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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**TELECOMMUNICATIONS (REGIONAL BROADBAND SCHEME)
CHARGE BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications, Cyber Safety and the Arts,
the Honourable Paul Fletcher MP)

TELECOMMUNICATIONS (REGIONAL BROADBAND SCHEME) CHARGE BILL 2019

OUTLINE

The Telecommunications (Regional Broadband Scheme) Charge Bill 2019 (the Bill) will establish an ongoing funding arrangement for fixed wireless and satellite infrastructure through the imposition of a charge. The funding arrangement is called the Regional Broadband Scheme (the Scheme). The Bill is a taxation measure.

The Bill operates in tandem with Schedule 4 to the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 (TLA (CC) Bill). The TLA (CC) Bill sets out the various charge collection and other administration arrangements associated with the Regional Broadband Scheme. Together, the two Bills ensure the continuity of essential regional broadband services.

The Bill reintroduces the taxation measure contained in the Telecommunications (Regional Broadband Scheme) Charge Bill 2018 (the previous Bill), and includes a new concession. The previous Bill was introduced in the House of Representatives on 22 June 2017 and passed the House of Representatives on 10 May 2018, and was introduced into the Senate on 18 June 2018, but subsequently lapsed at the end of that Parliament. The previous Bill was referred to the Senate Environment and Communications Legislation Committee on 22 June 2017 and the Committee reported on 6 September 2017. The previous Bill was also considered by the Senate Standing Committee for the Scrutiny of Bills on 9 August 2017 (Scrutiny Digest 10 of 2017).

NBN Co Limited's (NBN Co) fixed wireless and satellite networks are essential to address the broadband access disadvantage historically experienced by regional Australia. These networks improve social, education and health outcomes for regional Australians and better enable them to participate in the digital economy.

These substantial benefits come at a high cost. Fixed wireless and satellite technologies are the quickest and most cost effective way of providing broadband services to regional Australia. However, these networks are expected to incur a net loss of \$9.8 billion (in net present value terms) over thirty years. NBN Co currently funds these net costs through an internal cross subsidy from its fixed-line networks. This cross subsidy is not sustainable and ongoing funding for essential regional broadband services is at risk.

The Bill will establish a sustainable funding mechanism to ensure NBN Co can continue to deliver the benefits of high-speed broadband to regional Australia. It will require all carriers, including NBN Co, to contribute funding at a rate of \$7.10 per month, per chargeable premises. Chargeable premises are premises where a carriage service provider (i.e. a provider of retail broadband services) provides a designated broadband service. A designated broadband service is a carriage service provided over a fixed-line that is technically capable of providing download transmission speeds of 25 megabits per second (Mbps) or more.

The technical speed requirement is on the line, not the service. This ensures NBN Co's 12 Mbps services are captured and carriers cannot avoid the charge by offering sub-25 Mbps services over lines capable of 25 Mbps or more. For example, it is intended that the charge

would apply to all premises serviced by fibre-to-the-premises (FTTP), fibre-to-the-node (FTTN), fibre-to-the-basement (FTTB), fibre-to-the-curb (FTTC) and hybrid fibre-coaxial (HFC).

Once established, the charge to be levied under the Bill will fund:

- the administrative costs incurred by the Australian Competition and Consumer Commission (ACCC) and the Australian Communication and Media Authority (ACMA) in administering the Scheme, and
- payments made by the Secretary of the Department of Communications and the Arts (the Department) to NBN Co under contracts and grants for the provision of fixed wireless and satellite services (and any other eligible funding recipient under item 13 of Schedule 4 to the TLA(CC) Bill. These contractual and funding arrangements will support NBN Co's ability to fulfil its obligations under the Statutory Infrastructure Provider provisions proposed in Schedule 3 to the TLA (CC) Bill.

Under the Bill, the initial \$7.10 monthly charge will be comprised of a \$7.09 base component and a \$0.01 administrative cost component. The base component is indexed annually to the consumer price index (CPI). The administrative cost component is set for each of the first five years at \$0.01, \$0.00172, \$0.00, \$0.0027 and \$0.00 respectively. The administrative component will be indexed annually to CPI thereafter.

Both the base component and the administrative cost component may be changed by the Minister for Communications (the Minister) via disallowable legislative instrument. However, the sum of the base and administrative cost components for any month cannot exceed the cap (which is \$7.10 in the first eligible financial year, then indexed annually to CPI in the second and subsequent financial years). Any adjustments made by the Minister will not commence until after the disallowance period has elapsed.

The ACCC will review the base and administrative cost components at least once every five years to ensure they are sufficient to meet the reasonable net costs associated with NBN Co's fixed wireless and satellite networks and the administrative costs of the Scheme. It is intended that NBN Co's reasonable costs would be the costs NBN Co incurs to build and maintain its fixed wireless and satellite networks to a standard that enables it to meet its statutory infrastructure provider obligations. The ACCC will give the Minister advice based upon its review, and the Minister must take the advice into account when deciding to change the base and administrative cost components.

The Bill also establishes a charge concession period, to lessen the burden on small carriers and help them transition to paying the charge. For carriers supplying services over their networks to premises that are 'recently connected greenfield premises', the first 55,000 premises will be exempt from the charge for the first five years. For all other carriers, the first 25,000 residential and small business chargeable premises are exempt from the charge for the first five years.

The Bill operates in conjunction with Schedule 4 to the TLA (CC) Bill, which establishes:

- the types of broadband services caught by the charge;
- the types of broadband services exempt from the charge;
- penalties for avoiding the charge;
- the administrative arrangements for assessing and paying the charge, including yearly reporting requirements for carriers;

- the arrangements for paying NBN Co (and other eligible funding recipients) for its fixed wireless and satellite services through contract or grant;
- the Special Account into which funds from the charge will be credited and debited;
- an offset mechanism to allow eligible funding recipients to offset their charge liability against money owed to them under the Scheme;
- information gathering and disclosure powers for the ACCC and the ACMA,
- information reporting obligations for carriers, the ACMA and the Department's Secretary;
- a one off reporting requirement on carriers, which will give the ACCC an initial snapshot of the high-speed, fixed-line broadband market, and
- a requirement for the Scheme to be reviewed during the first four years or as soon as practicable after.

Together, the two Bills establish a suitably flexible, equitable, transparent and sustainable funding mechanism for fixed wireless and satellite networks and ensure the continuity of essential regional broadband services.

FINANCIAL IMPACT STATEMENT

The Regional Broadband Scheme (the Scheme) is budget neutral in the medium to long term. All funds paid to NBN Co Ltd (NBN Co), other eligible funding recipients, the ACMA and the ACCC will be collected as revenue via the charge. There is a small initial impact on the Budget to fund the ACMA and ACCC's initial set up costs in financial years 2016-17 and 2017-18 before funding raised by the charge becomes available. However, once the charge is collected from 2019-20 onwards this initial funding will be reimbursed to the Consolidated Revenue Fund and future administrative costs will be paid from the charge proceeds.

Under the Scheme, all fixed-line infrastructure providers will compete on the same basis. To ease the financial burden on smaller carriers operating recently connected greenfield premises, it is proposed that the first 55,000 premises on their networks are exempt from the charge for the first five years. For all other carriers, the first 25,000 residential and small business chargeable premises are exempt from the charge for the first five years. These exemptions will help smaller carriers transition to paying the charge.

The Scheme introduces a charge at the wholesale level of the telecommunications market. It is a commercial decision for carriers to decide whether to pass on the charge to retail service providers (RSPs), and a decision for RSPs whether to then pass on the charge to consumers. If the charge is passed through to consumers, the vast majority of consumers will not experience a price rise, since NBN Co is already 'paying' the charge, through its opaque internal cross-subsidy, and passing the costs onto its wholesale customers. The Government estimates this will be the case for 95 per cent of consumers by 2020. For the remaining 5 per cent, the Government expects competition will put downward pressure on prices.

The following figures published in the 2019-20 Budget show the impact of the Scheme over the forward estimates and assumed the scheme would start in 2019-20 with collections and payments occurring from 2020-21.

	Impact on underlying cash (\$ millions)				
	2019-20	2020-21	2021-22	2022-23	Total
Expenditure	0.0	-28.002	-29.559	-32.540	-90.101
Revenue	0.0	29.218	29.734	32.540	91.492
Total	0.0	1.216	0.175	0.000	1.391

REGULATION IMPACT STATEMENT

The Regional Broadband Scheme

Introduction

This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Communications and the Arts. The purpose of this RIS is to assist the Australian Government to make a decision about the design and implementation of a funding arrangement for providing broadband services to regional areas, which due to high costs and low population density, cannot be provided on a commercial basis. These services are currently being provided by NBN Co Limited's (NBN Co) fixed wireless and satellite networks and are funded through an opaque internal cross-subsidy from NBN Co's profitable fixed-line networks.

In 2013 the Government commissioned the Independent Cost-Benefit Analysis of Broadband and Review of Regulation (the Vertigan Review). The Vertigan Review considered funding arrangements for fixed wireless and satellite services. In December 2014 the Government responded to the Vertigan Review, deciding to introduce a new funding arrangement for those services. The Government published its decision in the *Telecommunications and Structural Reform paper* (the 2014 policy paper).¹ The funding arrangement would take the form of an industry charge to fund the net costs generated by NBN Co's fixed wireless and satellite networks, replacing the company's opaque internal cross subsidy. This proposed funding arrangement is known as the Regional Broadband Scheme (the Scheme).

In bringing its broadband policy reforms forward, the Government has adopted the following overarching principles:²

- regulation should allow competition at both the retail and wholesale infrastructure levels
- to the greatest extent possible, industry players should be treated consistently under the regulatory framework, and
- new high-speed broadband access networks (which control 'last mile' connections to consumers) should be vertically separated.

The effect of implementing the first principle, allowing and encouraging competition at the infrastructure level, is that NBN Co's internal cross-subsidy to its fixed wireless and satellite networks is at a risk of becoming unsustainable. The proposed Scheme goes directly to the second principle by treating all fixed-line carriers consistently. Under the Scheme all carriers that operate high-speed fixed-line networks, not just NBN Co, will contribute to the significant net costs of building and operating the fixed wireless and satellite networks that provide essential broadband services to regional Australia.

This RIS is supported by the work and consultation undertaken by the Department of Communications and the Arts' Bureau of Communications and Arts Research (BCAR) in 2015.³

¹ *Telecommunications and Structural Reform paper*, published in December 2014.

https://www.communications.gov.au/sites/g/files/net301/f/Telecommunications_Regulatory_and_Structural_Reform_Paper_-_11_December_....pdf

² See the *Telecommunications and Structural Reform paper*, published in December 2014.

https://www.communications.gov.au/sites/g/files/net301/f/Telecommunications_Regulatory_and_Structural_Reform_Paper_-_11_December_....pdf

³ <https://www.communications.gov.au/departamental-news/further-consultation-nbn-non-commercial-services>

This RIS should be read in conjunction with the 2014 policy paper and the BCAR's final report released in December 2016 (the 2016 Report).

This RIS has been developed in accordance with the Australian Government Guide to Regulation, March 2014, issued by the Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet, and in consultation with the OBPR. Relevant guidance notes issued by the OBPR have also been taken into account.

The Department has prepared a standard form RIS as the proposal is considered to have a relatively minor impact on the economy and is likely to impact a limited number of businesses. An early assessment draft of this RIS was provided to OBPR in 2014 and then considered by the Government when it developed its response to the Vertigan panel (set out in the 2014 *Telecommunications Regulatory and Structural Reform* policy paper). The Minister also considered an early draft of the RIS in finalising his decisions as part of the development of the response. The draft RIS was published with draft legislation in December 2016 and the Government sought submissions on the RIS. The RIS was submitted to OBPR for First and Second Pass Final Assessment in May 2017.

What are the non-commercial services?

Non-commercial services are those where the revenue from the service is less than the full cost of providing the service. In its 2016 Report, the BCAR confirmed high-speed broadband services delivered by NBN Co over its fixed wireless and satellite networks were non-commercial.

The BCAR used the incremental cost test to determine whether the fixed wireless and satellite networks provided by NBN Co were non-commercial. In the case of the fixed wireless and satellite networks, revenues are less than direct costs and so it is clear that they are non-commercial. More detail is at **Attachment D**.

Even if NBN Co were to increase its prices for the non-commercial services to reflect the true costs of providing these services, they would likely remain non-commercial, because fewer people would take up services. This is because there is a limit to how much consumers are willing to pay (WTP) for broadband. The Vertigan Review found that the WTP for services was substantially lower than costs for fixed wireless and satellite services.⁴

What is the problem being solved?

This RIS considers how best to sustainably fund non-commercial broadband services provided by NBN Co in regional Australia. In 2009, the Government established NBN Co to roll out high-speed broadband across Australia. The company had planned to roll out fixed wireless and satellite services to approximately one million premises.⁵ The retail prices for services were to be largely the same across different parts of Australia, regardless of the costs of providing

⁴ See [Independent cost-benefit analysis of broadband and review of regulation](https://www.communications.gov.au/sites/g/files/net301/f/Cost-Benefit_Analysis_-_FINAL_-_For_Publication.pdf), page 49, https://www.communications.gov.au/sites/g/files/net301/f/Cost-Benefit_Analysis_-_FINAL_-_For_Publication.pdf

⁵ When the rollout is complete, the fixed wireless network will cover approximately 600,000 premises, and the satellite network will cover approximately 400,000 premises. For comparison, NBN Co's fixed-line network will cover 10.9 million premises.

services. NBN Co's fixed wireless and satellite services are provided predominantly in regional areas, although they may also service urban fringe areas.

The analysis from the BCAR estimates that the total net loss incurred by NBN Co's satellite and fixed wireless networks will be approximately \$9.8 billion (net present value) between financial years 2010–11 and 2039–40.⁶ Because these services (in aggregate) cost more than they earn in revenue, they are known as 'non-commercial' services. This definition is used throughout this document. A part of the cost has already been expended. For example, approximately [CIC] of capital expenditure has been spent by NBN Co rolling out the fixed wireless and satellite networks from 2009–10 until 2014–15. A further \$1.69 billion in capital expenditure is expected to be spent by 2017–18, by which time the rollout of the fixed wireless and satellite networks will almost be complete.⁷

Originally it was intended that the net costs from NBN Co's fixed wireless and satellite networks would be funded through a cross subsidy from its commercial fixed-line services. The current arrangements implicitly expect that customers on NBN Co's fixed-line network will fund the net costs of the fixed wireless and satellite services through the prices their retailers are charged. NBN Co was originally intended to be an effective monopoly. This arrangement was supported through regulatory protections.⁸ In 2011, the Government introduced amendments to the *Telecommunications Act 1997* (Tel Act), seeking to ensure that non-NBN providers operated on the same structural basis. The provisions grandfathered existing networks, built before 1 January 2011. The provisions have not succeeded, as network providers have expanded into population dense areas with existing infrastructure beyond what was originally conceived through the grandfathering provisions.

Competition is occurring in the high-speed broadband infrastructure market. For example, the rollout of TPG's fibre-to-the-basement network now covers almost 1,000 high value apartment blocks.⁹ There are also a number of smaller carriers, including OPENetworks, Comverge Networks, Service Element and Pivit, that collectively have passed over 400,000 homes and businesses in new developments.¹⁰

The Government's policy is to support infrastructure competition and there are a number of non-NBN fixed-line broadband providers operating in the market. However, the current method of funding non-commercial services is not aligned with the reality of greater competition for high-speed fixed-line infrastructure provision. As currently structured, if competition intensifies, there is a risk that NBN Co will be less able to support its internal cross subsidy. While NBN Co is able to reduce its prices in commercially viable areas to respond to competition, if it does so, it will be less capable of funding cross subsidies to fixed wireless and satellite services.¹¹

⁶ As NBN Co does receive revenue from customers using the fixed wireless and satellite networks, some of the costs involved with providing these services are already recovered by NBN Co. A breakdown of this cost appears at **Attachment D**.

⁷ See NBN Co's 2016 Corporate Plan, page 16.

⁸ These regulatory protections were chiefly made through the amendments to Parts 7 and 8 of the *Telecommunications Act 1997* in 2011. More information on the legislative history of Parts 7 and 8 is below.

⁹ See <https://www.finder.com.au/tpg-fttb>.

¹⁰ Answers to Questions on Notice by OPENetworks, Service Elements, Comverge and Pivit who are Members of the GFOA http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcnbn/./bill/subs/s/ub1.1.pdf

¹¹ Supported by the Government's decision to move to a price cap model – see the *Telecommunications and Structural Reform paper*, published in December 2014. https://www.communications.gov.au/sites/g/files/net301/f/Telecommunications_Regulatory_and_Structural_Reform_Paper_-_11_December_....pdf

The size of the net costs from fixed wireless and satellite services that are borne by NBN Co's commercial services is in the order of [CIC] per service per month (in 2017-18 nominal terms). In terms of the competitive impact, the average revenue per user obtained by NBN Co is ~\$40 per month, meaning that the funding of those services is a significant share of the cost recovered from commercial users. The size of the competitive impact is large because, even though the fixed wireless and satellite networks will only make up about 1 million of NBN Co's approximately 12 million premises reached by the network, the net cost for each service is very large, at \$105-110 per premise per month. Or to put this another way, the net loss of those services are expected to be \$9.8 billion (in net present value terms) over thirty years.¹²

Why is Government action needed?

The Government has committed to rolling out a ubiquitous high-speed broadband network and the rollout of broadband services to non-commercial areas (i.e. NBN Co's fixed wireless and satellite networks) is expected to be completed in 2020. Hence this is not a question of whether Government should be involved but what the best form of funding should be, given that fixed wireless and satellite services are being provided.

In considering how the problem should be solved, the Government has had regard to the principles it adopted in the 2014 Policy paper, particularly that to the greatest extent possible, industry players should be treated consistently under the regulatory framework. From these general principles, a series of six objectives have been developed. These objectives must be considered against each other in context. These objectives have been adapted from the principles used by the BCAR in consulting with stakeholders. These six objectives are:

Objective	Description
Transparency	The design, implementation and costs of a non-commercial funding mechanism should facilitate scrutiny and evaluation. Transparency allows stakeholders and the Government to monitor performance of funding arrangement outcomes, and cost information supports decisions to improve arrangements as appropriate.
Contestability	The arrangements should minimise barriers to entry or other impediments for all participants. The arrangements should be equitable to all segments of market participants.
Competitive neutrality	The arrangements should address advantages (or disadvantages) that some participants would otherwise have over others.

¹² A discount rate of 6.46 per cent was used by the BCAR.

Objective	Description
Sustainability	<p>The mechanism used to fund the provision of the non-commercial service should be viable for the anticipated period the non-commercial obligation will be in effect.</p> <p>The mechanism should be secure and reasonable in the face of changing social, political, technological and economic circumstances to fund fixed wireless and satellite net costs over the longer term.</p> <p>The mechanism should provide certainty to industry stakeholders of any obligations.</p> <p>The design of the arrangements should not conflict with or undermine other regulatory objectives.</p> <p>The funding schemes should be simple. The more complex the scheme is to administer, monitor and implement, the less likely it is that its objective will be achieved and the more costly it will be to administer.</p>
Economic efficiency (allocative/productive and dynamic)	<p>Non-commercial funding models should be assessed by whether they support or constrain productive, allocative or dynamic efficiency.</p> <p>Allocative efficiency includes consideration of the distortionary impact of taxes and levies on demand for goods and services.</p> <p>Productive efficiency is minimising the cost of providing a particular service.</p> <p>Dynamic efficiency is ensuring that allocative and productive efficiency improve through time.</p>
Equity	<p>The funding models should consider how any funding arrangement will fall across society. Equitable outcomes for beneficiaries and funders of fixed wireless and satellite services should also be considered.</p>

Existing policies and regulatory settings

Funding options for fixed wireless and satellite services detailed in this RIS fit within the context of a range of the legislation and Government policies that apply to NBN Co. These are summarised below:

- **NBN Co's Statement of Expectations (SOE)** is issued by the Government and sets out the relevant government policies and expectations on how NBN Co should conduct its operations.
- **NBN Co's Special Access Undertaking (SAU)**, as accepted by the Australian Competition and Consumer Commission (ACCC) on 13 December 2013, is a key part of the regulatory framework that governs the price and other terms on which NBN Co supplies services to access seekers who are supplying services in downstream retail and wholesale markets.
- **Parts 7 and 8 of the Tel Act** provide rules about the supply of high-speed broadband, and were put in place in their current form in 2011. The intention of Parts 7 and 8 is to ensure that other non-NBN providers of high-speed broadband can provide customers with similar services to NBN Co (that is provide access to a broadband service of 25 Mbps or more) and do so on an open access basis.
- **Superfast broadband access service (SBAS) and local bitstream access service (LBAS) declarations** are made by the ACCC and set the price and non-price terms and conditions that must be used by non-NBN retail service providers offering superfast fixed-line broadband services.
- **Future Reforms:** The Regional Broadband Scheme is part of a broader Telecommunications Reform Package that also includes:

- **Amendments to Parts 7 and 8 of the Tel Act:** The Government will amend existing separation rules in the Tel Act to allow superfast networks to operate on a functionally separated basis if authorised by the ACCC, and
- **Statutory Infrastructure Provider:** The Government will introduce Statutory Infrastructure Provider obligations on NBN Co and, where appropriate, other superfast network providers.

