

# Response to Discussion Paper: Registration or Licensing Scheme for Carriage Service Providers

NBN Co submission

December 2023



NBN Co Limited (**NBN Co**) thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**) for its discussion paper seeking to address the question of whether a Carriage Service Provider (**CSP**) Registration should be adopted for the Australian telecommunications industry.

We note the broad range of industry stakeholders who have expressed in principle support for a registration scheme. NBN Co agrees with others across the telecommunications sector that there is a need for a centralised and comprehensive list of service providers that deliver telecommunications services to Australians.

A register that captures the identity of all retail CSPs (that is, those CSPs who interact directly with end users) would be a useful platform to provide greater visibility to the appropriate regulatory authorities and the general public about who is offering carriage services to Australian consumers and businesses. In doing so it would also address an ongoing pain point caused by the lack of a publicly available list of CSPs that operate within the sector.

NBN Co is not in favour of wholesale CSPs or carriers being asked to get involved with the mechanisms to ensure retail CSPs complete their registration or keep their registration information up to date.

## 1. 'Light touch' registration process

NBN Co is supportive of introducing a 'light touch' model as described by the discussion paper. A registration scheme should appropriately balance a need for greater visibility of all entities providing telecommunications carriage services directly to Australians, with a model that does not become so burdensome that it hinders the ability for viable and compliant retail providers to enter into the market and bring new opportunities for competition and innovation to the sector. A 'light touch' model of registration would support the maintenance of a 'large and diverse market'<sup>1</sup> whilst still assisting the Australian Communications and Media Authority (**ACMA**), the Telecommunications Industry Ombudsman (**TIO**) and other industry stakeholders to have greater visibility of the entities operating within it.

NBN Co believes the ACMA is the most appropriate entity to administer a new registration scheme. They have carriage of ensuring compliance with the Telecommunications Act and many of its associated regulations and co-regulatory instruments that apply to all carriage services that are sold to end users by retail CSPs.

A register could enable the ACMA to be provided with sufficient information about a CSP's business including legal identifications such as their ACN or ABN, trading name/s, management and ownership of their organisation and up to date contact details. This level of detail should be efficiently and easily known to the provider prior to the start of their operations and able to be provided without an overly burdensome cost impost. NBN Co agrees with the discussion paper's suggestion that imposing additional suitability criteria at point of registration that requires CSPs to prove financial and/or technical viability could create an unwarranted barrier to entry,<sup>2</sup> especially at the beginning of a CSP's operations.

NBN Co is supportive in principle of the options outlined in the discussion paper that could allow a registration scheme to be 'light touch' including measures that:

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<sup>1</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Registration or Licencing Scheme for Carrier Service Providers Discussion Paper*, September 2023, p7.

<sup>2</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Registration or Licencing Scheme for Carrier Service Providers Discussion Paper*, September 2023, p11.

- Enable CSPs' registration activity to align with existing registration requirements to the extent possible, such as joining the TIO Scheme (where applicable);
- Relies on existing regulation and co-regulation to govern CSP interactions with end users;
- Enable the ACMA to deregister CSPs (or possibly refuse registration) in limited circumstances such as in response to repeated or serious breaches of their legal and regulatory obligations; or in disrupting illegal activity that creates consumer harm and brings the rest of the industry into disrepute, e.g. 'phoenixing' activity; and
- Include appropriate transparency, appeal and review mechanisms.

## 2. Type of CSP

It would seem most beneficial for the register to capture details of those retail CSPs who provide services directly to end users where misconduct or serious non-compliance with regulatory obligations could inflict the most public harm, rather than include those who solely offer wholesale services to other CSPs. NBN Co notes the Australian Government's proposed amendment to the Statutory Infrastructure Provider (SIP) legislation to require CSPs to nominate as SIPs in certain circumstances and therefore offer wholesale services on reasonable request is likely to necessitate a subset of wholesale CSPs to be captured through that mechanism.

If the Department was to consider broadening the scope of the register beyond retail CSPs, NBN Co suggests that, in determining which CSPs should be required to register, the Department consider what current information gaps a broader CSP register could fulfill. In keeping with the objective of enabling the ACMA and other stakeholders to have greater visibility of CSPs both to support providers in understanding the laws, codes and standards they must follow<sup>3</sup> and to better investigate potential compliance issues that adversely impact end users, CSPs who fall under the scope of those regulatory requirements should be in scope to be registered.

