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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Broadband Network
Companies Bill 2010**

No. , 2010

(Broadband, Communications and the Digital Economy)

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

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Objects.....	3
4 Simplified outline	4
5 Definitions	6
6 Crown to be bound	11
7 Extension to external Territories.....	12
Part 2—Operations of NBN corporations	13
Division 1—Simplified outline	13
8 Simplified outline	13
Division 2—Rules about operations of NBN corporations	15
Subdivision A—Supply of eligible services to be on wholesale basis	15
9 Supply of eligible services to be on wholesale basis	15
10 Exemption—transport authorities.....	15
11 Exemption—electricity supply bodies.....	16
12 Exemption—gas supply bodies	16
13 Exemption—water supply bodies.....	16
14 Exemption—sewerage services bodies.....	17
15 Exemption—storm water drainage services bodies	17
16 Exemption—State or Territory road authorities	17
Subdivision B—Supply of other goods and services	18
17 Content services not to be supplied	18
18 Non-communications services not to be supplied.....	18
19 Non-communications goods not to be supplied.....	18
Subdivision C—Investment activities	18
20 Restriction of investment activities.....	18
Subdivision D—Transitional	19
21 Transitional—pre-commencement contractual obligations	19
22 Transitional—pre-acquisition contractual obligations	20
Division 3—Functional separation of NBN corporations	21
23 Contents of draft or final functional separation undertaking	21
24 Functional separation principles	21
25 Functional separation requirements determination	22
26 Draft functional separation undertaking to be given to the Communications Minister and the Finance Minister	23

27	Approval of draft functional separation undertaking by the Communications Minister and the Finance Minister	24
28	Time limit for making an approval decision	26
29	Effect of approval	26
30	Variation of final functional separation undertaking	27
31	Publication of final functional separation undertaking	29
32	Compliance with final functional separation undertaking	29
Division 4—Divestiture of assets by NBN corporations		30
33	Directions about disposal of assets	30
34	Directions about transfer of assets to another NBN corporation.....	31
35	Advice from ACCC about disposal or transfer directions	32
36	Exemption from stamp duty—transfer in compliance with transfer direction.....	33
Division 5—Carrier licence conditions etc.		34
37	Carrier licence condition	34
38	Service provider rule	34
39	Power to declare carrier licence conditions not limited	34
40	Power to determine service provider rules not limited	34
Division 6—Special carrier licence conditions		35
41	Conditions about supply of carriage services by NBN corporations	35
42	Consultation with ACCC.....	36
Part 3—Ownership and control of NBN Co		37
Division 1—Simplified outline		37
43	Simplified outline	37
Division 2—Commonwealth ownership and control of NBN Co		39
Subdivision A—Commonwealth ownership provisions		39
44	Commonwealth ownership provisions.....	39
45	Commonwealth to retain ownership of NBN Co.....	39
46	Compliance by NBN Co.....	39
Subdivision B—Termination of Commonwealth ownership provisions		40
47	Object of this Subdivision	40
48	Declaration by Communications Minister—whether national broadband network should be treated as built and fully operational	40
49	Productivity Commission inquiry	42

50	Declaration by Finance Minister—whether conditions suitable for an NBN Co sale scheme	45
51	Termination of Commonwealth ownership provisions.....	47
Subdivision C—Sale by the Commonwealth of its shares in NBN Co		47
52	Simplified outline	47
53	When NBN Co sale scheme may be entered into and carried out.....	47
54	NBN Co sale scheme.....	48
55	Sale-scheme hybrid securities.....	50
56	Exemption from stamp duty—transfer by the Commonwealth of its shares in NBN Co etc.	51
57	Authorisation of borrowing—issue of sale-scheme hybrid securities.....	53
58	Appropriation—costs incurred in connection with an NBN Co sale scheme	54
59	Assistance given by NBN Co or the Board in connection with an NBN Co sale scheme	54
60	Giving of assistance—ancillary provisions.....	56
61	Reimbursement of expenses incurred in giving assistance	57
62	Commonwealth to be bound by Chapters 6CA, 6D and 7 of the <i>Corporations Act 2001</i>	57
63	Reduction of NBN Co’s share capital.....	58
64	Alterations of NBN Co’s constitution—notice to debenture holders	59
65	Alteration of NBN Co’s constitution—Ministerial instrument.....	59
66	Use by the Commonwealth of information obtained from NBN Co or the Board	61
67	Agreements relating to the protection of information obtained from NBN Co or the Board.....	62
68	NBN Co’s obligations to disclose information	62
Division 3—Private ownership and control of NBN Co		63
69	Unacceptable private ownership or control situation	63
70	Prohibition of unacceptable private ownership or control situation	63
71	Remedial orders.....	63
72	Record-keeping and giving of information.....	64
73	Validity of acts done in contravention of this Division	66
74	Acquisition of property.....	66
Division 4—General provisions		67
75	Interest in a share.....	67
76	Extra-territorial application	68

Part 4—NBN Co’s reporting obligations	69
77 Simplified outline	69
78 Application of this Part.....	69
79 Financial statements	69
80 Communications Minister and the Finance Minister to be notified of significant events	70
81 Keeping the Communications Minister and the Finance Minister informed.....	71
82 Corporate plan for NBN Co.....	71
83 Consequences of contraventions of this Part	73
84 This Part has effect despite the <i>Corporations Act 2001</i> etc.	73
85 When this Part ceases to have effect.....	73
Part 5—Anti-avoidance	75
86 Anti-avoidance	75
Part 6—Injunctions	76
87 Simplified outline	76
88 Injunctions	76
89 Interim injunctions.....	77
90 Discharge etc. of injunctions	77
91 Certain limits on granting injunctions not to apply.....	77
92 Other powers of the Federal Court unaffected.....	78
Part 7—Miscellaneous	79
93 Severability.....	79
94 Promotion of the long-term interests of end-users of carriage services and of services supplied by means of carriage services	79
95 NBN Co is not a public authority	80
96 Public Works Committee Act.....	80
97 Winding-up of NBN corporation not prevented by this Act.....	80
98 Rights of NBN corporation’s shareholders, debenture holders and creditors to be subject to this Act.....	80
99 Delegation	80
100 Compensation for acquisition of property	81
101 Regulations.....	82
Schedule 1—NBN corporations	83
1 NBN corporations.....	83
2 Control of a company	83
3 Associate	84

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

		85
1	Parliamentary Joint Committee on the Ownership of NBN Co	85
2	Powers and proceedings of the Parliamentary Joint Committee	87
3	Duties of the Parliamentary Joint Committee	87
4	Winding up of the Parliamentary Joint Committee.....	87

1 **A Bill for an Act relating to certain companies**
2 **associated with the national broadband network,**
3 **and for other purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *National Broadband Network*
9 *Companies Act 2010*.

3 Objects

1
2 (1) The main objects of this Act, when read together with Part XIC of
3 the *Competition and Consumer Act 2010*, are as follows:

4 (a) to provide a regulatory framework for NBN corporations that
5 promotes the long-term interests of end-users of carriage
6 services or of services provided by means of carriage
7 services;

8 (b) to ensure that NBN Co remains in Commonwealth ownership
9 until the following events have occurred:

10 (i) the Communications Minister has declared that, in his
11 or her opinion, the national broadband network should
12 be treated as built and fully operational;

13 (ii) the Productivity Minister has caused to be tabled in both
14 Houses of Parliament a report of an inquiry by the
15 Productivity Commission;

16 (iii) the Parliamentary Joint Committee on the Ownership of
17 NBN Co has examined the Productivity Commission's
18 report;

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

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

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

27 (a) NBN Co;

28 (b) NBN Tasmania;

29 (c) a company over which NBN Co is in a position to exercise
30 control.

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

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

35 (a) to ensure that the supply of an eligible service by an NBN
36 corporation is on a wholesale basis;

Section 4

- 1 (b) to ensure that an NBN corporation does not supply a content
2 service;
- 3 (c) to ensure that an NBN corporation does not supply a
4 non-communications service;
- 5 (d) to ensure that an NBN corporation does not supply goods that
6 are not for use in connection with the supply of an eligible
7 service by the NBN corporation;
- 8 (e) to restrict the investment activities of NBN corporations;
- 9 (f) to provide a framework for the functional separation of NBN
10 corporations;
- 11 (g) to provide a framework for the divestiture of assets of NBN
12 corporations;
- 13 (h) to ensure that an NBN corporation provides open access to
14 eligible services on a non-discriminatory basis.

15 **4 Simplified outline**

16 The following is a simplified outline of this Act:

- 17 • An NBN corporation must not supply an eligible service to
18 another person unless the other person is:
- 19 (a) a carrier; or
- 20 (b) a service provider.
- 21 • An NBN corporation must not supply:
- 22 (a) a content service; or
- 23 (b) a non-communications service; or
- 24 (c) goods that are not for use in connection with the
25 supply by an NBN corporation of an eligible
26 service.
- 27 • An NBN corporation may be required to prepare, and comply
28 with, a functional separation undertaking.

