



Regulatory impact statement

Introduction of a Statutory Infrastructure Provider Regime into the *Telecommunications Act 1997*

This Regulation Impact Statement (RIS) considers options to ensure that industry and consumers have certainty that NBN Corporation Limited (NBN Co) (or comparable providers) will connect and supply next generation broadband infrastructure and services on an ongoing basis, while balancing the potential operational impact on NBN Co and comparable providers, in particular NBN Co's ability to roll out the National Broadband Network (NBN) sooner and at lower cost, as instructed by the Government.

The RIS looks at three main options:

1. continue to give NBN Co guidance on its connection and supply obligations through Statements of Expectations;
2. make carrier licence conditions setting out connection and supply obligations for NBN Co and alternative providers; and
3. legislate connection and supply obligations for NBN Co and alternative providers.

These are assessed against factors such as whether the option will ensure consumers have access to high-speed broadband after the NBN rollout is completed in each area, whether consumers and industry will have certainty about NBN Co's supply obligations, whether there is the flexibility to allow providers other than NBN Co to register as the statutory infrastructure provider in areas where they have deployed infrastructure, the potential impact on NBN Co's rollout, and whether the compliance costs of the option would outweigh the benefits.

The RIS concludes that legislating connection and supply obligations on NBN Co and other comparable providers (Option 3) offers the greatest net benefit as it provides certainty for end-users that they can receive high-speed broadband services and does this through imposing limited compliance costs on industry. It would provide the most clarity and certainty for NBN Co and access seekers as to NBN Co's supply obligations. It would also ensure that there is certainty for alternative providers, in areas where they are the sole or main providers of infrastructure, that they will have connection and supply obligations and how such obligations will be implemented and enforced.

Context

In December 2013 the Government appointed a panel chaired by Dr Michael Vertigan, AC (the Vertigan panel) to conduct a cost-benefit analysis of the National Broadband Network and a review of structural and regulatory arrangements in the telecommunications sector. As part of this review, the panel considered whether a legislated obligation on NBN Co to connect premises and supply services is needed to give certainty that consumers and businesses will be able to access telecommunications services, regardless of where they live in Australia, following the NBN rollout.

In its 2014 *National Broadband Network Market and Regulatory Report* (the Regulatory Report), the Vertigan panel recommended that the Government introduce legislation to require NBN Co to supply broadband access to:

- premises that are not already being serviced by another entity; and
- premises that were serviced by another entity but that entity has exited the market.¹

The panel also recommended that NBN Co have a Broadband Connection Service Undertaking (BCSU) approved by the ACCC setting out the terms and conditions on which it will provide a broadband connection service.²

The Government accepted the recommendation in part. In its December 2014 policy statement, *Telecommunications Regulatory and Structural Reform* (the 2014 Government Response), the Government announced that it would legislate infrastructure provider of last resort (IPOLR) obligations for NBN Co on an area basis once it has a well-established presence in the area. These have been renamed statutory infrastructure provider (SIP) obligations in the draft Bill. The 2014 Government Response also stated that the arrangements would allow for the SIP obligations to be applied to other carriers on an area basis where appropriate.

In relation to the panel's proposal that NBN Co set out the terms and conditions on which it will fulfil its obligations in a BCSU approved by the ACCC, the Government considered the requirement unnecessary. NBN Co's special access undertaking (SAU), which was accepted by the ACCC on 13 December 2013, already set out the terms and conditions on which NBN Co will supply services to retail providers.

The SAU identifies the main services to be supplied by NBN Co and sets out price caps relating to those services, but does not create obligations to connect premises, nor does it include service level standards like timeframes for connection and repair.

In a separate recommendation, the Panel advised the Government if it disaggregated NBN Co into competing business units, it should remove NBN Co's internal cross-subsidy of its services in non-commercial areas and fund the loss through an industry charge. While the Government did not agree to disaggregate NBN Co at this time, it decided to implement arrangements for funding NBN Co's non-commercial services to ensure their long-term sustainability. These arrangements are being developed and this will be considered in a separate RIS. Given that a statutory requirement to connect and supply services would entail connection of non-commercial services, the future funding arrangements are relevant to the current RIS.

The NBN is currently being rolled out progressively across Australia. After the rollout is completed, NBN Co will become the primary supplier of residential fixed-line communications infrastructure in Australia. When it is complete, the NBN will deliver high-speed broadband services across Australia. As part of the NBN rollout, Telstra, as the owner of the existing fixed-line copper network, has agreed to stop supplying fixed line telecommunications services using its network in an area 18 months after NBN Co starts supplying fixed line services in an area. Telstra will migrate these services to the NBN. Accordingly, NBN Co will ultimately replace Telstra as the principal fixed-line telecommunications network operator in most of Australia, the main exception being in the NBN satellite and fixed wireless footprint.

¹ Independent cost-benefit analysis and review of regulation (2014), *Volume 1 – National Broadband Network Market and Regulatory report*, p. 91.

² Independent cost-benefit analysis and review of regulation (2014), *Volume 1 – National Broadband Network Market and Regulatory report*, p. 91.

