



Australian Government

Australian Government Response to the Joint Standing Committee on the National Broadband Network report:

The rollout of the National Broadband Network:
1st Report of the 45th Parliament

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Overview

The Australian Government notes the report by the Joint Standing Committee on the National Broadband Network (the Committee) into the rollout of the National Broadband Network (NBN).

The Government is disappointed that after considering 191 submissions; holding 15 public hearings; receiving testimony from 179 witnesses; and undertaking three site visits, the Committee's majority report and recommendations indicates a failure to understand the fundamentals of the NBN. While it does not agree with all of the conclusions and recommendations contained in the majority report, the Government does however note that the report highlights the consumer experience and acknowledges that improving consumer experiences during connection and use of the NBN is an important priority. The Government fully supports the dissenting report given by the Chair of the Committee.

The NBN is Australia's largest and most complex infrastructure project. It will be a key facilitator for innovation in the nation and it is essential for a successful Australian economy in the 21st century, especially for households and small business. Rolling out the next-generation NBN to all Australians as quickly as possible is therefore a priority for the Government.

No project is subject to greater public scrutiny than the NBN. From NBN Co Limited's (nbn's) Corporate Plan and Annual Report to parliamentary committees and weekly and quarterly reports, there is already a significant amount of public data about nbn's objectives and performance.

As a government business enterprise (GBE) established in corporate form, nbn is subject to multiple layers of corporate governance and public accountability. As a company, nbn must comply with the governance requirements of the *Corporations Act 2001*, including an annual independent audit of its financial statements and performance reporting. As a corporate Commonwealth entity, nbn is subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) which requires nbn to publish an annual corporate plan setting out how nbn will achieve its purpose over a forward-looking four-year period. As a GBE, nbn must also comply with the Commonwealth Government Business Enterprise Governance and Oversight Guidelines. Public accountability of nbn is already rigorous and so many of the Committee's recommendation about governance are unnecessary.

nbn's core business is also closely regulated. As a licensed telecommunications carrier, nbn is subject to the direct oversight of the Australian Communications and Media Authority (ACMA). The terms and conditions of supply of all nbn services are subject to regulation by the Australian Competition and Consumer Commission (ACCC). As a telecommunications service provider, nbn is also a member of the Telecommunications Industry Ombudsman (TIO) scheme, which ensures its cooperation in providing information to the TIO to help resolve consumer complaints about the NBN. Like any other Australian business, nbn must also comply with the Australian Consumer Law (ACL).

The tenor of the majority report, which implies that nbn is not accountable to either Government or the Australian public, and uses this claimed lack of accountability to justify unnecessary additional regulatory, transparency and accountability requirements, is misdirected. nbn is a closely-regulated business, subject to multiple layers of public accountability.

The Government, like the Committee, is concerned that consumers on the NBN have a good experience, and recognises that for some consumers the network has not met their expectations. However, the majority report fails to recognise a large number of consumers' good experience with the network and that the majority are satisfied with their NBN service. It is important to remember that in 2013 there were up to 1.6 million premises throughout Australia which had either no access to fixed broadband or very poor broadband connectivity, with peak median download speeds of less than 4.8 megabits per second (Mbps). Over 6.8 million premises now have access to high speed broadband, which is expected to increase to 11.6 million premises by 2020.

Further, given the scale of the NBN rollout, the NBN consumer experience is not faring as the majority report makes out. As the number of households and businesses migrating to the NBN continues to grow, it to be expected that the number of consumer complaints will also rise. In the third quarter of 2017, close to 175,000 premises switched services to the NBN per month, compared to around 93,000 per month in the third quarter of 2016.

The TIO's 2016-17 report however shows that the proportion of complaints about services delivered over the NBN compared to the number of activated nbn services remained at a similar level to 2015-16 (around 1 per cent), despite the network more than doubling in size. To put this in context, in 2016-17 there were just over 11,000 NBN connection complaints to the TIO out of 1.3 million activations during the same period. This is about 0.8 per cent of activations. Similarly, just over 16,000 fault complaints were made to the TIO, for around 2.4 million active services, which means that fault complaints were about 0.6 per cent as a proportion.

The Government recognises however, that even though these numbers are relatively low, each consumer's individual experience with the network is still important. That is why on 21 December 2017, the Minister for Communications announced an NBN consumer experience improvement package to ensure retailers support their customers as they migrate to the NBN. The ACMA will put in place a package of regulatory measures in 2018 to provide additional consumer protections during the migration to the NBN and to improve transparency of information for consumers.

The Government will provide \$8.7 million over three years from 2017-18 to ACMA to enhance important consumer protections, including:

- **Greater transparency** – through updates to Critical Information Summaries, consumers will be provided with clear information about their NBN plans and the speed options they have selected.
- **Improvements to retail service level standards** – to address the current 'handballing' of complaints, consumers will be provided a key point of contact and must be notified of the time it will take to fix their service. Major retail providers will also be required to report to the ACMA on customer complaints, with the results to be published to allow consumers to make informed decisions when choosing a provider.
- **Service continuity** – consumers will be able to be reconnected to a previous service when disconnected and not able to connect to the NBN.
- **Service quality** – consumers will be assured of a functioning and quality NBN connection as retail providers will be required to complete line testing at the time of installation.

As a part of the improvement package, the Government is working with nbn to make public information on key metrics, in the form of a consumer experience dashboard, which will make its operational performance more transparent.

A critical part of the consumer experience relates to the speed and reliability of the service. Broadband speeds and reliability are affected by a number of factors including the technology over which services are delivered; how retailers configure their networks and manage traffic; the speed tier selected by the consumer; modem performance; in-home Wi-Fi; internal wiring; and interference from other devices in the home. To respond to key areas of concern within its responsibility, nbn has announced the introduction of new pricing packages to improve broadband speeds and the reliability of services from retailers. As a part of the consumer improvement package, the ACMA will also undertake research into the performance of modems to determine if standards are required, as their performance can impact the broadband speeds obtained by consumers.

