

# Government Telecommunications Act 1991 No 77

[1991-77]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Public Sector Employment Legislation Amendment Bill 2006](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Government Telecommunications Act 1991 No 77



New South Wales

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# Government Telecommunications Act 1991 No 77



New South Wales

An Act to integrate the telecommunications networks of the Government of New South Wales; to constitute the New South Wales Government Telecommunications Authority to manage the integrated network; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Government Telecommunications Act 1991*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Authority** means the New South Wales Government Telecommunications Authority constituted by this Act.

**Board** means the Board of the Authority established under this Act.

**carry** includes transmit, switch and receive.

**communication** includes any communication:

- (a) whether between persons and persons, things and things, or persons and things, and
- (b) whether in the form of speech, music or other sounds, data, text, visual images (whether or not animated) or signals or in any other form, or in any combination of forms.

**equipment** means any apparatus or equipment used, or intended for use, in or in connection with a telecommunications network, but does not include a line.

**facility** means any tower, antenna, tunnel, pit, pole or other structure or thing used, or intended for use, in or in connection with a telecommunications network, and includes:

- (a) a line, and
- (b) equipment, and
- (c) a radiocommunications transmitter or receiver.

**Government agency** means:

- (a) a Government department or administrative office, or
- (b) a statutory body representing the Crown, or
- (c) an electricity county council, or
- (d) any other public or local authority (including any State-owned corporation) which is declared by proclamation to be a Government agency for the purposes of this Act.

**Government telecommunications network** means the telecommunications network whose infrastructure is vested in the Authority under this Act.

**infrastructure** of a telecommunications network means lines, equipment or other facilities used, or intended for use, in or in connection with that network.

**line** means any wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or intended for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

**Managing Director** means the Managing Director of the Authority.

**radiocommunications** means radiocommunications within the meaning of the [Radiocommunications Act 1983](#) of the Commonwealth.

**telecommunications network** means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both, and includes any part of such a system for carrying communications by means of radiocommunications.

- (2) For the purposes of this Act, equipment, or a line or other facility, is connected to a telecommunications network if it (either by itself or in conjunction with any other thing) is being used, or is in place for use, to carry communications by means of the network, whether or not it is comprised in (or is in physical contact with any part of) the network.
- (3) In this Act, a reference to the Government of the State includes a reference to any

Government agency.

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4 Objects of Act**

The objects of this Act are as follows:

- (a) to integrate the various telecommunications networks of New South Wales Government agencies and to provide for the common carriage of the communications of Government agencies,
- (b) to establish a New South Wales Government Telecommunications Authority, and to vest that integrated telecommunications network and its control and management in the Authority as agent for the Government of the State,
- (c) to enable the Government of the State (through the Authority) to operate and maintain in an efficient and economical manner that integrated telecommunications network,
- (d) to enable the best commercial advantage to be obtained from any excess capacity of that integrated telecommunications network,
- (e) to enable Government agencies to obtain the best commercial advantage from any infrastructure or facilities required by the operators of the public telecommunications networks and other licensees.

## **Part 2 The Government telecommunications network**

### **Division 1 Vesting of infrastructure of network**

#### **5 Vesting infrastructure of networks of Government agencies**

- (1) The Minister may, by order in writing, vest in the Authority any infrastructure of a telecommunications network of a Government agency.
- (2) When any such order takes effect, the infrastructure concerned becomes part of the Government telecommunications network and is vested by this Act in the Authority.
- (3) In this section, a reference to any infrastructure of a telecommunications network includes a reference to any infrastructure of the Government agency that has at any time been disconnected by the Government agency from its telecommunications network.

## **6 Boundary of network infrastructure that may be vested**

- (1) That part of the infrastructure of the telecommunications network of a Government agency that is beyond the boundaries of that network may not be vested in the Authority under this Act unless:
  - (a) the Government agency consents, or
  - (b) it is necessary to do so in order to connect 2 separate telecommunications networks.
- (2) For the purposes of this section, the boundaries of a telecommunications network are to be determined in accordance with Division 2 of Part 2 of the [Telecommunications Act 1991](#) of the Commonwealth.

