

Consumer Safeguards Review: Part C - Choice and Fairness

NBN Co Submission

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1 Introduction

NBN Co Ltd (**nbn**) wishes to thank the Department for the opportunity to comment on its Consumer Safeguards Review: Part C Consultation Paper (**Consultation Paper**). It is appropriate and timely to undertake a comprehensive review of the consumer safeguards framework, given the changes currently taking place within the telecommunications industry.

Improving end user and RSPs' experience is a key priority at **nbn** and we will continue to collaborate with our RSPs and industry on this important issue. **nbn** has been making good progress to address the concerns of Government and regulators in respect of the components of end user experience that can be influenced by a wholesaler. It is important to recognise, however, that retail and wholesale providers have differing roles to play in developing and delivering products that enable 'choice' and provide 'fairness' to consumers.

The Consultation Paper invites comment on the role of self-regulation and direct regulation. In **nbn's** view, commercially negotiated agreements should be the primary method used by industry to deliver robust consumer safeguards. **nbn's** Wholesale Broadband Agreement (**WBA**) has been the mechanism by which **nbn** and RSPs have been able to successfully provide consumers with ongoing improvements to their experience with services over the **nbn**TM network. Improvements through WBA terms continue to be made. We consider that the preferred approach to developing and delivering consumer safeguards should be through commercial agreements and self-regulatory processes, such as the development of industry codes, before direct regulation is considered or applied.

In this submission we explain how commercially negotiated agreements can be used to deliver robust consumer safeguards and highlight how the legacy telecommunications-specific regulatory framework should be amended to ensure that the regulation remains appropriate for the current market dynamics and the changing way that telecommunications technology is being used by end users.

The Consultation Paper also invites comment on what the Department sees as key issues in the current regulatory framework. **nbn** believes that in order for any future reform to the telecommunications regulatory framework to be effective the impact of new regulation on both wholesale and retail providers must be considered carefully. Both are dependent on each other to some extent but both also have distinct roles to play in order to deliver the consumer experience and protections the public wants and expects from their telecommunications services.

Any consideration of future reforms, including whether regulation should be introduced or revoked, should focus on identifying which consumer segments need specific protection. There is now a greater choice of services through increased competition, expanded networks and greater product development. However, there is also a need to adapt the way consumer safeguards are implemented.

There should be a move away from technology specific regulation and towards developing solutions that focus on addressing a consumer-led outcome that are appropriately targeted to the harm they are designed to prevent and can be applied on differing technologies available to the consumer. This will be particularly important as telecommunications technologies and retail product options change to meet consumer demand over time. Therefore to enable responsiveness to these changes, the regulatory framework should be flexible enough to adapt.

In keeping with the objects of the *Telecommunications Act 1997* (**Telco Act**) the opportunity for safeguards to be developed via self-regulation (or co-regulation) should be encouraged to determine suitable outcomes to the benefit of both consumer and industry members.

nbn would be happy to further discuss any of the comments made in this submission.



2 Regulatory framework

The overarching Parliamentary intention for the development of regulatory policy set out in section 4 of the Telco Act remains valid and should continue to be the starting position for any reform of the consumer safeguard framework. The Telco Act provides that:

“The Parliament intends that telecommunications be regulated in a manner that:

a) promotes the greatest practicable use of industry self-regulation; and

b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.”

When examining the effectiveness of the telecommunications consumer protection regime, the objects under Section 3 of the Telco Act when read together with Parts XIB and XIC of the *Competition and Consumer Act 2010* remain particularly relevant and enduring regardless of the ongoing development of markets and technologies:

“(c) to promote the supply of diverse and innovative carriage services and content services;

(d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community;

...

(g) to promote the equitable distribution of benefits from improvements in the efficiency and effectiveness of:

(i) the provision of telecommunications networks and facilities; and

(ii) the supply of carriage services;

(h) to provide appropriate community safeguards in relation to telecommunications activities and to regulate adequately participants in sections of the Australian telecommunications industry;

...”¹

Telecommunications regulation has to balance the tension between allowing freedom for competing companies to innovate and differentiate themselves and setting minimum standard of behaviours and expectations to protect those members of our society who are unable to negotiate for themselves. To over-regulate or be too prescriptive and directive in the manner and scope of any regulation will stifle innovation and opportunities to supply a diverse range of services to meet the diverse range of consumer needs.

The Department has historically acknowledged this tension between the Telco Act’s regulatory objectives and the legitimately competing interests across the sector.² The ability for Government to successfully manage this tension whilst adjusting to shifting community expectations will be crucial to its success in shaping consumer protection regulation for years to come.

The Consultation Paper asks for views on the role of self-regulation and direct regulation in shaping the future telecommunications industry. While both have merit and individual examples of each have provided an improved

¹ *Telecommunications Act 1997*, Section 3, p2.

² Department of Communications, *Deregulation in the Communications Portfolio, Policy Background Paper No. 1, November 2013*, p5.



standard of customer service or protections for consumers, **nbn**'s clear view is that where commercially negotiated outcomes fail, self-regulation is preferred.

The extent of the legacy infrastructure that is no longer relevant or effective (some of which is being considered in this Consultation Paper) highlights that a decision to regulate should not be taken lightly. The lived experience of the sector shows that it is politically and practically difficult to remove regulation once it is enacted even when there is clear evidence that it is no longer relevant or practicable to serve as a consumer protection. We note, for example, some of the legacy obligations under this review have been the subject of previous de-regulation reform reviews but not pursued. To guard against future regulation becoming overly burdensome or redundant in a short time, instruments should be:

- principles-based;
- where possible, technologically neutral or agnostic;
- appropriately targeted to the harm it is designed to prevent; and
- outcomes focused.

It is equally important for the Government and respective regulators to ensure their approach to implementing future regulatory policy allows industry to be flexible in its development of products and services across the supply chain, whilst also ensuring it appropriately reduces consumer harm. There should be a clear and consistent order of preference when deciding the best way to develop consumer safeguards with direct regulation only being applied where there is clear evidence that market activity and industry arrangements have not been sufficient to address the issue. In our view the order of preference should be as follows:

1. **Commercial Agreements:** Commercial and operational agreements between different parties, including wholesale and retail service providers, provide the most cost-effective, efficient and mutually beneficial mechanism of ensuring consumer safeguards are developed by the telecommunications industry.
2. **Self-Regulation:** There are two areas where self-regulation may be appropriate:
 - Where commercial agreements failed to develop appropriate consumer safeguards, self-regulation should be given an appropriate opportunity to address the issue; or
 - Self-regulation may be appropriate to support existing commercial agreements.Any self-regulatory approach should be consistent for both retailers and wholesalers.
3. **Direct Regulation:** Where there is evidence that the telecommunications market failed to implement adequate consumer protections, it may be appropriate for the Government and regulators to address this through direct regulation.