The funding arrangements for fixed wireless and satellite services are being put forward as a package of reforms, along with the amendments to Parts 7 and 8 and the Statutory Infrastructure Provider reforms because they are integrated and dependent. While the Parts 7 and 8 reforms are designed to provide greater structural flexibility for firms and therefore more commercial opportunities, this could impact on NBN Co's ability to fund its fixed wireless and satellite services. Sustainable funding arrangement for those services will assist in balancing this arrangement.

Similarly, while the Statutory Infrastructure Provider obligations will make clear NBN Co's obligations to deliver infrastructure, including in rural and remote areas, it is important that there is a mechanism to contribute to the cost of non-profitable fixed wireless and satellite infrastructure. Conversely, industry is likely to want to see a legally binding requirement on NBN Co to provide infrastructure if it is to contribute to its cost.

Further detail about the existing and planned policy and regulatory settings can be found at **Attachment E**.

Consultations

The options explored in this RIS have undergone consultation at four different points. A summary of each phase of consultation is provided below. More detailed stakeholder comments are provided at **Attachment F**.

1. Vertigan Review

In August 2014, the Vertigan Review delivered its report, titled "Independent cost-benefit analysis of broadband and review of regulation—Volume I—National Broadband Network Market and Regulatory Report".

In developing this report, the panel consulted broadly. On 13 February 2014 the panel released a Regulatory Issues Framing Paper that focused on structural issues and sought views from industry and the public on the structure and regulatory environment for Australia's future broadband market. The panel received 43 public submissions.¹³ To encourage submissions the panel also held an industry forum on 24 February 2014, inviting a number of key stakeholders to attend and express views. The framing paper was a broad ranging consultation process that considered a range of commercial and regulatory issues relevant to the NBN.

The key issues noted by stakeholders relevant to non-commercial funding arrangements included:

- Consumer groups stating that post market subsidies would potentially be complex to administer, especially in the context of a network that uses multiple technologies across the fixed-line network.

¹³ Available here: <https://www.communications.gov.au/have-your-say/regulatory-framing-paper-nbn>

- The ACCC agreeing that NBN Co's fixed wireless and satellite networks were non-commercial and that some form of subsidy may be required to fund the shortfall between costs and revenues. However, a subsidy provided to support the Scheme should be as transparent and effectively delivered as possible, while minimising market distortions.
- Industry views were mixed with some arguing that funding for fixed wireless and satellite services should come through Commonwealth Budget (the Budget) funding and others arguing that the funding mechanism should be spread as broadly as possible across the profitable parts of the telecommunications industry.

BCAR's consultations

Members of the telecommunications industry, including NBN Co, were consulted on the amount and structure of the proposed funding arrangements through two consultation processes in 2015. The initial consultation period was 24 days (8 May—1 June 2015), and the second consultation period ran for 21 days (13 October—3 November 2015). In addition to this, some industry participants also met with the Department of Communications and the Arts outside these two consultation periods. The consultation periods received thirteen and ten submissions respectively from interested parties, including all major carriers. The summary of both consultations is below. The Department would like to acknowledge the substantial assistance provided by NBN Co during the consultation process. Without the assistance of NBN Co, the financial projections included as part of this proposal would not have been possible. Additional information about the findings from the BCAR Reports can be found at **Attachment G**.

2. BCAR Consultation 1

In general, the submissions received in the first consultation did not indicate a significant opposition to the introduction of NBN non-commercial service funding arrangements. However, a number of issues and concerns were raised particularly with regards to cost measurement, eligibility and implementation.

3. BCAR Consultation 2

The BCAR considered issues raised by interested parties in the first consultation round and released a second paper for consultation, which included the proposed funding arrangements. The following issues were raised:

- Industry views were mixed, with some raising significant concerns with an NBN Comparable funding approach (i.e. a charge that targets fixed-line services only), citing that it would increase fixed-line pricing to the point of pushing customers to mobile broadband, and others supporting a fixed-line only base, stating that it is an appropriate response to the emergence of infrastructure based competition.
- The ACCC suggested it is suitably placed to handle future calculations of the charge, including considering the charge in the context of broader NBN regulatory requirements (such as the prudence and efficiency requirements under the SAU) and managing industry consultations.

4. Exposure Draft consultation

On 12 December 2016 the Government released an Exposure Draft of the telecommunications reform package legislation for consultation for a period of six weeks. The views expressed in the

thirty submissions received from stakeholders have been taken into account in considering potential policy adjustment.

The public consultation demonstrated that most stakeholders agreed with the policy principle of establishing a funding mechanism for essential fixed wireless and satellite networks primarily serving regional Australia. Overall feedback was consistent within three distinct groups. Regional and consumer groups were strongly supportive of the Scheme and see it as necessary to sustainably fund regional broadband services; smaller carriers were strongly opposed to the Scheme as described at the time, which they argued would place substantial pressure on their business models; and larger carriers would prefer the Scheme was Budget funded and object to the inclusion of medium and large business premises.

What policy options are being considered?

There are four options that are being considered. These options reflect the options considered at the time of the Government's 2014 Policy paper and additional options that have arisen through consultation.

Beyond these four options, two other options are possible, but have not been considered. That is, the Government could:

- Provide NBN Co with a regulated monopoly for wholesale high-speed broadband.
- Cease the rollout of the fixed wireless and satellite networks and sell these assets.

These options have not been considered because they are inconsistent with the Government's election commitments. For example, the "Coalition's Plan for Fast Broadband and an Affordable NBN" document states that "The Coalition will remove or waive impediments to infrastructure competition introduced to provide a monopoly to Labor's NBN..." and that "NBN Co will proceed with its existing satellite and fixed wireless networks...".¹⁴ These options are not considered to be preferable in any case.

- A regulated monopoly on provision of services would deny end customers the benefits of infrastructure competition and reduce competitive pressure on NBN Co to provide services rapidly and efficiently. It may also be prohibited under Australia's free trade agreements.
- Ceasing the fixed wireless and satellite rollouts at this point would leave these substantially complete, although there would be some households and businesses that would not obtain broadband. The sale of these assets would occur at a substantial loss on expenditure to date and potentially they could not be sold at a positive price. This would leave NBN Co in a similar position to now in terms of having to fund net costs on its fixed wireless and satellite services, because the revenue from the sale of assets would be insufficient to cover costs expended.

¹⁴ See "The Coalition's Plan for Fast Broadband and an Affordable NBN", <http://lpa.webcontent.s3.amazonaws.com/NBN/The%20Coalition%E2%80%99s%20Plan%20for%20Fast%20Broadband%20and%20an%20Affordable%20NBN.pdf> page 9 and 10.

Options under consideration are as follows:

- **Option 1: Do nothing:** NBN Co would continue to fund net costs from its fixed wireless and satellite services through an internal cross subsidy. This would minimise government intervention in the operations of NBN Comparable businesses, however this would leave NBN Co, and the customers on NBN Co's network, as the only funding source for those services.
- **Option 2: Budget funding:** The provision of broadband services to non-commercial areas is a loss-making activity undertaken for community benefit. If looked at from the perspective of maximising allocative efficiency funding a loss-making community benefit through Budget funding may minimise market distortions and be economically efficient. This would capture the largest funding base possible to support the Government's objective of providing high-speed broadband services to all Australians. However, there are other costs which include the additional impost on the Budget.
- **Option 3: The Regional Broadband Scheme:** A transparent and more effective funding arrangement would be introduced to fund NBN Co's non-commercial services through contributions sourced from owners of high-speed fixed-line broadband access networks—i.e. the NBN and networks comparable to the NBN. Relative to current arrangements the opaque part of NBN Co's cost recovery would be made explicit. The Government would provide the ACCC and the Australian Communications and Media Authority (ACMA) with sufficient powers to monitor, review and administer these arrangements.
- **Option 4: Targeted post-market subsidies:** This option would involve consumers paying charges that reflected the full costs faced by NBN Co and retailers in non-commercial areas (likely to be upward of \$170 per service per month).¹⁵ Customers facing difficulty meeting these charges could apply for assistance, for example, in the form of a means tested subsidy payment. The assistance could be funded from the Budget. This would allow NBN Co to set cost based prices, require consumers with an ability to pay those rates to do so, and provide subsidies for those who could not. This would involve substantial administration costs to manage the subsidy eligibility and would likely leave the capital expenditure made in NBN Co fixed wireless and satellite services stranded as prices would be too high for many users who are not eligible for a subsidy to take-up services.¹⁶ Administration costs would be lower if eligibility was linked to eligibility for existing welfare programs. This option would also be inconsistent with NBN Co being subject to a price cap under its SAU.

Who is affected and what is the impact?

The options considered in this RIS have both financial and economic costs and benefits.

Financial impacts

This section considers the financial impact of each option on different parts of the community. It considers the impact on:

- NBN Co

¹⁵ The service price would reflect NBN Co's standard wholesale prices, the non-commercial service loss estimated by the BCAR, of \$105-110 per month (BCAR final report, p. 8) and retail costs.

¹⁶ The *Independent Cost Benefit Analysis of Broadband and Review of Regulation, Volume II, The Costs and Benefits of High-Speed Broadband* found that there would be net costs per premises connected of almost \$7000, from delivering fixed wireless and satellite services. The willingness to pay was estimated at one quarter of the cost in total, indicating that willingness to pay is substantially below cost for these services and hence NBN Co could not charge prices that would enable it to recover costs.

- customers on NBN Co’s network
- NBN Comparable providers
- customers on non-NBN networks, and
- the Budget

All financial impacts are approximate and presented in net present value terms, discounted at 6.46 per cent, and calculated until 2039–40. The discount rate of 6.46 per cent is consistent with the discount rate used by the BCAR and the rate accepted by the ACCC for NBN Co’s SAU. Further information about the methodology for determining the discount rate can be found at **Attachment D**.

Option 1: Do nothing –

Maintain NBN Co’s internal cross-subsidy. The whole \$9.8 billion net cost from the fixed wireless and satellite networks would be recovered from customers on NBN Co’s fixed-line networks (expected to be around 8 million active customers by 2020).¹⁷ Customers of NBN Comparable providers would not contribute to the provision of the satellite and fixed wireless networks.

At present, customers on NBN Co’s fixed-line networks pay approximately [CIC]¹⁸ in subsidy per service per month to support those services. There is a risk that in response to market forces the funding base will diminish and increase the required subsidy per service. This option would increase the likelihood that the Government (and taxpayers) would have greater exposure to NBN Co’s market value reducing.

As this is the base case, the financial impact has been set to nil and other options are compared to this option.

Party impacted	Financial impact
NBN Co	Nil.
Customers on NBN Co’s network	Nil.
NBN Comparable providers	Nil.
Customers of NBN Comparable providers	Nil.
Budget impact	Nil.

Option 2: Direct Budget funding

The net cost generated by the fixed wireless and satellite networks would be funded from the Budget.

It is likely that there would be less cost discipline on NBN Co, as the constraints from regulatory arrangements and the Government equity cap would become looser, but this is not reflected in

¹⁷ See NBN Co’s 2017 Corporate Plan, page 7.

¹⁸ This is the projected real cost per service per month in 2017-18 dollars.

the estimates of financial impacts. The BCAR and ACCC both noted that NBN Co would face greater incentives for cost efficiency if the costs for providing those services were mainly borne by NBN Co itself.¹⁹

NBN Comparable providers would be negatively impacted, as NBN Co would be competing without its cost disadvantage. This would either result in lower entry, lower market share or lower profitability for NBN Comparable providers.

In the current fiscal environment and the Budget being substantially in deficit it is unlikely that direct Budget funding would be a desirable option for the Government. The BCAR modelling shows that, on average, NBN Co requires approximately \$1 billion per year to recover its \$9.8 billion losses (in net present value terms). This is the amount of Budget funding that NBN Co would require. While broad based taxation is generally more efficient than a levy on a targeted base, it is likely that greater efficiencies would be achieved through providing NBN Co with adequate incentives to build and operate its fixed wireless and satellite networks as efficiently and cost effectively as possible. The incentives for NBN Co are most likely to be achieved through a targeted charge base where NBN Co is the main contributor. Additional information about the Budget funding option can be found in the ‘What are the limitations of the other options considered?’ section below.

Party impacted	Financial impact
NBN Co	Gains as it will be able to compete on the same cost basis as other providers (estimated to be [CIC]). ²⁰
Customers on NBN Co’s network	Gains as prices could fall.
NBN Comparable providers	Losses, as NBN Co would be better able to compete.
Customers of NBN Comparable providers	Gains, as NBN Co competition would lead to lower prices.
Budget impact	Losses, as funding would come direct from the budget (-\$9.8 billion NPV).

Option 3: Regional Broadband Scheme

The net costs generated by NBN Co’s fixed wireless and satellite networks would be shared across all users of high-speed fixed-line broadband, through a charge known as the Regional Broadband Scheme (the Scheme).

This option would not result in users of high-speed fixed-line broadband paying any more in total when compared to Option 1 as NBN Co is already ‘paying’ the charge, through its opaque internal cross-subsidy, and passing the costs onto its customers. NBN Co is expected to make up 95 per cent of the fixed-line broadband market by 2020.

¹⁹ Bureau of Communications and Arts Research (BCAR) 2015, *NBN non-commercial services funding options: final report*, December; ACCC submission to the NBN non-commercial services funding options -final consultation paper, November 2015.

²⁰ This estimate is based on advice provided by NBN Co, which considered the impact of not introducing a funding arrangement relative to its current business outlook. This net present value of the impact is [CIC], and assumes an average revenue per user of [CIC] and is based on conservative assumptions of the marginal impact of each additional 100,000 premises rolled out by competing carriers.

For the remaining five per cent of fixed-line broadband market, it will be up to these networks to decide whether the charge will be passed on. However, in a competitive market there are limitations on how much charge will be passed on.

Under the Regional Broadband Scheme all fixed-line Infrastructure providers would compete on the same basis. There would be some administrative costs in facilitating payments from the charge. In total, customers on NBN Co's network would pay less in the long term and the net proceeds from the charge may enable NBN Co to reduce its prices faster.²¹

To ease the burden on smaller carriers and help them transition to paying the charge, a charge concession period is proposed. For carriers operating recently connected greenfield premises, the first 55,000 premises on their networks would be exempt from the charge for the first five years. For all other carriers, the first 25,000 residential and small business chargeable premises would be exempt from the charge for the first five years. This is further explained under in the Implementation section below.

The BCAR undertook a projection of the market until 2022 in the event that the charge was introduced, and estimated that there could be 380,000 NBN Comparable services provided by other providers by this time.²² Note that this competition impact applies equally to Option 2. In these circumstances NBN Co would pay approximately 95 per cent of the charge, resulting in a net transfer to NBN Co of ~\$40-\$60 million each year.

There would be no long-term impact on the Budget.

Party impacted	Financial impact
NBN Co	Gains as it will be able to compete on the same basis as other providers (estimated to be between [CIC]).
Customers on NBN Co's network	Gains, from slightly lower NBN prices.
NBN Comparable providers	Losses, as NBN Co would be better able to compete and some minor compliance costs. ²³
Customers of NBN Comparable providers	Losses, as non-NBN providers will now bear some of the burden of funding fixed wireless and satellite services, and may choose to pass this on to their customers. At most this cost will be [CIC] inclusive of administration costs over ten years.
Budget impact	Nil.

²¹ It is expected that competitive pressure will act to induce NBN Co to drop its prices in the fixed-line market. More broadly, over the long term the SAU will require NBN Co to drop its prices commensurate to the revenue it generates from the funding arrangement. (Importantly, as NBN Co will be the largest contributor to the charge it will only be able to drop its prices by the amount paid by other network operators not by the amount of the total charge.)

²² BCAR 2015, *NBN non-commercial services funding options: final report*, December, page 10.

²³ See **Attachment C**. Across industry these are expected to be approximately \$43,000 per year.

Option 4: Targeted post-market subsidies

NBN and non-NBN networks would be able to charge market rates for their fixed wireless and satellite services and customers would have access to ongoing Government payments to offset their higher monthly broadband costs compared to typical metropolitan customers. Under this option additional safeguards would be needed to ensure that carriers did not arbitrarily raise prices to accommodate the level of subsidy available. The amount of offset available for customers would likely be means tested.

This option has significantly higher administrative and compliance costs than the other options considered. It also has the greatest level of uncertainty as a detailed scheme would need to be devised to estimate the quantitative impact. In particular, the level of means testing would need to be determined. If the income threshold for means testing was set low, a substantial number of consumers would not take up a satellite or fixed wireless service, leaving NBN Co's assets underutilised. If the income threshold was set high, this option would not have substantial positive impacts above Options 2 and 3 (i.e. it would simply be a more expensive way of delivering the outcomes outlined in Options 2 and 3).

The detailed modelling and analysis required to determine appropriate subsidy levels and income thresholds has not been undertaken because Option 2 (direct Budget funding) and Option 3 (the Regional Broadband Scheme) are viewed as much more viable options. Similarly the administrative arrangement required to implement this option (i.e. how households report income and how often they would have to report income) have not been explored in detail. In determining the regulatory burden of this option it has been assumed that individuals would be required to spend around 2 hours per year undertaking tasks to receive the subsidy including researching the subsidy, reporting income and preparing required documentation.

Party impacted	Financial impact
NBN Co	Some overall revenue gain from flexibility to raise prices above current price caps in non-commercial areas, resulting in higher prices but lower uptake.
Customers on NBN Co's network	Gains for customers in commercial areas as there would be marginally lower cross subsidisation by NBN Co. Losses for consumers in non-commercial areas as prices would increase to match the cost of providing the service (less any subsidy provided).
NBN Comparable providers	Losses, as NBN Co would be somewhat better able to compete in commercial areas. To a large extent NBN Co would continue to provide the bulk of funding for fixed wireless and satellite services from its commercial services, which would mean impacts would be small.
Customers of NBN Comparable providers	Gains, as NBN Co competition would lead to marginally lower prices.
Budget impact	Loss, depending on the amount of post-market subsidies provided, and the cost of administering the scheme.

Economic impacts

Economic efficiency impacts—As the BCAR has noted, the economic welfare of society is typically maximised when the following three components of economic efficiency are achieved²⁴:

- **Productive efficiency**—It is important that a funding mechanism does not distort a provider’s incentives to adopt the best mix of technologies and exploit economies of scale, thus delivering services at the lowest possible cost. Similarly, it is important that the funding mechanism does not lead the service provider to be more concerned about devoting resources to protect their subsidy rather than investing in more economical and innovative delivery solutions.
- **Allocative efficiency**—Economic resources should move freely towards their most highly valued uses. That is, as far as possible the design of the Scheme should minimise the additional costs imposed on society due to the diversion of resources away from their more highly valued uses. If resources are diverted into activities that are less highly valued from a national perspective, then the community will be worse off.
- **Dynamic Efficiency**—A funding arrangement should aim to not deter a provider from investing in and innovating their service delivery approach. A funding arrangement may create dynamic inefficiencies if it undermines incentives to innovate to contain costs over time, or to provide new services. Flexibility also supports dynamic efficiency. If the delivery mechanism for funding the Scheme is too rigid, it could create market distortions if changing technologies and consumer preference generate potentially cheaper ways of achieving the objective of the funding arrangement.

