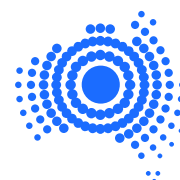


# Charter

## Board

<b>Approver (owner)</b>	Board
<b>Status</b>	FINAL
<b>Issue date</b>	10 DECEMBER 2024



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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 Chair, Deputy Chair 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 2.4 a); and
  - ii. additional obligations imposed by the Commonwealth Government Business - Enterprises Governance and Oversight Guidelines Resource Management Guide 126, as amended from time to time (**GBE Guidelines**)<sup>2</sup> (the principal elements of which are also set out at section 2.2 and section 2.4 a).
- c. The GBE Guidelines represent Australian Government policy and supplement and operate in conjunction with the PGPA Act and the *Public Governance, Performance and Accountability Rule 2014* (Cth) (**PGPA Rule**).<sup>3</sup> The key principles which 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>4</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:

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<sup>1</sup> As defined in s8 and s90 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 1.4 of the GBE Guidelines.

<sup>4</sup> cl 1.5 of the GBE Guidelines.



- 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>5</sup>
- ii. exercising strategic control over nbn, consistent with its accountability to the Parliament and to the public,<sup>6</sup> including by the appointment of the Directors, the Chair and the Deputy Chair and, should the need arise, exercising the powers of nbn by passing a shareholder resolution<sup>7</sup>;
- iii. setting clear objectives for nbn<sup>8</sup>; and
- iv. monitoring the operations of nbn through the receipt of reports and notices from nbn.

## 2.3 Role of the Board

- a. As a GBE, nbn is subject to the powers of direction and decision making reserved to the Commonwealth by law and by nbn's Constitution and, exercised by the Shareholder Ministers.
- b. 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>9</sup>
- c. 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>10</sup>
- d. 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.
- e. 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.
- f. 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.
- g. 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;

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<sup>5</sup> Rule 4.1.2 nbn Constitution and the Statement of Expectations, as supplemented or amended from time to time.

<sup>6</sup> cl 1.7(a) of the GBE Guidelines.

<sup>7</sup> Rule 8 nbn Constitution.

<sup>8</sup> cl 1.7(b) of the GBE Guidelines

<sup>9</sup> Rule 8 nbn Constitution.

<sup>10</sup> Rule 4 nbn Constitution.



- iii. supervise and challenge Management in the implementation of the strategic direction, the Corporate Plan and compliance with the legal and regulatory obligations of nbn;
- iv. ensure the solvency of nbn;
- v. ensure the long term financial and organisational sustainability of nbn, which includes considering the culture and behaviours of nbn Management and personnel;
- vi. demonstrate leadership of nbn, challenge Management where necessary in its decision making and hold Management to account;
- vii. 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 );
- viii. oversee and monitor the effectiveness of nbn's sustainability governance framework, strategy and associated actions; management of material social and environmental risks, issues and opportunities and associated non-financial (sustainability) reporting and disclosure requirements;
- ix. 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;
- x. 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>11</sup>
  - d. approving policies and frameworks for, and monitoring internal control systems;
  - e. approving and monitoring nbn's compliance with nbn's internal and external audit requirements, including overseeing the implementation of all audits; and
  - f. 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;

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<sup>11</sup> Recommendation 1.5 of ASX Corporate Governance Principles and Recommendations (4th Edition-February 2019).



- xi. endeavour to govern nbn's activities to minimise any divergence of interests between nbn and its Shareholder Ministers;<sup>12</sup>
- xii. 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>13</sup> and
- xiii. establishing and maintaining a register of interests to ensure potential conflicts can be identified and managed.<sup>14</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 nbn complies with any Government Policy Order;<sup>15</sup>
  - ii. consulting with the Shareholder Ministers in relation to the Corporate Plan;<sup>16</sup>
  - iii. providing progress reports to the Shareholder Ministers which may include financial statements and key performance metrics against Corporate Plan targets;<sup>17</sup>
  - iv. publishing reports such as the Annual Report as required;
  - v. keeping the Shareholder Ministers informed of the activities of nbn and giving the Shareholder Ministers any reports, documents and information in relation to those activities as the Shareholder Minister requires;<sup>18</sup>
  - vi. notifying the Shareholder Ministers as soon as practicable after the Directors make a significant decision in relation to nbn;<sup>19</sup>
  - vii. giving the Shareholder Ministers reasonable notice if the Directors become aware of any significant issue that may affect nbn;<sup>20</sup>
  - viii. notifying the Shareholder Ministers as soon as practicable after the Directors become aware of any significant issue that has affected nbn;<sup>21</sup>

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<sup>12</sup> 1.7(d)(i) of the GBE Guidelines.

