



Australian Government

Department of Communications and the Arts

# Consumer Safeguards Review – Part B (reliability of services) – Final report

December 2019



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## Background

The Australian Government is conducting a review to prepare the telecommunications consumer safeguards framework for a post-2020 environment — one in which the National Broadband Network (NBN) rollout has been completed and is available to all Australian homes and businesses.

The consumer safeguards currently in place were mainly designed around voice services, at a time when telecommunications services were predominantly delivered over the copper telephone network. The ongoing relevance and usefulness of these protections is decreasing as Australia's telecommunications environment and consumer use of telecommunications services continues to change.

On 17 April 2018, the former Minister for Communications and the Arts, Senator the Hon Mitch Fifield, announced the Terms of Reference for the Consumer Safeguards Review (the review). The objective of the review is to determine the appropriate mix of consumer safeguards that are needed now and into the future, and how these safeguards would be best implemented and governed, in the areas of:

- A. complaints handling and consumer redress
- B. reliability of telecommunications services, and
- C. choice and fairness in the retail relationship between the customer and their provider.

## Introduction

On 15 November 2018, the former Minister issued a discussion paper for Part B of the review (reliability of services). Submissions closed on 18 January 2019. The discussion paper and 25 public submissions received are available at [www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services](http://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services)

Following receipt and preliminary consideration of submissions, the department had follow up discussions with and obtained additional data from industry on the different roles, responsibilities and key interactions within the supply chain. This report summarises the key issues raised through the initial and subsequent consultation processes and sets out a number of recommendations intended to support future reliability of communications services, including for:

- wholesale level regulation of connections, repairs, and appointment keeping timeframes to underpin whole of industry performance on connecting and repairing individual services
- retail level regulation requiring clear service and delivery commitments from retailers together with transparency of performance
- further consideration of well targeted and sustainable arrangements to maximise connectivity for medically vulnerable consumers
- establishing an evidence base around issues of network reliability/repeated faults, and
- addressing existing reliability safeguards of limited and declining relevance.



## Overview of stakeholder views

Stakeholder submissions to the discussion paper agreed with the majority of principles put forward, including that telecommunications are an essential service, and the whole of industry needs to focus on getting consumers connected, and staying connected. There was also a general consensus that the majority of existing telecommunications-specific consumer reliability safeguards no longer meet community expectations.

There were polarised views on the principle that consumer safeguards should be delivered via direct regulation. Submissions from individual consumers and consumer advocacy/representative groups supported mandatory consumer protection rules for reliability of voice and broadband services, applied at both the wholesale and retail level, with specific timeframes and automatic compensation arrangements. A number of consumer groups submitted that compensation was required to provide incentives for industry to perform, and to reflect losses that consumers may face if there are delays with connections or repairs.

Industry submissions also noted reliability safeguards needed to be carefully considered and designed, and suggested opportunities should be provided for industry to compete and differentiate. Accordingly, industry submissions largely suggested that direct intervention in the market should be minimised and directed to clear cases of market failure. Within this, most industry submissions suggested direct regulatory intervention was warranted and necessary at the wholesale level, with NBN Co offering a counter view that commercial negotiation of wholesale terms was the preferable approach.

While most consumers have a good experience migrating to the NBN, a number of submissions from consumer representative groups highlighted specific issues associated with NBN migration (such as missed connection appointments or delays in getting connected), and broader concerns with customer service (such as responsiveness and timeliness of industry to identify and resolve issues). Industry submissions recognised the challenges of NBN migration, while also stating that some existing concerns with industry performance should reduce once rollout and migration activities finish.

The majority of submissions supported a focus on reliability arrangements for fixed connections to premises (such as fixed line, fixed wireless and fixed satellite), but NBN Co and some consumer groups proposed that a technology neutral approach should be adopted (so that any reliability arrangements would apply equally to both fixed and mobile services).



## Observations on the supply chain

Over the last 18 months, industry, government and regulators have collectively and individually taken steps to improve customer experience in the telecommunications sector. However, consumer and consumer group submissions identify an ongoing level of frustration with connections, fault repairs and missed appointments. ACMA's recent publication of complaints handling data<sup>1</sup> from July-December 2018 indicates that faults and connection issues associated with NBN broadband services represented approximately a third of complaints during that period (noting that a complaint may reflect issues at the retail or wholesale level).

Some of these existing issues are due, in part, to the challenges of a once in a generation migration to the NBN. A number of industry submissions have suggested performance with connections, repairs and appointments should improve once NBN rollout and migration activities are completed, while also cautioning that telecommunications networks cannot be entirely fault free and/or without unique logistical and geographical challenges.

A number of industry submissions emphasised the complexity of the supply chain, noting reliability issues can involve multiple parties and issues that can sometimes be complex and time consuming to diagnose and resolve. As well as wholesalers that own and operate infrastructure, and the retailers that sell voice and broadband services to consumers, there are also intermediary providers and aggregators within the supply chain that 'on sell' wholesale services and/or capacity, generally to smaller retailers. The department notes intermediary providers operate in a competitive market and should have strong commercial incentives to effectively manage the flow of information between wholesalers and retailers.

