

SAU Variation: Proposed changes

Discussion Paper on proposed changes to nbn SAU Variation

August 2022





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1 Executive Summary

Following the lodgement of **nbn**'s proposed SAU Variation on 29 March 2022 (**March Variation**), the ACCC and industry have identified key areas where they consider the proposal did not sufficiently address industry concerns – particularly in relation to pricing certainty, revenue controls, service quality and the role and powers of the regulator. In parallel, the Minister for Communications supported the withdrawal of the March Variation and submission of a new SAU variation reflective of changes in the policy landscape and operating environment that have occurred since that variation was lodged.

In its December 2021 summary of industry working group outcomes¹ the ACCC identified five key outcomes to help guide the development of the SAU variation. These outcomes remain a key focus in **nbn**'s consideration of further changes to our SAU variation proposal. They are:

- **nbn** has the opportunity to earn the minimum revenues it needs to meet its legitimate financing objectives, including to transition to a standalone investment grade credit rating;
- **nbn** end users are protected from price shocks and from prices that are higher than necessary in later years;
- The regulatory framework provides incentives for **nbn** to operate efficiently and promote use of the **nbn** network;
- **nbn** access seekers have greater certainty over the costs that they will face when using the **nbn** network; and
- There is a clear and robust quality of service framework so access seekers and end users know what to expect from **nbn** services, including a review mechanism so that service standards remain fit for purpose.

This discussion paper sets out the key proposed changes that **nbn** intends to incorporate in a revised SAU variation – with the intention that the ACCC, industry and **nbn** continue to engage on these changes prior to the lodgement of a revised variation in October. Further to the working groups and consultation that has already taken place under the SAU variation process, it is important that **nbn** continues to consult with industry to explain how **nbn** is seeking to address outstanding concerns – including the trade-offs that **nbn** is balancing in proposing these changes – and for **nbn** to understand industry response to the proposals before we submit a revised SAU variation.

While the Government has indicated that **nbn** will remain under public ownership for the foreseeable future, **nbn**'s mandate to operate on a standalone commercial basis as a Government Business Enterprise (**GBE**) has not changed. It remains imperative that the commitments **nbn** makes in the SAU (and the Wholesale Broadband Agreement (**WBA**)) are set so as to support a sustainable **nbn**, including to provide **nbn** with the opportunity to continue to efficiently invest in the network consistent with Government policy and the expectations of RSPs and end users, and to achieve and maintain a standalone investment grade credit rating

The proposed changes set out in this discussion paper – which are cumulative to those in the March Variation – further reduce the maximum prices that **nbn** may charge and the level of past costs which **nbn** is able to recover. **nbn**'s ability to deliver on its multiple objectives and achieve the required cashflows to do so, requires that the SAU continues to allow **nbn** the opportunity to earn revenues in excess of a standard 'building block' revenue allowance in order to pay down debt and place **nbn** on a stable financial footing going forward. In doing so, **nbn**'s

¹ ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#), December 2021, p. 1.



updated proposal provides the ACCC with a strong oversight role to provide certainty to RSPs in relation to nbn's overall revenue trajectory, and hence price path.

nbn considers that, as an integrated package of enhancements which, taken together, materially improve the March Variation, the proposed changes respond substantively to RSP and ACCC concerns. However, these enhancements do not come without cost. The pricing changes that nbn proposes to include in the updated SAU variation materially reduce nbn's revenues in the short-term, materially reduce nbn's ability to monetise the increased usage of the network that will inevitably take place over coming decades, and significantly reduce the level of regulatory certainty delivered to nbn by the SAU.

In putting forward these new proposals, nbn has carefully considered the various expectations and constraints placed on it, including achieving and maintaining a standalone investment grade credit rating, likely future network investments, the impact of competitive networks and the policy expectations of Government. nbn is seeking to balance RSP and ACCC feedback while framing an SAU that also provides nbn with the opportunity to sustainably generate the necessary revenues to service its debts, operate efficiently and efficiently invest into the future to meet the needs of Australians for a faster, more reliable and more capable and resilient network.

nbn will continue to consider other potential changes in response to industry feedback to this discussion paper and the ACCC consultation and workshops planned for 18-19 August 2022. nbn will need to prioritise and balance the different objectives on pricing structure, future price levels and service, while ensuring nbn can sustainably operate and invest. Accordingly, it will be helpful if stakeholders could reflect their prioritisation and potential trade-offs in providing feedback. We look forward to engaging with industry on these new proposed enhancements with a view to lodging a revised SAU variation with the ACCC in October 2022, to enable changes to take effect from 1 July 2023.



2 Overview of key proposed changes

The table below summarises the key changes that **nbn** is proposing to make to the March Variation. Further detail on each proposed change, including the associated benefits and how the change addresses concerns raised by interested parties, is then set out in sections 3 to 6. Additional proposed changes are described in section 7 .

Change category	Description of proposed change
Pricing construct and price controls (see section 3 for more details)	
1	<p>Transition to AVC-only pricing on TC-4 lower speed tiers</p> <p>nbn will transition TC-4 Bundle Offers to \$0 CVC pricing (i.e., \$0 per Mbps CVC TC-4 Overage Charge) by no later than 1 July 2026. This will be enabled through a progressive rebalancing of CVC and AVC charges.</p>
2	<p>Reduced TC-4 AVC-only charge on higher speed tiers</p> <p>nbn will reduce AVC-only charges on the Home Fast (100/20 Mbps), 100/40 Mbps, Home Superfast (250/25 Mbps) and Home Ultrafast (up to ~1000/50 Mbps) speed tiers.</p>
3	<p>Reduced effective charge on TC-4 Bundle Offers</p> <p>nbn will reduce effective charges through amended pricing or increased inclusions on TC-4 Bundle Offers for the 12, 25 and 50 Mbps speed tiers.</p>
4	<p>Basket price control for majority of nbn services to replace individual price controls</p> <p>nbn will introduce a Weighted Average Price Control (WAPC) or ‘basket’ price control applicable to all nbn services with limited exceptions (e.g., ‘Competitive Services’).</p> <p>To allow a transition to ‘cost-reflective’ prices, the weighted basket may increase each year (on a ‘use-it-or-lose-it’ basis) at:</p> <ul style="list-style-type: none"> • CPI – during an initial glidepath period (i.e., before nbn is expected to first achieve its Core Services Annual Building Block Revenue Requirement (ABBRR)); and thereafter • at a percentage which allows forecast revenue for each financial year to equal allowable Building Block Model (BBM) revenues/the WAPC Revenue Requirement for those years.
5	<p>Additional price controls and price certainty commitments</p> <p>The WAPC framework will be supplemented by additional individual sub-caps on each of: (1) the entry level TC-4 service (initially the 25 Mbps speed tier); and (2) all other TC-4 services.</p> <p>nbn will introduce a list of pricing principles into the SAU to provide certainty over nbn’s long-term pricing intentions.</p> <p>In addition to the previous commitment to publish an annual Tariff List, nbn will also publish on an annual basis an indicative 3-year pricing roadmap and pricing intention statement.</p>



Change category	Description of proposed change	
Framework for efficient cost recovery and inclusion (see section 4 for more details)		
6	Limitations on ICRA recovery	The SAU will: (1) lock in the maximum amount of ICRA to be included in nbn 's revenue cap in a given year, which will not commence until nbn is expected to achieve its Core Services ABBRR; and (2) include in the ACCC's 2032 review powers the ability to adjust the recovery of ICRA provided nbn retains the opportunity to sustain a standalone investment grade credit rating with stable outlook.
7	Expenditure Assessment Framework	nbn will make changes to the framework for assessing nbn 's prudent and efficient costs in response to ACCC feedback.
Service Standards (see section 5 for more details)		
8	Benchmark service standards	The SAU will incorporate a set of benchmark service standards which nbn will commit to include in its Standard Form of Access Agreement (SFAA). This will include service levels, performance objectives, rebates and corrective action. Service standards will apply for each regulatory cycle through the Replacement Module Application process.
9	Review mechanism for service standards	The SAU will give the ACCC powers to set alternate service standards for subsequent regulatory cycles if nbn 's Replacement Module Application is rejected.
ACCC roles and reserve powers (see section 6 for more details)		
10	Additional ACCC powers	ACCC powers will be significantly expanded, including the power to reset nbn 's revenue and pricing regulation framework from 2032.
11	Expiry of SAU upon privatisation of nbn	nbn is considering a proposal whereby the SAU expiry date would be brought forward (from 2040) in the event that nbn transfers from Government to private ownership before that time.



