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Mr Robert Oakeshott MP
 Chair,
 Joint Committee on the National Broadband Network
 Parliament of Australia
 PO Box 6021
 Parliament House
 CANBERRA ACT 2600

Dear Mr Oakeshott,

Thank you for the opportunity to provide comments on the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011.

HIA would be pleased to attend any further hearings that the Committee may be holding to discuss any of the comments made in this response.

HIA is Australia's peak residential building industry association, representing over 42,000 members nationally.

HIA members comprise a diversity of residential builders, including all Top 100 builders, all major building industry manufacturers and suppliers and importantly for the purposes of this legislation, we represent residential land developers and apartment builders, small to medium builders, contractors and consultants to the residential building industry.

HIA members construct over 85% of the nation's new housing stock. HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building and development industry.

HIA has run a long campaign around the broadband issue and the housing industry's interests lie primarily in the provision of services in and around new housing developments in Greenfield and infill areas.

The central focus of HIA's early campaign was the inequity between the proposal for new homes and new home buyers to pay a full cost of the installation, whilst those in existing homes would receive the service for "free" or at the expense of the broader taxation base. If developers were to pay the full cost of installing optical fibre, HIA's costs indicated it would be at best \$2,500 per allotment and as high as \$5000 per allotment. This would have placed an inappropriate burden on new home buyers, in particular first home buyers who can least afford these additional imposts at the time of purchase.

Through the debate, HIA did, however, support:

- Incorporating 'fibre-ready' infrastructure in new developments where the National Broadband Network Company (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).

In response to HIA's concerns, in December 2010, the Federal Government, announced, consistent with its June 2010 statement, a movement of the focus away from developers having to install 'full fibre' to require only 'fibre ready' infrastructure – including the trenching (pit and pipe) arrangements.

The Government's December announcement confirmed the intention that from 1 January 2011, NBN Co would be the telecommunications (wholesale) provider of last resort in new developments with 100 dwellings or more, that are within or adjacent to the "long term fibre footprint". Some transitional arrangements were put in place for projects that were in progress at that time.

For sites with less than 100 dwellings, developers would continue to liaise with Telstra about the appropriate level of service. This may be to retain copper and provide pit and pipe, or Telstra may nominate an alternative broadband option such as wireless or satellite connections.

HIA notes that the Bill as it stands appears to contain the four key enabling arrangements to be set up for fibre installation in new developments: The Bill:

- Requires the installation of optical fibre line into developments in specified developments;
- Requires that a fixed line facility must not be installed in the project area unless the facility is fibre ready;
- Ensures that an allotment or buildings in new developments must not be sold unless fibre ready with Ministerial powers for use when a site is outside the long term fibre footprint and
- Sets up a third party access regime to infrastructure with any disputes over access to be overseen by the Australian Competition and Consumer Commission.

The Committee should be aware that the Bill does not, as outlined in its Statement of 13th May:

"...enable NBN Co. to be the fibre provider of last resort in new developments, including broad acre estates, urban infill and urban renewal projects within its fibre footprint."

This part of the arrangements is provided for in the Minister's December 2010 policy statement and also in a "Statement of Expectations" that the Government has made to the NBN Co.

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

Detailed comments are set out in the attached schedule. HIA would be pleased to provide any further comments as required in relation to this matter.

Yours sincerely



Kristin Brookfield
Senior Executive Director
Building and Planning Services

Issues

a) Overall Implementation Issues

One of the biggest difficulties being faced by developers and builders around the implementation of the Federal Government's Fibre to the Home proposal in Greenfield developments has been the lack of available technical standards and guidelines to assist the residential building industry in complying with the new requirements and ensuring the end user has the required connection.

Developers are responsible for delivering the pit and pipe and the requirements for these will be NBN Co specific. This is because NBN Co will specify standards that meet their network architecture. Initial documentation released late last year on the standards focussed on brownfield areas. New documentation with some further detail with more of a Greenfield focus was released on 1st April 2011. NBN Co will need to continue to work with developers and their engineers to ensure designs meet NBN requirements. It appears that NBN Co hold the final determination about the technical requirements for the pit and pipe – but has been willing to work with individual developers early in the permit stages.

