



Australian Government

Telecommunications Regulatory and Structural Reform

December 2014

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Contents

| | | |
|------|--|---|
| 1. | Overview..... | 4 |
| 2. | Transition Period – 2015-2016 | 5 |
| 2.1. | New developments | 5 |
| 2.2. | Carrier licence condition | 5 |
| 2.3. | VDSL2 measures | 5 |
| 2.4. | NBN Co’s wholesale pricing..... | 5 |
| 2.5. | Competition regulation | 6 |
| 2.6. | Funding for non-commercial services | 6 |
| 2.7. | NBN Co structural options..... | 6 |
| 3. | New Regulatory Framework..... | 7 |
| 4. | Pre-NBN Co Privatisation..... | 7 |
| | Attachment A – Diagram of stages of reforms | 8 |
| | Attachment B – Government Response to Vertigan Review..... | 9 |

1. Overview

This policy paper sets out the Government's framework for regulatory reform in the telecommunications sector, including its response to the 53 recommendations made by the Vertigan panel's Independent Cost-Benefit Analysis and Review of Regulation.¹

The Government believes that its approach to regulation in the telecommunications market should not unnecessarily restrict competition and, to this end, will adopt the following overarching regulatory policy principles:

- Regulation should allow competition at both the retail and wholesale/infrastructure levels.
- To the greatest extent possible industry players should be treated consistently under the regulatory framework.
- New high-speed broadband access networks (which control 'last mile' connections to consumers) should be vertically separated.

To put in place market arrangements that are consistent with these principles entails a very significant shift from the current model. A competitively neutral telecommunications regulatory regime was compromised by legislative and regulatory reforms undertaken between 2009 and 2011 to enable the implementation of the National Broadband Network (NBN). Elements of the NBN policy adopted by the then-government required NBN Co to provide very substantial non-commercial services and sought to provide competitive protections to NBN Co in commercially attractive areas so that it could fund non-commercial services with an internal cross-subsidy

This model is unsustainable in the long term and not in the interests of the consumers who ultimately fund the cost of the services under any model, and typically face higher costs where competition is reduced.

Against this backdrop the Government is seeking to establish a more competitive regulatory framework, and as it continues to roll out the NBN, to make NBN Co more 'competition ready'. The proposed arrangements will provide clear and consistent rules for carriers looking to invest in new high-speed broadband access networks, ensure access for retail service providers on a structurally separated basis, and deliver competitive neutrality for NBN Co and other industry players.

Reform of the existing arrangements needs to be implemented gradually, through a transition plan that balances the benefits of the regulatory changes with the potentially adverse impact of some changes on the rollout of the NBN. Implementation of the Government's policy framework will therefore be achieved through a staged approach whereby:

- Some changes will be introduced on an interim basis as transitional measures.
- Others elements will be implemented following the transitional stage, and establish the basis of the longer-term market model.
- And a number of remaining issues will be considered around the time that the NBN rollout is completed and privatisation of NBN Co is under consideration.

¹ In December 2013 the Government appointed a panel of experts chaired by Dr Michael Vertigan AC to undertake an Independent Cost-Benefit Analysis of the NBN and Review of Regulation. The other panellists were Ms Alison Deans, Professor Henry Ergas, and Mr Tony Shaw PSM. The panel's work resulted in the publication of three volumes: *Statutory Review under Section 152EOA of the CCA* in July 2014, *NBN Market and Regulatory Report* in October 2014 and *NBN Cost-Benefit Analysis* in August 2014. These volumes are available at: http://www.communications.gov.au/broadband/national_broadband_network/cost-benefit_analysis_and_review_of_regulation

The implementation arrangements are further discussed below, and summarised in the attached diagram. A detailed Government response to each of the Vertigan panel's 53 recommendations is set out in the attached schedule.

2. Transition Period – 2015-2016

There are a number of measures that will be implemented in the initial stage of the reform process, several of which are transitional. These measures will progressively take effect over the period between now and the end of 2016.