<sup>13</sup> cl 2.5(a) of the GBE Guidelines.

<sup>14</sup> cl 2.5(b) of the GBE Guidelines.

<sup>15</sup> s22 and s93 PGPA Act, cl 1.12 of the GBE Guidelines.

<sup>16</sup> cl 3.5 (a) of the GBE Guidelines.

<sup>17</sup> cl 3.12-3.15 of the GBE Guidelines.

<sup>18</sup> s 91(1)(a)-(b) PGPA Act, cls 3.25 - 3.29 of the GBE Guidelines.

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

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

<sup>21</sup> s 91(1)(e) PGPA Act.





- ix. adopting the Corporate Plan;<sup>22</sup>
  - x. preparing and giving the Minister of Finance budget estimates covering nbn's activities for each reporting period for nbn;<sup>23</sup> and
  - xi. adopting nbn's Annual Report<sup>24</sup> and any other report that may be required<sup>25</sup>
- b. PGPA Rule;
  - c. Commonwealth Competitive Neutrality Policy Statement;<sup>26</sup> and
  - d. *Competition and Consumer Act 2010* (Cth);
  - e. *Freedom of Information Act 1982* (Cth);
  - f. *Public Interest Disclosure Act 2013* (Cth);
  - g. any other document which is designated or agreed in writing by nbn and the Australian Government<sup>27</sup>.

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

- h. *National Broadband Network Companies Act 2011* (Cth); and
- i. *Telecommunications Act 1997* (Cth);
- j. *Telecommunications (Interception and Access) Act 1979* (Cth);
- k. *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth);
- l. *Telecommunications Legislation Amendment (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>22</sup> s 95 PGPA Act, cl 3.3 of the GBE Guidelines for guidance regarding the content requirements of the Corporate Plan.

<sup>23</sup> s 96 PGPA Act.

<sup>24</sup> s 97 PGPA Act, cls 1.12, 3.16 to 3.23 of the GBE Guidelines, Resource Management Guide No. 137 Annual Reporting for Commonwealth Companies (May 2020) and Resource Management Guide No. 139 Commonwealth companies Executive Remuneration Reporting Guide for Annual Reports (April 2019) for guidance regarding the content requirements of the Annual Report.

<sup>25</sup> s 91(4) PGPA Act.

<sup>26</sup> Commonwealth Competitive Neutrality Policy Statement (June 1996: Commonwealth of Australia).

<sup>27</sup> Statement of Expectations as amended from time to time



## 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>28</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/her 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>29</sup>
  - ii. The Board has also established a:
    - a. Nominations Committee<sup>30</sup>; and
    - b. People and Remuneration Committee<sup>31</sup>.
- b. The Board will:
  - i. determine the membership of each Committee having regard to workload, skills, experience and regulatory requirements of Government;
  - ii. ensure that Board committees do not duplicate work performed by the CEO and Management,<sup>32</sup> and

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<sup>28</sup> s 198D (1) *Corporations Act*.

<sup>29</sup> s 92 PGPA Act, s 17 and s 28 PGPA Rule. See also Recommendations 4.1, 7.1 and 7.2 ASX Corporate Governance Principles and Recommendations.

<sup>30</sup> cl 2.9 of the GBE Guidelines and Recommendation 2.1 ASX Corporate Governance Principles and Recommendations.

<sup>31</sup> Recommendation 8.1 ASX Corporate Governance Principles and Recommendations.

