

ACCAN Submission to Consultation Paper 2 NBN 2025 RMA

4 April 2025

Recommendations

This submission recommends NBN Co:

- > Articulate a clear and comprehensive strategy for advancing fibre migration.
- > Genuinely engage with consumers and consumer advocacy groups on expenditure forecasts.
- > Streamline and revise service standards to promote their efficacy and improve compliance.
- > Apply uniform service standards regardless of geographic location.
- > Overhaul the rebate system to ensure complete passthrough to consumers.
- > Engage with consumer advocacy groups about upgrades to satellite services.

About this submission

The Australian Communications Consumer Action Network (**ACCAN**) is pleased to provide this submission on NBN Co's 2025 Replacement Module Application Consultation Paper 2 (**the Paper**) as part of NBN Co's compliance under the economic regulation regime established by the August 2023 Variation of the Special Access Undertaking (**SAU**).

ACCAN received an Australian Government grant of \$2.5 million over two years to represent consumer voices and interests in the development of NBN Co's expenditure proposals and service standards for Financial Years 2027 – 2029, to ensure they meet the needs of Australian consumers.

ACCAN thanks NBN Co for the opportunity to provide a consumer voice into the Paper. Should you wish to discuss any of these matters further, please contact audrey.reoch@accan.org.au.

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**Australian Communications
Consumer Action Network**

Australian Communications Consumer Action Network

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services.

ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

Introduction

This paper covers two key issues for NBN, representing both investment in its future potential, as well as shoring up its existing network. It is the second of two public Consultation Papers that NBN Co has released as part of its Replacement Module Application (**RMA**) process, occurring under the framework of the new Special Access Undertaking (**SAU**), which took effect on 1 November 2023. It is the last opportunity for public consultation before NBN Co submits its proposal by 2 July 2025.

NBN Co's proposed \$2.5b investment in Fibre Migration is an immense nationwide infrastructure upgrade programme, which will potentially transform the experience of broadband internet for up to 5,622,000 Australian households.¹ By upgrading the infrastructure backhaul and migrating the remainder of Australia's copper-based FTTN services onto FTTP technology,² it represents the fulfilment of the original vision of the NBN, as designed in 2009.³

The advancement of fibre upgrades is critical to the consumer experience, and the cost of services faced by consumers. Accordingly, any investments must be subject to appropriate investment governance arrangements and implementation should be focused on the delivery of service uplift in a manner that is cost-effective. While supportive of investments that provide consumer benefits, we note that NBN Co has failed to articulate the benefits and deliverability of the proposed expenditure.

The Benchmark Service Standards set minimum service levels to ensure that consumers receive the NBN services that they are paying for. In reviewing NBN Co's service standards, ACCAN considers that there is greater room to promote equality of service levels for consumers living in Regional, Rural and Remote (**RRR**) areas. There is also an urgent need to revisit NBN Co's system of rebates for service standards, which have created perverse incentives to discourage effective service delivery.

ACCAN cannot support work programmes without costings and business cases

At face value, ACCAN considers that many aspects of NBN Co's work proposals in fibre migration and service standards appear reasonable. However, the information provided in this consultation paper, which does not link its approach to consumer benefits, value for money, or the results of consumer engagement, is insufficient for ACCAN to support NBN Co's proposed approach.

ACCAN recommends that NBN Co set out its proposed approach in substantially greater detail in a comprehensive strategy that outlines its approach to potential fibre migrations. At present, given the lack of costed business cases, granular work programmes and a clear articulation of expected consumer benefits, ACCAN is unable to determine as to whether they reflect value for money for consumers sufficient to justify the likely price increases that this expenditure will generate.

¹ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 68–69.

² Ibid 15–16.

³ Australian Communications Consumer Action Network, 'ACCAN Submission to the National Broadband Network Companies Amendment (Commitment to Public Ownership) Bill 2024' (Submission, 18 December 2024) <<https://accan.org.au/accans-work/submissions/2390-accan-submission-to-the-national-broadband-network-companies-amendment-commitment-to-public-ownership-bill-2024>>.

The submission of a compliant RMA requires NBN Co to engage with consumer advocacy groups on forecast expenditure. To date, the information provided, and engagement undertaken is insufficient to support the contention that this has occurred. Engagement on NBN expenditure forecasts is critical to ensuring that the RMA reflects consumer preferences and meets regulatory requirements with respect to prudence and efficiency. These regulatory requirements are binding on NBN Co, which must *demonstrate that proposed expenditure is prudent and efficient through the RMA process*. ACCAN is concerned that there may be a misunderstanding of the level of evidence and detail required for a regulated entity to demonstrate that their proposed expenditure is prudent, efficient, and in the long-term interest of end-users.

While ACCAN's role is fundamentally concerned with ensuring consumer preferences are reflected in the proposed expenditure forecasts, we have concerns that engagement to date is insufficient to support a successful RMA. In particular, we note that information on benefits, costs and trade-offs has been lacking in engagement to date.

Further, critical information concerning the feasibility of the proposed investments has not yet been provided and consequently, it remains unclear whether the programme is capable of being delivered in the forthcoming regulatory reset cycle. While some proposals have been rejected due to delivery constraints, limited detail has been provided on how this has been determined, or why particular service uplifts have been prioritised.⁴

In ACCAN's view, the absence of detail on the deliverability of the proposed expenditure is a key omission, noting that the capacity to deliver planned infrastructure investments have a material bearing on the prioritisation of potential projects, the timing of expenditures and the recovery of proposed expenditures via pricing. We encourage NBN Co to articulate the assumed workforce and field services constraints under which they are developing the proposed service standards, and to engage with consumers on the prioritisation of projects.

ACCAN's recommendations aim to bridge the gap in consultation and analysis

ACCAN is proposing six recommendations for NBN Co to incorporate into their RMA, to improve the accountability and efficacy of NBN Co's expenditure and workplan:

1. Articulate a clear and comprehensive strategy for advancing fibre migration consistent with the consumer interest and the terms of the Special Access Undertaking (SAU).
2. Genuinely engage with consumers and consumer advocacy groups on proposed expenditure forecasts and how they promote consumer benefits and value for money.
3. Streamline and revise service standards to promote their efficacy and improve compliance, especially in removing unnecessary granularity or duplication of reporting.
4. Apply uniform service standards regardless of geographic location, ensuring that RRR consumers benefit from the same quality of service as consumers in metro areas.
5. Overhaul the rebate system to ensure complete passthrough to consumers — preventing the rebate system from acting as a subsidy to retailers.
6. Engage with consumer advocacy groups about upgrades to satellite services to ensure that this vital form of broadband technology receives appropriate community consultation.

⁴ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 58–64.

Background

The condensed consultation phase has poorly served consumer interests and NBN Co

Since NBN Co's Consultation Paper 1, the bulk of work undertaken has pertained to issues raised in Consultation Paper 2 – Fibre Migration and Service Standards. However, there are a range of other issues which ACCAN wishes to investigate further, such as satellite services, affordability and disaggregated capex and opex figures. As formal consultation will conclude shortly after engagement on Consultation Paper 2, there is little scope to engage further on these key issues, despite the clear benefits for consumers in greater scrutiny of these issues. Unfortunately, this is a foreseeable outcome of the condensed seven-month timeline for engagement.⁵

As such, little time remains before NBN Co will consolidate and submit their RMA to the Australian Competition and Consumer Commission (ACCC) by 2 July 2025. ACCAN notes that delays to the commencement of engagement on the RMA has limited the scope and substantiveness of the engagement on expenditures, with several key aspects of expenditure not subject to engagement.