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- 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.

Section 5

- 1 Note 1: Clause 1 of Schedule 1 provides that each of the following is an *NBN*
2 *corporation*:
3 (a) NBN Co;
4 (b) NBN Tasmania;
5 (c) a company over which NBN Co is in a position to exercise
6 control.
- 7 Note 2: The Parliamentary Joint Committee on the Ownership of NBN Co is
8 constituted under Schedule 2.

9 **5 Definitions**

- 10 In this Act:
- 11 *ACCC* means the Australian Competition and Consumer
12 Commission.
- 13 *Australia*, when used in a geographical sense, includes the external
14 Territories.
- 15 *authority* includes the following:
16 (a) a Department of the government of the Commonwealth;
17 (b) a Department of the government of a State;
18 (c) a Department of the government of a Territory.
- 19 *bank* has the same meaning as in the *Financial Management and*
20 *Accountability Act 1997*.
- 21 *Board* means the board of directors of NBN Co.
- 22 *business unit*, in relation to an NBN corporation, means a part of
23 the NBN corporation.
- 24 *carriage service* has the same meaning as in the
25 *Telecommunications Act 1997*.
- 26 *carrier* has the same meaning as in the *Telecommunications Act*
27 *1997*.
- 28 *carrier licence* has the same meaning as in the
29 *Telecommunications Act 1997*.
- 30 *carry* has the same meaning as in the *Telecommunications Act*
31 *1997*.

- 1 **charge** has the same meaning as in the *Corporations Act 2001*.
- 2 **Commonwealth ownership provisions** means sections 45 and 46.
- 3 **communications** has the same meaning as in the
4 *Telecommunications Act 1997*.
- 5 **Communications Minister** means the Minister who administers
6 this Act.
- 7 **constitution**, in relation to NBN Co, has the same meaning as in
8 the *Corporations Act 2001*.
- 9 **constitutional corporation** means a corporation to which
10 paragraph 51(xx) of the Constitution applies.
- 11 **content service** has the same meaning as in the
12 *Telecommunications Act 1997*.
- 13 **debenture** has the same meaning as in the *Corporations Act 2001*.
- 14 **declared pre-termination period** has the meaning given by
15 section 48.
- 16 **declared sale deferral period** has the meaning given by section 50.
- 17 **declared service** has the same meaning as in Part XIC of the
18 *Competition and Consumer Act 2010*.
- 19 **Department of Finance** means the Department administered by the
20 Finance Minister.
- 21 **draft functional separation undertaking** means a draft functional
22 separation undertaking under Division 3 of Part 2.
- 23 **electricity supply body** means an authority, or a body corporate,
24 that carries on a business, or performs a function, of:
- 25 (a) generating, transmitting, distributing or supplying electricity;
26 or
- 27 (b) managing the generation, transmission, distribution or supply
28 of electricity.
- 29 **eligible service** has the same meaning as in section 152AL of the
30 *Competition and Consumer Act 2010*.
-

Section 5

- 1 **engage in conduct** means:
- 2 (a) do an act; or
- 3 (b) omit to perform an act.
- 4 **Federal Court** means the Federal Court of Australia.
- 5 **final functional separation undertaking** means a final functional
- 6 separation undertaking under Division 3 of Part 2.
- 7 **Finance Minister** means the Minister who administers the
- 8 *Financial Management and Accountability Act 1997*.
- 9 **financial product** has the same meaning as in Chapter 7 of the
- 10 *Corporations Act 2001*.
- 11 **functional** includes organisational.
- 12 **functional separation principles** has the meaning given by
- 13 subsection 24(1).
- 14 **functional separation requirements determination** means a
- 15 determination under subsection 25(1).
- 16 **gas supply body** means an authority, or a body corporate, that
- 17 carries on a business, or performs a function, of:
- 18 (a) transmitting, distributing or supplying natural gas; or
- 19 (b) managing the transmission, distribution or supply of natural
- 20 gas.
- 21 **hybrid-security issuer company** has the meaning given by
- 22 section 54.
- 23 **intellectual property rights** includes rights associated with:
- 24 (a) a patent; or
- 25 (b) copyright; or
- 26 (c) a design; or
- 27 (d) a trade secret; or
- 28 (e) know-how.
- 29 **listed carriage service** has the same meaning as in the
- 30 *Telecommunications Act 1997*.

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

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

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

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

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

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

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

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

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

26 **non-communications service** means a service other than:

- 27 (a) an eligible service; or
28 (b) a content service; or
29 (c) a service that is ancillary or incidental to the supply by an
30 NBN corporation of an eligible service; or
31 (d) an advisory or consulting service that relates to:
32 (i) the supply of an eligible service; or

Section 5

- 1 (ii) goods for use in connection with the supply of an
2 eligible service; or
3 (iii) facilities (within the meaning of the
4 *Telecommunications Act 1997*); or
5 (e) the provision, grant or conferral (whether by way of a licence
6 or otherwise) of intellectual property rights that relate to:
7 (i) the supply of an eligible service; or
8 (ii) goods for use in connection with the supply of an
9 eligible service; or
10 (iii) facilities (within the meaning of the
11 *Telecommunications Act 1997*).

12 ***Parliamentary Joint Committee on the Ownership of NBN Co***
13 means the Parliamentary Joint Committee on the Ownership of
14 NBN Co constituted under Schedule 2.

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

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

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

21 ***retail carriage service provider*** means a carriage service provider
22 who supplies a listed carriage service to another person who is
23 neither:

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

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

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

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

29 ***securities*** (except in section 55) includes:

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

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

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

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

9 **storm water drainage services** means services that consist of
10 draining storm water.

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

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

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

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

20 **voting share** has the same meaning as in the *Corporations Act*
21 *2001*.

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

24 **6 Crown to be bound**

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

Part 1 Preliminary

Section 7

1 **7 Extension to external Territories**

2 This Act extends to every external Territory.

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2 **Part 2—Operations of NBN corporations**

3 **Division 1—Simplified outline**

4 **8 Simplified outline**

5 The following is a simplified outline of this Part:

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- 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

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- 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.

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2 **Division 2—Rules about operations of NBN corporations**

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

5 **9 Supply of eligible services to be on wholesale basis**

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

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

10 **10 Exemption—transport authorities**

11 (1) Section 9 does not apply if:

- 12 (a) both:
13 (i) the eligible service is a carriage service; and
14 (ii) the sole use of the carriage service is use by Airservices
15 Australia to carry communications necessary or
16 desirable for the workings of aviation services; or
17 (b) the eligible service is a service that facilitates the supply of a
18 carriage service covered by paragraph (a) of this subsection.

19 (2) Section 9 does not apply if:

- 20 (a) the eligible service is a carriage service, and the sole use of
21 the carriage service is use by a State or Territory transport
22 authority to carry communications necessary or desirable for
23 the workings of the following services:
24 (i) train services of a kind provided by the authority;
25 (ii) bus or other road services of a kind provided by the
26 authority;
27 (iii) tram services of a kind provided by the authority; or
28 (b) the eligible service is a service that facilitates the supply of a
29 carriage service covered by paragraph (a) of this subsection.

30 (3) Section 9 does not apply if:

Section 11

- 1 (a) both:
- 2 (i) the eligible service is a carriage service; and
- 3 (ii) the sole use of the carriage service is use by a rail
- 4 corporation to carry communications necessary or
- 5 desirable for the workings of train services; or
- 6 (b) the eligible service is a service that facilitates the supply of a
- 7 carriage service covered by paragraph (a) of this subsection.

8 **11 Exemption—electricity supply bodies**

- 9 Section 9 does not apply if:
- 10 (a) the eligible service is a carriage service, and the sole use of
- 11 the carriage service is an electricity supply body to carry
- 12 communications necessary or desirable for:
- 13 (i) managing the generation, transmission, distribution or
- 14 supply of electricity; or
- 15 (ii) charging for the supply of electricity; or
- 16 (b) the eligible service is a service that facilitates the supply of a
- 17 carriage service covered by paragraph (a) of this section.

18 **12 Exemption—gas supply bodies**

- 19 Section 9 does not apply if:
- 20 (a) the eligible service is a carriage service, and the sole use of
- 21 the carriage service is use by a gas supply body to carry
- 22 communications necessary or desirable for:
- 23 (i) managing the transmission or distribution of natural gas
- 24 in a pipeline; or
- 25 (ii) charging for the supply of natural gas transmitted or
- 26 distributed in a pipeline; or
- 27 (b) the eligible service is a service that facilitates the supply of a
- 28 carriage service covered by paragraph (a) of this section.

