

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

### ***Telecommunications (NBN Consumer Information) Industry Standard 2018***

#### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has determined the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Standard**) under subsection 125AA(1) of the *Telecommunications Act 1997* (the **Act**) and in accordance with sections 5 and 6 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* (the **Direction**).

The Minister for Communications (the **Minister**) has the power under subsection 125AA(4) of the Act to direct the ACMA to:

- (a) determine a standard under subsection 125AA(1) of the Act that:
  - (i) applies to participants in a specified section of the telecommunications industry;
  - (ii) deals with one or more specified matters relating to the activities of those participants; and
- (b) do so within a specified period.

The Direction was given to the ACMA by the Minister under subsection 125AA(4) of the Act and commenced on 23 December 2017.

Subsection 5(1) of the Direction directs the ACMA to determine an industry standard under subsection 125AA(1) of the Act that complies with Divisions 2, 3 and 4 of Part 2 of the Direction. Relevantly, section 6 of the Direction requires the ACMA to determine an industry standard relating to the provision of information and advice by carriage service providers (**CSPs**) to consumers.

Subsection 6(1) of the Direction requires the ACMA to determine an industry standard that:

- (a) applies to CSPs in relation to services supplied by those providers using the National Broadband Network (the **NBN**); and
- (b) deals with information and advice that carriage service providers should provide or make available to consumers to help consumers make informed decisions about NBN services prior to entering a contract with a CSP for the supply of those services.

Specifically, subsection 6(2) provides that the Standard must deal with:

- (a) minimum requirements for information and advice to be provided to consumers about services supplied using the NBN;
- (b) requirements in relation to when the information and advice about the services is to be provided; and
- (c) requirements in relation to the manner in which that information or advice is to be provided.

Subsection 125AA(5) of the Act provides that the ACMA must determine a standard under subsection 125AA(1) in accordance with a direction under subsection 125AA(4). The Standard meets the requirements in sections 5 and 6 of the Direction and commences on 21 September 2018.

## **Purpose and operation of the Standard**

### *Background*

The *Telecommunications Consumer Protections Code C628:2015* (the **TCP Code**) contains industry rules that require a CSP to provide consumers with certain information which includes a summary of each of its current offers and a range of important information about its offers, known as a Critical Information Summary (see clause 4.1.1 of the TCP Code). CSPs are also required to make available information to assist consumers to estimate what capacity they may need on a telecommunications product to meet their usage requirements (see clause 4.1.2(e) of the TCP Code).

### *Requirements in the Direction*

The Standard has been made to fulfil the requirements of the Direction. The Explanatory Statement to the Direction noted that the TCP Code provisions include requirements around the provision of information to consumers but that there were gaps in that information. Relevantly, the Explanatory Statements states:

*the Code provisions were developed at the start of the decade and are currently heavily focused on information to assist consumer understanding and to address comparison of post-paid mobile phone offers. There is a gap in information to assist consumers seeking to understand and compare NBN services and products, particularly information about speed tiers. The information currently being provided by carriage service providers providing retail services using the NBN does not sufficiently enable consumers to understand the broadband service that will best meet their online requirements. Stronger obligations are required to drive better consumer understanding and choice of NBN products.*

### *Operation of the Standard*

The aim of the Standard is to ensure that consumers (residential and small business customers) are provided with advice and accurate information to assist them to make informed choices about services offered using the NBN and prepare for migration to the NBN. Consumers must receive this information before they enter a contract with a CSP for an NBN voice service and/or an NBN broadband service. This includes information that helps consumers to understand and compare NBN consumer plans on offer and the data speeds in those plans, and to choose a plan that suits their household or small business online usage profile.

The Standard will require that a one-page document be made available to consumers by all CSPs for each of their NBN consumer plans. This will be titled a “Key Facts Sheet: NBN Services” and referred to as a key facts sheet. This document will be specific to services provided over the NBN.

A key facts sheet will set out information about the data download speeds available with each NBN consumer plan, a description of the typical online usage that the plan would support and other important information about factors that can affect the quality and utility of the service.

The speed and usage information is intended to give clear information to consumers about the internet download speeds that the typical consumer can expect to be delivered to their home or small business during the busiest time of the day. It is also intended to provide information to help consumers choose an appropriate NBN consumer plan that will meet their expected online usage needs.

A key facts sheet must set out information that provides guidance to consumers about the level of online usage the relevant NBN consumer plan can support during busy periods, including examples of the common online activities that the NBN consumer plan can support and the approximate number of people who could participate in the common online activities simultaneously using different devices. For NBN plans based on the NBN broadband service speed tier 12/1 or lower, a retail CSP must also identify which common online activities are unlikely to be supported.