2.1 Commercially negotiated agreements versus mandatory rules

As detailed in our response to the Department's Part B consultation paper, telecommunications regulation has "prioritised access agreements between access providers and access seekers over mandatory rules developed by governments or regulators".³ It is our strong belief that a competitive market responding to commercial incentives will produce far better outcomes than a regulated market and outcomes that are more responsive to immediate consumer needs.

³ [Consumer Safeguards Review: Part B, NBN Co submission](#), p8.



Commercial agreements, such as the WBA and other access arrangements that govern **nbn**'s wholesale supply activities, can be negotiated with shorter terms. Variations to access agreements can be agreed and amended more quickly when it becomes obvious that a new consumer detriment has arisen or that the existing terms are not appropriately addressing the consumer detriment. For example, where a consumer need is identified, **nbn**'s product development forum (**PDF**) provides a transparent and collaborative forum for RSPs and consumer advocacy groups to propose and develop appropriate products/solutions. The development of **nbn**'s SkyMuster Plus product provides a clear example of this. In collaboration with our RSP customers, **nbn** developed a solution targeted at residential, public interest and small business end users after it was identified that the existing product suite could be improved to address the data needs of specific consumers. End users using this wholesale product can now access unmetered data for essential online activity and better manage their overall data usage.⁴

Commercial arrangements can also allow the industry to act quickly and nimbly to deliver satisfactory consumer outcomes that address changing consumer needs and any gaps in the market. Addressing issues that impact consumer experience in this way means is possible as wholesalers and RSPs know firsthand the issues consumers face and can achieve the operational and technical improvements needed to resolve an issue. For example, as part of its response to assist industry through the development of the COVID-19 crisis in Australia, **nbn** via our commercial mechanisms and in consultation with RSPs quickly developed its \$150 million financial relief and assistance fund to help RSPs connect low-income households with home schooling needs, supporting emergency and essential services, and assisting small and medium businesses and consumers facing financial hardship.⁵

Another example is the ongoing development of **nbn**'s Service Health Summary, a diagnostic tool designed to help RSPs test, identify and resolve issues with an end user's service and subsequently reduce the time and effort for RSPs to run multiple tests.

Commercial agreements also provide cost, efficiency and flexibility benefits for both wholesalers and RSPs. These benefits are recognised as the foundational policy rationale for encouraging and favouring privately negotiated telecommunications access terms over regulated terms.

Commercial agreements can offer financial benefits and incentives between wholesalers and their retail customers to achieve a desired outcome for consumers. In **nbn**'s case, strong commercial incentives exist to continuously improve its performance through its commercial access agreements. This is in large part an outcome of competitive pressure and commercial incentives we have imposed ourselves during the course of our negotiations. We continue to face competition from alternative fixed broadband providers (for example in high value multi-dwelling units (**MDUs**), wireless network operators, and from alternative and emerging technologies (such as mobile data services and 5G).

At the time of writing, **nbn** is entering into what is hoped to be the final stages of negotiations with our access seekers to incorporate a range of additional benefits into the next iteration of the Wholesale Broadband Agreement (**WBA4**). We see these commercially led negotiations as being able to align commitments between **nbn** and RSPs so both are incentivised to improve the customer experience for end users and work together to resolve issues. Our guiding principle has been to work collaboratively with our access seeker partners and to

⁴ <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-sky-muster-plus-provides-unmetered-data-for-essentials>

⁵ <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-creates-covid-19-relief-and-assistance-package>



ensure WBA4 provides the foundation for a better customer experience for those across Australia using services over the **nbn**TM network.⁶

nbn continues to work with RSPs to develop initiatives designed to address in-home wiring issues, modem standards and Wi-Fi performance that exist beyond the extent of the **nbn**TM network but have material impacts on a consumer's experience.⁷

2.2 The importance of self-regulation

Some consumer protection matters, such as billing arrangements, complaint management or financial hardship provisions, are more suitably addressed across the telecommunications market and therefore a whole of industry set of rules is more appropriate.

As mentioned above, a key feature of the Telco Act is that it encourages the greatest practicable use of self-regulation. The Department promotes the concept as being intended to minimise government intervention, reduce costs and promote industry compliance.⁸ This is supported by the Government's guidelines for assessing regulatory impacts, which goes further in nothing that "red tape resulting from self-regulation is usually minimal and often administered sympathetically by the industry."⁹

The Consultation Paper recognises that the prevalent practice of code development and enforcement is more appropriately classed as 'co-regulation'¹⁰ where the telecommunications industry develops its own codes but compliance monitoring, registration and enforcement is authorised through legislation, usually through Part 6 of the Telco Act. **nbn** agrees with this assessment.

The telecommunications industry has mostly been quite successful in producing Codes of Practice that benefit consumers. Communications Alliance (**Comms Alliance**) has historically provided an effective avenue for industry to identify consumer issues and address these, taking into account the current supply chain. **nbn** continues to be an active member in Comms Alliance forums and has a seat on the Board.

While **nbn** has limited input into the industry codes that direct conduct and processes between consumers and RSPs, the success of the following codes is likely to influence the level of customer satisfaction consumers experience with services used over the **nbn** access network:

- C628: 2019 Telecommunications Consumer Protections (TCP) Code;
- C540: 2016 Local Number Portability (LNP) Code;
- C555: 2020 Integrated Public Number Database (IPND) Code;
- Priority Assistance for Life Threatening Medical Conditions Code and related legislative requirements under Schedule 2, Part 6 of the Telecommunications Act 1997;
- C566: 2005 Rights of Use of Numbers;
- C617: 2017 Connect Outstanding Code; and
- C647: 2017 **nbn** Access Transfer Code.

⁶ [Attachment 2, nbn Wholesale Broadband Agreement Proposal](#) , p1.

⁷ **NBN Co**, [Corporate Plan 2021](#) p19.

⁸ <https://www.communications.gov.au/policy/policy-listing/telecommunications-self-regulation>

⁹ Australian Government, *The Australian Government Guide to Regulation*, p28.

¹⁰ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p1.



Codes form a crucial role in providing minimum standards and set the benchmark for other operational practices designed to provide consumers and small businesses with choice of service providers and services.

There is plenty of evidence to suggest that the development of registered industry codes (and supplementary documents such as guidelines and guidance notes) has transformed the way telecommunications service providers have interacted with each other and has successfully allowed end users to take advantage of available retail competition in the fixed line and mobile markets. For example, the number portability codes and more recently the **nbn** Access Transfer Code provide a highly streamlined mechanism for consumers to effectively exercise choice. Consumers are relatively easily able to move their business elsewhere should the current provider not provide a good customer service or competitive price for their service.