## **7 Other exemptions from vesting**

- (1) Any infrastructure of the telecommunications network of a Government agency is not to be vested in the Authority under this Act if the Minister is satisfied that the infrastructure is used by the agency only for very specific operational requirements and that the agency wishes to retain the infrastructure.
- (2) Infrastructure used for very specific operational requirements includes (but is not limited to) infrastructure used exclusively for the supply of electricity and not for the carriage of communications.

## **8 Compensation for vesting of infrastructure of networks of Government agencies**

- (1) Compensation is not payable to a Government agency for any infrastructure of a telecommunications network of the agency that is vested in the Authority under this Act.
- (2) However, section 22 confers on the Government agency entitlements relating to the use of the Government telecommunications network.
- (3) For the purposes of the financial accounts of the Government agency and the audit of those accounts, those entitlements may be treated by the agency as a non-capital asset equal in value to the value from time to time of the infrastructure of the Government agency vested in the Authority. The valuation of the infrastructure is taken to have been made in accordance with current accounting standards and practices.

## **9 Vesting of extensions of Government network infrastructure made by the Authority**

- (1) The Minister may, by order in writing, vest in the Authority any addition to the infrastructure of the Government telecommunications network that is carried out by or on behalf of the Authority.



- (2) When any such order takes effect, the additional infrastructure becomes part of the Government telecommunications network and is vested by this Act in the Authority.

#### **10 Removal etc of part of Government network infrastructure**

- (1) The Authority may remove or permanently disconnect any part of the infrastructure of the Government telecommunications network if it is no longer required for the efficient and economical operation of that network and is not required to be maintained under any contract or arrangement with a Government agency.
- (2) On its removal or disconnection, that part of the infrastructure ceases to be part of the Government telecommunications network. The order that vested it in the Authority is taken to be revoked or amended accordingly.

#### **11 Subsisting private interests in infrastructure**

- (1) If any part of the infrastructure of a telecommunications network that is vested in the Authority under this Act was, immediately before the vesting, subject to any charge or other interest, the vesting extinguishes that charge or other interest. However, compensation is payable by the Authority to any person (other than a Government agency) who had that charge or other interest and who suffers any loss as a result of the extinguishing of the charge or interest.
- (2) If any part of the infrastructure of a telecommunications network that is vested in the Authority under this Act was, immediately before the vesting, owned by a person other than a Government agency, the vesting does not transfer the ownership of that part of the infrastructure but merely transfers to the Authority the interest of the Government agency concerned in that part of the infrastructure immediately before its vesting.

#### **12 Vesting orders**

- (1) An order under this Division which vests any infrastructure in the Authority may describe that infrastructure in general terms, such as infrastructure of a specified Government agency or infrastructure carrying communications between specified destinations or infrastructure carrying communications of a specified kind.
- (2) A single order under this Division may vest in the Authority the infrastructure of the telecommunications networks of a number of Government agencies.
- (3) The Authority is required to maintain a register of orders in force under this Division and make that register available for inspection by any Government agency, or any other person, affected by any such order.

### **Division 2 Vesting of certain land occupied by infrastructure of**

## Government network etc

### 13 Definition of “designated land”

- (1) In this Division, **designated land** means the space occupied by the following parts of the Government telecommunications network, together with the space within 300 mm (or other prescribed distance) of any such part:
  - (a) lines,
  - (b) equipment connecting lines,
  - (c) any covering in which any such line or equipment is enclosed.
- (2) The **other prescribed distance** is any other distance (not exceeding 1 metre) prescribed by the regulations or in the order by which the relevant part of the network is vested in the Authority.

### 14 Vesting of designated land in the Authority

- (1) All the land which is for the time being a part of designated land is vested by this Act in the Authority. The Authority has a single freehold title to all the land so vested.
- (2) When any such land is so vested, the land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

### 15 Change in position of designated land etc

- (1) If the position of the relevant parts of the Government telecommunications network changes or is changed, a corresponding change occurs in the position of the designated land.
- (2) If there is any addition to or removal of a relevant part of the Government telecommunications network, a corresponding change occurs in the extent of the designated land.
- (3) If any land ceases at any time to be designated land because of this section, that land reverts in the owner of the surrounding land and is taken never to have formed part of the designated land.
- (4) If any land becomes at any time designated land because of this section, that land vests in the Authority in accordance with this Division.