On 8 April 2014, the Shareholder Ministers issued a new Statement of Expectations to NBN Co requiring the company to continue the NBN rollout using a multi-technology mix (MTM) model to complete the rollout as quickly and as cost-effectively as possible. However, the Statement of Expectations does not explicitly address NBN Co's ongoing obligations to provide infrastructure and services.

An early assessment draft of this RIS was provided to OBPR in 2014 and then considered by the Government when it developed its response to the Vertigan panel (set out in the 2014 *Telecommunications Regulatory and Structural Reform* policy paper). The Minister also considered an early draft of the RIS in finalising his decisions upon separation issues as part of the development of the response. The draft RIS was published with draft legislation in December 2016 and the Government sought submissions on the RIS. The RIS was submitted to OBPR for First and Second Pass Final Assessment in May 2017.

Assessing the problem

The key issue for this RIS is how to ensure that NBN Co will continue to connect premises and supply services after it has completed its rollout in an area within reasonable timeframes. A related issue is whether there are circumstances where another provider should be able or obliged to connect premises and supply services and if so, what those circumstances are. Consideration must also be given to whether it is appropriate for the same obligations to apply to all SIPs.

The Australian Government is committed to consumers in Australia having access to appropriate telecommunications services at affordable prices. The Australian Government has implemented a number of initiatives to ensure access to telecommunications services. In particular, in 2013, the Government indicated that it would continue the NBN rollout of a new national wholesale-only high-speed broadband network. When it is complete, the NBN will deliver high-speed broadband services across Australia.

There is also a legislated Universal Service Obligation (the 'USO'). Under the USO, Telstra must supply an end-user with a standard telephone service on request. That is, the obligation is restricted to providing a voice telephony service rather than a broadband service that SIPs will be required to offer. The USO is complemented by the Customer Service Guarantee (CSG), which requires carriage service providers (CSPs) to meet performance standards, for example connection and repair timeframes, and provide end-users with financial compensation when these standards are not met. In areas where the NBN has not yet been rolled out, Telstra generally uses its copper network to meet the USO but may also use other technologies. As Telstra will stop using its copper network after the NBN becomes available in an area, it is expected Telstra will generally use the NBN to meet the USO.

At present, the only way that the Government, as shareholder, provides clarity about when, where and how NBN Co is to provide infrastructure is through the Statement of Expectations or other direction. Given the significance of ready and ongoing access to modern telecommunications, this method does not provide certainty or clarity to NBN Co, access seekers or consumers about NBN Co's service provision obligations after it rolls out in an area. This lack of clarity and certainty has been raised as a concern by industry and the public, given past delays in service provision in some areas.

The Vertigan panel considered whether NBN Co's ongoing service delivery obligations should be specified in legislation and noted that:

Taxpayer equity funding of up to \$29.5 billion, acceptance that ongoing service supply in loss-making areas will be subsidised, as well as funding to support the migration of customers from Telstra's copper network represent a major public

commitment. This warrants a corresponding legal obligation relating to wholesale service provision by NBN Co... In any event, such a [legislative] requirement will need to be put in place prior to NBN Co being privatised otherwise its new owners could choose to withdraw from unprofitable areas or decline to extend its infrastructure into areas or to premises where it expects to make a loss.³

In considering whether to impose SIP obligations on NBN Co, it is important to consider the progressive nature of the NBN rollout. Imposing default provider obligations on NBN Co before it has a network in an area would be to impose obligations on it that it could not meet, or that would impose considerable costs on it to meet. It would only be possible to impose these obligations on NBN Co where it has infrastructure rolled out in that area in order to provide certainty that services are able to be supplied. It is more appropriate to only impose obligations to the rollout as it progresses.

The Vertigan panel also considered the potential impact of a SIP regime on NBN Co's ability to complete the rollout of the NBN. In this regard, the panel noted:

[T]here would have been difficulties in placing supply obligations on NBN Co when it was a start-up company with no infrastructure and with an uncertain rollout-completion timetable. It would be undesirable for inconsistencies to arise, however inadvertently, between the deployment schedule for the NBN that made the best use of resources and NBN Co's mandated service obligations. But the situation is changing and will change further as deployment progresses. At the very least, property owners in areas where the NBN has been provided need to have certainty about supply continuing into the future, as do those in areas what would be affected by infill service provision.⁴

A further issue is whether NBN Co should be the SIP for all of Australia after the NBN rollout is completed. While NBN Co will be the sole infrastructure provider in many parts of Australia, alternative operators are able to roll out competing networks. Private investment has occurred, and continues to occur. This is generally in new real estate developments (where the operator will likely connect the majority of premises in the development) and in apartment buildings in the inner cities of several capital cities (as these are generally low-cost, high-return investments). For example, Opticomm has installed infrastructure in approximately 100 new real estate developments and TPG has announced its intention to roll out a network to apartment buildings in a number of capital cities.

Arguably operators other than NBN Co will be better placed to assume the role of SIP in some circumstances, for example where they have a contract to be the infrastructure provider in an area. Another example is where vectored VDSL technology is used in an area or building. In some circumstances, the presence of multiple infrastructure providers using vectoring technology can lead to the degradation of end-user services which may mean a single provider other than NBN Co needs to exercise SIP responsibility.

