

GOVERNMENT TELECOMMUNICATIONS BILL 1991*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (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; and
- (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; and
- (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; and
- (d) to enable the best commercial advantage to be obtained from any excess capacity of that integrated telecommunications network and
- (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 1—PRELIMINARY (clauses 1–4)

This Part contains preliminary provisions, namely, short title, commencement on a day or days to be proclaimed, definitions and the objects (as stated above) of the proposed Act.

Key definitions include the following:

“Authority” refers to the New South Wales Government Telecommunications Authority established by the proposed Act;

“communication” includes all forms of communication (including data transfer);

“Government agency” refers to a government department or office, a statutory body representing the Crown, an electricity county council or any other public or local authority identified by proclamation (a reference to the “Government of the State” includes a reference to any such agency);

* Amended in committee—see table at end of volume.

“**Government telecommunications network**” refers to the network whose infrastructure is vested in the Authority under the proposed Act;

“**infrastructure**” of a telecommunication network refers to the lines, equipment and other facilities of the network;

“**telecommunications network**” refers to systems for carrying communications by guided or unguided electromagnetic energy or both (and includes radiocommunication systems).

PART 2—THE GOVERNMENT TELECOMMUNICATIONS NETWORK (clauses 5–28)

Division 1—Vesting of infrastructure of network

This Division provides for the vesting in the Authority of any infrastructure of the communication networks of Government agencies.

Clause 5 enables the Minister, by order, to vest any such infrastructure in the Authority.

Clause 6 excludes telecommunication infrastructure on the premises of Government agencies from being vested in the Authority except in certain cases. Generally the outer boundary of the Government network is the first point at which the Government network connects with those premises.

Clause 7 also excludes from vesting infrastructure that is used for very specific operational requirements of a Government agency (for instance certain specialised railway signalling systems).

Clause 8 provides that compensation is not payable to a Government agency for infrastructure vested in the Authority. However, the agency is entitled to treat the agency’s entitlements under the proposed Act to use the infrastructure as a non-capital asset equal in value to the value of the infrastructure.

Clause 9 enables the Minister, by order, to vest additions to the Government network in the Authority.

Clause 10 provides for the removal or permanent disconnection of any part of the Government network that is no longer required.

Clause 11 provides (among other things) for compensation to persons (other than Government agencies) who had any interest in the vested infrastructure.

Clause 12 authorises the Minister to make vesting orders under the proposed Act in specific or general terms.

Division 2—Vesting of certain land occupied by infrastructure of Government network etc.

This Division provides for the vesting of “designated” land surrounding the infrastructure of the Government network in the Authority. The Division provides for a single parcel of freehold land in which the infrastructure of the Government network is contained.

Government Telecommunications 1991

Clause 13 defines “designated land” as the space occupied by the lines and equipment connecting lines (and their coverings) of the infrastructure, together with an additional surrounding space of 300 mm (or other distance not exceeding 1 metre specified in the regulations or the vesting order).

Clause 14 vests the designated land in the Authority and constitutes a single freehold title to the land.

Clause 15 provides that the vested land may change position as the position of the lines etc. changes.

Clause 16 provides that compensation is not payable to a Government agency for the vesting of the land, but is payable to any other person.

Clause 17 declares that a record of the designated land is not to be made in any land register, except the General Register of Deeds.

Clause 18 provides that the vesting of the designated land is not affected by (and does not affect) the change in ownership of surrounding land. In particular, the vendor in any conveyance is not required to disclose the existence of designated land.

Division 3—Operation etc. of Government network

This Division provides generally for the operation of the Government network by the Authority on behalf of the State, including the right of Government agencies to use the network

Clause 19 declares that the Authority has the control and management of the Government network and is responsible for its operation

Clause 20 enables the Minister to enter into management agreements for the operation of the network.

Clause 21 requires a Government agency whose infrastructure becomes part of the network to continue to maintain that infrastructure on terms agreed with the Authority.

Clause 22 confers on Government agencies whose infrastructure becomes part of the network the right to continue to use that infrastructure for their own communications and the right to be reimbursed for all the charges imposed by the Authority for the use of that infrastructure by the Government or other persons.

Clause 23 requires Government agencies to use the Government network if it is available and meets the reasonable requirements of the agencies.

Clause 24 prevents a Government agency from spending more than \$500,000 (or other amount approved by the Minister) on telecommunications infrastructure without the approval of the Minister or the Authority.

Clause 25 obliges Government agencies to pay for their use of the Government network

Clause 26 enables the Authority to sell any excess capacity of the Government network

Clause 27 enables the Authority to enter into contracts or arrangements to use other networks.

