



Exposure Drafts

Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017

Telecommunications (Regional Broadband Scheme) Charge Bill 2017

Explanatory Notes

Introduction

This document provides an overview of the draft *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017* (the Bill) and the draft *Telecommunications (Regional Broadband Scheme) Charge Bill 2017* (the Charge Bill). It explains the operation of the key measures in these Bills to assist readers to understand and provide comments on them. These versions of the Bills have been prepared for the purposes of consultation and are subject to change.

The Bills will implement the main legislative component of the Government's response to the independent cost-benefit analysis and review of regulatory arrangements for the National Broadband Network (NBN) undertaken by the panel of experts headed by Dr Michael Vertigan AC. The Government's response, 'Telecommunications Regulatory and Structural Reform', was released on 11 December 2014.¹

The Government response proposed three major reforms:

- amendments to the level playing field rules in Parts 7 and 8 of the *Telecommunications Act 1997* to make the default structural separation requirement clearer and more effective as a baseline for industry, while at the same time creating new commercial and competitive opportunities;
- introduction of a statutory infrastructure provider regime; and
- introduction of a funding mechanism for regional broadband services.

The Bills implement these reforms.

¹ See: <https://www.communications.gov.au/sites/g/files/net301/f/Telecommunications%20Regulatory%20and%20Structural%20Reform%20Paper.pdf>

Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017

Overview

Amendments to the level playing field rules (LPFRs)

The Bill proposes amendments to Parts 7 and 8 of the *Telecommunications Act 1997* (Tel Act) with some minor and/or consequential amendments to the *Competition and Consumer Act 2010* (CCA). In summary, the measures will:

- remove the obligation on carriers in Part 7 to supply a Layer 2 bitstream service, leaving supply obligations for specific services to the Australian Competition and Consumer Commission (ACCC) declaration process under Part XIC of the CCA;
- amend Part 8 to make the default structural separation requirement clearer and more effective as a baseline for the industry, while at the same time creating new commercial and competitive opportunities;
- amend Part 8 to require new superfast² networks and new parts of pre-existing superfast networks supplying residential customers to be structurally separated, unless the ACCC has authorised functional separation;
- implement a process under which the ACCC can authorise functional separation if this is in the long-term interests of end-users, subject to an operator submitting an undertaking with appropriate organisational, access and non-discrimination commitments; and
- insert a power for the ACCC to exempt a class of carriers from Part 8, so long as all carriers in this class have fewer than 2,000 residential customers (or such higher number not exceeding 20,000 where specified in regulations) on all fixed-line networks.

Statutory Infrastructure Provider (SIP) regime

The SIP regime will require NBN Co Limited (nbn), and in certain other circumstances, other carriers, to connect infrastructure and supply wholesale services on reasonable request from a retail service provider. This will ensure that all premises will be guaranteed an infrastructure connection and retail service providers will have access to wholesale services supplied on that infrastructure.

The Regional Broadband Scheme

nbn's fixed wireless and satellite services are fundamentally non-commercial, and are expected to generate a net cost of \$9.8 billion over thirty years. The bills will introduce the Regional Broadband Scheme (RBS) through an industry charge on superfast fixed-line (nbn-comparable) broadband providers to provide sustainable funding for regional fixed wireless and satellite broadband services.

Regulation impact statements have been prepared as required for these three measures.

² A superfast carriage service is defined in the Bill as a carriage service that enables end-users to download communications, the download transmission speed of the carriage service is normally more than 25 megabits per second, and the service is supplied using a line to premises occupied or used by an end-user.

Notes on the Bill

Schedules 1 and 2: Amendments to the Level Playing Field Rules (LPIFRs)

The LPIFRs in Parts 7 and 8 of the Tel Act were introduced in 2011 and apply to superfast fixed-line networks servicing residential and small business customers. Part 7 requires operators of such networks (excluding nbn) to supply a Layer 2 bitstream service to access seekers. Part 8 requires the networks to be wholesale-only (that is, structurally separated). There are a number of exemptions to the LPIFRs. In particular, the existing LPIFRs do not apply to networks that existed prior to 1 January 2011, or to extensions of pre-2011 networks of less than 1 kilometre on or after 1 January 2011. There are also exemptions in relation to the supply of services to utilities and a ministerial power to grant exemptions.

The Bill will make several key amendments to the LPIFRs to make the default structural separation requirement clearer and more effective as a baseline for the industry, while at the same time creating new commercial and competitive opportunities. These amendments reset the structural separation arrangements, establish functional separation arrangements and promote competition.

Grandfathering arrangements

The Bill proposes to amend Part 8 so that the current wholesale-only obligations in section 143 of the Tel Act will now apply to fixed-line networks that came into existence between 1 January 2011 and 1 July 2017, or to networks that existed before 1 January 2011 and were extended, altered or upgraded between 1 January 2011 and 1 July 2017. A new proposed section 142C will then apply the new structural separation or functional separation rules to local access lines that come into existence, or are altered or upgraded, after 1 January 2017. In effect, therefore, the rules applying to networks that were subject to the current Part 8 will be grandfathered until such time as local access lines in those networks are altered or upgraded in such a way that the lines are captured by the new rules. Network operators will still be able to connect premises to networks that are subject to the existing rules, without needing to comply with the new rules, but the Bill proposes to amend the existing rules so that a line to connect a building can only be considered a 'connection' if no point on the building is more than 50 metres from a point on the infrastructure of the network as the network stood before 1 July 2017.

The Bill also proposes grandfathering arrangements for local access lines that are currently subject to the *Carrier Licence Conditions (Networks supplying superfast carriage services to residential customers) Declaration 2014* (the CLCs). Such lines are not otherwise subject to the existing Part 8 rules. The Bill grandfathers the CLC rules by ensuring that the CLCs continue to apply in relation to lines that form a part of a telecommunications network to which the CLCs applied between 1 January 2015 and the commencement of the new rules, provided that the lines have not been altered, upgraded or extended on or after 1 July 2017.

