



**Australian Government**

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**Department of Communications,  
Information Technology and the Arts**

## Higher Bandwidth Incentive Scheme (HiBIS) Program Guidelines



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# 1 Introduction

## 1.1 What is the Higher Bandwidth Incentive Scheme (HiBIS)?

The Higher Bandwidth Incentive Scheme (HiBIS) is a key part of the Government's response to the 2002 Regional Telecommunications Inquiry (RTI). The RTI was commissioned to carry out an independent assessment of the adequacy of telecommunications services in regional, rural and remote Australia. A specific term of reference was to assess barriers to accessing higher bandwidth services in regional and rural areas. The RTI determined that while all Australians have access to broadband via at least one platform, those in regional, rural and remote areas were disadvantaged because they had to pay prices well above those prevailing in metropolitan areas. The RTI found that:

*Finding 6.4*

*The major impediment to regional, rural and remote Australians having equitable access to higher bandwidth services is the higher prices that users in some areas pay for these services.*

Recommendation 6.3 of the RTI was that:

*The Government should establish an incentive scheme for the provision of higher bandwidth services to regional, rural and remote areas, to enable all Australians to have access to services at prices comparable to those prevailing in metropolitan areas.*

In accepting the recommendations of the RTI, the Government has allocated \$107.8 million over four years for HiBIS. The Australian Department of Communications, Information Technology and the Arts (DCITA) manages HiBIS.

The primary objective of HiBIS is to achieve prices for higher bandwidth services in regional Australia that are comparable to metropolitan services.

In pursuit of this goal, the Scheme has two supporting objectives:

- (a) to promote competition among higher bandwidth service providers; and
- (b) to ensure efficient use of public funds by effectively targeting support to areas of need in regional Australia.

In implementing HiBIS, the Australian Government is seeking to promote competition to support equitable pricing on an on-going basis and in a technology neutral manner.

HiBIS is targeted at residential customers, small businesses and small not-for-profit organisations. The Scheme applies across Australia, except in the capital cities and adjacent designated high population centres.

## 1.2 Purpose of the Program Guidelines

The HiBIS Guidelines describe the key elements of the operation of HiBIS, including the customer eligibility requirements, the registration process for service providers and HiBIS services, and the processes for providing customers with HiBIS services.

It should be noted however that the Guidelines are solely a guide to the Scheme. Legal enforcement of HiBIS operational rules will be through the funding agreement between HiBIS providers and DCITA, and in the contracts that HiBIS providers are required to establish with their customers. In the event of any inconsistency between the agreement and the Guidelines, the agreement will prevail.

## 1.3 Key concepts and terminology

The Guidelines include reference to a number of terms, many HiBIS-specific, which are defined below.

### A

**ADSL** means an Asymmetric Digital Subscriber Line Higher Bandwidth Service.

**Agreement** means the legal agreement between DCITA and a HiBIS Provider concerning the supply of HiBIS Services under the Scheme.

**Allowable Costs** means that portion of costs incurred by a HiBIS Provider or a HiBIS Wholesaler in providing HiBIS Services against which Incentive Payments may be allocated. (See sections 4.13.10 and 4.13.11 for further information on Allowable Costs).

**Applicant** means a Service Provider who is applying to become a HiBIS Provider or a HiBIS Wholesaler.

### B

**Business** means an activity undertaken as a commercial enterprise on a going concern basis, or engaged in for the purpose of profit on a continuous and repetitive basis.

### C

**CCIF** means the Coordinated Communications Infrastructure Fund administered by OIE.

**CPE** means Customer premises equipment.

**Customer** means a person who is seeking the supply of, or is being supplied with a Higher Bandwidth Service, not necessarily under HiBIS.

### D

**Data Speed** means the speed at which data bits, comprising both protocol headers and data payload, are carried by a service. This contrasts with throughput, which refers to the delivery of actual payload data bits (i.e. the content useable to end-users), excluding

protocol overheads. Data Speed is measured in kilobits per second, and is determined through the testing regime established by DCITA for HiBIS.

**DCITA** means the Department of Communications, Information Technology and the Arts.

## **E**

**Eligible Customer** means:

- (a) a Residential Customer;
- (b) a Small Business with 20 or fewer permanent FTEs at the time of application for a HiBIS Service;
- (c) a Not-for-profit Organisation with 20 or fewer permanent FTEs at the time of application for a HiBIS Service, except in the case of Indigenous Community Councils where the FTE limit does not apply; or
- (d) a Not-for-profit Organisation where the service supplied is for the provision by the organisation or agency of a Public Access Internet Facility on a not-for-profit basis.

**Eligible Premises** means any Premises in the HiBIS Area that did not have access to a Metro-comparable Service at the Start of the Scheme or in exceptional circumstances described in section 3.2.

**Eligible Provider** means a Service Provider who is eligible to apply for registration under HiBIS.

**ESA** means a Telstra Exchange Service Area.

**Exit Strategy** means the arrangements by which a HiBIS Provider manages its Customer base if and when it ceases to provide HiBIS Services. In particular it refers to actions to be taken by the HiBIS Provider to ensure that there is minimal negative impact on its Customers when it ceases to provide HiBIS Services.

## **F**

**FTE** means full time employee and includes the clarifications described in sections 3.1.3 to 3.1.5.

## **G**

**Guidelines** means the HiBIS Program Guidelines as issued by DCITA.

## **H**

**HiBIS** means the Higher Bandwidth Incentive Scheme.

**HiBIS Added Value Service** means a HiBIS Service registered for supply in a Service Area in which a HiBIS Threshold Service has been registered and which provides additional functionality or features, over and above those required of the HiBIS Threshold Service.

**HiBIS Area** means all of Australia other than the Metropolitan Exclusion Area and, unless otherwise prescribed for the purposes of section 8B of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Consumer Protection Act), External Territories.

**HiBIS - compliant Pricing** means that the price of a particular Higher Bandwidth Service meets the price requirements of a HiBIS Threshold Service or the equivalent HiBIS Added Value Service being offered under HiBIS.

**HiBIS Customer** means an Eligible Customer with whom a HiBIS Provider has a contract to supply a HiBIS Service.

**HiBIS Demand Register** means the Customer demand register available at HiBIS Online which allows Eligible Customers to register their interest in being supplied with a HiBIS Service.

**HiBIS Online** means the portion of the DCITA website dealing with the HiBIS program, and the information and program management tools provided at that site.

**HiBIS Premises** means Eligible Premises where a HiBIS Service is being received.

**HiBIS Provider** means a Service Provider registered under the Scheme and with whom DCITA has an Agreement, who is providing HiBIS Services under the Scheme.

**HiBIS Service** means an Internet service meeting the performance and pricing requirements of HiBIS (described in section 4.6) that is registered under the Scheme and included for supply by a HiBIS Provider under its Agreement.

**HiBIS Service Area** means the Eligible Premises that have been included in the Agreement of a HiBIS Provider as the Premises to which it will offer a particular HiBIS Service.

**HiBIS Terms and Conditions**, means the terms and conditions on which a HiBIS Service is supplied by a HiBIS Provider to a HiBIS Customer, including mandatory terms and conditions required under HiBIS.

**HiBIS Threshold Service** means a service that provides:

- (a) access to the Internet;
- (b) a peak Data Speed of at least 256 kbps to the Customer and 64 kbps from the Customer;
- (c) average data download and upload speeds of at least 60 per cent of these peak speeds at least 75 per cent of the time as measured according to a prescribed HiBIS testing schedule for test computers located in different geographic regions described in section 4.6.2.2;
- (d) a minimum monthly usage allowance (download and upload) of at least 500 MB;
- (e) availability 99 per cent of the time, averaged over a quarterly period;

- (f) free 24 hour fault reporting;
- (g) staffed helpdesk services as agreed between DCITA and the HiBIS Provider;
- (h) where Customer usage limits apply, Customer usage information updated at least once per day;
- (i) the ability, upon request of the Customer, to inform the Customer of current usage and any associated costs; and
- (j) where the service is an ADSL service:
  - I. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$2500; or
  - II. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$2900 where additional features or functionality of a value equal to or exceeding the additional price allowance are provided; or
- k) where the service is not an ADSL service:
  - I. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$3000; or
  - II. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$3400 where additional features or functionality of a value equal to or exceeding the additional price allowance are provided.

**HiBIS Wholesaler** means a Service Provider who has registered with HiBIS for the purposes of providing wholesale services to a HiBIS Provider and receiving a share of the HiBIS Provider's Incentive Payments.

**Higher Bandwidth Service** means any Internet access service that provides access to the Internet at a peak Data Speed of at least 256 kbps and from the Internet at a peak Data Speed of at least 64 kbps.

**High Cost** has the meaning given to it in section 2.5.

## I

**Imminent Access**, in relation to an area, means an area within the HiBIS Area, listed at Attachment 9.2 and described at section 2.1, which the relevant Service Provider, listed at Attachment 9.2, has publicly identified prior to the Start of the Scheme as being an area where it intends to provide Metro-comparable Services.

**Incentive Payment** means either a Standard or a High Cost payment as described under section 2.5 that is made to a HiBIS Provider, to be paid after the HiBIS Provider has supplied a HiBIS Service to an Eligible Customer, and upon receipt by DCITA of a properly submitted claim.

**Indigenous Community Council** means an organisation as described at section 3.1.5

**ISDN** means an Integrated Services Digital Network service, as provided by Telstra.



## K

**kbps** means kilobits per second.

## M

**MB** means megabyte.

**Metropolitan Exclusion Area** means:

- (a) the capital cities of Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin; and
- (b) the adjacent high population centres of Wollongong (NSW), the Central Coast of NSW, Newcastle (NSW), Geelong (Vic), Palmerston (NT) and the Gold Coast (Qld) including Tweed Heads (NSW);

the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 30 September 2002 in 2909.0 – *Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities* (Issue 2001 released 30 September 2002; ISBN 0 642 47821 X)<sup>1</sup> and described in section 3.2.1.

**Metro-comparable Service** means a Higher Bandwidth Service that provides Internet access at a peak Data Speed of at least 256/64 kbps and 500 MB per month usage allowance, and has the following pricing:

- (a) where the service is an ADSL service:
  - I. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$2500; or
  - II. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$2900 where additional features or functionality of a value equal to or exceeding the additional price allowance are provided; or
- (b) where the service is not an ADSL service:
  - I. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$3000; or
  - II. a package including equipment, installation (but not travel costs) and monthly usage over three years at a price of up to \$3400 where additional features or functionality of a value equal to or exceeding the additional price allowance are provided.

## N

**New HiBIS Service** means a HiBIS Service provided by a HiBIS Provider to a Customer who was not previously receiving a Higher Bandwidth Service from that provider.

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<sup>1</sup> For further information see:

<http://www.abs.gov.au/ausstats/abs@.nsf/0/B03C37D9D89F7C19CA256AD4007F67F8?Open&Highlight=0,urban>

**Not-for-profit Organisation** means an organisation or a corporation that is formed for social, recreational, educational, charitable, philanthropic or other lawful purposes where any profit earned can only be applied to the organisation as a whole and not to individual members of the organisation. It does not include any Australian, State, Territory or local Government agency.

**Not-for-profit public access higher bandwidth Internet facility** means a facility which allows one or more members of the public to access, or share access, to the Internet. For it to be provided on a not-for-profit basis means that any revenue earned from the service is applied only to the provision of the service or the operation of the organisation.

## O

**OIE** means the Office for the Information Economy within the Department of Communications, Information Technology and the Arts.

## P

**PGS** means Pair Gain Systems.

**Premises** means any building or similar structure where a Customer to whom a HiBIS Service is to be supplied resides, conducts business, operates a not-for-profit operation, or intends to offer eligible public access facilities as described at section 3.2.

**Pre-existing Customer** means a Customer who at the time of registration of a HiBIS Service was a Customer of the HiBIS Provider and was receiving a Higher Bandwidth Service that was comparable, except in regard to price, to the registered HiBIS Service.

**Pricing for a New HiBIS Service** means the prices that a HiBIS Provider charges for a HiBIS Service provided to a Customer who was not a Pre-existing Customer when the provider registers the HiBIS Service.

**Pricing for a Pre-existing Customer** means the prices that a HiBIS Provider charges for a HiBIS Service provided to a Customer who is a Pre-existing Customer.

**Public Access Internet Facility** means an Internet service that is provided principally for public access with or without charge.

## R

**Remote Australia** means, for the purpose of determining the payment of travel costs, those ESAs that do not contain an urban centre or localities with a population of 200 or more people, as recorded at the 2001 Census published by the Australian Bureau of Statistics, and as identified on a map published by DCITA on the HiBIS Online website.

**Residential Customer** is a Customer who requests a HiBIS Service be provided at a Premises that is their place of residence, primarily for non-business use. Premises of a Residential Customer includes those places of residence described at section 3.1.2.

**RIM** means Remote Integrated Multiplexer.

**RTI** means the 2002 Regional Telecommunications Inquiry.

## **S**

**Scheme** means the Higher Bandwidth Incentive Scheme.

**Service Provider** means a retail Internet service provider.

**Service Upgrade** means the arrangements by which a HiBIS Customer changes from a lower level to a higher level of HiBIS Service in terms of service performance, quality of service and/or any other feature or functionality.

**Small Business** means a Business with 20 or fewer FTEs

**Start of the Scheme** means the date on which the final Guidelines were published, allowing Service Providers to register for the Scheme.

## **T**

**Telstra EZ Satellite Service** means a two-way satellite service supplied by Telstra at concessional rates under Telstra's Two-Way Satellite Offer in accordance with the Extended Zones Agreement with the Australian Government.

**TIO** means the Telecommunications Industry Ombudsman.

## **W**

**Wholesale Registration** means the registration of a HiBIS Wholesaler under HiBIS.

**Working Day** means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday or an Australian Public Service holiday in the relevant place.

## **2 Overview of the Operation of HiBIS**

### **2.1 HiBIS Area and Eligible Premises**

HiBIS operates in the HiBIS Area, and offers access to Metro-comparable Services for Premises that did not have such access at the Start of the Scheme.

Premises that did have access to Metro-comparable Services at the Start of the Scheme are not Eligible Premises, provided they retain access to Metro-comparable Services. Areas that include Premises with access to Metro-comparable Services are identified at Attachment 9.1 and at HiBIS Online.

The HiBIS Area includes areas that are identified in Attachment 9.2 as having Imminent Access at the Start of the Scheme. These are areas that have been publicly identified by Service Providers as being areas where they intend to provide Metro-comparable Services. This would include, for example, Premises affected by the announcement of 19 January 2004 by Telstra to extend the range of ADSL from 3.5 to at least 4.0 kilometres line distance from an enabled exchange.

If Metro-comparable Services are provided in these Imminent Access areas (through these facilities being deployed) by 31 December 2004, Premises with access to such services will not be Eligible Premises from that date. However, Customers will be eligible to receive a HiBIS Service at such Premises, provided all other eligibility requirements are satisfied, up until the time that such access is provided.

### **2.2 HiBIS Services**

Under HiBIS, Service Providers can register as HiBIS Providers and offer HiBIS Services to Eligible Customers at Eligible Premises in the HiBIS Area. In return they receive Incentive Payments from DCITA for each Customer provided with a HiBIS Service.

All HiBIS Providers are required to offer and supply upon request a HiBIS Threshold Service. They can also register HiBIS Added Value Services.

Where a HiBIS Provider has Pre-existing Customers receiving a Higher Bandwidth Service which is not a Metro-comparable Service, it must offer Pricing for Pre-existing Customers. This gives Pre-existing Customers access to services with HiBIS-compliant Pricing.

### **2.3 HiBIS Customers**

HiBIS is targeted at four Customer groups: Residential Customers, Small Businesses, Not-for-profit Organisations, and Not-for-profit Organisations intending to provide new Public Access Internet Facilities. These groups are described in more detail at section 3.1. HiBIS Services are provided to these Customers at Eligible Premises.

## **2.4 HiBIS Service Providers**

An Eligible Provider who wishes to register for the purposes of the Scheme must apply to DCITA and be assessed in relation to corporate, technical and financial capabilities and sustainability. The Eligible Provider must also agree to offer a HiBIS Threshold Service. Eligible Providers may also register HiBIS Added Value Services with additional functionality, which are also eligible for Incentive Payments.

Eligible Providers who are approved for registration with HiBIS are required to enter into an Agreement with DCITA. The Agreement binds the HiBIS Provider to offer and supply its HiBIS Services on the terms and conditions that it has proposed at the time of registration for a period of three years from the date that it begins serving each HiBIS Customer.

The Agreement also requires the HiBIS Provider to agree to bind itself in these terms with its HiBIS Customers in its Customer contracts.

HiBIS Providers must market and supply the HiBIS Services that they have registered in their HiBIS Service Areas. However, HiBIS Providers may nominate only those HiBIS Service Areas that suit their particular technology platform and/or business plan.

Eligible Customers are able to apply for HiBIS Services, and once their preferred HiBIS Provider verifies their eligibility and that of the Premises to which they want the service provided, the HiBIS Service can be supplied, and an Incentive Payment claimed.

## **2.5 HiBIS Incentive Payments**

Once a HiBIS Provider supplies a HiBIS Service to a HiBIS Customer at a HiBIS Premises, the HiBIS Provider is able to claim an Incentive Payment from DCITA. There are two categories of Incentive Payments:

- (a) Standard, being \$1540 (including GST), payable for New HiBIS Services provided to Premises which have ISDN Access (as defined in these Guidelines); and
- (b) High Cost, being \$3300 (including GST), payable for New HiBIS Services provided to Premises that have no ISDN Access (as defined in these Guidelines).

Only one Incentive Payment can be claimed for each HiBIS Service supplied and the Incentive Payments can only be claimed once supply of the HiBIS Service has commenced. An additional payment in relation to some travel costs is also payable by DCITA.

Partial Incentive Payments, based on the two categories above, are determined upon application for HiBIS Providers to provide Pre-existing Customers with HiBIS-compliant Pricing.

In claiming Incentive Payments, HiBIS Providers are required to declare that the claims are legitimate and accurate. Payments made by DCITA to HiBIS Providers are required to be audited and any monies found to be not legitimately payable to the HiBIS Provider under its Agreement are required to be repaid.