29 **13 Exemption—water supply bodies**

- 30 Section 9 does not apply if:

- 1 (a) the eligible service is a carriage service, and the sole use of
2 the carriage service is use by a water supply body to carry
3 communications necessary or desirable for:
4 (i) managing the distribution of water in a pipeline; or
5 (ii) charging for the supply of water distributed in a
6 pipeline; or
7 (b) the eligible service is a service that facilitates the supply of a
8 carriage service covered by paragraph (a) of this section.

9 **14 Exemption—sewerage services bodies**

10 Section 9 does not apply if:

- 11 (a) the eligible service is a carriage service, and the sole use of
12 the carriage service is use by a sewerage services body to
13 carry communications necessary or desirable for:
14 (i) managing the supply of sewerage services; or
15 (ii) charging for the supply of sewerage services; or
16 (b) the eligible service is a service that facilitates the supply of a
17 carriage service covered by paragraph (a) of this section.

18 **15 Exemption—storm water drainage services bodies**

19 Section 9 does not apply if:

- 20 (a) the eligible service is a carriage service, and the sole use of
21 the carriage service is use by a storm water drainage services
22 body to carry communications necessary or desirable for:
23 (i) managing the supply of storm water drainage services;
24 or
25 (ii) charging for the supply of storm water drainage
26 services; or
27 (b) the eligible service is a service that facilitates the supply of a
28 carriage service covered by paragraph (a) of this section.

29 **16 Exemption—State or Territory road authorities**

30 Section 9 does not apply if:

- 31 (a) the eligible service is a carriage service, and the sole use of
32 the carriage service is use by a State or Territory road

Part 2 Operations of NBN corporations

Division 2 Rules about operations of NBN corporations

Section 17

- 1 authority to carry communications necessary or desirable for
2 the management or control of road traffic; or
3 (b) the eligible service is a service that facilitates the supply of a
4 carriage service covered by paragraph (a) of this section.

5 **Subdivision B—Supply of other goods and services**

6 **17 Content services not to be supplied**

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

9 **18 Non-communications services not to be supplied**

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

12 **19 Non-communications goods not to be supplied**

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

16 **Subdivision C—Investment activities**

17 **20 Restriction of investment activities**

- 18 (1) An NBN corporation must not invest money of the NBN
19 corporation unless:
20 (a) the investment is related to the supply, or prospective supply,
21 of eligible services by the NBN corporation; or
22 (b) both:
23 (i) the investment is related to the supply, or prospective
24 supply, of goods; and
25 (ii) the goods are for use in connection with the supply, or
26 prospective supply, of an eligible service by the NBN
27 corporation; or
28 (c) both:
29 (i) the investment is in shares in a company; and

- 1 (ii) the company carries on, proposes to carry on, or has the
2 object of carrying on, a business that consists of or
3 includes the supply of a carriage service; or
4 (d) the investment is:
5 (i) an investment in securities of the Commonwealth or of
6 a State or Territory; or
7 (ii) an investment in securities guaranteed by the
8 Commonwealth, a State or a Territory; or
9 (iii) a deposit with a bank, including a deposit evidenced by
10 a certificate of deposit; or
11 (iv) any other form of investment prescribed by regulations
12 made for the purposes of subparagraph (a)(iv) of the
13 definition of *authorised investment* in subsection
14 39(10) of the *Financial Management and Accountability*
15 *Act 1997*.

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

17 **Subdivision D—Transitional**

18 **21 Transitional—pre-commencement contractual obligations**

19 *Scope*

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

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

28 *Exemption*

- 29 (2) Sections 18 to 20 do not apply to:
30 (a) a supply of goods; or
31 (b) a supply of services; or
32 (c) an investment;

Part 2 Operations of NBN corporations

Division 2 Rules about operations of NBN corporations

Section 22

1 to the extent that the supply or investment is in fulfilment of the
2 pre-existing obligation.

3 **22 Transitional—pre-acquisition contractual obligations**

4 *Scope*

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

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

15 *Exemption*

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

1

2 **Division 3—Functional separation of NBN corporations**

3 **23 Contents of draft or final functional separation undertaking**

4 (1) A draft or final functional separation undertaking given by an NBN
5 corporation must:

6 (a) comply with the functional separation principles that are
7 applicable to the NBN corporation; and

8 (b) comply with such requirements as are specified in a
9 functional separation requirements determination that is
10 applicable to the NBN corporation.

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

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

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

18 **24 Functional separation principles**

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

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

25 (2) Principles determined under subsection (1) must include:

26 (a) the principle that the NBN corporation should maintain 2 or
27 more specified business units; and

28 (b) the principle that the NBN corporation should maintain arm's
29 length functional separation between the specified business
30 units; and

Part 2 Operations of NBN corporations

Division 3 Functional separation of NBN corporations

Section 25

- 1 (c) the principle that the NBN corporation should have systems,
2 procedures and practices that relate to:
3 (i) compliance with a final functional separation
4 undertaking given by the NBN corporation; and
5 (ii) monitoring of, and reporting on, compliance with the
6 final functional separation undertaking; and
7 (iii) the development of performance measures relating to
8 compliance with the final functional separation
9 undertaking; and
10 (iv) independent audit, and other checks, of compliance with
11 the final functional separation undertaking.
- 12 (3) Subsection (2) does not limit subsection (1).
- 13 (4) Before making a determination under subsection (1), the
14 Communications Minister must consult the Finance Minister.
- 15 (5) A determination under subsection (1) is not a legislative
16 instrument.

17 **25 Functional separation requirements determination**

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

- 1 (5) A determination under subsection (1) is not a legislative
2 instrument.

3 **26 Draft functional separation undertaking to be given to the**
4 **Communications Minister and the Finance Minister**

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

1 **27 Approval of draft functional separation undertaking by the**
2 **Communications Minister and the Finance Minister**

- 3 (1) This section applies if an NBN corporation gives the
4 Communications Minister and the Finance Minister a draft
5 functional separation undertaking (the *original undertaking*).
- 6 (2) The Communications Minister and the Finance Minister must, by
7 writing:
- 8 (a) approve the original undertaking; or
9 (b) both:
- 10 (i) vary the original undertaking; and
11 (ii) approve the original undertaking as varied; or
12 (c) both:
- 13 (i) determine that the NBN corporation is taken to have
14 given the Communications Minister and the Finance
15 Minister another draft functional separation undertaking
16 (the *replacement undertaking*) in the terms specified in
17 the determination, instead of the original undertaking;
18 and
19 (ii) approve the replacement undertaking.

20 *Consultation*

- 21 (3) Before making a decision under subsection (2), the
22 Communications Minister and the Finance Minister must:
- 23 (a) cause to be published on the Department's website a notice:
- 24 (i) setting out the original undertaking; and
25 (ii) inviting persons to make submissions to the
26 Communications Minister and the Finance Minister
27 about the original undertaking within 14 days after the
28 notice is published; and
- 29 (b) give the ACCC a copy of the notice; and
30 (c) cause to be published on the Department's website a copy of
31 each submission received within the 14-day period
32 mentioned in paragraph (a); and
33 (d) consider any submissions received within the 14-day period
34 mentioned in paragraph (a); and

- 1 (e) ask the ACCC to give advice to the Communications
2 Minister and the Finance Minister, within 44 days after the
3 notice is published, about the original undertaking; and
4 (f) have regard to any advice given by the ACCC.

5 *Consultation—variation of original undertaking*

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

18 *Consultation—replacement undertaking*

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

30 *Advice by the ACCC*

- 31 (6) Subsection (3) does not, by implication, prevent the
32 Communications Minister and the Finance Minister from asking

Section 28

1 the ACCC to give the Communications Minister and the Finance
2 Minister additional advice about a matter arising under this section.

3 *Notification of decision*

4 (7) As soon as practicable after making a decision under
5 subsection (2), the Communications Minister and the Finance
6 Minister must notify the NBN corporation in writing of the
7 decision.

8 *Instrument is not a legislative instrument*

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

11 **28 Time limit for making an approval decision**

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

15 (2) The Communications Minister and the Finance Minister must use
16 their best endeavours to make a decision under subsection 27(2) in
17 relation to the original undertaking within 6 months after the
18 original undertaking was given to the Communications Minister
19 and the Finance Minister.

20 **29 Effect of approval**

21 (1) If the Communications Minister and the Finance Minister approve
22 a draft functional separation undertaking under subsection 27(2),
23 the undertaking becomes a final functional separation undertaking.

24 (2) A final functional separation undertaking given by an NBN
25 corporation comes into force on the day after notice of the relevant
26 decision is given to the NBN corporation in accordance with
27 subsection 27(7).

28 (3) A final functional separation undertaking may not be withdrawn.

1 *Undertaking is not a legislative instrument*

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

4 **30 Variation of final functional separation undertaking**

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

7 *Variation*

8 (2) The Communications Minister and the Finance Minister may, in
9 writing, vary the final functional separation undertaking:

- 10 (a) at the request of the NBN corporation or another person; or
11 (b) on the initiative of the Communications Minister and the
12 Finance Minister.

