



**Department of Communications and the Arts:**

**Telecommunications Reform Package**

**February 2017**

**NSW Farmers' Association Background**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

## **Executive Summary**

The Association supports the intent of the legislation in the Telecommunications Reform Package to establish nbn as the default Statutory Infrastructure Provider (SIP) and to establish a Regional Broadband Scheme (RBS). In principle, both the SIP changes and the Regional Broadband Scheme will play an important role in securing the delivery of effective telecommunications services for regional, rural and remote Australians.

However, we believe that there are a number of items relating to the SIP regime that require amendment to ensure that the legislation provides a robust framework for the long term delivery of services in regional, rural and remote Australia. We cannot give our full support for the Telecommunications Reform Package, and particularly the establishment of the SIP regime, unless these items are addressed.

Firstly, the definitions included in the draft Telecommunication Legislation Amendment (Competition and Consumer) Bill 2017 (the draft Bill) of qualifying services are inappropriate given what is currently expected of the National Broadband Network (NBN). Defining satellite and fixed wireless services without any reference to performance standards creates questions about what will actually be delivered. It is concerning that the definitions of qualifying fixed wireless and satellite services in the draft Bill are below the standard of service that is set in the current Statement of Expectations to nbn.<sup>1</sup> The Association believes that the definitions of all services supplied by a SIP (fixed line, fixed wireless and satellite) should include a definition of the minimum upload speed and download speeds the service should be capable of achieving, and should also reflect the current expectations on network performance.

Secondly, while the Association welcomes the draft Bill's provision for the creation of standards, rules and benchmarks, we are concerned that this provision will not be used appropriately, and that SIPs will be left to self-regulate the delivery of their services and their response to faults. This is an unwelcome prospect for regional Australians who have significant experience dealing with the shortcomings of monopoly providers.

The Association is seeking a guarantee that appropriate standards, rules and benchmarks are established as soon as possible after the passage of the draft Bill. The creation of these should not be left until it is apparent that there are systemic issues with the operation of the SIP framework. As a starting point, it would be appropriate to update the Customer Service Guarantee (CSG) that applies to landlines and apply it to qualifying broadband services supplied by a SIP. This would mean that a SIP (nbn or otherwise) could be held accountable to a transparent standard for items such as the connection of a service, the repair of a fault or service difficulty and attending appointments with a customer. Reliability could also be considered.

The Department of Communications' review of the consumer safeguards framework will also need to interact with this legislation, and should be completed as a matter of priority.

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<sup>1</sup> Department of Communications and the Arts (2016) *Statement of Expectations*, available from <https://www.communications.gov.au/publications/nbnstatementofexpectations>, accessed 30 January 2017.



*Submission to Telecommunications Reform Package*

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Regarding the RBS, we believe that the Department should consider its interaction with any potential changes to the Universal Service Obligation (USO). In particular, it would be prudent to consider how any infrastructure provided under the RBS will interact with whatever technology is used in the future to provide universal voice services to remote Australia.

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## **Introduction**

The NSW Farmers Association thanks the Department of Communications for the opportunity to provide a submission on the Telecommunications Reform Package.

We are Australia's largest state farming organisation, representing the interests of commercial farm operations throughout the farming community in NSW. Through our commercial, policy and apolitical lobbying activities we provide a powerful and positive link between farmers, government and the general public.

The state of NSW is responsible for the production of almost a quarter of Australia's gross value of agricultural production and twenty per cent of Australia's agricultural exports. Furthermore, the value of agriculture is vital to regional economies, with almost one in thirteen employees in NSW regions directly employed in agriculture, fishing or forestry.

Access to reliable, affordable, quality telecommunications underpins the viability of these farming businesses across NSW, allowing farming families access to the business and education services as well as social connectivity. Access to improved telecommunications services in regional, rural and remote Australia is imperative to facilitate economic growth across the agricultural industry through innovation in production, improved market access and enhanced consumer connectivity.

There is enormous latent demand for data in rural, regional and remote Australia, especially on farms. Farmers are anxious to overcome the digital divide that currently exists between rural and urban Australia. However, before farmers can consider investing in new technologies that will drive on farm data consumption and farm productivity, there is a need to overcome the capacity constraints and frustrations that form the existing narrative of rural telecommunications.

We believe that there are a number of basic initiatives and reforms that can be enacted to underpin the provision of 21<sup>st</sup> century telecommunications in regional, rural and remote Australia. We believe that the most fundamental of these is a new USO that puts in place minimum standards for voice and data. This must be accompanied by a modernised consumer protections framework.