3 Pricing construct and price controls

3.1 Transition to AVC-only pricing on lower speed tiers

Proposed changes

nbn proposes to:

- introduce \$0 CVC pricing (i.e., \$0 per Mbps CVC TC-4 Overage Charge) on TC-4 Bundle Offers by no later than 1 July 2026; and
- reduce the CVC TC-4 Overage Charge on TC-4 Bundle Offers by at least \$1 per Mbps each financial year (as part of a rebalance of AVC and CVC charges), starting at \$8 per Mbps in FY24– as set out below:

Date	CVC TC-4 Overage (per Mbps) Max. Regulated Price
1 July 2023	\$8.00
1 July 2024	\$7.00
1 July 2025	\$6.00
1 July 2026	\$0.00

Together with the proposal to transition higher speed tiers to AVC-only within 6 months of SAU acceptance, this would mean that all Fixed Line and Fixed Wireless TC-4 services are effectively supplied on an AVC-only basis from 1 July 2026.

Benefits

As nbn articulated in its SAU supporting submission, an immediate shift from the current AVC/CVC model to an AVC-only one has the potential to generate a number of adverse outcomes for end users, RSPs and nbn. By providing a committed and clearly defined path to AVC-only pricing for the lower speed tiers, nbn and the industry should be able to identify and mitigate any such impacts. The benefits of this committed transition period for TC-4 Bundle Offers to move to AVC-only pricing include:

- Avoiding price shock to legacy capped plans and allowing time to develop alternatives:** An immediate transition to \$0 CVC pricing would mean an increase of the effective access charge that RSPs will pay for low usage customers. The defined transition to AVC-only now proposed by nbn will allow nbn and RSPs to develop alternative approaches to dealing with potential impacts for lower-use customers that may otherwise have eventuated.
- Mitigating impacts for smaller volume RSPs losing the benefit of the Overage Waiver:** Under the existing CVC-AVC construct, the Overage Waiver Threshold supports smaller RSPs (and by extension their customers) by waiving the overage charge for the first 1.5 Gbps of provisioned CVC per POI.² The waiver is currently being used by 30 RSPs benefiting a total of approximately 150,000 customers of these RSPs. Smaller RSPs qualifying for the Overage Waiver would be disproportionately impacted by any immediate removal of CVC charges, particularly when nbn rebalances prices from variable to fixed at the industry average. This would likely result in significant financial impacts on these RSPs, reduce their ability to compete and ultimately lessen retail competition for nbn services. nbn’s proposed transition period

² At current industry average CVC provisioning of 2.9Mbps per SIO, 1.5Gbps CVC per POI can theoretically support up to 60,000 customers across 121 POIs for a single RSP.



provides an appropriate period of time for smaller RSPs to adjust to the changes in pricing and underlying product economics. This in turn will enable these smaller RSPs to remain competitive challengers in the market, and thus promote retail competition for services provided over **nbn**'s network.

3. **Avoiding reduced use of the nbn network:** Higher access charges under an AVC-only model will increase incentives for RSPs to migrate low-usage customers off the **nbn** network and onto fixed wireless networks – particularly where those end users are customers of a mobile network operator. This would reduce allocative efficiency as **nbn**'s network costs, which are predominately fixed, would need to be recovered from a smaller customer base leading to higher costs per user and lower use of the network. Given recent mobile network investments, **nbn** estimates that the additional number of services transitioning to mobile and fixed wireless alternatives could be in excess of 170k customers between FY24-26 if **nbn** moved to AVC-only more quickly. The proposed transition period will reduce short-term incentives to move low-usage customers off the **nbn** network, and as access speed and usage on the **nbn** network increase over time, enhance the utility and value these low-usage customers gain from the **nbn** network.
4. **Mitigating nbn commercial impacts:** **nbn** estimates that an immediate transition to AVC-only pricing for lower speed tiers will have significant incremental impact to **nbn** revenue in the short term, primarily due to changes in wholesale pricing incentives leading to elevated Mobile Fixed Wireless substitution³ and lower growth in uptake of higher speed tiers. The expected revenue impacts would constrain investment in the short-term and likely cause delays in achieving a standalone investment grade credit rating in the medium-term.

Responding to industry and ACCC concerns

nbn has responded directly to RSP concerns regarding ongoing price certainty, and specifically the variability and operational complexity associated with CVC charges on **nbn** TC-4 services.⁴ While the March Variation sought to address this through the introduction of AVC-only pricing for higher speed tiers while maintaining lower access charges on speed tiers below 100 Mbps, **nbn** acknowledges RSP feedback to the ACCC's SAU consultation which indicates a preference for AVC-only on additional speed tiers and concerns regarding the sustainability of a variable charge component.⁵

nbn appreciates that a number of RSPs have advocated for AVC-only charging to apply immediately on all speed tiers – suggesting that a transitional approach on select speed tiers may not address pricing certainty concerns soon enough. It is essential, however, that pricing certainty for RSPs is balanced against continuing to promote efficient take-up of the **nbn** network (especially for low usage customers), avoiding price shocks for consumers on data capped plans, and ensuring **nbn** has the opportunity to earn the cashflow required to achieve financial sustainability and to continue to invest in the network. **nbn** considers that providing a committed timeframe for this transition in the SAU strikes an appropriate balance in addressing the impacts this change will have for different stakeholders.

³ See the discussion by Frontier Economics in section 4.3 of its July 2022 report - <https://www.accc.gov.au/system/files/Submission%20-%20NBN%20Co%20-%20Expert%20Report%20-%20Frontier%20Economics%20-%20%20NBN%20Co%20SAU%20Variation%20March%202022%20-%202024%20July%202022.pdf>

⁴ Feedback from RSPs in both **nbn** led pricing consultation and the ACCC Industry Working Groups was almost unanimous in seeking that **nbn** transition away from variable CVC charges and instead adopt AVC-only pricing on all speed tiers.

⁵ Telstra, [Response to the Proposed Variation to the NBN Co Special Access Undertaking](#), 20 July 2022, pp. 33-35; Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, p. 11; Aussie Broadband, [Submission in response to proposed variation to the NBN Co Special Access Undertaking](#), 22 July 2022, p. 3; Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 5; TPG, [Submission in response to Proposed variation to NBN Co Special Access undertaking](#), July 2022, p. 11.



3.2 Reduced AVC-only charge on higher speed tiers

Proposed changes

Compared to the March Variation proposal, the revised SAU proposal will reduce the initial AVC-only charges on the following AVC-only speed tiers:

Monthly charge	March Variation	Revised SAU Proposal
Home Fast (100/20)	\$60.00	\$55.00
100/40	\$65.00	\$58.00
Home SuperFast (250/25)	\$70.00	\$60.00
Home UltraFast (500- ~1000/50)	\$80.00	\$70.00

In addition to the removal of variable CVC TC-4 charges set out in the March Variation, the AVC charge payable by RSPs (and, by extension, end users) for these speed tiers would be between \$5 and \$10 less than under the pricing proposed in the March Variation.

Benefits

The clear benefits of this change include:

- Unlocking higher speeds for more end users:** The proposed reductions in AVC-only charges are likely to encourage take-up of higher speed tiers, promoting efficient use of the **nbn** network and unlocking the potential benefits of higher broadband speeds for more end users.
- Reduced charges for existing higher speed tier users:** End users who are already connected to, or are likely to take up, high speed services would be subject to substantially lower AVC-only charges. The change demonstrates a further commitment to the long-term affordability of **nbn**'s services for end users.

Responding to industry and ACCC concerns

In addition to being a key objective for **nbn**, pricing that enables more end users to access the full capability of the network has been a clear issue raised by RSPs. Submissions from Telstra, Optus and AGL Southern Phone to the ACCC consultation on the March Variation recommend that lower pricing is required in order to increase utilisation of the network – with utilisation referable not only to basic access but access to higher speeds.⁶ The revised price for the 100/20 Mbps speed tier is aligned with market insights provided by Aussie Broadband that suggest achieving structural change in the take-up of higher speed tiers ‘requires an AVC-100 Wholesale Price of no greater than \$55 wholesale (with preference lying in the lower range of \$50-\$52)’.⁷

This view on the preferred pricing approach is not necessarily consistent across all RSPs. Feedback from Vocus suggests that, rather than driving easier access to high speeds, the key principle that should inform pricing is that price points are clearly relative to speed. For example, Vocus has suggested that ‘a more reasonable entry level NBN25 product would have a flat fee around \$30 and a product that is 10x quicker (e.g., NBN250) might be priced 5x more while a product that is 40x quicker (e.g., NBN1000) might be priced 15x more.’⁸ **nbn** considers this pricing

⁶ In its response to the March Variation, Telstra recommended that **nbn** deliver lower prices in order to encourage utilisation stating that ‘Wholesale pricing has led to heavy under-utilisation of the NBN – while 40% of fixed premises can attain 1 Gbps speed, less than 1% of customers take up these speeds. Further, 73% of NBN Co’s fixed-line footprint can achieve over 100 Mbps speeds, while only 18% of customers take up plans with speeds of 100 Mbps or more.’ Refer Telstra, [Response to the Proposed Variation to the NBN Co Special Access Undertaking](#), 20 July 2022, p. 12. See also AGL Southern Phone, [Submission in response to Review of NBN Application for SAU Variation](#), 22 July 2022, p. 2; Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, pp. 11-13.

⁷ Aussie Broadband, [Submission in response to proposed variation to the NBN Co Special Access Undertaking](#), 22 July 2022, p. 2.