## **2.6 HiBIS performance monitoring and compliance**

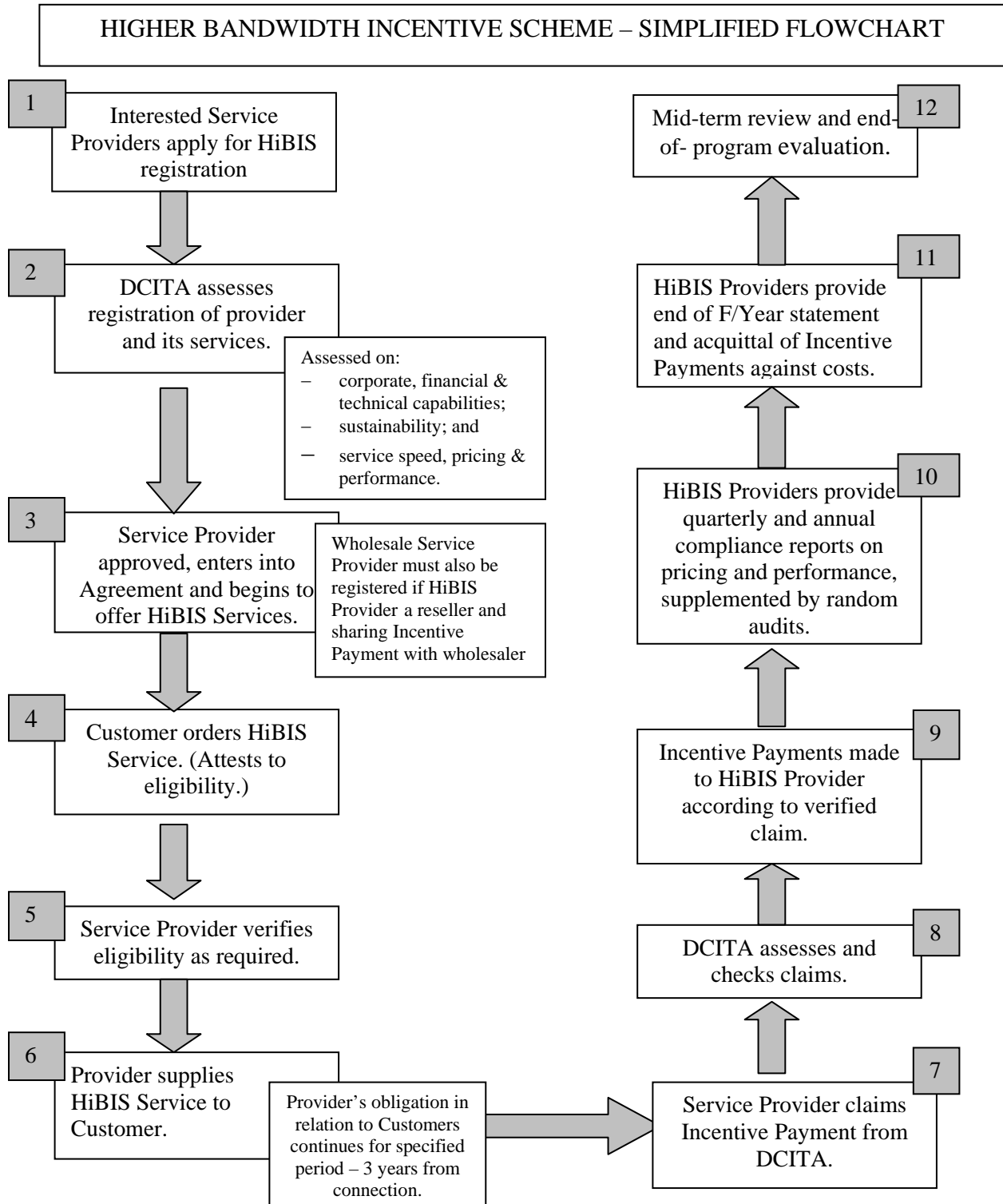
Each quarter each HiBIS Provider must provide a performance report on key aspects of its HiBIS Service delivery, including Data Speed, service availability and complaints received from Customers.

At the end of each financial year, each HiBIS Provider must report to DCITA on its compliance with its obligations under HiBIS, particularly the obligation to provide HiBIS Services at the performance and pricing levels set out in its Agreement. HiBIS Providers must also provide a financial report to DCITA at the end of each financial year. A summary of annual compliance reporting requirements common to all HiBIS Providers is at Attachment 9.5.

HiBIS Providers must also advise DCITA if they become aware of any material change in their corporate standing or managerial capabilities which could affect their ongoing ability to meet their obligations under HiBIS. These reports are supplemented by random audits of HiBIS Providers by DCITA throughout the financial year.

HiBIS Providers who are found to be in breach of their obligations will be required to take remedial action and, in the event of continued or serious breaches, their Agreement may be terminated. HiBIS Providers failing to meet their obligations to HiBIS Customers under their customer contracts may be subject to investigation and action by the TIO.

The flowchart below provides an overview of HiBIS' operation.



## 3 Customer participation in HiBIS

### 3.1 Customer eligibility requirements

HiBIS Services can only be provided to Customers and Premises where certain eligibility requirements are met. There are two key matters that need to be considered in assessing Customers' overall eligibility. These are:

- (a) the type of Customer; and
- (b) the eligibility of the Premises to which the Eligible Customer wants the service provided.

#### 3.1.1 Types of Customers eligible for HiBIS assistance

Four categories of Customers are eligible to be supplied with HiBIS Services:

- (a) Residential Customers;
- (b) Small Businesses with 20 or fewer permanent FTEs;
- (c) Not-for-profit Organisations with 20 or fewer permanent FTEs, except in the case of Indigenous Community Councils, where the limit on FTEs does not apply; and
- (d) Not-for-profit Organisations, where the service supplied is for the provision by the organisation of a new Public Access Internet Facility on a not-for-profit basis.

#### 3.1.2 Residential Customers

Subject to other eligibility requirements specified in section 3.1, Residential Customers are eligible to be provided with HiBIS Services.

A Residential Customer is not precluded from being supplied with a HiBIS Service as a Small Business Customer, subject to meeting eligibility requirements.

A Residential Customer's Premises does not need to be a person's sole or principal residence to be eligible under HiBIS but must satisfy the definition of Eligible Premises. Thus a Residential Customer may be supplied under HiBIS with services at both the Customer's principal place of residence and any other place of residence (e.g. a weekend retreat or holiday home).

Where there is doubt as to whether a Premises is serving the purpose of a residence, HiBIS Providers must satisfy themselves by obtaining information from the Customer that confirms his or her right of occupancy, and that the Premises supports independent living. DCITA may require such evidence from a HiBIS Provider as part of its assessment of a claim for an Incentive Payment.

For the purposes of HiBIS, a 'place of residence' is a self-contained and distinct place of residence and includes:

- (a) a distinct house or houses, including a 'granny flat' on a block of ground under a single title;
- (b) a flat or apartment in a block of flats or apartments;
- (c) houses, cottages or other dwellings on a farming property that are separate places of residence for the property owner and a staff member(s);



- (d) self-contained and distinct places of residence within retirement villages and nursing homes<sup>2</sup>; and
- (e) a caravan that is permanently located at a caravan park and is a residence of the Customer<sup>3</sup>.

Boats may be considered within the definition of Eligible Premises. However, the ability of HiBIS Providers to offer HiBIS Services to Customers at Eligible Premises that are boats may be limited by their technological capability to do so. Such Customers are eligible for a HiBIS Service in their nominated homeport, where that homeport is in the HiBIS Area, and where all other eligibility criteria are met.

Residents of places that are separate residential units within a complex of such units, and are generally rented by the owner for occupancy by another person on a short-term basis, are not eligible to be provided with a HiBIS Service under HiBIS. Such places include hotel rooms, holiday apartments, boarders' rooms and dormitories.

### **3.1.3 Small Businesses**

Small Businesses with 20 or fewer permanent FTEs at the time of application for a service are eligible to be provided with HiBIS Services, subject to other eligibility criteria being met.

In determining whether a Business has 20 or fewer FTEs, consideration is given to the total employment by the Business across Australia. Thus, although an organisation may have fewer than 20 FTEs working for it at a particular site or office in the HiBIS Area, if it has more than 20 FTEs nationally, it would not be eligible under HiBIS. Examples of Businesses excluded by this provision could include branches of banks, supermarkets, chain stores, stock and station agents, and insurance companies.

Each Small Business is eligible to receive one HiBIS Service at each of its places of business that is an Eligible Premises. Where multiple Businesses with common ownership and control share a single place of business, then each of those Businesses is eligible to receive one HiBIS Service only if the Business has:

- (a) a separate ABN (Australian Business Number) from the Business or Businesses with which it is collocated;
- (b) a unique trading name; and
- (c) a clearly identified separate work location within the shared building Premises.

Where multiple separate Businesses (without common ownership and control) share the same Premises (i.e. are collocated), each Business is eligible for a HiBIS Service.

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<sup>2</sup> However, for the retirement village or nursing home itself to be eligible to be supplied with a HiBIS Service (as distinct from a resident) it needs to be eligible under another category (e.g. Small Business or Not-for-profit Organisation).

<sup>3</sup> However, for the caravan park business itself (as distinct from a resident) to be supplied with a service under HiBIS, it needs to be eligible under another category (e.g. Small Business or Not-for-profit Organisation).

A franchisee with 20 or fewer FTEs will be eligible to receive a HiBIS service providing the franchisee is a separate legal entity from the franchiser and the franchiser is not in partnership with, or does not own all or part of, the franchisee.

### 3.1.4 Not-for-profit Organisations

Not-for-profit Organisations with 20 or fewer permanent FTEs at the time of application are eligible to be provided with HiBIS Services, subject to other eligibility criteria being met. Volunteers are not considered as employees in determining the number of permanent FTEs for the purpose of an application under HiBIS.

In determining whether a Not-for-profit Organisation has 20 or fewer FTEs, consideration is given to the total employment of the organisation across Australia. Thus, although an organisation may have fewer than 20 FTEs working for it at a particular site or office, if it has more than 20 FTEs nationally, it would not be eligible under HiBIS. Examples of Not-for-profit Organisations excluded by this provision may include local offices of national representative organisations.

Not-for-profit Organisation does not include Australian, State, Territory and local governments or their agencies.

### 3.1.5 Indigenous Community Councils

Organisations that are Indigenous Community Councils are taken to be Not-for-profit Organisations for the purposes of HiBIS, and are eligible to be provided with services under HiBIS, subject to other eligibility criteria being met. There are no limits on the number of permanent FTEs employed by such Councils.

For the purposes of HiBIS, an ‘Indigenous Community Council’ is, in Queensland:

- (a) an Aboriginal Council constituted under the *Community Services (Aborigines) Act 1984 (Qld)*; or
- (b) an Island Council constituted under the *Community Services (Torres Strait) Act 1984 (Qld)*.

In the Northern Territory, an ‘Indigenous Community Council’ is:

- (a) a community government council established under the *Local Government Act 1993 (NT)*; or
- (b) an incorporated association recognised as a ‘local governing body’ by the Australian and Northern Territory Governments in order that Australian Government funding can be made for local government type services.

An Indigenous Community Council must be able to substantiate its status to a HiBIS Provider and, if requested, to DCITA.

Where a body in another State or Territory asserts that it is an ‘Indigenous Community Council’, DCITA will consider each claim on its merits.

### **3.1.6 Not-for-profit Public Access Internet Facilities**

Not-for-profit Organisations, regardless of their numbers of permanent FTEs, are eligible to be provided with services under HiBIS to provide new Public Access Internet Facilities on a not-for-profit basis at Eligible Premises.

There is a limit of three services per Eligible Premises (see section 3.4.1). HiBIS only supports services for Public Access Internet Facilities that are New HiBIS Services. HiBIS does not provide Incentive Payments to enable Customers who are providing pre-existing higher bandwidth public access services to migrate to HiBIS-compliant Pricing.

For the purposes of this section, a Not-for-profit Organisation is the same as described in section 3.1.4, but without regard to the limit on the number of permanent FTEs.

As a HiBIS Service supplied for a Not-for-profit Public Access Internet Facility may be shared among a number of users of the service, it is not expected that end-users will necessarily experience higher bandwidth speeds consistent with those provided by the HiBIS Service to the HiBIS Customer providing the public access service.

## **3.2 Premises to which HiBIS Services can be provided**

The supply of services and the payment of Incentive Payments under HiBIS are subject to a number of eligibility criteria in relation to the location of the Premises to which the HiBIS Service is to be supplied.

Premises must be places of residence, of Business, or for the operation of a Not-for-profit Organisation as described in section 3.1.

In addition, Premises are Eligible Premises if they are in the HiBIS Area and:

- (a) did **not** have access to a Metro-comparable Service at the Start of the Scheme; or
- (b) had Imminent Access to a Metro-comparable Service at the Start of the Scheme, but did not gain access by 31 December 2004; or
- (c) did **not** have access to a Metro-comparable Service at any other time following the Start of the Scheme due to pre-existing capacity ceasing to be available.

### **3.2.1 Exclusion of Premises in metropolitan areas and specified adjacent urban centres**

HiBIS applies to Premises in the defined HiBIS Area. HiBIS does not apply to Premises that are in the defined Metropolitan Exclusion Area.

A map showing the boundaries of the Metropolitan Exclusion Area is available at <http://www.dcita.gov.au/hibis>.

Where there is dispute as to whether or not Premises are in the HiBIS Area, DCITA will consider each claim on its merits, and will make a determination, based on available evidence.

### **3.2.2 Exclusion of Premises with existing access to Metro-comparable Services**

A Premises is not eligible under HiBIS where, at the Start of the Scheme, it had access to a Metro-comparable Service. The process for determining whether a Premises is eligible under HiBIS is described at section 3.5.1.

#### **3.2.2.1 Premises with access to Telstra ADSL services**

Premises in the HiBIS Area that had access to a Telstra ADSL service at the Start of the Scheme are considered to have access to a Metro-comparable Service, and are not Eligible Premises. An indicative map of Telstra's ADSL coverage at the Start of the Scheme is provided on the HiBIS website.

This map shows ESAs that were enabled to provide ADSL services at the Start of the Scheme. Not all Premises within these ESAs were able to access ADSL services at that time, because of distance and other technological limitations. Such Premises are Eligible Premises, as discussed in more detail in sections 3.2.5 and 3.2.6.

#### **3.2.2.2 Premises with Metro-comparable Services through other providers**

A list of other Service Providers identified as providing access to Metro-comparable Services at the Start of the Scheme in areas not coinciding with Telstra's ADSL coverage, along with their general service areas, is given in Attachment 9.1. Premises which were able to receive these services at the Start of the Scheme are not Eligible Premises.

#### **3.2.2.3 Premises serviced by unidentified higher bandwidth providers**

To protect the commercial interests of Service Providers already offering Metro-comparable Services at the Start of the Scheme, there is a special exclusion provision to cover any such Service Providers not identified by DCITA at the Start of the Scheme.

A Service Provider who believes that they were providing a Premises with access to a Metro-comparable Service at the Start of the Scheme, but was not identified as such by DCITA in Attachment 9.1, may dispute the eligibility of such Premises under HiBIS. To do this, the Service Provider must contact DCITA in writing providing details of the services it was providing, the date from which it was providing those services, the prices of the services and the coverage area of the services. Where DCITA is satisfied that the Premises in question should be considered ineligible, it will amend these Guidelines accordingly, advise HiBIS Providers and publicise the decision on the HiBIS website.

DCITA would not seek to recover Incentive Payments already paid in relation to HiBIS Services provided to Premises which subsequently had been designated to be ineligible in these circumstances. HiBIS Providers of those HiBIS Services would continue to be obliged to provide those services on the terms and conditions set out in their contracts with Customers.

#### **3.2.2.4 Premises with Imminent Access**

Premises are also not Eligible Premises once they gain access to a Metro-comparable Service under the Imminent Access arrangements.

Prior to services being offered in accordance with Imminent Access commitments, Premises are Eligible Premises (provided they satisfy other eligibility requirements), but once the Imminent Access becomes available, the Premises are no longer eligible. In the period before Imminent Access becomes available, all HiBIS Providers may register to provide HiBIS Services to Imminent Access Premises. However once the Imminent Access becomes available, HiBIS Providers are no longer eligible to provide HiBIS Services to Premises which as a result have access to a Metro-comparable Service. However they are obliged to continue to meet their obligations to HiBIS Customers they have signed up in the interim period.

For Imminent Access to have the effect of excluding Premises from HiBIS, it must be provided by 31 December 2004. Where Imminent Access is provided, DCITA will publish information on the HiBIS website confirming that Imminent Access has been provided and that Premises with access to that service are ineligible under HiBIS.

Where a Service Provider has indicated that it will provide Imminent Access but fails to do so by 31 December 2004, the Premises concerned will be Eligible Premises for the remainder of the HiBIS program. However the Service Provider identified as the Imminent Access provider for those Premises will not then be eligible to provide HiBIS Services to those Premises. Other HiBIS Providers who have registered for the area will continue to be able to provide HiBIS Services. Other Eligible Providers will continue to be able to register and provide HiBIS Services for the area.

### **3.2.3 Ongoing Eligibility of Premises**

Unless otherwise explicitly provided for in these Guidelines (including under the Imminent Access arrangements), Premises that were eligible to receive a HiBIS Service at the Start of the Scheme remain eligible to receive a HiBIS Service from any HiBIS Provider servicing their area. This applies even if a Service Provider is able to offer them a Metro-comparable Service or a service with HiBIS-compliant Pricing, independent of HiBIS support.

### **3.2.4 Premises no longer eligible once provided with a HiBIS Service or a Metro-comparable service**

Once a Premises has been provided with a HiBIS Service, the Premises is no longer an Eligible Premises for further HiBIS Services. This includes for future occupants of the Premises, except as provided for in these Guidelines (see section 3.4.4.1)

Premises also become ineligible under HiBIS once they have been provided with a Metro-comparable Service, or a service with HiBIS-compliant Pricing, where that service is provided by a Service Provider who is not a HiBIS Provider.

### **3.2.5 Premises that lose access to a Metro-comparable Service following the start of HiBIS**

Where a Premises had access to a Metro-comparable Service at the Start of the Scheme, or after the provision of Imminent Access, but loses that access as a result of available capacity becoming unavailable, the Premises becomes an Eligible Premises until such time

as capacity again becomes available. The Service Provider who provided the particular Metro-comparable Service at the Start of the Scheme is not eligible to provide HiBIS Services to Premises that have become Eligible Premises as a result of losing access in these circumstances.