The Bill also amends the CLCs to clarify that a network that is subject to them can continue to connect buildings to the network, but a line to connect a building can only be considered a 'connection' if no point on the building is more than 50 metres from a point on the infrastructure of the network as the network stood before 1 July 2017.

The CLC rules will not apply to a network that is included in a functional separation undertaking that is in force and given by the carrier who owns or controls the network.

Repeal of Part 7

Part 7 of the Tel Act and associated provisions in the CCA will be repealed. Currently Part 7 requires affected providers to supply a Local Bitstream Access Service. Following repeal, access to specific wholesale services on superfast broadband networks would only be mandated if the services are declared by the ACCC under Part XIC of the CCA. For example, networks that are not currently subject to

Part 7 (such as Telstra's Velocity networks and TPG's fibre-to-the-basement network) are required to supply the Superfast Broadband Access Service as declared by the ACCC in July 2016. Furthermore, under the Bill, superfast networks would operate on either a functionally or structurally separated basis. They would therefore supply eligible services on a wholesale basis.

Currently, carriers subject to Part 7 of the Tel Act are required to supply the Local Bitstream Access Service on a non-discriminatory basis. The Bill will extend non-discrimination requirements to all eligible services supplied by persons owning or controlling superfast local access lines built on or after 1 July 2017.

Removal of some Part 8 exemptions

The Bill makes a number of changes to the exemptions in Part 8. The 1 kilometre exemption will no longer apply on or after 1 July 2017. This means that all extensions of pre-existing networks on or after that date must be used to supply services on a structurally separated basis as the default. Similarly, the ministerial power to grant exemptions would be revoked so that no exemptions will be able to be granted on or after 1 July 2017. This means that prior to the expiry date for current ministerial exemptions, operators will need to either submit a functional separation undertaking to the ACCC for approval (see below) or be in a position to structurally separate relevant parts of their networks that are subject to the LPFRs.

For clarity, the existing exemptions in the Tel Act for the supply of services to specified classes of utilities will not be changed by these amendments.

Local access lines

Currently, the wholesale-only rules in Part 8 apply to local access lines that are part of the infrastructure of a telecommunications network. Such networks must be used, or proposed to be used, to supply superfast carriage services wholly or principally to residential or small business customers. However, this can have the effect of regulating access networks as a whole when the preference is simply to regulate lines being provided to particular classes of customer. This is particularly important given it is proposed that the level playing field rules not apply in future to lines serving small business customers. Consequently, Part 8 will be amended to focus on individual local access lines to better target regulation. The intention is that any single local access line that is used to supply superfast carriage services to residential customers would be subject to obligations in Part 8. This new approach will apply to lines that come into existence after 1 July 2017, or are altered or upgraded after 1 July 2017.

Removal of small business

The Bill would amend the existing Part 8 rules so that they no longer apply to local access lines that are part of a telecommunications network used to supply superfast carriage services to small business customers. The new Part 8 rules will also only apply to local access lines used to supply superfast carriage services to residential customers. This means that lines used to supply superfast carriage services to small businesses will no longer be subject to structural or functional separation requirements. This creates greater flexibility for network operators in the supply of superfast carriage services to small business customers.

Functional separation undertakings

The Bill inserts a functional separation undertaking process into Part 8, under which operators will be able to submit such undertakings to the ACCC for approval. This creates greater flexibility in the supply of services on an integrated, albeit functionally separated, basis. That is, a business could have both network/wholesale and retail operations, subject to certain requirements. Undertakings may be given by a person alone or jointly with one or more other persons. In deciding whether to accept a functional separation undertaking, the ACCC will be required to have regard to the long-term interests of

end-users and any matters specified by the Minister in a legislative instrument. If accepted, the operator would be required to comply with the undertaking.

The ACCC will also be able to make a functional separation undertaking that would apply to a specified class of operators which, if an operator chooses to comply with it, would apply as though the operator had submitted it and the ACCC had approved it. This measure is intended to reduce the regulatory workload for some sectors of the industry as individual undertakings will not need to be prepared if members of the class sought to be covered by the class undertaking, and also reduce the workload for the ACCC as there would be a reduced number of individual functional separation undertakings submitted for its assessment.

The Bill sets a baseline for functional separation by requiring that a functional separation undertaking include a number of key elements. In particular, the operator will be required to:

- operate separate wholesale and retail business units;
- ensure that confidential information is not passed between the retail business unit and wholesale business unit and vice versa; and
- offer the same terms and conditions to its retail business unit and wholesale customers.

Functional separation undertakings can be tailored for each business as the Bill provides for flexibility in how these key elements are met. The ACCC will assess proposed functional separation undertakings based on the size and scale of each business.

Where operators are subject to a functional separation undertaking approved by the ACCC, all of an operator's superfast fixed-line networks would be subject to the functional separation requirements, regardless of when they were built or further altered or upgraded. This is intended to promote consistent operation of a carrier's networks, regardless of when they were constructed.

For the avoidance of doubt, the proposed amendments to allow for functional separation will not alter nbn's obligation to operate as a wholesale-only business, or Telstra's obligations to structurally separate.

As the assessment of functional separation undertakings will involve significant administrative and regulatory effort on the part of the ACCC, the Bill allows the ACCC to determine a fee or a method of ascertaining a fee for the consideration of functional separation undertakings.

