

Chapter 1

Introduction

Resolution of appointment

1.1 On 14 November 2013, the Senate established the Select Committee on the National Broadband Network to inquire into and report on the Government's reviews of the National Broadband Network (NBN) and the governance of NBN Co, with interim reports as the committee sees fit and a final report on or before 10 June 2014.¹

1.2 The committee's terms of reference identify the following areas of inquiry:

- the establishment of the Government's strategic review of the NBN including:
 - the adequacy of the terms of reference,
 - the selection of personnel and expert advisers to the review,
 - the data provided to the strategic review, in particular, any variation between that data and data used by NBN Co in preparing its annual report and corporate plan, and
 - the impact of the strategic review on the operational effectiveness of NBN Co;
- the outcome of the strategic review of the NBN, including:
 - the extent to which the review fulfilled its terms of reference,
 - the reliability of assumptions made in the review, including, inter alia, the cost of alternative network equipment, the revenues of NBN Co under alternative scenarios, construction requirements and access to Telstra's copper network,
 - the implications of any alternatives considered for the long-term structure of the industry, in particular, the structural separation of access networks from retail operations, and
 - any other matters arising from the strategic review;
- the establishment and findings of the Government's cost benefit analysis;
- the conduct and findings of the Government survey of the availability of broadband in Australia; and
- any related matter.

1 Parliament of the Commonwealth of Australia, *Journals Of The Senate*, No. 3 (Thursday, 14 November 2013), p. 133.

Brief history of NBN policy

1.3 On 7 April 2009, the Rudd Government announced the establishment of NBN Co to 'design, build and operate a new super-fast National Broadband Network'.² The NBN would:

- 'connect [with 90 per cent coverage] homes, schools and workplaces with Fibre-to-the-Premise (FTTP), providing broadband services ... in urban and regional towns with speeds of up to 100 Megabits per second (Mbps) - 100 times faster than those currently used by most people – extending to towns with a population of around 1,000 or more people' (later increased to 93 per cent)
- use next generation wireless and satellite technologies that will be able to deliver 12 Mbps or more to 'remote and regional areas
- 'provide fibre optic transmission links connecting cities, major regional centres and rural towns
- be Australia's first national wholesale-only, open access broadband network
- be built and operated on a commercial basis by a company established at arm's length from Government involving private sector investment
- be expected to be rolled-out, simultaneously, in metropolitan, regional, and rural areas.'³

1.4 The NBN was initially proposed as a joint partnership between Government and the private sector. During 2008, the former Minister, Senator the Hon Stephen Conroy, convened a panel of experts to evaluate proposals from the private sector.⁴ The expert panel was chaired by the former Secretary of the Department, Ms Patricia Scott. The other members of the panel were: Dr Ken Henry AC, (Treasury Secretary); Reg Coutts (Professor Emeritus of Communications at the University of Adelaide); John Wylie (CEO of Lazard Carnegie Wylie); Rod Tucker (Laureate Professor at the University of Melbourne); Tony Mitchell (Allphones Chairman); and Tony Shaw (former Chairman of the Australian Communications Authority).

1.5 On 26 November 2008, the Commonwealth received Proposals from six proponents: Acacia Australia Pty Ltd, Axia Netmedia Corporation, Optus Network Investments Pty Ltd, the Crown in the Right of Tasmania, Telstra Corporation Ltd and TransACT Capital Communications Pty Ltd. On 13 December 2008, the Panel met and considered the future of the Telstra Proposal. After considering legal and probity

2 Hon Kevin Rudd MP, Prime Minister and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, Media Release, "New Broadband Network," (7 April 2009).

3 Joint Committee on the National Broadband Network, Rollout of the National Broadband Network – First Report (31 August 2011), pp. 2-3.

