

# Australian Greens' Dissenting Report

## Summary

1.1 The Australian Greens welcome the introduction of the statutory infrastructure provider (SIP) obligations as set out in Schedule 3. The SIP obligations will ensure that all Australians have access to high-speed broadband, with minimum speed requirements of 25/5 Mbps and requirements for SIP services to support voice services on fixed lined and wireless platforms. These requirements are consistent with the Productivity Commission's review of the Telecommunications Universal Service Obligation.

1.2 We broadly agree with the amended network rules for carriage service providers set out in Schedules 1 and 2.

## Relevant background

1.3 The Australian Greens are committed to ensuring all Australians have access to affordable, high quality internet services. Fast, reliable broadband has the potential to transform the lives of Australians. The NBN is not just a piece of infrastructure; access to digital networks is a right and it is incumbent upon government to make it fast and affordable.

- In 2011, a UN Special Rapporteur report declared that internet access is a human right and recommended that "each State should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population".<sup>1</sup>
- In 2016, the UN passed a non-binding resolution condemning intentional disruption of internet access by governments and reaffirming that "the same rights people have offline must also be protected online".<sup>2</sup>

1.4 Australia's internet is lagging behind the rest of the world, in terms of speed and affordability.

- Akamai's State of the Internet Report<sup>3</sup> for Q2 2017 shows Australia is in 50th place in the world for internet speeds, slowly climbing from 51st place for Q1 2017.

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1 UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, at:

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

2 UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>

- The Digital Australia: State of the Nation<sup>4</sup> report shows the cost of fixed broadband makes affordability Australia's lowest performing digital readiness aspect, with Australia ranking at 57<sup>th</sup> in the world.
- The Digital Australia report also shows that Australia's average mobile broadband speeds of 15.7 Mbps (placing Australia at 11<sup>th</sup> in the world) are out-performing average fixed broadband speeds of 11.1 Mbps.

1.5 The bills seek to implement components of the Government's response to recommendations of the Vertigan Panel. As noted in the Dissenting Report from Labor and the Australian Greens<sup>5</sup> on the Telecommunications Legislation Amendment (Access Regime and NBN Companies) Bill 2015:

The Vertigan Panel was assembled by the former Communications Minister, Mr Malcolm Turnbull, in December 2013. Instead of appointing Infrastructure Australia as promised, Mr Turnbull appointed former Liberal Party staffers, Liberal Party advisors and noted and strident critics of the NBN to conduct his cost benefit analysis and review of regulation, with predictable results.

The Senate Select Committee into the National Broadband Network subjected the Vertigan Panel's "independent" cost benefit analysis of broadband to rigorous scrutiny in early 2015. The Senate Select Committee concluded that 'the Cost-Benefit Analysis is a deeply flawed and overtly political document. It is not credible and is not a reliable basis upon which to make decisions about the NBN'.

## Particulars of the bill

1.6 Schedule 3 specifies that the Minister will have the power to make a legislative instrument setting out circumstances in which the SIP obligation does not apply, and requirements for people purchasing a SIP service. The Australian Greens note that the option to access internet services is vital for all Australians. Associate Professor Mark Gregory of RMIT University states that:

If approvals cannot be achieved or there are safety concerns, the alternative is to provide a satellite connection. To consider a situation where a SIP should not have to provide a connection in 2017 is unacceptable. This is an example where the legislation is poorly drafted.<sup>6</sup>

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3 Akamai, *State of the Internet*, at: <https://www.akamai.com/us/en/about/our-thinking/state-of-the-internet-report>

4 EY Sweeney, *Digital Australia: State of the Nation*, at: <https://digitalaustralia.ey.com>

5 Senate Select Committee on Environment and Communications, Report on Telecommunications Legislation Amendment (Access Regime and NBN Companies) Bill 2015, 22 February 2016, p. 26, at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Telco\\_access\\_and\\_NBN\\_Bill/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Telco_access_and_NBN_Bill/Report)

6 Associate Professor Mark Gregory, *Submission 14*, p. 5.

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1.7 The RBS is proposed as a narrowly-targeted, technology-specific tax. In this form, it is not robust to changing telecommunications technologies and markets and risks distorting competition between technology types. TPG states that:

The Bills are anticompetitive because they directly attack the operations of a particular market segment, the fixed line network operators that the Department of Communications and the Arts (DOCA) considers to be directly competing with nbn Co.

The Bills ignore the rapidly growing importance and technical advancement of fixed wireless and mobile networks and their ability to take considerable broadband market share from nbn Co in profitable urban areas.

