

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

**Thematic Review of the Customer  
Service Guarantee (CSG):  
Consultation Paper**

NBN Co submission

March 2023





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## 1. Introduction

**nbn** thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**) for the opportunity to respond to this important review.

The *Telecommunications (Customer Service Guarantee) Standard 2011* (**CSG Standard**) and associated instruments has been a feature of the telecommunications industry for the past 20 years. It has shaped community expectations about what reasonable timeframes look like when a retail service provider (**RSP**) is requested to connect or fix a standard telephone service.

The telecommunications market has changed markedly since the introduction of the CSG Standard. Consumer usage of available telecommunications services has shifted away from a heavy reliance on a ubiquitous Standard Telephone Service (**STS**) and the processes used to support this use. For example, there has been and continues to be a growing preference to use mobile services for voice calls across all demographics (indeed this ongoing trend is not just limited to fixed telephony). The current usage patterns and the increasing trend away from using fixed telephony at all mean that the existing CSG regulation as a means for providing a broad consumer safeguard is no longer fit for purpose.

Continuing to apply the CSG regime in its current form entrenches a regulatory framework that reflects market dynamics and consumer usage patterns of 20 years ago. It does not reflect today's market where providers service an increasingly small proportion of the Australian market who use a fixed voice service and an even smaller subset of consumers who may solely rely on it. **nbn** therefore suggests that a fresh approach be adopted that better reflects consumer preferences and the market structure as it stands today and for the legacy CSG regulation to be repealed.

This fresh approach should recognise the existing practice by consumers to use more than one service for their communication needs, including making and receiving voice calls. It should provide a framework that can accommodate future consumer trends, including an increasingly converged telecommunications environment. The prevalence for most Australians to avail themselves of multiple services means that a redundancy model can feasibly be used where a service on one network is unavailable for a period of time. Future consumer protections (which may include future regulatory options) can then be more appropriately targeted to Australians who may need additional support to access the range of redundancy services.

## 2. The CSG is of diminishing relevance as a consumer safeguard

The CSG Standard is a legislated safeguard which sets out performance standards for CSG-eligible services provided to consumers and small businesses. It does this by mandating guaranteed maximum timeframes for connections, fault repair, and appointment-keeping depending on the location of the consumer's premises, e.g., urban, major or minor rural, or remote. Financial compensation is paid to the consumer where the legislated timeframes are not met.

The Standard was established at a time when a standard telephone service was deemed to be the baseline ubiquitous carriage service that all Australians should be entitled to have access to within the framework of the Universal Service Obligation (**USO**). A STS was established under the *Telecommunications Act 1997*, then the

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*Telecommunications (Consumer Protections and Service Standards) Act 1999 (TCPSS Act)*, to be “a uniform concept... [that] reflects the practical reality that there is a basic carriage service, based on voice telephony, that the community expected to be available...By basing the standard telephone service on voice telephony (or its equivalent for people with a disability) the legislation sets a firm baseline below which the standard telephone service cannot fall.”<sup>1</sup>

At that time the Australian telecommunications market was dominated by Telstra as the incumbent who was both wholesaler and largest retail provider, owned and operated the copper network that connected almost every house in the Australia, operated the largest HFC cable network, and the largest mobile network.<sup>2</sup> The objective of the CSG regime was to ensure that there were set timeframes by which a consumer could receive access to voice calls via a STS and, at least in part, that a level of service standards provided to a consumer would be maintained in the lead up to, and after, Telstra’s privatisation.<sup>3</sup>

Additionally, at that time the use of fixed line telephone services was significantly more prevalent than it is today. In 2000, there were 10.6 million fixed line telephone services in operation (**SIOs**) across Australia in both retail and wholesale markets. This number peaked in 2004 at 11.7 million and has been falling incrementally ever since.<sup>4</sup> In 2022, the number of fixed-line telephone services reported by the Australian Competition and Consumer Commission (**ACCC**) across Telstra, Optus and TPG had decreased to 6.4 million SIOs.

At face value, the 6.4 million total SIOs the ACCC has most recently reported remains a sizeable market (though we note the number of services to which CSG applies is likely to be a subset of this figure<sup>5</sup>). However, it is insufficient to simply use a measurement of fixed voice SIOs as a means of determining whether the CSG is providing a useful consumer protection. Instead, it is important to assess if, and how, these services are being used and whether there is sufficient evidence that the community continues to hold an expectation that fixed voice telephony is still the basic carriage service that should be ubiquitously relied upon, and therefore protected.