13 (3) The Communications Minister and the Finance Minister do not
14 have a duty to consider whether to exercise the power to vary a
15 final functional separation undertaking, whether they are requested
16 to do so by the NBN corporation or by any other person, or in any
17 other circumstances.

18 *Consultation*

19 (4) Before varying a final functional separation undertaking, the
20 Communications Minister and the Finance Minister must:

- 21 (a) cause to be published on the Department's website a notice:
22 (i) setting out the proposed variation; and
23 (ii) inviting persons to make submissions to the
24 Communications Minister and the Finance Minister
25 about the proposed variation within 14 days after the
26 notice is published; and
27 (b) give the ACCC a copy of the notice; and
28 (c) cause to be published on the Department's website a copy of
29 each submission received within the 14-day period
30 mentioned in paragraph (a); and
31 (d) consider any submissions received within the 14-day period
32 mentioned in paragraph (a); and

Part 2 Operations of NBN corporations

Division 3 Functional separation of NBN corporations

Section 30

- 1 (e) ask the ACCC to give advice to the Communications
2 Minister and the Finance Minister, within 44 days after the
3 notice is published, about the proposed variation; and
4 (f) have regard to any advice given by the ACCC.

5 *Minor variation*

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

8 (6) If the proposed variation:

9 (a) is of a minor nature; and

10 (b) is not made at the request of the NBN corporation;

11 then, before making the proposed variation, the Communications
12 Minister and the Finance Minister must:

13 (c) give the NBN corporation a notice:

14 (i) setting out the proposed variation; and

15 (ii) inviting the NBN corporation to make submissions to
16 the Communications Minister and the Finance Minister
17 about the proposed variation within 14 days after the
18 notice is given; and

19 (d) consider any submissions received from the NBN corporation
20 within that 14-day period.

21 *Advice by the ACCC*

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

26 *Notification of variation*

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

1 *When variation comes into force*

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

5 *Variation is not a legislative instrument*

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

8 **31 Publication of final functional separation undertaking**

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

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

18 **32 Compliance with final functional separation undertaking**

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

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2 **Division 4—Divestiture of assets by NBN corporations**

3 **33 Directions about disposal of assets**

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

1 **34 Directions about transfer of assets to another NBN corporation**

- 2 (1) The Communications Minister and the Finance Minister may:
- 3 (a) by written notice given to an NBN corporation (the
- 4 *transferor*), direct the transferor:
- 5 (i) to transfer one or more specified assets of the transferor
- 6 to another NBN corporation specified in the notice (the
- 7 *transferee*); and
- 8 (ii) to do so within the period specified in the notice; and
- 9 (b) by written notice given to the transferor or the transferee,
- 10 give such other directions to the transferor or transferee as
- 11 the Communications Minister and the Finance Minister
- 12 consider necessary for the purposes of securing the transfer.
- 13 (2) The Communications Minister and the Finance Minister must not
- 14 give a direction under subsection (1) after the Commonwealth
- 15 ownership provisions have ceased to have effect under section 51.
- 16 (3) In deciding whether to give a direction under subsection (1), the
- 17 Communications Minister and the Finance Minister must have
- 18 regard to the following:
- 19 (a) whether the direction will promote the long-term interests of
- 20 end-users of carriage services or of services provided by
- 21 means of carriage services;
- 22 (b) if the Communications Minister and the Finance Minister
- 23 have required the ACCC under section 35 to give advice
- 24 about the giving of the direction—the advice given in
- 25 compliance with the requirement;
- 26 (c) such other matters (if any) as the Communications Minister
- 27 and the Finance Minister consider relevant.
- 28 Note: For long-term interests of end-users of carriage services or of services
- 29 provided by means of carriage services, see section 94.
- 30 (4) The Communications Minister and the Finance Minister must not
- 31 give a direction under subsection (1) to an NBN corporation unless
- 32 the NBN corporation is a constitutional corporation.
- 33 (5) An NBN corporation must comply with a direction under
- 34 subsection (1) that is applicable to the NBN corporation.

Section 35

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

2 **35 Advice from ACCC about disposal or transfer directions**

3 (1) The Communications Minister and the Finance Minister may, by
4 written notice given to the ACCC, require the ACCC:

5 (a) to give advice to the Communications Minister and the
6 Finance Minister about whether the Communications
7 Minister and the Finance Minister should give one or more
8 directions under subsection 33(1) or 34(1); and

9 (b) to do so within the period specified in the notice.

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

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

14 (3) For the purposes of section 496 of the *Telecommunications Act*
15 *1997*, the giving of advice by the ACCC in compliance with a
16 requirement under subsection (1) is taken to be a matter concerning
17 the telecommunications industry.

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

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

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

28 (a) whether giving the relevant direction or directions under
29 subsection 33(1) or 34(1) will promote the long-term
30 interests of end-users of carriage services or of services
31 provided by means of carriage services;

32 (b) such other matters (if any) as the ACCC considers relevant.

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

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

6 **36 Exemption from stamp duty—transfer in compliance with**
7 **transfer direction**

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

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2 **Division 5—Carrier licence conditions etc.**

3 **37 Carrier licence condition**

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

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

9 **38 Service provider rule**

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

16 **39 Power to declare carrier licence conditions not limited**

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

20 **40 Power to determine service provider rules not limited**

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

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2 **Division 6—Special carrier licence conditions**

3 **41 Conditions about supply of carriage services by NBN**
4 **corporations**

5 *Mandatory services*

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

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

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

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

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

24 *Prohibited services*

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

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

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

Section 42

1 *Power to declare carrier licence conditions not limited*

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

5 **42 Consultation with ACCC**

6 *Scope*

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

11 *Consultation with ACCC*

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

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2 **Part 3—Ownership and control of NBN Co**

3 **Division 1—Simplified outline**

4 **43 Simplified outline**

5 The following is a simplified outline of this Part:

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- 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.

Part 3 Ownership and control of NBN Co

Division 1 Simplified outline

Section 43

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- 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.

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2 **Division 2—Commonwealth ownership and control of NBN**
3 **Co**

4 **Subdivision A—Commonwealth ownership provisions**

5 **44 Commonwealth ownership provisions**

6 This Subdivision sets out the Commonwealth ownership
7 provisions.

8 **45 Commonwealth to retain ownership of NBN Co**

- 9 (1) The Commonwealth must not transfer any of its shares in NBN Co
10 if the transfer results in a breach of subsection (2).
- 11 (2) Neither the Commonwealth nor NBN Co is allowed to do anything
12 to cause or contribute to any of the following results:
- 13 (a) that the Commonwealth no longer holds shares in NBN Co
14 that carry the rights to exercise all of the voting rights
15 attached to the voting shares in NBN Co;
- 16 (b) that the Commonwealth no longer controls the exercise of all
17 of the voting rights attached to the voting shares in NBN Co;
- 18 (c) that the Commonwealth no longer holds all of the paid-up
19 share capital of NBN Co;
- 20 (d) that the Commonwealth is no longer entitled to hold all of the
21 rights to any distribution of capital or profits of NBN Co on
22 winding-up;
- 23 (e) that the Commonwealth is no longer entitled to hold all of the
24 rights to any distribution of capital or profits of NBN Co,
25 otherwise than on winding-up.

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

28 **46 Compliance by NBN Co**

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

Part 3 Ownership and control of NBN Co

Division 2 Commonwealth ownership and control of NBN Co

Section 47

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

4 Penalty for contravention of this subsection: 500 penalty units.

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

7 **Subdivision B—Termination of Commonwealth ownership**
8 **provisions**

9 **47 Object of this Subdivision**

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

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

26 **48 Declaration by Communications Minister—whether national**
27 **broadband network should be treated as built and fully**
28 **operational**

29 *Initial declaration*

- 30 (1) During the period:
31 (a) starting at the commencement of this section; and
32 (b) ending at the end of 30 June 2018;