The announced consumer experience improvement package builds on a substantial body of actions already being undertaken to ensure the NBN rollout is addressing consumers' and taxpayers' expectations. The Government is disappointed that the Committee failed to acknowledge the many Government and industry measures already underway. The Government has encouraged nbn to work with industry to develop end-to-end strategies for continuous improvement to make the order-to-connect process easier to navigate. In August 2017, the Minister for Communications convened an industry CEO Forum which has already initiated a range of joint activities focusing on priority areas, including: provision of consumer information; appointment, installation and disconnection processes; handling of complaints (including escalations), and pricing.

nbn itself is also focusing on improving the consumer experience and is implementing a strategic program of work to achieve this. Program FoCX (Future of Customer Experience), covers an extensive range of initiatives to lift consumer experience, including improvements to systems, processes and information flow between nbn, retail providers and nbn's delivery partners.

FoCX is making improvements to all aspects of the consumer journey from the initial awareness of the migration through to connection, service use and service assurance. The program is focussed on tangible consumer outcomes using clear accountabilities and targets and incorporating a coordinated approach to industry engagement. The range of initiatives includes targeted projects like the identification of in-home wiring issues to broader and longer term change such as the evolution of pricing to encourage the take up of higher speeds and more capacity.

In terms of helping consumers make informed decisions about NBN services, the Government and industry regulators are collecting real-world data, via the ACMA's consumer survey and the ACCC's *Measuring Broadband Australia* monitoring program. The outcomes of the data collected by the ACMA and the ACCC will be published and as a result consumers will be able to draw on more information that is helpful for making decisions concerning their migration to, and use of, the NBN.

Consumers are also protected by the ACCC's enforcement of the ACL. In November 2017, the ACCC settled a case against Telstra involving alleged contraventions of the ACL by way of a court-enforceable undertaking that Telstra will compensate consumers affected by past sales practices; and for the next three years will provide maximum attainable speed information where this is relevant to the consumer

Shortly after, Optus and TPG undertook to compensate customers for not delivering the NBN speeds their customers paid for. The ACCC continues to investigate other retailers for similar conduct and have publicly stated they will take enforcement action.

The ACMA has commissioned research to obtain information directly from consumers about their experience before, during and after migration to the NBN. The research will span the range of technologies that are used to connect households and businesses to the NBN.

Additionally, the ACMA has used its formal powers under the *Telecommunications Act 1997* to collect information from businesses across the NBN supply chain to help target industry improvements. It has given notices to 21 industry participants, including retailers, wholesale providers and nbn, seeking a range of data on issues such as fault handling, connection timeframes, appointment keeping, complaint handling, and more. This information forms the evidence base for the Government's NBN consumer experience improvement package announced in December 2017.

On 21 August 2017, the Government published the updated Migration Assurance Framework. Developed in collaboration with industry, the framework sets out the roles and responsibilities of all industry parties to ensure consumers experience a seamless migration. nbn, industry retailers, industry partners (Foxtel and Next Telecom), and the Communications Alliance have committed to applying the framework.

On 2 November 2017, the ACCC announced an inquiry into wholesale service standards. This inquiry will consider amongst other things whether there are appropriate incentives for nbn to remedy service failures, and whether the compensation framework for wholesale customers is adequate to ensure consumers receive redress when things go wrong. This is an example of the regulatory framework within which the NBN is being rolled out and operated performing as intended. The ACCC's power to regulate wholesale service standards is an important one and the Government will monitor the progress of the ACCC's inquiry closely.

The Committee also fails to acknowledge the work being done by nbn to ensure Australians outside metropolitan areas have a good experience of the NBN. By the end of 2017, the NBN rollout outside major urban areas was over 77 per cent complete. Both Sky Muster satellites are fully operational and the fixed wireless network continues to have the highest consumer satisfaction ratings of all the NBN's technologies. nbn has taken action also to address Sky Muster consumer concerns about data limits, with a 50 per cent increase in average peak download on wholesale plans and a doubling of the maximum monthly wholesale data limits. From October 2017, consumers have been able to purchase plans offering 150 gigabytes (GB) a month of peak data, and up to 300GB per month in total on the Sky Muster satellites. This increase in data follows a demonstrated improvement in Sky Muster's stability, with outages down 82 per cent in October 2017 compared to October 2016.

The prominence given in the majority report of the Committee to the stories of dissatisfied consumers distorts the perception of the success of the NBN. As the Chair of the Committee rightly highlighted, the NBN is delivering on its promise. While nbn is on target to reach the speed baseline set in the Statement of Expectations of at least peak wholesale download data rates (and proportionate upload rates) of 25Mbps per second to all premises, and at least 50Mbps to 90 per cent of fixed line premises, nbn is also confident that the upgrade paths available for NBN technologies will enable close to half of all the premises on the NBN with access to speeds of up to 500Mbps, and speeds of up to 1 gigabits per second (Gbps) to 40 per cent of premises.

nbn's plans to roll out the NBN using fibre to the curb (FTTC) to one million homes is an example of planning for the future. FTTC trials have demonstrated download speeds of around 100Mbps, and future upgrades could provide speeds of up to 1Gbps using new technologies such as G.fast.

The Government has put the NBN on track to deliver high-speed broadband to all Australian homes and businesses by 2020. It now reaches over half of the homes and businesses across Australia. As the rollout reaches its peak, the Government is committed to ensuring nbn and retailers are focussed on providing a smooth transition to the NBN for consumers. The Government notes that the current pace of the rollout means that the NBN consumer base is rapidly expanding and nbn is experiencing some issues, as can be expected for any business during a peak growth phase. In September 2013, fewer than three per cent of Australian premises could obtain a service on the network. In September 2017, over half of Australian premises – more than 6.4 million homes and businesses – were in ready for service areas, and there were close to 3 million active users. Rollout of the NBN is an infrastructure project of unprecedented scale in Australia and with that scale comes complexity and, inevitably, some issues for consumers.

