30 September 2022

[redacted]

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

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Proposed amendments to Statutory Infrastructure Provider legislation, fibre-ready facilities legislation, and ACMA reporting powers

nbn welcomes the opportunity to comment on the exposure draft of legislation to amend:

- the operation of the Statutory Infrastructure Provider (**SIP**) regime in Part 19 of the *Telecommunications Act 1997* (Cth) (**Telco Act**);
- the ACMA's powers to regulate the installation of fibre-ready facilities in new developments under Part 20A of the Telco Act; and
- the ACMA's ability to publish data on individual carriers and carriage service providers under Part 7A of the *Australian Communications and Media Authority Act 2005* (Cth) (**ACMA Act**).

The SIP regime is an important component of the telecommunications regulatory framework. It recognises the fundamental importance of broadband services in the lives of Australians, and safeguards it so that all Australians may depend on its availability, regardless of where they live. **nbn**, as the default SIP, has a special interest in ensuring the SIP legislative framework is efficient and effective at fulfilling the policy outcomes it is designed to achieve. Ensuring the legislation properly supports those core policy principles, and is adequately supported by operational efficiency and enforcement activities, is key to making the SIP framework as robust and sustainable as possible.

nbn supports many of the proposed changes in the exposure draft, including the proposed amendments to:

- Provide more clarity and efficiency in the making of new non-**nbn** SIP areas. In particular, the proposal to introduce 'pending areas' and 'anticipated service areas' will help ensure that customers have greater certainty about which provider is (or will be) the SIP for their area, and that non-**nbn** SIPs begin to fulfil their SIP obligations in areas they have agreed to serve at the appropriate time.
- Bring private networks within the scope of the SIP regime. This will help ensure developments served by these networks, such as retirement villages, are appropriately covered by the SIP legislation.
- Specify the timeframes for notices given under section 360R by non-**nbn** SIPs exiting their service areas (although we have suggested in our submission that a longer notice period may be appropriate).
- Enable and streamline a number of SIP-related processes to be undertaken by the ACMA, including for variations and revocations of anticipatory notices and nominations by non-**nbn** SIPs.
- Empower the ACMA to issue remedial notices regarding the installation of pit and pipe in new developments.

While **nbn** supports these and other aspects of the exposure draft, we have some more significant comments and concerns about the implications of three sets of proposed amendments to the SIP legislation. These relate to the following proposals:

- The proposal to repeal the SIP supply exception in section 360Q(2). Currently, this exception operates as a sensible and appropriate 'anti-overlap' provision in circumstances where SIPs are supplying relevant declared services under Part XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**). The repeal of the SIP supply exception will require SIPs to comply with two legislated access regimes which govern the same activity in different ways – an outcome which will introduce regulatory uncertainty, complexity and inefficiency.

  [CiC] [CiC]

- The proposal to introduce a legislative framework for a SIP compensation regime, in circumstances where at least some SIPs (including **nbn**) have their own rebate arrangements in place in their commercial agreements with service providers.
- The proposal to specifically empower the Minister to set standards and rules regarding SIP terms and conditions relating to price or a method of ascertaining price, given the other price regulation to which **nbn** is subject under Part XIC of the CCA.

Our submission in response to the exposure draft is included in three attachments to this letter:

- In **Attachment A**, we have set out **nbn**'s response to the proposed amendments to the SIP legislation.
- In **Attachment B**, we have responded to the proposed changes to Part 20A of the Telco Act and Part 7A of the ACMA Act.
- In **Attachment C**, we have included some brief comments about several other SIP-related topics, which are not included in the exposure draft but which **nbn** considers are necessary to improve the scope and clarity of the SIP regime.

If you would like to discuss any of **nbn**'s comments further, please contact [redacted]

Your sincerely

[redacted]

