



National Broadband Network Companies Act 2011

No. 22, 2011

**An Act relating to certain companies associated
with the national broadband network, and for
other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Broadband Network Companies Act 2011

No. 22, 2011

**An Act relating to certain companies associated
with the national broadband network, and for
other purposes**

[Assented to 12 April 2011]

The Parliament of Australia enacts:

National Broadband Network Companies Act 2011 No. 22, 2011 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Broadband Network Companies Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Sections 3 to 98	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	13 April 2011
2A. Section 98A	22 March 2011.	22 March 2011
2B. Sections 99 to 101	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	13 April 2011

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedules 1 and 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 2 of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .	13 April 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects

- (1) The main objects of this Act, when read together with Part XIC of the *Competition and Consumer Act 2010*, are as follows:
- (a) to provide a regulatory framework for NBN corporations that promotes the long-term interests of end-users of carriage services or of services provided by means of carriage services;
 - (b) to ensure that NBN Co remains in Commonwealth ownership until the following events have occurred:
 - (i) the Communications Minister has declared that, in his or her opinion, the national broadband network should be treated as built and fully operational;
 - (ii) the Productivity Minister has caused to be tabled in both Houses of Parliament a report of an inquiry by the Productivity Commission;
 - (iii) the Parliamentary Joint Committee on the Ownership of NBN Co has examined the Productivity Commission's report;

(iv) the Finance Minister has declared that, in his or her opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme, and the declaration has taken effect;

(c) to provide a framework for restrictions on private ownership or control of NBN Co.

Note 1: Clause 1 of Schedule 1 provides that each of the following is an *NBN corporation*:

- (a) NBN Co;
- (b) NBN Tasmania;
- (c) a company over which NBN Co is in a position to exercise control.

Note 2: For long-term interests of end-users of carriage services or of services provided by means of carriage services, see section 94.

(2) The other objects of this Act, when read together with Part XIC of the *Competition and Consumer Act 2010*, are as follows:

- (a) to ensure that the supply of an eligible service by an NBN corporation is on a wholesale basis;
- (b) to ensure that an NBN corporation does not supply a content service;
- (c) to ensure that an NBN corporation does not supply a non-communications service;
- (d) to ensure that an NBN corporation does not supply goods that are not for use in connection with the supply of an eligible service by the NBN corporation;
- (e) to restrict the investment activities of NBN corporations;
- (f) to provide a framework for the functional separation of NBN corporations;
- (g) to provide a framework for the divestiture of assets of NBN corporations;
- (h) to ensure that an NBN corporation provides open access to eligible services on a non-discriminatory basis.

4 Simplified outline

The following is a simplified outline of this Act:

-
- An NBN corporation must not supply an eligible service to another person unless the other person is:
 - (a) a carrier; or
 - (b) a service provider.
 - An NBN corporation must not supply:
 - (a) a content service; or
 - (b) a non-communications service; or
 - (c) goods that are not for use in connection with the supply by an NBN corporation of an eligible service.
 - An NBN corporation may be required to prepare, and comply with, a functional separation undertaking.
 - The Communications Minister may give directions about the divestiture of assets of an NBN corporation.
 - A condition of a carrier licence held by an NBN corporation may require the NBN corporation to supply a specified carriage service.
 - A condition of a carrier licence held by an NBN corporation may prohibit the NBN corporation from supplying a specified carriage service.
 - Under provisions called the Commonwealth ownership provisions, the Commonwealth must retain ownership of NBN Co.
 - The Commonwealth ownership provisions cease to have effect after the following events have occurred:

- (a) the Communications Minister has declared that, in his or her opinion, the national broadband network should be treated as built and fully operational;
 - (b) the Productivity Minister has caused to be tabled in both Houses of Parliament a report of an inquiry by the Productivity Commission;
 - (c) the Parliamentary Joint Committee on the Ownership of NBN Co has examined the Productivity Commission's report;
 - (d) the Finance Minister has declared that, in his or her opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme, and the declaration has taken effect.
- NBN Co must take all reasonable steps to ensure that an unacceptable private ownership or control situation does not exist in relation to NBN Co.

Note 1: Clause 1 of Schedule 1 provides that each of the following is an *NBN corporation*:

- (a) NBN Co;
- (b) NBN Tasmania;
- (c) a company over which NBN Co is in a position to exercise control.

Note 2: The Parliamentary Joint Committee on the Ownership of NBN Co is constituted under Schedule 2.

5 Definitions

In this Act:

ACCC means the Australian Competition and Consumer Commission.

Australia, when used in a geographical sense, includes the external Territories.

authority includes the following:

- (a) a Department of the government of the Commonwealth;
- (b) a Department of the government of a State;
- (c) a Department of the government of a Territory.

bank has the same meaning as in the *Financial Management and Accountability Act 1997*.

Board means the board of directors of NBN Co.

business unit, in relation to an NBN corporation, means a part of the NBN corporation.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

carrier licence has the same meaning as in the *Telecommunications Act 1997*.

carry has the same meaning as in the *Telecommunications Act 1997*.

charge has the same meaning as in the *Corporations Act 2001*.

Commonwealth ownership provisions means sections 45 and 46.

communications has the same meaning as in the *Telecommunications Act 1997*.

Communications Minister means the Minister who administers this Act.

constitution, in relation to NBN Co, has the same meaning as in the *Corporations Act 2001*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

content service has the same meaning as in the *Telecommunications Act 1997*.

debenture has the same meaning as in the *Corporations Act 2001*.

Section 5

declared pre-termination period has the meaning given by section 48.

declared sale deferral period has the meaning given by section 50.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

Department of Finance means the Department administered by the Finance Minister.

draft functional separation undertaking means a draft functional separation undertaking under Division 3 of Part 2.

electricity supply body means an authority, or a body corporate, that carries on a business, or performs a function, of:

- (a) generating, transmitting, distributing or supplying electricity; or
- (b) managing the generation, transmission, distribution or supply of electricity.

eligible service has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Federal Court means the Federal Court of Australia.

final functional separation undertaking means a final functional separation undertaking under Division 3 of Part 2.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

financial product has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

functional includes organisational.

functional separation principles has the meaning given by subsection 24(1).

functional separation requirements determination means a determination under subsection 25(1).

gas supply body means an authority, or a body corporate, that carries on a business, or performs a function, of:

- (a) transmitting, distributing or supplying natural gas; or
- (b) managing the transmission, distribution or supply of natural gas.

hybrid-security issuer company has the meaning given by section 54.

intellectual property rights includes rights associated with:

- (a) a patent; or
- (b) copyright; or
- (c) a design; or
- (d) a trade secret; or
- (e) know-how.

listed carriage service has the same meaning as in the *Telecommunications Act 1997*.

listed disclosing entity has the same meaning as in the *Corporations Act 2001*.

listing market, in relation to a listed disclosing entity, has the same meaning as in the *Corporations Act 2001*.

listing rules of a market has the same meaning as in the *Corporations Act 2001*.

national broadband network means a national telecommunications network for the high-speed carriage of communications, where an NBN corporation has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

Section 5

NBN Co means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

NBN corporation has the meaning given by clause 1 of Schedule 1.

NBN Co sale scheme has the meaning given by section 54.

NBN Tasmania means NBN Tasmania Limited (ACN 138 338 271), as the company exists from time to time (even if its name is later changed).

non-communications service means a service other than:

- (a) an eligible service; or
- (b) a content service; or
- (c) a service that is ancillary or incidental to the supply by an NBN corporation of an eligible service; or
- (d) an advisory or consulting service that relates to:
 - (i) the supply of an eligible service; or
 - (ii) goods for use in connection with the supply of an eligible service; or
 - (iii) facilities (within the meaning of the *Telecommunications Act 1997*); or
- (e) the provision, grant or conferral (whether by way of a licence or otherwise) of intellectual property rights that relate to:
 - (i) the supply of an eligible service; or
 - (ii) goods for use in connection with the supply of an eligible service; or
 - (iii) facilities (within the meaning of the *Telecommunications Act 1997*).

Parliamentary Joint Committee on the Ownership of NBN Co means the Parliamentary Joint Committee on the Ownership of NBN Co constituted under Schedule 2.

Productivity Minister means the Minister administering the *Productivity Commission Act 1998*.

rail corporation means a body corporate that manages or operates either or both of the following:

- (a) rail transport services;
- (b) rail transport infrastructure.

retail carriage service provider means a carriage service provider who supplies a listed carriage service to another person who is neither:

- (a) a carrier; nor
- (b) a service provider.

sale-scheme hybrid security has the meaning given by section 55.

sale-scheme trust deed has the meaning given by section 54.

sale-scheme trustee has the meaning given by section 54.

securities (except in section 55) includes:

- (a) shares; and
- (b) debentures.

service provider has the same meaning as in the *Telecommunications Act 1997*.

sewerage services body means an authority, or a body corporate, that carries on a business, or performs a function, of supplying sewerage services.

State or Territory road authority means an authority that has responsibility for the management, regulation or control of motor traffic in a State or Territory.

storm water drainage services means services that consist of draining storm water.

storm water drainage services body means an authority, or a body corporate, that carries on a business, or performs a function, of supplying storm water drainage services.

telecommunications market has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

telecommunications network has the same meaning as in the *Telecommunications Act 1997*.

unacceptable private ownership or control situation has the meaning given by section 69.

voting share has the same meaning as in the *Corporations Act 2001*.

water supply body means an authority, or a body corporate, that carries on a business, or performs a function, of supplying water.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

7 Extension to external Territories

This Act extends to every external Territory.

Part 2—Operations of NBN corporations

Division 1—Simplified outline

8 Simplified outline

The following is a simplified outline of this Part:

- An NBN corporation must not supply an eligible service to another person unless the other person is:
 - (a) a carrier; or
 - (b) a service provider.
- An NBN corporation must not supply:
 - (a) a content service; or
 - (b) a non-communications service; or
 - (c) goods that are not for use in connection with the supply by an NBN corporation of an eligible service.
- An NBN corporation's investment activities are restricted.
- An NBN corporation may be required to prepare a draft functional separation undertaking.
- A final functional separation undertaking is a draft functional separation undertaking that has been approved by the Communications Minister.
- An NBN corporation must comply with a final functional separation undertaking given by the NBN corporation.

Part 2 Operations of NBN corporations

Division 1 Simplified outline

Section 8

- The Communications Minister may give directions about the divestiture of assets of an NBN corporation.
- A condition of a carrier licence held by an NBN corporation may require the NBN corporation to supply a specified carriage service.
- A condition of a carrier licence held by an NBN corporation may prohibit the NBN corporation from supplying a specified carriage service.

Note 1: Clause 1 of Schedule 1 provides that each of the following is an ***NBN corporation***:

- (a) NBN Co;
- (b) NBN Tasmania;
- (c) a company over which NBN Co is in a position to exercise control.

Note 2: The Parliamentary Joint Committee on the Ownership of NBN Co is constituted under Schedule 2.

Division 2—Rules about operations of NBN corporations

Subdivision A—Supply of eligible services to be on wholesale basis

9 Supply of eligible services to be on wholesale basis

An NBN corporation must not supply an eligible service to another person unless the other person is:

- (a) a carrier; or
- (b) a service provider.