Examples of online activities may include: web browsing, emailing, using social media, music streaming, video streaming such as YouTube, Netflix or TV and movie subscription services (distinguishing between different levels of picture quality definition), online gaming and uploading large amounts of data.

For plans that can be offered over copper-based NBN technologies including fibre to the node (**FTTN**), fibre to the building (**FTTB**) and fibre to the curb (**FTTC**), a key facts sheet must also set out what remedies are available to consumers if it is established that the physical telecommunications network infrastructure underlying the consumer's connection to the NBN is not capable of providing the speed tier upon which the consumer's NBN consumer plan is based. This situation would arise, for example, if a consumer has purchased an NBN consumer plan that is based on a speed tier of 50 Mbps download, but testing shows that the maximum possible download speed of the line is only 30 Mbps. The Standard does not specify what remedies should be made available to affected consumers. However, the ACMA notes that the ACCC document, *Broadband Speed Claims: Industry Guidance (August 2017)* gives advice about the sorts of remedies that should be offered to consumers in certain circumstances.

A CSP will need to make a key facts sheet available on their website from a prominent link in its on-line advertising for an NBN consumer plan and from the CSP's stores and other locations where NBN consumer plans are offered.

A CSP must give a consumer a key facts sheet applicable to their intended NBN consumer plan before they enter into a contract for an NBN service unless it is impractical to do so (such as for sales over the phone). Where impractical, the key facts sheet information must still be conveyed by other means and a copy made available to the consumer soon after the sales transaction occurs. In all cases, a CSP must actively provide the relevant key facts sheet to the consumer, either as an electronic or hard copy version of the document, or by directing them to a link where the relevant key facts sheet can be viewed or downloaded, depending on the consumer's preference. The Standard will also promote consistency and clarity in the way NBN services are promoted to consumers, by requiring:

- key information to be provided to consumers before they enter into a contract;

- more consistency in the advertising of NBN plans, including information about typical busy period download speeds;
- retail CSPs to advise consumers before they enter a contract: to check the compatibility of existing personal medical alarm and security alarm services with the NBN; how their NBN service will perform in a power failure; potential in-home factors (and possible remedies) that could affect service quality; and whether the consumer will be able to keep their telephone number when migrating to the NBN.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The Standard is a disallowable legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

### **Documents incorporated by reference**

This Standard incorporates the following Acts, legislative instruments and documents (including by the adoption of definitions), or otherwise refers to them:

- the Act;
- the ACCC's *Broadband Speed Claims: Industry Guidance*, which is published on its website at [www.accc.gov.au](http://www.accc.gov.au);
- the *Acts Interpretation Act 1901 (the AIA)*;
- the Direction;
- the LA;
- the *National Broadband Network Companies Act 2011*;
- the *Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014*; and
- the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the AIA, subsection 13(1) of the LA and section 589 of the Act. The non-legislative document listed above is incorporated as in force from time to time, in accordance with section 6 of the instrument, subsection 14(1) of the LA and section 589 of the Act.

Under paragraph 589(2)(b) of the Act, an instrument made under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing, as in force or existing from time to time; even if the other instrument or writing does not yet exist when the instrument is made. This power has been relied upon to incorporate, ACCC's *Broadband Speed Claims: Industry Guidance*, which is published on its website at [www.accc.gov.au](http://www.accc.gov.au).

## Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

In January and February 2018, the ACMA conducted preliminary consultation through a series of meetings with representatives from the telecommunications industry, consumer advocacy and government regulatory stakeholders. Feedback from these meetings and in subsequent correspondence was considered by the ACMA during the initial drafting of the Standard.

The ACMA also consulted with stakeholders and the general public on the making of the Standard, as required by subsection 125AA(3) and section 132 of the Act. Between 10 April 2018 and 11 May 2018, the ACMA conducted a public consultation process inviting submissions on a draft Standard and seeking comment on specific issues raised in an accompanying consultation paper. The draft Standard and consultation paper were made available through the ACMA's website.

The ACMA received 14 submissions from industry, consumer advocacy groups, other government and regulatory agencies, and the general public. After the consultation period, all non-confidential submissions were made publicly available on the ACMA website.

The ACMA considered all relevant issues raised by the submissions when making the Standard.