From HIA's perspective one of the biggest challenges in the process will involve getting the right information to the builders who will need to plan for installations in the homes and developments. Also information will be required on network points and liaising with electricians to make sure installation is safe, streamlined and operational (particularly when the end user occupies the premises).

b) Providers

As outlined in the Government's December Policy announcement, it is the intention that NBN Co is expected to be the wholesale supplier of last resort for fibre connections in Greenfield developments. This essentially means that developers will be required to fund the cost of pit and pipes for fibre connections and NBN Co (including its sub contractors and partners) will be responsible for all other costs for fibre deployment, including backhaul. Telstra will be required to provide retail telecommunications services to all premises (which may be via wireless technology).

Whilst there will be a choice in providers, NBN Co will possibly end up being the main provider for developments. This will be probably be the case as the NBN Co set the technical requirements and run the approvals process for the pit and pipe construction which will possibly limit opportunities for other providers to step in. NBN Co might find that it is the provider of first choice as opposed to the provider of "last resort" as developers and builders will rely on them to guarantee service delivery at the right standards. It is noted however, that having the choice of provider as will assist those developers who elect to move earlier than NBN Co timeframes to install full fibre in a development.

Urgent clarification is need in relation to developments that are located within the NBN footprint that elect to pay for and install a full fibre service for residents, in conjunction with additional fibre services such as pay TV, security systems and intranets. Will these developments retain ownership of the infrastructure or will they be forced to transfer these assets to NBN Co. at the time they move through the area without adequate compensation.

Section 372L refers to third party access, however this does not detail whether a carrier must be given access at no charge, nor does it address whether the ownership can retain with the original installer.

c) Transitional Issues

A number of members have begun contacting HIA in relation to the new requirements as they are now being asked by Telstra to pay for the pit and pipe infrastructure in existing (approved) developments - which was previously provided by Telstra at no cost under the universal service obligation. This is around \$900 - \$1000 per allotment.

The process of land subdivision takes many years, therefore over the next 2 – 3 years, HIA members will need to establish whether their project is covered by the new provisions or whether it pre-dates the Bill, to determine their legal obligations for telecommunication services.

In theory, sites being developed that are not captured by the Bill remain under the 'old system' and expected Telstra to continue to deliver infrastructure in the same manner. However advice from HIA members indicates that Telstra is now seeking reimbursement for that infrastructure, as it will become the property of the NBN CO₂. in the future, despite not being captured by the Bill. Prior to the legislation, the universal service obligation was being met without these charges.

d) Regulation

Whilst the Government has released a policy and a statement of expectations to the NBN Co, around the intentions for the 100 lot threshold where NBN Co is to be the provider of last resort in new developments, HIA was under the impression that these and other matters agreed to by Government and contained in the policy would be covered in ensuing regulations.

Whilst provision for the Government's intention is outlined in the abovementioned statements, industry requires certainty about the arrangements and this should be clarified to ensure they are enforceable in the future, preferably through the regulation.

HIA remains concerned that the legislation does not clearly define the scope of the universal service obligation as it will apply to all projects (both over and under 100 lots/dwellings). It is expected that this matter will be clarified through the regulation or complementary legislation to establish the new Universal Service Obligation Company.

e) Commencement

The Bill is scheduled to commence the day after it receives Royal Assent or 1 July 2011 whichever occurs later. Whilst understanding it is difficult to predict accurately, a degree of certainty around commencement times is considered desirable.

In setting this date, the Government has expected the fibre announcement has been well publicised as it was initially to have commenced on 1 January 2011. Industry is expected to be well equipped to commence working under the requirements but there are a number of the practical implementation issues that are being raised with HIA which are set out in this submission.

Given there has been a further six month lag in the anticipated commencement date HIA would be seeking clarity in the transitional provisions to understand whether projects which have commenced in the first half of this year have a legal obligation.

f) Other matters

There are several other matters that have been raised by HIA members including:

- *Sign off on final works* – There are industry concerns that there may be a cost for the final sign off of works and the transfer of assets.
- *Council Intervention* – It is unclear how the Bill will prevent Councils from adding planning permit conditions relating to fibre and backhaul installations. There should be a measure to control the use of individual council permit requirements that either double up or conflict with NBN Co requirements.
- *Connection from pit to the home and home wiring* – As mentioned earlier HIA is unclear as to what the requirements will be. For HIA's builder members this is the most important aspect.