10 Exemption—transport authorities

- (1) Section 9 does not apply if:
 - (a) both:
 - (i) the eligible service is a carriage service; and
 - (ii) the sole use of the carriage service is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (1A) Paragraph (1)(a) does not apply to a carriage service supplied to Airservices Australia unless the carriage service is supplied on the basis that Airservices Australia must not re-supply the carriage service.
- (2) Section 9 does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of the following services:
 - (i) train services of a kind provided by the authority;
 - (ii) bus or other road services of a kind provided by the authority;
 - (iii) tram services of a kind provided by the authority; or

Section 11

- (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (2A) Paragraph (2)(a) does not apply to a carriage service supplied to a State or Territory transport authority unless the carriage service is supplied on the basis that the State or Territory transport authority must not re-supply the carriage service.
- (3) Section 9 does not apply if:
 - (a) both:
 - (i) the eligible service is a carriage service; and
 - (ii) the sole use of the carriage service is use by a rail corporation to carry communications necessary or desirable for the workings of train services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.
- (4) Paragraph (3)(a) does not apply to a carriage service supplied to a rail corporation unless the carriage service is supplied on the basis that the rail corporation must not re-supply the carriage service.

11 Exemption—electricity supply bodies

- (1) Section 9 does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by an electricity supply body to carry communications necessary or desirable for:
 - (i) managing the generation, transmission, distribution or supply of electricity; or
 - (ii) charging for the supply of electricity; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to an electricity supply body unless the carriage service is supplied on the basis that the electricity supply body must not re-supply the carriage service.

12 Exemption—gas supply bodies

- (1) Section 9 does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a gas supply body to carry communications necessary or desirable for:
 - (i) managing the transmission or distribution of natural gas in a pipeline; or
 - (ii) charging for the supply of natural gas transmitted or distributed in a pipeline; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a gas supply body unless the carriage service is supplied on the basis that the gas supply body must not re-supply the carriage service.

13 Exemption—water supply bodies

- (1) Section 9 does not apply if:
 - (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a water supply body to carry communications necessary or desirable for:
 - (i) managing the distribution of water in a pipeline; or
 - (ii) charging for the supply of water distributed in a pipeline; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a water supply body unless the carriage service is supplied on the basis that the water supply body must not re-supply the carriage service.

14 Exemption—sewerage services bodies

- (1) Section 9 does not apply if:
-

Section 15

- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a sewerage services body to carry communications necessary or desirable for:
 - (i) managing the supply of sewerage services; or
 - (ii) charging for the supply of sewerage services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a sewerage services body unless the carriage service is supplied on the basis that the sewerage services body must not re-supply the carriage service.

15 Exemption—storm water drainage services bodies

- (1) Section 9 does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a storm water drainage services body to carry communications necessary or desirable for:
 - (i) managing the supply of storm water drainage services; or
 - or
 - (ii) charging for the supply of storm water drainage services; or
 - (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a storm water drainage services body unless the carriage service is supplied on the basis that the storm water drainage services body must not re-supply the carriage service.

16 Exemption—State or Territory road authorities

- (1) Section 9 does not apply if:
- (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory road authority to carry communications necessary or desirable for the management or control of road traffic; or

- (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
- (2) Paragraph (1)(a) does not apply to a carriage service supplied to a State or Territory road authority unless the carriage service is supplied on the basis that the State or Territory road authority must not re-supply the carriage service.

Subdivision B—Supply of other goods and services

17 Content services not to be supplied

An NBN corporation must not supply a content service to another person.

18 Non-communications services not to be supplied

An NBN corporation must not supply a non-communications service to another person.

19 Non-communications goods not to be supplied

An NBN corporation must not supply goods to another person unless the goods are for use in connection with the supply, or prospective supply, of an eligible service by the NBN corporation.

Subdivision C—Investment activities

20 Restriction of investment activities

- (1) An NBN corporation must not invest money of the NBN corporation unless:
 - (a) the investment is related to the supply, or prospective supply, of eligible services by the NBN corporation; or
 - (b) both:
 - (i) the investment is related to the supply, or prospective supply, of goods; and
 - (ii) the goods are for use in connection with the supply, or prospective supply, of an eligible service by the NBN corporation; or

- (c) both:
 - (i) the investment is in shares in a company; and
 - (ii) the company carries on, proposes to carry on, or has the object of carrying on, a business that consists of or includes the supply of a carriage service; or
- (d) the investment is:
 - (i) an investment in securities of the Commonwealth or of a State or Territory; or
 - (ii) an investment in securities guaranteed by the Commonwealth, a State or a Territory; or
 - (iii) a deposit with a bank, including a deposit evidenced by a certificate of deposit; or
 - (iv) any other form of investment prescribed by regulations made for the purposes of subparagraph (a)(iv) of the definition of *authorised investment* in subsection 39(10) of the *Financial Management and Accountability Act 1997*.

(2) Paragraphs (1)(c) and (d) apply both within and outside Australia.

Subdivision D—Transitional

21 Transitional—pre-commencement contractual obligations

Scope

- (1) This section applies if, immediately before this section commences, an NBN corporation has an obligation (the *pre-existing obligation*) under a contract to:
 - (a) supply services; or
 - (b) supply goods; or
 - (c) invest money.

For this purpose, it is immaterial whether the obligation is a contingent obligation

Exemption

- (2) Sections 18 to 20 do not apply to:
 - (a) a supply of goods; or

- (b) a supply of services; or
 - (c) an investment;
- to the extent that the supply or investment is in fulfilment of the pre-existing obligation.

22 Transitional—pre-acquisition contractual obligations

Scope

- (1) This section applies if:
- (a) at a particular time (the *start time*), a company other than NBN Co becomes an NBN corporation; and
 - (b) immediately before the start time, the company has an obligation (the *pre-existing obligation*) under a contract to:
 - (i) supply services; or
 - (ii) supply goods; or
 - (iii) invest money.

For this purpose, it is immaterial whether the obligation is a contingent obligation

Exemption

- (2) Sections 18 to 20 do not apply to:
- (a) a supply of goods; or
 - (b) a supply of services; or
 - (c) an investment;
- to the extent that the supply or investment is in fulfilment of the pre-existing obligation.

Division 3—Functional separation of NBN corporations

23 Contents of draft or final functional separation undertaking

- (1) A draft or final functional separation undertaking given by an NBN corporation must:
 - (a) comply with the functional separation principles that are applicable to the NBN corporation; and
 - (b) comply with such requirements as are specified in a functional separation requirements determination that is applicable to the NBN corporation.

Note 1: For the functional separation principles, see section 24.

Note 2: For the functional separation requirements determination, see section 25.

- (2) If a final functional separation undertaking provides for the ACCC to perform functions or exercise powers in relation to the undertaking, the ACCC may perform those functions and exercise those powers in accordance with the undertaking.

24 Functional separation principles

- (1) The Communications Minister and the Finance Minister may, by writing, determine that specified principles are ***functional separation principles*** for the purposes of the application of this Act to a specified NBN corporation.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Principles determined under subsection (1) must include:
 - (a) the principle that the NBN corporation should maintain 2 or more specified business units; and
 - (b) the principle that the NBN corporation should maintain arm's length functional separation between the specified business units; and

- (c) the principle that the NBN corporation should have systems, procedures and practices that relate to:
 - (i) compliance with a final functional separation undertaking given by the NBN corporation; and
 - (ii) monitoring of, and reporting on, compliance with the final functional separation undertaking; and
 - (iii) the development of performance measures relating to compliance with the final functional separation undertaking; and
 - (iv) independent audit, and other checks, of compliance with the final functional separation undertaking.
- (3) Subsection (2) does not limit subsection (1).
- (5) A determination under subsection (1) is not a legislative instrument.

25 Functional separation requirements determination

- (1) The Communications Minister and the Finance Minister may make a written determination (a *functional separation requirements determination*) specifying requirements to be complied with by a draft or final functional separation undertaking given by a specified NBN corporation.
- (2) A functional separation requirements determination may deal with the manner in which the functional separation principles are to be implemented.
- (3) Subsection (2) does not limit subsection (1).
- (4) The Communications Minister and the Finance Minister must ensure that a functional separation requirements determination relating to an NBN corporation comes into force within 90 days after the first or only determination is made under subsection 24(1) in relation to the NBN corporation.
- (5) A determination under subsection (1) is not a legislative instrument.

26 Draft functional separation undertaking to be given to the Communications Minister and the Finance Minister

- (1) An NBN corporation must give the Communications Minister and the Finance Minister a draft functional separation undertaking:
 - (a) within 90 days after the first or only functional separation requirements determination in relation to the NBN corporation comes into force; or
 - (b) if a longer period is specified in an instrument under subsection (2)—within that longer period.
- (2) The Communications Minister and the Finance Minister may, by writing, specify a period for the purposes of paragraph (1)(b).
- (3) The Communications Minister and the Finance Minister may, by writing, vary a subsection (2) instrument.
- (4) A period specified in a subsection (2) instrument may be a period ascertained wholly or partly by reference to the occurrence of a specified event.
- (5) The Communications Minister and the Finance Minister do not have a duty to consider whether to exercise the power to make or vary a subsection (2) instrument, whether they are requested to do so by the NBN corporation or by any other person, or in any other circumstances.
- (6) The Communications Minister and the Finance Minister must cause a copy of an instrument under subsection (2) or (3) to be published on the Department's website.
- (7) An instrument under subsection (2) or (3) is not a legislative instrument.

27 Approval of draft functional separation undertaking by the Communications Minister and the Finance Minister

- (1) This section applies if an NBN corporation gives the Communications Minister and the Finance Minister a draft functional separation undertaking (the *original undertaking*).

- (2) The Communications Minister and the Finance Minister must, by writing:
- (a) approve the original undertaking; or
 - (b) both:
 - (i) vary the original undertaking; and
 - (ii) approve the original undertaking as varied; or
 - (c) both:
 - (i) determine that the NBN corporation is taken to have given the Communications Minister and the Finance Minister another draft functional separation undertaking (the ***replacement undertaking***) in the terms specified in the determination, instead of the original undertaking; and
 - (ii) approve the replacement undertaking.

Consultation

- (3) Before making a decision under subsection (2), the Communications Minister and the Finance Minister must:
- (a) cause to be published on the Department's website a notice:
 - (i) setting out the original undertaking; and
 - (ii) inviting persons to make submissions to the Communications Minister and the Finance Minister about the original undertaking within 14 days after the notice is published; and
 - (b) give the ACCC a copy of the notice; and
 - (c) cause to be published on the Department's website a copy of each submission received within the 14-day period mentioned in paragraph (a); and
 - (d) consider any submissions received within the 14-day period mentioned in paragraph (a); and
 - (e) ask the ACCC to give advice to the Communications Minister and the Finance Minister, within 44 days after the notice is published, about the original undertaking; and
 - (f) have regard to any advice given by the ACCC.

Consultation—variation of original undertaking

- (4) Before making a decision under paragraph (2)(b) to approve the original undertaking as varied, the Communications Minister and the Finance Minister must:
- (a) give the NBN corporation a notice:
 - (i) setting out the original undertaking as proposed to be varied; and
 - (ii) inviting the NBN corporation to make submissions to the Communications Minister and the Finance Minister, within 14 days after the notice is given, about the original undertaking as proposed to be varied; and
 - (b) consider any submissions received from the NBN corporation within the 14-day period mentioned in paragraph (a).