There were mixed views presented on the extent to which different parts of industry had responsibilities for reliability – with NBN Co stating it had a limited and defined role in the supply chain, while many retailers put forward a view that they were heavily or completely reliant on NBN Co or other wholesalers to ensure reliable services. No submissions raised any significant concerns around the role of intermediaries in relation to reliability issues.

Different roles and responsibilities and key interactions within the industry are set out below in relation to connections, repairs and appointment keeping. This is not intended to be an exhaustive or definitive outline of how individual issues are managed or resolved in every instance, but to establish some general principles and context for the detailed discussion of issues and recommendations that follow.

### Connections

Depending on the particular circumstances, the process of connecting a premises will vary. In some instances, a new resident or tenant may be able to order a service directly from a retail provider without the need for a technician visit, such as when the property has been previously connected. In other circumstances, a technician may be required to complete a connection, including installing hardware inside the property. Some premises may require more significant work to complete a connection, including trenching and civil works.

The department considers retailers are heavily reliant on the upstream actions of wholesalers, particularly where infrastructure to a premises needs to be installed to provide a fixed connection.

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<sup>1</sup> [www.acma.gov.au/theACMA/telecommunications-complaints-handling](http://www.acma.gov.au/theACMA/telecommunications-complaints-handling)



While timeframes during the connection process may vary depending on whether civil works or installation is required, there remains a clear need for retailers (and consumers) to have a level of certainty around the timely connection of a service. Additionally, connections are not always solely a wholesale issue, with retailers potentially undertaking related activities (such as porting phone numbers) and providing modems and other equipment to consumers.

Once a physical network connection is successfully made by NBN Co or other wholesaler, retail service providers then have strong market incentives to get a working service in place. The department recognises that certainty is required by retailers in order to fully support competition and confidence at the retail level and provide greater transparency for consumers.

## Faults and repairs

The department notes faults can occur at multiple points in the supply chain, including at the wholesale level, retail level, or due to in-home issues (such as wiring, modem placement or modem configuration). Distinguishing between a fault and minor or anticipated service issue (modem re-syncs, planned outages) may not historically have been consistently well communicated to consumers.

Equally, there are now examples emerging of providers implementing innovative approaches and harnessing technology to share real time information with consumers, allowing consumers better awareness of issues including planned maintenance that might impact their service.

Data provided to the department during the review indicates that around half the faults experienced by consumers relate to an underlying network problem, while the remainder of faults are likely due to retail level issues, or in-home issues. While the proportion of faults that occur in different parts of the industry may shift over time, including with industry efforts to improve the identification and management of faults and any associated repairs, both retailers and wholesalers will need to co-operate in identifying and responding to faults.

From a consumer perspective, whatever the underlying root cause or source of a fault, the retailer remains central to providing adequate support and guidance. To support retailer efforts to effectively respond to faults and undertake remediation activities, the department recognises the importance of wholesalers in making available appropriate diagnostic tools and data/information available to assist in identifying and isolating any network related issues. In turn, retailers need to have appropriate incentives to effectively manage troubleshooting and consumer engagement.

## Appointments

The department considers wholesalers play a significant role in the appointment keeping process. Where an appointment is required, retailers are reliant on wholesalers to effectively schedule and manage availability of suitably qualified field staff to undertake connections or repairs.

Industry data provided during the review indicates that, in managing connections or repairs, it is rare for retailers to make appointments directly with consumers without in some way involving the attendance of a technician responsible for the wholesale side of the network – although some retailers do offer appointments (for a fee) for their own technicians to assist consumers to install or configure a range of equipment. These latter types of discretionary appointments are outside the scope of this review given these are ‘advanced service’ offerings.



Retailers must generally liaise with wholesalers to book and manage appointments on behalf of consumers. Submissions from consumer groups raised issues around missed appointments, as well as examples of technicians attending appointments on time, but not necessarily having the skills and/or equipment to complete the required works. Concerns were also raised about the inconvenience of lengthy appointment windows, poor communication and/or timely information available to consumers on whether the technician will be attending their appointment as scheduled. Industry submissions also identified challenges in managing and validating cases where consumers were not present for scheduled appointments. Some retailers also raised the desirability of having greater transparency and real time information sharing, including the potential to track the location of technicians.

Appointments may be involved as part of the broader process of either connecting a service or repairing a service – however not all connection or repairs will necessarily require an appointment. Overall, submissions suggested that appointments are a current pain point and create a degree of inconvenience to consumers – particularly if appointments are repeatedly missed or cancelled/rescheduled with insufficient notice. As the NBN rollout and migration activities wind down, the overall number of new connection appointments will reduce, and appointments will increasingly focus on repairs and fault resolution.



## Discussion and recommendations

### Wholesale level performance and accountability

Industry submissions were broadly aligned on a preference for competition and market-led approaches to maximise consumer outcomes. However, retailers argued that given the current market structure they are highly reliant on appropriate wholesale inputs to deliver a good consumer experience, and raised concerns that NBN Co, as a monopoly wholesaler, lacked sufficient incentives to negotiate improved service levels, and/or to consistently achieve those service levels. As a result, the majority of consumer and industry submissions supported the introduction of enforceable rules for fixed line wholesalers.

In contrast, NBN Co noted in its submission that it considered it had made significant and continuous performance improvements since mid-2017 against a number of key areas of concern. While NBN Co has introduced various strategies and initiatives aimed at improving the consumer experience, many of its negotiated wholesale service levels remain 'best efforts'.