## Regulatory impact assessment

A Regulation Impact Statement (**RIS**) was prepared for the Direction (OBPR Reference Number: 23048) and which applies to the measures in the Standard and other standards to be made in accordance with the Direction. As stated in the Explanatory Statement to the Direction:

*The RIS considered options for targeted regulatory measures to improve the NBN consumer experience.*

*The RIS concluded that the regulatory impacts of this instrument are on business providing retail telecommunications services over the NBN, NBN Co Limited, and other suppliers in the NBN supply chain. The average annual regulatory costs to these businesses were estimated to be \$1.49 million. There are no regulatory impacts on community organisations or individuals.*

## Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

**Notes to the *Telecommunications (NBN Consumer Information) Industry Standard 2018***

**Part 1–Preliminary**

**Section 1 Name**

This section provides for the instrument to be cited as the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Standard**).

**Section 2 Commencement**

This section provides for the Standard to commence on 21 September 2018. The Standard is available on the Federal Register of Legislation, which may be accessed at: [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

This section provides that the Standard is made under subsection 125AA(1) of the *Telecommunications Act 1997* (the **Act**) and in accordance with sections 5 and 6 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*.

**Section 4 Application of industry standard**

This section has the effect of applying the requirements under the Standard to carriage service providers that supply services using the NBN directly to consumers.

**Section 5 Definitions**

This section defines a number of key terms used throughout the Standard. It also notes that a number of other expressions used in the Standard are defined in the Act.

**Section 6 References to other instruments**

This section provides that in the Standard, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time.

**Part 2–Provision of information about NBN services to consumers**

**Division 1 – Key Facts Sheets: NBN Services**

**Section 7 Requirement to provide key facts sheets about NBN services**

This section requires a retail carriage service provider (**retail CSP**) to prepare a key facts sheet for each NBN plan that it offers to consumers. The section sets out minimum content and quality requirements, format requirements, how and when the key facts sheet must be made available to consumers, and that it must be made available to consumers free of charge.

Paragraph 7(1)(a) sets out the minimum requirements for the format of the key facts sheet. It requires that a key facts sheet:

- be titled *Key Facts Sheet: NBN Services*;
- use plain language;
- be clear, accurate and up-to-date;
- use a font size that is at least equivalent to 12 point Times New Roman;
- include the minimum information requirements set out in Division 2 of Part 2 of the Standard;
- be no longer than a single sided A4 page;
- be capable of being printed out; and
- display the information specified in section 8 (relating to speed and online usage information) prominently and before the information specified in sections 9 (technical limitations) and 10 (medical and security alarm services).

Subsections 7(1), (3), (4), (5) and (6) also set out obligations regarding how the key facts sheet must be provided to consumers. A retail CSP must provide key facts sheets to consumers in a single document prior to the consumer entering the contract for an NBN service. For sales over the telephone and sales at physical store locations, the retail CSP must convey to the consumer the information set out in the key facts sheet and give the consumer a choice of how they receive a copy of the key facts sheet. For sales made over the internet the provider must direct the consumer to the web page where they can access the key facts sheet. For clarity, the reference to a web page can also mean a key facts sheet provided as a separate electronic file that can be downloaded via a hyperlink.

Retail CSPs must make key facts sheets available free of charge at any physical locations where the provider's NBN consumer plans are offered to consumers. Key facts sheets must also be made available on a provider's website via prominently displayed hyperlinks which are in close proximity or adjacent to the full description of the relevant NBN plan.

Subsections 7(2) and (3) allows for key facts sheets to include information about one or more NBN consumer plans, provided that each plan is clearly identified and the key facts sheet can be reached via a hyperlink which is in close proximity or adjacent to the full description of the NBN plans to which the key facts sheet relates.

Subsection 7(7) also states that providing a consumer with the information required to be in a key facts sheet in a standard form of agreement does not fulfil the obligation to provide a key facts sheet to the consumer.

## **Division 2 – Minimum requirements for information**

### **Section 8 Minimum requirements – data speeds and online usage**

Section 8 sets out the minimum information required to be included in an NBN consumer plan’s key facts sheet that relates to the data speed of the plan and the kind of consumer online usage for which the plan is suitable.

Subsection 8(1) details the requirements for the provision of speed and online usage information. Under paragraph 8(1)(a), where speed tier information is represented in advertising for an NBN consumer plan, the key facts sheet for that plan must include advice that the speed tier represents the maximum possible speed that is available during off-peak periods.

