

nbn Special Access Undertaking Variation 2022 – Supporting Submission

Part D: ACCC Roles and Powers

November 2022

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Structure of Submission

This Submission describes the proposed material changes to the SAU and explains why this comprehensive package of regulatory obligations and constraints meets the relevant statutory criteria by which such an SAU variation must be assessed. The Submission also describes the specific commitments proposed in respect of the First Regulatory Cycle (FY24 to FY26). Detailed information can be found in the following chapters:

Executive summary and key narratives	Introduction	Part A chapter 1
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	State of competition	Part A chapter 3
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Pricing and price controls	Pricing structure and levels	Part B chapter 7
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Key inputs to nbn's Regulated Revenue Requirement	Recovery of initial costs	Part E chapter 16
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Statutory assessment	The Variation satisfies the Statutory Criteria	Part G chapter 22
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13 Replacement Module provisions

13.1 Purpose of the existing Replacement Module framework

The modular framework established by the current SAU provides the mechanism by which **nbn** can propose, and the ACCC can assess, forecasts of **nbn**'s expenditures and its required regulatory revenue allowances at regular intervals. Every three to five years, **nbn** is required to make a Replacement Module Application (**RMA**) to the ACCC with its then current forecasts which, if accepted, establishes the key regulatory settings for **nbn** over the following Regulatory Cycle.

Under the current SAU, each Replacement Module would operate as a variation to the SAU and be governed by the process and principles applicable to SAU variations under the CCA. If the ACCC does not accept an RMA by **nbn**, the ACCC must issue an ACCC Replacement Module Determination (**RMD**) addressing the same matters as those required to be included by **nbn** in an RMA.

The Replacement Module provisions in the current SAU¹ set out a process by which **nbn** will seek to incorporate a Replacement Module into the SAU, by way of an application to vary the SAU under section 152CBG of the CCA. An RMA must include a proposed term for the Replacement Module (i.e., a three, four or five-year Regulatory Cycle), an LTRCM proposal and a RAB roll forward proposal.²

The ACCC must assess each RMA, including the specific regulatory settings applying in each Regulatory Cycle, and ultimately accept or reject the RMA under section 152CBG of the CCA, which incorporates the reasonableness criteria in section 152CBD of the CCA.³

If the ACCC does not accept an RMA proposed by **nbn**, the current SAU provides for the ACCC to issue an RMD addressing the same matters as those required to be included by **nbn** in an RMA, and to do so at least 20 Business Days before the end of the then current Regulatory Cycle.⁴ An RMD must be made in accordance with the same SAU rules and LTRCM provisions that apply in respect of RMAs, thus providing regulatory certainty over the SAU period.

Such propose-respond arrangements are common in utility regulation and are reasonable in the context of **nbn**. The approach strikes a balance between a commercially driven investment and expenditure process by **nbn**, and an appropriate regulatory oversight role for the ACCC, by providing the ACCC with sufficient information and approval powers for the effective operation of the LTRCM and RAB roll-forward mechanisms.

The Variation seeks to maintain the propose-respond approach that underpins the existing SAU, but responds to concerns raised by the ACCC in relation to the operation of that process in the existing SAU, and proposes updates to reflect the arrangements that are now proposed to apply from 1 July 2023. These changes are described further in section 13.2 below.

¹ Current SAU, cls 4.4 to 4.8.

² Current SAU, cl 4.5(e).

³ See CCA, s 152CBG(4) which states that section 152CBD applies to the variation in a corresponding way to the way in which it applies to an undertaking (with an exception for a variation of a minor nature to paragraph 152CBD(2)(d)).

⁴ Current SAU, cl 4.8.



13.2 Changes to the Replacement Module provisions in the Variation and role played by the ACCC

nbn has retained a propose-response approach in the Variation, but has made certain changes to that process in response to ACCC concerns and to reflect other proposed changes to the regulatory framework in the SAU. For example, the Variation will change the way in which RMAs are made – rather than being lodged as variations to the SAU under the CCA and assessed by the ACCC under the provisions of the CCA, **nbn** will provide RMAs to the ACCC under the terms of the SAU itself for cycles after the First Regulatory Cycle.

