

# Charter

## Board

<b>Approver (owner)</b>	Board
<b>Status</b>	FINAL
<b>Issue date</b>	22 MAY 2018





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# 1 Introduction

## 1.1 Purpose

The Board of Directors (the **Board**) of nbn co limited (**nbn**) has adopted this Charter to describe the respective roles, responsibilities and powers of:

- a. the Commonwealth; and
- b. the Board, including those matters reserved to the Board and those matters that have been delegated to **nbn** management (**Management**),

in the governance of **nbn**.

## 1.2 Overview

In summary, this Charter addresses:

- a. the nature of **nbn** as both a company limited by shares and a government business enterprise (**GBE**), and the reporting and disclosure obligations that are imposed on the Board: see section 2;
- b. the role and responsibilities of the Commonwealth as represented by its Shareholder Ministers: see section 2.2;
- c. the role and responsibilities of the Board: see section 2.3;
- d. the delegation of responsibilities to committees of the Board and to Management, including that group of managers reporting directly to the Chief Executive Officer (**CEO**) forming the Executive Committee (**ExCo**) and matters reserved to the Board: see section 3;
- e. the composition of the Board: see section 4;
- f. Board process, the role of the Chairman, Deputy Chairman and Company Secretaries: see sections 5, 6 and 7;
- g. the Board's Code of Conduct: see section 8; and
- h. review of the performance of the Board: see section 13.

# 2 nbn: a corporation and a Government business enterprise

## 2.1 Governance legal framework

- a. **nbn** is a public company incorporated under and subject to, the *Corporations Act 2001* (Cth) (**Corporations Act**). As such, each Director on the Board is subject to the same duties and responsibilities as a Director of any unlisted public company, including (but not limited to) the duty to act in the best interests of **nbn**.



- b. **nbn** is also a *wholly owned Commonwealth company* for the purposes of the *Public Governance Performance and Accountability Act 2013 (Cth) (PGPA Act)* and has been prescribed as a GBE<sup>1</sup> for the purposes of the PGPA Act. As a wholly owned Commonwealth company and a prescribed GBE, **nbn** and the Board are subject to:
- i. additional obligations imposed by the PGPA Act (the principal elements of which are set out at section 2.4a); and
  - ii. additional obligations imposed by the Commonwealth Government Business Enterprise Governance and Oversight Guidelines (*GBE Guidelines*), as amended from time to time<sup>2</sup> (the principal elements of which are also set out at section 2.2 and section 2.4a).
- c. The GBE Guidelines represent Australian Government policy and supplement and operate in conjunction with the PGPA Act. The key principles that underpin the GBE Guidelines emphasise the Commonwealth's strong interest in the performance and financial returns of **nbn**, reporting and accountability arrangements that facilitate best practice corporate governance and active oversight by the Commonwealth, and action by the Commonwealth in relation to the strategic direction of **nbn** where it prefers a different direction to that proposed by **nbn**.<sup>3</sup>

## 2.2 Role of the Commonwealth

- a. The Commonwealth is the sole shareholder of **nbn** and is represented jointly by the Minister for Communications and the Minister for Finance (*Shareholder Ministers*). The Shareholder Ministers have the following roles in the governance of **nbn**:
- i. formulating and communicating Australian Government policy to **nbn** to enable the Board to exercise **nbn's** powers under the constitution of **nbn** (*Constitution*);<sup>4</sup>
  - ii. exercising strategic control over **nbn**, consistent with its accountability to the Parliament and to the public,<sup>5</sup> including by the appointment of the Directors, the Chairman and the Deputy Chairman and, should the need arise, exercising the powers of **nbn** by passing a shareholder resolution;<sup>6</sup> and
  - iii. monitoring the operations of **nbn** through the receipt of reports and notices from **nbn**.

## 2.3 Role of the Board

- a. The Corporations Act and the Constitution establish and define the corporate powers of **nbn**. Those corporate powers are exercised by the Board, unless exercised by the Shareholder Ministers under the Constitution.<sup>7</sup>

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<sup>1</sup> As defined in s8 of the PGPA Act, and prescribed in s5(2)(e) of the *Public Governance, Performance and Accountability Rule 2014 (Cth) (PGPA Rule)*.

<sup>2</sup> Current edition: Resource Management Guide No. 126 January 2018.

<sup>3</sup> cl 1.5 of the GBE Guidelines.

<sup>4</sup> Rule 4.1.2 **nbn** Constitution and the Statement of Expectations, as supplemented or amended from time to time.

<sup>5</sup> cl 1.7(a) of the GBE Guidelines.

