



Draft Record Keeping Rule – NBN service quality and network performance

Consultation paper

December 2023

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

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ACCC 12/23

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Executive summary

The Australian Competition and Consumer Commission (ACCC) is seeking comment on a proposed Record Keeping Rule (RKR) for NBN Co relating to its service quality and network performance. An RKR will require NBN Co to retain certain information and provide information to the ACCC to assist us in our monitoring, analysis, and reporting functions.

As part of the RKR development process, in December 2022 the ACCC released a consultation paper outlining several aspects of service quality and network performance, and related service level metrics and data proposed for collection through an RKR.¹ The broad service quality aspects included connections, faults and dropouts, appointments, network outages and speed performance, rebates due to not meeting service levels, and corrective action taken by NBN Co.

Submissions in response to the consultation paper supported the ACCC implementing an RKR. We then conducted a series of meetings with NBN Co staff to discuss key aspects of its service quality and network performance (and the related metrics / data) proposed for inclusion in an RKR.

We have now developed a draft service quality RKR for public consultation. This paper sets out the proposed metrics and data collection under each aspect of service quality and network performance as listed in the accompanying draft RKR.

Following submissions in response to the draft RKR, the ACCC intends to make a decision on a final RKR for NBN Co in March 2024.

The draft RKR is available on the ACCC's website [here](#). We are seeking written submissions from stakeholders by **30 January 2024**.

¹ Record Keeping Rule – NBN service performance Consultation paper December 2022: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks/consultation-paper>.

1. Introduction

1.1. Background

The Australian Competition and Consumer Commission (ACCC) is seeking comment on a proposed Record Keeping Rule (RKR) for NBN Co relating to its service quality and network performance. An RKR will require NBN Co to retain certain information and provide information to the ACCC to assist us in our monitoring, analysis, and reporting functions.

In December 2022, the ACCC released a consultation paper outlining several aspects of service quality and network performance, and related service level metrics and data proposed for collection through an RKR.² This included data on connections, faults and dropouts, appointments, network outages and speed performance, rebates due to not meeting service levels, and corrective action taken by NBN Co.

The ACCC received six submissions.³ Submissions supported the ACCC implementing an RKR to increase monitoring and transparency relating to NBN Co's service quality and network performance. Submissions also supported collecting data across the broad areas of service quality set out in the consultation paper. There were differing views regarding the levels of disaggregation for some service quality metrics.

NBN Co was broadly supportive of an RKR as part of a robust and comprehensive service quality and monitoring framework. However, it also highlighted initial concerns with the proposed collection of some aspects of service quality data. NBN Co also questioned the net benefit of some of the proposals given potential system changes, and costs, associated with data collection and reporting – particularly those related to its network performance.

The ACCC considered the issues raised in submissions and conducted a series of meetings with NBN Co in 2023 to work through each aspect of service quality and network performance (and the related metrics / data) identified in our consultation paper. These discussions resulted in some refinements in the proposed metrics and associated data to be reported through an RKR.

This paper sets out the proposed metrics and data collection under each aspect of service quality and network performance as listed in the accompanying draft RKR.

The development of a proposed service quality RKR builds on a previous ACCC inquiry into NBN Co's wholesale service standards. The ACCC published its final report to the inquiry in November 2020.⁴ The inquiry found that improvements in NBN Co's reporting to retail service providers (RSPs) would assist them to better manage end-user expectations. The inquiry also found that improved reporting on service level metrics would provide an incentive for NBN Co to improve its performance and result in better end-user outcomes over time.⁵

² Record Keeping Rule – NBN service performance Consultation paper December 2022: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks/consultation-paper>.

³ Submissions to the ACCC consultation paper can be found at: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks/submissions>.

⁴ The ACCC Inquiries into NBN access pricing and wholesale service standards Final report (November 2020) is at: <https://www.accc.gov.au/system/files/Inquiries%20into%20NBN%20access%20pricing%20and%20wholesale%20service%20standards%20-%20Final%20report.pdf>.