### Reliance on fixed voice services has declined

With the advent of the **nbn**, a PSTN-based STS is no longer needed to access a broadband service. Instead, most consumers receive a Voice over Internet Protocol (**VOIP**) service that operates as an ‘over the top’ service to the high-speed Layer 2 broadband network. Other consumers are using mobile phones in substitution to fixed voice

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<sup>1</sup> Reference to the Explanatory Memorandum to the Telecoms Act 1997 in Mark Armstrong (Network Insight Institute), “Notes on VOIP Regulatory Obligations”, November 2004, p14.

<sup>2</sup> Telecommunications Legislation Amendment (Competition And Consumer Safeguards) Bill 2010 Explanatory Memorandum, p1.

<sup>3</sup> Reference to the Explanatory Memorandum to the Telecoms Act 1997 in Mark Armstrong (Network Insight Institute), “Notes on VOIP Regulatory Obligations”, November 2004, p18.

<sup>4</sup> ACMA, *Communications Report 2009-10 series, Report 2 – Take-up and use of voice services by Australian consumers*, p3

<sup>5</sup> For example, the ACMA noted in its 2012-13 Communications Report (p64) that 65% of all fixed SIOs were covered by the CSG at that point in time. Other exemptions built into the CSG Standard will also mean the number of CSG-eligible services will always be a smaller subset of the total number of SIOs. For example, only consumers that have five or fewer telephone services are covered by the CSG Standard.



options. Through the past 10 years there have been several studies indicating an increasing move away from consumers' reliance on fixed telephony for their communication needs. For example:

- In 2011, the number of Australians aged 14 years and over living in households without a fixed-line telephone service had reached 17% (or 2.7 million).<sup>6</sup>
- In 2017, the Productivity Commission noted evidence that consumer's reliance on an STS as a preference to make or receive voice calls had continued to decline.
- In 2020, the Australian Communications and Media Authority (**ACMA**) reported 39% (or 7.8 million people) had a fixed telephone service at home. At that time, there were 6.17 million total fixed line voice SIOs, both as part of a bundle (frequently with a broadband service) and standalone voice products.<sup>7</sup>

In the same 2020 report, the ACMA also indicated "while households with fixed-line voice services may have a service in operation, it may be unconnected to a handset, or never used."<sup>8</sup> Of those households surveyed, 15% had a home phone which was not in use.<sup>9</sup>

Consumers appear to have continued to retain a fixed voice service due to legacy practice or for reasons controlled by their RSP. For example:

- There has been a long-held established consumer practice to buy a bundled service plan that includes a fixed voice home phone service, most commonly with an internet or mobile service in the same package.<sup>10</sup>
- Larger providers such as Telstra have included a voice service as a default component of both legacy and some **nbn** plans, irrespective of whether the consumer wants it or intends to use the voice service.<sup>11</sup>

Instead, most Australians are now choosing to make voice calls on other networks, or to communicate by alternative means:

- Mobile networks cover around 99% of the Australian population<sup>12</sup> and offer a genuine alternative service for making voice calls. Mobile calls, text and messaging or calling apps are now the main services consumers use for communicating for personal use.<sup>13</sup> In recent years, approximately 78% of calls to Triple Zero have originated from a mobile.<sup>14</sup>

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<sup>6</sup> ACMA, 2010-11 Communications Report, p17

<sup>7</sup> ACMA, *Communications and media in Australia Supply and use of services, 2019–20, April 2021*, p15

<sup>8</sup> ACMA, *Communications and media in Australia Supply and use of services, 2019–20, April 2021*, p15.

<sup>9</sup> ACMA, *Telco consumer experience - Australian adults and households: Phone and internet services, October 2020*, p52.

<sup>10</sup> ACMA, *Communications Report 2009-10 series, Report 2 – Take-up and use of voice services by Australian consumers*, p26.

<sup>11</sup> For example, <https://www.telstra.com.au/help/critical-information-summaries/personal/home-internet/telstra-upfront-internet-plans/upfront-internet-plans>

<sup>12</sup> <https://www.infrastructure.gov.au/media-technology-communications/phone/mobile-services-coverage>

<sup>13</sup> [Communications and media in Australia: How we communicate | ACMA](#), services used.