<sup>6</sup> Rule 8 **nbn** Constitution.

<sup>7</sup> *Ibid.*



- b. The powers of **nbn** must be exercised in accordance with the objects set out in the Constitution, in particular the object to roll-out, operate and maintain a national broadband network consistent with Australian Government policy.<sup>8</sup>
- c. The best interests of **nbn** are defined by reference to the objects and purposes of **nbn**, including Australian Government policy communicated to **nbn** from time to time and as set out in the GBE Guidelines.
- d. The Board regards **nbn** as bound by and required to implement Australian Government policy set out in formal communications from both Shareholder Ministers as well as to exercise its powers in the best interests of **nbn**.
- e. The Board recognises the importance of environmental and workplace health and safety issues and, is committed to compliance with all relevant laws and regulations to ensure the protection of the environment, the community and the health and safety of its employees and partners.
- f. Against that background, the role of the Board is to:
  - i. approve the strategic direction of **nbn**;
  - ii. engage with the Shareholder Ministers on Australian Government policy requirements, including the implications of those policy requirements for **nbn** and annually cause to be prepared and submitted a Corporate Plan;
  - iii. supervise Management in the implementation of the strategic direction, the Corporate Plan and compliance with the legal and regulatory obligations of **nbn**;
  - iv. take necessary steps to ensure compliance with duties and obligations imposed on the Board by law and by the Constitution (including, in particular, the compliance and financial reporting requirements set out at section 2.4 and the supervision of the development of risk management and internal control systems set out at section 9);
  - v. set work health and safety and environmental performance objectives, develop appropriate policies and controls, ensure legal compliance, and monitor progress against such objectives and policies;
  - vi. approve and supervise the implementation of an appropriate internal governance framework for **nbn**, including (but not limited to):
    - a. developing, promoting and ensuring compliance with **nbn's** values and governance framework;
    - b. investigating reports of unethical practice by any Director under the Board Code of Conduct in section 8 of this Charter and, monitoring investigations by Management of breaches by employees of the **nbn** Code of Conduct;
    - c. setting diversity objectives, developing a diversity policy and monitoring progress towards achieving such objectives;<sup>9</sup>
    - d. approving policies and frameworks for, and monitoring, internal control systems;

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<sup>8</sup> Rule 4 **nbn** Constitution.

<sup>9</sup> Recommendation 1.5 of ASX Corporate Governance Principles and Recommendations (3<sup>rd</sup> Edition).



- e. approving and monitoring **nbn's** compliance with **nbn's** internal and external audit requirements, including overseeing the implementation of all audits;
  - f. monitoring the operation of each subsidiary of **nbn**, and when necessary, exercising the voting power attaching to its shares in the subsidiary;
  - g. either approving or noting (where appropriate) and then monitoring those policies which bind the employees of **nbn**, Directors of **nbn** or (where specifically provided for in a relevant policy) third parties dealing with **nbn**; and
- vii. regularly monitoring the ongoing independence of each Director and the Board generally to ensure each Director continues to exercise unfettered and independent judgement and does not have any interests that derogate from carrying out the role intended with diligence and care;<sup>10</sup>
- viii. establishing and maintaining a register of interests to ensure potential conflicts can be identified and managed.<sup>11</sup>

## 2.4 Particular compliance and reporting obligations of nbn

**nbn** is bound by a number of unique governance and operational obligations arising from its status as a GBE that do not apply to an unlisted public company, including obligations arising under the:

- a. PGPA Act, as supplemented by the GBE Guidelines, that are specifically binding on the Board, including:
  - i. ensuring that **nbn** complies with any Government Policy Order;<sup>12</sup>
  - ii. consulting with the Shareholder Ministers in relation to the Corporate Plan;<sup>13</sup>
  - iii. providing confidential monthly progress reports to the Shareholder Ministers on key issues and operational and financial performance, including providing key performance metrics against Corporate Plan targets;<sup>14</sup>
  - iv. publishing quarterly reports providing financial statements and a financial and operational update;<sup>15</sup>
  - v. keeping the Shareholder Ministers informed about any material variance from Corporate Plan assumptions or forecasts and other material events;<sup>16</sup>

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<sup>10</sup> cl 2.5(a) of the GBE Guidelines.

<sup>11</sup> cl 2.5(b) of the GBE Guidelines.

<sup>12</sup> s 93 PGPA Act, cl 1.12 of the GBE Guidelines.

<sup>13</sup> cl 3.5 a) of the GBE Guidelines.