[Class exemption](#)

The Bill introduces a power for the ACCC to exempt operators with a very small retail customer base from the LPRs if it considers that exemption would promote the long-term interests of end-users (as currently defined in the CCA). The exemption would be limited to operators with fewer than 2,000 retail residential customers on all fixed-line networks. This threshold will minimise the potential impacts on competition from allowing these operators to be vertically integrated, and the operators will be required to offer a wholesale layer 2 bitstream service, or other service specified by the ACCC in a legislative instrument, on a non-discriminatory basis.

The exemption provision recognises that the costs to such providers of separation could be burdensome and will facilitate entry by new small players into the market. Once such operators exceeded the specified threshold, they would become subject to the new requirements of Part 8 and need to become structurally separated unless functional separation undertakings were in place. The Bill provides that the statutory exemption could be extended, by regulation, to include operators (or groups) with up to 20,000 retail residential services. The figure of 20,000 is based on the exemption threshold for small networks set out in the ACCC's interim access determination for the superfast broadband access service.

It is envisaged that the regulation power would not be used in the short-to-medium term.

Enforcement

The Bill proposes to change the offence provisions under Part 8 from criminal offences to civil offences. Although criminal penalties can be invoked for breaches of some areas of competition law, they are usually applied in relation to conduct that is especially egregious (e.g. cartel conduct). The Government therefore considers civil penalties more appropriate in the context of Part 8.

The change means that contraventions of the wholesale-only rules under the proposed revised LPFRs, failure to comply with a functional separation undertaking, or breaches of other obligations in Part 8 (such as the non-discrimination obligations), will attract civil penalties. The level of penalty that is proposed reflects the importance of the new rules.

The Bill also gives the ACCC the power to issue formal warnings or infringement notices where it has reasonable grounds to believe that an operator has breached the LPFRs. This will enable the ACCC to resolve matters without taking court action.

The Bill proposes that every functional separation undertaking must contain specified elements ('fundamental provisions') that are critical to the achievement of the matters set out in the undertaking. Fundamental provisions must include, but are not limited to, requirements to maintain separate business units and requirements to protect confidential information. Other fundamental provisions can be proposed by the person who gives the ACCC the undertaking.

Where the person who gives the undertaking has breached a fundamental provision, or has an unsatisfactory compliance record in relation to non-fundamental provisions, the ACCC may revoke the undertaking and the operator will have 12 months to structurally separate the parts of its network that would otherwise have been subject to the LPFRs had the undertaking (which is to be revoked) not been in force.

The ACCC would also be able to revoke an undertaking for breaches of the non-discrimination obligations.

Merits review

Key ACCC decisions, for example to reject or revoke a functional separation undertaking, will be subject to merits review by the Australian Competition Tribunal. This reflects the fact that the ACCC will be making decisions that can affect the commercial viability of individual enterprises. Merits review is the default requirement in such circumstances, as set out in the guidelines published by the Administrative Review Council.

Schedule 3: Statutory Infrastructure Provider regime

Other than the current Statement of Expectations which requires nbn to roll out the NBN, there is no legal obligation requiring nbn to connect any premises to its network. The Bill will implement a new SIP regime to provide industry and consumers with certainty that all premises in Australia will have access to infrastructure that supports the delivery of superfast broadband services. This is appropriate given that nbn will ultimately replace Telstra as the principal fixed-line operator in Australia. With other carriers being expected to contribute to the cost of regional nbn services through a charge, those carriers and regional end-users will also expect that there is some guarantee that nbn will deliver services.

During the NBN rollout, nbn will have SIP obligations in all areas where it is supplying carriage services. After the NBN rollout is completed, nbn will be the default SIP for all of Australia. Other carriers can also

become a SIP where appropriate, for example where a carrier is the sole provider of infrastructure in a new development. The SIP obligation guarantees the provision of wholesale access to broadband infrastructure for retail service providers.

There are three key elements to the proposed SIP regime—identifying the SIP, the obligations of the SIP, and the processes to be followed when a SIP does not or cannot meet the SIP obligation. These are discussed below.

The Australian Communications and Media Authority (ACMA) will be the regulator with responsibility for enforcing the SIP regime. If a SIP does not meet any of the SIP obligations, the ACMA will have a range of enforcement mechanisms available, including issuing formal warnings, accepting undertakings, issuing an infringement notice or taking court action if appropriate.

Identifying the SIP

The Bill provides that, as the NBN rolls out, nbn will become the default SIP for each area where it has commenced supplying carriage services. These areas are expected to be those designated as ‘ready for service’ by nbn and are termed “interim NBN service areas” in the Bill. To ensure enhanced transparency about the service status of an NBN rollout area, the Bill would require nbn to report to the ACMA when it commenced supplying carriage services in an area.

Following completion of the rollout, nbn will be the default SIP for the “general service area” which, as a default, will be all of Australia. However, “nominated service areas” and “designated service areas” that are covered by other SIPs, and “exempt areas” will be excluded from the general service area.

Where carriers have signed a contract to provide infrastructure and services in a locality and undertaken to serve all premises in that locality, the carrier must declare itself as the SIP. The carrier would also be required to report to the ACMA when they have signed contracts to deploy infrastructure in an area (“provisional nominated service areas”).

New developments specified in existing ‘adequately served’ carrier licence condition determinations will also be nominated service areas. The ‘adequately served’ licence conditions were made in 2013-14 and apply to four carriers – NT Technology Services, OptiComm, Pivit and Places Victoria. They require those carriers to connect, upon reasonable request, any premises within networks in new developments specified in the licence conditions. In effect, the licence conditions impose a form of statutory infrastructure provider obligation on the four carriers. The Bill ensures that those carriers’ specific networks are automatically subject to the new statutory infrastructure provider obligations.

The Bill also includes a ministerial power to declare that a carrier is the SIP for an area, for example in areas where there is superfast broadband infrastructure in place that it would not be economically efficient for nbn to duplicate (“designated service areas”).