Requiring NBN Co (or another provider) to be the SIP will give end-users and industry certainty that regardless of where they reside or operate, they will have access to underlying telecommunications infrastructure and services. As NBN Co will likely be the sole infrastructure provider in most areas, it is appropriate for it to be the default SIP. However, any SIP regime needs to include a mechanism for alternative carriers to displace NBN Co as the SIP in areas where they have infrastructure that can, or have entered into an agreement to install infrastructure that will, supply all premises in an area. To

³ Independent cost-benefit analysis and review of regulation (2014), *Volume 1 – National Broadband Network Market and Regulatory report*, p. 88.

⁴ Independent cost-benefit analysis and review of regulation (2014), *Volume 1—National Broadband Network Market and Regulatory report*, p. 88.

require NBN Co to be the SIP in such areas would require NBN Co to overbuild competing networks, even though there may be no commercial case to do so.

Generally, there are no restrictions on NBN Co overbuilding competing networks.⁵ However, NBN Co will only do so where there is a commercial case. Requiring NBN Co to overbuild all alternative networks would likely impact on private investment incentives.

If there is to be an obligation placed on NBN Co or any other provider, the issue then is what form the obligation should take and when that obligation should apply. Secondary issues relate to the appropriate standards and benchmarks that should apply to NBN Co or any other provider in fulfilling its SIP obligations. The USO and CSG set out a number of features that a SIP regime could include, for example a broad obligation to connect premises.

Objective

The Government's objective is to ensure that NBN Co continues to supply broadband access to Australian premises after it completes the network rollout in each area so that all premises have access to high-speed broadband. The Government also considers that industry, including access seekers, consumers and NBN Co should have certainty as to what NBN Co's supply obligations are.

Options

This RIS considers three options:

1. status quo—continue to give NBN Co guidance through the Statement of Expectations;
2. make carrier licence conditions setting out SIP obligations for NBN Co and alternative providers; and
3. legislate SIP obligations for NBN Co and alternative providers.

Option 1: Do nothing—Government to continue to give NBN Co guidance through the Statement of Expectations

Under this option, NBN Co's SIP supply obligations after it completes the network rollout in an area would be left to the Government, as shareholder of the company, to set out in the Statement of Expectations or other written direction. There would be no legislated supply obligation on NBN Co or any other carrier. Under this option, the delivery of telecommunications infrastructure and connections would be left to NBN Co, with guidance provided by the Government and the commercial marketplace.

Should NBN Co be privatised in the future, it would not be subject to any obligation to install new infrastructure, but would be required to continue to supply services on request on its existing networks in accordance with its Special Access Undertaking and Part XIC of the CCA. As a result, there may be a

⁵ Under the Adequately Served Policy, owners of certain networks as at 1 January 2012 were able to apply to the Minister to have these networks recognised as meeting adequately served criteria. This provided guidance to NBN Co that it did not need to deploy its network in areas deemed adequately served to meet its coverage obligation. However, NBN Co can still overbuild these areas where not doing so would have a significant impact on its ability to efficiently rollout the network. Forty-five networks operated by four carriers have been granted adequately served status.

The Government's Telecommunications Infrastructure in New Developments (TIND) policy, which took effect in March 2015, confirms that the Adequately Served Policy is no longer open for applications. However, NBN Co must advise, and get agreement from, Shareholder Ministers in advance of construction if it considers there is a commercial case to materially overbuild an existing network in a new development providing NBN-comparable outcomes.

number of premises that would not have any guarantee of being connected to infrastructure supplying high-speed broadband services.

Option 2: The Minister makes carrier licence conditions

The Minister for Communications could make carrier licence conditions that would apply to NBN Co and other providers as appropriate. The carrier licence conditions would set out carriers' obligations as SIPs. In relation to NBN Co, such carrier licence conditions could require NBN Co to supply broadband access to premises when requested by a retail service provider and where the premises are in an area that has been declared ready for service. Under this option, NBN Co would be required to report to the Government when it has commenced supplying services in an area.

Under this option, the Minister could specify that NBN Co's SIP obligations commence only after it has commenced the supply of services in an area, in order to ensure that these obligations do not affect NBN Co's ability to meet its objective to complete the NBN as quickly and as cost-effectively as possible.

The Minister could also make similar carrier licence conditions to require other providers to assume SIP responsibilities if they are able to better fulfil the role in an area. In practice, this is what has been done in relation to 'adequately served' areas. The Government has also recently consulted on draft carrier licence conditions that, if made, would implement SIP obligations on carriers that enter into agreements to deploy infrastructure in new real estate developments. NBN Co's carrier licence conditions would not apply in areas where another provider has been made the SIP through a carrier licence condition.

The carrier licence conditions could set out standards, rules and benchmarks that carriers must comply with, including:

- maximum timeframes for the supply of services and for rectifying faults;
- the reliability of services; and
- the technology used to connect premises.

Option 3: Legislate SIP obligations

Option 3 is similar to Option 2, however under this option, SIP obligations would be enshrined in legislation by the Parliament.

