

Part 1 – General Amendments

Introduction

- 2.1 The Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011 (the Bill) consists of Part 1 – General Amendments and Part 2 – Other Amendments. Both Parts 1 and 2 will amend the *Telecommunications Act 1997* (Cwlth) (the Act).

Summary of key provisions

- 2.2 Proposed Part 1 of Schedule 1 will amend the Telecommunications Act to ‘support the deployment of optical fibre and optical fibre-ready passive telecommunications infrastructure in specified real estate development projects.’¹
- 2.3 Proposed Part 2 of Schedule 1 will amend the Telecommunications Act to repeal proposed sections 372ZC and 372ZE to ensure there is no repetition in the definitions of ‘optical fibre lines’ and ‘NBN Corporation’, should the Telecommunications Legislation (National Broadband Network Measures-Access Arrangements) Bill 2010 be enacted before the Bill.²
- 2.4 A summary of the key provisions and discussions of issues raised through the inquiry in relation to these provisions follows.

1 Explanatory Memorandum (EM), p. 1.

2 EM, p. 51. The Telecommunications Legislation (National Broadband Network Measures-Access Arrangements) Bill 2010 was passed by the House of Representatives on 1 March 2011 and the Senate on 25 March 2011.

Proposed Part 20A – Deployment of optical fibre etc

- 2.5 Proposed Part 20A consists of proposed new Divisions 1 to 6 and amendments to provisions in Part 21 of the Telecommunications Act.

Proposed Division 2 – Deployment of optical fibre lines

- 2.6 **Proposed Division 2 of Part 20A** requires the deployment of optical fibre lines to specified building lots and building units.³
- 2.7 **Proposed section 372D** provides that the Minister may make exemptions by legislative instrument from the optical fibre line requirement in sections 372B and 372C. This will enable the Minister to make conditional and unconditional exemptions for the deployment of fibre for copper installation.⁴
- 2.8 **Proposed subsection 372D(3)** enables the Minister, through a legislative instrument, to confer powers or functions on the Australian Communications and Media Authority (ACMA) to determine whether conduct is exempt in terms of laying fibre or copper. For example, 'if such an instrument provides an exemption where particular equipment requires a copper line, the ACMA would be required to certify this.'⁵

Proposed Division 3 – Installation of fibre-ready facilities

Background

Proposed Subdivision A – Installation obligations

- 2.9 **Proposed Subdivision A** provides that where passive fibre-ready infrastructure has been laid, that the installation of fibre optic lines 'at a later date, quickly, at lower cost and with minimum inconvenience to the community' may occur.⁶

3 EM, p. 19.

4 EM, p. 24.

5 EM, pp 24 and 25.

6 EM, p. 25.

- 2.10 **Proposed Section 372J** enables NBN Co Limited (NBN Co) 'to issue a written statement if a new development is outside the long term fibre footprint and will not have optical fibre lines installed by NBN Co or other NBN Co contractor. This will provide a process for developers to gain information to clarify whether their projects may be subject to these rules.'⁷

Discussion

- 2.11 The Urban Taskforce Australia (UTA) raised the following concerns:

- 'There is no obligation on the NBN Co to respond to a request for such a statement in any particular timeframe. In fact there is no obligation on the NBN Co to respond to a request to issue a statement at all.
- There is no right to appeal to the Administrative Appeals Tribunal for any failure to respond to a request or [for] an inappropriate response.
- There is no obligation on the NBN Co to publish statistics on its performance in this regard.'⁸
- There needs to be a mechanism of review by the Administrative Appeals Tribunal of any subsequent refusal or inability of the NBN Co to install optical fibre lines in relation to the project.'⁹

- 2.12 The UTA suggested that provisions be included in the Bill which address these concerns.¹⁰

- 2.13 The Department of Broadband, Communications and the Digital Economy (DBCDE) commented:

