



# **ACCC Inquiry into NBN Wholesale Service Standards**

Submission by the Australian Communications Consumer Action  
Network to the Australian Competition and Consumer Commission

2 March 2018

## **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.

## **Contact**

**Una Lawrence**  
**Director of Policy**

PO Box 639,  
Broadway NSW, 2007  
Email: [Una.Lawrence@accan.org.au](mailto:Una.Lawrence@accan.org.au)  
Phone: (02) 9288 4000  
Fax: (02) 9288 4019  
Contact us through the [National Relay Service](#)

# 1. Introductory Comments

ACCAN would like to thank the ACCC for the opportunity to submit to its inquiry into NBN wholesale service standards.

The absence of communications services - even for short periods - can result in social isolation, reduced economic livelihood and participation in social life, insecurity, and can potentially pose a risk to safety.<sup>1</sup> The reliability of broadband services is therefore very important for consumers and poor performance can reduce the benefits they derive from services.<sup>2</sup> With Government and many businesses pursuing a 'digital first' agenda, reliable access to the internet is becoming all the more necessary.

Consumers may have no choice in the network that services them as nbn is, in effect, a monopoly. Therefore, it is important that minimum connection, repair and reliability standards apply. While consumers deal directly with retail service providers it is important that incentives and accountability measures apply to the body responsible for delivering each element of the end-to-end services. Consumers currently do not have guarantees in relation to connection, reliability and repair timeframes for broadband and this puts their services at risk.

While there are legal consumer guarantees over the provision of services, there is little case law on how these might work in practice in telecommunications.<sup>3</sup> Without a clearly codified framework, it is difficult for consumers to enforce their rights. While consumers may have some success asserting their rights at the retail level under contract or the Australian Consumer Law, this is much more complicated at the wholesale level. Improved consumer protections policy is required to adequately manage the tension between wholesale and retail performance.

ACCAN believes existing wholesale service standards do not achieve this and do not adequately protect consumers. The Wholesale Broadband Agreement (WBA) is an agreement between nbn and its retail customers (e.g. Telstra, Optus and TPG), and its focus is on network management rather than consumer demand.<sup>4</sup> Creating lines of accountability from the wholesale provider to the retailer and thence from the retailer to the consumer is more likely to create a network responsive to consumer needs.

The significant increase in complaints to the Telecommunications Industry Ombudsman (41% in 2016/2017), specifically complaints about the NBN (159% in 2016/2017), and the fact that the top issues are connection delays and unusable services, demonstrates that the current arrangements are not working.<sup>5</sup>

For an obligation to be sustainable, it should provide for a level of network service which realistically balances consumer need with the technical and resource limits of the network. The obligations should deliver a baseline level of adequate service to individual consumers. These should include:

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<sup>1</sup> Garnham, Nicholas. "Amartya Sen's capabilities approach to the evaluation of welfare: Its application to communications." *Communication, citizenship and social policy: Rethinking the limits of the welfare state* (1999): 113-124.

<sup>2</sup> <https://accan.org.au/our-work/policy/1245-the-future-of-consumer-focused-communication-services> and see attachment.

<sup>3</sup> Services are to be provided with due care and skill, be fit for purpose, supplied within a reasonable time (ACL, s.60,61,62)

<sup>4</sup> *Wholesale Broadband Agreement* 3

<sup>5</sup> TIO 2016-2017 Annual Report <https://annualreport.tio.com.au/>

- a) Customer service standards that set timeframes for:
- Fault rectification
  - New connections
  - Existing connections (where infrastructure is in place), and
  - Appointment keeping.
- b) Reliability measures consisting of agreed independent performance benchmarks for network availability to encourage overall high performance across urban, regional and rural/remote geographies, that ensure end users experience a high level of network connectivity. These need to be targeted to address the severity of impact of unreliable services and include metrics such as the:<sup>6</sup>
- Number of minutes that a customer is without services in a year
  - Number of times a customer's supply is interrupted per year
  - Duration of each interruption, and
  - Number of momentary interruptions per customer per year.
- c) Interim migration targets consisting of:
- New connection timeframes (legacy service in place)
  - New connection timeframes (no legacy service in place)
  - Appointment keeping, and
  - Enhanced fault rectification for services that were disconnected in error.

Using these measures, network reliability can be improved by identifying areas for remediation which are causing significant consumer detriment.

Attached are two ACCAN policy position papers relevant to this consultation – at Appendix 1: *A Telecommunications Guarantee for the Future* summarises some of the key points in our proposals for reform of the Customer Service Guarantee; at Appendix 2: *The Connected Consumer* sets out a consumer focused approach to address gaps in the provision of essential telecommunications services.

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<sup>6</sup> These mirror the measures used to monitor network reliability in the energy sector. Further discussion in Houston Kemp, 2014, 'Electricity Network Service Standards: An Overview', p.2.

## 2. Responses to discussion paper questions

The following are ACCAN's answers to specific questions posed in the discussion paper. Some questions have been skipped where the response has been 'Not Applicable' or where there is a dearth of information or transparency that means ACCAN cannot provide an informed response.