The Government trusts that the Committee will give the industry and nbn the time it needs to make ongoing improvements, and that subsequent Committee reports will give equal space to the NBN's success stories as it has given in its first report to the challenges that are inevitable in such a major and complex infrastructure project.

Australian Government response

The Australian Government's response to *The rollout of the National Broadband Network* is set out in detail below.

Generally, the response is set out in the same order as the recommendations, however, where several recommendations relate to substantially similar issues, those recommendations are addressed in the same section of the response.

Rollout technology

Recommendation 1:

2.91 The Committee recommends that the Australian Government direct and enable nbn to complete as much as possible of the remaining fixed line network using FTTC at a minimum (or FTTP), and require nbn to produce a costed plan and timetable under which that would be achieved.

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

The Government notes the Committee's recommendation that the fixed line rollout be completed using FTTC at a minimum. The Government remains committed to the Multi Technology Mix (MTM), which will see the roll out of fast broadband as soon as possible, at affordable prices and at least cost to tax payers.

Further, the Government considers that nbn has the expertise to make decisions about how best to roll out the NBN, and there is value in allowing the experts to use their discretion to choose the most appropriate technology to ensure the network is rolled out as quickly and cost-effectively as possible. In fact, it is this flexibility, provided to nbn under the MTM approach, that has meant nbn has been able to adjust its approach and roll out FTTC to one million premises, and why it has also signalled that it will continue to use fibre to the premises (FTTP) where it is the most appropriate and viable technology option.

nbn's annual published Corporate Plan provides information about network planning and the technology mix, and as the Chair of the Committee highlighted in her dissenting report, the MTM was the approach recommended by the 2013 NBN Strategic Review. Further, as highlighted in her dissenting report, the Chair noted that the cost to taxpayers of changing direction would be substantial; both in terms of delay and in the estimated requirement of approximately an additional \$30 billion to roll out a full FTTP network across the vast Australian continent. It would also lead to wastage if existing nbn designs for areas already planned were discarded.

Corporate plan audit

Recommendation 2:

2.92 The Committee recommends, in light of recent results and developments, that the Australian Government commission an independent audit and assessment of the long-term assumptions underpinning nbn's financial projections and business case as set out in the *Corporate Plan 2018-21*.

The Government **supports** this recommendation **in principle**, on the basis that existing activities are already in place.

The Government already has a strong interest in monitoring these long-term assumptions, including whether there are any changes required over time. There are a range of mechanisms (described below) already in place for such monitoring. nbn, as a corporate Commonwealth entity, is already subject to extensive public scrutiny and regular independent audit and assessment.

The Department of Communications and the Arts and the Department of Finance provide the Government with a detailed assessment of nbn's financial plan each year through the Corporate Plan review. nbn's financial statements are audited by the Australian National Audit Office (ANAO) each year. This ANAO audit provides an independent level of oversight to ensure that each year nbn's financial statements give a true and fair view of nbn's financial position and its performance.

The Corporate Plan review provides a thorough assessment of nbn's financial projections and business plans for the next four financial years. From time to time, specialist reviews of aspects of nbn's financial plan have been undertaken.

Since 2013, the quality of nbn's corporate planning process has improved markedly, and the annual Corporate Plan review undertaken by joint Shareholder Departments provides a further layer of scrutiny for the Government.

Publication of the Corporate Plan allows for public scrutiny of nbn's financial projections, performance and progress. Quarterly market briefings provide regular updates of nbn's performance against its Corporate Plan.

Rural, regional and remote users

Recommendation 3:

2.94 The Committee recommends that the Australian Government direct nbn to establish a regional and remote reference group to support the rollout of the NBN in rural and remote Australia. The reference group would include consumer advocate groups and departmental representation from the Department of Communications and the Arts and the Department of Infrastructure and Regional Development. Business decisions that fundamentally change the nbn experience for the end user in regional and remote communities should be referred to the reference group for consideration and analysis as to whether the decision will result in nbn not meeting its responsibilities as outlined in the Statement of Expectations.

Recommendation 11:

4.102 The Committee recommends that the Australian Government ask nbn to establish a rural and regional reference group (see recommendation 3) and that nbn consult on Sky Muster services and changes to policy and rollout plans.

The Government **does not support** these recommendations.

This recommendation is based on the incorrect assumption by the Committee that nbn does not consult with regional and remote Australians. nbn already has a comprehensive program of stakeholder engagements including with rural and regional groups representing telecommunications users, farming organisations, rural health and education advocates. Responding to concerns of regional Australians over data caps, in June 2017 nbn doubled the maximum monthly wholesale data limits for Sky Muster from 150GB to 300GB, with minimal costs being passed on to consumers by RSPs. The changes took effect from 4 October 2017, and retail plans now available in the market offer consumers on average 50 per cent extra peak data per month at a minimal additional cost.

nbn has a well-developed plan to provide the services that regional Australia needs. In fact, the nbn rollout is more advanced in regional Australia because the Government asked nbn to prioritise underserved areas. As a result of this decision, the rollout is more than 77 per cent complete outside major urban areas.¹

To support the provision of high quality services, in October 2017 nbn established its ‘nbn local’ initiative, with community relations teams on the ground in regional areas to enable nbn to better understand the needs at a community level.

¹ As at 28 December 2017.

The teams will focus on educating residential and business consumers about the status of the NBN in their area and what they need to do to connect, and what choices they need to make to switch to the network. Network engineers and deployment specialists will also be located in regional hubs to help identify and resolve issues.

The Australian Communications Consumer Action Network (ACCAN), the peak body for communications consumer organisations, has supported the ‘nbn local’ initiative.²

The Statutory Infrastructure Provider (SIP) regime, included in the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 (TLA(CC) Bill) introduced by the Government in June 2017, will ensure that all people in Australia, no matter where they live or work, will be able to access high speed broadband services upon reasonable request. The Regional Broadband Scheme (RBS) (introduced at the same time as the SIP regime) will secure funding for regional broadband services into the future by requiring all nbn-comparable fixed-line broadband networks to contribute equitably to the costs of nbn’s fixed wireless and satellite networks.