<sup>32</sup> cl 2.23 of the GBE Guidelines



- iii. annually review the composition of each Committee.<sup>33</sup>
- c. 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>34</sup>
- d. 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>35</sup>
- e. The Board may, at its discretion, amend a Committee's charter.
- f. 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
  - ii. seek information or advice from employees or external parties including professional advice within its scope of responsibility.
- g. The Committees are as follows:
  - i. **Audit and Risk Committee** which assists the Board in satisfying itself that nbn is complying with its financial management/reporting, performance reporting, 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, succession planning for Directors, the CEO and members of nbn's ExCo and, evaluating the performance of the Board, its Committees and all 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>36</sup>

- a. the approval of the appointment and removal of:
  - i. the CEO following consultation with Shareholder Ministers;<sup>37</sup> and

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<sup>33</sup> cl 2.23 of the GBE Guidelines

<sup>34</sup> s 92 PGPA Act, s 17 and s 28 PGPA Rule, cl 3.31 of the GBE Guidelines, commentary to Recommendations 2.1, 4.1, 7.1 and 8.1 ASX Corporate Governance Principles and Recommendations.

<sup>35</sup> s 198D *Corporations Act*.

<sup>36</sup> Recommendation 1.1 ASX Corporate Governance Principles and Recommendations.

<sup>37</sup> Cl 2.9 (b) of the GBE Guidelines.



- ii. managers reporting directly to the CEO;
- b. the evaluation of the performance of the CEO;
- c. the setting of the remuneration of the CEO within the parameters of the *Remuneration Tribunal Act (Cth) 1973*, if applicable;<sup>38</sup>
- d. the establishment of Board Committees, their membership and delegated powers;
- e. the approval of the charter of each Board Committee including any relevant subsequent amendments thereto;
- f. the appointment, re-appointment or removal of nbn's external auditors;<sup>39</sup>
- g. the recommendation of dividends;
- h. the approval of financial statements and corporate reporting;
- i. the approval of the Annual Report and any interim report that may be required;
- j. the approval of the Corporate Plan;
- k. the approval of policies and frameworks for risk management, regulatory risk and compliance monitoring, internal control systems and investment strategy;
- l. 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;
- m. the approval of matters relating to funding arrangements and debt capital markets including:
  - i. the establishment of any debt financing arrangement or programme, including, without limitation, the approval of the terms of any such programme and any notes issued (whether under such programme or on a standalone basis in any jurisdiction) and approval of the subsequent issue, any disclosure materials and appointment of such arrangers, dealers, managers and other entities as the Board considers appropriate; and
  - ii. the approval of any financing arrangement, including, without limitation, any facilities, loans or short term credit arrangements (including, without limitation, the terms of and documents associated with any such facilities or loans including Revolving Credit Facilities, Term Loans and Common Term Deeds or commercial paper programmes and bank facilities whether committed facilities or uncommitted arrangements;
- n. any matter reserved for the approval of a Board Committee in its charter; and
- o. any other specific matters nominated by the Board from time to time.

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<sup>38</sup> CI 5.1 (a) of the GBE Guidelines.

<sup>39</sup> As at the date of this Charter, the auditor of nbn must be the Auditor-General, s 43 and 98(1) PGPA Act, s 21(c) *Auditor-General Act 1997* (Cth).



## 4 Board composition

### 4.1 Board composition<sup>40</sup>

- a. The Board must comprise between three and nine Directors.<sup>41</sup>
- b. The Board may, following consultation with the Shareholder Ministers, provide the Shareholder Ministers (through the Chair) with a shortlist of candidates for Board membership to supplement or replace existing Directors.<sup>42</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>43</sup>
    - (a) Non-Executive Directors; and
    - (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>44</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>45</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>46</sup>
- f. The Chair may recommend to the Shareholder Ministers the reappointment of an existing Director where this is sought by the Director and where appropriate.<sup>47</sup>
- g. The Board should be conscious of the duration of each Director's tenure in succession planning.<sup>48</sup>
- 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 as part of regular succession planning, including as part of the Chair's Board Plan.<sup>49</sup>

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<sup>40</sup> Note: some provisions of this section have been delegated to the Nominations Committee: see the Committee charter at paragraph 4.4.

<sup>41</sup> Rule 5.4.1 nbn Constitution.

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

<sup>43</sup> Recommendation 2.4 ASX Corporate Governance Principles and Recommendations.

<sup>44</sup> cl 2.8 of the GBE Guidelines and Recommendation 2.2 ASX Corporate Governance Principles and Recommendations.

<sup>45</sup> cl 2.8 of the GBE Guidelines.

<sup>46</sup> cl 2.9(b)(ii) of the GBE Guidelines.

<sup>47</sup> cl 2.9(b)(iii) of the GBE Guidelines.