2.1. New developments

The Government has released a paper on its proposed policy for telecommunications infrastructure in new housing developments. Comments are sought by 15 January 2015. The new policy will take effect from 1 March 2015. Under the proposed approach, developers and home-owners served by NBN Co in new developments will meet some of the costs of this infrastructure upfront to ensure fairer competition in the market, although cost recovery will be capped to ensure these charges do not have a material impact on housing affordability. Consistent with the Government's 2013 election commitments, NBN Co will also trial processes whereby developers can contract with the company to build and then transfer network infrastructure at a pre-determined price. NBN Co will also be encouraged to trial alternative network rollout models, including co-investment and public-private partnerships.

2.2. Carrier licence condition

A new carrier licence condition will come into effect on 1 January 2015 requiring providers of superfast broadband networks providing services to residential customers to be functionally separated (that is, operate their networks and retail operations at arm's length) and offer a 25/5 Mbps wholesale bitstream service at no more than \$27 per month. The carrier licence condition will remain in place for two years as a transitional measure.

2.3. VDSL2 measures

The Australian Competition and Consumer Commission (ACCC) has announced a declaration inquiry in relation to the next generation of broadband access technology over copper lines (VDSL2 - very high speed digital subscriber line). The Communications Alliance is currently considering the technical issues posed where there are competing providers of this technology in a single multi-tenant building. The Government will consider additional rules as needed for managing interference and co-existence between competing VDSL2 networks.

2.4. NBN Co's wholesale pricing

The Government will request that NBN Co implement a wholesale price cap model. During the transition period, NBN Co will advise industry of implementation arrangements including any necessary changes to its Special Access Undertaking (SAU) approved by the ACCC in December 2013, noting that changes to the SAU require consideration by the ACCC. This change is consistent with the Government's 2013 election commitments and the Vertigan panel's recommendations, and will provide NBN Co with increased flexibility and assist it to compete under the new more competitive market arrangements. Price caps will not increase NBN wholesale prices in either urban or regional areas above the current levels approved by the ACCC in the SAU. There will be scope for reduced

wholesale prices in some markets, where this is necessary for NBN Co to respond to more competitive arrangements.

2.5. Competition regulation

The Government will initiate a review of the telecommunications-specific anticompetitive conduct regime set out in Part XIB of the *Competition and Consumer Act 2010* (CCA) in the second half of 2015. The Government will also bring forward legislation in 2015 to clarify the ACCC's ability to regulate facilities through Part XIC of the CCA and improve the operation of provisions relating to special access undertakings and fixed principles. To encourage greater service innovation on the NBN, NBN Co will be given flexibility to support trials and pilots of new services.

2.6. Funding for non-commercial services

The Bureau of Communications Research (the policy research arm of the Department of Communications) will undertake an assessment of the costs of NBN Co's fixed wireless and satellite services, which serve many non-commercial parts of Australia, and provide options to Government for replacing the current opaque NBN Co cross-subsidy embedded in its wholesale access prices with more transparent funding arrangements. Terms of reference for this assessment will be released early in 2015 with a view to having more transparent funding arrangements in place when the new regulatory framework set out in this paper commences (1 January 2017).

The intention of this reform is to ensure that the funding required to support non-commercial services is transparent and contributions are made to these costs in a competitively neutral manner. At present NBN Co is required to fund non-commercial areas from cross-subsidies that disadvantage it in commercially attractive areas relative to other carriers. This is neither sustainable nor fair. Making the extent of the cross-subsidy and level of contribution in commercial areas transparent will enable the introduction of increased competition without undermining access to affordable high-speed broadband in urban fringe, regional and remote parts of Australia

The cross-subsidies which are currently embedded in NBN Co's wholesale prices will be replaced by transparent funding provided via contributions sourced from owners of high-speed broadband access networks that target residential and small business customers – i.e. the NBN and networks in commercially viable areas that are comparable to the NBN. There will be no additional costs to consumers relative to current NBN pricing – an opaque part of the cost of the NBN will be made explicit. The Government will provide the ACCC with sufficient powers to monitor the introduction of these arrangements.

