

# SENATE SELECT COMMITTEE HEARING

## Written Questions on Notice

October 2009

### Department of Broadband, Communications and the Digital Economy

#### QUESTION 1

*When the Government announced that there would be an Implementation Study conducted by the Lead Adviser, there was also mentioned that there would be at least one Interim Report that would provide progress on implementation issues being considered by the Government, the NBN Co and the telecommunications industry.*

- a) *Could you please provide the Committee with the due date of the first Interim Report, as well as that of any additional Interim Reports due prior to the Final Report?*
- b) *What topics will be covered in the first interim report?*
- c) *Is the Final Report still scheduled for completion by the end of February 2010?*
- d) *Will the reports be made public?*
  - i. *If not, how will the Government ensure it can be held accountable to the findings and recommendations within the report(s)?*
- e) *What role will the Lead Adviser assume once the Final Implementation Study Report is completed?*

#### ANSWER:

- a) The first Interim Report was provided to the Department on 14 August 2009. The Lead Adviser contract and the terms of reference provide for further interim reports to be provided at the Department's request. However, the Department has not sought further interim reports.
- b) The interim report was preliminary in nature and delivered within a very short time frame, given the Lead Adviser was only appointed on 6 August 2009. The interim report provided an early view of the key issues to be considered over the course of the implementation study and to frame the final report.

The topics covered in the interim report were in line with the terms of reference and included consideration of;

- Ownership, governance and operating arrangements of the company
  - Nature of wholesale services
  - Ways to attract private sector investment
- c) The Lead Advisor is on track to deliver the final Implementation Study report in February 2010.
  - d) The interim report will not be released. As the Minister indicated at Senate Estimates on 19 October 2009, the Government will consider whether the final report will be made public in February 2010 when the implementation study is completed.
  - e) As part of the Lead Adviser's contract, they are required to assist the Department and the Government in considering the findings of the recommendations from the Implementation Study Report, respond to any queries in relation to the Implementation Study Report and assist decision makers on the approach to the implementation of the new national broadband network.

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#### QUESTION 2

*Mr Quigley indicated at the 20 July public hearing that the NBN Co may consider the acquisition of assets prior to the Final Report of the Implementation Study.*

- a) What measures has the Department put in place to prevent the NBN Co procuring assets that would not be either in the public interest or could place at risk the long term commercial viability of the NBN?*
- b) What limitations can the Department or the Government place on the NBN Co regarding asset procurement, building programs or employment prior to the Implementation Study's report?*
- c) How will the Department and/or the Government mitigate the risks associated with procurement decisions made without the benefit of the Final Implementation Study Report?*

#### ANSWER:

- a) NBN Co Limited (NBN Co) is a wholly-owned Commonwealth company and, accordingly, it is subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act). NBN Co has also been prescribed as a Government Business Enterprise (GBE), so it follows the *Governance Arrangements for Commonwealth Government Business Enterprises* (June 1997) (Governance Arrangements). Among other things, both the CAC Act and the Governance Arrangements place obligations on the directors of GBEs to keep Shareholder Ministers (for NBN Co the Shareholder Ministers are the Minister for Broadband, Communications and the Digital Economy and the Minister for Finance and Deregulation) informed of significant events including the proposed acquisition of a significant shareholding or business by NBN Co or any of its subsidiaries.
- b) The directors of NBN Co are responsible for developing the business strategies and approving the day-to-day management policies of the company. The CAC Act places obligations on the directors of GBEs to keep Shareholder Ministers informed of particular significant events that may occur, which could include events relating to asset procurement, building programs, or employment, to the extent that they involve a significant business or business activity.
- c) The NBN Co Directors are responsible for managing all risks associated with NBN Co's operations. The Government is working closely with NBN Co during the Implementation Study process and Shareholder Ministers are being regularly consulted.

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**QUESTION 3**

*The Committee has been advised by the Auditor General that the NBN Co will not be subject to the usual Government Procurement Guidelines? However Mr Quigley informed the Committee that the NBN Co, as a Government Business Enterprise, would be subject to the usual "government rules". Apart from the Procurement Guidelines, can you detail what other government rules will not apply to the NBN Co, and why?*

**ANSWER:**

As a wholly-owned Commonwealth company and Government Business Enterprise (GBE), NBN Co Limited (NBN Co) is subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act). In accordance with section 47A of the CAC Act, a CAC Act body is subject to government procurement requirements, including the *Commonwealth Procurement Guidelines*, only if it is prescribed under the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations). NBN Co has not been so prescribed under the CAC Regulations, consistent with the practice for other Commonwealth GBEs.

The Government expects to introduce legislation into Parliament that will determine the regulatory framework to govern NBN Co. The Government has undertaken consultation on this matter and is now formulating the NBN Co regulatory framework.