The failure to engage on expenditures as required under the terms of the SAU raises questions of compliance with the intent and substance of the SAU obligations. However, more importantly, it has limited the capacity for genuine engagement on expenditures, limiting the ability of NBN Co to develop an RMA that reflects consumer preferences. In ACCAN's view, this reflects a significant missed opportunity and undermines the legitimacy of the RMA proposal, raising the spectre of rejection, which in ACCAN's view would be an undesirable outcome. We remain committed to engaging in the process so long as there remains scope to develop a proposal capable of acceptance, that reflects the long-term interest of end-users.

ACCAN expects many of these issues to be raised again during the ACCC's consultation into its Replacement Module Determination (RMD), later this calendar year. In advance of the formal process, ACCAN encourages NBN Co to continue to engage with consumer advocacy groups on key aspects of its expenditure in order to acquit its undertaking to the ACCC.

NBN Co has failed to consult on key expenditure decisions, despite SAU obligations

By this stage in the process, a regulated entity should have already engaged on and determined many key decisions, with the views of consumer advocates and industry integrated into the wholesaler's proposed expenditure. Unfortunately, contrary to best practice, NBN Co has continued to make key business decisions outside the scope of the SAU and without appropriate consultation.⁶

This was first apparent with the announcement of 'speed leadership' plans in early 2024, with one retailer noting that it undermined the only recently-signed SAU by rewriting product constructs and pricing plans without appropriate consultation.⁷ Similarly, Australian Government funding

⁵ Formally commencing in October 2024 and finishing in April 2025, with reporting due by 2 July 2025.

⁶ Australian Communications Consumer Action Network, 'ACCAN's Submission to NBN Co's Consultation Paper 1' (Submission, 22 January 2025) 4 <<https://accan.org.au/accans-work/submissions/2399-accan-s-submission-to-nbn-co-s-consultation-paper-1>>.

⁷ Grahame Lynch, 'TPG Telecom says NBN changes remove SAU certainty', *Communications Day* (online, 6 March 2024).

announcements in early January — supported by ACCAN — have occurred without effective engagement from NBN Co stakeholders.⁸

Most pertinently, no public or private (to ACCAN’s knowledge) consultation had taken place by the time that the *Australian Financial Review* published news that NBN Co intends to sign a contract with Amazon’s Kuiper network.⁹ ACCAN’s requests to understand more about this process in the Regulatory Proposal Forum have not been answered by NBN Co, despite the immense importance of the satellite network to Australians living in RRR areas, including remote First Nations communities.

ACCAN appreciates that the commercial sensitivities of some aspects of NBN Co’s expenditure may limit the capacity to provide detailed information on expected costs associated with commissioning capability from a third-party Low Earth Orbit Satellite (**LEOSat**) provider. However, no information has been provided even about the process that might be undertaken to consider alternative approaches, or determine consumer preferences and needs with respect to satellite services.

ACCAN notes that the terms of the SAU require engagement with consumer advocacy groups on all relevant expenditure. In preparing an RMA, NBN Co is required to:

- Consult with Access Seekers and Consumer Advocacy Groups on the Relevant Expenditure NBN Co proposes to undertake in that Regulatory Cycle.¹⁰
- Provide a summary of the consultation to the ACCC setting out the views of stakeholders including Consumer Advocacy Groups and how NBN Co has responded.¹¹
- Propose expenditure forecasts that take into account the concerns of Consumer Advocacy Groups as identified by NBN Co in the course of its engagement.¹²

While there has been engagement in this initial RMA process, to date it has occurred at an extremely high level on aggregate figures provided by NBN Co, without the genuine engagement in the challenge-and-critique fashion outlined in the terms of the SAU.

The lack of consultation on Satellite Services compromises NBN Co’s RMA

To date, the RMA process has featured little discussion on the future of satellites or the potential incorporation of LEOsat services into the NBN. ACCAN expresses this as a particular concern, as it directly impacts access to broadband for Australians living in RRR areas, particularly those in rural and remote locations. Given the expected retirement of the existing Sky Muster assets by the early 2030s,¹³ ACCAN is concerned that no further detail has been shared.

This gap in consultation is not supported by NBN Co’s acknowledgement within Consultation Paper 2 that ‘plans for the future of our Sky Muster satellite services are not yet sufficiently developed to

⁸ The Hon Michelle Rowland MP, Minister for Communications, ‘Only Labor will finish the NBN and keep NBN Co in public hands’ (Media Release, 13 January 2025) <<https://minister.infrastructure.gov.au/rowland/media-release/only-labor-will-finish-nbn-and-keep-nbn-co-public-hands>>.

⁹ Ronald Mizen, ‘NBN Co set to choose Amazon over Musk’s Starlink for satellite service’, *Australian Financial Review* (online, 3 March 2025) <<https://www.afr.com/politics/federal/nbn-co-set-to-choose-amazon-over-musk-s-starlink-for-satellite-service-20250303-p5lghc>>.

¹⁰ NBN Co Special Access Undertaking variation (August 2023) Clause 5.7(a).

¹¹ NBN Co Special Access Undertaking variation (August 2023) Clause 5.7(b).

¹² NBN Co Special Access Undertaking variation (August 2023) Clause 2G.2.5(d).

¹³ Ronald Mizen, ‘NBN Co set to choose Amazon over Musk’s Starlink for satellite service’, *Australian Financial Review* (online, 3 March 2025) <<https://www.afr.com/politics/federal/nbn-co-set-to-choose-amazon-over-musk-s-starlink-for-satellite-service-20250303-p5lghc>>.

consult on, and nbn will share further developments as they are progressed.¹⁴ Given the lead-time that such capital investment to replace the Sky Muster services would require, this omission is a significant oversight and undermines the efficacy of NBN Co's consultation process. ACCAN considers this a missed opportunity which will have negative impacts for RRR consumers, and recommends NBN Co launch a public consultation process for the future of satellite services as soon as possible.

In the event that they will not be in a position to engage in advance of submission of the RMA, ACCAN strongly encourages NBN Co to establish a further framework for engagement to ensure effective representation of consumer interests for potential out-of-cycle applications. While of a smaller size, we note that frameworks for engagement on contingent expenditure have been developed in the energy sector for regulated networks with respect to investments in innovation and research and development, which are difficult to determine in advance a regulatory cycle.

In the absence of any engagement on forecast expenditures relating to satellite services, ACCAN has material concerns that they may be determined to be non-compliant, resulting in the deferral of service uplifts for regional, rural and remote consumers.

NBN Co's online consultation is not an adequate substitute for in-person engagement

ACCAN recognises the efforts by NBN Co to undertake direct engagement with consumers. It is essential that end-users' needs and concerns are incorporated into the way that infrastructure service providers operate, and NBN Co's End-User Panel is an important first step in the right direction towards future consumer engagement.

However, ACCAN considers that the consumer engagement undertaken in NBN Co's End-User Panel was not an adequate substitute for the kind of in-person consumer engagement that regulatory reset processes require. The End-User Panel, made up of 50 NBN consumers across the country, was tasked with providing advice on direction on NBN Co's economic investment, technical upgrades and operational practices, across five two-hour online meetings.

While NBN Co has at various points cited concerns over timing in its decision to opt for an online-only consultative model, ACCAN considers that this is an issue that could have been reasonably mitigated had NBN Co commenced the process earlier, noting that the SAU Variation took effect on 1 November 2023, nearly a year before the consultative process begun in October 2024.

