



# National Broadband Network Companies and Access Arrangements Bills

Submission by the Australian Communications Consumer Action Network  
to the Department for Broadband, Communications and the Digital  
Economy



March 2010



The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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# Introduction

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The exposure drafts of the NBN Companies Bill and the Access Bill provide an opportunity to entrench consumer protections in Australia's future broadband arrangements.

The bills establish key arrangements for the accountability of the NBN Co to government and the process for access seekers but ACCAN believe the Bills could go much further to build public interest concerns into the NBN.

ACCAN has joined a large number of stakeholders who are very concerned about the provisions contained in the Bill that allow the NBN Co to provide retail services. We believe this exemption undermines the integrity of the government's commitment to establish a wholesale-only broadband provider and it undermines consumer confidence that service provider market power in this industry will ever be curtailed.

In addition to this concern, ACCAN challenges the government to really implement laws that will deliver accessible, affordable and available broadband services for all Australians.

## Response to Exposure Bills

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ACCAN is pleased to respond to the exposure drafts of the NBN Companies Bill and the Access Bill. The Companies Bill establishes the rules of operation for NBN Co, which will become Australia's largest wholesaler of broadband services with responsibility for a massive infrastructure investment. The Access Bill identifies the arrangements by which the NBN Co will facilitate a competitive retail sector around its infrastructure and the means by which the ACCC will undertake its biggest ever regulation of a declared service. This submission responds to the Exposure Bills by reference to ACCAN's guiding principles for Australia's broadband future.

### 1. No consumer should be worse off

ACCAN believes that no consumer should be worse off in the migration to and following the full implementation of the NBN. While we are extremely pleased to note that the NBN Companies Bill establishes the long term interests of end-users an object of the Bill we caution that this must be complemented with legislative protections that deliver the type of broadband future that Australians want and need. The Government has declared that the NBN will be the means by which "every house, school and business in Australia will get access to affordable fast broadband". (DBCDE 2009)

There is an opportunity presented in these bills to enshrine this policy commitment into law by adopting additional objects in the Companies Bill. We suggest that the objects be expanded to adopt the principle that it is the role of the NBN Co;

- to ensure that no consumer is worse off in the migration to and following the implementation of the NBN;
- to promote accessible ,available and affordable broadband services that enhance the lives of consumers; and
- to implement measures that address the digital divide by facilitating equivalent use of services by end-users

Consumers are looking for reassurance that their needs will be met by the Australian government's \$43 billion expenditure on broadband infrastructure. Adopting the above objects would provide the security that the NBN is being built with direct consideration of the public interest concerns about access and affordability.



We believe that such objects could be accompanied by a requirement to produce five year plans, with direct and deliberate consultation with stakeholders, about how the NBN is setting about implementing these goals.

**Recommendations:**

- **That the object of the Companies Bill be expanded to enshrine the role of the NBN Co in ensuring access to affordable fast broadband, accompanied by a requirement to produce five-year implementation plans**

## 2. Accessible, reliable and secure NBN infrastructure and services

Reliability is at the heart of any network infrastructure industry and it's a priority concern for consumers in the NBN. There will be considerable opportunity (and possibly pressure) for people to conduct more of their services through the NBN once fast broadband is connected to their premises. The extent to which people will be willing to take up NBN services will depend partly on cost and partly on perceived and actual network security and reliability.

Access to reliable telephony services is currently guaranteed through a combination of the Universal Service Obligation (USO), the Customer Service Guarantee (CSG) and the Network Reliability Framework (NRF). The USO has the objective of ensuring that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they live or carry on business. The CSG sets out minimum service standards that telephone companies are required to meet including timeframes for the connection of specified services, the repair of faults and the attending of appointments by telephone companies. The NRF requires Telstra to overhaul facilities used to provide services to Telstra retail customers that have recurring faults. For individual services, the reliability requirements are for no more than three faults in 60 days and no more than four faults in 365 days.

The measures outlined above have by no means operated to the perfect satisfaction of consumers and disputes often arise, particularly between Telstra and their regional and rural customers. However, the measures have provided an important avenue of recourse for consumers. We note with some concern that the Government is yet to articulate how commensurate measures will be put in place around the NBN. We believe the Exposure Bills present an opportunity to establish an obligation on the NBN Co to provide specified levels of service, for example by requiring a new head of power on the NBN to take over responsibility for USO provision and exploring the adoption of performance standards and service guarantees by NBN Co.

**Recommendations:**

- **That measures be introduced to establish minimum service standards to end-users and an obligation on the part of the NBN to supply services to all premises.**

## 3. Consumer requirements genuinely considered

At the time of writing this submission there are 9 major NBN-related government initiatives, processes and consultations underway on various aspects of the NBN, some of which fail to adequately embed consumer requirements. For example, the Communications Alliance has seven streams of NBN activity at various stages of development, including critical consumer issues such as end user premises and end user migration. Yet consumer groups do not qualify to be members of Communications Alliance and therefore are ineligible to be



members of the Communications Alliance committees developing the NBN rules of operation.

In light of the evidence that consumer requirements are already not being genuinely considered, we are seeking amendments to the Companies Bill that would entrench consumer views within the NBN Co. We believe that two steps are warranted. Firstly, we believe that at least one board position should be deemed to be a person who represents the interests of end users. This would mirror arrangements at the Australian Competition and Consumer Commission and the Productivity Commission which define specific roles for people with expertise in consumer issues.