In the absence of an exemption, the default under the Bill is that a constitutional corporation would need to have fibre-ready passive infrastructure installed in any new development in Australia prior to sale or leasing. Some of these developments could in practice be in areas where NBN Co will provide services by wireless or satellite. In these circumstances, it could be wasteful to require the installation of fibre-ready passive infrastructure in these areas.¹¹

- 2.14 The DBCDE also commented that in comparison to other providers, NBN Co 'is in the best position to confirm a locality is in its long term fibre

7 EM, p. 31.

8 Urban Taskforce Australia (UTA), *Submission 11*, p. 1.

9 Urban Taskforce Australia (UTA), *Submission 11*, p. 1.

10 UTA, *Submission 11*, p. 1.

11 Department of Broadband, Communications and the Digital Economy (DBCDE), *Submission 8*, p. 3.

footprint, it is logical that it should be able to confirm an area is not covered.’ This power is not expected to affect other providers, ‘because if they were to provide fibre in such an area, they would be able to deal’ with passive fibre-ready infrastructure requirements in their contract with the developer.¹²

Concluding comments

- 2.15 NBN Co is under obligation by the Government to perform its duties as outlined in its Corporate Plan and in line with the relevant Government policies. More broadly, NBN Co is established under Corporations Law and operates under the Commonwealth Authorities Companies Act and so its directors have a legal and commercial obligation to its customers and stakeholder Ministers and through them to the Parliament.
- 2.16 However, the committee notes the concerns raised by the UTA in regard to the responsive issue of statements. The committee suggests that internal customer service protocols should be put in place within NBN Co to ensure that the timeframe for issuing statements is completed within benchmarked customer service timeframes.
- 2.17 According to the DBCDE, the proposed sections in Division 3 are intended to require developers to put in place passive fibre-ready infrastructure to enable fibre to be laid to facilitate the rollout of the National Broadband Network. The committee acknowledges that this is the intent of proposed Division 3 and also notes that NBN Co will need to issue statements to ensure eventual efficient fibre deployment.
- 2.18 The committee proposes that NBN Co should commit to specific timeframes, to publish its performance against those timeframes, and that these commitments be subject to regulatory oversight.

Proposed Subdivision B – Sale of building lots and building units

- 2.19 **Proposed Subdivision B** ensures that fibre-ready facilities are installed in new developments to enable fibre rollout to occur quickly, economically and with less disruption than a full retrofitting.¹³
- 2.20 Constitutional corporations (eg. Pty Ltd and Inc. business entities and statutory authorities) may not sell or lease lots or units in new

12 DBCDE, *Submission 8*, p. 3.

13 EM, p. 28.

developments, ‘unless there are fibre-ready facilities installed within or in proximity to the lots or units.’¹⁴

- 2.21 This restriction does not apply if there is an exemption arising either from:
- ⇒ ‘a legislative instrument made by the Minister under proposed section 372K; or
 - ⇒ a contract for the installation of lines or fixed-line facilities being in place, or the installation of lines or fixed-line facilities having commenced, or civil works otherwise having commenced in a development as provided for under proposed section 372P; or
 - a statement has been issued by NBN Co under proposed section 372J in respect of the particular project.’¹⁵
- 2.22 There is no restriction on the ‘off-the-plan’ sale or lease of lots and/or units.¹⁶

Proposed subdivision C – NBN Co may issue statement about the non-installation of optical fibre lines

- 2.23 **Proposed subdivision C** provides that NBN Co may issue a statement about the non installation of optical fibre lines. The purpose of this is to clarify whether a new development is outside the NBN’s long term fibre footprint. Where a new development is outside the long term fibre footprint, it would not be necessary for fibre-ready facilities to be installed.¹⁷
- 2.24 **Proposed section 372JA** provides that NBN Co is obliged to maintain a register (by electronic means that is accessible to the public) of all statements issued in accordance with proposed subsection 372J(1). This will enable developers and their customers ‘to ascertain whether the fibre-ready facility requirement and, for constitutional corporations, the fibre-ready installation requirement, apply in relation to a particular project.’¹⁸

