

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Consultation Paper

**Internet Activity –
Proposed Record Keeping
Rules**

Public Version

September 2018

EXECUTIVE SUMMARY

1. Optus does not support the introduction of the new Internet Activity Record Keeping Rules (the proposed RKR) in its current form. Optus considers that the proposed RKR unnecessarily expands the scope of the previous Internet Activity Survey previously conducted by the Australian Bureau of Statistics (ABS).
2. Optus agrees that the previous ABS Internet Activity Survey provided some valuable insights on the current take up and usage of internet and broadband services. The ACCC also acknowledges that after publication of the final ABS IAS for the June 2018 period, there is currently no suitable replacement sources of data.
3. However, the ACCC's proposed RKR does not merely replace the ABS IAS, it represents a completely new data requirement, most of which is not routinely collected by CSPs. Moreover, the data that is collected by CSPs is already reported to the ACCC through other RKR and information requests. The result is increased compliance costs that do not appear to be justified. For example,
 - (a) Input data is required to be provided at a level of granularity that does not currently exist in some cases. The ACCC has not established both *why* it is required and *what* benefit the new reporting fields will provide.
 - (b) Information provided must be submitted in accordance with the reporting requirements and record-keeping declarations. This significantly increases the regulatory compliance cost to the reporting carriers.
4. Optus also questions the overlap of some of the reporting inputs in the proposed RKR. New RKR will always introduce regulatory burden on carriers. In many cases, carriers and carriage service providers already publicly disclose subscriber numbers in their financial reports to the markets. NBN Co also already similarly provides NBN related information under the NBN Services in Operation RKR.
5. In summary, the proposed RKR should:
 - (a) Not request SIO data that is available through other RKR or available publicly. The ACCC could request the SIO data from those CSPs that do not already supply such information. Where ACCC collects SIO data from CSPs, there would no need to request additional wholesale SIO data.
 - (b) Not request NBN data. NBN inputs are already supplied to the ACCC by NBN Co, and the new RKR should not replicate information that can be derived from the existing NBN SIO RKR.
 - (c) Replicate the data downloaded information previously collected in the ABS IAS. That is, aggregated fixed line and aggregate mobile data downloaded.
 - (d) Not require information on the specific features of plans. Retail plans, including price and plan features, are publicly available on all carrier and carriage service provider websites. Further, the utility of collecting information on 'entertainment products' is not clear and has not been explained.

PURPOSE OF THE PROPOSED INTERNET ACTIVITY RKR

6. Under section 151BU of the CCA the ACCC can issue record keeping and reporting rules requiring a carrier or carriage service provider to keep and retain records and provide reports to the ACCC. The records must contain information relevant to the ACCC's statutory functions.
7. For this proposed RKR, the ACCC specifically refers to this data being collected to meet its obligations under subsection 151CL(1) and paragraph 151CM(1)(a) of the CCA. It should also be acknowledged that a separate RKR already exists for the collection of data to meet its obligations under paragraph 151CM(1)(a) of the CCA. This already applies to a subset of the specified carriers required to report under this proposed RKR.
8. Furthermore, the proposed RKR requires the input data to be provided at a level of granularity that does not currently exist. It is unclear to what extent the ACCC has engaged with specified carriers in understanding to what extent this data is even available, or whether it is even possible to be easily extracted on a bi-annual basis.
9. Moreover, it is unclear how carriers can make a declaration as required under Schedule E – requiring attestation that the data is consistent with the internal reporting procedures of the company – when the RKR requests data that is not part of any internal reporting.
10. The ACCC has highlighted that data from the current ABS IAS is widely used by industry, government and other stakeholders, and that there are currently no suitable replacement sources of data. Optus does not disagree with the *replication* of the ABS data; however, the proposed RKR is a new requirement.
11. The imposition of new RKR's are not without cost and any changes must consider the additional regulatory burden forced on specified carriers.

