**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

***Telecommunications Service Provider (NBN Service Migration) Determination 2018***

**Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* (the **Determination**) under subsection 99(1) of the *Telecommunications Act 1997* (the **Act**).

Pursuant to subsection 99(1) of the Act, the ACMA may, by legislative instrument, make a determination, called a service provider determination, setting out rules that apply to service providers in relation to the supply of either or both of the following:

1. specified carriage services;
2. specified content services.

The Determination does not apply to carriers.

Subsection 99(3) of the Act provides, relevantly, that the ACMA must not make a service provider determination unless the determination relates to a matter specified in the regulations. The relevant enabling regulations are the *Telecommunications Regulations 2001* (the **Regulations**). Regulation 3.13 of the Regulations applies to, among other things, the supply of a standard telephone service and a carriage service that enables customers to access the internet (see sub-regulations 3.13(1)(a) and (c) respectively).  Sub-regulation 3.13(2) provides that the ACMA may make a service provider determination setting out rules that apply to service providers such as carriage service providers (**CSPs**) in relation to a customer’s interests as regards the supply of those services.

The Determination relates to a customer’s interests regarding the supply of an NBN service which enables customers to access the internet and a standard telephone service and as such, subsection 99(3) is satisfied.

**Purpose and operation of the instrument**

As part of its NBN Consumer Experience program[[1]](#footnote-2), the ACMA has made the Determination as well as the following legislative instruments to impose obligations on NBN CSPs and carriers to improve consumer experiences with services supplied using the NBN and to enable more effective enforcement action by the ACMA:

* the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (the **Service Continuity Standard**); and
* the *Telecommunications (NBN Consumer Information) Industry Standard 2018*.

Under this program, the ACMA has also made two legislative instruments that have application beyond CSPs supplying services over the NBN:

* the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*; and
* the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* (the **RKRs**).

The Determination has three main aims. The first aim is to ensure that all new NBN services are tested upon migration to the NBN to confirm that the service is operational. The Determination establishes a line testing process for CSPs that supply NBN services directly to consumers (**NBN CSPs**) to undertake promptly after migration. The testing process will also assist NBN CSPs to identify and address issues that arise when migration to the NBN occurs at a consumer’s premises. The Determination may be regarded as formalising some existing industry processes by mandating that these tests are undertaken, and to provide consumers with options and remedies in the event that their NBN connection or provision of a service over the NBN is not successful.

This aim corresponds to problems identified through ACMA information-gathering and research activities, specifically that:

* Some consumers are left without a working telecommunications service when a problem arises during their move to the NBN. ACMA research of households that connected to the NBN in the 12 months prior to November–December 2017 showed that approximately one third of households were left without their service when moving to the new network. For nearly one in 12 households, this interruption was for two weeks or more.
* Some consumers experience faults or other difficulties with their new NBN service shortly after connection. Analysis of complaints information obtained by the ACMA from a selection of CSPs in the second half of 2017 showed that many consumers experience issues at the time of transitioning from their legacy network to the NBN, or immediately upon activation of their NBN service.

The second aim of the Determination is to minimise loss of service continuity for NBN consumers at the time of migrating to the NBN. This is achieved by requiring the provision of services that, to a large extent, act as a replacement for an NBN service, or by alternative arrangements agreed with a consumer that may not involve provision of a service. The Service Continuity Standard has a similar and complementary aim. The Determination addresses scenarios involving a loss of service continuity that are not addressed by that standard.

The third aim of the Determination is to ensure that all new services that are connected using part of the legacy copper network are assessed to confirm that the underlying copper infrastructure is capable of supporting the speed specified in the NBN plan sold to the customer.

The Determination also requires NBN CSPs to keep sufficient records to demonstrate compliance with the requirements of the Determination. It also requires other CSPs to provide reasonable assistance to NBN CSPs regarding post-migration testing, supply of interim services and line capability assessment.