Under this option, legislation would be introduced to require NBN Co to supply services that allow carriage service providers to supply broadband services to end-users with peak download speeds of 25 Mbps. NBN Co would need to connect premises to its networks on reasonable request (by a retail service provider and where the premises are in an area where NBN Co has commenced supplying services. It would also have to supply wholesale services to carriage service providers on reasonable request. NBN Co would be required to report to the Government when it has commenced supplying services in an area.

The legislation would allow other providers to nominate to be the SIP in an area where the provider has contracted to supply services to premises in the locality. These alternative carriers would also be required to report to the Government when they have signed contracts to deploy infrastructure in an area involving SIP obligations.

The legislation would also give the Minister the power to declare a provider to be the SIP or revoke a provider's SIP status if it is not meeting its SIP obligations or will not be able to meet its SIP obligations in the future. The Minister would also be able to declare that there is no SIP for an area if the level of competition in the area is such that the Minister considers that services will be delivered to end-users without the imposition of SIP obligations.

Following completion of the NBN rollout, NBN Co would be the default SIP for all of Australia except in areas where an alternative provider has nominated to be the SIP, where the Minister has declared another provider to be the SIP or where the Minister has declared that there is no SIP because the level of infrastructure competition ensures that all premises can be connected to superfast networks on reasonable request. The default provider obligations would extend to any entity that purchases NBN Co, should NBN Co be privatised in future.

The legislation would require the Australian Communications and Media Authority to publish a register of SIPs on its website so that end-users and service providers are able to easily determine who the SIP is in any particular part of Australia. This would ensure that retail providers will know which carrier to contact if they need to have infrastructure installed to premises in order to supply retail carriage services to those premises.

The legislation would give providers the flexibility to determine how they meet their SIP obligations, including the technology used to connect premises. However, the Minister would have a reserve power to set standards, rules and benchmarks that SIPs must meet if, through operational experience, it appears that SIPs are not installing infrastructure and supplying services of an appropriate quality within appropriate timeframes. These standards, rules and benchmarks could include the type of technology that SIPs must use in particular areas.

Should the Minister make SIP standards or rules, they would interact with the SAU obligations. The legislation would provide, however, that if there is any inconsistency between the two, then the SIP standards or rules would prevail going forward.

Analysis of options

This section discusses the relative costs and benefits of the three options and their impacts on stakeholders, namely telecommunications customers, retail service providers, alternative providers and NBN Co.

The criteria used in the assessment relate to the Government's objectives:

1. Does the option ensure that consumers and access seekers have access to high-speed broadband after the NBN rollout is completed in each area, thereby giving them certainty in this regard?
2. Is the option sufficiently flexible to allow for non-NBN carriers to register as the SIP in areas where they have deployed high-speed broadband infrastructure?
3. Does the option impose significant compliance costs on industry that may outweigh the benefits of providing industry and consumer certainty?
4. Does the option support the Government's policy that NBN Co deliver faster broadband, sooner and at lower cost?
5. Does the option support the proposed non-commercial services funding arrangements?

Option 1: Do nothing—Statement of Expectations continues to guide NBN Co

Access and certainty

Advantages:

- The Statement of Expectations can be readily revised to impose relevant obligations on NBN Co, thus providing access and a degree of certainty.

Disadvantages:

- As the Statement of Expectations does not have the force of legislation and is subject to change, this option does not provide access seekers and end-users with certainty about NBN Co's supply obligations either during the rollout or after the NBN Co is completed.
- While NBN Co would have some greater certainty as its obligations, it would be limited as the Statement of Expectations can be readily changed.
- As the Government is not able to issue a private company with a Statement of Expectations, this option would not prevent a future privatised NBN Co withdrawing from unprofitable geographic areas or declining to extend the network infrastructure into areas or to premises where it expects to make a loss.
- There are limited options to enforce any obligations set out in the Statement of Expectations, should NBN Co fail to meet them.

Other providers and other SIPs

Advantages:

- Other providers would be able to act as infrastructure providers on a commercial basis.

Disadvantages:

- While other providers would be able to act as infrastructure providers on a commercial basis, there would be no regulatory framework confirming their obligations and the rights of access seekers and customers.

Compliance costs

Advantages:

- While NBN Co would still need to report to Parliament and the Government as a government business enterprise (GBE), this option would impose minimal compliance costs on NBN Co and other carriers.

Disadvantages:

- Updating, monitoring and revising the Statement of Expectations would require greater ongoing involvement on the part of the Department of Communications and the Arts and the Department of Finance and their Shareholder Ministers.
- In its submission on proposed carrier licence conditions for new developments, ACCAN pointed out potential costs for consumers in the absence of appropriate regulation.

NBN rollout

Advantages:

- This approach would allow the Government to easily tailor NBN Co's obligations as the rollout progresses, thereby avoiding any negative impact on the rollout. For example, the Government could require NBN Co to meet certain timeframes after the rollout is substantially completed.

Non-commercial services funding

Advantages:

- To the extent the Statement of Expectation required the provision of non-commercial services, the approach would provide a sufficient basis for new funding arrangements.

Disadvantages:

- Funding of non-commercial services would not be tied to a clear statutory obligation to provide infrastructure and services, particularly given the Statement of Expectations can be readily changed.