The amended RMA/RMD process involves:

- **nbn** submitting an RMA that includes **nbn**'s Building Block Model Proposal (including the WAPC Revenue Requirement and ABBRR in relation to Core Regulated Services), Entry Level Offers Proposal and a Service Standards Proposal for the proposed Regulatory Cycle; and
- the ACCC making an RMD regarding those same matters.

Changes to the RMA/RMD process provide the ACCC with a number of additional powers including: ex-post review of **nbn**'s capital expenditure; categorisation of Core Regulated and Competitive Services; and the ability to determine Benchmark Service Standards that may reflect **nbn** proposed service standards or alternative service standards. The detail of these additional powers is considered further in chapter 14.

nbn considers that an RMA/RMD process remains appropriate for the SAU framework. The approach strikes an appropriate balance between ensuring long-term regulatory certainty for **nbn** and the industry, and providing the ACCC with sufficient oversight to ensure that the regulatory settings applicable to **nbn** under the SAU are adaptable to changing circumstances.

Currently, the SAU provides that any RMA submitted by **nbn** (and any RMD made by the ACCC) must comply with the rules set out in 'Module 2' of the SAU – which, for example, establishes the relevant form of economic control applying from 1 July 2023 and contains rules for calculating the ABBRR. The current Module 2 applies from 1 July 2023 to 30 June 2040.

The Variation:

- shortens the period of Module 2, so that it only applies until 30 June 2032 (**Subsequent Regulatory Period**); and
- adds a new 'module' to the SAU (Module 3), which sets out limited, high-level rules for RMAs and RMDs for the period 1 July 2032 to 30 June 2040 (**Post-2032 Regulatory Period**), reflecting the general principles regarding **nbn** having a reasonable opportunity to achieve its ABBRR and recoverable ICRA and to achieve and maintain a stand-alone investment grade credit rating.

nbn has amended the existing RMA/RMD provisions in the Variation to reflect the significant changes to the SAU including the transition to a Weighted Average Price Control (**WAPC**), limitations on recovery of the ICRA, and the introduction of Benchmark Service Standards in the SAU.

13.2.1 RMA/RMD process for Subsequent Regulatory Period

The Variation proposes that, during the Subsequent Regulatory Period (i.e., 1 July 2023 to 30 June 2032) **nbn** will be required to submit RMAs for Regulatory Cycles after the First Regulatory Cycle, covering the matters set out in section 13.2.2 below. The Variation provides for the ACCC to then make RMDs which determine those matters for each such Regulatory Cycle. If the ACCC has not issued an RMD by the time specified in the SAU, the matters that



would otherwise have been determined in an RMD will be those set out in the RMA for the relevant Regulatory Cycle. This is to ensure that no regulatory 'gap' arises in such circumstances, and that **nbn** and industry will have certainty about the regulatory arrangements to apply for the relevant Regulatory Cycle, including key inputs into the WAPC.

The proposed settings for the First Regulatory Cycle (from 1 July 2023 to 30 June 2026), including **nbn**'s proposed Entry Level Offers, Benchmark Service Standards and Building Block Model parameters, are set out in Module 4 of the Variation for assessment by the ACCC as part of the Variation itself.

13.2.2 Matters covered under Replacement Modules

An RMA submitted by **nbn** for the second and later Regulatory Cycles in the Subsequent Regulatory Period must incorporate:

1. **Regulatory Cycle duration.** **nbn** must specify a proposed Regulatory Cycle of either three, four or five years in duration (unless fewer than three years remain in the Subsequent Regulatory Period).

This mechanism is intended to provide **nbn** with a degree of flexibility in relation to the term of each Regulatory Cycle so that **nbn** can account for uncertainties (e.g., demand and revenue uncertainty) that may exist at the time the particular RMA is lodged, or to reflect other relevant changes in external circumstances that support a particular length for a Regulatory Cycle. A maximum five-year Regulatory Cycle ensures that the settings applicable to Replacement Modules can be regularly reviewed and provides an ongoing oversight role for the ACCC.⁵

The Variation provides for the First Regulatory Cycle in the Subsequent Regulatory Period to be a three-year Regulatory Cycle. The reasons for this are described further in section 13.3 below.

