceased, this report, unlike in earlier years, does not report on Telstra's transparency and equivalence metrics.⁴

Telstra reported 4 types of non-compliance with both Part C of the Structural Separation Undertaking and the Migration Plan in its annual report to the ACCC for the 2021–22 period.

In most cases, non-compliance with Part C of the Undertaking relating to delayed disconnection or inadvertent reconnection will also raise non-compliance with similar terms in the Migration Plan.

1.1 Cease Sale

Telstra reported 20 instances in 2021–22 where Telstra connected services that were not permitted under the cease sale requirements.⁵ Telstra attributed these to system and data quality issues, and to a lesser extent human error associated with the use of manual processes. These non-compliant orders represented 0.05% of total orders completed by Telstra.

Telstra advised that it remains focused on promoting compliance with this obligation by regularly monitoring copper and HFC orders provisioned at premises subject to cease sale, making manual and automated process improvements where required, and conducting ongoing staff education and awareness activities.

The ACCC considers that appropriate remediation steps are being applied by Telstra to improve and maintain compliance with this obligation.

1.2 Order Stability Period

Telstra reported that in some instances, orders that were provisioned were not actually permitted under the order stability period.⁶ According to Telstra, in 2021–22 there were 4,063 non-compliant

2 According to the SSU, Non Exempt Services means a fixed-line carriage service other than an Exempt Service which is supplied by Telstra to retail customers in Australia.

3 According to the SSU, Non Exempt Network means a telecommunications network other than an Exempt Network over which Telstra is in a position to exercise control.

4 Following the Minister for Communications, Cyber Safety and the Arts specifying the 'Designated Day' as 1 July 2020, marking the end of the initial NBN rollout, Telstra's equivalence and transparency requirements in Part D of the Undertaking have ceased to operate. New requirements to not supply non-exempt services over a non-exempt network under Part C of the Undertaking came into effect at the same time.

5 Clause 17 of the Migration Plan requires Telstra to stop selling (cease sale) any copper or HFC service once a premise become NBN serviceable within the fixed line footprint.

6 Under Clause 13 of the Migration Plan, Telstra can apply an Order Stability Period in a rollout region immediately prior to and after a disconnection date for a roll out region. This is intended to facilitate migration to the NBN in an orderly and robust manner that also allows Telstra time to clear any pending order or modification before the managed disconnection date.

orders, which represented 2.55% of total orders completed. Telstra highlighted that these volumes represented a decrease from 2020–21, where 5.9% of orders were non-compliant.

Telstra attributed these errors to data quality issues and human error associated with manual processes. Telstra explained that a contributing factor to the decrease in 2021–22 was that in the previous financial year, services remained active during the order stability period for longer as a result of extensions to the managed disconnection arrangements for external events related to COVID-19 and the NBN HFC pause.⁷ According to Telstra, the longer premises remain subject to the order stability period, the more likely that requests will be raised for those active services, resulting in a higher likelihood that non-compliant requests will be inadvertently permitted. In 2021–22, the effects of COVID-19 lessened, and so Telstra says services were deactivated more promptly.

Although the volumes for 2021–22 decreased from the previous financial year, the number of instances of non-compliance in this category is not insubstantial. The ACCC considers that Telstra should continue to work to improve any data quality issues and non-compliance caused by human error.

1.3 Reconnection of permanently disconnected services

Telstra reported that in 2021–22, there were 51 cases where staff used incorrect processes to reconnect services that had previously been disconnected, and these were disconnected once they were identified.

Telstra advised that these breaches arose due to lack of awareness and understanding of the relevant processes by Telstra staff. Telstra reported that subsequent feedback was provided to impacted business areas to provide coaching to staff and improve awareness of correct processes for requesting reconnections.

The ACCC considers that appropriate steps have been taken by Telstra to ensure that these breaches do not occur in the future.

Telstra also advised the ACCC that there were a number of reconnections provisioned to previously disconnected premises, because the relevant premises were not NBN-serviceable. Telstra considers that these reconnections were technically non-compliant with the SSU, but reasonable in the circumstances.

The ACCC does not take issue with Telstra's position.

1.4 Temporary extension to disconnection requirements

As in previous years, Telstra reported that it granted a small percentage of services (approximately 1.5% of the total volume of disconnections performed in 2021–22) a temporary extension from disconnection beyond the required date under the Migration Plan. Telstra says this occurred where customers required a service, but NBN access was not yet available.

⁷ On 10 March 2021, Telstra notified the ACCC of an Excluded Event under the Migration Plan arising from NBN Co's inability to install HFC in premises connection units due to semiconductor shortages. As a consequence, Telstra and NBN Co have agreed to revised disconnection arrangements to ensure that customers are not disadvantaged and to maintain service continuity.

The ACCC supports the approach taken by Telstra in these cases to promote service continuity and a smooth migration process for end-users, particularly where the wellbeing or safety of customers is at risk. We do not have concerns with non-compliance with disconnection obligations in these circumstances for the small percentage of disconnections where these issues arise.

