



Australian Government

Department of Communications and the Arts

# Telecommunications Reform Package Frequently Asked Questions

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# Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019

## General

### What is the rationale behind this legislation?

In 2013-14, a panel of experts chaired by Michael Vertigan AC undertook a review of telecommunications regulatory arrangements which led to the publication of the [NBN Market and Regulation Report](#) and a [cost-benefit analysis](#) of the National Broadband Network (NBN).

The Government responded in December 2014 in its [Telecommunications Regulatory and Structural Reform](#) policy statement.

The Bureau of Communications and Arts Research undertook detailed analysis and public consultation on funding NBN Co's [non-commercial services](#) in regional Australia during 2015 and 2016.

The Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019:

- implements measures from the Government's 2014 Telecommunications Regulatory and Structural Reform paper;
- amends existing carrier separation rules in the Telecommunications Act to create new commercial and competitive opportunities for network operators; and
- introduces statutory infrastructure provider obligations for NBN Co and other carriers to ensure Australians can be connected to high speed networks and receive high speed broadband services, regardless of where they live.

This legislation works with the Telecommunications (Regional Broadband Scheme) Charge Bill 2019 to establish the Regional Broadband Scheme which will provide equitable and transparent long-term funding for NBN Co's loss-making fixed wireless and satellite networks. These networks provide internet access to close to one million premises, predominantly in regional Australia.

### Who will benefit from the Competition and Consumer Bill changes?

The changes to carrier separation rules will promote competition and investment while continuing to provide access for retail providers to bottleneck infrastructure. They do this by:

- removing regulation from networks servicing small businesses;
- allowing network operators to have functionally-separated wholesale and retail businesses, subject to pro-competitive safeguards and Australian Competition and Consumer Commission (ACCC) approval; and
- giving the ACCC the power to exempt very small providers (up to 2,000 services, or 12,000 if additional regulations are made).

Consumers in regional areas will benefit as the changes, along with the Telecommunications (Regional Broadband Scheme) Charge Bill 2019, will give regional communities certainty that they will be able to access high speed broadband and that there is a transparent mechanism in place that secures funding for their broadband infrastructure for the long-term.

Small businesses will benefit because competition will promote investment in networks and services to meet their specific needs.



Consumers will benefit from the statutory infrastructure provider measures because:

- They provide for people to be connected to high speed networks and receive high speed broadband. As a result, people living in houses that are expensive or difficult to service will know that they can't simply be ignored.
- The rules provide access to peak download speeds of at least 25 Megabits per second (Mbps) and peak upload speeds of at least 5 Mbps. A statutory infrastructure provider's broadband services also need to support voice on fixed-line or fixed wireless networks.
- The Minister will be able to make service provider rules dealing with consumer issues like the handballing of disputes between wholesale and retail providers. Consumers will also have clear information on why a request to connect has been refused and by whom.

## Separation rules

### What are the amendments to the separation rules?

The amendments reform the existing separation rules in Part 8 of the *Telecommunications Act 1997*, and associated carrier licence conditions made in 2014.

There are five main changes to the separation rules:

1. Networks servicing small businesses will no longer be subject to the separation rules.
2. Carriers will be able to be functionally separated—that is, have both wholesale and retail businesses—subject to ACCC approval.
3. The ACCC will be able to make class exemptions for very small providers (up to 2,000 services, although this could be increased to 12,000 if additional regulations are made).
4. All services supplied on networks that are wholesale-only or functionally separated will be subject to non-discrimination obligations.
5. The enforcement regime has been improved by providing a wider range of enforcement measures and penalties.

The changes promote competition and investment while continuing to provide access for retail providers to bottleneck infrastructure.

Together, these changes promote greater commercial flexibility for carriers to grasp competitive opportunities while also setting an effective baseline for competition into the future.

### Why are you changing the rules? How do they help competition?

The Vertigan panel found that existing rules have a number of problems. In some areas they were open to gaming and weren't achieving their objectives, but in other areas they were proving inflexible and deterring competition.

Existing fixed-line networks can be extended by up to 1 kilometre without being subject to the wholesale-only rules. This could advantage these older networks over new ones.

Removing networks servicing small business from being subject to the separation rules will promote competition and investment in these networks, providing benefits for small businesses.

Smaller networks are having difficulty in competing with larger ones because they can't be extended very far without the requirement to be wholesale-only.



The ACCC will be able to exempt very small networks, subject to competitive safeguards. This will promote market entry.

Networks will be able to be functionally separated—that is, to have both wholesale and retail businesses. However, this will also be subject to competitive safeguards and ACCC approval.