Imposition of new RKR's should not impose additional regulatory burden

12. Optus submits that the regulatory burden arises because the proposed RKR unnecessarily expands the input requirements and costs of compliance associated with trying to formalise a replacement source of data for the now discontinued ABS IAS.
13. In particular,
 - (a) Cost of compliance is significantly increased for specified carriers. This is also exacerbated where inputs are required to be granularly reported in a format that is not currently captured.
 - (b) There is no established objective provided for the information being sought. For example, the proposed outputs set out on page 5 of the Consultation Paper can be achieved without the granularity of the data inputs currently proposed.
 - (c) Various carriers are already subject to RKR obligations, and care must be given to ensure there is no overlap in reporting obligations to reporting entities.
14. The introduction of new RKR's will introduce additional regulatory costs to business. The cost of compliance, including both indirect and direct costs, must therefore be commensurate with the regulatory outputs that the RKR is intended to provide.
15. A key difference between the ABS IAS and the proposed RKR is the requirement for carriers to provide a Record-Keeping Declaration. This adds an unnecessarily layer of internal governance to the data collection process, given the overlap in some of the data

inputs being sought, as well as the expansion in reporting granularity the ACCC now seeks to impose.

MATTERS FOR CONSIDERATION

16. Optus submits that should the RKR be issued, the inputs required should not be unnecessarily expanded to require specified carriers to report at a level of granularity that does not currently exist.
17. There is insufficient information provided for this proposed RKR that would warrant an expansion of the input data compared to the previous ABS IAS.
18. First, the reduced scope of respondents required to comply with the new reporting obligation means there will be RSPs not captured within the population frame, with new entrants not required to provide information under the proposed Rules even as they gain sufficient market share.
19. Second, there is overlapping collection of data through various RKR instruments, which already provide the ACCC with sufficient information to monitor how retail competition develops in the Australian telecommunications market. In many cases, subscriber numbers are also already publicly disclosed in financial reports to the market.
20. The following sets out Optus' views on the content and our proposed amendments to the data input to be collected in the proposed RKR. Assuming these proposed amendments are accepted, then bi-annual collection of this data may be warranted.

Content of the proposed RKR should be simplified

21. Optus submits that the content of the proposed RKR be further simplified. At the minimum, it should only require information that allow for the continuation of monitoring trends in internet activity in Australia namely:
 - (a) The volume of data downloaded via either a fixed broadband, or wireless broadband technology.
22. Importantly, we note that SIO information is available through other RKRs, or direct from market sources. Where smaller providers are not covered by existing RKRs for SIO information, the ACCC should impose an additional SIO RKR on the smaller CSPs. A combination of the two outputs will provide sufficient information to derive the retail market shares for fixed, mobile and wireless broadband services; and an indication of broadband usage by overall access type.
23. The requirement to provide this information on a disaggregated basis is unlikely to provide any additional insights that is commensurate with the regulatory burden required to collate and provide this data. Notably, new internal processes may need to be established to provide the input data as proposed. It is also unclear how this additional information will provide any additional insights on the development of competition compared to data already collected through the other RKR obligations that already exist.

NBN fixed broadband services should not be disaggregated

24. Both NBN and non-NBN services information form part of the retail fixed broadband services market and should be reported on a similar basis. This will ensure that any trend analysis and monitoring of competition in the market is not unintentionally distorted due to separate reporting of data for services offered in the same downstream market.

25. Optus does not support the collection of NBN data from non-NBN Co CSPs. Network data should be collected from the network provider, not derived by their downstream customers. If the ACCC wants access to data downloaded over the NBN it should request NBN Co to provide it.
26. Optus submits that the provision of retail NBN fixed broadband service information should not need to be disaggregated by speed tiers. There is no value add from providing this information, particularly given that NBN Co is already required to provide similar information in its quarterly NBN Services in Operation RKR.

NBN volume data requirements

27. The proposed RKR requires CSPs to report on total data downloaded over the NBN split by speed tiers. **[CiC]** In order for Optus to be able to comply with the proposed RKR, we would require NBN Co to supply the data to Optus. It is not clear that NBN Co is willing to do so.
28. NBN related information should continue to be provided by NBN Co. It is not clear to why (or how) a non-NBN company can report on the volume of traffic over NBN Co's network. NBN Co reports publicly on total volume of traffic downloading. It can clearly report this data, and as such, the new RKR should obtain any NBN-related data input from NBN Co.
29. Optus also questions the relevance of reporting service information or usage data by speed tiers for NBN services, particularly given that the previous ABS IAS did not require this distinction by access technology.
30. Optus therefore considers the proposed RKR be amended to remove the requirement to provide NBN service data on a disaggregated basis (by speed tiers).