Paragraph 8(1)(b) provides that for NBN consumer plans using fixed line connections (fibre to the premises (FTTP), fibre to the node (FTTN), fibre to the building (FTTB), fibre to the curb (FTTC) and hybrid fibre coaxial (HFC)), the key facts sheet must include a numerical representation of the typical busy period download speed that the average consumer can expect to receive during the busy period for the relevant NBN consumer plan. The busy period is defined in the Standard as the times between 7 pm and 11 pm. The key facts sheet must also state the hours covered by the busy period.

Subsection 8(2) provides that where a key facts sheet relates to a small business NBN consumer plan (that is, NBN plans that are offered on the basis that the service will be used for business purposes – but not for resale – by consumers) retail CSPs can satisfy the requirement under paragraph 8(1)(b) by providing a numerical representation of the typical busy period download speed during standard work hours. Standard work hours are defined in the Standard as the hours between 9 am and 5 pm on a working day. The key facts sheet must also state the hours over which the typical busy period download speed applies.

Subsection 8(4) provides that a retail CSP may use the typical busy period download speed determined in accordance with the ACCC’s *Broadband Speed Claims: Industry Guidance* (August 2017) as a basis for the typical busy period download speed included in its key facts sheet for residential NBN consumer plans.

Paragraph 8(1)(c) requires a retail CSP to provide information that provides consumers with a guide to the level of online usage that the relevant NBN consumer plan would support during the busy period. Subsection 8(3) requires that the information guide about the level of online usage must apply to standard work hours where the typical busy download speed is provided in accordance with subsection 8(2) (that is the retail CSP has chosen to provide the typical busy download speed for the standard work hours).

Under paragraph 8(1)(d) a key facts sheet relating to NBN consumer plans that are offered over a FTTN, FTTB or a FTTC connection must also set out what remedies are available to consumers if it is established that the physical telecommunications network infrastructure underlying the consumer’s connection to the NBN is not capable of providing the speed tier underlying the consumer’s NBN consumer plan.



## **Section 9 Minimum requirements – technical limitations**

Paragraph 9(a) provides that a key facts sheet must include information for consumers that relates to certain technical features of NBN services. This includes information about the limitations of the performance of NBN services in the event of a power failure. A note in section 9 recognises that there are additional disclosure and other obligations imposed on carriage service providers by the *Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014* in relation to the supply of standard telephone services using FTTP.

Paragraph 9(b) requires a key facts sheet to include information about common factors in a consumer's home or business premises that may affect the speed or performance of their NBN service, including practical examples, and how consumers can reduce the impact of these factors.

## **Section 10 Minimum requirements – medical alarm services and security alarm services**

Section 10 sets out the minimum information that must be included in a key facts sheet about using personal medical alarms and security alarms over an NBN service. It requires retail CSPs to inform consumers that, if they wish to continue using a personal medical alarm or security alarm service on a new NBN service, then they should take steps to determine if the alarm service will be compatible with the NBN service, and if not, what alternatives are available, before they enter a contract for the NBN service. At a minimum, consumers should be advised that these steps should include contacting the provider of the medical alarm or security alarm service.

The information requirements relating to personal medical alarms in section 10 complement the advice, under section 12, that retail CSPs must give to consumers with personal medical alarm devices who enquire about, or wish to enter into, an NBN consumer plan.

## **Division 3 – Advertising material for NBN consumer plans**

### **Section 11 Minimum information requirements for advertising material about NBN consumer plans**

Section 11 sets out minimum requirements for data speed and online usage information in the advertising of NBN consumer plans. It prohibits the use of the term 'up to', or similar phrases, when making speed claims for fixed line NBN plans. It also requires retail CSPs to include the typical busy period download speed in online, printed or broadcast advertising for fixed line NBN plans unless exempted by subsection 11(2).

Under subsection 11(2), the obligation to provide the typical busy period download speed does not apply to small online advertising that is not large enough to include all the information in a font size that is at least equivalent to 12 point Times New Roman.

Paragraph 11(1)(c) provides that where speed tier information is included as text in advertising material, the typical busy period download speed must also be included in close proximity to the speed tier and price information and in a font size that is at least as large as the speed tier information.

Subsection 11(3) requires retail CSPs to provide consumers with an explanation of any standardised labelling applied to NBN consumer plans in advertising to indicate relative data speeds. This includes standardised labelling to align with the ACCC's *Broadband Speed Claims: Industry Guidance* (August 2017) (which refer to 'Basic evening speed', 'Standard evening speed', 'Standard plus evening speed' and 'Premium evening speed'), or future versions of this Guidance. These explanations must also include information about the online usage guide described in paragraph 8(1)(c). Subsection 11(3) also sets out rules about how consumers will be able to access information explaining standardised labelling on a retail CSP's website.