The Minister would also be able to declare that there is no SIP for an area if the level of competition in the area is such that the Minister considers that services will be delivered to end-users without the imposition of SIP obligations (“an exempt area”).

SIP obligations

Upon reasonable request by a carriage service provider on behalf of an end-user in the service area, all SIPs will be required to connect a premises to a superfast network (a ‘qualifying fixed-line telecommunications network’) in order that the carriage service provider can supply a fixed-line carriage service that supports retail services with a download speed of normally 25 Mbps or more. Where it is not reasonably practicable for the SIP to connect a premises to a fixed-line network, it must provide a fixed wireless or satellite technology solution.

The Bill provides for SIPs to be able to negotiate to connect designated equipment (such as health monitoring devices, ATMs, EFTPOS machines and traffic lights), upon reasonable request. This obligation is subject to commercial agreement. If commercial agreement is not possible, the owners of the designated equipment could approach another carrier to provide the carriage services.

The Minister will have the power to make a legislative instrument setting out circumstances in which the SIP obligation does not apply, and requirements for people purchasing a SIP service. This reserve power is similar to the power which exists under the Universal Service Obligation (USO) regime in the *Telecommunications (Customer Protection and Service Standards) Act 1999*. For example, a SIP should not have to connect its network where it cannot receive required approvals, or there are safety concerns involved.

The Bill gives the relevant SIP flexibility in how it meets its SIP obligations for a particular area, including the technology used to connect premises. However, the Minister will have a reserve power to set standards, rules and benchmarks that the SIPs must comply with (or in the case of benchmarks, meet or exceed). Such powers would typically be used if, through operational experience, SIPs were not installing infrastructure and supplying services of an appropriate capability within appropriate timeframes. The matters that could be specified in standards, rules and benchmarks are broad. By way of example, standards could include timeframes for connecting premises and rectifying faults, and rules could be made about how premises must be connected. Benchmarks could be set in relation to a matter covered by a standard.

For ease of administration, the Bill enables the Minister to delegate to the ACMA a range of powers, including the power to make standards, rules and benchmarks.

Failure or inability to meet the SIP obligation

If a SIP becomes aware that it is likely that it will no longer be able to fulfil its SIP obligations for that area, it would be required to notify the Secretary of the Department of Communications and the Arts and the ACMA. The carrier may negotiate with another carrier to take over its SIP obligations. If an alternative SIP is agreed, the first carrier must notify the Secretary and the ACMA. If no alternative SIP is agreed, nbn becomes the replacement SIP for that area.

Schedule 4: Sustainable funding of regional broadband through the Regional Broadband Scheme

The Bill sets out arrangements to fund the net costs of nbn's fixed wireless and satellite networks through an industry charge at the wholesale level on active fixed-line superfast broadband services. The arrangements are broadly similar to the current Telecommunications Industry Levy arrangements. Schedule 4 works in tandem with the Charge Bill. Schedule 4 outlines the operational aspects of the RBS, and covers:

- the funding mechanism for the fixed wireless and satellite networks, through the establishment of grants and contracts;
- the establishment of a Special Account;
- the establishment of the funding base through the definition of chargeable services associated with an access line;
- exemptions to the charge;
- an offset mechanism;
- carrier reporting obligations;
- charge assessment;
- charge collection;
- anti-avoidance and penalties for failure to pay the charge;
- access to information held by a carrier or carriage service providers;

- access to information held by eligible funding recipients;
- information disclosure between Government agencies and quasi-government bodies; and
- the Secretary's power to delegate their functions and powers.

The establishment of grants and contracts to fund the fixed wireless and satellite networks

The Bill provides that the Secretary will be permitted to enter into a contract or grant with eligible funding recipients on behalf of the Commonwealth to provide financial assistance for:

- the connection of premises to fixed wireless or satellite networks; or
- the supply of eligible services to carriage service providers to enable them to provide fixed wireless and satellite broadband services; or
- fixed wireless or satellite facilities.

We expect these contracts and grants would cover the provision of customer equipment necessary to connect premises to satellite and fixed wireless networks, including satellite dishes and fixed wireless antenna, but not, for example, wireless modems or telephones.

An eligible funding recipient is defined to be an NBN corporation, or a specified carrier as declared by the Minister. Whilst it is envisaged that NBN Co Ltd (nbn) will be the only eligible funding recipient at the RBS's commencement, there is flexibility for the Minister to declare other eligible funding recipients if required.

The Bill allows the Secretary and the eligible funding recipients to agree upon terms and conditions of the contracts and grants. The Minister may make a determination setting out standards, rules and benchmarks that are to apply to such contracts and grants but there are limitations on such determinations. The Minister cannot, for example, specify prices for services or facilities or override terms or conditions that give the contractor or grant recipient a right to adjustment of payment for a change in the services, facilities or customer equipment to be supplied.

The Secretary must maintain a register setting out the details of these contracts and grants and publish the register on the Department of Communications and the Arts' website.

The establishment of a Special Account

Charge proceeds will be paid into a Special Account established by the legislation (known as the Regional Broadband Scheme Special Account). The Special Account provides strict limitations on how money received into the account can be expended. They are:

- to pay amounts payable by the Commonwealth under a relevant contract or grant for the provision of fixed wireless or satellite services;
- to pay designated administrative costs;
- to distribute the whole or a part of the balance of the special account in the event that a relevant contract or grant has not been entered into and the account stands in surplus.
- to pay refunds in the event that a carrier has paid its charge and then becomes the holder of an offset certificate, or in the event of an accidental overpayment.

Funds paid into the Special Account cannot be used to make payments for any other purpose.

