

National Broadband Network Companies Amendment (Commitment to Public Ownership) Bill 2024

18 December 2024

Recommendations

This submission recommends:

- > The Parliament of Australia pass the bill to commit to ongoing public ownership over NBN Co and the National Broadband Network.
- > The Australian Government use public ownership of the NBN to support initiatives to provide affordable, accessible and quality communications services to all Australians.

About this submission

The Australian Communications Consumer Action Network (ACCAN) is pleased to provide this submission to the Senate Environment and Communications Legislation Committee (**the Committee**) about the National Broadband Network Companies Amendment (Commitment to Public Ownership) Bill 2024 [Provisions] (**the bill**).

ACCAN strongly supports the initiative by the Australian Government to ensure that the National Broadband Network (**NBN**) remains in public ownership. As a monopoly infrastructure service provider supplying essential communications services, and the Statutory Infrastructure Provider (**SIP**) for the vast majority of Australian households, it is essential that NBN remains effectively regulated in the long-term interest of end-users. Retaining NBN in public hands will contribute to better governance and support the Australian Government in achieving its policy outcomes.

Introduction

The National Broadband Network is a significant achievement of the Australian Government to build and deliver a publicly owned broadband internet provider, capable of delivering superfast internet across Australia's wide and diverse landmass. It is a unique achievement by international standards, replicated only by New Zealand in creating Chorus, a similar wholesale broadband service provider.

As the peak communications consumer body, ACCAN strongly supports the continued public ownership of the NBN. A publicly owned NBN Co will be more responsive to the Australian Government's policy initiatives, particularly in the delivery of a universal service obligation, and as a regulated public utility will be better placed to deliver greater value to end-users. Harmonising the provision of communications services with Australian Government communications policy will better promote uptake of communications technology and support economic outcomes for all Australians.

Communications Policy Context

The communications landscape in Australia has changed drastically since NBN Co was first established in 2009, with communications policy and regulation often lagging behind new developments. Since the network's original 2013 Special Access Undertaking (**SAU**)¹ was followed soon after by the adoption of the Multi-Technology Mix in 2014,² it was only with the adoption of the August 2023 SAU Variation³ that the entirety of the NBN became regulated by the Australian Competition and Consumer Commission (**ACCC**).

Further widespread social changes, such as the emergence of COVID-19, the 2019-20 bushfire season, and unexpected outages such as the Optus Outage of 8 November 2023, have highlighted the essential nature of communications. Voice calls and broadband internet have greatly expanded Australians' economic opportunities and social connectivity, while also informing and aiding Australians in emergency scenarios. In both day-to-day and emergency situations, Australians expect their communications services to be fast, effective and reliable.

This is mirrored by a substantial number of Australian Government reviews into communications services, including the telecommunications Universal Service Obligation (**USO**), the Regional Broadband Scheme (**RBS**) and broader funding of USO services, the Regional Telecommunications Review 2024 (**RTR**) and the post-Optus Outage Bean Review and reforms to Triple Zero.

While the recommendations of these reviews are still being implemented, it is likely that the Australian Government will consolidate overlapping regulations, while implementing stronger governance regimes to ensure the ongoing reliability and security of the Australian communications sector. To this end, ACCAN considers that the NBN will continue to play an important role in the Australian Government's communications policy, as the nation's default wholesale service provider.

¹ NBN Co, NBN Co Special Access Undertaking (Report, 18 November 2013).

² Allie Coyne, "Turnbull gives NBN Co green light to continue MTM build", *IT News*, (online, 9 April 2014) <<https://www.itnews.com.au/news/turnbull-gives-nbn-co-green-light-to-continue-mtm-build-382248>>.

³ NBN Co, NBN Co Special Access Undertaking (Report, 16 August 2023).

Benefits of Public Ownership

The National Broadband Network, as originally conceived, was not necessarily intended to be a public network, with the Australian Government originally seeking for a privatised Telstra to develop the network, before later mooting a public-private model for NBN Co.⁴ Only in 2011 did the Australian Government opt towards a public-only model, with the door for potential privatisation left open once NBN Co had fully recovered its costs.

