

Introduction

- 1.1 The Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011 (the Bill) was preceded by a similar bill which was introduced into the Senate in March 2010, but lapsed on the proroguing of the 42nd Parliament. The Fibre Deployment Bill 2010 shared a similar purpose to the Bill under inquiry, that is, to 'ensure fibre-ready and fibre infrastructure installation in new developments.'¹ This Bill differs from its predecessor in that the Fibre Deployment Bill 2010 'was more dependent on subordinate legislation for activation of the key provisions in the Bill', while the current Bill includes those key provisions.²
- 1.2 This Bill intends to facilitate the fibre rollout of the National Broadband Network (NBN) by ensuring that fibre-ready passive infrastructure is installed in new developments within the fibre footprint of the NBN. This can be undertaken either by a fibre provider (chosen by the developer) or NBN Co as the 'fibre infrastructure provider of last resort in new developments'³ in the long term, if required.⁴

Background

- 1.3 In April 2009, the Government established NBN Co Limited (NBN Co)⁵ to design, build and operate the NBN. The NBN will offer a high-speed

1 New developments are also referred to as Greenfields developments.

2 Department of Broadband, Communications and the Digital Economy (DBCDE), *Submission 8*, p. 2.

3 Regulation Impact Statement (RIS), p. 5; Bill, Explanatory Memorandum (EM), p. 2.

4 RIS, pp 5 and 6.

5 NBN Co Limited (NBN Co) was established by the Government on 9 April 2009 as a company under Corporations Law. NBN Co operates under the Commonwealth *Authorities Companies Act 1997*, NBN Co, 17 December 2010, *Corporate Plan: 2011-2013*, p. 12.

national broadband service in the form of a wholesale only, open-access network. The NBN is planned to be rolled-out across Australia in accordance with the Government's NBN policy, NBN Co's Corporate Plan and the Statement of Expectations⁶ issued by the Stakeholder Ministers to NBN Co.⁷

1.4 NBN Co's Corporate Plan states that its objectives for the NBN are to:

- establish a network design which is an open access, wholesale only, national network
- rollout fibre to 93 per cent of premises (including Greenfields developments) to provide for download internet speeds of 100 [Megabits per second] Mbps,⁸ and provide fixed wireless to four per cent of premises and satellite to three per cent of premises at a speed of at least 12 Mbps
- offer uniform national wholesale pricing over the network, from a point of interconnect to a premises on a non discriminatory basis
- 'the expected rate of return should, at a minimum, be in excess of current public debt rates.'⁹

1.5 In June 2010, following stakeholder consultation,¹⁰ the Government announced that NBN Co would be the fibre infrastructure provider of last resort in new developments. This would require NBN Co to provide at no cost, the fibre in new developments (that are within the NBN long term fibre footprint) where a developer¹¹ did not opt to use an alternative fibre infrastructure provider.¹²

6 The Government's Statement of Expectations was released on 20 December 2010 by the Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy and Senator the Hon Penny Wong, Minister for Finance and Deregulation. The document outlines the main elements of the Government's National Broadband Network Policy in the form of expectations on the delivery of services to be provided by NBN Co.

7 NBN Co, 17 December 2010, *Corporate Plan: 2011-2013*, p. 12.

8 Megabits per second is a measurement of transmission speeds. NBN Co, 17 December 2010, *Corporate Plan: 2011-2013*, p. 156.

9 NBN Co, 17 December 2010, *Corporate Plan: 2011-2013*, p. 12.

10 The Government undertook extensive consultation (with the telecommunications industry, State, Territory and Local Governments, developers, builders and telecommunication consumers) and concluded that the provision of fibre-ready passive infrastructure at the development stage of new developments ensures efficiency in the installation process. RIS, p. 5.

11 Under this Bill a developer that is a constitutional corporation is required to install passive, fibre-ready infrastructure. RIS, p. 13.

12 Fibre-ready passive infrastructure includes trenching, conduits and access pits, also known as 'pit and pipe', RIS, p. 5.