2. **Building Block Model Proposal.** Under the current SAU, the existing revenue cap is set using the ABBRR in respect of all products and services supplied by **nbn**, and does not apply until the ICRA is extinguished. If the current SAU were to continue on foot, it is unlikely that a binding revenue constraint would be established under the SAU, given the size and likely trajectory of **nbn**'s ICRA.⁶

The Variation proposes changes to the existing Replacement Module provisions to reflect the proposed transition to a 'cost reflective' WAPC for the majority of **nbn**'s services, the proposed categorisation of Core Regulated and Competitive Services, and the proposed constraints relating to the annual drawdown of the ICRA. As part of an RMA, **nbn** will be required to submit key forecast information including the Annual WAPC Revenue Requirement, the Forecast Nominal Core Services ABBRR and Forecast Real Core Services ABBRR.

3. **Entry Level Offers Proposal.** An Entry Level Offers Proposal must state the NBN Offers that are proposed to be the Entry Level Offers for the relevant Regulatory Cycle and which offers are consistent with the criteria in clause 2B.4 of the SAU (as varied).
4. **Service Standards Proposal.** **nbn** must propose the Benchmark Service Standards (standards relating to the quality or service performance of specified products) for the relevant Regulatory Cycle, and a date by which **nbn** proposes to include in its SFAA service standards that are no less favourable than these benchmarks.

⁵ In its 2013 Final Decision on **nbn**'s SAU, the ACCC (at p. 64) recognised that a three to five year period for Regulatory Cycles was reasonable and that the conduct in these provisions would promote the LTIE. Further, such periods are consistent with the length of Part XIC declarations.

⁶ ACCC, *NBN Co Special Access Undertaking – Final Decision*, 13 December 2013, p. 12:

<https://www.accc.gov.au/system/files/ACCC%20Final%20Decision%20on%20the%20Special%20Access%20Undertaking%20lodged%20by%20NBN%20Co%20on%2019%20November%202013.pdf> (Final 2013 Decision).



13.3 Initial three-year Regulatory Cycle

There are two key principles that should inform the ACCC's assessment of **nbn**'s proposal for an initial three-year Regulatory Cycle:

- **Level of uncertainty:** Where there exists a higher level of demand and revenue uncertainty such that forecasts are subject to a higher level of risk, a shorter Regulatory Cycle (i.e., three years) is preferable to mitigate the potential risks of regulatory error.
- **Specific terms and conditions of the Replacement Module:** The ACCC has acknowledged the relationship between the length of a Regulatory Cycle and the specific circumstances facing **nbn** at the time of such Regulatory Cycle. In its 2013 SAU decision, the ACCC mentioned that the ability to set different lengths for each Regulatory Cycle “allows for different incentives to apply to NBN Co depending on the circumstances at the time” and that the “ACCC considers it appropriate to determine these issues at the time, considering NBN Co’s circumstances”.⁷

A three-year term is appropriate for the First Regulatory Cycle (being the initial period in which a WAPC price control, significant changes to the structure and implementation of **nbn**'s pricing, and new ACCC powers and functions will be introduced in the SAU) having regard to the higher level of demand and revenue uncertainty expected over the period FY24 to FY26 and the specific terms and conditions of the Replacement Module. A three-year initial Regulatory Cycle will also align the Replacement Module process with **nbn**'s current IOP, which captures forecast expenditures to FY26.

13.4 Replacement Module Process for the Post-2032 Regulatory Period

The Variation proposes that the RMA/RMD process will continue to apply during the Post-2032 Regulatory Period. However, the requirements for RMAs and RMDs during this period are set at a higher level than those for the Subsequent Regulatory Period to reflect the newly introduced power the ACCC will have at this point to reset the regulatory framework that will apply to **nbn** post-2032.

This is subject to certain key principles, in particular:

1. the terms of, and matters set out in, any RMA or RMD for a Regulatory Cycle within the Post-2032 Regulatory Period must allow **nbn** a reasonable opportunity to earn Revenues in that Regulatory Cycle equal to the sum of the Annual Regulated Revenue Allowance for each Financial Year in that Regulatory Cycle (in terms of net present value); and
2. the Annual Regulated Revenue Allowance for a Financial Year within a Regulatory Cycle must be set to allow **nbn** a reasonable opportunity to achieve and maintain, for the duration of that Regulatory Cycle, a stand-alone investment grade credit rating with a stable outlook from designated established and reputable rating agencies.