### 16 Compensation for vesting of designated land

- (1) Compensation is not payable to a Government agency in respect of any land that is vested in the Authority under this Act.

- (2) Compensation is payable to any person (other than a Government agency) for any interest of the person in land that is extinguished or diminished by any such vesting. The compensation is to be determined as if the land had been acquired by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

**17 Designated land not to be recorded in land registers except General Register of Deeds**

- (1) A recording in respect of designated land is not to be made in the Register kept under the *Real Property Act 1900* or in any other register relating to interests in land.
- (2) However, the orders made under Division 1 may be registered in the General Register of Deeds, together with a notation of the vesting of the land concerned by the operation of this Division.
- (3) Subsection (1) does not apply to a recording in respect of designated land if:
- (a) the land surrounding the designated land is also vested in the Authority, or
  - (b) the position of the designated land has been duly surveyed in connection with a claim for compensation under section 16 (2), or
  - (c) the land surrounding the designated land is vested in a Government agency and the position of the designated land has been duly surveyed by that agency or by the Authority.

**18 Designated land not affected by, and not to affect, acquisition, transfer etc of surrounding land**

- (1) The vesting of designated land in the Authority is not affected by any acquisition (including compulsory acquisition) of the land in which designated land is situated or by any dealing in connection with that land.
- (2) A dealing in connection with land in which designated land is situated is not affected by the existence of the designated land or by the failure to disclose the existence of the designated land.
- (3) In particular, in connection with any conveyance or transfer, a vendor of the land is not required to disclose the existence of the designated land and a purchaser of the land is not entitled to make any requisition, objection or claim for compensation, or refuse to complete the purchase, because of the existence of the designated land.
- (4) However, subsections (2) and (3) do not apply to any designated land referred to in section 17 (3).
- (5) In this section, **dealing** includes conveyance and mortgage (within the meaning of the *Conveyancing Act 1919*) and testamentary disposition.

## **Division 3 Operation etc of Government network**

### **19 Authority to have control and management of Government network**

The Authority has, as agent for the Government of the State, the control and management of the Government telecommunications network and is responsible for its operation.

### **20 Management agreement for Government network**

- (1) The Minister may, on behalf of the Government of the State and the Authority, enter into contracts or arrangements for the management by any person or body of communications on the Government telecommunications network.
- (2) The Minister is not entitled to exclude any particular person or body from any request for expressions of interest in connection with a contract or arrangement under this section.

### **21 Maintenance of Government network**

- (1) After any infrastructure of a telecommunications network of a Government agency becomes part of the Government telecommunications network under this Act, the agency is to maintain that infrastructure in accordance with a contract or arrangement between the Authority and the agency.
- (2) Until the contract or arrangement is made, the Government agency is to maintain that infrastructure to at least the same standard as applied at the time of the vesting and in accordance with such terms and conditions as the Minister determines.
- (3) A Government agency is not to alter, move, replace, add to or otherwise interfere with any part of the Government telecommunications network.

### **22 Right of Government agencies to use their former infrastructure**

- (1) If any infrastructure of the telecommunications network of a Government agency becomes part of the Government telecommunications network under this Act, the agency retains the right (subject to this Act) to continue to use that infrastructure for the carriage of its communications.
- (2) The Government agency is entitled to be reimbursed by the Authority, in accordance with a contract or arrangement between the Authority and the agency, for the charges made by the Authority for the use of that infrastructure by that or any other Government agency or by any other person.
- (3) Until the contract or arrangement is made, the Government agency is to be reimbursed in accordance with such terms and conditions as the Minister determines with the approval of the Treasurer.
- (4) If the order vesting any infrastructure so provides or the Authority so approves, the

Government agency may continue to use that infrastructure for its own communications and as part of a separate telecommunications network. Such a use may include the use of a particular band-width on any line on the network.

### **23 Government agencies required to use Government network**

- (1) A Government agency must use the Government telecommunications network (and not any other network) for the carriage of its communications if the Government telecommunications network is available to be used by the agency and is sufficient to meet the reasonable requirements of the agency.
- (2) The Minister or the Authority may exempt a Government agency from the requirements of this section in any specified case or class of cases.