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- 1.6 In December 2010, the Government announced its implementation and transitional arrangements for this policy. Transitional arrangements under the implementation strategy provided that Telstra will service infill developments of less than 100 premises pending NBN Co's fibre rollout.¹³
- 1.7 To enable NBN Co to be the fibre provider of last resort in all new developments within the fibre footprint, it would negotiate with developers for the transfer of ownership of infrastructure through contractual arrangements. NBN Co would install fibre at no cost.¹⁴
- 1.8 In the event that NBN Co would be unable to service developments immediately, developers could request other telecommunications providers to provide infrastructure in their estate.¹⁵
- 1.9 It is estimated that 150 000 new dwellings and approximately 60 000 other types of premises (commercial, industrial and government) are constructed annually. NBN Co has calculated that 94 per cent of these new premises (or around 197 000) will be within the fibre footprint.¹⁶
- 1.10 The cost of installing fibre-ready infrastructure has been estimated at about \$800 per lot or building unit. The cost of retrofit of fibre where no passive infrastructure has been supplied is estimated to be approximately \$1300 a lot or unit.¹⁷
- 1.11 The Government's policy carries the assumption that most developers will install fibre-ready infrastructure in new developments, with the risk that a small percentage of developers will not. If this number were up to five per cent, the Government estimates this would cost \$12.8 million per annum¹⁸ to retrofit.¹⁹
- 1.12 To ensure that developers (who are constitutional corporations) install fibre-ready infrastructure in new developments, there are 'civil penalties'²⁰ attached to the sale or lease of land where passive fibre-ready infrastructure is not installed.²¹
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13 RIS, p. 5.

14 RIS, p. 5.

15 RIS, p. 5.

16 RIS, p. 6.

17 RIS, p. 6.

18 This estimate is arrived at from the number of new premises built (197 000 per annum). RIS, p. 6.

19 RIS, p. 6.

20 EM, p. 2.

21 RIS, p. 13.

- 1.13 The legislation will be reviewed in five years to assess if it is still required. Review will involve consultation with carriers including: NBN Co, developers, consumer groups, and State and Territory planning bodies.²²

Overview and purpose of the Bill

- 1.14 The legislative intent of the Bill is to amend the *Telecommunications Act 1997* (Cwlth) to ensure 'that developers have fibre-ready passive infrastructure installed for the future provision of fibre, potentially for use by any fibre provider.'²³
- 1.15 Other key provisions of the Bill will:
- require developers that are constitutional corporations to install fibre-ready passive infrastructure in developments in the long term fibre footprint of the NBN;
 - provide Ministerial authority to determine specifications for fibre-ready passive infrastructure, if required;
 - 'provide for NBN Co to issue a statement that premises are not in the NBN's long term fibre footprint;
 - allows carriers to access passive infrastructure that is owned by non-carriers, and provides for the Australian Competition and Consumer Commission to be the default arbitrator;
 - enable the Minister to specify developments in which fixed lines must be optical fibre and determine specifications for such lines, if necessary;
 - provide for statutory and Ministerial exemptions from the requirements to install fibre-ready facilities or optical fibre lines; and
 - enable the Australian Communications Media Authority to develop technical standards for customer equipment and cabling for connection with the NBN and other superfast networks, on its own initiative or if directed by the Minister.'²⁴

22 RIS, p. 13.

23 DBCDE, *Submission 8*, p. 2.

24 DBCDE, *Submission 8*, p. 1.

Financial impact of the Bill

- 1.16 The financial impact of the Bill will be met through funding accorded to NBN implementation and is expected to be ‘small’.²⁵

Policy underpinning the Bill

- 1.17 The policy on *Fibre in New Developments* underpins the provisions contained in the Bill. This policy was announced by the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy (the Minister) on 20 June 2010, with further enhancements announced to the policy on 9 December 2010, reiterated on 15 June 2011 and further updated on 22 June 2011.²⁶ This policy also reflects the Government’s Statement of Expectations.²⁷
- 1.18 Further to an earlier announcement on 20 June 2011, on 9 December 2010, the Minister announced ‘very significant changes to the way telecommunications infrastructure and services [could be] provided in new developments.’²⁸
- 1.19 New developments encompassed residential, commercial, industrial, government and other types of developments and constructions ‘regardless of the number of lots, premises or units involved, whether they are broadacre greenfield or brownfield infill.’²⁹
- 1.20 The Ministerial statement on *Fibre in New Developments*³⁰ reiterated that from 1 January 2011:
- NBN Co Limited would be the wholesale provider of last resort in new developments within or adjacent to its long term fibre footprint and meet the associated cost of this obligation.