A provision-by-provision description of the Determination is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

**Documents incorporated by reference**

The Determination incorporates the following Acts, legislative instruments and instruments (including by the adoption of definitions), or otherwise refers to them:

* the Act;
* the *Acts Interpretation Act 1901* (the **AIA**);
* the *Handling of Life Threatening and Unwelcome Communications Code C252:2017* (the **UC Code**);
* the LA;
* the *National Broadband Network Companies Act 2011*;
* the Service Continuity Standard*;*
* the *Telecommunications (Consumer Protection and Service Standards) Act 1999;*
* the *Telecommunications Regulations 2001;* and
* the *Wholesale Broadband Agreement*, being the standard form of access agreement for the purposes of Part XIC of the *Competition and Consumer Act 2010*, setting out the contractual terms on which NBN Co Limited supplies products and services to the persons mentioned in section 4 of the Determination (the **WBA**).

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>).

The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the AIA, subsection 13(1) of the LA and section 589 of the Act.

The other instruments listed above are incorporated as in force from time to time, in accordance with section 6 of the Determination, subsection 14(1) of the LA and section 589 of the Act.

Subsection 589(2) of the Act also provides that an instrument made under the Act may make provision for certain matters by applying, adopting or incorporating (with or without modifications) matters contained in any other instrument or writing, as in force or existing at a particular time or from time to time, even if the other instrument or writing does not yet exist when the first instrument is made. This power has been relied upon to incorporate the UC Code and the WBA. The UCC is available on the ACMA’s register of industry codes which is published on its website: [www.acma.gov.au](http://www.acma.gov.au). The WBA is available on NBN Co’s website at https://www.nbnco.com.au.

**Consultation**

Before the Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA consulted with Communications Alliance (being a body that represents the telecommunications industry), individual industry stakeholders, consumer groups and the general public on the making of the Determination. Between 10 April and 11 May 2018, the ACMA conducted a public consultation process inviting submissions on the proposed changes through the release of a draft of the Determination together with a consultation paper on the ACMA’s website.

As required under subsection 99(4) of the Act, the ACMA also consulted the Australian Competition and Consumer Commission (**ACCC**).

The ACMA received 16 submissions in response to the draft instrument and consultation paper. The ACMA considered all relevant issues raised by the submissions.

As a result of the issues raised in submissions, the ACMA re-drafted the Determination and conducted further consultation, specifically with the ACCC, Communications Alliance, individual industry stakeholders and the Australian Communications Consumer Action Network. Between 27 June and 29 June 2018, the ACMA conducted a targeted consultation process inviting submissions on the revised draft of the Determination. The ACMA received 5 further submissions in response to the re-draft of the Determination. The ACMA considered all relevant issues raised by the submissions in the initial and targeted consultation processes, when making the Determination.

The following key issues were also raised during the consultation process:

* 1. Relevant obligations should apply to NBN Co Limited, in its capacity as a carrier, including requirements relating to reasonable assistance, charging and the provision of reports relating to line testing.
	2. The timeframes attached to requirements to undertake service testing were too short.
	3. If a consumer opted to use a modem other than a CSP supplied modem, that modem would be unlikely to be preconfigured to enable remote management by the CSP for the purpose of testing to confirm that services were operational.
	4. The determination should not require CSPs to perform line capability testing when data provided by NBN Co Limited to its customers served the same purpose.
	5. Reasonable assistance could be required from other CSPs to enable smaller providers to comply with service testing and line capability requirements.
	6. Customer-initiated speed testing could be costly to implement and of limited benefit to consumers.
	7. A prohibition on billing for a service that was not operational could be costly to implement, and the same outcome could be achieved by requiring CSPs to automatically refund or credit consumer accounts.