NBN SIO data requirements

31. Under the NBN SIO RKR, NBN Co already provides the total number of NBN SIOs for the Reference Date by both access technology (eg. FTTP, FTTN, FTTB, HFC, Fixed Wireless, and Satellite), as well as speed tiers.
32. This information is also publicly disclosed on a quarterly basis at an individual RSP level where the RSP holds more than 1% market share for each of the relevant NBN access technology. The ACCC also discloses market share based on speed tiers by RSP in its annual communications report.¹
33. The ACCC's Division 12 RKR also already requires specified carriers to provide Internet services information in the form of total number of SIOs by access technology. For example, Schedule D in the Division 12 RKR requires service information:
 - (a) DSL broadband Internet services;
 - (b) Wireless broadband Internet services;
 - (c) Cable broadband Internet services;
 - (d) NBN fibre broadband Internet service; and

¹ See for example: Table 2.3 in ACCC, 2018, Competition and price changes in telecommunications services in Australia 2016–17, p.15

(e) NBN fixed wireless broadband Internet services.

34. Optus acknowledged that not all CSPs are covered by the Division 12 RKR. However, for those CSPs subject to the Division 12 RKR, no further SIO obligation should apply.

Total Data Volume for the Reporting Period should not be disaggregated

35. Optus submits that the provision of total Data Volume for fixed, mobile and wireless broadband services should be provided at the aggregated level. This is in line with the previous ABS IAS methodology, which only required ISPs to report in aggregate:

(a) Fixed line includes DSL, cable, fibre and other fixed line broadband

(b) Wireless includes fixed wireless, mobile wireless via a datacard, dongle, USB modem or tablet SIM card and other wireless broadband.

(c) Mobile handsets include revenue generating downloads, and not monthly data allowances, or downloads that don't contribute to data download allowances.

36. Optus considers that the proposed RKR should not require a change to this approach. Optus has previously advised the ACCC that the ABS IAS could be improved by having just one distinction; namely, between fixed line and wireless.

37. Optus does not support the introduction of new requirements to report on data download volumes that were not part of the existing ABS IAS.

38. **[CiC]**

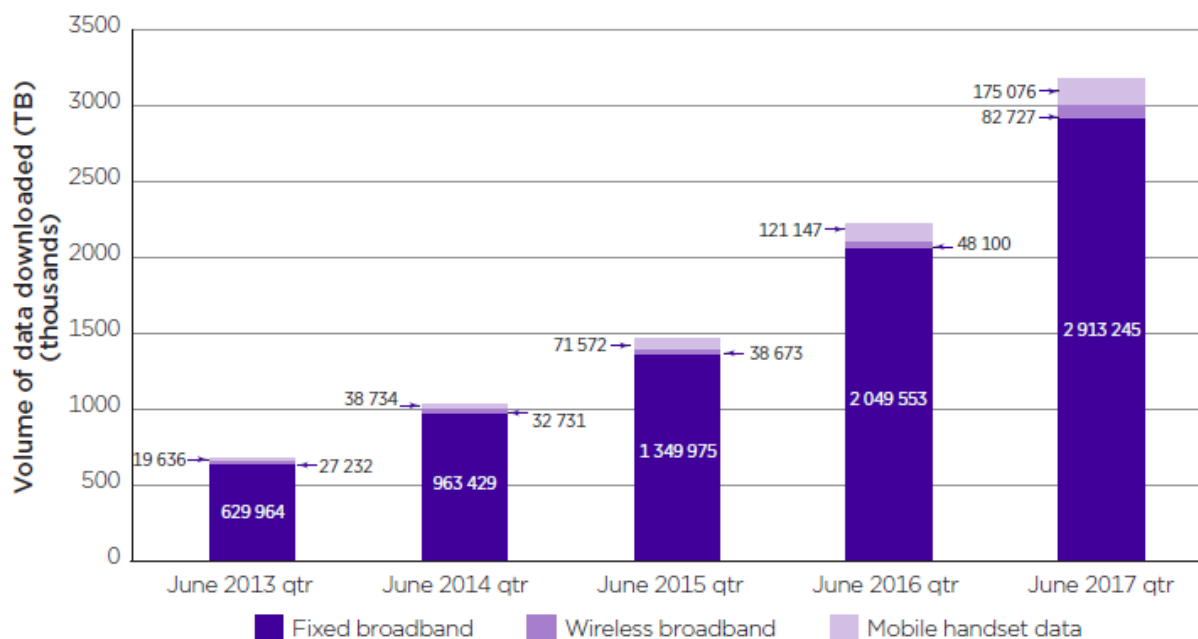
39. Second, the information on total Data Volume is indicative only, and is only useful in provide a trend analysis of data usage over sequential Reference Periods. The Explanatory Notes accompanying the ABS IAS reports clearly acknowledge:

*“The statistics on volume of data downloaded should only be considered as an indicative measure of internet activity during the reference period and therefore should be used with caution. **The ability of ISPs to report volumes of data downloaded is variable.**”* [emphasis added]

40. Figure 1 provides a common example of how the volume of data downloaded is commonly used. It clearly demonstrates a trend of growing demand for data, however as the methodology implies this is only indicative of data usage in the reference period.

Figure 1 Volume of data downloaded by access technology

Figure 2.40: Volume of data downloaded by access technology



Source: ABS, *Internet Activity Australia* (8153.0).

Source: ACCC

41. Optus therefore considers the proposed RKR be amended to remove the requirement to provide mobile service data on a disaggregated basis (by both a retail/wholesale and prepaid/postpaid split). This information could be provided at an aggregate level as a single line item for mobile handset data usage and a single line item for wireless broadband data usage, in line with the previous ABS IAS methodology.

Information on retail plan features is already publicly available

42. The proposed RKR seeks SIO data broken down into “no data limit” and “entertainment” products. Optus does not support this requirement.
43. First, there is already a requirement for all services providers to publish (and make publicly available) a copy of all retail plans, including price and plan features on their public websites. This includes in the form of both Standard Form of Agreements (SFOAs) and Consumer Information Statements (CIS) documents.
44. Optus therefore questions the need for reporting on the number of retail SIOs that have:
 - (a) No data limit plans; and
 - (b) Entertainment products.
45. In particular, these specific plan features are offered in most retail offers in the market today. The need to separately report on this appears redundant. For example, all new Optus fixed retail plans would be considered as ‘no data limit plans’ and in the majority of cases would also an ‘entertainment product’ within the bundle.
46. Second, it is not clear what benefit arises from this data. The consultation paper contains no explanation as to how this information is to be used, or how it would assist the ACCC

achieve its obligations. Where there are no clear benefits to the collection of data, it may be difficult to demonstrate that the benefits outweigh the compliance costs imposed.

47. Third, the definition of 'entertainment product' in the RKR does not appear overly functional. It appears, for example, that the trigger for inclusion rests on 'free of charge & unmetered', or that third party content is provided for a 'fee'. Would this mean, for example, that Facebook, which is commonly unmetered, is included as content? Similarly, how would Netflix be measured, which can be offered unmetered but which requires a third party subscription? It is not clear the requested data would assist the ACCC to understand the OTT content market. **[CiC]** We do not understand the utility of such limited data.
48. Optus therefore considers the proposed RKR be amended to remove the requirement to provide service information on specific plan features.

Two month collection timeframe is insufficient

49. Optus submits that the two month period for the collection, review and sign off of the data is not sufficient. This is particularly the case given the RKR as proposed. As noted above, the splits required by the ACCC cannot be collected by Optus, and for the data that can be collected, it requires manual collation and analysis.
50. Importantly, the process to obtain CFO sign-off as required under the RKR process is not a quick process. For example, CFO sign-off for the Division 12 RKR typically takes at least two months. We would expect that the proposed Internet Activity RKR would require more time due to the need to collate manually from several source systems.
51. Finally, we question whether sign-off is possible given the requirement to attest that the reports "are consistent with the internal reporting procedures of Optus. For Division 12, for example, Optus reconciles the data back to the public financial reports. Such reconciliation, however, is not possible for the proposed data given that the proposed RKR is requesting data that is not currently collected nor reported internally or externally.