- Option 1 would not support future funding of a privately owned NBN Co, as a privately-owned NBN Co would not be subject to a Statement of Expectations issued by Shareholder Ministers.

Option 2: The Minister makes carrier licence conditions

Access and certainty

Advantages:

- Carrier licence conditions would require carriers to install high-speed broadband infrastructure and connect premises to the infrastructure in all areas where the carrier licence conditions apply. This will ensure that consumers have access to high-speed broadband in these areas.
- NBN Co's (and alternative providers') SIP obligations would be set out in enforceable legislative instruments, providing certainty for the SIPs, access seekers and end-users.
- Carrier licence conditions could be set in place relatively quickly, meaning that NBN Co, access seekers and end-users would gain legal certainty in a short period of time.
- Carrier licence conditions would ensure that after NBN Co is privatised, the privatised company would be required to continue to supply services as the default SIP for all Australian premises.
- The Minister's ability to revoke a provider's SIP status will ensure that providers do not retain SIP-status if they are not meeting the SIP obligations or will not be able to meet the SIP obligations in the future.

Disadvantages:

- The relative ease with which Ministers can change carrier licence conditions means that this approach cannot provide the same long-term certainty of NBN Co's obligations as a legislative requirement.
- In the lead-up to possible privatisation of NBN Co, the Parliament, industry, consumers and any potential buyer(s) of NBN Co are likely to seek greater certainty.
- Carrier licence conditions are subject to sun-setting. That is, after ten years the conditions would lapse unless the Government reviews the condition and decides that it should be remade or rolled over. Given the enduring nature of the proposed SIP obligations, a carrier licence condition may not be an appropriate vehicle.

Other providers and other SIPs

Advantages:

- Carrier licence conditions can be tailored in order to allow alternative providers to be the SIP where it is appropriate. NBN Co would not need to overbuild alternative networks where there is no commercial case to do so, thereby reducing disincentives on private investment and allowing NBN Co to focus the rollout on other areas.
- Carrier licence conditions can also be adjusted relatively quickly to reflect changes in circumstances, whereas legislation can take longer to develop and implement.

Disadvantages:

There would be no clear and consistent statutory framework setting out SIP obligations (i.e. licence conditions can vary), thus reducing regulatory certainty and increasing risk.

Compliance costs

Advantages:

- Carrier licence conditions could be tailored to minimise compliance costs.
- Carrier licence conditions could also be tailored to provide SIPs with the flexibility to set the terms and conditions on which they will meet the SIP obligation with minimum standards only being imposed where there is a clear need.

Disadvantages:

- This option would impose compliance costs on NBN Co and other alternative carriers as they would need to set up new internal systems and comply with requirements to report to the Department and the ACMA when they start to supply services or have signed a contract for services.
 - However, it is arguable that NBN Co should be doing this anyway as a GBE that has been required to provide all Australian premises with high-speed broadband.
- In addition, the conditions would impose an administrative burden on the Government and affected carriers at the end of the sun-setting period, when it came to considering whether they should be continued.

NBN rollout

Advantages:

- The carrier licence conditions would be tailored to reflect NBN Co's planned roll out approach and not complicate it.
- Carrier licence conditions can be more readily amended if necessary to address unforeseen issues or changing circumstances.
- Setting standards, rules and benchmarks in carrier licence conditions, rather than in legislation, will ensure that they can be flexibly adjusted in response to changing circumstances.
- The carrier licence conditions can be tailored so NBN Co and other SIPs will have the ability to set the terms and conditions on which they will meet the SIP obligation unless it is clear minimum standards need to be imposed.

Disadvantages:

- To the extent NBN Co (and others) are subject to regulatory rules, there is a risk of greater inflexibility that could impact on the role, but the risk is considered low, given the types of rules envisaged and the scope for modification.

Non-commercial services funding

Advantages:

- Carrier licence conditions, as binding regulation, would provide a firmer basis for obligations that would be funded by a legislated funding scheme.

Disadvantages:

- While carrier licence conditions would provide a firmer regulatory basis for a legislated funding mechanism, carrier licence conditions can be more easily revoked or modified than legislation.

Option 3: Legislate Statutory Infrastructure Provider (SIP) obligations

Access and certainty

Advantages:

- Legislated requirements would provide access seekers and end-users with access to next generation infrastructure and services.
- Legislated requirements are less easily changed and provide greater certainty to NBN Co, other SIPs, access seekers and customers about carriers' obligations.
- Legislation would ensure that once NBN Co is privatised, the privatised company would be required to continue to supply services as the default SIP for all Australian premises.
- Allowing the Minister to revoke a provider's SIP status will ensure that providers do not retain SIP-status if they are not meeting the SIP obligations or will not be able to meet the SIP obligations in the future.

Disadvantages:

- While legislation would provide a high level of access and certainty, the use of subordinate legislation to add necessary details means not all issues may be covered in statute.
- That said, subordinate legislation can better deal with matters of detail like timeframes and could be more readily adjusted in light of changing circumstances.
- While it is unlikely to be an issue, if it became apparent there was a flaw in the proposed legislation, it may require Parliamentary amendment to address it requiring added time and resources.