<sup>14</sup> Letter from Shareholder Ministers re Improved Transparency and Reporting Measures dated 22 December 2013, incorporated by reference into the Statement of Expectations as amended from time to time. These monthly reports replace the confidential quarterly progress reports required under the GBE Guidelines cl 3.12-3.15. Letter from Shareholder Ministers re **NBN** Co's presentation of quarterly financial and operational updates dated 1 May 2015.

<sup>15</sup> Letter from Shareholder Ministers re Improved Transparency and Reporting Measures dated 22 December 2013, incorporated by reference into the Statement of Expectations, as amended from time to time. Letter from Shareholder Ministers re **NBN** Co's presentation of quarterly financial and operational updates dated 1 May 2015.

<sup>16</sup> Statement of Expectations as amended from time to time.



- vi. keeping the Shareholder Ministers informed of the activities of **nbn** and any subsidiaries and giving the Shareholder Ministers any reports, documents and information in relation to those activities as the Shareholder Minister requires;<sup>17</sup>
  - vii. notifying the Shareholder Ministers as soon as practicable after the Directors make a significant decision in relation to **nbn** or its subsidiaries;<sup>18</sup>
  - viii. giving the Shareholder Ministers reasonable notice if the Directors become aware of any significant issue that may affect **nbn** or its subsidiaries;<sup>19</sup>
  - ix. notifying the Shareholder Ministers as soon as practicable after the Directors become aware of any significant issue that has affected **nbn** or its subsidiaries;<sup>20</sup>
  - x. adopting the Corporate Plan;<sup>21</sup>
  - xi. preparing and giving the Minister of Finance budget estimates covering **nbn's** activities for each reporting period for **nbn**;<sup>22</sup> and
  - xii. adopting **nbn's** Annual Report<sup>23</sup> and any other report that may be required.<sup>24</sup>
- b. Public Governance, Performance and Accountability Rule 2014 (Cth) (**Rule**);
  - c. Commonwealth Competitive Neutrality Policy Statement;<sup>25</sup> and
  - d. *Freedom of Information Act 1982* (Cth).

**nbn** is also subject to certain telecommunications industry specific regulation, including obligations arising under the:

- e. *Telecommunications Act 1997* (Cth);
- f. *Telecommunications (Interception and Access) Act 1979* (Cth);
- g. *Telecommunications (Interception and Access) (Data Retention) Act 2015* (Cth);
- h. *National Broadband Network Companies Act 2011* (Cth); and
- i. *Telecommunications Legislation Amendments (National Broadband Network Measures – Access Arrangements) Act 2011* (Cth).

Finally, **nbn** is subject to parliamentary oversight which requires periodic participation in parliamentary processes by some members of the Board and Management.

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<sup>17</sup> s 91(1)(a)-(b) PGPA Act, cls 3.25 - 3.30 of the GBE Guidelines.

<sup>18</sup> s 91(1)(c) PGPA Act.

<sup>19</sup> s 91(1)(d) PGPA Act.

<sup>20</sup> s 91(1)(e) PGPA Act.

<sup>21</sup> s 95 PGPA Act, cl 3.3 of the GBE Guidelines for guidance regarding the content requirements of the Corporate Plan.

<sup>22</sup> s 96 PGPA Act.

<sup>23</sup> s 97 PGPA Act, cls 1.12, 3.16 to 3.23 of the GBE Guidelines for guidance regarding the content requirements of the Annual Report.

<sup>24</sup> s 91(4) PGPA Act.

<sup>25</sup> Commonwealth Competitive Neutrality Policy Statement (June 1996: Commonwealth of Australia).



## 3 Delegation of duties and powers and matters reserved to the Board

### 3.1 Power of delegation

The Board may delegate its powers as it considers appropriate.<sup>26</sup>

### 3.2 CEO

- a. The Board has delegated many of its powers to the CEO and may modify or revoke such a delegation at any time.
- b. The CEO is responsible for implementing strategic objectives, policies, the Corporate Plan and budget of **nbn** approved by the Board and has the additional responsibilities set out in rule 12.2 of the Constitution.
- c. The CEO has delegated some of his powers to the members of ExCo.