In response to stakeholder feedback received during the consultation, the ACMA updated the Determination to:

* change the name of the Determination to reflect the different scope of the instrument following consultation;
* remove the requirement for CSPs to conduct customer-initiated speed testing;
* provide an exemption from undertaking line testing when customers provide their own modems;
* require CSPs to make modem configuration settings available to their consumers so that consumers who elect to use a modem of their choice are able to configure that modem;
* allow CSPs to rely on the NBN Co Limited-supplied maximum theoretical speed information in lieu of performing their own line capability testing on a consumer’s line;
* include a requirement to develop individual migration plans and conduct audits in circumstances when customers have experienced lengthy delays in establishing their connection to the NBN (as also exists in the Service Continuity Standard); and
* require that the amount payable for the provision of an interim service must not exceed the monthly fee applicable to the lowest speed tier plan offered by the CSP.

**Regulatory impact assessment**

The Determination forms part of a package of measures aimed at improving the experience of consumers moving to and using the NBN. Other parts of the package include three industry standards that the ACMA has made as required by the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* (the **Direction**). Under the Direction, the ACMA must make industry standards dealing with:

* the provision of information to consumers about retail services supplied over the NBN;
* the handling of complaints made by consumers to retail CSPs; and
* promoting the continuity of voice and broadband services.

In addition to these industry standards and the Determination, the ACMA also made the RKRs which require specified CSPs to keep records about complaints they have received and to provide reports to the ACMA on a quarterly basis.

A Regulation Impact Statement (**RIS**) was prepared in relation to the Direction (OBPR Reference Number: 23048) and which applied to the proposal to make a service provider determination in relation to line testing by CSPs. As stated in the Explanatory Statement to the Direction:

The RIS considered options for targeted regulatory measures to improve the NBN consumer experience.

The RIS concluded that the regulatory impacts of this instrument are on business providing retail telecommunications services over the NBN, NBN Co Limited, and other suppliers in the NBN supply chain. The average annual regulatory costs to these businesses were estimated to be $1.49 million. There are no regulatory impacts on community organisations or individuals.

**Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

**Overview of the Determination**

The Determination aims to ensure:

* that all new NBN services are tested upon migration to the new network to confirm that the service is operational;
* that all consumers that migrate to the NBN are offered options to maximise service continuity in the event of issues with connecting to the NBN or establishing an NBN service. (This is sought to be achieved by aligning the arrangements for the provision of interim and backup services with those established under the Service Continuity Standard and by providing CSPs with the ability to agree on alternative arrangements with their customers); and
* that all new services that are connected using the legacy copper network are capable of supporting the speed specified in the NBN plan sold to the customer, and where that network is not capable of supporting the specified speed, that remedies are made available to those customers.

**Human rights implications**

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not raise any human rights issues requiring further discussion.

**Conclusion**

The Determination is compatible with human rights as it does not raise any human rights issues requiring further discussion.

**Attachment A**

**Notes to the *Telecommunications Service Provider (NBN Service Migration) Determination 2018***

**Part 1–Preliminary**

**Section 1 Name**

This section provides for the instrument to be cited as the *Telecommunications Service Provider (NBN Service Migration) Determination 2018*.

**Section 2 Commencement**

This section provides for the instrument to commence on 21 September 2018.

**Section 3 Authority**

This section provides that the Standard is made under subsection 99(1) of the Act.

**Section 4 Application**

This section provides, for the purposes of subsection 99(1) of the Act, that the Determination applies to carriage service providers who (directly or indirectly) supply either or both an NBN broadband service or an NBN voice service.

**Section 5 Definitions**

This section defines a number of key terms used throughout the Determination and notes that a number of other expressions used in the Determination are defined in the Act or other legislation as specifically referred to.

The definitionof ***alternative arrangement*** provides a non-exhaustive list of the types of arrangements that may be agreed by the NBN CSP and the consumer if the CSP is not able to provide that consumer with an interim service. The Determination includes alternative arrangements as the ACMA recognises that not all CSPs are able to provide interim services and that not all consumers will benefit from an interim service. The ACMA nonetheless considers that any loss of service continuity should be appropriately offset by an arrangement offered by the NBN CSP and agreed to by the consumer.