### **24 Approval for provision of separate infrastructure by Government agencies**

- (1) A Government agency must not, without the approval of the Minister or the Authority, establish or extend a telecommunications network of the agency if the cost of establishing or extending the network exceeds \$500,000 or such other amount as the Minister may approve.
- (2) The Minister may issue guidelines for the purpose of determining the cost of establishing or extending a telecommunications network.

### **25 Authority entitled to charge for use of Government network**

- (1) Government agencies which use the Government telecommunications network are required to pay to the Authority such charges as the Authority determines.
- (2) The charges are not to exceed the maximum charges fixed by the Minister with the approval of the Treasurer.

### **26 Authority entitled to sell excess capacity**

- (1) The Authority may enter into a contract or arrangement with any person (not being a Government agency) for the use by that person of any part of the Government telecommunications network that is not required for use by Government agencies. Government agencies may not enter into any such contract or arrangement.
- (2) The power of the Authority under this section is subject to the requirements of the [Telecommunications Act 1991](#) of the Commonwealth relating to the exclusive rights of general carriers licensed under that Act.

### **27 Arrangements for the Authority to use infrastructure of other networks**

The Authority may enter into contracts or arrangements with any person (including a Government agency) for the use by the Authority of any infrastructure of a communications network in connection with the Government telecommunications

network.

## **28 Acquisition of land and construction of works**

- (1) The Authority may, for the purposes of the Government telecommunications network, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, the acquisition is taken to be for an authorised work and the Authority is, in relation to the work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply to the construction of works under this Act.

# **Part 3 New South Wales Government Telecommunications Authority**

## **Division 1 Constitution of the Authority**

### **29 Constitution of the Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Government Telecommunications Authority.
- (2) The New South Wales Government Telecommunications Authority may also be called TELCO and the use of that name has the same effect for all purposes as the use of its corporate name.
- (3) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

## **Division 2 Management of the Authority**

### **30 Ministerial control**

The Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

### **31 Corporate plan**

- (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the Authority, a draft corporate plan for the financial year.
- (2) The Authority must:
  - (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the plan was delivered to the Minister, and
  - (b) deliver the completed corporate plan to the Minister before the beginning of the

financial year concerned.

- (3) The Authority is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.
- (4) A corporate plan must specify:
  - (a) the objectives of the activities of the Authority for the financial year concerned and for future financial years, and
  - (b) the strategies, policies and budgets for achieving those objectives, and
  - (c) targets and criteria for assessing the Authority's performance.
- (5) This section is subject to the requirements of any direction of the Minister under this Division.

### **32 Establishment of the Board**

- (1) There is to be a Board of the Authority.
- (2) The Board is to consist of:
  - (a) the Managing Director, and
  - (b) at least 8 (and not more than 10) part-time members appointed by the Governor on the recommendation of the Minister.
- (3) Of the part-time members:
  - (a) one is to be a person nominated by the Minister, who is to be the Chairperson of the Board, and
  - (b) one is to be a person nominated by the Minister, who is to be the Deputy Chairperson of the Board, and
  - (c) one is to be a person nominated by the Premier, and
  - (d) one is to be a person nominated by the Treasurer, and
  - (e) one is to be a person nominated by the Minister responsible for the Commercial Services Group, and
  - (f) one is to be a person nominated by the Minister responsible for Rail Corporation New South Wales, and
  - (g) one is to be a person nominated by the Minister administering Part 2 of the *Energy Services Corporations Act 1995*, and
  - (h) one is to be a person nominated by the Minister administering Part 3 of the *Energy*

*Services Corporations Act 1995.*

(4) Schedule 1 has effect with respect to the members and procedure of the Board.

**33 Functions of the Board**

The functions of the Board are as follows:

- (a) to determine the policies and long-term strategic plans of the Authority,
- (b) to oversee the effective, efficient and economical management of the Authority,
- (c) to advise the Minister (at the request of the Minister or on its own initiative) on any matter relating to the telecommunication requirements of the Government of the State or on the commercial advantages available to the Government of the State with respect to telecommunications.

