



Telecommunications Service Provider (NBN Service Migration) Determination Variation 2020 (No. 1)

The Australian Communications and Media Authority makes the following determination under subsection 99(1) of the *Telecommunications Act 1997*.

Dated: 16 October 2020

Creina Chapman
[signed]
Member

Cathy Rainsford
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

1 Name

This is the *Telecommunications Service Provider (NBN Service Migration) Determination Variation 2020 (No.1)*.

2 Commencement

This instrument commences on 14 December 2020.

Note: The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 99(1) of the *Telecommunications Act 1997*.

Note: The power to make a service provider determination under subsection 99(1) includes the power to vary that determination in a like manner: see subsection 33(3) of the *Acts Interpretation Act 1901*.

4 Variations

The instrument that is specified in Schedule 1 is varied as set out in the applicable items in that Schedule.

Schedule 1—Variations

Telecommunications Service Provider (NBN Service Migration) Determination 2018 [F2018L01052]

1 Section 5 (definition of *alternative arrangement*)

Repeal the definition, substitute:

alternative arrangement means an arrangement agreed by the NBN CSP and the consumer, where the requirement to supply a legacy service under Part 3 applies, and may include:

- (a) the payment of reasonable compensation;
- (b) the application of credit to the consumer's account for mobile data;
- (c) reconnection of a legacy service;
- (d) payment to an alternative provider for the provision of a mobile data service; or
- (e) any other arrangement agreed by the NBN CSP and the consumer that is not merely:
 - (i) rescheduling an appointment to provide an operational NBN service; or
 - (ii) an arrangement that the consumer need not make payments in relation to an NBN service that is not operational.

2 Section 5 (at the end of subparagraph (b)(ii) of the definition of *consumer*)

Omit "\$20,000", substitute "\$40,000".

3 Subsubparagraph 8(c)(ii)(D)

Repeal the subsubparagraph, substitute:

- (D) the legacy CSP has disconnected the legacy service at the request of the consumer; or
- (iii) the circumstances in paragraph 9(1)(c) exist.

4 Subsection 9(1)

Repeal the subsection, substitute:

- (1) An interim service must be supplied to a consumer by the NBN CSP where:
 - (a) the migration at the consumer's premises has been unsuccessful, and is unlikely to be successful within three working days of the NBN CSP becoming aware of the unsuccessful migration;
 - (b) the migration at the consumer's premises has been successful, but an operational NBN service has not been supplied to the consumer and cannot be supplied to that consumer within three working days of the NBN CSP becoming aware that the consumer's NBN service is not operational; or

- (c) both:
 - (i) the migration at the consumer's premises has not been attempted and is not likely to be attempted within 3 working days; and
 - (ii) the consumer's legacy service has been disconnected by the legacy CSP other than for a valid reason,

unless an exception in subsection (2) applies.

Note: The requirement to provide an interim service under paragraph 9(1)(c) applies whether or not the migration at the consumer's premises is a parallel migration.

5 Section 14(3)(b)

Before "that they", insert "if there is a lower speed tier plan offered by the NBN CSP,"

6 At the end of subsection 15(2)

Add "for the NBN service".

7 Section 16

Repeal the section, substitute:

16 Requirements where there is unreasonable delay in the supply of an operational NBN service

- (1) This section applies where section 8 applies.
- (2) If, at 23 working days after the NBN CSP becomes aware that:
 - (a) the migration at the consumer's premises has been unsuccessful; or
 - (b) the migration at the consumer's premises has been successful, but the consumer's NBN service is not operational,

(the *relevant day*) and the consumer's NBN service is still not operational, the NBN CSP must within 2 working days, prepare a plan directed at ensuring that the consumer is provided with an operational NBN service as soon as possible.
- (3) Subsection (2) does not apply where:
 - (a) the NBN CSP has provided the consumer with all of the information referred to in subsection (5) during the period of 23 working days from the occurrence of the events described in either paragraphs (2)(a) or (2)(b), whichever is applicable; and
 - (b) the information referred to in paragraph (a) continues to be accurate at the end of the relevant day.
- (4) Where a plan is prepared by an NBN CSP in accordance with the requirement in subsection (2), the NBN CSP must send a copy of the plan to the consumer within 2 working days of its being prepared.
- (5) A plan mentioned in subsection (2) must contain the following minimum requirements:

- (a) if a consumer requests information about the cause of the problem with the NBN service – a diagnosis of the issue that has caused the NBN service to be not operational;
 - (b) if a consumer requests information about how the issue will be remediated – the steps required to remediate the issue and establish an operational NBN service;
 - (c) the timeframe for completing the required remedial work;
 - (d) any compensation that will be offered to the consumer; and
 - (e) contact details that the consumer can use to gain updates on the completion of the remedial work.
- (6) If, at a further 20 working days (the *further period*) after the expiration of the 23 working day timeframe mentioned in subsection (2), the NBN service is not operational, the NBN CSP must arrange for a technical audit to be completed within 10 working days after the expiration of the further period.
- (7) A technical audit under subsection (6) must identify:
- (a) why the plan mentioned in subsection (2) did not result in the establishment of an operational NBN service;
 - (b) the steps that are required to remediate the issue and establish an operational NBN service as soon as possible; and
 - (c) the measures that can be instituted to avoid similar problems in other cases.
- (8) An NBN CSP is not required to prepare a plan mentioned in subsection (2) or complete a technical audit under subsection (6) where it determines on reasonable grounds that the reason why the NBN service is not operational is due to:
- (a) an issue on the consumer’s side of the boundary of a telecommunications network; or
 - (b) NBN Co not having completed remediation steps that must be undertaken in order for the NBN service to be operational.