⁸ Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 4.



differential would further hinder the take-up of high-speed services and would not promote efficient use of the network nor efficient cost recovery.

3.3 Reduced effective charge on TC-4 Bundle Offers

Proposed changes

Compared to the March Variation proposal, the revised SAU proposal reduces effective charges for lower speed tiers through amended pricing for the 12/1 Mbps TC-4 Bundle Offer and increased inclusions for TC-4 Bundle Offers applicable to 25 and 50 Mbps speed tiers:

Speed Tier	March SAU Variation Proposal Monthly charge (CVC incl.)	Revised SAU Proposal Monthly charge (CVC incl.)
12/1 Voice Only	\$12.00 (0 Mbps)	\$12.00 (0 Mbps)
12/1 Broadband	\$26.00 (0 Mbps)	\$24.40 (0 Mbps)
25/5 and 25/10	\$26.00 (0.1 Mbps)	\$26.00 (0.2 Mbps)
50/20 and FW Plus	\$50.00 (2.45 Mbps)	\$50.00 (2.50 Mbps)

Note: 12/1 (voice-only) monthly charge will remain at \$12.00 but the additional excess utilisation charge will decrease to \$12.40 (from \$14.00).

Benefits

As with the reduced AVC-only charges outlined in section 3.2 the benefit to RSPs and end users of reduced effective charges on the TC-4 Bundle Offers is clear. Irrespective of the preferred pricing construct, it is essential that entry level services on the network remain affordable and do not present a barrier to access for end users or limit efficient use of the network.

Responding to industry and ACCC concerns

The reduction in effective charges for TC-4 Bundles responds to two key concerns with the March Variation. First, the ACCC and RSPs have raised concerns with the potential price shock for existing 12 Mbps customers with the increase of the fixed bundle charge from \$22.5 to \$26 under the March Variation.⁹ While nbn anticipates a corresponding reduction in overage due to the introduction of utilisation-based billing, nbn recognises the price impact on consumers with very low data use and has responded to this feedback by reducing the proposed access charge for 12 Mbps to \$24.4. This is expected to deliver an average wholesale charge of approximately \$31 based on an average 12 Mbps utilised bandwidth (excluding voice only customers) of around 0.87 Mbps as of June 2022 - approximately \$4 cheaper than the average price in 2019.

Questions for stakeholder consideration

- Taking into account all the outcomes articulated in the Executive Summary, do you have any feedback on the pricing proposals?
- Are there alternative suggestions or any other trade-offs you would suggest as specific opportunities for improvement, consistent with those outcomes?

⁹ In its response to the ACCC’s consultation on the March Variation, TPG noted that ‘NBN Co’s proposal to abolish NBN12 as the entry level product will make broadband access unaffordable for price sensitive customers.’ Refer TPG, [Submission in response to Proposed variation to NBN Co Special Access undertaking](#), July 2022, p. 2. Vocus has also raised concerns regarding the impact on, and price sensitivity, of prices proposed in the March Variation on lower speed tier customers. Refer Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 3.



3.4 Basket price control replaces individual price controls

Proposed change

Individual price controls on most **nbn** SAU services will be replaced with a Weighted Average Price Cap (WAPC) or ‘basket’ price control. Under the proposed framework, on 1 May each year, **nbn** will publish prices for the upcoming Financial Year in an SAU Tariff List, with relevant compliance documents showing how those prices are consistent with the WAPC and relevant side constraints / sub-caps (discussed below).

To allow a transition to ‘cost-reflective’ prices, **nbn** proposes that the weighted basket may increase each year (on a ‘use-it-or-lose-it’ basis) at:

- CPI – during an initial glidepath period (i.e., before **nbn** is expected to first achieve its Core Services ABBRR, currently expected to be between FY30-32); and thereafter
- at a percentage (expressed as “CPI-X”) which allows forecast revenue for each financial year to equal allowable BBM revenues / the WAPC Revenue Requirement for those years.¹⁰

To effect the initial glidepath proposal in which the basket price control is effectively set at CPI, the relevant ‘X factor’ will be set at 0 until the year in which **nbn** is expected to first achieve its Core Services ABBRR.

The proposed WAPC framework is broadly aligned with WAPC methodology used by the Australian Energy Regulator (**AER**). This framework will transparently determine the X factor that would enable (but not guarantee) **nbn** to achieve its forecast revenue requirement based on forecast demand quantities for its charges. Relevantly, the WAPC revenue requirement, X factor and related demand forecasts (which are inputs into the WAPC calculation) will be established each regulatory cycle through the SAU replacement module process and BBM arrangements.

The calculation of the WAPC will cover all of **nbn**’s services, excluding:

- Ancillary services provided on a ‘time and materials’ or ‘quoted’ basis (and which therefore do not lend themselves to being included in a WAPC – such services will have separate, individual price controls);
- Enterprise Ethernet, Business Satellite Services and Satellite Mobility for Large Commercial Passenger Aircraft (referred to in the March Variation as ‘Competitive Services’);
- Build works (i.e., pre-supply construction services);
- New developments charges (noting that these services have maximum prices set under the Government’s Telecommunications in New Developments (**TIND**) policy); and
- Duct and tower access and other facilities access services regulated under the Facilities Access Code.¹¹

¹⁰ This reflects the standard operation of a WAPC, while the initial glidepath proposal reflects the role of price controls noted by Frontier Economics in its recent report in relation to **nbn**’s March Variation (which proposed individual price controls and an overall revenue control), which stated: ‘within NBN Co’s total pricing and revenue constraint framework, the specific role of the CPI – X price controls... is simply to provide greater certainty over the (maximum) price paths for RSPs... While CPI – X controls... can, in some circumstances, offer incentives to lower costs and share these with customers, this role within NBN Co’s framework is filled through the revenue control developed using the BBM. In that context, it is somewhat a matter of judgement as to whether the particular X values that are adopted provide a reasonable balance between RSP certainty and NBN Co’s ability to structure prices efficiently within the overall revenue constraint’. See: Frontier Economics, *Efficiency and competition assessment of NBN Co’s proposed pricing construct*, 22 July 2022.

¹¹ Note that the current SAU price regulates specific services which meet the service description set out in the SAU. While the calculation of the WAPC is proposed to account for a broader range of services than those covered by the SAU service description, **nbn** does not propose to change the SAU service description itself. In that context, services which fall outside the SAU service description (such as Layer 3 services like Sky Muster Plus, or Layer 1 Continuity Services) will be accounted for in the WAPC calculation but will not have Maximum Regulated Prices under the SAU WAPC and will remain subject to direct ACCC pricing intervention through the form of access determinations or binding rules of conduct (which is the status quo today).



Key design aspects of the proposed WAPC include that:

1. The weight of a product in the basket is the relative revenue contribution of the product to overall core services revenue;
2. Discounts will be excluded for assessing compliance with the basket price control, such that **nbn** commercially discounting one service does not allow **nbn** to increase the price of other services;
3. A compliance mechanism will account for any breach of the basket price control;
4. Compliance with the price control will be based on 't-2' quantities (this enables use of actual observed quantity data for the 't-2 Financial Year', rather than using an incomplete set of quantity data for the 't-1 Financial Year', and is consistent with the approach taken by the AER in gas network regulation); and
5. Services which remain on a two-part (AVC-CVC) pricing structure will be accounted for in the WAPC formula based on the industry average 'combined price' of that service (i.e., the average price paid for the speed tier including the fixed AVC-CVC bundle charge and the industry average overage charge for the speed tier).
6. New core services will be added to the basket price control two years after introduction (once sufficient volume data is available). Consistent with the existing SAU, such new services will have an individual Maximum Regulated Price during that two-year period (set at the level at which the service is first priced commercially), with the ACCC retaining the ability to reset that MRP in that two-year period. Such individual MRPs will be allowed to increase at CPI each year until the relevant service is included in the WAPC. In addition, any relevant product in market at the time of a replacement module application (or ACCC replacement module determination) will be added to the basket and subject to the X factor calculation, regardless of whether the product has been in market for more than 2 years.

Further details of **nbn**'s proposed WAPC formulation are provided in Appendix A.

Benefit

nbn's proposed WAPC for a single basket (and a single price cap) covering these services is anticipated to:

1. create a stronger link between **nbn**'s efficient costs and its overall price levels by formulaically determining the price level based on efficient costs in **nbn**'s building block model;
2. improve price certainty for RSPs and end users through a transparent price setting process and clear parameters for allowable changes, strengthened by the WAPC compliance process, pricing principles, tariff list, pricing roadmap and pricing intention statement;
3. provide an appropriate level of pricing flexibility going forward to set prices in the face of changing economic conditions and infrastructure competition;
4. result in **nbn**, and not RSPs, bearing all the demand risk of its pricing as price levels are set based on forecast demand. This compares to **nbn**'s previous SAU Variation proposal in which there was a sharing of the demand risk between **nbn** and RSPs via an "unders and overs mechanism"; and
5. provide continued incentives on **nbn** for product innovation as new products that enable **nbn** to overachieve WAPC demand forecast will deliver additional returns to **nbn**.