Beyond the USO, improvements to mobile infrastructure, competition and coverage will facilitate farm business productivity and farm safety. Many on-farm technological innovations will require connection to the internet from within the paddock. The expansion of 3G, 4G and 5G mobile coverage beyond existing footprints will be required to achieve this.

Given the seeming reluctance of telecommunications companies to expand mobile coverage at the pace at which rural communities and farmers' desire, ongoing funding for the Federal Government's Mobile Black Spot Programme (MBSP), or an equivalent program, will play an important role in expanding coverage at an appropriate rate. We believe that long term public funding for open access mobile network expansion in rural and regional Australia will deliver the best outcomes for consumers. As coverage is expanded into more remote areas, the funding and conditions required to meet community needs will require increased flexibility from any program, especially if commercial carriers become reluctant to co-invest.

Finally, we believe that there is a need to ensure fair and equitable access to Sky Muster satellite services for those with a genuine need for the service. This service should reflect the residential, educational and business needs of rural and regional Australia.

Consumers using Sky Muster are likely to have little or no alternative means to access internet services. Sky Muster must deliver a service that is sufficient to allow its users to seamlessly run their businesses, educate their children, and connect with their families and friends. Associated with this, there is a need to identify a long term solution for the provision of voice services within the nbn Sky Muster satellite and fixed wireless footprint – an issue that is raised further in the submission.

## **Statutory Infrastructure Provider Regime**

In previous submissions, including the Australian Competition and Consumer Commission's 2016 inquiry into Competition in Evolving Communications Markets, the Association has noted the lack of any stringent regulation on the performance of the NBN. We have called for greater accountability and transparency around the performance of the NBN including the establishment of transparent minimum standards for voice and data service delivery over the NBN, the introduction of stringent performance standards for fault rectification, installation and service reliability, and regular public reporting on the performance of the network against these standards.

### ***Identifying the Statutory Infrastructure Provider***

The Association supports the premise of the legislation to make nbn the default SIP of superfast broadband services for all of Australia, and the intent to formalise the requirements that have only previously been expressed through the respective versions of the Statement of Expectations.<sup>2</sup> Furthermore, the Association supports the provision for the Minister to declare that a carrier other than nbn is the SIP for an area through the establishment of "designated service areas".

However, we do not support provision to create an exemption such that there would be no SIP for an area. Even notionally high levels of competition in an area can result in situations of market failure. Price signals are never perfect, and there are always limits on the willingness and abilities of companies to engage in work that would typically be regarded as costly, wearisome, or likely to generate a low marginal return. Many rural Australians experience this first hand every day as they fight for the retention and upgrade of telecommunications, finance and health services – among others.

It is conceivable that even with a number of firms competing for business, subtle variations in on the ground conditions could easily drive up the cost of installing superfast broadband infrastructure beyond the willingness to pay for any firm. Framed a different way, in theory, if there is healthy competition for the provision of superfast broadband infrastructure in an area, then the extra costs that a firm would likely incur through being the designated SIP would be negligible, or even zero. Given this, we believe that it would be wiser to have in place a safeguard service, no matter how unlikely it is that it will be

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<sup>2</sup> Department of Communications and the Arts (2016) *Statement of Expectations*, available from <https://www.communications.gov.au/publications/nbnstatementofexpectations>, accessed 30 January 2017.

needed, than to be left without a simple means of recourse when an unforeseen market failure has left a community or individual without a connection.

### **Statutory Infrastructure Provider Obligations**

The Association supports the legislation's requirement for a SIP to "supply a fixed-line carriage service that supports retail services with a download speed of normally 25 Mbps or more". However, we have concerns around what is absent from the definition of a qualifying fixed-line telecommunications network.<sup>3</sup>

Firstly, we note the absence of any reference to upload speeds. Many of the most productive uses of super-fast broadband are stymied by the inability to upload data sufficiently quickly. This includes video conferencing, remote health applications, and online financial services such as cloud based accounting. The current Statement of Expectations dictates that the NBN should deliver at least 25 megabits per second, 'and proportionate upload rates'. Furthermore, current Sky Muster satellite plans include the capacity to operate at speeds of up to 25 megabits per second (Mbps) download and 5 Mbps upload.<sup>4</sup> This is often referred to as 25/5 Mbps.

Secondly, we oppose definitions of qualifying fixed wireless or satellite carriage services that are without minimum performance criteria. The current definition of a satellite service in the draft Bill is something that allows, "end users to download communications and... is supplied using a satellite".<sup>5</sup> The definition of what is a fixed wireless broadband service is similarly narrow, making reference only to an ability to download, and not to an ability to upload. Given there are no further indications in the draft Bill or the explanatory memorandum regarding what will be required of these fixed wireless or satellite services from a performance perspective, the definitions provided are inadequate. As these services are to be supplied in the event that a premises cannot be fitted with a qualifying fixed-line telecommunications service, we believe that they should be required to meet the same minimum performance standards as a qualifying fixed line service – especially when the satellite and fixed wireless technologies that have already been deployed by nbn meet the 25/5 Mbps criteria.