Beyond the regional deployment of the NBN, the Government is also providing mobile coverage through the Mobile Black Spot Program. Through this program, the Government is investing \$220 million to provide greater mobile coverage of Australia.

In addition, the Government has a dedicated Minister for Regional Communications.

² See: *Improved service on the way* (12 October 2017), *Western Magazine* (Dubbo), and ACCAN’s twitter feed @ACCAN_AU.

Broadband speed

Recommendation 4:

3.104 The Committee recommends the Government ensure by appropriate regulation that end users are informed of, or can easily access and are directed to, clear information about the maximum attainable layer 2 speed of their NBN infrastructure/service on a per premise basis.

The Government **supports** this recommendation **in principle** on the basis of actions already underway.

This recommendation is based on the assumption by the Committee that information about broadband speeds is not currently available to consumers. This assumption is incorrect, but more can be done.

The Government notes that the ACCC is an independent statutory authority and is not subject to specific direction by the Government. The Government notes, however, that the ACCC has already published guidance for RSPs on how to advertise speeds for fixed-line broadband services, including clearly identifying typical peak speeds.³

The ACCC's advertising guidance recognises that in order to assist consumers in making informed decisions, RSPs should advise the consumer of limitations that would impact their service during the sales process, or as soon as practicable to the sale. This includes providing maximum attainable speed information to consumers in circumstances where the maximum attainable speed of the NBN connection cannot support the full speed of the plan that the consumer is ordering.

The guidance follows extensive consultation with RSPs and consumer representatives and builds on the six best practice principles for marketing fixed-line broadband services that the ACCC published in February 2017.

While non-binding, the ACCC has warned that its speed claims guidance is the standard by which RSPs will be judged in advertising. The ACCC will review its guidance after 12 months to determine its effectiveness. The ACCC has made it clear it will take enforcement action for misleading advertising, and in November 2017, it settled a case against Telstra involving alleged contraventions of the ACL by way of a court-enforceable undertaking that it will compensate consumers affected by past sales practices and for the next three years will provide maximum attainable speed information where relevant to the consumer.

The ACCC is investigating other RSPs for similar conduct. In November and December 2017, Optus and TPG stated that they too will compensate their customers for slow NBN speeds.

³ Australian Competition and Consumer Commission, *Broadband Speed Claim: Industry guidance* (21 August 2017), see: www.accc.gov.au/publications/broadband-speed-claims-industry-guidance.

The ACCC is establishing arrangements to collect data about the speeds and experiences of consumers through its *Measuring Broadband Australia* (performance monitoring and reporting program), which will independently test broadband speeds and in the first quarter of 2018 will start to give consumers real-world results of broadband speeds they can expect with different RSPs.⁴

Additionally, in the case of xDSL technologies, nbn provides RSPs with the estimated line speed available at a given location before a service is ordered. These line speed estimates are based on cable records, including an estimate of the range of potential maximum speeds on the line prior to a service being established, as well as reporting at least each month once the line is active, on the actual maximum speed available on the line. It is appropriate that line speed information is available through RSPs given the range of factors that can influence the speed attained for individual consumers, including in-home wiring, consumer equipment and the provisioning made by the RSP to support capacity on their services.

On 21 December 2017, the Government announced a package of regulatory interventions to address certain transitional challenges associated with the rollout and activation of the NBN. The package includes measures requiring RSPs to make available consumer information about the different NBN speed tiers they offer and the use cases to which those tiers are best suited (e.g. households with high video streaming needs). Consistent with ACCC guidance, RSPs will also be required to amend the critical information summaries they provide to consumers so that educative and comparator information on different speed tiers and the specific speed achievable on a service are included. This will provide customers with assurance about what they have ordered and what they should expect to receive. The emphasis, in this example, is on practical information that supports better consumer decision-making.

In the longer term, the provision of better information to customers, including information about broadband speeds, is also being considered in the context of the current review of the Telecommunications Consumer Protections Code (TCP Code). On the TCP Code, please also see the Government's response to recommendations 14 and 17.

⁴ For information about the program see: www.accc.gov.au/consumers/internet-phone/monitoring-broadband-performance.

Network capability at handover

Recommendation 5:

3.105 The Committee recommends that nbn develop and implement a framework that ensures best-practice installation as part of an 'active handover' model, with reference to the approach of Chorus NZ, so that each premise is assured of network capability at the point it is ready-for-service, and repeat visits and remedial costs are avoided.

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

This recommendation is based on incorrect assumptions by the Committee regarding the similarities and differences of the networks and technologies in the respective countries.

Testimony from nbn Chief Financial Officer, Stephen Rue, to the Senate Estimates hearing on 24 October 2017 elaborated on the significant differences in the rollout approach adopted in New Zealand, when compared to the nbn.⁵ With different technologies being deployed here in Australia, and on a vastly different scale and timeframe, comparisons between the two rollouts are of limited value.

nbn announced in August 2017 that its 'check your address' function had been updated to identify when homes and businesses are 'ready to connect' at an individual address level providing the most up to date information regarding when nbn services become available. This initiative was designed to eliminate confusion about premises in an area 'ready for service' (RFS) that still require extra work.

The Government's NBN consumer experience improvement package announced in December 2017 requires RSPs to reconnect a service to the legacy network in certain circumstances where the service has been disconnected and cannot be connected to the NBN.

⁵ Proof Committee Hansard, Environment and Communications Legislation Committee, Commonwealth of Australia, Tuesday, 24 October 2017, p.140.

Progress reporting

Recommendation 6:

- 3.106 The Committee recommends that nbn review and provide advice to the Committee on how it:
- takes into consideration the added complexity and time requirements of installations to Service Class 0 and Service Class 10 premises, or equivalent areas, when calculating its progress towards completion goals; and
 - prioritises connections to areas that currently have no access to internet.

The Government **supports** this recommendation **in principle**.