<sup>14</sup> Department of Home Affairs, [Advanced Mobile Location \(triplezero.gov.au\)](https://triplezero.gov.au)



- Between 2016 to 2021, the total call time on fixed line phones dropped by over 50% to approx. 8.7 billion voice call minutes. In contrast, mobile phone calls make up an increasing majority of total voice call minutes each year, with mobile originating calls reaching up to 73 billion minutes in total.<sup>15</sup> Mobile phone SIOs have increased from 11.1 million in 2001<sup>16</sup> to over 28 million SIOs in 2021-22.<sup>17</sup>
- In the ACMA's 2022 survey, just 23% of Australians made a fixed phone call at home in the previous six months. In contrast, 96% made a mobile call and 81% used a messaging app.<sup>18</sup> Older Australians were still the most predominant users of fixed-line phone services but even their usage of fixed voice services has fallen to 39% of 65-74yrs Australians and 63% of 75+ year olds in 2022.<sup>19</sup> The majority of Australians in these older age brackets also use other means of communicating, for example, 97% of 65-74yrs Australians and 95% of 75+ year olds used mobile phone calls.

Importantly, when assessing whether the CSG regime as a consumer protection measure is still necessary, the number of Australians now solely relying on a fixed line voice service for their communications needs is negligible. The ACMA's 2022 research indicates just 1.6% of consumers surveyed in 2022 had a landline only.<sup>20</sup>

### Waiver process is widely used

Over the past 10 years, an increasing number of consumers have been agreeing to CSG waivers. This is another trend that has reduced the number of consumers being protected by the CSG regime.

The CSG Standard allows RSPs to ask consumers to waive their rights, either in whole or in part, usually at the point of sale. Many RSPs have adopted this practice since the waiver provisions were amended in the CSG Standard in 2011. In many cases, RSPs require consumers to waive their CSG rights as a condition of accepting an otherwise CSG-eligible service (whether that be for VOIP services provided over the **nbn** network, or other networks). In its 2011-12 Communications Report, the ACMA suggested that waivers were an indicator of consumers electing to use VOIP services (over both mobile and fixed line infrastructure) in increasing numbers.<sup>21</sup>

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<sup>15</sup> Christopher Hughes, [Australia: mobile and fixed line telephone usage 2021 | Statista](#)

<sup>16</sup> ACMA, *Communications Report 2009-10 series, Report 2 – Take-up and use of voice services by Australian consumers*, p3

<sup>16</sup> ACMA, *Communications Report 2009-10 series, Report 2 – Take-up and use of voice services by Australian consumers*, p3

<sup>17</sup> ACCC, [Communications Market Report 2021-22](#), p10.

<sup>18</sup> <https://www.acma.gov.au/publications/2022-12/report/communications-and-media-australia-how-we-communicate>

<sup>19</sup> *ibid*

<sup>20</sup> ACCC, [Communications Market Report 2021-22](#), p15

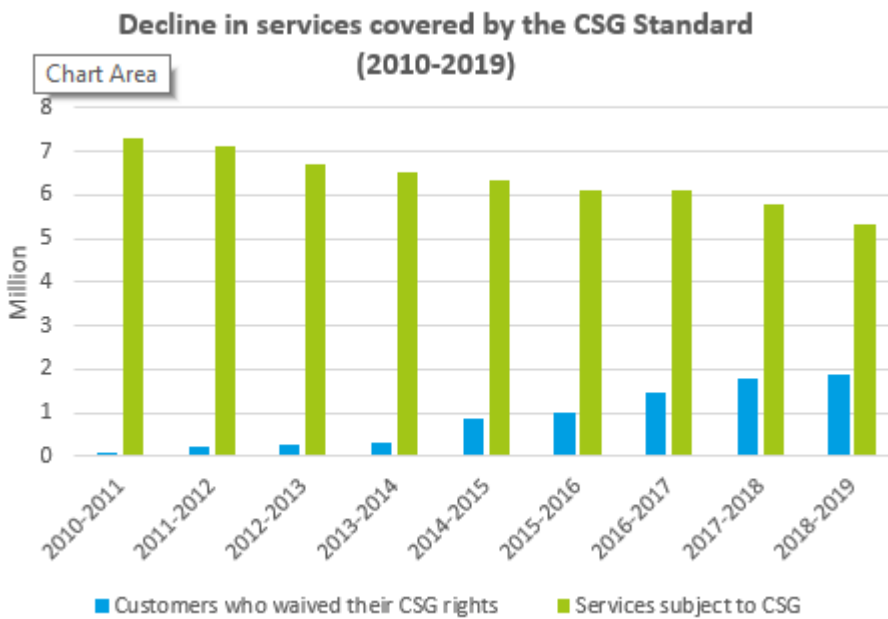
<sup>21</sup> ACMA, *2010-11 Communications Report*, p35.