Consultation—replacement undertaking

- (5) Before making a decision under paragraph (2)(c) to approve the replacement undertaking, the Communications Minister and the Finance Minister must:
- (a) give the NBN corporation a notice:
 - (i) setting out the proposed replacement undertaking; and
 - (ii) inviting the NBN corporation to make submissions to the Communications Minister and the Finance Minister about the proposed replacement undertaking within 14 days after the notice is given; and
 - (b) consider any submissions received from the NBN corporation within the 14-day period mentioned in paragraph (a).

Advice by the ACCC

- (6) Subsection (3) does not, by implication, prevent the Communications Minister and the Finance Minister from asking the ACCC to give the Communications Minister and the Finance Minister additional advice about a matter arising under this section.

Notification of decision

- (7) As soon as practicable after making a decision under subsection (2), the Communications Minister and the Finance

Minister must notify the NBN corporation in writing of the decision.

Instrument is not a legislative instrument

- (8) An instrument made under subsection (2) is not a legislative instrument.

28 Time limit for making an approval decision

- (1) This section applies if an NBN corporation gives the Communications Minister and the Finance Minister a draft functional separation undertaking (the *original undertaking*).
- (2) The Communications Minister and the Finance Minister must use their best endeavours to make a decision under subsection 27(2) in relation to the original undertaking within 6 months after the original undertaking was given to the Communications Minister and the Finance Minister.

29 Effect of approval

- (1) If the Communications Minister and the Finance Minister approve a draft functional separation undertaking under subsection 27(2), the undertaking becomes a final functional separation undertaking.
- (2) A final functional separation undertaking given by an NBN corporation comes into force on the day after notice of the relevant decision is given to the NBN corporation in accordance with subsection 27(7).
- (3) A final functional separation undertaking may not be withdrawn.

Undertaking is not a legislative instrument

- (4) A final functional separation undertaking is not a legislative instrument.

30 Variation of final functional separation undertaking

- (1) This section applies if a final functional separation undertaking given by an NBN corporation is in force.

Variation

- (2) The Communications Minister and the Finance Minister may, in writing, vary the final functional separation undertaking:
 - (a) at the request of the NBN corporation or another person; or
 - (b) on the initiative of the Communications Minister and the Finance Minister.
- (3) The Communications Minister and the Finance Minister do not have a duty to consider whether to exercise the power to vary a final functional separation undertaking, whether they are requested to do so by the NBN corporation or by any other person, or in any other circumstances.

Consultation

- (4) Before varying a final functional separation undertaking, the Communications Minister and the Finance Minister must:
 - (a) cause to be published on the Department's website a notice:
 - (i) setting out the proposed variation; and
 - (ii) inviting persons to make submissions to the Communications Minister and the Finance Minister about the proposed variation within 14 days after the notice is published; and
 - (b) give the ACCC a copy of the notice; and
 - (c) cause to be published on the Department's website a copy of each submission received within the 14-day period mentioned in paragraph (a); and
 - (d) consider any submissions received within the 14-day period mentioned in paragraph (a); and
 - (e) ask the ACCC to give advice to the Communications Minister and the Finance Minister, within 44 days after the notice is published, about the proposed variation; and
 - (f) have regard to any advice given by the ACCC.

Minor variation

- (5) Subsection (4) does not apply to a proposed variation if the variation is of a minor nature.

- (6) If the proposed variation:
- (a) is of a minor nature; and
 - (b) is not made at the request of the NBN corporation;
- then, before making the proposed variation, the Communications Minister and the Finance Minister must:
- (c) give the NBN corporation a notice:
 - (i) setting out the proposed variation; and
 - (ii) inviting the NBN corporation to make submissions to the Communications Minister and the Finance Minister about the proposed variation within 14 days after the notice is given; and
 - (d) consider any submissions received from the NBN corporation within that 14-day period.

Advice by the ACCC

- (7) Subsection (4) does not, by implication, prevent the Communications Minister and the Finance Minister from asking the ACCC to give the Communications Minister and the Finance Minister additional advice about a matter arising under this section.

Notification of variation

- (8) As soon as practicable after varying a final functional separation undertaking, the Communications Minister and the Finance Minister must notify the NBN corporation in writing of the variation.

When variation comes into force

- (9) A variation of a final functional separation undertaking comes into force on the day after the notice of the variation is given to the NBN corporation in accordance with subsection (8).

Variation is not a legislative instrument

- (10) A variation of a final functional separation undertaking is not a legislative instrument.

31 Publication of final functional separation undertaking

- (1) As soon as practicable after a final functional separation undertaking given by an NBN corporation comes into force, the NBN corporation must make a copy of the undertaking available on the NBN corporation's website.
- (2) As soon as practicable after a variation of a final functional separation undertaking given by an NBN corporation comes into force, the NBN corporation must make a copy of the varied final functional separation undertaking available on the NBN corporation's website.

32 Compliance with final functional separation undertaking

If a final functional separation undertaking given by an NBN corporation is in force, the NBN corporation must comply with the undertaking.

Division 4—Divestiture of assets by NBN corporations

33 Directions about disposal of assets

- (1) The Communications Minister and the Finance Minister may, by written notice given to an NBN corporation:
 - (a) direct the NBN corporation:
 - (i) to dispose of one or more specified assets of the NBN corporation (otherwise than by transferring the asset to another NBN corporation); and
 - (ii) to do so within the period specified in the notice; and
 - (b) give such other directions to the NBN corporation as the Communications Minister and the Finance Minister consider necessary for the purposes of securing the disposal.
 - (2) In deciding whether to give a direction under subsection (1), the Communications Minister and the Finance Minister must have regard to the following:
 - (a) whether the direction will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services;
 - (b) if the Communications Minister and the Finance Minister have required the ACCC under section 35 to give advice about the giving of the direction—the advice given in compliance with the requirement;
 - (c) such other matters (if any) as the Communications Minister and the Finance Minister consider relevant.
- Note: For long-term interests of end-users of carriage services or of services provided by means of carriage services, see section 94.
- (3) The Communications Minister and the Finance Minister must not give a direction under subsection (1) to an NBN corporation unless the NBN corporation is a constitutional corporation.
 - (4) An NBN corporation must comply with a direction under subsection (1) that is applicable to the NBN corporation.
 - (5) A direction under subsection (1) is not a legislative instrument.

34 Directions about transfer of assets to another NBN corporation

- (1) The Communications Minister and the Finance Minister may:
 - (a) by written notice given to an NBN corporation (the *transferor*), direct the transferor:
 - (i) to transfer one or more specified assets of the transferor to another NBN corporation specified in the notice (the *transferee*); and
 - (ii) to do so within the period specified in the notice; and
 - (b) by written notice given to the transferor or the transferee, give such other directions to the transferor or transferee as the Communications Minister and the Finance Minister consider necessary for the purposes of securing the transfer.
 - (2) The Communications Minister and the Finance Minister must not give a direction under subsection (1) after the Commonwealth ownership provisions have ceased to have effect under section 51.
 - (3) In deciding whether to give a direction under subsection (1), the Communications Minister and the Finance Minister must have regard to the following:
 - (a) whether the direction will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services;
 - (b) if the Communications Minister and the Finance Minister have required the ACCC under section 35 to give advice about the giving of the direction—the advice given in compliance with the requirement;
 - (c) such other matters (if any) as the Communications Minister and the Finance Minister consider relevant.
- Note: For long-term interests of end-users of carriage services or of services provided by means of carriage services, see section 94.
- (4) The Communications Minister and the Finance Minister must not give a direction under subsection (1) to an NBN corporation unless the NBN corporation is a constitutional corporation.
 - (5) An NBN corporation must comply with a direction under subsection (1) that is applicable to the NBN corporation.

- (6) A direction under subsection (1) is not a legislative instrument.

35 Advice from ACCC about disposal or transfer directions

- (1) The Communications Minister and the Finance Minister may, by written notice given to the ACCC, require the ACCC:
- (a) to give advice to the Communications Minister and the Finance Minister about whether the Communications Minister and the Finance Minister should give one or more directions under subsection 33(1) or 34(1); and
 - (b) to do so within the period specified in the notice.

- (2) The ACCC must comply with the requirement.

Note: Under section 497 of the *Telecommunications Act 1997*, the ACCC could hold a public inquiry under Part 25 about a matter relating to the performance of this function.

- (3) For the purposes of section 496 of the *Telecommunications Act 1997*, the giving of advice by the ACCC in compliance with a requirement under subsection (1) is taken to be a matter concerning the telecommunications industry.

Note: Section 496 of the *Telecommunications Act 1997* allows the Minister to direct the ACCC to hold a public inquiry under Part 25 about a specified matter concerning the telecommunications industry.

- (4) Subsection (3) is enacted for the avoidance of doubt.

- (5) If the ACCC holds a public inquiry under Part 25 of the *Telecommunications Act 1997* about the giving of advice to the Communications Minister and the Finance Minister in compliance with a requirement under subsection (1), the ACCC must, in holding the inquiry and preparing its report on the inquiry, have regard to the following:

- (a) whether giving the relevant direction or directions under subsection 33(1) or 34(1) will promote the long-term interests of end-users of carriage services or of services provided by means of carriage services;
- (b) such other matters (if any) as the ACCC considers relevant.

Note: For long-term interests of end-users of carriage services or of services provided by means of carriage services, see section 94.

- (6) This section does not, by implication, prevent the Communications Minister and the Finance Minister from asking the ACCC to give the Communications Minister and the Finance Minister additional advice about a matter arising under this Division.
- (7) A requirement under subsection (1) is not a legislative instrument.

36 Exemption from stamp duty—transfer in compliance with transfer direction

- (1) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
 - (a) a transfer of an asset in compliance with a direction under subsection 34(1); or
 - (b) an agreement relating to a transfer covered by paragraph (a);
 - (c) the receipt of money by an NBN corporation, or by a person acting on behalf of an NBN corporation, in respect of a transfer covered by paragraph (a);
 - (d) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a matter covered by paragraph (a), (b) or (c).
- (2) However, the rule in subsection (1) does not apply:
 - (a) in such circumstances as are specified in the regulations; or
 - (b) in relation to stamp duty, or other tax, of a kind specified in the regulations; or
 - (c) in relation to stamp duty, or other tax, of a kind specified in the regulations, in such circumstances as are specified in the regulations.

Division 5—Carrier licence conditions etc.

37 Carrier licence condition

A carrier licence held by an NBN corporation is subject to a condition that the NBN corporation must comply with any rules in section 9, 17, 18, 19, 20, 26, 32, 33 or 34 that are applicable to the NBN corporation.

Note: See also section 62E of the *Telecommunications Act 1997*.

38 Service provider rule

- (1) In addition to the rules mentioned in section 98 of the *Telecommunications Act 1997*, the rule set out in subsection (2) of this section is a service provider rule for the purposes of that Act.
- (2) If an NBN corporation is a service provider, the NBN corporation must comply with any rules in section 9, 17, 18, 19, 20, 26, 32, 33 or 34 that are applicable to the NBN corporation.

39 Power to declare carrier licence conditions not limited

Sections 9, 17, 18, 19, 20, 26, 32, 33 and 34 do not, by implication, limit the conditions that may be declared under section 63 of the *Telecommunications Act 1997*.

40 Power to determine service provider rules not limited

Sections 9, 17, 18, 19, 20, 26, 32, 33 and 34 do not, by implication, limit the rules that may be determined under section 99 of the *Telecommunications Act 1997*.

