



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

Mr Stephen Palethorpe  
Secretary  
Senate Environment and Communications Legislation Committee  
PO Box 6100, Parliament House,  
Canberra ACT 2600  
By email: ec.sen@aph.gov.au

3 February 2020

Dear Mr Palethorpe

## Telecommunications Reform Package 2019

I am writing to clarify two matters following my appearance on 30 January 2020 before the Senate Environment and Communications Legislation Committee inquiry into the Telecommunications Reform Package 2019.

On page 32 of the draft transcript I am reported as referring to '... a standard access undertaking, which it gets the ACCC to accept...'. I mis-spoke here. The reference to 'standard access undertaking' should have been a reference to a 'special access undertaking'.

On page 32, I also discuss the relationship between possible Ministerial standards under the proposed statutory infrastructure provider regime (proposed section 360U), access determinations made by the ACCC, access agreements and NBN Co's wholesale broadband agreement. I indicated I would check my answer. I have done this and consider my comments as recorded are correct. These arrangements are, however, complex and have a number of dimensions. The Committee may also wish to consider the material provided on pages 140-141 of the Explanatory Memorandum to the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019, which provides additional detail. The relevant text is attached for the Committee's convenience.

Yours sincerely

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**Relationship between statutory infrastructure provider standards and other instruments -  
Extract from Explanatory Memorandum to the Telecommunications Legislation  
Amendment (Competition and Consumer) Bill 2019 (pp.140-141)**

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**Division 2—Other amendments**

***Competition and Consumer Act 2010***

**Item 1 – After section 152BCCA**

Item 1 inserts a new provision, section 152BCCB, into Part XIC of the CCA. This new section ensures that SIP standards and rules prevail over inconsistent access determinations. This section, in effect, gives precedent in the broader regulatory hierarchy under Part XIC to SIP rules standards and rules.

Under proposed sections 360U and 360V the Minister may, by legislative instrument, determine standards or make rules to be complied with by SIPs. A SIP would not be required to comply with the standards or rules in relation to existing access agreements, but would have to comply with them when entering into new access agreements or when an existing access agreement is varied.

SIPs can meet their supply obligations by supplying a declared service under Part XIC of the CCA (see subsection 360Q(2) below). If a SIP does that, it may be subject to an access determination made by the ACCC in relation to the declared service. . By operation of proposed section 152BCCA SIP standards and rules in force at a particular time will prevail over an ACCC access determination made after the commencement of new section 152BCCB to the extent of any inconsistency.

**Item 2 – After section 152BDCA**

Item 2 inserts a new provision, section 152BDDB, into the CCA. This new section ensures that SIP standards prevail over inconsistent binding rules of conduct under Part XIC of the CCA. By operation of proposed section 152BDDB, SIP standards and rules in force at a particular time will prevail over an ACCC binding rule of conduct made after the commencement of new section 152BDCA to the extent of any inconsistency.

**Item 3 – Before section 152BEC**

Item 3 inserts two new provisions, sections 152BEBH and 152BEBI, into the CCA. These new sections provide that SIP standards and rules will prevail over certain access agreements to the extent of any inconsistency. However, subsections 152BEBH (2) and 152BEBI (2) conserve the operation of access agreements entered into before the commencement of the particular conflicting standard or rule (as the case may be) so long as they have not been varied after the commencement of the standard or rule.

The proposed new sections provide clarity that a SIP must comply with SIP standards and rules after the standard or rule is made.

**Item 4 – After section 152CBIC**

Item 4 inserts a new provision, section 152CBID, into the CCA. This new section ensures that SIP standards and rules prevail over special access undertakings to the extent of any inconsistency.

A special access undertaking may be in place when the Minister makes a SIP standard or rule, so proposed section 152CBID provides clarity that any SIP who meets its SIP supply obligations by supplying a declared service must comply with standards and rules and that they prevail over a special access undertaking that is in force to the extent of any inconsistency.