4 Senator the Hon Stephen Conroy, Media Release, "Government announces Panel of Experts to assess National Broadband Network proposals," (11 March 2008).

advice, the expert panel and the Commonwealth concluded that the Telstra Proposal had not met the conditions of participation for the RFP and Telstra's Proposal was excluded from further consideration in the RFP process.⁵

1.6 In its report to Government, the expert panel advised that:

All Proposals were to some extent underdeveloped. No Proposal, for example, provided a fully developed project plan. None of the national Proposals was sufficiently well developed to present a value-for-money outcome.⁶

1.7 The expert panel also advised:

The Proposals have also demonstrated that rolling out a single fibre-to-the-node (FTTN) network is unlikely to provide an efficient upgrade path to fibre-to-the-premises (FTTP).⁷

1.8 This advice was in part informed by a concurrent review by the Australian Competition and Consumer Commission (ACCC) of the types of rollout proposed for the NBN. However, the expert panel also formed its own view that FTTN was not a cost effective path to FTTP.⁸ The expert panel concluded:

The Panel can see a way forward to achieve the outcomes sought by the Government and has provided that advice in confidence to the Government because of the commercial sensitivities arising.⁹

1.9 Following receipt of this advice, the Minister met with Prime Minister Rudd on 21 January 2009 to seek approval to bring an alternative plan to Cabinet.¹⁰ The

5 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia' (20 January 2009), at: http://www.archive.dbcde.gov.au/2013/september/national_broadband_network/extract_from_evaluation_report/extract_from_the_evaluation_report2.pdf

6 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia' (20 January 2009), at: http://www.archive.dbcde.gov.au/2013/september/national_broadband_network/extract_from_evaluation_report/extract_from_the_evaluation_report2.pdf

7 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia' (20 January 2009), at: http://www.archive.dbcde.gov.au/2013/september/national_broadband_network/extract_from_evaluation_report/extract_from_the_evaluation_report2.pdf

8 Kathryn Edwards, "Expert panel member defends NBN tender process," *Computerworld* (4 February 2010), at: http://www.computerworld.com.au/article/335122/expert_panel_member_defends_nbn_tender_process/

9 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia' (20 January 2009).

Strategic Priorities and Budget Committee of Cabinet considered the NBN policy on a number of occasions between 29 January and 6 April 2009. Cabinet formally considered the NBN policy on 7 April 2009.¹¹ The Government also received advice from other Government agencies and the external advisers engaged by the Department on costing alternative proposals.¹²

1.10 In announcing the new National Broadband Network proposal in April 2009, the Prime Minister, Finance Minister and Minister for Broadband, Communications and the Digital Economy stated that:

The Panel of Experts has encouraged the Government to invest in optical fibre technology, supplemented by next-generation wireless and satellite technologies. The Australian Competition and Consumer Commission has also endorsed the use of FTTP as a superior technology to Fibre to the Node.¹³

1.11 Work to begin implementation of the NBN began shortly after the announcement. The Government announced that it would:

- commission an implementation study to determine operating arrangements, detailed network design, methods to attract investment and provide procurement opportunities for business
- fast-track negotiations and arrangements to begin a FTTP and wireless network rollout in Tasmania (which would commence in July 2009)
- commence rollout of fibre optic transmission links between cities, major regional centres and rural towns to address ‘blackspots’
- take steps to ‘progress legislative changes’ to govern NBN Co and facilitate NBN rollout including in new (or Greenfield) developments (from 1 July 2010)
- make an initial investment of \$4.7 billion in the NBN

10 The process by which the Minister met with and briefed the Prime Minister was detailed by Senator Conroy at Budget Estimates in May 2009 (Senate Budget Estimates Hansard, 26 May 2009, p. 93). The expert panel report was received in a week the Prime Minister had decided to deliver a major speech in every mainland capital as part of maintaining public confidence in the face of the Global Financial Crisis (see James Button, *Speechless: A Year in My Father’s Business* (Melbourne University Press, 2012).

11 Answer to Questions on Notice, Budget Estimates 2009, No.5.

12 Estimates Hansard, May 2009, pp. 97-98.

13 Hon Kevin Rudd MP, Prime Minister and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, Media Release, “New Broadband Network,” (7 April 2009).