Division 6—Special carrier licence conditions

41 Conditions about supply of carriage services by NBN corporations

Mandatory services

- (1) A condition of a carrier licence held by an NBN corporation may require the NBN corporation to comply with section 152CJB of the *Competition and Consumer Act 2010* in relation to a specified eligible service that is supplied, or is capable of being supplied, by the NBN corporation (whether to itself or other persons).

Note 1: This means that the service will become a declared service, and the NBN corporation will be subject to a standard access obligation to supply the service under section 152AXB of the *Competition and Consumer Act 2010*.

Note 2: For declaration of carrier licence conditions, see section 63 of the *Telecommunications Act 1997*.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) A condition covered by subsection (1) has no effect in relation to an eligible service if, immediately before the time when the condition comes into force, the service, to the extent that it is capable of being supplied by the NBN corporation concerned, is a declared service.

Prohibited services

- (3) A condition of a carrier licence held by an NBN corporation may prohibit the NBN corporation from supplying a specified carriage service to carriers or service providers.

Note 1: For declaration of carrier licence conditions, see section 63 of the *Telecommunications Act 1997*.

Note 2: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Power to declare carrier licence conditions not limited

- (4) Subsections (1) and (3) do not, by implication, limit the conditions that may be declared under section 63 of the *Telecommunications Act 1997*.

42 Consultation with ACCC

Scope

- (1) This section applies if the Communications Minister is required under section 64 of the *Telecommunications Act 1997* to give an NBN corporation a notice in relation to a condition covered by subsection 41(1) or (3) of this Act.

Consultation with ACCC

- (2) Before giving the notice, the Communications Minister must consult the ACCC.

Part 3—Ownership and control of NBN Co

Division 1—Simplified outline

43 Simplified outline

The following is a simplified outline of this Part:

- Under provisions called the Commonwealth ownership provisions, the Commonwealth must retain ownership of NBN Co.
- The Commonwealth ownership provisions cease to have effect after the following events have occurred:
 - (a) the Communications Minister has declared that, in his or her opinion, the national broadband network should be treated as built and fully operational;
 - (b) the Productivity Minister has caused to be tabled in both Houses of Parliament a report of an inquiry by the Productivity Commission;
 - (c) the Parliamentary Joint Committee on the Ownership of NBN Co has examined the Productivity Commission's report;
 - (d) the Finance Minister has declared that, in his or her opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme, and the declaration has taken effect.
- This Part sets out rules about how an NBN Co sale scheme is to be carried out.

- NBN Co must take all reasonable steps to ensure that an unacceptable private ownership or control situation does not exist in relation to NBN Co.

Division 2—Commonwealth ownership and control of NBN Co

Subdivision A—Commonwealth ownership provisions

44 Commonwealth ownership provisions

This Subdivision sets out the Commonwealth ownership provisions.

45 Commonwealth to retain ownership of NBN Co

- (1) The Commonwealth must not transfer any of its shares in NBN Co if the transfer results in a breach of subsection (2).
- (2) Neither the Commonwealth nor NBN Co is allowed to do anything to cause or contribute to any of the following results:
 - (a) that the Commonwealth no longer holds shares in NBN Co that carry the rights to exercise all of the voting rights attached to the voting shares in NBN Co;
 - (b) that the Commonwealth no longer controls the exercise of all of the voting rights attached to the voting shares in NBN Co;
 - (c) that the Commonwealth no longer holds all of the paid-up share capital of NBN Co;
 - (d) that the Commonwealth is no longer entitled to hold all of the rights to any distribution of capital or profits of NBN Co on winding-up;
 - (e) that the Commonwealth is no longer entitled to hold all of the rights to any distribution of capital or profits of NBN Co, otherwise than on winding-up.

Note: This section ceases to have effect at the time worked out under section 51.

46 Compliance by NBN Co

- (1) NBN Co must take all reasonable steps to ensure that a situation described in paragraph 45(2)(a), (b), (c), (d) or (e) does not exist.

- (2) NBN Co commits an offence if:
- (a) NBN Co engages in conduct; and
 - (b) NBN Co's conduct contravenes subsection (1).

Penalty for contravention of this subsection: 500 penalty units.

Note: This section ceases to have effect at the time worked out under section 51.

Subdivision B—Termination of Commonwealth ownership provisions

47 Object of this Subdivision

The object of this Subdivision is to provide for the termination of the Commonwealth ownership provisions after the following events have occurred:

- (a) the Communications Minister has declared that, in his or her opinion, the national broadband network should be treated as built and fully operational (see section 48);
- (b) the Productivity Minister has caused to be tabled in both Houses of Parliament a report of an inquiry by the Productivity Commission (see section 49);
- (c) the Parliamentary Joint Committee on the Ownership of NBN Co has examined the Productivity Commission's report (see Schedule 2);
- (d) the Finance Minister has declared that, in his or her opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme, and the declaration has taken effect (see section 50).

48 Declaration by Communications Minister—whether national broadband network should be treated as built and fully operational

Initial declaration

- (1) During the period:
- (a) starting at the commencement of this section; and
 - (b) ending at the end of 31 December 2020;

the Communications Minister must:

- (c) declare, in writing, that, in his or her opinion, the national broadband network should be treated as built and fully operational; or
- (d) declare, in writing, that the period:
 - (i) starting immediately after the declaration is made; and
 - (ii) ending at a specified time;is a ***declared pre-termination period*** for the purposes of this Act.

Subsequent declarations

- (2) During a declared pre-termination period, the Communications Minister must:
 - (a) declare, in writing, that, in his or her opinion, the national broadband network should be treated as built and fully operational; or
 - (b) declare, in writing, that the period:
 - (i) starting immediately after the declaration is made; and
 - (ii) ending at a specified time;is a ***declared pre-termination period*** for the purposes of this Act.
- (3) Subsection (2) is recursive, that is, the first reference in that subsection to a declared pre-termination period includes a reference to a period that is a declared pre-termination period because of any other application or applications of paragraph (2)(b).

Maximum duration of declared pre-termination period

- (4) A declared pre-termination period must not be longer than 12 months.

Matters to which Communications Minister must have regard

- (5) In deciding whether to make a declaration under this section, the Communications Minister must have regard to the following matters:

- (a) the extent to which the national broadband network has been built;
- (b) the extent to which the national broadband network is operational;
- (c) matters relating to the security of the national broadband network;
- (d) such other matters (if any) as the Communications Minister considers relevant.

Tabling in Parliament

- (6) The Communications Minister must cause a copy of a declaration under this section to be tabled in each House of the Parliament within 15 sitting days of that House after making the declaration.
- (7) If a declaration under paragraph (1)(d) or (2)(b) is tabled in accordance with subsection (6), the Communications Minister must also table a statement to the effect that the Commonwealth ownership provisions continue in operation.

Declaration is not a legislative instrument

- (8) A declaration under this section is not a legislative instrument.

49 Productivity Commission inquiry

Scope

- (1) This section applies if the Communications Minister has made a declaration under paragraph 48(1)(c) or (2)(a) that, in the Communications Minister's opinion, the national broadband network should be treated as built and fully operational.

Inquiry by Productivity Commission

- (2) The Productivity Minister may, under paragraph 6(1)(a) of the *Productivity Commission Act 1998*, refer the following matters to the Productivity Commission for inquiry:
 - (a) the matter of the regulatory framework for the national broadband network;

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- (b) the matter of the impact on future annual Commonwealth budgets of a sale of the Commonwealth's equity in NBN Co;
 - (c) the matter of the impact on:
 - (i) the supply of affordable broadband carriage services; and
 - (ii) the supply of affordable carriage services (other than broadband carriage services); and
 - (iii) equity and social inclusion;of a sale of the Commonwealth's equity in NBN Co;
 - (d) the matter of the impact on competition in telecommunications markets of a sale of the Commonwealth's equity in NBN Co.
- (3) In referring the matters to the Productivity Commission for inquiry, the Productivity Minister must, under paragraph 11(1)(c) of the *Productivity Commission Act 1998*, specify the period of 12 months beginning when the reference is made as the period within which the Productivity Commission must submit its report on the inquiry to the Productivity Minister.

Note 1: Under section 12 of the *Productivity Commission Act 1998*, the Productivity Minister must cause a copy of the Productivity Commission's report to be tabled in each House of the Parliament.

Note 2: Under clause 3 of Schedule 2, the Parliamentary Joint Committee on the Ownership of NBN Co must:

- (a) examine the Productivity Commission's report; and
- (b) report to both Houses of the Parliament on that examination.

Matters to which Productivity Commission must have regard

- (4) In holding the inquiry, and in preparing its report on the inquiry, the Productivity Commission must have regard to the following matters:
- (a) equity of access to broadband carriage services in:
 - (i) metropolitan areas; and
 - (ii) regional areas; and
 - (iii) rural areas; and
 - (iv) remote areas;
 - (b) competition in telecommunications markets;
 - (c) structural features of telecommunications markets;

- (d) power in telecommunications markets, including whether an NBN corporation has a substantial degree of power in any telecommunications market;
 - (e) ownership and control of NBN corporations;
 - (f) ownership and control of carriers or service providers by NBN corporations;
 - (g) structural organisation of NBN corporations;
 - (h) bundling of services supplied, or proposed to be supplied, by NBN corporations;
 - (i) retail prices of services supplied using the national broadband network;
 - (j) restriction of the investment activities of NBN corporations;
 - (k) geographical coverage of the national broadband network;
 - (l) technology used in connection with the national broadband network;
 - (m) the need for maintenance, replacement and upgrading of technology used in connection with the national broadband network;
 - (n) any other matters specified in a written determination made by the Productivity Minister;
 - (o) such other matters (if any) as the Productivity Commission considers relevant.
- (5) Subsection (4) of this section has effect in addition to section 8 of the *Productivity Commission Act 1998*.
- (6) Before making a determination under paragraph (4)(n), the Productivity Minister must consult:
- (a) the Communications Minister; and
 - (b) the Finance Minister.
- (7) A determination under paragraph (4)(n) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

Assumptions in report

- (8) If, in arriving at a conclusion set out in its report on the inquiry, the Productivity Commission made, or had regard to, a particular assumption:
- (a) the report must set out that assumption; and
 - (b) if making, or having regard to, an alternative plausible assumption would have had a particular effect on that conclusion—the report must set out that effect.

Substantial degree of power in telecommunications market

- (9) For the purposes of this section, the question of whether an NBN corporation has a substantial degree of power in a telecommunications market is to be determined under Part XIB of the *Competition and Consumer Act 2010*.

Matters relating to industry, industry development and productivity

- (10) For the purposes of paragraph 6(1)(a) of the *Productivity Commission Act 1998*, each matter mentioned in subsection (2) of this section is taken to be a matter relating to industry, industry development and productivity.

50 Declaration by Finance Minister—whether conditions suitable for an NBN Co sale scheme

Scope

- (1) This section applies if the Parliamentary Joint Committee on the Ownership of NBN Co has reported to both Houses of the Parliament, under paragraph 3(1)(b) of Schedule 2, on the Committee's examination of the report of the Productivity Commission inquiry mentioned in section 49.

Declaration

- (2) The Finance Minister may declare, in writing, that, in the Finance Minister's opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme.

Matters to which Finance Minister must have regard

- (3) In deciding whether to make a declaration under subsection (2), the Finance Minister must have regard to the following matters:
- (a) NBN Co's governance arrangements;
 - (b) NBN Co's business record;
 - (c) market conditions;
 - (d) such other matters (if any) as the Finance Minister considers relevant.