The Government has issued nbn with a Statement of Expectations that asks nbn to prioritise underserved areas. One key consequence of this requirement, which was not included in earlier Statements, is that the rollout is more than 75 per cent completed in regional Australia.

Further, nbn publishes rollout information on a weekly basis which clearly identifies:

- premises in ready for service areas.
- premises ready to connect.
- premises not ready to connect.
- premises activated.

Technology change decisions

Recommendation 7:

- 4.98 The Committee recommends that the Australian Government require nbn to identify and disclose all areas that are currently designated to be served by a satellite connection that previously were set to receive the NBN by FTTN or fixed wireless, and explain why the change has occurred.

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

Under the Statement of Expectations, nbn is obligated to provide all premises with access to minimum download wholesale speeds of 25Mbps (and proportionate upload rates). The Statement gives the company the discretion to decide which technology is best suited to premises, provided it can provide access to that speed at a minimum.

nbn is continually optimising the rollout to deliver broadband as quickly and cost-effectively as possible and this may involve changes to its footprint boundaries and movement of particular areas from one technology to another during the planning stage.

In areas outside of the nbn fixed line footprint, Telstra's existing copper lines are not subject to mandatory disconnection. Furthermore, under the *Telstra Universal Service Obligation Performance Agreement* (TUSOPA), Telstra is generally prevented from disconnecting any copper lines that are being used to provide services to premises outside of the nbn fixed line footprint, and must ordinarily use its copper network to fulfil the Universal Service Obligation to these premises.

Co-location

Recommendation 8:

4.99 The Committee recommends that the Australian Government require nbn to develop a plan that would provide access to nbn's fixed wireless towers for the provision of mobile telephony.

The Government **supports** this recommendation **in principle**, on the basis that such a requirement is already in place.

Under the *Telecommunications Act 1997*, carriers are already required to provide other carriers with access to certain facilities including telecommunications towers, subject to technical capacity constraints and other exceptions. nbn already provides access to its fixed wireless towers to mobile network operators, and itself accesses towers owned by other mobile network operators.

Independent tower providers such as Axicom and Broadcast Australia also provide tower access to nbn and the mobile network operators. Based on commercial interests, carriers determine whether to seek access to another carrier's tower or to install their own tower.

Furthermore, the Australian Government's Mobile Black Spot Program (MBSP) included specific provisions to encourage co-location outcomes. For example, a condition of Commonwealth funding is that other mobile network operators (MNOs) have an opportunity to elect to co-locate on the funded base stations in advance of the design of the base station being settled. In addition, the program also encouraged applicants to consider co-locating on nbn fixed wireless towers where cost effective. As of November 2017, co-location between the MNOs is being planned or expected to occur at 87 MBSP base stations. The MNOs are also expecting to co-locate MBSP base stations on 77 nbn fixed wireless towers.

Sky Muster plans

Recommendation 9:

4.100 The Committee recommends that the Australian Government ask nbn to consider providing the capacity for separate business and residential Sky Muster plans to be made available at the same location when business grade plans are introduced in 2018.

The Government **supports** this recommendation **in principle**, on the basis that action is already underway.

In June 2017 nbn announced that it would be doubling the maximum monthly wholesale data limits from 150GB to 300GB, and increasing average peak downloads by 50 per cent on the Sky Muster satellite services. These data increases will result in a vast improvement in the service for businesses and consumers.

nbn is planning further enhancements to the satellite service, and consulting with industry on Enterprise Satellite Services. The availability of plans will be dependent on capacity available in each Sky Muster satellite beam.

The development of these services will include symmetrical services with equal upload and download speeds for business applications such as video-conferencing and cloud-based services. nbn announced that it will introduce wholesale satellite enterprise products in 2018 to assist regional businesses.

nbn will continue improving the Sky Muster service and examine ways to further increase capacity to ensure it offers the best possible service to regional consumers.

Recommendation 10:

4.101 The Committee recommends that the Australian Government set a benchmark for reasonable data allowance on Sky Muster plans, by reference to average data use across the fixed line network.

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

The fair use policy is the most important tool available to nbn to manage the scarce satellite capacity, to ensure that all Sky Muster users can have a good experience. The Committee's recommendation fundamentally misunderstands the technical capability of the satellite, and would mean a relaxation in the fair use policy, and a return to the system used by the Interim Satellite Service, which was plagued with outages and poor quality services.

Rather than require nbn to provide a service that does not meet consumer expectations, the Government has been working with RSPs and nbn to increase the total amount of capacity available. To this end, on 27 June 2017, the Government announced that nbn would be doubling the maximum monthly wholesale data limits and increasing average peak download plans by up to 50 per cent on the Sky Muster service.

Plans giving effect to the 50 per cent increase in peak data and doubling of off-peak Sky Muster data allowances announced by the Government in June 2017 became available in the market from October 2017 with several RSPs offering 300GB plans that provide 150GB peak data for around \$130 per month.

Regulation of broadband wholesale services

Recommendation 12:

5.21 The Committee recommends that the regulation of broadband wholesale services be overhauled to establish clear rights and protections for suppliers and end users of NBN broadband services. This framework should include: service connection and fault repair timeframes; minimum network performance and reliability; and compensation arrangements when these standards are not met. The Committee requests that the Department brief the Committee on progress in developing these protections by December 2017.

The Government **supports** this recommendation **in principle**, on the basis that action is already underway.

Under the *Competition and Consumer Act 2010*, nbn must publish all the wholesale services that it supplies, along with terms and conditions of supply. It has done this through its special access undertaking and wholesale broadband agreements (WBA). The WBA is a commercially-negotiated contract with RSPs which includes its service connection and fault repair timeframes, minimum network performance and reliability measures and rebate mechanisms. nbn consulted with its customers in determining the service levels in the WBA. The latest version of the WBA (WBA3) includes a new \$25 rebate for services which may be claimed when nbn fails to meet its performance target restoration timeframes. This is in addition to the existing WBA connection rebate. WBA3 also includes a new liability regime for Material Service Failures.