Attachment A: nbn response to proposed amendments to the SIP legislation

Item	Proposed amendment	Issue	nbn comments / recommendations
1	Repeal of section 360Q(2)	• Section 360Q(2) provides an exception from the SIP supply obligation in section 360Q(1) where: ○ the SIP supplies eligible services that allow carriage service providers (**CSPs**) to provide qualifying carriage services to end-users; ○ the eligible services allow CSPs to supply voices services to end-users; ○ the eligible services are declared under the *Competition and Consumer Act 2010* (Cth) (**CCA**); and ○ the SIP is subject to a Standard Access Obligation (**SAO**). • The Explanatory Memorandum (**EM**) which accompanied the introduction of the SIP regime explained the purpose of section 360Q(2) as follows: *Subsection 360Q(2) recognises that SIPs may supply declared services and therefore should, if the declared service is fundamentally the same as the SIP service, only be subject to one supply obligation, being that under the CCA. Effectively the declared service is taken to be supplied in fulfilment of the SIP service supply obligation.* • **nbn** has relied on section 360Q(2) to implement the SIP regime: ○ Under our Wholesale Broadband Agreement (**WBA**), we supply eligible services to CSPs that allow those CSPs to supply qualifying carriage services and voice services to end-users. ○ Those eligible services are declared under the CCA, and we are subject to the Category B SAOs set out in section 152AXB of the CCA. ○ Accordingly, we supply eligible services under the WBA in accordance with SAOs, rather than under section 360Q(1). • The draft legislation is proposing to repeal the exception in section 360Q(2). Repealing this section will require **nbn** and other	**General comments** • **nbn** understands that the repeal of section 360Q(2) is designed to prevent the supply of eligible services from falling outside the scope of the SIP regime. • In **nbn**'s view, section 360Q(2) operates as a sensible and appropriate 'anti-overlap' provision, which must remain in place to ensure the efficient operation of the SIP regime within the broader telecommunications regulatory landscape. In particular, we note the following: ○ As the EM explains, section 360Q(2) prevents SIPs from being subject to two regulated supply obligations, for SIPs supplying relevant eligible services to which a CCA/SAO obligation also applies. ○ This is the case for **nbn**, which is required (by the Category B SAOs) to supply a declared service relating to **nbn** under sections 152AL(8A), (8D) and (8E) of the CCA on request by a service provider. Similarly, non-**nbn** SIPs supplying services over superfast fixed-line infrastructure in accordance with the ACCC's Superfast Broadband Access Service declaration are required (by the Category A SAOs) to supply an active declared service on request by a service provider. ○ Section 360Q(2) recognises the overlap between the SIP and CCA regimes, and promotes regulatory certainty and efficiency by preventing carriers from being subject to two access obligations which are aimed at achieving similar outcomes in different ways. ○ Given Part XIC of the CCA is a long-standing telecommunications access regime, well understood by industry, and applied and enforced by the nation's economic regulator, the ACCC, in accordance with established criteria focused on promoting the long-term interests of end-users (**LTIE**), it is sensible and appropriate when the CCA/SAOs apply for there to be a SIP supply exception. • It is also important to note that, while the application of section 360Q(2) removes the requirement to comply with section 360Q(1) (and with other provisions in Part 19 that link specifically to section 360Q(1)), this does not mean SIPs who are supplying declared services operate entirely outside the scope of the SIP regime. Many aspects of the SIP regime continue to apply, regardless of whether a SIP is supplying eligible services under section 360Q(1) or under the CCA/SAOs. This includes:

Item	Proposed amendment	Issue	nbn comments / recommendations
		SIPs to supply eligible services in accordance with both the CCA/SAOs and the SIP legislation.	○ The SIP connection obligation in section 360P, which requires SIPs to connect premises to a qualifying telecommunications network on reasonable request by a CSP on behalf of an end-user. ○ The requirements in sections 360W and 360X, which require SIPs to publish their connection and supply terms and conditions. ○ The requirements in sections 360H and 360HA, which require non-**nbn** SIPs to lodge anticipatory notices and to nominate as the SIP when they contract to install telecommunications network infrastructure in real estate development projects (**REDPs**) and building redevelopment projects (**BRPs**), and the requirements to provide mapping data to the ACMA in accordance with section 360LA. ○ Any standards, rules and benchmarks made by the Minister under sections 360U and 360V will apply to all SIPs and will, in fact, prevail over a SIP's own commercial agreements to the extent of any inconsistency (at least from the time those commercial agreements are next varied, which for **nbn** occurs frequently). **[CiC] [CiC]** **nbn recommendation** • For the reasons discussed above, **nbn** considers that section 360Q(2) must remain within the SIP legislation: ○ As explained above, many aspects of the SIP legislation apply to SIPs, regardless of whether they are supplying eligible services under section 360Q(1) or under the CCA/SAOs in reliance on section 360Q(2). ○ If there are specific obligations or requirements which attach to supply under section 360Q(1) but not under section 360Q(2), and which the Department considers should apply to all SIPs, then the legislation could be amended to make sure those specific obligations and requirements apply to all SIPs, while leaving section 360Q(2) in place. For example, the exposure draft is proposing to include additional process requirements for SIPs who refuse a supply request under section 360Q(1). The SIP must decide to accept or refuse the request within 10 business days and, if refused, provide written notice to the CSP within a further 5 business days (see new sections 360Q(11) and (13)). It would seem a straight-forward exercise to apply these requirements to all SIPs, whether they are supplying under section 360Q(1) or relying on section 360Q(2) to supply under the CCA/SAOs.