Disallowance

- (4) The Finance Minister must cause a copy of a declaration under subsection (2) to be tabled in each House of the Parliament within 15 sitting days of that House after making the declaration.
- (5) Either House of Parliament may, following a motion on notice, pass a resolution disallowing the declaration. To be effective, the resolution must be passed within 15 sitting days of the House after the copy of the declaration was tabled in the House.
- (6) If neither House passes such a resolution, the declaration takes effect on the day immediately after the last day on which such a resolution could have been passed.
- (7) If a House of Parliament passes a resolution under subsection (5) disallowing a declaration made under subsection (2), this Act does not prevent the Finance Minister from making another declaration under subsection (2).

Publication

- (8) The Finance Minister must cause a copy of a declaration under subsection (2) to be published on the website of the Department of Finance.

Declaration is not a legislative instrument

- (9) A declaration under subsection (2) is not a legislative instrument.

51 Termination of Commonwealth ownership provisions

Scope

- (1) This section applies if:
- (a) the Finance Minister declares under subsection 50(2) that, in his or her opinion, conditions are suitable for the entering into and carrying out of an NBN Co sale scheme; and
 - (b) the declaration takes effect under subsection 50(6).

Termination of Commonwealth ownership provisions

- (2) The Commonwealth ownership provisions cease to have effect when the declaration takes effect under subsection 50(6).

Subdivision C—Sale by the Commonwealth of its shares in NBN Co

52 Simplified outline

The following is a simplified outline of this Subdivision:

- An NBN Co sale scheme must not be entered into or carried out unless the Commonwealth ownership provisions have ceased to have effect.
- This Subdivision sets out rules about how an NBN Co sale scheme is to be carried out.

53 When NBN Co sale scheme may be entered into and carried out

An NBN Co sale scheme must not be entered into or carried out unless the Commonwealth ownership provisions have ceased to have effect under section 51.

Note: For *NBN Co sale scheme*, see section 54.

54 NBN Co sale scheme

Object

- (1) The object of this section is to define the expressions *NBN Co sale scheme*, *sale-scheme trustee*, *sale-scheme trust deed* and *hybrid-security issuer company*.

NBN Co sale scheme

- (2) For the purposes of this Act, an *NBN Co sale scheme* is a scheme the object of which is to achieve the transfer, or progressive transfer, of the whole or a part of the Commonwealth's equity in NBN Co to other persons.
- (3) An NBN Co sale scheme must comply with any rules set out in a determination in force under subsection (4).
- (4) The Finance Minister may make a written determination setting out rules that are to be complied with by an NBN Co sale scheme.
- (5) An NBN Co sale scheme may involve any or all of the following:
- (a) the transfer by the Commonwealth of any of its shares in NBN Co;
 - (b) the transfer by the Commonwealth of interests in its shares in NBN Co to a company (the *sale-scheme trustee*) in the company's capacity as the trustee of a trust established by a trust deed (the *sale-scheme trust deed*);
 - (c) an investor in NBN Co initially acquiring a particular interest in shares in NBN Co and subsequently acquiring the remaining interests in those shares;
 - (d) the payment by NBN Co of a dividend;
 - (e) the reduction of NBN Co's share capital;
 - (f) a return of capital by NBN Co;
 - (g) the cancellation of a particular parcel of shares in NBN Co held by the Commonwealth;
 - (h) NBN Co buying back shares in itself;
 - (i) the issue of securities in NBN Co;
 - (j) the redemption of redeemable preference shares in NBN Co held by the Commonwealth;

- (k) the modification of NBN Co's constitution;
 - (l) the issue by the Commonwealth or NBN Co of sale-scheme hybrid securities;
 - (m) an arrangement under which one or more designated companies (each of which is called a **hybrid-security issuer company**) issue sale-scheme hybrid securities;
 - (n) the guarantee by the Commonwealth of obligations of a hybrid-security issuer company in relation to sale-scheme hybrid securities (for example, obligations to make payments of interest or dividends);
 - (o) an agreement of the kind known as a securities lending arrangement, where the securities lending arrangement relates to shares in NBN Co.
- (6) In determining whether a scheme is an NBN Co sale scheme, regard must be had to the economic and commercial substance of the scheme.
- (7) Subsections (5) and (6) do not, by implication, limit subsection (2).

Designated company

- (8) For the purposes of this section, a **designated company** is:
- (a) a wholly-owned Commonwealth company; or
 - (b) a body corporate specified in a written declaration made by the Finance Minister under this paragraph.

Legislative instruments

- (9) A determination under subsection (4) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- (10) A declaration under paragraph (8)(b) is not a legislative instrument.
- (11) To the extent that an NBN Co sale scheme is in writing, it is not a legislative instrument.

Definitions

- (12) In this section:
-

interest in a share has the meaning given by section 75.

modification has the same meaning as in the *Corporations Act 2001*.

transfer, in relation to an interest in a share, includes the creation of the interest.

wholly-owned Commonwealth company has the same meaning as in the *Commonwealth Authorities and Companies Act 1997* (in working out whether a company is covered by this definition, ignore any sale-scheme hybrid securities issued by the company).

55 Sale-scheme hybrid securities

- (1) For the purposes of this Act, a *sale-scheme hybrid security* is:
- (a) an interest-bearing security that is issued on the basis that it will or may be redeemed in exchange for a share or shares in NBN Co; or
 - (b) a share that is issued on the basis that it will or may be redeemed in exchange for a share or shares in NBN Co; or
 - (c) any other security or financial product that is issued on the basis that it will or may be redeemed in exchange for a share or shares in NBN Co; or
 - (d) an option to acquire a share or shares in NBN Co; or
 - (e) an interest-bearing security that is issued on the basis that it will or may be converted to a share or shares in NBN Co; or
 - (f) any other security or financial product that is issued on the basis that it will or may be converted to a share or shares in NBN Co; or
 - (g) an interest-bearing security that is issued on the basis that it will or may be exchanged for a share or shares in NBN Co; or
 - (h) any other security or financial product that is issued on the basis that it will or may be exchanged for a share or shares in NBN Co; or
 - (i) a security, or a financial product, that:
 - (i) is specified in a written declaration made by the Finance Minister under this subparagraph; and

- (ii) relates directly or indirectly to NBN Co.
- (2) A security or financial product covered by a paragraph of subsection (1) may (but need not) include a charge, pledge or lien.
- (3) A security covered by paragraph (1)(a), (e) or (g) may be issued in or outside Australia, and may be denominated in:
- (a) Australian currency; or
 - (b) a currency other than Australian currency.
- (4) A share covered by paragraph (1)(b) may be issued in or outside Australia, and any rights or obligations may be denominated in:
- (a) Australian currency; or
 - (b) a currency other than Australian currency.
- (5) A security or financial product covered by paragraph (1)(c), (f), (h) or (i) may be issued in or outside Australia, and any rights or obligations may be denominated in:
- (a) Australian currency; or
 - (b) a currency other than Australian currency.
- (6) An option covered by paragraph (1)(d) may be issued in or outside Australia, and the exercise price may be denominated in:
- (a) Australian currency; or
 - (b) a currency other than Australian currency.
- (7) A declaration under subparagraph (1)(i)(i) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.
- (8) In this section:
- security* has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

56 Exemption from stamp duty—transfer by the Commonwealth of its shares in NBN Co etc.

- (1) In this section:
-

designated matter means any of the following matters, where the matter relates to the entering into or carrying out of an NBN Co sale scheme:

- (a) the transfer by the Commonwealth of:
 - (i) a share in NBN Co held by the Commonwealth; or
 - (ii) an interest in such a share;
- (b) an agreement relating to a transfer covered by paragraph (a);
- (c) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (a);
- (d) the transfer by the sale-scheme trustee of:
 - (i) a share in NBN Co held by the trustee; or
 - (ii) an interest in such a share;where the transfer is in accordance with the sale-scheme trust deed;
- (e) an agreement relating to a transfer covered by paragraph (d);
- (f) the receipt of money by the sale-scheme trustee or by a person acting on behalf of the sale-scheme trustee, in respect of a transfer covered by paragraph (d);
- (g) the reduction of NBN Co's share capital;
- (h) the cancellation of a particular parcel of shares in NBN Co held by the Commonwealth;
- (i) NBN Co buying back shares in itself;
- (j) the issue of securities in NBN Co;
- (k) the redemption of redeemable preference shares in NBN Co held by the Commonwealth;
- (l) the issue of sale-scheme hybrid securities;
- (m) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of the issue of sale-scheme hybrid securities;
- (n) the receipt of money by a hybrid-security issuer company, or by a person acting on behalf of a hybrid-security issuer company, in respect of the issue of sale-scheme hybrid securities;
- (o) the redemption, exchange or conversion of sale-scheme hybrid securities;

- (p) the transfer by a hybrid-security issuer company of a share in NBN Co held by the company;
- (q) the grant of a charge, pledge or lien (whether in connection with sale-scheme hybrid securities or otherwise);
- (r) an agreement relating to a matter covered by paragraph (c), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p) or (q);
- (s) an agreement of the kind known as a securities lending arrangement, where the securities lending arrangement relates to shares in NBN Co;
- (t) any other matter that is specified in the regulations.

interest in a share has the meaning given by section 75.

transfer, in relation to an interest in a share, includes the creation of the interest.

- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
 - (a) a designated matter; or
 - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a designated matter.
- (3) However, the rule in subsection (2) does not apply:
 - (a) in such circumstances as are specified in the regulations; or
 - (b) in relation to stamp duty, or other tax, of a kind specified in the regulations; or
 - (c) in relation to stamp duty, or other tax, of a kind specified in the regulations, in such circumstances as are specified in the regulations.

57 Authorisation of borrowing—issue of sale-scheme hybrid securities

To the extent to which the issue of sale-scheme hybrid securities under an NBN Co sale scheme involves a borrowing of money by the Commonwealth, that borrowing is authorised by this section.

Note: Section 37 of the *Financial Management and Accountability Act 1997* provides that an agreement for the borrowing of money by the

Commonwealth is of no effect unless the borrowing is authorised by an Act.

58 Appropriation—costs incurred in connection with an NBN Co sale scheme

- (1) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (2) The costs, expenses and obligations covered by subsection (1) include (but are not limited to) the following:
 - (a) legal and accounting fees;
 - (b) costs of undertaking due diligence inquiries;
 - (c) underwriting fees;
 - (d) costs associated with an offer document;
 - (e) marketing expenses;
 - (f) other administrative and logistical expenses;
 - (g) calls on indemnities granted by the Commonwealth;
 - (h) calls on guarantees given by the Commonwealth;
 - (i) obligations to make payments of amounts in relation to sale-scheme hybrid securities issued by the Commonwealth (for example, payments of interest).

59 Assistance given by NBN Co or the Board in connection with an NBN Co sale scheme

Giving assistance on own initiative

- (1) NBN Co may, on its own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (2) A member of the Board may, on the member's own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme.

Giving assistance when requested by Communications Minister and Finance Minister

- (3) NBN Co must, when requested in writing by the Communications Minister and the Finance Minister to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (4) The Board must, when requested in writing by the Communications Minister and the Finance Minister to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.

Directions of Communications Minister and Finance Minister

- (5) The Communications Minister and the Finance Minister may, by written notice given to NBN Co, give directions to NBN Co about the exercise of NBN Co's powers under subsection (1). NBN Co must comply with the direction.
- (6) The Communications Minister and the Finance Minister may, by written notice given to a member of the Board, give directions to the member about the exercise of the member's powers under subsection (2). The member must comply with the direction.