⁵ The ACCC Inquiries into NBN access pricing and wholesale service standards Final report pp.41 and 44.

1.2. Consultation process

The ACCC is conducting public consultation and seeking submissions from interested parties on the draft RKR for NBN Co including the specific questions raised in this consultation paper.

We consider that, for the consultation process to be effective, it is necessary for the process to be as transparent as possible. This is to enable effective participation by all interested parties. To foster an informed and consultative process, all submissions will be considered as public submissions and posted on the ACCC's website. We will assess any confidentiality claims on a case-by-case basis and in doing so will consider whether we are required to publish information having regard to our statutory duties and functions in each instance and in accordance with section 155AAA of the Competition and Consumer Act 2010 (Cth) (CCA). The ACCC's approach in this consultation to assessing any confidentiality claims and disclosure of information is set out in Appendix A. The ACCC prefers to receive submissions in electronic form, in either PDF or Microsoft Word format which allows the submission text to be searched.

Submissions should be provided by **30 January 2024** to ServiceLevelsRKR@accc.gov.au.

1.3. Next steps

The ACCC will consider submissions to the consultation paper and draft RKR and, subject to consultation outcomes, the ACCC intends to make a decision on its final RKR for NBN Co in March 2024.

As foreshadowed in the ACCC's December 2022 consultation paper, we intend to develop a service performance RKR for large superfast broadband access service (SBAS) providers after the intended issue of the final RKR for NBN Co. The RKR for SBAS providers is likely to cover similar metrics to the proposed RKR for NBN Co. We will consult with SBAS providers on these matters in 2024.

2. Record Keeping Rule for NBN service levels

2.1. Rationale and scope

We consider the development of an RKR for NBN Co is timely given NBN Co has completed the initial build of its network. The focus of NBN Co is now on the efficient operation, maintenance, and development of the network, which includes upgrading parts of its network. Another key area of focus for NBN Co is to meet the service quality and performance levels expected by access seekers and end-users.

An RKR will assist the ACCC to monitor and undertake its regulatory functions in the broadband services market which provides an essential service for end-users. In addition, an RKR will enable future benchmarking of service performance across networks and the identification of systemic issues regarding service quality.

Information collected through an RKR will also complement implementation of service quality monitoring and transparency measures under NBN Co's Special Access Undertaking (SAU). In October 2023, the ACCC accepted NBN Co's proposed variation to its SAU.⁶ The revised SAU commits NBN Co to report on its service quality performance to RSPs, as well as provide an expanded range of operational reports during the first regulatory cycle (until 30 June 2026).⁷ The revised SAU also commits NBN Co to report publicly on the outcomes of its annual service improvement plan and performance review in the first regulatory cycle, which are measures relating to NBN Co's commitments to improved service quality.⁸

During the SAU variation process, stakeholders continued to support the implementation of a reporting framework that provides transparency of service quality that RSPs and consumers experience when using the NBN.⁹ The development of a proposed RKR for NBN Co supports this objective.

An RKR will assist us to monitor NBN Co's performance in key service quality areas such as NBN Co's responsiveness in meeting connection and fault rectification requests, its timeliness in keeping appointments, and notification timeframes when undertaking planned network outages. It will also assist the ACCC in monitoring the quality and performance of NBN Co's network with a focus on network speeds and stability. We consider the proposed data collection relating to NBN Co's progress on its network upgrades will also provide increased transparency on initiatives which are designed to improve service quality for end-users.

The draft RKR developed focuses on NBN Co's service quality and network performance in the context of its interactions with retailers, and ultimately service quality levels experienced

⁶ On 17 October 2023 the ACCC released its final decision to accept NBN Co's proposed variation to its SAU: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-sau-variation-august-2023/final-decision>.