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			○ [CiC] [CiC] • Alternatively, if section 360Q(2) is repealed: ○ [CiC] [CiC] ○ In addition, the SIP exceptions instrument would first need to be reviewed to determine whether any additional SIP supply exceptions may need to be included in that instrument: ▪ At the very least, the CCA/SAO exceptions and limitations in sections 152AXB(3), (6) and (7) of the CCA should be incorporated into the SIP exceptions instrument, to the extent they are not already covered. Otherwise, **nbn** and other SIPs could be forced to supply services to RSPs who present unacceptable creditworthiness risks or who **nbn** has reasonable grounds to believe will not comply with its terms of supply. [CiC] [CiC] ▪ Consideration should also be given as to whether other process-based or operational exceptions may be needed, where they are included in existing supply terms and conditions of SIPs currently relying on section 360Q(2).
2	New provisions regarding SIP compensation (Sections 360U and 360V; Division 4A)	• Currently, the SIP legislation empowers the Minister to make standards, rules and benchmarks under sections 360U and 360V. • The draft legislation is proposing to: ○ Amend sections 360U and 360V to expressly empower the Minister to make 'designated compensable standards' and 'designated compensable rules'. ○ Introduce a new division, Division 4A, which sets out the legislative framework for a SIP compensation regime. • Under the SIP compensation regime: ○ If a SIP contravenes a designated compensable standard or rule, the SIP will be liable to pay damages to the 'customer'. ○ The damages payable for a particular contravention will be ascertained in accordance with compensation rules to be made by the Minister. ○ If a SIP credits an amount to an account it has with the customer, or pays an amount to the customer, as a result of a	• Division 4A is modelled on the Customer Service Guarantee (**CSG**) regime in Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth): ○ In **nbn**'s view, a SIP compensation regime modelled on the CSG is likely to be difficult to apply and administer, given the wholesale nature of the SIP obligations and the retail nature of the CSG. ○ We also note that the use of the word 'customer' in the proposed SIP compensation regime is likely to confuse, as it may refer to an RSP or to an end-customer for vertically-integrated SIPs. If Division 4A is introduced, we would suggest using a different term, or adding a note to the legislation stating that a 'customer' is the person the SIP has a direct contractual relationship with, whether that person is an end-user, an RSP, or another wholesale provider. • In relation to the application of any SIP compensation regime, **nbn** notes it is currently consulting on service levels within the Special Access Undertaking (**SAU**) variation process, which will then be reflected in WBA5 and in enhanced ACCC powers under the SAU to regulate service levels going forward. The existing rebate regime under WBA4 involves paying rebates for a range of missed service levels, including in relation to connection, assurance, and appointment timeframes. With that in mind, **nbn**'s position

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		right or remedy available otherwise than under Division 4A and which arose out of the same event, then the amount of damages payable is to be reduced (but not below zero) by the amount of the credit or payment. ○ The TIO may issue an evidentiary certificate in relation to a contravention, which will then become *prima facie* evidence of the matters in the certificate.	in relation to a proposed SIP compensation regime is that: ○ If the Minister decides to establish a SIP compensation regime, that regime should not apply to SIPs who have their own rebate arrangements in place. There is no need for a regulated compensation regime to apply to SIPs who have agreed to pay rebates under their commercial agreements to compensate customers for missed service levels. Indeed, the application of a SIP compensation regime in these circumstances will likely lead to duplication and significant operational complexity, without a corresponding benefit for customers. In making this comment, **nbn** notes that, under sections 360U(2) and (new) section 360V(1AA), standards and rules may be of general or limited application. In our view, the Minister's powers to make designated compensable standards and rules should also be framed to allow differential application to SIPs. ○ Alternatively, if the Minister decides to establish a SIP compensation regime and that regime applies to all SIPs, then **nbn** believes the regime should broadly align with the rebate arrangements in the WBA. This would align compensation payments across **nbn** and non-**nbn** SIPs (noting non-**nbn** SIPs may not offer any rebates at the moment). It would also reduce operational cost and complexity for **nbn** who, as the default SIP, has responsibility for serving the vast majority of Australian premises. • **nbn** notes that, if a SIP compensation regime is introduced, applies to **nbn**, and does not broadly align with the WBA (e.g. because the SIP compensation regime covers different service levels and/or requires different payments to be made to customers), **nbn** may face additional costs to comply with the SIP compensation regime, which would need to be considered under the SAU cost pass-through mechanism.
3	Amendments to the Minister's power to make standards and rules to expressly refer to price (Sections 360U and 360V)	• Currently, the SIP legislation empowers the Minister to make standards, rules and benchmarks under sections 360U and 360V. • The draft legislation is proposing to amend these sections by including additional language to expressly refer to the Minister's ability to make standards and rules regarding a SIP's terms and conditions relating to price or a method of ascertaining price.	• The additional language proposed to be included in sections 360U and 360V closely matches the requirements imposed on SIPs in sections 360W and 360X to publish their connection and supply terms and conditions, including in relation to price or a method of ascertaining price. • **nbn** understands that the proposed amendments are designed to clarify the Minister's standard- and rule-making powers with respect to price, but that these powers may not necessarily be used in practice, noting the existing regulatory framework regarding price in Part XIC of the CCA. • In relation to Part XIC, **nbn** notes the following:

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			○ We are currently engaged in a SAU variation process, which involves extensive consultation between **nbn**, industry, and the ACCC. The SAU plays a central role in the telecommunication industry's regulatory framework, by governing key price and non-price terms on which **nbn** supplies services to RSPs over the long-term. ○ The ACCC is required to assess a proposed SAU variation against statutory criteria, including whether the variation promotes the long-term interests of end-users (**LTIE**) and whether the terms and conditions are reasonable. To promote the LTIE, the ACCC must consider whether the variation promotes competition in markets for listed services, achieves any-to-any connectivity, and encourages economically efficient use of and investment in infrastructure. ○ In addition to the SAU process, Part XIC contains a number of other provisions through which price regulation may be achieved, including ACCC access determinations, binding rules of conduct, and Ministerial pricing determinations. • It is critically important – for end-users, RSPs, non-**nbn** SIPs and **nbn** – that price regulation is clear and consistent, and that different regulatory mechanisms are not applied in a way which leads to the imposition of conflicting requirements. While there may be a regulatory hierarchy governing what takes priority in the event of an inconsistency, the possibility of conflicting regulatory requirements must be minimised as far as possible – an objective which should be borne in mind before any pricing regulation outside Part XIC is developed and applied. • Further, while we acknowledge that, if the Minister did consider making a standard or rule regarding SIP prices, the Minister would consult with affected parties and consider the objects of the Telco Act, we believe the exercise of this power should require an assessment against the same criteria the ACCC applies under Part XIC, including whether it would promote the LTIE through: (1) the promotion of competition; (2) the achievement of any-to-any connectivity; and (3) the economically efficient use of and investment in infrastructure. The SIP legislation should be amended to require this. • Lastly, as noted above, under sections 360U(2) and (new) section 360V(1AA), standards and rules may be of general or limited application. If the Minister did consider making a standard or rule regarding SIP prices, it may be appropriate to apply that standard or rule differently as between **nbn** and non-**nbn** SIPs, given the greater degree of pricing regulation governing **nbn**.