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

10 *Subsequent declarations*

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

26 *Maximum duration of declared pre-termination period*

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

29 *Matters to which Communications Minister must have regard*

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

Part 3 Ownership and control of NBN Co

Division 2 Commonwealth ownership and control of NBN Co

Section 49

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

9 *Tabling in Parliament*

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

17 *Declaration is not a legislative instrument*

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

19 **49 Productivity Commission inquiry**

20 *Scope*

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

25 *Inquiry by Productivity Commission*

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

- 1 (b) the matter of the impact on future annual Commonwealth
2 budgets of a sale of the Commonwealth's equity in NBN Co;
- 3 (c) the matter of the impact on:
- 4 (i) the supply of affordable broadband carriage services;
5 and
- 6 (ii) the supply of affordable carriage services (other than
7 broadband carriage services); and
- 8 (iii) equity and social inclusion;
9 of a sale of the Commonwealth's equity in NBN Co;
- 10 (d) the matter of the impact on competition in
11 telecommunications markets of a sale of the
12 Commonwealth's equity in NBN Co.
- 13 (3) In referring the matters to the Productivity Commission for inquiry,
14 the Productivity Minister must, under paragraph 11(1)(c) of the
15 *Productivity Commission Act 1998*, specify the period of 12
16 months beginning when the reference is made as the period within
17 which the Productivity Commission must submit its report on the
18 inquiry to the Productivity Minister.
- 19 Note 1: Under section 12 of the *Productivity Commission Act 1998*, the
20 Productivity Minister must cause a copy of the Productivity
21 Commission's report to be tabled in each House of the Parliament.
- 22 Note 2: Under clause 3 of Schedule 2, the Parliamentary Joint Committee on
23 the Ownership of NBN Co must:
- 24 (a) examine the Productivity Commission's report; and
25 (b) report to both Houses of the Parliament on that examination.
- 26 *Matters to which Productivity Commission must have regard*
- 27 (4) In holding the inquiry, and in preparing its report on the inquiry,
28 the Productivity Commission must have regard to the following
29 matters:
- 30 (a) equity of access to broadband carriage services in:
- 31 (i) metropolitan areas; and
32 (ii) regional areas; and
33 (iii) rural areas; and
34 (iv) remote areas;
- 35 (b) competition in telecommunications markets;
36 (c) structural features of telecommunications markets;
-

Part 3 Ownership and control of NBN Co

Division 2 Commonwealth ownership and control of NBN Co

Section 49

- 1 (d) power in telecommunications markets, including whether an
2 NBN corporation has a substantial degree of power in any
3 telecommunications market;
- 4 (e) ownership and control of NBN corporations;
- 5 (f) ownership and control of carriers or service providers by
6 NBN corporations;
- 7 (g) structural organisation of NBN corporations;
- 8 (h) bundling of services supplied, or proposed to be supplied, by
9 NBN corporations;
- 10 (i) retail prices of services supplied using the national broadband
11 network;
- 12 (j) restriction of the investment activities of NBN corporations;
- 13 (k) geographical coverage of the national broadband network;
- 14 (l) technology used in connection with the national broadband
15 network;
- 16 (m) the need for maintenance, replacement and upgrading of
17 technology used in connection with the national broadband
18 network;
- 19 (n) any other matters specified in a written determination made
20 by the Productivity Minister;
- 21 (o) such other matters (if any) as the Productivity Commission
22 considers relevant.
- 23 (5) Subsection (4) of this section has effect in addition to section 8 of
24 the *Productivity Commission Act 1998*.
- 25 (6) Before making a determination under paragraph (4)(n), the
26 Productivity Minister must consult:
- 27 (a) the Communications Minister; and
28 (b) the Finance Minister.
- 29 (7) A determination under paragraph (4)(n) is a legislative instrument,
30 but section 42 (disallowance) of the *Legislative Instruments Act*
31 *2003* does not apply to the determination.

1 *Assumptions in report*

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

9 *Substantial degree of power in telecommunications market*

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

14 *Matters relating to industry, industry development and productivity*

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

19 **50 Declaration by Finance Minister—whether conditions suitable**
20 **for an NBN Co sale scheme**

21 *Scope*

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

27 *Declaration*

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

Section 50

1 *Matters to which Finance Minister must have regard*

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

9 *Disallowance*

- 10 (4) The Finance Minister must cause a copy of a declaration under
11 subsection (2) to be tabled in each House of the Parliament within
12 15 sitting days of that House after making the declaration.
- 13 (5) Either House of Parliament may, following a motion on notice,
14 pass a resolution disallowing the declaration. To be effective, the
15 resolution must be passed within 15 sitting days of the House after
16 the copy of the declaration was tabled in the House.
- 17 (6) If neither House passes such a resolution, the declaration takes
18 effect on the day immediately after the last day on which such a
19 resolution could have been passed.
- 20 (7) If a House of Parliament passes a resolution under subsection (5)
21 disallowing a declaration made under subsection (2), this Act does
22 not prevent the Finance Minister from making another declaration
23 under subsection (2).

24 *Publication*

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

28 *Declaration is not a legislative instrument*

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

1 **51 Termination of Commonwealth ownership provisions**

2 *Scope*

3 (1) This section applies if:

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

8 *Termination of Commonwealth ownership provisions*

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

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

13 **52 Simplified outline**

14 The following is a simplified outline of this Subdivision:

- | |
|---|
| <p>15 • An NBN Co sale scheme must not be entered into or carried
16 out unless the Commonwealth ownership provisions have
17 ceased to have effect.</p> <p>18 • This Subdivision sets out rules about how an NBN Co sale
19 scheme is to be carried out.</p> |
|---|

20 **53 When NBN Co sale scheme may be entered into and carried out**

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

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

1 **54 NBN Co sale scheme**

2 *Object*

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

6 *NBN Co sale scheme*

7 (2) For the purposes of this Act, an *NBN Co sale scheme* is a scheme
8 the object of which is to achieve the transfer, or progressive
9 transfer, of the whole or a part of the Commonwealth's equity in
10 NBN Co to other persons.

11 (3) An NBN Co sale scheme must comply with any rules set out in a
12 determination in force under subsection (4).

13 (4) The Finance Minister may make a written determination setting out
14 rules that are to be complied with by an NBN Co sale scheme.

15 (5) An NBN Co sale scheme may involve any or all of the following:

- 16 (a) the transfer by the Commonwealth of any of its shares in
17 NBN Co;
- 18 (b) the transfer by the Commonwealth of interests in its shares in
19 NBN Co to a company (the *sale-scheme trustee*) in the
20 company's capacity as the trustee of a trust established by a
21 trust deed (the *sale-scheme trust deed*);
- 22 (c) an investor in NBN Co initially acquiring a particular interest
23 in shares in NBN Co and subsequently acquiring the
24 remaining interests in those shares;
- 25 (d) the payment by NBN Co of a dividend;
- 26 (e) the reduction of NBN Co's share capital;
- 27 (f) a return of capital by NBN Co;
- 28 (g) the cancellation of a particular parcel of shares in NBN Co
29 held by the Commonwealth;
- 30 (h) NBN Co buying back shares in itself;
- 31 (i) the issue of securities in NBN Co;
- 32 (j) the redemption of redeemable preference shares in NBN Co
33 held by the Commonwealth;

- 1 (k) the modification of NBN Co's constitution;
2 (l) the issue by the Commonwealth or NBN Co of sale-scheme
3 hybrid securities;
4 (m) an arrangement under which one or more designated
5 companies (each of which is called a **hybrid-security issuer**
6 **company**) issue sale-scheme hybrid securities;
7 (n) the guarantee by the Commonwealth of obligations of a
8 hybrid-security issuer company in relation to sale-scheme
9 hybrid securities (for example, obligations to make payments
10 of interest or dividends);
11 (o) an agreement of the kind known as a securities lending
12 arrangement, where the securities lending arrangement
13 relates to shares in NBN Co.

14 (6) In determining whether a scheme is an NBN Co sale scheme,
15 regard must be had to the economic and commercial substance of
16 the scheme.

17 (7) Subsections (5) and (6) do not, by implication, limit subsection (2).

18 *Designated company*

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

23 *Legislative instruments*

- 24 (9) A determination under subsection (4) is a legislative instrument,
25 but section 42 (disallowance) of the *Legislative Instruments Act*
26 *2003* does not apply to the determination.
27 (10) A declaration under paragraph (8)(b) is not a legislative instrument.
28 (11) To the extent that an NBN Co sale scheme is in writing, it is not a
29 legislative instrument.

30 *Definitions*

- 31 (12) In this section:
-

Section 55

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

2 ***modification*** has the same meaning as in the *Corporations Act*
3 *2001*.