The Bills' narrowly targeted tax on fixed line broadband networks will distort competition in broadband markets as too large a financial burden is being placed on the owners of a particular type of network technology. The cost will be passed on to consumers and risks consumers shifting their buying preference to other technologies such as fixed wireless or mobile that become comparatively cheaper because they are not subject to the tax.<sup>7</sup>

The DOCA's decision to ignore the competitive impact of mobile and fixed wireless broadband networks is based upon its analysis of increasingly out of date evidence regarding the ability of these technologies to compete with the nbn's fixed line technology. Mobile and fixed wireless broadband are already successful substitutes for fixed line broadband for a growing segment of the community and will increasingly affect nbn Co's viability and its ability to cross-subsidise non-economic services.<sup>8</sup>

1.8 Similarly, OptiComm highlights the excessive burden placed on a narrow segment of the market:

Most carriers and carriage service providers will not be required to pay the levy and the burden of paying for the nbn in non-economic areas will fall on a small number of carriers and their end-user customers. This results in the captured carriers being required to pay a far higher tax than would be necessary if the tax was collected from the broader industry.<sup>9</sup>

1.9 The Productivity Commission also notes in their report that the funding scheme for the RBS should seek to minimise distortions that can be heightened with a narrow levy:

The Regional Broadband Scheme is proposed to (at least initially) include only a narrow levy base. In principle, the choice of funding model for non-commercial services should seek to minimise distortions in the telecommunications market, the risk of which is heightened with a narrowly-based long-term industry levy. As such, the Government may

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7 TPG, *Submission 2*, p. 1.

8 TPG, *Submission 2*, p. 5.

9 OptiComm, *Submission 11*, p. 1.

need to revisit the merits of alternative funding arrangements for nbn's non-commercial services.<sup>10</sup>

1.10 A preferable option would be for the non-commercial services to be funded from the general budget. This is an approach that is recommended in industry submissions, including from the Vocus Group and TPG, as well as in the Vertigan Review:

By far the best option for funding any ongoing subsidy would be through consolidated revenue. Among other advantages, that would allow Parliament and the public to assess in an ongoing way the benefits of using taxpayer funds for this purpose rather than others.<sup>11</sup>

1.11 Alternatively, the RBS could be extended to include a broad base of telecommunications operators and technologies. OptiComm supports this approach:

We ask that the Senate Committee recommend amendments to the Bills in order to replace the narrowly targeted new tax with a levy similar to the existing USO and collected from all participants of the telecommunications industry.<sup>12</sup>

1.12 The Vocus Group also recommends the need for a broad, rather than narrow, focus for funding non-commercial NBN services:

The risk and uncertainty arising under Option 3 [RBS] can be avoided by having a levy that has a broad rather than a narrow funding base. In particular, any levy should be technologically neutral, with mobile, fixed wireless and satellite networks included within the levy.<sup>13</sup>

A more effective way to deal with the Market Change Risk is to have a broad funding base across the industry. If a broad funding base is used from the outset, there will be no need for any regulatory resets to that funding base and the uncertainty and risk.<sup>14</sup>

1.13 TPG also notes the broad funding base of the Telecommunications Industry Levy, which supports the USO:

Restricting the RBS Charge to high speed fixed line operators provides a far smaller collection base than the Telecommunications Industry Levy (TIL), which supports the Universal Service Obligation (USO) and has close correlations to the nbn's regional broadband scheme. In comparison, the USO is funded by a levy collected from all participants in the telecommunications industry with eligible revenue above a set threshold. The result of the narrowly targeted tax is that the RBS Charge per premise

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10 Australian Government, *Telecommunications Universal Service Obligation*, Productivity Commission Inquiry Report, No. 83, 28 April 2017, p. 17.

11 Vertigan Review, *NBN Market and Regulatory Report*, 2014, p. 21.

12 OptiComm, *Submission 11*, p. 2.

13 Vocus Group, *Submission 4*, p. 2.

14 Vocus Group, *Submission 4*, p. 6.

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or service is significantly higher than would be required if the tax is levied across the industry as a whole.<sup>15</sup>

1.14 The RBS and funding of NBN non-commercial services should not be considered independently of the Telecommunications Universal Service Obligation (USO), as recommended in the Productivity Commission's report:

The funding of nbn's non-commercial services should, moreover, not be considered independently of universal service policy reforms. In this context, the Commission has faced a unique challenge in responding to proposed government policy on the funding of nbn non-commercial services (the Regional Broadband Scheme) Charge Bill 2017 before the conclusion of this inquiry.<sup>16</sup>