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4	Amendments to the notice provisions for non-**nbn** SIPs exiting their service areas (Section 360R)	• Currently, section 360R requires SIPs to notify the Secretary of the Department and the ACMA if it is likely the SIP will no longer be able to fulfil its obligations. If another person is willing to become the SIP for the relevant service area, the outgoing SIP must also notify the Secretary and the ACMA of that information. • The draft legislation is proposing to amend: ○ Section 360R(2) to specify the notice period required to be given by a SIP when that SIP is no longer able to fulfil their obligations under sections 360P and 360Q. ○ Section 360R(3) to specify the notice period required to be given when another person is willing to become the SIP for the relevant service area. • In each case, the amendments will require notice to be given at least 90 days in advance where that is reasonably practicable or, in any other case, not later than 10 business days after the relevant event (i.e. when the SIP is no longer able to fulfil their obligations, or when the new person becomes the SIP for the service area).	• Because **nbn** is the default SIP, it is likely that, when a non-**nbn** SIP exits a service area, **nbn** will be required to take over SIP responsibility for that area. This will be the case unless another carrier or CSP is willing and able to take on the SIP role (e.g. if the outgoing SIP has sold their network to a non-**nbn** carrier, who then takes over the SIP role for the relevant service area). • For this reason, in relation to section 360R(2), it is important that non-**nbn** SIPs exiting their service areas give as much notice as possible in advance of their exit, to ensure **nbn** has sufficient time to step-in and assume the SIP obligations without disruption to end-users. Against that background, in **nbn**'s view, section 360R(2) should be amended to require non-**nbn** SIPs: ○ to give 12 months' notice in advance, where that is reasonably practicable; ○ otherwise, to give as much notice as possible; and ○ as a catch-all, to give notice not later than 10 business days after the SIP is no longer able to fulfil their obligations under sections 360P and 360Q. • In relation to section 360R(3), we note the proposed amendments align with those proposed for section 360R(2). We understand the rationale for this alignment, as we expect notice under sections 360R(2) and (3) may often be given simultaneously. However, we query whether the proposed amendment in section 360R(3)(d)(ii) is necessary/workable in practice. This is because the Minister, the Department and/or the ACMA are likely to be involved in the process to change the identity of the SIP for a service area, so they should be aware of any change well before the proposed notice period in section 360R(3)(d)(ii). • Lastly, **nbn** believes the intended operation of section 360R should be clarified, preferably through legislative change, but at the very least through the EM. In particular: ○ The legislation does not provide sufficient parameters to detail when a SIP is able to withdraw from its SIP obligations. There is a risk that some SIPs may interpret section 360R to allow them to withdraw from their SIP obligations for any reason, including purely commercial reasons. To allow a SIP to withdraw for commercial reasons undermines the core policy purpose of the legislation, which is to protect consumers with assurances that a SIP has an obligation to provide broadband services in their service area. Accordingly, **nbn** considers that a SIP should only be

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			entitled to withdraw as SIP in limited circumstances, e.g. if the SIP is being wound up, or is no longer providing residential services anywhere in Australia. ○ In addition, **nbn** considers that, where possible, an outgoing SIP should be required to develop a migration plan and to consult with **nbn** (or other incoming SIP) to help ensure the plan is effective and realistic, and to minimise disruption for RSPs and end-customers in the relevant service area.
5	Amendments regarding revocation and variation of nominations and anticipatory notices (Sections 360H, 360HA, 360HB and 360HC)	• Currently: ○ A nomination made under section 360H cannot be revoked, and can only be varied by the Minister. ○ Section 360HA does not contain a provision allowing revocation or variation of an anticipatory notice. • The draft legislation proposes to amend section 360H to allow declarations to be revoked or varied through an ACMA process, and to amend section 360HA to allow anticipatory notices to be varied through an ACMA process. Similar provisions are proposed to be included in new sections 360HB and 360HC covering nominations and anticipatory notices by CSPs.	• **nbn** accepts it may be necessary to revoke or vary nominations and anticipatory notices from time to time, including to address errors or, more significantly, to change a non-**nbn** SIP's service areas where that SIP is no longer able to fulfil its obligations. • As discussed in row 4 above, because **nbn** is the default SIP, changes to a non-**nbn** SIP's service areas are likely to have a corresponding impact on the boundaries of **nbn**'s general service area. Accordingly, it is important that there be suitable notification of, and consultation on, revocations and variations of nominations and anticipatory notices: ○ We assume that revocation of a nomination under section 360H or 360HB would generally occur following notice under section 360R, which we have commented on in row 4 above. ○ In addition to complying with section 360R, it will be important to ensure that any ACMA processes developed to give effect to the new revocation and variation provisions build in appropriate consultation requirements, particularly with **nbn,** whose SIP service areas are likely to change as a result. • Specifically in relation to the proposed changes to section 360HA (and the corresponding subsections in 360HC), we note that: ○ While provision is being made for variation of an anticipatory notice, there does not appear to be any provision for revocation of an anticipatory notice (except in the circumstances set out in sections 360Z(4) and (5)). ○ While this may be less significant under the current legislation, the draft legislation proposes to introduce the concept of 'pending areas' for project areas covered by an anticipatory notice. Pending areas would be carved out of **nbn**'s general service area when the anticipatory notice is lodged with the ACMA. ○ While **nbn** strongly supports the concept of a 'pending area' (discussed in row 7 below), we note that if a development included in an anticipatory notice does not proceed for some reason, the anticipatory notice would need to be withdrawn to