### 3.3 Delegation to Committees

- a. The Board will from time to time establish standing committees to streamline the discharge of its responsibilities (**Committees**).
  - i. The Board has established and maintains a permanent standing Audit and Risk Committee (**Audit and Risk Committee**).<sup>27</sup>
  - ii. The Board has also established a:
    - a. Nominations Committee<sup>28</sup>; and
    - b. People and Remuneration Committee.
- b. Each Committee must adopt a charter, in terms approved by the Board, setting out the matters relevant to the composition, responsibilities and administration of the Committee.<sup>29</sup>
- c. The Board may also delegate certain decisions and give specific functions to ad hoc Committees on an 'as needed' basis under Committee charters approved by the Board.<sup>30</sup>
- d. The Board may, at its discretion, amend a Committee's charter.
- e. Any powers of the Board that are delegated to a Committee will be as set out in the Committee's charter or in the Board resolutions relating to the establishment of the Committee, or both. General powers delegated to each Committee are to:
  - i. conduct or otherwise investigate any matters within its scope of responsibility; and

<sup>26</sup> s 198D(1) *Corporations Act*.

<sup>27</sup> s 92 PGPA Act, s 28 PGPA Rule. See also Recommendation 4.1 ASX Corporate Governance Principles and Recommendations.

<sup>28</sup> cl 2.9 of the GBE Guidelines.

<sup>29</sup> s 92 PGPA Act, s 28 and s 17 PGPA Rule, commentary to Recommendations 1.5, 2.1, 4.1, 8.1 ASX Corporate Governance Principles and Recommendations.

<sup>30</sup> s 198D *Corporations Act*.



- ii. seek information or advice from employees or external parties including professional advice within its scope of responsibility.
- f. The Committees are as follows:
  - i. **Audit and Risk Committee** which assists the Board in satisfying itself that **nbn** and its subsidiaries are complying with their financial management, risk oversight and management, reporting obligations, internal control and compliance with relevant laws and policies.
  - ii. **Nominations Committee** which assists the Board in fulfilling its governance responsibilities in relation to the appointment, induction, independence and ongoing assessment of the skills and experience of Directors, Board composition, CEO recruitment and, succession planning for Directors, the CEO and members of **nbn's** ExCo and evaluating the performance of the Board, its Committees and Directors.
  - iii. **People and Remuneration Committee** which assists the Board in fulfilling its governance responsibilities in relation to establishing people management and remuneration policies and practices for **nbn**.

## 3.4 Reserved authorities

The following matters are specifically reserved for the Board:<sup>31</sup>

- a. the approval of the appointment and removal of:
  - i. the CEO following consultation with the Commonwealth, and evaluation of the CEO's performance; and
  - ii. managers reporting directly to the CEO;
- b. the setting of the remuneration of the CEO;
- c. the establishment of Board Committees, their membership and delegated powers;
- d. the approval of the charter of each Board Committee including any relevant subsequent amendments thereto;
- e. the appointment, re-appointment or removal of **nbn's** external auditors;<sup>32</sup>
- f. the recommendation of dividends;
- g. the approval of financial statements and corporate reporting;
- h. the approval of the Annual Report and any interim report that may be required;
- i. the approval of the Corporate Plan;
- j. the approval of policies and frameworks for risk management, regulatory risk and compliance monitoring, internal control systems and investment strategy;

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<sup>31</sup> Recommendation 1.1 ASX Corporate Governance Principles and Recommendations.

<sup>32</sup> s 98(1) PGPA Act, s 15 Auditor-General Act 1997 (Cth).



- k. the approval of capital expenditure, acquisitions and divestiture decisions whose value and/or nature is such as to fall outside of the delegations of authority to Management from time to time;
- l. any matter reserved for the approval of a Board Committee in its charter; and
- m. any other specific matters nominated by the Board from time to time.

## 4 Board composition

### 4.1 Board composition<sup>33</sup>

- a. The Board must comprise between three and nine Directors.<sup>34</sup>
- b. The Board may, following consultation with the Shareholder Ministers, provide the Shareholder Ministers (through the Chairman) with a shortlist of candidates for Board membership to supplement or replace the existing Directors.<sup>35</sup>
- c. When identifying potential candidates the Board is to ensure that its composition comprises:
  - i. a majority of Directors who are independent, namely:<sup>36</sup>
    - (a) Non-Executive Directors;
    - (b) free of any business or other relationship that could materially interfere with, or could reasonably be perceived to materially interfere with the independent exercise of their judgment;
  - ii. an appropriate balance of relevant skills;<sup>37</sup> and
  - iii. an appropriate mix of relevant industry experience, expertise, different perspectives and diversity (including, but not limited to, gender, age, ethnicity and cultural background).<sup>38</sup>
- d. In particular, when identifying potential candidates the Board is to have regard to Government policy on fostering a governance culture that embraces diversity in the composition of boards.
- e. With agreement from the Shareholder Ministers, the Board may undertake additional processes for identifying Board candidates such as public advertising or the use of executive search processes.<sup>39</sup>
- f. The Chairman may recommend the reappointment of an existing Director where this is sought by the Director and where appropriate.<sup>40</sup>
- g. The Board should be conscious of the duration of each Director's tenure in succession planning.<sup>41</sup>

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<sup>33</sup> Note that the provisions of this section (with the exception of those provisions relating to the Chairman at (f) and (h)) have been delegated to the Nominations Committee: see the Committee charter at paragraph 4.4.