1.15 The Vocus Group also highlight the need to consider funding of NBN non-commercial services alongside the USO:

Consideration of how to recover the costs of the Non Commercial Services should not take place in isolation from consideration of the Universal Service Obligation.<sup>17</sup>

Given that the USO and the RBS have the same basic policy objectives, and the need for coherent and holistic regulatory policy in this area, as part of its inquiry, the Productivity Commission considered the RBS. Vocus notes that the Productivity Commission was not in favour of the RBS being considered in isolation from the USO reforms and was not in favour of the Narrow Approach for the RBS.<sup>18</sup>

1.16 TPG also addresses the importance of considering the RBS and SIP obligations alongside the USO, noting recommendations from the 2015 Regional Telecommunications Review (RTIRC) and the Productivity Commission report:

The RTIRC recommended development of a new broad based Consumer Communication Fund for voice and data services and replacing the USO's TIL with a levy to support loss-making regional infrastructure and services, with scope to include subsidies for the non-commercial nbn services. The RTIRC stated, such an overarching regulatory structure would avoid piecemeal and short term regulatory adjustments by putting a more relevant and comprehensive framework in place.

USO policies are designed to address the affordability, accessibility and availability of basic communications services. It is clear that nbn infrastructure, complemented by mobile coverage, will meet the objective of providing USO availability. The nbn's uniform pricing structure and its

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15 TPG, *Submission 2*, p. 2.

16 Australian Government, *Telecommunications Universal Service Obligation*, Productivity Commission Inquiry Report, No. 83, 28 April 2017, p. 16–17.

17 Vocus Group, *Submission 4*, p. 2.

18 Vocus Group, *Submission 4*, p. 9.

funding helps to address USO affordability and accessibility. Clearly, the nbn forms part of Australia's USO policy fulfilment.

In considering the future of the USO, the Productivity Commission recommended "baseline" telecommunications standards be set and that nbn Co have a clearly defined role in providing baseline telecommunications services, in effect largely replacing Telstra as the USO provider. This USO or baseline role is clearly what the nbn's satellite and wireless services will be fulfilling in non-economic areas as voice and broadband services will be provided on that infrastructure in areas where they would otherwise not be available. The funding of the nbn's non-economic services is intrinsically tied to Australia's USO policy.<sup>19</sup>

1.17 Vodafone notes that the RBS does not include a sunset clause and risks becoming an entrenched tax that is used for purposes that deviate from the original intention of the scheme:

It is concerning for example that the RBS does not have a sunset clause or automatic requirements for fundamental reviews in certain circumstances, such as privatisation of the NBN. VHA understands the RBS is intended to be in place until at least 2040.<sup>20</sup>

1.18 The costing on which the RBS pricing was based has already changed considerably, as identified by TPG:

nbn Co's average cost of connecting a fixed wireless service is now \$3550 per premise, a decrease from its previous estimate of \$4000 to \$5000. This is a decrease of between 11% and 29% in nbn Co's costs and makes fixed wireless cheaper than nbn Co's FTTP connections. This raises questions regarding whether the estimated costs used in the BCR's calculations of the levy required to fund the nbn's non-economic services are now obsolete and whether the RBS Charge needs to be reassessed, particularly as the cheaper fixed wireless network will be rolled out to 50% more premises than previously planned.<sup>21</sup>

1.19 The proposed legislation requires the ACCC to give advice to the Minister about the charge amount at least once every five years. TPG notes that a shorter review period is necessary due to the rapid nature of technological advancements in telecommunications and to assess the extent of competitive distortion caused by the tax:

The Bills propose a review within the first 5 years. We submit that it is appropriate for the legislation to be reviewed every 18 months after implementation to gauge the effect on competition and the ongoing sustainability for the funding of the nbn's non-economic services. A short review date is necessary because the Bills risk considerable competitive distortion and because the telecommunications industry is subject to

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19 TPG, *Submission 2*, p. 3.

20 Vodafone Hutchinson Australia, *Submission 6*, p. 1-2.

21 TPG, *Submission 2*, p. 9.

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imminent and relevant technological advancement, particularly with regard to 5G mobile.<sup>22</sup>

### **Recommendation 1**

**1.20 The Australian Greens recommend revising the Regional Broadband Scheme, taking into consideration updated costings, the current and emerging state of telecommunications technology and markets, and recommendations from the Productivity Commission regarding the Telecommunications Universal Service Obligation.**

**Senator Janet Rice  
Senator for Victoria**

**Senator Sarah Hanson-Young  
Senator for South Australia**

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22 TPG, *Submission 2*, p. 8.