The composite nature of the engagement — featuring individuals with greatly different experiences of the NBN — meant that it was difficult for NBN Co to conduct deep engagement on issues which pertained to each end-user's experience, and instead was more general and high-level in nature. For future cycles, ACCAN recommends NBN Co adopt an in-person engagement model (which can be supplemented by online sessions), involving repeat visits to key communities, facilitated by local community and consumer advocacy groups, to understand the issues they face and adjust their expenditure and work programmes appropriately. This would better allow NBN Co to generate more community — and technology — specific solutions in the long-term interest of end-users (**LTIE**).

¹⁴ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 8.

Fibre Migration

Fibre migration may bring consumer benefits in principle, but NBN Co has not made the case for its proposed investments

By the end of 2030, an estimated 5,622,000 million households will be eligible for upgrades to FTTP services, leaving only a small percentage of Australian households reliant on wireless services, such as fixed wireless (4G and 5G home connections) and satellite services (currently serviced by NBN Co's GEOSatellite Sky Muster service).¹⁵

There are potentially material benefits for consumers to be upgraded from the legacy copper network to fibre-optic cable services. Fibre networks are more reliable and capable of delivering faster speeds, with lower repair and maintenance costs. This is consistent with the Australian Government's decision in 2020 to transition from the Multi-Technology Mix in favour of upgrading as much of the NBN as possible to FTTP services (as well as the legacy HFC network).¹⁶ Since then, NBN Co has been upgrading the infrastructure and backhaul required to allow 4.3 million households and businesses in the legacy copper network to upgrade to FTTP services.¹⁷

The benefits associated with fibre migration, including reduced costs, service performance and uplift should be articulated in clear, monetised terms and assessed against the countervailing impact on costs to consumers. This should be undertaken at a level of granularity sufficient to support the prioritisation and selection of migration projects to maximise consumer benefit at the least cost, and align with NBN Co's actual capacity to deliver given existing field resources.

For the vast majority of Australians, a fixed-line fibre connection provides or will provide the fastest and most reliable internet connection for their household or small business. To this end, ACCAN supports the fibre migration programme in its efforts to shift Australia onto this faster and more reliable form of technology, providing that it does not come at extra cost to consumers.

NBN has however provided no costings or business case for fibre upgrades

However, despite ACCAN's in-principle support for fibre migration, we are unpersuaded by NBN Co's assertion that households require fibre services because of an immense proliferation of devices per households,¹⁸ or because of purportedly immanent take-up of emerging technology which is reliant upon gigabit-level services.¹⁹ On its own, the information provided in the Paper does not make the case for fibre upgrades, as such proposals would require detailed costings and examination of economic trade-offs to justify the increase in capital expenditure that such a programme requires.

¹⁵ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 9.

¹⁶ Ry Crozier, 'NBN Co to spend \$3bn upgrading half of FTTN network to full fibre' *ITNews.com.au* (online, 23 September 2020) <<https://www.itnews.com.au/news/nbn-co-to-spend-3bn-upgrading-half-of-fftn-network-to-full-fibre-553731>>.

¹⁷ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 9.

¹⁸ *Ibid* 9.

¹⁹ Australian Communications Consumer Action Network, 'ACCAN's Submission to NBN Co's Consultation Paper 1' (Submission, 22 January 2025)¹⁸ <<https://accan.org.au/accans-work/submissions/2399-accan-s-submission-to-nbn-co-s-consultation-paper-1>>.

While ACCAN supports in-principle investments to address latent consumer demand, we note that NBN Co has not provided information on network utilisation rates and network constraints that would be alleviated by investment, nor set out its approach to modelling consumer demand in detail. For \$2.5 billion of capital expenditure over the regulatory cycle, we consider these omissions to be a significant gap in consultation. Accordingly, we encourage NBN Co to give consideration to whether all or part of the proposed expenditure should be deferred and spread over future regulatory cycles in order to better align with actual consumer demand for communications services.

Deferral of the proposed expenditure would allow for the reduction of overall expenditures, and the avoidance of the weighted average cost of capital associated with infrastructure that would be constructed but remain underutilised or unutilised for some time following construction. ACCAN considers this approach to be desirable to the extent that it places downward pressure on wholesale costs and improves affordability — the predominant concern of consumers.

ACCAN recommends NBN Co provide significantly more detail when it submits its RMA. There is a material need for NBN Co to develop a comprehensive approach to fibre migration, complete with geo-mapping and a business case to demonstrate which parts of the network should be prioritised. Recent reports that the Australian Government is considering upgrading the minimum speed required of Statutory Infrastructure Providers (**SIPs**) to 100 Mbps, only increases the necessity for NBN Co to have a clear and detailed medium-long-term plan for fibre migration.²⁰

²⁰ Grahame Lynch, 'Federal government seeks feedback on 100Mbps SIP minimum speed proposal' *Communications Day* (online, 28 March 2025).

Consultation Questions

1. What do you see as the benefits/barriers to customers and/or RSPs of these potential new capabilities?

The fibre upgrade programme represents the single most significant item of capital expenditure in NBN Co's proposal. At \$2.5 billion, it is roughly 28% of the revised \$8.8 billion capex proposed over the period FY26-27 – FY28-29.²¹ The programme includes investments to continue and accelerate the upgrade of the vast majority of Australian households from copper-based FTTN/FTTC services to the fully fibre-operated FFTP technology.

ACCAN is concerned that the consultation question belies a lack of substantive cost-benefit analysis undertaken to date by NBN Co to support the proposed \$2.5 billion programme. At this stage, we note that quantitative estimates of benefits for consumers have not been articulated for this programme, and consequently it must be assumed in the absence of evidence to the contrary that the programme or aspects of the programme are net-benefit negative. We encourage NBN Co to articulate the expected benefits of the proposed expenditure, in order to facilitate an assessment of whether it reflects the long-term interests of consumers.

NBN Co has proposed three approaches ('capabilities') for its fibre migration programme, each of which covers a different aspect of the household experience:

- Proactive assurance-led migrations — upgrades targeted at households which are likely to experience faults or have a history of repeated service issue.
- Reconnections to the network default to fibre — upgrades disconnected and reconnected households to fibre rather than the existing legacy technology.
- Network-led target migrations — upgrades households on legacy technology in majority-fibre neighbourhoods in which NBN Co upgrades these services on a geographic basis.²²

While network-driven migrations may be an efficient way to drive improvements to consumer experience and provide consumer benefits, NBN Co has not articulated the basis on which such migrations would be advanced. In the absence of clear criteria to trigger network-led migrations, ACCAN cannot support the adoption of this approach. Investments made without tangible consumer benefits and delivery strategy may result in higher prices for consumers, with limited benefits.

Each of these work programmes provides a potentially useful approach to upgrading 'low-hanging fruit' across the network — i.e. circumstances where it would likely be cheaper for NBN Co to upgrade a household to FFTP rather than continue to service their existing copper connection. However, these approaches must be clearly scoped and subject to rigorous criteria in order to ensure that they provide consumer benefits and align with the long-term interest of consumers.

For example, triggering investment on the basis of a reconnection may be efficient if the premise in question has been disconnected due to damage to the infrastructure e.g. wiring damaged by flooding. In contrast, investment in building out a fibre connection for a property that had been disconnected by the election of a prior resident — and which has a well-functioning FTTN or FTTC service may be an imprudent and costly exercise that provides limited consumer benefit.