NBN Co emphasised in its submission that it faced competitive pressure and existing incentives to perform at a high level, noting potential competition from alternative fixed broadband providers in high value multi-dwelling units (MDUs), and from mobile data services (while acknowledging that mobile services are currently a complementary product for most fixed line users).

NBN Co also pointed to its voluntary monthly publication of wholesale network metrics as another incentive to improve ongoing performance. The majority of wholesale metrics published by NBN Co report on performance, such as the percentage of faults repaired within commercially negotiated timeframes. However, the methodology used by NBN Co for calculating and reporting some of these metrics has changed over time, reducing the time series value of this data. While achieving or maintaining a high percentage against individual metrics provides some assurance around NBN Co's wholesale performance, it does not for example, allow for consideration of the distribution of wholesale connection or repair times being achieved across the supply chain.

### Wholesale timeframes

In the discussion paper, the department sought views on future timeframes for connections and fault repairs. While it is understandable that NBN Co has sought to balance the achievement of commercially agreed wholesale timeframes against achieving broader construction and migration targets, there remain significant and legitimate expectations from both retailers and consumers that connection and repair timeframes, and appointment keeping processes need to improve beyond what is currently offered, particularly once rollout and migration activities are completed.

Submissions from NBN Co and some retailers cautioned that if timeframes were too short this could significantly impact on industry processes and resources and increase costs, which may ultimately be passed on to consumers. NBN Co raised particular concerns that the proposed timeframes in the discussion paper were in some cases significantly shorter than its existing Wholesale Broadband Agreement (WBA3) service standards, which had drawn on historical industry practice.

While there are some precedents for repair and connection timeframes in the sector, these largely represent Telstra's approach to managing a national, predominantly copper network, whereas NBN services are delivered across Australia using seven different access technologies.



NBN Co also proposed longer timeframes should be allowed for connection and repair of both NBN fixed wireless and satellite services given their unique geographical challenges. Setting timeframes linked to specific technologies carries risks that rules become outdated, and need to be revisited in future as technologies change or evolve. The department also notes a number of areas served with NBN fixed wireless services are located on the outskirts of major cities or regional centres. While the department accepts reasonable provision should be retained to allow for travel or difficult to access locations, this should preferably be categorised on the basis of population or remoteness, rather than technology, and be reviewed periodically (subject to improvements in remote diagnosis and repairs). The department notes that concerns raised in submissions around timeframes were only articulated at a high level, and that more granular data or analysis will be needed from industry to help inform the detail of final decisions on this issue.

Recommendations 1 to 4 below relate to wholesale timeframes.

### Missed appointments

The discussion paper proposed that missed appointments should potentially be subject to compensation payments. This was generally supported by consumer groups, but a number of retailer submissions highlighted concerns that appointment keeping performance was heavily dependent on wholesalers. Equally, requiring pass through of individual payments to consumers for missed appointments would introduce additional complexity and administrative costs (as wholesalers do not have a direct billing relationship with consumers). As noted above, a range of submissions identified issues not just with missed appointments, but opportunities to improve the overall appointment keeping process more generally.

The review has found where a connection or a fault involves a network issue that requires attendance by a technician, wholesalers play a significant role. Like other utilities, such as water, gas and electricity, to ensure network integrity wholesalers typically only allow their own staff or contractors to undertake network connections or repairs. This leaves consumers and retailers highly dependent on wholesaler performance in making, keeping and rescheduling appointments. While overall connection or repair timeframes should provide general incentives to meet appointments, missed appointments create a level of direct inconvenience for the consumer, and impose additional costs for retailers in having to negotiate a new appointment with the wholesaler and the consumer.

Recommendation 1 below therefore includes setting mandatory wholesale appointment keeping timeframes and associated benchmarks.

### Exemptions

For existing voice based safeguards, industry can presently claim exemptions from meeting network reliability and/or individual service connection and repair timeframes where networks are impacted by natural disasters or extreme weather events. In some cases, these exemptions can be extended, potentially for lengthy periods. The discussion paper therefore proposed network providers be required to develop a network rectification plan in order to establish greater clarity and transparency around industry efforts to restore services in these situations. There were questions raised in industry submissions as to whether the preparation of such plans would impose additional costs and potentially distract from efforts to restore services. Consumer groups, regulators and the Telecommunications Industry Ombudsman (TIO) suggested a mechanism to claim exemptions should be maintained, but there should be more time-limited restrictions.

Recommendation 4 suggests establishing clearly defined criteria for exemptions.



## Future approach

On balance, the department considers NBN Co and other similar fixed line infrastructure providers of last resort may not face consistent competition from other networks, and regulated wholesale timeframes for connections, fault repairs and appointment keeping matters are therefore appropriate. Enforceable wholesale reliability rules should also encourage improved outcomes for consumers at the retail level, providing more certainty to retailers to develop and offer a range of retail service offerings (see discussion from page 12 onwards).

The department notes that there are a number of different mechanisms which could potentially be used to create wholesale timeframes and benchmarks including the Ministerial rule-making powers proposed under statutory infrastructure provider (SIP) arrangements, which were re-introduced to the Parliament on 28 November 2019. Subject to the passage of this legislation through the Parliament, the Minister could make wholesale rules and standards applying to NBN Co and other similar infrastructure providers from 1 July 2020 onwards.

