



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

our reference: 2008/464

**Submission to the Senate Standing Committee on Environment, Communications and
the Arts in relation to the Telecommunications Legislation Amendment (National
Broadband Network) Bill 2008**

18 April 2008

Background

A key element of the Government's telecommunications policy is the roll-out of high-speed broadband more widely throughout Australia. The Government recognises that high-speed broadband services are a key part of Australia's future infrastructure and are critical to Australia's future economic prosperity and social well-being.

This is why the Government has committed to contribute up to \$4.7 billion to facilitate the roll-out of a new open access, high-speed fibre broadband network. The Government's objectives for the National Broadband Network include that the network will use fibre infrastructure to provide speeds of at least 12 megabits per second to 98 per cent of Australian homes and businesses. The Government intends to implement other measures to provide equitable access to broadband services for the small percentage of customers not serviced by the new network.

On 11 April 2008, the Government released the Request for Proposals for the National Broadband Network. The Request for Proposals is a designated request for proposal notice for the purposes of the definition in proposed section 531D of *Telecommunications Legislation Amendment (National Broadband Network) Bill 2008* (the Bill). The Request for Proposals states that the Government intends to make available to proponents network information it considers necessary for the development of proposals. It also states that the network information will be required to be provided by carriers either in accordance with proposed Part 27A of the *Telecommunications Act 1997* or on a voluntary basis. This is on the basis that parties interested in rolling-out the new network should not be prevented from participating in the process by a lack of information about existing network infrastructure.

The Department is of the view that the Second Reading Speech and Explanatory Memorandum for the Bill set out in sufficient detail the purpose and operation of the Bill. Accordingly, this submission focuses on providing additional information in relation to the nature of the information that may be specified as 'designated information' in a instrument made under proposed section 531C of the Bill and further information on what additional arrangements may be specified, in a legislative instrument, concerning the storage, handling and destruction of protected carrier information.

The Department understands that it is the intention of the Government that draft instruments would be circulated to Members of Parliament prior to the commencement of debate on the Bill.

Network information request – Proposed section 531C (Designated information)

Nature of the information

The Bill provides a mechanism for the Minister to require information from carriers, it does not mandate for such information to be required. This submission provides a high level overview of the types of information that may be specified and how this information may be useful to proponents for the National Broadband Network. The Department notes that consultation on a draft instrument would need to occur as required by proposed subsection 531C(4) of the Bill and that the Minister would take into account any comments received before making a final decision of the information to be specified.

It is expected that a draft instrument would specify relevant information about existing infrastructure and facilities to assist proponents develop their network design and costings as part of their proposals in response to the Request for Proposals documentation. This may cover:

- (a) information about the core optical fibre transmission networks (e.g. locations, such as towns between which optical fibre cable operates). This information would assist proponents to form a view regarding opportunities to leverage existing transmission capacity for backhaul services;
- (b) information about microwave radio core transmission networks (e.g. . locations, such as towns between which microwave links operates). As with optical fibre networks, there may be opportunities for proponents to leverage existing transmission capacity for backhaul;
- (c) location of points of interconnection (i.e. the location where the carriers currently interconnect with other networks or would be readily able to do so if approached with a commercial proposition); and
- (d) details about the network servicing customers, from the exchange to the customer premises, so that proponents can determine costs and performance parameters. This detail may include:
 - a. location of the local telephone exchanges;
 - b. information regarding line lengths from exchanges to pillars. This information would assist proponents to form a view on the amount of fibre optic cabling that will be required to be purchased to link the exchange to nodes;
 - c. information regarding line lengths from pillars to homes (e.g. maximum, minimum and average cable lengths at pillars). This information would assist proponents to form a view on the data speeds that can be delivered to customer premises from nodes, as broadband data speeds delivered over copper lines decrease as the line length increases;
 - d. information concerning equipment in the Customer Access Network that would prevent the provision of broadband services over copper wires such as remote integrated multiplexer, small pair gain systems and bridged taps; and
 - e. information regarding space in underground conduits. This information would assist proponents to form a view on availability of space to install additional cables. In the event that conduits are full, either longer alternate routes need to be used or possibly new conduits have to be installed, which would increase the costs of building the new network.