Responding to industry concerns

The ACCC has raised concerns that:

- the March Variation does not sufficiently address the link between **nbn**'s costs and pricing;



- the current SAU does not constrain **nbn**'s revenues until the ICRA is extinguished; and
- the revenue cap in **nbn**'s March Variation is unlikely to, in the early stages of the SAU Variation, provide any meaningful constraint to prices or contribute meaningfully to the extinguishing of the ICRA.

This aligns with sustained RSP concerns regarding pricing certainty, transparency and demand risks they bear with **nbn** prices. Feedback to the ACCC consultation is almost unanimous in challenging **nbn**'s proposed price control of CPI+3% for AVC-only offers.

The ACCC maintains that a WAPC, rather than an amendment of **nbn**'s existing individual price controls, would better address revenue shortfalls, as well as improve pricing certainty, flexibility and economic efficiency.¹²

Questions for stakeholder consideration

- Do you support the introduction of a WAPC covering **nbn**'s core services?
- Do you have comments on **nbn**'s proposed WAPC framework, including the proposal to largely adopt the WAPC framework used by the AER?

3.5 Additional price controls

Proposed change

The WAPC framework will be supplemented by additional sub-caps designed to protect against potential price-shocks. These are:

1. an individual sub-cap price control of CPI on the TC-4 'entry level' service (25 Mbps speed tier) with an ACCC power to reset which TC-4 service is the 'entry level' each regulatory cycle; and
2. an individual sub-cap price control on other TC-4 services to prevent price shocks on individual services.

To the extent that a service has a two-part (AVC-CVC) pricing structure, these sub-cap price controls will apply based on the industry average 'combined price' of that service (i.e., the average price paid for the speed tier including the fixed AVC-CVC bundle charge and the industry average overage charge for the speed tier).

Benefit

Whereas the existing SAU price controls by their nature address price shock on a per service (and even per product component) basis, the introduction of a WAPC means that individual services could be exposed to significant price movements without appropriate controls during price rebalance. As the ACCC has highlighted, individual product price controls are particularly important for the entry level product to ensure end user accessibility is sustained on the network.¹³ The proposed sub-caps address this issue and will provide certainty and transparency regarding future potential price changes. This will benefit RSPs in making investment and product decisions, and end users in ensuring the long-term price certainty of their chosen broadband service.

¹² ACCC, [Proposed variation to the NBN Co Special Access Undertaking: Consultation paper](#), May 2022, p. 27; ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#) (Attachment A), December 2021, p. 13.

¹³ ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#) (Attachment A), December 2021, p. 14.



Responding to industry concerns

The ACCC and RSPs have consistently raised concerns that the SAU should not enable a situation in which end users are subject to significant price shocks. **nbn** is aligned with this view and, as several RSPs have noted, increasing competition faced by **nbn** means that any move to drastically increase prices would likely result in significant migration of end users off the **nbn** network and onto competing mobile and fixed wireless networks.

The sub-cap control ensures that, within the overall constraints of the WAPC, **nbn** cannot significantly rebalance prices within its portfolio too rapidly which could have detrimental consequences for RSPs and end users. It is also designed to prevent unexpected price increases driven by demand shocks on overage. The sub-cap price controls will likely be on the low band of ACCC's initial suggestion of 5-10% as part of the SAU working group in 2021, and the 10% commonly used in other utilities frameworks regulated under a WAPC.

Questions for stakeholder consideration

- Do you support the introduction of these additional price controls to help mitigate against potential price shocks for RSPs and end users?
- Do you have any alternative suggestions to the proposed price controls?

3.6 Improving pricing certainty

nbn considers the revised SAU variation proposal will significantly uplift pricing certainty for RSPs via a package of additional commitments on pricing and an overall regulatory framework governing the pricing process. These include:

- **Overall price path:** the move to a WAPC regulatory framework for all core services will constrain **nbn's** prices and the rate of change on a forward-looking basis, based on efficient costs, providing RSPs much greater visibility of **nbn's** future price path;
- **Additional price controls:** sub-caps on individual TC-4 service prices ensure that individual services will not experience price shocks in any given year as a result of any price rebalancing within the basket or as a result of network usage growth;
- **Principles for setting prices:** a set of pricing principles that **nbn** must have regard to when changing prices or setting new prices, providing RSPs with long term certainty and transparency on how **nbn** will set prices. Further information on these pricing principles is provided below;
- **Forward pricing visibility:** on 1 May each year, **nbn** will publish an annual SAU Tariff List, together with a three-year pricing roadmap (in which the prices for the second and third years will be indicative). This will provide RSPs with visibility of **nbn's** expected future pricing, to aid forward-looking product and investment decisions. The roadmap will also explain how **nbn** has had regard to the pricing principles set in the SAU;
- **Pricing intention statement:** at the same time, **nbn** will publish an annual statement describing **nbn's** pricing objectives in the medium term, providing RSPs with the broader context in which **nbn's** prices will be set. The prices stated in the SAU Tariff List and three-year roadmap will be consistent with the pricing intention statement;
- **Constraints on discounts:** **nbn's** discounting activity will be constrained, including through the existing SAU commitment to only withdraw discount in accordance with the terms specified at the time of initial introduction of the discount;



- **Certainty regarding TC-4 CVC overage (while relevant):** **nbn** proposes to retain its commitment in the March Variation to index bundled TC-4 CVC inclusions formulaically based on observed usage growth. In addition, the new price control commitments as detailed in this chapter will operate on an average ‘combined charge’ basis for bundled speed tiers (i.e., the industry average price paid for the speed tier including the fixed AVC-CVC bundle charge and the industry average overage charge for the speed tier), substantially uplifting transparency of pricing and certainty of allowable changes in CVC overage.

The inclusion of pricing principles is a new feature under the updated variation proposal. **nbn** must have regard to these high-level principles when changing prices or setting new prices and must state how **nbn** has done so in the pricing roadmap to be published each year.

These principles will apply at least until 2032. In particular, **nbn** proposes that when changing prices or setting new prices, **nbn** will have regard to:

- the efficient costs of **nbn** supplying services;
- the objective of maximising efficient network access and usage;
- the objective of maintaining affordable access to its network;
- the objective of maintaining a diversity of offers at a reasonable price relativity to each other;
- the outcomes of the low-income forum to be established pursuant to the SAU;¹⁴
- the ability of **nbn**’s customers and end users to manage price transitions; and
- the relevant three-year SAU pricing roadmap published by **nbn**.

Questions for stakeholder consideration

- Do you support the inclusion of pricing principles in the SAU framework as a mechanism to deliver additional pricing certainty?

¹⁴ Noting that **nbn** proposes to retain the commitment from its March Variation regarding establishing a multilateral working group to identify possible targeted initiatives to improve access to the **nbn** network for low-income, vulnerable and unconnected users (a ‘low-income forum’).



4 Framework for efficient cost recovery and inclusion

4.1 Introduction

While **nbn** proposes to adopt a Weighted Average Price Cap (**WAPC**) as the primary form of economic regulation of its prices, the SAU will continue to employ a Building Block Model (BBM) and Core Services ABBRR as inputs to the determination of the WAPC. Two elements of that framework which **nbn** proposes to modify in its SAU variation are the approach to recovery of the ICRA, and the framework used to assess the expenditures which are inputs into **nbn**'s BBM. This chapter outlines the key changes proposed, which respond to feedback from the ACCC and industry, and provide an increased level of certainty over the arrangements that will be used to determine important inputs to the WAPC.

4.2 ICRA recovery

Proposed changes

nbn will propose as part of its updated SAU Variation the following arrangements:

1. **nbn** will agree to adjust the Initial Cost Recovery Account (**ICRA**) to an amount sufficient to cover the difference between the efficient debt associated with a BBB-rated entity (set at 40% of the Regulated Asset Base) and the benchmark debt accumulated to the date on which ICRA will be crystallised. This amount will allow **nbn** the opportunity to earn revenues additional to the ABBRR sufficient to achieve a standalone investment-grade credit rating with a benchmark gearing level;
2. As at the end of FY23, this amount will be crystallised in the SAU and will then be adjusted in future years in line with inflation and any ICRA drawdown amounts. Any additional losses after FY23 will not be included in the ICRA;
3. Once the revenue under the WAPC exceeds **nbn**'s costs (as per **nbn**'s BBM) the SAU will provide **nbn** the *opportunity* to earn revenues in excess of its costs until the ICRA is extinguished. Specifically, **nbn**'s regulated revenue allowance will include a portion of the retained ICRA in addition to the ABBRR. Any unrecovered ICRA at the end of the SAU term will automatically be extinguished; and
4. The amount of ICRA that **nbn** will be allowed to recover in any financial year will be capped as per a method which will be detailed in the SAU. This means that the recovery of ICRA over time will be predictable, constrained and transparent.