<sup>48</sup> Rule 5.5.1 of nbn Constitution.

<sup>49</sup> cl 2.9(a) of the GBE Guidelines and Commentary to 2.6 ASX Corporate Governance Principles and Recommendations.



## 4.2 Appointment and removal of Directors

- a. Each Director is appointed by the Shareholder Ministers<sup>50</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/her.<sup>51</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:
  - i. 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; and
  - ii. he/she has reviewed the online GBE Directors Guide.<sup>52</sup>
- c. nbn's Shareholder Ministers may, at their discretion, remove a Director at any time prior to the completion of the Director's term of appointment.<sup>53</sup>
- d. Upon termination of employment with nbn, an Executive Director must immediately resign from any office he/she holds in nbn or any associated entity.

## 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>54</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.

The Board considers a Director to be independent where the Director is independent of Management and free of any interest, position or relationship that might influence or reasonably be perceived to influence, in a material respect, the Director's capacity to bring an independent judgment to bear on issues before the Board and to act in the best interests of the entity as a whole<sup>55</sup>.

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<sup>50</sup> cl 2.13 of the GBE Guidelines.

<sup>51</sup> cl 2.3(a) of the GBE Guidelines.

<sup>52</sup> cl 2.4(a) of the GBE Guidelines.

<sup>53</sup> cl 2.19 of the GBE Guidelines.

<sup>54</sup> Recommendations 2.3 and 2.4 of the ASX Corporate Governance Principles and Recommendations.

<sup>55</sup> Commentary to 2.3 of the ASX Corporate Governance Principles and Recommendations.



## 4.4 Indemnity and Insurance

nbn will:

- a. execute with each Director an Officer Protection Deed in a reasonable form approved by the Board; and
- b. arrange for the benefit of each Director, subject to cover availability at commercially acceptable premiums to the satisfaction of the Board, a policy of Directors' and Officers' Liability Insurance in a form approved by the Board and in accordance with the nbn Constitution<sup>56</sup>.

## 4.5 External Directorships

- a. Non-executive Directors

A Non-Executive Director should continually evaluate the number of boards of companies (and any committees of those boards) on which the Non-Executive Director serves, to ensure that each company can be given the time and attention to detail required to properly exercise the Director's powers and discharge the Director's duties to that company. A Non-Executive Director shall notify the Chair prior to responding to an invitation to become a Director of any other company<sup>57</sup> and, in deciding whether or not to accept the invitation, the Director must have regard to:

- i. the views and recommendations of the Chair with respect to the Director acting simultaneously as a Director of nbn and as a Director of an external entity/ies; and
- ii. best practice standards on multiple directorships.

- b. Executive Directors

An Executive Director shall not accept an invitation to become a Director of any other company without the prior approval of the Chair.

# 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.
- b. Directors must use all reasonable endeavours to attend Board meetings in person either by physical attendance or use of videoconferencing/ teleconferencing facilities.

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<sup>56</sup> Rule 11 nbn Constitution.

<sup>57</sup> Commentary to Recommendation 2.1 of ASX Corporate Governance Principles and Recommendations.



- c. A Director may convene a meeting of the Board at any time by giving reasonable notice to every other Director.<sup>58</sup>
- d. Periodically, Non-Executive Directors will meet without Executive Directors or Management present.<sup>59</sup>
- e. Any Director may submit business to be included on the agenda provided that the Company Secretaries or his/her designated representative have been given sufficient notice of the agenda item.

## 5.2 Decisions

A decision of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The Chair (or the Deputy Chair or any other person acting in the capacity as the Chair at a Directors' meeting<sup>60</sup>) has a casting vote, if necessary, in addition to any vote the Chair has in his/her capacity as a Director<sup>61</sup>.

## 5.3 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 which will be determined by the Company Secretaries in consultation with the Chair in the first instance and, subsequently in consultation with the Board.

## 5.4 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>62</sup>

## 5.5 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 Chair will monitor the volume, quality and timeliness of the distribution of Board reports to the Board.

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<sup>58</sup> Rule 7.2.1 nbn Constitution.

<sup>59</sup> Commentary to Recommendation 2.4 of ASX Corporate Governance Principles and Recommendations.

<sup>60</sup> Rule 7.3.5 nbn Constitution.