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- commence consultation on required amendment to the telecommunications regulatory regime.¹⁴

1.12 The Implementation Study was delivered to Government on 5 March 2010 and was released on 6 May 2010¹⁵ Key findings and recommendations from the Implementation Study included:

- The NBN will deliver world class broadband infrastructure to all Australians;
- The \$43 billion total capital cost of the NBN is a conservative estimate and there are opportunities to significantly reduce the build cost;
- The peak investment required by Government is estimated at \$26 billion by the end of year 7, of which \$18.3 billion will be required over the next four years;
- Government should retain full ownership of the NBN until the roll out is complete to ensure that its policy objectives are met – including its competition objectives;
- The fibre component of the NBN should be extended from 90 to 93 per cent and cover the 1.3 million new premises expected to be built by 2017-18;
- Entry level wholesale prices on the fibre should be set at around \$30-35 per month for basic broadband 20Mbps plus voice service, to drive affordable retail prices and better value for money for consumers compared to what is available today;
- Fibre to the premise is widely accepted as the optimal future proof technology with wireless broadband a complementary rather than a substitute technology;
- Next generation wireless and satellite services will deliver peak speeds of at least 12 Mbps (and much higher for many wireless users). Satellite services will deliver average data rates which are more than 20 times higher than most users of these technologies experience today and much higher than average DSL usage today;
- NBN Co can build a strong and financially viable business case with the Study estimating it will be earnings positive by year six and able to pay significant distributions on its equity following completion of the rollout; and

14 Hon Kevin Rudd MP, Prime Minister and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, Media Release, “New Broadband Network,” (7 April 2009).

15 The Hon Lindsay Tanner MP, Minister for Finance and Deregulation and Senator the Hon Stephen Conroy Minister for Broadband, Communications and the Digital Economy, Joint Media Release ‘Landmark Study confirms NBN vision is achievable and affordable’ (6 May 2010).

- The Government can expect a return on its equity investment sufficient to fully cover its cost of funds.

1.13 NBN Co delivered its Corporate Plan 2011-13 on 8 November 2010.¹⁶ The Corporate Plan was released publicly on 20 December of that year, together with the Government Statement of Expectations.¹⁷ The Government Statement of Expectations also constituted the Government response to the Implementation Study.¹⁸

1.14 The Corporate Plan and the Government Statement of Expectations (20 December 2010) reflected the Government's changes to its expectations for the NBN since the Implementation Study:

- increasing the FTTP coverage of the NBN by the end of the rollout period from 90 per cent of premises to 93 per cent of premises
- requesting NBN Co to 'build the wireless network that will deliver fixed wireless services, delivering peak speeds of at least 12 Mbps to premises in the 94 to 97 percentile of premises.'
- an expectation of NBN Co 'to maximise the use of existing infrastructure where it is efficient and economic to do so in the delivery of the fixed wireless network.'¹⁹

1.15 In August 2012, NBN Co released its second Corporate Plan (2012-15).²⁰ The Corporate Plan noted that concluding the Definitive Agreements with Telstra had taken nine months longer than foreshadowed in the previous Corporate Plan. The Corporate Plan defined the Commencement Date as "7 March 2012, being the date that the Telstra Definitive Agreements became wholly unconditional." As a consequence the NBN is now two years into the build program for the FTTP rollout.

1.16 The Corporate Plan confirmed:

- The NBN is a sound investment that will pay its own way and generate a 7% return for the taxpayer

16 Available at: <http://www.nbnco.com.au/assets/documents/nbn-co-3-year-gbe-corporate-plan-final-17-dec-10.pdf>

17 The Hon Julia Gillard MP, Prime Minister; The Hon Wayne Swan MP, Treasurer; Senator The Hon Penny Wong, Minister for Finance and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, Media Release, 'Government releases NBN Co Corporate plan,' (20 December 2010).