2.7. NBN Co structural options

As previously indicated the Government does not support near-term disaggregation of NBN Co into business units based on access technologies because of high estimated costs, the likelihood this would delay the rollout of the network, and the distraction it would indisputably create for NBN Co's management. However, optionality for future restructuring or disaggregation should be retained, to provide future governments with greater policy and financial flexibility.

To this end, NBN Co will be required to maintain separate accounts for its satellite, fixed wireless, FTTx, HFC and transit networks.

It is the Government's preference that NBN Co develop operational and business support (OSS/BSS) IT systems that are readily separable by business unit so that these systems do not become a barrier to any future disaggregation. This may involve high costs, however, and so the costs of

implementing separable OSS and BSS systems will be investigated by an independent party. This work will commence promptly with a view to it reaching a conclusion no later than 1 July 2015.

These initiatives are intended to keep open future options for alternative NBN structures.

3. New Regulatory Framework

Subject to these transitional steps being successfully undertaken, the Government intends that the new telecommunications sector regulatory framework will commence on 1 January 2017.

Under the new framework:

- Structural separation will remain the default requirement for new high-speed fixed line broadband networks. But the ACCC will be given the power to authorise functional separation of such networks, and impose conditions as part of that authorisation, where it judges this to be in the long-term interests of consumers.
 - ‘Grandfathering’ arrangements will apply to networks that were in place prior to 2011 and any networks rolled out under the interim carrier licence condition, but not to future extensions of those networks.
- Competitively neutral arrangements will be put in place for the funding of the NBN’s non-commercial fixed wireless and satellite services.
- Legislation will be introduced requiring NBN Co to operate as the broadband infrastructure provider of last resort. The legislation will provide scope for non-NBN carriers to be so designated in circumstances where they take on or are better able to fulfil this role.

4. Pre-NBN Co Privatisation

Current legislation governing NBN Co allows for the privatisation of the company once the NBN has been completed and is operational. The legislation sets out a number of events that must take place before privatisation, including a Productivity Commission review.

