

Coalition Senators' additional comments

Coalition Senators do not oppose the passage of this legislation and welcome the recommended amendments proposed in the Committee's report. However, Coalition Senators do hold concerns relating to:

- the conduct of this inquiry;
- the effectiveness and nature of the disclosure and safeguard provisions contained within this Bill; and
- general failings of the policies and processes being applied in relation to the development of the National Broadband Network (NBN).

Conduct of this inquiry

Coalition Senators believe it is regrettable that this inquiry was conducted in the shadow of the Request for Proposals (RFP) issued by the Government, with the associated confidentiality and gag provisions that are applied to it. Indications from industry suggest this caused a level of reluctance from interested parties to making submissions to the inquiry. Concerns were held that such public comment, especially offered voluntarily, could jeopardise other commercial interests related to the RFP.

The overlapping of the introduction of this Bill with the work of the Panel of Experts, the calling for submissions on future regulatory or structural settings and the release of the RFP highlight the chaotic, shambolic and frantic approach being applied to the development of the NBN. These issues are further explored herein.

As a result of these factors limited submissions were received. This prompted the Committee to pose a number of questions to the Department of Broadband, Communications and the Digital Economy (DBCDE).

Subsequent to the lodging of these questions a late submission from Telstra was received on 24 April 2008, detailing a number of concerns with the proposed legislation and outlining possible amendments to the Bill. DBCDE was then asked to provide specific responses to the issues raised and amendments proposed by Telstra.

However, responses were not received to the two requests of DBCDE until after each of the deadlines requested by the Committee. As a consequence this information explaining key components of the legislation and responding to Telstra's concerns was received within days of the reporting deadline set by the Senate.

Coalition Senators were of the opinion that the response of DBCDE to Telstra's submission inadequately addressed all of the issues raised and that hearings were warranted to explore the issues with Telstra. Further, Coalition Senators understood that other industry experts and companies would be willing to provide evidence about the Bill and associated NBN processes if called to do so.

Given these factors and that the Committee was unable to meet the original reporting date set by the Senate anyway, Coalition Senators argued that an interim report be tabled, hearings be held and a final report lodged within eight days of the original reporting date. Government Senators rejected this move, blocked the potential for public hearings on this Bill and extended the reporting date by just two days.

After several years of attacking Coalition Senators over accountability and the conduct of Senate committees, along with countless promises from Labor's leaders to adhere to higher standards of accountability and transparency, Coalition Senators are amazed at the breathtaking hypocrisy of the Government in blocking public hearings into the forced provision of such sensitive information by private companies and the investment of billions of dollars in taxpayer funds.

Government Senators blocked public hearings and a reasonable extension to the reporting deadline citing the need to have the legislation passed during the sittings in the week beginning 12 May 2008. This is not only reflective of the hasty and rushed approach to all aspects of the NBN but also of the lack of parliamentary sittings scheduled by the Rudd Government in the first half of 2008. It highlights their avoidance of scrutiny at all levels.

Issues with the Bill

Like much of the NBN process this Bill leaves more questions unanswered than it answers. It requires for specified information to be provided to the Commonwealth by telecommunications carriers so this information can be disclosed to companies considering lodging a proposal to build the NBN. However, despite being a Bill requiring the release of specified information, it fails to actually specify what information is to be released.

Instead, such information is to be contained in a later disallowable instrument to be issued by the Minister. Consultation with telecommunications carriers on the content of the instrument is provided for under section 531(C) but Optus states in their submission to this inquiry that they are:

... very concerned the consultation period under section 531C(1) may be too short. The section proposes a mere 3 business days for consultation on the draft instrument to determine that specified information is 'designated information'. Optus proposes this section be amended to provide for 5 business days.

Commensurate with the Government's desire to rush all aspects of the NBN to suit their political purposes, even this very reasonable request for an extra two days to consider the draft instrument has been rejected out of hand. Coalition Senators urge the Government to reconsider their stance on this point.

As previously mentioned, Coalition Senators welcome the limited amendments incorporated in the report into this Bill. The three amendments strengthen the safeguards in the Bill that will hopefully ensure smooth and satisfactory provision of the information required for companies participating in the RFP process.

In addition to these amendments Coalition Senators believe the Bill should be further amended in the following terms:

- to encourage the timely and voluntary provision of information (subject to appropriate confidentiality deeds) as has been volunteered by companies such as Telstra and Optus;
- to expressly limit the scope of the instrument to requiring information necessary for the construction of the NBN and Broadband Fibre to Schools initiatives;
- strengthening the recourse against the Government or recipient parties for disclosing entities who may be damaged by the misuse of information provided by them; and
- tightening rules in relation to the destruction or return of information provided by carriers.

Coalition Senators also note the unprecedented nature of this legislation, with the DCBDE acknowledging in correspondence to the Committee that it is not:

... aware of any other examples of specific legislative arrangements introduced overseas to facilitate the roll-out of a broadband network on a large scale.

This statement again highlights the highly interventionist nature of the NBN policies adopted by the Rudd Government, requiring unprecedented legislative powers and the significant contribution of taxpayers funds.

Development of the National Broadband Network

The development of the NBN is increasingly being criticised by telecommunications carriers, companies and commentators as a shambolic process driven by the Government's desire to appear to be fulfilling its election promise as quickly as possible, regardless of the best approaches to regulation, structural reforms or the provision of public funds.

\$4.7 billion of taxpayer funds, all of it savings meant for other purposes contained in either the Communications Fund or the Future Fund, is being dangled as the investment carrot in this process. It ignores the fact that in many areas commercial broadband services would be provided anyway, but commits public funds to such areas while ensuring that Australians living in rural or remote areas, where public subsidies to encourage infrastructure investment might be justified, will miss out altogether or be forced to wait until 2012 for broadband services.

In terms of financial management, the Government is unaware of whether it wishes to provide these funds as part of an equity arrangement where it owns shares, debentures or trust units in the project. Alternatively, it has left open the possibility funds may go towards grants for the creation of the networks, grants for the supply of the service, purchase of assets for the network or indeed any other incidental or ancillary purpose related to the NBN.

This total lack of Government direction in relation to the NBN extends to the regulatory environment that will dramatically impact on competition and pricing issues, as well as issues around structural separation. Rather than outlining what is required in these areas, the Government has invited proponents to make suggestions. Such suggestions are being made in tandem with the development of proposals, meaning a disconnect is likely to exist between the structure of many proposals and the regulatory regime eventually settled on by the Government, or that such changes could significantly benefit a particular bidder.

At a minimum, the regulatory framework should be finalised and made public as a first step. Resolution of the regulatory framework should be assisted by the Australian Competition and Consumer Commission, the Productivity Commission and Infrastructure Australia, all of whom have been sidelined in the current process. Then a request for tender could be issued, allowing companies the opportunity to bid against a known commodity and still deliver an outcome by 2012.

Failure to get these issues right might well see the Government achieve their promise of an NBN, but the question will be at what cost? A lessening of competition will result in higher access costs for Australian businesses and families, meaning the expenditure of \$4.7 billion could leave Australia worse off, not better off. Coalition Senators believe that less politically motivated haste and more sound consideration of the policy issues at stake is required by the Government.

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