Charge Base

The charge base is set out in Division 4 of Schedule 4 and is supported through four fundamental definitions.

Chargeable service associated with a local access line: Carriers will be liable to pay the charge for each chargeable service associated with a local access line that was operated over their infrastructure during the whole or a part of a month in a financial year. Chargeable services associated with a local access line are defined as ‘potentially chargeable services’ other than exempt services (discussed below).

Potentially chargeable service: If a person is a carrier and either owns a local access line or is the nominated carrier in relation to a local access line, and a carriage service provider supplies a designated broadband service over that line during the whole or part of a month, then the designated broadband service is a potentially chargeable service.

Designated broadband service: A designated broadband service is defined as a carriage service supplied over a local access line that enables users to download communications, and is part of Australian telecommunication infrastructure and is technically capable of being used to supply a superfast carriage service. Attempts to manipulate a line’s usual technical capability will be considered an attempt to avoid the charge and will trigger the anti-avoidance provisions discussed below.

Superfast carriage service: A superfast carriage service is a carriage service that enables end-users to download communications over a fixed-line where the download transmission speed is normally 25 megabits per second or more. The word “normally” is akin to “usually”; it recognises that circumstances may arise that temporarily displace usual download transmission speeds.

In summary, carriers will have to pay the charge on local access lines that are technically capable of providing download speeds of normally 25 megabits per second, over which a carriage service provider has provided an active service during the whole or part of a month. For example, the provisions would capture active local access lines used in fibre to the premises (FTTP), fibre to the node (FTTN), fibre to the basement (FTTB), fibre to the cabinet (FTTC) and hybrid fibre-coaxial (HFC) infrastructure and where the line is technically capable of supplying download transmission speeds of 25 megabits per second (regardless of whether it is in fact providing a service of 25 megabits per second or more).

The provisions are not intended to capture mobile broadband services, fixed wireless broadband services, satellite broadband services, exchange based xDSL services or inactive superfast carriage services.

If different carriage service providers supply two or more designated broadband services to the same customer during a month, whether over the same local access line or over different local access lines, then only the designated broadband service supplied during the last part of the month is the potentially qualifying service.

The total charge payable by a carrier for each month is calculated based on the total number of chargeable services associated with a local access line a carrier has each month (see related explanatory notes for the Charge Bill 2017).

Example of Charge Base

			A carriage service provider provides a service over the technology during:		
			Whole or part of a month	Not at all	
Carrier owns:	Fixed line	Technically capable of download speeds of normally 25Mbps	FTTP	✓	X
			FTTN	✓	X
			FTTB/FTTC	✓	X
			FTTdp	✓	X
			HFC	✓	X
			Other	✓	X
	Non-fixed line	Not technically capable of download speeds of normally 25Mbps	xDSL other	X	X
			Mobile	X	X
			Fixed wireless	X	X
	Satellite		X	X	

Exemptions

The Bill provides for two categories of exemptions.

The first exemption applies to persons (whether as an individual or as part of an associated group) who have less than 2,000 potentially chargeable services during the whole or a part of a month. The exemption applies on a month by month basis. For example, if a person had less than 2,000 services in January and then more than 2,000 services in February, only the January services would be exempt from the charge.

The second exemption applies to local access lines transitioning to nbn under certain agreements. The following potentially chargeable services supplied over a local access line are exempt:

- Lines that are transitioning to nbn from Telstra Corporation Limited (Telstra) as part of the revised Definitive Agreements.
- Lines that are the subject of an agreement between nbn and specified Optus companies providing for the deactivation or decommissioning of hybrid fibre coaxial lines.
- Lines that are transitioning to nbn where:
 - the lines are transitioning in one of the first six months of the first eligible financial year (1 July 2017); and
 - a contract was in place for their transfer prior to 1 July 2017.

The Bill provides that the Minister can effectively remove services associated with particular agreements from the exemption by specifying the agreements in a legislative instrument. The legislative instrument is a disallowable instrument, so it will be scrutinised by Parliament before coming into effect.

The offset mechanism and payment of eligible funding recipients

The Bill allows the Secretary to offset eligible funding recipients' charge liabilities against their funding entitlement under a contract or grant. This improves the efficiency of the RBS and minimises transaction costs. The offset mechanism relies on two certificates: the nominal funding entitlement certificate and the offset certificate.

Nominal funding entitlement certificate

The nominal funding entitlement certificate (NFEC) establishes an estimate of how much money the Commonwealth owes an eligible funding recipient for the financial year under a contract or grant. This estimate is based on the balance of the Special Account. If a carrier is an eligible funding recipient on 1 February in a year that charge payment is due, the Secretary must issue it with an NFEC by the following 31 March. The Secretary will issue a new NFEC every year that charge payment is due.

Offset certificate

The offset certificate specifies the amount of charge the Commonwealth will offset against a carrier’s nominal funding entitlement. To be eligible for an offset, an eligible funding recipient must apply for an offset certificate by the standard due date of the charge, typically during December or February following the year in which the charge accrues (see ‘charge collection’ below for further details).

Eligible funding recipients can only apply to have their annual base amount offset. They must contribute to the administrative costs of the charge by paying their annual administrative cost amount on the standard due date of the charge. “Annual base amount” and “annual administrative cost amount” are explained in the explanatory note for the Charge Bill below.

