



Inquiry into the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and Telecommunications (Regional and Broadband Scheme) Charge Bill 2017

Submission by the Australian Communications Consumer Action
Network to the Environment and Communications Legislation
Committee

14th July 2017



About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1. Executive Summary

ACCAN would like to thank the Environment and Communications Legislation Committee for the opportunity to comment on the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 and Telecommunications (Regional and Broadband Scheme) Charge Bill 2017.

ACCAN does not believe that the current framework governing the delivery of broadband services is in the interest of consumers. Too often consumers have no transparency or assurance over their service, get passed between retailer and wholesaler and could potentially be left without access to any network.

Broadband services are essential services that should be underpinned by standards and conditions. ACCAN believes the Telecommunications Legislation Amendment (Competition and Consumer) Bill is in the interest of consumers as it puts in place the architecture that could be used to establish a framework that:

- Ensures access to a superfast network to all premises,
- Provides transparency and accountability over network providers,
- Ensures that networks need to exceed minimum performance levels and timeframes for connection and fault repairs, and
- Ensures that networks act in a manner which supports consumers' complaint and dispute resolution.

Therefore, ACCAN strongly supports the SIP legislation. We encourage the introduction of the legislation as quickly as possible so the powers within the legislation can be used to protect consumers and their services. Section 2 of this submission sets out further our reasoning of why we believe the SIP is in the interest of consumers.

Additionally, ACCAN would like to express support for a more transparent and accountable funding model for Regional, Rural and Remote broadband services. Section 3 sets out our thinking in relation to the Telecommunications (Regional Broadband Scheme) Charge Bill (RBS).

2. Statutory Infrastructure Provider (Schedule 3)

Broadband services are essential for consumers and small businesses. However, guaranteed access and provision of this service is not guaranteed to all premises in Australia. ACCAN believes that the current arrangements are putting consumers and small businesses at serious risk. The level of complaints, news articles and general discussion around the National Broadband Network demonstrates the need for greater statutory safeguards.

ACCAN is very supportive of the SIP arrangements in the Bill, as it will allow for a number of benefits to consumers. ACCAN sees the potential benefits of this Bill to be:

2.1. Guaranteed access to a network

Currently there are only expectations that nbn will roll out its network. There are no protections or certainty that the numerous premises that are choosing not to connect during the rollout will be able to request a connection in the future.¹ This leaves these premises potentially at risk from having no network that will connect them. ACCAN is concerned about the future of these premises.

The Bill (through section 360P) will create an obligation on SIP providers to provide reasonable access to all premises. This will provide protection to consumers that no matter where they live or work, they will be able to access a broadband network. This provides for a stronger protection for consumers into the future. ACCAN strongly believes that broadband network access should be guaranteed in legislation.

2.2. Minimum network to all premises

Likewise, there are currently only expectations that nbn, and other networks, will deliver networks capable of superfast download speeds (25Mbps), and proportionate upload speeds. The expectation the nbn delivers a peak wholesale download data rate often does not translate into a service that consumers can understand and use. The vagueness of the expectation has resulted in concern over what the level of service will be for consumers. Consumers are also concerned that by not stating upload speeds it is unclear if the service will be adequate, particularly for small business consumers who rely on cloud applications and video conferencing facilities.

ACCAN sees improvements through this Bill that will provide certainty for consumers. The qualifying carriage service establishes that the network must support “retail services with peak download speeds of at least 25Mbps and peak upload speeds of at least 5Mbps”².

Additionally, fixed line and fixed wireless services must allow consumers make and receive voice calls. This will be important for consumers, particularly those served by networks other than nbn, to ensure they can receive voice services. While much of the talk has been about broadband,

¹ 21% of Australians didn't have a fixed internet connection at December 2014.

<http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Australians-get-mobile>

² Pg. 9 of the explanatory memorandum.

telecommunication services also deliver voice and other essential services. Networks should support all the necessary communication services that consumers need.

The Bill also includes Ministerial powers to make standards related to reliability (Section 360U) and the power to require SIP providers to provide the ACMA with compliance reports (Section 360XA). ACCAN believes that these powers are important. Network performance must exceed minimum standards, be transparent and accountable, with proper regulatory oversight. Consumers need assurance that the monopoly network that is providing their service will perform to set benchmarks. The provisions in this Bill, if used, could ensure that the network performance can be confirmed.

2.3. Clear identification of a network provider for each premises

There are a number of superfast networks which may provide network access to a premises. Understanding which network is supposed to connect your premises can be confusing, particularly when moving into a new development. ACCAN is regularly contacted by consumers who have difficulty identifying which network is responsible for their connection. While the Department of Communications and the Arts has developed a mapping resource to provide information on which network services each new development, the lack of requirement on the networks to provide the information has been the source of inconsistency with the map.³ When consumers are not able to access information about networks or are not informed of delays in connecting premises it can result in being left without services for months on end.⁴

Section 360HA, which sets out the requirement that network providers must give the ACMA information on each development they enter into a contract for, will ensure that consumers have a body from which they can obtain this necessary information. ACCAN supports the transparent and available information to consumers about network access and will be urging the ACMA to make this information available and easily accessible online.