At the wholesale level, the department recognises that several related processes are ongoing. NBN Co is in the early stages of negotiations for a new wholesale broadband agreement (WBA4). Although NBN Co considers the WBA4 negotiation process to be an important opportunity to negotiate improved arrangements, a key issue will be whether this process results in material changes to service levels and performance incentives.

The ACCC is also considering submissions against its draft decision following the second stage of its wholesale service standards inquiry. By way of distinction, this review is considering longer term arrangements for an environment where the NBN (and other similar wholesale fixed line networks) are available to all premises, while the ACCC has indicated it is seeking to encourage a better consumer experience and improved industry coordination for the remainder of the NBN rollout and migration. Broadly speaking, the recommendations in this report are intended to formalise wholesale connection, repair, and appointment keeping timeframes and establish overall penalties where aggregate benchmarks are not achieved, while the ACCC has proposed a per service wholesale daily rebate scheme when existing timeframes are not met.

As NBN migration activities are completed in coming years, the main issue for industry and consumers will shift from connections to repairs (and associated appointments). The department considers wholesale connection, fault repair and appointment keeping benchmarks should be put in place from 2020 (see recommendation 1). Consumers and retailers would benefit from greater assurance that existing wholesale timeframes will be maintained, and that there are incentives for ongoing high levels of performance.

The department recognises many industry and consumer submissions raised concerns about both the 'best efforts' nature of existing wholesale connection timeframes, and limited incentives if those timeframes are exceeded. The department also notes that until the NBN migration process is complete, industry will continue to manage a high volume of connections. Accordingly, wholesale connection rules should provide some allowance for this (see recommendation 2). In parallel, the NBN migration service continuity rules introduced in 2018 will continue to provide important protections for consumers.

The department considers network providers required to meet wholesale timeframes and benchmarks should be allowed a reasonable opportunity to restore impacted networks due to issues outside their control.



Given exemptions at the wholesale level will flow through to the retail level, the department considers exemption criteria should be tightly defined, and would benefit from improved oversight and transparency (see recommendation 4).

#### Recommendations: Wholesale timeframes and benchmarks

1. Mandatory wholesale connection, fault repair and appointment keeping rules and associated benchmarks should be introduced during 2020.
2. Wholesale connection rules and benchmarks should be set in a way that accommodates the high volume of connections which will occur up until early 2022 as the NBN migration process concludes.
3. Wholesale timeframes should be set to recognise issues of geographic remoteness and provide for reasonable industry travel time.
4. Wholesale providers should be able to claim exemptions from wholesale timeframes and benchmarks based on meeting clearly defined criteria. Exemptions claimed should be time limited, supported by evidence, and require wholesalers to ensure exemptions are readily transparent to retailers and consumers. The regulator should have the ability to seek additional information where extensions are sought.

### Retail level performance and accountability

The discussion paper proposed a range of measures that would involve retailers focusing on keeping consumers connected, such as by supplying backup/alternative solutions to respond to faults or delays with connections, and not charging consumers for periods while a service is not working. The paper also sought views on whether arrangements should be in place to allow consumers to exit contracts in defined circumstances.

#### Backup/alternative services

There was general support across submissions that it was desirable that service continuity options be available and offered where relevant and practical. However, there were reservations both from consumer groups and industry regarding the introduction of specific rules requiring mandatory provision of backup/alternative solutions.

Consumer groups raised some concerns that backup or alternative service options would be reliant on mobile coverage, which may not be available or adequate in all cases. Industry submissions raised concerns around the varying capacity of different providers (particularly smaller retailers) to provide competitive and/or alternative service solutions.

A number of industry submissions raised broader competition concerns, noting providers that owned mobile networks would be better placed to meet any mandatory requirements. There were also industry concerns that some consumers may already have access to or use mobile services, and may not want or benefit from a mandatory requirement for industry to offer backup or alternative services, or meet the associated costs.

Concerns were raised by regulators and the TIO that the commercial provision of alternative services or backup solutions within the market could be offered as a long term remedy. Additionally, some industry submissions noted retail level backup solutions could effectively 'mask' underlying network reliability issues.



In light of feedback received, the department considers that backup or alternative solutions should not be mandated at this point. The department considers consumers should be adequately informed, preferably as part of the sales process, in regards to any alternative and/or backup service solution individual retailers may (or may not) offer, and any associated limitations of those services.

### Other remedies

The discussion paper proposed that retailers should not be able to charge consumers for periods while a service is not connected, or while a service is not working. The discussion paper also sought views on whether consumers should have the option to exit a contract without charge in circumstances where they experienced ongoing reliability issues (for example, frequent faults).

Consumer groups queried if 'no charge' arrangements would provide sufficient incentive on a per service basis to promote good industry performance. Industry submissions raised a number of implementation concerns, including that 'no charge' arrangements could potentially see them face liability for issues beyond their control, and a number of industry submissions raised potential costs of amending billing systems.

