

13 October 2021



## **Response to Senate Select Committee on Job Security Questions on Notice**

Q1. When engaging Primes, do you provide any guidance or set any expectation around what proportion of the rate of pay the Prime can withhold from the technician?

- a. If yes, what is that amount?
- b. If yes, how is it enforced?
- c. If no, how do you ensure that Primes aren't withholding unreasonable sums from technicians?

A. Lendlease does not set rates of pay for sub-contractors' engagement with their employees or sub-contractors. Lendlease sub-contractor agreements include clauses that require the sub-contractor to comply with applicable legal requirements, for example the Fair Work Act 2009.

Q2. How many notifiable incidents have your subcontractors suffered over the last five years?

- a. What proportion of them were direct subcontractors, and what proportion were subcontractors engaged through Primes?

A. We've only been performing these works for six months, and in that time, to date we've had zero notifiable incidents from a work health and safety perspective.

Q3. How many safety incidents which weren't notifiable incidents have your subcontractors suffered over the last five years?

- a. What proportion of them were direct subcontractors, and what proportion were subcontractors engaged through Primes?

A. In the last five years, we've recorded six incidents, of which two worked for a "Prime".

Q4. Are subcontractors able to negotiate with you on job rates, or do you dictate the rates?

A. All contractors engaged by Lendlease are able to discuss rates with Lendlease. As part of our standard procurement process, we approach the sub-contractor market prior to engagement. This process includes negotiation and feedback on the rates presented.

- a. Are subcontractors engaged by Primes able to negotiate with you directly?

A. Lendlease does not engage directly with Prime subcontractors on commercial matters as our commercial relationship is directly with the Prime and not their subcontractors.

- b. Are subcontractors able to negotiate with you collectively?

A. Lendlease does not engage with subcontractors collectively in relation to their individual sub-contractor agreements.

- c. If subcontractors are able to negotiate with you collectively, has it ever resulted in a higher rate of pay for subcontractors? If yes, please provide specific examples.

A. As per above.

- d. Is it common or uncommon for subcontractors to be successful when they attempt to negotiate a higher rate of pay? If possible, please provide a rough proportion.

A. As part of our standard procurement process, we approach the sub-contractor market prior to formal engagement. This process includes negotiation and feedback on the rates presented by the sub-contractor market. Lendlease has negotiated revised rates with two sub-contractors after engagement.

Q5. When asked about how NBN Co monitors the pay and conditions of NBN technicians, NBN Co said at the hearing:

“I would say that we work tirelessly to ensure that our contracts are strong, and that people are paid fairly.”

Please advise in as much detail as possible:

- a. How NBN Co ensures that you pay your subcontractors (including those engaged by Primes) fairly.

A. A Statutory Declaration form is submitted along with our payment claim to nbn confirming all employees and subcontractors have been paid in accordance with applicable legal requirements. nbn's payment is contingent on receiving this declaration to ensure subcontractors are paid. See below extract contained in the Statutory Declaration:

2. To the best of my knowledge all employees, workers, subcontractors, consultants and suppliers who have at any time been employed by the Contractor in relation to the Contractor's Activities to be performed under the Contract have, as at the date of this declaration, been paid in full all moneys due and payable to them inclusive of any amounts owing under any industrial instrument and all mandatory statutory obligations, payments, charges, taxes (including but not limited to (Goods and Services Taxes and Superannuation where applicable) in respect of their employment in relation to the Contractor's Activities.

- b. What specific guidelines or expectation NBN Co provides around the rates of pay NBN technicians should receive?

A. nbn does not provide expected rates of pay for Technicians. nbn provides the scope of work to the Delivery Partners which run a tender process where the rates are determined by the market.

- c. What specific guidelines or expectation NBN Co provides around terms and entitlements NBN technicians should receive?

A. nbn does not provide an expectation around terms and entitlements for Technicians. These are commercial arrangements negotiated between the Delivery Partner and the Entity delivering the works in accordance with the scope.

- d. What specific monitoring or audit actions NBN Co has engaged in with respect to pay and conditions for your subcontractors (including those engaged by Primes)?

A. nbn does not audit the pay and conditions of the subcontracts. These are commercial arrangements between the Delivery Partner and the Entity delivering the works.

- e. What specific enforcement actions NBN Co has engaged in with respect to pay and conditions for your subcontractors (including those engaged by Primes)?

A. These are commercial arrangements between the Delivery Partner and the Entity delivering the works.

Q6. If subcontractors refuse tasks allocated to them, is this recorded in any way, and does a record of refusing tasks influence the allocation of future tasks?

A. We do not have reporting on, nor do we look at rejection history, for any subcontractor indexing or work allocation.

Q7. Where a task is allocated directly by NBN Co to a technician by the ServiceMax app, do you still take a margin of that rate of pay?

A. Yes. Although the nbn system allocates the work, Lendlease manages that work on the day and manages all safety, quality, operational queries, complaints, rectifications, payment claims and payments.

- a. If yes, how does the margin compare to what you would take if you had been responsible for allocating the workflow?

A. Margin is consistent across all work types, and we also manage complex orders that is allocated by Lendlease within our own systems.

Q.8 The Committee heard evidence from numerous contractors that even with the enablement fee, their average pay is approximately \$2,000 per week. Prior to the enablement fee, their average pay was less than \$1,000 per week.

That is before contractors have to pay their own costs including superannuation, paid leave, workers compensation, insurance, fuel, tolls, equipment, vehicle maintenance and training.

Is that consistent with your understanding of what its subcontractors earn? If not, what is the average pay for your subcontractors?

A. Visibility on specific salaries/wages paid to individuals is not available to Lendlease. Lendlease remains under the assumption that Subcontractors have taken all costs and expenses into consideration during the tender phase when the detailed scope of each rate was made clear to the Subcontractors and their response was used to build the charge rates.

Q.9 Have you ever rejected an application by an NBN technician to subcontract directly for your company, because they had not been released from their prior arrangement with a Prime? Or because doing so would incur a fee payable to a Prime?

A. Lendlease has never rejected any application to work directly for it, if that person/company meet the procurement requirements which include a detailed assessment of their financial and operational capability to perform the works. Lendlease has been proactive in encouraging technicians to work directly to Lendlease where it's operationally available, and they are appropriately capable and qualified to do so.

**ENDS#**