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

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

10 **55 Sale-scheme hybrid securities**

- 11 (1) For the purposes of this Act, a ***sale-scheme hybrid security*** is:
- 12 (a) an interest-bearing security that is issued on the basis that it
13 will or may be redeemed in exchange for a share or shares in
14 NBN Co; or
- 15 (b) a share that is issued on the basis that it will or may be
16 redeemed in exchange for a share or shares in NBN Co; or
- 17 (c) any other security or financial product that is issued on the
18 basis that it will or may be redeemed in exchange for a share
19 or shares in NBN Co; or
- 20 (d) an option to acquire a share or shares in NBN Co; or
- 21 (e) an interest-bearing security that is issued on the basis that it
22 will or may be converted to a share or shares in NBN Co; or
- 23 (f) any other security or financial product that is issued on the
24 basis that it will or may be converted to a share or shares in
25 NBN Co; or
- 26 (g) an interest-bearing security that is issued on the basis that it
27 will or may be exchanged for a share or shares in NBN Co;
28 or
- 29 (h) any other security or financial product that is issued on the
30 basis that it will or may be exchanged for a share or shares in
31 NBN Co; or
- 32 (i) a security, or a financial product, that:
- 33 (i) is specified in a written declaration made by the Finance
34 Minister under this subparagraph; and

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

27 **56 Exemption from stamp duty—transfer by the Commonwealth of**
28 **its shares in NBN Co etc.**

- 29 (1) In this section:

- 1 **designated matter** means any of the following matters, where the
2 matter relates to the entering into or carrying out of an NBN Co
3 sale scheme:
- 4 (a) the transfer by the Commonwealth of:
 - 5 (i) a share in NBN Co held by the Commonwealth; or
 - 6 (ii) an interest in such a share;
 - 7 (b) an agreement relating to a transfer covered by paragraph (a);
 - 8 (c) the receipt of money by the Commonwealth, or by a person
9 acting on behalf of the Commonwealth, in respect of a
10 transfer covered by paragraph (a);
 - 11 (d) the transfer by the sale-scheme trustee of:
 - 12 (i) a share in NBN Co held by the trustee; or
 - 13 (ii) an interest in such a share;where the transfer is in accordance with the sale-scheme trust
14 deed;
 - 15 (e) an agreement relating to a transfer covered by paragraph (d);
 - 16 (f) the receipt of money by the sale-scheme trustee or by a
17 person acting on behalf of the sale-scheme trustee, in respect
18 of a transfer covered by paragraph (d);
 - 19 (g) the reduction of NBN Co's share capital;
 - 20 (h) the cancellation of a particular parcel of shares in NBN Co
21 held by the Commonwealth;
 - 22 (i) NBN Co buying back shares in itself;
 - 23 (j) the issue of securities in NBN Co;
 - 24 (k) the redemption of redeemable preference shares in NBN Co
25 held by the Commonwealth;
 - 26 (l) the issue of sale-scheme hybrid securities;
 - 27 (m) the receipt of money by the Commonwealth, or by a person
28 acting on behalf of the Commonwealth, in respect of the
29 issue of sale-scheme hybrid securities;
 - 30 (n) the receipt of money by a hybrid-security issuer company, or
31 by a person acting on behalf of a hybrid-security issuer
32 company, in respect of the issue of sale-scheme hybrid
33 securities;
 - 34 (o) the redemption, exchange or conversion of sale-scheme
35 hybrid securities;
 - 36

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

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

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

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

28 **57 Authorisation of borrowing—issue of sale-scheme hybrid**
29 **securities**

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

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

Section 58

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

3 **58 Appropriation—costs incurred in connection with an NBN Co**
4 **sale scheme**

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

23 **59 Assistance given by NBN Co or the Board in connection with an**
24 **NBN Co sale scheme**

25 *Giving assistance on own initiative*

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

1 *Giving assistance when requested by Communications Minister*
2 *and Finance Minister*

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

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

15 *Directions of Communications Minister and Finance Minister*

16 (5) The Communications Minister and the Finance Minister may, by
17 written notice given to NBN Co, give directions to NBN Co about
18 the exercise of NBN Co's powers under subsection (1). NBN Co
19 must comply with the direction.

20 (6) The Communications Minister and the Finance Minister may, by
21 written notice given to a member of the Board, give directions to
22 the member about the exercise of the member's powers under
23 subsection (2). The member must comply with the direction.

24 *Immunity*

25 (7) To avoid doubt, the giving of assistance as mentioned in
26 subsection (1), (2), (3) or (4), the making of a request under
27 subsection (3) or (4), or the giving of a direction under
28 subsection (5) or (6), does not result in a contravention of, or give
29 rise to a liability or remedy under:

- 30 (a) a provision of the *Corporations Act 2001*; or
31 (b) if NBN Co is a listed disclosing entity—the listing rules of a
32 listing market in relation to NBN Co; or
33 (c) a rule of common law or equity (other than a rule of
34 administrative law).
-

1 *Consequences of a contravention*

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

5 **60 Giving of assistance—ancillary provisions**

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

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

1 **61 Reimbursement of expenses incurred in giving assistance**

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

15 **62 Commonwealth to be bound by Chapters 6CA, 6D and 7 of the**

16 ***Corporations Act 2001***

- 17 (1) Despite subsection 5A(4) of the *Corporations Act 2001* (but
- 18 subject to subsection 5A(5) of that Act), Chapters 6CA, 6D and 7
- 19 of the *Corporations Act 2001* bind the Crown in right of the
- 20 Commonwealth to the extent to which those Chapters deal with the
- 21 formulation, entering into, or carrying out, of an NBN Co sale
- 22 scheme.
- 23 (2) Subsection (1) has effect despite anything in the *Corporations Act*
- 24 *2001*.
- 25 (3) For the purposes of subsection (1), if Chapter 6CA, 6D or 7 of the
- 26 *Corporations Act 2001* is repealed and replaced by another
- 27 provision of that Act that deals with fundraising or securities
- 28 regulation, the reference in that subsection to that Chapter of that
- 29 Act is to be read as a reference to the replacement provision.

Section 63

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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.

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23
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25 **63 Reduction of NBN Co's share capital**

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

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

7 **64 Alterations of NBN Co's constitution—notice to debenture**
8 **holders**

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

19 **65 Alteration of NBN Co's constitution—Ministerial instrument**

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

Part 3 Ownership and control of NBN Co

Division 2 Commonwealth ownership and control of NBN Co

Section 65

- 1 (iii) in the case of a provision that prohibits an act or thing
2 without the consent of the Commonwealth—remove the
3 requirement to obtain that consent; or
4 (iv) remove a provision that prohibits an act or thing without
5 the consent of the Communications Minister and the
6 Finance Minister; or
7 (v) in the case of a provision that prohibits an act or thing
8 without the consent of the Communications Minister
9 and the Finance Minister—remove the requirement to
10 obtain that consent; or
11 (vi) remove a provision that prohibits an act or thing unless
12 the Commonwealth directs otherwise; or
13 (vii) in the case of a provision that prohibits an act or thing
14 unless the Commonwealth directs otherwise—remove
15 that power of direction; or
16 (viii) remove a provision that prohibits an act or thing unless
17 the Communications Minister and the Finance Minister
18 direct otherwise; or
19 (ix) in the case of a provision that prohibits an act or thing
20 unless the Communications Minister and the Finance
21 Minister direct otherwise—remove that power of
22 direction.

- 23 (2) Before making an instrument under subsection (1), the
24 Communications Minister and the Finance Minister must consult
25 the members of the Board.

26 *Immunity*

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

1 *Other powers not limited*

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

5 **66 Use by the Commonwealth of information obtained from NBN**
6 **Co or the Board**

- 7 (1) This section applies to information obtained under section 59.
- 8 (2) The Commonwealth, or an associated person, may use the
9 information for a purpose in connection with the formulation,
10 entering into, or carrying out, of an NBN Co sale scheme.
- 11 (3) The Commonwealth, or an associated person, may disclose the
12 information for a purpose in connection with the formulation,
13 entering into, or carrying out, of an NBN Co sale scheme.
- 14 (4) If subsection (2) or (3) does not apply, the Commonwealth, or an
15 associated person, may use or disclose the information for a
16 purpose in connection with the Commonwealth's capacity as a
17 shareholder in NBN Co, so long as the use or disclosure does not
18 involve giving the information to a person who is not an associated
19 person.
- 20 (5) To avoid doubt, the use or disclosure of information as mentioned
21 in subsection (2), (3) or (4) does not result in a contravention of, or
22 give rise to a liability or remedy under:
- 23 (a) a provision of the *Corporations Act 2001*; or
24 (b) if NBN Co is a listed disclosing entity—the listing rules of a
25 listing market in relation to NBN Co; or
26 (c) a rule of common law or equity (other than a rule of
27 administrative law).
- 28 (6) In this section:

29 ***associated person*** means:

- 30 (a) a Minister; or
31 (b) an individual who holds an office under, or is employed by,
32 the Commonwealth; or

Part 3 Ownership and control of NBN Co

Division 2 Commonwealth ownership and control of NBN Co

Section 67

- 1 (c) a person appointed or engaged under the *Public Service Act*
2 *1999*; or
3 (d) a person who performs services for or on behalf of the
4 Commonwealth in connection with:
5 (i) the formulation, entering into, or carrying out, of an
6 NBN Co sale scheme; or
7 (ii) the Commonwealth's capacity as a shareholder in NBN
8 Co.

9 **67 Agreements relating to the protection of information obtained**
10 **from NBN Co or the Board**

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

20 **68 NBN Co's obligations to disclose information**

- 21 To avoid doubt, the mere fact that particular information was
22 requested, required or given under section 59 is not a ground on
23 which NBN Co can be required to disclose or notify that, or any
24 other, information under:
25 (a) a provision of the *Corporations Act 2001*; or
26 (b) if NBN Co is a listed disclosing entity—the listing rules of a
27 listing market in relation to NBN Co.