Supporting the ACCC's ability to reset key elements of the regulatory framework that will apply from 2032, the SAU provides the ACCC with the ability to issue an ACCC Statement of Approach before **nbn** is required to submit an RMA, setting out the ACCC's proposed approach in relation to the matters that will be covered by the RMA.⁸

⁷ Final 2013 Decision, p. 12.

⁸ Variation, cl 3A.1.3.



14 nbn proposes an expanded role for the ACCC

14.1 Overview

The legislative framework provides for an SAU to confer functions and powers on the ACCC, to be performed and exercised in accordance with the relevant SAU.

The current SAU provides the ACCC with several specific functions and powers. The Variation proposes to confer a broader range of functions and powers on the ACCC, in respect of both the Subsequent Regulatory Period and the Post-2032 Regulatory Period.

The significantly broader set of functions and powers conferred on the ACCC in the Variation mean the ACCC will have greater ability under the SAU to address issues that are unforeseen and to address any concerns that may arise in the future about the SAU arrangements delivering outcomes consistent with the LTIE.

Part XIC provides that an SAU may confer functions and powers on the ACCC, and that the ACCC may perform such functions, and exercise such powers, in accordance with the relevant SAU.⁹ This is “intended to permit special access undertakings to operate flexibly, by ensuring that an undertaking can provide for the ACCC to make decisions on particular matters at a future time”.¹⁰

The current SAU provides the ACCC with several specific functions and powers, including to:

- issue a Replacement Module Determination in respect of a Regulatory Cycle where **nbn**'s RMA is not accepted;
- review and change **nbn**'s Maximum Regulated Prices in a revenue neutral manner; and
- object to the withdrawal of an **nbn** service, and not allow **nbn** to withdraw that service for a period of up to five years.

The current SAU also ensures that the ACCC can:

- change the Maximum Regulated Price under the SAU of a new NBN Offer or Other Charge within 24 months of its introduction;
- change the Maximum Regulated Price under the SAU of an NBN Offer or Other Charge within 24 months of it ceasing to be Zero-Priced.

The Variation introduces a significant number of additional functions and powers for the ACCC in respect of both the Subsequent Regulatory Period and the Post-2032 Regulatory Period, as listed below and described further throughout this chapter.

⁹ CCA, s 152CBA(10A).

¹⁰ Explanatory Memorandum to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 203. See also the Final 2013 Decision, pp. 23, 54.



14.1.1 Subsequent Regulatory Period

Additional ACCC functions and powers during the Subsequent Regulatory Period include:

- to step in where a Pricing Review Event occurs i.e., where **nbn**'s prices are inconsistent with its Statement of Pricing Intent, or where specified TC-4 discount thresholds are exceeded (detailed in section 14.2 below);
- to ensure Prices in a published Tariff List are compliant with the WAPC formula, Individual Price Controls and the TC-4 Price Relativity Restriction (where relevant) (detailed in section 0 below);
- to make decisions in relation to cost pass-through applications (detailed in section 19.5 of Part F of this Submission);
- to undertake ex-post review of capex incurred in a Regulatory Cycle (detailed in section 20.8 of Part F of this Submission);
- to re-categorise existing products or services as Core Regulated or Competitive Services (detailed in section 14.4 below);
- to review and approve **nbn**'s Cost Allocation Manual or to approve a version of it that incorporates the ACCC's reasonable changes (detailed in section 14.5 below);
- to set the Benchmark Service Standards that will apply for each Regulatory Cycle as part of an ACCC RMD, which may be the same or different to the service standards proposed by **nbn** in its RMA (detailed in section 14.6 below);
- to:
 - require **nbn** to provide, for approval, a proposal setting out any changes to **nbn**'s Benchmark Service Standards that are necessary for RSPs to comply with new or amended retail-level regulation; or
 - determine any such amendments where it rejects **nbn**'s proposal (detailed in section 14.7 below);
- to:
 - require **nbn** to provide, for approval, a proposal setting out any changes to **nbn**'s Benchmark Service Standards that are necessary to address systemic issues; or
 - determine any changes to **nbn**'s Benchmark Service Standards necessary to prevent the continuation/recurrence of the systemic issue where it rejects **nbn**'s proposal (detailed in section 14.814.7 below);
- to request information from **nbn** which it considers is reasonably necessary to exercise its functions and powers under the SAU, or to administer or assess compliance with the SAU (detailed in section 14.8 below);
- to consult with third parties on any matters arising in connection with the SAU (detailed in section 14.8 below); and
- to determine Approved Accounting Procedures for establishing and maintaining consolidated and separate accounts for certain products and services, and to direct **nbn** to propose changes to the Approved Accounting Procedures (detailed in section 14.9 below).