Industry is best placed to know what changes to their systems and processes will improve the customer experience whilst also not being unreasonably costly or operationally difficult for industry to implement. As the Consultation Paper notes, reforms that use code and guideline development processes require a degree of consensus from participating members. A majority process is determined by Comms Alliance's Operating Manual to determine matters that are taken to the final ballot to approve a Code.¹¹ Where a majority consensus is reached, industry members can convene on a regular basis to address an emerging issue to either amend an existing process or create a new solution. A recent example has been the creation of a guideline that has developed a trial process to facilitate an additional check to the **nbn** access transfer process before transferring critical services in order to provide increased protection and validation that the correct service has been requested to be transferred. This form of collaboration would not be possible without the forum Comms Alliance and other industry bodies provides to its members.

The Consultation Paper made note of the Telco Act's statement that codes are voluntary, however lived experience suggests this is not the case in practice. It is certainly true that, unless directed by the regulator, registration of a Code is not mandatory. However, it is incorrect to imply that a Code once registered is still considered by industry members to be a voluntary instrument to adhere to. The Consultation Paper implies that because there is an additional step to direct a service provider to comply with some, or all, of the code's provisions, industry members consider it a 'voluntary choice' whether or not to comply with a Code.¹² It is also incorrect to suggest that only direct regulation results in mandatory compliance in the first instance.¹³ The premise that the ACMA's compliance and enforcement actions appear to be constrained by an inability to directly enforce rules set out in industry codes because code enforcement is confined, at first, to either a formal warning or a direction to comply¹⁴ underplays the effectiveness of these enforcement tools. These actions when taken by the ACMA are in most instances sufficient for a service provider to amend their behaviour.

The ACMA has a strong focus in ensuring registered codes, and particularly consumer safeguard practices under the Telecommunications Consumer Protections (**TCP**) Code, are monitored and enforced. After the registration of the 2019 version of the Code, the ACMA included aspects of the new rules in their compliance priorities, and put

¹¹ See section 10 of Communications Alliance Ltd, *Operating Manual* December 2019, p7.

¹² Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p4.

¹³ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p18.

¹⁴ ¹⁴ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p19.



RSPs on notice that they would actively be enforcing compliance.¹⁵ We note monitoring compliance with the TCP Code continues to be a priority for the ACMA for 2020/21.¹⁶ While non-compliance with specific rules has in recent times been found through the ACMA’s investigations, these investigations have uncovered issues with a small subset of services in operation and with a relatively small subset of those RSPs that are subject to the regulation. It is reasonable to conclude therefore that the threat of regulatory scrutiny or enforcement action seems to have been sufficient to ensure compliance by most suppliers.

2.3 The place of mandated consumer safeguards

nbn’s position is that consumer safeguards set out in direct regulation should aim to act as a “safety net”, designed to maintain acceptable community standards of service. This idea implies that legislation is a backstop in instances where commercial arrangements fail, rather than the leading edge on which terms should be set. This is an approach that is already used across the telecommunications consumer safeguards framework and reflects the fundamental principle of good regulation that governments should only intervene where there is a clear market failure and where, without the regulation, there is a high perceived risk or detriment to consumers and so compliance is important (and in some cases vital).¹⁷

There is a clear place for government or regulatory oversight of telecommunications consumer safeguards given the importance of consumer safeguards to the health and safety of individuals. However, in keeping with the Australian Government Guide to Regulation, regulation should be considered as just one of a range of solutions to address a policy problem and should only be imposed when it can be shown to offer an overall net benefit or “as a means of last resort”.¹⁸ Consumers and industry will benefit from a principles-based, targeted and outcomes-focussed approach to future consumer safeguards which aims first and foremost to improve the customer experience for end users but does not place unreasonable or unnecessary costs and compliance burdens on industry participants.

To fulfil this aim, direct regulation should only be considered when:

- there is clear evidence, that due to competing interests a solution to resolve a proven consumer pain point cannot be achieved via commercially negotiated arrangements or these arrangements have failed to produce the right outcome to protect consumers;
- a genuine attempt has been made to allow a self-regulatory process to address a specific issue and the development process has been given a reasonable timeframe;
- there is clear systemic failure on industry’s part to comply with an aspect of a self-regulatory instrument in place; and
- the consumer issue is of such significant or urgent consumer detriment that greater Government intervention in the first instance is required. There should be clearly articulated benchmarks and checks used to determine what threshold of detriment would warrant this activity.

Mandatory rules imposed by direct regulation, particularly those that include a high degree of prescription on how a provider must fulfil an obligation, can have unforeseen consequences for industry, will generally result in

¹⁵ <https://www.acma.gov.au/publications/2019-10/speech/speech-creina-chapman-acting-acma-chair-commsday-congress>

¹⁶ <https://www.acma.gov.au/compliance-priorities>

¹⁷ The Australian Government Guide to Regulation, p29.

¹⁸ The Australian Government Guide to Regulation, p5.



increased costs to ensure compliance and can result in a high degree of non-compliance from smaller providers (or force smaller providers out of the market altogether). Deloitte Access Economics' recent paper commissioned by Comms Alliance found the telecommunications industry had a high regulatory burden compared to most other private sector industries and measured that 2.4% of the telecommunications industry workforce are in occupations involving regulatory compliance, the 15th highest regulatory burden out of 70 private sector industry sub-divisions examined.¹⁹ This would suggest there could be improvements in the fulfilment of the Telco Act's overarching regulatory policy.

3 Settings for a future framework

3.1 Impact of retail regulation on wholesale providers and vice versa

Today's wholesale and retail supply chain is certainly more complex than those in place when the Telco Act was made in 1997. The Consultation Paper observes the "multi-layered supply chain impacts on the likelihood of a seamless service experience and challenges the existing consumer protection paradigm."²⁰ While processes may be streamlined, that complexity in the supply chain is here to stay and should be factored into consideration of the best means to achieve fit-for-purpose consumer safeguards.

To some degree the actions of both wholesale and retail providers are intrinsically linked in delivering an end users' overall experience with their service, regardless of whether these actions are governed by commercial arrangements, self-regulatory codes or direct regulation. The degree to which one party is more responsible than another has been the subject of claims and counter claims from different industry players, depending on their commercial interests and market strategy. The Department's Final Report on Part B reflected that "many retailers put forward a view that they were heavily or completely reliant on NBN Co or other wholesalers to ensure reliable services."²¹

nbn, on the other hand, has long made the case that it is only a part of the overall supply chain, and only a portion of the broadband service delivered to end users is within our control. As demonstrated in the figure below, there are numerous points within the delivery of an **nbn** voice or broadband service to the consumer, that rely on cooperation between **nbn** and RSPS; and other points where specific responsibility is more easily defined.