All options to fund fixed wireless and satellite services will have efficiency impacts, in terms of distorting decisions relative to those that would be made were services to be provided in a competitive and efficient market.

Quantifying these efficiency impacts is difficult—however, we can identify the direction of differences. The overall efficiency impacts of different options reflect how they impact on allocative, productive and dynamic efficiency, as set out in the table below, with impacts measured relative to the do nothing option.

Option 2 (Budget funding) would likely improve allocative efficiency relative to doing nothing, but would reduce cost and service level pressure on NBN Co and therefore could lower productive and dynamic efficiency.

Option 3 (Regional Broadband Scheme) would improve allocative efficiency, because NBN Co and NBN Comparable providers would be treated equally. It would have only a small negative impact on productive/dynamic efficiency as long as most of the revenue from the charge was from NBN Co (i.e. a charge whereby NBN Co and NBN Comparable, but not mobile broadband, were captured). If the funding base was expanded to mobile broadband providers (for example) NBN Co would have less incentives to control costs. See the discussion in the ‘Who should contribute to the Regional Broadband Scheme?’ section for further consideration of the funding base.

²⁴ BCAR 2015, *NBN non-commercial services funding options: final report*, December.

Option 4 (post-market subsidies) would reduce allocative efficiency, largely because the capital costs for fixed wireless and satellite services would be sunk, and at cost-reflective prices, few people would use the network.

Option	Name	Allocative efficiency impacts relative to option 1	Productive / dynamic efficiency impacts relative to option 1
1	Do nothing	N/A	N/A
2	Direct budget funding	Increased distortions from funding from tax revenue Reduced distortions from funding from only NBN users	Lower productive/dynamic efficiency
3	The Regional Broadband Scheme	Reduced distortions from funding from only NBN users	Similar to do nothing
4	Targeted post-market subsidies	Reduced distortions for commercial areas Substantial net costs in non-commercial areas, as costs incurred regardless	Similar to do nothing

A detailed explanation of the different allocative, dynamic and productive efficiency impacts is at **Attachment A**, estimating the magnitude of the various distortions.

What is the likely net benefit of each option?

In the table below each option is mapped out and compared against each other option across the objectives set out in the “Why is Government action needed?” section. The table over the page also gives the direction financial and economic efficiency impact.

Objective / option	Option 1: do nothing	Option 2: direct budget funding	Option 3: Regional Broadband Scheme	Option 4: targeted post market subsidies
Transparency	✗ NBN Co’s internal cross subsidy would remain opaque	✓ The cost of providing fixed wireless and satellite services would be transparent in Budget papers.	✓ The cost of providing fixed wireless and satellite services would be transparent and published by ACMA each year.	✓ The cost of providing fixed wireless and satellite services would be transparent in Budget papers.
Contestability	✗ Without a funding arrangement in place, it is unlikely that the fixed wireless and satellite services could be made contestable.	✓ In the future NBN Co could compete with other providers to provide fixed wireless and satellite services.	✓ In the future NBN Co could compete with other providers to provide fixed wireless and satellite services.	✓ In the future NBN Co could compete with other providers to provide fixed wireless and satellite services.
Competitive neutrality	✗ NBN Co would continue to face costs that its competitors do not.	✓ NBN Co could lower its prices in line with the amount of additional funding it received.	✓ The cost of fixed wireless and satellite services would be shared proportionally across all comparable providers.	✓ Customers would receive direct subsidies.
Sustainability	✗ NBN Co would be increasingly uncompetitive. It may be unable to continue to fund services.	✓ The cost of the fixed wireless and satellite services would be sustainably funded.	✓ The cost of the fixed wireless and satellite services would be sustainably funded.	✗ The proposal would be complex and costly to administer.

Objective / option	Option 1: do nothing	Option 2: direct budget funding	Option 3: Regional Broadband Scheme	Option 4: targeted post market subsidies
Economic Efficiency: Allocative efficiency	<p>✗ This proposal would lead to inefficient entry decisions by NBN Comparable providers.</p> <p>Customer decisions for commercial services are also impacted as they implicitly fund fixed wireless and satellite services.</p>	<p>✓ This proposal would not distort investment choices by broadband providers or customers. There would be distortions associated with direct budget funding, which could be in the order of \$1.5 billion (net present value).²⁵</p>	<p>✓ Entry decisions would be efficient as NBN Co and other broadband providers would face the same incentives.</p> <p>Customers would shift away from NBN Comparable services, because these providers would no longer have a cost advantage.</p> <p>There could be broader distortions, such as investment decisions to avoid paying the proposed charge (for example by favouring alternative technologies).</p>	<p>✗ This proposal would not distort investment choices by broadband providers or commercial customers. However, it would be likely that few people would take up fixed wireless or satellite services in the absence of a subsidy, with costs likely to be greater than \$170 per month. As costs will still be incurred, this implies inefficient use of the network.</p>
Economic efficiency: Dynamic / Productive efficiency	<p>✓ NBN Co would face incentives for cost and service efficiency over time due to increased competition, the regulatory arrangement, shareholder (Government) pressure and debt market pressure.</p>	<p>✗ This may reduce cost constraints on NBN Co, and lead to service quality decisions that are inefficient because NBN Co would not itself bear the costs.</p>	<p>✗ This may reduce cost constraints on NBN Co, and lead to service quality decisions that are inefficient because NBN Co would not itself bear the costs. The impact would be small if most of the revenue from the charge was from NBN Co (i.e. a charge whereby NBN and NBN Comparable fixed-line networks, but not mobile broadband, were captured).</p>	<p>✗ This may somewhat reduce cost constraints on NBN Co, by loosening the price cap arrangements. This would be expected to be minimal given the small amount of revenue recovered from fixed wireless and satellite services.</p>

²⁵ See **Attachment A** in relation to the likely size of distortions from Budget funding.

Objective / option	Option 1: do nothing	Option 2: direct budget funding	Option 3: Regional Broadband Scheme	Option 4: targeted post market subsidies
Equity	<p>✗ Customers on NBN Co's networks in commercial areas would be subsidising non-commercial areas, regardless of the income and hardship levels of either user. Customers of other fixed-line services would not contribute to the costs of providing fixed wireless and satellite services.</p>	<p>✗ Taxpayers would fund fixed wireless and satellite services. This would mean that there would be subsidies for high income people in non-commercial areas.</p>	<p>✗ Customers in commercial areas would be subsidising non-commercial areas, regardless of the income and hardship levels of either user.</p>	<p>✓ Users in non-commercial areas would be responsible for funding their own services except in cases of hardship.</p> <p>Take-up of services would be very low in the absence of a subsidy, with prices higher than most people would pay.</p>
Net financial impact	✗ Nil	✓ Strong net benefits.	✓ Strong net benefits.	✓ Weak net benefits.

What is the best option from those you have considered?

On balance Option 3, the Regional Broadband Scheme, is the recommended approach. The Regional Broadband Scheme option is unlikely to have a substantive negative impact on competition and provides a natural incentive for NBN Co to build and operate its fixed wireless and satellite networks as efficiently as possible. While Option 2 (direct Budget funding) is also unlikely to have any substantive negative impact on competition, the 2014 RIS concluded that direct Budget funding was not feasible because of the large negative impact on the Budget. Funding NBN Co's net losses of \$9.8 billion (in net present value terms) would require Budget funding of around \$1 billion per year out to 2040.

While the precise difference in net benefits between this option and the others are not able to be measured, both the BCAR and the ACCC noted that NBN Co would face greater incentives for cost efficiency if the costs for providing its fixed wireless and satellite networks were mainly borne by NBN Co itself.²⁶ The BCAR also recommended a charge on fixed-line broadband providers on the basis that the benefits in productive and dynamic efficiency from ensuring costs were mainly borne by NBN Co itself outweighed the lower allocative efficiency from a narrower charge. These arguments favour Option 3 (Regional Broadband Scheme) as the option with the highest net benefit, although there are some uncertainties about the potential magnitude of the different impacts of these options.

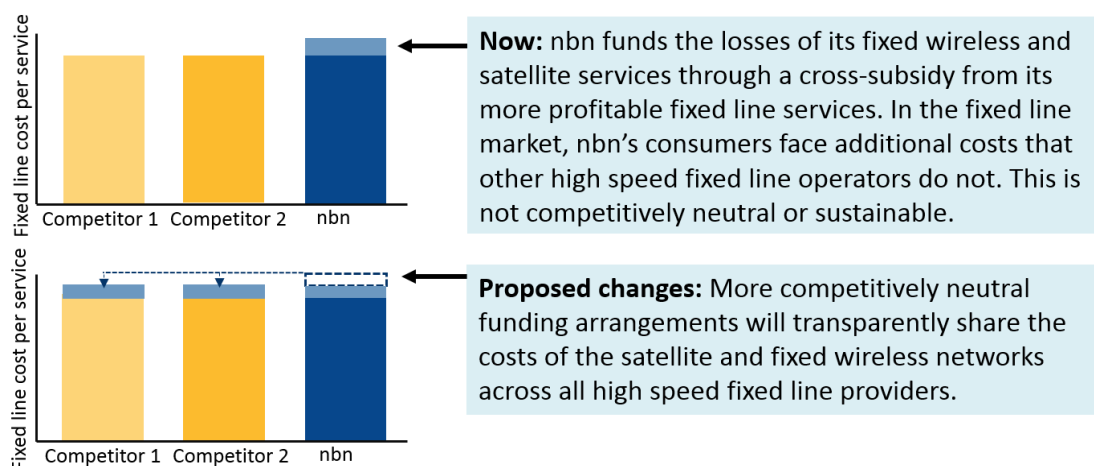
Under the Scheme, the opaque cross subsidies currently embedded in NBN Co's wholesale prices will be replaced by transparent funding provided via contributions sourced from all owners of high-speed broadband access networks—i.e. the NBN and networks comparable to the NBN. The proposed funding arrangement does not represent a new cost for the industry—or consumers—as a whole as the cost of the fixed wireless and satellite networks is already being recovered by NBN Co, it would simply mean that the distribution of the cost would now extend to fixed-line networks competing with the NBN.

As NBN Co is already paying for the costs of the fixed wireless and satellite networks, end users of NBN Co's network will not face price changes. The NBN is expected to make up 95 per cent of the fixed-line broadband market by 2020. For the remaining five per cent – many of these networks service medium and large businesses which will for the first time contribute to funding regional broadband. For non-NBN networks servicing residential and small businesses – it will be up to these networks to decide whether the charge will be passed on. However, in a competitive market there are limitations on how much charge will be passed on. The Scheme is expected to raise around \$40 million per year from non-NBN fixed-line networks over the next four years. However, this could change depending on NBN Co's fixed-line market share.

The intended impact of the new funding arrangement is further illustrated in the diagram below. The diagram is illustrative only and it is not expected that there will be price parity between NBN Co and all of its competitors. The diagram below refers to cost, not price. Whether non-NBN providers pass on the charge is dependent on many factors, from the ACCC's SBAS and LBAS FAD (considered above), the extent to which competition imposes

²⁶ BCAR 2015, *NBN non-commercial services funding options: final report*, December; ACCC submission to the NBN non-commercial services funding options -final consultation paper November 2015.

discipline, and the relevant tax incidence (which in turn depends on the elasticity of the supply and demand curve).



What are the limitations of the other options considered?

Option 1 (Do nothing) is not a feasible option because under this approach there is no certainty that NBN Co can continue providing essential broadband services to regional Australia.

Option 2 (Direct Budget funding) would likely have net benefits relative to Option 1 (Do nothing). This option would have lower levels of distortive effects on the economy than Option 1 (Do nothing) because it would lead to an equal funding of fixed wireless and satellite services across highly substitutable high-speed broadband services. While there are many benefits associated with Direct Budget Funding, this option is seen as inferior to the Regional Broadband Scheme because:

- Relative to Option 3 (Regional Broadband Scheme), Option 2 (Direct Budget funding) would likely reduce productive and dynamic efficiency. Option 2 (Direct Budget funding) would lead to less pressure on NBN Co to constrain costs and constrain service levels to those already committed (as long as NBN Co was itself paying the majority of the charge in Option 3). This is because under Option 2 (Direct Budget funding) funding for services would not come under the Government equity cap for NBN Co, leaving NBN Co in a less constrained financial position. There may also be pressure from stakeholders to increase expenditure, such as additional satellite capacity, that would not be subject to NBN Co's current commercial constraints.
- Relative to Option 3 (Regional Broadband Scheme), Option 2 (Direct Budget funding) would likely increase allocative efficiency. This is because a larger funding base (general taxes) would be expected to have a smaller economic cost than an industry charge. This difference may be relatively small because demand for NBN Comparable services is likely to be relatively inelastic, and other taxation instruments impose distortions of their own that are not insignificant.
- While Budget funding would result in a lower level of economic loss from the tax than the Regional Broadband Scheme, it is not desirable for the Government because of the large negative impact on the Budget (estimated at \$1.8 billion over the Forward Estimate and around \$1 billion per year thereafter to recover NBN Co's net losses of \$9.8 billion in net present value terms).

- Also, while Budget funding would reduce NBN Co's costs substantially, who benefited from this would depend on what NBN Co decided to do. Most likely NBN Co would increase its Internal Rate of Return to government, alternatively it could lead to lower AVC/CVC prices but these would be spread over long-term due to pricing formula in NBN Co's SAU and even then consumers might not benefit because retail service providers could take these lower wholesale prices as extra profit margin.

Option 4 (Targeted post market subsidies) would likely leave the capital expenditure in fixed wireless and satellite services as underutilised, as few people would be willing to pay upwards of \$170 per month for services. This is likely to be true even if customers would be able to recover some or all of this cost at a later time through a post market subsidy. The Vertigan Review found that the willingness to pay for fixed wireless and satellite services was substantially below costs, which indicates that if the price was set on a cost basis people would not be willing to pay for the service. On this basis, this option would likely have net costs relative to Option 1 (Do nothing).

Implementation

Under the Scheme all carriers (i.e. owners of network infrastructure) would contribute funding at a rate of \$7.10 per month, per chargeable premises. Chargeable premises are premises where a carriage service provider (CSP) (i.e. a provider of retail broadband services) provides a designated broadband service. A designated broadband service is a carriage service provided over a fixed-line that is technically capable of providing download transmission speeds of 25 megabits per second (Mbps) or more. The technical speed requirement is on the line, not the service. This ensures NBN Co's 12 Mbps services are captured and carriers cannot avoid the charge by offering sub 25 Mbps services over lines capable of 25 Mbps or more. It is intended that the charge would apply to all premises serviced by fibre-to-the-premises (FTTP), fibre-to-the-node (FTTN), fibre-to-the-basement (FTTB), fibre-to-the-curb (FTTC) and hybrid fibre-coaxial (HFC).

The initial \$7.10 charge is comprised of a \$7.09 base component and a \$0.01 administrative cost component. The base component will be indexed annually to the consumer price index (CPI). The administrative cost component has been set for each of the first five years at \$0.01, \$0.00172, \$0.00, \$0.0027 and \$0.00 respectively. The administrative component will be indexed annually to CPI thereafter. Both the base component and the administrative cost component can be changed by the Minister for Communications (the Minister) via disallowable legislative instrument. Additionally, both the base component and the administrative cost component would be reviewed by the ACCC at least once every five years to ensure they are sufficient to meet the net costs of NBN Co's fixed wireless and satellite networks, and the administrative costs of the Scheme.

Each year, carriers would report the number of chargeable premises they have to the ACMA along with the names of any other carriers with which they are associated. The ACMA would assess each carrier's charge liability and carriers would pay their base and administrative contributions into a Special Account administered by the Secretary of the Department of Communications and the Arts.

The total amount raised by the administrative cost component is intended to be paid from the Special Account to the ACCC and the ACMA for administering the Scheme. As the total rate is based on forecasts, there is a risk that the Scheme would over or under recover the net costs

of NBN Co's fixed wireless and satellite networks, or the costs to administer the Scheme. In this eventuality, the ACCC would undertake an assessment to determine what the charge amount should be and advise the Minister, who could then change the charge amount for future years. It is intended that any excess funding would be returned to industry through a lower charge amount for future years rather than refunded in a given year.

The total amount raised by the base component would be paid to NBN Co under a contract or grant in order to fund its fixed wireless and satellite networks. Because NBN Co would receive money from the Special Account, it can apply to have its charge contribution offset against the amount of funding it is owed so it does not have to raise funds to pay its charge liability, only to receive that money back from the Commonwealth.

While it is expected NBN Co would be the only recipient of funding under the Scheme, the proposed legislation allows for the Minister to determine additional carriers to be eligible funding recipients by legislative instrument. This power provides flexibility for the Government to make funding contestable if this becomes feasible.

Who should contribute to the Regional Broadband Scheme?

While the Government's decision to implement an industry funding mechanism focused on contributions sourced from owners of high-speed fixed-line broadband access networks, another option would be to apply the charge to all telecommunications industry participants, including mobile broadband providers. The extension of the funding arrangement across the whole of the telecommunications market was considered as part of the BCAR's final report. Under an industry wide contribution option, the number of firms contributing to the funding mechanism would increase, reducing the industry amount on a per line basis. It may be the case that consumers treat non-fixed-line services (chiefly mobile broadband) as close substitutes to high-speed fixed-line broadband services.

However, the evidence to date suggests that this is not the case, and that mobile broadband and high-speed fixed-line broadband services are not directly substitutable, mainly due to the high cost of data usage. For example, the cost of data on a per gigabyte basis is often around five times more expensive on mobile networks than on fixed-line networks. The Government has committed to reviewing the Scheme on a regular basis. In the event that mobile broadband services become substitutable for fixed-line services, the Government would consider changing the funding base.

As part of its 2015 Superfast Broadband Access Service (SBAS) declaration inquiry²⁷, the ACCC found in its final report that while mobile broadband may be a substitute for high-speed broadband services for some customers, this is not generally the case because of the functional differences between the services. For example, mobile networks may not support data intensive applications and that there appears to be a substantial difference in the data allowances and per gigabyte pricing between mobile and fixed-line broadband services.

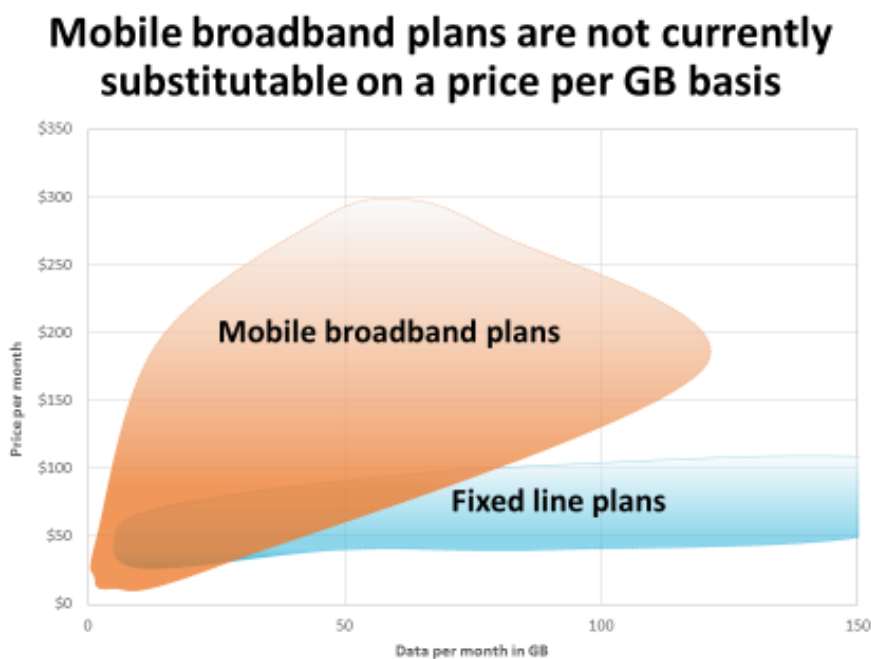
For example, the ACCC found that high-speed fixed-line broadband services are typically around the 25/5 Mbps level with monthly download limits of around 100GB. One such offer

²⁷ See <https://www.accc.gov.au/system/files/SBAS%20-%20ACCC%20draft%20decision%20-%20public%20version%20-%20November%202015.pdf> for a copy of the final decision.

from Exetel costs \$50²⁸ per month on a 12-months contract. In contrast, one of the latest large mobile offerings from Optus with a month download limit of 50 GB²⁹ costs \$70 per month on a 24-months contract.

