

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to facilitate and accelerate the rollout of the National Broadband Network in New South Wales. For that purpose, the Bill:

- (a) establishes a NSW NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network, and
- (b) establishes a NSW NBN Chief Executives Committee to advise the NBN Co-ordinator and issue guidelines and protocols regarding the rollout of the National Broadband Network, and
- (c) requires State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

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Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the objects of the proposed Act, which are as follows:

- (a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,
- (b) to facilitate the use of existing infrastructure owned by State government agencies for the purposes of the National Broadband Network,
- (c) to establish a NBN Co-ordinator to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network and provide for its functions,
- (d) to require State government agencies to co-operate with the NBN Co-ordinator in facilitating and assisting the rollout of the National Broadband Network,
- (e) to establish a Chief Executives Committee to advise the NBN Co-ordinator and review the exercise of certain powers under the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. The **National Broadband Network** is defined to mean the national telecommunications network for the high-speed delivery of communications constructed, or being constructed, by NBN Co. **NBN Co** is NBN Co Limited (ACN 136 533 741) and includes any of its related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth). The **NBN Co-ordinator** is defined as the NSW NBN Co-ordinator appointed under the proposed Act. A **government agency** is defined to include a public authority, a NSW Government agency, a Division of the Government Service and a State owned corporation, but does not include the NSW Police Force, the Independent Commission Against Corruption or the Ombudsman's Office.

Part 2 NSW NBN Co-ordinator

Clause 5 provides that there is to be a NSW NBN Co-ordinator (the **NBN Co-ordinator**) who is to be the person appointed to that office under Chapter 1A of the *Public Sector Employment and Management Act 2002* (or, until that office is created or during any vacancy in that office, the Director-General of the Department of Services, Technology and Administration).

The NBN Co-ordinator is to have the following functions:

- (a) to facilitate and accelerate the rollout of the National Broadband Network in New South Wales,

(b) to liaise with government agencies in relation to the rollout of the National Broadband Network,

(c) to negotiate on behalf of, and act as an agent for, government agencies in their dealings with NBN Co (including by entering into contracts and arrangements on behalf of government agencies),

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(d) to co-ordinate the activities of government agencies in their involvement with the rollout of the National Broadband Network,

(e) to enter into contracts or arrangements on the NBN Co-ordinator's own behalf with NBN Co relating to the rollout of the National Broadband Network,

(f) such other functions as are conferred on the NBN Co-ordinator by or under the proposed Act or any other Act or law, including by the regulations made under the proposed Act.

Clause 6 provides that the NBN Co-ordinator may delegate his or her functions to a government agency or member of staff of a government agency.

Part 3 NSW NBN Chief Executives Committee

Clause 7 provides for the establishment of a NSW NBN Chief Executives Committee. The Chief Executives Committee is to comprise:

(a) the Director-General of the Department of Services, Technology and Administration or the Director-General's nominee, who is to be the presiding member of the Committee, and

(b) the Director-General of the Department of Premier and Cabinet or the Director-General's nominee, and

(c) the Director-General of the Department of Industry and Investment or the Director-General's nominee, and

(d) the Secretary of the Treasury or the Secretary's nominee, and

(e) the Director-General of Transport NSW or the Director-General's nominee.

The Chief Executives Committee is to have the following functions:

(a) to advise on the exercise of functions under the proposed Act in relation to the rollout of the National Broadband Network in New South Wales,

(b) to issue guidelines in relation to the consultation that the NBN Co-ordinator should undertake when carrying out his or her functions under the proposed Act,

(c) to prepare protocols for government agencies in relation to developing and implementing agreements with NBN Co regarding the rollout of the National Broadband Network in New South Wales,

(d) such other functions as are conferred on the Chief Executives Committee by or under the proposed Act or any other Act or law.

Clause 8 provides that the Chief Executives Committee may appoint advisory committees.

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Part 4 Co-ordination of State government agencies in rollout of National Broadband Network

Clause 9 imposes obligations on government agencies in respect of the rollout of the National Broadband Network in New South Wales. These include the following obligations:

(a) to facilitate and assist the rollout of the National Broadband Network,

(b) to co-operate with the NBN Co-ordinator in the exercise of his or her functions, including complying with any request of the NBN Co-ordinator for information to enable the NBN Co-ordinator to exercise his or her functions,

(c) to notify the NBN Co-ordinator of any proposed exercise of the agency's functions that may impact adversely on the exercise of the NBN Co-ordinator's functions.

Clause 10 authorises and empowers government agencies:

(a) to exercise any of their functions in order to facilitate and assist the rollout of the National Broadband Network, and for that purpose enter into agreements and arrangements with NBN Co, and

(b) to exercise any of their functions in order to comply with a request of the NBN Co-ordinator made under the proposed Act, and

(c) to enter into agreements with the NBN Co-ordinator for the purposes of the proposed Act and to do or suffer anything necessary or expedient for carrying any such agreement into effect.

Clause 11 provides that the NBN Co-ordinator may request that a government agency:

(a) appoint the NBN Co-ordinator as the agent for the government agency in its dealings with NBN Co (including authorising the NBN Co-ordinator to enter into contracts and arrangements with NBN Co on behalf of the government agency), and

(b) enter into a specified contract or arrangement with NBN Co, and

(c) provide resources and assistance to facilitate or assist the rollout of the National Broadband Network, and

(d) refrain from negotiating, or entering into, any agreement with NBN Co, and

(e) exercise the agency's functions for the purpose of facilitating and assisting the rollout of the National Broadband Network.

Clause 12 enables the Minister to direct government agencies that exercise functions that may facilitate, assist or affect the rollout of the National Broadband Network (or other government agencies declared by the regulations) to comply with a request of the NBN Co-ordinator.

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Part 5 Miscellaneous

Clause 13 provides that the proposed Act is to bind the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Clause 14 protects the NBN Co-ordinator, members of the Chief Executives Committee or an advisory committee, and persons acting under the direction of any of them, from personal liability in respect of acts done in good faith for the purposes of executing the proposed Act.

Clause 15 specifically authorises certain conduct done in connection with the rollout of the National Broadband Network that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Clause 16 enables the Governor to make regulations for the purposes of the proposed Act (including regulations of a savings or transitional nature consequent on the enactment of the proposed Act).

Clause 17 provides for the review of the proposed Act in 5 years.

Clause 18 provides for the repeal of the proposed Act. The NBN Co-ordinator is to keep the need for the Act under review and, if the NBN Co-ordinator certifies it is no longer required, the Act may be repealed by proclamation.