14.1.2 Post-2032 Regulatory Period

The Variation provides that the ACCC will have the power to reset **nbn**'s pricing, service standards and product development/withdrawal regulation framework which apply under the SAU from 2032 through the RMA/RMD process, subject to:

- the SAU retaining the existing propose-respond framework of regulation; and
- the terms of, and matters set out in any RMA or RMD for a Regulatory Cycle within the Post-2032 Regulatory Period allowing **nbn** a reasonable opportunity to earn Revenues in that Regulatory Cycle equal to the sum of the Annual Regulated Revenue Allowance for each Financial Year in that Regulatory Cycle (in terms of net present value). The Annual Regulated Revenue Allowance for a Financial Year within a Regulatory Cycle must be set to allow **nbn** a reasonable opportunity to achieve and maintain, for the duration of that Regulatory Cycle, a stand-alone investment grade credit rating with a stable outlook.

When making an RMD for Regulatory Cycles in the Post-2032 Regulatory Period, the ACCC must take into account the matters set out in section 152BCA(1) of the CCA as well as any other matters the ACCC thinks are relevant.

The significant expansion of the ACCC's role from 2032 should provide long-term confidence to RSPs and end-users that the price and non-price regulation to which **nbn** will be subject remains fit for purpose. The Variation achieves this by reducing the term of Module 2 of the SAU from 2040 to 2032 and introducing a new 'Module 3'. This Module 3 introduces a significant change to the regulatory framework governing access to **nbn**'s network by implementing a principles-based approach using the propose-respond model. This gives the ACCC a substantive role, and will allow it to address any concerns that may arise in the future about the outcomes the SAU arrangements deliver for RSPs and end-users. Given that a key purpose of the SAU is to provide **nbn** with long-term regulatory certainty, this is a key concession that **nbn** has made to address the concerns of stakeholders about the ongoing operation of the SAU for up to 17 years from the time the Variation is likely to be accepted.

14.1.3 Change of Control¹¹

In addition to powers provided to the ACCC in the Post-2032 Regulatory Period, the Variation directly addresses ACCC and RSP concerns regarding the regulatory framework that will apply in the event **nbn** is privatised. Under clause 3.2 of the Variation, the SAU will expire earlier than the current expiry date of 30 June 2040 if a Change of Control occurs. Specifically, a Change of Control will occur on the earlier of:

(A) 20 Business Days following the day on which a Change of Control Notice is published on the Department's website; and

(B) The day on which the Commonwealth first ceases to have Control of NBN Co.¹²

This is a significant departure from the current SAU, the terms of which are not subject to **nbn**'s status as a private or public entity. While the economic principles underpinning the SAU (i.e., providing industry with certainty regarding the pricing and service quality available on the network while providing **nbn** the opportunity to recover prudently and efficiently incurred costs) would apply equivalently to a private operator of the network, **nbn** has responded to ACCC concerns that the details of the regulatory framework should be revisited in the event of privatisation.

¹¹ **nbn** notes that the Change of Control provisions in the Variation do not confer a function or power on the ACCC. However, given the relevance of those provisions to the longer-term SAU framework and the ability for **nbn**'s regulatory arrangements to be revisited, they are discussed in this section.

¹² Variation, cl 3.2(a).



