

30th September 2022

To: Department of Infrastructure, Transport, Regional Development, Communications and the Arts
Via: usb@communications.gov.au

Re: Exposure Draft – Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022

ACCAN thanks the Department for the opportunity to comment on *the Exposure Draft – Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022* (Draft Bill). ACCAN supports the key changes proposed in the Draft Bill, including:

- bringing private networks in new developments into the Statutory Infrastructure Provider (SIP) regime;
- making sure SIPs are ready to service buildings as soon as they are occupied;
- clarifying the primacy of standards, rules and benchmarks for SIPs and the Telecommunications Industry Ombudsman (TIO)'s jurisdiction in complaints involving SIPs;
- confirming that SIPs can be required to pay compensation;
- empowering the Australian Communications and Media Authority (ACMA) to require developers to remediate deficient pit and pipe work;
- providing the ACMA the power to publish data on individual providers' performance on customer service metrics.

ACCAN welcomes the proposed changes in the Draft Bill, which provides a timely opportunity to strengthen and clarify consumer protections. We encourage the Minister to exercise their powers under the SIP regime to set standards and benchmarks to strengthen consumer protections and address poor quality of service issues. SIP standards and benchmarks should be supported by appropriate, automatic end user compensation for non-compliance.

Further detailed comments on the Draft Bill are set out in Attachment A, with supporting case studies provided in Attachment B.

ACCAN thanks the Department for the opportunity to comment on the Draft Bill. Should you wish to discuss any of the issues raised in this submission further please contact Megan Ward, Senior Economic Adviser at megan.ward@accan.org.au.

Yours sincerely,

Megan Ward
Senior Economic Adviser

Attachment A. Detailed response to Draft Bill

Bring private networks in new developments into the SIP regime and make sure SIPs are ready to service buildings as soon as they are occupied

ACCAN welcomes the Draft Bill which will bring private networks in new developments into the SIP regime and ensure they are ready to service buildings as soon as they are occupied. Once a carriage service provider (CSP) is a SIP for an area, they are obligated to connect premises and supply wholesale broadband services to Retail Service Providers (RSP) on reasonable request, providing residents with assurance that they are entitled to a qualifying carriage service.¹

Expanding the SIP regime to include private networks ensures that all consumers can access essential broadband services irrespective of where they live. Further the proposed reform will support the ACMA to have visibility of where and what facilities will be available, and at what time they will be available for use in a timely manner. In addition, the proposed changes work to ensure that new developments or re-developments are captured by the SIP regime as quickly as possible.

ACCAN recommends that the Minister determine standards and benchmarks for SIPs following the passage of the legislation.² Standards and benchmarks should set timeframes for new connections, fault repairs and appointment keeping to address quality of service issues and ensure services are reliable.³ In setting service standards, the definition of a fault should be set to reflect consumer experience, this should include classifying a service that experiences a certain number of intermittent drop outs as faulty. Attachment B provides recent case studies of consumer issues which should be addressed through SIP standards.

Confirm that SIPs can be required to pay compensation

The Draft Bill clarifies that if a SIP contravenes a designated compensable standard, the SIP is liable to pay damages to the customer for the contravention. We welcome this development, noting that ACCAN has long advocated for consumers to be appropriately compensated where they have been adversely affected by the failure of a CSP or RSP to address delayed connections, recurring dropouts or slow speeds.⁴

ACCAN recommends that the Minister determines standards and benchmarks to address long standing issues of reliability, supported by rebates set in line with the current Customer Service Guarantee for voice and broadband, to be paid where a SIP misses a service standard. Doing so will not only work towards redress for the harm or cost borne by the consumer, but it also creates an incentive against any further wrongdoing. Given SIPs generally do not have a direct relationship with end users, compensation should be paid to RSPs, and RSPs should be required to pass this on in full to the end user.

¹ A qualifying carriage service can be either a fixed line, fixed wireless or satellite service which is capable of providing peak download transmission speeds of at least 25 Mbps, and peak upload transmission speed of at least 5 Mbps. A qualifying carriage service is not a public mobile telecommunications service.

