

SENATE STANDING COMMITTEES ON ENVIRONMENT AND COMMUNICATIONS: INQUIRY INTO THE NBN BILLS

QUESTION ON NOTICE

For the Department of Broadband, Communications and the Digital Economy:

1) What is the legislative basis on which NBN Co was exempted by regulation from the PWC Act? 2) Is the number of projects part of the legislative proscription ?

RESPONSE

1) Subsection 6A(1) of the *Public Works Committee Act 1969* (the Act) provides that the Act applies to every authority of the Commonwealth, which includes NBN Co given that it is classified as an authority of the Commonwealth.

However subsection 6A(3) provides that where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services in competition with other bodies, the Governor-General may make regulation declaring that the Act does not apply to that authority.

An exemption was therefore sought under subsection 6A(3) as NBN Co is:

- operating in commercial markets and rolling out networks in response to market conditions; and
- competing in the broadband sector throughout Australia, including offering wholesale fixed broadband services in Tasmania.

The Government introduced a disallowable instrument which:

- under subsection 6A(3) of the PWC Act amends the PWC Regulations such that NBN Co is exempt from the PWC Act;
- was signed by the Governor General on 29 June 2010; and
- is taken to have full legal effect on the date registered on the Federal Register of Legislative Instruments, 1 July 2010.

2) No, the legislative basis for the exemption is set out in the answer to question 1 above.