18 The Hon Julia Gillard MP, Prime Minister; The Hon Wayne Swan MP, Treasurer; Senator The Hon Penny Wong, Minister for Finance and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy 'NBN Rollout: Statement of Expectations' Media Release 20 December 2010.

19 Joint Committee on the National Broadband Network, 'Rollout of the National Broadband Network – First Report,' (31 August 2011), p. 5.

20 NBN Co Corporate Plan 2012-15, 8 August 2012, available at: <http://www.nbnco.com.au/assets/documents/nbn-co-corporate-plan-6-aug-2012.pdf>

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- The Government is on track to meet its target of having work for 758,000 fibre premises commenced or completed by the end of 2012
 - Wholesale broadband prices are projected to fall over time in both real and nominal terms
 - The capital cost of the NBN build has increased by 3.9%, but remains significantly less than the \$43 billion originally announced
 - The construction time for the NBN has only been extended by six months, despite a nine month delay in the completion of the Telstra deal.²¹

1.17 In March 2013 NBN Co announced that the failure of its contractors to mobilise resources necessitated a downward revision of its June 2013 forecasts.²² In May 2013 Telstra put a temporary stop on remediation work while asbestos handling practices were reviewed.²³ In August 2013 Telstra announced the recommencement of pit remediation.²⁴

1.18 In an address to TelSsoc on 2 December 2013, Mike Quigley summarised the achievements of the company to date:

- Building from scratch a company of close to 3,000 people with all of the processes and systems needed;
- Launching a successful Interim Satellite service;
- Building a Long Term Satellite solution that is on schedule and on budget for services beginning in mid-2015;
- Rolling out a Fixed Wireless network;
- Building a Transit Network to support all access technologies, which is on budget and on schedule for completion by 2015;
- The Development of OSS/BSS systems that have been proven to function at scale together with the establishment of a National Test Facility and a Network Operations Centre;
- The successful development and launch of a suite of Products covered by Wholesale Broadband Agreements (WBAs). And hopefully, any day now, the finalisation of a 27-year SAU [now accepted by the ACCC];
- Building of a Greenfields fibre capability that can complete more than 30 new development sites a week, anywhere in the country;

21 Senator the Hon Penny Wong, Minister for Finance and Deregulation and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, Media Release, “NBN Co Corporate Plan 2012-2015 released” (8 August 2012).

22 NBN Co, Media Release, “NBN Co updates short-term fibre rollout timeline” (21 March 2013).

23 Telstra, Media Release, “New initiatives to strengthen asbestos management” (30 May 2013).

24 Telstra, Media Release, “Retrained field force to begin Telstra pit remediation works” (5 August 2013).

- Building a Customer Connect capability that has now connected more than 100,000 end users and which is rapidly getting on top of the MDU connections and growing the ability to cope with the exceptionally high take-up rates that were being experienced;
- And finally, a growing capability to build the LN/DN component of the Brownfields network at a cost that preserves the integrity of NBN Co's financial plan.²⁵

1.19 In his Australian Computer Society Telecoms Address on 11 October 2013, Senator Conroy summarised the reasons why the former Government conceived the National Broadband Network. An abridged version is provided here:²⁶

The digital age is upon us, but the realisation of the opportunities it presents is really just beginning. We started on realising it on day one by creating the Department of Broadband, Communications and the Digital Economy. Labor's policy on broadband formed in Opposition was an essential part of this name change, so was the wider agenda. So as well as focussing on broadband we started a national discussion about the digital economy.

Over the last four years we released three major reports;

- Australia's Digital Economy: Future Directions in 2009;
- the National Digital Economy Strategy in 2011, and
- Advancing Australia as a Digital Economy earlier this year.

These reports were dismissed by Malcolm Turnbull as justifying the NBN by "framing it as a pre-requisite for global digital greatness."

This is the Coalition's fundamental error—they don't understand that we are building the NBN because of the promise of the digital economy. We are not talking about the digital economy to justify the infrastructure investment. Labor made the decision to invest in broadband because of its importance to our economic and social future.

