



ACMA consultation on the proposed revisions to the NBN consumer experience rules

Submission by the Australian Communications Consumer Action
Network

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Executive Summary and Recommendations

ACCAN thanks the ACMA for the opportunity to contribute to its consultation on the proposed revisions to the NBN consumer experience rules. The rules are a critical component of the consumer protection framework that underpins the delivery of communications services to Australians migrating to the NBN.

ACCAN is supportive of the overwhelming majority of drafting changes proposed by the ACMA, and as a consequence will focus our comments on those provisions that may require further clarification. As the changes in the *Telecommunications (NBN Consumer Information) Industry Standard 2018* are relatively minor and uncontentious we will not comment on these changes.

The ACMA's proposed changes are set out in red in the following text. ACCAN's proposed amendments are set out in blue.

ACCAN notes that in developing the consumer experience rules that there has been an inconsistent use of italics and bold to indicate terms that are defined in the relevant definitions section of their respective rules. Although a simple drafting change ACCAN believes that a return to the use of bold to identify defined terms would assist consumers in identifying terms with a technical meaning and engaging with the rules.

Telecommunications Service Provider (NBN Service Migration) Determination 2018

ACCAN is broadly supportive of the proposed changes in the draft Determination. However, we have concerns about the redrafting of section 5 with respect to the definition of *alternative arrangements*. The current draft wording is as follows:

Alternative arrangement means an arrangement agreed by the NBN CSP and the consumer, where the requirement to supply an interim service under Part 3 applies, which provides a benefit to the consumer that reasonably offsets the effect of the NBN CSP not supplying an interim service to the consumer, and it may include:

- (a) the payment of reasonable compensation;
- (b) the application of credit to the consumer's account for mobile data;
- (c) the reconnection of a legacy service;
- (d) payment to an alternative provider for the provision of a mobile data service;
- or
- (e) any other terms agreed by the NBN CSP and the consumer.

ACCAN is supportive of the revised drafting of the current definition to indicate that only arrangements whereby consumers must be paid compensation that offsets the loss of service are within the scope of the rules. However, ACCAN has significant concerns about modifications to the definition of *alternative arrangement* that would inadvertently encourage the payment of compensation as a substitute for genuine efforts to ensure consumers have access to a working NBN service.

Telecommunications (NBN Continuity of Service) Industry Standard 2018

ACCAN has identified a minor drafting error in s. 21(2)(a) which fails to contain the an ‘and’, set out in blue below. As a consequence it is not clear from the current drafting that the three sub-sections need to be read in conjunction with one another and that their application relies upon the drafting of the aforementioned sub-section.

21 Circumstances where an NBN CSP must not charge a consumer for an NBN service

- (1) Where an NBN CSP supplies a legacy service or an interim service to a consumer in accordance with the requirements under Parts 3 and 4, it must not charge a consumer for their NBN service until it is operational.
- (2) An NBN CSP does not contravene subsection (1) if:
 - (a) the consumer’s NBN service is not operational; and
 - (b) the NBN CSP has issued a bill to the consumer for the NBN service; and
 - (c) the NBN CSP promptly provides a refund or credit to the consumer for the amount specified in the bill mentioned in (b).

~~it promptly provides a refund or credit to a consumer for an amount specified in a bill issued to the consumer for their NBN service which was later found to be not operational.~~

ACCAN welcomes the inclusion of a definition of *alternative arrangement* under s.5 of the *Telecommunications (NBN Continuity of Service) Industry Standard 2018*. The inclusion of a definition provides parameters for the formation of arrangements between NBN CSPs and consumers and ensures that consumers have appropriate protections afforded to them.

As noted in our comments above on the draft *Telecommunications Service Provider (NBN Service Migration) Determination 2018*, we have material concerns that elements of the drafting may facilitate the offering of inconsequential sums of compensation in order to avoid compliance with the objectives of the rules.

The proposed drafting of *alternative arrangement* is set out below:

Alternative arrangement means an arrangement agreed by the NBN CSP and the consumer, where the requirement to supply a legacy service under Part 3 applies, which provides a benefit to the consumer that reasonably offsets the effect of the NBN CSP not supplying a legacy service to the consumer, and it may include:

- (a) the payment of reasonable compensation;
- (b) the application of credit to the consumer's account for mobile data;
- (c) payment to an alternative provider for the provision of a mobile data service;
- or
- (d) any other terms agreed by the NBN CSP and the consumer.