Telstra’s customers are an exception when it comes to CSG waivers. Telstra’s USO obligation includes supplying an STS to all people in Australia on request, and customers cannot waive their CSG protections in respect of Telstra’s supply of USO services.<sup>22</sup>

The ACMA’s annual Communications Reports recorded the declining number of services that were eligible to be protected under the CSG Standard in conjunction with the increasing number of waivers. This data indicates that, if the CSG regime is retained in its current form, it will largely only provide consumer protection to the customers of a single retailer.

The ACMA’s last Communications Report, published for 2018-19, reported the number of consumers who had waived their CSG rights had increased to 1.85 million at June 2018 in comparison to the 5.3 million eligible services that were subject to the CSG Standard (3.9 million of which were provided by Telstra).<sup>23</sup>



(Source: various ACMA Communications Reports)<sup>24</sup>

<sup>22</sup> Section 120(7) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* states that a customer cannot waive their protection under the CSG Standard in respect of a service supplied, or proposed to be supplied, in fulfilment of the universal service obligation. Since Telstra’s USO obligation includes supplying a standard telephone service to all people in Australia on request, customers cannot waive their CSG protections in respect of Telstra’s supply of such USO services.

<sup>23</sup> ACMA, *Communications Report 2018-19*, p118.

<sup>24</sup> Table sourced from CSG data derived from ACMA Communications Reports between 2010 and 2019.



More recent data shows that Telstra continues to hold a significant portion of the retail fixed telephone market. For example, of the total fixed-line voice SIOs counted by the ACMA in 2019-20, Telstra had 46% of market, TPG 28%, Optus 24%, and Vocus 2%.<sup>25</sup>

On the assumption that at least a portion of the 6.17 million total SIOs at 2020 were CSG-eligible services and met the conditions of the CSG Standard, at least 30% of these CSG-eligible services were subject to a waiver (i.e., those provided by TPG and Vocus). The Department noted that, since this data was collated, Optus has introduced a waiver for any new fixed voice consumers it may have accrued, so the proportion of Optus customers accorded CSG rights would only decline from that point in time.

Unfortunately, there is no publicly available information on the number of waivers now in market since that 2019-20 report. **nbn** recommends the Department seek further clarity on this aspect of the market when assessing the ongoing relevance of the CSG regime.

Regardless, there is also little evidence available to suggest that, where consumers have chosen to waive their rights, they have been detrimentally impacted by not receiving protection under the CSG safeguards. For example, looking at the Telecommunications Industry Ombudsman's (TIO's) annual report complaint data as one indicator, new complaints for landline services have fallen from 37,425 across all networks in FY2011-12<sup>26</sup> to 4,343 in FY2021-22.<sup>27</sup> This may reflect the general consumer trend away from both relying on and using a fixed voice service, but it also suggests that the consumer expectation that a fixed voice service should be the basic carriage service (and, by association, must be protected by regulation for all Australians) is significantly reduced.

#### Interim and alternative services can be offered in place of specific performance standards

One aspect of the CSG regime that has not been explored in detail by existing research or longitudinal studies is how frequently RSPs rely on their ability under the CSG Standard to make a reasonable offer to supply the consumer with an interim or alternative service in the place of a specific performance standard. The Standard details when an RSP may offer consumers an interim or alternative service. Once a reasonable offer is made, even if the consumer declines this offer, the service performance standard does not apply for that event (e.g., for a fault on the telephone service) and the consumer is not eligible to receive compensation under the Standard for that event.

The Standard suggests examples of alternative and interim services may include call diversions to a mobile telephone service or a second fixed telephone service; or provision of a mobile phone service as a replacement at standard telephone prices.

However, these examples are not exhaustive and there is scope for RSPs to adopt other means to offer an interim or alternative service. There has been a growing prevalence over the past 5 years for many RSPs to offer hybrid modems that are marketed either as offering a seamless voice or broadband service by switching from the **nbn**

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<sup>25</sup> ACMA, *Communications and media in Australia Supply and use of services, 2019–20, April 2021*, p15

<sup>26</sup> Telecommunications Industry Ombudsman, *2012 Annual Report*, p17.

<sup>27</sup> Telecommunications Industry Ombudsman, *Annual Report 2021-22*, p79.



network to a mobile network if the underlying broadband service is unavailable. For example, Telstra’s Smart Modem has been marketed in these terms and, as the universal service provider, Telstra has the ability to offer this as an alternative service under the CSG framework. Further, we have recently been made aware that Telstra has written to certain fixed voice plan customers to advise them that their home phone service modems will permanently move their voice services onto their 4G network from April 2023 unless otherwise advised.<sup>28</sup> It isn’t clear whether this activity will remove CSG protection altogether for these consumers but we note Telstra has advised that these consumers won’t have the option of a backup service that reverts back to the **nbn** network if the Telstra 4G service becomes unavailable.