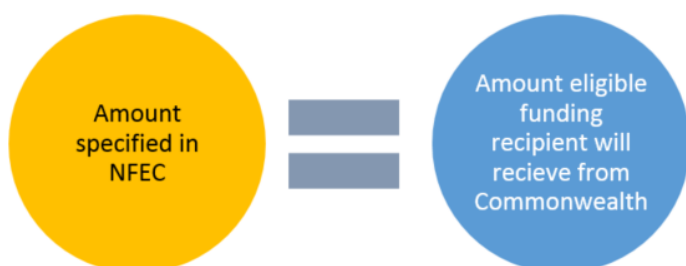
The Secretary will approve an eligible funding recipient’s offset certificate application after issuing an NFEC by 31 March following the financial year that the charge accrues. The Secretary will then remit the offset amount or, if the eligible funding recipient has already paid the offset amount, refund the amount. Later in the financial year, the Secretary will pay the eligible funding recipient the amount specified in the NFEC adjusted by the offset amount.

Where an eligible funding recipient *does* have an offset certificate:



If the eligible funding recipient’s offset certificate application is refused, it must pay its annual base amount by 30 April following the financial year that the charge accrues. If the carrier does not apply for an offset certificate it must pay its annual base amount on the standard due date along with its annual administrative cost amount. In each of these cases, the Secretary will pay the carrier the full amount specified in the NFEC later in the financial year.

Where an eligible funding recipient *does not* have an offset certificate and instead pays the full amount of the charge:



Carrier reporting obligations

There are two sets of carrier reporting obligations set out in the Bill: a once-off reporting obligation and an annual reporting obligation.

The once-off reporting obligation occurs in financial year 2017-18. On 30 August 2017, carriers must report to the ACCC the total number of designated broadband services provided by carriage service providers over their local access lines during July 2017. This requirement applies to carriers whose services might otherwise be exempt from the charge. This once-off reporting obligation will enable the ACCC to review the base component of the charge and provide advice to the Minister to consider whether it should be adjusted for the 2018-19 financial year (see the Charge Bill's explanatory notes for more information).

Failing to lodge a report is a strict liability offence. The penalty is 50 penalty units (currently \$9,000). A person who fails to lodge a report commits a separate offence for each day that they fail to lodge a report.

The annual reporting requirement starts in financial year 2018-19. Carriers that have chargeable services associated with a local access line during a month in an eligible financial year must report those services to the ACMA one year in arrears, by 31 October next following the financial year. Carriers do not have to report exempt services. The penalty for failing to lodge a report is 50 penalty units (currently \$9,000).

If an entity has no chargeable services associated with a local access line because the services it operates are exempt, the entity is not required to lodge a report.

Charge assessment

Carrier's charge liability is assessed one year in arrears. Starting in financial year 2018-19, the ACMA will annually assess:

- the number of chargeable services that a person operated in each month of the financial year that the charge accrued,
- the person's annual chargeable services amount, annual base amount and annual administrative cost amount for the year the charge accrued, and
- the charge payable by the person in relation to year the charge accrued.

The ACMA is required to complete its assessment by 30 November following the financial year that the charge is accrued or another day no later than two months before the standard due date for the charge. The ACMA will notify the carrier of its assessment as soon as is practicable. Each year, the ACMA must also publish on its website the aggregate amount of charge carriers pay and the total of the amounts specified in charge offset certificates for the eligible financial year.

The Bill provides that the onus of establishing that an assessment is incorrect rests on the party making that assertion.

Charge collection

The charge is collected one year in arrears. The collection arrangements are different depending on whether a carrier is an eligible funding recipient.

For all carriers that are not eligible funding recipients, charge payment is due on the standard due date, that is, 31 December following the financial year that the charge is accrued or a later date determined

by the ACMA, no later than 28 February. The ACMA can also give individual extensions to specific carriers until no later than 28 February.

Eligible funding recipients can pay their charge in two instalments. This arrangement is necessary for the Bill's offset mechanism to operate effectively. The administrative cost instalment (equal to the annual administrative cost amount) is due on the standard due date. If an eligible funding recipient has made an application for an offset certificate, their base instalment (equal to the annual base amount) is due on 30 April following the financial year that the charge is accrued, otherwise it is due on the standard due date.

The ACMA may recover the charge on behalf of the Commonwealth in the Federal Court, the Federal Circuit Court or a court of a State or territory that has jurisdiction.

Late payment penalties apply to unpaid charge liabilities at a rate of 20 per cent per year, or another lower amount that the ACMA determines.

[Anti-avoidance and penalties for failure to pay charge liability](#)

Carriers must not, either alone or together with other people, enter into, begin to carry out or carry out a scheme if it would be concluded that the carrier did so for the sole or dominant purpose of avoiding the charge.

It is also a criminal offence for a carrier, either alone or together with one or more other persons, to enter into, begin to carry out or carry out a scheme for the sole or dominant purpose of avoiding the charge. The penalty is 10,000 penalty units (currently \$1.8 million).

The Bill extends the existing penalties in Part 3 of Division 3 of the Tel Act to apply to a failure to pay the charge. This means that the ACMA could cancel a carrier's carrier licence if the carrier does not pay its charge liability. This amendment is consistent with the penalty regime that already applies to a failure to pay the Telecommunications Industry Levy (which funds, amongst other things, USO services).

[ACMA access to information held by carriers and carriage service providers](#)

The ACMA can require carriers and carriage service providers to provide information and documents it believes on reasonable grounds to be relevant to the operation of the funding arrangement. To request information, the ACMA will issue a written notice specifying the timeframe for the request, the manner in which the documents should be set out and whether copies of documents are required.

The penalty for failing to comply is 50 penalty units (currently \$9,000).

Carriers and carriage service providers are entitled to be paid compensation for reasonable expenses incurred in meeting a request.

[ACCC access to information held by eligible funding recipients](#)

The ACCC can require eligible funding recipients to provide information and documents relevant to the performance of the ACCC's functions. To request information, the ACCC will issue a written notice specifying the timeframe for the request, the manner in which the documents should be set out and whether copies of documents are required.

The penalty for failing to comply is 50 penalty units (currently \$9,000).