### **3.2.6 Premises without access to a Metro-comparable Service because of technological limitations**

Where a Premises is in an area that, at the Start of the Scheme or after the provision of Imminent Access, had access to a Metro-comparable Service, the Premises is nevertheless eligible to be supplied with a HiBIS Service if it did not have access to a Metro-comparable Service because of technological limitations, such as distance or the use of PGSs and RIMs.

This is particularly pertinent to ADSL services, because distance and the use of PGSs and RIMs prevent its availability to all Premises within an ADSL-enabled ESA. It is also relevant to other technologies. For example, a wireless service may be offered in an area at the Start of the Scheme, but may be unavailable to particular Premises because of topographical features.

#### **3.2.6.1 Removal of technological limitations and the eligibility of Premises**

If a Service Provider in the HiBIS Area, either with or without HiBIS support, undertakes the removal of a technological limitation (e.g. by replacement of a PGS or RIM or increasing a transmitter's power) to provide a Metro-comparable Service to one or more Premises previously denied access because of that limitation, all Premises receiving access as a result of that upgrade will remain Eligible Premises, provided they have not already become HiBIS Premises.

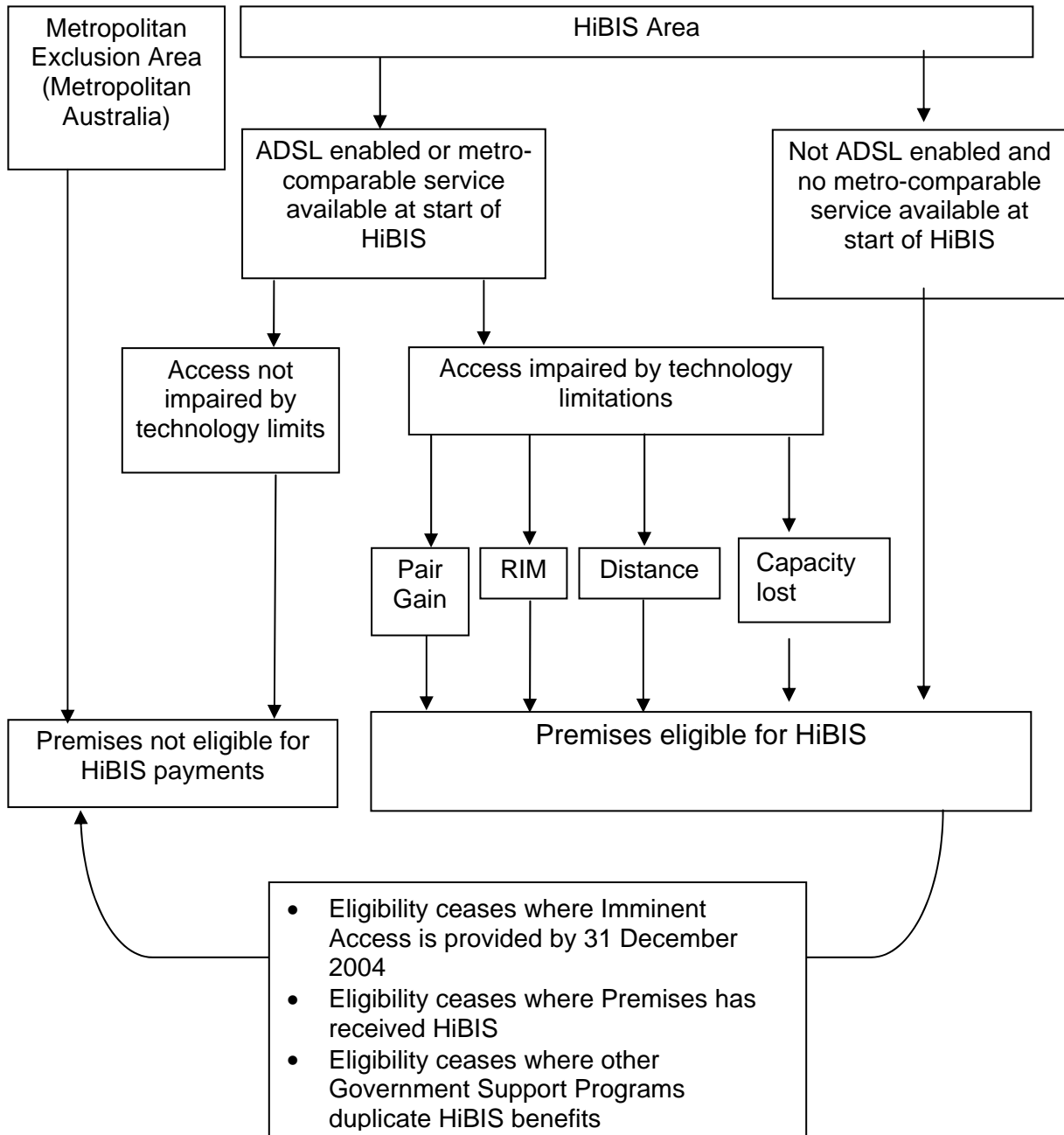
In the event of a HiBIS Provider removing a technological limitation in an area where a Metro-comparable Service was generally available at the Start of the Scheme, the HiBIS Provider will be required to provide DCITA with details of the upgrade and the location of Premises now able to receive a HiBIS Service as a result of the upgrade.

Subject to Customer privacy requirements, this information will be made available by DCITA to all HiBIS Providers. This is to ensure that competing HiBIS Providers are able to continue to offer HiBIS Services to such Eligible Customers for the duration of HiBIS.

### 3.2.7 Summary of eligibility arrangements relating to Premises

Eligibility arrangements are summarised in Figure 1 below:

**Figure 1: HiBIS Premises eligibility**



### **3.3 Other Government programs and eligibility under HiBIS**

#### **3.3.1 Special Digital Data Service Obligation beneficiaries covered**

Premises and/or Customers that have received assistance with services under the Special Digital Data Service Obligation (SDDSO) are eligible to receive HiBIS Services, provided other eligibility criteria have been met.

#### **3.3.2 Certain beneficiaries of the Extended Zones Agreement excluded**

A Premises where a Telstra EZ Satellite Service has been installed is not eligible to receive a HiBIS Service.

If a new occupant moves to that Premises and the Telstra EZ Satellite Service can no longer be provided as a result, that Customer is eligible to receive a HiBIS Service at that Premises.

If a Customer who has received a Telstra EZ Satellite Service moves to a new Premises at which there is no Telstra EZ Satellite Service, and all other eligibility requirements are met, that Customer is eligible to receive a HiBIS Service.

Customers in the Extended Zones who have not received a Telstra EZ Satellite Service are eligible to receive a HiBIS Service, provided other eligibility criteria are met.

#### **3.3.3 Coordinated Communications Infrastructure Fund (CCIF) and other Government Support Programs**

The provision of funds under CCIF will not generally affect the eligibility of Premises under HiBIS. Eligible Premises under HiBIS which are able to access a Metro-comparable Service under the CCIF will remain Eligible Premises until they are actually provided with a Metro-comparable Service under the CCIF.

Service Providers who are able to offer Metro-comparable Services in certain areas of the HiBIS Area as a result of CCIF support, will not be eligible to provide HiBIS Services in those areas. This is explained in section 4.4.3.1.

DCITA may identify other Australian, State/Territory or local Government programs that have the same explicit purpose and effect as HiBIS. In these circumstances the following would apply:

- (a) Premises receiving Metro-comparable Services as a result of such programs would no longer be Eligible Premises;
- (b) Service Providers or HiBIS Providers able to offer access to Metro-comparable Services to particular Premises as a result of those programs would not be eligible to provide HiBIS Services to those particular Premises; and
- (c) other HiBIS Providers would be eligible to provide HiBIS Services to those Premises (see section 4.4.3.2).



Programs will be considered on a case-by-case basis. This provision may apply to pre-existing programs and any future programs. Exclusion will be on a prospective basis only and will only come into force after DCITA takes reasonable steps to inform all HiBIS Providers of the exclusion in writing and from a date specified in writing by DCITA.

If other Government support is limited and/or is considered to have an objective to provide additional benefits beyond the HiBIS objectives, Premises receiving those benefits and which would otherwise be Eligible Premises, would remain Eligible Premises. For example, the Queensland Government program, by which distance education families are provided with financial assistance to offset the cost of participating in distance education, is considered not to overlap with HiBIS, but rather to be complementary. In these instances Premises and/or Customers would remain eligible for HiBIS Services.

### **3.4 Service-related eligibility provisions**

#### **3.4.1 Number of HiBIS Services per Premises**

With the exception of a Not-for-profit Organisation providing a Public Access Internet Facility, one HiBIS Service may be provided to an Eligible Premises at any one time for each type of Eligible Customer.

Where Eligible Premises are occupied by more than one type of Eligible Customer, one HiBIS Service may be provided for each type of Eligible Customer, even if more than one type of Eligible Customer is represented by a single person, for example where a person is eligible as both a Small Business and a Residential Customer. Types of Eligible Customers are set out in section 3.1.1.

Where the Eligible Customer is a Not-for-profit Organisation providing new Public Access Internet Facilities, no more than three services can be provided to the Eligible Customer at a Premises, unless the Customer has requested in writing and, obtained in advance, from DCITA a written notice specifying that a greater number of services can be provided at a Premises for that Customer. In deciding whether to issue such a notice to a Customer, DCITA will require the Customer to provide information regarding:

- (a) the number of existing and likely users of the Public Access Internet Facility for which the approval is being sought;
- (b) the nature of the entity and its access to funding, other than through HiBIS;
- (c) the availability of funds under HiBIS and the demand for those funds; and
- (d) any other matter DCITA considers relevant.

DCITA will also advise HiBIS Providers when it gives approval for such a Customer to have access to more than three HiBIS Services.

#### **3.4.2 Customer transfers between HiBIS Service Providers**

Where a HiBIS Customer is receiving a HiBIS Service from one HiBIS Provider at a particular HiBIS Premises, and the Customer changes to a different HiBIS Provider to receive a Higher Bandwidth Service at that Premises, the service supplied by the new HiBIS Provider is not eligible for an Incentive Payment under HiBIS.

However, where a HiBIS Customer stops receiving a HiBIS Service at a particular HiBIS Premises through circumstances beyond their control, the Customer will be eligible to be supplied with another HiBIS Service to those Premises.

### **3.4.3 HiBIS support for Pre-existing Customers**

Pre-existing Customers who are already being supplied with a Higher Bandwidth Service in the HiBIS Area by a HiBIS Provider, but not a service with HiBIS-compliant Pricing, are eligible to receive a HiBIS Service. Their HiBIS Provider can claim an Incentive Payment from HiBIS to transfer the Pre-existing Customer from their existing service to a service with HiBIS-compliant Pricing, and to upgrade equipment if necessary. This would generally be a partial payment based on the appropriate portion of the full Incentive Payment.

Where their HiBIS Provider does not offer a HiBIS Service that is reasonably equivalent (apart from price) to the Higher Bandwidth Service already being supplied, the Pre-existing Customer is eligible to receive a HiBIS Service from any HiBIS Provider offering services in the HiBIS Service Area, and a full Incentive Payment applies.

Customers who are receiving a Higher Bandwidth Service which does not include HiBIS-compliant Pricing from a Service Provider who is not a HiBIS Provider are eligible to receive a HiBIS Service from a HiBIS Provider, and a full Incentive Payment is payable.

Details of partial Incentive Payments payable for transferring Pre-existing Customers to HiBIS-compliant Pricing are at section 4.13.9.

### **3.4.4 When a HiBIS Customer changes Premises**

When a HiBIS Customer changes Premises, the following provisions apply.

#### **3.4.4.1 Moves to Eligible Premises**

If an existing HiBIS Customer moves to an Eligible Premises which has not previously been provided with a HiBIS Service, the Customer is eligible to receive a HiBIS Service at that Premises.

If that Customer is able to transfer any relevant CPE and use that equipment to receive a HiBIS Service, whether from its existing HiBIS Provider or another HiBIS Provider, a full Incentive Payment is still payable, but the cost of CPE for that service may be deducted from the HiBIS Provider's Allowable Costs. (see sections 4.13.10 and 4.13.11 for further information on Allowable Costs).

A new Customer moving to a Premises that has previously been provided with a HiBIS Service is generally not eligible to receive a HiBIS Service at the Premises. This provision recognises that, in such circumstances, the infrastructure necessary to provide a Metro-comparable Service to the new resident will generally remain in place. The exception is where a Metro-comparable Service cannot be provided to the new Eligible Customer at that Premises unless a New HiBIS Service is provided, for example where a HiBIS two-way

satellite service is the only means of providing a Metro-comparable Service to the new Customer.

#### **3.4.4.2 Moves to Premises that are not eligible for HiBIS**

An existing HiBIS Customer moving to a Premises that is not an Eligible Premises is not eligible to receive a HiBIS Service at the new Premises.

### **3.5 Process for Customers to obtain a HiBIS Service**

HiBIS aims to make a Customer's procedure for acquiring a HiBIS Service as similar as possible to their usual commercial dealings with a Service Provider.

#### **3.5.1 How Customers determine whether their Premises are Eligible Premises**

##### **3.5.4.1 Assess whether Premises are in the HiBIS Area**

In the first instance a Customer must establish whether their Premises is in the HiBIS Area (i.e. not in the Metropolitan Exclusion Area). In the first instance Customers are able to use the indicative map on the HiBIS website for this purpose.

If relevant, the Customer (or their preferred HiBIS Provider) uses the street address of the Premises to identify the location of the Premises on the HiBIS map. If the Premises does not have a street address, the Customer or their HiBIS Provider identifies the latitude and longitude (geo-code) of the Premises. If geo-coding is not practicable, the HiBIS Customer or their HiBIS Provider undertakes a reasonable estimation of the location of the Premises, using the mapping tools available. Where the Premises is considered to cross a Metropolitan Exclusion Area boundary, it will be assumed that the Premises is in the HiBIS Area.

##### **3.5.4.2 Assess whether Premises had access to a Metro-comparable Service at the Start of the Scheme**

Eligible Customers must also check whether any Service Providers were offering Metro-comparable Services in their area at the Start of the Scheme or following the provision of Imminent Access. A list of such Service Providers, the general service areas where they are providing Metro-comparable Services and their contact details, is at Attachments 9.1 and 9.2. If Customers are in the general service area of a Metro-comparable Service described at Attachments 9.1 or 9.2 or at HiBIS Online, they will need to check with the relevant Service Provider as to the availability of a Metro-comparable service to their Premises.

Generally, if Metro-comparable Services identified at Attachment 9.1 are available at any time during the Scheme they would have been available at the Start of the Scheme. The exception is upgrades to services identified at Attachment 9.1 that have taken place since the Start of the Scheme, whether under HiBIS or separately from HiBIS. Premises that gain access to Metro-comparable Services after the Start of the Scheme remain Eligible Premises under HiBIS until those services are provided. Upgraded services are identified separately at HiBIS Online.

Premises that are in the HiBIS Area but not in a general service area described in Attachment 9.1 or 9.2 are Eligible Premises.

Customers who believe they are eligible for assistance following these checks can then apply for a HiBIS Service from their preferred HiBIS Provider. HiBIS Online provides indicative information about the areas HiBIS Providers are serving. The information on the website is only indicative as the online mapping system cannot precisely mirror the service areas of HiBIS Providers, particularly where coverage may be limited by technology restrictions or topographical features. Customers need to check with their preferred HiBIS Provider about the availability of HiBIS Services to their particular Premises.

As HiBIS is a competitive multi-provider program, HiBIS Providers are encouraged to actively market their HiBIS Services in their service areas.

### **3.5.1.3 Review of access by DCITA**

Notwithstanding the procedures above, a Premises may be accepted as not having access to a Metro-comparable Service at the Start of the Scheme or following the provision of Imminent Access if a Customer and/or a Service Provider can provide evidence in writing to DCITA that reasonably satisfies DCITA to this effect.

### **3.5.2 HiBIS Demand Register**

Customers are able to add their names to the HiBIS Demand Register established by DCITA and operated as part of HiBIS Online.

The HiBIS Demand Register collects the contact details of potential HiBIS Customers and basic information about the type of services that they are seeking. This information is available to registered HiBIS Providers with a view to helping them market their services to Eligible Customers and to assist establishing a business case for investment in particular areas.

The HiBIS Demand Register is operated independently of demand registers set up by other entities.

### **3.5.3 Customer application form and attestation**

Once a Customer has identified a preferred HiBIS Provider who can provide a HiBIS Service to their Premises, the Customer needs to place an order with the HiBIS Provider.

DCITA requires HiBIS Providers to ensure Customers attest to their eligibility under HiBIS. HiBIS Providers are required to ask Customers to provide attestation of their eligibility in a standard format, in writing or another form acceptable to DCITA.

Customers need to attest that, to the best of their knowledge:

- (a) the information provided in their application is accurate;
- (b) they and the Premises at which they require the HiBIS Service are eligible under the Scheme, and they or their HiBIS Provider have made such inquiries as are required by DCITA to confirm this; and

(c) they acknowledge and accept the obligations on them under HiBIS, including agreeing to provide information and to it being shared among appropriate organisations. Customers should also note that in applying for a HiBIS Service, they are accepting various terms and conditions of supply.

Where a Customer has previously had a HiBIS Service, but no longer has access to that HiBIS Service due to circumstances beyond their control, they must give the details of those circumstances in their application.

For audit purposes, Customers must be able to produce relevant proof to support the information in their application, upon the request of DCITA or its representative.

The standard provisions of the Customer application and attestation form required by DCITA are at Attachment 9.4.

### **3.5.4 Use of Customer information by DCITA**

DCITA requires Customers to agree, for the purposes of the *Privacy Act 1988*, to their Customer details being provided by HiBIS Providers to DCITA, and potentially other appropriate agencies for the purposes of program administration, regulation and evaluation, and policy development.

Customers' personal information is handled in accordance with the provisions of the *Privacy Act 1988*, which sets standards for the collection, storage, use and disclosure of personal information. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the Privacy Act allows.

The information that Customers are asked to agree to allow to be disclosed includes information relating to their identity, their contact details, the services they are having supplied and the Premises to which the service is being provided.

### **3.5.5 HiBIS Service Terms and Conditions**

HiBIS Providers are required to enter into a contract with their Customers in relation to their HiBIS Services. HiBIS Providers may not use a Standard Form of Agreement for this purpose.