Given that most Australians are choosing to make voice calls over their mobile services already, regardless of the fact that mobile services are not covered by CSG Standard, **nbn** agrees with the Consultation Paper’s suggestion that consumers are choosing to manage their ability to use an alternative means of making a voice call,<sup>29</sup> even if they continued to retain a fixed voice service. **nbn** also suggests this behaviour is another reason to determine that the CSG regime is no longer the important consumer protection it once was, and there are more efficient and appropriate means of ensuring overall consumer connectivity needs are maintained.

### 3. Underlying wholesale broadband networks are important

**nbn** agrees with the Consultation Paper’s statement that there has been “a greater focus on **nbn** and other SIPs supporting the outcomes the CSG has previously delivered.”<sup>30</sup> As noted above, the structure of the telecommunications industry has changed considerably over the last decade. The ‘national provider’ is no longer a vertically integrated operator of a voice network, but a wholesale-only operator of a high-speed broadband network. **nbn** now provides the majority of fixed line ‘connections’ in Australia but not a STS that may be eligible for CSG itself.

As the default Statutory Infrastructure Provider (**SIP**) across Australia, **nbn** has obligations to provide access to a broadband service to all premises upon reasonable request, and an obligation to support a voice service being supplied to consumers (except where broadband is delivered via satellite). This means that **nbn** fixed line and fixed wireless broadband networks enable RSPs to provide both retail voice (via VOIP technology) and broadband services to consumers. **nbn** as the default SIP does not provide voice services itself. **nbn**’s service is an Ethernet-based Layer 2 virtual connection and this is configured to enable RSPs to use the **nbn** broadband service as an input to a retail voice service.

Even prior to the SIP legislation being enacted, many elements of the CSG performance standards were reflected in **nbn**’s commercially offered connection, assurance, and appointment-keeping service levels, and in that way, they are available to all RSPs offering retail services on **nbn**’s networks via the **nbn** Wholesale Broadband Agreement (**WBA**). When developing **nbn**’s service level timeframes, **nbn** was conscious of the service levels

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<sup>28</sup> <https://cybershack.com.au/consumer-advice/telstra-wants-to-move-your-nbn-home-phone-to-telstra-4g-dont-do-it>

<sup>29</sup> DITRDCA, *Thematic Review of the customer Service Guarantee – Consultation Paper*, p8.

<sup>30</sup> DITRDCA, *Thematic Review of the customer Service Guarantee – Consultation Paper*, p9.





applicable in the CSG Standard and broadly aligned them where possible. For example, service fault assurance timeframes in **nbn**'s fixed line and fixed wireless footprints are aligned across the WBA and the CSG Standard.

In some circumstances, for example for in-place connections where an **nbn** service has existed previously, **nbn**'s connection timeframes are in fact shorter than the CSG Standard timeframes to provide sufficient lead time to account for the variance in the retail service level framework, i.e. the retail guaranteed maximum timeframe starts from when the RSP receives a request from the consumer.

Historically, **nbn**'s satellite and fixed wireless technologies have not been able to be used to provide a CSG service to a consumer.<sup>31</sup> **nbn**'s satellite services are not designed to carry voice traffic and, in any case, satellite services are exempt from being CSG-eligible services under the CSG Standard. The legislative obligation to support voice services over **nbn** fixed wireless was introduced via the Australian Government's SIP legislation in 2020 but, as the Consultation Paper outlines, **nbn**'s contractual terms and new connection service levels do not allow **nbn** fixed wireless to be used to provide a CSG service. Telstra has continued to operate its copper network and associated CSG-eligible services in these areas under its Copper Continuity Obligations so that consumers could continue to obtain STS which are still subject to CSG.