² Subsections 360U(1) and 360V(1) of the *Telecommunications Act 1997* (Cth)

³ For more information on appropriate timeframes and benchmarks, see ACCAN's submission to Telecommunications (Statutory Infrastructure Providers – Standards, Rules and Benchmarks) Determination 2021 Consultation. Available at: <https://accan.org.au/files/Submissions/2021/ACCAN%20submission%20to%20DITRDC%20SIP%20Standards%20rules%20and%20benchmarks.pdf>

⁴ ACCAN, 2022, *Future of Broadband Policy Position*. <https://accan.org.au/accans-work/policy-positions/1999-the-future-of-broadband>; ACCAN, 2018, *Consumer Safeguards Review – Part B/ Reliability of Services* <https://accan.org.au/files/Submissions/Consumer%20Safeguards%20Review%20-%20Part%20B%20-%20Reliability%20of%20Services.pdf>; ACCAN, 2016, *A Guarantee for the Future Policy Position*, <https://accan.org.au/accans-work/policy-positions/1166-future-guarantee>

The latest report from the TIO shows that issues with reliability continue to make up the largest proportion of complaints received regarding the internet.⁵ Anecdotally, ACCAN frequently hears from consumers frustrated by service quality issues experienced on their network and the lack of compensation available to them (see Attachment B). Creating benchmarks, rules and standards with appropriate financial incentives to comply via automatic compensation would work towards reducing the consumer harm created through poor service quality.

Clarify the Telecommunications Industry Ombudsman's jurisdiction in complaints involving SIPs

ACCAN supports the clarification of the TIO's jurisdiction in complaints involving SIPs. ACCAN is aware of instances where a consumers' issue is not the result of actions caused by the RSP, but the harm is due to the actions or inactions of a SIP. Noting RSPs have limited incentive and dedicated capacity to assist consumers with issues created at the wholesale level, RSPs cannot be relied upon to act in consumers' best interests to have an issue with a SIP resolved. Therefore, it is vital that consumers have an appropriate dispute resolution mechanism for complaints involving SIPs, allowing them to advocate on their own behalf. Attachment B contains further evidence of consumers who have struggled to resolve complaints with the TIO that involve SIPs.

Empower the ACMA to require developers to remediate deficient pit and pipe work

The Draft Bill proposes that where the ACMA believes that a designated civil penalty provision has been contravened or is likely to be contravened, then the ACMA are able to provide a notice requiring remedy, prevention from the contravention occurring or remedy the things causing the contravention. The remedial notice must state a period within which the person must comply, and this period must be reasonable in all the circumstances.

The proposed civil penalty provisions require that real estate developments have fibre-ready facilities installed and that a corporation cannot sell or lease a lot or building unless functional fibre-ready facilities have been installed. We support this requirement as retrofitting pit and pipes can be expensive and delay the consumer from receiving a connection. The NBN states that there are instances where typically smaller developers or those unfamiliar with the process fail to provide infrastructure that is fit for purpose and requires retrofitting.⁶ Appendix B contains further evidence of consumers struggling to receive a connection due the unavailability of appropriate facilities. ACCAN expects that empowering the ACMA to require developers to remediate deficient fibre-ready facilities will reduce instances of this occurring.

Provide the ACMA the power to publish data on individual providers' performance on customer service metrics

Consumers should be able to access information which will assist them in choosing the most appropriate provider. Currently, public complaints data is not disaggregated by retailer, and there is a lack of information regarding disconnections, reliability and financial hardship arrangements. To encourage retail competition, information such as this should be published to overcome the

⁵ The top 10 issues received by the TIO in 2021-22 regarding internet services consisted of intermittent service or dropouts (20.3%), no phone or internet service (17.0%), slow data speeds (15.7%), delay establishing a service (14.2%), inadequate fault testing (7.3%), missed appointment (6.8%).

⁶ NBN Co, 2020, *Submission to Proposed amendments to Part 20A of the Telecommunications Act 1997*, <https://www.infrastructure.gov.au/sites/default/files/submissions/nbn-co-submission-to-2020-ris-for-pit-and-pipe-in-new-developments-29-september-2020.pdf>

information asymmetry consumers face, giving people greater confidence in choosing the right provider for them.

ACCAN welcomes the changes made to the Draft Bill which proposes that the ACMA may disclose information relating to matters on customer complaints. Publishing granular data on financial hardship, customer service, faults and service difficulties, rectification of faults and service difficulties, service activation and provisioning, service connection, performance characteristics of services and customer appointment keeping is critical to driving competition. We support the ACMA being empowered to publish information about complaints where disclosure may involve disclosing the identify of a carrier or carriage service provider.

The introduction of more transparent public reporting by the telecommunications industry is needed to encourage behavioural change by individual service providers. More granular reporting will incentivise industry to be more accountable and compete on customer service and service quality. ACCAN considers that the proposed changes in the Draft Bill relating to publishing data on individual providers' performance will work to remedy many of the consumer harms we are seeing in the industry today.