Benefits

The proposed adjustment to the ICRA seeks to retain an amount which is sufficient to pay down higher than benchmark levels of debt, as is necessary to achieve a standalone investment grade credit rating. This approach strikes a balance between:

- RSP calls for greater certainty regarding the extent and timing of **nbn**'s recovery of its historical losses; and
- **nbn**'s forward looking commercial sustainability and the achievement of Government policy.



Responding to industry and ACCC concerns

The proposed change responds directly to ACCC and industry concerns that the size and role of the ICRA creates uncertainty regarding future pricing, and the ACCC proposal that **nbn** should not be able to recover against past losses other than to the extent necessary to enable **nbn** to achieve and maintain a standalone investment grade credit rating.¹⁵ The proposal reflects a clear intent to reset the SAU process and facilitate a forward-looking regulatory model for **nbn** and retain forward-looking investment incentives. It also means that the ICRA can only be recovered to the extent necessary to reduce **nbn**'s debt levels to achieve and maintain a standalone investment grade credit rating, which itself is necessary to ensure **nbn** continues to be able to meet the GBE guidelines and is able to raise cost-effective debt to fund future investments.

4.3 Expenditure Assessment Framework

Background

The March Variation proposed moving to a traditional propose-respond form of regulation, in which the ACCC would conduct an *ex ante* review of the prudence and efficiency of **nbn**'s forecast operating and capital expenditure, and also be able to conduct an *ex post* review of capital expenditure as incurred, as part of the process for rolling forward the Regulated Asset Base between regulatory cycles.

The March Variation also proposed a framework for assessing those expenditures, which required that **nbn**'s forecast expenditure reasonably reflect the expenditure that a prudent and efficient operator in **nbn**'s position would incur in achieving certain objectives (the **Expenditure Objectives**), to be assessed having regard to relevant factors including those stated in the March Variation (the **Expenditure Factors**). A similar framework is used in electricity network regulation in Australia.

The ACCC asked questions about that framework in its May 2022 Consultation Paper, to which **nbn** responded in its July Submission. The ACCC has since provided further views to **nbn**.

Proposed changes

In response to ACCC concerns, **nbn** proposes various changes to the expenditure assessment framework, being to:

- amend the definition of 'prudence' as follows:

*expenditure will be the expenditure that a prudent operator in NBN Co's position, acting in accordance with good industry practice, would incur if the expenditure reflects **the best choice a reasonable choice** amongst available alternatives;*

- amend the definition of 'efficiency' as follows:

expenditure will be the expenditure that an efficient operator in NBN Co's position, acting in accordance with good industry practice, would incur if the expenditure is likely to lead to the lowest Total Cost of Ownership ~~or highest value outcome~~ over time;

- amend the Expenditure Objective regarding 'compliance with Regulatory Requirements' so that it still relates to compliance with legal and regulatory obligations but does not include compliance with

¹⁵ In its summary of the working groups, the ACCC noted in relation to the ICRA: 'Subject to being financeable, once NBN Co reaches a point when it can recover its annual building block revenue requirement, this should be sufficient for it to operate the network efficiently, invest in the network and to ensure its efficient use. Any additional revenue NBN Co receives above this amount will represent recovery of previous losses and/or costs of maintaining the ICRA and is not required for operational or financing purposes. We consider the pursuit of all previous losses could conflict with promoting efficient use of the NBN.' Refer ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#) (Attachment A), December 2021, p. 6.



Government policy or other Government directions issued to **nbn** (including directions in any Government Statement of Expectations to **nbn**);

- amend the Expenditure Objective regarding ‘maintaining quality, reliability, etc of products and services’ to remove the following qualifying words, which will instead be included as an Expenditure Factor: ‘*taking into account current and reasonably anticipated future market conditions (including the extent to which NBN Co must adjust quality to meet competition)*’;
- add ‘end user willingness to pay’ as an Expenditure Factor, so that it is clear this is a relevant factor – including when considering the prudence and efficiency of expenditure incurred to meet the Expenditure Objective of meeting demand;¹⁶
- add ‘any business cases prepared by **nbn**’ as an Expenditure Factor;
- otherwise consolidate the list of Expenditure Factors; and
- amend the proposed SAU wording to clarify the information which is relevant when assessing expenditure forecasts (on an *ex ante* basis) and capital expenditure as incurred (on an *ex post* basis – where such an assessment will be based on relevant information but, consistent with other regulatory frameworks, will not be a ‘hindsight review’ where, for example, the efficiency of capital expenditure is judged by demand or commercial information which became available after the capital expenditure had been incurred).

nbn is also considering related issues raised by third parties in submissions to the ACCC’s May Consultation Paper.

Benefits and responding to industry and ACCC concerns

These proposed changes respond directly to ACCC concerns regarding the proposed framework for assessing the prudence and efficiency of **nbn**’s costs.

The most significant of the amendments is the proposed change to the Expenditure Objective regarding meeting Regulatory Requirements, so that it does not include compliance with Government policy or other Government directions issued to **nbn**. As a result of this change, **nbn** will only be allowed to recover its prudent and efficient costs of complying with Government policy if doing so meets one of the other Expenditure Objectives (e.g., meeting demand, maintaining service quality) or if the Government has issued a formal SAU notice (a Government Policy Project Notice) in respect of a particular project.

This change contemplates that in future, Government will take explicit action, in the form of enacting legislation or making regulations (or by issuing a Government Policy Project Notice) in the event that the Government wishes to have certainty about **nbn**’s ability to recover the costs of particular investments under the SAU regulatory framework. This will promote greater transparency regarding the costs of Government policy and the extent to which Government policy impacts consumer prices.

¹⁶ The March Variation sought to reflect ‘consumer willingness to pay’ in the expenditure assessment framework through the inclusion of the words ‘or highest value’ in the definition of ‘efficiency’ – however, as noted, **nbn** now proposes to delete those words from that definition.



4.4 Regulatory financeability test

nbn proposes to remove the benchmark regulatory financeability test as a prerequisite to determining **nbn**'s Annual Building Block Revenue Requirement (ABBRR). This will enable the ACCC to assess the internal consistency of the BBM without reference to a particular financeability test built into the SAU. The SAU would not contain a specific requirement that the ACCC undertake an internal consistency assessment of the BBM when determining **nbn**'s ABBRR.

Questions for stakeholder consideration

- Do you have any additional suggestions in relation to changes proposed for **nbn**'s ICRA recovery and expenditure assessment framework?



5 Service Standards

5.1 SAU to include benchmark service standards

Proposed changes

nbn proposes to include in the SAU a mechanism whereby:

- nbn proposes service standards and rebates for each regulatory cycle (i.e., 3-5 years) as part of its Replacement Module Application; and
- nbn is required to offer in its SFAA service standards that are no worse than the regulated benchmark included in the SAU.

The benchmark service standards that nbn is proposing for the first regulatory cycle commencing 1 July 2023 (i.e., the start of Module 3) will be the key WBA4 service levels and associated rebates set out in Table 1, together with the performance objectives set out in Table 2 (and associated corrective action commitments). nbn’s proposal would see the relevant rebate being paid for a failure to achieve the associated service level and corrective action being available for failure to achieve a Performance Objective, consistent with the position under WBA4 today. The SAU would also establish benchmark timeframe measurement and exclusions rules by reference to the WBA4 Service Levels Schedule.

Table 1: Benchmark Service Levels for First Regulatory Cycle

	Service Level	Description
1	End User Connections (Standard)	Timeframes within which nbn is required to complete connection of end user services.
2	End User Connections (Priority Assistance)	Timeframes within which nbn is required to complete connection of Priority Assistance services.
3	End User Connections (Accelerated)	Timeframes within which nbn is required to complete connection of Accelerated services.
4	Service Transfers	Timeframe within which nbn is required to complete service transfers.
5	End User Connection Appointments	Timeframes within which nbn is required to attend end user appointments for connection of service.
6	End User Fault rectification (Standard)	Timeframes within which nbn is required to complete fault assurance activities.
7	End User Fault rectification (Priority Assistance)	Timeframes within which nbn is required to complete fault assurance activities for Priority Assistance service.
8	End User Fault rectification Appointments	Timeframes within which nbn is required to attend end user appointments for fault assurance purposes.
9	Performance Incidents	Timeframes within which nbn is required to rectify Performance Incidents.
10	Activation of CVC / NNI	Timeframes within which nbn is required to activate CVC and NNI product components.
11	Access component modification service levels	Timeframes within which nbn is required to modify access components (i.e., AVC).
12	Connectivity component modifications	Timeframes within which nbn is required to modify CVC/NNI product components.
13	Access component disconnection	Timeframes within which nbn is required to disconnect an access component.



14	PIR Objective Rebate	Rebate payable for TC-4 FTTN/B/C services that are not capable of achieving their PIR and designated for Network Activity.
15	FTTB/N/C Connection Performance Rebate	Rebate payable for TC-4 FTTN/B/C service where the measured rate is below specified threshold (and assured rate in SQ).
16	Wireless Speed Performance Rebate	Rebate payable for fixed wireless service supplied over a persistently congested cell.