Given this disparity of pricing and capacity, the ACCC's draft SBAS decision found that it is unlikely that customers would substitute mobile broadband services in the event of a small but significant non-transitory increase in price in the provision of superfast broadband services.³⁰

The chart below further illustrates the point. This chart graphs representative samples of mobile broadband plans against NBN Co fixed-line plans. This demonstrates the substantial disparity between the mobile and fixed-line broadband plans currently available on the market.



Given the likelihood that mobile and fixed-line broadband form two different markets, to include mobile broadband in the funding arrangements would effectively create a cross subsidy from mobile broadband to the fixed-line market.

The legislation includes a requirement for a statutory policy review of the Scheme by the Department of Communications and the Arts within the first four years of the Scheme or as soon as practicable. If mobile broadband become increasingly substitutable for fixed-line high-speed broadband then the Department could initiate a review of the legislative arrangements. The statutory review mechanism is described in more detail below.

²⁸ Exetel [website](#) as at 17 Mar 2017

²⁹ Optus [website](#) as at 17 Mar 2017

³⁰ The ACCC formed a similar view in relation to ADSL services that they are likely to be a weak substitute for superfast broadband services from a customer perspective.

Clarifying the charge base

The charge base has been clarified to implement the Scheme more efficiently and to provide more certainty to carriers and regulators about when the charge would be incurred. These clarifications do not represent a change in policy direction.

Premises-based charge base

The inclusion of business services in the charge base raised a number of issues during public consultation around what would constitute a service and how the charge would apply in different scenarios. Under the Scheme carriers will pay the charge in relation to each premises with at least one active designated broadband service provided over a local access line, rather than paying the charge in relation to each service. This enables the Scheme to deal with complex service types more simply whilst remaining consistent with the original policy intent.

The Scheme will rely on the ordinary meaning of the word ‘premises’ and will be clarified in the explanatory memorandum. The Minister will also have the power to determine, by disallowable legislative instrument, whether locations that satisfy specified conditions are or are not premises. Special disallowance provisions apply to this determination in order to reduce constitutional risk.

Excluding voice-only and television broadcast and other similar services

Voice-only services (including those provided on NBN Co’s network) and television broadcast services have been excluded from the charge base. These are not broadband services and should not be caught by the Scheme. The Minister will also have the power to exclude other classes of carriage services by disallowable legislative instrument. This would enable the Minister to adjust the charge base should the definition of a designated broadband service result in unintended consequences. Special disallowance provisions apply to this determination in order to reduce constitutional risk.

Lines in multi-unit buildings are caught

There are certain companies that operate networks in multi-dwelling units, over ‘in-premises’ lines that are not considered local access lines because they are on the customer side of the network boundary (for example, the entity may roll out one local access line to an apartment block and use customer cabling to provide a service). To ensure that all premises within apartment blocks are captured, the Scheme has adopted a definition of a local access line which includes any lines used to supply a designated broadband service, no matter which side of the customer boundary the local access line is on. This would ensure that mechanisms that may be used to circumvent the customer boundary in multi dwelling unit buildings do not enable carriers to avoid paying the charge.

Should there be any exemptions?

A number of exemptions are proposed in order to mitigate the negative impacts of the Regional Broadband Scheme:

- **Charge concession period:** For carriers operating recently connected greenfield premises, where a designated broadband service is provided by a carriage service provider, it is proposed that the first 55,000 premises on their networks are exempt from the charge for the first five years of the Regional Broadband Scheme. For all other carriers, where a designated broadband service is provided by a carriage service provider, the first 25,000 residential and small business chargeable premises are exempt from the charge for the first five years of the Regional Broadband Scheme.
- This change lessens the burden on smaller carriers and helps them transition to paying the charge. The thresholds have been selected because they preserve the revenue base and ensures that small carriers are not initially caught by the charge but will progressively contribute as their businesses grow. Foregone revenue, due to the charge concession period, would be recovered over the life of the Scheme through a marginally higher charge amount.
- **Exempt networks transitioning under the definitive agreements:** The BCAR’s final report recommended that migrating networks should be exempt from charge contributions, given the complexity and cost involved in capturing services that will not be in operation beyond 2020. This exemption has been adopted.
- **Exempt networks that are small:** The BCAR’s final report recommended excluding small networks with less than 2,000 SIOs on the basis that the administrative costs of applying the charge to these networks would outweigh the benefits. This exemption has been included.

Networks serving medium and large businesses

The BCAR also considered an exemption for networks serving medium and large businesses. In its final report, the BCAR noted that the NBN was competing for business in the medium and large business markets. On this basis the BCAR noted that “it seems reasonable that NBN Co should contest these markets on a level playing field basis, suggesting grounds for introducing funding arrangements that ensure equal contributions towards NBN non-commercial services”.³¹ At the same time, the BCAR noted that including networks servicing medium and large businesses would expand the charge base and improve allocative efficiency outcomes. Against this, the BCAR considered the policy rationale of the existing Parts 7 and 8 of the Tel Act, noting that the provisions in these parts do not extend to networks serving medium and large businesses because infrastructure competition generally exists in these markets. Further, the BCAR noted that while access lines to medium and large businesses were potentially high value, they are expected to be relatively small in number compared to lines serving residential and small business customers. Consequently, on balance the BCAR favoured excluding networks servicing medium and large business customers.

Since the BCAR’s final report a number of other issues have come to light. In particular:

- NBN Co has increasingly sought to expand its network to service medium and large businesses and is actively pursuing these commercial opportunities
- it is reasonable to include networks serving medium and large businesses as they are also consumers of high-speed broadband, and
- there are compliance costs for networks to determine whether the customers on their networks are small or medium businesses. For example—it may be difficult for a

³¹ BCAR’s Non-Commercial Services Funding Arrangement Final Report, March 2016, page 60.

wholesale network provider to determine how many employees the customers of its retailers have. This is particularly difficult if staffing numbers fluctuate from month to month.

On this basis, it is proposed that networks servicing medium and large businesses be included in the charge base.

An exemption for pre-existing networks is not proposed because it would be complex to administer and open the arrangements to challenge (in terms of whether an individual premises was active pre-2011 for example).

In addition, the possibility of a charge has been forecast since the Implementation Study (see the explanatory memorandum and revised explanatory memorandum for the National Broadband Network Companies Bill 2010 Telecommunications Legislation).

Start date of the Scheme

It is intended that the accrual of Regional Broadband Scheme charges commence on 1 July 2020. This timeframe will provide industry, the ACCC and the ACMA time to update their systems and prepare for the coming changes from implementing the Scheme. The ACCC will also have a chance to review the Scheme charge and advise the Minister before the start date of 1 July 2020.

The exact start date for the Scheme will not impact the overall operation of the Scheme and will not impact NBN Co's ability to deliver fixed wireless and satellite services to regional Australia. Any shortfall from delays would be recovered over the life of the Scheme.

Offset provisions

It is proposed that an offset provision would be introduced to allow payments made to NBN Co to be counted against payment made by NBN Co. This would avoid the transactional burden of NBN Co transferring money then receiving it back again. The operation of the offset provisions would not impact on the transparency of the Scheme.

Wholesale price impact

The 2014 policy paper indicated there will be no additional costs to consumers as a whole relative to current NBN pricing—an opaque part of the costs of the NBN will be made explicit, and would be spread across all consumers of comparable broadband services. The paper also indicated that the Government would provide the ACCC with sufficient powers to monitor the introduction of these arrangements.

Consequently, it is expected that NBN Co will drop its wholesale prices commensurate to the net proceeds from the charge it receives under the funding arrangements. There are options to implement the position outlined in the 2014 policy paper. The Government could:

- **Apply the current SAU arrangements.** NBN Co would be permitted to maintain its prices to recover costs it incurs in the initial build phase. When NBN Co has operated profitably for some time it will 'pay back' these initial losses, and it is expected that further downwards pressure will then be placed on its prices. This framework is already

in place, is already monitored by the ACCC, meets the requirements of the 2014 policy paper and provides NBN Co with pricing flexibility.

- **Require NBN Co to drop its prices immediately, commensurate with the amount of the proceeds from the charge it is paid each year under the funding arrangements.** This would require the Commonwealth to impose an additional binding obligation on NBN Co and would reduce NBN Co's pricing flexibility (in a period in which it is making very substantial losses). In practice it would be very difficult to monitor this approach. It would mean though that NBN Co Retail Service Providers would experience an immediate small wholesale price drop.

The current arrangements are sufficient and NBN Co should consider the revenues from the funding arrangements as revenues for the purposes of the SAU. This arrangement is already monitored by the ACCC, is already implemented, and provides NBN Co with pricing flexibility.

How should the administrative costs of the charge be funded?

The administrative costs of the Scheme include costs incurred by:

- the ACCC in terms of calculating the charge amount on commencement and at the end of each five year cycle, and costs incurred in monitoring NBN Co's prices
- the ACMA in monitoring compliance, undertaking enforcement action, collecting funding arrangement revenues and in publishing funding arrangement payments and receipts, and
- the Department of Communications and the Arts for administering the contract with NBN Co and undertaking a policy review of the Scheme.

A portion of these costs are expected to be absorbed by these administering entities. Costs are estimated to be \$0.9 million in aggregate from 2016–17 through to 2019–20.³² There are three options for how these costs can be funded:

- **Administrative costs of the funding arrangements would be funded through the charge:** This is expected to include the ACMA's costs to collect the charge and undertake any necessary reporting, and the ACCC's costs to monitor and periodically review the charge amount, and the Department of Communications and the Arts' cost to administer the contract. This option would have no direct impact on the Budget and ensures that the entities that have caused the need for regulatory intervention bear the cost of that intervention. This option would increase the cost of the charge per-SIO, but because administration costs are expected to be low, the impact is expected to be minor.
- **All administration costs associated with the funding arrangements would be funded through the Budget:** This would spread the cost of administration of the funding arrangements across the widest tax base.
- **Partial Budget funding:** The ACCC's role would be funded through the Budget, and the ACMA's costs would be funded through its existing funding mechanism, taking contributions across the general fees on the telecommunications industry. This option would reduce the impact on the Budget, and there is substantial crossover between those entities that fund the ACMA and those entities that are expected to be covered by the charge.

³² See **Attachment C**.

The administrative costs should be included in the charge, on the basis that administrative costs are expected to be minor. Other implementation detail is at **Attachment B**.

Review

A review of the policy on the Scheme was flagged when the policy was released for exposure draft consultation. It is proposed that the funding arrangements are regularly reviewed.

During consultation, small carriers (and NBN Co) have argued that there should be regular reviews of the policy basis of the charge base as technology and other telecommunications developments continue to rapidly evolve, especially with the expected emergence of 5G mobile networks. A review is required to ensure that the charge base and threshold exemptions remain relevant to the Scheme. The review would consider advice from the ACCC on the monthly charge amount and the ACMA on the collection of charges.

One of the key policy adjustments in the legislation is a requirement for a statutory policy review of the Scheme by the Government within the first four years of the Scheme or as soon as practicable. The Government would review, for example, if the charge base of the Scheme is still applicable in the telecommunications market in Australia. The Minister would be required to cause such a broad scope policy review to commence within the first four years. The Government would undertake subsequent reviews at regular intervals to make sure the Scheme continued to operate efficiently and effectively. In addition, there are a range of mechanisms built into the charge implementation that would allow the Government to adjust the charge in the event that there are unintended consequences. For example, the Government could set the charge per-premises to \$0 if it wanted to delay the impact of the charge, or put the arrangement on 'hold'.

Cost control measures for NBN Co's fixed wireless and satellite networks

It is expected that NBN Co would make up 95 per cent of the fixed-line broadband market by 2020 and as such, would be contributing 95 per cent of the total funds collected by the Scheme. As recommended in the BCAR report, limiting the Scheme charge to NBN Co and NBN-comparable industry participants provides the greatest commercial incentives for NBN Co to control costs for its fixed wireless and satellite networks because it would be paying the bulk of the charge itself. If, for example, the funding base was expanded to mobile broadband providers, NBN Co would not be the main contributor and would have less incentives to control costs because other entities would be providing the bulk of the net costs NBN Co incurs for its fixed wireless and satellite networks.

The ACCC will also have a role in keeping NBN Co's fixed wireless and satellite costs in check through its regular review of the charge amount for the Scheme. As part of the ACCC review, NBN Co would be required to submit information to substantiate the reasonable losses it has incurred in building and operating its fixed wireless and satellite networks. This role complements the ACCC's existing evaluation of NBN Co's prudent capital expenditure undertaken as part of its compliance assessment for the SAU. The ACCC will use this information (and information on the number of premises in the market) to determine the amount of the base charge.

Additionally, the Government's Statement of Expectations issued to NBN Co on 24 August 2016 states that company should be rolling out the network as cost effectively as possible.

While NBN Co is a Government Business Enterprise, the Department of Communications and the Arts will continue to monitor the costs of NBN Co's fixed wireless and satellite networks as part of its annual review of NBN Co's corporate plan.

If in the future the fixed wireless and satellite networks were to be provided by a different entity to NBN Co, the cost control mechanisms would need to be revised. In this case, there would be weaker incentives for the entity providing fixed wireless and satellite networks to control costs, because it would largely be paid for by another entity. In this case, risks for cost over-runs and under-runs should be shifted to the provider of those services.

Conclusion

The funding of broadband services to rural and regional Australia addresses a long standing issue in the Australian telecommunications market. Whilst different approaches have been taken over the past two decades, the sustainability and transparency of arrangements have always raised questions.

The arrangements in place at the moment are not transparent, not effective and are unsustainable. The full cost of the fixed wireless and satellite networks are recovered through an opaque internal cross subsidy from NBN Co's fixed-line networks. NBN Co is now at a competitive disadvantage to comparable providers that do not face similar costs of providing non-commercial broadband services. NBN Co will be less able to support its internal cross subsidy as competition intensifies. If NBN Co loses market share or experiences a reduction in its profit margins in commercially viable areas, it will be less capable of supporting cross subsidies for its fixed wireless and satellite networks.

The magnitude of this competitive impact is relatively large, because while NBN Co's fixed wireless and satellite networks will only make up eight per cent of the total NBN rollout, the net costs are very large, and the markets that NBN Co is under pressure in are relatively profitable. This RIS has considered a range of options to address this issue.

The relative net benefits between Budget funding and the introduction of the Scheme are difficult to measure, but on balance, the introduction of the Scheme through an industry charge is recommended because Budget funding would reduce incentives on NBN Co to contain costs (resulting in a reduction of productive and dynamic efficiency). Additionally, Budget funding is unlikely to be feasible in the current fiscal environment as NBN Co's net costs of \$9.8 billion (in net present value terms) would require Budget funding of around \$1 billion per year out to 2040.

The introduction of the Scheme through contributions sourced from owners of high-speed fixed-line access networks will sustainably fund NBN Co's non-commercial service net costs in regional Australia. It will also reduce the likelihood of a future call on the Budget to renew or replace satellite and fixed wireless assets.

Under the arrangements, NBN Co will pay approximately 95 per cent of the charge, resulting in a real transfer of between \$40 million and \$60 million to NBN Co each year. At the same time the reform will mean that NBN Co will be capable of competing in the highly profitable fixed-line market on the same basis as other providers.

The proposed funding arrangement does not represent a new cost for the industry—or consumers—as a whole, although the distribution of the cost would now extend to networks competing with the NBN. It is an option familiar to the industry as a result of the Universal Service Obligation funding arrangements and is therefore likely to be accepted by market participants.

Attachment A—Allocative, Dynamic and Productive Efficiency Impacts

Allocative efficiency impacts from Government budget funding

If non-commercial net costs are funded from the Government budget then this would require taxes to be higher than would otherwise be the case. The Treasury's 2015 report *Understanding the economy-wide efficiency and incidence of major Australian taxes* (2015 Treasury Report) presents evidence of the distortionary impacts of different types of taxes. Previous studies have also examined distortions from taxation, as inputs into tax discussions such as the Henry tax review. A summary of three previous studies is set out in the table below.

The distortionary impacts of taxation vary from zero or even negative for a land tax to 70 cents per dollar of revenue raised for taxes such as stamp duty. A relatively efficient tax, such as a GST or personal income tax, is estimated to have a distortionary impact of ~15-20 cents per dollar of revenue raised, based on estimates from the 2015 Treasury Report.

For funding non-commercial services, a distortionary impact of 15 cents per dollar would equate to overall net loss of \$1.5 billion (net present value) relative to doing nothing, based on the BCAR's estimated net costs of \$9.8 billion for non-commercial services. For an increase in the GST, the distortions would be marginally higher at \$1.9 billion (net present value).

Relative efficiency of selected taxes by study

KPMG Econtech 2010 ³³	Marginal excess burden	KPMG Econtech 2011	Marginal excess burden	2015 Treasury Report	Marginal excess burden
Municipal rates	0.02	Land tax	0.09	Broad based land tax	-0.1
GST	0.08	GST	0.12	Personal income tax (labour & capital)	0.16
Land taxes	0.08	Personal income tax	0.24	Broad based GST	0.17
Labour income tax	0.24	Motor vehicle stamp duty	0.33	Current GST	0.19
Conveyancing stamp duties	0.34	Payroll tax	0.35	Labour income tax	0.21
Motor vehicle stamp duties	0.38	Company tax	0.37	Company tax	0.50
Corporate income tax	0.40	Commercial transfer duty	0.74	Stamp duty on conveyances	0.72
Payroll tax	0.41	Residential transfer duty	0.85		

Note: Marginal excess burden is the cost of the tax due to changing it by a small amount (usually such that total government revenue increases by \$1).

Sources: KPMG Econtech 2010, CGE analysis of the current Australian tax system, prepared for Department of Treasury, 26 March 2010; KPMG Econtech 2011, Economic analysis of the impacts of using GST to reform taxes; Australian Treasury 2015, Understanding the economy-wide efficiency and incidence of major Australian taxes.

Allocative efficiency impacts from funding from users

The distortionary impact of funding the fixed wireless and satellite services net costs from customers will depend on how many customers decide not to take up services as a result of the charge. This in turn will reflect the price change that the charge leads to (relative to budget funding) and the price responsiveness of users.

If all of the charge were passed through to consumers, the price change from a charge of \$7 (in real, 2015 terms) applied to NBN Comparable services would be similar to an increase of 10%, with a retail plan costing ~\$70 on average.

The responsiveness of consumers to price (the price elasticity of demand) is likely to be relatively low. For example, Dutz et al (2009) found that elasticities from dial-up to

³³ Modelling and results were prepared for and incorporated into the Henry Tax Review

broadband were about -0.69 in 2008—that is, a 10 per cent rise in the price of broadband would lead to a 6.9 per cent decline in the number of people choosing broadband versus dial-up internet.³⁴ At higher speeds, Dutz et al (2009) found much higher elasticities—generally larger than -4. This makes sense, as another high-speed plan (such as 50/20) is a closer substitute to a very high-speed plan (100/40) than is dial up internet. The former estimates are most relevant for the application of a charge across NBN Comparable services. There is the potential for elasticities to change depending on technological advances such as in mobile broadband.

The estimated net costs of funding fixed wireless and satellite services from users of NBN and NBN Comparable services (Option 3), for different measures of consumer responsiveness, are set out in the table below. The most likely estimate of net loss is \$235 to \$470 million (net present value). Option 1 (do nothing) would have higher allocative efficiency costs than this, because it would distort decisions across different suppliers of comparable broadband services—or, if NBN Co lowered prices to compete, would lead to higher prices for commercial users in areas where competition did not emerge.

The estimated net costs from funding from users are somewhat below the losses from the taxation literature relevant for direct government funding. However, the measures of the losses from taxation account for flow-on distortions across the economy, while the estimates below are for the market for NBN Comparable services only.³⁵

Efficiency impacts of funding from users

Price responsiveness of consumers (elasticity of demand)	Per cent of customers not taking up services as a result of the charge	Estimated net costs (\$m. NPV)
-0.2	-2.0%	-94
-0.5	-5.0%	-235
-1	-10.0%	-470
-1.5	-15.0%	-705

Productive and dynamic efficiency impacts

Different options are likely to lead to different levels of cost constraint on NBN Co, in its provision of fixed wireless and satellite services and more generally. It is very difficult to measure how much this could impact on costs. To give a sense of the order of magnitude, we have mapped out different levels of net cost if NBN Co becomes less efficient than anticipated (see below).