Some retailers noted they already offered 'satisfaction guarantees' as a point of competitive differentiation, allowing consumers to break a contract in defined circumstances without incurring 'break fees' or equipment charges. Industry submissions also noted that there were a mix of fixed and month to month plans available in the market. Further, both consumer and industry submissions noted that requiring clear contract exit provisions would not necessarily be effective if a consumer is experiencing an underlying network issue that is outside the direct control of the retailer.

The discussion paper proposed automatic compensation in the event of missed appointments, noting that there are limited remedies otherwise available in this case. This was not preferred by industry, noting wholesalers managed most appointments and requiring pass through of compensation from wholesalers was potentially costly and time consuming. In contrast, submissions from consumer groups suggested that compensation arrangements should apply across the board (to connections, repairs and appointments) to provide performance incentives to industry and to respond to potential losses or inconvenience experienced by consumers.

Compensation arrangements are most likely to have an incentive effect in cases where an issue clearly lies with a single party. In the case of telecommunications faults where the source of an issue may not immediately have an easily identifiable root cause, mandatory compensation arrangements may actually compound consumer issues by encouraging 'buck passing' and internal industry debates around liability, rather than encouraging a focus on resolving the issue. Industry submissions also noted that mandatory compensation arrangements would impose a level of administrative complexity in passing through payments to consumers, and ongoing compliance costs.

A number of retailers noted in submissions that a future safeguards framework should seek to maximise scope for competition and innovation, and support consumers making informed choices about suitable services and products. A number of industry submissions suggested that one way of achieving this, subject to suitable wholesale rules being in place, would be for retailers to publicly state their reliability commitments and associated remedies.



## Future approach

With the NBN rollout forecast to be completed by mid-2020, the majority of migration activities should be completed by early 2022, and the telecommunications market will have undergone a substantial shift.

The department considers there is now an opportunity to rebalance 'retail' level reliability safeguards and provide more scope for industry to compete and innovate, and to overall be more responsive to consumer needs. If well implemented, this type of approach should encourage long term benefits to consumers by moving from a framework that necessarily focuses industry on minimal compliance against prescriptive rules, to one where industry has specific incentives to take greater responsibility for improving both the design and ongoing delivery of services they offer in the market (see recommendation 5).

Cautionary submissions from consumer and consumer groups identify instances where industry has not performed well in managing connections and repairs, and instances where consumers have experienced ongoing reliability issues that have not been well handled by industry, such as cases of handballing of issues between wholesalers and retailers.

On balance, the department considers that retailers should have scope to differentiate their service offerings, and in all cases, consumers should expect to be provided with clear information on how connections and repairs will be managed by their provider including commitments on timeframes and remedies and any contract exit/service guarantees (see recommendation 6). Implementation will need to consider existing information provision requirements in the sector, such as critical information summaries, requirements to publish complaints handling policies and to provide key NBN fact sheets.

In the case of vulnerable consumer groups, such as consumers with life threatening medical conditions, the department notes that the market may have less incentives and some level of more direct regulatory arrangements may be warranted (see discussion at page 17).

Submissions from consumer groups and the Australian Small Business and Family Enterprise Ombudsman also noted the unique impact on small business consumers of delayed connections or repairs and suggested specific protections and/or compensation be available in such circumstances. The department notes wholesalers are currently offering service levels to enable retailers to tailor services to small businesses. For example, NBN Co offers 'enhanced' service levels (predominately catering for businesses), which provide options for faster rectification of network faults, and a wider window of time (i.e. after hours) during which faults can be addressed. NBN Co has a performance objective to meet 95 per cent of enhanced fault timeframes. Where NBN enhanced service levels are not met, there are wholesale rebates available on a per service basis (although those rebates are capped and subject to some exclusions). The outcome for an impacted small business will however be dependent on the relevant terms and service levels within their retail contract. As such, where enhanced service level commitments are available these should be clearly communicated to small business customers as part of the overall sales and marketing process (see recommendation 7).

While retailers should clearly communicate timeframes and available remedies, there may be cases where generic remedies may not be appropriate – such as where individuals or small businesses face significant losses due to delayed connections or faults, or ongoing missed appointments. These cases may be best addressed through the TIO scheme or small claims processes, which can have due regard to the specific circumstances. The TIO for example has recently adjusted its terms of reference to



better deal with issues involving wholesalers and retailers, and is further reviewing its terms of reference as recommended by the 2017 Independent Review of the TIO Scheme<sup>2</sup>.

A number of other steps to improve complaints handling and to strengthen the TIO scheme are also being progressed through Part A of the Consumer Safeguards Review.

More broadly, industry compliance with existing mandatory reliability rules has not always been perfect. Beyond effective complaints handling, there needs to be accountability that the framework is working in the interests of industry and consumers, and options to identify and respond quickly and effectively if consumer harms emerge (see recommendations 8 and 9).