Whether the CSG regime remains in its current form or not, there is still a community expectation that service performance standards are needed to achieve a satisfactory consumer experience. **nbn** suggests these should not be driven solely by legacy regulation. Through its Special Access Undertaking (**SAU**) Variation proposals **nbn** has acknowledged the importance of consumers and RSPs having safeguards regarding expected service quality. We have also acknowledged there is a close interaction between price controls and service quality measures applicable to the **nbn** network. **nbn**'s SAU Variation proposals (if accepted by the ACCC) will also allow the ACCC to set changes to wholesale service standards based on future retail regulation, systemic service standard events or future **nbn** proposals to improve service standards. This should provide RSPs and consumers with confidence in the minimum level of service **nbn** will be required to maintain and that they will be directly linked to the prices and price controls that apply for each Regulatory Cycle.<sup>32</sup>

Reporting on **nbn**'s network and service performance has been a key focus of the engagement surrounding the proposed SAU Variation, as well as the ACCC's proposed record keeping rules regarding **nbn** service performance. In addition to **nbn**'s proposed commitments in the SAU to continue existing operational and performance reporting (including monthly WBA Service Level Performance Report provided to RSPs) the record keeping rules under consultation are intended to provide industry with further transparency of the performance of the network and **nbn**'s operations.<sup>33</sup>

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<sup>31</sup> WBA Product Terms – **nbn** Ethernet Product Module, clause 17.1 states "RSP must not use, and warrants to nbn that it will not use, nbn™ Ethernet (Wireless) or nbn™ Ethernet (Satellite), or permit any Downstream Service Provider to use an RSP Product which relies on nbn™ Ethernet (Wireless) or nbn™ Ethernet (Satellite) as an input to supply: a) Downstream CSG Service (including standard telephone services that are subject to retail service providers service guarantees for the purposes of the TCPSS Act)..."

<sup>32</sup> NBN Co, *Special Access Undertaking Variation 2022 – Supporting Submission Part C: Non-Price Terms, November 2022*, p9.

<sup>33</sup> NBN Co, *Submission to ACCC Consultation Paper - Proposed Variation to the NBN Co Special Access Undertaking* p23-24.



In its current SAU proposals, **nbn** is proposing to reduce the price of a basic connectivity service on fixed-line technologies (supplied using the 12 Mbps speed tier) that will allow RSPs to offer voice plans to consumers. Again, this is not a voice service, but rather is a broadband service with a limited data allowance that can be used as an input to a voice service that enables voice traffic to be carried over the Layer 2 broadband ethernet service.

Lastly, **nbn**'s existing wholesale rebate scheme currently offered under its WBA will remain regardless of any change to the CSG. **nbn** offers RSPs a greater range of service level types and associated rebates for **nbn** performance activity than those currently applied under the CSG Standard. The WBA also asks RSPs to take reasonable steps to ensure that for some specific rebates, such as those for Missed Trouble Ticket Appointment Rebates, an equal amount is paid or credited to the affected consumer<sup>34</sup> or for other service levels a fair value benefit (in monetary or other form).<sup>35</sup> However where an RSP is seeking specific action (e.g. a broadband connection or fault rectification) from **nbn** for the RSP to meet its own CSG service level obligations and **nbn** is liable to provide the RSP with CSG compensation, **nbn** may reduce the amount of a specific rebate payable to the total liability to the RSP for CSG Compensation. This means that even if the CSG regime was repealed and RSPs were no longer required to provide a consumer with CSG damages as directed under the TCPSS Act, RSPs and in some cases the end user would continue to receive compensation in the form of an **nbn**/WBA rebate if a service level is not met by **nbn**.<sup>36</sup> Therefore concerns that a removal of the CSG regime would lead to no consumer protections in relation to specified performance standards for today's voice and broadband services, at least on the **nbn** network, should be allayed.

#### 4. RSPs are still crucial to provision of fixed voice services

Ultimately the ability for consumers to experience a standard of service that reflects their expectations is dependent on a partnership between **nbn** and its RSPs, and between other SIPs or wholesale network providers and their RSPs. **nbn** is reliant on RSPs also investing in and providing a positive service level experience in order for the consumer to reap the benefits of any **nbn** activity that may be undertaken.

While **nbn** fulfils its SIP obligations by providing wholesale services that allow RSPs to provide retail services with the ability to make and receive voice calls, **nbn** does not know if its wholesale service is being used to supply a CSG-eligible service at the retail level. It therefore does not know whether the CSG Standard is applied to an individual voice service or not. **nbn**'s wholesale service levels balance the cost to provide a service with the intent to allow an RSP to fulfil a CSG obligation (where it applies).

For example, service faults reported to **nbn** should be made on the basis that troubleshooting has been conducted by either the consumer or the RSP to determine that the fault is due to an issue with the underlying Layer 2 broadband service. This includes providing physical access, bandwidth and optional traffic class tagging to support a VOIP service dependent on how the RSP wishes to provision it. **nbn** does not have visibility of faults

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<sup>34</sup> **NBN** Co, WBA – Service Levels Schedule, Ethernet Product Module, section 11.4(f), p28.