<sup>34</sup> Rule 5.4.1 nbn Constitution.

<sup>35</sup> cl 2.9(b)(i) of the GBE Guidelines.

<sup>36</sup> Recommendation 2.4 ASX Corporate Governance Principles and Recommendations.

<sup>37</sup> cl 2.8 of the GBE Guidelines and recommendation 2.2 ASX Corporate Governance Principles and Recommendations.

<sup>38</sup> cl 2.8 of the GBE Guidelines.

<sup>39</sup> cl 2.9(b)(ii) of the GBE Guidelines.

<sup>40</sup> cl 2.9(b)(iii) of the GBE Guidelines.



- h. The composition of the Board will be assessed at least once a year (and more frequently if required) both in respect of Director attributes and tenure of Directors as part of regular succession planning, including as part of the Chairman's annual Board plan.<sup>42</sup>

## 4.2 Appointment and removal of Directors

- a. Each Director is appointed by the Shareholder Ministers<sup>43</sup> under a formal letter of appointment setting out the key terms and conditions of his/her appointment, and including certain information prescribed in the GBE Guidelines, to ensure that each Director clearly understands **nbn's** expectations of him or her.<sup>44</sup>
- b. Each Director will formally respond to a letter of appointment within 14 days of receipt and provide an undertaking to the Shareholder Ministers that he/she will advise the Shareholder Ministers if there is any change in circumstance that might impact on his/her ability to be a Director.<sup>45</sup>
- c. **nbn's** Shareholder Ministers may remove a Director at any time prior to the completion of their term of appointment.<sup>46</sup> Removal of a Director would be considered by the Shareholder Ministers, in any case of failure to keep **nbn's** Shareholder Ministers adequately informed, in situations of ongoing under-performance in respect of financial or other aspects of the operations of the business and, in circumstances where continuing to be a Director could embarrass the GBE or the Shareholder Ministers.<sup>47</sup>

## 4.3 Independence of Directors

At least annually and when a Director is being considered for reappointment, the Board must assess the independence of each Director<sup>48</sup> by:

- a. securing from Directors, through the Company Secretaries, a Declaration of Private Interests (or equivalent declaration); and
- b. reviewing each Director's declaration and any other information available in relation to the Director's interests in order to make an informed decision as to the independence or otherwise of that Director.

# 5 Board process

## 5.1 Meetings

- a. The Board anticipates holding in the order of 10 scheduled meetings per year and may meet on an ad-hoc basis as required for the efficient performance of its functions.

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<sup>41</sup> cl 2.14 of the GBE Guidelines and Rule 5.5.1 of **nbn** Constitution.

<sup>42</sup> cl 2.9(a) of the GBE Guidelines.

<sup>43</sup> cl 2.13 of the GBE Guidelines.

<sup>44</sup> cl 2.3(a) of the GBE Guidelines.

<sup>45</sup> cl 2.4 of the GBE Guidelines.

<sup>46</sup> cl 2.19 of the GBE Guidelines.

<sup>47</sup> Section 8.3 of this Charter.

<sup>48</sup> Recommendations 2.3 and 2.4 of the ASX Corporate Governance Principles and Recommendations (3<sup>rd</sup> Edition)



- b. Directors must use all reasonable endeavours to attend Board meetings in person either by physical attendance or use of videoconferencing/ teleconferencing facilities.
- c. A Director may convene a meeting of the Board at any time by giving reasonable notice to every other Director.<sup>49</sup>
- d. Periodically, Non-Executive Directors will meet without Executive Directors or Management present.<sup>50</sup>

## 5.2 Planning

The Board will develop and maintain:

- a. a forward schedule of proposed agenda items for each meeting for the forthcoming calendar year which covers all the responsibilities outlined in this Charter; and
- b. an annual schedule of meeting dates, times and locations.

## 5.3 Quorum for meetings

The quorum for a meeting of the Board is a majority of the total number of Directors holding office at the time of the meeting. The quorum must be present at all times during the meeting.<sup>51</sup>

## 5.4 Board reports

- a. Management will aim to provide Board reports to Directors no less than five calendar days prior to a scheduled meeting.
- b. The Chairman will monitor the volume, quality and timeliness of distribution of Board reports to the Board.