**Question 1:** *Are the key elements of the NBN supply chain as they relate to this inquiry captured in Diagram 1? Are there any additional aspects of the supply chain that should be considered as a part of this inquiry?*

The diagram appears to be comprehensive for the NBN supply chain.

We note that Priority Assistance safeguards are not in the diagram, but are mentioned later in the chapter (page 12).

**Question 2:** *Are the non-price terms and conditions in NBN wholesale aggregation supply agreements the same, or similar to, those in the WBA? Is there a mechanism in these agreements to allow service level terms to be updated to reflect the relevant changes in WBA 3? What are the implications, if any, where these terms and conditions are not the same?*

Not applicable.

**Question 3:** *If the ACCC was to make an IAD or FAD as a part of this inquiry, how would this impact the terms and conditions in the WBA and NBN wholesale aggregation service agreements?*

Not applicable.

We assume there are contractual arrangements over other networks (Telstra ADSL, other superfast networks) which may also have to comply with regulatory conditions and codes. In the same way, these documents would have to support the new regulatory framework that is put in place.

**Question 4:** *Overall, how do stakeholders view the operation of the CSG standard in the context of the NBN, considering its origins as a measure for voice services provided by a vertically integrated service provider?*

Given the 29% increase in payments that have resulted from the CSG in 2015-2016, and despite an increase in the use of CSG waivers, it is clear that the safeguards within the CSG are still delivering to some extent for consumers.<sup>7</sup>

However, the CSG is limited in its scope, as the number of voice services is declining and the number of broadband services is increasing. The CSG is also outdated in its operation as it allows RSPs the opportunity to waive it and the rights within it are not automatically applied (consumers have to apply for compensation).

There is also a compatibility issue with CSG and the WBA3. The CSG provides guarantees on an individual's service, with compensation when this is not met. WBA3 provides rebates when the

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<sup>7</sup> ACMA, Communications Report 2016 – 2017, p. 7. <https://www.acma.gov.au/-/media/Research-and-Analysis/Report/pdf/Communications-report-2016-17-pdf.pdf?la=en>

timeframes are not met for more than 90% of the time. It doesn't provide protection on an individual service.

An element of the CSG that has been very beneficial to consumers is the use of alternative service delivery in the interim period. This allows consumers to maintain a level of their connectivity and minimises disruptions. As nbn is a wholesale network, the ability to do this is limited. Not all RSPs operating over the NBN will have the means to access alternative networks either.

In an extreme example, one end user may experience multiple missed connection appointments, multiple outages once connected, poor reliability, multiple missed fault repair timeframes and still their RSP (and presumably, ultimately the end user) may not be eligible for any compensation or rebate, as nbn could be meeting the targets most of the time.

**Question 5:** *Are there any 'other matters' that should be considered in making an access determination or BROC in relation to non-price terms and conditions relating to NBN Co.'s service standards?*

Consumers have had a high expectation of NBN performance that has been somewhat negatively impacted by the experience of migration and service quality. ACCAN often hears reports of consumers who are choosing to delay switching to an nbn service due to these factors. If nbn's performance fails to demonstrate high levels of reliability and service quality, consumer trust may be further impaired, driving consumers to try to find alternative services. It is possible that not strengthening these non-price terms and conditions may actually hurt nbn in reduced take up rates.

**Question 6:** *Have commercial negotiations about the NBN service standards been effective in obtaining competitive and efficient outcomes in the relevant markets? Please explain the reasons why these negotiations have or have not been successful and the main factors that have influenced the outcome of these negotiations.*

There are a number of poor consumer experiences that indicate that the negotiations have not been effective.

The increase in CSG payments in 2015-2016 is reported to be in part due to the transition to nbn.

Despite the significant number of issues with Sky Muster in its first year nbn did not pay its RSPs any compensation.<sup>8</sup> NBN publically stated that there was "an 'exorbitant' rate of failures for its Sky Muster satellite service... the satellite service had not met anyone's expectations."<sup>9</sup> Despite this, nbn has confirmed that there have been no payments of compensation to RSPs through the Wholesale Broadband Agreements (WBAs).<sup>10</sup> There is a clear deficiency in the current arrangement that is to the detriment of end users. ACCAN believes that urgent action is required to ensure that service levels are examined and robust performance metrics and compensation mechanisms are established.

In addition, ACCAN has attended one or two of the forums that were held as part of the development of the WBA3. Our observations of this process are that issues of concern for the RSPs do not appear to be fully addressed by nbn. The documents and processes were very lengthy and

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<sup>8</sup> For example: Better Internet for Regional, Rural and Remote, 2017 Sky Muster survey. <https://birrraus.files.wordpress.com/2017/04/birrr-skymuster-2017-survey-results-published.pdf>

<sup>9</sup> <https://www.itnews.com.au/tools/print.aspx?ciid=452965>

<sup>10</sup> Senate Estimates Question on Notice. Question No: 202. Hansard Ref: Page 62, 25/05/2017

difficult to engage with. ACCAN did not have confidence that, despite attempts made by nbn, RSPs were fully engaged or representing their customers' best interests fully. Only the larger RSPs who were supported by a full legal team appeared to have any engagement or traction in the negotiation process.