A draft instrument may also specify information about the geographic extent of the area in which their telecommunications networks are able to provide carriage services. For

example, the exchange areas served by Telstra's local exchanges and/or the areas served by pillars. This information would assist proponents to identify service coverage of existing broadband customer access infrastructure.

Finally, a draft instrument may specify information about service descriptions for existing types of carriage services, other than public switched telephone network (PSTN), Integrated Services Digital Network (ISDN) and Digital Subscriber Line (DSL) services, that they offer over their customer access Networks. For example, this could include services supporting the operation of traffic lights and alarm systems. Proponents would need to consider this information in developing their migration plans for moving existing networks services across to the National Broadband Network.

Frequency and timing of requests for information from carriers

For practical purposes, noting the recent release of the Request for Proposals and the length of the proposal preparation period, it is not envisaged that, were a legislative scheme necessary, there would be multiple requests for information by way of the making of an instrument under proposed section 531C. However, the Minister would be able to exercise the power to make additional instruments at a later time, if necessary.

It is envisaged that an instrument would seek information from carriers that have deployed significant network infrastructure.

Disclosure of and handling arrangements for protected carrier information – Proposed sections 531N and 531P

The Bill already applies significant non-disclosure obligations on recipients of protected network information. Additional measures that could be put in place through making of legislative instruments would be considered, if necessary, and would depend on the type of information sought.

Conditions on disclosure of protected carrier information

The Bill would allow the Minister, by legislative instrument, to make rules that would ensure that the proponents are suitably qualified before they are able to access the information (see proposed section 531N of the Bill).

In addition, the Request for Proposals to roll-out and operate the National Broadband Network sets out specific pre-qualification requirements (set out in clause 8.1 of the Request for Proposals) that an authorised decision-maker would need to be satisfied had been met by a proponent before disclosing protected carrier information to an entrusted company officer of the proponent. Specifically, proponents are required to provide a \$5 million bond, in the form of a bank guarantee, and to execute a confidentiality deed.

The Bill would also allow the Minister to require the lodgement of a bond, separate to the bond required by the Request for Proposals, by proponents prior to the proponents receiving network information (see proposed subsection 531H(4)). This may take the form of an unconditional and irrevocable bank guarantee in favour of the Commonwealth in substantially the form set out in Section 7 of Schedule 2 to the Request for Proposals, and for an amount specified by the Commonwealth, or another form of security.

Arrangements for storage, handling and destruction of network information

It is expected that a draft instrument under proposed section 531P may require proponents, whose entrusted company officers may receive protected carrier information, to:

- (i) establish and maintain effective security measures to safeguard protected carrier information from inappropriate access or use;
- (ii) establish and maintain effective and auditable procedures for ensuring compliance with its entrusted company officers' obligations; and
- (iii) destroy or return all protected carrier information if required to do so by the Commonwealth.

Relationship to the process for voluntary provision of network information

As noted above, the National Broadband Network Request for Proposals documentation states that network information will be provided either in accordance with the proposed Part 27A of the *Telecommunications Act 1997* or on a voluntary basis (clause 6.2.1).

On 27 February 2008, the Minister for Broadband, Communications and the Digital Economy wrote to 24 telecommunications carriers requesting that they voluntarily provide relevant information about their networks. Most carriers, including Telstra, have demonstrated that they are willing to consider giving this information voluntarily.

While the work to progress contractual arrangements for the voluntary provision of network information is ongoing, the Government has come to the conclusion that a legislative framework is necessary to ensure that it is able to deliver on its intention to provide access to information if a voluntary outcome cannot be achieved in a timely manner.

Consultation to date

The Department and the Government more broadly have consulted with interested parties on the network information requirements of the National Broadband Network project and the handling arrangements necessary to protect and control access to this information.

To date, the Department has consulted with the Attorney-General's Department and security agencies regarding the security requirements of the information that may be specified in an instrument made under proposed section 531C.

The Department recognises that ongoing consultation is required to ensure the proposed instruments satisfy the needs of potential proponents and the carriers who may provide the information.