



## Update on the NBN regulatory framework review and requirements under the current SAU

### Introduction

The purpose of this note is to provide an update on the long-term review of the NBN regulatory framework and to set out the more immediate requirements under the current Special Access Undertaking (SAU).

### Review of the NBN regulatory framework

As we have previously advised, the ACCC is currently working with NBN Co and other industry participants to review the long-term regulatory arrangements for wholesale access to the NBN. This review will likely result in a variation to the SAU. As the ACCC is taking a first principles approach to looking at the regulatory framework, it is possible that the new SAU will be significantly different to the current SAU.

The current SAU commenced in 2013 and will operate until 30 June 2040. The SAU will remain in place in its current form while we undertake the broader review. The current SAU has a modular structure with different provisions applying at different times. The current transition point from module 1 to module 2, should our process not result in a new SAU, would occur on 1 July 2023. As we are undertaking a comprehensive review of the framework, it is unclear what that framework will look like from 2023. Further, it is unclear when the new framework and any associated timelines will be put in place. To that end, we need to take steps to prepare for the transition to module 2 as it is set out in the current SAU.

We anticipate that the preparations for module 2 under the current SAU and the broader review of the regulatory framework will run as parallel processes for some time. Until any changes have been included in an SAU variation, we will continue to administer our responsibilities under the existing SAU. We will seek to provide clarity through the process as to how any transition will occur.

### Requirements under the current SAU

The current SAU sets out certain processes that must occur before module 2 comes into effect. These relate to replacement modules, which are a feature of module 2. The replacement modules will contain more detailed terms and conditions and related matters, primarily relating to expenditure forecasts, the cost of capital and the method for rolling forward the regulated asset base (RAB). The replacement modules will operate concurrently with module 2 and apply for 3 to 5 year regulatory cycles. The first replacement module is due to commence at the same time as module 2.

To ensure the first replacement module is in place when module 2 commences, the SAU sets out the process for lodging and assessing a replacement module application. The first step under the SAU is for the ACCC to provide NBN Co with 12 months notice that NBN Co is required to lodge a replacement module application by a certain date. NBN Co must then prepare a replacement module application for assessment by the ACCC. The ACCC would be required to assess the application and make a decision to either accept the replacement module application or make a replacement module determination. In accordance with this

process, the ACCC has provided notice to NBN Co that it must submit a replacement module application by 30 September 2022.

The replacement module application must:

- specify a proposed length of the regulatory cycle. The regulatory cycle must be either 3, 4 or 5 years in duration.
- include a long term revenue constraint methodology (LTRCM) proposal, including expenditure forecasts, a proposed cost of capital and other LTRCM components for the proposed regulatory cycle. Under the current SAU, NBN Co must provide forecasts for 5 financial years even if the specified regulatory cycle is shorter.
- include a RAB roll forward proposal, which includes the method for rolling capital expenditure into the RAB and accounting for depreciation. In broad terms, the primary role of the RAB roll forward proposal is to specify the extent of any ex-post assessment of capital expenditure by the ACCC where actual capital expenditure exceeds the forecast. It would include the detailed process for how the closing RAB will be determined at the end of a regulatory cycle once actual values for capital expenditure and other RAB elements are realised.
- include any other matters NBN Co proposes to form part of the replacement module.

As previously stated, we anticipate that the current review of the regulatory framework may result in significant changes to this process. At a minimum, we expect that any LTRCM proposal submitted will cover both the current SAU technologies (fibre-to-the-premises, fixed wireless and satellite) as well as the multi-technology mix services.

### **Next steps**

We anticipate the review of the current regulatory framework will result in NBN Co lodging an SAU variation. Until an SAU variation is in place, NBN Co must comply with the existing SAU, including the replacement module application process. As such, we have notified NBN Co that it must submit a replacement module application to the ACCC by 30 September 2022. We will continue to liaise with NBN Co throughout the review process and will consider transitional arrangements to any new regulatory framework.