Immunity

- (7) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4), the making of a request under subsection (3) or (4), or the giving of a direction under subsection (5) or (6), does not result in a contravention of, or give rise to a liability or remedy under:
 - (a) a provision of the *Corporations Act 2001*; or
 - (b) if NBN Co is a listed disclosing entity—the listing rules of a listing market in relation to NBN Co; or
 - (c) a rule of common law or equity (other than a rule of administrative law).

Consequences of a contravention

- (8) A contravention of subsection (3), (4), (5) or (6) is not an offence. However, a contravention of subsection (3), (4), (5) or (6) is a ground for obtaining an injunction under Part 6.

60 Giving of assistance—ancillary provisions

- (1) The assistance mentioned in subsection 59(1), (2), (3) or (4) may take the form of:
- (a) the giving of information; or
 - (b) the giving of financial assistance (within the meaning of Part 2J.3 of the *Corporations Act 2001*); or
 - (c) the giving of a financial benefit to a related party (within the meaning of Chapter 2E of the *Corporations Act 2001*); or
 - (d) the provision, by NBN Co's directors or employees, of facilities, information and other assistance in connection with the conduct of:
 - (i) a due diligence procedure or a similar process; or
 - (ii) a market briefing or a similar process.
- (2) Subsection (1) does not, by implication, limit the forms in which assistance may be given.
- (3) Section 59 does not, by implication, limit any rights that are conferred on shareholders by other laws.
- (4) Section 59 does not authorise the imposition of taxation (within the meaning of section 55 of the Constitution).
- (5) Section 59 does not, by implication, limit:
- (a) the executive power of the Commonwealth to enter into an agreement; or
 - (b) the capacity of NBN Co, or of a member of the Board, to enter into an agreement with the Commonwealth.

Note: This ensures, for example, that the Commonwealth can enter into a co-operation agreement with NBN Co or with a member of the Board.

61 Reimbursement of expenses incurred in giving assistance

- (1) This section applies if:
 - (a) assistance is given under section 59; and
 - (b) NBN Co or a member of the Board incurs expenses in relation to the giving of that assistance.
- (2) The Finance Minister may authorise the payment by the Commonwealth to NBN Co, or to the member, as the case may be, of an amount equal to so much of those expenses as the Finance Minister considers reasonable.
- (3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (2).
- (4) This section does not, by implication, limit the executive power of the Commonwealth to make a payment to NBN Co or to a member of the Board.

62 Commonwealth to be bound by Chapters 6CA, 6D and 7 of the *Corporations Act 2001*

- (1) Despite subsection 5A(4) of the *Corporations Act 2001* (but subject to subsection 5A(5) of that Act), Chapters 6CA, 6D and 7 of the *Corporations Act 2001* bind the Crown in right of the Commonwealth to the extent to which those Chapters deal with the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (2) Subsection (1) has effect despite anything in the *Corporations Act 2001*.
- (3) For the purposes of subsection (1), if Chapter 6CA, 6D or 7 of the *Corporations Act 2001* is repealed and replaced by another provision of that Act that deals with fundraising or securities regulation, the reference in that subsection to that Chapter of that Act is to be read as a reference to the replacement provision.

Chinese wall arrangements

- (4) The Commonwealth does not contravene subsection 1043A(1) of the *Corporations Act 2001* by entering into a transaction or agreement at any time in relation to:
- (a) shares in NBN Co; or
 - (b) sale-scheme hybrid securities; or
 - (c) an NBN Co sale scheme;
- merely because of information in the possession of an officer or employee of the Commonwealth if:
- (d) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and
 - (e) it had in operation at that time arrangements that could reasonably be expected to ensure that:
 - (i) the information was not communicated to the person or persons who made the decision; and
 - (ii) no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
 - (f) the information was not so communicated and no such advice was given.
- (5) A reference in subsection (4) to an *officer* of the Commonwealth includes a reference to the holder of an office under a law of the Commonwealth.

63 Reduction of NBN Co's share capital

- (1) This section applies to a reduction of NBN Co's share capital if:
- (a) the reduction relates to the formulation, entering into, or carrying out, of an NBN Co sale scheme; and
 - (b) the reduction is part of an overall arrangement or plan that involves:
 - (i) the replacement of a particular type of share with one or more other types of share; and
 - (ii) the replacement of the reduced share capital.

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- (2) Notice of the reduction does not have to be given to NBN Co's creditors.
- (3) NBN Co's creditors are not entitled to object to the reduction.
- (4) The reduction does not have to be confirmed by a court.
- (5) Subsections (2), (3) and (4) have effect despite anything in Part 2J.1 of the *Corporations Act 2001*.

64 Alterations of NBN Co's constitution—notice to debenture holders

- (1) This section applies to an alteration of NBN Co's constitution if the alteration relates to the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (2) A notice of a general meeting specifying an intention to propose a resolution for the alteration does not have to be given to:
 - (a) trustees for debenture holders; or
 - (b) debenture holders.
- (3) A court is not empowered to cancel the alteration.
- (4) Subsections (2) and (3) have effect despite anything in the *Corporations Act 2001*.

65 Alteration of NBN Co's constitution—Ministerial instrument

- (1) The Communications Minister and the Finance Minister may, by legislative instrument, alter NBN Co's constitution if:
 - (a) the alteration relates to the formulation, entering into, or carrying out, of an NBN Co sale scheme; and
 - (b) the effect of the alteration is to:
 - (i) remove, restrict or limit any rights, privileges or immunities of the Commonwealth, the Communications Minister or the Finance Minister; or
 - (ii) remove a provision that prohibits an act or thing without the consent of the Commonwealth; or

- (iii) in the case of a provision that prohibits an act or thing without the consent of the Commonwealth—remove the requirement to obtain that consent; or
 - (iv) remove a provision that prohibits an act or thing without the consent of the Communications Minister and the Finance Minister; or
 - (v) in the case of a provision that prohibits an act or thing without the consent of the Communications Minister and the Finance Minister—remove the requirement to obtain that consent; or
 - (vi) remove a provision that prohibits an act or thing unless the Commonwealth directs otherwise; or
 - (vii) in the case of a provision that prohibits an act or thing unless the Commonwealth directs otherwise—remove that power of direction; or
 - (viii) remove a provision that prohibits an act or thing unless the Communications Minister and the Finance Minister direct otherwise; or
 - (ix) in the case of a provision that prohibits an act or thing unless the Communications Minister and the Finance Minister direct otherwise—remove that power of direction.
- (2) Before making an instrument under subsection (1), the Communications Minister and the Finance Minister must consult the members of the Board.

Immunity

- (3) To avoid doubt, the making of an instrument under subsection (1) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
 - (b) if NBN Co is a listed disclosing entity—the listing rules of a listing market in relation to NBN Co; or
 - (c) a rule of common law or equity (other than a rule of administrative law).

Other powers not limited

- (4) If NBN Co's constitution is altered by an instrument under subsection (1), this Act does not prevent the further alteration of that constitution.

66 Use by the Commonwealth of information obtained from NBN Co or the Board

- (1) This section applies to information obtained under section 59.
- (2) The Commonwealth, or an associated person, may use the information for a purpose in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (3) The Commonwealth, or an associated person, may disclose the information for a purpose in connection with the formulation, entering into, or carrying out, of an NBN Co sale scheme.
- (4) If subsection (2) or (3) does not apply, the Commonwealth, or an associated person, may use or disclose the information for a purpose in connection with the Commonwealth's capacity as a shareholder in NBN Co, so long as the use or disclosure does not involve giving the information to a person who is not an associated person.
- (5) To avoid doubt, the use or disclosure of information as mentioned in subsection (2), (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
 - (b) if NBN Co is a listed disclosing entity—the listing rules of a listing market in relation to NBN Co; or
 - (c) a rule of common law or equity (other than a rule of administrative law).
- (6) In this section:
- associated person*** means:
- (a) a Minister; or
 - (b) an individual who holds an office under, or is employed by, the Commonwealth; or

- (c) a person appointed or engaged under the *Public Service Act 1999*; or
- (d) a person who performs services for or on behalf of the Commonwealth in connection with:
 - (i) the formulation, entering into, or carrying out, of an NBN Co sale scheme; or
 - (ii) the Commonwealth's capacity as a shareholder in NBN Co.

67 Agreements relating to the protection of information obtained from NBN Co or the Board

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into an agreement with NBN Co, or with one or more members of the Board, relating to the protection of information:
 - (a) that is obtained under section 59; and
 - (b) the publication of which might be expected to prejudice substantially NBN Co's commercial interests.
- (2) The agreement may be enforced as if it were a contract.
- (3) This section does not, by implication, limit the executive power of the Commonwealth to enter into agreements.

68 NBN Co's obligations to disclose information

To avoid doubt, the mere fact that particular information was requested, required or given under section 59 is not a ground on which NBN Co can be required to disclose or notify that, or any other, information under:

- (a) a provision of the *Corporations Act 2001*; or
- (b) if NBN Co is a listed disclosing entity—the listing rules of a listing market in relation to NBN Co.

Division 3—Private ownership and control of NBN Co

69 Unacceptable private ownership or control situation

- (1) For the purposes of this Act, an *unacceptable private ownership or control situation*, in relation to NBN Co, has the meaning given by the regulations.
- (2) Regulations made for the purposes of subsection (1) may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the ACCC.
- (3) Before the Governor-General makes a regulation for the purposes of subsection (1), the Communications Minister must consult the ACCC.

70 Prohibition of unacceptable private ownership or control situation

- (1) NBN Co must take all reasonable steps to ensure that an unacceptable private ownership or control situation does not exist in relation to NBN Co.
- (2) NBN Co commits an offence if:
 - (a) NBN Co engages in conduct; and
 - (b) NBN Co's conduct contravenes subsection (1).

Penalty for contravention of this subsection: 500 penalty units.

71 Remedial orders

- (1) If an unacceptable private ownership or control situation exists in relation to NBN Co, the Federal Court may, on application by the Communications Minister, the ACCC or NBN Co, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The Federal Court's orders include:
 - (a) an order directing the disposal of shares; or

- (b) an order restraining the exercise of any rights attached to shares; or
 - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
 - (d) an order that any exercise of rights attached to shares be disregarded.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) In addition to the Federal Court's powers under subsections (1) and (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (5) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

72 Record-keeping and giving of information

- (1) The regulations may make provision for, or in relation to, requiring a person to do any or all of the following:
- (a) keep and retain records, where the records are relevant to an NBN Co ownership or control matter;
 - (b) give information to the Communications Minister that is relevant to an NBN Co ownership or control matter;
 - (c) give information to the ACCC that is relevant to an NBN Co ownership or control matter;
 - (d) give information to NBN Co that is relevant to an NBN Co ownership or control matter.

Note: For *NBN Co ownership or control matter*, see subsection (6).

Section 72

Statutory declarations

- (2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(b), (c) or (d) must be verified by statutory declaration.

No self-incrimination

- (3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(b), (c) or (d) if the information might tend to incriminate the individual or expose the individual to a penalty.

Offence

- (4) A person commits an offence if:
- (a) a person is subject to a requirement under regulations made for the purposes of subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the conduct breaches the requirement.

Penalty: 50 penalty units.