14.2 Pricing Review Events

nbn recognises the importance of pricing certainty – which has been a core concern of the ACCC and RSPs throughout the development of the Variation – which has informed the introduction of key commitments in the Variation including the Statement of Pricing Intent, Pricing Roadmap and Tariff List. In conjunction with these commitments, **nbn** has proposed granting the ACCC additional powers where:

- **nbn** includes a Price in its Tariff List that the ACCC reasonably considers is inconsistent with **nbn**'s then current Statement of Pricing Intent; or
- subject to certain exclusions, discounts are applied to more than 50% of AVC TC-4s in a TC-4 Offer Group (on average throughout a Financial Year).¹³

Where either of these Pricing Review Events occurs:

- the ACCC may issue a notice directing **nbn** to specify any actions **nbn** will take (including any changes to the Prices or CVC inclusions in the Tariff List) and the date by which such actions will be taken;
- **nbn** must provide the ACCC a Price Rectification Plan within 40 Business Days of receiving a notice from the ACCC, that sets out the actions **nbn** will take to address the inconsistency or use of discounts; and
- the ACCC may accept or reject the Price Rectification Plan issued by **nbn**. If accepted, **nbn** must implement the changes within the time specified in an accepted Price Rectification Plan. If rejected, the ACCC may specify changes that **nbn** must make to Prices or CVC inclusions in the Tariff List by issuing an alternative rectification plan.

Any alternative rectification action plan issued by the ACCC must:

- set out the date by which **nbn** must make changes to Prices or CVC inclusions in the Tariff List;
- only require **nbn** to make changes to Prices in the Tariff List which are proportionate and related to the Pricing Review Event;
- not detract from the opportunity available to **nbn** to achieve the maximum revenue allowed via the WAPC formula under the Prices in the Tariff List applicable before the rectification plan was implemented; and
- provide **nbn** an opportunity to charge Prices for NBN Offers within that TC-4 Offer Group that are at least equal to the Discount Adjusted Price for the TC-4 Offer Group.

Related to the above pricing review powers, **nbn** is only able to update the Statement of Pricing Intent for a Regulatory Cycle after publication in limited circumstances, including where the update is approved by the ACCC.

The new ACCC price review powers described above are in addition to the material new commitments in the Variation regarding **nbn**'s use of TC-4 discounts (see section 8.4 of Part B of this Submission).

¹³ Variation, cls 2C.4.2 to 2C.4.3.



14.3 Ensuring compliance of Prices in Tariff List

The Variation provides for **nbn** to publish a Tariff List for each Financial Year by 1 May of the preceding Financial Year, where the Prices in that Tariff List must comply with:

- the WAPC formula;
- the Individual Price Controls; and
- the TC-4 Price Relativity Restriction.¹⁴

The Variation also provides that, if the ACCC considers **nbn** has included Prices in such a Tariff List that are not compliant with those requirements, the ACCC may issue a notice to **nbn** requiring **nbn** to demonstrate compliance. **nbn** must then provide the ACCC with a response demonstrating how it has met these requirements and/or set out updated Prices proposed for the Tariff List that meet the requirements for the applicable Financial Year. The ACCC may then determine whether **nbn** has complied with these requirements. If the ACCC determines that **nbn** has not complied with these requirements, **nbn** must update the Tariff List to set out compliant prices. This power and process applies in addition to the ACCC's existing enforcement powers under the CCA.

This power will provide additional certainty to RSPs and the ACCC that **nbn**'s Prices comply with the relevant requirements in the SAU, and that there is a path established under the SAU itself for rectifying any concerns that may arise in this regard.

14.4 Re-categorisation of a service as Core Regulated or Competitive

As described in sections 20.2 and 20.4 of Part E of this Submission, the Variation provides for different treatment of **nbn**'s products and services depending on whether they are categorised as a Core Regulated or Competitive Service. The Variation includes a power for the ACCC to re-categorise a product or service as a Competitive Service or a Core Regulated Service as part of an RMD.