Therefore ACCAN does not believe that the negotiations have been effective. It appears to us that the process has been focused on minimising risk for nbn, rather than producing a robust level of service and performance targets. This type of negotiation may be appropriate and effective for commercial agreements but we do not believe that they have produced the right incentives for good consumer outcomes.

**Question 7:** *Do you consider regulated fall-back service standards are required for NBN service standards? If so, should they cover all service standards, specific standards only or broad principles for negotiating service standards? Please provide reasons for your answers and in doing so describe your relevant experiences in negotiating NBN service standards and how those experiences inform your preferred approach.*

Specific service standards that include all the main targets and compensation mechanisms are required. The calculations for meeting targets are important and minor changes can impact significantly on the end result. We therefore believe that the ACCC should be involved in these and have oversight of these details.

ACCAN cautions against a broad principles approach as it is unlikely to deliver for consumers.

**Question 8:** *What NBN service standards do you consider should be covered by any access determination or BROCC? Please provide reasons.*

Connection timeframes (new and existing), fault repair timeframes, appointment keeping, reliability, number of outages and extent of outages are key service standards that would clearly set out service expectations for end users.

These should also function over all the technologies (all geographical areas – although with different timeframes for harder to reach areas).

In the short term, there should be migration-specific targets such as new migration connection, consisting of a general timeframe, and an additional timeframe for consumers who have no legacy services. There should be a fix for problems that arise where there is an issue with nbn connection and the consumer cannot connect or reconnect to the legacy service in the interim period.<sup>11</sup>

ACCAN does not support medium-term standards. Once a consumer has migrated, the service standards should apply.

**Question 9:** *Are there specific NBN service standards that we should examine as a matter of urgency or for more immediate regulatory intervention? Please provide reasons.*

Standards for very remote areas (“limited access” areas) – as they currently only have objectives, and these appear to be the least rigorous.

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<sup>11</sup><http://accan.org.au/our-work/policy/1458-migration-statement>

Standards for services that are in co-existence or remediation (which may extend for a longer period than migration).<sup>12</sup>

Priority assistance as this safeguard has been watered down over NBN.

**Question 10:** *Do the timeframes for the rollout of the NBN impact on any decision to make an access determination or BROCC? If so, how should these timeframes be assessed in any decision to make an access determination?*

Initial new migration connections may require more flexibility than the long-term connection timeframe.

However, all other timeframes should be established and take effect immediately.

**Question 11:** *Does the service levels schedule appropriately cover the most important aspects of the end-user life cycle? If not, what matters have been excluded from the service levels schedule? Are there areas in the service levels schedule where the scope of service standards should be extended?*

ACCAN believes the WBA Service Levels Schedule should be extended to include protections for end-users of services which are performing particularly poorly.

This could be a change to 100% targets (in which case any cases of not meeting targets would receive a rebate) or additional standards that examine the worst-performing services.

ACCAN does not agree with the 90% target, as this can hide a large number of extremely poor performing services. Additionally, it incentivises nbn to remedy services at the margin (easy services that ensure that it meets 90%) rather than addressing the longer-term issues which may be resulting in significant detriment to a small number of end users.

**Question 12:** *Are there any service standards where commercial rebates for not meeting performance objectives are likely to improve end-user experiences?*

Rebates should be factored to the worst-performing services. At the moment there is a set payment, but this does not take into consideration the length or extent of issues for the affected end-users.

**Question 13:** *Are there any additional service level commitments that would be desirable during the rollout phase?*

Reconnection or prioritised repairs for consumers disconnected in error, as well as shorter connection timeframes for premises that do not have a legacy service.

**Question 14:** *Are there any additional service level commitments that should be applied for post-rollout?*

Consideration should be given to introducing new service level commitments for individual multiple outages.

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<sup>12</sup> <http://accan.org.au/our-work/submissions/1419-variation-to-nbn-co-sau>

**Question 15:** *Does the CSG framework provide an appropriate benchmark for assessing the WBA service levels and performance objectives? If not, are there other benchmarks that should be considered?*

See Question 4 for issues with assessing / comparing the CSG and WBA.

The CSG was designed for a less reliable network. As the NBN is largely fibre we believe that the performance should be better with fewer performance issues expected, allowing for shorter timeframes.

**Question 16:** *Do you consider that reducing service level timeframes or improving performance objectives for particular service levels would have the effect of improving end-user experience? If so, how?*

Somewhat. At this stage meeting the targets would improve end-user experiences.

Reducing timeframes or improving performance objectives in certain areas would also assist. In particular, reducing the service level timeframes for limited access areas would ensure that consumers in remote areas are not exposed to the risk of not having services for three months at a time.