<sup>61</sup> Rule 7.5.2 nbn Constitution.

<sup>62</sup> Rule 7.4.1 nbn Constitution.





- c. The Company Secretaries will maintain electronic copies of all reports considered at each Board meeting and these will be archived periodically, ensuring the reports for three months or three meetings remain current at all times.

## 5.6 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<sup>63</sup>.

## 6 Chair

- a. The Chair is responsible for leadership of the Board and for the efficient functioning and proper process of the Board. The Chair is appointed by the Shareholder Ministers.<sup>64</sup>
- b. The Chair is responsible for maintaining a regular dialogue with the CEO and senior Management and serving as a primary link between the Board and Management.
- c. There may be a Deputy Chair who will be appointed by the Chair following consultation with the Shareholder Ministers. The respective roles and responsibilities of the Chair and any Deputy Chair will be agreed between them and approved by the Board.<sup>65</sup>
- d. The Chair and any Deputy Chair will be an independent Non-Executive Director and the roles of Chair or Deputy Chair and CEO will not be exercised by the same individual, unless otherwise agreed by the Shareholder Ministers.<sup>66</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>67</sup>
- e. The Chair presides at all meetings at which the Chair is present.<sup>68</sup> The Deputy Chair presides when the Chair is unavailable for any reason.<sup>69</sup>
- f. If the Chair (or in his or her absence or unavailability for any reason, the Deputy Chair) is not present at a meeting within 10 minutes of the scheduled commencement time of the meeting, or not willing to act as Chair of the meeting, the Directors present are to appoint one of their number to be the chairperson of the meeting.<sup>70</sup>

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<sup>63</sup> Rule 7 nbn Constitution.

<sup>64</sup> Rule 7.3.1 nbn Constitution.

<sup>65</sup> Ibid.

<sup>66</sup> cl 2.8(b) of the GBE Guidelines.

<sup>67</sup> See commentary in Box 2.3 ASX Corporate Governance Principles and Recommendations.

<sup>68</sup> Rule 7.3 nbn Constitution.

<sup>69</sup> Rule 7.6.1 nbn Constitution.

<sup>70</sup> Rule 7.3.5 nbn Constitution.



- g. The Chair or the Deputy Chair (as agreed between them under paragraph 6.c. of this Charter) is responsible for the provision of confidential required reports to the Shareholder Ministers and the publication, where required of reports.<sup>71</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 (hard and/or electronic) of all Board business, including agendas, Board reports, minutes and all statutory and other filings relating to the Board and company administration.<sup>72</sup>
- b. The Company Secretaries will make these documents available to Directors to inspect at nbn's registered office or electronically, on request.
- c. All Directors will have direct access to the Company Secretaries.

## 8 Board Code of Conduct<sup>73</sup>

The Government expects GBE boards to establish and maintain a code of conduct for directors, employees and contractors and that GBEs, in undertaking their business, avoid activities that could give rise to questions about their political impartiality. For example, GBEs are not to make direct or indirect political donations or participate in activities that would bring the Government into disrepute. GBEs may consult with the Shareholder Ministers on any sensitive issues affecting its business activities.<sup>74</sup>

This section should be read in conjunction with nbn's 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:
  - i. act in the best interests of nbn;<sup>75</sup>
  - ii. bring an independent judgment to bear on matters before the Board;
  - iii. act with honesty and integrity and observe the highest standards of ethical behaviour; and

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<sup>71</sup> GBE Guidelines cl 3.12.

<sup>72</sup> Commentary to Recommendation 1.4 ASX Corporate Governance Principles and Recommendations.

<sup>73</sup> Cl 2.6 GBE Guidelines and Recommendation 3.2 ASX Corporate Governance Principles and Recommendations.

<sup>74</sup> Cl 2.6 GBE Guidelines.

<sup>75</sup> ss 180 to 184 *Corporations Act*.



- iv. carry out their duties in accordance with the law and, nbn's corporate governance framework and policies.
- c. 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.
- d. 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>76</sup>
- e. 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 including First Nations Australians.
- f. 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.
- g. 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.

## 8.2 Conflicts of interest

- a. This section should be read in conjunction with nbn's Conflicts of Interest Directors' Policy (including External Securities (Declaration of Interests) 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>77</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>78</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>79</sup>
- f. Directors should consider past employment, consultancy arrangements and related party issues in making a declaration. The Board, in consultation with the Chair, should be satisfied there are sufficient processes in place to manage any real or perceived conflict.