Other providers and other SIPs

Advantages:

- The proposed legislation would provide a clear framework for other providers to operate as SIPs, giving the providers, access seekers and end-users certainty as to their obligations. It also provides certainty for other providers who do not operate as SIPs, particularly in terms of who is providing infrastructure in an area.
- Allowing alternative providers to self-nominate as the SIP will give them certainty that if they invest in infrastructure in a new real estate development or multi-dwelling unit, they will be able to nominate to be the SIP for that area.

Disadvantages:

- While the legislation would provide for other SIPs, they would be subject to a statutory framework which would impose regulatory obligations and compliance costs that could restrict their operational flexibility. However, providers other than NBN Co designated as SIPs will be operating in an area on a commercial basis, and SIP status will confirm their obligation to service premises in their area of operation.

Compliance costs

Advantages:

- The legislation can be tailored to minimise compliance costs, for example, by limiting SIP obligations to notifying the Government that they have contracted to provide infrastructure and services in a specific locality.

Disadvantages:

- This option would impose compliance costs on carriers in the same way as Option 2 as they would need to set up new internal systems and report to the Department and the ACMA when they start to supply services or have signed a contract for services.

NBN rollout

Advantages:

- The legislation would be tailored to reflect NBN Co's planned roll out approach and not complicate it.
- Setting standards, rules and benchmarks in instruments, rather than in the legislation itself, will provide flexibility to adjust arrangements in response to unforeseen issues or changing circumstances.
- As with Option 2, NBN Co and other SIPs will have the ability to set the terms and conditions on which they will meet the SIP obligation unless it is clear minimum standards need to be imposed.

Disadvantages:

- While the legislation will reflect NBN Co's proposed roll-out approach, it would be subject to a statutory framework which would impose regulatory obligations and compliance costs that could restrict its operational flexibility.
- NBN Co's operational flexibility could be affected depending on the final shape of the legislation passed by the Parliament.
- Legislation is less flexible, and any issues identified through operational experience could only be changed through legislative amendment. However, this issue will be mitigated through ministerial powers to make instruments to set standards, rules and benchmarks, rather than setting these out in legislation.

Non-commercial services

Advantages:

- A legislative obligation to supply infrastructure and services provides a firmer basis for the proposed arrangements to fund NBN Co's non-commercial services.
- Given the significance of the obligations, their ongoing application, and the linkage to the non-commercial services funding, this is arguably a matter best considered by the Parliament.

Disadvantages:

- Option 3 does not appear to have any particular disadvantages in terms of the funding of non-commercial services.

Preferred option

Option 3 is the preferred option because it offers the greatest net benefit. It best delivers the overarching objective of providing access seekers and end-users with ongoing access to high-speed broadband services and maximum certainty this will occur. It does this with limited compliance costs on industry. It would provide the most clarity and certainty for NBN Co and access seekers as to NBN Co's supply obligations. It would also ensure that there is certainty for alternative providers, in areas where they are the sole or main providers of infrastructure, that they may have SIP obligations and how such obligations will be implemented and enforced.

Legislation, while it can take time to pass Parliament, is the most certain form of regulation. As such, legislation is the most appropriate vehicle to establish enduring requirements for the supply of broadband access to premises, which will have a long-term operation and will constitute an important safety-net for consumers. Legislation would also ensure that after NBN Co is privatised, the company continues to be obliged to supply broadband access to premises where access is not being provided by another entity or where a third party that was providing access to the premises has exited the market.

The Government intention to introduce a mechanism by which competing providers will contribute to the cost of NBN Co's connection and supply of non-commercial services needs to have a legislative basis. Where there is a legislative obligation on superfast broadband providers to contribute these costs, it is a reasonable expectation that there should be a legislative obligation for NBN Co to connect infrastructure and provide services.

Legislation can be drafted to set out the basic SIP obligations and give providers the flexibility to determine how they will meet the SIP obligations in the most efficient way. At the same time, the Government would retain the ability to step in and set minimum standards through legislative instruments if required. Any such intervention would be subject to a separate regulatory burden analysis at the time.

Option 3 is consistent with the Government's expectations that NBN Co will build a national broadband network that is available to all premises in Australia for use by retail service providers on an open access basis. The proposed SIP regime also recognises that other providers may provide superfast services in a range of circumstances and enables other providers to be designated a SIP where appropriate. This includes providers already operating as the IPOLR in adequately served areas, those that are contracted to service new developments and providers with established networks. The regime recognises that other providers will generally be servicing areas on a commercial basis and will be contracted to supply premises on this basis. SIP status will confirm their obligation to service premises in their area of operation

Option 1 does not address the Vertigan panel's concern that the Government's Statement of Expectations does not provide sufficient certainty for NBN Co, access seekers and consumers about NBN Co's ongoing supply obligations. In particular, it would not ensure that NBN Co, after privatisation, continued to supply broadband access to premises in unprofitable geographic areas. It also provides a poor basis for charging non-commercial services funding.