The Service Continuity Standard provides consumers with the option of reconnecting to legacy services if they experience loss of service continuity when migrating to the NBN, in circumstances when legacy infrastructure remains in place. The Determination also includes, in the list of examples of alternative arrangements, reconnection to legacy services. While the Determination does not mandate this arrangement, the ACMA considers that reconnection to legacy services may be appropriate in some circumstances when remediation of the NBN service cannot take place for a lengthy period.

**Section 6 References to other instruments**

This section provides that in the instrument, unless the contrary intention appears, a reference to any legislative or other instrument is a reference to that legislative or other instrument as in force from time to time.

**Part 2– Rules about testing following service migration**

**Section 7 Post-migration testing**

This section establishes the procedure according to which the NBN CSP must perform, or arrange the performance of, post-migration line testing. The objective of this testing is to determine whether or not the NBN service is operational.

Subsection 7(1) provides that the requirement to perform post-migration testing only applies where:

* the location of the consumer’s premises has been declared ready for service by NBN Co; and
* the NBN CSP has entered into a consumer contract with the consumer for the supply of an NBN service to the premises.

Subsection 7(2) requires the NBN CSP to perform, or arrange for the performance of, post-migration testing within one working day of the consumer’s premises being migrated to the NBN, to determine whether or not the service is operational. The NBN CSP may arrange for the performance of post-migration line testing by another party (e.g. by another CSP with whom it has a contractual relationship).

Subsection 7(3) imposes requirements on the NBN CSP in the event that the initial post-migration testing determines that the consumer’s service is not operational. In such circumstances, within one working day after it considers the issue has been rectified, the NBN CSP must repeat the post-migration testing, or arrange for the post-migration testing to be repeated.

Subsection 7(4) requires the process in subsection 7(3) to be repeated by the NBN CSP until the results of post-migration testing indicate that the service is operational. This is intended to ensure that all NBN services have been tested to identify services that are not operational and so that any issues with the service are identified and rectified.

Subsection 7(5) provides that the NBN CSP will not contravene the requirement to conduct post-migration line testing, where it takes all reasonable steps to perform post-migration testing, but is unable to do so because:

* the consumer is using their own modem in connection with the NBN service; or
* the consumer is required to activate the NBN service to facilitate the performance of the post-migration testing, but has not done so.

A service will have been ***activated*** if the modem has been connected inside the consumer’s premises and it has been turned on.

**Part 3– Rules about the supply of an interim service**

**Section 8 Requirement to supply an interim service only applies to particular services**

This section is intended to limit the scope of the rules in Part 3 about supply of an interim service, to those migrations that are not eligible to be reconnected to a legacy service under the Service Continuity Standard.

Section 8 has the effect that where:

* the area in which the consumer’s premises is located has been declared ready for service by NBN Co; and
* the NBN CSP has entered into a consumer contract with the consumer for the supply of an NBN service to the premises; and

either:

* the migration is not a parallel migration; or
* the following applies:
	+ the migration is a parallel migration; and
	+ the NBN CSP is not the legacy CSP;

and either:

* + a port of the consumer’s telephone number has occurred; or
	+ the legacy CSP has disconnected the legacy service at the request of the consumer,

the NBN CSP must supply an interim service to the consumer if and as required under subsection 9(1).

**Section 9 Requirement to supply an interim service**

This section applies in circumstances where the requirements in section 8 have been satisfied and provides that the NBN CSP must supply an interim service, unless relevant exceptions apply.

Subsection 9(1) provides that the requirement to supply an interim service applies in circumstances where:

* migration at the consumer’s premises has not been successful and it is unlikely to be successful within three working days of the NBN CSP becoming aware that the migration was not successful; or
* the migration at the consumer’s premises has been successful, but an operational NBN service has not been supplied to the consumer and cannot be supplied to that consumer within three working days of the NBN CSP becoming aware that the consumer’s NBN service is not operational,

unless an exception under subsection 9(2) applies.