Proposed Subdivision D - Exemptions

- 2.25 **Proposed subsection 372K(1)** enables the Minister (by legislative instrument) to exempt certain new developments from:

14 EM, p. 28.

15 EM, p. 29.

16 EM, p. 29.

17 EM, p. 31.

18 EM, p. 32.

- the fibre-ready facility requirement; and
 - the fibre-ready installation requirement for constitutional corporations.¹⁹
- 2.26 These exemptions could be used to exempt a project that may still be receiving one or more basic utilities outside the proposed long-term coverage of the rollout of the NBN by an NBN corporation. 'Section 589 of the Act would enable the Minister to incorporate by reference coverage maps or other guidance prepared by an NBN corporation and the like to specify or ascertain exempt projects.'²⁰
- 2.27 **Proposed subsection 372K(1)** would enable the Minister, where appropriate 'to permit the installation of fixed-line facilities other than fibre-ready facilities where appropriate.'²¹
- 2.28 **Proposed subsection 372K(9)** provides that an instrument under subsection (1), (3), (5) or (7) may confer functions or powers on the ACMA. For example, 'an exemption instrument could provide for the ACMA to determine whether specified circumstances under which an exemption was to operate (such as remoteness or that a locality was outside NBN Co's long term fibre footprint) were applicable.'²²

Proposed Division 4 – Third party access regime

Background

- 2.29 **Proposed Division 4** establishes a 'framework for carriers to seek access to non-carrier fixed-line facilities with a view to supporting the rollout of optical fibre.' The provision of access may be commercially negotiated or failing agreement, arbitrated by an agreed arbitrator or the Australian Competition and Consumer Commission (ACCC) as the default arbitrator.²³
- 2.30 Proposed Division 4 also enables the Minister to:
- issue exemptions through a legislative instrument.

19 EM, p. 33.

20 EM, p. 33.

21 EM, p. 33.

22 EM, p. 33.

23 EM, p. 34.

- confer functions or powers on the ACCC in relation to an exemption.²⁴
- 2.31 **Proposed subsection 372NA(1)** enables the ACCC to make a code (by legislative instrument) which sets 'out conditions that are to be complied with' in relation to the provision of access under Division 4.²⁵

Discussion

- 2.32 The ACCC commented that the facilities access regime which would be established under the Bill is 'very similar to the facilities access regime currently available to carriers under Schedule 1 of the Telecommunications Act.'²⁶
- 2.33 In addition, the ACCC stated that while it could make a code relating to access, commercial agreements have been preferred to the current facilities access code made by the ACCC in 1999 under Schedule 1 of the Telecommunications Act. The ACCC stated:

Under the Bill, the ACCC may, by legislative instrument, make a code relating to access. The development of this type of code would require the ACCC to balance the benefits that might be available to the relevant stakeholders from such a code with any regulatory burden. In the main, commercial agreements have been preferred to the current facilities access code which was made by the ACCC in 1999 (the 1999 Code) under Schedule 1 of the Telecommunications Act 1997. If it decides whether to make a code under the Bill, the ACCC would also consider whether to modify the 1999 Code or issue a new code.²⁷

Concluding comments

- 2.34 The committee acknowledges the ACCC's comments that even though proposed Division 4 specifies the ACCC may make a code for the facilities access regime, 'commercial agreements' are preferred format. In addition, the ACCC has stated that it may revise or replace the 1999 Code established under the Telecommunications Act.
- 2.35 The committee acknowledges that the ACCC is required to fulfil its obligations under proposed Division 4 and supports the ACCC's role as stated in this regard.