2. Compliance with the Migration Plan

This chapter sets out the matters relating to compliance with Telstra's Migration Plan obligations.

In 2021–22, Telstra reported 3 types of non-compliance with its Migration Plan (that were not also breaches of Part C of the SSU).

2.1 Delay in notifying customers regarding impending disconnection date

Telstra advised the ACCC that in 2021–22, it failed to provide approximately 7,500 customers with 3 months' notice of their impending disconnection date. Instead, these customers were provided only 80 days' notice of their disconnection. This issue affected customers who received notice via postal letter. The customers who received notice electronically were not impacted by the delay.

Telstra advised that the incident occurred through human error in executing the process to send relevant data and trigger the letter process. Telstra has provided additional training to relevant staff and reviewed processes to reduce the risk of a similar delay occurring again.

The ACCC considers that timely notification of disconnection date is important for all customers. While the number of customers affected by this delay is not insignificant, the length of delay was not substantial. The ACCC considers that appropriate steps were taken by Telstra to ensure that this type of breach does not occur in the future.

2.2 Delayed or absent notification of impending disconnection for enterprise customers

Telstra advised the ACCC that in December 2021, Telstra identified that it had failed to give 3 months' notice of an impending disconnection date to a total of 2,500 enterprise customers for disconnections that occurred in June 2021, July 2021, August 2021, and September 2021.

Further, also in December 2021, Telstra identified that 3 months' notice of an impending disconnection date had not been provided to 900 enterprise customers for disconnections that were due to occur in January 2022.

According to Telstra, the cause of these incidents was improperly followed manual processes. To reduce the potential for these and similar incidents occurring in future, Telstra is introducing greater automation into its mandatory communication processes and has increased resourcing and staff training in relation to Telstra's obligations.

Telstra advised the ACCC that despite not receiving their formal 3 months' notice, all impacted enterprise customers were communicated with earlier in their migration windows, prior to the date on which Telstra was required to provide the formal disconnection notice. Telstra advised that they received one complaint from an affected enterprise customer, who informed Telstra that they had not been made aware of their impending disconnection date prior to the disconnection occurring. In response, Telstra reconnected that customer.

The ACCC considers that timely notification of disconnection date is important for all customers. The number of customers affected by this delay is not insignificant, and for the 2,500 enterprise customers affected by not receiving formal notice of disconnection at all, the impact may have been significant.

In light of Telstra's informal notification of the impending disconnection date, and Telstra's resolution of the one complaint received, the ACCC is satisfied with Telstra's response, including the steps that are being taken by Telstra to ensure that this type of breach does not occur in the future. However, the ACCC will seek an update from Telstra in their 2022–23 annual report as to its progress in implementing greater automation for mandatory communication processes.

2.3 Incorrect customer details included within letters sent to enterprise customers

Telstra advised the ACCC that in December 2021, it identified a data issue impacting letters which were sent to 730 enterprise customers on 23 November 2021. These letters did not include the correct full national telephone number for the customers in question. However, Telstra noted that the letters were sent to the correct customers and otherwise included correct details. Corrected letters were sent to affected customers on 2 December 2021, and no customer complaints were made to Telstra as a consequence of this error.

While noting the importance of data accuracy in customer correspondence, the ACCC does not have concerns with this error relating to the incorrect full national telephone number within the specified correspondence.

3. Force Majeure, Excluded Events and disconnection deferrals

3.1 Force Majeure and Excluded events reported in 2021-22

Telstra reported that during 2021–22, disconnection activity was impacted by 3 significant ongoing events. These events gave rise to the need for extensions to the standard managed disconnection timeframes set out in the Migration Plan.

A Force Majeure Event under the Migration Plan has the same meaning as in the Migration Plan Principles⁸, and generally relates to an event beyond the reasonable control of Telstra.

An Excluded Event under the Migration Plan is defined to relevantly mean a matter which falls outside Telstra’s responsibilities under the Migration Plan; and a failure by NBN Co or a third party to do or not to do something on which an obligation of Telstra under the Migration plan depends.

3.1.1 Force Majeure Event due to the COVID-19 pandemic

The ongoing impacts of the COVID-19 pandemic continued to be a Force Majeure Event, which Telstra continued to manage under arrangements previously notified to the ACCC when the pandemic commenced.⁹

Telstra updated its Force Majeure Event notice on 21 September 2021, outlining specific arrangements for premises in NSW and Victoria where further deferrals of managed disconnections were required. As a result, numerous service disconnection milestones for active services at impacted premises in these states were deferred to a single date commencing 23 November 2021.

Telstra has advised that in 2021–22, approximately 19,000 premises were subject to disconnection deferral due to the COVID-19 pandemic.

In August 2022, Telstra advised the ACCC that the conditions giving rise to the Force Majeure Event due to the COVID-19 pandemic no longer affect Telstra’s ability to comply with its Migration Plan obligations going forward.