Subsection 9(2) provides that the requirement to provide an interim service under subsection 9(1), will not apply where:

* the NBN CSP has agreed with the consumer on an alternative arrangement: or
* the NBN CSP has:
	+ sought the consumer’s consent to supply the interim service and the consumer does not consent to the supply of the interim service; and
	+ has agreed with the consumer on an alternative arrangement; or
* the NBN CSP is supplying an NBN backup service to the consumer.

Subsection 9(3) provides that, where the consumer has agreed to an alternative arrangement, the alternative arrangement must be expressly agreed upon by the consumer and must not be included as a part of a standard form agreement formulated by the NBN CSP pursuant to section 479 of the Act.

**Section 10 Conditions for the supply of an interim service by an NBN CSP**

Subsection 10(1) provides that where the requirement under subsection 9(1) to supply an interim service applies:

* the amount payable by the consumer to the NBN CSP for the supply of the interim service must not exceed the monthly fee applicable to the lowest speed tier plan offered by the NBN CSP; and
* when the interim service ceases to be supplied, the costs of returning any equipment used in the supply of the interim service must be paid by the NBN CSP.

Subsection 10(2) provides that, in the event the consumer advises the NBN CSP that the interim service supplied by the NBN CSP is not performing as reasonably expected, having regard to the features and limitations of the interim service disclosed to the consumer by the NBN CSP, the NBN CSP must take all reasonable steps to improve the performance of the interim service to the reasonable satisfaction of the consumer.

Subsection 10(3) states that if the performance of the interim service cannot be improved to the reasonable satisfaction of the consumer, the NBN CSP must use its best endeavours to negotiate an alternative arrangement with the consumer.

The effect of subsection 10(4) is that the NBN CSP will no longer be required to provide an interim service to the consumer in circumstances where the consumer and the NBN CSP have agreed on an alternative arrangement under subsection 10(3).

**Section 11 Requirements for an NBN CSP to advise a consumer**

This section operates where the NBN CSP is required to provide an interim service to the consumer under subsection 9(1) of the Determination.

Subsection 11(1) provides that the NBN CSP is required to advise the consumer of the applicable timeframes set out in sections 12 and 13 and details of key features, limitations, fees and charging arrangements for an interim service, as soon as possible after the NBN CSP becomes aware of a matter in subsection 9(1) and before obtaining the consumer’s consent for the supply of that interim service.

**Section 12 Timeframes for the supply of an interim service**

Subsection 12(1) provides that where the NBN CSP is required to supply an interim service to the consumer under subsection 9(1), it must be supplied to the consumer:

* where the consumer is located in an urban area - within 3 working days;
* where the consumer is located in a major rural area - within 4 working days; or
* where the consumer is located in a minor rural or remote area - within 6 working days;

of the NBN CSP obtaining the consumer’s consent to that supply.

The effect of subsection 12(2) is that the requirement to supply an interim service set out in subsection 12(1) ceases to apply where the consumer’s NBN service becomes operational prior to the supply of the interim service in accordance with paragraphs 12(1)(a), (b) and (c), whichever is applicable.

**Section 13 Timeframes for the continued supply of an interim service**

This section requires the NBN CSP to continue supplying the interim service to the consumer until the first of the four events identified in paragraphs 13(a), (b), (c) or (d).

**Part 4 – Rules relating to line capability assessment**

**Section 14 Line capability assessment of next-generation NBN broadband services**

Subsection 14(1) limits the scope of the rules in Part 4 about conduct of a line capability assessment to next-generation NBN broadband services only.

Subsection 14(2) provides that, as soon as practicable, and in any event, within 20 working days, after a next-generation NBN broadband service becomes operational, the NBN CSP supplying the service must either:

* confirm the maximum attainable speed of the service identified in the line capability data relating to the service; or
* perform, or arrange for the performance of, line capability testing in relation to the service.