1

2 **Division 3—Private ownership and control of NBN Co**

3 **69 Unacceptable private ownership or control situation**

4 (1) For the purposes of this Act, an *unacceptable private ownership or*
5 *control situation*, in relation to NBN Co, has the meaning given by
6 the regulations.

7 (2) Regulations made for the purposes of subsection (1) may make
8 provision in relation to a matter by conferring a power to make a
9 decision of an administrative character on the ACCC.

10 (3) Before the Governor-General makes a regulation for the purposes
11 of subsection (1), the Communications Minister must consult the
12 ACCC.

13 **70 Prohibition of unacceptable private ownership or control**
14 **situation**

15 (1) NBN Co must take all reasonable steps to ensure that an
16 unacceptable private ownership or control situation does not exist
17 in relation to NBN Co.

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

21 Penalty for contravention of this subsection: 500 penalty units.

22 **71 Remedial orders**

23 (1) If an unacceptable private ownership or control situation exists in
24 relation to NBN Co, the Federal Court may, on application by the
25 Communications Minister, the ACCC or NBN Co, make such
26 orders as the court considers appropriate for the purpose of
27 ensuring that that situation ceases to exist.

28 (2) The Federal Court's orders include:
29 (a) an order directing the disposal of shares; or

Section 72

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

22 **72 Record-keeping and giving of information**

- 23 (1) The regulations may make provision for, or in relation to, requiring
24 a person to do any or all of the following:
- 25 (a) keep and retain records, where the records are relevant to an
26 NBN Co ownership or control matter;
- 27 (b) give information to the Communications Minister that is
28 relevant to an NBN Co ownership or control matter;
- 29 (c) give information to the ACCC that is relevant to an NBN Co
30 ownership or control matter;
- 31 (d) give information to NBN Co that is relevant to an NBN Co
32 ownership or control matter.
- 33 Note: For *NBN Co ownership or control matter*, see subsection (6).

1 *Statutory declarations*

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

5 *No self-incrimination*

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

10 *Offence*

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

16 Penalty: 50 penalty units.

17 *Regulations may confer discretionary powers on the*
18 *Communications Minister or the ACCC*

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

27 *NBN Co ownership or control matter*

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

Section 73

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

3 *Other information-gathering powers not limited*

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

8 **73 Validity of acts done in contravention of this Division**

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

11 **74 Acquisition of property**

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

- 17 (2) In this section:

18 *acquisition of property* has the same meaning as in paragraph
19 51(xxxi) of the Constitution.

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

1

2 **Division 4—General provisions**

3 **75 Interest in a share**

- 4 (1) For the purposes of this Part, a person holds an *interest in a share*
5 if the person has any legal or equitable interest in the share.
- 6 (2) For the purposes of this Part, a person is taken to hold an *interest*
7 *in a share* if:
- 8 (a) the person has entered into a contract to purchase the share;
9 or
 - 10 (b) the person has a right (otherwise than because of having an
11 interest under a trust) to have the share transferred to the
12 person or to the person's order (whether the right is
13 exercisable presently or in the future and whether or not on
14 the fulfilment of a condition); or
 - 15 (c) the person has a right to acquire the share, or an interest in
16 the share, under an option (whether the right is exercisable
17 presently or in the future and whether or not on the fulfilment
18 of a condition); or
 - 19 (d) the person is otherwise entitled to acquire the share or an
20 interest in the share; or
 - 21 (e) the person is entitled (otherwise than because of having been
22 appointed as a proxy or representative to vote at a meeting of
23 members of the company or of a class of its members) to
24 exercise or control the exercise of a right attached to the
25 share.
- 26 (3) Subsection (2) does not, by implication, limit subsection (1).
- 27 (4) For the purposes of this Part, a person is taken to hold an *interest*
28 *in a share* even if the person holds the interest in the share jointly
29 with another person.
- 30 (5) For the purpose of determining whether a person holds an interest
31 in a share, it is immaterial that the interest cannot be related to a
32 particular share.

Part 3 Ownership and control of NBN Co

Division 4 General provisions

Section 76

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

11 **76 Extra-territorial application**

12 This Part applies both within and outside Australia.

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2 **Part 4—NBN Co's reporting obligations**

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4 **77 Simplified outline**

5 The following is a simplified outline of this Part:

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- 7
- 8
- 9
- 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.

10 **78 Application of this Part**

11 This Part does not impose a requirement on:

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

14 if NBN Co is a wholly-owned Commonwealth company (within
15 the meaning of the *Commonwealth Authorities and Companies Act*
16 *1997*).

17 **79 Financial statements**

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

Section 80

- 1 (d) each financial year.
- 2 (4) The members of the Board must:
- 3 (a) prepare each statement in accordance with written guidelines
- 4 given to the Board by the Communications Minister and the
- 5 Finance Minister; and
- 6 (b) give the statement to the Communications Minister and the
- 7 Finance Minister within 2 months after the end of the period
- 8 to which the statement relates.
- 9 (5) The Communications Minister and the Finance Minister may grant
- 10 extensions of time in special circumstances.
- 11 (6) A guideline given under paragraph (4)(a) is not a legislative
- 12 instrument.
- 13 (7) In this section:
- 14 *financial statements* includes financial statements for the group
- 15 consisting of NBN corporations.

16 **80 Communications Minister and the Finance Minister to be**

17 **notified of significant events**

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

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

11 **81 Keeping the Communications Minister and the Finance Minister** 12 **informed**

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

25 **82 Corporate plan for NBN Co**

- 26 (1) The members of the Board must prepare a corporate plan at least
27 once a year and give it to the Communications Minister and the
28 Finance Minister.
- 29 (2) The plan must cover a period of at least 3 years and not more than
30 5 years.

Section 82

- 1 (3) The plan must cover each NBN corporation. In particular, for each
2 NBN corporation the plan must include details of the matters in
3 subsection (6), so far as they are applicable.
- 4 (4) The members of the Board must keep the Communications
5 Minister and the Finance Minister informed about changes to the
6 plan.
- 7 (5) If the Board becomes aware that a particular matter may affect the
8 achievement of the plan, the Board must give the Communications
9 Minister and the Finance Minister a written notice:
- 10 (a) setting out particulars of the matter; and
11 (b) explaining the effect of the matter on the achievement of the
12 plan.
- 13 (6) The plan must include details of the following matters (so far as
14 they are applicable):
- 15 (a) the objectives of the company;
16 (b) assumptions about the business environment in which the
17 company operates;
18 (c) the business strategies of the company;
19 (d) the investment and financing programs of the company,
20 including strategies for managing financial risk;
21 (e) financial targets and projections for the company;
22 (f) the dividend policy of the company;
23 (g) non-financial performance measures for the company;
24 (h) community service obligations of the company;
25 (i) review of performance against previous corporate plans and
26 targets;
27 (j) analysis of factors likely to affect achievement of targets or
28 create significant financial risk for the company or for the
29 Commonwealth;
30 (k) price control and quality control strategies for goods or
31 services supplied by the company under a monopoly;
32 (l) human resource strategies and industrial relations strategies.
- 33 (7) The plan must also cover any other matters required by the
34 Communications Minister and the Finance Minister (which may
35 include further details about the matters in subsection (6)).
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83 Consequences of contraventions of this Part

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

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

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

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

85 When this Part ceases to have effect

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

14 *Majority interest sale day*

- 15 (2) If, in the opinion of the Communications Minister, a particular day
16 is the first day on which a majority of the voting shares in NBN Co
17 are held by a person, or persons, other than the Commonwealth, the
18 Communications Minister must, by written instrument, declare the
19 day to be the *majority interest sale day* for NBN Co.

- 20 (3) The declaration under subsection (2) is a legislative instrument, but
21 section 42 (disallowance) of the *Legislative Instruments Act 2003*
22 does not apply to the declaration.

- 23 (4) The majority interest sale day for NBN Co may be earlier than the
24 day on which the declaration under subsection (2) is registered
25 under the *Legislative Instruments Act 2003*.

26 *Securities lending arrangements*

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

Section 85

- 1 (a) at a particular time (the *disposal time*), the Commonwealth
2 disposed of a share in NBN Co (the *borrowed share*) to
3 another person (the *borrower*); and
4 (b) the Commonwealth may come under an obligation to:
5 (i) re-acquire the borrowed share from the borrower at a
6 later time; or
7 (ii) acquire an identical share from the borrower at a later
8 time;
9 the borrowed share is taken to be held by the Commonwealth
10 during the period:
11 (c) beginning at the disposal time; and
12 (d) ending when the obligation mentioned in paragraph (b) is
13 discharged or can no longer arise.

14 *Hybrid-security issuer company*

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

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Part 5—Anti-avoidance2
3**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:

10 (a) the NBN corporation; or

11 (b) any other NBN corporation.