²¹ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 65–69.

²² Ibid 10.

ACCAN encourages NBN Co to articulate the criteria for advancing a network level programme of migration for given areas e.g. identified capacity constraints or falling utilisation of connection type at node level, reliability issues or consumer-led demand reflected through requests for speed-uplifts. Additionally, there may be additional scope for NBN Co to identify premises and nodes at greater risk of climate and natural disaster events, and to prioritise such migrations in order to support the resilience and durability of the network and support households in these at-risk areas.

Given the potentially significant task of migrating 5,622,000 households onto the fibre network, NBN Co will likely need to deliver a programme with a greater scale than these three locally-focused work programmes.²³ Unfortunately, NBN Co has not articulated either within Consultation Paper 2 nor in other forums its approach to a strategic migration of households across the country.

> ACCAN recommends NBN Co:

- provide costings and business cases to articulate how its potential approaches to fibre migration plans would operate, including potential reductions in opex.
- provide further detail on criteria and timelines required for proactive migrations, including the speed of reconnection and the length of outages.
- provide more detail and map out implementation plans for default-to-fibre.
- provide additional detail on targeted migrations to indicate how areas will be sequenced and how many premises are ultimately envisaged to be migrated over.
- align the three capabilities within a broader strategy for migrations.

2. Are there any additional capabilities that nbn should consider to support an efficient and smooth migration from FTTN and FTTC to fibre?

NBN Co may wish to develop additional capabilities to resolve potential barriers such as consumer objections onsite, and issues in accessing the MDU enclosures in multi-dwelling households, especially when there may be disagreement about responsibility and liability concerning upgrades between strata, owners and tenants.

Public information campaigns, clear guidelines for MDUs and alignment of communications from NBN Co and retailers that households will benefit from faster and more reliable services without being forced onto higher-priced plans will help set appropriate consumer expectations to support an efficient and smooth migration process.

> ACCAN recommends NBN Co:

- develop capabilities to facilitate upgrades of complex, multi-dwelling residencies.
- align their fibre upgrade programme with their disaster and resilience work programme to improve households' connectivity during disaster events.
- develop communications for households to inform and provide assurances that fibre upgrades will not force households to subscribe to higher price tier services.

²³ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025), Page 9.

3. What are your views on when and how the existing and proposed new capabilities could be used/phased to support (a) the shift from early on demand upgrades to mass upgrades and (b) mass upgrades to managed upgrades to complete the final transition?

ACCAN encourages NBN Co to articulate the basis for its proposed shift from its on-demand approach. We note that the on-demand approach ensures that investments are tied to tangible consumer benefits and align with the consumer preferences of the individuals seeking the uplift in reliability and speed of the ordered service. The adoption of a demand-driven approach is also consistent with an impactor-pays model of cost recovery and links the costs of investments to the consumers that are driving these investments through their expressed demand for higher-speed services.

In ACCAN's view, the uneven distribution of existing infrastructure encourages consideration of how best to undertake investments to promote consumer benefits and a more uniform experience for consumers. However, we note that further infrastructure investments must be driven by the consumer interest and not undertaken for their own sake. The current framework of demand-driven investment ensures alignment between investment, consumer preferences and willingness to pay for increased speed and performance.

While broader improvements in service performance are desirable, these must be considered against the attendant cost increase faced by consumers from further investment. In order to support the proposed shift to NBN Co's proposed capabilities, ACCAN considers that NBN Co should articulate its strategy for advancing fibre migration that includes the economic basis for adopting such an approach. While NBN Co's largely on-demand programme has migrated 610,000 (or 14%) of eligible premises under the fibre upgrade programme to FTTP connections, a more comprehensive migration plan may be more efficient and hasten fibre migration across the country.²⁴ However, we consider that this proposition should be tested through the RMA process, and not be assumed as representing the most desirable approach.

Unfortunately, ACCAN has not seen a comprehensive fibre migration strategy throughout this consultation process. This is concerning, as NBN Co's communications infrastructure provides a significant safety net to the community, particularly Australians living in RRR or disaster-prone areas.

- > ACCAN recommends NBN Co:
 - justify the transition from on-demand upgrades to its new capabilities.
 - articulate the consumer benefits of further infrastructure investments.
 - ensure that all fibre migration plans go through the RMA consultation process.
 - develop a comprehensive fibre migration strategy inclusive of other aspects of NBN Co's work plans, such as disaster mitigation.

²⁴ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 9.

4. Are there any future considerations/criteria that should be applied over time to further accelerate or slow down on migration timing?

ACCAN is concerned that fibre migration is too closely tied to cost recovery, leading to higher consumer prices which hinder NBN Co's efforts to migrate consumers onto the network by slowing the uptake and reducing consumer buy-in. As expressed in our response to Consultation Paper 1, ACCAN considers that NBN Co is placing undue emphasis on the take-up of multi-gigabit speeds and emerging technology in its cost recovery model.²⁵

The pace of migration should be informed by the expenditure objectives specified in the SAU.²⁶ These objectives should serve as the foundation for making investment decisions, and consequently, for setting a migration pace that takes into account both demand forecasts and the projections for opex and capex. This approach ensures that the fibre migration programme is aligned with the financial and operational parameters outlined in the SAU, balancing investment needs with demand growth and cost constraints.

Based on the information presented in Consultation Paper 2, the work programme falls short of addressing the following expenditure factors outlined in the SAU:

(ii) expected end user willingness to pay for NBN Co's products and services, including as to connections, speed requirements, data volumes, quality and reliability;

(v) NBN Co's procurement and governance framework, and whether NBN Co's asset management and planning framework reflects generally accepted industry standards and practice;

(vi) NBN Co's ability to finance Relevant Expenditure;²⁷

ACCAN considers that the expenditure objectives related to demand forecasts and consumer interests must form the basis for determining investments, as a binding statutory undertaking.²⁸ In the absence of a detailed plan for the roll-out of the fibre migration project, ACCAN is unable to assess whether the NBN Co's opex and capex forecasts align with a suitable migration pace for consumers. Therefore, ACCAN urges NBN Co to reassess the migration project, ensuring that it reflects the highest net-benefit option for consumers among the relevant investment alternatives.

ACCAN notes that equivalent processes are in place within the energy sector and encourages NBN Co to articulate their approach to expenditure forecast consistent with frameworks established in other regulated sectors. This would include assessing any potential investments in migration should be subject to cost-benefit analysis, underpinned by sensitivity testing and technical feasibility for any proposed timelines.

²⁵ Australian Communications Consumer Action Network, 'ACCAN's Submission to NBN Co's Consultation Paper 1' (Submission, 22 January 2025) 16–19. <<https://accan.org.au/accans-work/submissions/2399-accan-s-submission-to-nbn-co-s-consultation-paper-1>>.

²⁶ NBN Co, 'NBN Co Special Access Undertaking' (Report, August 2023) cl 2G.2.5(a)-(d).

²⁷ NBN Co, 'NBN Co Special Access Undertaking' (Report, August 2023) cl 2G.2.5(d).

²⁸ NBN Co, 'NBN Co Special Access Undertaking' (Report, August 2023) cl 2G.2.5(a).

ACCAN encourages NBN Co to develop a coherent and rigorous investment governance framework that considers the pace of migration against cost, infrastructure durability²⁹, compliance³⁰, monetised risk³¹, geography and time restrictions. It must be clear that NBN Co is capable of delivering the projects it seeks to cost recover against, such as whether there are sufficient staff to plan and deliver the migration projects within the context of NBN Co's broader programme of works.