A HiBIS Provider's Agreement with DCITA requires the Provider to include in its contracts such commitments to deliver the service performance and pricing levels as it has committed to in its Agreement.

### **3.5.6 Upgrades by Customers of HiBIS Services**

A HiBIS Customer may upgrade the service package it is receiving under HiBIS to a higher level of service, subject to the terms and conditions offered by the HiBIS Provider, and subject to paying any additional charges required by the HiBIS Provider. No further HiBIS Incentive Payment is payable in relation to such Service Upgrades.

In these circumstances, if the new service is a HiBIS Service, the HiBIS Provider is required to provide the service on the applicable HiBIS Terms and Conditions for a period of three years from the time that the first HiBIS Service (from which the Customer is upgrading) was provided. If the new service is not a HiBIS Service, the HiBIS Provider has no obligation to provide HiBIS Terms and Conditions in relation to the service.

### **3.5.7 Customer termination of HiBIS Service (and churning)**

HiBIS does not place any restrictions on termination by a Customer of a HiBIS Service. The Customer is only bound by its contract with the HiBIS Provider in this regard, as would be the case with any other commercial arrangement. Termination of the supply of a HiBIS Service by a Customer does not affect the Incentive Payment that has been paid to the HiBIS Provider.

Similarly, HiBIS does not place restrictions on a Customer leaving one HiBIS Provider for another Service Provider (i.e. churning), whether to a HiBIS Provider or otherwise. Where a Customer does this, no HiBIS Incentive Payment will be payable to the new Service Provider, and there is no obligation on the new provider to offer HiBIS Terms and Conditions to the Customer.

This matter is discussed further in section 4.5.8 in the context of withdrawal from a service area by a HiBIS Provider or withdrawal of a HiBIS Service.

### **3.5.8 Customer terms and conditions after 3 year period**

HiBIS Providers are required to offer HiBIS Services for the three year period of the Scheme (see section 4.6.6 for further details).

As part of the registration process, Applicants will need to specify their intended policies in relation to HiBIS Customers' terms and conditions after the initial three-year period of supply of the HiBIS Service. The Australian Government cannot give any assurances that HiBIS Terms and Conditions will be maintained after this period.

## **4 Service Provider participation in HiBIS**

### **4.1 HiBIS Online**

To assist DCITA and HiBIS Providers with the administration of HiBIS, DCITA has established an online program management system, HiBIS Online. For HiBIS Providers, the information at HiBIS Online includes:

- (a) information and maps indicating the geographic areas that are covered by HiBIS;
- (b) information on the allocation, and remaining availability, of funds under HiBIS in a financial year; and
- (c) a demand register where possible HiBIS Customers can be identified.

HiBIS Providers use HiBIS Online to make claims for Incentive Payments for services provided under HiBIS, including providing HiBIS Customer data.

In the event that HiBIS Online is not fully operational at any time during the Scheme's operation, DCITA will institute alternative management arrangements.

### **4.2 Service Provider eligibility under HiBIS**

Service Providers, being retail Internet Service Providers, are eligible to apply for registration under HiBIS, and to receive Incentive Payments from DCITA for the provision of HiBIS Services.

### **4.3 Retailer-wholesaler arrangements**

Where a Service Provider applying for HiBIS registration proposes to provide a HiBIS Service by re-selling the service provided by a wholesale service provider, the Applicant must agree with the wholesale service provider whether and in what proportion the HiBIS Incentive Payment would be shared between the HiBIS Provider and the wholesale service provider.

Where there is agreement to share the Incentive Payment between the HiBIS Provider and the wholesale service provider, the wholesale service provider must also register with DCITA as a HiBIS Wholesaler, to be eligible to receive a proportion of Incentive Payments from the HiBIS Provider. DCITA will only register a wholesale service provider as a HiBIS Wholesaler where that wholesale service provider has established new infrastructure and/or incurred other costs since the Start of the Scheme that can be directly attributed to the provision of HiBIS Services and included in Allowable Costs.

Registration of HiBIS Wholesalers is for the purpose of accounting for HiBIS Incentive Payments that are agreed to be passed on to HiBIS Wholesalers by HiBIS Providers, and for allocating those Incentive Payments against agreed Allowable Costs.

DCITA will pay directly to the HiBIS Wholesaler amounts agreed by the reselling HiBIS Provider to be passed on to the HiBIS Wholesaler.

DCITA will not register a Service Provider who is proposing to resell the services of a wholesale service provider until the wholesale service provider is registered as a HiBIS Wholesaler. Where a HiBIS Provider who has already commenced offering HiBIS Services wishes to commence reselling a wholesale service provider's services, the HiBIS Provider must come to an agreement with the wholesale service provider, and if the HiBIS Provider wishes to share Incentive Payments with the wholesale service provider, the wholesale service provider must register as a HiBIS Wholesaler.

The information required from the Applicant in relation to wholesale arrangements is:

- (a) the identity of the wholesale service provider/s;
- (b) the nature of the agreement between the HiBIS Provider and the wholesale service provider/s; and
- (c) the share of each Incentive Payment to be paid to the HiBIS Wholesaler, being a proportion of the total incentive or a dollar amount.

It is required that the HiBIS Provider and the HiBIS Wholesaler establish appropriate contractual arrangements to reflect the arrangements for sharing Incentive Payments. DCITA does not specify the form which such agreements should take.

If HiBIS payments to a HiBIS Wholesaler cease because payments have exceeded Allowable Costs, HiBIS Providers who have agreements with that HiBIS Wholesaler in relation to sharing Incentive Payments, will continue to receive their agreed share of the Incentive Payment, subject to not exceeding their Allowable Costs.

These arrangements apply to both HiBIS Threshold Services and HiBIS Added Value Services.

## **4.4 Applying for HiBIS Provider registration**

Before participating in HiBIS, Service Providers are required to register themselves and each service they propose to provide, and to sign an Agreement with DCITA. Services that offer different functionality (e.g. bandwidth) and are offered at different prices will be considered as separate services for the purposes of HiBIS.

### **4.4.1 Requirements for registration**

Application for registration under HiBIS is open to all Service Providers. Registration is subject to Applicants being assessed and found to meet the requirements for registration, including their corporate standing and managerial capabilities (see section 4.5).

At the time of initial application for registration, Applicants must apply for registration as a HiBIS Provider, and must apply to register at least one HiBIS Threshold Service. HiBIS Providers must offer at least one HiBIS Threshold Service to each Customer to whom they offer a HiBIS Service.

At the time of their initial application, Applicants can also seek registration of HiBIS Added Value Services. Where a HiBIS Provider is already supplying a Higher Bandwidth Service to Pre-existing Customers and proposes to register the service under HiBIS, the



Provider must register HiBIS-compliant Pricing for Pre-existing Customers. Pricing for a Pre-existing Customer generally attracts partial Incentive Payments for each Customer transferred to HiBIS-compliant Pricing (see section 4.13.9).

#### **4.4.2 Registration of wholesale service providers as HiBIS Wholesalers**

The circumstances in which wholesale service providers must register as HiBIS Wholesalers is set out in section 4.3.

Registration is subject to wholesale service providers being assessed and found to meet the requirements for registration, including their corporate standing and managerial capabilities as identified under section 4.5.

#### **4.4.3 Service Provider eligibility and other funding programs**

##### **4.4.3.1 Coordinated Communications Infrastructure Fund (CCIF)**

Like HiBIS, the CCIF is an element of the Australian Government's contribution to the National Broadband Strategy. HiBIS works with the CCIF in a coordinated fashion, with HiBIS funding being available to complement but not duplicate CCIF (and similar State or local Government) funding.

Where, as a result of CCIF funding, a Metro-comparable Service is being offered in the HiBIS Area, the Service Provider offering that service is not eligible to register that service as a HiBIS Service in that area.

Where DCITA is satisfied that CCIF funding is insufficient to enable a Metro-comparable Service to be offered and supplied to Eligible Customers in an area, that service will generally be considered eligible for HiBIS registration in that area. Where such services are registered under HiBIS, total Allowable Costs for that HiBIS Provider may be adjusted to take account of funding that has been received through CCIF (including through State and Territory contributions) (see section 4.13.10).

Information about any CCIF funding is sought from HiBIS Providers at the time of application for HiBIS registration. Information about CCIF funding will be verified with OIE.

##### **4.4.3.2 Other Government programs that overlap with HiBIS**

If DCITA identifies other Australian, State, Territory or local Government programs that have the same explicit purpose and effect as HiBIS, it may exclude Service Providers funded under those programs to provide services, from HiBIS eligibility in relation to those services. Alternatively total Allowable Costs of benefiting HiBIS Providers may be adjusted to reflect funds provided under those programs.

Such programs will be considered on a case-by-case basis. This provision applies to pre-existing programs and any future programs. Such exclusion will be on a prospective basis

only. DCITA will take reasonable steps to inform all HiBIS Providers of such exclusions in writing.

If other Government support is limited and/or has additional objectives, it may be considered to complement HiBIS. For example, the Queensland Government program, by which distance education families are provided with financial assistance to offset the cost of using distance education, is considered not to overlap with HiBIS and to be complementary. In these circumstances, HiBIS Provider eligibility would be unaffected.

#### **4.4.4 When applications can be made**

An Eligible Provider intending to become a HiBIS Provider can submit an application at any time after the publication of the final Guidelines up until 30 June 2006. No applications will be accepted after 30 June 2006, unless this date is subsequently varied by DCITA through notification on HiBIS Online.

#### **4.4.5 The HiBIS Agreement**

A Service Provider whose application for registration under HiBIS is successful is required to sign an Agreement with DCITA in order to become a HiBIS Provider.

The Agreement binds the HiBIS Provider to comply with the requirements of HiBIS, and where the HiBIS Provider provides HiBIS Services as agreed, commits the Commonwealth to pay the Incentive Payments applicable to the HiBIS Services supplied by the HiBIS Provider.

The standard Agreement is available separately at <http://www.dcita.gov.au/hibis>. Service Providers should note that DCITA makes no representations that it will enter into any Agreement in exactly the terms of this standard Agreement.

Prior to submitting an application under HiBIS, Service Providers should fully apprise themselves of the details of the Agreement, obtaining independent legal advice where necessary.

Applicants are required to state in their applications that they have read the Agreement and are aware that they must sign it in order to receive HiBIS payments.

##### **4.4.5.1 Duration of the Agreements under HiBIS**

Agreements under HiBIS provide for Incentive Payments for only one financial year; that is, the financial year in which they are signed. It should be noted that the Agreement will provide for the HiBIS Provider's obligations to a HiBIS Customer connected during that year to continue for three years from the date of the connection of that HiBIS Customer, even though a new Agreement is entered into for Incentive Payments for Customers connected in the next financial year.

Before the start of each new financial year in which the Scheme operates, each registered HiBIS Provider will be invited to enter into a new Agreement, subject to any relevant changes to the HiBIS Scheme, and if there has been no material change in their

circumstances that would render the HiBIS Provider ineligible for registration under HiBIS.

Subject to any relevant changes to the HiBIS Scheme, it is envisaged the invitation would be made on the basis of the HiBIS Provider's pre-existing Agreement. DCITA envisages these offers would be made in May-June of 2004, 2005 and 2006, following the introduction of the relevant appropriation legislation into the Parliament.

#### **4.4.6 Commencement date for the supply of HiBIS Services**

HiBIS Providers can choose the date from which they begin to offer HiBIS Services, but that date must be specified in their application and set out in their Agreement. The date may be any date on or after the Agreement comes into effect.

Where a HiBIS Provider applies for HiBIS registration in advance of having arrangements in place to offer HiBIS Services, its registration and its Agreement are based on the information provided in its application. If, before beginning to offer HiBIS Services, the HiBIS Provider becomes aware that it can no longer meet the terms and conditions agreed to in the Agreement, it must advise DCITA immediately. In order for DCITA to agree to a variation of the Agreement, it must be satisfied that any new terms and conditions proposed by the HiBIS Provider are compatible with the arrangements set out in the Agreement.

#### **4.4.7 The registration application - Procedural matters**

Applicants and wholesale service providers seeking registration of themselves and/or services must use the HiBIS Provider, HiBIS Wholesaler and HiBIS Service registration application forms provided by DCITA. Copies of the forms can be downloaded from HiBIS Online at <http://www.dcita.gov.au/hibis> or requested from DCITA using the contact details provided in section 8.

All applications must be completed in full, and be accompanied by such supporting documents as are specified in these Guidelines and in the registration forms. Where the Applicant is an organisation, the applications must be authorised by an appropriately authorised person.

Applications are accepted in either hard copy or electronic format (Microsoft Word 97 or another compatible program). If provided in hard copy, the original application must be signed and dated and must be accompanied by two full copies.

Applications in electronic format must be accompanied by a signed and dated hard copy declaration that the electronic application is full and complete and duly authorised. An electronic application will not be processed until the declaration is received. Declarations can be forwarded to DCITA using the contact details in chapter 8.

##### **4.4.7.1 Requirements for registration of a HiBIS Provider**

The initial application to become a HiBIS Provider must seek registration of the Service Provider and at least one HiBIS Threshold Service, for each Service Area in which the Service Provider intends to operate. Applications for registration of more than one HiBIS

Threshold Service in the same Service Area or different Service Areas can be made. In all instances HiBIS Threshold Services must meet or better the performance and pricing parameters specified in the Guidelines.

Service Providers may also apply to register HiBIS Added Value Services.

#### **4.4.7.2 Overview of the registration assessment**

An Applicant is required to provide information on, and demonstrate:

- 1) its identity;
- 2) its corporate standing and managerial capabilities;
- 3) its technical and operational capabilities;
- 4) its financial standing;
- 5) the ongoing operation and sustainability of its business, particularly in regard to the HiBIS Services proposed; and
- 6) its capacity to meet the requirements of these Guidelines.

DCITA requires different levels of information, and undertakes different levels of scrutiny, depending on the size and corporate standing of Applicants and their experience in providing Higher Bandwidth Services (see section 4.5). Assessment criteria are set out in sections 4.5.3 to 4.5.6 below. DCITA reserves the right to seek additional information in order to satisfy itself as to the suitability of an Applicant for registration.

For the Applicant's proposed HiBIS Threshold Service(s), the assessment covers eight main areas:

- 1) Data Speeds;
- 2) the pricing of the proposed HiBIS Service, including the various price components;
- 3) other mandatory functionality and features;
- 4) the Service Area(s) in which the proposed HiBIS Service will be offered;
- 5) the commencement date for supply of the proposed HiBIS Service;
- 6) other nominated features of the proposed HiBIS Service;
- 7) marketing arrangements; and
- 8) the Allowable Costs of providing the proposed HiBIS Service.

Applications for HiBIS Added Value Services are subject to similar scrutiny, but more flexible requirements apply in relation to pricing.

Other information for administrative purposes (e.g. estimated call on HiBIS funds) is also required.

The same information is requested of all Applicants for HiBIS Service registration, and is assessed in the same way regardless of the categorisation of the Applicant as set out in Table 1.

#### **4.4.8 Confidentiality of Applicant information**

Information provided in applications should be identified as confidential if the Applicant wishes it to be treated as such.

Documents containing personal information are handled and protected in accordance with the provisions of the *Privacy Act 1988*, which sets standards for the collection, storage, use and disclosure of personal information. Personal information is disclosed only as provided for in these Guidelines or with the permission of the individual to whom it relates, or where the Privacy Act allows.

#### 4.5 Assessing HiBIS Providers and HiBIS Wholesalers

DCITA applies additional scrutiny to Applicants with a lower level of available business resources and with less experience in the provision of Higher Bandwidth Services. This additional scrutiny is intended to address the additional risk to the Australian Government of registering Service Providers who have limited financial resources and/or experience in providing Higher Bandwidth Services. As a result, Applicants will be categorised for assessment as set out in Table 1.

	Current number of higher bandwidth Customers		
Gross revenue of business in previous financial year	<1000	1,000 to 10,000	>10,000
>\$50 million	Category C	Category B	Category A
\$1m to \$50m	Category C	Category B	Category B
<\$1m	Category D	Category D	Category D

For the purposes of registering wholesale service providers, they will be assessed against criteria equivalent to those applying to Category A HiBIS Providers, where relevant and as identified at section 4.5. Wholesale service provider requirements are identified by ‘W’ in sections 4.5.3 to 4.5.6.

##### 4.5.1 Assessment of the Applicant as a HiBIS Provider

In the registration application, information is requested to allow DCITA to properly assess Applicants in specified areas. In all instances, Applicants must be prepared to provide, upon request, further documentation to substantiate claims made in their application form. DCITA relies on the information provided by Applicants; however, it may undertake such background checks and due diligence as it considers necessary to confirm the accuracy of information provided by an Applicant and the acceptability of an Applicant for registration under HiBIS. This may include checks of financial viability, criminality and regulatory compliance. Applicants are required to provide such consent as is necessary for these checks to be conducted by DCITA.

##### 4.5.2 Assessment of HiBIS Provider is for HiBIS purposes only

The assessment of Applicants by DCITA is solely for the purpose of DCITA determining whether it is acceptable to DCITA that the Applicant should be registered as a HiBIS Provider. DCITA’s assessment, including its assessment of financial information, is not to be taken by the HiBIS Provider or any other person as a representation by DCITA as to that

HiBIS Provider's financial viability. Accordingly no HiBIS Provider nor any third party should rely upon that assessment.

### **4.5.3 Applicant's corporate standing and managerial capabilities**

Applicants are assessed to establish the extent to which their organisational and managerial capacity is adequate to provide HiBIS Services. An Applicant's capability will be assessed according to the categorisation of the Applicant as set out in Table 1, and according to the specific criteria below.

#### **SOLVENCY**

**Applicant category:** A, B, C, D, W

**Indicative Benchmark/s:**

- (a) Solvent.
- (b) No knowledge of development that could change solvency status.

**Information required/How assessed:**

- (a) Director's or principal's statutory declaration, as applicable.
- (b) Where applicable to an Applicant, its:
  - (i) Profit and Loss Statements;
  - (ii) Balance Sheets; and
  - (iii) Cashflow Statements; OR
  - (iv) public annual reports;
 for the last 1, 2 or 3 years, where available.

Where the documents in (b) above are not available for the Applicant (e.g. it is a start-up operation), reliance will be placed on the statutory declaration (if applicable) and other information required in the application.