**Question 17:** *What other mechanisms could provide incentives to NBN Co to improve service standards and consumer experiences if shortened timeframes or improved performance objectives are not possible?*

If performance was factored into nbn's regulated return it could be an effective incentive. If performance does not meet targets then possible allowable return should be reduced. This could have a knock on impact of not allowing wholesale costs to increase or a requirement to reduce them. This would provide a motivation to nbn to take poor performance seriously.

Additionally, requiring nbn to report on performance and reliability, including identifying the worst performing services, would provide public oversight and scrutiny of services and incentivise nbn to improve services.

**Question 18:** *How should the cost implications on NBN of reduced service level timeframes or increased performance objectives be weighed against the potential for better consumer experience outcomes?*

Affordability of services is an important issue for consumers, as are long periods without services, or multiple days off work to accommodate missed appointments. These issues contribute to a lack of trust in the benefits that NBN could deliver, and persuade consumers to turn to other options if available.

Consumers turning to other services which they have more confidence in should also be factored against the cost of meeting these standards.

**Question 19:** *Are the service levels and performance objectives for network availability and utilisation management adequate to provide certainty that NBN Co is effectively managing network capacity across its network, particularly during busy hours of service?*

ACCAN does not have access to sufficient information to comment on this.

**Question 20:** *Would it be feasible to introduce more binding commitments for matters currently covered by operational targets? If so, over what timeframes?*

ACCAN would welcome this but is unsure on feasibility considerations.

**Question 21:** *Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to connect premises and rectify faults in a timely manner?*

No. The formula does not promote good behaviour by nbn. It only encourages action when the figure approaches or is at risk of going below 90% and leaves premises that are between the 90-100% without any incentive to have remedies.

Compensation should be based per time period rather than a once off figure. It should increase the longer the performance benchmarks are not met (e.g. \$25 per day for the first week, \$30 per day for second week, etc.).

**Question 22:** *Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to address individual cases of poor performance regarding connections and service faults?*

The current structure does nothing to address individual cases of poor performance. There should be network level targets with repercussions and individual end user targets and rebates.

Individual end users that have repeated faults or outages should receive prioritised attention and a separate rebate scheme to overall performance targets.

**Question 23:** *Do the specific service levels for connections allow retail service providers to meet their CSG and priority assistance obligations (as opposed to the availability of compensation or rebates from NBN Co under the WBA)?*

As CSG payments in relation to nbn have increased significantly, and the legislation had to be changed to downgrade Telstra's responsibility to deliver Priority Assistance over networks that it has no control over, we believe that service levels do not allow RSPs to deliver these obligations.

**Question 24:** *Are there any other measures in place besides the connection and fault rebates to deal with individual cases of poor performance regarding end user connections and service faults? Are these measures effective?*

Unsure.

**Question 25:** *Why are forecast plan and forecast accuracy conditions in place for the connection rebate? How are these conditions affecting RSPs' ability to claim connection rebates?*

ACCAN agrees that there appears to be no reason to have these as conditions affecting rebate claims, other than to limit nbn's liability and trip up providers with overly cumbersome paper work which have no direct impact on the performance of nbn's network.

**Question 26:** *Are the enhanced fault rectification rebates resulting in faster fault rectification for those consumers purchasing this service? To what extent are the enhanced fault rectification rebates flowing through to consumers?*

ACCAN is not sure about the impact or use of these. Residential plans generally do not identify that they are using this enhanced feature, so it is unclear how effective they are. At this stage, it may only be used for business plans.

There are many consumers who would pay extra to have this enhanced fault rectification and it should be a distinguishing factor of available plans.

**Question 27:** *How is the process for claiming CSG costs from nbn working in practice? To what extent have RSPs been able to claim CSG costs from nbn?*

ACCAN understands that it is a difficult process. Many RSPs report that they just pay CSG payments themselves as it is easier than claiming from nbn or having a complaint with the TIO against the service.

We believe that the extent to which RSPs have been able to claim CSG costs is very low, and not in line with CSG payments to end-users.

**Question 28:** *Are changes to the CSG arrangements introduced into WBA3 promoting more effective processes?*

As WBA3 has only just commenced, it is difficult for ACCAN to assess whether it has had any impact in improving processes.

**Question 29:** *What is the process for determining how CSG costs are allocated between NBN Co and RSPs?*

Unsure as these arrangements are not transparent.

**Question 30:** *Do the matters identified in this section represent the key aspects of WBA3 that relate to the allocation of risk and incentives?*

Unsure.

**Question 31:** *Are the material service failure provisions likely to provide appropriate protections and incentives for nbn co in relation to significant network outages?*

Consumers understand that there may be an unpredictable event which may cause an outage or a delay in repairing their services.

The material service failure provisions, and the current mass service distributions with CSG, are particularly difficult for consumers to engage with or understand if their service is affected, and why.

Consumers often report frustration with these arrangements, as they believe RSPs use them without justification and consumers or regulators are unable to question or verify that the use was justified or reasonable. There is serious information asymmetry at the moment with a lack of public information on nbn performance. Careful regulatory scrutiny and public accountability is required.

**Question 32:** *What impact is the third party claims regime likely to have in practice, including on RSPs, consumers and nbn's incentives?*

Not applicable.