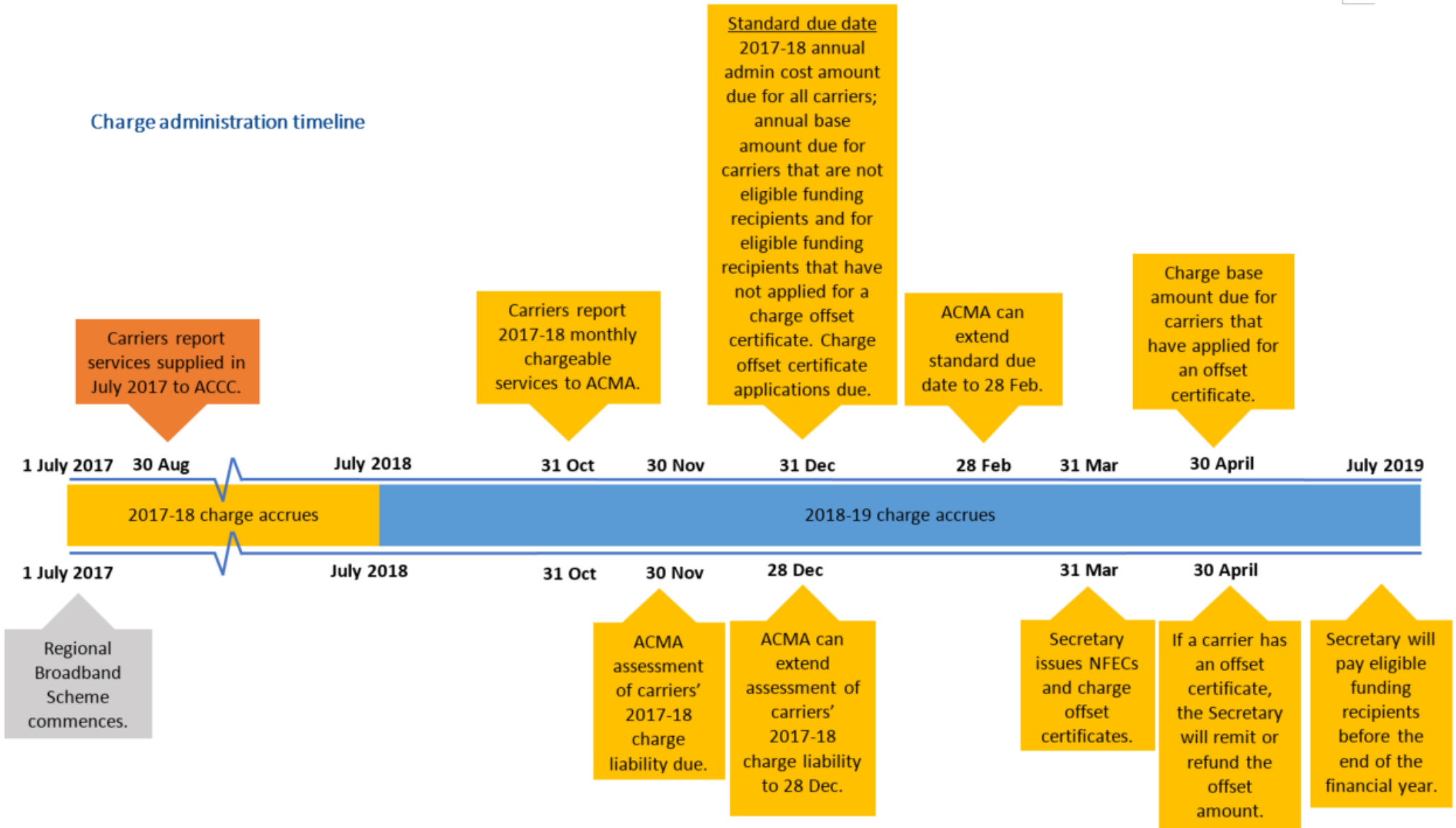
Eligible funding recipients are entitled to be paid compensation for reasonable expenses incurred in meeting a request.

Information disclosure between Government agencies and quasi-government bodies

The Bill allows the ACMA and the ACCC to disclose information to the following government and quasi-government bodies if the information will enable or assist the body to perform or exercise their functions:

- the Department of Communications and the Arts,
- the Department of Finance,
- the Treasury,
- the ACCC or the ACMA,
- the Regional Telecommunications Independent Review Committee, and
- an authorised Government agency.

Charge administration timeline



Example of charge administration for charge accrued in financial year 2017-18 and assessed in 2018-19

Months in financial year 2018-19	JULY	AUG	SEPT	31 OCT	30 NOV	31 DEC	JAN	FEB	31 MAR	APR	MAY	JUNE
Event				Carriers report chargeable services owned in each month of 2017-18	ACMA issues assessments specifying annual base and administrative cost amounts	Standard due date for charge; applications for offset certificate due			Secretary issues NFEC and offset cert.	Secretary considers remittance and refunds		Payment under contract or grant
Carrier that is an eligible funding recipient				6,500,000 services each month	Base: \$553,020,000 Admin: \$987,480 Total: \$554,007,480	Pays admin: \$987,480 and applies for offset cert. for base: \$553,020,000			Secretary issues NFEC for \$582,798,000 and offset cert. for \$553,020,000	Before 30 April, Secretary remits liability for base: \$553,020,000		Before end of financial year, Secretary pays \$29,778,000
Carrier that is not an eligible funding recipient				300,000 services each month	Base: \$25,524,000 Admin: \$45,576 Total: \$25,569,576	Pays total: \$25,569,576						
Carrier that is not an eligible funding recipient				50,000 services each month	Base: \$4,254,000 Admin: \$7,596 Total: \$4,261,596	Pays total: \$4,261,596						

Telecommunications (Regional Broadband Scheme) Charge Bill 2017

Overview

This document provides an overview of the *Telecommunications (Regional Broadband Scheme) Charge Bill 2017* (the Charge Bill) to help readers understand its operation. This version of the Charge Bill has been prepared for the purposes of consultation and is subject to change.