#### **AUDIT STATUS**

**Applicant category:** A, B, C, D, W

**Indicative Benchmark/s:** Unqualified audit report of financial position of the Applicant.

**Information required/How assessed:**

- (a) Where applicable, a copy of the audit report for the last annual financial statements.
- (b) As applicable, Director's or principal's statutory declaration that no material events have occurred since the date of the audit report that would affect the overall validity of the audit report.
- (c) Where an Applicant is unaudited, full set of the last three years financial statements, including notes.
- (d) Where the documents in (a) to (c) above are not available for the Applicant (e.g. it is a start-up operation), reliance will be placed on the statutory declaration (if applicable) and other information required in the application.

#### **REGULATORY STATUS**

**Applicant category:** A, B, C, D, W

**Indicative Benchmark/s:** Up-to-date with statutory lodgment requirements.

**Information required/How assessed:**

- (a) Statement of being up to date with lodgments and other statutory requirements with: ASIC, ATO, ASX, ACA, ACCC and TIO<sup>4</sup>.
- (b) Statement identifying and giving the details of any alleged breaches of law being pursued by ASIC, the ATO, ACA or ACCC at the time of registration.

**BOARD EXPERIENCE (IF APPLICABLE)**

**Applicant category:** C and D

**Indicative Benchmark/s:**

For the Board as a whole, 6 years minimum, combined industry experience at Board or senior executive level.

- (a) At least two Board members with at least 3 years industry experience each at Board or senior executive level.
- (b) No criminal convictions, charges pending or other serious breaches of professional rules, that are relevant to HiBIS operations.

**Information required/How assessed:**

- (a) Details of Board members and their relevant experience.
- (b) In relation to criminal conviction, charges pending and other serious breaches, Director's or principal's statutory declaration in case of nil response; details where required.

**CAPABILITY OF SENIOR MANAGEMENT**

**Applicant category:** C and D

**Indicative Benchmark/s:** For the management team, 6 years minimum, combined industry experience at senior management level.

- (a) At least two managers with at least 3 years industry experience each at senior management level.
- (b) No criminal convictions or other serious breaches of professional rules, that are relevant to HiBIS operations.

**Information required/How assessed:**

- (a) Details of organisational structure.
- (b) Details of senior managers including their roles, qualifications and relevant industry experience.
- (c) In relation to criminal convictions, charges pending and other serious breaches, Director's or principal's statutory declaration in case of nil response; details where required.

**4.5.4 Applicant's operational and technical capabilities**

Applicants will be assessed to establish their technical capability to provide services under HiBIS, according to the criteria set out below.

**ROBUSTNESS OF NEW TECHNOLOGICAL PLATFORMS**

(i.e. platforms not already proven or deployed elsewhere on a wide scale)

**Applicant category:** A, B, C, D, W (as relevant)

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<sup>4</sup> That is, the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Australian Stock Exchange (ASX), the Australian Communications Authority (ACA), and the Australian Competition and Consumer Commission (ACCC).

**Indicative Benchmark/s:**

- (a) Successful testing on an operational basis.
- (b) Capacity to increase scale of operations commensurate with Applicant's business plans.
- (c) Whether the platform is covered by documented technical standards.

**Information required/How assessed:**

- (a) Description of the platform.
- (b) Information on testing results and operational deployment.
- (c) Details of standardisation.

**SYSTEMS TO SUPPORT OPERATION UNDER HiBIS****Applicant category:** C and D**Indicative Benchmark/s:**

- (a) In-house, outsourced or combination of operational support systems to support level of Higher Bandwidth Service to Customers currently served and proposed.
- (b) Adequate arrangements in place by the commencement of HiBIS Service.

**Information required/How assessed:**

- (a) Description of systems or arrangements (e.g. plans, outsourcing).

**RISK MANAGEMENT****Applicant category:** C and D**Indicative Benchmark/s:**

- (a) Awareness of key technical and operational risks and effective strategies to address them, particularly in HiBIS context.

**Information required/How assessed:**

- (a) Identification of key technical and operational risks.
- (b) Strategies to mitigate those risks.

**TECHNICAL CAPABILITY AND EXPERIENCE OF CHIEF TECHNOLOGY (CTO) AND/OR OPERATIONS OFFICER (COO)<sup>5</sup>:****Applicant category:** C and D**Indicative Benchmark/s:**

- (a) Tertiary qualifications in IT, Communications Engineering or other relevant discipline; or technical competence, otherwise demonstrated.
- (b) At least 2 years equivalent experience at a senior level.
- (c) Technical expertise provided in-house or outsourced.

**Information required/How assessed:**

- (a) Names of CTO and/or COO.
- (b) Statement of the CTO and/or COO's qualifications and experience, including recent relevant major projects.
- (c) Whether CTO/COO are on contract and, if so, date contract expires.
- (d) Supporting documentation available upon request.

**ADEQUACY AND QUALIFICATIONS OF TECHNICAL STAFF****Applicant category:** C and D (infrastructure-based only)

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<sup>5</sup> In small organisations without dedicated staff serving in these designations, this criterion relates to the person/s filling comparable roles, whether in-house or outsourced.



**Indicative Benchmark/s:**

(a) Industry qualified and/or experienced operational staff.

**Information required/How assessed:**

- (a) General statement of the level of qualification and experience required of technical staff on recruitment.
- (b) General statement on staffing levels to manage projected Customer base.

**COMMERCIAL AVAILABILITY OF PROPOSED TECHNOLOGY AND SUPPORT FOR IT**

**Applicant category:** C and D (infrastructure-based only)

**Indicative Benchmark/s:**

(a) Technology is commercially available and supported in Australia or well proven overseas.

**Information required/How assessed:**

(a) Descriptive statement from applicant of proposed technology and support arrangements.

**4.5.5 Applicant's financial standing**

Applicants are assessed according to the criteria set out below, to establish that their financial resources are sufficient to provide services effectively under HiBIS.

In addition to information required from Applicants, DCITA may seek information on financial standing from third parties, including credit rating agencies. Applicants need to provide written authorisations as required.

**ONGOING ABILITY TO FUND HiBIS COMMITMENTS**

**Applicant category:** A, W

**Indicative Benchmark/s:**

Absence of material commitments that would call into question the Applicant's ability to sustain its HiBIS operations.

**Information required/How assessed:**

- (a) Financial Statements and annual reports as applicable.
- (b) Answers to questions on application form.
- (c) Director's statutory declaration.

**HiBIS PROVIDER'S ACCESS TO ADEQUATE FUNDS**

**Applicant category:** B, C, D

**Indicative Benchmark/s:**

Access to sufficient funds to operate the business while participating in HiBIS.

**Information required/How assessed:**

- (a) Financial Statements and annual reports as applicable.
- (b) Answers to questions on application form.
- (c) Director's or principal's statutory declaration.
- (d) For C and D Applicants, a business plan that is to include a completed HiBIS financial plan template.

**FINANCIAL PERFORMANCE - PROFIT****Applicant category:** B, C, D**Indicative Benchmark/s:**

Profitable.

**Information required/How assessed:**As for HiBIS Provider's access to adequate funds above.**FINANCIAL PERFORMANCE – NET ASSETS****Applicant category:** B, C, D**Indicative Benchmark/s:**

Positive net assets.

**Information required/How assessed:**As for HiBIS Provider's access to adequate funds above.**FINANCIAL PERFORMANCE – NET CURRENT ASSETS****Applicant category:** B, C, D**Indicative Benchmark/s:**

Positive net current assets

**Information required/How assessed:**As for HiBIS Provider's access to adequate funds above**ASSETS AND FUTURE COMMITMENTS****Applicant category:** B, C, D**Indicative Benchmark/s:**

Material future commitments relative to net assets on the balance sheet at the Applicant's most recent financial year end.

**Information required/How assessed:**As for HiBIS Provider's access to adequate funds above.**4.5.6 The sustainability of the Applicant's proposed HiBIS operation**

In support of their applications for registration as HiBIS Providers, Applicants who fall into Categories C and D are required to submit business planning information in relation to their proposed HiBIS operations. This is to assist DCITA assess their likely capacity to deliver Higher Bandwidth Services during and beyond the period of the HiBIS program. The business planning information must cover the matters identified below, and will be assessed as indicated.

**OVERVIEW OF INTENDED HiBIS BUSINESS****Applicant category:** C and D**Indicative Benchmark/s:**

- (a) Absolute scale and complexity of intended HiBIS business.
- (b) Scale of HiBIS business relative to Applicant's experience and other operations in the business.

**Information required/ How assessed:**

- (a) Answers to questions in application form.

**MARKETING AND SALES PLANS AND STRATEGIES**

**Applicant category:** C and D

**Indicative Benchmark/s:**

- (a) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (b) Use of outsourcing where internal expertise is lacking.

**Information required/ How assessed:**

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (c) Use of outsourcing where internal expertise is lacking.

**CUSTOMER SERVICE STANDARDS**

**Applicant category:** C and D

**Indicative Benchmark/s:**

- (a) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (b) Use of outsourcing where internal expertise is lacking.

**Information required/ How assessed:**

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (c) Use of outsourcing where internal expertise is lacking.

**BILLING ARRANGEMENTS**

**Applicant category:** C and D

**Indicative Benchmark/s:**

- (a) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (b) Use of outsourcing where internal expertise is lacking.

**Information required/ How assessed:**

- (a) Answers to questions in application form.
- (b) Adequacy and likely effectiveness of arrangements to achieve business objective.
- (c) Use of outsourcing where internal expertise is lacking.

**REASONABLENESS OF FINANCIAL PLAN'S ASSUMPTIONS**

**Applicant category:** C and D

**Indicative Benchmark/s:**

- (a) Assumptions in relation to:
  - (i) higher bandwidth Internet penetration;
  - (ii) market share;
  - (iii) pricing;
  - (iv) costs.

**Information required/ How assessed:**

- (a) Answers to questions in application form.
- (b) Financial Plan.

**REASONABLENESS OF THE FINANCIAL PROJECTIONS**

**Applicant category:** C and D

**Indicative Benchmark/s:**

- (a) Performance in terms of:

- (i) gross margin;
- (ii) shareholder funds;
- (iii) EBTIDA<sup>6</sup>;
- (iv) funding and sales;
- (v) long-term profitability.

**Information required/ How assessed:**

- (a) Answers to questions in application form.
- (b) Financial plan.

#### **4.5.7 Provision of financial plans**

Applicants who fall into Categories C and D are required to submit a business plan that is to include a completed HiBIS Financial Plan Template, for their proposed HiBIS business operations in support of their applications. The HiBIS Financial Plan Template is available separately at the HiBIS website, <http://www.dcita.gov.au/hibis>.

The financial plan template contains a guide on its structure and operation. DCITA cannot assist Applicants in the preparation of their financial plans, beyond the general information provided in this guide.

#### **4.5.8 Arrangements for withdrawal of the HiBIS Provider**

Each Applicant must set out an Exit Strategy it would follow if it decided to terminate its registration as a HiBIS Provider or its registration of a HiBIS Service.

A HiBIS Provider must comply with the Exit Strategy included in its registration and set out in its Agreement.

The Exit Strategy must provide for the HiBIS Provider to give DCITA and the HiBIS Provider's HiBIS Customers not less than 30 days notice of its intention to withdraw itself or a service from HiBIS.

It must also set out details on how relevant aspects of service withdrawal would be managed, including:

- (a) ownership of CPE; and
- (b) assistance with transferring Customers to comparable services.

Where a HiBIS Provider is proposing to withdraw a HiBIS Service but to continue to operate as a HiBIS Provider, the HiBIS Provider must offer to migrate Customers of the withdrawn Service to a comparable HiBIS Service being offered, if such a service is available.

### **4.6 Assessment of an Applicant's HiBIS Services**

These sections focus on the assessment for registration of 'HiBIS Threshold Services'. These arrangements also apply to HiBIS Added Value Services except in the area of pricing.

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<sup>6</sup> EBTIDA: Earnings before tax, interest, depreciation and amortisation.

#### **4.6.1 Area in which the HiBIS Threshold Service is to be offered**

For a service to be registered as a HiBIS Threshold Service, the Applicant must specify the area or areas in which it will offer and supply the service, subject to normal technological and commercial limitations, upon request by an Eligible Customer. These areas will be the HiBIS Service Areas for the service concerned. The Applicant has discretion to define its service area, within the provisions governing overall eligibility of the HiBIS Area. The area can be as small or as large as the HiBIS Provider wishes. For example, the area may be a discrete community, a local government area or the whole HiBIS Area.

The HiBIS Service Area may also be defined by the locations to which it is technically or financially feasible to offer the proposed HiBIS Service, rather than by a discrete geographic area. For example, a HiBIS Provider providing HiBIS Services via satellite may define its HiBIS Service Area to include those Premises only serviceable by satellite solutions.

HiBIS Service Areas must be within the HiBIS Area.

An Applicant's proposed HiBIS Service Area must be defined with sufficient specificity to enable a clear understanding by DCITA and the Applicant's potential Customers of the circumstances and locations in which the Applicant will provide a HiBIS Service.

DCITA reserves the right to reject any application which, in its view, indicates the Applicant has defined the service area to target a particular Customer group, rather than all Eligible Customers able to receive the service in a HiBIS Service Area.

The same requirements apply to HiBIS Added Value Services.

A HiBIS Provider who has registered a HiBIS Service in a Service Area, may subsequently not be able to offer that service because its existing infrastructure is fully utilised and no further capacity is available. In this circumstance the HiBIS Provider may invest in further infrastructure (which would be included in its Allowable Costs) for the purpose of continuing to offer HiBIS Services in the Service Area, or it may cease to offer HiBIS Services in that Service Area. If the HiBIS Provider ceases to offer HiBIS Services in these circumstances it must immediately notify DCITA, and it must continue to fulfil its obligations to its HiBIS Customers in that Service Area.

HiBIS Providers should note that an existing HiBIS Customer who moves to an Eligible Premises which has not previously been provided with a HiBIS Service is eligible to receive a HiBIS Service at that Premises. If that Customer is able to transfer any relevant CPE and use that equipment to receive a HiBIS Service, whether from its existing HiBIS Provider or another HiBIS Provider, a full Incentive Payment is still payable but the cost of CPE for that service may be deducted from the HiBIS Provider's Allowable Costs.

#### **4.6.1.1 Mapping of the area in which the HiBIS Threshold Service is to be offered**

Where feasible, the Applicant must provide DCITA with sufficient information to enable DCITA to map the HiBIS Service Area of a HiBIS Threshold Service, if and when the HiBIS Provider and HiBIS Service are registered. This map is published online and is available in a printed form upon request. DCITA will place necessary qualifications in relation to service coverage on the map, in consultation with the registered HiBIS Provider.

The same requirements apply to HiBIS Added Value Services.

#### **4.6.1.2 Extension of a HiBIS Service to a new area**

Where a HiBIS Provider wishes to extend a HiBIS Threshold Service or HiBIS Added Value Service to a new area, the HiBIS Provider must advise DCITA in writing, using the Service Area Extension Form, of the proposed addition to the HiBIS Service Area, including an estimation of Additional Allowable Costs. Once approved by DCITA the HiBIS Provider's Agreement is varied to include the additional service area.

### **4.6.2 HiBIS Threshold Service Data Speeds**

A HiBIS Threshold Service must be able to meet the Data Speed requirements specified in the definition of the Service (see section 1.3).

Applicants may propose higher peak and/or average Data Speeds than the minimum required for a HiBIS Threshold Service.

HiBIS Added Value Services must also satisfy Data Speed requirements specified in the Applicant's description of the service and be subject to testing. Average Data Speeds for Added Value Services are not required to be set at 60 per cent of peak Data Speeds, but an average Data Speed for each Added Value Service must be nominated, and actual performance must be tested against that nominated speed (according to DCITA's prescribed methodology). Customers must be informed of the nominated average Data Speed and actual performance against that speed.

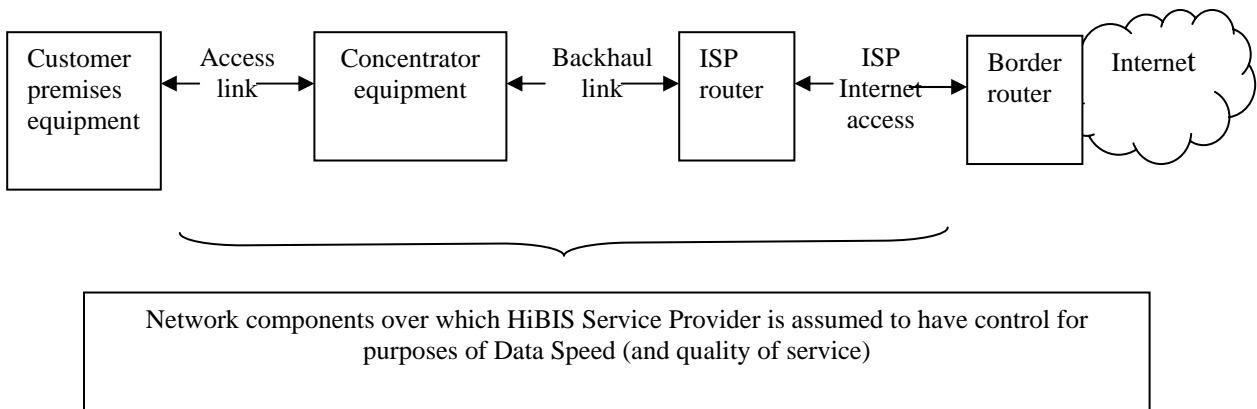
For Added Value Services actual peak and average Data Speeds cannot be less than those required for Threshold Services.

The Applicant's proposed HiBIS Services must be configured so that the peak Data Speeds are accurate and represent those that could be achieved by any end-user on the service as a maximum peak level. The HiBIS Provider's network must be configured so that the stipulated average Data Speeds for services are achieved when measured in the manner specified by DCITA.

These Data Speeds are those attainable over those parts of the infrastructure within the HiBIS Provider's control, specifically from the border between the HiBIS Provider's Network and the Internet to the border between the HiBIS Provider's network and the CPE.

The Data Speeds do not refer to end-to-end Data Speeds across the Internet, which are subject to a range of factors beyond the HiBIS Provider’s control. Figure 2 shows the main components of an Internet network and those which are subject to the Data Speed requirements.