**Question 33:** *Are RSPs flowing through or intending to flow through the model terms under the third party claims provisions to retail contracts?*

ACCAN has not witnessed RSPs flowing through the model terms as standard provisions in retail contracts.

We understand that in part this is due to the number of factors, other than nbn, that may cause a fault and require rectification.

**Question 34:** *Are there examples from other sectors where an upstream service provider has required downstream providers to contractually prevent claims being brought against it or otherwise indemnify it from claims?*

Not applicable.

**Question 35:** *How likely is it that liability caps will be reached? What type of event could potentially see the caps being reached?*

Not applicable.

**Question 36:** *Are there any comparable situations where liability caps have been imposed? If so, how are these caps structured and at what levels are the caps set?*

Not applicable.

**Question 37:** *Why do retail customer contracts for NBN broadband services not, in general, reflect the wholesale NBN service standards, particularly for connections, faults and appointments? Please detail the key drivers for this and provide evidence to illustrate.*

ACCAN believes it is in part due to the risk of not meeting targets and being liable for compensation for faults outside of their control.

**Question 38:** *Are there any measures that could be put in place to achieve greater alignment of wholesale and retail NBN service standards and are any measures considered likely to be more effective than others?*

See responses above.

# Appendix 1

## Policy Position: A Telecommunications Guarantee for the Future<sup>13</sup>

January 2017

Broadband is now considered essential to provide access to services and employment opportunities, as well as entertainment and education. This is true for all consumers, no matter whether they live in regional, rural or remote areas or in the cities.

Reliable broadband connections are also pivotal for small businesses and farmers who often rely on them to run their businesses. Internet connections provide opportunities for farmers to use sophisticated agricultural software to monitor yield predictions and more. But when services fail, there are no guarantees that apply to internet services to ensure faults are fixed within certain timeframes. This can result in long outages, meaning lost money and productivity for farmers and small businesses, and frustration for general consumers.

The current consumer telecommunications guarantee, the [Customer Service Guarantee](#) (CSG), only applies to connection and fault repair times on fixed-line telephone (i.e. voice) services. This leaves consumers with no guarantees for fixed broadband (i.e. data) services.

ACCAN has been calling for [an updated CSG](#) to include service timeframes for fault rectification, connections and appointment keeping as the standard for internet connections. We are also proposing independent service reliability benchmarking to ensure that disruptions to services are minimised.

An updated CSG with service guarantees and reliability measures to underpin the provision of voice and data services, to deliver more accountability from providers and nbn, is also one of the five outcomes prioritised by the [Regional, Rural and Remote Communications Coalition](#) (of which ACCAN is a member). At the moment, there are no requirements for nbn to publish information on repair times or network reliability metrics, leaving consumers with little transparency around reliability of services. There is a need for updated, fully accountable and independently monitored CSG arrangements and reliability performance measures.

At ACCAN, we often hear from consumers in rural, regional and remote areas who experience faults with their services that last for long periods and disrupt their ability to conduct business, educate their children and stay connected with the rest of the world. The lack of guarantees for internet services also affects consumers in metro areas.

ACCAN's [CSG policy position](#) addresses consumer concerns about existing customer service and reliability measures, and proposes a new model for the future. It is a step towards a new Consumer Communications Standard. The Regional, Rural and Remote Communications Coalition is also calling for changes to the CSG.

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<sup>13</sup> ACCAN, 'A Telecommunications Guarantee for the Future', <https://accan.org.au/hot-issues/1346-a-telecommunications-guarantee-for-the-future>, January 2017.

We were pleased that the Productivity Commission’s [draft report](#) into the Universal Service Obligation urges the Government to “proceed with its planned review of telecommunications consumer safeguards as a matter of priority.” We look forward to the review of the consumer safeguards in 2018 and we hope this results in an updated CSG that covers both voice and data services for all consumers and small businesses.

## Appendix 2

### Policy Position: The Connected Consumer

June 2016

Telecommunication services have and are rapidly evolving. ACCAN believes the enhancements to quality of life and economic opportunities from being connected should be available to all consumers. In looking at the future of communication services in Australia it is time for a new focus on consumer needs. The focus to date has centred too much on developments in the telecommunications market and infrastructure rollout. A consumer focus reveals a number of policy gaps that must be addressed now.

#### *Importance of connected consumers*

Communication services are an enabler for consumers to perform a variety of functions, rather than deliver value by themselves. Therefore they should be judged on how well they are utilised for the capabilities that they deliver. This capabilities framework considers what a consumer can do. It is based on the theoretical framework, the capabilities approach, developed by Nobel Prize winning economist Amartya Sen.<sup>14</sup> This approach is applicable across political, economic and cultural borders. People can choose to do the things they want to do when they have the commodities available, as well as the environment and personal characteristics that allow them to perform these actions. In the twenty first century this results in the idea of *connectability*, the absence of which results in social isolation, loss of functions, reduced economic livelihood, inhibitor of participation in social life, insecurity and potential threat to safety.<sup>15</sup> It is important that we ensure that all consumers can choose to be connected consumers.