#### Recommendations: Retail service commitments

5. Building on wholesale level rules, arrangements should be put in place to require and then promote transparency around the service commitments of individual retailers, including at a minimum a requirement to advise consumers and small businesses of timeframes for connections and repairs, and associated remedies, while allowing industry to make these points of competitive distinction.
6. As part of overall sales and marketing processes, retailers should have to clearly state remedies they will deliver if retail service level commitments are not met, including:
  - a. credits, rebates or similar arrangements
  - b. details of any satisfaction guarantees or contract exit arrangements offered on a commercial basis, and
  - c. availability of any backup/alternative services and the duration those will be offered, including details of any significantly different functionality, features and/or performance compared to their usual service.
7. Service commitments should be appropriately tailored and/or explained where services are being offered to small business customers, such as clearly identifying any enhanced service levels available.
8. In implementing service commitment requirements, the government should put in place arrangements to provide assurances that timeframes and associated remedies offered by retailers are reasonable and proportionate.
9. The government should work with regulators and the TIO on appropriate arrangements to discourage, identify and respond to any cases where retailers either fail to develop or deliver on promised commitments.
10. There should be limited exemptions for achievement of service commitments, such as if there is a network based exemption in place (see recommendation 4 above) or where a provider can demonstrate a consumer did not provide reasonable information or assistance to support a resolution, or if there are property access or other legal impediments.

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<sup>2</sup> [www.tio.com.au/sites/default/files/2019-05/Response-to-Independent-Review-of-the-Telecommunications-Industry-Ombuds...pdf](http://www.tio.com.au/sites/default/files/2019-05/Response-to-Independent-Review-of-the-Telecommunications-Industry-Ombuds...pdf)



## Network reliability and reporting

The majority of stakeholder submissions agreed in principle that ongoing public reporting of network reliability metrics or performance could be beneficial in promoting transparency and accountability and if well designed, could support consumer decision making.

Currently, Telstra is the only provider subject to reporting and remediation obligations under the Network Reliability Framework (NRF). The department considers aspects of the NRF remediation and reporting requirements are far less relevant as consumers migrate to the NBN and copper and other legacy fixed line networks are progressively disconnected (see recommendation 11 below).

Since early 2018, NBN Co has voluntarily published results against various network reliability metrics on a monthly basis. Many consumer respondents noted the benefits of these NBN Co monthly reports in providing greater transparency and accountability of NBN Co's performance.

In general, consumer groups were more supportive of introducing ongoing mandatory reporting and transparency arrangements and proposed that network reliability metrics could be made most useful by producing frequent reports with a high degree of granularity, such as by technology and across different geographic areas.

In general terms, industry submissions accepted reliability metrics could provide a factual evidence base before further interventions are considered. Across industry submissions, mixed views were offered on whether reliability metrics should encompass wholesale or retail services, or both.

A number of industry submissions noted a number of existing ACCC and ACMA record keeping rules were already in place, and cautioned against the potential risk of duplication if additional obligations are implemented. As set out further below, the department considers there are some existing safeguards of declining relevance where it is appropriate to make changes, including to consider consequential changes to associated record keeping rules.

Some retailers suggested in submissions that network reliability reporting arrangements may not be sufficient, and suggested consideration be given to placing network remediation obligations on NBN Co or other similar wholesalers. No submissions presented data to suggest wholesale network remediation arrangements were urgently required. However, the department notes there may be longer term issues with monopoly infrastructure providers not having strong incentives to appropriately invest in maintaining infrastructure, particularly in areas where there is less infrastructure based competition.

The department recommends introducing record keeping rules to track performance of larger providers (based on market share or services in operation) against retail service level commitments and against overall wholesale network benchmarks. Public reporting of wholesale performance is important for a complex network like the NBN, to help identify key areas of concern and as a basis for industry, government and regulators to determine if changes to arrangements are warranted over time.

The discussion paper also sought views on whether there would be benefits in having mobile networks subject to overall reliability reporting arrangements. While there are cases where mobile networks in Australia have experienced widespread outages or ongoing performance issues, these have generally attracted a high level of media attention, and in some cases, have led to significant numbers of dissatisfied customers switching between mobile networks. Given current infrastructure competition



between mobile network operators, the department does not consider reporting on the reliability of mobile networks would provide additional consumer benefits at this point.

#### Recommendation: Network reliability and reporting

11. Record keeping rules and associated transparency rules should be developed and introduced applying to both wholesalers and retailers in order ensure the availability of important information to consumers, industry and policy makers and to establish a robust evidence base on industry performance.
  - a. Wholesale performance of NBN Co and other similar providers against key network reliability metrics should be publicly reported, including providing data that allows the distribution of wholesale connection or repair times to be assessed.
  - b. Larger retail service providers (based on a market share or services in operation threshold) should be required to report to the regulator on achievement of their retail service level commitments.

### Reforms to existing reliability safeguards of limited and declining relevance

In light of other recommendations in this report, the department considers the efficacy and relevance of the Customer Service Guarantee (CSG) and the NRF will continue to diminish and that these arrangements should be amended. As set out below, it will be necessary to further consider reforms to Priority Assistance arrangements.

#### Priority Assistance

Priority Assistance (PA) is available to consumers diagnosed with a life threatening medical condition who depend on a reliable, fixed line home telephone service to be able to call for assistance at any time. PA customers are entitled to priority connection and fault repair of their telephone service.

Telstra is the only provider that must offer PA as part of its carrier licence conditions, although based on ACMA reporting, a small number of other providers also offer PA in accordance with an industry code. Providers that do not offer PA must inform consumers of other providers that do, with the ACMA monitoring compliance with this requirement.

