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Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretariat,

Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010

On behalf of the Housing Industry Association (HIA) I would like to provide the following comments in relation to the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010.

HIA does not oppose the decision to improve the performance of telecommunications services to all Australians.

However HIA does not support the subsequent decision that there should be two levels of service, with the majority of Australians receiving Commonwealth funded delivery, whilst new home buyers are asked to pay for this same service.

Since the Government's announcement in 2009, HIA has been seeking responses to a range of issues surrounding this Bill and to date, many aspects remain unanswered.

HIA agreed to participate in the Stakeholder Reference Group established in mid-2009 by the Department of Broadband, Communications and the Arts in an effort to resolve these issues. At the same time, HIA has sought to highlight the impacts that the Government's approach to new developments will have on housing affordability.

HIA has made a number of written submissions to the Department in response to proposals put forward to the Group and we will continue to participate in the future in order to assist in the development of the legislative instrument, the range of technical standards required and to ensure a smooth implementation for HIA members carrying out residential developments affected by the legislation.

HIA would be pleased to meet with the Committee to discuss any of the issues raised in this submission.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Graham Wolfe
Chief Executive, Association

HIA Comments on the Telecommunications (Fibre Deployment) Bill 2010

General

HIA does not support the underlying premise of the Bill which seeks to introduce a mandatory requirement for all new developments from 1 July 2010 to fund the cost of installing optical 'fibre to the premises' (FTTP) whilst 90 per cent of all existing Australian households (approx. 9 million homes) receive this service at no cost through the National Broadband Network Company (NBN Co.) roll-out.

HIA does not consider that the Government has put forward any argument as to why new homes constructed should be subjected to a different process for installation of future telecommunications services to that which currently exists, i.e. Telstra currently provide copper cabling services at no up-front cost to a development and recoup the costs for the service through user charges and other 'fee for service' options.

HIA believes the Bill will create an inequitable system and place an additional burden on new home buyers, in particular first home buyers who can least afford these additional imposts at the time of purchase, placing further negative pressure on housing affordability.

The cost of utility services to new development projects, whilst paid by the project developer during the construction process, are inherently included in the final cost of a land and housing development. Therefore the home buyer pays the costs of these services and they have no choice about the level of service they receive.

The decision to remove new developments from the national broadband roll-out was announced without any consultation with the residential development industry. Since the announcement, discussions with the Government have been limited to issues around facilitating the roll-out, with no meaningful debate being allowed in respect to the equity and affordability issues that will arise.

As a member of the Stakeholder Reference Group established by the Department last year, HIA has been provided with some information on the potential legislative instrument. However HIA cannot estimate the full impact of the Bill on housing supply until the Government provides the legislative instrument setting out details of the possible exemptions and construction requirements for the scheme.

Despite HIA's opposition to the Bill, the following comments are provided in respect to specific provisions and the Explanatory Memorandum including the Financial Impact Statement as the smooth implementation of this legislation should it proceed is critical to HIA members.

HIA would be pleased to provide additional comments should the legislative instrument be made available prior to the completion of the Committee's inquiry.

Comments on the Financial Impact Statement (FIS)

a) Accurate cost estimates

The FIS does not provide an accurate cost benefit for the Government, as it only provides the estimated cost savings for all dwellings under each of the three scenarios considered (fibre installed, 'fibre-ready' or copper only). The Bill and the FIS clearly indicate that the Government will have a combination of both 'fibre' and 'fibre-ready' costs, along with a proportion of projects being exempted from either requirement.

The FIS indicates that to require 'fibre-ready' infrastructure to all new developments over the next 8 years, until the NBN Co establishes a level playing field for all households, would cost:

- the land/project developer and hence home owner, a marginal increase on the current infrastructure delivery for copper fixed lines (i.e. cost for copper only or copper with 'fibre ready' is identical).
- the Government an additional \$378 million per annum to retrofit fibre through 'fibre-ready' infrastructure. This equates to \$3.024 billion over 8 years for 1.08 million homes¹.

The Government has committed \$43 billion to the NBN roll-out over 8 years. The inclusion of homes built during this period, would equate to 7 per cent of the total expenditure. However the costs could reduce annually as the extent of the NBN Co's coverage increases.

HIA does not believe that the FIS accurately represents the costs associated with the copper only and fibre ready options. HIA members have indicated that in some circumstances they make no contribution towards the installation of copper only and that this is fully funded by Telstra. Equally other members may incur some charges by Telstra for new connections or major upgrades. Therefore the \$1,000 suggested in the FIS may represent a cost to Telstra, rather than the up-front cost to the consumer or the Government.

HIA members have also indicated that they have instances in current projects where they have sought to install fibre ready conduit in projects at their own expense, but have been advised by Telstra that a charge of \$1,000 per lot would be applied for the privilege, despite the cost for the appropriate conduit being minimal.

HIA believes that the FIS should be reviewed to accurately reflect the costs and outline who is responsible for payment of these costs currently and under the proposed legislation, clearly identifying Telstra's current costs in service delivery.

b) Impact on housing affordability

In June 2009, HIA provided the Government with average cost estimates for fibre deployment ranging from \$2,500 - \$3,500 per dwelling, excluding the physical connection into the dwelling. When combined with the costs associated with the additional installation requirements to service the home, along with taxes and a margin, the retail cost to the consumer will be in the order of \$5000 per dwelling.

The FIS relies on a cost of \$2,500 per dwelling and does not make reference to the retail cost to a home buyer. The makes no critical assessment of the impact on housing affordability.