24 EM, p. 34.

25 EM, p. 37.

26 Australian Competition and Consumer Commission (ACCC), *Submission 13*, p. 2.

27 ACCC, *Submission 13*, p. 2.

Proposed Division 5 – Exemption of certain projects

Background

- 2.36 **Proposed Division 5** sets out exemptions for pending projects which meet certain criteria from the optical fibre line requirement under proposed Division 2. A limited exemption is provided from the ‘fibre-ready facility requirement’ and the ‘fibre-ready installation requirement’ under proposed Division 3 for pending projects which meet certain criteria.²⁸
- 2.37 Proposed sections in Division 5 enable exemptions in certain circumstances where it would be unreasonable to apply the rules contained in the Bill. Such circumstances include where contracts have already been entered into by developers, or where it would be too costly or inconvenient for developers to halt works or the ‘installation of fixed lines or facilities in their developments.’²⁹

Discussion

- 2.38 The UTA put the view that the transitional arrangements in proposed section 372P (included under Division 5) relate to those projects which were underway before the commencement of the legislative provisions and offer no protection for businesses. The UTA stated:

They offer no protection for businesses who, after the commencement of the legislation, act in reliance of an absence of a legislative instrument, or an existing legislative instrument, which may be later amended. Additionally, they offer no protection from businesses who have been acting in reliance on their existing land use approvals, and made irreversible investment decisions, but nonetheless, have not reached the thresholds set out in the bill.³⁰

- 2.39 Additionally, the UTA does not support Ministerial authority under the Bill to vary the conditions of a legislative instrument. The UTA stated:

This power is inconsistent with the approach taken for land use approvals (such as development consents/planning permits, mining leases, etc) generally which, once issued, cannot normally be varied other than by application of the benefitting party. Where a development consent has already been issued, a subsequent

28 EM, p. 38.

29 EM, p. 38.

30 UTA, *Submission 11*, p. 2.

change in policy on, say, dwelling density, does not impact on the consent. It may affect new consents, but not old ones. Similarly, changes to the building code cannot affect projects that have already received final tick-off.³¹

- 2.40 The UTA puts the view that the ‘risk premium required to secure debt and equity finance to develop land will increase if the conditions relating to a development may be varied at will by the regulator.’ The UTA stated:

The Minister’s power to unilaterally vary conditions could even reduce the development potential of some land and reduce or remove feasibility of some projects.³²

- 2.41 The UTA suggested that an investor requires certainty and in this respect that proposed section 372P be amended to:

- provide that the civil penalty provisions will be taken not to have been contravened where:
 - ⇒ a legislative instrument is imposed after a development consent/planning permit has been issued; or
 - ⇒ a legislative instrument is amended after a development consent/planning permit has been issued;
- and the conduct of the person would have not been in breach of the civil penalty provisions if it had been carried out at the time the consent/permit was issued.³³

- 2.42 The UTA was also critical that the proposed legislative instrument was not available to industry or the wider community as part of the accompanying documentation to the Bill.³⁴

Concluding comments

- 2.43 The committee notes the concerns presented by the UTA and believes these issues should be reconciled with the proposed provisions and relevant policy to ensure there is no unintended consequence arising.
- 2.44 The committee believes that the issue raised in regard to the possible impact on risk premiums of regular changes in development regulations requires further investigation and that appropriate measures be put in

31 UTA, *Submission 11*, p. 2.

32 UTA, *Submission 11*, p. 2.

33 UTA, *Submission 11*, p. 2.

34 UTA, *Submission 11*, p. 2.

place to anticipate this type of outcome and rectify any negative consequence.

Proposed Division 6 – Miscellaneous

Background

- 2.45 **Proposed Division 6** creates new definitions to support the operation of proposed Part 20A as well as the legislative instruments made by the Minister therein contained. Proposed Division 6 clarifies that State and Territory laws ‘operate concurrently with proposed Part 20A of the Act to the extent that they are not inconsistent with the Bill.’³⁵
- 2.46 **Proposed section 372W – Fibre-ready facility** creates a definition of ‘fibre-ready facility’ and covers the two categories of:
- an underground fixed-line facility that is used in connection with an optical fibre line as specified by legislative instrument; and
 - any other fixed line facility used in connection with an optical fibre line as specified by legislative instrument.³⁶
- 2.47 The purpose of this section is to enable the Minister to ‘specify other types of fixed-line facilities, including above ground facilities, as fibre-ready facilities individually or by class.’ The Explanatory Memorandum provides that:
- Because fibre-ready facilities are for use in connection with optical fibre cabling they will necessarily need to be designed and installed with that purpose in mind. In the case of underground fibre-ready facilities, for example, this would include ducting with gentle enough angles to allow the ready deployment of fibre. More detailed specifications could be set out in industry codes or standards, carrier specifications or in a Ministerial instrument.³⁷