- The loss of productive efficiency is a cost increase applied across time. A 1% reduction in productive efficiency would have a net loss of \$120 million (net present value), a 5% reduction a net cost of \$600 million and a 10% reduction a net cost of \$1.2 billion.

³⁴ Dutz, M., Orszag, J. and Willig, R. 2009, *The substantial consumer benefits of broadband connectivity for US households*, Commissioned by the Internet Innovation Alliance. See http://internetinnovation.org/files/special-reports/CONSUMER_BENEFITS_OF_BROADBAND.pdf

³⁵ Technically, taxation impacts are measured in a general equilibrium framework, while the estimated losses from user funding are estimated in a partial equilibrium framework.

- Dynamic efficiency is where costs or allocative efficiency do not improve or worsen over time. For example, if efficiency worsens by 0.5% per year, relative to current expectations, then this would create a loss of \$573 million (net present value). Higher levels of efficiency loss over time could lead to losses of over \$1 billion.

Overall levels of inefficiency reached by organisations whose incentives to control costs are not as strong as a private sector business can reach levels of 20-30 per cent:

- Economic Insights 2014 found that efficiency (based on operating costs) for NSW Government owned electricity distributors ranged from 40% to 60% of an efficient firm.³⁶ Based on this and other analysis, the Australian Energy Regulator considered that AusGrid, the largest of the NSW electricity distributors, should be allowed costs 24% below their proposed operating costs.³⁷
- The CIE 2015 found that government operated train and bus services in Sydney were 20-30% less efficient than a benchmark efficient operator.³⁸
- PWC 2015 considered that privatisation of public utilities could have productivity gains of 5 to 15% for electricity, water and the NBN and 35% for transport.³⁹

The main option that we consider would reduce productive and dynamic efficiency is Option 2 (direct budget funding), as this option would fund the net costs from NBN Co providing fixed wireless and satellite services through the Budget, and outside of existing regulatory and shareholder constraints. A broad-based industry charge could also reduce productive and dynamic efficiency. The BCAR and ACCC both noted that NBN Co would face greater incentives for cost efficiency if the costs for providing those services were mainly borne by NBN Co itself.⁴⁰ The changes in efficiency incentives from alternative funding options for those services are not as different as between a government owned and regulated business, and a private business. The impact of a greater part of funding for those services coming from Budget or other outside services would be expected to be considerably smaller than this, and would also depend on what other mechanisms could be put in place to control costs and service standards.

Efficiency impacts of funding from users

Change in productive efficiency	Net cost	Change in dynamic efficiency	Net cost
Per cent	\$m, NPV	Per cent/year	\$m, NPV
-1%	-120	0.5%	-573
-5%	-600	1.0%	-1,187
-10%	-1,200	2.0%	-2,556

³⁶ As reported in Australian Energy Regulator 2015, *Overview: AusGrid final decision 2015 to 2019*, p. 39.

³⁷ Australian Energy Regulator 2015, *Overview: AusGrid final decision 2015 to 2019*, p. 41.

³⁸ The CIE 2015, *Efficiency of NSW public transport services*, prepared for IPART, December.

³⁹ PWC 2016, *Modelling of potential policy reforms*, prepared for Infrastructure Australia, February.

⁴⁰ BCAR 2015, *NBN non-commercial services funding options: final report*, December; ACCC submission to the NBN non-commercial services funding options - final consultation paper November 2015.

Attachment B—Regional Broadband Scheme Implementation detail

Options surrounding design of the charge have been considered by the Department, in consultation with interested parties including members of the telecommunications industry. This attachment summarises the aspects of that design which the Department considers best underpins a sustainable and effective arrangement to fund NBN Co's fixed wireless and satellite services including a charge on NBN and NBN Comparable providers.

Objectives

The charge will introduce sustainable and transparent funding of NBN Co's fixed wireless and satellite services and ensure that NBN Co's competitors are subject to the same costs as NBN Co. The arrangement will ensure that NBN Co and its competitors operate on a more level playing field to sustainably fund the provision of those services in regional Australia, including asset renewal and replacement (thereby avoiding a future call on the Budget). The funding reforms will complement other market reforms, for example, promoting network competition in greenfield areas by allowing NBN Co to charge for the installation of network infrastructure in greenfield sites.

Costs to be recovered

The net costs to be funded will be those generated by the NBN Co fixed wireless and satellite services. Other net costs (for example in relation to some areas of NBN Co's fixed-line services) should not be included as they cannot currently be quantified and these networks are profitable overall.

The net costs associated with those services should be assessed over the period 2010–11 to 2039–40 (a longer period or an increase in the charge per service would be required if the arrangements are delayed). This will allow a sufficient timeframe to average the net costs incurred during the initial build phase while allowing for consideration of reasonable operating and replacement capital costs.

Determination of the charge amount

The charge amount will be determined by the Minister for Communications after considering advice from the ACCC. This will allow the charge to take into account the ACCC's expert opinion and provide substantial flexibility to the Government in determining and adjusting (if needed) the charge's coverage or operation.

Cost calculation methodology

A discounted cash flow (DCF) approach will be used, because it directly and transparently aligns with financial projections, can readily accommodate future updates, aligns with the SAU and provides the most consistent outcomes.

Legislative provision will allow flexibility in the event that circumstances change such that an alternate approach can be introduced at a later time.

Cost allocation methodology

The avoidable cost methodology will be used because it is consistent with the approach taken in calculating the community service obligations of other Government Business Enterprises, such as Australia Post, and best recognises efficient asset usage and expenditure. This approach was also recommended by the BCAR.

Implementation date

The legislation for the Scheme will begin on Royal Assent, with carriers to begin accruing the charge from 1 July 2020.

Carriers have a one-off reporting obligation following commencement of the Scheme. The one-off report will be for the ‘applicable reporting period’ which is the second month that began after commencement of Schedule 4 to the TLA (CC) Bill. The one-off report will be due at the end of the month after the applicable reporting period. The first annual reporting period will commence on 1 July following passage of the legislation and 30 June 2020, with the first collection late in the following calendar year. Aligning the funding arrangement with financial years will lower compliance costs for industry. Setting the first accrual period from 1 June 2020 will avoid retrospectivity issues, aligns with the Government’s policy statement, allows industry to adapt to the reform and allows government agencies to put in place the necessary administrative arrangements.

Review of charge amount

A review of the charge amount will be undertaken by the ACCC at least every five years, whilst permitting the ACCC to undertake a review outside of the set review points. The proposed five year period will provide industry with some investment certainty, and allowing the ACCC to undertake reviews outside of the set review points will allow the Minister to adjust the charge in the event that major changes to the charge forecasts were expected. It is intended that the ACCC collects information following commencement of the Scheme to allow it to recalculate the monthly per-premises amount, if necessary, and advise the Minister who may then decide to adjust either or both the base component or administrative cost component.

At each review point, there will be an adjustment to allow over (or under) recovery of costs to be returned (or charged) to industry as a whole through a lower (or higher) monthly charge per-premises. Retrospective refunds are not proposed due to the high administration costs.

Transparency of payments

As outlined by the Government’s 2014 policy paper, the transparency of the funding arrangement is a critical element of the proposal.

The aggregate amounts paid to the ACMA under the funding arrangements will be published each year.

Revenue collection

The ACMA will be tasked to collect the charge as it administers existing telecommunications levy mechanisms (i.e. the Eligible Revenue reporting process) and because it is familiar with the sector.

An offset provision will be introduced, to allow charge payments made by NBN Co to be counted against funding payments made to NBN Co. The operation of the set off provisions will not impact on the transparency of the arrangements.

A special account will be introduced and administered by the Department of Communications to further improve the transparency of the funding arrangements.

Policy review

Under the legislation there is a requirement for a statutory policy review of the Scheme by the Government within the first four years of the Scheme or as soon as practicable. The Government would review, for example, if the charge base of the Scheme is still applicable in the telecommunications market in Australia. The Minister would be required to cause such a broad scope policy review to commence within the first four years.

Additionally, it is expected that the Government will undertake periodic policy reviews (probably on a similar schedule to the ACCC's reviews of the charge amount), and on an ad-hoc basis in the event of major market changes, asset renewal or technology changes. This would support the sustainability of the fixed wireless and satellite networks funding arrangement.

Note that should fixed wireless and satellite networks be provided by a different entity to NBN Co, then there would be a need to revise mechanisms for cost control. In this case, there would be weaker incentives for the entity providing fixed wireless and satellite networks to control costs, because it would largely be paid for by another entity. In this case, risks for cost over-runs and under-runs should be shifted to the provider of those services.

Changes in the telecommunications market

Because of rapid changes in broadband technology, new and improved technologies may warrant an expansion of the categories of entities captured by the charge. These changes will be considered as part of the policy reviews outlined above.

Attachment C—Implementation costings

Under the preferred model, the expected implementation and operating costs of administration for the funding agreements are expected to be \$0.9 million over the first four years of the Scheme.

Entity	Function
ACCC	<p>Recalculating the charge for the first 5 year cycle On commencement the ACCC would re-calculate the charge based on the latest premises figures and cost estimates from NBN Co of its fixed wireless and satellite networks. This would require the ACCC to undertake complex financial calculations and undertake market forecasts.</p>
ACCC	<p>Consulting on approach/setting up framework On commencement the ACCC would consult on various options/considerations in relation to performing its role under the legislative framework and amending any record-keeping rules (where relevant) to enable the ACCC to perform its monitoring role.</p>
ACCC	<p>Monitoring Each year the ACCC would consider the information provided by industry on the actual number of premises in the market and consider the financial information provided by NBN Co. In considering this information, the ACCC would make a decision on whether it ought to initiate a pricing review earlier than planned.</p>
ACCC	<p>Re-calculating the charge amount for 5 year cycles This cost component is similar to the pricing review for the first five year cycle, although the ACCC expects this would be a more extensive task in which they would consider any lessons from the first five years of the funding arrangements, or otherwise alter the approach in response to the scheduled policy review.</p>
ACCC	<p>Price monitoring The ACCC would monitor NBN Co's prices to determine the extent to which the proceeds from the charge had resulted in lower wholesale prices. It is proposed that these costs are absorbed into the ACCC's existing NBN Co price monitoring function.</p>
TOTAL ACCC over 4 years	\$0.2 million
ACMA	Levy (TIL) work. In addition the ACMA would also assess the amounts providers were liable for and enforce the charge obligations.

Entity	Function
ACMA	<p>IT upgrade The ACMA reports that it will be implementing the secure online system (TELLER) for telco carriers to report eligible revenue for TIL calculations. The TELLER system is an “off the shelf” product that the ACMA has customised to meet the particular needs of the telco industry for the reporting of eligible revenue and collection of the TIL. The ACMA anticipates modifying this system to collect the charge to be the most effective method of administering the Regional Broadband Scheme. The modifying of the ACMA’s established CRM/Intellex system for the charge collection involves a moderate setup cost.</p>
Total ACMA over 4 years	\$0.6 million
Department of Communications and the Arts	<p>Contract administration As part of arrangements, the Department of Communications and the Arts (DCA) would need to negotiate and administer a contract with NBN Co for the payment of proceeds from the charge. It is expected that negotiation would take three months, and require four FTE (one FTE annualised). Each year, the DCA would need to pay NBN Co the charge proceeds. It is estimated that this would take 0.5 months and require three FTE (0.125 FTE annualised). The Department would absorb these costs.</p> <p>Policy Review The Government is required to undertake a policy review of the Scheme within the first four years or as soon as practicable after the end of the four-year period, and subsequently at regular intervals.</p>
Total administration costs	\$0.9 million

Compliance costs

Under the preferred model, the expected compliance costs (excluding costs of administering the charge) per annum are expected to be \$67,000 in aggregate per year, or approximately \$4,333 per year on average per firm currently in the market. As per Guidance Note ‘Regulatory Burden Measurement Framework’ issued in February 2016, because the compliance costs fall beneath \$2 million per annum, these costs have not been agreed by the Office of Best Practice Regulation.

Under the preferred model, the expected compliance costs per annum are as follows:

Entity	Cost estimate	Function
NBN Co and NBN Comparable providers	\$43,000 p.a.	Enforcement and record keeping: As part of the arrangements, providers will need to determine how many eligible premises they provide eligible services to and advise the ACMA. It is expected that providers will be aware of the number of eligible premises they operate on a month to month basis for billing purposes. Likewise, providers already need to provide information to the ACMA for other telecommunications purpose (e.g. as part of carrier license requirements). Nonetheless, we estimate that eligible carriers may need to undertake some work to ensure that they are compliant with the charge requirements, particularly in determining whether premises they operate are eligible for the charge. We estimate that a regulatory officer in each provider would spend approximately 0.5 months undertaking this work, each year ⁴¹ .
NBN Co	\$0	NBN Co has advised that there are no material ongoing compliance costs, relative to budget, even though additional resources may be required in administering the charge. However, there may be substantial transaction costs for NBN Co. Consequently, an ‘offset’ provision is proposed.

Cost estimates have also been prepared for other options:

Option	Entity	Cost estimate	Explanation
Option 1: Do nothing	Nil	\$0	There would be no compliance costs if the net costs from the fixed wireless and satellite services continue to be funded by NBN Co.
Option 2: Direct Budget funding	Nil	\$0	There would be no compliance costs if the net costs from the fixed wireless and satellite services were funded directly from the Budget. NBN Co has advised that there are no material ongoing compliance costs for providing its net costs for building and operating its fixed wireless and satellite networks to the ACCC.
Option 4: Targeted post-market subsidies	Consumers	\$12.7 million ⁴²	Individuals seeking access to post-market subsidies would face some compliance burden in demonstrating that they are eligible for a subsidy. The level of compliance burden would be commensurate to the standard of proof required to demonstrate eligibility. For the purposes of developing compliance costings, it

⁴¹An annual salary of \$100,000, and that there are 10 eligible firms operating in the market.

⁴² This figure is equal to OBPR’s average wage rate for leisure time (\$31) multiplied by 2 (for the number of hours spent researching options) multiplied by the number of eligible households (in this case: 204,600).

Option	Entity	Cost estimate	Explanation
			<p>is assumed that a reasonably small number of documents would be required: proof of identity, proof of residence and proof of income. It is assumed that on average the typical consumer would spend two hours per year researching the Scheme, gathering the necessary documents and checking that they meet the requirements. The number of consumers that this burden would apply to is dependent on the income (or other) threshold set. This RIS assumes that the threshold is set at \$52,000 (consistent with other Government programs, such as Family Benefit Part A). We assume that, based on NBN Co's forecast penetration rate and the ABS' estimate of income distribution across Australia, that 204,600 households would be eligible for a subsidy.⁴³</p> <p>This RIS assumes that assessment of consumers' claims is undertaken by the Government. If another body (such as the service provider) were to undertake this work, the Budget cost estimated in "Who is affected?" would apply as a compliance cost instead.</p>

Regulatory compliance costs for the four options explored in this document are set out below. The offsets referred to in this section refer to the proposed reforms to Parts 7 and 8 announced in the Government's 2014 Policy Paper. The Department warrants that the regulatory costs imposed by the preferred option will be offset by regulatory savings from these reforms.

Option 1: Do nothing

Average Annual Regulatory Costs (from Business as usual)

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

Cost offset (\$million)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0.9 m	\$0	\$0	\$0.9 m

Are all new costs offset?

yes, costs are offset

Total (Change in costs—Cost offset) \$0.9 m

⁴³ See ABS' Household income in Australia, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6523.02013-14?OpenDocument>

Option 2: Direct Budget funding

Average Annual Regulatory Costs (from Business as usual)

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

Cost offset (\$million)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0.9 m	\$0	\$0	\$0.9 m

Are all new costs offset?

yes, costs are offset

Total (Change in costs—Cost offset) \$0.9 m

Option 3: Regional Broadband Scheme

Average Annual Regulatory Costs (from Business as usual)

Change in costs (\$)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$43,000	\$0	\$0	\$43,000

Cost offset (\$million)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0.9 m	\$0	\$0	\$0.9 m

Are all new costs offset?

yes, costs are offset

Total (Change in costs—Cost offset) \$0.85 m

Option 4: Targeted post-market subsidies

Average Annual Regulatory Costs (from Business as usual)

Change in costs (\$)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$0	\$0	\$12.7 m	\$12.7 m

Cost offset (\$million)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0.9 m	\$0	\$0	\$0.9 m

Are all new costs offset?

no, all costs are not offset

Total (Change in costs—Cost offset) \$11.8 m

Attachment D—Breakdown of satellite and fixed wireless net costs

In its final report, the BCAR estimated that NBN Co’s fixed wireless and satellite networks will cost of approximately \$9.8 billion from 2010–11 to 2039–40 (net present value). This attachment provides greater detail on how this estimate was developed.

Methodology

The BCAR used an avoidable cost methodology. In essence, the BCAR considered all costs (including capital costs) which would have otherwise been ‘avoided’ had the service not been provided. The BCAR has adopted the following approach to identifying the avoidable costs of the satellite and fixed wireless services:

1. Categorise all NBN Co costs into:
 - a. costs that are directly attributable to the provision of satellite and fixed wireless services (e.g. satellite costs, fixed wireless tower costs, etc.)
 - b. costs that are directly attributable to the provision of fixed-line services (e.g. cost of pit and pipe), or
 - c. common and indirect costs from assets and activities shared by fixed wireless, satellite and fixed-line services (e.g. transit and labour costs).
2. Identify whether the common and indirect costs (under 1c) are:
 - a. unavoidable, as they do not vary irrespective of the deployment of the satellite and fixed wireless networks, or
 - b. partly avoidable, because they would be less if the satellite and fixed wireless networks were not deployed.
3. For those common and indirect costs that are partly avoidable, the BCAR allocated costs between the fixed-line, fixed wireless and satellite networks based on the percentage of SIOs in a given financial year.

This approach resulted in around 1.2 per cent of all indirect or common costs being allocated to the fixed wireless and satellite networks from 2010–11 through to 2021-22. By comparison, the fixed wireless and satellite networks are expected to account for around eight per cent of all premises covered by NBN Co’s network.

The BCAR modelled non-commercial net costs to 2039–40.⁴⁴ This approach provides consistency between non-commercial service forecasts and the business case period considered under the SAU.

The BCAR modelling included replacement costs for the capital in the fixed wireless and satellite networks. The BCAR estimated that satellite assets (that is, the satellite and ground stations) would have a useful life of 15 years. The BCAR estimated that the fixed wireless assets would have a useful life of 5 years for customer equipment, between 15 and 16 years for the fixed wireless base stations, and 7 years for the core network assets.

In considering the financial outcomes of the fixed wireless and satellite services, the BCAR adopted the discounted cash flow (DCF) methodology. The DCF methodology involves

⁴⁴ ‘Historical’ costs of the interim satellite service were also included in BCAR’s modelling.

estimating the future cash inflows and outflows, and applying an appropriate discount rate to those future cash flows.

In the context of fixed wireless and satellite services, which are characterised by negative cash flows throughout the life of the project, the discount rate decreases net present value (NPV) net loss. In other words, the greater the discount rate, the smaller the overall net cost. The BCAR considers that the most appropriate discount rate for quantifying non-commercial net costs is the weighted average cost of capital (WACC) calculated by the method approved by the ACCC for NBN Co's SAU—the risk free rate (10-year Commonwealth Government Bond spot rate) plus 350 basis points.

The WACC contemplated in the SAU is consistent with the Government's competitive neutrality guidelines for determining a target rate of return. A risk-based approach allows for the application of a benchmark base cost of capital such as the Commonwealth long-term bond rate and the addition of a risk premium. The BCAR used this approach to calculating the WACC value, and has used a discount rate of 6.46 per cent to give indicative NPV net costs estimates.