¹⁹ Deloitte Access Economics, [Connected Nation – the Regulatory Ecosystem 2020](#), p25.

²⁰ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p6.

²¹ Department of Communications and the Arts, *Consumer Safeguards Review Part B (reliability of services) – Final report*, p6.

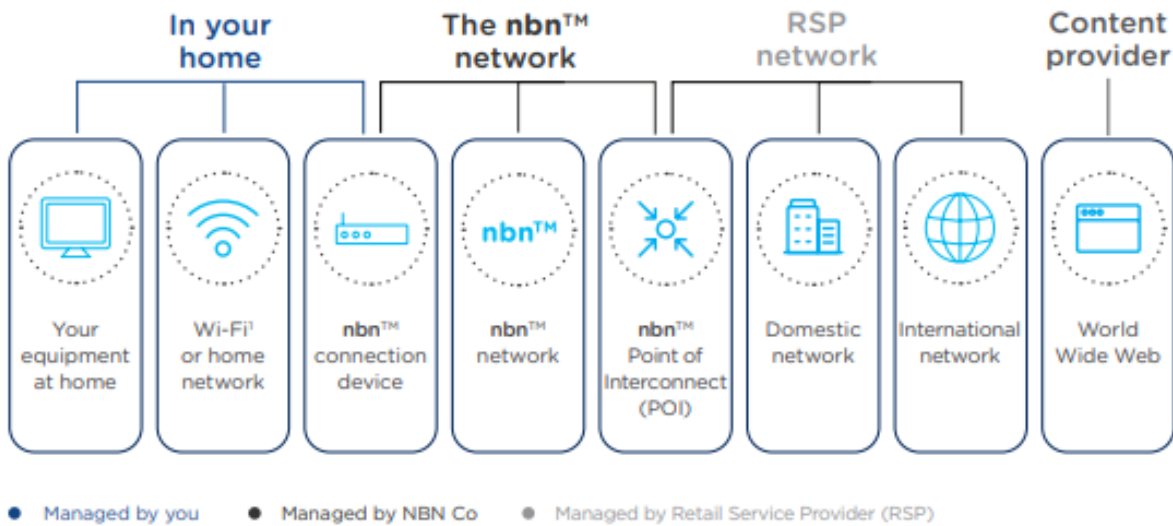


Figure 1 - Online service supply chain²²

In recent years there has been an intense focus on the wholesale service standards arrangements **nbn** should operate under, including the Department’s Part B review into service reliability. This scrutiny has included commentary on the impact that wholesale providers, and **nbn** in particular, can have on consumers’ experience. There has been significant work by both the Department in implementing the recent SIP legislation, providing final recommendations to Part B of the Consumer Safeguards Review, and by the ACCC through their Wholesale Service Standards Inquiry to ensure wholesale benchmarks are set for the future.

Retail providers also have a significant part to play in both the quality of a consumer’s service, the degree to which consumers are provided with sufficient information to understand the services they pay for, the success with which consumers are afforded a satisfactory level of customer service and how individual concerns are adequately addressed.

What is unique to retail providers is their direct contractual relationship with the consumer, the quality of their interactions about the end-to-end components of their service and the degree to which choice and fairness are provided. In relation to products that are provided to consumers using the **nbn** access network, decisions made by RSPs and others in relation to CVC dimensioning, network provisioning and retail service commitments impact the quality of service a consumer receives from their retail provider.

The Department’s Final Report in response to Part B included a recommendation that stated “building on wholesale level rules, arrangements should be put in place to require and then promote transparency around the service commitments of individual retailers, including at a minimum a requirement to advise consumers and small businesses of timeframes for connections and repairs, and associated remedies, while allowing industry to make these points of competitive distinction.”²³

Where it has been determined by the regulators that there is sufficient justification for regulation to be imposed on **nbn** as the wholesaler, in order for these benefits to be passed through to the consumer at the end of the supply

²²Your Wi-Fi device may be provided by your RSP or you can choose to purchase your own. The quality or type of device may impact your experience. <https://www.nbnco.com.au/content/dam/nbnco2/2020/documents/media-centre/corporate-plan-2021/nbnco-corporate-plan-2021.pdf>, p21.

²³ Department of Communications and the Arts, *Consumer Safeguards Review Part B (reliability of services) – Final report*, p15.



chain, RSPs should be held to the same standards as the wholesale provider. In our view, whether both are determined by commercial agreement or by direct regulation, retail actions should be considered under a similar assessment to ensure adequate consumer safeguards are disseminated through the supply chain and the right outcome for the consumer is achieved.

This includes practices beyond simply providing transparency about what wholesale providers provide to the RSP as a minimum service standard. For example, if commitments and rebates are provided to RSPs by the wholesaler the benefits felt by the consumer would be negligible unless RSPs were to also pass on the tangible outcomes based on wholesale commitments to end users, such as the fair value pass-through arrangements through **nbn** is proposing of rebates paid by **nbn** to RSPs for events such as connection and fault rectification delays.

It should also be acknowledged that many wholesale access agreements, including the WBA, already reflect and support existing retail regulatory obligations. For example, WBA3 already has additional service levels and support structures designed to help RSPs meet the regulatory requirements under the *Telecommunications (Customer Service Guarantee) Standard 2011*. We contractually support service levels outlined under the Priority Assistance regime to ensure consumers with a life-threatening illness are catered for even though there is currently no retail obligation for services over the **nbn** network. **nbn** has recently shifted its **nbn** access transfer window timeframes to support RSPs' ability to complete an LNP transaction on the same working day to reduce impacts to consumer's services.

[Commercial-in-Confidence]

3.2 Ensuring appropriate assignment of responsibility

An important component of **nbn**'s vision and purpose is to lift the digital capability of Australia. As a wholesale only provider, the degree of success by which we are able to achieve this goal is dependent on whether measures to lift digital capability by **nbn** are mirrored by retail arrangements. We can only improve consumers' experience of their **nbn** services in collaboration with RSPs, industry stakeholders, research partners, regulators and the government.²⁴

In **nbn**'s submission to the Department's Part A Consultation Paper, we discussed the importance of ensuring that a complaints handling and dispute resolution framework appropriately recognise the distinction between wholesale and retail suppliers and the different roles and responsibilities each part of the supply chain bear in relation to the resolution of customer complaints.

In a similar fashion, in our submission to the Department's Part B Consultation Paper we emphasised the importance of this principle with regard to service reliability issues.