## 5.5 Written resolutions

- a. The Board will only resolve matters by written resolution, in lieu of meeting, when absolutely necessary.
- b. All Directors shall receive notice of a resolution and the resolution shall be passed in accordance with the **nbn** Constitution.

## 6 Chairman

- a. The Chairman is responsible for leadership of the Board and for the efficient functioning and proper process of the Board. The Chairman is appointed by the Shareholder Ministers.<sup>52</sup>
- b. There may be a Deputy Chairman who will be appointed by the Chairman following consultation with the Shareholder Ministers. The respective roles and responsibilities of the Chairman and any Deputy Chairman will be agreed between them and approved by the Board.<sup>53</sup>

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<sup>49</sup> Rule 7.2.1 **nbn** Constitution.

<sup>50</sup> Commentary on Recommendation 2.4 of ASX Corporate Governance Principles and Recommendations.

<sup>51</sup> Rule 7.4.1 **nbn** Constitution.

<sup>52</sup> Rule 7.3.1 **nbn** Constitution



- c. The Chairman and any Deputy Chairman will be an independent Non-Executive Director and the roles of Chairman or of Deputy Chairman and CEO will not be exercised by the same individual, unless otherwise agreed by the Shareholder Ministers.<sup>54</sup> A former CEO will not qualify as an independent Director unless there has been a period of at least three years between ceasing employment with **nbn** and serving on the Board.<sup>55</sup>
- d. The Chairman presides at all meetings at which the Chairman is present.<sup>56</sup> The Deputy Chairman presides when the Chairman is unavailable for any reason.<sup>57</sup>
- e. If the Chairman (or in his or her absence or unavailability for any reason, the Deputy Chairman) is not present at a meeting within 10 minutes of the scheduled commencement time of the meeting, or not willing to act as Chairman of the meeting, the Directors present are to appoint one of their number to be the chairperson of the meeting.<sup>58</sup>
- f. The Chairman (or the Deputy Chairman or any other person acting in that capacity at a Directors' meeting) of the meeting has a casting vote, if necessary, in addition to any vote the Chairman has in his or her capacity as a Director.<sup>59</sup>
- g. The Chairman or the Deputy Chairman (as agreed between them under paragraph 6b of this Charter) is responsible for the provision of confidential monthly reports to the Shareholder Ministers and the publication of quarterly reports.<sup>60</sup>

## 7 Company Secretaries

- a. The Company Secretaries, who are appointed in accordance with **nbn's** Constitution, are responsible for the coordination of, and will retain master copies of, all Board business, including agendas, board reports, minutes and all statutory and other filings relating to the Board and Company administration.<sup>61</sup>
- b. The Company Secretaries will make these documents available to Directors to inspect at **nbn's** registered office, on request.
- c. All Directors will have direct access to the Company Secretaries.

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<sup>53</sup> Ibid.

<sup>54</sup> cl 2.8(b) of the GBE Guidelines.

<sup>55</sup> See commentary to recommendation 2.3 ASX Corporate Governance Principles and Recommendations.

<sup>56</sup> Rule 7.3 **nbn** Constitution.

<sup>57</sup> Rule 7.6.1 **nbn** Constitution.

<sup>58</sup> Rule 7.3.5 **nbn** Constitution.

<sup>59</sup> Rule 7.5.2 **nbn** Constitution.

<sup>60</sup> Letter from the Shareholder Ministers re Improved Transparency and Reporting Measures dated 22 December 2013, incorporated by reference into the Statement of Expectations, as amended from time to time. These monthly reports replace the confidential quarterly progress reports required under the GBE Guidelines cl 3.16 to 3.23. Letter from Shareholder Ministers re NBN Co's presentation of quarterly financial and operational updates dated 1 May 2015.

<sup>61</sup> Recommendation 1.4 ASX Corporate Governance Principles and Recommendations.