The discussion paper sought input on whether these arrangements should be adjusted, and if there were other options to help maximise service continuity for people with a diagnosed life threatening medical condition. Submissions from consumers and consumer groups agreed on the importance of industry maintaining a level of targeted support for medically vulnerable consumers that need to be able to readily speak to health professionals, or reach emergency services.

Submissions from Telstra and consumer representative groups suggested a broader industry approach to supporting medically vulnerable consumers, on the basis this would offer a more equitable sharing of costs and offer greater competition and choice to consumers. Other industry submissions highlighted some concern around the cost and feasibility of all providers having to develop processes and arrangements to support medically vulnerable consumers, particularly if provision of backup or alternative services was mandated for this group of consumers. NBN Co suggested a threshold (50,000 or more customers) to balance the costs to industry while promoting greater competition and choice for consumers. Based on figures from the ACCC<sup>3</sup>, a threshold set at this level would currently capture the six largest NBN providers (and around 96 per cent of NBN retail services).

<sup>3</sup> ACCC, [NBN Wholesale Market Indicators Report](#), 30 June 2019



A number of industry submissions noted in general terms that it may be possible to examine revised arrangements in light of increased coverage, penetration and use of mobile services in the market, and availability of other products such as medical alarms. However, beyond a general willingness to explore alternatives, no submissions offered substantive and practical suggestions.

The department observes no single network can offer 100 per cent reliability, and expediting connection or more rapid repair of a single service under PA arrangements may still leave vulnerable consumers unable to seek assistance for short periods.

The general principle expressed in the discussion paper was that medically vulnerable consumers may be better served by steps to maximise service continuity. While any transitional arrangements will need to be carefully managed, the department considers there is merit in further considering ways in which existing PA arrangements could be better adapted to the market structure and to explore different technological options.

One option may be to grandfather existing arrangements, with industry to develop and effectively promote a range of technology options for vulnerable consumers that need voice connectivity. The department notes there will be an ongoing high expectation from the community around compliance with existing and any revised arrangements, and therefore some regulatory obligation is likely to be appropriate. For example, it is likely there will be an ongoing need to maintain some targeted obligations to ensure wholesalers and retailers can expedite connection or repairs of fixed services for medically vulnerable consumers in areas with no or poor mobile coverage. Alternatively, satellite phones could be explored as a means to provide service continuity options where mobile coverage is inadequate or unavailable. Any transition from the existing safeguard to alternative arrangements needs to be carefully managed ensuring existing PA customers are not adversely impacted. The department notes Communications Alliance, Telstra and Optus supported further consideration and consultation on how this should best be progressed.

#### **Recommendation: Support for medically vulnerable consumers**

12. The government should consult with consumer groups and industry (through Communications Alliance) on transitional arrangements for the current Priority Assistance safeguard to a more suitable model allowing shared responsibility across industry.

#### **Customer Service Guarantee (CSG)**

The CSG requires providers of standard telephone services to meet connection, repair and appointment keeping timeframes or be subject to daily financial penalties once mandatory timeframes are exceeded. The CSG does not apply where a customer has waived their rights to the CSG. Telstra is prevented from seeking CSG waivers for Universal Service Obligation (USO) voice services.

Other recommendations in this report propose moving to a framework of retail level service commitments underpinned by wholesale rules and benchmarks, reflecting that the majority of premises will only be able to access fixed voice and broadband services from a retailer that does not control the underlying network infrastructure. However, the CSG should continue to apply in areas outside the NBN fixed line footprint, while Telstra remains an integrated network and retail provider in those areas. This would involve the Minister directing the ACMA to make changes to the CSG standard to limit its ongoing application, and consequential changes being made to existing CSG benchmarks, and associated record keeping and reporting obligations.

As CSG benchmarks are used by the department to assess Telstra's performance of its USO contractual obligations, it would also be necessary to settle alternative contractual reporting arrangements with Telstra.



**Recommendation: Reforms to the CSG**

13. Subject to broader recommendations on wholesale reliability rules and retail service level commitments being implemented, Customer Service Guarantee (CSG) obligations should be removed, except for voice services delivered over networks that Telstra owns or controls.

**Network Reliability Framework (NRF)**

The NRF requires Telstra to:

- publish monthly data on reliability of CSG (voice) services nationally and against 44 historical field service areas (Level 1)
- identify and report to the ACMA on its 40 lowest performing copper cable runs each month. If, over a 6 month period, it does not achieve a 90 per cent decrease in average network events, then the run is subject to further remediation and assessment (Level 2), and
- report to the ACMA on and act to prevent individual CSG services from experiencing more than 3 faults in any rolling 60-day period, or more than 4 faults over any rolling 365-day period (Level 3).

The department considers existing Level 1 NRF reporting is not producing meaningful data for government, consumers or industry. A significant proportion of Telstra's voice services are now provided over the NBN network, and this will only increase as NBN rollout and migration activities are completed over the next few years, at which point the majority of Australian premises will access fixed services via the NBN. As part of the NBN rollout, Telstra is progressively disconnecting fixed line legacy services in most areas of Australia, and therefore the Level 2 NRF obligations that that were originally intended to address remediation of a national copper network should be reconsidered.

Finally, under existing USO contract arrangements, Telstra will continue to provide voice services over its copper network outside the NBN fixed line footprint. As such, the department considers Level 3 arrangements should continue to apply, but be limited to where Telstra is delivering services over a network it owns or exercises control.