The Charge Bill operates in tandem with Schedule 4 to the *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017* (the TLA Bill), which is explained in the associated explanatory note.

The sole purpose of the Charge Bill is to establish an ongoing funding arrangement for fixed wireless and satellite infrastructure through an industry charge. The Charge Bill is a taxation measure.

Unlike any other broadband wholesaler, NBN Co Ltd (nbn) is required to provide superfast broadband to all premises in Australia. The Statutory Infrastructure Provider regime proposed in the TLA Bill will cement this requirement in law. Rolling out superfast broadband infrastructure to regional Australia is very expensive and nbn has determined that utilising fixed wireless and satellite technologies is the quickest and most cost effective way to do so. Even still, these networks are expected to incur a net cost of \$9.8 billion (in net present value terms) over thirty years.

nbn currently funds these net costs through an internal cross subsidy from its fixed line networks. This cross subsidy is not sustainable and ongoing funding for essential regional broadband services is at risk. The Charge Bill will require all superfast fixed-line broadband carriers, including nbn, to pay a transparent and competitively neutral charge. Schedule 4 to the TLA Bill empowers the Commonwealth to give funding assistance to fixed wireless and satellite infrastructure providers like nbn from the charge proceeds. Together, the two Bills ensure the continuity of essential regional broadband services.

Notes on the Charge Bill

Who has to pay the charge?

The charge applies to carriers that own, or are the nominated carrier in relation to, chargeable services associated with a local access line, which are superfast local access lines that are connected to Australian premises over which a carriage service provider is providing an active broadband service. The lines must be technically capable of supplying download transmission speeds of normally 25 megabits per second or more.

The following exemptions are set out in Division 4 of Schedule 4 to the TLA Bill:

- small carriers that operate less than 2,000 lines in a month, and
- Telstra lines transitioning to nbn under the Definitive Agreements, and
- Optus HFC lines transitioning to nbn, and
- other carriers that have an agreement to transition their networks to nbn in place before commencement of the RBS. This exemption only applies for the first six months after commencement of the Charge Bill.

See the TLA Bill explanatory note for further details regarding the charge base and exemptions.

How is the charge calculated?

There are two components to the charge:

1. the base component, which will be used to fund nbn's (and any other eligible funding recipient's) satellite and fixed wireless networks, and
2. the administrative cost component, which will be used to fund the administration of the charge.

Base component

In the first eligible financial year (2017-18), the base component of the charge will be \$7.09 per line per month. For each subsequent financial year, the base component for a month is the previous base component indexed to the Consumer Price Index (CPI).

Administrative cost component

The Charge Bill specifies the administrative cost component per line per month for each of the first five eligible financial years. For example, in the first eligible financial year the administrative cost component is \$0.01266 per line per month. For the sixth and each subsequent financial year, the administrative cost component is the previous administrative cost component indexed to CPI and rounded to five decimal places.

Ministerial determination of the base and administrative cost components

The Minister can determine a different amount for the base component at any time and for the administrative cost component after the first five years of the charge but must have regard to the most recent advice from the Australian Competition and Consumer Commission (ACCC) when doing so. This means the Minister can change the amount to reflect the latest industry information and advice. The Minister's determination is subject to a disallowance period so that Parliament can review the Minister's decision.

Advice from the ACCC

The ACCC must give advice to the Minister about the charge amount at least once every five years. The purpose of giving advice is to ensure that:

- the base component accurately reflects the net costs incurred by eligible funding recipients in supplying fixed wireless and satellite broadband services; and
- the administrative cost component is sufficient to offset the costs of administering the charge.

Calculation of charge

For each month of the financial year, the base and administrative cost component for the month is multiplied by the number of chargeable services associated with a local access line a carrier has in the month. These monthly amounts are then added to calculate the annual base and administrative cost amounts, which are then added to calculate a carrier's annual charge liability, or 'annual chargeable services amount'. The annual chargeable services amount is rounded to the nearest 50 cents. The example below demonstrates this process.

Example

If a carrier has 10,000 chargeable services associated with a local access line in each month July-December 2017 and 20,000 chargeable services associated with a local access line in each month January-June 2018 its charge liability will be calculated as follows.

Base Amount

	Base component	Number of chargeable services each month	Monthly base amount for each month
July – Dec 2017	\$7.09	10,000	\$70,900.00
Jan – June 2018	\$7.09	20,000	\$141,800.00
Annual base amount 2017-18			\$1,276,200.00

Administrative Cost Amount

	Administrative cost component	Number of chargeable services each month	Monthly administrative cost amount for each month
July – Dec 2017	\$0.01266	10,000	\$126.60
Jan – June 2018	\$0.01266	20,000	\$253.20
Annual administrative cost amount 2017-18			\$2,278.80



How does the carrier pay its charge?

Schedule 4 to the TLA Bill sets out the administrative arrangements for the charge. These provisions are discussed in more detail in the TLA Bill’s explanatory note.

In summary, carriers will report how many chargeable services they have for each month of the financial year to the Australian Communications and Media Authority (ACMA) in the October following the financial year. The ACMA will then invoice carriers in November for their annual chargeable services amount one year in arrears; the first annual chargeable services amount will be due in December 2018-19. Carriers will pay their charge into the Regional Broadband Scheme Special Account established under Schedule 4 to the TLA Bill.

Charge administration timeline (summary)