The same distinction between the different roles and responsibilities of retail and wholesale provider is also relevant when ensuring 'choice' and 'fairness' in the retail relationship and when reviewing the most appropriate regulatory framework under this Part C of the Review.

'Choice'

The Consultation Paper has described 'choice' to mean consumers need accurate, relevant and usable information about products and services so they can confidently choose those that meet their needs.

²⁴ NBN Co, [Corporate Plan 2021](#), p22.



The information available about the product and services and how well this information is conveyed to consumers is primarily the responsibility of RSPs. There is currently a wide variety of direct regulation already in place that dictates information content; at what point within the contractual relationship this information is provided to a consumer and the medium in which this information must be given. The Critical Information Summaries as required under the TCP Code and the Key Fact Sheets about **nbn** services under the *Telecommunications (NBN Consumer Information) Industry Standard 2018* are two important sources for consumers to access information about their **nbn** voice or broadband service. The ACCC's *Broadband Speed Claims: Industry Guidance* is yet another.

Education tools and awareness campaigns may be one area of activity where the responsibilities for information provision can be successfully shared by both wholesale and retail providers, consumer groups, the Government and the regulators. The Department has previously nominated education and awareness as one of a range of tools available to achieving a public policy directive as an alternative to direct regulation, stating “a consumer education function is likely to continue to have a place in terms of consumer protection initiatives”.²⁵ **nbn** strongly supports use of these strategies to address areas where consumers are required to take action to protect themselves or to improve the quality of their service. Collaboration is needed across industry, government and consumer groups to ensure messaging is consistent and targeted appropriately.

In mid-2020, **nbn** released a new advertising campaign centred on raising awareness of broadband performance issues within the home, and how consumers could address these issues. The purpose of one television advertisement that formed part of this campaign was to educate consumers on modem or gateway placement within the home, and how placement of that device could impact overall performance.²⁶ While not relevant to RSP choice, the campaign demonstrates that all parties can play a role in educating consumers on managing their services.

‘Fairness’

The Consultation Paper describes ‘fairness’ as an expectation that “consumers should be treated honestly and reasonably by their provider. This includes ethical selling practices, even-handed and easily understood contracts, accurate and timely billing, services that perform as described, and providers who respond promptly and effectively when a consumer experiences problems with the product or service, or financial hardship.” **nbn** has input into ensuring a **nbn** broadband service performs as described and responsibility to assist the RSP where a consumer experiences problems with their service. Commitments and service levels to provide this activity form a key pillar of our contractual obligations under the WBA. Selling practices, consumer contracts and timely accurate billing are a key part of RSPs’ responsibilities but impact customer experience in relation to services on the **nbn**TM network.

[Commercial-in-Confidence]

As **nbn** stated in our Corporate Plan 2021, we “will promote a joint industry agenda, collaborating with RSPs, regulators, policymakers and broader industry stakeholders to drive improved customer outcomes, including addressing factors that are outside NBN Co’s control but nevertheless impact customer experience. In collaboration with the industry, any gaps will be identified and a program of works implemented for the benefit of the wide range of customers using the **nbn**TM network.”²⁷

[Commercial-in-Confidence]

²⁵ Department of Communications, *Deregulation in the Communications Portfolio, Policy Background Paper No. 1, November 2013*, p8.

²⁶ “nbnTM home internet help: Get your Wi-Fi modem out in the open”, <https://youtu.be/Br2EsHy208M>

²⁷ **NBN Co**, [Corporate Plan 2021](#), p21.



These activities will continue to be a focus for **nbn** and a source of ongoing discussion with our access seeker customers. Where there is failure to take up opportunities for industry-led development of solutions to resolve these issues, there may be scope to explore direct regulation to alleviate these pain points. Again, any consideration to apply regulation to address these issues must be based on evidence of detriment to the consumer and a failure for the industry to adopt a minimum standard of practice.

3.3 Any consumer safeguard regulation should be technology agnostic / uniform

The Consultation Paper acknowledges that the bulk of legacy regulatory obligations have historically focused on fixed line voice services and in particular on Telstra’s copper access network as the ubiquitous service that was available in the late 1990s- early 2000s. Equivalent regulation on use of mobile services as a means of providing consumer protections was not considered as necessary at the time. Given the market changes since this implementation, this approach should change.

The rapid evolution of the telecommunications sector over recent years highlights the importance of preferably avoiding or removing regulatory bias towards particular technologies or network design standards. In many areas of Australia, there are now suitable alternative services through increased competition, expanded networks and greater product development. The ACMA’s Communications Report indicates “the number of Australian adults with a fixed-line phone service at home continued to decline—less than half (49% or 9.46 million) of Australian adults had a fixed-line phone at home at June 2019, down from 70%” in 2015.²⁸

[Commercial-in-Confidence]

Where the solution to provide a consumer protection includes an obligation for a fixed service (historically telephony) to have alternative or back-up services in place, these are in most cases likely to be provided over a mobile network. Retail mobile services are often supplied as an alternative service for when fixed services become temporarily unavailable, for example as interim or alternative services to provide continuity of service under the *Telecommunications (nbn Service Migration) Determination 2018*, the *Telecommunications (nbn Continuity of Service) Industry Standard 2018*, the Customer Service Guarantee regime, and under the Priority Assistance Code.

However, consumer protection regulations have rarely been placed on these mobile services or networks as well – particularly in relation to service continuity protections. If regulation is still deemed necessary for one technology but not the other, then the back-up service cannot be assumed to provide the same protections as the fixed networks they will be backing up.

Wireless operators are now launching products that cater to broadband services within the home over their 5G mobile networks²⁹ and some consumers may view this as an alternative to a **nbn** service. These new products are currently subject to less regulation due to the nature of the networks they operate upon. **nbn** supports a technologically agnostic approach to regulation of all superfast broadband networks (including wireless broadband services such as fixed wireless and 5G). Technologically agnostic regulation will promote a level playing field, enhance competition across the industry and promote more choice for consumers.

²⁸ ACMA *Communications Report 2018-19*, pp4 and 38.

²⁹ Optus’ recent announcement of its 5G Internet Plans is an example of this. See <https://www.optus.com.au/about/media-centre/media-releases/2020/09/optus-newest-5g-internet-plans-are-all-about-high-speed-and-streamed-entertainment>



3.4 Focus on consumer-led outcomes

When determining future policy safeguards, a renewed focus on identifying which consumer segments need protection should be applied.