ACCAN queries the demand forecasts that have been put forward by NBN Co to support the proposed expenditure and requests that such information be provided as part of the consultation process. To date, NBN Co has made limited efforts to engage with consumer advocacy groups regarding the trade-off between higher prices and improved fibre services and consumer's willingness to pay for these potential services. This lack of engagement suggests that NBN Co has not adequately forecasted consumer demand. ACCAN considers that this indicates a significant range of work still needs to be undertaken before this work programme can be approved by the regulator.

> ACCAN recommends NBN Co:

- base the timeline of the migration to fibre project on the forecasts and expenditure objectives outlined in the SAU.
- develop a comprehensive and rigorous investment governance framework through which forecasted opex and capex is outlined and is consistent with the expenditure factors of the SAU.
- ensure that expenditure is subject to cost-benefit analysis, sensitivity testing and technical feasibility.
- ensure that the fibre migration project reflects consumer demand forecasts by presenting as the highest net-benefit options for consumers.

5. What success factors and/or lessons from previous migrations (e.g. global benchmarks, 3G, Digital TV, nbn initial network rollout) should be taken into consideration for the migration from copper to fibre?

This is an essential question to consider, and it is appropriate for NBN Co to consider fibre migration in light of other recent communications migrations. Disruptions and migrations, even when planned years in advance, are always a difficult experience for consumers, and infrastructure service providers who do not effectively communicate the issue are likely to face complications, delays and community unrest. This was unfortunately the case when it came to the recent 3G shutdown,³² which has led to pronounced community dissatisfaction.³³

²⁹ Ausgrid, 'Expenditure Forecasting Methodology' (Report, June 2022) 9.

³⁰ Ausgrid, 'Expenditure Forecasting Methodology' (Report, June 2022) 9.

³¹ Ausgrid, 'Expenditure Forecasting Methodology' (Report, June 2022) 17.

³² Australian Communications Consumer Action Network, 'Mobile phone overhaul literally a matter of life and death' (Media Release, 19 August 2024) <<https://accan.org.au/media-centre/hot-issues-blog/2325-3g-shutdown-life-and-death-op-ed>>.

³³ Annika Burgess and Lauren Bohane, '3G network shutdown drives surge in telco service complaints', ABC News (online, 20 February 2025) <<https://www.abc.net.au/news/2025-02-20/telecommunications-complaints-3g-shutdown-optus-telstra/104959072>>.

Fortunately, this difficult experience provides NBN Co with a wealth of lessons. These include the importance of establishing consumer buy-in early in the process, consulting closely with consumer advocacy groups who may be able to pick up potential issues before they become bigger problems, considering the needs of consumers from RRR areas and non-native English speakers, and ensuring that the lived experience of community members is reflected in NBN Co's decision-making.

These are elaborated in ACCAN's submission to the Senate Committee inquiry on the Shutdown of the 3G mobile network listed a range of recommendations.³⁴ Some of these recommendations (also that have relevance to NBN Co's fibre migration include:

- undertaking a nationwide media campaign to inform and educate consumers on the impact of the migration.
- working with community groups and government agencies (across various levels of government) to check in on consumers' welfare.
- a nationwide free phone number which consumers can use to understand the impact of the migration on their household.³⁵

Similar reflections can be found in the submission made by the Regional, Rural and Remote Communications Coalition.³⁶ ACCAN strongly recommends that NBN Co studies the submissions made to this Senate Committee to ensure the migration from copper to fibre broadband is clearly communicated and understood and minimises disruption to households' internet access.³⁷

> ACCAN recommends NBN Co:

- study the submissions made to the Senate Committee inquiry into the Shutdown of the 3G mobile network.
- engage as early as possible with communities where migrations are planned.
- engage with consumer advocacy groups, particularly those representing consumers living in RRR areas, and from First Nations and CALD backgrounds to ensure their needs are met throughout the fibre migration.
- ensure the lived experience of communities is incorporated into the decision-making process.
- engage with communities before and after the migration to ensure the efficacy of the upgrade programme.

³⁴ Australian Communications Consumer Action Network 'Inquiry into the shutdown of the 3G mobile network and telecommunications services accessibility' (Submission, 31 May 2024) <<https://accan.org.au/accans-work/submissions/2305-inquiry-into-the-shutdown-of-the-3g-mobile-network-and-telecommunications-services-accessibility>>.

³⁵ Australian Communications Consumer Action Network 'Inquiry into the shutdown of the 3G mobile network and telecommunications services accessibility' (Submission, 31 May 2024) <<https://accan.org.au/accans-work/submissions/2305-inquiry-into-the-shutdown-of-the-3g-mobile-network-and-telecommunications-services-accessibility>>.

³⁶ Regional, Rural and Remote Communications Coalition, 'Re: 2024 Inquiry into 3G Mobile Network Shutdown' (Submission, 12 June 2024) 7. <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/3GNetworkShutdown/Submissions>.

³⁷ Parliament of Australia, 'Shutdown of the 3G mobile network' (online, Retrieved 31 March 2025), <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/3GNetworkShutdown>.

6. What are your views on when nbn, working with RSPs, should complete the migration of connections from legacy copper to fibre? Please provide any context for your views.

It is difficult to give an effective answer to this question, noting that specific issues surrounding timing, implementation, and geographic mapping, have either not been shared with the Regulatory Proposal Forum or have not yet been developed by NBN Co.

NBN Co estimates that it will complete its infrastructure upgrade to connect the remaining 622,000 households by 2030.³⁸ Noting that Sky Muster services are estimated to be functional until 2030-2032, and that Telstra's Universal Service Obligation (USO) contract (which utilises the legacy copper network) expires in 2032, ACCAN considers that NBN Co should avoid circumstances where any Australian consumer is reliant upon legacy technology. The timeline for the migration should seek to optimise consumer connectivity within the boundaries of what is technically feasible and consistent with the minimisation of risks to consumers and community safety.

ACCAN notes that opex savings from the fibre migration programme are only able to be realised when the legacy technologies are switched off — i.e. copper is decommissioned and disused nodes are switched off. Accordingly, NBN Co should clearly articulate its criteria and strategy for decommissioning assets, including whether it is adopting a geospatial approach to decommissioning assets by area or region.

However, it is not just the completion date of the migration that matters, but also the efficacy of the programme. ACCAN encourages NBN Co to adopt an integrated strategy for fibre migration that connects to its various other work programmes, including service standard upgrades, 2 Gbps capacity upgrades, and the future of satellite broadband services in Australia. The success of the migration programme should be defined by the improvements it can offer Australian consumers and the ease of the transfer, rather than as an outlay exercise alone.³⁹

In the absence of further information, ACCAN's view is that the pace of progress of the migration from legacy infrastructure should be driven by the criteria underpinning investment decision-making. ACCAN does not consider that the adoption of a specific time frame to complete the migration is necessarily consistent with the operation of the provisions of the SAU. Rather, the terms of the SAU should inform the pace at which the migration is undertaken, in order to facilitate investments in the long-term interests of consumers.

- > ACCAN recommends NBN Co:
 - ensure that all consumers are migrated onto non-copper services by 2030.
 - adopt a holistic view of the Fibre Migration project and its connection to other services and infrastructures.
 - develop public geo-mapping tools to ensure progress is kept accountable to internal stakeholders and consumers.
 - ensure that SAU, with reference to the expenditure factors and objectives, informs the pace at which the migration is undertaken.