The Coalition response to our initial broadband policy was to assert that the private sector would build broadband for our cities. The Coalition only has a broadband plan because, as Peter Reith identified, the failure to have a credible broadband policy cost them the 2010 election.

Labor's approach to the Digital Economy actually focussed on three areas—providing the physical infrastructure, developing services and building national capability.

Labor's commitment to build a new national broadband infrastructure was forged in Opposition. Three factors resulted in the need to move from the initial plan to build Fibre to the Node and instead build Fibre to the Home.

25 Mike Quigley 'Reflections on starting-up a Public Infrastructure Project,' Address to TelSoc (2 December 2013).

26 Senator the Hon Stephen Conroy, ACS Telecoms Address (11 October 2013). Video available at: <http://www.acs.org.au/news-and-media/news-and-media-releases/2013/acs-telecoms-address-now-available-to-view>

The first was the resistance of Telstra to structural reform. This resistance led them to submit only a brief non-compliant tender response and they were excluded from the process. The second was the impact of the Global Financial Crisis on alternative bidder's ability to raise capital. But thirdly, and most significantly, the Expert Panel advised the government that FttN was not a cost effective path to a full fibre network.

At the heart of our approach were two fundamental principles.

The first was to fix the industry structure and get sustainable retail competition.

The second principle was to make sure that we make an investment in long term infrastructure, not a stop-gap.

The starting point for Labor's policy was to ask what infrastructure you need to empower the digital age. The starting point should not be identifying the cheapest interim step to get you through the next five years.

1.20 On 7 September 2013, the Coalition formed Government. Since being sworn in, the Minister for Communications, the Hon Malcolm Turnbull MP has announced five reviews into the NBN, including:

- The Strategic Review
- An Independent Cost Benefit Analysis and Regulatory Review
- The Broadband Quality and Availability study
- An NBN Governance Review
- An Independent Audit of the NBN Public Policy Process.

1.21 The Strategic Review also flagged a sixth review focussing on the fixed wireless and satellite programs, which will "consider strategic options available to NBN Co to cost effectively provide coverage to areas outside the fixed footprint, as well as considering the optimal model to provide this coverage."²⁷ The committee understands that this review will be completed in March and will be examined by the committee in subsequent hearings.²⁸

1.22 On 24 September 2013, NBN Co shareholder Ministers, the Minister for Communications and the Minister for Finance, provided NBN Co with an interim Statement of Expectations for the transition period.²⁹ The interim Statement of Expectations directed NBN Co to:

- avoid service disruption for consumers, minimise impact on the construction industry, and achieve less costly and speedier rollout objectives

27 Strategic Review, p. 119.

28 Committee Hansard, Additional Estimates 2014, p. 32.

29 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, Media Release, "Implementing the Coalition's Broadband Policy" (24 September 2013).

- continue to provide services including interim satellite services, and deployment of fibre to new development areas
- commence preparation of the 2014-17 Corporate Plan
- increase transparency and accountability of NBN Co and its activities; and
- assist with the conduct of other reviews—specifically requests for information from the Department of Communications regarding the broadband quality and availability review.³⁰

1.23 The interim Statement of Expectations also instructed NBN Co to “continue existing construction where build instructions had been issued.” Further build or remediation instructions “should not ordinarily be issued pending further analysis and discussion.” It also advised that: “management of existing design work should occur so as to optimise value in the context of the Government’s policy for a flexible architecture.” The Committee has considered NBN Co’s application of this instruction as part of this report.