All services supplied by nbn are subject to oversight by the ACCC. The ACCC is the independent industry regulator and has the power to regulate service levels where such market intervention is clearly warranted.

The ACCC has indicated in its *Communications Sector Market Study*⁶ that it will examine wholesale service levels in the context of the supply chain to consider whether regulatory intervention is necessary, for example, by including service level terms within nbn's regulated terms of access. The ACCC announced on 2 November 2017 that it would be conducting a public inquiry into nbn's wholesale service level standards, and released a discussion paper in December 2017. This inquiry will include examination of the wholesale service standard levels themselves; the impact that these have on the consumer experience; and incentives for nbn to take corrective action and pay relevant compensation to RSPs.

In December 2017, the Government announced that the ACMA will be intervening to improve complaint handling by RSPs. An industry standard will be developed, which among other things, will require RSPs to keep up to date information on service repair timeframes and to share this information with consumers. Upstream providers (e.g. wholesale providers such as nbn) will be required to provide reasonable assistance to service providers on request for the purposes of resolving consumer complaints.

⁶ Australian Competition and Consumer Commission, *Communications Sector Market Study: Draft Report* (October 2017), at 5.2, see: www.accc.gov.au/about-us/market-studies/communications-sector-market-study#draft-report.

In addition, in June 2017 the Government introduced the TLA(CC) Bill to establish the SIP regime. The SIP regime will establish requirements for nbn (and other carriers where appropriate) to connect premises to superfast access networks and supply wholesale services that can be used by RSPs to supply consumers with broadband services with peak download speeds of at least 25Mbps and peak upload speeds of at least 5Mbps. On fixed-line and fixed wireless networks SIPs will also have to support the supply of voice services by RSPs.

The TLA(CC) Bill provides powers for the Minister to make standards, rules or benchmarks that SIPs must comply with. Standards could consider such matters as service connection and fault repair timeframes and rebates for failure to meet timeframes. Rules could consider complaints handling processes, and benchmarks could be applied to require timeframes to be met in a certain number of cases.

The Minister for Communications has publicly stated that a key objective of the Government's intended Review of the Telecommunications Consumer Safeguards Framework (Safeguards Review) will be to examine the existing suite of communications consumer safeguards, their effectiveness, relevance and ongoing utility, and to consider how the protections they deliver in practice might best translate to a world where the NBN rollout is complete.⁷ This would include consideration of fault repair timeframes, including taking into account any above noted standards, rules or benchmarks with respect to SIPs.

⁷ Senator the Hon Mitch Fifield, Minister for Communications, *Opening address, ACCANect 2017* (20 September 2017), accan.org.au/files/Events/Conference17/Day%201%20-%20Session%202%20transcript.docx.

Small business users

Recommendation 13:

5.22 The Committee recommends that nbn and RSPs develop business grade products specifically designed for the small business market which provide service guarantees and remedies. The Committee requests that nbn and the Communications Alliance report back to the Committee on progress in developing these products by December 2017.

The Government **does not support** this recommendation, on the basis that nbn is already taking action to provide products over which RSPs tailor their services for the small business market.

This recommendation is based on the assumption by the Committee that nbn does not consider the needs of small business when designing its wholesale products. This assumption is incorrect.

nbn already has products in the market to allow its RSPs to support small businesses. In fact, the Statement of Expectations provides that nbn should ensure that its wholesale services enable RSPs to supply services that meet the needs of consumers. nbn has been working with the Council of Small Business Australia (COSBOA), and recently announced plans to provide dedicated business support has been endorsed by COSBOA.⁸ Furthermore, data increases announced in June 2017 (and available from October 2017) provided a doubling of maximum monthly wholesale data limits from 150GB to 300GB and increased average peak downloads by 50 per cent on the Sky Muster satellite services, resulting in a vast improvement to the satellite service for small business.

In November 2017, nbn announced the formation of a dedicated team to support Australian businesses that offers: improved connection and resolution processes; and tailored wholesale business product pricing. For large businesses nbn has also announced specialist support. Via dedicated case management, enterprise engagement teams will be established to work closely with phone and internet service providers to ensure a smooth transition, particularly for moving special services such as Ethernet Lite and ISDN to the new network. Complex and multi-site migrations will be project managed between nbn and the business' service provider.

nbn's RSPs already market plans directed at regional small business consumers. For Sky Muster consumers, nbn's release of a new wholesale business pricing model incorporating a spend cap will enable RSPs to save on monthly wholesale charges, driving competition in the business market. nbn is planning further enhancements to the satellite service, and is consulting with industry on Enterprise Satellite Services to enhance regional business administration by enabling options such as cloud computing, video calls and global marketing, with these services becoming available in 2018.

⁸ see: [/www.nbnco.com.au/corporate-information/media-centre/media-releases/improving-customer-experience.html](http://www.nbnco.com.au/corporate-information/media-centre/media-releases/improving-customer-experience.html).

nbn is also working towards providing a multicasting capability, and has commenced a six month trial into these services on Sky Muster. Multicasting allows a satellite RSP to deliver content simultaneously to multiple users and is well suited to video delivery.

Telecommunications Consumer Protections Code

Recommendation 14:

5.41 The Committee recommends that the Telecommunications Consumer Protections Code be amended to require that customers lodging a complaint with their retail service provider are specifically made aware of external dispute resolution options including the Telecommunications Industry Ombudsman at the time they initially lodge the complaint.

The Government **supports** this recommendation **in principle**, on the basis that these requirements already exist within the TCP Code.

Chapter 8 of the TCP Code, which deals with complaint handling by service providers, sets out the obligations for service providers to advise their customers and former customers of their options for external dispute resolution, including the TIO. Further, the Critical Information Summary provisions of the Code also require service providers to provide certain information to consumers, including contact details for the TIO.

In its present form, the TCP Code requires RSPs to:

- include information about how to access internal dispute resolution processes and contact details for the TIO in every Critical Information Summary (TCP Code subclauses 4.1.1(a)(iii)(D) and (E)).
- tell Consumers who remain dissatisfied (after internal escalation of the Consumer's complaint) of the options for external dispute resolution including the TIO (TCP Code subclause 8.2.1(c)).