## 8 Board Code of Conduct

### 8.1 Ethical and responsible decision making

- a. The Board is committed to the promotion of ethical, honest and responsible decision-making and the observance of their fiduciary duties.
- b. Directors will at all times bring an independent judgment to bear on matters before the Board.
- c. The Board will consider the reasonable expectations of **nbn**'s stakeholders, including the Shareholder Ministers, and through them the Commonwealth and the Parliament, the employees of **nbn**, its customers and its suppliers and, where applicable given the scale of the project, the broader community.
- d. The Board will investigate reports of breaches by any Director of this Code of Conduct and will monitor the investigation by Management of breaches by employees of the **nbn** Code of Conduct to ensure any systematic issues are adequately addressed.
- e. Directors are expected to participate in all induction and orientation programs and, to participate in training and awareness raising programs which will assist in keeping Directors abreast of contemporary developments and leading practices relating to the functions of the Board.
- f. The Directors must act in the best interests of **nbn**.<sup>62</sup>
- g. Where there is any doubt as to the best interests of **nbn**, the Board will proactively engage with its Shareholder Ministers to resolve that doubt, including by clarification of Australian Government policy.
- h. Directors will be taken to act in the best interests of the Commonwealth, if they act in accordance with a resolution of the Commonwealth in accordance with rule 8 of the Constitution.<sup>63</sup>

### 8.2 Conflicts of interest

- a. This section should be read in conjunction with **nbn's** Directors Conflicts of Interest Policy.
- b. Directors must disclose the nature and extent of any material personal interest they have in any matter which relates to the affairs of **nbn** unless permitted to avoid doing so by the Corporations Act.<sup>64</sup>
- c. A Director with a material personal interest may not be present when that matter is being discussed or voted on except in accordance with the Corporations Act.<sup>65</sup>
- d. Directors will ensure that no decision or action is taken that has the effect of prioritising their personal interests over **nbn's** interests.
- e. The Company Secretaries will record all notifications of interests both in the minutes of the relevant meeting and in a register which is available for inspection by any Director.<sup>66</sup>

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<sup>62</sup> ss 180 to 184 *Corporations Act*.

<sup>63</sup> Rule 5.2.2 **nbn** Constitution.

<sup>64</sup> s 191(1) *Corporations Act*.

<sup>65</sup> s 195 *Corporations Act*.

<sup>66</sup> ss 191(3) and 192(4) *Corporations Act* and cl 2.5(b) of the GBE Guidelines.



- f. Directors should consider past employment, consultancy arrangements and related party issues in making a declaration. The Board, in consultation with the Chairman, should be satisfied there are sufficient processes in place to manage any real or perceived conflict.

## 8.3 Embarrassment

Directors must immediately inform the Chairman (who may inform the Shareholder Ministers) where their continued service as a Director could embarrass **nbn** or the Shareholder Ministers. The Director may be asked to resign or be removed.<sup>67</sup>

## 8.4 Confidentiality

Confidential information received by a Director in the course of his/her service as a Director remains the property of **nbn** and the Director must not disclose or permit the disclosure of such information without the authorisation of the Board, unless required by law.

# 9 Risk management

The Board will:

- a. identify enterprise risks (including, for example, occupational health and safety), establish policies for the oversight and management of material business risks, and regularly review and approve such policies;
- b. require Management to develop risk management and internal control systems in accordance with such policies and to report to the Board on whether such risks are being effectively managed; and
- c. review the effectiveness of **nbn's** risk management and internal control systems and policies at least annually.

# 10 Remuneration

- a. The remuneration of each Non-Executive Director is determined by the Commonwealth Remuneration Tribunal from time to time.<sup>68</sup>
- b. The remuneration of each Executive Director is determined by the Board following recommendation from the People and Remuneration Committee.

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<sup>67</sup> cl 2.19(b) of the GBE Guidelines.

<sup>68</sup> s 7(3) *Remuneration Tribunal Act 1973* (Cth).



## 11 Communications, disclosure of information and reporting

- a. The Board will put in place authorisation and monitoring processes in support of the objective that **nbn** disclosures, announcements and other communications with stakeholders (see section 8.1c above) are factual and timely.
- b. The Board will develop and implement a framework for review, authorisation and reporting on **nbn**'s financial position. The framework will include review and consideration of the financial statements by the Audit and Risk Committee and, a process to ensure the independence and competence of **nbn**'s external auditors.
- c. The Board will do what it reasonably can to ensure that **nbn** complies with its planning and reporting obligations under the Corporations Act, the PGPA Act and the GBE Guidelines set out in Schedule A. In particular, the Board will do what it reasonably can to ensure that:
  - i. **nbn** has procedures and processes in place to ensure the Shareholder Ministers are kept informed of **nbn**'s performance and major developments affecting its state of affairs; and
  - ii. **nbn** gives the Shareholder Ministers the reports, documents and information in relation to its operations that the Shareholder Ministers require.