**Figure 2: Basic Internet network components**



HiBIS Providers are not in breach of the Data Speed requirements of the Scheme if Data Speeds experienced by Customers fall below specified HiBIS levels due to circumstances beyond their control. However HiBIS Providers are responsible for service components within their control, including:

- (a) the access link to the Customer;
  - (b) the backhaul link from their concentrator equipment to their ISP router; and
  - (c) the ISP’s Internet access link between their ISP router and the border router;
- as shown in Figure 2 above.

Average Data Speeds must be measured independent of caching effects in order to measure the actual performance of the links identified above.

In the case of a HiBIS Provider who is a reseller, it is the responsibility of the reseller to ensure that its contract with its wholesale service provider has terms and conditions that enable it to achieve these average Data Speeds on the service it resells.

If, on the basis of reasonable evidence<sup>7</sup>, a Customer claims that its HiBIS Provider is not providing the Data Speeds stipulated, the HiBIS Provider is required to investigate and deal with the complaint. This may include reasonable efforts to assist the Customer to configure their computer to achieve the required Data Speeds (where this is identified as the constraining factor). Should a Customer consider that a complaint relating to Data Speeds

<sup>7</sup> In most instances, a Customer would be expected to have undertaken a sufficient number of tests, using a recommended test facility, to demonstrate that their Provider would likely fail the HiBIS Data Speed test for that service.

has not been settled to their satisfaction, the Customer may refer the complaint to the TIO for investigation (see section 4.6.2.2.1).

#### **4.6.2.1 Data Speed information required at registration**

In its application for registration of HiBIS Services, an Applicant must provide evidence that it is able to achieve the peak and average Data Speeds required for HiBIS Threshold Services or, in the case of HiBIS Added Value Services, the peak and average Data Speeds proposed.

In the case of peak Data Speeds, an Applicant must identify the peak Data Speeds of the proposed service, show how they have been derived and demonstrate that they are a reliable indication of peak Data Speeds.

In the case of average Data Speeds, an Applicant must provide information to DCITA to demonstrate it can achieve the required or proposed average Data Speeds. To this end, DCITA requires the following information at registration:

- (a) an estimate of the maximum number of services to be supported by the proposed infrastructure;
- (b) the estimated service Data Speed mix if applicable – i.e. the respective percentages of 256/64, 512/128, 1500/256 or other service Data Speeds;
- (c) the total capacity to be provisioned in both the backhaul and ISP Internet Access links, as shown in Figure 2. These figures should be accompanied by a diagram to show where this capacity is located within the Applicant’s proposed infrastructure;
- (d) the estimated activity rate per service during the 16 hour period between 7:00 a.m. and 11:00 p.m. The activity rate is the proportion of time during this period that an end-user is assumed to be actually downloading data; and
- (e) any other information that the Applicant believes is relevant to demonstrating this performance.

These figures should be accompanied by the reasoning and calculations that show how the Applicant will ensure the specified average speed for the proposed service. If the Applicant wishes DCITA to consider a claim to treat this information as confidential information, it should be identified as such and reasons for such treatment provided.

DCITA may require further information from an Applicant to be satisfied that its infrastructure is configured adequately to support the proposed services. In particular, DCITA needs to be satisfied that the capacity provisioned and the resulting contention ratios will support the specified average Data Speeds stipulated for the HiBIS Provider’s HiBIS Customers.

#### **4.6.2.2 Monitoring and enforcement of Data Speed compliance**

Compliance with average Data Speed requirements is subject to a three-tier monitoring and enforcement regime. The first tier is based on Customer complaints. The second tier is based on average Data Speed monitoring and reporting by HiBIS Providers. The third tier is a process of random audit by DCITA (or its nominated representatives). These arrangements apply to all HiBIS Threshold Services and HiBIS Added Value Services.



#### **4.6.2.2.1 Complaints-based monitoring**

DCITA is establishing an online facility at which HiBIS Customers are able to test their average Data Speeds.

Where testing undertaken by a Customer indicates that the HiBIS Service is not performing at the required average Data Speed, the Customer should complain to the HiBIS Provider and seek an explanation. The Customer's testing needs to be reasonably consistent with the testing schedule specified in section 4.6.2.2.5. Customers also need to recognise that such results may be caused by factors outside their HiBIS Provider's control and therefore may not signify a breach of the HiBIS Provider's HiBIS obligations.

If the Customer is not satisfied by the HiBIS Provider's explanation, the Customer can take the matter to the TIO. Action by the TIO may include referring the HiBIS Provider to DCITA for an examination of service performance.

Where complaint data indicates possible systemic non-compliance by a HiBIS Provider with its average Data Speed obligations, DCITA may require further formal testing, and, if necessary, rectification of the situation (see section 4.6.2.2.5 below).

Data on HiBIS Service complaints is also to be reported to DCITA by both HiBIS Providers and the TIO.

#### **4.6.2.2.2 Inability to achieve the average Data Speed due to exceptional circumstances**

After supplying a HiBIS Service to a particular Customer it may become apparent that a HiBIS Provider is unable to provide the average Data Speed required because of exceptional circumstances relating to the supply of that particular service. For example, the service may be affected because it is being provided at the limit of the technical range of the platform being used, or the speed is inhibited by environmental features such as topography or vegetation.

In these circumstances, it may be impossible or extremely costly for the HiBIS Provider to achieve the required average Data Speeds. Where such circumstances are identified, and where the Customer consents, the HiBIS Provider may propose to DCITA that it withdraw the Customer's Service and repays the Incentive Payment for that Service to DCITA. The affected Customer would then be eligible to receive another HiBIS Service.

A HiBIS Provider may continue to provide a service that is not achieving the required average Data Speed, provided that the Customer has been informed of their right to another HiBIS Service as described above, and elects to continue to receive the existing HiBIS Service. In this circumstance the Incentive Payment would not be repayable by the HiBIS Provider to DCITA.

#### **4.6.2.2.3 Data speed monitoring and reporting by HiBIS Providers**

HiBIS Providers are required to:

- (a) maintain test computers and services;

- (b) undertake and report on scheduled Data Speed (Phase 1) testing;
- (c) undertake follow-up (Phase 2) testing where initial test results are substandard; and
- (d) undertake further follow-up (Phase 3) testing within its own network where the HiBIS Provider contends the Data Speed problem lies outside its network boundaries.

Where Phase 2 or 3 testing results indicate a systemic failure by a HiBIS Provider to meet its average Data Speed requirements, the HiBIS Provider must rectify the situation within a reasonable period determined by DCITA. Where the HiBIS Provider has failed to adequately address the problem, the HiBIS Provider's Agreement may be terminated (see section 5.2 below).

#### **4.6.2.2.4 Test computers and services**

Each HiBIS Provider is required to have sufficient test computers to enable DCITA to properly assess whether HiBIS Services are being provided to Customers at the required average Data Speeds. Testing needs to provide a representative view of the performance of a HiBIS Provider's overall HiBIS operations, including both HiBIS Threshold and HiBIS Added Value Services. The test computers must be connected to the HiBIS Provider's HiBIS Services in its HiBIS Service Areas in the same manner that its Customers are connected to those services.

As an alternative to setting up their own test computers, HiBIS Providers may enter into arrangements with particular Customers in their HiBIS Service Areas for those Customers' computers to be used for testing purposes. Such arrangements would need to be on the basis that required tests could be undertaken in the manner specified by DCITA, and that DCITA could have ready access to test computers for follow up investigations and/or random audits as required.

Test computers are required to be configured in a manner specified by DCITA for testing purposes. The details of all test computers including their physical locations and network details (e.g. IP addresses) must be provided to DCITA.

DCITA will also consider the use of other testing processes proposed by HiBIS Providers that can be demonstrated to provide test results that are reliable and consistent with the two approaches indicated above. Such an approach needs to be approved in writing by DCITA.

Where one or more HiBIS Providers are providing HiBIS Services by reselling the services of a HiBIS Wholesaler or a wholesale service provider, and where the HiBIS Providers' services are essentially identical, DCITA will consider proposals for a single testing process for those HiBIS Providers.

#### **4.6.2.2.5 Data speed testing regime and reporting**

The Data Speed testing facility established by DCITA is used by test computers to download and upload a specified file in order to test average download and upload speeds.

The file is to be hosted on a DCITA server or another server with high capacity access to the Internet so that Data Speeds are unlikely to be significantly affected by speed restrictions within the Internet cloud.

To determine that the required Data Speed is achieved at least 75 per cent of the time, data download and upload tests are undertaken by test computers according to the following minimum testing schedule. On one specified day each calendar month, the test computer is required to download and upload the specified file at least once each hour, over the 16 hour period between 7:00 a.m. and 11:00 p.m. The test occurs at a time randomly chosen within each hour.

The HiBIS Provider is taken to have met the 75 per cent availability requirement if at least 75 per cent of the test results (i.e. 12 out of 16) show that a download and upload Data Speed of at least 60 per cent of the peak Data Speed has been achieved. This is Phase 1 testing.

Where a HiBIS Provider's Data Speed tests do not achieve the average Data Speeds required during this test, it is required to enter into a program of daily Phase 2 testing. This means that for a period of five successive working days the testing schedule as described above must be carried out. If, after five successive working days testing, the results indicate the required average Data Speeds are still not being achieved, the HiBIS Provider must notify DCITA of the overall test results, providing if possible an explanation, and describing what remedial action, if any, it intends to take.

Where the HiBIS Provider contends that its failure to meet the required average Data Speeds is due to factors beyond its control (i.e. factors arising on the Customer's side of the Service Provider interface or between its border router and the test server), the HiBIS Provider must institute a program of Phase 3 testing of equal or greater frequency to the Phase 2 testing (i.e. at least five successive working days). Phase 3 testing is to be undertaken within the HiBIS Provider's network, between the CPE and the HiBIS Provider's border router, or such other point as the HiBIS Provider satisfies DCITA is appropriate given the configuration of its network.

#### **4.6.2.2.6 Quarterly reporting and publication of Data Speeds**

HiBIS Providers are required to include their average Data Speed test results in their quarterly compliance reports to DCITA (see section 2.6). Where DCITA scrutiny of the test results in the quarterly report identifies non-compliance that has not previously been advised to it, such non-compliance may give rise to further investigation and/or action by DCITA, including possible de-registration of the HiBIS Provider.

DCITA publishes on the HiBIS Online website at least quarterly each HiBIS Provider's average Data Speed test results for each HiBIS Service it is providing.

#### **4.6.2.2.7 Random audit of Data Speeds**

In addition to the above requirements, average Data Speeds for HiBIS Services are subject to random audit. This may involve DCITA (or its contractors) making arrangements directly with HiBIS Customers or making site visits to HiBIS Providers and making use of their facilities. HiBIS Providers must comply with all reasonable requests in relation to such audits, including making available facilities for audit purposes.

### **4.6.3 Pricing requirements for the HiBIS Threshold Service**

HiBIS Threshold Services supplied under HiBIS must meet the pricing requirements specified in the definition of a HiBIS Threshold Service (see section 1.3). Different pricing requirements apply to HiBIS Added Value Services and are discussed in section 4.6.11.

A HiBIS Provider's prices for its HiBIS Services are specified in its Agreement with DCITA and are binding on the HiBIS Provider.

The pricing requirements for HiBIS Threshold Services will be re-examined during the review of the Scheme in early 2005-06.

#### **4.6.3.1 Additional pricing discounts**

The price an Applicant proposes for a HiBIS Threshold Service must be available for all Eligible Customers within the HiBIS Service Area. However HiBIS does not preclude the HiBIS Provider offering special discounts on the Service to particular groups of Eligible Customers on a commercial basis, subject to compliance with all other relevant laws.

#### **4.6.3.2 Assessing pricing for HiBIS Threshold Services**

In assessing whether pricing for a HiBIS Threshold Service meets the prescribed pricing requirements, prices charged over three years for the following items will be taken into account:

- (a) hardware;
- (b) installation (excluding travel costs);
- (c) connection;
- (d) account establishment;
- (e) ongoing provision of the service, including provision of Internet access and a monthly usage allowance of at least 500 MB<sup>8</sup>; and
- (f) any other charges that DCITA decides to take into account.

A HiBIS Service by definition includes Internet access, and where this is not proposed, the service will not be registered as a HiBIS Service.

For the purpose of assessing the proposed pricing for a HiBIS Threshold Service, it is assumed that ownership of CPE passes to the Customer within the three year period over which HiBIS pricing is to apply. Where this is not the case, the Applicant's proposed pricing is subject to additional scrutiny to ensure the proposed pricing package reflects the pricing requirements for HiBIS Threshold Services. Specifically, where the HiBIS Provider

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<sup>8</sup> As the HiBIS Threshold Service must include a 500 MB usage allowance, excess charges will not be considered, except in determining the value of any additional functionality claimed.

retains ownership of the CPE, DCITA is expecting a pricing discount reflecting the residual value of the equipment to the HiBIS Provider after three years.

Additional funding is provided for certain travel costs (see section 4.13.8). Travel charges are therefore not included in the assessment of proposed pricing for HiBIS Threshold Services. Payment of Travel costs by DCITA in the circumstances described applies for both HiBIS Threshold and HiBIS Added Value Services.

For assessment purposes, the price of a HiBIS Threshold Service as a package over three years is calculated as follows:

	hardware charges
+	installation (excluding travel charges)
+	connection (if applicable)
+	account establishment (if applicable)
+	monthly (usage) charges (x 36 months) <sup>9</sup>
+	<u>any other relevant charges (x number required in the period)</u>
=	total package price

The pricing must be GST inclusive.

HiBIS Providers are required to provide all information relevant to this calculation in their application for registration of a HiBIS Threshold Service.

#### **4.6.3.3 Calculating credits for additional functionality, features or inclusions**

To provide Applicants with some flexibility in how they structure their HiBIS Threshold Services, HiBIS Providers may propose HiBIS Threshold Services which have additional features, functionality or inclusions, and which can be offered at a slightly higher price, up to an additional \$400 over the three year package. Any additional price (up to \$400) must be justified by reference to the value of additional features provided. The maximum allowable package price for an ADSL HiBIS Threshold Service with additional functionality is therefore \$2900, and for a non-ADSL HiBIS Threshold Service, \$3400.

Applicants are able to propose features and inclusions that could be considered additional, and propose a valuation for them. DCITA will generally only consider as reasonable and acceptable valuations that are based on:

- (a) charges otherwise applied by the HiBIS Provider as part of its HiBIS package; or
- (b) charges that the HiBIS Provider or other HiBIS Providers charge in the market for the additional functionality or feature.

Additional functionality, features and inclusions, which could be valued for this purpose, are:

- (a) additional usage allowances (including unmetered usage);
- (b) additional Data Speed (that is, additional upload or download speed), where this can be objectively valued; and

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<sup>9</sup> A HiBIS Threshold Service must include a download limit of at least 500 MB.

- (c) additional security, data prioritisation or other elements that offer functionality that are clearly in addition to standard services, and which offer identifiable value for consumers.

HiBIS Providers may propose other functionality, features or inclusions, but such proposals must be substantiated as described in this section.

#### **4.6.4 Bundling of the HiBIS Threshold Service and other services**

DCITA will not register as a HiBIS Threshold Service a constructed service bundle; that is, a package of services, the constituents of which are generally sold separately (e.g. mobile, higher bandwidth, telephony, pay TV) and the bundling of which is not inherent to the operation of the product.

However services involving different platforms for data uploading and downloading (e.g. satellite download and an ISDN upload) are acceptable for HiBIS registration.

HiBIS Providers are able to offer as part of a service bundle a HiBIS Service that is identical to their HiBIS Threshold Service, provided that the HiBIS Threshold Service is also offered separately as a stand-alone service. Service Providers should note that bundling conduct is subject to compliance with all relevant laws including trade practices law.

#### **4.6.5 Pricing packages for Pre-existing Customers**

Where an Applicant or HiBIS Provider is proposing to register a HiBIS Service, which is based on an existing commercial service for which it has Pre-existing Customers in the HiBIS Area, the Provider must also register HiBIS-compliant Pricing for those Customers, if the price of the existing service is higher than the proposed price for the equivalent HiBIS Service.

HiBIS-compliant Pricing must offer Pre-existing Customers the same prices that new HiBIS Customers would pay for the relevant components of the equivalent HiBIS Service of that HiBIS Provider, particularly in regard to monthly usage charges. This requirement applies to both HiBIS Threshold and HiBIS Added Value Services.

DCITA will determine, upon application, a partial Incentive Payment for provision of HiBIS-compliant Pricing to Pre-existing Customers. Such payment is prospective only, and is based on the cost to the HiBIS Provider of reducing the price to the Pre-existing Customer for a three year period.

Where a Pre-existing Customer does not have access to HiBIS-compliant Pricing because their HiBIS Provider does not offer an equivalent HiBIS Service, then they are eligible to receive either:

- (a) the nearest equivalent HiBIS Service from their HiBIS Provider, in which case a partial Incentive Payment will be determined; or
- (b) a New HiBIS Service from another HiBIS Provider, in which case a full Incentive Payment will apply.

#### **4.6.6 Period over which HiBIS prices must be offered in the HiBIS Provider's HiBIS Service Area**

Subject to any revision of the pricing requirements following the mid-term review, HiBIS Providers are required to offer HiBIS Threshold Services at or below their registered prices for the period of the Scheme (that is until 31 December 2006, extendable to 30 June 2007). The registered price is specified in each of the HiBIS Provider's Agreements.

HiBIS Providers may change the constituent prices within the pricing of HiBIS Services, provided they do not exceed the total price for the HiBIS Service that has been registered with DCITA. The HiBIS Provider must advise DCITA in writing of any proposed changes to constituent prices at least 14 days in advance. If DCITA does not approve of such a change, it must notify the HiBIS Provider within the 14 days to this effect and the change must not proceed. If DCITA takes no action, it is taken to have agreed to the change.

These arrangements also apply to HiBIS Added Value Services.

##### **4.6.6.1 Possible price changes following the mid-term review**

Higher bandwidth pricing generally and the prescribed prices for HiBIS Threshold Services will be reviewed in the mid-term review scheduled for July 2005. Among other things, the review will consider the prices and service features registered for HiBIS Services, the market prices and features prevailing at that time in metropolitan markets, and the costs of supplying HiBIS Services.

If the mid-term review identifies that there have been material increases or decreases in the price of metropolitan Higher Bandwidth Services, DCITA will consider changing the HiBIS benchmark prices (and incentive levels) accordingly.