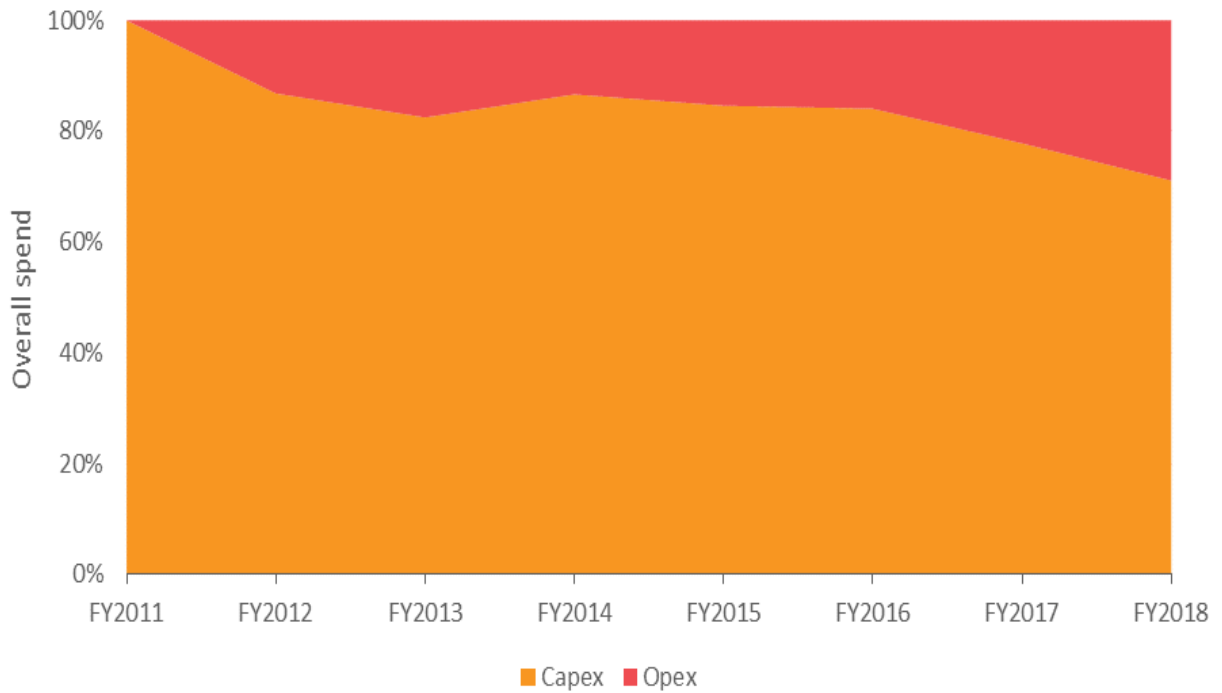
Once the NPV real charge per-SIO is estimated (estimated to be \$6.76 by the BCAR, excluding services provided to medium and large businesses in 2014–15 dollars⁴⁵), it is inflated each year by the consumer price index to generate the nominal charge per-SIO.

Net costs of the fixed wireless and satellite services

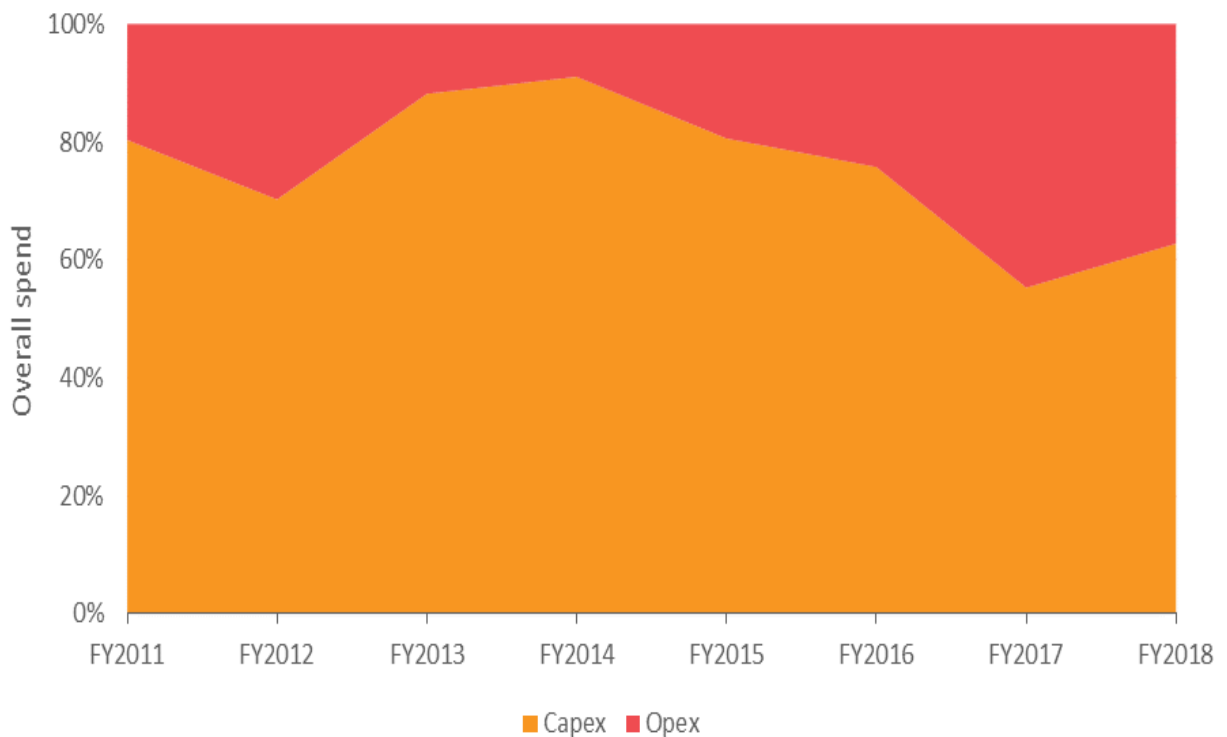
The total net present value net loss of the fixed wireless and satellite services was estimated by the BCAR to be \$9.8 billion. The figure below⁴⁶ shows the split of the expected overall spend for fixed wireless capital expenditure (capex) and operational expenditure (opex) from 2010–11 to 2017–2019, including common costs.

⁴⁵ Note that the Department has recalculated the charge amount per service to include services provided to medium and large businesses. This results in a charge of approximately \$7.10 per month per service, including administrative costs.

⁴⁶ See BCAR's NBN Non-Commercial Services Final Report, page 16, page 19.

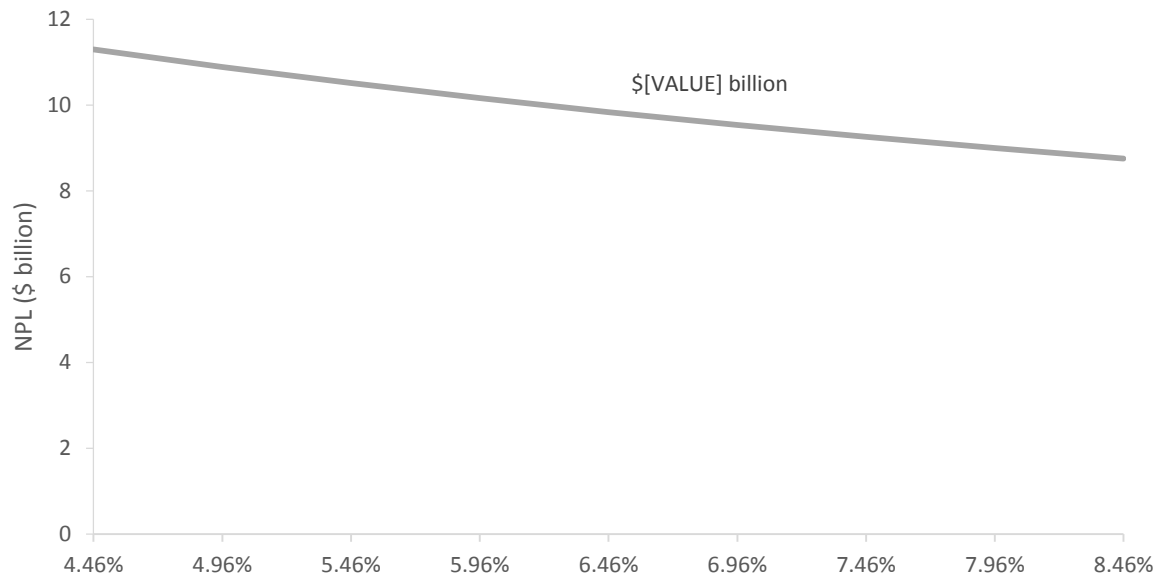


The following figure shows the expected Satellite capex and opex from FY2011 to FY2018, including common costs.



Because the net cost is calculated in NPV terms, the loss is also sensitive to the discount rate chosen. The sensitivities shown below highlight the need to carry out periodic forecasting of non-commercial service losses, particularly to reflect updated cost estimates.

Figure 1: NPV loss, sensitivity by discount rate



Source: BCR (2015).

Attachment E - Existing policies and regulatory settings

Statement of expectations

Following the recommendations of the 2003 Review of Corporate Governance of Statutory Authorities and Office Holders (the Uhrig review)⁴⁷ Statements of Expectations (SoE) are issued by the Government to Commonwealth Companies, setting out relevant government policies and expectations on how these companies should conduct their operations. The latest SoE for NBN Co was issued on 24 August 2016.⁴⁸

Relevant to the delivery of fixed wireless and satellite services, the SoE specifies that NBN Co should build the network in a cost-effective way, using the technology best matched to each area of Australia within the constraints of the Government's public equity capital limit, as set out in the Equity Funding Agreement, and deliver a network capable of wholesale download data rates of at least 25 megabits per second to all premises.

Special Access Undertaking

The Special Access Undertaking (SAU), as accepted by the ACCC on 13 December 2013, is a key part of the regulatory framework that governs the price and other terms on which NBN Co supplies services to access seekers who are supplying services in downstream retail and wholesale markets.⁴⁹

The SAU has a term that runs to 30 June 2040 and operates via a modular structure. The first part (known as Module 1) applies for the first 10 years (during which time the network will be built). Module 1 includes detailed price terms and a limited set of non-price terms. The second part of the SAU (known as Module 2), commences on 1 July 2023 and its terms are generally expressed at a higher, more principled level. The SAU contemplates that further detail will be incorporated over time via NBN Co submitting replacement modules for ACCC consideration.

To account for the transition to the multi-technology mix approach, NBN Co lodged a variation to the SAU with the ACCC on 27 May 2016. The variation proposes to:

- retain the current SAU arrangements, most aspects of which are technology neutral (including the modular structure)
- extend the SAU's service, product and price coverage to incorporate FTTB, FTTN and HFC (and the option to incorporate future variants such as FTTdp, and
- make a very small number of changes based on experience with operating under the SAU to date.

The ACCC has rejected the proposed changes to the SAU put forward by NBN Co, but has indicated that it does not have fundamental concerns with the overall approach NBN Co has taken to incorporate the additional technologies. The ACCC has provided NBN Co with clear

⁴⁷ See <http://www.finance.gov.au/sites/default/files/Uhrig-Report.pdf>

⁴⁸ The SoE is available here: <http://www.nbnco.com.au/content/dam/nbnco2/documents/soe-shareholder-minister-letter.pdf>

⁴⁹ The SAU is available here: [http://www.nbnco.com.au/content/dam/nbnco/documents/NBN%20Co%20SAU%20-%20Varied%20on%2018%20November%202013%20\(clean%20version\).pdf](http://www.nbnco.com.au/content/dam/nbnco/documents/NBN%20Co%20SAU%20-%20Varied%20on%2018%20November%202013%20(clean%20version).pdf)

guidance and what changes are required before it can accept the variation to the SAU. The SAU works in conjunction with NBN Co's Wholesale Broadband Agreement (WBA).⁵⁰ Whereas the SAU includes a mechanism to set the maximum price (for example) that NBN Co can charge for services, the WBA is the contractual agreement between NBN Co and its retailers that specifies price and non-price terms.

In providing a service over the NBN, NBN Co's access seekers must purchase both Access Virtual Circuit (AVC) and Connectivity Virtual Circuit (CVC) services from NBN Co (amongst other things).⁵¹ In simple terms, AVC is the supply charge and CVC is the capacity charge (or usage charge).⁵² Retailers can aggregate multiple AVCs on one CVC (with options for different 'traffic class' qualities)—in essence CVC capacity is shared between customers. The amount of CVC an access seeker purchases for each AVC and its traffic class has a large bearing on the quality of the service experienced by customers, particularly during the peak period on the access seeker's network. Access seekers mix and match different AVC and CVC combinations as part of developing their retail products.

Parts 7 and 8 of the Telecommunications Act

Parts 7 and 8 of the Tel Act provides rules about the supply of high-speed broadband, and were put in place in their current form in 2011.

Part 7 provides that networks built or upgraded after 1 January 2011 must not supply a fixed-line broadband services to residential and small business customers if they do not also provide a layer 2 bit stream service. A layer 2 bit stream service has the normal meaning used in the telecommunications industry, which is generally taken to be an Ethernet service for the transmission of data between two points on a network.⁵³ NBN Co is not bound by Part 7 as it is required to operate on a wholesale only basis and offer services at the lowest practical layer of the OSI stack. Part 8 requires that operators of high-speed broadband offer services on a wholesale basis.

Taken together, the intention of Parts 7 and 8 are to ensure that other non-NBN providers of high-speed broadband can provide customers with similar services to NBN Co (that is provide access to a broadband service of 25 Mbps or more) and do so on an open access basis.

Parts 7 and 8 include a range of exemptions. In particular, exemptions are provided to networks in place prior to 1 January 2011. This exemption remains in force in the event of small upgrades extending the existing infrastructure by no more than 1 kilometre.⁵⁴

In September 2013, TPG Telecom announced its intention to build a fibre-to-the-basement (FTTB) network with the potential to reach more than 500,000 premises in metropolitan areas

⁵⁰ See <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>

⁵¹ For example, clause 1A.4.2 provides that NBN Co can require that the supply of an AVC to a retail providers can be on the condition that the retailer also acquire another product.

⁵² See clauses 1A.3.2 and 1A.3.3 for the definitions used in the SAU.

⁵³ See the ACCC's Layer 2 bitstream service declaration Final report, February 2012 for more discussion about the definition of a layer 2 bit stream service, available here:

<https://www.accc.gov.au/system/files/Local%20bitstream%20access%20service%20declaration%20-%20final%20report.pdf>

⁵⁴ See 141B(4)(c)(i).

in Sydney, Melbourne, Brisbane, Perth and Adelaide. However, it is not subject to Part 7 and 8 of the Tel Act because it had a network (albeit one that was focussed on the business market) that was already capable of supplying superfast carriage services before 1 January 2011, and is extending that network by less than 1 kilometre.

On 11 September 2014, the ACCC announced that it did not consider TPG was in breach of Part 7 or 8. On the same day as the ACCC's announcement, the Minister for Communications announced that he would consult on a new carrier licence condition declaration relating to superfast networks. Subsequent to this, the Minister for Communications made a new carrier licence condition declaration requiring that specified carriers provide high-speed broadband on a wholesale non-discriminatory and equivalent basis until 30 June 2015, and after that be required to comply with general separation and supply obligations, and layer 2 wholesale service obligations.⁵⁵ The carrier licence condition is part of the Government regulatory transition process, explained in more detail below under 'Future reform'.

Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) declarations

Superfast broadband access service (SBAS) and local bitstream access service (LBAS) are wholesale broadband services⁵⁶ on non-NBN networks. The services are used by retail service providers (RSPs) to supply downstream superfast broadband to customers. Both services are referred to as layer 2 bitstream fixed-line services; they are capable of a data transmission speed rate of 25 Mbps or higher. Fixed wireless, satellite and mobile services are not included in these services.

These services have been declared by the ACCC which means that the ACCC can set price and non-price terms for these services.

- **SBAS** refers to broadband services delivered on eligible networks built before 1 Jan 2011. However, they do not include services supplied to locations where there is effective competition, for example, services supplied exclusively to businesses, public bodies or charities in major central business districts (CBDs). Services supplied by NBN Co or on HFC networks (transferring to NBN Co) are excluded.
- **LBAS** refers to wholesale broadband access services delivered on networks built, upgraded or altered by more than 1km cable distance after 1 January 2011, unless they have a Ministerial exemption or are exempt under Part 7 of the Tel Act. These services are subject to structural separation requirements.
- **Layer 2 bitstream** access is a wholesale product consisting of a high-speed access link installed in the local access network (which itself is linked to a backhaul backbone network) and made available to third parties (i.e. RSPs) to enable them to provide high-speed broadband services to customers. It is a key feature of the broadband market that enables RSPs to offer their own products to customers even if they do not operate the local access network.

SBAS providers include:

⁵⁵ See Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014, <https://www.legislation.gov.au/Details/F2014L01699>

⁵⁶ <http://registers.accc.gov.au/content/index.phtml/itemId/1035508>.

- Telstra: fibre-to-the-premises (FTTP) networks in the South Brisbane Exchange and Velocity Estates Fibre Access Broadband networks (FAB), and
- TPG: FTTB networks, VDSL network in the ACT and HFC networks in Victoria (acquired via iiNet⁵⁷)

LBAS providers include:

- Opticomm Co Pty Ltd
- CNT Pty Ltd
- OPENetworks
- the Local Broadband Network Company (LBNCo), and
- Vocus Communications: fibre networks

Process for declaration and determination

The general process for the ACCC issuing a Service Access Determination or Product Declaration is outlined in its draft guidelines⁵⁸. It may start by making a declaration or issuing a discussion paper on the matter for input by access seekers and consumers then making an interim/draft decision (which it issues out for further consultation) before making its final decision or determination.

The SBAS declaration came into effect on 29 July 2016 (expiring 28 July 2021) and applies to all non-NBN pre-2011 superfast fixed-line broadband networks delivering download speeds of 25 Mbps or higher.

LBAS was declared on 22 February 2012 (with an indefinite expiry date) and came into effect on 13 April 2012. The LBAS service declared was required to have a download speed rate of 25 Mbps.

On 26 May 2017, the ACCC released its final decision for the combined SBAS/LBAS Final Access Determination public inquiry. In its final decision the ACCC has allowed LBAS/LBAS to pass on the Scheme charge beyond the existing \$27 price cap if required.

Future reform

In its 2014 policy paper, the Government acknowledged that an effective telecommunication regulatory regime was compromised by legislative and regulatory reform undertaken between 2009 and 2011, particularly in relation to Parts 7 and 8.

In the 2014 policy paper the Government announced that it would introduce a package of reforms to move towards a more effective regulatory arrangement. The reforms would proceed in an ordered sequence to minimise disruption to the industry and enable NBN Co to complete its rollout.

⁵⁷ iiNet is owned by TPG

⁵⁸ https://consultation.accc.gov.au/regulated-infrastructure/draft-guidelines-for-part-xic-declaration-provisio/supporting_documents/Draft%20Part%20XIC%20declaration%20guideline%20June%202016.pdf

The transition period and pre-NBN privatisation phases set out in the 2014 policy paper are beyond the scope of this RIS, however it is intended that legislation allowing for greater structural flexibility for non-NBN providers and establishing a Statutory Infrastructure Provider proceeds at the same time as legislation implementing transparent funding for fixed wireless and satellite services. These two other measures are subject to a separate RIS, and are summarised below:

1. **Amendments to Parts 7 and 8:** The Government will amend existing separation rules in the Tel Act to allow superfast networks to operate on a functionally separated basis if authorised by the ACCC; and
2. **Statutory Infrastructure Provider:** The Government will introduce Statutory Infrastructure Provider obligations on NBN Co and, where appropriate, other superfast network providers.

It is important that the funding arrangements for fixed wireless and satellite services, amendments to Parts 7 and 8 and the Statutory Infrastructure Provider reforms proceed as a package because they are integrated and dependent. While the Parts 7 and 8 reforms are designed to provide greater structural flexibility for firms and therefore more commercial opportunities, this could impact on NBN Co's ability to fund its fixed wireless and satellite services. Sustainable funding arrangement for those services will assist in balancing this arrangement.

Similarly, while the Statutory Infrastructure Provider obligations will make clear NBN Co's obligations to deliver infrastructure, including in rural and remote areas, it is important that there is a mechanism to contribute to the cost of non-profitable fixed wireless and satellite infrastructure. Conversely, industry is likely to want to see a legally binding requirement on NBN Co to provide infrastructure if it is to contribute to its cost.