Complaints handling, including in relation to NBN services, is also being considered in the context of the current review of the Code.

Consideration of any adjustments to Code provisions would appropriately be a matter for the Communications Alliance working committee that is undertaking the review. The Communications Alliance works program 2017 indicates a publication target date of September 2018 for the TCP Code project.⁹

⁹ Communications Alliance, *Communications Alliance Works Program 2017* (updated 22 September 2017), see: www.commsalliance.com.au/__data/assets/pdf_file/0003/38694/Works-Program-170922.pdf.

Recommendation 17:

- 5.66 The Committee recommends that the Australian Communications and Media Authority develop and introduce an updated Telecommunications Consumer Protections Code that specifically addresses issues raised in relation to customer experiences with NBN services. This should include mandatory, enforceable standards to regulate the marketing of broadband speeds, in line with the recent principles and industry guidance released by the Australian Competition and Consumer Commission. The updated instrument must ensure that end users have rights and accessible procedures to enforce those rights.

The Government **supports** this recommendation **in principle**, on the basis that these matters are already being considered in an industry review of the TCP code.

The TCP Code is an industry code developed by the Communications Alliance. The ACMA registers industry codes if they meet the requirements specified in section 117 of the *Telecommunications Act 1997*.

A review of the TCP Code is currently underway, and is expected to be completed by September 2018¹⁰. The Review includes a Working Committee that includes consumer representatives from ACCAN and Legal Aid NSW and is considering a broad range of consumer issues, including those experienced by consumers on the NBN.

If an industry code is assessed as deficient, the ACMA has reserve powers to make an industry standard under section 125 of the *Telecommunications Act 1997*. The ACMA also has powers to enforce registered industry codes, including the ability to issue warnings and/or directions. It can also issue infringement notices or commence proceedings in the Federal Court seeking a pecuniary penalty from a provider that breaches a direction.

However, the ACMA does not have the power to intervene to the direct benefit of individual consumers, with the role of dispute resolution being the responsibility of the TIO. Consumers are also protected by the ACCC's enforcement of the Australian Consumer Law which, being legislation, does not need to be captured by the TCP Code.

Please also see the Government's response to recommendation 4.

¹⁰ Communications Alliance, *Communications Alliance Works Program 2017* (updated 22 September 2017), see: www.commsalliance.com.au/__data/assets/pdf_file/0003/38694/Works-Program-170922.pdf.

Telecommunications Industry Ombudsman

Recommendation 15:

5.46 The Committee recommends that the Telecommunications Industry Ombudsman be empowered to compel any relevant parties to a complaint to meet together or otherwise cooperate in order to facilitate the resolution of that complaint within a set reasonable timeframe.

The Government **supports** this recommendation **in principle**, on the basis that these matters have already been addressed by the TIO.

While the TIO Scheme is established under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act), the TIO is an independent, industry-based ombudsman scheme, and the Government does not intervene in its operations.

The TIO's Company Constitution establishes the TIO as the company which corresponds to the one specified in the TCPSS Act, and enables the creation and amendment of an associated Terms of Reference (ToRs). These ToRs set out the types of complaints the TIO can handle, and how it handles them. The TIO Board may change the ToRs at any time, via a special resolution of the Board and following consultation with Australian Government Ministers responsible for communications and consumer affairs policy.

The Government notes changes adopted by the TIO Board on 26 September 2017 to the TIO's ToRs to strengthen the obligation on TIO members (not just the member against whom a complaint has been brought) to provide information requested by the TIO in order to resolve a complaint, and to strengthen the obligation on TIO members to cooperate with TIO decisions.

The Government also notes the independent review of the TIO, required under section 133A of the TCPSS Act, which was conducted in 2017.

The Government's Consumer Safeguards Review will include examining the effectiveness of existing telecommunications consumer complaint mechanisms, and the extent to which associated collection and reporting of complaints data contributes to improvements in consumer outcomes.

Also see the Government's response to recommendation 14.

Recommendation 20:

- 6.48 The Committee recommends that the scope, function, and operation of the Telecommunications Industry Ombudsman (TIO) be expanded so that, among other improvements determined through the current review process, the TIO should keep data according to technology type, and should record and report multiple issues as separate items, especially where nbn and an RSP are both involved.

The Government **supports** this recommendation **in principle**.

Please see the Government's response to recommendation 15.

Consumer complaint handling

Recommendation 16:

5.48 The Committee recommends that the Australian Government direct nbn to clearly identify the complaint handling process for consumers, including: complaint resolution processes and timeframes, and internal and external complaint escalation processes. This information must be provided by nbn in a way that meets Australian Government accessibility guidelines.

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

This recommendation demonstrates the Committee's fundamental misunderstanding of nbn's role in respect of consumer experiences of the NBN. nbn is a wholesale only provider and encourages consumers to seek to resolve issues directly with their access seeker or telecommunications RSP as they are the ones with the direct relationship to the consumer.

Under nbn's Complaint Management Policy, a consumer can, however, raise a complaint which will be logged in nbn's Community Relationship Management system to track, resolve and close the issue in accordance with this policy and nbn's internal procedure. nbn will keep access seeker's apprised of relevant issues where appropriate. nbn's Complaint Management Policy includes timeframes:

- nbn seeks to acknowledge written complaints within 2 working days.
- nbn seeks to provide confirmation of the proposed resolution of the urgent aspects of an urgent complaint (and, if accepted by the complainant, implementation of the urgent aspects of the resolution) within 2 working days of receipt.
- nbn endeavours to resolve non-urgent complaints within 5 working days of receipt and preferably at the first point of contact.
- nbn endeavours to resolve complex complaints within 20 working days of receipt.

