

29 September 2022

Minister
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

By email: usb@communications.gov.au

Dear Minister

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

Thank you for the opportunity to comment on the Department’s *Telecommunications Legislation Amendment (Statutory Infrastructure Providers and Other Measures) Bill 2022* (the Bill).

We broadly support the proposed revisions of the Bill, which offer comprehensive improvements to the regulations that govern the activities of Statutory Infrastructure Providers (SIPs).

In particular, we welcome the changes to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act), which clarifies our jurisdiction to handle connection complaints by SIPs. We also support the proposed Division 4A of the *Telecommunications Act 1997* (Telecommunications Act), and would like to offer some practical observations on these provisions. Additionally, we flag important future considerations relating to the proposed power to issue evidentiary certificates.

1. Comments on Subsection 128(5A) of the TCPSS Act

We support the proposed subsection 128(5A) of the TCPSS Act. We understand this subsection empowers our scheme to provide for the Telecommunications Industry Ombudsman to investigate, make determinations, and give directions relating to complaints about the connection of eligible premises by SIPs. This new subsection streamlines our ability to engage with telecommunications complaints involving SIPs, and helps us avoid disputes around our jurisdiction to handle connection complaints.

We thank the Department for engaging with us in conversations last year around different methods of clarifying our jurisdiction. The Department’s solution is clearly drafted and effectively confirms our jurisdiction. While our Terms of Reference may need to be amended to reflect this subsection, these amendments will most likely be minimal.

2. Comments on Division 4A of the Telecommunications Act

We are pleased to see the proposed Division 4A of the Telecommunications Act. This Division establishes a framework whereby consumers may be entitled to compensation by a SIP if the SIP contravenes a designated compensable standard or rule, and sets out timeframes and methods of payment. We understand these standards or rules are yet to be declared by the Minister or the ACMA.

In our feedback to the Department's consultation on its proposed *Telecommunications (Statutory Infrastructure Providers – Standards, Rules and Benchmarks) Determination 2021 (the Standards, Rules and Benchmarks Determination)*, we supported the introduction of obligations requiring SIPs to rebate consumers if standards are not met. We said the introduction of rebates would benefit consumers by helping them understand what to expect when faced with a service or connection difficulty. It would also incentivise SIPs to resolve service or connection issues more efficiently.

We are pleased to see our feedback has been incorporated into subsection 360VD(1). We are also pleased to see this obligation mirrored for rules under subsection 360VD(2). This framework may result in fewer complaints about connection issues, and the complaints may be resolved within a shorter timeframe, benefiting both consumers and service providers.

We understand key provisions under the proposed Division 4A were inspired by Part 5 of the TCPSS Act, which establishes a framework to compensate consumers for contraventions of the Customer Service Guarantee (CSG). We have extensive experience handling complaints about CSG contraventions, and wish to offer our observations on the shared terminology used in Division 4A.

2.1 A SIP's customer is not necessarily the end-user of the telecommunications service

Subsections 360VD(1) and (2) provide that if a SIP contravenes a designated compensable standard or rule, the SIP is liable to pay damages to the 'customer' for the contravention.

We understand the Department's intention was to use the word 'customer' to mean the 'end-user' of the service. However, there is potential ambiguity in the proposed wording, as the SIP's customer may be interpreted as the RSP rather than the end user, since the RSP has a contractual relationship with the SIP. Under this interpretation, if a SIP contravenes a designated compensable standard, the SIP would be liable to pay damages to the RSP, and not the end-user.

To remove any ambiguity, the Department could consider replacing 'customer' with 'end-user' throughout Division 4A.

2.2 The end-user does not have an account with the SIP

Subsection 360VD(4) allows compensation to be offset if the SIP credits an amount to 'an account that the customer has with the provider', or pays the customer via another means.

We note this subsection may be difficult to fulfil in practice, as the SIP is unlikely to have access to the provider's billing systems, and is unlikely to have sufficient details about the end user to pay them directly.

Similarly, subsection 360VD(6) states that the SIP may discharge its liability by giving the end-user a credit in an account the end-user has with the SIP, or in any other manner agreed between the SIP and the end-user.

As mentioned above, the majority of SIPs will never have any direct contractual relationship with the end-user. It is unclear how the end-user would be able to access any applicable credits.

In our feedback to the Australian Competition and Consumer Commission's NBN Wholesale Service Standards Inquiry in November 2019, we supported the introduction of a pass-through requirement for connection and fault rectification rebates. We were concerned that without a pass-through requirement, rebates may benefit providers without compensating consumers. We also said the consumer experience of receiving a rebate should be seamless, and supported the introduction of a framework that clearly defines when different parties in the supply chain are responsible.

To remedy the potential issues with the wording used in subsection 360VD, the Department could consider implementing a two-stage process for compensation, where the SIP must pay the RSP, and then the RSP must pay the end-user. This would simplify consumer entitlements by ensuring the rebates compensate consumers directly.

2.3 The end-user is not billed by the SIP

Subsection 360VD(4) states that if a SIP discharges its liability by giving the customer a credit in an account the customer has with the SIP, the customer should be notified of the credit on the first bill sent to the customer, or on the second bill sent to the customer, if the first is not practicable.

We note this obligation may be difficult for SIPs to carry out, as consumers do not receive bills from SIPs. The Department may wish to consider alternative arrangements to allow for consumers to be notified of any applicable credits.

2.4 Evidentiary certificates and the TIO

We tentatively support the proposed section 360VF. We believe we are well-placed to issue evidentiary certificates. However, before we can consent to the conferral of the powers under subsection 360VF(1), we would be grateful if the Department could provide us with further information around how and when the evidentiary certificates may be used. This would allow us to consider the impacts of the conferral of this power to our scheme.

We look forward to the results of this consultation, as well as the Department's 2021 consultation on the Standards, Rules and Benchmarks Determination.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long, sweeping horizontal flourish that ends in a small upward tick.

Cynthia Gebert
Telecommunications Industry Ombudsman