Attachment F – Detailed stakeholder comments from consultations

1. Vertigan Review

The key issues noted by stakeholders relevant to non-commercial funding arrangements were as follows:

- **Complexity of subsidy arrangements:** the Australian Communications Consumer Action Network (ACCAN) argued that post market subsidies would potentially be complex to administer, especially in the context of a network that uses multiple technologies across the fixed-line network. ACCAN advocated reconsideration of a charge (as noted in the earlier implementation study) to support the proposed Scheme.
- **Potential distortions:** The ACCC agreed that NBN Co's fixed wireless and satellite networks were non-commercial, and that some form of subsidy may be required to fund the shortfall between costs and revenues. The ACCC advocated that a subsidy provided to support the Scheme should be as transparent and effectively delivered as possible, while minimising market distortions. The ACCC noted that Budget funding via a grant could potentially have a low distortionary impact. The ACCC also noted that an alternative would be the introduction of a charge or other fee on market participants.
- **Industry contributions:** The Communications Alliance argued that, as a matter of principle, funding for fixed wireless and satellite services should come through Government, rather than the imposition of a charge or other industry funding mechanism. Telstra also argued that net costs generated by those services should be absorbed by NBN Co's shareholder. In contrast, OptiComm was in favour of an industry funding mechanism. It argued "*industry generated funding of non-NBN Co fixed access providers in regional or metro-fringe areas would enhance competition and reduce the reliance on government financed NBN Co networks. Those services should not be cross subsidised, they should be funded through an industry generated funding mechanism*". Similarly, TPG was opposed to 'do nothing'. It argued that the delivery of NBN Co's fixed wireless and satellite services could be achieved through an industry wide charge (albeit, TPG argued that the charge should be applied to all telecommunications infrastructure providers and retailers, and on the basis that a portion of those services may be commercial). TPG also noted that Budget funding would be acceptable, noting that "*[the current] cross-subsidy model will tend to entrench inefficiencies in the important economic drivers of the Australian economy, being the major population centres.*"

2. BCAR Consultation 1

Key issues raised:

- **Cost measurement:** A number of submissions considered that NBN Co's non-commercial service costs should be assessed on an avoidable or incremental cost basis, as opposed to a fully allocated cost approach. VHA, Telstra and iiNet all advocated cost measurement on an avoidable or incremental cost basis as being more economically appropriate and reflective of the costs of an efficient competitor.
- **Use of a discounted cash flow approach:** Optus and John de Ridder advocated for the use of a Regulated Asset Base (RAB) / Building Block model (BBM) for determining non-commercial service net costs. All other respondents accepted a discounted cash flow analysis as being suitable. The ACCC accepted the use of a discount cash flow while also discussing how a BBM approach could be implemented.

- **Discount rate and terminal value:** In general, respondents indicated that prevailing market conditions should drive the discount rate. All respondents that addressed questions relating to the terminal value expressed concerns with including such a value.
- **Forecast period:** A number of respondents suggested that useful asset life should be used to determine the forecast period.
- **Eligibility:** Telstra argued that high-speed networks that existed prior to 1 January 2011 (e.g. contemplated in the original NBN business case) and greenfield network investments made to date on the basis of no charge, should not be required to contribute to the charge. While there was general support for eligibility based on a service standard, some (e.g. NBN Co and John de Ridder) consider that mobile broadband should contribute to the fund. Others (e.g. iiNet) considered that eligibility should be extended beyond owners of high-speed fixed-line broadband access networks targeting consumer and residential services.
- **Contestability of fixed wireless and satellite services and access to the Scheme:** Submitters were divided over the issue of contestability. Telstra and Optus did not favour contestability of non-commercial service provision.
- **Universal Service Obligation:** There was some support for reviewing and merging the funding arrangements for the USO with arrangements for the Scheme. However, Telstra and Optus did not support changes to the current USO arrangements. Telstra argued funding arrangements for the USO target the provision of retail services whereas the charge arrangements for fixed wireless and satellite services should focus on the provision of wholesale services. Optus cited the incompatibility of the calculation base between arrangements for the USO which is based on eligible revenue and its preferred option of using the number of SIOs for the calculation of the funding for those services. NBN Co also supported the establishment of separate processes for the calculation and funding of non-commercial services.

3. BCAR Consultation 2

Key issues raised:

- **Eligibility:** NBN Co, TPG, OptiComm and Vocus expressed significant concerns with an NBN Comparable funding approach (i.e. a charge that targets fixed-line services only), citing that it will increase fixed-line pricing to the point of pushing customers to mobile broadband. In support of these claims, these network operators provided market analysis suggesting that mobile broadband is emerging as a substitute to NBN Comparable fixed-line services. TPG indicated it may commence offering services via fixed wireless in order to avoid meeting the proposed eligibility criteria. There is a risk that a fixed-line only charge will lead to market exit or entrench barriers to entry, which contradicts the ‘competition ready’ outcomes sought by Government. Conversely, Optus and Telstra made submissions supporting a fixed-line only base, stating that it is an appropriate response to the emergence of infrastructure based competition. The ACCC also made a submission supporting a fixed-line only approach as it maintains cost incentives for NBN Co.
- **Treatment of legacy networks:** Telstra flagged concerns that the proposed charge would capture a number of networks that were in existence at the inception of the NBN and that are not in direct competition with the NBN (e.g. the South Brisbane exchange). Telstra recommended that the charge should focus on competing networks only. Separately, OptiComm argued the Telstra ADSL and HFC networks are NBN Comparable and should be considered eligible for the charge, regardless of the fact that these are transitioning to the NBN. Finally, TPG argued that placing a charge on networks in place

prior to the inception of the NBN would act as a deterrent for investment in telecommunications.

- **Role of the ACCC:** the ACCC suggested it is suitably placed to handle future calculations of the charge, including considering the charge in the context of broader NBN regulatory requirements (such as the prudence and efficiency requirements under the SAU) and managing industry consultations.
- **Consultation on final model outcomes:** Optus, Telstra and OptiComm indicated they are unable to fully consider model outcomes without greater visibility into model assumptions and inputs.
- **Competitive neutrality:** The OptiComm submission (which included a commissioned paper from Frontier Economics) raised competitive neutrality concerns whereby firms such as OptiComm are at a competitive disadvantage compared to NBN Co as they believe that NBN Co is not required to earn a commercial rate of return (based on a long term IRR of 3.5%).

4. Exposure Draft consultation

Key issues raised:

- **The Regional Broadband Scheme is a sustainable option to equitably fund regional and rural broadband services** – consumer and regional interest groups supported the Scheme; they include the Australian Communications Consumer Action Network (ACCAN), Better Internet for Regional, Rural and Remote Australia (BIRRR), the National Farmers Federation (NFF), Cotton Australia and the Isolated Children’s Parents Association (ICPA). Some of them (ICPA and ACCAN) are concerned that retail prices may rise and ACCAN has proposed that direct Budget funding is also included to assist low-income groups to better afford services. BIRRR suggested minimum enforceable performance standards on NBN Co’s fixed wireless and satellite services through the statutory infrastructure provider obligations. The NSW Farmers Association proposes introducing the Scheme in parallel with the recently reviewed Universal Service Obligation (USO) as well as provisioning voice services with the fixed wireless and satellite services in regional areas.
- **The Scheme impacts on small carriers’ business viability** – the Greenfield Fibre Operators of Australia (GFOA) and OptiComm said the Scheme’s charge equates to about 30 per cent of their operational revenue per service per month, which would have a flow-on effect on their profitability. They argue that the charge base is too narrow and propose it be expanded to include at least mobile and fixed wireless broadband services. These operators argue that the provisions that allow the Minister to require performance guarantees are unnecessary and would cause substantial investment uncertainty.
- **The charge base of the Scheme should be expanded** – some submissions argued that the funding base should be expanded. Some proposed inclusion of mobiles, fixed wireless and networks transitioning to the NBN. TPG, Vocus, OptiComm and GFOA want to broaden the Scheme charge base to include (superfast) mobile broadband and fixed wireless services. While NBN Co supports the Scheme, it argued that mobile broadband and fixed wireless services should be included in the charge base.
- **The charge base of the Scheme should be reduced** – Telstra, Vocus and Optus argue that the charge base should not include services provided to medium and large businesses. Optus says this distorts the market and also suggests that they do not have visibility on business dark fibre services they offer to the retail market. Telstra generally supports the policy intent of the Scheme but does not support the inclusion of these services; in particular its Velocity and South Brisbane fibre networks do not directly compete with

NBN Co's networks since they cannot technically provide speeds greater than 12 Mbps without costly upgrades. They also propose that administration costs of the Scheme should be funded from Government revenue.

- **The network size exemption threshold should be lifted** - some operators, such as Spirit, have argued that the small provider exemption should be higher than 2,000 premises to improve investment incentives for small providers.

Attachment G - Overview of the BCAR Reports

Following the Government's decision in 2014 to fund NBN Co's non-commercial services (fixed wireless and satellite services) with industry contributions, several options were considered: first, during the BCAR's review in 2015 and, second, post release of an Exposure Draft of the legislation in December 2016.

What options were considered in the 2015 BCAR review?

The BCAR considered sub-options for the development of a charge on industry to cover non-commercial service net costs, as well as advising on the implementation of such a charge. The BCAR found that:

- overall, the net loss from providing fixed wireless and satellite services would be \$9.8 billion in net present value terms to 2040, and
- on a per premises basis, the net costs are estimated at \$105 per month for fixed wireless services and \$110 per month for satellite services.⁵⁹

The BCAR recommended a charge of \$7 (in real 2015 terms) per month per SIO⁶⁰ be applied to NBN Comparable services to fund the identified non-commercial services net costs. The charge would apply to NBN Commercial services (i.e. NBN Co's fixed-line networks) and owners of NBN Comparable networks.

The BCAR also considered a funding option that included mobile and other telecommunications providers. The BCAR concluded that mobile services be excluded from the funding base as the services were not substitutable for fixed-line services. The BCAR recommended a charge on NBN Comparable providers and the key reason for that was that a funding arrangement limited to NBN Co and comparable industry participants would maintain existing commercial incentives for NBN Co to control costs, determine appropriate service standards and innovate.

The following table summarises the financial outcomes based on updated modelling undertaken by the Department of Communications and the Arts:

Financial estimates	2018–19	2021–22
Per-SIO contribution monthly amount (nominal)	\$7.27	\$7.82
Per-SIO contribution annual amount (nominal)	\$87.2	\$93.8
non-NBN annual contribution	\$39 million	\$44 million
NBN annual contribution	\$552 million	\$781 million
Total annual collection	\$592 million	\$825 million

Following the BCAR's work, a draft non-commercial funding arrangement model has been developed. This section considers key policy questions associated with the implementation of the model. Administrative details about the proposed model appear at **Attachment B**.

⁵⁹ See the BCAR's final report, page 8.

⁶⁰ This amount includes administration costs for the scheme, and is an approximation.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

TELECOMMUNICATIONS (REGIONAL BROADBAND SCHEME) CHARGE BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill will establish a sustainable funding mechanism to ensure NBN Co Limited (NBN Co) can continue to deliver the benefits of high-speed broadband to regional Australia. It will require all carriers, including NBN Co, to contribute funding at an initial rate of \$7.10 per month (indexed to CPI), per chargeable premises. Chargeable premises are premises where a carriage service provider (i.e. a provider of retail broadband services) provides a designated broadband service. A designated broadband service is a carriage service provided over a fixed-line that is technically capable of providing download transmission speeds of 25 megabits per second (Mbps) or more. The Bill also establishes a charge concession period, to lessen the burden on small carriers and help them transition to paying the charge. This Bill operates in tandem with Schedule 4 to the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 (TLA (CC) Bill). The TLA (CC) Bill sets out the various charge collection and other administration arrangements associated with the Regional Broadband Scheme. Together, the two Bills ensure the continuity of essential regional broadband services.

Rolling out superfast broadband infrastructure to regional Australia is very expensive and NBN Co has determined that utilising fixed wireless and satellite technologies is the quickest and most cost effective way to do so. Even still, these networks are expected to incur a net loss of \$9.8 billion (in net present value terms) over thirty years. NBN Co currently funds these net losses through an internal cross subsidy from its fixed-line networks. The money collected from the proposed new industry charge will be used to fund NBN Co's net losses for constructing and operating fixed wireless and satellite network infrastructure in order to supply wholesale services in regional Australia, replacing the company's opaque internal cross subsidy. The assistance will be in the form of contracts and/or grants made by the Secretary of the Department to NBN Co. The proposed charge was foreshadowed by Government in its December 2014 response to

No human rights issues were raised during consultation.

Human rights implications

The Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

NOTES ON CLAUSES

TELECOMMUNICATIONS (REGIONAL BROADBAND SCHEME) CHARGE BILL 2019

Clause 1 – Short title

Clause 1 provides that the Bill, once enacted, may be cited as the *Telecommunications (Regional Broadband Scheme) Charge Act 2019*.

Clause 2 – Commencement

Clause 2 of the Bill provides for the commencement of the provisions in the Bill.

Clauses 1 and 2 of the Bill, and any other provisions not covered in the table provided at subclause 2(1), will commence on the day on which the Act receives the Royal Assent.

Clauses 3 to 20 of the Bill commence at the same time that Schedule 4 to the Telecommunications Legislation (Competition and Consumer) Bill 2019 (TLA (CC) Bill).

Schedule 4 to the TLA (CC) Bill commences on the day after it receives the Royal Assent.

Linking the commencement of clauses 3 to 20 to the commencement of Schedule 4 to the TLA (CC) Bill ensures that the new industry charge imposed under this Bill comes into effect at the same time as the legislative requirements relating to the assessment, collection and recovery of the new charge.

Subclause 2(2) provides that any information in column 3 of the table is not part of the Act.

Clause 3 – Definitions

Clause 3 sets out definitions of key terms used in the Bill.

‘ACCC’ refers to the Australian Competition and Consumer Commission.

The term ‘administrative cost component’ has the meaning given by clause 16 of the Bill.

The ordinary meaning of the term, ‘amount’ has been modified to include a nil amount. This is important as it is possible for a charge liability to be nil.

The term ‘annual administrative cost amount’, for an eligible financial year, has the meaning given by clause 14.

The term ‘annual base amount’, for an eligible financial year, has the meaning given by clause 10.

The term ‘annual chargeable premises amount’, for an eligible financial year, has the meaning given by clause 9.

The term ‘base component’, for a month in a financial year, has the meaning given by clause 12.

The terms ‘carriage service provider’, ‘fixed wireless broadband service’, ‘person’ and ‘telecommunications network’ have the same meaning as in the *Telecommunications Act 1997* (Tel Act).

The terms ‘chargeable premises associated with a local access line’, ‘designated administrative costs’, ‘eligible financial year’, ‘eligible funding recipient’, ‘potentially concessional premises’, ‘recently connected greenfield premises’ and ‘satellite broadband service’ are defined as having the same meaning as in Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act), as proposed to be amended by Schedule 4 to the TLA (CC) Bill.

The term ‘combined component cap’ for a month has the meaning given by clause 17A.

The term ‘connection’, in relation to a telecommunications network, has the same meaning as in the Tel Act. A note accompanies the definition to refer readers to section 7 of the Tel Act and section 18A of the *Acts Interpretations Act 1901*.

The term ‘eligible service’ has the same meaning given by clause 152AL of the *Competition and Consumer Act 2010*.

The term ‘indexation factor’ for a financial year has the meaning given by clause 18.

The term ‘index number’, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

The term ‘month’ means calendar month.

The term ‘monthly administrative cost amount’ relating to a month in an eligible financial year, has the meaning given by clause 15.

The term ‘monthly base amount’ has the same meaning given by clause 11.

Clause 4 – Extension to external Territories

Clause 4 extends the Bill to each external Territory referred to in section 10 of the Tel Act. That Act refers to the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and any other external Territories prescribed by regulations. A note is also included to remind readers of a similar application provision under section 7 of the TCPSS Act.

Clause 5 – Act to bind Crown

Clause 5 provides that the Bill binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory. However, it does not bind the Crown in right of the Commonwealth.

Clause 6 – Imposition of charge

Clause 6 provides that if a person has an annual chargeable premises amount for an eligible financial year, the charge will be imposed on that amount. This provision establishes the tax for constitutional purposes.

Proposed new Part 3, Division 4 of the TCPSS Act (refer item 13 of Schedule 4 to the TLA (CC) Bill) sets out the entities, which must pay the charge and the type of premises, which are chargeable premises (i.e. specified premises associated with a local access line). It also establishes exemptions for small networks and local access lines transferring to the NBN, and potentially concessional premises that may be excluded for the first five eligible financial years from a person’s chargeable premises in the (see clause 20 of this Bill).

Clause 7 – Amount of charge

Clause 7 provides that the amount of the charge imposed by the Bill on an annual chargeable premises amount for a particular eligible financial year will be equal to that annual chargeable premises amount.

Clause 8 – Person liable to pay charge

Clause 8 provides that the charge imposed by this Bill on a person’s annual chargeable premises amount for an eligible financial year is payable by that person.

Proposed new Part 3, Division 7 of the TCPSS Act (refer item 13 of Schedule 4 to the TLA(CC) Bill) establishes administration of the charge, including the method and deadline for the Australian Consumer and Media Authority’s (ACMA) assessment of a carrier’s charge liability and the due date of the charge.

Under proposed new section 102E of the TCPSS Act (refer item 13 of Schedule 4 to the TLA (CC) Bill), the charge is a debt due to, and is recoverable in a court of competent jurisdiction, by the ACMA on behalf of the Commonwealth.

Clause 9 - Annual chargeable premises amount

The annual chargeable premises amount is the amount of charge a person will have to pay for an eligible financial year.

Under clause 9 of the Bill, a person’s annual chargeable premises will be the total of the person’s annual base amount and the person’s annual administrative cost amount for the eligible financial year (see Table 1). Annual base amount and annual administrative cost amount have the meanings provided in clause 10 and clause 14 of the Bill respectively.

Annual base amount	\$1,276,200.00
Annual administrative cost amount	\$1,800.00
Annual chargeable services amount	\$1,278,000.00

Subclause 9(2) provides for the annual chargeable premises amount that is not a whole dollars amount and is above zero, to be rounded to the nearest dollar (rounding 50 cents upwards). Subclause 9(3) specifies that the term ‘dollar’ includes \$0 for the purposes of subclause 9(2).

The ACMA invoices the charge on an annual basis because doing so limits the reporting compliance burden on industry and facilitates the Commonwealth providing funding to eligible funding recipients on a regular basis. The method for providing this funding is established in Division 2 and 3 of proposed new Part 3 of the TCPSS Act (refer item 13 of Schedule 4 to the TLA(CC) Bill).

Clause 10 - Annual base amount

A person’s annual base amount is the annual amount of charge attributable to the base component of the charge (refer clause 12). Money raised from carriers’ annual base amounts will be used to pay eligible funding recipients under contracts or grants made in reliance of section 80 of proposed new Part 3 of the TCPSS Act. A person’s annual base amount is summed with the person’s annual administrative cost amount to calculate their annual chargeable services amount.

Subclause 10(1) sets out the calculation for deriving a person’s annual base amount: the annual base amount is the sum of the person’s monthly base amounts for each of the months in the eligible financial year (see Table 2). Monthly base amount has the meaning provided in clause 11 of the Bill.

Subclause 10(2) provides that if there are no chargeable premises associated with a local access line of the person for a particular month, that month should be disregarded for the purposes of calculating the annual base amount.

Table 2. Example – calculation of a carrier’s annual base amount in the first eligible financial year	
	Monthly base amount
July	\$70,900.00
August	\$70,900.00
September	\$70,900.00
October	\$70,900.00
November	\$70,900.00
December	\$70,900.00
January	\$141,800.00
February	\$141,800.00
March	\$141,800.00
April	\$141,800.00
May	\$141,800.00
June	\$141,800.00
Annual base amount	\$1,276,200.00

Clause 11 – Monthly base amount

A person’s monthly base amount is the amount of charge attributable to the base component of the charge (refer clause 12) for a particular month.

Clause 11 sets out the calculation for deriving a person’s monthly base amount for a particular month. In simple terms, the amount is derived by multiplying the total number of chargeable premises in relation to the person for that month by the base component (refer clause 12). This means that if the person’s number of chargeable premises varies from month to month, the monthly base amount for a particular month will reflect that variation.