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<sup>76</sup> Rule 5.2.2 nbn Constitution.

<sup>77</sup> s 191(1) Corporations Act.

<sup>78</sup> s 195 Corporations Act.

<sup>79</sup> ss 191(3) and 192(4) Corporations Act and cl 2.5(b) of the GBE Guidelines.



## 8.3 Embarrassment

A Director must immediately inform the Chair (who may inform the Shareholder Ministers) where his/her continued service as a Director could embarrass nbn or the Shareholder Ministers. The Director may be asked to resign or may be removed.<sup>80</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 annually and, any applicable policies at least biennially unless required earlier.

# 10 Remuneration

- a. The remuneration of each Non-Executive Director is determined by the Commonwealth Remuneration Tribunal from time to time.<sup>81</sup>
- b. The remuneration of each Executive Director (unless governed by the Commonwealth Remuneration Tribunal) is determined by the Board following recommendation from the People and Remuneration Committee.

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<sup>80</sup> cl 2.19(b) of the GBE Guidelines.

<sup>81</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 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 the 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 nbn complies with its planning and reporting obligations under the Corporations Act, the PGPA Act, the PGPA Rule and the GBE Guidelines.<sup>82</sup> 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.
- d. Communication between the Board and the Shareholder Ministers is generally through the Chair and/or the Chief Executive Officer.
- e. Directors are expected to comply with nbn's communications protocols.

## 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;
- b. has access to any historical 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;

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<sup>82</sup> Refer to Schedule A to this Charter.



- d. may seek any independent professional advice in accordance with nbn Funding Director's Access to Independent Advice Policy;<sup>83</sup> 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.

## 13 Review of performance

### 13.1 Board and Director performance

- a. On an annual basis<sup>84</sup>, the Board will review the performance of:
  - i. the Board as a whole;
  - ii. the CEO (against predetermined criteria) with a written record of the review to be retained by the Board;
  - iii. each Committee in conjunction with the Committee; and
  - iv. each Director, including the Chair and the Deputy Chair.
- b. Unless otherwise directed by Shareholder Ministers, on a biennial basis a performance assessment of the Board will be undertaken by an independent external party.<sup>85</sup>
- c. The Chair 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>86</sup>
- d. The Board will from time to time review the processes of the Board<sup>87</sup> to ensure nbn has exercised best Corporate Governance practices. At the discretion of the Board, the review may be undertaken by the Board or by an independent external third party.
- e. The Board will seek to have an annual Strategic Meeting, to which Shareholder Ministers or their delegate(s) will be invited. This meeting will focus on the performance of the Board and nbn over the previous year and the development of future strategy.<sup>88</sup>

## 14 Review of Charter and future amendments

The Board will review this Charter annually and, amend it as required.<sup>89</sup>

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<sup>83</sup> Commentary to Recommendation 1.1 and Recommendation 1.3 ASX Corporate Governance Principles and Recommendations.

<sup>84</sup> cl 2.21 to 2.22 of the GBE Guidelines

<sup>85</sup> cl 2.21 of the GBE Guidelines.

<sup>86</sup> cl 2.22 of the GBE Guidelines.

<sup>87</sup> Recommendation 1.6 ASX Corporate Governance Principles and Recommendations.

<sup>88</sup> cl 3.30 of the GBE Guidelines.

<sup>89</sup> cl 2.23 of the GBE Guidelines



## Related policies

- Code of Conduct
- Conflict of Interest Directors (including External Securities Declaration of Interests)
- Diverse, Respectful and Inclusive Workplace
- Funding Director's Access to Independent Advice

## Approved and adopted

This Charter was approved and adopted by the Board on 10 December 2024 and is effective from 10 December 2024.

Signed



**Chair of the Board of Directors of nbn**

Date 10 December 2024



### Approval table

nbn	Meeting no.	Meeting date	Agenda item no.
Board	191	10 December 2024	19.1.1
Board	180	15 December 2023	7.1
Board	167	16 December 2022	15.1
Board	150	22 June 2021	18.1
Board	146	14 December 2020	09.3
Board	138	19 May 2020	14.1
Board	128	21 May 2019	14.1
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

