



Australian Government

Australian Government response to the
Senate Environment and Communications Legislation
Committee report:

Telecommunications Legislation Amendment (Competition
and Consumer) Bill 2017 [Provisions]

Telecommunications (Regional Broadband Scheme) Charge
Bill 2017 [Provisions]

January 2018

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Overview

On 6 September 2017, the Senate Environment and Communications Legislation Committee (the Committee) released its report of inquiry into the provisions of the below Bills:

- *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017* (TLA Bill); and
- *Telecommunications (Regional Broadband Scheme) Charge Bill 2017* (Charge Bill).

The report comprised three sections:

- a majority report, which was endorsed by the Coalition Senators;
- additional comments, which were provided by Labor Senators; and
- a dissenting report, which was endorsed by the Australian Greens Senators.

The Australian Government has considered the Committee's report and provides the following response to the recommendations in the majority and dissenting reports. The Government notes that Labor Senators have some concerns about aspects of the Regional Broadband Scheme (RBS), however, support the proposed changes to Parts 7 and 8 of the *Telecommunications Act 1997* to enhance competition, the establishment of a Statutory Infrastructure Provider (SIP) regime for the provision of high-speed broadband to consumers, and the policy objective of establishing a level playing field for competition in the telecommunications market and ensuring there is a sustainable funding mechanism for regional broadband services.

The Government's proposed RBS is the most appropriate mechanism for ensuring NBN Co Limited (nbn) is on a level playing field with other comparable carriers with respect to its fixed wireless and satellite networks. The charge associated with the RBS targets services that are substitutable for an nbn service, consistent with the general economic principle that all providers of substitutable services should be treated in the same way, and requires all nbn-comparable providers to contribute annually, by way of a charge, proportionate to the number of premises connected to their networks. The RBS will ensure close to one million services in regional Australia, that are loss-making and are currently solely funded by nbn, will be transparently and equitably funded by the high-speed fixed line market.

Australian Government response to the majority report

Recommendation 1

3.28 The committee recommends that the proposed disallowance procedure in clause 19 of the Telecommunications (Regional Broadband Scheme) Charge Bill 2017 and proposed section 102ZFB of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* be amended to provide that a determination is deemed to have been disallowed if:

- notice of a motion to disallow the determination is given in a House of the Parliament within 15 sitting days of that House after the copy of the determination was tabled in the House under section 38 of the *Legislation Act 2003*; and
- at the end of 15 sitting days of that House after the giving of that notice of motion:
 - the notice has not been withdrawn and the motion has not been called on, or
 - the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of.

The Government **supports** this recommendation.

The Government will seek to move amendments to the Bills when debate resumes in the House of Representatives. The amendments will enhance Parliamentary scrutiny of the determinations and align the relevant RBS-related legislative instruments under the TLA Bill and Charge Bill more closely with the usual disallowance procedures in the *Legislation Act 2003*.

Recommendation 2

3.40 After due consideration of recommendation 1, the committee recommends that the Bills be passed.

The Government **welcomes and supports** this recommendation.

Australian Government response to the dissenting report

Recommendation 1

- 1.20 The Australian Greens recommend revising the Regional Broadband Scheme, taking into consideration updated costings, the current and emerging state of telecommunications technology and markets, and recommendations from the Productivity Commission (PC) regarding the Telecommunications Universal Service Obligation (USO).

The Government **does not support** this recommendation.

The RBS is the most equitable and transparent way to fund broadband services that are critical to regional communities across Australia. The RBS will adapt to changes in the telecommunications market over time, and strikes an appropriate balance between the needs of regional Australians and the business needs of telecommunications providers.

The RBS has been purposefully designed to be dynamic, to adapt as the costs of regional broadband crystallise and as the market adjusts. The modelling provided in the report on *NBN Non-commercial Services Funding Options: Final Report (March 2016)* by the Department of Communications' Bureau of Communications and Arts Research (BCAR) is the starting point, but the RBS will adapt over time. For example, the Australian Competition and Consumer Commission (ACCC) will be required to review the RBS charge amounts every five years and advise the Minister for Communications whether the charge amount should be adjusted to reflect the changing size of the telecommunications market and the costs of nbn's fixed wireless and satellite networks.

The RBS follows the general economic principle that all providers of substitutable services should be treated in the same way. The Government does not consider that mobile broadband services are presently substitutable for fixed line broadband services due to a number of factors, including the substantially higher average cost per Gigabyte of data on mobile plans. Therefore, it is not appropriate to include mobile services in the RBS charge base at this time.

In considering the RBS and USO in tandem, the Government notes the RBS is consistent with the PC's main recommendations. The PC found that nbn infrastructure, complemented by mobile coverage, is expected to mostly address the objective of universal service availability for broadband and voice services in Australia. This further highlights the importance of ensuring there is a mechanism in place to secure funding of nbn's loss-making networks. The Government considers that establishing the SIP and the RBS regimes, before further progressing USO reform, provides an important, timely and much needed safety net, particularly for regional and remote consumers.

The Government welcomes the Australian Greens' support for the SIP obligations and their broad agreement with the proposed changes to Parts 7 and 8 of the *Telecommunications Act 1997*. The proposed SIP obligations will ensure that all people in Australia are able to order a high-speed broadband service regardless of where they live, and that nbn becomes the default SIP as the network is rolled out. The RBS will provide equitable and transparent funding for the loss-making nbn fixed wireless and satellite networks in regional Australia. The SIP obligations and the RBS form an integrated package. One cannot proceed without the other.

Together, they will ensure all Australians have access to affordable, high quality broadband services (including voice calls).

The RBS is the result of extensive policy development and consultation since the 2014 Vertigan review of the National Broadband Network. The BCAR undertook two detailed consultation processes, and exposure drafts of the TLA Bill and Charge Bill were publicly released for comment in December 2016.

The Government considered the views of a wide range of stakeholders, including those of nbn, Telstra, Optus, TPG, Vocus, OptiComm, OPENetworks and other carriers, Communications Alliance, the ACCC, the Australian Communications and Media Authority and other industry experts. The Government has also consulted with the Australian Communications Consumer Action Network, the Regional, Rural and Remote Communications Coalition and the National Farmers' Federation who strongly support the RBS and recognise its importance for advancing regional development. This comprehensive consultation has produced a well-balanced, thoroughly considered and important reform proposal.

Conclusion

The Government thanks the Committee for its considered comments on the TLA Bill and the Charge Bill and looks forward to working with the Parliament to pass these important reforms.