We believe that the definition of the services that can be accessed on a qualifying fixed line service should be amended to reflect the current expectations and capacity of the network. It should recognise that all premises should be able to access a service that is capable of up to 25/5 Mbps. We believe that the same standard should be applied to the definitions of a qualifying fixed wireless carriage service (or fixed wireless broadband service) and qualifying satellite carriage service that is supplied by a SIP. It is absurd that this legislation seeks to define a standard that is below current expectations for network performance.

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<sup>3</sup> Department of Communications (2016) Exposure Draft, Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017, p. 7, available from <https://www.communications.gov.au/have-your-say/consultation-telecommunications-reform-package>, accessed 12 December 2016

<sup>4</sup> Aktiv8me (2016) *NBN Sky Muster Satellite*, available from <https://www.aktiv8me.net.au/internet/skymuster>, accessed 25 January 2016.

<sup>5</sup> Department of Communications (2016) *Exposure Draft, Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017*, p. 95.

We also support the position of the Australian Communication Consumer Action Network (ACCAN) regarding the inclusion of a broader range of technical features, beyond speed, in any definition of a qualifying service. These features should be carefully designed to allow for existing and future residential, agriculture, health and education applications.

***Provision for standards, rules and benchmarks in proposed legislation***

The Association notes that in the draft Bill there is provision for the Minister to have a reserve power, delegated to the Australian Communications and Media Authority (ACMA), to set “standards, rules and benchmarks that the SIPs must comply with”.<sup>6</sup> The creation of these safeguards is foreseen in the event that, “through operational experience, SIPs were not installing infrastructure and supplying services of an appropriate capability within appropriate timeframes”.<sup>7</sup>

There is no indication in the draft Bill or the Explanatory Memorandum of what an appropriate capability or timeline would be. Indeed, we understand that it is the Government’s initial intent not to use its power, and to allow SIPs such as nbn to self-regulate – to set their own definitions for what are appropriate standards, rules and benchmarks.<sup>8</sup> This conceivably means that SIPs would only be called to account in the event that they failed to meet the standards that they put in place for themselves for services such as fault repair, appointment keeping and time taken to install a service, as well as their targeted level of service reliability. Service reliability could also be considered.

nbn is likely to be an effective monopoly wholesale broadband provider in regional Australia for the foreseeable future. Its end user fault service repair timeframes are already beyond those of the current Customer Service Guarantee (CSG) services.<sup>9</sup> Without regulation nbn will have little external incentive to strive for excellence in its service provision. In the view of the Association, the self-regulation currently proposed in the draft Bill is not in the long term interest of regional consumers. While it is important to acknowledge that nbn is still rolling out its network, the current customer service standards that are loosely imposed on nbn through the nbn *Service Levels Schedule* set a very low bar, particularly for satellite services. It would be unacceptable to rural Australians to have nbn self-regulate using these standards following the passage of the draft Bill.<sup>10</sup>

The experience of rural, regional and remote Australia when dealing with telecommunications is that safeguards are a necessity, not an option. Many of our members have traditionally relied upon the existing Universal Service Obligation (USO) for the provision of a standard telephone service, and have often experienced an

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<sup>6</sup> Department of Communications (2016) *Explanatory Notes, Exposure Draft: TLA Bill and Charge Bill*, p. 8.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Productivity Commission (2016) *Telecommunications Universal Service Obligation*, Draft Report, Canberra, p. 172, available from <http://www.pc.gov.au/inquiries/current/telecommunications#draft>, accessed 6 December 2016.

<sup>10</sup> Nbn (2016) *SFAA - Wholesale Broadband Agreement Product Catalogue – Service Levels Schedule*, p.16, available from: [http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-wba2-product-catalogue-service-levels-schedule\\_20161205.pdf](http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-wba2-product-catalogue-service-levels-schedule_20161205.pdf), accessed 30 January 2017.



antagonistic relationship with Telstra when issues with their service have arisen.<sup>11</sup> The draft Bill gives the opportunity for the government to proactively establish a framework of safeguards that will encourage a positive, transparent and responsive relationship between SIPs, telecommunication retailers and telecommunications customers. The antagonism between nbn and Sky Muster customers over current performance illustrates the absence of this relationship, and imperils the long term relationship between nbn and its end users in rural areas.