## 12 Access to information and independent advice by Directors

The Board collectively, and each Director individually:

- a. has access to any information in the possession of **nbn** he/she considers necessary to fulfil his/her responsibilities and to exercise independent judgment when making decisions;<sup>69</sup>
- b. has access to any information relating to subsidiaries of **nbn**;
- c. has access to:
  - i. Management to seek explanations and information in relation to **nbn** and its subsidiaries;
  - ii. auditors, both internal and external, to seek explanations and information from them in relation to the management of **nbn**;
- d. may seek any independent professional advice in accordance with **nbn** Funding Director's Access to Independent Advice Policy; and
- e. may seek any advice or services to be provided to **nbn** by third party advisers in accordance with applicable **nbn** policies and procedures, as amended from time to time.

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<sup>69</sup> Recommendation 1.3 ASX Corporate Governance Principles and Recommendations.



## 13 Review of performance

### 13.1 Board and Director performance

- a. The Board will annually review the performance of:
  - i. the Board as a whole;
  - ii. each Committee in conjunction with the Committee; and
  - iii. each Director, including the Chairman and the Deputy Chairman.<sup>70</sup>
- b. The Board will annually review the processes of the Board.<sup>71</sup>
- c. The Chairman will provide the Shareholder Ministers with written confirmation that the process outlined at a above has been followed and raise any areas of concern with the Shareholder Ministers as required.<sup>72</sup>

## 14 Review of Charter and future amendments

The Board will review this Charter at least annually, and amend it as required.

### Related policies

- Code of Conduct
- Conflict of Interest – Directors
- Diversity
- External Securities (Declaration of Private Interests) - Directors
- Funding Director's Access to Independent Advice

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<sup>70</sup> cl 2.21 of the GBE Guidelines.

<sup>71</sup> Recommendation 1.6 ASX Corporate Governance Principles and Recommendations.

<sup>72</sup> cl 2.21 of the GBE Guidelines.



# Schedule A

## Summary of Planning and Reporting Requirements<sup>73</sup>

Month	Description	Requirements
January	Monthly Report	Submit to Shareholder Ministers
February	Monthly Report	Submit to Shareholder Ministers
	Half Year Report – to 31 December	Submit to Shareholder Ministers by 11 February
	Half Year Briefing	To Stakeholders and Media
March	Monthly Report	Submit to Shareholder Ministers
April	Monthly Report	Submit to Shareholder Ministers
	Quarterly Financial and Operational Report – to 31 March	Submit to Shareholder Ministers
	Quarterly Briefing	To Stakeholders and Media
May	Monthly Report	Submit to Shareholder Ministers
	March Quarterly Report	Submit to Shareholder Ministers by 11 May
June	Monthly Report	Submit to Shareholder Ministers
	Corporate Plan – Draft	Submit to Shareholder Ministers by 30 June
July	Monthly Report	Submit to Shareholder Ministers
August	Monthly Report	Submit to Shareholder Ministers
	Corporate Plan – Final	Submit to Shareholder Ministers by 31 August
	June Quarterly Report	Submit to Shareholder Ministers by 31 August
September	Monthly Report	Submit to Shareholder Ministers
	Annual Report	Submit to Shareholder Ministers by 30 September (for tabling in Parliament)
	Annual Report Briefing	To Stakeholders and Media
October	Monthly Report	Submit to Shareholder Ministers
	Quarterly Financial and Operational Report – to 30 September	Submit to Shareholder Ministers
	Quarterly Briefing	To Stakeholders and Media
November	Monthly Report	Submit to Shareholder Ministers
	September Quarterly Report	Submit to Shareholder Ministers by 11 November
December	Monthly Report	Submit to Shareholder Ministers

<sup>73</sup> Refer to section 11c of this Charter. The timing for reporting requirements shown in the above table may vary at the request or direction of Government, cl 3.1, 3.2 and Table 2 on page 15 of the GBE Guidelines.



## Approved and adopted

This Charter was approved and adopted by the Board on 6 February 2018.

Signed

A handwritten signature in black ink that reads 'J. P. Switkowski'. The signature is written in a cursive style with a large initial 'J'.

**Chairman of the Board of Directors of nbn**

Date 22 May 2018

## Approval table

nbn	Meeting no.	Meeting date	Agenda item no.
Board	117	22 May 2018	17.1
Board	115	06 February 2018	17.2
Board	113	21 November 2017	19.2
Board	103	22 November 2016	15.2
Board	90	13 October 2015	14.1
Board	87	14 July 2015	17.1
Board	74	15 July 2014	16.1
Board	59	11 July 2013	27
Board	46	16 March 2012	10