Regulations may confer discretionary powers on the Communications Minister or the ACCC

- (5) Regulations made for the purposes of this section may make provision for, or in relation to, a matter by conferring a power on the Communications Minister or the ACCC. For example, the regulations could provide that the Communications Minister may, by written notice given to NBN Co, require NBN Co to give the Communications Minister, within the period and in the manner specified in the notice, specified information about an NBN Co ownership or control matter.

NBN Co ownership or control matter

- (6) For the purposes of this section, an ***NBN Co ownership or control matter*** means a matter relevant to:
- (a) an unacceptable private ownership or control situation; or

- (b) the question of whether an unacceptable private ownership or control situation has existed, is in existence, or will exist.

Other information-gathering powers not limited

- (7) This section does not limit:
 - (a) Division 6 of Part XIB of the *Competition and Consumer Act 2010*; or
 - (b) section 155 of that Act.

73 Validity of acts done in contravention of this Division

An act is not invalidated by the fact that it constitutes an offence against this Division.

74 Acquisition of property

- (1) The Federal Court must not make an order under this Division if:
 - (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.

- (2) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

Division 4—General provisions

75 Interest in a share

- (1) For the purposes of this Part, a person holds an *interest in a share* if the person has any legal or equitable interest in the share.
- (2) For the purposes of this Part, a person is taken to hold an *interest in a share* if:
 - (a) the person has entered into a contract to purchase the share; or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (d) the person is otherwise entitled to acquire the share or an interest in the share; or
 - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) Subsection (2) does not, by implication, limit subsection (1).
- (4) For the purposes of this Part, a person is taken to hold an *interest in a share* even if the person holds the interest in the share jointly with another person.
- (5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.

- (6) An interest in a share is not to be disregarded only because of:
- (a) its remoteness; or
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.
- (7) For the purposes of this section, a person is *entitled to acquire* a share if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

76 Extra-territorial application

This Part applies both within and outside Australia.

Part 4—NBN Co's reporting obligations

77 Simplified outline

The following is a simplified outline of this Part:

- This Part imposes reporting obligations on NBN Co, so long as NBN Co is not a wholly-owned Commonwealth company.
- This Part ceases to have effect when the Commonwealth ceases to hold a majority of the voting shares in NBN Co.

78 Application of this Part

This Part does not impose a requirement on:

- (a) NBN Co; or
- (b) the members of the Board;

if NBN Co is a wholly-owned Commonwealth company (within the meaning of the *Commonwealth Authorities and Companies Act 1997*).

79 Financial statements

- (1) The Communications Minister and the Finance Minister may give NBN Co a written direction requiring NBN Co to give the Communications Minister and the Finance Minister a specified financial statement or statements for a specified period or for each specified period.
- (2) NBN Co must comply with a direction under subsection (1).
- (3) The following are examples of periods that may be specified under subsection (1):
 - (a) the first 3 months of each financial year;
 - (b) the first 6 months of each financial year;
 - (c) the first 9 months of each financial year;

- (d) each financial year.
- (4) The members of the Board must:
 - (a) prepare each statement in accordance with written guidelines given to the Board by the Communications Minister and the Finance Minister; and
 - (b) give the statement to the Communications Minister and the Finance Minister within 2 months after the end of the period to which the statement relates.
- (5) The Communications Minister and the Finance Minister may grant extensions of time in special circumstances.
- (6) A guideline given under paragraph (4)(a) is not a legislative instrument.
- (7) In this section:

financial statements includes financial statements for the group consisting of NBN corporations.

80 Communications Minister and the Finance Minister to be notified of significant events

- (1) If an NBN corporation proposes to do any of the following things, the members of the Board must immediately give the Communications Minister and the Finance Minister written particulars of the proposal:
 - (a) form a company or participate in the formation of a company;
 - (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - (c) acquire or dispose of a significant shareholding in a company;
 - (d) acquire or dispose of a significant business;
 - (e) commence or cease a significant business activity;
 - (f) make a significant change in the nature or extent of its interests in a partnership, trust, unincorporated joint venture or similar arrangement.

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- (2) The Communications Minister and the Finance Minister may, by writing, exempt the members of the Board from the requirement to notify matters covered by paragraph (1)(a). The exemption may be granted subject to conditions.
- (3) The Communications Minister and the Finance Minister may give written guidelines to the Board that are to be used by the members in deciding whether a proposal is covered by paragraph (1)(b), (c), (d), (e) or (f).
- (4) A guideline given under subsection (3) is not a legislative instrument.

81 Keeping the Communications Minister and the Finance Minister informed

- (1) The members of the Board must:
 - (a) keep the Communications Minister and the Finance Minister informed of the operations of NBN corporations; and
 - (b) give the Communications Minister such reports, documents and information in relation to those operations as the Communications Minister requires; and
 - (c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.
- (2) The members of the Board must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.

82 Corporate plan for NBN Co

- (1) The members of the Board must prepare a corporate plan at least once a year and give it to the Communications Minister and the Finance Minister.
- (2) The plan must cover a period of at least 3 years and not more than 5 years.

- (3) The plan must cover each NBN corporation. In particular, for each NBN corporation the plan must include details of the matters in subsection (6), so far as they are applicable.
 - (4) The members of the Board must keep the Communications Minister and the Finance Minister informed about changes to the plan.
 - (5) If the Board becomes aware that a particular matter may affect the achievement of the plan, the Board must give the Communications Minister and the Finance Minister a written notice:
 - (a) setting out particulars of the matter; and
 - (b) explaining the effect of the matter on the achievement of the plan.
 - (6) The plan must include details of the following matters (so far as they are applicable):
 - (a) the objectives of the company;
 - (b) assumptions about the business environment in which the company operates;
 - (c) the business strategies of the company;
 - (d) the investment and financing programs of the company, including strategies for managing financial risk;
 - (e) financial targets and projections for the company;
 - (f) the dividend policy of the company;
 - (g) non-financial performance measures for the company;
 - (h) community service obligations of the company;
 - (i) review of performance against previous corporate plans and targets;
 - (j) analysis of factors likely to affect achievement of targets or create significant financial risk for the company or for the Commonwealth;
 - (k) price control and quality control strategies for goods or services supplied by the company under a monopoly;
 - (l) human resource strategies and industrial relations strategies.
 - (7) The plan must also cover any other matters required by the Communications Minister and the Finance Minister (which may include further details about the matters in subsection (6)).
-

83 Consequences of contraventions of this Part

A contravention of this Part is not an offence. However, a contravention of this Part is a ground for obtaining an injunction under Part 6.

84 This Part has effect despite the *Corporations Act 2001* etc.

To avoid doubt, the operation of this Part does not result in a contravention of, or give rise to a liability or remedy under:

- (a) a provision of the *Corporations Act 2001*; or
- (b) a rule of common law or equity (other than a rule of administrative law).

85 When this Part ceases to have effect

- (1) This Part (other than this section) ceases to have effect at the end of the majority interest sale day for NBN Co.

Majority interest sale day

- (2) If, in the opinion of the Communications Minister, a particular day is the first day on which a majority of the voting shares in NBN Co are held by a person, or persons, other than the Commonwealth, the Communications Minister must, by written instrument, declare the day to be the *majority interest sale day* for NBN Co.
- (3) The declaration under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.
- (4) The majority interest sale day for NBN Co may be earlier than the day on which the declaration under subsection (2) is registered under the *Legislative Instruments Act 2003*.

Securities lending arrangements

- (5) For the purposes of this section, if, under an agreement of the kind known as a securities lending arrangement:

- (a) at a particular time (the *disposal time*), the Commonwealth disposed of a share in NBN Co (the *borrowed share*) to another person (the *borrower*); and
- (b) the Commonwealth may come under an obligation to:
 - (i) re-acquire the borrowed share from the borrower at a later time; or
 - (ii) acquire an identical share from the borrower at a later time;

the borrowed share is taken to be held by the Commonwealth during the period:

- (c) beginning at the disposal time; and
- (d) ending when the obligation mentioned in paragraph (b) is discharged or can no longer arise.

Hybrid-security issuer company

- (6) For the purposes of this section, the *Commonwealth* includes a hybrid-security issuer company specified in a written declaration made by the Finance Minister under this subsection.
- (7) A declaration under subsection (6) is not a legislative instrument.

Part 5—Anti-avoidance

86 Anti-avoidance

- (1) An NBN corporation must not, either alone or together with one or more other persons, enter into, begin to carry out or carry out a scheme if it would be concluded that the NBN corporation did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to:
 - (a) the NBN corporation; or
 - (b) any other NBN corporation.
- (2) A contravention of subsection (1) is not an offence. However, a contravention of subsection (1) is a ground for obtaining an injunction under Part 6.
- (3) A contravention of subsection (1) does not affect the validity of any transaction.
- (4) In this section:

scheme means:

 - (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; and
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Part 6—Injunctions

87 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of this Act.

88 Injunctions

Performance injunctions

- (1) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of this Act;
- the Federal Court may, on the application of the Communications Minister or the Finance Minister, grant an injunction requiring the person to do that act or thing.

Restraining injunctions

- (2) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Act, the Federal Court may, on the application of the Communications Minister or the Finance Minister, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

89 Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court for an injunction under subsection 88(2), the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that subsection.

No undertakings as to damages

- (2) The Federal Court is not to require the Communications Minister or the Finance Minister, as a condition of granting an interim injunction, to give any undertakings as to damages.

90 Discharge etc. of injunctions

The Federal Court may discharge or vary an injunction granted under this Part.

91 Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Federal Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind.

Performance injunctions

- (2) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:

- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing.

92 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court under this Part are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

Part 7—Miscellaneous

93 Severability

- (1) Without limiting its effect apart from this section, this Act (other than Division 4 of Part 2) also has effect as provided by this section.

Corporations power

- (2) This Act (other than Division 4 of Part 2) also has the effect it would have if:
 - (a) subsection (3) had not been enacted; and
 - (b) each reference in this Act (other than Division 4 of Part 2) to an NBN corporation were, by express provision, confined to an NBN corporation that is a constitutional corporation.

Communications power

- (3) This Act (other than Division 4 of Part 2) also has the effect it would have if:
 - (a) subsection (2) had not been enacted; and
 - (b) each reference in this Act (other than Division 4 of Part 2) to an NBN corporation were, by express provision, confined to an NBN corporation that carries on, proposes to carry on, or has the object of carrying on, a business that consists of or includes the supply of a carriage service.

94 Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services

For the purposes of this Act, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as it is determined for the purposes of Part XIC of the *Competition and Consumer Act 2010*.

95 NBN Co is not a public authority

NBN Co is taken for the purposes of the laws of the Commonwealth, of a State or of a Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown (however described); and
- (c) not to be entitled to any immunity or privilege of the Commonwealth;

except so far as express provision is made by this Act or any other law of the Commonwealth, or by a law of a State or of a Territory, as the case may be.

96 Public Works Committee Act

The *Public Works Committee Act 1969* does not apply to an NBN corporation.

97 Winding-up of NBN corporation not prevented by this Act

This Act does not, by implication, prevent an NBN corporation being wound up in accordance with the *Corporations Act 2001*.

98 Rights of NBN corporation's shareholders, debenture holders and creditors to be subject to this Act

The rights of an NBN corporation's shareholders, debenture holders and creditors are subject to this Act.