³⁸ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 9.

³⁹ For more on the capabilities approach to the delivery of universal services, see Australian Communications Consumer Action Network, 'Better Delivery of Universal Services' (Policy Submission, 8 March 2024), <<https://accan.org.au/accans-work/submissions/2279-better-delivery-of-universal-services>>.

Benchmark Service Standards

ACCAN cannot provide support to NBN Co's service standards without costings

NBN Co's Benchmark Service standards cover NBN's core product — 'nbn ethernet' — which covers the range of its Multi-Technology Mix. However, NBN Co is prioritising amendments to its three 'future networks' — FTTP, HFC and Fixed Wireless (**FW**) services⁴⁰ — to avoid incentivising investment in networks that are being phased out, as such investments would 'involve trading off Service Standard improvements on the future access technologies of FTTP, HFC and FW.'⁴¹

ACCAN agrees with NBN's observation that 'it is appropriate that any material investment in improving Service Standards is aligned with nbn's broader network investment strategy.'⁴² However there is little detail given on the assessment criteria used to determine these decisions, despite NBN Co specifically including these as assessment criteria.⁴³ Without costings tied to service standards, there is insufficient information for a consumer advocacy group to engage in effective consultation.

In ACCAN's view, the information provided to date with respect to the Benchmark Service Standards is insufficient to form a view as to whether the forecast expenditure aligns with those that would be undertaken by a prudent and efficient operator — a requirement of the SAU.⁴⁴ ACCAN has not seen relevant information on the costs of proposed investments associated with uplifting service standards and the expected benefits that will flow to consumers through these improvements.

NBN Co's service standards deliver lower quality services for RRR consumers

Benchmark Service Standards set the minimum level of service quality that consumers and small businesses should expect from NBN Co services. Unfortunately, within the existing framework, NBN Co can be held to different standards of performance depending on where the end-user is located, which can lead to significant disparities in user experience. RRR consumers have fewer substitutable communications services than metro consumers. This is particularly evident when it comes to poorer access to mobile networks, and less competition within this market.⁴⁵

Consumers in the regions have less access to non-NBN sources of broadband connectivity when compared to metro consumers.⁴⁶ This disparity of broadband services available to consumers in RRR Australia was a primary policy consideration in establishing the NBN in 2009.⁴⁷ Accordingly, ensuring that RRR consumers have access to reliable broadband services should be a key priority for NBN Co, and should be supported as a key component of any benchmark service standard programme.

⁴⁰ NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 28.

⁴¹ Ibid 28; ibid 39.

⁴² Ibid 39.

⁴³ Ibid 36.

⁴⁴ NBN Co, 'NBN Co Special Access Undertaking' (Report, August 2023) cl 2G.2.5(c)(iv).

⁴⁵ Commonwealth of Australia, '2024 Regional Telecommunications Review' (Report, 2024) 23.

⁴⁶ Australian Communications Consumer Action Network, '2024 Regional Telecommunications Review' (Policy Submission, 30 August 2024) 26–27 <<https://accan.org.au/accans-work/submissions/2331-2024-regional-telecommunications-review>>.

⁴⁷ The Hon Wayne Swan MP, Deputy Prime Minister and Treasurer, 'New National Broadband Network', (Media Release, 7 April 2009), <<https://ministers.treasury.gov.au/ministers/wayne-swan-2007/media-releases/new-national-broadband-network>>.

Consultation Questions

1. To what extent do you support the proposed enhancements to Benchmark Service Standards?
Please specify which of the proposals you support or oppose.

NBN Co's proposed enhancements to the Benchmark Service Standards within Consultation Paper 2 are relatively uncontroversial, if limited in scope. More concerning however, is that service standard upgrades have been presented without being linked to costings, noting that the SAU specifically requires:

(c) Forecasts of Operating Expenditure and Capital Expenditure... must reasonably reflect the prudent and efficient expenditure that an operator in NBN Co's position would incur in achieving the following objectives. ...

(iv) maintaining and improving the quality, reliability, safety, security and integrity of supply of any products and services, including by meeting the Benchmark Service Standards which are to apply in the relevant Regulatory Cycle⁴⁸

The adjustments to service standards, as proposed within Consultation Paper 2, do not meet this requirement of the SAU to ensure that improvements to service standards are linked to forecasts of opex and capex. Without costings and implementation plans within the document, ACCAN is not in a position to assess what is within NBN Co's scope to improve, and how it can best complement NBN Co's other work programmes.

NBN Co needs to give greater consideration to how benchmark service standards tie into NBN Co's work programmes, noting that every enhancement represents a potential increase in capex and opex to resource these upgrades. It is essential that service standards are linked to work programmes. For instance, NBN Co should consider how improved service standards can underpin NBN Co's fibre migration programme to ensure that it proceeds as smoothly as possible, with minimum disruption to consumer experience. To this end, ACCAN encourages NBN Co to adopt more targeted reporting of its fibre migration activities, particularly when NBN Co is pro-actively migrating consumers onto the fibre network and switching off legacy network infrastructure.

Clearer linking of service standards to work programmes would also help streamline and simplify NBN Co's at-times overly detailed service standards framework, which can potentially obscure rather than enlighten consumers and regulators. For example, NBN's service standard targets for connections currently depends on up to 34 different service classes across five different geographic areas and can differ further depending on whether the connection is classed as 'standard', 'accelerated' or 'priority'. ACCAN considers that more streamlined standards could reduce the operating expenditure that accompanies reporting service standards at such a targeted level while enhancing the specific areas of focus as outlined above.

> ACCAN recommends NBN Co:

- meet its SAU compliance requirements through linking its forecast opex and capex to its improvements in Benchmark Service Standards.
- link its service standard upgrades to its work programmes.
- streamline service standards to promote their efficacy and improve compliance.

⁴⁸ NBN Co, 'NBN Co Special Access Undertaking' (Report, August 2023), 2G.2.5(c)(iv), 260.

2. *In order of priority, which enhancement or enhancements would add the greatest value to the customer experience and why?*

ACCAN considers there to be two immediate priorities for enhancements to service standards — the incorporation of new standards to improve network performance, and the adjustment of service standard targets for RRR areas to drive a significantly higher level of compliance.

Incorporating stronger technical performance standards would universally enhance services

For consumers using the internet and accessing government, health and education services that a reliable connection enables, there are technical dimensions that affect consumer experience outside of a connection's advertised speed and geographic availability. This is particularly the case for real-time applications such as video calls, reliable web browsing, and uploading and downloading files, which are reliant upon on a stable connection in order to fulfil consumer needs.⁴⁹

Adding service standards around dimensions of network performance such as latency, jitters, and packet loss, would provide more transparency around NBN's network performance and provide greater insight into where performance enhancing investments could be made. While NBN does have a service standard for utilisation management, the current service standard framework does not require NBN to report on performance related to the latency, jitter or packet loss.

Further, end-user feedback throughout the engagement process has suggested that consumers do place weight on reliability and latency. Improvements to this aspect of service delivery would benefit consumers in both metro and RRR areas, and bring NBN's reporting in line with overseas communications providers and improve consumer experience.

More stringent standards are essential to support RRR areas who are uniquely reliant on the NBN

ACCAN considers that the proposed benchmark service standards for regional, rural and remote services are inadequate, and should be subject to material uplift. The proposed standards impose weak requirements on NBN Co to support the resolution of service standard breaches, and risk consumers living in RRR areas being without effective communications access for lengthy periods of time, despite the NBN being built to provide communications for precisely these areas.