Option 2 addresses the panel's concern, but does not provide the same level of certainty as Option 3 because a carrier licence condition is a relatively flexible mechanism. Given the importance of ongoing supply obligations to industry and consumers, they need a high degree of certainty. This issue is compounded by the sun-setting of carrier licence conditions and the intention to privatise NBN Co once fully built and operational. Given the significance of the issue, there is also a strong argument that it should be explicitly considered by the Parliament (as has the existing USO requirement, with which the SIP obligations have many analogies). This is particularly true given NBN Co's SIP obligations is the basis for the proposed non-commercial services funding regime. For these reasons, carrier licence conditions would not be the appropriate vehicle to set out SIP obligations on an enduring basis.

Consultation

There was extensive consultation on possible changes to the telecommunications regulatory framework in 2014 as part of the Vertigan review. The Vertigan panel released a Regulatory Framing Paper in February 2014 to take soundings from industry and the public on key issues that should be considered. The panel received 43 submissions. The Vertigan panel also engaged directly with a range of stakeholders in follow-up discussions.

The Government published its *Telecommunications Structural and Regulatory Reform* policy in December 2014, which set out its response to the Vertigan review and its reform plans for the sector. The response was based on the reports of Vertigan review, the submissions to it, and other industry engagement. There has been ongoing engagement with industry since that time.

On 12 December 2016, the Minister for Communications and the Minister for Regional Communications released for public comment exposure drafts of the:

- Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017; and
- Telecommunications (Regional Broadband Scheme) Charge Bill 2017.

The Bills provide for three key reform measures:

- Refinement of the carrier separation rules under Parts 7 and 8 of the Tel Act;
- The introduction of a statutory infrastructure provider obligation for superfast broadband; and
- The introduction of a Regional Broadband Scheme to support loss-making services.

Along with the Bills, the Government released:

- explanatory notes on the draft Bills - an overview of the Bills and explanation on the operation of the key measures; and
- Regulation Impact Statements for the three measures.

Submissions on the package were requested by 3 February 2017.

In addition to public announcement of the consultation process, the Department of Communications and the Arts undertook a number of initiatives to raise awareness with stakeholders, in particular, carriers, service providers, industry, consumer and regional representative groups and regulators.

The Department emailed all licensed telecommunications carriers and other known interested parties, advising them of the consultation process and offering to provide further explanation and to discuss issues. It made a presentation to Communications Alliance members on the package in December, offering follow-up engagement. A range of follow-up briefings and discussions with other groups and individual stakeholders followed. The Department also provided an online briefing to the Wireless Internet Service Provider Association of Australia (WISPAU) in early 2017.

The Department received 30 submissions. These included submissions from Telstra, Optus, VHA, Vocus, TPG, the Greenfield Operators of Australia (four small carriers: OPENetworks, LBN Co, CNT Corp Pty Ltd and Opticomm), NBN Co Limited, Great Northern Telecommunications, Spirit Telecom, the Australian Communications Consumer Action Network (ACCAN), Better Internet for Rural, Regional & Remote Australia (BIRRR), Cotton Australia, the Isolated Children's Parents Association (ICPA), the NSW Farmers' Federation, the National Farmers' Federation, the Telecommunications Industry Ombudsman (TIO), Regional Development Australia and individual members of the Australian community. Submissions covered all aspects of the package to varying degrees.

Generally the comments on the SIP provisions were supportive of the scheme, with most stakeholders expressing support for the overall objectives of the scheme. Two industry submitters provided detailed comment on the drafting with a view to maximising clarity for industry and consumers. These comments focussed on the supply of services to 'designated equipment', the interaction between the SIP provisions and Part XIC of the *Competition and Consumer Act 2010* (CCA), and the operation of exemptions from the SIP obligations. Regional and consumer groups suggested a number of enhancements to the SIP provisions, particularly relating to service speeds, connection and fault repair timeframes, the consumer experience and dispute resolution. There were no comments on the draft RIS.

Following consideration of these comments, the Government decided to amend the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 to make a number of enhancements. In particular, it amended the Bill to remove obligations relating to designated equipment, on the basis these are better handled on a commercial basis as has been the case to date. The Government also clarified that the SIP supply obligation can be fulfilled by a service being supplied under Part XIC of the CCA. The Government also amended the SIP obligations to specify download and upload speeds (25/5 Mbps) that are consistent with NBN Co's Statement of Expectations, and also to set out a target for NBN Co that it can supply speeds of 50/10 Mbps to 90 per cent of the premises connected to its fixed-line networks. The Bill was also amended to provide that SIPs can supply services to carriage service providers that can support voice services on fixed-line or fixed wireless networks. The Government also introduced measures to improve consumer outcomes by providing powers for the Minister to make service provider rules. Such rules would, if made, be legislative instruments and therefore subject to consultation, disallowance and RIS requirements.

In the case of issues like connection and repair time frames, the Government considers the matters raised need to be considered further as part of the proposed review of telecommunications safeguards.

A number of matters would most likely be best addressed in subordinate legislation given the level of detail that would generally be involved.

The Department considers that the above changes will not impose any further regulatory burden overall, particularly noting the SIP provisions have been costed on the basis that they create a broad legislative supply obligation consistent with established and intended modes of operation.

