

Chapter 1

Introduction

Background

1.1 The Telecommunications Legislation Amendment (National Broadband Network) Bill 2008 (the bill) was introduced to the Senate on 19 March 2008 and referred to the Standing Committee on Environment, Communications and the Arts (the committee) on 20 March 2008, for report by 7 May 2008. On 7 May, the committee tabled an interim report indicating it would report by 9 May 2008.

Conduct of the inquiry

1.2 The committee advertised the inquiry in *The Australian* and invited written submissions by 17 April 2008. Details of the inquiry were placed on the committee's website and the committee also wrote to a number of organisations and stakeholder groups inviting written submissions.

1.3 The committee received submissions from seven organisations. The committee wrote to the Department of Broadband, Communications and the Digital Economy (DBCDE) with questions about the bill, and also asked the department to respond to the submission from Telstra. DBCDE replied on 1 May and 2 May respectively to those requests, and the replies are attached as appendices two and three.

1.4 The committee thanks those who participated in this inquiry.

Background to the bill

1.5 The bill 2008 amends the *Telecommunications Act 1997* (the Act) to provide for specified information to be provided by telecommunications carriers to the Commonwealth, so that this information can be disclosed to companies who are considering or intend to make a submission relating to the creation or development of a National Broadband Network (NBN).

1.6 The government's broadband network objective is to facilitate the roll out of a high speed network servicing 98 per cent of Australian homes and businesses which is subject to open access arrangements. The policy will involve the competitive evaluation of independent proposals by a panel of experts appointed by the government.

1.7 High quality proposals will be necessary in order to ensure a truly competitive process. To facilitate the development of such proposals it is necessary for certain information, particularly network information, which is not currently public or available through commercial sources be made available to proponents so they can accurately design and cost their proposed network.

As the owner of Australia's largest fixed customer access network – elements of which are likely to form part of any fibre-to-the-node network – Telstra is at an advantage to other potential proponents of a national broadband network if it has sole access to information that is essential for the preparation of competitive proposals. Knowledge of other non-Telstra infrastructure that could form part of a national broadband network, such as that used for backhaul, is also relevant.¹

1.8 The bill is intended to address these issues by inserting a new part 27A into the Act. Part 27A would set out a scheme for the provision of information as specified by the minister in a disallowable instrument, and for the protection of the information that is provided by the carriers. This information would then be made available under certain conditions to companies wishing to participate in the process of lodging proposals to provide new broadband services under the government's policy.

The bill

Obligation to provide information

1.9 The bill would allow the minister to make a disallowable instrument specifying particular information to be provided by specified carriers, the manner and form the information is to be supplied in and a time limit for providing it. Following the commencement of an instrument made by the minister, the specified carriers would be obliged to provide the information to an authorised Senior Executive Service officer, known as an 'authorised information officer'.

Disclosure and protection of 'protected carrier information'

1.10 The government is committed to ensuring that any information provided is not misused.

Importantly, the legislation includes strong legislative safeguards to carriers, which guard against the misuse of sensitive network information. The Bill, and any subordinate instruments ... are not intended to override and protections under the *Privacy Act 1988* for personal information.²

1.11 Information gathered under the new part 27A and provided to bidders in the process is termed 'protected carrier information'. Such information is provided to an authorised information officer. It may then be passed on to other officials assisting the process. The range of such officials, termed 'entrusted public officials', is defined in item 531B of the bill.

1 Telecommunications Legislation Amendment (National Broadband Network) Bill 2008, Second Reading Speech, *Senate Hansard*, 19 March 2008, p. 1213.

2 Telecommunications Legislation Amendment (National Broadband Network) Bill 2008, Second Reading Speech, *Senate Hansard*, 19 March 2008, p. 1213.

1.12 Division 3 of part 27A specifies that protected carrier information in the possession of an entrusted public official may not be disclosed to another person unless it is for the purpose of advising government decision making or to facilitate the preparation of a proposal.

1.13 A company may receive protected information if a designated request for proposal notice has been published and the company has notified an authorised information officer in writing that the company is considering providing a proposal in the broadband bidding process. A person who has received such protected information is termed an 'entrusted company officer'. They must not disclose the information unless it is for the purpose of preparing or varying a submission, or is contained within such a submission, unless the information has been made publicly known.

1.14 There are thus provisions in the bill that require that neither the public sector nor company officials can disclose the information beyond the circumstances set out in sections 531G, H and K. These relate primarily to the process of making and assessing bids in the broadband network tender process.

Consultation obligations under part 27A

1.15 In order to meet the government's deadline of November 2008 for a roll out of a NBN the bill contains provisions intended to minimise the potential for consultation requirements and legal action to delay the necessary steps in the process.

1.16 Authorised information officers are not required to consult with carriers prior to disclosing protected information. However, a carrier would be consulted prior to the Minister making an instrument (subsection 531(C)). The bill also contains a provision that would prevent a court ordering a stay of decision by an information officer or entrusted public official.

Nature of 'designated information'

1.17 The department, DBCDE, provided additional information on the nature of the types of information likely to be specified as 'designated information' in an instrument.

1.18 The department envisages that the information may include:

- core optical fibre transmission network information, for example locations such as towns between which optical fibre operates;
- microwave radio core transmission networks;
- location points of interconnection; and
- details about the network servicing customers, from the exchange to the premises, including:
 - locations of telephone exchanges;
 - line lengths from exchanges to pillars,;

- line lengths from pillars to homes;
- information concerning equipment in the Customer Access Network; and
- information regarding physical space in underground conduits.

1.19 An instrument could also specify information regarding the geographic extent of the area in which a network is able to provide carriage services. An instrument could also specify information regarding other types of carriage services that they offer over their customer access networks.

1.20 It is not envisaged that there would be multiple requests for information by way of making an instrument and it is anticipated that an instrument would seek information from carriers that have deployed significant network infrastructure.³

3 DBCDE, *Submission 4*, p. 2.