The existing service standards framework, by design, allows for a different customer experience depending on whether a customer is in an urban or RRR area. NBN Co's current service standard framework — including the nature of its targets and the rebate payment arrangements — do not necessarily compensate for this. Despite the greater risks faced by RRR consumers when they lose communications services, when compared to metropolitan consumers who have access to redundancies, the former will likely experience less reliable services and significantly longer wait times for connections and maintenance than their metro counterparts.

For example, on some parts of NBN Co's network, a consumer seeking a new fibre network connection in an 'isolated area' (as defined by NBN Co's service standard framework), NBN Co is only required to provide this within 35 days to meet its service standard target. This contrasts with a consumer in an urban or major/minor rural area, where the expectation is 9 business days for urban areas and 14 for major/minor rural areas.⁵⁰ This aligns with findings from the *2024 Regional*

⁴⁹ Australian Communications Consumer Action Network, 'Better Delivery of Universal Services' (Policy Submission, 8 March 2024) <<https://accan.org.au/accans-work/submissions/2279-better-delivery-of-universal-services>>.

⁵⁰ NBN Co, August 2023 SAU variation, Module 4, Schedule 4A, 11.1, Attachment b)i).

Telecommunications Review, that found misconceptions around access to NBN services in regional Australia due to some retailers not offering the full range of NBN technologies, and inaccurate mapping and address databases.⁵¹

While differences in service standard targets may reflect genuine differences in the cost of provision across geographic disparities, NBN Co has not articulated any difference in costs, further NBN Co does not necessarily perform better even against these lower service standards. As such, the service standard framework allows for NBN to be delivering a lower quality of service to customers in RRR areas whilst still meeting its obligations under the framework. This reinforces a digital divide that is not tenable for the needs of RRR consumers, and raises the need to institute more stringent service standards to improve the quality of service for RRR areas.

ACCAN recommends NBN Co should commit to equivalent service standards for regional, rural and remote services as are offered for metropolitan consumers. Noting the material risk of harm faced by RRR consumers due to service disruptions, and the lack of reasonable substitutions compared with metro consumers, ACCAN considers that this is a reasonable and appropriate prioritisation.

- > ACCAN recommends NBN Co:
 - incorporate technical performance measures into service standards, including latency, jitters and packet loss, to better measure consumer experience.
 - improve the quality of services for RRR Australians and simplify the framework by applying uniform service standards regardless of geographic location.

⁵¹ Commonwealth of Australia, '2024 Regional Telecommunications Review' (Report, 2024) 85.

3. What is your view on the proposed timing for the potential enhancements?

As noted above, ACCAN considers that the timing of service enhancements should be guided by the application of an expenditure framework that is focused on maximising consumer benefits and value for money. Therefore, NBN Co should strategically integrate its upgrades into its work programmes, as part of its overall investment in the network, and clearly tied to its capex and opex.

ACCAN considers that the detriment faced by regional, rural and remote consumers, who have often limited access to redundant technologies, implies greater benefits may accrue from prioritisation of enhancements for these consumers. We note however, that prioritisation of investment should be undertaken by reference to a standardised cost-benefit analysis framework — which would allow for the prioritisation of enhancement investments based on highest net benefits that they provide.

- > ACCAN recommends NBN Co:
 - prioritise investment in service standards through a cost-benefit framework which maximises consumer benefit and value for money.

4. To what extent do you support the proposed changes to the Corrective Action process?

It is difficult for ACCAN as a consumer advocacy group to provide effective feedback on the Corrective Action process based on the minimal information provided in this consultation paper. The timing and definitions of measurement periods and their links to consumer experience are not articulated within the document, nor is there any apparent connection to ensuring that consumers maintain a reliable connection with as few disruptions as possible.

In particular, the requirement for three consecutive measurement periods is of great concern, noting that this may present regulatory obstacles to corrective action in circumstances where a service is intermittently unreliable, noting that regular disruptions, especially when recurrent, can functionally limit consumers' access to communications services, and lead to as much time disconnected from broadband services as outages or network faults.

In the absence of clear criteria regarding the Corrective Action process, there is little feedback that ACCAN can give in response to the minimal context and explanation within the consultation paper. Therefore, ACCAN encourages NBN Co to reframe its questioning and articulate in significantly more detail how it seeks to improve consumer experience through the Corrective Action process.

- > ACCAN recommends NBN Co:
 - revise and elaborate its approach to amending the Corrective Action process.
 - ensure corrective actions are developed with consumer experience in mind, noting the reliance upon NBN services in RRR areas.

5. Are the current rebate arrangements between nbn and RSPs sufficient to ensure customers are appropriately compensated for nbn missing its Service Standards?

ACCAN has material concerns with the operation of the current framework of rebates, which provides for the compensation of RSPs due to the failure to meet service standards by NBN Co. While ACCAN acknowledges strong RSP support for the receipt of rebates for breaches to service standards, we note that limited evidence has been provided to ensure that the programme of rebates is driving efficient resolution of service issues for consumers, or the pass-through of compensation to end-users who are impacted by breaches to service levels.

NBN Co has not articulated at this stage a coherent economic or policy basis for the continuation of the rebates framework in its current form. ACCAN notes that rebates may be provided on fundamentally two grounds:

- Compensation: a rebate payment may be made to compensate a consumer due to the failure to provide a service as committed to under a contract, or in a regulated entity context, failure to provide a service as committed to under a service standard.
- Establishing an incentive for compliance: a rebate payment may be made to provide an economic incentive to undertake efficient investment in infrastructure, systems and processes to ensure the delivery of services, consistent with service level committed to under a service standard.

ACCAN notes that the current rebate framework does not provide a sound framework for compensation, as RSPs are not required in all instances to provide compensation to consumers for breaches of service levels. Noting that the policy objective of compensation is to remedy the harm experienced by the party that suffers loss due to breach of the service standard – namely consumers – we query on what basis NBN Co can conclude that the framework is effective.

In particular, ACCAN is concerned at NBN Co's conclusion that 'the current suite of rebates provides appropriate payments to RSPs... and operate as an effective incentive on nbn to meet its Service Standards without being disproportionate or unnecessarily onerous.'⁵² NBN notes that RSPs are expected to pass on a fair value benefit of rebate to end customers for specific rebates, but it is unclear why any portion of the rebate is retained by the retailer at all.⁵³ Such rebates have little utility unless they are passed on in full to end-users.

Further, ACCAN has observed no evidence to the effect that the framework of rebates provides efficient incentives to comply with service standards. In particular, we note that the economic value of payments made under the terms of the rebate framework appear low when compared to other regulated utilities, and consequently the economic incentive provided by the rebates is likely to be weak. In light of the relatively low value at risk to NBN Co, we query whether a conclusion can be formed that the framework is establishing efficient incentives to meet service standards.

It is important to note that NBN Co's rebate programme is an outlier by international standards. In other regulatory frameworks where network operators make payments for missing their quality of

⁵² NBN Co, 'NBN 2025 Replacement Module Application Consultation Paper Two' (Consultation Paper, February 2025) 29–30.