However, the set of regulations underpinning the NBN have changed significantly over the past decade, with the adoption of the August 2023 SAU Variation bringing NBN Co more into line with the regulation of other essential utility services, such as energy and water. In particular, the requirement to incorporate the feedback of Access Seekers (i.e. retailers) and Consumer Advocacy Groups into NBN's expenditure proposal,⁵ will promote efficiency and greater fulfillment of consumer need.

In ACCAN's view, the new set of regulations arising from the August 2023 SAU Variation eliminate any apparent benefit from private ownership of NBN Co, as the incentive for profit maximisation would necessarily be constrained through the ACCC's regulation of NBN as a monopoly infrastructure service provider.⁶ Studies of privatisation of Australian Government assets further indicate that purported benefits of privatisation are usually attributable to more effective corporate governance as well as regulatory and competitive reforms.⁷

Further, the Australian Government has seen similar conditions that led Telstra to reject the offer to build the NBN replicated in other infrastructure sectors, with Sydney Airport choosing to not exercise its prerogative to build the Western Sydney Airport in 2017, requiring the creation of a government-owned corporation to manage this project.⁸

Should the Australian Government follow the recommendation within the 2024 RTR to shift the USO obligation from Telstra to NBN Co,⁹ it would be preferable to retain NBN in public ownership to ensure greater alignment between Australian Government policy and NBN governance and operations, a perspective also raised within the RTR.¹⁰ Greater public oversight of NBN will better allow the network to deliver affordable, quality and reliable communications to all Australians, while promoting greater competition within the retail sector.

⁴ The Hon Wayne Swan MP, Deputy Prime Minister and Treasurer, "New National Broadband Network", (Media Release, 7 April 2009) <<https://ministers.treasury.gov.au/ministers/wayne-swan-2007/media-releases/new-national-broadband-network>>.

⁵ NBN Co, *NBN Co Special Access Undertaking* (Report, August 2023) cl 5.7(a)-(b), sch 2G cl 2.5(d)(iii).

⁶ Audrey Reoch, 'Making NBN's Monopoly Broadband Work For All Australians' (2023) 31(337) *Australian Journal of Competition and Consumer Law*.

⁷ Malcolm Abbott and Bruce Cohen, 'A Survey of the Privatisation of Government-Owned Enterprises in Australia since the 1980s' (2024) *The Australian Economic Review*.

⁸ Gareth Hutchens, 'Government says it will build second Sydney airport', *The Guardian* (online, 2 May 2017) <<https://www.theguardian.com/australia-news/2017/may/02/government-build-second-sydney-airport>>.

⁹ Commonwealth of Australia, *2024 Regional Telecommunications Review Connecting communities, reaching every region* (Report, 2024) 4.

¹⁰ *Ibid* 8.

The Legislation

ACCAN supports the legislative amendments proposed within the bill, including the adoption of the statement of intent in Section 43A:

It is the Parliament's intention, in recognition of the importance of the national broadband network as nation wide infrastructure, that:

- (a) *the national broadband network is operated by NBN Co; and*
- (b) *NBN Co remains wholly owned by the Commonwealth¹¹*

ACCAN notes the advice of the Bills Digest that this statement of intent would not prevent future parliaments from reconsidering the public ownership of NBN, due to the principle of parliamentary sovereignty.¹² Nonetheless, ACCAN views this as an appropriate reflection of community and parliamentary sentiment in retaining this piece of infrastructure within public hands, as well as creating an additional hurdle to privatisation, should this be considered by future parliaments.¹³

Conclusion

The retention of NBN within public ownership is in the long-term interest of Australian consumers. ACCAN supports the Australian Government's intent and legislative action to ensure that the NBN remains a publicly owned asset, which will better align the NBN with communications policy and support the provision of affordable, reliable and quality communication services across Australia.

ACCAN thanks the Committee for this opportunity to comment on the bill. Should you wish to discuss this further, please do not hesitate to contact Audrey Isadora Reoch, Director of Economic Regulation, at audrey.reoch@accan.org.au or (02) 9288 4012.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)

¹¹ National Broadband Network Companies Amendment (Commitment to Public Ownership) Bill 2024 (Cth) sch 1 sub-div AA s 43A.

¹² Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), *Bills Digest* (Digest No. 24, 2024-25, 29 October 2024) 7-8.

¹³ *Ibid* 7-8.