#### *The gaps*

Unfortunately, market forces do not always result in optimal outcomes for consumers. In applying a connectability approach and examining issues in the market, in collaboration with our members, ACCAN has identified a number of gaps in the current policy framework. A number of protections and obligations that currently exist for consumers need to be re-examined. ACCAN has developed six key principles and associated measures to address the gaps.

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<sup>14</sup> Sen, A, 1999. *Development as Freedom*. OUP, Oxford. The capability approach was originally used in development studies to understand the causes and consequences of not having opportunities to “do” and “be” what is of value to the individual, due to external causes such as poverty or racism. It highlighted that development should be a method to promote an individual’s capabilities, and should be evaluated according to its impact on people’s capabilities. For example a programme to teach school children to read should not just be evaluated by its means i.e. how many children attended class and passed exams, but by how this impacted on these children’s capabilities- such as being literate, empowered, connected and later accessing jobs.

<sup>15</sup> Garnham, Nicholas. "Amartya Sen’s capabilities approach to the evaluation of welfare: Its application to communications." *Communication, citizenship and social policy: Rethinking the limits of the welfare state* (1999): 113-124.

*Six key principles for Connected Consumers*

1. Available essential telecommunication services for all.

Consumers increasingly need guaranteed access to data and voice services.

2. Affordable telecommunication services and targeted measures for low income consumers.

Financial barriers which hinder the optimal take up of services or prevent low income consumers from access to services should be addressed.

3. Service standards applicable on essential services.

Quality standards should apply to essential services. Consumers should have access to information on services to compare providers.

4. Accessible essential services.

Services must be fully accessible to people of all abilities.

5. Ensure all consumers can engage and benefit from online services.

Service delivery bodies should support consumer engagement through their content and design of programs and support to obtain the required telecommunication plans and devices to access services.

6. Increased digital literacy and empowerment.

Consumers need to be sufficiently skilled and confident to engage online and participate in the transition to digital information and service delivery.

The following chart outlines the key areas and the gaps that we have identified.

# Connected Consumers

Available	Voice	Grandfather existing arrangements
	Data	Establish standards Retail obligations
	Mobile	Increase coverage
Affordable	Market	nbn pricing examined  Geographic pricing and competitive equity
	Low income	Eligibility for Telephone Allowance extended Increased allowance rates
Service standards	Voice and data	Wholesale standards for fixed networks Compensation and incentives
	Comparative retail information	Broadband performance information
Accessible	Ongoing research into barriers	Specialist equipment
		Content format
		Informed customer service
Online services	Ongoing analysis of citizen readiness to engage	Service delivery body / DTO to address barriers by redistribution of savings  Content and service design principles to maximise take up
Literacy and empowerment	Identify gaps in confidence and skill	Education programs that are tailored and delivered through variety of channels  Showcasing uses and applications

## **Availability of essential telecommunication services for all**

Guaranteed access to a standard telephone service<sup>16</sup> no longer ensures access to the services that consumers require or need to achieve connectability. Data services are increasingly important. The essentiality of communication services today can be seen by how they are used;

- **in life threatening situations for personal safety and security** (8.5 million calls were made to Triple Zero in 2014, 67% of which were made from mobile phones),
- **for self-progression and personal development** (56% of Australians reported working or studying from home),
- **to complete essential tasks, e-commerce and economic livelihood, success and well-being** (77% of Australians banked and paid bills online, 64% bought or sold items, 49% accessed government websites), and
- **for social networking, interaction and communication** (94% used the internet for emailing, 69% of Australians used the internet for social networking).<sup>17</sup>

While the Government, through the National Broadband Network (NBN)<sup>18</sup>, intends to deliver data services to all Australians, there are a number of gaps in this policy:

- There is no minimum level of data service guaranteed to consumers.
- Consumers waiting for nbn to reach them have no guaranteed access to data services. Many of these premises have been categorised as under-served and may not be connected to nbn until 2021.
- There is no retail provider obligated to provide data services.
- Consumers who have a preference for mobile products have no protections, guarantees or standards applied to their services.

The following should be adopted:

1. Grandfathering the obligation to provide standard telephone services to protect consumers who continue to rely on these services
2. Broadband services should be recognised as an essential service to which all citizens should have access
3. A minimum standard applied at network level in terms speed (download and upload), committed information rate, latency, jitter, packet loss and reliability should be established
4. Barriers at retail levels should be addressed as appropriate.
5. Further consideration needs to be given as to what standard of data services is required by consumers

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<sup>16</sup> A carriage service with any to any connectivity for the purpose of voice telephony or its equivalent, as defined in Section 6 of the Telecommunications (Consumer Protections and Service Standard) Act 1999. [http://www.austlii.edu.au/au/legis/cth/consol\\_act/tpassa1999620/s6.html](http://www.austlii.edu.au/au/legis/cth/consol_act/tpassa1999620/s6.html)

<sup>17</sup> ACMA Communications Report 2013 – 2014 <http://www.acma.gov.au/theACMA/Library/Corporate-library/Corporate-publications/communications-report>, pages 37 and 55

<sup>18</sup> Delivered by nbn, the company

6. Mobile network coverage should extend to cover a greater proportion of the population and along important roadways. Preferably, the extensions should ensure competition through open access networks.