⁵³ Ibid 33.

service targets, such payments do not generally accrue to RSPs, perhaps in recognition of the potential for a perverse incentive. Such examples include:

- Singapore’s Infocomm Media Development Authority imposes a penalty of S\$10,000 per month if an operator does not deliver end user connections within its specified service standards.⁵⁴
- Ireland’s state-supported rural broadband provider, for which the regulator can impose penalties that are paid to the authorities, rather than RSPs.⁵⁵

ACCAN notes that other regulated utilities within Australia are subject to more sophisticated approaches to incentivising reliability, including notably in the energy sector the STPIS regime.⁵⁶ These frameworks typically entail a material proportion of overall revenue being subject to financial incentives, in order to drive the delivery of service outcomes in an efficient manner. NBN Co can learn from this range of examples to develop an incentive and rebate scheme that eliminates perverse incentives and more in line with community expectations.

ACCAN considers NBN Co’s failure to articulate an initial view on the development of an incentive scheme for reliability and service standards as indicative of its truncated approach to engagement, which has constrained effective engagement on key issues. While the development of an incentive framework for a reliability scheme may be difficult in the remaining time available, we strongly encourage NBN Co to give appropriate consideration to doing so in the next regulatory cycle.

ACCAN considers that the rebate framework requires material strengthening, with respect to pass through and economic value at risk in order to effectively deliver against the objectives of effective compensation and incentives to comply. At present the costs associated with the payment of service rebates are ultimately recovered from consumers, and accordingly the framework does not provide an efficient incentive for NBN Co.

In ACCAN’s view, the cost of breaches of service standards should lie with NBN Co and reflected in a reduction in allowable revenue. This would be reflected in either a reduction in the equity return received by NBN Co, or an equivalent reduction in the value of ICRA. In our view – reductions in the ICRA would provide an appropriate incentive to NBN Co to efficiently comply with service standards, as it would reflect a reduction in expected future revenues — and therefore NBN Co’s value — and place downward pressure on future prices.

> ACCAN recommends NBN Co:

- eliminate perverse incentives within its rebate system by ensuring that all payments are passed on to consumers in full.
- learns from international and domestic utilities sector examples to develop more consistent and effective systems of fines and rebates.
- tie breaches of service standards to incentives such as a reduction in allowable revenue, such as the reduction in value of the ICRA.

⁵⁴ Infocomm Media Development Authority, ‘Qos Standards On Netlink Trust’s Provisioning Of Residential End-User Connection Service’ (Report, n.d.) 1. <https://www.imda.gov.sg/-/media/imda/files/regulation-licensing-and-consultations/licensing/licenses/compliance-to-ida-standards/qosframework_nltservertimeframe-2.pdf>.

⁵⁵ National Broadband Ireland, ‘Wholesale Bitstream & VUA Products Service Level Agreement’, (Report, August 2022)13–16 <<https://nbi.ie/service-provider-portal/>>.

⁵⁶ Australian Energy Regulator, ‘Review of electricity transmission service standards incentive schemes’ (Web Site, 3 April 2025) <<https://www.aer.gov.au/industry/registers/resources/reviews/review-electricity-transmission-service-standards-incentive-schemes>>.

6. Would you support an Annual Service Standards Review process?

ACCAN supports regular consumer engagement on service standards, and encourage NBN Co to consider consistent consumer engagement on many of its core work programmes. However, we consider that engagement is best measured by depth rather than frequency, and would encourage NBN Co to consider what means of engagement they would undertake when considering the utility of an annual review process.

For instance, if service standards are to be reviewed as part of expenditure cycles, as required under the SAU, then it is unclear how effective an annual review process may be, noting improvements to service standards are necessarily tied to capex and opex. Therefore, NBN Co needs to consider what the task of an annual review process would be, and what utility it would offer to NBN Co.

Further, given the slate of consultations that consumer advocacy groups engage with, across different industry sectors and involving multivarious government departments, it is unclear how more frequent reviews would promote greater involvement of end-users or consumer advocacy groups. Effective community consultation requires dedication and expertise, which need to be appropriately funded to ensure they deliver effective results. Therefore, ACCAN advises NBN Co consider how much funding it is prepared to commit to community consultation.

ACCAN notes that our ability to engage as a member of the Regulatory Proposal Forum and write detailed responses to Consultation Papers 1 and 2 is only due to the resourcing enabled to the Australian Government grant to ensure that consumer advocacy is appropriately funded. It is essential that consumer advocacy and representation in regulatory reset processes on an ongoing basis, as this helps create a more stable regulatory environment and delivers long-term results for end-users.⁵⁷ This is an issue that both NBN Co and the Australian Government need to consider as to how they envision consumer engagement for the NBN going forward.

- > ACCAN recommends NBN Co:
 - consider Annual Service Standards Reviews within the scope of its overall approach to consultation.
 - only undertake an annual approach if it is clearly linked to capex and opex, and ties into NBN Co's obligations under the SAU.
 - effectively fund all consumer advocacy groups participating in consultation through independently administered grants.

⁵⁷ The Hon Michelle Rowland MP, Minister for Communications, 'More funding to support advocacy to keep broadband affordable' (Media Release, 5 December 2024), <<https://minister.infrastructure.gov.au/rowland/media-release/more-funding-support-advocacy-keep-broadband-affordable>>.

Conclusion: Recommendations for NBN Co

Small improvements belied by significant gaps in consultation

As Australia's peak communications consumer body and a participant within NBN Co's Regulatory Proposal Forum, ACCAN is highly interested in the success of this regulatory reset process. The information provided in Consultation Paper 2 is an important step in the right direction in the economic regulation of the National Broadband Network, and provides a useful foundation for additional work going forward.

However, there remain significant gaps throughout the consultation process which jeopardise the success of NBN Co's RMA. Crucial information, such as the economic trade-offs between different capital investment strategies, planning of migrations by geographic area to plot out fibre upgrade plans, and costings and business cases for service standard upgrades remain absent from this consultation paper.

The absence of disaggregated economic data and business cases, both within private forums and public consultations, limits the efficacy of the consultation that NBN Co is undertaking, and reduces its likelihood to submit a compliant RMA. The lack of any public consultation concerning decisions on crucial satellite technology also risk alienating regional, rural and remote consumers by not adequately incorporating their interests into NBN Co's expenditure proposals.

Reset processes are difficult – ACCAN advises NBN Co to engage with critique

Given that this is the last opportunity for public comment before NBN Co submits its RMA by 2 July 2025, ACCAN wishes to express its deep concern that if NBN Co is not able to consult on, or eventually supply, such detailed information as is usually required in a regulatory reset process, that it will face the real likelihood of regulatory failure.

ACCAN notes that the current set of regulations were only achieved after considerable engagement from industry and consumer advocacy groups, with the SAU only approved by the ACCC after three previous attempts, in part because some stakeholders were simply looking to bring the process to a close.⁵⁸ ACCAN recalls the conventional wisdom in economic regulation that the first regulatory reset process is always the hardest, as regulated entities adjust to the new expectations placed upon them, and cautions that this increases the risk of submitting a non-compliant RMA for NBN Co.

Even the spectre of regulatory failure could have a negative effect on NBN Co's operations, and costs for consumers, through higher costs of borrowing and reduced social licence, which can impact the success of programmes such as fibre migration. Regulatory failure will lead to unnecessary costs being passed onto consumers, which is a highly undesirable outcome. ACCAN therefore urges NBN Co to engage with the at-times challenging feedback from consumer advocacy groups and the Regulatory Proposal Forum, as all stakeholders have an interest in the success of this reset process.

⁵⁸ Rohan Pearce, 'Launtel on NBN SAU: "Enough already, let's do it!"', *Communications Day* (online, 15 September 2023).