

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 173**

Minister for Finance and Administration

*Public Works Committee Amendment Regulations 2010 (No. 1)*

*Public Works Committee Act 1969*

The *Public Works Committee Act 1969* (the PWC Act) established the Public Works Committee to inquire into and report on public works referred to it by the Parliament. A public work is a work that is proposed to be carried out by or for the Commonwealth and for which moneys are appropriated by the Parliament.

Section 40 of the PWC Act provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by that Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 6A(1) of the PWC Act advises that the Act applies to every authority of the Commonwealth. However, subsection 6A(3) provides that where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with other bodies, the Governor-General may make regulations declaring that the Act does not apply to that authority.

The purpose of the Regulations is to exempt NBN Co Limited (ACN 136 533 741) and its wholly owned subsidiaries from the provisions of the PWC Act<sup>1</sup>.

The National Broadband Network (NBN) (announced by the Government on 7 April 2009), will connect at least 90 percent of all Australian homes, schools and workplaces with broadband services with speeds up to 100 megabits per second. All other premises in Australia will be connected with wireless and satellite technologies that will deliver broadband speeds of 12 megabits per second.

The Government established NBN Co Limited (NBN Co) on 9 April 2009 as a Government Business Enterprise (GBE). NBN Co's responsibilities are to plan, rollout and operate the NBN, on a wholesale only open access basis. NBN Co operates as a fully corporatised commercial entity, independent from Government.

NBN Co is trading and providing services in competition with privately owned telecommunications firms, including:

- offering wholesale fixed broadband services in Tasmania (starting July 2010) and the five first release sites (starting 2011); and
- competing in the fixed fibre broadband sector throughout Australia as a wholesale only open access network provider;

NBN Co's competitors are not subject to PWC oversight. Requiring NBN Co to be subject to the PWC would place NBN Co at a competitive disadvantage in relation to its network design and construction activities which are expected to differ between geographical areas and would require NBN Co to submit a multitude of different plans to the PWC for approval. This process would have a high compliance cost and reduce NBN Co's ability to take advantage of economies of scale.

Exempting NBN Co from the PWC approval process will negate these compliance issues and will enable NBN Co to compete on a level playing field with all parties subject to Commonwealth, state and local government laws including in relation to planning, stakeholder consultation and access to private property. NBN Co will remain subject to Parliamentary oversight, including Senate committee scrutiny and the tabling of its annual report in Parliament.

The Regulations will amend the *Public Works Committee Regulations 1969*, to include NBN Co Limited (ACN 136 533 741) and its wholly-owned subsidiaries as an exempt Commonwealth authority under subsection 6A(3) of the PWC Act.

The PWC Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.