⁷ NBN Co, August 2023 SAU variation Module 4, Attachment I, clause 24: <https://www.accc.gov.au/system/files/NBN%20Co%20-%20SAU%20Variation%20%28clean%29%20-%2014%20August%202023.pdf>.

⁸ NBN Co, August 2023 SAU variation Module 4, Schedule 4A.4: <https://www.accc.gov.au/system/files/NBN%20Co%20-%20SAU%20Variation%20%28clean%29%20-%2014%20August%202023.pdf>.

⁹ See references to stakeholder submissions in the ACCC's final decision to accept NBN Co's proposed variation to its SAU: <https://www.accc.gov.au/system/files/ACCC%20Final%20decision%20-%2017%20October%202023.pdf> p.78.

by end-users. However, in developing the draft RKR, we acknowledge that other factors such as the quality of a retailer's network and its direct interactions with customers (i.e., end-users) impact on service levels and the quality of service experienced by customers.

2.2. Regulatory framework

The ACCC has the power to collect information from industry to undertake its telecommunications regulatory functions under the *Competition and Consumer Act 2010* (CCA).

Section 151BU of the CCA provides that the ACCC may, by written instrument, make rules for and in relation to requiring one or more specified carriers or carriage service providers to keep and retain records (i.e., an RKR). An RKR may also require the preparation of reports consisting of information contained in those records and the provision of those reports to the ACCC.

Without limiting the ACCC's power under subsection 151BU(1)¹⁰ an RKR may:

- specify the manner and form in which the records are to be kept¹¹
- specify the manner and form in which reports are to be prepared¹²
- provide for the preparation of reports as and when required by the ACCC; or the preparation of periodic reports relating to such regular intervals as are specified in the RKR.¹³

The ACCC must not make an RKR so as to require the keeping or retention of records unless the records contain, or will contain, information relevant to the operation of certain parts of the CCA or certain other telecommunications-related legislation, including the operation of Parts XIB and XIC of the CCA.

Under Part XIB of the CCA, the ACCC is responsible for enforcing the telecommunications specific anti-competitive conduct provisions as well as providing the Minister with annual reports including a report on competitive safeguards within the telecommunications industry.

We are proposing to make an RKR requiring NBN Co, a carrier, to keep records and provide reports of information to the ACCC periodically. The information and data collected under the proposed RKR would be relevant to the ACCC's administration of a range of its regulatory functions and responsibilities under Part XIC of the CCA. The object of Part XIC of the CCA is to promote the long-term interests of end-users which, amongst other things, includes promoting competition and encouraging the economically efficient use of, and investment in, infrastructure supplying telecommunications services.

The ACCC has several statutory functions under Part XIC of the CCA, including conducting inquiries for access determinations (containing price and non-price terms of access) for declared services (Section 152BC of the CCA).

Disclosure of reports given to the ACCC

If the ACCC is satisfied that disclosure of a report or series of periodic reports given to it in accordance with an RKR, or particular aspects of a report(s), would be likely to:

¹⁰ Subsection 151BU(2D) of the CCA.

¹¹ Subsection 151BU(2) of the CCA.

¹² Subsection 151BU(2A) of the CCA.

¹³ Subsection 151BU(2B) of the CCA.

- promote competition in markets for listed carriage services, or
- facilitate the operation of certain parts of the CCA or certain other telecommunications-related legislation, including the operation of Parts XIB and XIC of the CCA,

the ACCC may give written notice to the relevant carrier or carriage service provider that it intends to make copies of the report(s) or extracts available to the public; or direct that the carrier or carriage service provider make those copies available to the public.¹⁴

In deciding whether to give a disclosure notice or direction, the ACCC must have regard to:

- the legitimate commercial interests of the carrier or carriage service provider concerned, and
- such other matters as the ACCC considers relevant.

The ACCC must not give a disclosure notice or direction unless it has: first provided the relevant carrier or carriage service provider with a draft of the notice or direction (as relevant); and then invited and considered any submissions received.