<sup>35</sup> **NBN** Co, WBA – Service Levels Schedule, Ethernet Product Module, section 8.5(h), p21.

<sup>36</sup> **NBN** Co, WBA – Service Levels Schedule, Ethernet Product Module, section 11.4(d), pp27-28.



related to over-the-top services that are sold to consumers, including VOIP services that may be CSG-eligible services.

This means that RSPs manage Layer 3 voice traffic and numbering provision responsibilities for fixed voice services and, for those services eligible under the CSG, also manage the relevant enhanced call handling features that may be required, including connection and fault rectification of these features.

Given the importance of the RSP's role in managing the voice traffic, the role and responsibility of the RSP will need to be considered in any future amendment or future replacement of the CSG regime.

## 5. Future approaches to the relevant consumer safeguards

The original purpose for CSG is no longer relevant in today's market

In 2017, the Productivity Commission found "the deployment of NBN infrastructure" made the relevance of the safeguards under review questionable, and in particular the CSG.<sup>37</sup>

This assessment is even more relevant today, as the protections in the CSG Standard apply to fewer and fewer consumers. **nbn** suggests the number of consumers who are prepared to waive their CSG rights, the continuing trend in declining consumer voice usage overall and in particular consumer preference to make voice calls by non-fixed line networks (and therefore the number of consumers today who need to solely rely on the CSG service performance measures available to them) is not sufficient to maintain a broad protection regime such as the CSG Standard and associated instruments. The focus of the legacy regulation mandating timeframes to set a level of service for fixed voice no longer serves the purpose of providing broad consumer protection.

Reliance of mandated fixed voice performance timeframes under the CSG regime as a means of ensuring timely access to voice calls is increasingly irrelevant.

As noted above, in an RSP's application of the CSG Standard, they are able to offer interim or alternative services to consumers to ensure the consumer can make and receive voice calls as soon as practicable while the underlying infrastructure is connected or a fault fixed.

Recognition should continue to be paid to the fact that no network anywhere is ever 100% fault free. However, given the prevalence of consumers already owning multiple products and or services across different networks, including mobile phones and messaging/ communication apps, **nbn** believes this practice is likely to have alleviated much of the inconvenience and or risk (e.g., by virtue of not being able to contact emergency services) consumers may have faced while waiting for their voice service to be rectified.

### New framework options

**nbn** is in favour of replacing the existing legacy regulation and focusing instead on specific cohorts of consumers who may need additional protections, e.g., for vulnerable consumers or those who only have access to a single

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<sup>37</sup> Productivity Commission, *Telecommunications Universal Service Obligation Inquiry Report no. 83*, 28 April 2017, p129



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network. Once this type of policy is applied, it should be possible to repeal all four CSG instruments and, if necessary, make appropriate amendments to the TCPSS Act.

**nbn** believes the CSG regime should be replaced with policy that recognises the fundamental shifts in both the availability of substitutable networks and how consumers use them to meet their connectivity needs. We recommend the Department assess whether a new regulatory mechanism needs to be introduced for the very small minority that rely solely on their fixed voice service, to the extent that existing market trends indicate these cohorts may not be adequately catered for. This approach recognises the shift in consumer communication and usage patterns across a broader range of products, reduces regulatory and administrative burden on the industry where it has been clearly demonstrated there is limited ongoing need for intervention, and better targets consumer protections where they are needed for the future.

For those voice and broadband services provided over the **nbn** network, a series of rebates provided to RSPs, including for missed timeframes for new connections, fault rectification and appointment keeping, will remain in place. This arrangement under the WBA is likely to continue to include terms whereby fair value benefits or specific rebates are passed through to the consumer by their RSP. It may be appropriate for the Department to consider whether other network providers should also be encouraged to have 'pass through' arrangements for relevant rebates they offer.

Given the importance of the interaction between price controls and the ability for a network provider to meet set service quality measures at a wholesale level, such as those suggested in **nbn**'s SAU Variation proposals, setting retail consumer safeguards that meet actual needs rather than retaining historical standards simply because they are there will be crucial to a sustainable telecommunications market into the future.

Any new policy objective should look to move away from enshrining the existing regulation that focuses on guaranteeing minimum performance levels by a single network provider for a single type of voice service when the evidence indicates consumers have access to and acquire services on multiple networks, and that fixed voice services are no longer relied on by a majority of consumers as their basic carriage service.

Instead, future policy should focus more broadly on ensuring maximum availability of connectivity for all use cases (that is, voice, broadband and other methods consumers use to communicate), and minimising the amount of time consumers are left without a working service on any platform whether via fixed, mobile or other networks.