The recommended changes to the NRF set out below would also involve consequential amendments to existing record keeping and reporting obligations.

**Recommendation: Reforms to the NRF**

14. The Network Reliability Framework (NRF) safeguard should be adjusted so that:
- a. NRF Level 1 obligations are entirely removed, and
  - b. NRF Level 2 reporting and network remediation obligations and NRF Level 3 per service remediation requirements are retained for networks that Telstra owns or controls.

The upcoming contractual review of arrangements for delivery of USO voice services, and ongoing work on the development of the Universal Service Guarantee would inform any further changes to the NRF and CSG beyond those recommended above.



## Implementation

Many industry submissions identified it was desirable that future arrangements are implemented to ensure compliance obligations are not unnecessarily burdensome, and to avoid possible duplication or overlap.

The department and the ACMA will work closely on retail level arrangements, so these are aligned with and do not duplicate or cut across arrangements administered by the ACCC. Accordingly, the department intends to finalise and implement arrangements through a joint working group involving the ACMA and ACCC.



## Appendix A—Consolidated list of recommendations

### Wholesale timeframes and benchmarks:

1. Mandatory wholesale connection, fault repair and appointment keeping rules and associated benchmarks should be introduced during 2020.
2. Wholesale connection rules and benchmarks should be set in a way that accommodates the high volume of connections which will occur up until early 2022 as the NBN migration process concludes.
3. Wholesale timeframes should be set to recognise issues of geographic remoteness and provide for reasonable industry travel time.
4. Wholesale providers should be able to claim exemptions from wholesale timeframes and benchmarks based on meeting clearly defined criteria. Exemptions claimed should be time limited, supported by evidence, and require wholesalers to ensure exemptions are readily transparent to retailers and consumers. The regulator should have the ability to seek additional information where extensions are sought.

### Retail service commitments

5. Building on wholesale level rules, arrangements should be put in place to require and then promote transparency around the service commitments of individual retailers, including at a minimum a requirement to advise consumers and small businesses of timeframes for connections and repairs, and associated remedies, while allowing industry to make these points of competitive distinction.
6. As part of overall sales and marketing processes, retailers should have to clearly state remedies they will deliver if retail service level commitments are not met, including:
  - a. credits, rebates or similar arrangements
  - b. details of any satisfaction guarantees or contract exit arrangements offered on a commercial basis, and
  - c. availability of any backup/alternative services and the duration those will be offered, including details of any significantly different functionality, features and/or performance compared to their usual service.
7. Service commitments should be appropriately tailored and/or explained where services are being offered to small business customers, such as clearly identifying any enhanced service levels available.
8. In implementing service commitment requirements, the government should put in place arrangements to provide assurances that timeframes and associated remedies offered by retailers are reasonable and proportionate.
9. The government should work with regulators and the TIO on appropriate arrangements to discourage, identify and respond to any cases where retailers either fail to develop or deliver on promised commitments.
10. There should be limited exemptions for achievement of service commitments, such as if there is a network based exemption in place (refer recommendation 4 above) or where a provider can demonstrate a consumer did not provide reasonable information or assistance to support a resolution, or if there are property access or other legal impediments.

### Network reliability and reporting



11. Record keeping rules and associated transparency rules should be developed and introduced applying to both wholesalers and retailers in order ensure the availability of important information to consumers, industry and policy makers and to establish a robust evidence base on industry performance.
  - a. Wholesale performance of NBN Co and other similar providers against key network reliability metrics should be publicly reported, including providing data that allows the distribution of wholesale connection or repair times to be assessed.
  - b. Larger retail service providers (based on a market share or services in operation threshold) should be required to report to the regulator on achievement of their retail service level commitments.

#### **Support for medically vulnerable consumers**

12. The government should consult with consumer groups and industry (through Communications Alliance) on transitional arrangements for the current Priority Assistance safeguard to a more suitable model allowing shared responsibility across industry.

#### **Reforms to the CSG**

13. Subject to broader recommendations on wholesale reliability rules and retail service level commitments being implemented, Customer Service Guarantee (CSG) obligations should be removed, except for voice services delivered over networks that Telstra owns or controls.

#### **Reforms to the NRF**

14. The Network Reliability Framework (NRF) safeguard should be adjusted so that:
  - a. NRF Level 1 obligations are entirely removed, and
  - b. NRF Level 2 reporting and network remediation obligations and NRF Level 3 per service remediation requirements are retained for networks that Telstra owns or controls.



## Appendix B—List of submitters

- Aussie Broadband
- Australian Communications and Media Authority
- Australian Communications Consumer Action Network
- Australian Competition and Consumer Commission
- Australian Mobile Telecommunications Association
- Australian Small Business and Family Enterprise Ombudsman
- Bruce Bebbington
- Commpete
- Communications Alliance
- Consumer Policy Research Centre
- Craig Parsonage
- Financial Counselling Australia
- Isolated Children’s Parents’ Association
- MyRepublic
- National Farmers Federation
- NBN Co
- Optus
- Rural Regional and Remote Communications Coalition
- Small Business Development Corporation (Western Australia)
- Telecommunications Industry Ombudsman
- Telstra
- The Benevolent Society
- Vocus
- Vodafone
- WEstjustice