¹⁴ Sections 151BUA, 151BUB and 151BUC of the CCA.

3. Issues for consultation

To assist with the development of the proposed RKR for NBN Co, the ACCC is seeking views from industry participants, stakeholders, and other interested parties on the proposed scope and content of the RKR.

We are also seeking feedback from stakeholders in response to the questions in section 4 of this paper and any other relevant issues.

3.1. Record Keeping Rule scope and content

This section provides an outline of the service level metrics, and data to be collected through the proposed RKR.

In refining the data proposed to be collected, we have focused on those areas where NBN Co's performance is most likely to impact on RSP's ability to meet end-user needs/expectations and to assist the ACCC in identifying systemic issues of consumer detriment.

Also, in considering the proposed records NBN Co should keep and the proposed reports NBN Co should prepare and provide to the ACCC, we have had regard to:

- NBN Co's agreed service levels under its new Wholesale Broadband Agreement (WBA5).
- Submissions to our December 2022 consultation paper including submissions commenting on appropriate levels of disaggregation.
- Issues raised during the ACCC's meetings with NBN Co including the clarification of their processes and activities and potential levels of disaggregation proposed for record keeping and reporting under an RKR.

The information below should be considered in association with the draft RKR that is published alongside this consultation paper. Our December 2022 consultation paper provides additional background and context. We welcome views on any aspect of the draft RKR. We have also included specific questions at Section 4 of this consultation paper.

3.1.1. Connections and transfers

Connection and transfer processes are vital to ensuring end-users can connect to broadband services in a timely fashion. An RKR covering these aspects provides increased reporting and transparency regarding service connection and transfer volumes and how long these processes take to complete. The ACCC proposes to collect information on NBN Co's performance regarding standard connections, connections for Priority Assistance customers (those diagnosed with certain life-threatening medical conditions) and accelerated connections.

We propose to collect connection information disaggregated by geographic areas, connection timeframes and access network types.

We note NBN Co's connection service level timeframes are based on the access network type and the extent of infrastructure readiness prior to connection requests from RSPs. NBN Co's various 'Service Classes' take account of the relevant access network types and the

state of infrastructure readiness for premises in respect of connections. We propose information be collected by these Service Classes.

We propose collecting information on the number of connections subject to certain 'Stop-the-Clock' events. These events can cause connection delays which are outside of NBN Co's control e.g., NBN Co awaiting further information from RSPs/end-users to progress connections, force majeure events and property access issues.

Connections, particularly in new developments, may require technician attendance for relevant infrastructure installation activities prior to connection. Data is proposed to be collected on the extent to which these connections are completed without the service experiencing faults shortly after connection. For those experiencing faults, we propose to request data on the rectification timeframes for these faults disaggregated by geographic areas, access type and time taken rectify faults.

The draft RKR also proposes to require data on the time to complete transfers of services from one RSP to another disaggregated by geographic areas, access type, time taken to transfer services and transfer categories. These categories include:

- 'Connect Outstanding' transfers - those copper service-based transfers where an active legacy service has not been disconnected by the previous customer who has vacated the premises and the customer requesting the transfer is not the previous customer, which can cause delays in transfers.
- 'Reversal' transfers – those transfers that are unauthorised, placed in error or are a result of a technical irregularity.

While these transfer issues may not be directly related to NBN Co's own service performance, they are likely to highlight the extent of incorrect or inadvertent transfers due to systemic technical or process issues.

Metrics 1–5 in the attached draft RKR provide further information on the data to be collected.

3.1.2. Appointment keeping – connections and fault rectifications

NBN Co's appointment keeping punctuality plays a key role in its connection and fault rectification processes to enable end-users to become and stay connected.

The ACCC proposes to collect information on NBN Co's performance relating to its connection and fault rectification appointment keeping punctuality.