Subsection 14(3) operates in circumstances where the line capability assessment undertaken pursuant to paragraphs 14(2)(a) or (b) indicates that a part of the network unique to the consumer is not capable of providing the applicable speed. In these circumstances, the NBN CSP is required to advise the consumer of the matters particularised in paragraphs 14(3)(a), (b) and (c), as soon as practicable, and in any event within 5 working days.

Subsection 14(4) makes it clear that nothing in section 14 precludes the NBN CSP and the consumer agreeing to another remedy.

**Part 5 – Other consumer protections in relation to NBN services**

**Section 15 Circumstances where an NBN CSP must not charge a consumer for an NBN service**

This section operates to prohibit consumers from being charged for an NBN service by the NBN CSP unless the NBN service is operational and capable of providing the applicable speed tier to the consumer.

Subsection 15(1) specifies that the NBN CSP may only charge the consumer:

* if the NBN service is operational; and
* either of the conditions set out in subparagraphs 15(1)(b)(i) or (ii) apply in relation to a next-generation NBN service.

The effect of subsection 15(2) is that the NBN CSP does not contravene subsection 15(1) if it promptly provides a refund or credit to the consumer for an amount specified in a bill issued to the consumer.

**Section 16 Requirements where there is unreasonable delay in the supply of an operational NBN service**

Subsection 16(1) provides that the application of section 16 is limited in the same way as section 8.

Subsection 16(2) is enlivened 20 working days after the expiration of a timeframe referred to in paragraph 9(1)(a) or (b) and sets out the circumstances where 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.

Subsection 16(3) provides that a copy of the plan prepared by the NBN CSP in accordance with subsection 16(2), must be sent to the consumer within 2 working days of its being prepared.

Subsection 16(4) sets out the minimum requirements for the plan prepared under subsection 16(2). The plan must include:

* a diagnosis of the issue that has caused the NBN service to be not operational;
* the steps required to remediate the issue and establish an operational NBN service;
* the timeframe for completing the required remedial work;
* any compensation that will be offered to the consumer; and
* contact details that the consumer can use to gain updates on the completion of the remedial work.

Subsection 16(5) provides if a further 20 working days pass after the expiration of the 20 working days mentioned in subsection 16(2), and the NBN service is not operational, the NBN CSP must arrange for a technical audit to be completed within 10 working days after the expiration of the further 20 working days period.

Subsection 16(6) sets out the minimum requirements that the technical audit must identify:

* why the plan mentioned in subsection 16(2) did not result in the establishment of an operational NBN service;
* the steps that are required to remediate the issue and establish an operational NBN service as soon as possible; and
* the measures that can be instituted to avoid similar problems in other cases.

Subsection 16(7) provides that the NBN CSP is not required to comply with subsections 16(2) and 16(5) where it determines on reasonable grounds that the reason why the NBN service is not operational is due to an issue on the consumer’s side of the boundary of the telecommunications network.

**Section 17 Information to be supplied to consumers about the use of a consumer supplied modem**

This section operates where consumers elect to supply their own modem rather than use a modem supplied by the NBN CSP. Where this occurs, it is recognised that the NBN CSP may not be able to perform the test specified in section 7, and accordingly, the NBN CSP must provide information to consumers so that they are aware that the test may not be performed.

Subsection 17(1) identifies the circumstances where the section applies.

Paragraph 17(2)(a) requires the NBN CSP to advise the consumer at the pre-contract stage that it is required to undertake post-migration testing, and that this testing may not be possible where the consumer elects to use a consumer supplied modem.

Paragraph 17(2)(b) applies following the provision of advice to the consumer by the NBN CSP in accordance with the requirements in paragraph 17(2)(a), and requires that the NBN CSP obtain express confirmation from the consumer that they understand that the test may not be performed and that they should contact their NBN CSP if they experience service issues after migration.