Registered HiBIS Providers would then be:

- (a) allowed to seek registration of higher prices if the benchmark prices are increased; and
- (b) required to seek registration of lower prices if the benchmark prices are reduced.

HiBIS Services would be required to be offered and supplied at the new prices to all future Eligible Customers.

The application of new HiBIS prices to existing HiBIS Customers will be considered at the time of the review. The general policy preference is that existing HiBIS Customers should receive the benefit of any reductions in pricing, but the feasibility of this would need to be considered at the time.

#### **4.6.7 Period over which registered HiBIS prices must be maintained for Customers**

A HiBIS Provider must supply its HiBIS Threshold Service to its HiBIS Customers at or below the price registered and specified for the service in the HiBIS Provider's Agreement with DCITA for a minimum of three years from the date the service is first supplied to the Customer, provided the Customer wishes to continue to receive the Service and renew the

Contract (see below). It is a condition of HiBIS Providers' Agreements that HiBIS Providers include and maintain conditions to this effect in their contracts.

This requirement also applies to HiBIS Added Value Services.

A HiBIS Provider may allow its HiBIS Customers to migrate between different pricing plans it offers for HiBIS Services, but the HiBIS Provider must always ensure the Customer can return to the pricing plan it originally subscribed to.

#### **4.6.8 Maximum contract period**

HiBIS Providers must offer their HiBIS Customers the option to have a maximum contract period of no longer than 18 months. The HiBIS Provider may also offer longer contract periods, but only in addition to the option of a maximum contract period of 18 months.

This requirement does not affect the HiBIS Provider's obligation to offer HiBIS Terms and Conditions for at least three years.

This requirement also applies to HiBIS Added Value Services.

#### **4.6.9 Other commercial terms and conditions**

Except to the extent they are inconsistent with the specific objectives and requirements of HiBIS, a HiBIS Provider may include in its standard contract with its HiBIS Customers its usual terms and conditions relating to the supply of services, including that:

- (a) it is not obliged to connect a service unless the Customer is considered creditworthy;
- (b) the Customer must comply with the technical operating requirements of the service;
- and
- (c) the Customer must comply with other reasonable conditions of use.

Where in the view of DCITA a term or condition is inconsistent with the specific objectives and requirements of HiBIS, DCITA may require the modification or removal of the term or condition, as a condition of registering an Applicant and/or its proposed HiBIS Service.

#### **4.6.10 Post-HiBIS pricing policy**

Each Applicant must set out what its intended policy is in relation to the terms and conditions of the supply of its HiBIS Threshold Services once the requirement to supply those services on HiBIS Terms and Conditions expires (i.e. three years after connection).

These policies are not binding on HiBIS Providers unless they wish to formally commit to them in their Agreements. However they are required to publish their policies to enable Customers to take them into account in selecting a HiBIS Provider.

These arrangements also apply to HiBIS Added Value Services.



#### **4.6.11 Pricing of HiBIS Added Value Services**

When registering a HiBIS Added Value Service, a HiBIS Provider is required to demonstrate that it is appropriately taking into account the relevant Incentive Payment in setting the price of the service.

Where the Incentive Payment is used, in full or in part, to reduce the price of the HiBIS Service package, the HiBIS Provider would need to demonstrate how the pricing for the HiBIS Added Value Service reflects the allocation of the Incentive Payment. This would generally be done by reference to the relevant HiBIS Threshold Service of the Provider, and/or to the equivalent commercial service on which the HiBIS Added Value Service is based.

Where the Incentive Payment is used to fund new local infrastructure rather than to reduce the price of an existing service, the HiBIS Provider would need to demonstrate that the Incentive Payment is being used to maintain prices at the same level as in other markets (including if relevant metropolitan markets). Any variation from the metropolitan price must be justified by the HiBIS Provider.

The overall price for HiBIS Added Value Services is not necessarily required to be comparable to the equivalent metropolitan service. This reflects the fact that, for some high cost technologies (such as satellite), the provision of the Incentive Payment may not result in comparable pricing for some HiBIS Added Value Services of significantly higher functionality (e.g. business standard) or bandwidth (e.g. 1.5mbps/256kbps) beyond the HiBIS Threshold Service.

The price registered for a HiBIS Added Value Service must be available for all Customers to whom the service is offered within the registered HiBIS Service Area. However, the HiBIS Provider may offer additional discounts or special prices for the service to particular Customer groups where particular commercial outcomes have been negotiated, subject to compliance with all relevant laws including trade practices law.

#### **4.6.12 Mandatory requirements for functionality and features of HiBIS Services**

To be registered as a HiBIS Service, both HiBIS Threshold Services and HiBIS Added Value Services must include the following mandatory functionality and features.

##### Internet access capability

The service must include an Internet access service, not just data carriage capability.

##### Fault reporting and helpdesk

As part of the service, the Applicant must provide:

- (a) free of charge, fault reporting arrangements that operate 24 hours, seven days a week;
- and

(b) a staffed helpdesk, the hours of operation for which are approved by DCITA and published by the HiBIS Provider.

#### Usage status information

As part of the service, the HiBIS Provider must provide an online means for the Customer to check their usage, if usage limitations apply. Usage information should be updated at least once per day.

#### Billing

As part of the service, the HiBIS Provider must be able, at the Customer's request, to provide billing that shows the Customer's current usage and the associated charge to the Customer.

### **4.7 Other mandatory technical characteristics**

To be registered as a HiBIS Service, both HiBIS Threshold Services and HiBIS Added Value Services must also meet the following mandatory technical requirements. These requirements are in addition to the peak and average Data Speed requirements set out in Section 4.6.2.

#### Customer premises equipment (CPE)

The Customer modem must provide user data access via an industry standard data port (e.g. 10/100 Ethernet, USB, IEEE-1394 or PCMCIA).

#### Network Availability

Network availability is the proportion of the time for which the network is available to originate or receive data over a given period. Network availability refers to the portion of the end-to-end service under the control of the Provider (or their registered HiBIS Wholesaler), and broadly includes the links from the Internet border to the Customer equipment border (as per Data Speed performance assessment).

The network availability performance required for HiBIS Services is 99 per cent for each 3 month reporting period, for the HiBIS Customer base on each technology platform operated by the HiBIS Provider (e.g. cable, DSL, satellite, wireless, other). Such platforms are determined at the time of registration.

Scheduled downtimes between midnight and 6 a.m. are excluded in assessing network availability performance.

HiBIS Providers reselling the services of a wholesale service provider may make use of network availability data sourced from their wholesaler, to the extent it accurately reflects the network availability performance of the HiBIS Provider's HiBIS Services.

### **4.8 Timeframes for service connection and restoration**

For both HiBIS Threshold Services and HiBIS Added Value Services, an Applicant is required to nominate:

- (a) the period in hours or days in which it will generally undertake to connect a service at a Premises, other than where a Customer requests or agrees to a longer timeframe; and
- (b) the period in hours or days in which it will undertake to restore service in the event of an outage for which it is responsible, unless a Customer requests or agrees to a longer timeframe.

The times proposed by an Applicant may vary according to factors such as demographics and/or distance from major population centres. HiBIS Providers are not bound to the timeframes in the event of exceptional circumstances. Such circumstances need to be specified and agreed in advance by DCITA at the time of registration of the HiBIS Service.

While the timeframes Applicants propose are generally at their discretion, DCITA may not agree to proposals that are particularly at odds with industry norms or excessively qualified to the detriment of consumers. DCITA reserves the right to decline the registration of a HiBIS Service where the timeframes are deemed to be unreasonable.

The timeframes proposed by Applicants are included in their Agreements and in their contracts with their Customers, and enforceable in that regard. HiBIS Providers are also required to include these timeframes and any major qualifications in the information they publish for comparative purposes.

#### **4.9 Assessment of marketing proposals of Applicants**

The Applicant must provide a brief description of its marketing strategy, including its intentions in relation to:

- (a) marketing its HiBIS Services broadly across its proposed HiBIS Service Areas; and
- (b) Customer acquisition methods and channels.

DCITA needs to be satisfied that the arrangements the Applicant is proposing are generally consistent with the effective marketing of HiBIS Services to Eligible Customers. DCITA reserves the right to reject any application which, in its view, does not make appropriate provision for the marketing of proposed HiBIS Services.

#### **4.10 Other commitments nominated by the Applicant**

Applicants are encouraged to nominate higher levels of functionality and additional features as part of their application for registration of their HiBIS Threshold Service. Such offerings are not assessed in deciding whether or not to register the proposed service (except, if relevant, in relation to assessment of a service against the benchmark pricing requirements). Such nominations are included in the HiBIS Provider's Agreement and HiBIS Providers must identify them in the comparative information they publish (refer to Attachment 9.3).

Once registered, a HiBIS Provider is able to seek variation of nominated commitments under its Agreement, but such variations only have effect on a prospective basis and Customers signed up under the previous contract must be serviced on the terms and conditions of that contract.

These arrangements apply to both HiBIS Threshold Services and HiBIS Added Value Services.

#### **4.11 Provision of information for comparison**

The HiBIS Provider must commit to provide, from the time its HiBIS Service is offered, information in relation to the service to enable Customers to compare the service with those of other HiBIS Providers. The information to be made available is set out in Attachment 9.3, and is based on the ACA's ISP Guidelines, supplemented by HiBIS specific requirements. The information must be set out on the HiBIS Provider's website, must also be provided in a printed format upon request and included in the HiBIS Provider's letter to HiBIS Customers as described in section 4.14.1.

#### **4.12 Other aspects of the registration process**

##### **4.12.1 Process for assessing applications**

HiBIS applications are assessed by DCITA officers within the HiBIS Section of the Regional Communications Policy Branch, drawing as necessary on the expertise of other areas of DCITA (e.g. OIE), and other departments and agencies of the Australian Public Service as appropriate (e.g. ACA, ACCC). DCITA may make use of external consultants to assist it in the assessment of applications.

Once the assessment of the Applicant has been made, it is submitted to the officer of the Senior Executive Service (SES) with immediate responsibility for HiBIS, with a recommendation for approval or otherwise, for the officer's consideration. The officer may consult as he/she sees fit prior to deciding whether or not to accept the recommendation of the assessment panel.

##### **4.12.1.1 Applicant rights of review of an unsuccessful application**

Where an application for registration:

- (a) as a HiBIS Provider and of a HiBIS Threshold Service; or
- (b) of a subsequent service under HiBIS;

has been unsuccessful, the Applicant may request DCITA to provide a full statement of its reasons for refusing the application.

##### **4.12.1.2 Re-application by an unsuccessful Applicant**

An unsuccessful Applicant may make a further application for registration under HiBIS at any time, whether or not they have received a statement of reasons from DCITA, up to 30 June 2006.

##### **4.12.2 Variation of a HiBIS Provider or service registration**

A registered HiBIS Provider may seek, at any time, a variation to its registration as a HiBIS Provider, or to any HiBIS Service it has registered. In seeking a variation, the HiBIS Provider must provide supporting information in writing consistent with the information that is required at the time of registration of a HiBIS Provider or a HiBIS Service. Where a

proposed variation is accepted by DCITA, the variation is given effect in a variation to the HiBIS Provider's Agreement.

#### **4.12.3 Material changes in a HiBIS Provider's circumstances**

A HiBIS Provider must notify DCITA of any developments in relation to its corporate standing, financial standing, operational or technical capability or sustainability that may affect its ability to supply HiBIS Services on the terms and conditions required in its Agreement. DCITA must be notified of such developments immediately the HiBIS Provider becomes aware of them.

#### **4.12.4 Material changes in a HiBIS Wholesaler's circumstances**

A HiBIS Wholesaler must notify DCITA of any developments in relation to its corporate standing, financial standing, operational or technical capability or sustainability that may affect its ability to supply wholesale services to a HiBIS Provider. DCITA must be notified of such developments immediately the HiBIS Wholesaler becomes aware of them.

### **4.13 Incentive Payments**

#### **4.13.1 Incentives payable in relation to claims lodged**

Incentives become payable by DCITA upon receipt from a HiBIS Provider of a valid claim for payment. A claim for payment should be made as soon as possible after the commencement of supply of a HiBIS Service to a HiBIS Customer.

#### **4.13.2 Financial year funding allocation**

A set amount of funding is available under the HiBIS program each financial year. HiBIS Providers are asked for an estimation of their call on funds to assist DCITA in managing the HiBIS funding allocation (see section 4.13.12).

In the event that the funding available in a particular financial year becomes fully allocated, DCITA will notify HiBIS Providers. Advice will be provided to all HiBIS Providers when allocations remaining are at \$5 million, \$3 million, and \$1 million. An indication will also be provided as to approximately how many days of Customer registration activity the remaining funding represents, based on the level of activity at that time.

When the balance of available funding in a financial year reaches \$1 million, all HiBIS Providers will be notified that they are no longer obliged under their Agreement to connect new services under HiBIS until such time as further funding becomes available. DCITA will advise HiBIS Providers in writing if and when such funding becomes available.

In normal circumstances further funding would become available in the new financial year. When they are notified that remaining funds are at \$1 million, HiBIS Providers must consider whether they wish to hold orders or take other action pending the allocation of further funds to the Scheme in the new financial year.

### **4.13.3 Full Incentive Payments for new HiBIS Customers**

The Incentive Payments payable in relation to new HiBIS Customers are divided into two categories:

1. the Standard Incentive Payment (ISDN-areas) of \$1540 (including GST); and
2. the High Cost Incentive Payment of \$3300 (including GST).

These Incentive Payments are made to HiBIS Providers according to the procedures set out in sections 4.13.4 to 4.13.7. The full Incentive Payment is paid to a HiBIS Provider for each New HiBIS Service provided to an Eligible Customer at Eligible Premises, provided that the HiBIS Provider's Allowable Costs have not been exceeded. In some circumstances, however, payments for each HiBIS Service:

- (a) may be lower (i.e. in the case of Pre-existing Customers); or
- (b) may cease over time (i.e. when Allowable Costs are exceeded).

Sections 4.13.9 and 4.13.11 describe when and how this may occur.

### **4.13.4 Standard Incentive Payment (ISDN access) - \$1540**

A Standard Incentive Payment of \$1540 applies for HiBIS Services supplied to HiBIS Premises where Telstra's ISDN service was available (as defined in these Guidelines) at the commencement of the Scheme and continues to be available.

### **4.13.5 High Cost Incentive Payment (non-ISDN areas) - \$3300**

A High Cost Incentive Payment of \$3300 applies for HiBIS Services supplied to HiBIS Premises where Telstra's ISDN service was not available (as defined in these Guidelines) at the commencement of the Scheme.

### **4.13.6 Process for determining Standard or High Cost Incentive Payments**

For the purposes of HiBIS, availability of ISDN is assessed according to the following process, which must be undertaken by HiBIS Providers who are seeking to establish the relevant Incentive Payment for particular HiBIS Premises:

1. Use the automated ISDN Service Qualification Tool available through HiBIS Online, to establish whether a particular telephone service has ISDN availability. This test provides information that is current at the time of the enquiry, i.e. is not dependant upon Telstra undertaking any infrastructure work to provide ISDN Home access. HiBIS will accept the result of a Telstra Service Qualification test as a basis for determining whether a High Cost Incentive Payment is payable. The only information required is the customer's premises' 10 digit telephone number.
2. If the Premises does not have a fixed telephone number, the HiBIS Provider must contact Telstra directly to check ISDN availability.
3. If the response to an enquiry is negative, it indicates that the particular telephone service is not currently ISDN capable. The HiBIS Provider is to keep a copy of the response to the enquiry as confirmation that a High Cost Incentive Payment applies

for a HiBIS Service provided to an Eligible Customer at Eligible Premises to which that telephone service is connected.

If the response is positive, it indicates that the particular telephone service is currently ISDN capable, being supported by an ISDN enabled exchange, and not being impaired by technologies such as Pair Gain System (PGS) or Remote Integrated Multiplexer (RIM). The HiBIS Provider is to keep a copy of the response to the enquiry as confirmation that a Standard Incentive Payment applies for a HiBIS Service provided to an Eligible Customer at Eligible Premises to which that telephone service is connected.

#### **4.13.7 Telstra-specific limitations in relation to certain High Cost Incentive Payments**

Telstra's access to High Cost Incentive Payments is qualified in the following instance.

Where at the Start of the Scheme (or for Imminent Access areas at 31 December 2004) a Premises was in an ADSL-enabled exchange service area but did not have access to ADSL because of the effect of a PGS, RIM or other similar equipment, if Telstra supplies a HiBIS Service to these Premises (including by removing any of these inhibitors), it is only eligible for the Standard Incentive Payment of \$1540, even if the Premises did not have access to ISDN and would otherwise have qualified for the High Cost \$3300 Incentive Payment.

#### **4.13.8 Travel allowance in certain circumstances**

Where a HiBIS Service which is eligible for a High Cost Incentive Payment is being provided in Remote Australia, a travel allowance is payable to the HiBIS Provider, on acceptance by DCITA of a correctly submitted HiBIS travel allowance claim, according to the following:

- (a) no payment unless the travel distance exceeds 100 kilometres (that is, a round trip of more than 200 kilometres);
- (b) payment is on the basis of \$1.10 per kilometre travelled beyond the 200 kilometres round trip; and
- (c) the payment is capped at \$1100 per service installed (GST included).

Travel distance is defined as the distance travelled from the depot from which the installer departs for the job to the point of installation (and return).

Where multiple installations occur on a journey, the travel distance is deemed to be one journey only, that is the distance travelled from the depot to reach the installation site furthest from the depot.

If a HiBIS Provider needs to make more than one visit to a Customer to complete an installation, travel allowance may be claimed for those additional visits. However, the visits are to be treated cumulatively for the purposes of the cap on travel allowance. For example, if an installation requires two round trips of 600 kms each, both trips can be counted, but only to the value of 1,000 kms or \$1100.

Travel allowance is payable for both HiBIS Threshold Services and HiBIS Added Value Services.

A list and indicative maps of ESAs deemed to be remote for the purpose of claiming HiBIS travel costs is available at HiBIS Online.

#### **4.13.9 Partial Incentive Payments**

Partial Incentive Payments apply in certain circumstances.