Table 2: Benchmark Performance Objectives for First Regulatory Cycle

	Performance Objective	Description of objective
1	End User Connections (Standard)	nbn will aim to meet service levels for 90% of Standard connections.
2	End User Connections (Priority Assistance)	nbn will aim to meet service levels for 100% of Priority Assistance connections.
3	End User Connections (Accelerated)	nbn will aim to meet service levels for 90% of Accelerated Connections.
4	Service Transfers	nbn will aim to meet service levels for 95% of Service Transfers.
5	End User Connection Appointments	nbn will aim to meet service levels for 90% of Actual Appointments (excluding rescheduled).
6	End User Fault rectification (Standard)	nbn will aim to meet service levels for 90% of End User Fault rectifications (excluding Priority Assistance).
7	End User Fault rectification (Priority Assistance)	nbn will aim to meet service levels for 100% of End User Fault rectifications (Priority Assistance).
8	End User Fault rectification Appointments	nbn will aim to meet service levels for 90% of Actual Trouble Ticket Appointments (excluding rescheduled).
9	Performance Incidents	nbn will aim to meet service levels for 90% of Performance Incidents (80% for specified Performance Incidents).
10	Activation of CVC / NNI product components	nbn will aim to meet service levels for 90% of CVC Activations, NNI Group Activations, NNI Link Activations and V-NNI Activations.
11	Access component modification	nbn will aim to meet service levels for 90% of Access Component modifications.
12	Connectivity component modifications	nbn will aim to meet service levels for 90% of CVC modifications.
13	Access Component Disconnection	nbn will aim to meet service levels for 90% of Access Component disconnections.
14	Network Availability	nbn will aim to achieve Network Availability of: (i) 99.90% in respect of all relevant ordered products supplied to RSPs over the nbn network other than the Satellite Network; and (ii) 99.7% in respect of all relevant ordered products supplied to RSPs over the Satellite Network.

Benefits

The proposed approach to service levels will provide RSPs and **nbn** with certainty regarding the applicable benchmark service standards for each regulatory cycle. Embedding these service levels and performance objectives provide industry with a clear and express commitment that **nbn** will not reduce the service standards on which the associated SAU pricing commitments have been based.

nbn has proposed the inclusion of a broad suite of service levels and performance objectives – reflective of key service quality elements that impact RSP and end user experience. In addition to those service quality aspects highlighted by the ACCC in its consultation paper (e.g., connection, fault rectification and appointments) **nbn** has also proposed inclusion of specific performance-based service levels (e.g., PIR Objective Rebate, FTTN/B/C



Connection Performance Rebate, Fixed Wireless Rebate), service levels related to connectivity components that are not specific to individual services (e.g., CVC and NNI service levels) and overall network availability.

This is in addition to the proposed utilisation management commitment that **nbn** proposed in the March Variation.

Responding to industry concerns

Throughout the industry working groups and subsequent engagement, RSPs, consumer advocacy groups and the ACCC have maintained the importance of a service quality benchmark – establishing a price-quality link with the Maximum Regulated Prices contained in the SAU.¹⁷ While **nbn** has only ever delivered service level improvements under successive WBAs, it is aligned with industry that RSPs and end users should have continued confidence in the performance of their services on the **nbn** network. The March Variation sought to address this through: (1) the inclusion of a utilisation management commitment; (2) inclusion of key network performance reporting commitments; and (3) explicit reference to the SAU commitments being based on existing WBA4 service levels.

It is clear from feedback to date that, in particular, the third of these commitments did not, in the ACCC's or RSPs' view, provide a sufficiently strong link between prices and service quality. **nbn**'s proposal responds directly to these concerns, embedding key service levels within the SAU (in addition to the utilisation management commitment) and associated performance objectives that will provide industry with enhanced certainty regarding the minimum service performance that will be maintained on the **nbn** network. The inclusion of WBA4 service levels is consistent with the view expressed by the ACCC that:

The first reset baseline would likely align with the service standards in WBA4 given that it has only recently been entered into by NBN Co and RSPs. For future regulatory periods, the baseline would be reviewed under the SAU reset process. The WBA could also continue to set the processes under which the SAU baseline is delivered and any additions to the baseline.¹⁸

nbn notes that the ACCC and certain stakeholders have suggested that **nbn** should be subject to a more comprehensive set of reporting commitments and in a more consolidated mechanism. While **nbn**'s reporting commitments in the March Variation sought to leverage existing reporting commitments and processes (so as to avoid duplicative and overlapping RSP and ACCC reporting process), **nbn** acknowledges the concern raised and ACCC comments that it is considering whether this would be better addressed through a Record Keeping Requirement. In settling the appropriate reporting framework, it is important that any proposed Record Keeping Requirement does not lead to duplicative and inefficient reporting commitments, and that competing networks are subject to equivalent transparency to ensure that RSPs and end users have an appropriate baseline for comparison of network quality.

nbn recognises that RSPs would like **nbn** to commit to further service level improvements in the SAU. It is important to recognise, however, that **nbn**'s proposed pricing commitments are based on **nbn**'s existing service quality commitments under WBA4 (subject to the proposed utilisation management commitment and any

¹⁷ ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#) (Attachment A), December 2021, p. 6; ACCC, [Proposed variation to the NBN Co Special Access Undertaking: Consultation paper](#), May 2022, pp. 43-44; ACCAN, [Submission to the Proposed variation to the NBN Co Special Access Undertaking](#), July 2022, p. 11; Telstra, [Response to the Proposed Variation to the NBN Co Special Access Undertaking](#), 20 July 2022, p. 51; Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, p. 19; Aussie Broadband, [Submission in response to proposed variation to the NBN Co Special Access Undertaking](#), 22 July 2022, p. 7; Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 8; TPG, [Submission in response to Proposed variation to NBN Co Special Access undertaking](#), July 2022, p. 16; Compete, [Submission in response to the Proposed variation to the NBN Co Special Access Undertaking](#), 22 July 2022, p. 12.

¹⁸ ACCC, [NBN Co Special Access Undertaking: Summary of industry working group outcomes](#) (Attachment A), December 2021, p. 3.



required product changes as a consequence of the transition to AVC-only). The objectives of a sustainable **nbn** that is able to continue to invest in network upgrades consistent with Government policy and the expectations of RSPs and end users, and achieve and maintain a standalone investment grade credit rating, are equally relevant to service quality as they are to pricing. That is, any commitments to increase service quality must be critically assessed for their impact on **nbn**'s costs and long-term sustainability.

The fundamental means for increasing service standards on, and reliability of, the network over time is investment in upgrading copper services to fibre. While **nbn** acknowledges the concerns RSPs have raised with regard to certain copper services, it is essential that the SAU does not embed stricter performance requirements that would drive short term cost and risk undermining **nbn**'s ability to continue with this upgrade program. To the extent that individual services experience a level of performance below reasonable end user expectations, the performance rebates established under WBA4 (in response to the ACCC's Wholesale Service Standards Inquiry) provide an appropriate redress and recognition of this. These rebates are included in the benchmark service levels proposed by **nbn** to be included in the SAU.

While WBA4 contains the appropriate benchmark service levels and performance objectives to be incorporated in the SAU, the review mechanism set out in section 5.2 below means that the service quality benchmark will not be 'set-and-forget' under the SAU. Rather, it will continue to evolve and reflect the expectations of end users and industry – and ensure that **nbn**'s service levels are in line with those applicable to RSPs under retail regulation.

nbn has given further consideration to three key service quality areas raised by RSPs throughout consultation and which are not necessarily dealt with through the embedding of WBA4 service levels in the SAU. These are: (1) The volume of emergency outages and associated notification timeframes; (2) the number of dropouts that an end user must experience in a day before this will constitute a performance incident or service fault under the WBA; and (3) the proposed utilisation management commitment. Further information on each of these is provided in section 7 below.

Questions for stakeholder consideration

- Do you agree with the embedding of the proposed service levels and performance objectives in the SAU?
- Do you think that network performance reporting commitments are best included in the SAU or established through Record Keeping Requirements?
- Should Record Keeping Requirements capture both **nbn** and competing broadband networks to ensure RSPs and end users have a useful baseline for comparing service quality?
- Do you think there is an opportunity to streamline and consolidate reporting?



5.2 SAU review mechanism for service standards

Proposed change

- If the ACCC does not accept the benchmark service standards and rebates that **nbn** proposes as part of its Replacement Module Application for a regulatory cycle (i.e., 3-5 years), the SAU will give the ACCC powers to set alternate service standards and rebates as part of an ACCC Replacement Module Determination.
- **nbn** is considering including in the SAU a new mechanism which would allow benchmark service standards to be reviewed during a regulatory cycle where changes are made to consumer safeguards and retail-level regulation (including with associated ACCC powers). **nbn** is also considering how the new framework for including benchmark service standards in the SAU and related processes would interact with the cost-pass through provisions of the SAU.