Where resolution by nbn is not possible, nbn will advise the complainant of their options including to contact the Telecommunications Industry Ombudsman where applicable.

nbn's Complaints Management Policy is published on nbn's website. nbn aims for its website to be compliant with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0. This is consistent with the Australian Government standard established for web accessibility as set out in the Digital Service Standard published by the Australian Government Digital Transformation Agency.

On 21 December 2017, the Government announced a package of measures to improve the NBN consumer experience, including the introduction of new complaints handling rules stipulating timeframes for response and resolution by RSPs. These rules will be based on existing measures in the TCP Code, but will also contain additional provisions. The provisions will ensure upstream providers such as wholesalers, other intermediaries and nbn provide reasonable assistance to RSPs to resolve customer complaints. Major RSPs will also be required to report to the ACMA on customer complaints, with the results to be published to allow consumers to make informed decisions when choosing a provider.

Please also see the Government's response to recommendations 5 and 12.

Provision of information to consumers by RSPs

Recommendation 18:

5.67 The Committee recommends that the ACMA consider introducing an updated statutory determination, applicable to all NBN technology types, to require retail service providers to inform customers of any critical service issues and line impairments to ensure the customer has understood these issues, prior to a service commencing.

The Government **supports** this recommendation **in principle**, on the basis that this matter is the subject of upcoming regulatory action by the ACMA.

The Government announced in December 2017, as part of a package of measures to improve consumer experience that the ACMA would introduce regulatory measures to require RSPs to complete line testing to ensure a functioning and quality NBN connection at the time of an installation and, if required, undertake a line speed test at the request of their customer post connection. This will provide transparency of the level of service consumers can expect on their NBN service from their RSP.

Further, the ACCC's advertising guidance about broadband speeds recognises that in order to assist consumers make informed decisions, RSPs should advise the consumer of limitations that would impact their service during the sales process, or as soon as practicable to the sale. This includes providing maximum attainable speed information to consumers in circumstances where the maximum attainable speed of the NBN connection cannot support the full speed of the plan that the consumer is ordering.

Also see the Government's response to recommendations 5 and 12.

Consumer satisfaction and network performance metrics

Recommendation 19:

- 6.45 The Committee recommends that nbn publish prominently on its website, monthly information relating to its end user satisfaction metrics, including:
- its overall net promoter score as measured each month;
 - the overall net promoter score for each technology type as measured each month;
 - relevant disaggregated information about end user satisfaction metrics in relation to each RSP; and
 - any relevant disaggregated information about end user satisfaction metrics in specific geographic areas, such as:
 - data broken down by state and territory; and
 - data relating to each fixed-line area in the rollout footprint, as areas are designated Ready for Service.

The Government **supports** this recommendation **in principle**.

The Government is committed to the transparency and accountability of the nbn. That is why since 2013 the Government has implemented a series of reporting requirements on nbn to provide better information for the public. Improvements include:

- the weekly rollout report.
- improvements to nbn's website, which is now able to show when almost all premises in Australia will be able to connect to the NBN.
- quarterly market updates.
- detailed Corporate Plans and Annual Reports that show the true financial and operational status of nbn.

The Government is working with nbn to introduce public reporting of key metrics of operational performance as they relate to the consumer experience, as part of the package of measures to improve consumer experience, announced by the Government in December 2017.

Beyond this the ACCC's *Measuring Broadband Australia* program will independently test broadband speeds and publish results that will give consumers real-world results of broadband speeds they can expect with different RSPs.

Recommendation 21:

6.52 The Committee recommends that the Department of Communications and the Arts publish the data it receives from nbn as part of its monthly reporting regime, including data relating to:

- network fault restoration;
- service fault restoration;
- connection performance, such as right first time activations; and
- activities undertaken in accordance with service level agreement.

The Government **supports** this recommendation **in principle**, noting that nbn, rather than the Department of Communications, should be responsible for managing publication of key operational metrics relating to the network.

On 21 December 2017, as part of a package of measures to improve the consumer experience with the NBN, the Minister for Communications announced that the Government would require nbn to establish a consumer experience dashboard to publicly report on nbn connection, fault repair and service delivery performance.

Subcontractor arrangements

Recommendation 22:

7.25 The Committee requests that nbn review and provide advice to the Committee on its processes and conduct with regard to the engagement, training, coordination and dispute resolution with subcontractors, in accordance with global best-practice.

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

nbn already has an accreditation process that assists it to verify that workers have the right skills and competencies to carry out work on the NBN.

Technical skill accreditation may be gained through formal nationally recognised training programs, for workers lacking experience in specific technical skills, or direct assessment, for workers with relevant experience. In addition, technicians must complete two mandatory online modules, covering health, safety and environment, and knowledge of nbn as an organisation, before commencing work.

In addition, nbn has advised that it requires its Service Delivery Partners to document and implement a health and safety management plan for the work they are carrying out, including risk assessments and the implementation of controls for the specific tasks being undertaken.

nbn is aware that there are disputes between contractors and their subcontractors, however, it cannot act as the adjudicator in these disputes nor interfere with contractual relations. It is the responsibility of the parties to manage these disputes. To assist subcontractors, there are avenues under the security of payments legislation within each state and territory when payment disputes arise and are consistent with the terms of the contract between the parties.

Digital inclusion

Recommendation 23:

8.67 The Committee recommends that the Australian Government ensure that digital inclusion is measured and reported. It has been suggested that the Productivity Commission assess and report on income and wealth inequality in Australia, and it may be worth including the measurement and reporting of digital inequality, as the two areas are likely to be increasingly related.

The Government **supports** this recommendation **in principle**.

The Government is already consulting with the community on the thrust of this recommendation through the Digital Economy Strategy Discussion paper, released on 19 September 2017. Interested parties are invited to provide comment, through the Department of Innovation website **www.innovation.gov.au**.

Industry is also concerned with digital inclusion. Telstra has partnered with RMIT University, the Centre for Social Impact Swinburne, and Roy Morgan Research to create the Australian Digital Inclusion Index.

The Index, which was first published in 2016, benchmarks Australia's current rates of digital inclusion, in order to inform the course for future action.