If the ACCC does so, it must also determine the following values in the RMD in a manner which reflects an allocation of building block model costs that accounts for the re-categorisation, and is in accordance with the Cost Allocation Principles and the Cost Allocation Manual:

- the Forecast Nominal Core Services ABBRR for each Financial Year of the relevant Regulatory Cycle;
- the forecast Nominal Core Services RAB Portion at the start of each Financial Year of the relevant Regulatory Cycle; and
- the Real Core Services RAB Portion at the start and end of each Financial Year of the immediately preceding Regulatory Cycle.

An ACCC RMD which re-categorises an existing product or service as a Core Regulated Service or Competitive Service may also determine an updated value of the Real Module 2 Core Services ICRA, measured in Financial Year 2013/14 dollar terms, that accounts for the re-categorisation of the relevant product or service in accordance with the Cost Allocation Principles and the Cost Allocation Manual.¹⁵

¹⁴ These obligations apply from the second year of the Subsequent Regulatory Period. The Variation includes transitional provisions for the first financial year of the Subsequent Regulatory Period (see clauses 2B.2.3(c) and 2B.2.5).

¹⁵ Variation, cl 2G.6.4.



nbn may also propose for a product or service to be re-categorised as a Core Regulated Service or a Competitive Service as part of a RMA. If it does so, it must also propose the values set out above in a manner that accounts for the proposed re-categorisation, in accordance with the Cost Allocation Principles and the Cost Allocation Manual.

14.5 Cost Allocation Manual approval

The Variation requires that **nbn** submit to the ACCC, within 30 days of the Variation being accepted, a proposed cost allocation manual (**Proposed CAM**) which describes the detailed methodology by which **nbn** allocates costs between Core Regulated Services and Competitive Services in accordance with the Cost Allocation Principles.

The Variation provides the ACCC with a number of powers in respect of the CAM, including:

- to approve a Proposed CAM submitted by **nbn** in either the form it is submitted by **nbn**, or a form that incorporates reasonable changes made by the ACCC; and
- to issue a notice to **nbn** directing it to submit a Proposed CAM to the ACCC – the notice must describe the changes to the CAM that the ACCC considers should be included in that Proposed CAM. If the ACCC issues **nbn** with such a notice, **nbn** must provide the ACCC with a Proposed CAM within three months, and the ACCC may then either approve the CAM in the form provided by **nbn** or in a form that incorporates reasonable changes made by the ACCC.¹⁶

To assist the ACCC in assessing, and to enable RSPs to provide more informed feedback on, the Variation, **nbn** has provided the ACCC with a public version of an initial (not yet approved) cost allocation manual as part of the materials in support of the Variation.

14.6 Review mechanism for service standards

nbn is committed to continually improving its service standards over time. It already faces strong commercial incentives to do so and is also subject to regulatory oversight by the ACCC as well as through the Statutory Infrastructure Provider regime.

In response to ACCC and RSP concerns that the SAU should establish a set of minimum service standard commitments and establish a more direct price-quality link, the Variation includes a set of Benchmark Service Standards for the First Regulatory Cycle. The Variation includes a mechanism whereby **nbn** proposes Benchmark Service Standards for each Regulatory Cycle (i.e., three to five years) as part of its RMA. The ACCC may determine Benchmark Service Standards as part of an ACCC RMD, which may be as proposed by **nbn** in its RMA, or may be as otherwise determined by the ACCC.

14.7 Review and change of service standards during a Regulatory Cycle

The Variation includes a new mechanism which allows for Benchmark Service Standards to be reviewed and updated during a regulatory cycle where:

- required for RSPs to comply with new or amended retail-level regulation; or
- a systemic issue has arisen which has a material adverse impact on RSPs' access to a product.

¹⁶ Variation, cl 2G.6.3.



The ACCC will be able to:

- require **nbn** to submit (for approval) a proposal that sets out any changes **nbn** proposes to make to Benchmark Service Standards to address the retail-level regulation or systemic issue; and
- if the ACCC rejects **nbn**'s proposal, determine necessary amendments to the Benchmark Service Standards.

14.8 Provision of information and consultation

nbn recognises the importance of the ACCC having all relevant information so that it may effectively exercise its functions and powers under the SAU, and to administer and assess **nbn**'s compliance with the SAU.