35 EM, p. 39.

36 EM, p. 43.

37 EM, p. 44.

Discussion

- 2.48 The Greenfield Fibre Operators of Australia (GFOA) is opposed to Ministerial authority to set standards and specifications according to NBN Co requirements as this could limit competition. The GFOA explained:

... the Minister wants NBN Co to be a monopoly and that he will therefore either set standards and specifications that only suit NBN Co network design and business or be silent and allow NBN Co standards and specifications to become the default standards and specifications as uncertainty overcomes the property development industry.³⁸

- 2.49 In addition, GFOA commented that these standards prohibit innovation in Greenfield developments and do not permit affordable deployment of free to air television (FTA TV), Pay TV (television) and the like. The GFOA stated:

NBN Co standards and specifications are not suitable for other innovative [Fibre-to-the-Premises] FTTP networks in Greenfields or networks which permit the affordable deployment of FTA TV, PayTV, utility management and other community services.³⁹

- 2.50 This issue is discussed further in Chapter 3.

- 2.51 OptiComm was of a similar view and stated:

The legislation SHOULD NOT stipulate NBN Co standards (which have never been peer reviewed) as industry wide standards. Communications Alliance standards are designed to provide a broader range of options and encourage innovation within the industry.⁴⁰

- 2.52 TransACT stated it was concerned about the Minister's authority to set NBN Co specifications and standards by legislative instrument and would prefer the Communications Alliance (CA) to set the standard, but that timing may be an issue in this case. TransACT stated that it:

... is concerned about the potential for the Minister, under these provisions, to specify NBN Co specifications or guidelines by legislative instrument, thereby imposing inflexible and anti-competitive requirements on infrastructure competitors of the NBN Co. While TransACT would prefer to see CA industry

38 Greenfield Fibre Operators of Australia (GFOA), *Submission 1*, pp 5 and 6.

39 GFOA, *Submission 1*, pp 5 and 6.

40 OptiComm, *Submission 10*, p. 2.

endorsed codes or standards applied in the Bill it understands that timing may preclude that from occurring.⁴¹

2.53 TransACT suggests that provisions should be included in the Bill which allow a developer to adhere to the chosen or alternate fibre providers specifications or guidelines. TransACT commented that 'in this instance, these guidelines are well established, as.... fibre infrastructure providers have been successfully adhering to relevant CA codes for more than five years.'⁴²

2.54 Telstra responded to the issues GFOA raised in regard to standard setting and commented that the concerns raised by the GFOA are not relevant to the content of the Bill. Telstra stated:

Any concerns relating to standard setting in this area has already been addressed in previous legislation. The standard making powers in the Bill refer to standards ensuring the interoperability of **customer equipment** with the NBN or other superfast networks, rather than with the standards required of the network builder. The Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011, in amending Part 21 of the Telecommunications Act 1997 provided the Australian Communications and Media Authority ("ACMA") with powers to make technical standards relating to layer 2 bitstream services. There are general powers for the making of Codes and Standards under sections 117 and 118 of the Telecommunications Act which can be used by the Communications Alliance and the ACMA to make the type of codes and standards that the GFOA Document is referring to. Hence concerns raised by the GFOA Document are not relevant to the content of the Bill.⁴³

2.55 The DBCDE stated that the Bill does not set out technical specifications for fibre infrastructure in new developments, but rather gives 'the Minister some powers to make instruments to do so with regard to passive infrastructure and to optical fibre lines in specified developments' if necessary. The DBCDE explained:

For fibre infrastructure to be able to serve its purpose (e.g. to allow the ready deployment of fibre) and operate at an appropriate level (e.g. in terms of speeds) across the many new developments

41 TransACT, *Submission 12*, p. 14.

42 TransACT, *Submission 12*, p. 15.

43 Telstra, *Submission 3.2*, p. 5.

constructed in Australia each year, some degree of standardisation may be required. These provisions provide a reserve power to fast-track this standardisation process if required, noting that normal standardisation can sometimes be time consuming and subject to gaming.