2.4. Clarity on why a network will not connect a premises

As consumers do not have a relationship with wholesale network providers, when there are issues with a connection the consumer is often the last to be informed. ACCAN is contacted by consumers who experience difficulties connecting to networks but are unclear why or what their options are. They are often told that it is the network's fault, that the retailer is unable to do anything and washes their hands of the consumer. ACCAN is concerned that this will continue into the future after the NBN rollout.

Therefore, ACCAN strongly supports Section 360P (12), which ensures that the consumer is given written notice when a network is unable to provide a connection. The consumer could then understand the grounds for the refusal and raise objections through the appropriate processes, which we hope will be determined in the upcoming Consumer Safeguards Review to be conducted by the Department of Communications and the Arts. ACCAN will be urging clear complaint processes to be established as part of this review in order to fully protect consumers.

³ Department of Communications and the Arts, Telecommunications in new developments map.
<https://www.communications.gov.au/policy/policy-listing/telecommunications-new-developments>

⁴ Herald Sun, March 2017, *Belmond on Clyde estate residents left without phone and internet say they should have been told of NBN delay before moving in.*

2.5. Potential for improved complaint handling and dispute resolution processes

Consumers report raising complaints multiple times with retailers but due to a lack of power by retailers to get NBN and other networks to act appropriately, they are often left caught in the middle with poor or no service. ACCAN believes the powers under Item 4A, to make service provider determinations, and to make rules, under Section 360V, if used, will assist consumers navigating the wholesale and retail interactions. Once in place, determination powers may be able to quickly establish procedures to deal with complications between retailers and wholesalers when they arise.

2.6. Potential for performance incentives and protections for consumers when the network does not deliver

No network is infallible. There are bound to be times when consumers will experience outages or periods without services. While there is a level that is tolerated by consumers, extensive or repeated network performance issues are not acceptable. ACCAN does not believe that the current framework ensures that the networks are incentivised to perform and provide compensation or alternative services to consumers should their network fail. It is vital that consumers can rely on broadband networks. ACCAN sees the powers in this Bill (under Section 360U, 360V and 360XA), if used, as a possibility to provide this to consumers.

2.7. Conclusion

ACCAN strongly supports the SIP legislation and encourages its introduction as quickly as possible. Many of the benefits that this Bill will deliver for consumers are dependent on the use of the powers set out in it. Therefore, in addition to the speedy introduction of the Bill, ACCAN believes the Consumer Safeguards Review within the Department of Communications and the Arts should be prioritised to examine the legislative powers within the Bill and the potential use of them. Additionally, ACCAN welcomes the ACMA's quick adoption of its new powers and remit over the delivery of essential broadband and voice networks.

3. Telecommunications (Regional Broadband Scheme) Charge Bill 2017

ACCAN supports the provision of broadband services to all Australians, wherever they live or work. Services in Regional, Rural and Remote (RRR) areas will likely continue to need funding support. It is important that funding for these services is transparent, accountable and contestable. The funding mechanism for voice services, through the Universal Service Obligation, is opaque and is not contestable. The current method for nbn to fund services in the RRR areas is also unsatisfactorily through an opaque internal cross transfer.

ACCAN is supportive of moving to a funding mechanism which is transparent, (potentially) contestable and ensures vital broadband services in RRR areas will receive ongoing funding.

ACCAN notes the purpose of the charge is to support “the funding of fixed wireless broadband and satellite broadband”.⁵ This is in line with the Statutory Infrastructure Provider provisions to provide all premises with superfast broadband access and for nbn to connect all non-commercial (Fixed Wireless and Satellite) services.⁶ Given this purpose, ACCAN believes that the approach taken through the RBS is on balance the best of the proposed approaches to support this.

Aside from the scheme chosen to fund RRR broadband services, ACCAN believes that affordability on a geographical basis is not the only concern. Affordability of services is also important for low income households. It is estimated that 10% of households pay up to 10% of their income on communication services.⁷ That does not include costs for needed hardware and devices. ACCAN is concerned about the future affordability of services and the increasing need for consumers to use alternative broadband networks. Indicators are that further support in relation to the affordability of services is required.

⁵ Telecommunications (Regional Broadband Scheme) Charge Bill 2017

⁶ NBN Co Ltd, Statement of Expectations, 24th August 2016, and the proposed Statutory Infrastructure Provider Legislation as part of this package.

⁷ Bureau of Communication and Arts Research, Trends and drivers in the affordability of communications services for Australian households. July 2017