Secondly we believe the NBN Co should be required to establish a consumer advisory committee with the express purpose of providing expert guidance on how the NBN Co can operate in the interest of end users and ensure available, accessible and affordable NBN infrastructures and services. Again this approach mirrors process already enshrined in law, for example the Australian Communications and Media Authority (ACMA) is required to operate a Consumer Consultation Forum which to assists the ACMA to perform the ACMA's functions in relation to matters affecting consumers.

**Recommendations:**

- **Enact provisions to designate a consumer representative position on the NBN Board and establish a consumer advisory group.**

## 4. Robust consumer protections and remedies

ACCAN is opposed to the NBN Co having any retail role. As outlined in the introduction to this submission, above, we believe that allowing any exemption will undermine consumer confidence in the broadband market. A competitive retail market around the NBN wholesale infrastructure will be an important element of consumer protection and any step to re-introduce a vertically integrated wholesaler stands to significantly reduce the integrity of the marketplace.

There are other consumer protection measures that should be considered in this tranche of legislation. ACCAN sees a role for NBN Co in the delivery of basic, low-band width services, possibly in fulfillment of a USO obligation placed on the wholesaler. We envisage that NBN Co should have a duty to work with retailers to deliver specific services for low income consumers and other classes of consumers for whom the market alone may not deliver adequate or appropriate services. It may be necessary to expressly legislate for a class of access that is in fulfillment of a USO obligation.

We also believe it is appropriate that the Access Bill specifically includes the capacity to subject the NBN Co wholesale services to revenue caps.

**Recommendations:**

- **That NBN Co operate solely as a wholesale provider and the exemption to allow it to operate retail services be removed from the Bill**
- **That a class of access be proscribed to enable the NBN Co to meet its USO obligations**

## 5. Migration as seamless as possible

It is important that complaint management processes be clearly defined in the early stages of the NBN Co processes, so that consumer rights to redress are protected and so that appropriate diagnostic tools are built into the NBN architecture. A seamless migration will be



assisted by a memorandum of understand, a service level agreement or a code between the NBN Co and retail service providers to establish minimum service level arrangements and establishes responsibility for retail service provider to deal with any customer complaint and the wholesale provider to work with the retail provider to quickly resolve disputes.

**Recommendations:**

- **That a regulatory instrument be adopted to ensure that wholesale and retail service providers have clear responsibilities in resolving end-user complaints.**

## 6. Information and Education

ACCAN believes that the NBN Co should be doing a much better job at engaging with the community. We point to the Digital Television Taskforce as a good example about how to work with the community to engage, inform and equip people to make sense of the large scale changes to a major communications service. We encourage the government to investigate ways in which similar obligations can be placed on the NBN Co.

The Companies Bill presents an ideal opportunity to ensure that the public is kept well informed of NBN developments. Part 4 of the Bill places a number of obligations on the NBN Co to provide reports to the Government, for example the Corporate Plan of the NBN Co. We believe that this plan should be tabled in parliament to enable the greatest possible scrutiny over the activities of the NBN Co. Likewise, any information requested by Ministers under section 54 of the Bill should be made publicly available.

**Recommendations:**

- **That NBN Co implement a large-scale information and education campaign.**
- **That reports and corporate plans provided by the NBN Co to the Government be made publicly available.**

## 7. Broader regulatory environments keeps pace

This submission notes above the need to consider the impacts of the NBN on essential service provision. ACCAN is currently in the process of examining the broader regulatory changes that would facilitate a better, fairer communications market. One important reform that we believe would have significant benefit is an economy-wide law reform initiative to prohibit unfair conduct. We encourage the government to adopt broad regulatory changes to facilitate a competitive and fair market for broadband services, including economy-wide reforms to make markets fairer.

**Recommendations:**

- **That law reform initiatives be implemented to ensure that the broadband market is competitive and fair.**

# Conclusion

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ACCAN acknowledges that the submission raises a series of wide and varied issues relating to the NBN. We realise that some of these issues may not be addressed in the exposure bills but we are nevertheless raising the issues as we see them as critical for the NBN's



success. Many of the issues are not the topic of current considerations by the government, the NBN Co or other bodies and yet are at the heart of our broadband future.

In summary, we raise the following suggestions;

- That the object of the Companies Bill be expanded to enshrine the role of the NBN Co in ensuring access to affordable fast broadband, accompanied by a requirement to produce five-year implementation plans
- That measures be introduced to establish minimum service standards to end-users and an obligation on the part of the NBN to supply services to all premises.
- Enact provisions to designate a consumer representative position on the NBN Board and establish a consumer advisory group.
- That NBN Co operate solely as a wholesale provider and the exemption to allow it to operate retail services be removed from the Bill
- That a class of access be proscribed to enable the NBN Co to meet its USO obligations
- That a regulatory instrument be adopted to ensure that wholesale and retail service providers have clear responsibilities in resolving end-user complaints.
- That NBN Co implement a large-scale information and education campaign.
- That reports and corporate plans provided by the NBN Co to the Government be made publicly available.
- That law reform initiatives be implemented to ensure that the broadband market is competitive and fair.

## References

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DBCDE, 2009, *New National Broadband Network: Joint press release Prime Minister, Treasurer, Minister for Finance, Minister for Broadband*, Canberra accessed at [http://www.minister.dbcde.gov.au/media/media\\_releases/2009/022](http://www.minister.dbcde.gov.au/media/media_releases/2009/022) on 23 March 2010