### ***Affordability of telecommunication services for all, and targeted measures for low income consumers***

Leading academics define affordability as a consumer's ability to pay for and use telecommunications without sacrificing expenditure on other essential services and items.<sup>19</sup> Affordability is particularly an issue for those that have low predictability of cost and have less well developed coping mechanisms. Affordability is a known barrier for broadband services. Nationally the rate of households with internet is currently 86%, with access falling to just 66% for households in the lowest income bracket.<sup>20</sup> The ABS found that "For households with children under 15 years, the most common reason given for not accessing the internet was cost (43%)".<sup>21</sup> Current indications are that broadband affordability will become an increasing concern. NBN products last year showed a real price increase of 4.6%, while the cost of other telecommunication services decreased.<sup>22</sup>

ACCAN has identified the following areas of concern;

1. The funding model for nbn puts the social policy premise for which it was established at risk.
2. The potential affordability inequity created by some consumers being served by two fixed networks for their phone and internet services.
3. The inadequacy of the telephone allowance in ameliorating affordability barriers.<sup>23</sup>

The gaps should be addressed through:

1. Examination of nbn pricing model.
2. Affordability of equivalent services needs to be considered from the consumer's perspective across the different technologies.
3. Eligibility for Government funded subsidy, the Telephone Allowance, needs to be broadened to include all people on the lowest income support payments.
4. Increase to the Telephone Allowance to a level which provides realistic financial support for up-front connection and maintenance costs for telephone and data connectivity.

### ***Service Standards applicable to essential services***

Consumers currently do not have guarantees in relation to connection, reliability and repair timeframes for broadband and mobile services. Complaints to the Telecommunications Industry Ombudsman in relation to internet services have increased by 11.6% year on year. Slow data speeds

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<sup>19</sup> Lewin, D; Milne, C. 2010. *Are telecommunications services universally affordable across the EU? An independent assessment for Vodafone*, [http://www.vodafone.com/content/dam/vodafone/about/public\\_policy/affordability\\_plum.pdf](http://www.vodafone.com/content/dam/vodafone/about/public_policy/affordability_plum.pdf)

<sup>20</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8146.0Main+Features12014-15?OpenDocument>

<sup>21</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8146.0Main+Features12014-15?OpenDocument>

<sup>22</sup> ACCC, 2013-2014 Changes in the Prices Paid for Telecommunications Services [https://www.accc.gov.au/system/files/906\\_ACCC%20Telecommunications%20reports%202013%E2%80%9314\\_web\\_2-June-2015.pdf](https://www.accc.gov.au/system/files/906_ACCC%20Telecommunications%20reports%202013%E2%80%9314_web_2-June-2015.pdf)

<sup>23</sup> ACCAN, Affordability Communications Policy, March 2016. <http://accan.org.au/election-2016/election-issues/1179-affordable-communications>

are the primary driver of complaints with 1,662 issues reported in the October to December 2015 quarter (a 56.8% increase compared to the same period last year).<sup>24</sup> There is a risk to consumers from not having guarantees on these services.

ACCAN believes that a new standard should be implemented. This would take the form of a redesign of the current standards (the Customer Service Guarantee (CSG) for connection and repair timeframes of standard telephone services and the Network Reliability Framework (NRF) for fault repairs on the Telstra copper network). A minimum reliability standard should be achieved by networks. Consumers may have no choice in the network that services them. In effect it may be a monopoly; therefore it is important that minimum connection, repair and reliability standards apply to all networks. While consumers deal directly with retail service providers it is important that incentives and accountability apply to the body which is responsible for delivering each element of the end to end services.

The performance of broadband service is also very important for consumers and can impact on what they can do, and the benefits they derive from services. A number of factors can affect performance of a service; from customer equipment, to the network, the retail service provider, to the content providers. However, it is important that consumers have visibility over the level of performance that they can expect and identify and solve any issues which they encounter.

The gaps should be addressed through:

1. Standards should apply to voice and data services in terms of reliability, connection and fault repair timeframes.<sup>25</sup>
2. Consumers should have access to comparable information on the service performance of retail broadband providers.<sup>26</sup>

### ***Accessibility of essential services for all***

Accessibility of voice services has been addressed through the provision of accessible equipment, tele-typewriters, to enable people who are deaf or have a hearing or speech impairment to communicate. Telecommunication services, particularly data services, are expected to address many barriers faced by Australians with disabilities. The National Disability Strategy states that the NBN “is capable of enabling Australians with disability and their carers to access a range of benefits including e-health services, remote monitoring for assisted living, interactive learning opportunities, employment opportunities, increased connectedness within the community, and improved access to communication services”.<sup>27</sup> Such services can come with a hefty price in terms of the cost of equipment and data allowance, support for which is not currently addressed through the universal services obligation or Government support programmes.