The ACCC proposes disaggregation of appointment keeping performance data by geographic areas, appointment window timeframes and whether the appointments resulted from previously re-scheduled appointments.

Also, we propose to collect information on appointments which either did not proceed or were re-scheduled due to RSP/end user requests and which are excluded from NBN Co's performance in meeting appointments.

Metric 6 in the attached draft RKR provides further information on the data to be collected.

3.1.3. End-user faults, performance incidents and network faults

The number of faults (both individual line and NBN Co network faults) and the time taken to rectify faults can lead to detrimental consumer outcomes and higher costs for RSPs. Similarly, services with multiple dropouts, classed as performance incidents, can cause consumer detriment depending on their frequency and duration.

We propose collecting information on the number of services experiencing faults and NBN Co's performance in rectifying faults. Separate information is proposed to be collected on Priority Assistance customers experiencing faults.

The fault rectification data is proposed to be disaggregated by geographic areas, access network types, whether external/internal plant work or NBN Co attendance at premises was required and fault rectification timeframes.

Related information is also proposed to be collected for those services experiencing recurring faults disaggregated by geographic areas, access network types and the number of faults experienced with a specified time-period.

Data is also proposed to be collected on the number of services experiencing performance incidents, that is, the number of unexpected dropouts within a certain period which NBN Co does not categorise as a fault. Under the draft RKR, the data proposed to be collected includes NBN Co's timeframes for rectifying services experiencing performance incidents. The data would be disaggregated by geographic areas, access network types and timeframes to rectify such services. Information is also proposed to be collected on the number of such services NBN Co designates for network activity, which require technicians to either upgrade or rectify the network infrastructure.

Under the draft RKR we also propose to collect data relating to network infrastructure faults that affect multiple products and the timeframes for repairing these faults. Proposed disaggregation is by geographic areas, the number of services impacted and the time to rectify network faults.

Metrics 7-11 in the attached draft RKR provides further information on the data to be collected.

3.1.4. Dropouts and outages

Services may experience multiple dropouts which could be caused by end-user actions or those of RSPs and/or NBN Co. In addition, end-users may not report such instances to their RSPs. Similarly, localised or widespread outages – whether planned or unplanned – can be detrimental to a large number of end-users.

Under the draft RKR we propose to collect information on the number of services experiencing dropouts (or temporary loss of connectivity) and network outages.

We propose to collect data on the number of services experiencing dropouts disaggregated by the number of dropouts experienced, network access type (excluding wireless and satellite services) and geographic location. We note that dropouts can be caused by a variety of factors which may not always be related to NBN Co's performance.

Proposed information collection relating to NBN outages include the number of outages, their duration and time of day they occur. This information is proposed to be disaggregated by access type and the estimated number of services impacted. We also propose to collect

information on NBN Co's performance regarding outage notification arrangements communicated to RSPs for planned outages.

Metrics 12-13 in the attached draft RKR provides further information on the data to be collected.

3.1.5. Network speed, traffic performance and utilisation

It is critical that the NBN can provide acceptable and reliable levels of speed across its networks to enable end-users to conduct online activities. Consequently, the monitoring of network speed performance is an important element of the draft RKR. Data relating to traffic performance and network utilisation can also assist the ACCC in monitoring NBN Co's network performance.

Under the draft RKR, the ACCC also proposes to collect NBN network performance related data. This includes speed information on NBN Co's fixed line and fixed wireless networks, including upload and download speeds by various speed tiers. For the fixed line network, proposed disaggregation is by network access type and geographic location.

In relation to the fixed wireless network, we propose to collect information at the cell and individual service level, average speeds on NBN Co's higher speed fixed wireless plans and information relating to the progress of the rollout of its fixed wireless and satellite upgrade program. The proposed data, in relation to NBN Co's progress of its fixed wireless and satellite upgrade program, is to be disaggregated by State and Territory.