Where a HiBIS Provider has registered Pricing for Pre-existing Customers (see section 3.4.3) a partial Incentive Payment applies. The Incentive Payment made by DCITA in these circumstances is established at the time of registration of the Pricing for Pre-existing Customers, and reflects the reasonable cost of providing HiBIS-compliant Pricing for these Customers for a three-year period. In establishing the payment, DCITA may take into account:

- (a) the administrative costs of migrating Customers to the new pricing package;
- (b) the difference between existing price levels and those required under HiBIS; and
- (c) the extent to which the HiBIS Provider has already recovered the cost of CPE and other capital costs from the Customer.

In cases where migrating the Customer's service to HiBIS-compliant Pricing requires significant replacement of equipment and/or other additional Allowable Costs a full HiBIS Incentive Payment may be determined.

#### **4.13.10 Allocating Incentive Payments against Allowable Costs**

HiBIS Incentive Payments are intended to assist Service Providers to supply HiBIS Services in regional and rural areas at metropolitan comparable prices by contributing to the costs of providing these services.

The HiBIS Incentive Payments may be allocated against three categories of costs, all of which must be incurred after the Start of the Scheme, and must be able to be attributed directly to the cost of providing HiBIS Services. These categories are:

1. costs of HiBIS compliance;
2. costs that are incurred in advance of signing up Customers; and
3. costs that are incurred for each Customer signed up.

##### 1. Costs of HiBIS compliance

These are the costs of participating in and complying with HiBIS, and include the following costs:

- (a) developing products and systems for performance testing;
- (b) developing systems to make it possible for the provider to comply with the reporting requirements of HiBIS; and
- (c) administrative costs of other arrangements that are specific to HiBIS, and would not be incurred in the normal operation of the business.

##### 2. Costs that are incurred in advance of signing up Customers



These include up-front costs that are incurred to enable the HiBIS Provider to sign up future HiBIS Customers. These would typically be ‘lumpy’ costs, and would include costs for:

- (a) planning approvals;
- (b) site acquisition;
- (c) building structures and enclosures to house equipment;
- (d) establishing an uninterrupted power supply;
- (e) purchasing and installing of equipment such as switching equipment, where directly related to switching a Higher Bandwidth Service, D-Slam chassis and racks etc.;
- (f) installing cabling and associated facilities for a local access network;
- (g) wireless towers, transceivers and repeaters;
- (h) replacing a blocking PGS or RIM with systems that can service more than one Customer;
- (i) terrestrial backhaul; and
- (j) satellite transponder capacity.

### 3. Costs that are incurred for each Customer signed up

These are costs that are incurred when connecting each new Customer to a HiBIS Service.

Key examples of these costs are the cost of items such as:

- (a) CPE and its installation;
- (b) D-Slam line cards;
- (c) one off ULL connection fees; and
- (d) in the case of re-sellers, wholesale charges, as a reasonable proxy for other Allowable Costs identified in Category 2.

Costs are only allowable if incurred to provide a HiBIS Service. Hence, the cost of any items, like backhaul or transponder capacity for example, that are shared between HiBIS Services and other services, may only be included as Allowable Costs to the extent these costs are incurred in supplying a HiBIS Service. HiBIS Providers and HiBIS Wholesalers are required to justify the allocation of any portion of such shared costs to the provision of HiBIS Services.

Costs that are excluded from Allowable Costs are the following:

- (a) general administrative costs of operating the business, including staff costs, and corporate and business overheads, such as office rental, power, computing, insurance and travel;
- (b) general marketing costs unless particular marketing costs can be demonstrated to be additional to normal requirements, and relate to the special requirements of HiBIS; and
- (c) network and technical costs that are of a general nature and cannot be specifically or sufficiently identified and apportioned to the cost of providing HiBIS Services.

#### **4.13.11 Process for reconciling Incentive Payments against Allowable Costs**

The process for reconciling Incentive Payments against Allowable Costs is as follows. At the time of registration and at the beginning of each financial year, each HiBIS Provider and each HiBIS Wholesaler must provide an Allowable Cost estimate statement, as defined

in 4.13.10, for the coming year. One statement of costs is required per provider. The cost statement must provide details of estimated costs for the next financial year for each of the Allowable Cost categories. Unit costs and unit and Customer numbers must be provided where appropriate to justify costs.

At the end of each financial year, an audited statement of Allowable Costs incurred in that year must be provided, which will be compared with the Incentive Payments received by the HiBIS Provider or HiBIS Wholesaler during the same year. The Incentive Payments paid will be offset against the total sum of the Allowable Costs.

Where the Allowable Costs are greater in value than the value of the Incentive Payments received by the provider for the year, the excess value of the Allowable Costs is carried forward as a starting balance for the value of Allowable Costs in the following financial year. Where the value of the Incentive Payments exceeds the value of the Allowable Costs, DCITA will assess the likelihood of the excess Incentive Payments being able to be offset against Allowable Costs in the following financial year and either:

- (a) allow the excess value of the Incentive Payments to be carried forward as a starting balance for Incentive Payments in the following financial year; or
- (b) where it is determined that the value of the Incentive Payments is likely to continue to exceed the value of Allowable Costs, withhold further payment of Incentive Payments until such time as DCITA is satisfied that Allowable Costs are sufficiently in excess of Incentive Payments made. In these circumstances Incentive Payments withheld may be paid, up to the full amount due, to the HiBIS Provider or HiBIS Wholesaler, once, and if, Allowable Costs are sufficiently in excess of Incentive Payments.

At any time, if DCITA identifies that Incentive Payments are in excess of Allowable Costs and that it is not likely that further Allowable Costs will be incurred, DCITA may require the full re-payment of excess Incentive Payments.

#### **4.13.12 Overall cap on Incentive Payments paid to individual HiBIS Providers**

If a provider receives 60 per cent or more of the total amount of HiBIS funds that are available in any one financial year or over the life of the Scheme (from both retail and wholesale sources), that provider will generally become ineligible to receive any further Incentive Payments from retail and wholesale operations in the applicable period.

DCITA will publish the amount of the 60 per cent cap for each financial year after the relevant appropriation legislation is introduced into Parliament.

DCITA will monitor the status of Incentive Payments to HiBIS Providers and HiBIS Wholesalers against individual caps. DCITA at a minimum will notify HiBIS Providers and/or HiBIS Wholesalers when their payments are at 80 per cent, 90 per cent, 95 per cent and 100 per cent of the individual cap. Once 100 per cent of the cap is achieved and the HiBIS Provider and/or HiBIS Wholesaler is notified, DCITA will only make Incentive Payments for claims by the provider for services connected up to the date of notification. The exception to this principle is where DCITA has decided to make more funding

available to a HiBIS Provider and/or HiBIS Wholesaler in particular circumstances (see section 4.13.12.1).

Where the HiBIS Provider exceeds the individual cap, it is not obliged to offer New HiBIS Services, until such time as it again becomes eligible to receive Incentive Payments (e.g. in a new financial year, or following a decision by DCITA to make more funds available).

Where a HiBIS Wholesaler is no longer receiving a proportion of HiBIS Incentive Payments because the individual cap has been reached, it nevertheless may be required to continue to provide wholesale services to HiBIS Providers if its contracts with those providers so require.

#### **4.13.12.1 Application for variation of the individual funding cap**

Where a HiBIS Provider is approaching its cap it may seek access to additional HiBIS funds. Generally DCITA will only undertake such an examination where the HiBIS Provider is within 80 per cent or more of the 60 per cent cap (i.e. 48 per cent of available funds in a period).

In undertaking its examination, DCITA will examine the amount of funding remaining in the relevant period, the past and projected demand for HiBIS funds by other HiBIS Providers, the reasons why the HiBIS Provider is approaching or has met its cap and the impact on consumers of making or not making further HiBIS funds available.

If DCITA forms the opinion that the demand for HiBIS funds from other HiBIS Providers is such that further funds can be made available to a HiBIS Provider who is approaching, or who has reached its cap without jeopardising access to funding for other HiBIS Providers, DCITA may make available further funds to that HiBIS Provider. Where DCITA makes such a decision, it will publish a written notice of its decision on the HiBIS website and advise each HiBIS Provider of its decision. DCITA may specify the amount of additional HiBIS funding to which the HiBIS Provider can have access.

#### **4.13.13 Taxation status of HiBIS Incentive Payments**

The HiBIS Incentive Payments and travel allowances stated in these Guidelines are inclusive of GST. HiBIS Providers are responsible for managing all taxation matters associated with receipt of HiBIS Incentive Payments.

#### **4.13.14 Process for registering new Customers and claiming HiBIS Incentive Payments**

The HiBIS Provider makes its claim for Incentive Payments via HiBIS Online. HiBIS Providers are required to enter claims and details of new Customers as soon as practicable, but in all instances within 30 days of connecting the Customer.

#### **4.13.15 Payment of HiBIS Incentive Payments**

At the end of each calendar month, claims submitted in the preceding month are reconciled by DCITA. The total of claims for each HiBIS Provider is treated as the HiBIS Provider's monthly invoice for the purpose of Incentive Payments, once the claims have been

approved by DCITA. HiBIS Providers are given the opportunity to confirm this total. In the event of any discrepancy between the HiBIS Provider's own records and HiBIS Online, the onus is on the HiBIS Provider to demonstrate the error and to substantiate any request for correction. HiBIS Providers must report to DCITA any over-payment of Incentive Payments immediately such an over-payment is identified.

In all instances, the Incentive Payments paid to HiBIS Providers are subject to repayment in the event that a claim is found to have been wrongly made or paid, regardless of the party at fault.

#### **4.14 Acknowledgment of HiBIS as an Australian Government initiative**

HiBIS Providers are required under their Agreement with DCITA to acknowledge clearly and prominently HiBIS as an Australian Government initiative, in all instances where the HiBIS Provider is undertaking marketing of HiBIS Services. This includes marketing in all forms of media.

The exact words of acknowledgment required to be used are as identified by DCITA, and may change from time to time depending on Australian Government policy. The range of material on which such acknowledgment is required is as specified by DCITA, and would normally include:

- (a) publicity brochures and other printed material for HiBIS Services;
- (b) websites relating to HiBIS Services;
- (c) events involving the promotion of HiBIS Services;
- (d) speeches relating to HiBIS Services; and
- (e) billing relating to HiBIS Services, for the duration that the service is provided under HiBIS Terms and Conditions (that is, three years).

HiBIS Providers must be available to support Australian Government publicity associated with HiBIS, as advised by DCITA. HiBIS Providers are required to invite Australian Government officials to participate in publicity events they undertake relating to their HiBIS activities.

##### **4.14.1 Confirmation to HiBIS Customers**

HiBIS Providers must write (by post or email) to each HiBIS Customer at the commencement of a HiBIS Service to that Customer, confirming the specific terms and conditions that the HiBIS Provider has included in its contract with the HiBIS Customer in accordance with the HiBIS Provider's Agreement. In writing to each HiBIS Customer, the HiBIS Provider must also include a copy of the comparative information that the HiBIS Provider is required to make available on its website in accordance with section 4.11. It must also include an acknowledgment of HiBIS as an Australian Government initiative in accordance with section 4.14 above, and note the specific amount of the Incentive Payment for which the HiBIS Provider is eligible on provision of the HiBIS Service. The form and manner of this acknowledgment is as required and specified by DCITA.

#### **4.15 Compliance with research and evaluation**

Registered HiBIS Providers are required to comply with reasonable requests to participate in research into, and evaluation of, the operation and effectiveness of HiBIS, by DCITA or other Australian Government agencies. Such compliance may include providing records, responding to questionnaires, and assisting with Customer surveys.

## **5 Record-keeping, monitoring and reporting**

This chapter sets out requirements for monitoring, reporting and enforcing compliance with HiBIS.

### **5.1 Record keeping**

Appropriate and adequate records must be maintained to enable a HiBIS Provider to satisfy all HiBIS claims, auditing, compliance reporting, and review and evaluation requirements.

This includes information relating to:

- (a) corporate standing and sustainability (as provided for in the registration process);
- (b) technical capability (as provided for in the registration process);
- (c) financial standing (as provided for in the registration process);
- (d) services registered under HiBIS;
- (e) Allowable Costs incurred in providing HiBIS Services;
- (f) marketing activities related to HiBIS Services;
- (g) service performance for registered HiBIS Services;
- (h) Customers provided with HiBIS Services;
- (i) Incentive Payments claimed and received by the HiBIS Provider;
- (j) the value of payments made to HiBIS Wholesalers (where relevant); and
- (k) Customer complaints.

Information relating to participation in HiBIS must be kept in a particular form, if specified by DCITA in writing.

#### **5.1.1 Duration of record-keeping**

A HiBIS Provider must retain all records, as identified by DCITA, for no less than seven years after the end of HiBIS.

### **5.2 Failure to comply with Agreement**

As soon as a HiBIS Provider becomes aware that it has failed to meet its obligations under its Agreement, it must report such failure to DCITA, and take immediate steps to rectify the failure.

Where DCITA notifies a HiBIS Provider that the HiBIS Provider is in breach of its obligations under its Agreement, the HiBIS Provider must rectify the breach within 10 Working Days of receiving the notice. If the HiBIS Provider fails to do so, DCITA may terminate its Agreement with the HiBIS Provider.

## **6 Variation of the Guidelines**

DCITA reserves the right to vary these Guidelines in light of changes to Government policy and ongoing experience with HiBIS.

Prior to any variation in the Guidelines, DCITA's policy would be to consult with HiBIS Providers, and more generally if the variations being considered would have a material effect on the wider community. The effect of any changes on the pre-existing interests of relevant parties would be taken into account.

DCITA will notify all HiBIS Providers if the Guidelines are varied.

## **7 Review and evaluation of HiBIS**

### **7.1 Mid-term review of HiBIS**

DCITA will undertake a mid-term review of the HiBIS arrangements in July-August 2005. The Agreement between the registered HiBIS Provider and DCITA requires the HiBIS Provider to co-operate with reasonable requests in relation to the review, particularly in relation to the provision of information.

Any contractor of DCITA would be subject to confidentiality requirements in relation to information provided.

The Agreement requires HiBIS Providers to acknowledge that the review may lead to changes in the Scheme's design, operation, administration, or any other aspect of HiBIS. Any such changes would take into account the pre-existing interests of relevant parties.

### **7.2 End of Scheme Evaluation**

DCITA will initiate a final evaluation of HiBIS at its completion (scheduled for 31 December 2006, extendable to 30 June 2007). It is envisaged the evaluation will commence within three months of the end of the Scheme.

Agreements between HiBIS Providers and DCITA require HiBIS Providers to co-operate with reasonable requests in relation to the evaluation, particularly in relation to the provision of information.

It is envisaged the evaluation will examine and report on such measures as:

- (a) the numbers of Customers to have benefited directly or indirectly from HiBIS;
- (b) Customer awareness and satisfaction with HiBIS;
- (c) the effectiveness of HiBIS in providing regional Australians with more equitable and affordable access to Higher Bandwidth Services, especially in comparison to metropolitan areas;
- (d) the effect of HiBIS on Higher Bandwidth Service prices in regional Australia generally;
- (e) the extent to which HiBIS has contributed to the roll-out of Higher Bandwidth Service infrastructure in regional Australia;
- (f) the effectiveness of HiBIS in developing competition in the provision of Higher Bandwidth Services in regional Australia;
- (g) the efficiency of higher bandwidth solutions provided under HiBIS; and
- (h) the effectiveness and efficiency of the administration of HiBIS.



## **8 DCITA contact details**

Queries relating to these Guidelines or the ongoing operation of HiBIS or application for registration under HiBIS should be directed in writing to:

Manager, Higher Bandwidth Incentive Scheme  
Regional Communications Policy Branch  
Telecommunications Division  
Department of Communications, Information Technology and the Arts

Post: GPO Box 2154, Canberra, ACT 2602  
Email: [hibis@dcita.gov.au](mailto:hibis@dcita.gov.au)  
Phone: 1800 883 488

## 9 Attachments and other HiBIS documents

The following attachments are part of these Guidelines.

<u>Number</u>	<u>Attachment</u>	<u>Section where referenced</u>
9.1	List of Service Providers identified as providing a Metro-comparable Service at the Start of the Scheme, and their indicative service areas	3.2.2.2 3.5.1
9.2	List of Service Providers and areas identified for Imminent Access purposes	1.3 2.1 3.5.1
9.3	Standard comparative information to be published for Customers	4.10 4.11
9.4	Standard HiBIS provisions for the Customer application and attestation form	3.5.3
9.5	Summary of annual compliance reporting requirements common to all HiBIS Providers	2.6

The following key documents are available on the HiBIS website:

<u>Number</u>	<u>Document</u>	<u>Section where referenced</u>
1.	Standard HiBIS Agreement	4.4.4 4.4.5
2.	HiBIS Provider application form	4.4.6
3.	HiBIS Service application form	4.4.6
4.	HiBIS Wholesaler application form	
5.	HiBIS Financial Plan template (financial plan/projection of Applicants) and guide	4.5.7
6.	HiBIS Service Area Extension Form	4.6.1.2

The following HiBIS resources are (or will be) available on the HiBIS website:

<u>Number</u>	<u>Resource</u>	<u>Section where referenced</u>
<b>Metropolitan Exclusion Area</b>		
1.	Indicative maps of the Urban Centres/Localities boundaries for the Metropolitan Exclusion Area	3.2.1 3.5.1
<b>Pre-existing access to Metro-Comparable Higher Bandwidth Services</b>		
2.	Indicative maps of Metro-comparable coverage at the Start of the Scheme in the HiBIS Areas	3.2.2.1
3.	Indicative map of Imminent Access	nil

- |  |   |               |
|--|---|---------------|
| 4.   | List of numbers of telephone services provided with access to ADSL in existing enabled exchanges following the Start of the Scheme and following the provision of Imminent Access | nil           |
| 5.   | Confirmation of the provision of List of Service Providers and areas identified for Imminent Access purposes  | 3.2.2.4       |
| <b>ISDN availability</b>                     |   |               |
| 6.   | Indicative maps of Telstra ISDN coverage at the Start of the Scheme   | 4.13.6        |
| 7.   | Online tool for checking of Telstra ISDN availability   | 4.13.6        |
| 8.   | List of numbers of telephone services provided with access to ISDN following the publication of the Guidelines  | nil           |
| <b>Remote Areas for travel cost purposes</b> |   |               |
| 9.   | List and indicative maps of Telstra exchange service areas deemed to be remote for the purpose of paying travel costs.  | 1.3<br>4.13.8 |
| <b>HiBIS Service coverage maps</b>           |   |               |
| 10.  | Indicative maps of Service Areas for HiBIS Services   | 4.6.1.1       |