### **Part 3—Provision of advice to consumers about NBN services**

#### **Section 12 Minimum requirements to provide advice about NBN services**

Under subsection 12(1) a retail CSP must inform a consumer about whether they will be able to keep an existing telephone number if they transfer their voice service to the NBN. This advice must be given prior to their entering into a contract for such a service, and when the consumer specifically asks for this information.

Subsection 12(2) provides that if a retail CSP has a discussion with a consumer about acquiring an NBN service, or receives a request from a consumer to supply an NBN service, the retail CSP must ask the consumer whether they use a medical alarm or security alarm that functions through a home phone or internet connection. If the consumer advises that they have one or both of these services, the retail CSP must advise the consumer they should contact the provider of the alarm service to check whether the device is compatible with an NBN service and if not, what alternatives are available to the consumer. In the case of medical alarms, the retail CSP must also recommend that the consumer registers their medical alarm on the NBN Co Medical Alarm Register and state where this can be found.

Subsection 12(3) provides that retail CSPs must advise consumers before entering a contract for an FTTN, FTTB or FTTC connection of the remedies that will be made available if it is established that the physical telecommunications network infrastructure underlying the consumer's connection to the NBN is not capable of providing the speed tier underlying the consumer's NBN consumer plan.

### **Part 4—Record-keeping**

#### **Section 13 Requirement to keep records**

Under section 13, retail CSPs to which the Standard applies must retain records that can demonstrate that they have complied with the requirements set out in Parts 2 and 3 of the Standard. For the avoidance of doubt, retail CSPs must keep records that demonstrate their compliance in relation to the information and advice that must be given to each consumer. It is not sufficient to keep records that only demonstrate that a retail CSP has processes in place to give the required information and advice to consumers prior to entering a contract.

Providers must retain these records for at least two years and make them available to the ACMA within 5 working days upon written request from the ACMA.

## Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Telecommunications (NBN Consumer Information) Industry Standard 2018*

#### *Overview of the instrument*

Subsection 125AA(1) of the *Telecommunication Act 1997* (the **Act**) provides that the Australian Communications and Media Authority (the **ACMA**) may, by legislative instrument, determine an industry standard setting out rules that deal with one or more matters relating to a participant in a particular section of the telecommunications industry to which the standard applies. Subsection 125AA(5) of the Act provides that the ACMA must not determine a standard unless it does so after receiving written direction from the Minister.

The ACMA has determined the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Standard**) under subsection 125AA(1) of the Act and in accordance with sections 5 and 6 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*.

The Standard, sets out a regulatory framework for the provision of information and advice to consumers by carriage service providers (**CSPs**) regarding services supplied using the National Broadband Network (the **NBN**). The Standard deals with:

- minimum requirements for information and advice to be provided to consumers about services supplied using the NBN;
- requirements in relation to when the information and advice about the services is to be provided; and
- requirements in relation to the manner in which that information or advice is to be provided.

The Standard:

- requires retail CSPs to provide important pre-sale information and advice to consumers about:
  - their NBN consumer plan in a document called a “Key Facts Sheet: NBN Services”;
  - remedies that will be made available to consumers if the speed tier of their NBN consumer plan cannot be supplied;
  - the need to check the compatibility of existing personal medical alarm and security alarm services with an NBN service;
  - technical limitations, including how their NBN service will perform in a power failure, and any potential in-home or in-premises factors (and possible remedies) that could affect service quality; and

- whether the consumer will be able to keep their telephone number when migrating a voice service to the NBN.
- requires the inclusion of certain information when CSPs advertise NBN plans, including information about typical busy period speed and the kind of online usage that those plans will be suited to.

### ***Human rights implications***

The ACMA has assessed whether the Standard is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Standard and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument engages the right to freedom of expression in Article 19(2) of the *International Covenant on Civil and Political Rights*, which states:

*2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

The ACMA considers that the Standard engages the right to freedom of expression, in so far as that right includes the right to receive information about NBN services. Relevantly, the Standard imposes requirements on retail CSPs to provide certain information and advice to consumers about services as described above.

The obligations in the Standard are designed to help consumers to make informed decisions about NBN services prior to entering into a contract. In this regard, the Standard is directed at promoting the rights of consumers to receive information about NBN services and therefore does not cause any limitation or interference with the right to freedom of expression in an unlawful or arbitrary manner.

### ***Conclusion***

The Standard is compatible with human rights because it promotes the right to freedom of expression, in so far as that right encompasses the receipt of information relevant to NBN services which consumers may seek to purchase.