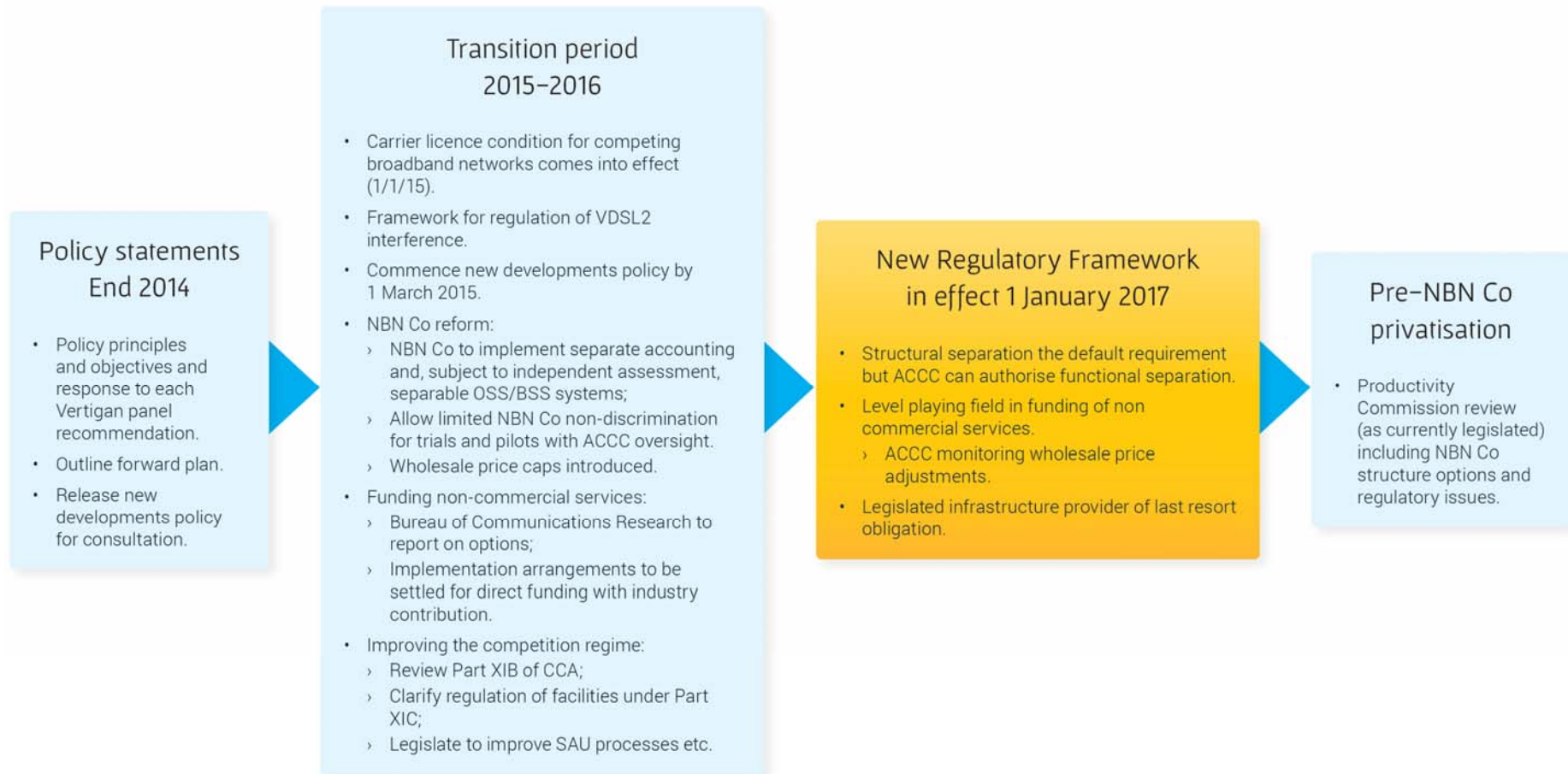
The Government considers that this review is the appropriate vehicle to revisit a number of the Vertigan panel’s recommendations regarding the structure, operation and regulation of NBN Co, as well as several other regulatory recommendations. The recommendations where this is the Government’s position are outlined in the attached schedule. Options will exist at the time privatisation is under consideration for NBN Co to potentially be restructured to promote greater facilities-level competition. This would also be an appropriate time to reconsider key regulatory issues such as the re-introduction of merits review, relaxation of NBN Co’s non-discrimination obligations in cases where such discrimination is not anti-competitive, and offering access seekers increased recourse to the ACCC on NBN Co access agreements.

A diagram summarising the phased introduction of these reforms is at **Attachment A**.

A table outlining the 53 Vertigan recommendations and the Government’s response to each of them is provided at **Attachment B**.

Attachment A

Telecommunications Regulatory and Structural Reform



Attachment B – Government Response to Vertigan Review

(Note: For convenience the following tables summarise the panel's recommendations. The full text of the recommendations will be found in the relevant reports.)

NBN Market and Regulatory Report (Volume 1)

| No. | Recommendation | Government Response |
|------------|----------------------------|--|
| 1 | Infrastructure Competition | <p>The Government agrees that arrangements for infrastructure competition need to be reformed. A transition plan will be implemented with the objective of new arrangements coming into effect on 1 January 2017.</p> |
| 2 | Disaggregation of NBN Co | <p>The Government considers that priority must be given to the rollout of the NBN given the long delays to date.</p> <p>Arrangements will be put in place to provide options for future NBN Co disaggregation if that is considered appropriate. The Government will require NBN Co to establish separate accounts for its FTTx, HFC, fixed wireless, satellite and transit businesses.</p> <p>The Government considers it is preferable for NBN Co to have operational and business support systems (OSS/BSS) that can be readily separable. The costs of implementing separable OSS and BSS systems will be investigated by an independent party.</p> <p>Longer term arrangements will be considered by the Productivity Commission as part of the legislated review required prior to NBN Co privatisation.</p> |