Functionally separated networks will also be subject to broad non-discrimination requirements, which will limit their controllers' ability to favour their own retail operations and restrict competition.

### How do the functional separation arrangements work?

A carrier, alone or with other persons, can give the ACCC a functional separation undertaking. If the ACCC accepts the undertaking, then the carrier isn't required to be wholesale-only but can have both a wholesale business and a retail business.

It is optional for a carrier to submit an undertaking. When a carrier gives an undertaking, all of that carrier's local access lines must be part of the undertaking, regardless of when they were built.

The ACCC will consider whether to accept an undertaking based on whether the undertaking promotes the long-term interests of end-users.

The functional separation undertaking has to contain a number of measures. These include:

- maintaining separate wholesale and retail businesses;
- separate workers;
- separate business, operational support and communications systems;
- separate accounts;
- transparency requirements including publishing standard offers for services;
- non-discrimination requirements, involving supplying the retail unit on the same terms as other wholesale customers;
- the retail unit using the same customer interface as other wholesale customers; and
- protecting confidential information relating to wholesale customers.

The ACCC must consult on the undertaking. After an undertaking has been accepted, the carrier or carriers who gave the undertaking must provide the ACCC with regular compliance reports.

### What is the process for submitting an undertaking?

An undertaking can be submitted at any time but must be in a form approved by the ACCC and include a fee (if any) specified by the ACCC.

The undertaking must include such information as would reasonably assist the ACCC in deciding whether to accept or reject the undertaking.

### What are the non-discrimination rules?

The Bill sets out three non-discrimination requirements:



1. not to discriminate between wholesale customers in relation to the supply of services, or in favour of a carrier's own retail operations;
2. not to discriminate in carrying out related activities, such as developing new services or giving information about network extensions or enhancements;
3. publishing standard offers for all eligible services and reporting to the ACCC if there are variations from the standard offer in an access agreement.

The rules are subject to enforcement by the ACCC or by a carrier or carriage service provider.

Together, the rules ensure that a carrier which has made a functional separation undertaking cannot discriminate in favour of its own retail operations.

## Statutory infrastructure providers

### What will the amendments do? Why are they needed?

Schedule 3 establishes a new statutory infrastructure provider Statutory Infrastructure Provider regime.

Currently there is no statutory obligation on NBN Co to connect premises to its networks. Similarly, there is no general statutory obligation on non-NBN high speed networks to connect premises (in areas where they are available).

A legislative framework provides certainty for all stakeholders: NBN Co, retail service providers, and consumers.

NBN Co will be the default Statutory Infrastructure Provider as it rolls out across a given area. After the NBN is completed, NBN Co will be default Statutory Infrastructure Provider for the whole of Australia. This is appropriate given that NBN Co will ultimately replace Telstra as the principal fixed-line network provider in Australia.

The Statutory Infrastructure Provider regime creates two obligations:

1. An obligation to connect premises via fixed-line unless this is not reasonable, in which case Statutory Infrastructure Providers must connect premises via fixed-wireless or satellite.
2. An obligation to supply wholesale services with a peak download speed of at least 25 Mbps and a peak upload speed of at least 5 Mbps.

Other carriers can also be Statutory Infrastructure Providers where appropriate, for example where they have contracts to service premises in a new real estate development.

Statutory Infrastructure Providers' standard services will also have to support voice on fixed-line and fixed wireless networks.

The Australian Communications and Media Authority (ACMA) will be the regulator responsible for enforcing the regime and will maintain a register of Statutory Infrastructure Provider service areas and Statutory Infrastructure Providers.

### Will customers be connected to fixed-line networks?

A Statutory Infrastructure Provider should connect premises to a fixed-line network as the default, but where this is not reasonable then the provider should connect premises to a fixed wireless network or a satellite network.



Statutory Infrastructure Providers would be able to determine what type of network is best to service an area. If a provider determines an area is best serviced by fixed wireless and rolls out a fixed wireless network, then it can automatically connect premises to fixed wireless.

### What are the services that consumers will receive?

The Statutory Infrastructure Provider must supply services that enable carriage service providers to supply retail broadband services with a peak download speed of at least 25 Mbps and a peak upload speed of at least 5 Mbps.

These are the specified speeds across all technologies. Where networks can supply faster speeds, it is expected that Statutory Infrastructure Providers would do so.

The Bill also sets a target for NBN Co that 90 per cent of premises in its fixed-line footprint can receive peak download speeds of at least 50 Mbps and peak upload speeds of at least 10 Mbps. This target is already set out in NBN Co's Statement of Expectations.