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			bring the project area back within the general service area. The SIP legislation should provide for the revocation of an anticipatory notice to cover this possibility. • Lastly, we note that the proposed amendments will place responsibility for revocation and variation on the ACMA, as the regulator with responsibility for administering the SIP legislation generally. While that is appropriate, **nbn** notes the importance of ensuring the ACMA has the resources it needs to administer and enforce the SIP legislation on an ongoing basis, in relation to both its existing and expanded functions, including to ensure that non-**nbn** SIPs contracting to serve new developments are doing so to the requisite standard through compliance with their SIP obligations.
6	Amendments regarding nominations and anticipatory notices for the whole or part of an REDP or BRP (Sections 360H, 360HA, 360HB and 360HC)	• Currently, non-**nbn** carriers are required to lodge anticipatory notices under section 360HA, and to nominate as the SIP under section 360H, when they contract to install telecommunications network infrastructure that will enable the supply of eligible services to all of the premises in an REDP or BRP. • The draft legislation proposes to amend sections 360H and 360HA to require non-**nbn** carriers to lodge an anticipatory notice and to nominate as the SIP when they contract to install telecommunications network infrastructure that will enable the supply of eligible services to all or part of an REDP or BRP. • New sections 360HB and 360HC, which cover nominations and anticipatory notices by CSPs, include the same language regarding the supply of services to the whole or part of an REDP or BRP.	• Our understanding is that this proposed amendment may be aimed at ensuring carriers do not fall outside the scope of sections 360H and 360HA (and CSPs do not fall outside the scope of the corresponding provisions in new sections 360HB and 360HC) if they contract to install infrastructure to serve almost all the premises in the project area of an REDP or BRP, but a small number of premises are excluded. • **nbn** understands the rationale for this proposed amendment. However, in making this legislative change, it will be important to emphasise that: ○ Under the Telecommunications in New Developments (**TIND**) policy, developers are expected to contract with carriers/CSPs to serve the entirety of the project area of their developments. This expectation is not changed by the proposed amendments to sections 360H and 360HA (and the corresponding provisions in new sections 360HB and 360HC). ○ If, for some reason, one carrier/CSP agrees with a developer to serve part of an REDP or BRP, the developer will need to contract with another carrier or CSP to ensure the rest of the development is also covered.
7	Amendments to introduce 'pending areas' (Sections 360F(1)(aa) and (2))	• Currently, non-**nbn** carriers are required to lodge an anticipatory notice under section 360HA when they contract to install telecommunications network infrastructure in a new development, but they only become the SIP when they complete the installation and nominate as the SIP under section 360H. • In practice, this means there may be a significant period of time when **nbn** technically has an obligation as the default SIP for an area, even though another carrier has contracted to build the	• **nbn** supports the introduction of 'pending areas'. • By pausing **nbn**'s default SIP status for those parts of the general service area that are subject to an anticipatory notice (excluding premises with an existing **nbn** service), the introduction of the concept of a 'pending area' will clarify that **nbn** is not required to pre-emptively overbuild competing carriers' networks in new development areas while they are being developed.

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		telecommunications network for that area. In that period, if there are premises that request a service, **nbn** could potentially be required to build its network out to those premises, even though another carrier has already contracted to build its own network to those premises and is (presumably) in the process of constructing that network. This would effectively require **nbn** to pre-emptively overbuild the other carrier's network in those new developments. • The proposed amendments will introduce the concept of 'pending areas'. A 'pending area' is effectively an area specified in an anticipatory notice, and will be carved out of **nbn**'s general service area, except for those premises in the area with an existing **nbn** service.	
8	Amendments to introduce 'anticipated service areas' (Sections 360F(1)(ab), 360KA and 360KB)	• As discussed in row 7 above, currently, non-**nbn** carriers are required to lodge an anticipatory notice under section 360HA when they contract to install telecommunications network infrastructure in a new development, but they only become the SIP when they complete the installation and nominate as the SIP under section 360H. • In practice, this means there may be a significant period of time when **nbn** technically has an obligation as the default SIP for an area, even though another carrier has contracted to build the telecommunications network for that area, and is presumably in the process of constructing that network. • The draft legislation is proposing to introduce the concept of an 'anticipated service area'. If a provider has lodged an anticipatory notice for a REDP, at least one building unit is being constructed, has been completed, and is occupied, then the area specified in the notice will become an 'anticipated service area' and the provider will become the SIP for that area (but will still need to nominate as the SIP under section 360H or section 360HB once the criteria in those sections are satisfied).	• **nbn** supports the introduction of 'anticipated service areas'. • The change means that, where a provider has agreed to serve a REDP, that provider will be required to fulfil the SIP obligations for the area from the point in time when one or more building units is completed and occupied, even if the provider has not yet nominated as the SIP under sections 360H or 360HB. (In relation to nominating under section 360H, **nbn** queries whether the proposed drafting of section 360H(2)(aa) may need to be amended slightly to ensure that a carrier who is a SIP for an anticipated service area is still required to nominate under section 360H once the installation of their infrastructure is complete). • **nbn** assumes that a SIP for an anticipated service area would be able to refuse a connection or supply request in relation to premises that have not been completed at the time of the request, and will not be completed within the SIP's maximum connection or supply timeframe. It may be worth ensuring that the SIP exceptions instrument accommodates a refusal in these circumstances. • It will be important to ensure anticipated service areas are appropriately shown on the SIP map, particularly if there is likely to be some delay between the area becoming an anticipated service area, and the non-**nbn** carrier/CSP being required to nominate under sections 360H or 360HB. This may require appropriate notification requirements between the developer, the non-**nbn** carrier/CSP contracted to serve the REDP, and the ACMA.