Benefit

This review mechanism provides RSPs and end users with confidence that the service level commitments set out in the SAU will continue to reflect industry and consumer expectations of performance on the **nbn** network. This will also provide the ACCC and industry with the ability to ensure that **nbn**'s service level commitments support any new retail service level obligations that may be introduced over time.

Responding to industry and ACCC concerns

In addition to the SAU embedding benchmark service standards, **nbn** acknowledges industry and ACCC views that the SAU should not prevent the ACCC from appropriate future review of these standards – consistent with the ACCC's existing powers to issue Access Determinations. **nbn** supports this view and the approach to service levels within the replacement module process is intended to reflect this position.

Questions for stakeholder consideration

- Do you support the proposed mechanism for including benchmark service standards as part of the replacement module process?



6 ACCC role and reserve powers

6.1 Additional ACCC powers

Proposed changes

nbn proposes that the SAU will confer additional powers on the ACCC to deal with specific matters, including:

- The ACCC will have the power to undertake a review of the WACC methodology every regulatory cycle, subject to a general rule that it be a nominal vanilla WACC determined in accordance with efficient financing practices and having regard to **nbn**'s risk profile (noting that this is the guiding principle for setting **nbn**'s WACC in the 'Subsequent Regulatory Period' under **nbn**'s current SAU, accepted by the ACCC in 2013);¹⁹
- If the ACCC does not accept the benchmark service standards and rebates that **nbn** proposes as part of its Replacement Module Application for a regulatory cycle (i.e., 3-5 years), the SAU will give the ACCC powers to set alternate service standards and rebates as part of an ACCC Replacement Module Determination;
- **nbn** is considering including in the SAU a new mechanism which would allow benchmark service standards to be reviewed during a regulatory cycle where changes are made to consumer safeguards and retail-level regulation (including with associated ACCC powers). **nbn** is also considering how such a mechanism would interact with the proposed cost-pass through provisions of the SAU;
- The ACCC will have the power to formally approve **nbn**'s Cost Allocation Manual; and
- **nbn** is contemplating conferring review powers on the ACCC in the event there are material changes to **nbn**'s price structures and is considering the impact this would have on the previously proposed 5% TC-4 discount cap and MRP ratchet down mechanism.
- The SAU will clarify that:
 - the ACCC may request (and **nbn** will provide) information which the ACCC considers reasonably necessary for it to exercise powers conferred on the ACCC by the SAU; and
 - the ACCC may consult third party stakeholders on the exercise of powers conferred on the ACCC by the SAU, subject to the ACCC not disclosing **nbn**'s confidential information other than in accordance with the ACCC's confidentiality procedures or as required or permitted by law.

nbn is giving consideration to further specific powers and functions which may be appropriate for the SAU to confer on the ACCC in order to deal with unforeseen issues or circumstances in which the ACCC forms the view that the SAU arrangements no longer promote the LTIE.

Benefit

The additional powers and functions that **nbn** propose will mean that that the ACCC will have greater ability to address issues that are unforeseen and to address future concerns that the SAU arrangements no longer achieve outcomes consistent with the LTIE. Importantly, in certain circumstances, the ACCC will have the power to automatically step in rather than **nbn** having the discretion to trigger ACCC involvement. These are significant changes to the SAU providing the ACCC with much greater scope to intervene and effect changes to the SAU.

¹⁹ See clause 2C.2.1(d) of the current SAU and also section 8.4.3 (page 101) of the ACCC's final decision to accept the current SAU, dated 13 December 2013.



Responding to industry and ACCC concerns

The ACCC has proposed that **nbn** confer on the ACCC a broad power of direction to deal with unforeseen or new issues, or to step in when existing SAU arrangements no longer provide appropriate protection for consumers. Additionally, it is important that any function and/or power that the SAU confers on the ACCC does not fetter the ACCC's existing statutory powers and obligations.

Questions for stakeholder consideration

- Do you support the SAU conferring these additional powers and functions on the ACCC?

6.2 Additional ACCC powers post 2032

Proposed changes

In addition to the expanded ACCC roles outlined above, **nbn** proposes that from 2032 the ACCC will have the power to review and reset **nbn**'s revenue and pricing regulation framework under the SAU through the replacement module process. This power is subject to the SAU retaining:

- the existing propose-respond framework of regulation;
- general principles including that **nbn**'s prices (whether set by the ACCC or **nbn**) will allow **nbn** a reasonable opportunity to achieve and maintain a standalone investment grade credit rating with a stable outlook.

Benefit

The expansion of the ACCC's role from 2032 provides long-term confidence to RSPs and end users regarding the price and revenue requirements that **nbn** will be subject to – ensuring that **nbn**'s regulatory commitments remain fit for purpose, benefiting all of industry.

Responding to industry and ACCC concerns

This ability to reset the revenue and pricing regulation framework before the expiration of the SAU is a significant departure from the existing SAU, and responds directly to ACCC concerns of being constrained if either industry or **nbn**'s operations evolve in a way that is unforeseen. Under the existing SAU, for example, the ACCC has expressed a concern with the fact that **nbn**'s discounting practices were not envisaged, by **nbn** or any of its stakeholders, as part of the SAU framework and the resulting gap between actual prices and regulated price caps has led to end user and RSP concerns that the ACCC is potentially unable to address. The introduction of a new overarching right for the ACCC to revisit the revenue and pricing regulation framework is intended to address this concern: providing the ACCC with an ability to revisit fundamental rights and commitments under the SAU in 2032 while ensuring that **nbn** and industry are provided with appropriate certainty regarding the regulation that will apply until that time.

Questions for stakeholder consideration

- Do you support this change to the SAU framework, enabling the ACCC to revisit the revenue and pricing regulation framework from 2032?



6.3 Expiry of SAU upon privatisation of nbn

Proposed change

While acknowledging that the Government has no current intention to privatise **nbn**, as an additional safeguard **nbn** proposes that the SAU expiry date will be brought forward from 2040 if a future Government privatises **nbn** before that time.

nbn expects that the regulatory arrangements that will succeed the SAU after any change of ownership from the Commonwealth will be settled in a manner that is informed, and aligned with, the processes set out under Part 3 of the *National Broadband Network Companies Act 2011* (Cth) (**NBN Companies Act**).

Benefits

This approach reflects **nbn**'s expectation that, in the event that there is a decision to transfer ownership from the Commonwealth, revised arrangements to succeed the SAU will be informed by the pre-sale processes set out in the *NBN Companies Act* and aligned with other changes to the regulatory framework that may be necessary in this phase.

Responding to industry and ACCC concerns

This approach responds directly to feedback by facilitating the establishment of new arrangements in the event of a transfer of ownership from the Commonwealth.

Questions for stakeholder consideration

- Do you support this change to the SAU framework, with expiry of the SAU before 2040 being tied directly to privatisation?



7 Other areas of industry concern

7.1 Outages

nbn regularly conducts maintenance and service fault or performance incident rectification works on its network. These works often require **nbn** to temporarily interrupt supply of services (herein referred to as ‘outages’ or ‘planned outages’). Outages are distinct from unexpected or spontaneous faults that occur on the network (‘faults’ or ‘unplanned outages’). Access technologies such as HFC which operate on a shared medium require more outages because any fault rectification or maintenance activities are more likely to impact multiple customers.

From responses to the ACCC consultation on the March Variation, it is clear that a number of RSPs maintain concerns related to the volume of outages on the network and associated notification processes / timeframes.²⁰ **nbn** is committed to continued improvements of the outages process – and shares RSP views that:

- interruptions experienced by end users (particularly outside the planned maintenance window) should be limited to only what is necessary; and
- that outage information should be provided in a timeframe and via a mechanism that enables RSPs to best support their end users.

To this end **nbn** has been working with RSPs towards the updated Network Performance Advice / Network Activity Ticket (**NPA/NAT**) notification process that seeks to deliver significant improvements for both RSPs and end users. The key features of this change are:

- RSPs would be notified when **nbn** becomes aware of a network issue that may require maintenance work to be undertaken in subsequent days (Initial notification of *potential* outage);
- RSPs would be again notified once **nbn** technicians are onsite and identify that an outage is required (i.e., real time notification of *actual* outage); and
- The information made available to RSPs via the existing emergency outage / eCRQ process (e.g., impacted AVCs) would be incorporated into the NPA/NAT notification providing RSPs with more streamlined and simplified information and enabling improved customer handling.

While **nbn** has engaged with RSPs on this specific improvement through the Product Development Forum, it is clear that RSPs concerns go beyond the notification process and to the overall volume of outages and impacted customers. In order to develop a collaborative solution to these concerns, **nbn** proposes that a working group focused specifically on outages may enable industry to deliver end user benefits in a more holistic way. Key issues that the working group could consider could include:

- 1) **NPA / NAT notification process:** Outstanding items to be addressed in order for industry to transition to this improved notification process.
- 2) **Context for emergency outages:** **nbn** to provide overview of the activities driving daytime emergency outages, including the particular maintenance requirements inherent in any HFC network. It should be

²⁰ Telstra, [Response to the Proposed Variation to the NBN Co Special Access Undertaking](#), 20 July 2022, pp. 50; Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, p. 24; Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 8; TPG, [Submission in response to Proposed variation to NBN Co Special Access undertaking](#), July 2022, p. 17.



noted that the vast majority of emergency outages would be replaced by the proposed NPA / NAT notification process.