HIA believes that the FIS should be revised to include an accurate assessment of the impact the Bill will have on housing affordability over the next 10 years.

Ownership of Infrastructure

The Bill confirms that where fibre infrastructure is provided by a developer this will become a freely available part of the distribution network for the NBN Co. and any other broadband providers including Telstra.

This approach will provide distribution companies, being private companies, with a commercial benefit through the receipt of payments for usage, despite having made no contribution towards the delivery of the infrastructure.

¹ The FIS is based on 150,000 new dwellings being constructed each year with 90 per cent of these (135,000 homes) being required to comply each year for 8 years.

HIA is of the view that the current method for delivery of telecommunications and electricity into Greenfield estates provides a more equitable model for the delivery of the broadband network. In contrast to burdening new home buyers with the upfront cost, the costs of installing the network should be incurred by the NBN Co. with outlays recouped through charges for ongoing use of the network and/or the sale or transfer of ownership of infrastructure to a third party.

Scope

Sections 372C(1) and 372D(1) of the Bill establish a minimum threshold of 'one or more' lots or building units.

HIA believes that this scope is inappropriate and that a significant number of homes that will need to be removed from the scope via exemptions from the Minister (under subsection (5)). It is suggested that this could be more easily resolved by changing the scope of the Bill to only capture 'more than one' lot or building units in a real estate development.

Exemptions

a) Granting exemptions

The Bill places an obligation on the utility provider to install the appropriate services, based on exemptions yet to be determined. The Minister will be authorized to nominate exemptions under proposed sections 372B (5) and 372C (5). However, it is likely that the process of making determinations against those exemptions will be delegated to a third party.

It is currently unclear who will be responsible for granting such exemptions. There are several possibilities in this regard, including the Department of Broadband, Communications and the Arts, the NBN Co, State utility or planning regulators, local planning authorities, or the utility provider themselves.

Given that the decision to grant an exemption affects the financial viability of a project, the exemptions need to be transparent, specific and easily interpreted to ensure consistent application by this potential range of authorities.

HIA considers that it would be inappropriate for State and Territory jurisdictions to have variations in their methods of granting exemptions. Equally, this is not a role that local government should be required to take responsibility for.

b) Exemption thresholds

The Government is yet to confirm what exemption thresholds may be applied by the Minister through a legislative instrument.

Based on preliminary information provided by the Department of Broadband, Communications and the Digital Economy to HIA through the Stakeholder Reference Group, it is understood that exemptions are likely to be based on criteria such as the cost of installation for the optical fibre or the backhaul cost to a service a site or the size of the development.

HIA has indicated to the Government that we are not supportive of either a cost or a size of development threshold.

Timing of application

The Explanatory Statement refers to projects gaining planning approval after 1 July 2010. Invariably, planning approval follows several years of feasibility studies, land consolidation, design and finally a range of other steps preceding a planning application. Based on the unspecified exemptions applying the requirements to projects that receive planning approval after 1 July would

retrospectively capture projects where the infrastructure costs have already been determined by the land owner and accounted for in the project feasibility, potentially 5 years earlier.

HIA does not support the application of the legislation to any application lodged but not approved prior to 1 July 2010.

HIA does not support any requirement for mandatory installation of 'fibre' to new buildings proposed on lots already approved, under construction or constructed, prior to the Bill taking effect. For example, the builder of a new home in an estate where fibre is not available (whether a new or existing estate) should not be required to provide fibre to the premises.

Timing of commencement

HIA believes that the proposed 1 July 2010 commencement date for the legislation is too short, given the nature of the land development process. There are still significant details yet to be resolved in respect to the legislative instrument, 12 months on. This process has created confusion for the residential development industry to date, and needs to be carefully managed to ensure that the legislation does not have a negative affect on land supply over the next 12 months, by creating a gap in supply, while land owners await decisions on the requirements.

The National Housing Supply Council² recognizes that the approval process for new housing developments can take between 6 months and 2 years, with the subsequent construction process taking between 1 and 2 years. The residential development industry commits significant time and funding towards each project and seeks the highest level of certainty in relation to the regulations and requirements for these projects during that time. The current uncertainty in respect to possible exemptions and construction standards is already affecting HIA members operations.

Telstra's Universal Service Obligation (USO)

HIA understands that Telstra's USO will continue to exist under the changed operating arrangements currently being developed by the Government. The USO requires Telstra to provide all homes with service through the most appropriate technology at the time. The decision about what method of servicing is used is completely at Telstra's discretion.

Whilst the Bill provides scope for 'fibre ready' installation and full exemptions to be set by the Minister for certain types of development, in recent weeks Telstra appears to be using the USO provisions to override the intended application of the Bill and has commenced advising customers that they will meet their USO obligation by providing optical fibre and is mandating a charge for this additional level of installation. Whilst this may achieve the desired outcome by the Government, it also creates uncertainty about the application of the Bill going forward.

The Government needs to urgently clarify how Telstra's USO will work in conjunction with the Bill, to avoid undue costs or delay to current and future developments.

Future servicing of new developments

The Bill and Explanatory Memorandum are silent in respect to what level of telecommunications servicing will be required in new developments after the completion of the national broadband roll-out or who pays for that service. The Government needs to clarify what will be expected of the development industry, and hence telecommunications service providers after 2016.

² Australian Government, 2008: National Housing Supply Council, State of Supply Report pg 52