3.1.2 Excluded Event due to NBN Co’s HFC network migration pause

On 10 March 2021 Telstra notified the ACCC of an Excluded Event under the Migration Plan arising from NBN Co’s decision to pause its HFC network migration due to a worldwide shortage of semiconductors.¹⁰

8 See https://www.infrastructure.gov.au/sites/default/files/Telecommunications-Migration-Plan-Principles-Determination-2015_0.pdf.

9 See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/telstras-migration-of-fixed-line-services/telstras-migration-plan/extended-covid-19-force-majeure-event-and-deferral-of-disconnections>.

10 See <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/excluded-event-due-to-hfc-network-migration-pause>.

As a consequence of the pause, Telstra and NBN Co agreed to revised disconnection arrangements to ensure that customers were not disadvantaged and to maintain service continuity. The ACCC advised Telstra on 18 March 2021 that it agreed that NBN Co's decision to pause its HFC network migration constituted an Excluded Event and noted that Telstra will not contravene the Migration Plan to the extent the Excluded Event caused Telstra to delay or fail to perform its obligations.¹¹

Telstra has advised that in 2021–22, approximately 15,800 premises were impacted by the NBN Co HFC network migration pause.

In August 2022, Telstra advised the ACCC that the conditions giving rise to the Excluded Event due to NBN Co's HFC network migration pause no longer affect Telstra's ability to comply with its Migration Plan obligations going forward.

3.1.3 Force Majeure Event due to the impact of flooding in southern Queensland and Northern New South Wales

On 28 March 2022, Telstra provided notice to the ACCC of a Force Majeure Event relating to the impact of the floods in towns and communities in southern Queensland and northern NSW.¹²

Under the Force Majeure arrangements, the commencement of managed disconnections in the relevant locations was deferred from April 2022 to July 2022.

Telstra has advised that in 2021–22, approximately 4,100 premises were subject to disconnection deferral due to the flooding event.

In August 2022, Telstra advised the ACCC that the conditions giving rise to the Force Majeure Event due to the impact of flooding in southern Queensland and Northern NSW no longer affect Telstra's ability to comply with its Migration Plan obligations going forward.

3.2 Deferrals of disconnections

In some cases, Telstra becomes aware of situations in advance where strict compliance with the Migration Plan would not be in the interests of its customers or end-users who may be affected by external circumstance through no fault of their own. Telstra accordingly notifies the ACCC of its intention to take a different course of action in the circumstances.

3.2.1 Disconnection deferral due to the Christmas and New Year period

On 2 December 2021, Telstra wrote to the ACCC regarding the deferral of disconnection arrangements during the 2021–22 Christmas and New Year holiday period. Disconnection milestones scheduled for December 2021 and January 2022 were deferred until later January 2022 and February 2022.

The ACCC did not take issue with Telstra's plan to minimise disruption of customers' services during the 2021–22 Christmas and New Year period, consistent with the approach taken in previous years to maintain service continuity for customers during this period.

11 See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/telstras-migration-of-fixed-line-services/telstras-migration-plan/excluded-event-due-to-hfc-network-migration-pause>.

12 See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/telstras-migration-of-fixed-line-services/telstras-migration-plan/force-majeure-event-qld-and-nsw-floods>.

3.2.2 Disconnection deferral of extended fire or lift services

On 14 June 2022, Telstra notified the ACCC of its intention to defer the commencement of the disconnection of approximately 8,200 extended fire or lift services across approximately 5,500 premises that had not achieved in-train order or in-train order equivalent status (e.g. notified migration orders to non-NBN solutions).

Telstra's rationale for this deferral included that the deferral allowed further opportunity for the affected customers to take action and organise a replacement service, given the important nature of these services.

The ACCC did not take issue with Telstra's plan to defer the commencement of the relevant extended fire or lift services.

4. Variation to the Migration Plan

The first Migration Plan was approved by the ACCC in 2012. The ACCC has since considered and approved several variations.

On 13 August 2021, Telstra submitted to the ACCC a proposed variation to the Migration Plan. Telstra submitted a replacement variation proposal on 20 December 2021 in response to 3 submissions received by the ACCC on the original proposal. The replacement proposal included an in-train order arrangement for Multi Dwelling Unit Common Areas and fire and lift telephone services scheduled for disconnection in March 2022.

The variation covered amendments:

- to the managed disconnection arrangements for services to premises that are Multi Dwelling Unit Common Areas and fire and lift telephone services
- to the timeframe for managed disconnection of premises that are not currently NBN serviceable
- to allow for public and private payphone services to be differentiated in the Migration Plan to enable Telstra to proceed with a national product exit of private payphone services
- to expand the current authority within Telstra for the reconnection of copper and HFC services in accordance with the standard conditions within the Migration Plan.

Following consideration of public submissions and the Migration Plan Principles, the ACCC approved the variation and published its decision on 23 February 2022. Further details are available on the ACCC's website.¹³

13 See <https://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/telstras-migration-plan/variation-approved-2>.