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9	Amendments to bring private networks within the SIP regime (Sections 360HB and 360HC)	• Currently, only carriers are able to be a SIP under the legislation. • The draft legislation proposes to bring private network operators within the scope of the SIP regime, including through the introduction of sections 360HB and 360HC, which will require CSPs to lodge anticipatory notices and nominate as the SIP if the criteria in those sections are satisfied.	• **nbn** supports the proposed amendments to bring private networks within the scope of the SIP regime. These amendments mean that private networks serving areas like retirement villages will be subject to the SIP connection and supply obligations, and will be required to support retail competition by offering wholesale services on request. This will, in turn, ensure that end-users in developments served by private networks are able to benefit from the application of the SIP regime to the provider serving their area. • The proposed amendments will also reduce the risk that **nbn** will be required to overbuild private networks in order to connect premises and supply services in our capacity as the default SIP, in circumstances where another party is already supplying services in the area and, in some cases, **nbn** is not able to install the infrastructure it needs in order to fulfil its SIP obligations. • We note that the drafting of sections 360HB and 360HC are, understandably, quite different from sections 360H and 360HA. This is because the existing provisions apply to carriers deploying telecommunications network infrastructure in new developments, while the new provisions are designed to apply to CSPs who do not hold a carrier licence but do use 'facilities' to supply services in new developments. In our view, it would be worthwhile reviewing how the new provisions are interpreted and applied by CSPs once they come into effect, to make sure they are operating as intended.

Attachment B: nbn response to proposed amendments to fibre-ready facilities legislation and ACMA reporting

Item	Proposed amendment	Issue	nbn comments / recommendations

1	Amendments to Part 20A of the Telco Act to enable the ACMA to issue remedial notices
	(Division 3, new subdivision C)
		• Currently, Part 20A of the Telco Act requires fixed-line facilities installed in REDPs to be fibre-ready, and prohibits developers from selling or leasing building lots or units unless fibre-ready facilities (e.g. pit and pipe) are installed.
		• The draft legislation proposes to amend Part 20A to introduce a new subdivision to empower the ACMA to issue remedial notices in cases of non-compliance, e.g. if defective pit and pipe has been or is likely to be installed.
			• **nbn** supports the proposed amendments to Part 20A to empower the ACMA to issue remedial notices for non-compliance with the requirements regarding fibre-ready facilities. These amendments will help ensure developers install fibre-ready facilities in their developments to enable the provision of fixed-line infrastructure in those developments, provided the ACMA is resourced to enforce any contraventions of requirements on a consistent and ongoing basis.
			• It is worth repeating two other points made in previous **nbn** submissions regarding Part 20A:
			  ○ It will be important for the Department and telecommunications industry players to continue to raise awareness with developers and buyers about the requirements of Part 20A and the TIND policy, and to encourage the adoption of state and territory planning laws and regulations to impose requirements on developers that are consistent with Part 20A and the TIND policy.
			  ○ Developers should also be required to provide the 'pathways and spaces' that are required in apartment buildings (and other multi-unit buildings) to reticulate fibre to each premises. Without this requirement, developers are effectively only required to install pit and pipe. This means that, if a developer only builds to the minimum requirements set out in the legislation, a carrier would be unable to readily connect fibre to each apartment. While most developers install pathways and spaces, there are instances where this does not happen, ultimately leading to poor outcomes for end-customers.
			• Lastly, **nbn** notes it has also experienced difficulties with defective lead-in conduits (**LICs**) serving single-dwelling units (**SDUs**). We sometimes have to repair or replace the LIC to provide a service to the SDU, which therefore involves multiple truck-rolls and a longer connection timeframe. **nbn** understands that, unlike pit and pipe and 'pathways and spaces', LICs may not be the responsibility of the developer. Nonetheless, consideration may need to be given to how best to ensure LICs are installed to the requisite standard, to minimise the risk that a repair or replacement is required before a service can be provided.