The Consultation Paper has suggested an appropriate principle to base future reform around is that rules are needed to drive customer-focussed behaviour where market/commercial incentives are weak. **nbn** supports this principle where it has also been proven commercially negotiated arrangements or self-regulatory arrangements have not been able to be implemented, but not necessarily for the reasons set out in the Paper. The Paper states that the basis of this principle is that “market/commercial incentives are likely to be weak where a customer has already signed up to a contract. In areas like sales practices, financial hardship and customer transfers, commercial incentives and/or competitive pressures are not always aligned to customer needs.”³⁰ In relation to whether sufficient consumer protections can be offered without direct regulation, we consider that market incentives are more likely to be weak:

- in offering products or special service levels that are specifically needed by smaller cohorts of the population (i.e. those with ‘special needs’);
- where there are very small specific hard-to-reach/access parts of the population; and
- where special provision of services are likely to be a loss-making or low-margin exercise from either a retail and wholesale perspective.

In fulfilling its purpose to lift the digital capability of Australia, **nbn** is interested in supporting RSPs to provide accessible and affordable carriage services that enhance the welfare of Australia as outlined in the object of the Telco Act. As such, we support proposed Principle 6 that “services should be available, accessible and affordable for all people in Australia”.

In assessing whether a consumer segment is sufficiently serviced or protected, a holistic view should be taken to examine what alternative networks and products are available to address a particular need.

In the case of retail services that are offered over the **nbn** access network, questions of whether there are barriers which prevent consumers from taking advantage of the retail offers available could also be examined further. For example, the ability to understand the information about products and services available, including the ability to ingest information in written form may need to be targeted. The Australian Digital Inclusion Index for example calls out Digital Ability as an area that could present future opportunities for improvement.³¹ A 2019 OECD report found more than 20% of Australian adults have very low literacy, numeracy and digital problem-solving skills.³² We note the Consultation Paper highlighted the Government’s Be Connected and Digi House programs to assist certain groups attain digital inclusion and we acknowledge more can be done by industry and governments alike.

Our preferred approach is for the Department to first determine which consumers are in need of protective legislation. Policy makers should determine whether protection is needed to address a lack of digital ability, availability or accessibility when seeking to attain a telecommunications service and whether competitive incentives are sufficient for the market to offer these services without the imposition of direct regulation. For example, if a consumer needs a fixed voice only service and has no access to alternative services available such as a mobile network at their premises.

³⁰ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p28.

³¹ Measuring Australia’s Digital Divide: Australian Digital Inclusion Index 2018, p12.

³² <https://www.smh.com.au/education/one-fifth-of-australian-adults-have-limited-literacy-and-numeracy-oecd-20190214-p50xpo.html>



Where it has been determined that a regulated consumer protection is required, there should be an assessment about whether the policy could be applied to fixed line, mobile, fixed wireless and satellite equivalently. While regulatory reform should also recognise there are important technical and usage differences between these different technology types, this approach would help provide a relatively level playing field in supporting the costs of mandated consumer protections, and would also mitigate end user risk and inconvenience should one network type be unavailable.

Wireless network operators should also be required to support their wholesale customers' retail regulatory obligations, in the same way that **nbn** is required to support its RSP customers. Continuing a technology-based approach to retail regulation in which consumer safeguard requirements fall only on a fixed network and retail providers is likely to drive up the cost of providing these services relative to mobile, which could reduce uptake of fixed services, and steer users toward mobile services.

3.5 Assessment of the current consumer protections framework

As discussed above, **nbn** suggests the emphasis of allowing commercial arrangements and self-regulation should continue before any additional direct regulation is applied. We do, however, recognise that under each framework, processes can be improved.

nbn is concerned with some aspects of the Department's assessment of the benefits and downsides to self-regulation and direct regulation.

Issues of timeliness and responsiveness to consumer detriment

The Consultation Paper suggests that the current code development process is slow and that contentious issues are difficult to manage quickly, but therefore arguably "the existing code development process is better suited to static, non-pressing issues, or those where there is agreement on the way forward."³³ In our view there is some merit to this observation but it doesn't tell the full picture.

The consumer protection code development process involves consumer interest groups who are likely to have different views to industry members on what are acceptable outcomes to the code process. Negotiation with such a broad group with differing views to reach a consensus takes time, particularly if parties' starting positions are poles apart. However, the process to reach consensus should be viewed as a positive step regardless of the time it takes.

In contrast, the Consultation Paper suggests that "targeted direct regulation, set out in standards and service provider determinations (subordinate legislation) can be responsive and flexible".³⁴ We suggest it is not appropriate to make assessment on the effectiveness of making rules under a self-regulatory regime or a direct regulatory one based on the time to complete. Examples using both processes can be cited as either being too slow or having been created too quickly for all unintended consequences as a result of hasty drafting to be ironed out.

³³ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p15.

³⁴ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p16.



Unclear and ambiguous rules

The Consultation Paper suggests that codes are sometimes ineffective because unclear or ambiguous language has been used and quotes the TCP Code's use of terms such as 'take reasonable steps' or 'use reasonable endeavours/ efforts'.³⁵ The ACMA's *Telecommunications (nbn Continuity of Service) Industry Standard 2018* uses similar language of 'taking reasonable steps' or 'reasonable assistance'. These are common legal terms used in legislation. We also note obligations under the new Statutory Infrastructure Provider regime for both infrastructure providers and regulators alike³⁶ are also based on 'reasonable request'. **nbn** believes that when referring to service provider or individual staff behaviour, or when applying a rule that is outcomes- or principles-based, this is entirely appropriate. This language is also appropriate in managing a balance between the risk of failure to provide a consumer protection in individual instances against the reality of human error or individual cases where there has been a failure to follow established process.

3.6 Suggested improvements

Sunset and timeliness to adapt regulation

One of the common criticisms of the current regulatory framework is that direct regulation, once in place, has been very difficult to remove. This is a problem faced with both legislation and subordinate instruments. Historically, part of the reluctance to amend or remove outdated legislation has been the negative perception associated with removing a consumer safeguard, even when the benefits of providing the specific protection are outweighed by the ongoing costs to industry.

A future consumer protection framework should include statutory requirements to independently review direct regulation on a more regular basis, and assess the costs and benefits of the framework. Additionally, sunset clauses could feature more prominently. Typically sunset provisions applied to legislative instruments and subordinate regulation are set for 10 years,³⁷ which in some instances encourages a 'set and forget' practice without ongoing consideration of its impact to broader changes within the telecommunications market. In contrast industry codes are typically reviewed within 5 years and, as a result, can be more responsive to industry development and to emerging consumer issues.

We suggest that additional reviews for both legislative instruments and subordinate regulation be set in place to make sure there is ongoing consideration of whether a regulation is still fit for purpose prior to a sunset timeframe. This review should examine whether:

- the direct regulation still meets the original purpose for which it was made;
- there are alternative products and services in the market which alleviate the need for the regulation; and
- whether the consumer segment is still appropriately targeted.