**34 Managing Director**

- (1) The Governor may appoint a Managing Director of the Authority.
- (2) The employment of the Managing Director is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (3) Until the first appointment of a Managing Director, an officer of the Commercial Services Group nominated by the Minister is to be the Managing Director.
- (4) The Minister may, from time to time, appoint a person to act in the office of the Managing Director during the illness or absence of the Managing Director (or during a vacancy in the office of Managing Director) and the person, while so acting, has all the functions of the Managing Director and is taken to be the Managing Director.
- (5) The Minister may, at any time, remove a person from office as acting Managing Director.
- (6) An acting Managing Director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

**35 Managing Director to manage and control affairs of the Authority**

- (1) The affairs of the Authority are to be managed and controlled by the Managing Director in accordance with the policies determined by the Board, but subject to any directions of the Minister under this Act.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Managing Director is taken to have been done by the Authority.



### **36 Staff of the Authority**

- (1) The staff of the Authority is (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local authority. Any staff of whose services the Authority makes use is taken to be the staff of the Authority for the purposes of this Act.
- (3) The Authority may employ staff for any special purpose approved by the Minister. Part 2 of the *Public Sector Management Act 1988* does not apply to the employment of any such staff.
- (4) The Authority may engage consultants.

## **Division 3 Functions etc of the Authority**

### **37 General functions of the Authority**

- (1) The Authority has the functions conferred or imposed on the Authority by or under this or any other Act.
- (2) The Authority may do all such things as are supplemental or incidental to the exercise of its functions and, in particular, to the control, management and operation of the Government telecommunications network.

### **38 Miscellaneous functions**

- (1) The Authority may:
  - (a) conduct any business in connection with a telecommunications network and, for that purpose, use any property or the services of any staff of the Authority, and
  - (b) acquire, install or dispose of any infrastructure of a telecommunications network, and
  - (c) make and enter into any contracts or arrangements for the carrying out of any works or the performance of services or the supply of goods or materials, and
  - (d) appoint agents, and act as agent for other persons (including acting as agent for a general carrier licensed under the *Telecommunications Act 1991* of the Commonwealth or any other licensee under that Act).
- (2) The provisions of the *Public Sector Management Act 1988* and the regulations under that Act relating to the methods for acquisition of stores, equipment, materials and services for the Public Service apply to any such acquisition for the Authority.

### **39 Delegation of functions**

- (1) The Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) In this section, **authorised person** means:
  - (a) a member of the staff of the Authority, or
  - (b) a member of the staff of the Commercial Services Group, or
  - (c) a person of a class prescribed by the regulations or approved by the Minister.

### **40 Private subsidiary corporations, joint ventures etc**

- (1) The Authority may, with the approval of the Minister:
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire, sell or otherwise dispose of interests in private corporations, and
  - (c) enter into partnerships, joint ventures and other profit-making arrangements, for the purpose of the exercise of its functions.
- (2) A private corporation in which the Authority has a controlling or other interest is not, and does not represent, the Crown.

## **Division 4 Financial provisions relating to the Authority**

### **41 Fund of the Authority**

- (1) There is established in the Special Deposits Account in the Treasury an account to be called the New South Wales Government Telecommunications Authority Fund.
- (2) There is payable into the Fund:
  - (a) all money received by or on account of the Authority (including the charges for use of the Government telecommunications network), and
  - (b) all interest received in respect of the investment of money belonging to the Fund, and
  - (c) all money borrowed by the Authority or appropriated by Parliament for the purposes of the Authority, and
  - (d) all money directed to be paid into the Fund by this or any other Act.

(3) There is payable from the Fund:

- (a) all payments made on account of the Authority or otherwise required to meet the expenditure incurred in relation to the functions of the Authority (including costs incurred in the operation of the Government telecommunications network), and
- (b) all money directed to be paid from the Fund by this or any other Act.

#### **42 Dividend contribution by the Authority to Consolidated Fund**

- (1) The Authority is required to pay to the Treasurer for payment into the Consolidated Fund, by way of dividend contribution in respect of each financial year to which this section applies, such amount as may be determined by the Treasurer.
- (2) The amount so determined may be based on the value of the Government telecommunications network, on the income derived by the Authority from the operation of that network or on any other basis the Treasurer considers appropriate.
- (3) The Treasurer must consult with the Minister and the Authority in connection with any determination to be made by the Treasurer under this section.
- (4) This section applies in respect of such financial years of the Authority as the Treasurer determines.
- (5) Nothing in this section affects section 59B of the *Public Finance and Audit Act 1983*.