12 (2) A contravention of subsection (1) is not an offence. However, a
13 contravention of subsection (1) is a ground for obtaining an
14 injunction under Part 6.

15 (3) A contravention of subsection (1) does not affect the validity of
16 any transaction.

17 (4) In this section:

18 *scheme* means:

19 (a) any agreement, arrangement, understanding, promise or
20 undertaking, whether express or implied; and

21 (b) any scheme, plan, proposal, action, course of action or course
22 of conduct, whether unilateral or otherwise.

1

2 **Part 6—Injunctions**

3

4 **87 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
 - The Federal Court may grant injunctions in relation to
- 7 contraventions of this Act.

8 **88 Injunctions**

9 *Performance injunctions*

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

18 *Restraining injunctions*

- 19 (2) If a person has engaged, is engaging or is proposing to engage, in
- 20 any conduct in contravention of this Act, the Federal Court may,
- 21 on the application of the Communications Minister or the Finance
- 22 Minister, grant an injunction:
- 23 (a) restraining the person from engaging in the conduct; and
- 24 (b) if, in the Court's opinion, it is desirable to do so—requiring
- 25 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:

Part 6 Injunctions

Section 92

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

9 **92 Other powers of the Federal Court unaffected**

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

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Part 7—Miscellaneous

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93 Severability

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- (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.

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Corporations power

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- (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.

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Communications power

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- (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.

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

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31

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*.

Section 95

1 **95 NBN Co is not a public authority**

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

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

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

13 **96 Public Works Committee Act**

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

16 **97 Winding-up of NBN corporation not prevented by this Act**

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

19 **98 Rights of NBN corporation's shareholders, debenture holders
20 and creditors to be subject to this Act**

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

23 **99 Delegation**

24 (1) The Communications Minister may, by writing, delegate to:

- 25 (a) the Secretary of the Department; or
26 (b) an SES employee, or acting SES employee, in the
27 Department;

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

- 1 (2) The Finance Minister may, by writing, delegate to:
2 (a) the Secretary of the Department of Finance; or
3 (b) an SES employee, or acting SES employee, in the
4 Department of Finance;
5 all or any of the Finance Minister's powers and functions under
6 this Act (other than section 50).

7 **100 Compensation for acquisition of property**

8 *General*

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

17 *Direction to transfer asset*

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

27 *Definitions*

- 28 (5) In this section:
29 ***acquisition of property*** has the same meaning as in paragraph
30 51(xxxi) of the Constitution.

Section 101

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

3 **101 Regulations**

4 The Governor-General may make regulations prescribing matters:
5 (a) required or permitted by this Act to be prescribed; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Act.

1 **Schedule 1—NBN corporations**

2 Note: See section 5.
3
4

5 **1 NBN corporations**

6 (1) For the purposes of this Act, each of the following is an *NBN*
7 *corporation*:

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

12 (2) Subclause (1) has effect subject to subclause (3).

13 (3) For the purposes of this Act, if:

- 14 (a) at a particular time (the *start time*), NBN Co starts to be in a
15 position to exercise control of a company that is a retail
16 carriage service provider; and
17 (b) if any other conditions are specified in the regulations—those
18 conditions are satisfied;

19 the company is taken not to be an NBN corporation during the
20 period:

- 21 (c) beginning at the start time; and
22 (d) ending at whichever is the earlier of the following:
23 (i) the end of 12 months after the start time;
24 (ii) when NBN Co ceases to be in a position to exercise
25 control of the company.

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

27 **2 Control of a company**

28 (1) For the purposes of this Schedule, the question of whether a person
29 is in a position to exercise control of a company is to be
30 determined under Schedule 1 to the *Broadcasting Services Act*
31 *1992*.

32 (2) However, in determining that question:

Clause 3

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

5 **3 Associate**

- 6 (1) For the purposes of this Schedule, an *associate* of NBN Co is:
7 (a) a partner of NBN Co; or
8 (b) if NBN Co or another person who is an associate of NBN Co
9 under another paragraph receives benefits or is capable of
10 benefiting under a trust—the trustee of the trust; or
11 (c) a person (whether a company or not) who:
12 (i) acts, or is accustomed to act; or
13 (ii) under a contract or an arrangement or understanding
14 (whether formal or informal) is intended or expected to
15 act;
16 in accordance with the directions, instructions or wishes of,
17 or in concert with:
18 (iii) NBN Co; or
19 (iv) NBN Co and another person who is an associate of
20 NBN Co under another paragraph; or
21 (d) another company if:
22 (i) the other company is a related body corporate of NBN
23 Co for the purposes of the *Corporations Act 2001*; or
24 (ii) NBN Co, or NBN Co and another person who is an
25 associate of NBN Co under another paragraph, is or are
26 in a position to exercise control of the other company.

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

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

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

3 Note: See sections 5 and 50.
4
5

6 **1 Parliamentary Joint Committee on the Ownership of NBN Co**

7 (1) If a report of the Productivity Commission inquiry mentioned in
8 section 49 is tabled in the House of Representatives:

- 9 (a) a joint committee of members of the Parliament, to be known
10 as the Parliamentary Joint Committee on the Ownership of
11 NBN Co, is to be appointed according to the practice of the
12 Parliament with reference to the appointment of members to
13 serve on joint select committees of both Houses of the
14 Parliament; and
15 (b) the appointment is to occur within 15 sitting days of the
16 House of Representatives after the tabling of the report.

17 (2) If:

- 18 (a) the Parliamentary Joint Committee on the Ownership of
19 NBN Co is appointed under subclause (1); and
20 (b) before the Parliamentary Joint Committee reports to both
21 Houses of the Parliament as mentioned in paragraph 3(1)(b)
22 of this Schedule, the House of Representatives expires by the
23 passing of time or is dissolved;

24 then, as soon as practicable after the commencement of the first
25 session of the next Parliament, a joint committee of members of the
26 Parliament, to be known as the Parliamentary Joint Committee on
27 the Ownership of NBN Co, is to be appointed according to the
28 practice of the Parliament with reference to the appointment of
29 members to serve on joint select committees of both Houses of the
30 Parliament.

31 (3) The Parliamentary Joint Committee on the Ownership of NBN Co
32 is to consist of 10 members, as follows:

- 33 (a) 5 Senators appointed by the Senate;
34 (b) 5 members of the House of Representatives appointed by that
35 House.

Clause 1

- 1 (4) A member of the Parliament is not eligible for appointment as a
2 member of the Parliamentary Joint Committee on the Ownership of
3 NBN Co if he or she is:
4 (a) a Minister; or
5 (b) the President of the Senate; or
6 (c) the Speaker of the House of Representatives; or
7 (d) the Deputy President and Chair of Committees of the Senate;
8 or
9 (e) the Deputy Speaker of the House of Representatives.
- 10 (5) A member of the Parliamentary Joint Committee on the Ownership
11 of NBN Co ceases to hold office:
12 (a) when the Parliamentary Joint Committee ceases to exist (see
13 clause 4); or
14 (b) when the House of Representatives expires by the passing of
15 time or is dissolved; or
16 (c) if he or she becomes the holder of an office specified in any
17 of the paragraphs of subclause (4); or
18 (d) if he or she ceases to be a member of the House of the
19 Parliament by which he or she was appointed; or
20 (e) if he or she resigns his or her office as provided by
21 subclause (6) or (7).
- 22 (6) A member of the Parliamentary Joint Committee on the Ownership
23 of NBN Co appointed by the Senate may resign his or her office by
24 writing signed by him or her and delivered to the President of the
25 Senate.
- 26 (7) A member of the Parliamentary Joint Committee on the Ownership
27 of NBN Co appointed by the House of Representatives may resign
28 his or her office by writing signed by him or her and delivered to
29 the Speaker of that House.
- 30 (8) Either House of the Parliament may appoint one of its members to
31 fill a vacancy amongst the members of the Parliamentary Joint
32 Committee on the Ownership of NBN Co appointed by that House.

1 **2 Powers and proceedings of the Parliamentary Joint Committee**

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

5 **3 Duties of the Parliamentary Joint Committee**

6 (1) The duties of the Parliamentary Joint Committee on the Ownership
7 of NBN Co are as follows:

8 (a) to examine the report of the Productivity Commission inquiry
9 mentioned in section 49;

10 (b) to report to both Houses of the Parliament on that
11 examination within 180 days after the Parliamentary Joint
12 Committee was appointed;

13 (c) to inquire into any question in connection with its duties
14 which is referred to it by either House of the Parliament, and
15 to report to that House on that question.

16 (2) The Parliamentary Joint Committee's examination of the report of
17 the Productivity Commission inquiry may deal with any matter
18 appearing in, or arising out of, the report of the Productivity
19 Commission inquiry.

20 **4 Winding up of the Parliamentary Joint Committee**

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