ACCAN believes that further revision of this provision and its counterpart in the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* are required in order to make it clear that arrangements that do not facilitate the objects of the rules would not be valid under the terms of the rules. This would entail the drafting of new clauses that explicitly note that the arrangements that do not facilitate the provision of interim services or NBN services as their primary object would be invalid and that penalties would apply to the formation of such agreements.

In the absence of anti-avoidance provisions of the nature proposed by ACCAN it is foreseeable that the rules will fail to achieve their objectives, with NBN CSPs having strong incentives to offer minimal amounts of compensation or rebates for services, while they collect rebate payments from NBN Co. Accordingly it is essential that strict requirements are put in place for alternative arrangements.

ACCAN supports the proposed revision of s. 23 of the *Telecommunications (NBN Continuity of Service) Industry Standard 2018*. The ACMA's proposed changes are set out as follows:

23 Requirements where there is unreasonable delay in the supply of an operational NBN service

(1) If, at ~~230~~ working days after the NBN CSP becomes aware that:

- (a) the migration at the consumer's premises has been unsuccessful; or
- (b) the migration at the consumer's premises has been successful, but the consumer's NBN service is not operational,

~~expiration of a timeframe referred to in paragraph 11(a) or (b), whichever is applicable, the NBN service is not operational,~~ the NBN CSP must within 2 working days, prepare a plan directed at ensuring that the consumer is provided with an operational NBN service as soon as possible.

Put more simply, the current reference to s11(1)(a) and s11(1)(b) which provide for timeframes for action to be taken are conditional on the application of an exception under s11(2) and as a consequence do not provide for a clear or consistent timeframe for action to be taken under the current s23. Accordingly by deleting the reference in the current s23 to s11(1) and replacing it with a direct reference to the number of working days in which the NBN CSP must take action, the drafting clearly compels action by NBN CSPs to make plans to ensure the supply of an operational NBN service.

Telecommunications (Consumer Complaints Handling) Industry Standard 2018

ACCAN is broadly supportive of the proposed changes in drafting set out within this standard. However, we have concerns about the appropriateness of using the term ‘accessibility’ in the title of section 8. As it currently reads, ACCAN understands this section to relate to the availability and scope of the complaints handling process. ACCAN therefore recommends that the title of s8 be changed to reflect the actual contents of this section, and that information about accessibility (meaning here access for people with disability or other accessibility requirements) be added. This should include, for instance, the insertion of the following two points into s8(1):

- that the complaints handling process and other consumer-facing information pertaining to complaints be made available in a range of accessible or alternative formats (including, for instance, in braille or easy English); and
- that consumers have a right to request and receive information about their complaint in an accessible or alternative format of their choosing.

Including these provisions would help to ensure that consumers receive information in a way that suits their accessibility needs, which in turn would make this information easier to understand. For instance, some consumers may request to receive documentation in braille, easy English or large print, while others may request not to receive inaccessible mailed letters or inaccessible phone calls (for people who are blind or have vision impairment, or are Deaf or have hearing impairment, respectively).

We further recommend that both mentions of the phrase ‘special needs’ be deleted from this Standard. ACCAN’s proposed changes to the Standard are set out in blue. This would involve changing what is currently s8(1)(i)(ii) to read:

‘provide consumers with help to formulate, make and progress a complaint, ~~and set out steps to assist members of its personnel~~ to help consumers with ~~special needs or~~ disabilities ~~or accessibility requirements~~, and consumers from non-English speaking backgrounds or those suffering financial hardship’

Similarly, removing ‘special needs’ from s11(b)(iv) would change this to:

‘an internal process for helping consumers to formulate, make and progress a complaint and which sets out steps to assist members of its personnel to help consumers with ~~special needs or disabilities~~ or accessibility requirements, and consumers from non-English speaking backgrounds or those suffering financial hardship’

Finally, ACCAN recommends that accessibility requirements be considered within section 12. This could involve adding a sentence to the end of s12(1) that reads: ‘~~This written or verbal response must take into consideration any of the consumer’s previously identified accessibility requirements.~~’