| No. | Recommendation | Government Response |
|-----|---|--|
| 3 | Repeal of Part 7 of the <i>Telecommunications Act 1997</i> | <p>As part of the transition to a more competitively neutral structure the Government is putting in place a two-year carrier licence condition requiring functional separation and supply of a wholesale service to access seekers on a non-discriminatory basis.</p> <p>The Government will introduce legislation to repeal Part 7 with intended effect from 1 January 2017. Access to services will be dealt with under Part XIC of the Competition and Consumer Act. The ACCC has announced it will undertake a Part XIC declaration inquiry into services on next-generation networks.</p> |
| 4 | Amendment of Part 8 of the <i>Telecommunications Act 1997</i> | <p>As part of the transition to a more sustainable competitively neutral structure the Government is putting in place a two-year carrier licence condition requiring functional separation and supply of a wholesale service to access seekers on a non-discriminatory basis.</p> <p>The Government will introduce legislation to require new networks targeting residential customers and offering high-speed broadband to be structurally separated as a default and offer non-discriminatory access. The legislation will remove the 1km statutory exemption. The legislation will also provide for the ACCC to authorise functional separation arrangements (subject to undertakings from carriers detailing satisfactory arrangements for access and equivalence to minimise anti-competitive effects). The arrangements will include appropriate grandfathering measures for pre-existing high-speed broadband networks. In line with the proposed arrangements for NBN Co, the non-discrimination arrangements for other providers will be reviewed at the same time.</p> |
| 5 | Infrastructure Provider of Last Resort (IPOLR) | The Government will legislate IPOLR obligations for NBN Co on an area basis once it has a well-established presence in that area. The arrangements will also allow for the IPOLR obligation to be applied to other carriers on an area basis where appropriate. |
| 6 | New Developments | The Government supports competition and ready access to broadband in new developments. A policy paper has been issued setting out proposed new arrangements for comment. Amongst |

| No. | Recommendation | Government Response |
|-----|---|--|
| | | other things, the policy paper proposes capped charging for infrastructure in new developments and a number of other operational changes. Capped charging would facilitate competition by alternative providers, help NBN Co recover its capital costs faster, and be consistent with the user-pays principle, while having minimum impacts on developers and housing costs. NBN Co would also be required to trial buy-back and other schemes involving private sector providers. Further details are provided in the policy paper. |
| 7 | Transitional New Developments measures | See response to Recommendation 6. |
| 8 | Wholesale price capping | The Government will confirm with NBN Co that it has flexibility to adjust prices on a non-uniform basis, subject to price caps. |
| 9 | Wholesale price capping on divested networks | See response to Recommendation 2. |
| 10 | Repeal of Division 16 of Part XIB of the <i>Competition and Consumer Act 2010</i> | The Government will repeal Division 16 of Part XIB in 2015, subject to considering implementation arrangements for price capping. |

| No. | Recommendation | Government Response |
|-----|---|---|
| 11 | Funding of Non-Commercial Services | <p>The Government will task the Bureau of Communications Research in the Department of Communications with providing advice on the amount of non-commercial service funding required to provide for NBN satellite and fixed wireless services. The intention is that new funding arrangements will be put in place that are competitively neutral across telecommunications carriers.</p> <p>The Government will implement an industry contribution and explicit funding mechanism for NBN satellite and fixed wireless services (expected implementation date 1 January 2017).</p> <p>The Government will task the Australian Competition and Consumer Commission with a price monitoring role to ensure that the introduction of a non-commercial funding arrangement does not increase total NBN end-user costs compared to current forecasts.</p> |
| 12 | New Product Development | The Government will ask the ACCC to issue guidelines. |
| 13 | National Broadband Standard | The Government considers that ensuring more competitive arrangements will mean that the market will drive future network upgrades. Where there is a need for any Government involvement this should occur after rigorous cost benefit analysis of options. |
| 14 | Upgrading the National Broadband Standard | See response to Recommendation 13. |