The Government's policy in relation to specifications was set out in the 9 December 2010 Policy Statement: NBN Co will provide specifications for use where a developer wishes to use NBN Co. The specifications will also be provided to the Communications Alliance with a view to having these specifications endorsed for general use by industry as soon as possible.⁴⁴

2.56 This policy is also reflected in the Government's Statement of Expectations for the NBN and NBN Co.⁴⁵

2.57 The CA has indicated it has worked closely with NBN Co since it was established and a range of telecommunications companies across Australia to:

Define the reference architecture of the NBN, designing wholesale product descriptions and a range of other technical and operational issues.⁴⁶

2.58 The CA stated it is presently reviewing all of its standards, codes and guidelines documents to identify which will need to be revised 'to take account of the changed industry circumstances flowing from the NBN rollout.'⁴⁷ The CA advised:

The Operations Working Group, for example, is reviewing the NBN Co Pit and Pipe specification to determine whether it would be appropriate to define a Communications Alliance standard for fibre deployment. It is anticipated that a range of other NBN-related issues will be reflected in revised standards codes and guidelines during coming months.⁴⁸

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

45 Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy and Senator the Hon Penny Wong, Minister for Finance and Deregulation, 20 December 2010, *Statement of Expectations*, pp. 6 and 7.

46 Comverge Networks, *Exhibit 4*, p. 1.

47 Comverge Networks, *Exhibit 4*, p. 1.

48 Comverge Networks, *Exhibit 4*, p. 1.

Concluding comments

- 2.59 The DBCDE has stated that the Bill does not set out technical specifications for fibre infrastructure in new developments, but rather gives ‘the Minister some powers to make instruments to do so with regard to passive infrastructure and to optical fibre lines in specified developments’ if necessary.
- 2.60 The committee also acknowledges the points made by Telstra that the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011, in amending Part 21 of the Telecommunications Act 1997 provided the Australian Communications and Media Authority with powers to make technical standards relating to layer 2 bitstream services.
- 2.61 The committee is of the view that a number of comments made by contributors in this part are not relevant to the Bill. The committee has outlined further the concerns of contributors in this area in Chapter 3.

Amendments to provisions in Part 21 – Technical regulation

Background

- 2.62 The **proposed amendments to provisions in Part 21** enable the ACMA to ‘set standards for customer equipment and customer cabling to be connected to the NBN or other superfast telecommunications networks.’ The Minister is also enabled ‘to direct the ACMA to make technical standards under Division 3 and update directions powers in Division 9.’⁴⁹
- 2.63 The proposed amendments to provisions in Part 21 will ensure that ‘the ACMA has sufficient powers to make technical standards’ if so required. This will ‘assist with the operation of the NBN or other superfast telecommunications networks.’⁵⁰

49 EM, p. 48.

50 EM, p. 48.

Discussion

- 2.64 Comverge Networks suggested that the Bill should not include provisions for standard setting by the Minister, rather it should be a body such as the CA. Comverge Networks stated:

Essentially it has taken the country years to evolve away from the old days of Telecom setting the monopoly standards to a broad-based, albeit fractious industry grouping collaboratively arriving at standards. At this stage there are numerous bodies capable of setting these standards, including the Communications Alliance who are standing ready and able.