Where the consumer is using a consumer supplied modem in connection with the supply of an NBN service and the consumer requests information regarding modem configuration settings from the NBN CSP then the NBN CSP must provide the consumer with that information as soon as practicable in accordance with subsection 17(3).

**Part 6 – Record-Keeping**

**Section 18 Requirement to keep records**

This section requires a carriage service provider referred to in section 4 to keep, retain and make available to the ACMA, records for the purpose of demonstrating compliance with Parts 2 to 5 of the Determination, in accordance with paragraphs 18(a), (b) and (c).

**Part 7 – Reasonable assistance**

**Section 19 Reasonable assistance regarding post-migration testing, the supply of interim services and line capability assessment**

Subsection 19(1) states that section 19 applies to:

* the NBN CSP (the first CSP) who supplies an NBN service to the consumer;
* a person (the second person) mentioned in section 4 who:
* is involved (directly or indirectly) in the supply of the NBN service; and
* has a direct contractual relationship with the first CSP; and
* a person (the third person) mentioned in paragraph 4 who:
* is not the first CSP or the second person;
* is involved (directly or indirectly) in the supply of the NBN service;
* does not have a direct contractual relationship with the first CSP; and
* has a direct contractual relationship with the second person; and
* a person (the other person) mentioned in paragraph 4 who is not the first CSP, the second person or the third person and who is involved (directly or indirectly) in the supply of the NBN service.

Subsections 19(2) to (6) impose requirements on the persons mentioned in subsection 19(1) to provide reasonable assistance to other persons in order to assist them to comply with the rules set out in the Determination.

Under subsection 19(2) the second person must provide reasonable assistance to the first CSP at the request of the first CSP, for the purpose of the first CSP complying with the requirements of Parts 2, 3, 4 and section 16.

Where subsection 19(2) applies and the second person requires the assistance of the third person to meet its obligations under that provision, subsection 19(3) has the effect that the third person must provide reasonable assistance to the second person at the request of the second person.

Where the assistance of the other person is required to enable the first CSP, the second person or the third person to meet its obligations under the section, the other person must provide reasonable assistance to the person mentioned in paragraph 4 who has requested that assistance (the **requesting person**) provided that the requesting person has a direct contractual relationship with the other person under subsection 19(4).

Subsection 19(5) states that a person who is required to provide reasonable assistance under section 19, must not fail or delay to take reasonable actions to cooperate nor withhold or delay the provision of reasonable assistance because there has been no agreement on the payment of costs from another person mentioned in the section.

Subsection 19(6) provides that a person who has agreed to pay reasonable costs associated with the provision of reasonable assistance under section 19 must not bill those costs to the consumer.

**Section 20 Nomination of contact persons**

Subsection 20(1) outlines the requirements for CSPs mentioned in section 4 to:

* nominate one or more contact persons responsible for the coordination of activities for the provision of reasonable assistance;
* notify the relevant CSPs and, where applicable, carriers, of an email address, or other method whereby they can contact the nominated contact person, or to make enquiries about, or request, reasonable assistance under this Part;
* ensure that the inbox for the email address or other method of contact is monitored each working day;
* ensure that all enquiries and requests for reasonable assistance received by the nominated contact person are responded to as soon as practicable; and
* if a telecommunications industry body has established a register for the purpose of Part 7, notify the industry body of the nominated contact persons within 2 working days of making that nomination, relevant contact details, and of any changes to the information notified regarding the nominated contact persons within 2 working days of the information being changed.

Subsection 20(2) provides that subsection 20(1) will not apply to the extent that a carriage service provider has complied with a requirement in section 26 of the Service Continuity Standard that corresponds with the requirement in subsection (1)*.*

1. More information about the ACMA’s NBN Consumer experience program can be found at: <https://www.acma.gov.au/Citizen/Phones/Landlines/The-NBN-and-you/the-nbn-and-the-consumer-experience-scope-and-status>. [↑](#footnote-ref-2)