Under the draft RKR, we also propose to collect certain technical network performance information. This includes information on NBN Co's traffic management performance where NBN Co reports on the number of instances where its traffic delay is above certain thresholds. This is proposed to be disaggregated by network access type. Similarly, we propose collecting information on network utilisation, to identify instances of network congestion and the need and timing for corrective action. We propose that under the draft RKR, NBN Co report when certain parts of its network breach utilisation thresholds.

Metrics 14 – 17 in the attached draft RKR provides further information on the data to be collected.

3.1.6. Fibre upgrades

Given the intended role of the fibre upgrade program in lifting overall service quality and performance of the NBN, we propose to collect information under the draft RKR on the progress of this program's implementation. Proposed levels of disaggregation cover the upgrade program's stages of progress and the types of network access types that are being upgraded.

Metrics 19 in the attached draft RKR provides further information on the data to be collected.

3.1.7. Rebates and corrective action

NBN Co provides RSPs with rebates where it does not meet its agreed service levels for certain activities such as missed and failed connections and unrectified faults. The collection of rebate information will assist the ACCC to identify aspects of service quality potentially of a systemic nature. Similarly, NBN Co is required to take corrective action when

it does not achieve its performance objectives for certain activities. Information collection relating to these areas will provide increased transparency on systemic service quality issues and NBN Co's actions to address such issues.

Under the draft RKR, we also propose to collect data on rebates payable to RSPs in cases where NBN Co does not meet its agreed service levels for certain activities.

The information we propose to collect includes the number of services for which a rebate was payable disaggregated by rebate category and network access type.

As some rebates are capped after a certain period, notwithstanding that an agreed service level has still not been met, we also propose to collect data on services for which a rebate was capped, by rebate category and network access type. In addition, we propose to collect data on the timeliness of rebate payments by NBN Co to RSPs.

NBN Co is also required to take corrective action when it does not achieve its performance objectives for certain activities. Under the draft RKR, we propose to collect data relating to NBN Co's corrective action including the activities for which NBN Co did not meet its performance objectives and summaries of the reason(s) for not meeting its performance objectives and the proposed corrective action to be undertaken.

Metrics 20 - 21 in the attached draft RKR provides further information on the data to be collected.

3.1.8. Additional metrics

The ACCC is also proposing to include two additional metrics in the draft RKR which were not identified in our December 2022 consultation paper.

Network activity

We propose the inclusion of data relating to NBN Co's performance regarding network activity in the draft RKR. We understand NBN Co can designate additional network activity for poorly performing copper-based services experiencing dropouts and/or not capable of achieving certain minimum speeds. Such network activity could include changes to the service's access technology or certain network rehabilitation works such as replacing copper cable runs, construction work etc. Where such services are designated, NBN Co has target dates by which to perform its network activity. The current target date for network activity is 375 business days for services designated from 1 July 2021 onwards.

Given the detriment to those consumers on poorly performing copper services and the relatively longer timeframes for network activity, we propose collecting data to improve the transparency of NBN Co's performance for the rectification of these services.

Data collection would include the number of services:

- designated for network activity during the reporting period
- that had network activity completed during the reporting period, disaggregated by various timeframes from the date of designation
- designated for network activity as at the end of the reporting period, by various timeframes from the date of designation
- transferred to NBN Co's fibre upgrade program during the reporting period, by various timeframes from the date of designation.

Network availability

We propose the inclusion of data relating to NBN Co's network availability in the draft RKR. Network availability is the percentage of time that NBN Co's access network is available and operating. NBN Co currently publishes its network availability performance on its [NBN Co public dashboard](#).

NBN Co's dashboard notes its network availability does not include periods where the network is unavailable due to operational outages for network upgrades and improvements where the outage is beyond NBN Co's control.

We propose including network availability in the draft RKR metrics, specifically NBN network availability as a percentage across the NBN, including and excluding planned outages and force majeure events. While planned outages are necessary for network improvements and upgrades, they affect end-user services during the period of the outage.