On fixed-line and fixed wireless networks, the broadband services a Statutory Infrastructure Provider supplies must enable a carriage service provider to supply voice services to consumers.

The Minister will also have powers to make standards, rules and benchmarks that Statutory Infrastructure Providers must comply with. These powers can be used to set more detailed service standards, such as timeframes for connecting services and rectifying faults.



# Telecommunications (Regional Broadband Scheme) Charge Bill 2019

## Regional Broadband Scheme

### What is the Regional Broadband Scheme?

NBN Co Limited's (NBN Co's) fixed wireless and satellite networks provide essential broadband services to regional Australia.

However, these networks are loss-making and are estimated to incur net losses of \$9.8 billion over 30 years.

Over time, these net losses will be covered by an opaque internal cross-subsidy from NBN Co's profitable fixed-line networks (predominantly in built up areas). The Regional Broadband Scheme makes this cross-subsidy transparent and requires other competing fixed-line networks to contribute to the cost of funding broadband for regional Australia.

The Regional Broadband Scheme is a long-term solution that ensures essential broadband services will continue to be provided to regional Australia well into the future, regardless of who owns the regional networks and who is the dominant fixed-line provider in profitable metropolitan areas.

Under the Regional Broadband Scheme, all high speed fixed-line carriers, including NBN Co, will be required to pay \$7.10 per month for each premises on their network with an active high speed superfast broadband service provided over a local access line. The charge will begin accruing from 1 July 2020 at the earliest.

The charges will be collected by the ACMA annually, and will then be paid to NBN Co to fund the costs of building and operating its fixed wireless and satellite networks.

Since the telecommunications industry is so dynamic, the legislation requires the ACCC to regularly review the charge amount (at least once every 5 years) and the Minister for Communications to commence a policy review in the first four years of the Regional Broadband Scheme's operation.

This legislation works with the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 to ensure Australians can be connected to high speed networks and receive high speed broadband services, regardless of where they live.

### Is this a new fee customers will pay or is the fee already built into NBN Co's business model?

The Regional Broadband Scheme does not impose a new cost on users of the NBN — the cost is already built into NBN Co's business model.

By the time the NBN is completed in 2020, 95 per cent of the Regional Broadband Scheme will continue to be paid for by NBN, whereas today it is 100 per cent. The remaining 5 per cent will be paid for by competing NBN-comparable wholesale networks.

For the remaining five per cent—many of these networks service medium and large businesses which will for the first time contribute to funding regional broadband. This establishes an equitable funding mechanism for broadband services in regional and remote Australia.

NBN-comparable network owners will pay the charge based on the size of their networks.



It will be up to non-NBN networks to decide whether or not the charge will be passed on to their customers, either in part, in full, or at all.

### **Is the Regional Broadband Scheme consistent with the Productivity Commission's main recommendations in its report on the Universal Service Obligation?**

The Productivity Commission found that NBN infrastructure, complemented by mobile coverage, is expected to mostly address the objective of universal service availability for broadband and voice.

Therefore, it is essential that that NBN Co's infrastructure, especially in areas where it operates at a loss, has a transparent and long-term funding source, such as the Regional Broadband Scheme.

### **Who will pay the charge?**

Carriers will incur a charge for each premises on their fixed-line local access networks where a carriage service provider (CSP) provides at least one high speed superfast broadband service.

The line must be technically capable of download transmission speeds of at least 25 Mbps.

Carriers will only incur a single charge for each premises, even if multiple services are being provided to the premises by multiple CSPs over the carrier's local access line/s.

If multiple carriers have local access line/s to a single premises, over which a CSP is providing a service, then each carrier will incur a charge.

The charge will not apply to voice-only or broadcast television-only services.

It is expected that all of the larger carriers will contribute to the charge, including NBN Co, Telstra, Optus, Vocus and TPG. Additionally, a number of smaller carriers may also contribute to the charge.

The Regional Broadband Scheme includes some exemptions and a limited concession period to support market competition and help small carriers transition to paying the charge.

### **Which networks are technically capable of providing broadband speeds of at least 25 Mbps?**

Networks using fibre-to-the-premises (FTTP), fibre-to-the-node (FTTN), fibre-to-the-basement (FTTB), fibre-to-the-curb (FTTC), hybrid fibre-coaxial (HFC) and equivalent technologies are expected to be technically capable of providing broadband speeds of at least 25 Mbps.