Therefore, while the legislative provision for the creation of consumer safeguards in the form of standards, rules and benchmarks is welcome, the ability to create safeguards does not guarantee their effective implementation. Given the regularity with which performance of telecommunications services arises as an issue in rural Australia, the lack of any firm guidance regarding the creation of any standards, rules and benchmarks is striking.

In the event that any legislation establishing SIPs is passed, it is imperative that modern safeguards around qualifying services are established as soon as possible. The creation of these safeguards should not be left until it is apparent that there are systemic issues with the operation of the SIP framework. As a starting point, it would be appropriate to update the CSG that applies to landlines and apply it to qualifying broadband services supplied by a SIP for items such as installation times, fault repair and appointment keeping. If needed, these safeguards could be structured to allow for the ongoing roll out of the nbn, with greater flexibility allowed until an area was deemed to be fully rolled out.

In addition, the Association believes that the current review of the consumer safeguards framework by the Department of Communications needs to be completed as a matter of priority. As noted in the draft report of the Productivity Commission into the USO, it is important to consider, “the way in which the SIP regime and a reformed CSG framework would operate concurrently.”<sup>12</sup>

While not explicitly discussed in the draft Bill, we also believe that it would be appropriate to put in place appropriate financial penalties for when SIPs do not meet any standards, rules or benchmarks. This should then facilitate financial compensation for individuals and retailers affected by the failure of a SIP to meet its obligations, a position supported by the Productivity Commission.<sup>13</sup>

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<sup>11</sup> For further discussion of this issue, please see the Association's submission to the Productivity Commission's draft report on the Universal Service Obligation.

<sup>12</sup> Productivity Commission (2016), p.277.

<sup>13</sup> *Idid.*

## **Draft Telecommunications (Regional Broadband Scheme) Charge Bill 2017**

The Association supports the intent of the Regional Broadband Scheme (RBS), including the provision that funding can be provided not only for the connection and supply of services, but also for the funding of fixed wireless or satellite infrastructure.

### ***The Regional Broadband Scheme and voice services in a new USO***

Any discussion of new broadband interaction cannot be divorced from current considerations of the Universal Service Obligation. Given the provision in the draft legislation for the RBS to fund fixed wireless or satellite facilities, it is important to consider how infrastructure under the RBS will interact with any infrastructure that is used to deliver a new universal voice service to areas covered by the nbn fixed wireless and satellite footprint.

The Association notes nbn's comments that the Sky Muster satellite and fixed wireless systems were not designed to provide a universal voice service.<sup>14</sup> The Productivity Commission noted that if the Sky Muster satellite was used to deliver a universal voice service, it would possibly result in "a lower quality ... in terms of latency and service repair timeframes".<sup>15</sup> Given that many in rural Australia are hoping to have improved telecommunications in the 21<sup>st</sup> century, this would be an unwelcome outcome.

Noting that the Productivity Commission continues to consider the future of the USO, the Association believes that it could be prudent to consider allowing RBS funds to either provide or augment whatever infrastructure is used in the future to deliver a universal voice service in the nbn fixed wireless and satellite footprint.

It is imperative that the Government determine as soon as possible the most appropriate long term means to deliver universal voice services in the nbn satellite footprint.<sup>16</sup> Any new service must feature the ability to function without fail in situations such a black out, or an extreme weather event, and must be able to host priority assistance medical alerts.

In order to give appropriate consideration to achieving the best possible long term solution, it will be important to know:

- the cost of 'grandfathering' the infrastructure used to provide landlines in the nbn fixed wireless and satellite footprint in the short term until a suitable replacement technology is found;
- the cost of retaining and augmenting the current infrastructure in this area as a long term solution for the provision of voice services; and,
- the approximate cost of any other alternative long term solutions to provide voice services in the nbn satellite and fixed wireless footprint, including the procurement of a voice specific satellite service.

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<sup>14</sup> Productivity Commission, pp. 177-178.

<sup>15</sup> *Ibid.*, p. 179

<sup>16</sup> Assuming that customers serviced by nbn fixed wireless are able to access suitable voice services via that technology.

The Association supports the grandfathering of the current infrastructure until alternative technology or infrastructure is put in place that delivers a service that is, at the very least, comparable to the current service in terms of reliability, quality, and requirements for fault repair.

## **Conclusion**

For the Telecommunications Reform Package to deliver an effective long term regulatory framework for telecommunications in regional, rural and remote Australia, the Government must strengthen the definitions of what is a qualifying fixed wireless and satellite service, and must commit to proactively establish an updated safeguards framework that includes standards, rules and benchmarks in relation to SIP performance that reflect existing CSG safeguards.