#### **43 Investment**

The Authority may invest money:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Authority to invest money—in accordance with the *Trustee Act 1925* or in any other manner approved by the Minister with the concurrence of the Treasurer.

#### **44 Financial year of the Authority**

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

### **Division 5 General provisions relating to the Authority**

#### **45 Personal liability of members etc**

A matter or thing done or omitted to be done by the Authority, the Board, a member of the Board or any person acting under the direction of the Authority or the Board does not,

if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

#### **46 Seal of the Authority**

The seal of the Authority is to be kept by the Managing Director and may be affixed to a document only:

- (a) in the presence of the Managing Director or a member of the staff of the Authority authorised in that behalf by the Managing Director, and
- (b) with an attestation by the signature of the Managing Director or that member of the fact of the affixing of the seal.

#### **47 Service of documents on the Authority**

- (1) A document may be served on the Authority by leaving it at, or by sending it by post to:
  - (a) the office of the Authority, or
  - (b) if it has more than one office—any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

#### **48 Recovery of charges etc by the Authority**

Any charge, fee or money due to the Authority may be recovered by the Authority as a debt in a court of competent jurisdiction.

### **Part 4 Additional powers of Government agencies relating to telecommunications**

#### **49 Purpose of Part**

- (1) The purpose of this Part is to enable Government agencies to obtain the best commercial advantage from any infrastructure or facilities required by the operators of the public telecommunications networks and other licensees.
- (2) The powers conferred by this Part on a Government agency are not limited to furthering the main business or activity of that agency.

#### **50 Part does not apply to Government telecommunications network etc**

- (1) This Part does not apply to any part of the Government telecommunications network. However, this Part applies to any telecommunications network of a Government agency that is not part of that Government network.

- (2) This Part is subject to the provisions of Division 3 of Part 2 and, in particular, section 24 (Approval for provision of separate infrastructure by Government agencies).

**51 Additional powers for Government agencies**

- (1) A Government agency may conduct any business, and enter into partnerships, joint ventures and other profit-making arrangements:
- (a) in connection with its telecommunication networks, or
  - (b) in connection with the use of any of its property for the purpose of the telecommunications network of any other person.
- (2) A Government agency may, without limiting the generality of subsection (1), enter into contracts or arrangements with any person:
- (a) for the use by that person of any part of the telecommunications network of that agency that is not required for use by that agency, or
  - (b) for the installation of any infrastructure in connection with the telecommunications network of that person, or
  - (c) for access to ducts for laying lines or to sites for erecting radio aerials or other facilities in connection with the telecommunications networks of that person.

**52 Government agencies to notify Authority of exercise of powers under this Part etc**

A Government agency is required to inform the Authority of any proposal for a contract or arrangement between the agency and the operator of a public telecommunications network for the purpose of the exercise of the powers of the agency under this Part or of similar powers under any other Act.

**53 Minister or Authority may act as agent for Government agencies under this Part**

- (1) The Minister or the Authority may, with the approval of and as agent for the Government agencies concerned, enter into contracts or arrangements for the purposes of the exercise of the powers of Government agencies under this Part.
- (2) The Minister and the Authority are not entitled to exclude any particular person or body from any request for expressions of interest in connection with a contract or arrangement under this section.

**54 This Part subject to exclusive rights of general carriers under Commonwealth law**

The powers conferred by this Part on a Government agency are subject to the requirements of the *Telecommunications Act 1991* of the Commonwealth relating to the exclusive rights of general carriers licensed under that Act.

## Part 5 Miscellaneous

### 55 Act binds the Crown

This Act binds the Crown.

### 56 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 57 (Repealed)

## Schedule 1 Provisions relating to members and procedure of the Board

(Section 32 (4))

### 1 Definitions

In this Schedule:

***appointed member*** means a member of the Board other than the Managing Director.

***member*** means any member of the Board.

### 2 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of an appointed member who is Chairperson or Deputy Chairperson of the Board does not have the member's functions as Chairperson or Deputy Chairperson.
- (4) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

### 3 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **4 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **5 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

#### **6 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purpose of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

## **7 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or



(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **10 Quorum**

The quorum for a meeting of the Board is a majority of the members for the time being, of whom one must be the Chairperson or Deputy Chairperson of the Board.

## **11 Presiding member**

- (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **13 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **14 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

#### **Schedule 2 (Repealed)**