While we acknowledge and intensely disliked the frustrations in the process this is far better than forcing the industry to accept what we believe would be throwback and feature specific standards proposed by NBN Co. To illustrate by referring to a similar field (not standards), we highlight that the basic services proposed by NBN Co tie the country to the days of xDSL (as opposed to a modern fibre network) and further note the mandatory bundling of data and voice services is not a practise seen on the more open style networks operated by the industry.⁵¹

- 2.65 Comverge Networks recommended:

... that the Bill ensures the continuing collaborative standards setting process with those numerous clauses allowing the political setting of standards to be struck out.⁵²

Concluding comments

- 2.66 The comments made by the DBCDE and Telstra in reference to proposed Division 6 also apply to proposed Amendments to Part 21.
- 2.67 The committee acknowledges the view put forward by Comverge Networks about the standard setting role of the CA.

General comments about the Bill

- 2.68 Several contributors to the inquiry were generally supportive of the certainty the Bill provides to developers.

51 Comverge Networks, *Submission 6*, pp. 5 and 6.

52 Comverge Networks, *Submission 6*, pp. 5 and 6.

- 2.69 Telstra stated that the Bill provides clarity on the obligations of developers and infrastructure providers in new developments which ‘will facilitate a more streamlined application of the Government’s policy objective of achieving fibre rollout in new developments.’ Telstra stated:

As the Universal Service Provider for Australia, Telstra has a substantial interest in achieving such certainty. Telstra requires certainty of its obligations and role in providing standard telephone services to Australians on request. Telstra is also aware that the developer community is seeking policy clarity to enable them to plan and build new homes and business premises for the broader Australian community.⁵³

- 2.70 The Housing Industry Association (HIA) stated that it supported the following elements of the Bill.

- ‘Incorporating ‘fibre-ready’ infrastructure in new developments where the NBN Co roll-out has not yet proceeded to the area; and
- Incorporating full fibre infrastructure in new developments where the NBN Co has completed its roll out and provided services to existing homes to the area (as is currently the case for copper facilities).’⁵⁴

- 2.71 The UDIA welcomed the ‘regulatory certainty that legislation will provide’ and stated that in general ‘the development industry is very supportive of the opportunity for improved telecommunications services to be made available in Greenfield sites offered by the NBN.’⁵⁵

- 2.72 The HIA stated that the operation of the legislation and the impact on new developments with less than 100 premises and on those with greater than 100 premises that elect to wait for the NBN may slow down land release across Australia. The HIA recommended that supporting regulations and other information be provided to the relevant stakeholders in a timely manner. The HIA stated:

Uncertainty around the operation of this legislation and the subsequent impact on developments with less than 100 lots/dwellings and on developments with more than 100 lots that elect to await the delivery of fibre by the NBN, has the potential to slow down the release of much needed land supply in all regions of Australia. Therefore the Bill, supporting regulations and other information needs to be provided to the residential building and

53 Telstra, *Submission 3.2*, pp 3 and 4.

54 Housing Industry Association (HIA), *Submission 7*, p. 1.

55 Urban Development Institute of Australia, *Submission 9*, p. 2.

development industry in a timely manner to ensure there is no negative impact on housing affordability as a consequence of delayed processes.⁵⁶

- 2.73 TransACT commented that the potential impacts of the Bill within the NBN framework need to be considered. TransACT stated:

TransACT believes that the Committee needs to consider not only the potential impacts of specific provisions within the Fibre Deployment Bill, but the greater impact of how this piece of legislation, together with the government's overall NBN policy framework, looks to enshrine the NBN Co as the monopoly provider of fixed-line services in Australia potentially displacing the private sector from the market.⁵⁷

Concluding comments

- 2.74 The committee notes that there is general support for the Bill. The committee acknowledges the broad concerns highlighted by various contributors to the inquiry, especially the Greenfields fibre providers.
- 2.75 Some of the issues raised throughout the inquiry relate to the Government's policy which underpins the Bill and so do not have any legislative consequence associated with the Bill.
- 2.76 The committee acknowledges that the Bill will provide certainty for developers with the broad aim of requiring the installation of passive fibre infrastructure in new developments in anticipation of the arrival of the NBN.

Recommendation 1

- 2.77 **The committee recommends that the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011 be passed.**

⁵⁶ HIA, *Submission 7*, p. 1.

⁵⁷ TransACT, *Submission 12*, p. 17.