Attachment B. Case studies of recent SIP consumer issues

Case Study 1: Refusal to connect and supply qualifying carriage service

A consumer, Iris*, contacted ACCAN at the end of 2021 needing urgent help with her phone and internet connection. She was informed that her current provider was disconnecting the network and that she would have to contact another provider in order to receive a phone and broadband connection. Iris had contacted the SIP for her area. The SIP for Iris's area told her that she would only be able to receive a mobile broadband connection. Iris and her partner are elderly and required a fixed connection for their safety. ACCAN informed the consumer of their rights under the SIP Regime and worked with the consumer and the SIP to ensure a connection took place. Iris is not entitled to any compensation despite the delay in getting her premise connected to a network.

Case study 2: Poor reliability from SIP network and no complaints resolution mechanism available

Tim* contacted ACCAN in 2021 because for 3 months, he and his neighbours had been experiencing small dropouts and packet loss. The frequent disconnections made using any applications that required consistent connectivity frustrating to use. Tim had gone through the necessary steps with his RSP, and they informed him it was an issue with the wholesaler. Tim was frustrated because he felt that there is no obligation on the wholesaler to resolve network issues. Furthermore, Tim told ACCAN that he had escalated his complaint to the ACCC and TIO, but because he doesn't pay the wholesaler, they had no obligation to remedy the issue. Tim has looked into changing his wholesale provider, but it is not possible because his entire building would have to agree and fund the works needed to change network. Tim felt that it was a commercial decision of the developers to choose which network he is on, and now he has no alternative.

*names have been changed.

Case study 3: Subdivision without pit and pipes

The below quote is taken from the website Whirlpool regarding a consumer's issue on getting their recently subdivided house connected:

"Contacting [Network A], they tell us they aren't allowed to sell us a new connection under their agreement with [Network B]. [Network B] tells us to contact [Network C]. Contacting [Network C], they told us our property doesn't exist in their system. After two months of hassling them to add us to their system, they finally sent a tech out last month who told us what we already knew – there is only [Network A's] Cable, no [Network C] pit/infrastructure ever provisioned. [Network C] advised that a pit may have to be dug and the line-in installed at our cost. Now we seem to be stuck – [Network C] doesn't seem to really know what is going on, we're just stuck in limbo calling different numbers who promise callbacks that never happen..."

*... Should the builder have connected to [Network C] / put a pit in? Or did connecting to [Network A] fulfill the New Development Application/Application for Reticulation requirement? Do we have any recourse against builder/owner/agent?" [April 2021]*⁷

⁷ <https://forums.whirlpool.net.au/archive/9nkk8pw3>

Case study 4. Poor reliability and lack of compensation

The below quote was taken from the website Whirlpool in regard to recurring outages on a SIP network:

"My [SIP] connection in the inner west NSW has gone down 4 times this month of June alone..."

...I opened a complaint ticket with [the SIP] which was today closed with no reply. My provider says they cannot provide refunds for days that the service is unavailable due to [the SIP] not refunding them" [June 2021].⁸

Case study 5. Delay in connection time

The below quotes were taken from the website Whirlpool regarding delays in connection:

"Moved in to my house last week, applied for an [SIP] connection and had the technician come out to install the necessary [SIP] gear. Its now 10 days and I am still not online..."

...I have utilised 2 routers/modem and direct connection to the Adtran box and get nothing. [RSP] have raised a ticket/fault with [the SIP] and its now at Level 3 with [the SIP] for a week now." [March 2022]

In the same thread, another consumer asks:

"[I] Still don't understand why no ISPs are able to enforce strict SLAs on [the SIP] and ask for compensation..." [March 2022]⁹

Case study 6. Reliability issues and unable to lodge complaint with TIO

The quote below was taken from the website Whirlpool regarding poor reliability issues:

"There was also a recent outage to the entire fibre network and this took more than a week to be resolved for some customers (and some services such as TV haven't yet been fully restored yet after two+ weeks). There are no consequences for the dismal service [the SIP] provides because we literally have no other options. I lodged a complaint with the TIO but they're unable to provide assistance regarding infrastructure upgrades. They suggested I lodge a complaint to the ACCC, which I've done..." [July 2019]¹⁰

⁸ <https://forums.whirlpool.net.au/archive/34k6kx1x>

⁹ <https://forums.whirlpool.net.au/archive/388l2lm2>

¹⁰ <https://forums.whirlpool.net.au/archive/322nrw53>