| No. | Recommendation | Government Response |
|-----|---|---|
| 15 | Exemption from Declared Service Supply Obligation | <p>The Government will bring forward legislative amendments to enable NBN Co, subject to ACCC scrutiny, to undertake trials and pilots without breaching its non-discrimination obligations.</p> <p>The Government considers that further changes to the obligation to supply only declared services should be considered by the Productivity Commission after the NBN rollout is complete.</p> <p>(See also response to Recommendation 13 of the Statutory Review under s.152EOA of the <i>Competition and Consumer Act 2010</i>.)</p> |
| 16 | Competitive Neutrality | <p>The Government will consider this matter in the context of the findings of the Harper review of competition laws and policy.</p> <p>The Government considers that NBN Co should operate consistent with the Competition Principles Agreement (CPA) and with clear guidance on the identified matters. The Government is not proposing legislation in this context because competitive neutrality requirements already apply to NBN Co by virtue of the CPA.</p> |
| 17 | Removal of Telstra price controls on the NBN | The Government notes that this is consistent with current policy. |
| 18 | NBN Co Privatisation | The Government notes that this is consistent with current policy. |
| 19 | Network Regulator | The Government notes that this recommendation is being considered by the Harper Review of competition laws and policy. |

Statutory Review under s.152EOA of the *Competition and Consumer Act 2010*

| No. | Recommendation | Response |
|-----|--|--|
| 1 | Facilities access regulation under Part XIC of the CCA. | The Government will clarify the ACCC's powers in relation to regulating access to facilities under Part XIC and the regime's interaction with Schedule 1 of the <i>Telecommunications Act 1997</i> . |
| 2 | Review of the telecommunications-specific anti-competitive conduct regime in Part XIB of the CCA | The Government will commence a review of Part XIB of the CCA during the second part of 2015. |
| 3 | Carrier access to in-building cabling | See response to Recommendations 3 and 4 of the NBN Market and Regulatory Report (Volume 1). |
| 4 | Information on the provision of vectored VDSL and similar services in multi-unit buildings. | The Department of Communications will continue to undertake this role. |
| 5 | Amendment to standard access obligations so that provision of access to in-building cabling is included. | See response to Recommendations 3 and 4 of the NBN Market and Regulatory Report (Volume 1). |
| 6 | Public inquiry into declaring vectored VDSL services | The Government notes that the ACCC has already announced such an inquiry. |
| 7 | Necessary amendments to existing declarations required by the deployment of vectored VDSL. | See response to Recommendation 6. |

| No. | Recommendation | Response |
|------------|---|--|
| 8 | Amendment of the legislation to facilitate declaration of vectored VDSL services if ACCC identifies legislative impediments | See response to Recommendation 6. The Government will keep this issue under review depending on outcome of ACCC inquiry. |
| 9 | Management of interference between competing vectored VDSL systems by Communications Alliance and the regulators | The Government agrees that this issue should be dealt with through existing industry mechanisms to the greatest extent possible. If it is difficult for these arrangements to resolve the issue, then the Government will enable Communications Alliance to put in place appropriate mechanisms, including interim arrangements, to deal with interference. The Government will consider additional rules as needed for managing interference and co-existence between VDSL2 networks. |
| 10 | ACCC cost-benefit analysis as part of any declaration decision | The Government notes that existing arrangements in effect require the ACCC to consider the costs and benefits of its declaration decisions. The Government will ask the ACCC to give greater prominence to these issues in documenting its declaration decisions. |
| 11 | Recourse to ACCC on NBN Co Access Agreements | The Government considers that this recommendation should be considered after the NBN rollout is complete. |
| 12 | Amendments to standard access obligations | The Government will consider the need for short term amendments to ensure effective operation of the standard access obligations in the context of developing amendments to Parts 7 and 8. (See also response to Recommendations 3 and 4 of the NBN Market and Regulatory Report (Volume 1).) |