Balance between principles based/outcomes focussed versus compliance driven rules

One aspect of the regulatory framework's compliance and enforcement regime, particularly the ACMA's approach to the industry codes and regulatory instruments under its remit, is that there is a tension between maintaining a balance between light-touch principles-based regulation (as opposed to heavy handed regulation) to allow

³⁵ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p12.

³⁶ See numerous examples under *Telecommunications Act 1997*, Part 19.

³⁷ For example, those legislative instruments that apply under Part 4 of the *Legislation Act 2003*.



flexibility amongst service providers as to how they achieve compliance; and drafting rules that are measured by their ability to be enforced but may not achieve a desired result. Ideally, successful principles-based regulation should focus on the purpose behind the rule rather than just on the detailed rule itself.³⁸

Care should be taken in assuming that detailed prescription in a Code or regulatory rule will always produce a better-quality outcome. For example, **nbn** has been in discussion with the ACMA as part of their 12 month implementation review of the *Telecommunications (nbn Continuity of Service) Industry Standard 2018* and *Telecommunications (nbn Service Migration) Determination 2018* about the efficacy of the requirement to provide a technical audit to all consumers as this process is, in our view, currently unwieldy and not useful for consumers.

Code development improvements

The Consultation Paper has suggested that industry codes could focus on providing guidance to industry on secondary, process and technical matters, rather than matters that are considered to be essential consumer protections. It is not clear from this statement what ‘secondary matters’ are intended to be so further clarification from the Department is needed on this point. This approach is inconsistent with **nbn**’s preferred approach of allowing the industry to work through either commercial agreement or self-regulatory process before direct regulation is considered.

Where it has become evident that commercial incentives or competitive pressures are not aligned to the industry forming a solution that provides suitable protection for a cohort of consumers, an appropriate alternative could be for the Minister or the ACMA to provide a direction ‘in principle’ or desired outcome it would like the industry to achieve. Section 118 of the Telco Act may already provide the ACMA with powers to ask an industry association to develop a Code. It is our understanding that this practice is not often applied. The success in using this approach more would rely on the ACMA allowing industry members to provide the detail of the solution within the code development process.

This approach would prevent RSPs and other industry players from refusing to address consumer detriment where there is evidence that needs to be addressed by the wider industry but allow experts within the industry to determine what will improve the customer experience and to develop a solution that is unlikely to be unreasonably costly or operationally difficult for industry to implement.

Compliance monitoring and enforcement improvements

The ACMA code registration guidelines outline that ‘enforceability’ of a specific Code rule must be a consideration through the Code development.³⁹ Greater prescription is encouraged to make a Code easier to enforce. As a result, there is a tension between the ACMA’s approach to greater prescription and industry’s desire to move to outcome focussed rules that afford flexibility while still providing safeguards for consumers.

We also recognise that there appears to be some frustration felt by the ACMA about their ability to obtain evidence of non-compliance and in not being able to penalise a service provider without a two-step process of having to direct a provider to comply first before further penalties can be imposed. For example, we note the following statement “the ACMA will generally use the minimum power or intervention necessary to achieve the

³⁸ Julia Black, *Principles based regulation: risks, challenges and opportunities Presentation*, p11.

³⁹ ACMA, *Guide to developing and varying telecommunications codes for registration September 2015*, p5.



desired result, which, in many cases, is compliance with the relevant obligation⁴⁰ has been removed from their current version of their Compliance and Enforcement Policy.

We are very supportive of the Paper's suggestion that allow more flexibility and 'better calibrated enforcement options' for the ACMA.⁴¹ This could include streamlining the current enforcement processes or applying additional enforcement measures where there is clear evidence of systemic non-compliance. **nbn** also believes the any additional measures should remain in keeping with the ACMA's existing approach of "a graduated and strategic risk-based approach to compliance and enforcement"⁴² that is consistently applied on an ongoing basis.

4 Legacy voice obligations

nbn is supportive of removing existing retail regulation that is no longer relevant or 'fit for purpose' in the context of today's retail offers and products, or in the context of the 'multi-layered supply chain' for fixed voice and broadband services.

It will be important to determine when to trigger revoking existing obligations. Possible triggers would need be responsive to the particular safeguard in question but could include:

- whether removal would detract from a consumer being able to maintain a positive consumer experience in the use of their service;
- whether removal will place a vulnerable member of the community without sufficient protection;
- whether there is other regulation in place that provides similar obligations on providers or protection for consumers;
- ensuring consumers have access to a basic standard of essential service, (whether voice or data);
- whether there are alternative services that would achieve the same outcome for consumers; and
- whether the regulatory policy of the Telco Act to not impose undue financial and administrative burdens on participants in the Australian telecommunications industry can still be achieved.

Price control arrangements for Telstra

Part 9 of the *Telecommunications (Consumer Protections and Service Standards) Act 1999 (TCPSS Act)* was originally put in place to govern Telstra's ability to make arbitrary price changes for untimed local calls and applied to local, national, fixed-to-mobile calls, international calls and line rental. Upon review the ACCC subsequently revoked the retail price arrangements in 2015.⁴³ As a result the terms in the TCPSS Act are no longer enacted upon. The ACCC extended the declaration for wholesale line rental and local call services to encourage competition and access to services over Telstra copper line network in areas until 30 June 2024.⁴⁴

nbn agrees with the Department's suggestion that this provision within the Act is of declining relevance. The remaining question is whether there would be a future need for the ministerial powers to reintroduce retail price controls for Telstra's fixed line voice service. On balance we suggest the ACCC's decision to extend its declaration

⁴⁰ ACMA, *ACMA compliance and enforcement policy- August 2010, Updated December 2017*, p7.

⁴¹ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p30.

⁴² <https://www.acma.gov.au/compliance-and-enforcement-policy>

⁴³ <https://www.accc.gov.au/regulated-infrastructure/communications/accc-role-in-communications/telstra-retail-price-control-arrangements>

⁴⁴ ACCC, *Fixed line telecommunications services declaration inquiry – Final decision*, p22.



could continue to encourage take up of Telstra fixed line voice services is sufficient to promote choice and fairness.

We also note the Department is currently undertaking an alternative voice service trial to explore alternative ways to deliver voice services to regional and rural areas that are served by **nbn**'s fixed wireless and satellite services. Once this activity and following reform has been completed, there may be further justification in removing the price control arrangements under the Telco Act.