1.24 The interim Statement of Expectations indicates that it provides guidance only, and that NBN Co should consult with the Government for any matters not covered by its advice.³¹

Previous parliamentary committee inquiries into the NBN

1.25 Since the announcement of the termination of the Request For Proposals process—and its replacement with a government-owned company to build the NBN—four parliamentary committees have inquired into various aspects of the project:

- The Senate Select Committee on the National Broadband Network (established 25 June 2008; terms of appointment revised by the Senate on 14 May 2009; final report tabled 17 June 2010);³²
- House of Representatives Standing Committee on Infrastructure and Communications ('Inquiry into the role and potential of the National Broadband Network', report tabled 25 August 2011);³³
- The Joint Committee on the National Broadband Network (established March 2011; five reports tabled between March 2012 and August 2013;³⁴ dissolved when the 43rd Parliament was prorogued on 5 August 2013); and

30 Interim Statement of Expectations, pp. 1-2, available at:
http://www.communications.gov.au/broadband/national_broadband_network

31 Interim Statement of Expectations, p. 2, available at:
http://www.communications.gov.au/broadband/national_broadband_network

32 Reports available here:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/broadband/index

33 Report available here:
http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ic/nbn/report.htm

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- The Senate Standing Committee on Environment and Communications (formerly Senate Standing Committee on Environment, Communications and the Arts) examined various pieces of legislation relating to the NBN. The relevant department and NBN Co were questioned during estimates hearings.

Purpose of the interim report

1.26 This first interim report provides an overview and analysis of the Strategic Review based on evidence received by the committee to date. The Committee has issued this interim report because it has significant concerns with the reliability of the Strategic Review.

1.27 The report focuses on three key aspects of Government policy on the NBN:

- the Strategic Review of the NBN carried out by NBN Co over a five week period in 2013 (Chapter 2);
- governance arrangements for NBN Co in the context of the Strategic Review (Chapter 3); and
- transparency and accountability issues surrounding Government policy and the current NBN rollout (Chapter 4).

1.28 The Committee acknowledges that a number of Questions on Notice and Questions in Writing to NBN Co remain unanswered at the time of writing. The Committee cannot be held hostage to long delays by NBN Co and the Minister in responding to these questions. Further comments on the issue of responsiveness are made in Chapter 4.

1.29 The Committee will pursue further lines of inquiry before presenting its final report to the Senate. A list of submissions to the inquiry and the public hearings held to date can be found in Appendix 1 and 2 respectively. The committee will have more to say in Chapter 4 about the conduct of some of the hearings, and the attendance or otherwise of witnesses in response to certain orders of the committee.

1.30 The findings of the Strategic Review will be incorporated into NBN Co's 2014-17 Corporate Plan. The Strategic Review advised that the Corporate Plan was scheduled to be provided to the Government in the first half of 2014, and that the Strategic Review had been prepared to assist the Government formulate policy and inform decisions on the Statement of Expectations for NBN Co.³⁵ NBN Co has since indicated an intention to lodge a 2014-15 “budget” before June and a full Corporate Plan in the second half of the year.³⁶ The revised timing will enable the plan to incorporate the findings of the cost-benefit analysis and the broadband quality project.

34 Reports available here:
http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jcnbn/reports.htm

35 Strategic Review, p. 9.

36 NBN Co, Transcript of Half Yearly Results Briefing, (21 February 2014), at:
<http://www.nbnco.com.au/content/dam/nbnco/images/media-images/Transcript-Half-Year-Results.pdf>

It will also enable the Corporate Plan to be more fully informed about the real costs of any change in strategy.

1.31 The Strategic Review is the first of the planned Government reviews to have been completed. *The Broadband Availability and Quality Report* was released on 20 February 2014 (noting that NBN Co was provided with early data for consideration in the Strategic Review),³⁷ but the Committee has not yet completed its investigation. Similarly, the terms of reference and panel of experts for the *Independent cost-benefit analysis and review of regulation* were announced on 12 December, and on 13 February 2014 the expert panel released a *Regulatory Issues Framing Paper*. However, until the review progresses further and the committee has the opportunity to seek submissions and call relevant witnesses, few conclusions can be drawn. Subsequent review processes are ongoing and will be examined in turn.

Acknowledgements

1.32 The committee thanks all those who have assisted with the inquiry to date, including those who have appeared at hearings and made submissions.

37 Committee Hansard, 17 December 2013, p. 48.