Implementation and Evaluation

Option 3 would be implemented by legislation. Legislation is expected to be introduced into the Parliament in 2017. Should the Parliament pass the legislation as proposed, the aim is to have the amendments in place for 1 July 2018, but a later date may need to be considered depending on when the Bill is passed. A later date may help the Government, ACCC and industry undertake necessary preparation.

The Minister may consider making legislative instruments setting out service standards following passage of the legislation. The development of such instruments would be subject to further regulation impact analysis and consultation with industry.

The Government would evaluate the impacts of the legislation through its normal industry monitoring and consultation processes. Additionally, the Productivity Commission is required to conduct a thorough review of the NBN once the Minister for Communications determines that the NBN is built and fully operational. This review must consider a range of matters, including competition in telecommunications markets, structural features of those markets, equity of access to broadband services and bundling of services supplied by NBN Co.

Attachment A

Regulatory costings

This RIS considers the implementation of the Government's decision to establish a statutory infrastructure provider regime for NBN Co (and comparable providers). While NBN Co has rollout obligations under the Government's Statement of Expectations, this RIS examines mechanisms to establish ongoing obligations to connect infrastructure and supply services. Scope will exist for other providers to operate as SIPs. This already occurs in practice, as is evidenced by the adequately served carrier licence conditions already in place for providers such as Opticomm and Pivit Telecom.

Options	Preferred	Costs
1: Status quo—do nothing	No	Neutral
2: Make a licence condition	No	<p>For NBN Co, the costs are neutral—the obligation has not changed, just the legal mechanism through which it is expressed. There may be some additional compliance and reporting costs.</p> <p>For carriers that nominate to be the SIP, the costs are arguably neutral as they will likely have committed to connecting all premises in an area to their high-speed broadband infrastructure. Carriers will incur costs in nominating service areas—including mapping these service areas.</p> <p>For carriers that are required to be the SIP, there will be a cost in complying with the obligations, including extending networks to serve additional premises and non-premises. However, a non-NBN carrier would only be required to be the SIP in an area where it has pre-existing high-speed broadband infrastructure and the costs associated with connecting additional premises to a pre-existing network are likely to be marginal and offset by the revenue that will be gained from the customer. The prices that non-NBN Co-operators can charge for connection and supply will be a commercial matter for each operator.</p>

Options	Preferred	Costs
3: Legislate SIP obligations	Yes	<p>For NBN Co, the costs are neutral—the obligation has not changed, just the legal mechanism through which it is expressed. There may be some additional compliance and reporting costs.</p> <p>For carriers that nominate to be the SIP, the costs are arguably neutral as they will have committed to connecting all premises in an area to their high-speed broadband infrastructure. Carriers will incur costs in nominating service areas—including mapping these service areas.</p> <p>For carriers that are required to be the SIP, there will be a cost in complying with the obligations, including extending networks to serve additional premises and non-premises. However, a non-NBN carrier would only be required to be the SIP in an area where it has pre-existing high-speed broadband infrastructure and the costs associated with connecting additional premises to a pre-existing network are likely to be marginal and offset by the revenue that will be gained from the customer. The prices that non-NBN Co-operators can charge for connection and supply will be a commercial matter for each operator.</p>

Assumptions (option 1)

No change in regulation—neutral regulatory burden impact.

Average Annual Regulatory Costs (from Business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	\$0	\$0	\$0	\$0

Assumptions (option 2)

- It is assumed that no more than ten carriers, other than NBN Co, will either nominate to have statutory infrastructure provider obligations or be designated the statutory infrastructure provider for an area. This is based on the number of providers who have submitted data to the National Map on the new developments that they have contracted to serve.⁶

⁶ www.communications.gov.au/what-we-do/internet/competition-broadband/telecommunications-new-developments-map

- It is further assumed that these carriers are likely to employ 1.0 FTE for four weeks to work on implementing the SIP arrangements (administrative and mapping) at \$37.40 x 1.75 per hour⁷ x 150 hours = \$9817.50 per carrier and a maximum of \$98,1750 for ten carriers.

Average Annual Regulatory Costs (from Business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	\$0.098	\$0	\$0	\$0.098

Assumptions (option 3—preferred)

- It is assumed that no more than ten carriers, other than NBN Co, will either nominate to have statutory infrastructure provider obligations or be designated the statutory infrastructure provider for an area. This is based on the number of providers who have submitted data to the National Map on the new developments that they have contracted to serve, as per option 2.
- It is further assumed that these carriers are likely to employ 1.0 FTE for four weeks to work on implementing the SIP arrangements (administrative and mapping) at \$37.40 x 1.75 per hour x 150 hours = \$9817.50 per carrier and a maximum of \$98,1750 for ten carriers.

Regulatory burden and cost offset estimate table—Average Annual Regulatory Costs (from Business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	\$0.098	\$0	\$0	\$0.098

The Department requests submissions as part of the consultation process to comment on the estimate of the regulatory burden.

⁷ The default hourly cost is based on average weekly earnings, but adjusted to include income tax, as set out in the Regulatory Burden Measurement Framework: https://www.dpmc.gov.au/sites/default/files/publications/005_Regulatory_Burden_Measurement_Framework_1.docx