The clause includes a note that if the month is in one of the first five eligible financial years, a person’s total number of chargeable premises may be reduced under clause 20 of the Bill. This would have the effect of reducing the person’s monthly base amount for that month.

The charge is calculated on a monthly basis to help ensure that fluctuations in a person’s number of chargeable premises are accurately reflected in their charge liability. Monthly charging also aligns with the telecommunications industry’s billing cycle.

Table 3. Example – calculation of a carrier’s monthly base amount in the first financial year			
Month	Number of chargeable premises	Base component	Monthly base amount
July	10,000	\$7.09	\$70,900.00
August	10,000	\$7.09	\$70,900.00
September	10,000	\$7.09	\$70,900.00
October	10,000	\$7.09	\$70,900.00
November	10,000	\$7.09	\$70,900.00
December	10,000	\$7.09	\$70,900.00
January	20,000	\$7.09	\$141,800.00
February	20,000	\$7.09	\$141,800.00
March	20,000	\$7.09	\$141,800.00
April	20,000	\$7.09	\$141,800.00
May	20,000	\$7.09	\$141,800.00
June	20,000	\$7.09	\$141,800.00

Clause 12 - Base component

Subclause 12(1) outlines the base component that will apply for a month in the first eligible financial year that the charge accrues, that is financial year 2020-21. The base component will either be:

- (a) \$7.09; or
- (b) any other amount the Minister has determined under subclause 12(4).

Subclauses 12(2) and (3) outline the base component that will apply for a month in the second and subsequent eligible financial years that the charge applies. The base component will be either the previous base component multiplied by the indexation factor (refer clause 18 of the Bill), or any other amount the Minister has determined under subclause 12(4).

Under subclause 12(4), the Minister is conferred the discretion (by legislative instrument) to determine a specified amount for the base component in relation to each of the months in the first financial year or another specified financial year. A note is included to refer readers to clause 19, which provides for disallowance of determinations.

This discretion is necessary to ensure that the base component continues to reflect the size of the charge base as it evolves over time. This will reduce the risk that the Scheme over or under recovers the amount of money necessary to fund NBN Co’s (and other eligible funding recipient’s) fixed wireless and satellite networks.

The Minister’s determination power is not unconstrained. Under subclause 12(5) the Minister must have regard to the following matters in making a determination under subclause 12(4):

- (a) the most recent advice that the ACCC has given to the Minister under clause 13;
- (b) such other matters (if any) as the Minister considers relevant, for example, advice from the Department.

Per subclause 12(6), the Minister cannot make a determination about the base component unless the ACCC has given advice to the Minister under clause 13. Additionally, per subclause 12(7) the Minister may not raise the base component and administrative cost components above the combined component cap (which is \$7.10 in the first eligible financial year) (see clause 17A).

Clause 13 - Advice by the ACCC about base component

Subclause 13(1) provides for the ACCC to give the Minister advice in relation to the exercise of the Minister's power to determine the base component under subclause 12(4). The ACCC is required to do so at least once every five years from commencement of the Act. Once every five years is often enough that the ACCC can recommend the base component be adjusted in the face of changing market conditions but not so often that it erodes carriers' certainty about the amount of change they are required to pay. It is expected that the ACCC will consult with industry as it prepares its advice.

Subclauses 13(2) and (3) set out the matters, which the ACCC must and may have regard to in giving its advice. The ACCC must be guided by the principle that charge amounts received by the Commonwealth under the Bill as are attributable to the base amount should be sufficient to offset reasonable losses incurred by the eligible funding recipients in relation to:

- the connection of premises to a fixed wireless or satellite telecommunications network;
- the supply of eligible services to a carriage service provider (CSP) in order that a CSP can provide fixed wireless or satellite broadband services to a consumer at the premises;
- facilities used to supply fixed wireless and satellite broadband services; or
- matters incidental or ancillary to the above.

The ACCC may also have regard to any other matters it considers relevant. For example, these may include the availability of new technologies and any charge offset certificates issued under the TLA (CC) Bill. The ACCC should, in conducting its analysis, consider the Special Access Undertaking assessments undertaken to date, and the extent to which NBN Co has incurred prudent costs in the deployment and operation of its fixed wireless and satellite networks.

Subclause 13(4) makes clear that it is immaterial whether the losses incurred by eligible funding recipients in relation to fixed wireless and satellite services were incurred before or after the commencement of this Act. For example, NBN Co's losses began in 2010 when it began rolling out its fixed wireless and satellite networks and are expected to continue into the future. The amount received by the Commonwealth that is attributable to the base amount should be sufficient to offset the whole of these losses.

Subclause 13(5) outlines that, in giving its advice under subclause 13(1), the ACCC must assume that Division 6 of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* had not been enacted. Division 6 relates to charge offset certificates.

Subclause 13(6) outlines that the use of the word "Regional" in the short title of the Act, in the name of the Regional Broadband Scheme Special Account, or in new section 92A of the TCPSS Act does not limit subclause 13(3).

Clause 14 - Annual administrative cost amount

A person's annual administrative cost amount is the annual amount of charge attributable to the administrative cost component of the charge (refer clause 16). Money raised from carriers' annual administrative cost amounts will be used to pay the ACMA and the ACCC for their administration of the Scheme. A person's annual administrative cost amount is summed with the person's annual base amount to calculate their annual chargeable services amount.

Subclause 14(1) sets out the calculation of a person's annual administrative cost amount for an eligible financial year. The amount is derived from the total of the person's monthly administrative cost amounts for each of the months in the eligible financial year (see Table 4).

Subclause 14(2) clarifies that any month in which the carrier does not have any chargeable premises associated with a line for that month is disregarded from the annual calculation.

	Monthly administrative cost amount
July	\$100.00
August	\$100.00
September	\$100.00
October	\$100.00
November	\$100.00
December	\$100.00
January	\$200.00
February	\$200.00
March	\$200.00
April	\$200.00
May	\$200.00
June	\$200.00
Annual base amount	\$1,800.00

Clause 15 – Monthly administrative cost amount

A person's monthly administrative cost amount is the amount of charge attributable to the administrative cost component of the charge (refer clause 16) for a particular month.

Clause 15 sets out the calculation for deriving a person's monthly administrative cost amount for a particular month. It is derived by multiplying the total number of chargeable premises in relation to the person for that month by the administrative cost component (refer clause 16, and see Table 5). Like the monthly base amount, this means that if the person's number of chargeable premises varies from month to month, the monthly administrative cost amount for a particular month will vary.

The clause includes a note that if the month is in one of the first five eligible financial years, a person's total number of chargeable premises may be reduced under clause 20 of the Bill. This would have the effect of reducing the person's monthly administrative cost amount for that month.

Table 5. Example – calculation of a carrier’s monthly administrative cost amount in the first financial year

Month	Number of chargeable premises	Administrative cost component	Monthly base amount
July	10,000	\$0.01	\$100.00
August	10,000	\$0.01	\$100.00
September	10,000	\$0.01	\$100.00
October	10,000	\$0.01	\$100.00
November	10,000	\$0.01	\$100.00
December	10,000	\$0.01	\$100.00
January	20,000	\$0.01	\$200.00
February	20,000	\$0.01	\$200.00
March	20,000	\$0.01	\$200.00
April	20,000	\$0.01	\$200.00
May	20,000	\$0.01	\$200.00
June	20,000	\$0.01	\$200.00

Clause 16 - Administrative cost component

Subclauses 16(1) – (5) (inclusive) sets out the administrative cost component for each month in the first five eligible financial years. The first year amount is \$0.01, the second year amount is \$0.00172 and the fourth year amount is \$0.0027. Nil amounts are the default amounts for years three and five. The Minister can determine another amount for any of these years or subsequent years under subclause 16(8).

The administrative cost component reflects the amount of funding necessary for the ACCC and ACMA to administer the Scheme. This is why the amount is highest in the first and second years, when the ACCC and ACMA are setting up their systems and operationalising their processes. There is an amount in the fourth year, when the ACCC is expected to review the base and administrative cost components. A nil amount occurs in the third and fifth year because the ACCC and ACMA do not expect to have any new additional direct costs in those years.

Subclause 16(6) provides that the administrative cost component for each month in the sixth eligible financial year or a later financial year will be the amount calculated to five decimal places (rounding up if the sixth decimal place is five or more) using the formula in subclause 16(7) or any other amount determined under subclause 16(8). The formula is the administrative cost component for a month in the previous financial year multiplied by the indexation factor for the financial year (see clause 18).

Under subclause 16(8), the Minister may, by legislative instrument, determine a single specified amount in relation to each of the months in a specified financial year. This ensures the Minister can change the administrative cost component if it is under or over recovering the ACCC and ACMA’s administrative costs. A note is included to refer readers to clause 19, which provides for disallowance of determinations.

Like the Minister’s power to determine the base component, the Minister’s power to determine the administrative cost component is constrained. Under subclause 16(9), the Minister is required to consider the following when deciding to make a determination:

- (a) the most recent advice that the ACCC has given to the Minister under clause 17;

(b) any other matters considered relevant by the Minister.

The Minister cannot make a determination under subclause (8) unless the ACCC has given advice to the Minister under clause 17 (see subclause 16(10)), and in compliance with subclause 16(11), the Minister may not increase the base component and administrative cost components above the combined component cap (which is \$7.10 in the first eligible financial year) (see clause 17A).

Clause 17 - Advice by the ACCC about administrative cost component

Clause 17 largely mirrors clause 13, however it relates to the advice the ACCC gives in respect of the administrative cost component.

Subclause 17(1) provides for the ACCC to give the Minister advice in relation to the exercise of the Minister's power under subclause 16(8). The ACCC is required to provide advice to the Minister at least once every 5 years from the commencement of the Act.

Paragraph 17(2)(a) sets out that the ACCC must be guided by the principle that charge amounts received by the Commonwealth under the Bill as are attributable to the annual administrative cost amount should be sufficient, over time, to offset designated administrative costs incurred after the start of the first eligible financial year. The ACCC may also have regard to any other matters it considers relevant (see paragraph 16(2)(b)).

Clause 17A – Combined component cap

Subclause 17A(1) provides that the sum of the base component for a month and the administrative cost component for that month must not exceed the combined component cap applicable for that month in each particular eligible financial year. Setting a cap on the sum of the base and administrative cost components supports wholesale market competition by providing regulatory certainty for investors that the level of taxation under the new Act cannot exceed the specified amount.

Subclause 17A(2) provides that the combined component cap for a month in the first eligible financial year is \$7.10. Under subclause 17A(3), the combined component cap for the second and subsequent financial years is calculated by multiplying the previous combined component cap by the indexation factor (see clause 18).

Clause 18 - Indexation factor

Subclause 18(1) provides that the indexation factor for a financial year is the number calculated, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), using the stated formula.

Subclauses 18(2) and (3) outline the correct index number to be used and the index reference period for the purposes of the indexation factor calculation. Subclause 18(3) provides that if the Australian Statistician changes the index reference period for the Consumer Price Index (CPI), then only the index number published in terms of the new index reference period must be used. However, subclause 18(2) provides that any later publication of an index number by the Australian Statistician must be disregarded for the purposes of clause 12.

This method of indexation is consistent with that used in the *Income Tax Assessment Act 1997*. The CPI was chosen as the index number in accordance with Commonwealth standards.

Clause 19 – Disallowance of determinations

To maximise opportunity for Parliamentary scrutiny of determinations made under subclauses 12(4) or 16(8), the Bill provides that such determinations only take effect after the disallowance period outlined below.

Subclauses 19(2) and (3A) set out the process for disallowance of determinations under this Act. Either House of Parliament may, following a motion upon notice, pass a resolution disallowing the determination. Under new subclause (2), either House of Parliament may pass a resolution disallowing the determination following a motion upon notice. The notice must have been given in the House within 15 sitting days of that House after the determination was tabled and the resolution must be passed within 15 sitting days of the House after the notice is given.

Under new subsection (3), if neither House of Parliament pass a resolution disallowing the determination under new subsection (2), the determination takes effect on the day immediately after the last day upon which such a resolution could have been passed.

However, if a relevant determination is deemed to be disallowed under new subsection (3A), new subsection (3) does not apply and the determination will not take effect. New subsection (3A) closely reproduces subsection 42(2) of the *Legislation Act 2003*, although in modified form. It holds that where a notice to disallow a relevant determination has been given in a House of Parliament, and the motion has not been considered within the 15 sitting days of that House after the giving of the notice so that the notice of motion to disallow remains unresolved at the end of the disallowance period, the determination will be taken to have been disallowed and subsection (3) does not apply.

Subclause 19 (4) makes clear that section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination. Two notes are included to remind readers that the 15 sitting day notice period mentioned in paragraph (2)(a), and the 15 sitting day disallowance period mentioned in paragraph (2)(b), are consistent with paragraphs 42(1)(a) and (b) of the *Legislation Act 2003*, respectively.

Clause 20 – Transitional – reduction in total number of chargeable premises

Clause 20 provides for transitional arrangements for a carrier's chargeable premises in four cases.

Subclause 20(1) provides that if the total number of potentially concessional premises in relation to a person for a month in one of the first five eligible financial years is 25,000 or more and none of the chargeable premises are recently connected greenfield premises in relation to that persons for that month, then the total number of chargeable premises associated with a local access line of the person for that month is to be reduced by 25,000 (see Table 6 and 7).

The term, ‘potentially concessional premises’ for premises would be defined in proposed section 96A of Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) (to be inserted by item 13 of Schedule 4 to the TLA (CC) Bill) as chargeable premises that are residential or small business premises.

Subclause 20(2) provides that if the total number of potentially concessional premises in relation to a person for a month in one of the first five eligible financial years is less than 25,000 and none of the chargeable premises are recently connected greenfield premises in relation to that persons for that month, then the total number of chargeable premises associated with a local access line of the person for that month is to be reduced by the total number of potentially concessional premises for that month (see Table 8 and 9).

The term, ‘recently connected greenfield premises’ would be defined in section 96B of proposed new Part 3 of the TCPSS Act. In simple terms, the term captures premises connected to two classes of networks:

- those covered by ministerial declarations made under subsection 63(2) of the *Telecommunications Act 1997* (for premises supplied by 30 June 2019); and
- those covered by the ACCC service declaration made on 24 February 2012 under section 152AL(3) of the *Competition and Consumer Act 2010*, as was required to be made by the ACCC in accordance with subsection 152AL(3C) (for premises supplied between 1 January 2011 and 30 June 2019) (known as the ‘LBAS declaration’).

The thresholds for potentially concessional premises maintain a sizeable charge base while giving carriers time to adjust to paying the charge. The transitional charge concession supports wholesale market competition by providing relief to smaller carriers that may be disproportionately affected by the charge. It also provides a smooth transition for small carriers and carriers operating recently connected greenfield premises if they grow their businesses above the thresholds over the first five years of the new tax arrangement.

Subclause 20(3) provides that if the total number of recently connected greenfield premises in relation to a person for a month in one of the first five eligible financial years is 55,000 or more, then the total number of chargeable premises associated with a local access line of the person for that month is to be reduced by 55,000.

Subclause 20(4) provides that if the total number of recently connected greenfield premises in relation to a person for a month in one of the first five eligible financial years is less than 55,000, then the total number of chargeable premises associated with a local access line of the person for that month is to be reduced by the total number of recently connected greenfield premises.

The concessions which are available under subclauses 20(1) and (2) only apply if the relevant pool of potentially chargeable premises for a carrier in any particular month does not contain any recently connected greenfield premises whatsoever. A carrier cannot be eligible for both a concession under either subclause 20(1) or 20(2) and also a concession under either subclauses 20(3) or 20(4). This is because of the operation of the absolute carve outs included at:

- paragraph 20(1)(b) - for the concessions where there are 25,000 or more premises
- paragraph 20(2)(b) - for the concession where there are less than 25,000 premises

This means that if a carrier’s network is being used to supply a recently connected greenfield premises in the particular month, then that carrier cannot also take advantage of the

concession under either subclause 20(1) or 20(2). The carrier needs to consider the application of concessions under subclause 20(3) or 20(4) to its circumstances.

Table 6. Example – impact of clause 20 on a carrier that has more than 25,000 potentially concessional premises in a month in the first financial year					
Month	Number of chargeable premises <i>before</i> application of subclause 20 (1)	Number of potentially concessional premises where no premises are recently connected greenfield premises	Number of chargeable premises <i>after</i> application of clause 20	Monthly base amount	Monthly administrative cost amount
July	100,000	30,000	75,000	\$531,750	\$750.00
August	100,000	30,000	75,000	\$531,750	\$750.00
September	100,000	30,000	75,000	\$531,750	\$750.00
October	100,000	30,000	75,000	\$531,750	\$750.00
November	100,000	30,000	75,000	\$531,750	\$750.00
December	100,000	30,000	75,000	\$531,750	\$750.00
January	200,000	60,000	175,000	\$1,240,750	\$1750.00
February	200,000	60,000	175,000	\$1,240,750	\$1750.00
March	200,000	60,000	175,000	\$1,240,750	\$1750.00
April	200,000	60,000	175,000	\$1,240,750	\$1750.00
May	200,000	60,000	175,000	\$1,240,750	\$1750.00
June	200,000	60,000	175,000	\$1,240,750	\$1750.00

Table 7. Annual amounts calculated from Table 6 above	
Annual base amount	\$10,635,000
Annual administrative cost amount	\$15,000
Annual chargeable premises amount	\$10,650,000

Table 8. Example – impact of clause 20 on a carrier that has less than 25,000 potentially concessional premises in a month in the first financial year

Month	Number of chargeable premises <i>before</i> application of subclause 20(2)	Number of potentially concessional premises where no premises are recently connected greenfield premises	Number of chargeable premises <i>after</i> application of clause 20	Monthly base amount	Monthly administrative cost amount
July	100,000	10,000	90,000	\$638,100	\$900.00
August	100,000	10,000	90,000	\$638,100	\$900.00
September	100,000	10,000	90,000	\$638,100	\$900.00
October	100,000	10,000	90,000	\$638,100	\$900.00
November	100,000	10,000	90,000	\$638,100	\$900.00
December	100,000	10,000	90,000	\$638,100	\$900.00
January	200,000	20,000	180,000	\$1,276,200	\$1800.00
February	200,000	20,000	180,000	\$1,276,200	\$1800.00
March	200,000	20,000	180,000	\$1,276,200	\$1800.00
April	200,000	20,000	180,000	\$1,276,200	\$1800.00
May	200,000	20,000	180,000	\$1,276,200	\$1800.00
June	200,000	20,000	180,000	\$1,276,200	\$1800.00

Table 9. Annual amounts calculated from Table 8 above

Annual base amount	\$11,485,800
Annual administrative cost amount	\$16,200
Annual chargeable premises amount	\$11,502,000

Subclause 20(5) provides an exception to subclauses 20(1) and 20(2), in relation to a person for a month if the person is a ‘subordinate member’ of an associated group during the whole or part of the month. If a person is in a position to exercise control of a local access line or a telecommunications network and the person has one or more associates, then the person is taken to belong to an associated group and each of those associates would be a subordinate member of the associated group. Together, subclauses 20(5) and 20(6) have the effect of, in the case of associated carrier groups, applying the concession under subclauses 20(1) and 20(2) to the controlling carrier of an associated group but not to the subordinate members of the associated group. Note, the references to a person who is in a position to exercise control includes natural persons as well as a corporation.

Subclauses 20(5), 20(6) and 20(7) set out the method by which to ascertain whether a person is in a position to exercise control of either a local access line or a telecommunications network. This method is consistent with proposed subsections 95(3), 95(4) and 95(5) (new Part 2 of the TCPSS Act). A new reporting item is proposed to the annual RBS carrier report to assist the Australian Communications and Media Authority with its assessment of charge liability and related enforcement (refer proposed section 100 of the TCPSS Act, under item 13 of Schedule 4 to the TLA (CC) Bill.

The concession under subclause 20(1) and (2) apply to individual carriers. In recognition that this approach may disadvantage smaller carriers that are not part of an associated group of

carriers, subclause 20(5) seeks to address this inequity by providing that, where a carrier is part of an associated group of carriers, the concession will apply only to the controller of an associated group and not to each individual carrier under the controller. This will support market competition and ensure the concession is applied equitably across carriers that are required to pay the RBS charge. Carriers that are not part of an associated group are not impacted by subclause 20(5).