A revised approach to consumer safeguards should recognise the importance of maximising connectivity as a general objective, rather than maximum connection and assurance timeframes for a voice service. Regulatory intervention should then focus on areas of identifiable need that have not already been met.

#### 1) Redundancy options readily available regardless of whether an end user is protected by CSG or not

Where a redundant service is already available (such as mobile backup in a hybrid modem, an existing mobile device or even an existing satellite voice service), connection and repair timeframes have become less critical given connectivity is able to be maintained via the other network. For example, where consumers have access to one or more mobile networks, these consumers already can and do self-manage their connectivity requirements by having concurrent fixed and mobile connections. At the same time, wholesale service levels provide an

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appropriate ‘backstop’ for connection and repair timeframes, including those set out in **nbn**’s WBA and addressed in **nbn**’s SAU Variation proposals. The SIP legislation also allows for wholesale service level regulation by empowering the Minister to make wholesale standards, rules and benchmarks.

In many respects, a redundancy model would replicate what happens in practice today – whether it be for non-Telstra customers (who are typically asked to waive their CSG rights), for those consumers who are already provided with a hybrid modem that automatically alternates between networks, or where interims / alternatives are used either by RSPs who offer them as an alternative to meeting their specific CSG performance timeframe or by the consumer’s own volition. Streamlining the underlying regulatory frameworks to reflect the availability and use of alternative networks, and to appropriately target subsidies and protections to fit the current (and future) industry landscape, is the logical next step.

## 2) Focus on specific consumer cohorts who may still need consumer protection

**nbn** acknowledges that there is still a small (albeit shrinking) portion of consumers who may need regulated consumer protection in specific circumstances. Where there is either an enhanced need for redundancy (for example, for Priority Assistance consumers), or there are barriers to accessing redundancy, targeted regulation should be used to require RSPs to properly inform these users of their options, and to ensure provision of a redundant retail service in appropriate circumstances.

Further analysis beyond the ACMA’s latest research is likely needed for those consumers relying solely upon a fixed voice service, that is for approximately 1.6% of Australians. It seems any additional regulatory intervention would only be needed to support that proportion of the population who are unable to self-manage their connectivity needs, or for whom there is an increased need to support their access to telecommunications services, including the ability to make and receive voice calls.

There will be a cohort of consumers who will continue to need access to a fixed service because of a particular communication need or whose options for alternative services are more limited. These may include:

- consumers outside mobile coverage, more likely to be in regional and remote areas;
- low-income households who may not be able to afford a second or redundant service;
- those who are unable to adapt to newer, less familiar technologies, e.g., some older Australians; and
- individuals with complex medical needs, for example medical alarms based on a fixed line service.

The Department should examine whether these cohorts are already protected by the availability of existing services or whether additional targeted regulation at the retail level is needed to ensure these consumers continue to have an adequate availability of services that provides sufficient support for more complex communication needs.

To ensure consumers are aware of the redundancy options RSPs can make available to them, it may also be appropriate to set a simple set of transparency and education measures so that information on any new redundancy arrangements can be made available to consumers, and an accurate assessment can be determined as to whether the new arrangements are sufficient as a consumer safeguard.



## Timing

**nbn** recognises the time needed to implement an alternative, holistic policy instead of the CSG regime is highly unlikely to be achieved prior to the sunset deadline of 1 October 2023. Therefore, we suggest the Department make minimal changes to the existing instruments until such time they can be repealed altogether. We anticipate this will also allow the ACMA to conduct their own processes they are legislatively mandated to follow prior to the sunset deadline. However, we also suggest the Department and the ACMA include a sunset provision, reflecting the timeframe within which this additional policy consultation and analysis can be concluded, in any of the instruments they decide to remake. This commitment will be useful for all parties to both be aware that the existing CSG instruments have a specifically limited shelf life and to understand the timeframes within which they can participate in furthering future policy development.

We strongly encourage the Department to pursue further any investigations needed to reach a decision that the current CSG regime can be repealed as quickly as possible, including additional research on the prevalence of using interim and alternative services as a means of limiting CSG obligations for those consumers who currently solely rely on their fixed voice CSG-eligible service.

## 6. Conclusion

**nbn** thanks the Department for this review.

We look forward to working with both the Department and the ACMA in developing future streamlined consumer protection settings that balances the commercial needs of the telecommunications industry providers when supplying services to consumers, anticipates the realities of the future telecommunications operational environment and the reasonable expectations of the community to be able to realise their connectivity needs.



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