25 EM, p. 4.

26 S Conroy, (Minister for Broadband, Communications and the Digital Economy), *Refined arrangements for fibre in new developments*, media release, Parliament House, Canberra, 15 June 2011; S Conroy, (Minister for Broadband, Communications and the Digital Economy), *Fibre in new developments: policy update*, media release, Parliament House, Canberra, 22 June 2011.

27 Minister for Broadband, Communications and the Digital Economy and the Minister for Finance and Deregulation, *Statement of Expectations*, 20 December 2010, p. 6.

28 DBCDE, Statement by the Minister for Broadband, Communications and the Digital Economy (Ministerial Statement), *Fibre in New Developments*, 9 December 2010, p. 1.

29 DBCDE, Ministerial Statement, *Fibre in New Developments*, 9 December 2010, p. 1.

30 DBCDE, Ministerial Statement, *Fibre in New Developments*, 9 December 2010.

- Developers and on their properties, property owners would be responsible for trenching and ducting.
 - Telstra would be the retail provider of last resort. Telstra would not have infrastructure responsibilities.
 - Developers could use any fibre provider of choice on the proviso they meet NBN specifications and open access requirements.³¹
- 1.21 NBN Co would be responsible for fibre installation for all premises in the fibre footprint which are at the development stage.³² These include:
- 'all broadacre developments;
 - all infill developments where it has fibre that is ready for service and capable of connection; and
 - new approved infill developments of 100 or more premises.'³³
- 1.22 The earliest practical date of effect of NBN Co's responsibilities occurred on 1 April 2011.³⁴
- 1.23 The policy also provides detail about the role of NBN Co and Telstra in new developments, pre-existing service applications, expectations on developers, and the role of competing fibre providers. The main elements of these are:
- NBN Co can choose the operational arrangements under which it services new developments, 'including sub-contracting and build-operate-transfer [BOT] arrangements' enabled through its own tender process arrangements.³⁵ NBN Co will 'establish a panel of appropriately qualified and experienced providers who can bid to install fibre on its behalf.'³⁶
 - Telstra is responsible for the delivery of infrastructure and services for infill developments of less than 100 premises, pending NBN rollout. In this circumstance, Telstra will generally provide copper infrastructure or depending on the timing of NBN rollout may provide a 'high quality

31 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 1.

32 This includes responsibility for installation of fibre infrastructure in a development for backhaul to a point of interconnect. DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 2.

33 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 2.

34 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 2.

35 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 2.

36 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 3.

wireless service as an interim solution.’ Telstra is also retail provider of last resort for standard telephone services.³⁷

- The policy sets out four scenarios and handling arrangements, which do not override existing developers’ contractual arrangements, but take into account the developers requests for infrastructure for developments that will not be completed before 1 January 2011.³⁸ These are:
 - ⇒ For lots where Telstra has installed passive fibre-ready infrastructure, but has not provided a fixed line, NBN Co will have access to this infrastructure on commercial terms with NBN Co subcontracting to deliver fibre to the premises.³⁹
 - ⇒ In developments that are design-ready, but do not yet have passive fibre infrastructure installed and require services from 1 January to 30 June 2011, NBN Co will subcontract to deliver fibre through a BOT arrangement. Subject to any existing legal arrangements between a provider and the developer, for efficiency, Telstra may, in arrangements with NBN Co, build the infrastructure.⁴⁰
 - ⇒ In developments that are design-ready but do not yet have passive fibre infrastructure installed and require services after 1 July 2011, developers can redirect requests to NBN Co for fibre service delivery as determined by the NBN Co. This is subject to any existing legal arrangements between a provider and the developer. For efficiency, Telstra may, in arrangements with NBN Co, build the infrastructure.⁴¹
 - ⇒ For those developments ‘land-banked’ (approved for development some time ago and have not proceeded to completion), developers will be required to re-lodge their requests with NBN Co. This is subject to any existing legal arrangements between a provider and the developer. For efficiency, Telstra may, in arrangement with Telstra, build the infrastructure.⁴²
- From 1 January 2011, for all new developments, developers are expected to ensure the installation of fibre-ready passive infrastructure in line with NBN Co specifications. Developers will meet the cost of this

37 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 3.