98A Exemption from stamp duty—matters related to the creation, development or operation of the national broadband network

- (1) In this section:

category A designated matter means any of the following matters:

- (a) an action taken by Telstra to cease to supply fixed-line carriage services to customers using a telecommunications

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network over which Telstra is in a position to exercise control, where:

- (i) under section 577BA of the *Telecommunications Act 1997*, the action is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
 - (ii) the cessation relates to the creation, development or operation of the national broadband network;
- (b) an action taken by Telstra to commence to supply fixed-line carriage services to customers using the national broadband network, where, under section 577BA of the *Telecommunications Act 1997*, the action is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*;
- (c) the receipt of money by a person in respect of a matter covered by paragraph (a) or (b);
- (d) an agreement that:
- (i) is between Telstra and an NBN corporation; and
 - (ii) relates to a matter covered by paragraph (a) or (b);
- where, at the time when the agreement is entered into, an undertaking is in force under section 577A of the *Telecommunications Act 1997*;
- (e) an agreement that:
- (i) is between Telstra and an NBN corporation; and
 - (ii) relates to a matter covered by paragraph (a) or (b);
- where the operative provisions of the agreement are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A of the *Telecommunications Act 1997*.

category B designated matter means any of the following matters:

- (a) the transfer, from Telstra to an NBN corporation, of:
 - (i) a conduit, wire or cable; or
 - (ii) any equipment, apparatus or other thing used, or for use, in or in connection with a conduit, wire or cable;

where:

- (iii) under section 577BA of the *Telecommunications Act 1997*, the transfer is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
- (iv) the transfer relates to the creation, development or operation of the national broadband network;
- (b) the giving to an NBN corporation, by Telstra, of access to a facility owned or operated by Telstra, where:
 - (i) under section 577BA of the *Telecommunications Act 1997*, the giving of the access is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
 - (ii) the access relates to the creation, development or operation of the national broadband network;
- (c) the giving to an NBN corporation, by Telstra, of access to a site:
 - (i) owned, occupied or controlled by Telstra; and
 - (ii) on which there is, or is proposed to be, situated a facility;where:
 - (iii) under section 577BA of the *Telecommunications Act 1997*, the giving of the access is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
 - (iv) the access relates to the creation, development or operation of the national broadband network;
- (d) the supply to an NBN corporation, by Telstra, of an eligible service, where:
 - (i) under section 577BA of the *Telecommunications Act 1997*, the supply of the service is authorised for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*; and
 - (ii) the supply of the service relates to the creation, development or operation of the national broadband network;
- (e) the receipt of money by a person in respect of a matter covered by paragraph (a), (b), (c) or (d);

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- (f) an agreement that:
 - (i) is between Telstra and an NBN corporation; and
 - (ii) relates to a matter covered by paragraph (a), (b), (c) or (d);

where, at the time when the agreement is entered into, an undertaking is in force under section 577A of the *Telecommunications Act 1997*;

- (g) an agreement that:
 - (i) is between Telstra and an NBN corporation; and
 - (ii) relates to a matter covered by paragraph (a), (b), (c) or (d);

where the operative provisions of the agreement are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A of the *Telecommunications Act 1997*.

facility has the same meaning as in the *Telecommunications Act 1997*.

fixed-line carriage service has the same meaning as in section 577BC of the *Telecommunications Act 1997*.

Telstra has the same meaning as in the *Telstra Corporation Act 1991*.

Category A designated matters

- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
 - (a) a category A designated matter; or
 - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a category A designated matter.
- (3) Subsection (2) ceases to have effect 24 months after the day on which the Communications Minister makes a declaration under section 48 that, in the Communications Minister's opinion, the national broadband network should be treated as built and fully operational.

Category B designated matters

- (4) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
- (a) a category B designated matter; or
 - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a category B designated matter.
- (5) Subsection (4) ceases to have effect when the Communications Minister makes a declaration under section 48 that, in the Communications Minister's opinion, the national broadband network should be treated as built and fully operational.

Position to exercise control of a telecommunications network

- (6) For the purposes of this section, the question of whether Telstra is in a position to exercise control of a telecommunications network is to be determined under Division 7 of Part 33 of the *Telecommunications Act 1997*.

Transitional—definitions etc.

- (7) For the purposes of this section, assume that:
- (a) sections 5 to 7; and
 - (b) section 93; and
 - (c) Schedule 1;
- had been in force throughout the period:
- (d) beginning at the commencement of this section; and
 - (e) ending at the commencement of section 5.

99 Delegation

- (1) The Communications Minister may, by writing, delegate to:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department;

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all or any of the Communications Minister's powers and functions under this Act (other than section 48).

- (2) The Finance Minister may, by writing, delegate to:
- (a) the Secretary of the Department of Finance; or
 - (b) an SES employee, or acting SES employee, in the Department of Finance;

all or any of the Finance Minister's powers and functions under this Act (other than section 50).

100 Compensation for acquisition of property

General

- (1) If the operation of this Act (other than section 34) or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

Direction to transfer asset

- (3) If the operation of section 34 in relation to the transfer of an asset to the transferee mentioned in that section would result in an acquisition of property from a person otherwise than on just terms, the transferee is liable to pay a reasonable amount of compensation to the person.
- (4) If the transferee and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the transferee of such reasonable amount of compensation as the Court determines.

Definitions

- (5) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

100A Review of operation of the *Freedom of Information Act 1982* so far as that Act relates to documents of NBN Co

- (1) Before the first anniversary of the commencement of this section, the FOI Minister must cause to be conducted a review of the operation of the *Freedom of Information Act 1982* so far as that Act relates to documents of NBN Co.
- (2) The FOI Minister must cause to be prepared a report of a review under subsection (1).
- (3) The FOI Minister must cause copies of the report to be tabled in each House of the Parliament.
- (4) For the purposes of this section, the question of whether a document is a document of NBN Co is to be determined in the same manner as that question is determined under the *Freedom of Information Act 1982*.
- (5) In this section:

document has the same meaning as in the *Freedom of Information Act 1982*.

FOI Minister means the Minister administering the *Freedom of Information Act 1982*.

101 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—NBN corporations

Note: See section 5.

1 NBN corporations

- (1) For the purposes of this Act, each of the following is an *NBN corporation*:
 - (a) NBN Co;
 - (b) NBN Tasmania;
 - (c) a company over which NBN Co is in a position to exercise control.
- (2) Subclause (1) has effect subject to subclause (3).
- (3) For the purposes of this Act, if:
 - (a) at a particular time (the *start time*), NBN Co starts to be in a position to exercise control of a company that is a retail carriage service provider; and
 - (b) if any other conditions are specified in the regulations—those conditions are satisfied;the company is taken not to be an NBN corporation during the period:
 - (c) beginning at the start time; and
 - (d) ending at whichever is the earlier of the following:
 - (i) the end of 12 months after the start time;
 - (ii) when NBN Co ceases to be in a position to exercise control of the company.

Note: For control of a company, see clause 2.

2 Control of a company

- (1) For the purposes of this Schedule, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the *Broadcasting Services Act 1992*.
- (2) However, in determining that question:

- (a) the definition of *associate* in subsection 6(1) of the *Broadcasting Services Act 1992* does not apply; and
- (b) the definition of *associate* in clause 3 of this Schedule applies instead.

3 Associate

- (1) For the purposes of this Schedule, an *associate* of NBN Co is:
 - (a) a partner of NBN Co; or
 - (b) if NBN Co or another person who is an associate of NBN Co under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
 - (c) a person (whether a company or not) who:
 - (i) acts, or is accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;
in accordance with the directions, instructions or wishes of, or in concert with:
 - (iii) NBN Co; or
 - (iv) NBN Co and another person who is an associate of NBN Co under another paragraph; or
 - (d) another company if:
 - (i) the other company is a related body corporate of NBN Co for the purposes of the *Corporations Act 2001*; or
 - (ii) NBN Co, or NBN Co and another person who is an associate of NBN Co under another paragraph, is or are in a position to exercise control of the other company.

Note: For control of a company, see clause 2.

- (2) However, for the purposes of determining whether a person is in a position to exercise control of a company, persons are not *associates* of each other if the ACCC is satisfied that:
 - (a) they do not act together in any relevant dealings relating to the company; and
 - (b) neither of them is in a position to exert influence over the business dealings of the other in relation to the company.

Schedule 2—Parliamentary Joint Committee on the Ownership of NBN Co

Note: See sections 5 and 50.

1 Parliamentary Joint Committee on the Ownership of NBN Co

- (1) If a report of the Productivity Commission inquiry mentioned in section 49 is tabled in the House of Representatives:
 - (a) a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on the Ownership of NBN Co, is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament; and
 - (b) the appointment is to occur within 15 sitting days of the House of Representatives after the tabling of the report.
- (2) If:
 - (a) the Parliamentary Joint Committee on the Ownership of NBN Co is appointed under subclause (1); and
 - (b) before the Parliamentary Joint Committee reports to both Houses of the Parliament as mentioned in paragraph 3(1)(b) of this Schedule, the House of Representatives expires by the passing of time or is dissolved;then, as soon as practicable after the commencement of the first session of the next Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on the Ownership of NBN Co, is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.
- (3) The Parliamentary Joint Committee on the Ownership of NBN Co is to consist of 10 members, as follows:
 - (a) 5 Senators appointed by the Senate;
 - (b) 5 members of the House of Representatives appointed by that House.

- (4) A member of the Parliament is not eligible for appointment as a member of the Parliamentary Joint Committee on the Ownership of NBN Co if he or she is:
- (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy President and Chair of Committees of the Senate; or
 - (e) the Deputy Speaker of the House of Representatives.
- (5) A member of the Parliamentary Joint Committee on the Ownership of NBN Co ceases to hold office:
- (a) when the Parliamentary Joint Committee ceases to exist (see clause 4); or
 - (b) when the House of Representatives expires by the passing of time or is dissolved; or
 - (c) if he or she becomes the holder of an office specified in any of the paragraphs of subclause (4); or
 - (d) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
 - (e) if he or she resigns his or her office as provided by subclause (6) or (7).
- (6) A member of the Parliamentary Joint Committee on the Ownership of NBN Co appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (7) A member of the Parliamentary Joint Committee on the Ownership of NBN Co appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.
- (8) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Parliamentary Joint Committee on the Ownership of NBN Co appointed by that House.

2 Powers and proceedings of the Parliamentary Joint Committee

All matters relating to the powers and proceedings of the Parliamentary Joint Committee on the Ownership of NBN Co are to be determined by resolution of both Houses of the Parliament.

3 Duties of the Parliamentary Joint Committee

- (1) The duties of the Parliamentary Joint Committee on the Ownership of NBN Co are as follows:
 - (a) to examine the report of the Productivity Commission inquiry mentioned in section 49;
 - (b) to report to both Houses of the Parliament on that examination within 180 days after the Parliamentary Joint Committee was appointed;
 - (c) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House on that question.
- (2) The Parliamentary Joint Committee's examination of the report of the Productivity Commission inquiry may deal with any matter appearing in, or arising out of, the report of the Productivity Commission inquiry.

4 Winding up of the Parliamentary Joint Committee

The Parliamentary Joint Committee on the Ownership of NBN Co ceases to exist immediately after the Parliamentary Joint Committee has reported to both Houses of the Parliament, under paragraph 3(1)(b) of this Schedule, on the Committee's examination of the report of the Productivity Commission inquiry mentioned in section 49.

Section 4

*[Minister's second reading speech made in—
House of Representatives on 25 November 2010
Senate on 2 March 2011]*

(283/10)