- 3) **Consideration of the Planned Maintenance Window:** nbn and RSPs to review if the Planned Maintenance Window can be adjusted so as ensure that maintenance work that is required during daylight (e.g., due to safety considerations) can occur during the hours of least impact to end users.

nbn welcomes RSP views on the outages process generally, and on the proposal to hold a working group to further drive solutions that balance the need to undertake maintenance on the network while minimising the impacts on end users.

7.2 Dropout threshold

Industry has raised concerns regarding the level of dropouts that a service must experience before nbn undertakes assurance activities.²¹ It is important to note the distinction between performance incidents and faults under the WBA. While a service must experience >9 dropouts in a 24-hour period in order to constitute a fault, under WBA4 nbn implemented the performance incident framework which enabled RSPs to raise a trouble ticket for services on the FTTN and HFC network which experience between 5 to 9 dropouts in a 24-hour period. This was subsequently reduced to between 4 and 9 dropouts in a 24-hour period.

The performance incident framework was a substantial and RSP / end user favourable change, committing nbn to investigate and seek to improve the performance of services below the traditional dropout threshold.

Performance Incidents are subject to specified service levels and while these may not attract rebates (which service faults do), they are subject to performance objectives which include corrective action obligations where they are not met. The absence of a rebate does not remove the significance of these commitments, the corrective action obligations or the work that nbn undertakes to investigate and improve these services.

nbn maintains that the dropout thresholds for both faults and performance incidents in the WBA4 will ensure that nbn's resources are able to be efficiently deployed to address customer-impacting performance incidents and faults, rather than on transient issues, or where further diagnostics are required to determine the most appropriate response (which could include actions by either the RSP or end user).

nbn has included service levels and performance objectives for both service faults and performance incidents (based on these dropout thresholds) in the benchmark service levels described in section 5 – addressing concerns that nbn could be incentivised to reduce the quality of these services in future.

7.3 Utilisation management commitment

RSPs have raised concerns with the proposed utilisation management commitment – including the proposed utilisation threshold, the timeframe for augmenting capacity in the network, and the elements of the network covered by the commitment.²² nbn is considering this feedback further and whether any reasonable amendments should be made to the proposed commitment in the March Variation.

²¹ Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, pp. 21-22.

²² Telstra, [Response to the Proposed Variation to the NBN Co Special Access Undertaking](#), 20 July 2022, p. 54; Optus, [Submission in response to ACCC Consultation Paper: Proposed variation to NBN Co Special Access Undertaking](#), July 2022, pp. 25-26; Vocus, [Submission in response to ACCC consultation paper: Proposed NBN Special Access Undertaking variation](#), July 2022, p. 8; Aussie Broadband, [Submission in response to proposed variation to the NBN Co Special Access Undertaking](#), 22 July 2022, p. 3.



7.4 Low-income consumers

Ensuring affordability of **nbn** services, particularly for vulnerable customer groups including low-income consumers, remains an important driver of the structure and levels of **nbn** pricing. However, as a wholesaler, **nbn** is not in the best position to identify and target end user customers. Instead, addressing this customer cohort in a targeted manner requires a more holistic, industry-wide approach. Further, **nbn**'s past experience and industry input have shown there are many reasons this cohort is under-connected, with access pricing only one component. Changes to **nbn** wholesale pricing in isolation – even wholesale charges of \$0 – have not driven significant take-up. **nbn** is eager to work with industry stakeholders as part of the Low-Income Forum proposed in the March Variation to work towards targeted, industry-wide solutions and considers that effectively addressing this customer cohort will require active involvement from industry stakeholders, including Not-for-Profit Groups, Consumer Advocacy Groups, Government Agencies, and RSPs. **nbn** proposes that the pricing principles framework described above in section 3.6 .

7.5 Data capped plans

nbn remains concerned that phasing out CVC charging will ultimately lead to data capped retail broadband offers being removed from the market and increase the price of low data users on the **nbn** network, adversely impacting consumers who are budget conscious and/or have low intensity broadband needs. In balancing the need to offer a reasonably priced product for these consumer cohorts and industry needs for long term price certainty, **nbn** is contemplating the introduction of a fixed charge wholesale offer with a pre-set data cap. Such an offer will require design decisions (e.g., pricing, the size of caps and implications of caps being exhausted), feedback on take-up (to determine the financial implications) and changes to both **nbn** and RSP systems to bring such offerings to market. Therefore, **nbn** sees value in using the proposed transition period (to July 2026) to conduct industry consultation, inviting broad stakeholder feedback and input into any product development. Subject to industry feedback and input, **nbn** would look to introduce such an offer prior to CVC charging being fully phased out.



8 Consultation and related processes

As communicated to the Industry by the ACCC on 5 August 2022 the ACCC will host an Industry Forum on the 18th and 19th of August 2022, in Sydney and online. At this forum **nbn** will:

- Discuss the proposed arrangements outlined in this discussion paper as well as any other arrangements that **nbn** may propose to include in its SAU variation that it will lodge with the ACCC later this year;
- Explain why these proposed arrangements are reasonable in the context of **nbn**'s requirement to achieve Government policy of upgrading the networks to improve network quality and customer experience as well as to repay debt to achieve a standalone investment grade credit rating;
- Listen to industry feedback provided at the forum and give all feedback received further consideration when developing its updated SAU variation.

We look forward to engaging with industry on these proposed enhancements, and to working collaboratively to deliver an SAU that strikes an appropriate balance between the needs of end users and all industry stakeholders.

As **nbn** is seeking to update its SAU variation in a timely manner, with the aim of being able to lodge an updated variation in October 2022, we are seeking written responses to this discussion paper and any other matters that are raised at the ACCC's Industry Forum by **Friday, 2 September, 2022**. It is **nbn**'s intention to share all feedback and response submissions with the ACCC unless otherwise requested by respondents. Please send responses to SAUConsultation2022@nbnco.com.au. **nbn** also welcomes direct engagement with stakeholders on any of the issues related to its SAU variation, either before or after that date.

8.1 WBA4 extension

Noting that WBA4 expires on 30 November 2022, in late August **nbn** intends to provide RSPs with an enhanced extension offer in place of the original WBA4 extension offer. This new "WBA4+" Bridging Offer will provide additional benefits and certainty to RSPs during the bridging period between WBA4 expiry and when a varied SAU is implemented via WBA5. **nbn** also intends to commence consultation with industry on WBA5 in late August to ensure that operational matters pertaining to how a varied SAU is implemented are also progressed.

For clarity, **nbn**'s TC-4 Bundles Discount Roadmap continues to apply post WBA4 expiry, and it sets the maximum effective charges and minimum CVC inclusions for up to 24 months in advance, with the current pricing set to apply until to April 2024. **nbn** expects the revised pricing proposed in the SAU variation will become effective by July 2023, which will supersede the current WBA pricing arrangements.



Appendix A Proposed WAPC formulation

nbn's proposed WAPC described in section 3.4 largely adopts the WAPC framework used by the AER and is reflected in the following formulation:

$$NPV_{WACC} \left\{ \sum_t^T \sum_m^M (1 - X_t)(1 + CPI_t)p_{t-1}^m q_t^m \right\} = NPV_{WACC} \left\{ \sum_t^T (ABBRR_t + ICRA_t) \right\}$$

Where:

t is the financial year for which prices are being set;

p_{t-1}^m is the SAU Tariff List price for product m in financial year $t - 1$;

q_t^m is the forecast quantities for product m in financial year t ;

CPI_t is the CPI as at the December Quarter immediately preceding the start of the relevant financial year;

X_t is the X factor for each financial year, determined in accordance with nbn's WAPC revenue requirement;

$ABBRR_t$ is nbn's forecast WAPC revenue requirement (Core Services ABBRR less forecast revenue for core services not covered by WAPC) for financial year t , set through the replacement module process for the regulatory cycle; and

$ICRA_t$ if applicable, is nbn's forecast ICRA recovery amount for financial year t .

Note that the X factors are set at the start of each regulatory cycle as part of the replacement module process and will apply for the entirety of the regulatory cycle. In the transition regulatory cycle where nbn revenue is expected to achieve its Core Services ABBRR for the first time, the X factor will only apply for the years after which nbn is expected to first achieve its Core Services ABBRR, and will remain 0 for all other years in that regulatory cycle (i.e., a CPI cap will apply to the basket for those years).

Under the proposed framework, nbn may set prices each year which are consistent with the following basket price control formula:

$$(1 + CPI_t)(1 - X_t) \geq \frac{\sum p_t^m q_{t-2}^m}{\sum p_{t-1}^m q_{t-2}^m}$$

Where:

p_t^m is the proposed price for product m in financial year t ;

q_{t-2}^m is actual quantities for product m in financial year $t - 2$.