Item	Proposed amendment	Issue	nbn comments / recommendations
2	Disclosure of information by the ACMA (Section 59DA of the ACMA Act 2005)	• Currently, the *Australian Communications and Media Authority Act 2005* (Cth) (**ACMA Act**) permits the disclosure of authorised disclosure information by the ACMA in certain circumstances and to certain parties. In particular, we note: ○ Section 59E permits the ACMA to disclose authorised disclosure information that relates to the affairs of a person if the person has consented to the disclosure. ○ Section 59G provides that the ACMA may disclose summaries of, or statistics derived from, authorised disclosure information that are not likely to enable the identification of a person. • The amendments to the ACMA Act would broaden the ACMA disclosure provisions, permitting the ACMA to disclose information, summaries of the information, and statistics derived from the information, where it relates to the affairs of a carrier or CSP and covers any of the following matters: ○ customer complaints, customers experiencing financial hardship, and customer service; ○ faults and service difficulties, and rectification of faults and service difficulties; ○ service activation and provisioning, and service connection; ○ performance characteristics of services; ○ customer appointment-keeping; and ○ a matter determined by the Minister.	• **nbn** broadly supports the enhanced transparency which these proposed amendments are designed to deliver. We do note, however, that in publishing information under new section 59DA, care will need to be taken to ensure that: ○ the distinction between wholesale and retail levels is clearly made and understood; ○ appropriate explanatory information is provided to ensure any published information, summaries or statistics can be accurately explained and interpreted, including when viewed in context with reports issued by other agencies on the same or similar topics; and ○ any confidential information provided to the ACMA is redacted or removed. • It may be appropriate for the ACMA to be required to consult with carriers or CSPs prior to disclosing information about that carrier or CSP under section 59AD. • We also note that the ACMA and other regulators including the ACCC and the TIO already have a wide range of reporting powers and functions, including in relation to complaints data and the performance of broadband services. Accordingly, if the ACMA Act is amended as proposed, care will also need to be taken to ensure the appropriate reporting power is used in any given circumstance, having regard to the purpose of the report/disclosure, which may be able to be achieved through the publication of aggregated industry data without the need to identify specific carriers or CSPs.

Attachment C: Additional **nbn** comments regarding SIP issues not covered in the exposure draft

Item	Issue	nbn comments / recommendations
1	Carve out of competitive services from SIP regime (Sections 360U and 360V)	• **nbn** believes the SIP legislation should be amended so that any SIP standards, rules and benchmarks made under sections 360U and 360V do not apply to competitive services (such as business-grade fibre). In our view, competition in those markets ensures the most efficient way of maintaining appropriate service standards, rather than regulatory intervention. • More specifically, **nbn** believes consideration should be given to amending sections 360U and 360V so that any standards, rules and benchmarks only apply to SIPs whose services are used, at a retail level, to supply services wholly or principally to residential customers. This would be consistent with the 'level playing field' provisions in Part 8 of the Telco Act. It would not, however, affect the overarching connect and supply obligations for SIPs, which would continue to apply in respect of business services. We think this approach would appropriately balance the need for SIPs to connect/supply in accordance with the legislation, while not over-regulating the provision of competitive services.
2	Peak speeds clarification (Section 360A)	• The terminology used to define a 'qualifying carriage service' refers to 'peak transmission speeds' of 25/5Mbps. Following the introduction of the SIP legislation in 2020, **nbn** encountered confusion about the reference to 'peak'. While **nbn** understands the meaning to refer to the achievable Peak Information Rate, a common misconception has been to interpret the definition of 'peak' as 'peak hour', 'peak time' or 'busy hour' – which are the speeds achievable at the busiest time of day. • Accordingly, we think the legislation should be amended to replace references to 'peak' with 'maximum', and to emphasise that qualifying carriage services are required to be capable of achieving 25/5Mbps, but are not required to consistently achieve speeds of at least 25/5Mbps at all times.