Existing obligations do not address the basic needs of consumers who require additional equipment in order to use data services. Mobile and fixed broadband services, and the associated equipment,

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<sup>24</sup> Telecommunications Industry Ombudsman, October to December 2015 quarterly report.

<https://www.tio.com.au/publications/news/complaint-statistics-october-december-2015>

<sup>25</sup> ACCAN, A Guarantee for the Future, March 2016. <http://accan.org.au/election-2016/election-issues/1166-future-guarantee>

<sup>26</sup> ACCAN, Independent Broadband Performance Information, March 2016. <http://accan.org.au/election-2016/election-issues/1178-broadband-performance>

<sup>27</sup> National Disability Strategy 2010-2020,

[https://www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf) p.g. 27

may inherently better meet the needs of consumers with accessibility issues. For these citizens, the cost of the additional devices needed can be significantly more than for average consumers. Further support may be required for consumers with additional accessibility barriers. This may include greater support from the telecommunications companies in their knowledge of products and services which are appropriate for consumers with disabilities. Previous ACCAN studies found that it was very difficult for consumers to get appropriate information.<sup>28</sup> If telecommunication services are to be used to address social inclusion, to improve service delivery and health, then equipment and costs of being connected need to be addressed through targeted programs.

***Ensure all consumers can engage and benefit from online service delivery***

Telecommunication services and the NBN are, and will increasingly be, relied on to deliver other services, such as education and government services. This method of delivery is seen as a better method to interact with citizens, compared to other methods such as in person or postal, and produces cost savings to the Government from doing so. Deloitte estimates that digitising customer transactions in government will result in a net lifetime present value benefit of \$20.5 billion (government benefits of \$17.9 billion and costs of \$6.1 billion and citizen benefits of \$8.7b).<sup>29</sup>

To deliver these, however, the telecommunications network and household setup need to be at a certain standard. This is not always the case. There may be a number of premises for which the telecommunications network is not up to the standard needed to deliver these services. Furthermore, consumers may not have the technology (e.g. suitable devices or required software) or plan (e.g. suitable level of data allowance) to complete these online services and tasks.

One suggested approach could be the use of zero rating for Government websites (i.e. data is not charged for using these sites). However, this would need to apply to all plans and providers, including mobile networks to ensure equity, which may present a challenge. Furthermore, not all citizens interact or face difficulties interacting, to the same level with e-Government and online services. Targeted programs to those that face greater cost with interacting may be more beneficial.<sup>30</sup>

The Digital Transformation Office (DTO) and the body delivering the service may be best placed to establish systems to deal with the delivery of these services. They are equipped to play a lead coordinating role, and have a technical understanding of the level of service and equipment and software required. Furthermore, this would require content providers to design services with consumers’ ability to use them in mind. If the delivery of online services requires the use of special equipment, for example, for consumers with disability, the government agency concerned should provide support for the purchase of this equipment. As a further example, the cost of equipment for school age students should be considered and programs to address the affordability of these designed.

Further analysis is required of the readiness of citizens and consumers for the delivery of online services. Some of the benefits accruing to government could be redistributed to prepare citizens and meet the costs of equipment or data plans required.

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<sup>28</sup> ACCAN Disability Mystery Shopper Report. September 2014. <http://accan.org.au/our-work/submissions/953-accan-s-disability-mystery-shopping-report?highlight=WyjkaXNhYmlsaXR5IiwjJ2Rpc2FiaWxpdHkiLCJteXNOZXJ5Iiwic2hvcHBpbmciLCJkaXNhYmlsaXR5IG15c3RlcnkiLCJkaXNhYmlsaXR5IG15c3Rlcnkgc2hvcHBpbmciLCJteXNOZXJ5IHNo3BwaW5nIl0=>

<sup>29</sup> Deloitte Access Economics 2015. Digital government transformation.

<sup>30</sup> See affordability policy for further information. <http://accan.org.au/our-work/policy/1179-affordable-communications>

***Increased digital literacy and empowerment***

It is important that consumers realise the benefits of communication services. This can only be done through consumers using the services to build perceptions of value. Paradoxically, to use services, consumers must have ability, skill and confidence. Lack of confidence, low ability or fear of technology is reported to be one of the main barriers to use.

The main reasons given for not accessing the internet at home are: no need (63%), lack of confidence or knowledge (22%), and cost (16%).<sup>31</sup> Studies by the CSIRO support the finding that confidence is an inhibitor to take up and use of services.<sup>32</sup>

As with all new technologies, consumers need to be informed and educated about the benefits and uses of data services. Raising digital literacy through education programs and showcasing uses and innovative applications is required. Ongoing monitoring of consumers attitudes to using communications services is needed to support targeted programs that increase confidence and digital literacy.

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<sup>31</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8146.0Main+Features12014-15?OpenDocument>

<sup>32</sup> CSIRO, 2013. *Broadband Impact and Challenges, realising the benefits from the digital economy.*  
<https://publications.csiro.au/rpr/download?pid=csiro:EP1312215&dsid=DS1>