Telstra's licence conditions

The Consultation Paper acknowledges the 'copper continuity obligation' requires Telstra to maintain services on the legacy copper network to customers outside the **nbn** fixed line footprint.⁴⁵ The Paper also comments that "given the changes in the market and consumer use, the Department considers that the obligation on Telstra to provide low income measures is of declining relevance. However, it may be appropriate for Telstra to continue to provide low income measures in relation to fixed line phone services for the duration of its contract as the USO provider (currently until 2032)."⁴⁶

It is important to note that while there are fluctuations in market share across the broader telecommunications market, Telstra retail services still account for 57% of fixed-line phone retail and resale services at June 2019.⁴⁷ Therefore reliance on the licence conditions that are specifically imposed on Telstra will be required if the market hasn't developed its own solution or until after alternative regulations are put in place.

nbn supports the retention of these carrier licence obligations until such time as:

- Telstra's obligations as the USO provider cease and, if relevant, alternative arrangements have been implemented;
- sufficient market incentives encourage a broader voluntary take-up of offering low income measures by other providers; and
- there is regulation that is applied across all relevant retail providers.

Free access to emergency call services

Free access to emergency services will continue to be important for consumers. Part 7 of the TCPSS Act only provides obligations on carriers and CSPS for standard telephone services. The *Telecommunications (Emergency Call Service) Determination 2019* includes calls from a public mobile telecommunications service that are not standard telephone services. It is important to note that calls to emergency services via Triple Zero are free from any phone however the conditions of free access from all voice calls are not included in the TCPSS Act. **nbn** supports retaining direct regulation to ensure end users have access to emergency services but it is likely that the subordinate regulation is sufficient to support the existing terms under the TCPSS Act.

nbn has little to do with the supply and identification of emergency call services other than to carry these calls as part of its Layer 2 data carriage. However, we do have an interest in the support of providing this important consumer protection generally and, more specifically, in support of consumers who participate in **nbn**'s medical

⁴⁵ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p5.

⁴⁶ Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review- Part C Choice and Fairness: Consultation Paper*, p27.

⁴⁷ ACMA, *Communications Report 2018-2019*, p37.



alarms programs. Unmonitored medical alarms may be configured to dial Triple Zero as a last resort if all other numbers programmed into the alarm are not answered.

We also note it will continue to be important for customers to have an accurate understanding of whether their voice service will continue operate in the event of a power outage and whether that will impact their ability to call Triple Zero.

Number portability

Number portability and transfer of allocated numbers is a success story for Australia’s telecommunications industry. It should also be seen as a measure of success where direct regulation under both the Telco Act and the Telecommunications Numbering Plan sets high-level policy and principles by which a porting regime must operate. The detail of how this should occur including operational processes, technical descriptions, interconnect agreements and system integration was determined by the industry itself.

Given the ongoing importance of number portability in enabling the efficient and smooth transition of consumer and business services between providers and the subsequent competitive benefits it supports, **nbn** supports the retention of the current regulatory framework on portability for the foreseeable future.

We note voice calls via fixed line and mobile networks are likely to remain a significant feature of Australian telecommunications usage. While there is a growing proportion of the Australian population using apps (which are less likely to require a phone number to use) to conduct voice calls,⁴⁸ there is still sufficient need for fixed line and mobile voice services so that the triggers discussed in this section above in considering the removal of this consumer protection are not yet relevant.

Preselection

Preselection was originally a means of encouraging competition by making it easy for consumers to be able to make a choice between retail providers for their local, national or international fixed line voice calls. A feature like pre-selection was also introduced to reduce switching costs for consumers – again encouraging competition within the industry.

nbn notes the ACMA has decided as a result of their recent review to continue the Telecommunications (Provision of Pre-selection) Determination and review its ongoing relevance once the **nbn** transition is complete.⁴⁹ Although we acknowledge pre-selection is not widely used anymore as a retail offering, **nbn**’s primary concern is that those consumers who will retain their Telstra copper voice service in **nbn**’s fixed wireless and satellite service areas are not disadvantaged.

The main question on any decision to revoke pre-selection provisions both in the Determination and the TCPSS Act will be to determine what the benchmark should be. The ACMA has indicated their assessment that there are currently less than 100,000 consumers using preselection and as retail voice services continue to be migrated to a VOIP service over the **nbn** this is likely to decline further.

In keeping with the principles discussed earlier in this submission, **nbn** supports the Department’s view that preselection is declining in relevance. It may also be a suitable subject for remaking the current regulation to narrow the scope of the obligations for only those within in the community who still have a need for it.

Calling line identification

⁴⁸ 42% of Australian internet users over 18 years had used over the top communications apps to conduct voice calls in the six months prior to May 2019. ACMA Communications Report 2018-19, p83.

⁴⁹ <https://www.acma.gov.au/publications/2020-05/publication/acma-announces-outcome-pre-selection-review>



The obligations under the Telco Act are related to carriers and service providers who have a switching system used in connection to standard telephone services to provide options for calling line identification (**CLI**). This provision in the Act would originally have been intended for telephone services over the copper access network. There are a wide range of carriage services include mobile and VOIP services where CLI and calling number display are readily available and able to be blocked or unblocked directly by the end user at the device level rather than at the network layer. There are also subordinate regulations that provide direction of the use of CLI and through the Privacy Act. We note C522:2007 Calling Number Display Code was de-registered by the ACMA in 2016 and replaced with G522:2016 Calling Number Display Guideline, in part because similar protections were already available to consumers via the TCP Code and the Privacy Act.⁵⁰

While there remain important uses for CLI such as the identification of consumers during emergency calls, consideration of whether removal or amendment to Part 18 of the Telco Act would create detriment is needed to continue adequate consumer safeguards are maintained.

Standard terms and conditions

We agree standard terms and conditions continue to form a fundamental service to consumers in understanding the mass market retail products available to them and therefore some form of regulatory oversight will continue to be of value. Part 23 of the Telco Act is one of the retail regulatory obligations that has had a successful review in previous reform activities as some provisions were repealed in 2014. It was considered at the time that those sections were superseded by rules that had been included by industry into the TCP Code which, given the Code was registered by the ACMA, also had “appropriate powers of enforcement in relation to the Code.”⁵¹ A similar review to ensure other duplication of obligations are removed would be in keeping with the principles **nbn** has upheld above.

Provision of itemised billing, access to untimed local calls, operator services for reporting faults and service difficulties; and directory assistance services

nbn agrees with the Departments assessment that the above items are less relevant in today’s market and in many cases alternative offerings are widely used. For example, the prevalence of online search and support functions and mobile apps being increasingly available fulfil the same function as directory and operator services.

We also note these activities do not impact consumers’ ability to successfully use **nbn** voice and broadband services and their satisfaction or use of the **nbn**TM network.

⁵⁰ Explanatory Statement, [G522:2016 Calling Number Display Guideline](#), p2.

⁵¹ Explanatory Memorandum to *Omnibus Repeal Day (Autumn 2014) Bill 2014*, p16.