| No. | Recommendation | Response |
|-----|---|---|
| 13 | NBN Co ability to discriminate where it aids efficiency or is otherwise authorised by the ACCC. | <p>The Government will bring forward legislative amendments to enable NBN Co, subject to ACCC scrutiny, to undertake trials and pilots without breaching its non-discrimination obligations.</p> <p>The Government considers that further changes to NBN Co's non-discrimination obligations and its obligation to supply only declared services should be considered by the Productivity Commission after the NBN rollout is complete.</p> <p>Consistent with this, the Part XIC requirement on the ACCC to publish guidelines on discrimination will be repealed.</p> <p>(See also Recommendation 15 of the NBN Market and Regulatory Report (Volume 1).)</p> |
| 14 | Requirement for NBN Co to publish a statement of difference and lodge it with ACCC where it discriminates | See response to Recommendation 13. |
| 15 | Removal of non-discrimination provisions in the longer term if NBN Co faces effective competition | See response to Recommendation 13. |
| 16 | Alignment of access pricing criteria in access determinations with Part IIIA, to the degree practicable | The Government notes that this recommendation relates to matters being considered by the Harper Review of competition laws and policy. The Government will examine the need for further review based on the findings of the Harper Review. |
| 17 | Access charges in an access determination set taking account of how NBN Co charges are set | The Government will introduce legislation during 2015 to implement this approach. |

| No. | Recommendation | Response |
|-----|--|---|
| 18 | ACCC decisions subject to regulatory oversight | The Government considers that the existing arrangements should not be changed until the NBN rollout is complete. The Government, with input from industry, will consider alternative models of review in advance of this date. |
| 19 | Alternatives to ACCC regulatory oversight | The Government does not support amending Part XIC pricing principles or reintroducing ordinary exemptions and ordinary access undertakings. In relation to the proposed Productivity Commission review, the Harper Review of competition laws and policy will consider governance and regulatory oversight and the Government will therefore consider this issue further in the context of its response to the Harper Review. |
| 20 | Reasonable efforts to consult on interim access determinations and binding rules of conduct | The Government will introduce legislation during 2015 to implement this approach. |
| 21 | Review of the role of Binding Rules of Conduct in context of review of Part XIB of the CCA (see Recommendation 2) | The Government will consider the role of Binding Rules of Conduct through the review of Part XIB. (See also response to Recommendation 2.) |
| 22 | A notice to vary confined to matters essential to satisfy the ACCC that a special access undertaking will pass relevant thresholds | The Government will introduce legislation during 2015 to implement this approach. |
| 23 | Amendment to Part XIC to give flexibility in how to respond to a notice to vary a special access undertaking | The Government will introduce legislation during 2015 to implement this approach. |

| No. | Recommendation | Response |
|-----|--|---|
| 24 | Amendment to the statute to simplify the special access undertaking assessment process | The Government will introduce legislation during 2015 to implement this approach. |
| 25 | Amendment to the statute to streamline the operation of fixed principles | The Government will introduce legislation during 2015 to implement this approach. |
| 26 | Government monitoring of the operation of the retail market | The Government will monitor the operation of the retail market as proposed in this recommendation. |
| 27 | Government monitoring of NBN Co's activities dealing with end-users | The Government will monitor NBN Co activities as proposed in this recommendation. |
| 28 | Government monitoring of NBN Co's behaviour in relation to Layer 2 | The Government will monitor NBN Co activities as proposed in this recommendation. |
| 29 | Expansion of NBN Co's field of operation able to be achieved through regulations | The Government will introduce legislation during 2015 to implement this approach. |
| 30 | Generic interface service for retail service providers | The Government will ask industry to develop and operate a generic retail service provider interface service. Consideration will be given to whether legislation is required and if so whether this should be implemented during the transition period with intended effect from 1 January 2017. |
| 31 | NBN Co prioritisation of development of white papers, to be completed by the end of 2015 | The Government agrees that NBN Co should prioritise the development of these white papers and that this should be completed during 2015. |

| No. | Recommendation | Response |
|------------|--|---|
| 32 | NBN Co investment in retail service providers to be subject to additional measures if its non-discrimination obligations are relaxed (see Recommendation 13) | The Government has decided, apart from some minor proposed changes, not to relax the non-discrimination restrictions on NBN Co at this time. (See also response to Recommendation 13.) |
| 33 | Joint ventures with NBN Co to operate subject to the rules generally applying to NBN Co | The Government will introduce legislation during 2015 to implement this approach. |
| 34 | Multi-stakeholder processes to be developed to improve migration processes | The Government notes that this approach is being implemented through the existing migration assurance process. |