## 3. Additional carrier obligations?

The discussion paper has suggested additional mechanisms may be required to facilitate compliance with the requirements to register, "including requiring carriers or wholesale CSPs to periodically confirm a CSP's registration in order to provide (or continue to provide) services to them and/or engagement with them in the supply of telecommunications services..."<sup>4</sup> NBN Co is not in favour of introducing rules that require wholesale carriers and wholesale CSPs to verify retail CSPs are registered in order to provide services to them; or a proposal that limits unregistered CSPs from exercising and enforcing their contractual rights with NBN Co.

NBN Co notes a requirement on carriers to monitor CSP compliance prior to supplying wholesale services is a feature in the Canadian registration model the Department has cited. However, the circumstances of setting the Canadian registration regime appear to be very different to the current situation in Australia. At the time obligations were imposed on Canadian carriers to require telecommunications service providers via their service contracts or other arrangements to register with the Canadian Radio-television and Telecommunications

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<sup>3</sup> <https://www.acma.gov.au/our-role-compliance-and-enforcement>

<sup>4</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Registration or Licencing Scheme for Carrier Service Providers Discussion Paper*, September 2023, p14.

Commission, NBN Co understands the Canadian Commission did not have the authority to direct non-carriers or retail providers themselves.<sup>5</sup>

NBN Co does not believe the ACMA has the same limitations. The Australian Communications and Media Authority Act 2005 (the ACMA Act) already enables the ACMA to monitor and regulate telecommunications including compliance with the Telecommunications Act 1997, the Telecommunications Consumer Protections and Service Standards Act 1999 and all other legislative and regulatory instruments that fall under its scope. The ACMA Act also gives the ACMA the power to “do all things necessary or convenient...with the performance of its functions.”<sup>6</sup>

One of the objects of the National Broadband Network *Companies Act 2011* is to ensure that an **nbn** corporation provides to CSPs open access to eligible services on a non-discriminatory basis.<sup>7</sup> NBN Co has onboarding processes already in place for prospective nbn customers which include checks that the provider is eligible to be considered to sell nbn products and services prior to them executing our Wholesale Broadband Agreement (WBA). However, having an additional condition on its ability to offer that open access, especially where it would be difficult for an nbn corporation to prove registration obligations had been initiated, or indeed continue to be met, may be inconsistent with that object. Further, NBN Co cannot supply carriage services unless they are declared services under Part XIC of the *Competition and Consumer Act 2020*. This means that NBN Co has a statutory obligation to supply declared services to all access seekers, subject to very limited exceptions. It would arguably be inconsistent with those obligations for NBN Co to refuse supply to an access seeker on the grounds that they were not a registered CSP (unless this were made an express exception to NBN Co’s Category B Standard Access Obligations.)

Carriers don’t have similar powers to enforce compliance in the same way a regulator appropriately has, and nor should they. For wholesale network providers, such as NBN Co, there are a range of access seekers and downstream CSPs between NBN Co and the entity that supplies retail nbn services to the end user. In order to comply with an obligation to monitor registration of its retail CSP customers, all providers in the supply chain would have to attest to each other that the provider at the end of the chain (the retail CSP) has registered without the ability to verify or prove compliance.

Further, NBN Co routinely discusses operational issues with its wholesale customers as they arise and regularly engage in activity that seeks to improve customer experience. However, having to verify and, if necessary, take action due to non-compliance about a separate CSP Register would impact on NBN Co’s and other carriers’ role in the sector and, at worst, presents a potential conflict of interest especially if carriers were also required to cease supply.

An additional complexity and consideration with any proposal to require carriers to periodically confirm a CSP’s registration in order to provide (or continue to provide) services to them and/or engage with them in the supply of telecommunications services, is the financial and operational impact for industry members to which a CSP registration scheme is not directed to or is designed to directly benefit.

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<sup>5</sup> [Telecom Regulatory Policy CRTC 2017-11 | CRTC](#), para 2

<sup>6</sup> *ACMA Act 2005*, Part 2, Division 3, Section 12, p14.

<sup>7</sup> *National Broadband Network Companies Act 2011*, section 3(2)(h), p4.

NBN Co does however wish to reiterate its support for the development of a 'light touch' registration scheme for CSPs that will provide greater visibility of which entities are providing services within the telecommunications sector and enable the regulators and industry associations to do awareness raising activities on the standards of practice required to support Australian telecommunications users.

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