### **Where does the \$7.10 figure come from? What analysis was performed to reach this figure?**

The initial charge amount of \$7.10 per month per premises is based on modelling undertaken by the Bureau of Communications and Arts Research (BCAR) as part of its NBN non-commercial services funding options — Final Report, released in March 2016.

The BCAR consulted with NBN Co to estimate the net cost of its fixed wireless and satellite networks over a 30 year period. The figure they came to was a loss with a net present value of \$9.8 billion.

The BCAR then modelled the number of high speed fixed-line services in the market over that period. It then used that information to calculate the amount required per premises to fund NBN Co's regional networks.



## Will the Regional Broadband Scheme impact the viability of small carriers?

The Government has consulted with small carriers and has amended the Regional Broadband Scheme to reduce the impact on them, including:

- Creating a concession period so that carriers will have the first 25,000 residential and small business premises on their network, or the first 55,000 'recently connected greenfield premises' for carriers operating greenfield networks (as defined by the legislation), exempt from paying the charge for the first five years. This will give small carriers time to transition to the Regional Broadband Scheme.
- Implementing a charge cap so the monthly charge amount per premises cannot be raised above \$7.10, indexed to CPI. This will provide more regulatory and investment certainty and support market competition.
- Creating a statutory requirement for a policy review within the first four years of the Regional Broadband Scheme. This provides assurance to industry that the Government will assess the scope of the Regional Broadband Scheme as technology and market conditions change.

In its May 2017 Final Decision on the Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination, the ACCC decided to allow TPG, OptiComm and other small carriers to pass on the Regional Broadband Scheme charge above their regulated prices, if required. This will also reduce the pressure on their business cases.

## What is the charge concession period?

To help small carriers adjust to paying the charge, the Regional Broadband Scheme includes a concession period that exempts the first 25,000 residential and small business premises with an active high speed fixed-line broadband service on each carrier's network, or the first 55,000 'recently connected greenfield premises' for carriers operating greenfield networks (as defined by the legislation), for the first five years.

The threshold of 25,000 has been selected because it preserves the tax base and ensures that small carriers are not initially caught by the charge but will progressively contribute as their businesses grow.

The Australian Labor Party moved amendments on the previous version of the Bills in the last term of Parliament, including an additional monthly concession for 55,000 'recently connected greenfield premises' for the first five years of the Regional Broadband Scheme. The Government agreed to this amendment as announced in the 2019-20 Budget, and this amendment has been incorporated into the Bills.

These concessions support wholesale market competition by providing relief to smaller carriers and operators of greenfield networks (as defined by the legislation) that may be disproportionately affected by the charge. It also provides time for small carriers to transition to paying the charge if they grow their businesses above the concession thresholds of 25,000 residential and small business premises or 55,000 'recently connected greenfield premises' over the first five years.



## Are there any exemptions?

Yes, exemptions will apply to:

- network owners that operate less than 2,000 services; and
- networks that have agreements in place to transition their networks and/or customers to NBN Co.

The charge will not apply to premises with voice-only or broadcast television-only services.

## Why aren't mobile broadband services included in the charge base?

Funding for the Regional Broadband Scheme will come from high speed fixed-line broadband providers.

High speed fixed-line services are generally comparable to one another. That is, for most consumers one high speed fixed-line service is much like any other.

The same is not true for mobile broadband services. Mobile broadband services are not comparable to fixed-line services mainly due to the higher cost for data use and as a result are generally not substitutable.

The Government has committed to reviewing the Regional Broadband Scheme on a regular basis, and the legislation includes a statutory requirement to conduct a review within the first four years of the Regional Broadband Scheme's operation. At that stage, the Government may consider whether the charge base needs to be expanded in light of technological advancements in the market.

## What is the rationale behind moving from a long-term internal cross-subsidy model for funding regional networks to the Regional Broadband Scheme model?

NBN Co's business model relies on revenue from metropolitan areas to cross-subsidise its fixed wireless and satellite networks. This means that if NBN Co's metropolitan market share is impacted by increasing competition, it may not be able to sufficiently fund its fixed wireless and satellite networks.

The Government supports infrastructure competition, with the view that more competition results in better outcomes for consumers. But if the Government is supporting competition in profitable built up areas, it is also important to secure long-term funding for loss-making regional broadband services, which do not enjoy the same level of competition as built up areas such as cities.

The Regional Broadband Scheme does this. It implements the policy announced in the Government's 2014 Telecommunications Regulatory and Structural Reform Paper to establish an industry levy to equitably fund NBN Co's fixed wireless and satellite networks. The Regional Broadband Scheme safeguards funding for regional broadband by equitably spreading the cost across all operators of high speed fixed-line broadband networks.