38 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 3.

39 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 3.

40 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 3.

41 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 4.

42 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 4.

infrastructure. Where a developer does not provide this infrastructure, NBN Co is not required to provide services to these developments.⁴³

- NBN Co will provide its specifications for use to developers that opt to use NBN Co. NBN Co infrastructure specifications will also be provided to the Communications Alliance⁴⁴ with the aim of endorsement.⁴⁵
- NBN Co will require through contract the transfer of ownership of infrastructure as a condition of serving a development.⁴⁶
- Developers can 'source fibre from competing fibre providers' and 'providers can compete to provide infrastructure in new developments.' They could do this 'by offering more tailored solutions to developers or more expeditious delivery.'⁴⁷
- 'Where the installed infrastructure meets NBN Co specifications, NBN Co may seek to acquire the infrastructure, but this is a commercial decision for NBN Co.'⁴⁸
- To ensure all consumers have access to the same service outcomes as serviced by NBN Co, providers are legally required to build to NBN specifications to offer a Layer 2 service on an open access basis. 'Providers who fail to do this will otherwise risk being overbuilt when NBN Co rolls out the network in their area.'⁴⁹

Scope of the Inquiry

- 1.24 The aim of this inquiry was to examine the legislative and practical consequences of the Bill, rather than the underlying policy intent of the proposed legislation.
- 1.25 While the majority of contributors to the inquiry agreed with the general premise of the Bill, a number of commercial fibre providers and industry groups raised concerns about the Bill's potential to:
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43 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

44 The Communications Alliance (CA) is a peak industry association representing the telecommunications sector with its main role to create and maintain the 'self-regulatory Codes, Guidelines and Standards to which the industry adheres. The CA sets industry standards and is a member of Standards Australia. *Converge Networks, Exhibit 4*, p. 1.

45 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

46 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

47 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

48 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

49 DBCDE, Ministerial Statement, Fibre in New Developments, 9 December 2010, p. 5.

- stifle competition in the Greenfield fibre provider market in the medium to long term;
 - potentially exclude commercial fibre providers from the market place if developers preferred to wait for NBN Co to lay fibre at no charge; and
 - limit the telecommunications services available to developments with less than 100 premises within the fibre footprint that are awaiting the NBN rollout.
- 1.26 These issues have been included in this report as they are relevant in the broader context of the rollout and future operation of the NBN.

Conduct of the Inquiry

- 1.27 The Bill was introduced into the House of Representatives on 23 March 2011 and referred by the House of Representatives Selection Committee to the Joint committee on the National Broadband Network for inquiry on 10 May 2011. The committee subsequently resolved to adopt the inquiry on 12 May 2011.
- 1.28 The inquiry was announced and submissions invited through the issue of a media release on 13 May 2011 and an advertisement in *The Australian* on 18 May 2011. Submissions to the inquiry were invited to be received by 20 May 2011.
- 1.29 The committee received 20 submissions and 4 exhibits to the inquiry which are listed at Appendix A. The committee held two public hearings on 16 May 2011 in Sydney and 17 June in Canberra. Witnesses who appeared before the committee and gave evidence to the inquiry at these public hearings are listed at Appendix B.

Report structure

- 1.30 Chapter 2 outlines the key proposed amendments included in Schedule 1, Part 1 of the Bill and outlines the issues presented in relation to these provisions.
- 1.31 Chapter 3 outlines the issues raised in relation to the potential impact of the proposed Bill on the Greenfield fibre provider market.