Metrics 18 and 22 in the attached draft RKR provides further information on the data to be collected.

3.2. Reporting frequency

The ACCC's December 2022 consultation paper proposed the requirement for NBN Co to keep and retain the information under an RKR and report to the ACCC bi-annually (June and December), with data to be segmented on a quarterly basis.

Following consideration of submissions received,¹⁵ the ACCC now proposes that data collection and reporting to the ACCC through an RKR be quarterly. We consider that quarterly reporting will enable more timely identification of service quality and network performance issues that may adversely affect end users. Quarterly reporting is also consistent with reporting requirements under other ACCC RKRs such as that for NBN Services in Operation. We note our understanding that NBN Co already collects much of the data identified in the draft RKR.

¹⁵ IAA submission [Record Keeping Rule – NBN Service Performance](#), February 2023, p 2; Telstra [Response to ACCC Discussion Paper on proposed Record Keeping Rule](#), February 2023, p 13,

4. Questions for stakeholders

We are seeking feedback from stakeholders in response to the questions below and any other relevant issues, and ask that clear reasons and information be provided in support of the views submitted.

1. Are the aspects on service quality and network performance, the service level metrics and proposed data, including levels of disaggregation, set out in the draft RKR appropriate for an RKR for NBN Co?
2. Should metrics for network activity and network availability be included in the RKR?
3. Should any other metrics be included and if so what aspects of service quality and network performance should they cover?
4. In the RKR we are generally using the definitions of key terms used by NBN Co in current Wholesale Broadband Agreements and/or NBN Co's Special Access Undertaking. Are there any issues in adopting this approach?
5. Is quarterly reporting appropriate?
6. We are proposing that the RKR expire 5 years after commencement and that at or before that time the RKR may be reviewed by the ACCC. Is an expiration date of 5 years appropriate?

Appendix: ACCC approach to handling information

We will consider whether publication of the information is required to enable effective public consultation and to allow us to perform or exercise our statutory functions and duties in relation to making any RKR. We will assess whether this requirement outweighs any significant commercial harm that may result from publication. We will consider procedural fairness matters for all relevant stakeholders.

Our decisions to publish information will be subject to the process described below.

If interested parties wish to make any claim of confidentiality over material provided to the ACCC during this consultation, they should follow the process below:

1. Please submit two versions of the submission:
 - a) a public submission that can be published on the ACCC's website, in which all confidential material has been removed and replaced with an appropriate symbol. Please ensure that redacted information is not searchable or otherwise able to be viewed
 - b) a confidential version that clearly identifies the information over which confidentiality is claimed by bookending the confidential material with a marking of 'commercial-in-confidence'. Please also highlight for ease of reference the material over which confidentiality is claimed.
2. Information over which a party claims confidentiality must be limited to ensure full consultation on all relevant material.
3. Please provide a supporting submission that specifically substantiates the confidentiality claim for each item of information over which confidentiality is claimed. Confidentiality claims need to detail why the information is competitively sensitive or otherwise confidential, or why disclosure of the information would be likely to cause significant commercial harm to the person to whom the information is confidential. 'Blanket' claims of confidentiality will not be accepted. We will notify parties of any additional information required to assess a confidentiality claim.
4. Where we propose to publish the information, which is the subject of a confidentiality claim, we will provide a right to be heard and to amend or withdraw the information before proceeding to publication with redactions removed.
5. Where we propose to not publish information which is the subject of a confidentiality claim and publish a redacted submission, we may reconsider that claim at a future date if it becomes evident that the redacted information is important to our consultation and needs to be tested with third parties. We will notify the relevant party and engage with them in relation to how this information can be disclosed. The ACCC-AER information policy: the collection, use and disclosure of information (2014) sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use and disclosure of information. A copy of the guideline is available on the ACCC's website.¹⁶

¹⁶ See: <https://www.accc.gov.au/about-us/publications/acccaer-information-policy>.