Clause 28 empowers the Authority to compulsorily acquire land for the network in accordance with the existing law on compulsory acquisition.

PART 3—NEW SOUTH WALES GOVERNMENT TELECOMMUNICATIONS AUTHORITY (clauses 29–48)

This Part provides for the constitution, management and functions of the Authority.

Division 1—Constitution of the Authority

Clause 29 constitutes the Authority as a statutory body representing the Crown. The Authority may use the alternative corporate name of "TELCO".

Division 2—Management of the Authority

Clause 30 places the Authority under Ministerial control.

Clause 31 requires the Authority to prepare a corporate plan each financial year in consultation with the Minister.

Clause 32 constitutes the Board of the Authority. The Board is to comprise:

- (a) the Managing Director of the Authority; and
- (b) at least 8 (and not more than 10) part-time members.

The part-time members are to include:

- a person nominated by the Minister as Chairperson;
- a person nominated by the Minister as Deputy Chairperson;
- a person nominated by the Premier;
- a person nominated by the Treasurer;
- a person nominated by the Minister responsible for the Commercial Services Group;
- a person nominated by the Minister responsible for SRA;
- a person nominated by the Minister responsible for ELCOM;
- a person nominated by the Minister responsible for Sydney Electricity.

Clause 33 specifies the functions of the Board, which generally are to determine the policies and long-term strategic plans of the Authority and to oversee the effective, efficient and economical management of the Authority.

Clause 34 provides for the appointment of a Managing Director of the Authority and any acting Managing Director. The Managing Director is to be a member of the Senior Executive Service.

Clause 35 provides that the Managing Director is to be the chief executive officer responsible for managing and controlling the affairs of the Authority in accordance with the policies of the Board and any relevant directions of the Minister.

Clause 36 provides for the appointment of the staff of the Authority, generally under the Public Sector Management Act 1988.

Government Telecommunications 1991

Division 3—Functions etc. of the Authority

Clause 37 declares that the Authority has the general functions conferred under the proposed Act, in particular the control, management and operation of the Government network

Clause 38 sets out miscellaneous functions of the Authority, including the acquisition and installation of telecommunications infrastructure, the conduct of any business connected with the network and the entering into of contracts.

Clause 39 authorises the Authority to delegate its functions.

Clause 40 enables the Authority to form subsidiary corporations or participate in joint ventures.

Division 4—Financial provisions relating to the Authority

Clause 41 provides that the Authority is to operate through an account in the Special Deposits Account in the Treasury.

Clause 42 requires the Authority to pay a dividend contribution to the Treasury.

Clause 43 authorises the Authority to invest its funds.

Clause 44 provides for the financial year of the Authority.

Division 5—General provisions relating to the Authority

Clause 45 exculpates members of the Board and others from personal liability for acts done in good faith.

Clause 46 deals with the seal of the Authority.

Clause 47 provides for the service of documents on the Authority.

Clause 48 deals with the recovery of charges etc. owed to the Authority.

**PART 4 ADDITIONAL POWERS OF GOVERNMENT AGENCIES
RELATING TO TELECOMMUNICATIONS (clauses 49–54)**

This Part confers additional powers on Government agencies to enable them to obtain the best commercial advantage from any infrastructure or facilities required by the operators of the public telecommunications networks and other licensees.

Clause 49 specifies the purpose of the Part.

Clause 50 provides that the Part does not apply to the government telecommunications network

Clause 51 confers a general power on Government agencies to enter into commercial arrangements with respect to their own telecommunications networks or anything required by the operators of the public telecommunications networks (such as the use of ducts for laying lines for those operators or the use of buildings to erect aerials).

Clause 52 requires Government agencies to notify the Authority of any proposal to exercise such a power.

Clause 53 authorises the Minister and the Authority to enter into contracts of arrangements under the Part on behalf and with the consent of Government agencies.

Clause 54 makes it clear that the powers conferred by the Part are subject to the exclusive rights of the operators of the public telecommunications networks.

PART 5—MISCELLANEOUS (clauses 55–57)

This Part contains miscellaneous provisions.

Clause 55 states that the proposed Act binds the Crown.

Clause 56 is a general regulation-making power.

Clause 57 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Schedule 1 contains standard provisions relating to the members of the Board and to the procedure of the Board.

Schedule 2 makes consequential amendments to the following Acts:

Public Authorities (Financial Arrangements) Act 1987—in order to give the Authority power to borrow money.

Public Finance and Audit Act 1983—in order to require the Authority to keep proper accounts (duly audited) and to make annual reports.

Public Sector Management Act 1988—to place the Managing Director of the Authority in the Senior Executive Service.