Notwithstanding the existing broad powers that the ACCC has to obtain information, including from **nbn**, the Variation specifies that under the SAU:

- the ACCC may request (and **nbn** will provide) information which the ACCC considers reasonably necessary for it to exercise its functions and powers under the SAU, or to administer and assess **nbn**'s compliance with the SAU;¹⁷ and
- the ACCC may consult with interested parties on matters arising in connection with the SAU, including on matters arising in connection with the exercise of its functions and powers under the SAU (such as the ACCC's power to conduct ex-post reviews of **nbn**'s capital expenditures). The ACCC may conduct the consultation in such a manner as it considers appropriate, provided that:
 - it gives **nbn** reasonable notice of, and a reasonable opportunity to participate in, the consultation; and
 - the ACCC does not disclose **nbn**'s confidential information other than in accordance with the ACCC's confidentiality procedures, as required or permitted by law, or with **nbn**'s prior written consent.¹⁸

These powers will not limit the ACCC's information gathering powers under the CCA or other legislative or statutory instruments.

14.9 Approval of accounting separation procedures

nbn must consult with the ACCC in development of proposed accounting separation procedures that establish and maintain accounts for key products and services supplied under the SAU.¹⁹ The ACCC may then determine Approved Accounting Procedures that reflect the procedures proposed by **nbn**, or which incorporate reasonable changes.²⁰ The ACCC has associated compliance powers related to **nbn** establishing and maintaining consolidated and separate accounts, and directing **nbn** to propose changes to the Approved Accounting Procedures for approval or amendment by the ACCC.²¹

¹⁷ Variation, cl 6.3.

¹⁸ Variation, cls 6.1 and 6.4.

¹⁹ Variation, cl 21.6.1 sets out the products and services for which Approved Accounting Procedures will apply.

²⁰ Variation, cl 21.6.2.

²¹ Variation, cl 21.6.5.



15 Price review mechanism

nbn proposes to remove the price review mechanism defined in Schedule 2E of the current SAU and considers that the additional powers conferred on the ACCC under the Variation are reasonable, including promoting the LTIE.

nbn proposes to remove the price review mechanism defined in Schedule 2E of the current SAU. This mechanism (which is also included in Schedule 1G.3 of the current SAU) was appropriate in the context of an SAU that provided **nbn** with a greater degree of pricing flexibility but has been superseded by the new pricing arrangements proposed in the Variation.

Under the Variation, the current Schedule 2E mechanism is unlikely to be used given the additional powers conferred on the ACCC to intervene in **nbn**'s pricing (as described in chapter 14 and chapter 7 of Part B of this Submission), the transition to cost-based pricing, and the additional transparency committed to in the form of Pricing Principles, Statements of Pricing Intent, Tariff Lists and Pricing Roadmaps.

In addition, the price review mechanism is unnecessary in the context of the Variation, given the proposed introduction of a WAPC which controls average prices while allowing individual prices to change each year (as opposed to the current SAU which provides for individual Maximum Regulated Prices which each depend in part on the corresponding Maximum Regulated Price from the year before).

nbn notes that the ACCC in its 2013 final decision on the SAU lodged by **nbn** on 19 November 2013 expressed the view that the price review mechanism in Schedules 1G and 2E of the current SAU allows Maximum Regulated Prices to be adjusted appropriately, including where pricing flexibility is needed to respond to unforeseen circumstances or where existing prices are not encouraging efficient use of, and investment in, **nbn**'s network.²² The ACCC also considered that the criteria for the price review mechanism promoted efficient use of, and investment in, infrastructure, promoted **nbn**'s legitimate business interest and also provided certainty to access seekers in respect of the mechanism for price changes over time.²³

nbn considers the pricing commitments set out in chapter 8 of Part B of this Submission to be reasonable, including promoting the LTIE, and address the outcomes of the working groups convened by the ACCC during 2021. As a package, they render unnecessary the ongoing inclusion of the price review mechanism of the current SAU. In considering **nbn**'s removal of Schedule 2E, it is essential that this is done so in the context of the Variation as a whole, including the significantly expanded oversight the ACCC will have in relation to **nbn**'s pricing, as described in chapter 14.

²² Final 2013 Decision, p. 89.

²³ Final 2013 Decision, pp. 89–90.