

Chapter 6

Governance issues

6.1 Since the publication of the committee's first interim report, two reviews into NBN policy and governance have been published: the 'Independent audit of the NBN policy process' (the 'Scales Review') and the 'NBN Co Limited Corporate Governance Review' conducted by KordaMentha. 2014 was also a year of further change in the management of NBN Co, with the commencement of new CEO Bill Morrow, other senior management changes and internal reforms.

The 'Scales Review' of NBN policy

6.2 In March 2014 the Minister for Communications and the Minister for Finance appointed Mr Bill Scales AO to conduct an 'independent audit of the NBN policy process'. The audit was to examine the policy process from April 2008 to May 2010 that resulted in the establishment of NBN Co Limited, and provide recommendations on what future actions should be taken by the Australian government in relation to both the NBN public policy process, and other major projects or reforms.¹

6.3 Mr Scales presented his report (the 'Scales Review') to the Minister for Communications on 25 July 2014, and it was publicly released and tabled in parliament on 4 August.

6.4 The Department of Communications advised the committee that the cost of the Scales Review was \$375,475.²

Key findings of the Scales Review

6.5 The Scales Review assessed that the first stage of the Labor government's process to develop the NBN through a private sector tender process, which was referred to as 'NBN Mark I', was 'in general conducted appropriately from a public policy perspective'. The Review asserted that the request for proposal process exhibited a lack of pertinent information about the framework and criteria for the NBN project.³

6.6 The Scales Review's major criticism of the Mark I process was that the ACCC 'overstepped its authority' in providing 'unsolicited advice' to the panel of experts considering the proposals that FTTN was not a stepping stone to FTTP. The ACCC had advised that around 70 per cent of the costs of the FTTN proposals were 'node-related expenditure' that would be 'stranded costs' in any subsequent upgrade to

1 'Independent audit of the NBN public policy process: Terms of Reference', in Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, Appendix 1.

2 Department of Communications, answer to question on notice (Question 6) following the committee's public hearing on 3 October 2014.

3 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. ix.

FTTP.⁴ The Review believed that this ACCC intervention had a particularly important influence on the subsequent decision by government to adopt a FTTP model, but that the ACCC lacked the expertise and mandate to offer such advice.⁵ The Scales Review also opined that it was inappropriate for the panel of experts to provide confidential 'observations' to the government following the failure of the tender process.⁶

6.7 The Scales Review's findings on this point were in conflict with the assessment of the Australian National Audit Office, which determined in a 2010 audit that the conclusions and observations of the panel of experts were supported by appropriate evidence.⁷

6.8 The Scales Review also examined the public policy process underpinning 'NBN Mark II.' The Scales Review asserted that the 11 weeks from the receipt by the government of the Panel of Experts' report in January 2009 to the announcement of NBN Mark II in April was an inadequate timeframe to do all the work necessary for such significant policymaking on one of Australia's largest ever public infrastructure projects, particularly at a time of 'frenetic' government activity across the board in response to the global financial crisis and other priorities.

6.9 The Scales Review also asserted that the completion of NBN's first preliminary business case in March 2010 was 'far too late'. Similarly, the Review criticised the timeframe for issuing NBN Co with a comprehensive Statement of Expectations in December 2010.⁸

6.10 The Scales Review recommended that commitments to new large infrastructure projects should be fully and independently costed by the Productivity Commission or Infrastructure Australia before they proceed, and the costs and project plans publicly disclosed before the project commenced.⁹ A related recommendation was that all public sector infrastructure projects with costs over \$1 billion should be subject to cost-benefit analysis, with the results made public prior to the commencement of the project.¹⁰

4 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, pp 36–37.

5 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, pp 73–76.

6 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xxviii.

7 Australian National Audit Office, *The National Broadband Network Request for Proposal Process: Department of Broadband, Communications and the Digital Economy*, Audit Report No.20 2009-10, p. 21.

8 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xxxiii.

9 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. x.

10 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xi.

6.11 The Scales Review also offered a number of more general recommendations for future public policymaking, including in relation to Cabinet consideration, independent monitoring, and the public service role in the development of major projects.

Issues arising from the Scales Review

The reality of the NBN development process

6.12 The criticism of the public policy process for 'NBN Mark II' in the Scales Review was largely based on the assertion that it was conceived hastily and without proper consideration by Cabinet or officials.

6.13 The Scales Review emphasised that responsibility for the detailed development of NBN Mark II fell to the Strategic Priorities and Budget Committee of Cabinet (SPBC, with the additional participation of the Minister for Broadband, Communications and the Digital Economy) rather than the full Cabinet.¹¹ Advisers outside the government were not used, and details of the policy were closely guarded even within the government.¹²

6.14 Mr Scales expressed his opinion on the work done during that time:

I consider the policy development process could not have been properly undertaken in 11 weeks, no matter how hard SPBC and the group of public servants worked, and how devoted they were to developing the new NBN Mark II.¹³

6.15 It should be noted that the 11 week timeframe and process to launch the revised NBN policy and establish NBN Co Limited, as described in the Scales Review, was far from the claim repeatedly made by the Minister for Communications and others, that the present NBN was conceived by the then Prime Minister and Minister for Broadband, Communications and the Digital Economy 'on the back of a

11 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xx. The members of the SPBC were the Prime Minister, Deputy Prime Minister, Treasurer and Minister for Finance and Deregulation.

12 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xxi.

13 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. 83.

beer coaster' during a two-hour flight.¹⁴ That version of events was not mentioned in the Scales Review; rather, Mr Scales acknowledged that 'from the evidence provided to me it is clear that both [SPBC and officials] worked extremely hard to develop the proposals'.¹⁵

6.16 In addition, the Scales Review observed that the department had in fact begun working on options for an alternative network as early as August 2008, in response to advice that the request for proposal process was likely to fail. Formal papers were submitted in October and December 2008 canvassing options for the government to build its own network.¹⁶

6.17 Others involved at the time have gone on the record to state that the Scales Review did not present an accurate or fair description of the process undertaken in 2009-2010. This committee outlined the policy process behind the development of the NBN in its first interim report,¹⁷ noting in particular that in addition to reports from its panel of experts and the ACCC, '[t]he Government also received advice from other Government agencies and the external advisers engaged by the Department on costing alternative proposals'.¹⁸ The department formally advised parliament in 2009 that '[t]he Government considered a range of options before decisions were taken to terminate the National Broadband Network (NBN) Request for Proposals process and to adopt the NBN policy announced on 7 April 2009'.¹⁹

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- 14 See, for example, The Hon Malcolm Turnbull, *House of Representatives Hansard*, 18 November 2013, p. 440; The Hon Malcolm Turnbull, *House of Representatives Hansard, Questions without notice*, 4 June 2014, p. 5543; 'Turnbull stays mum on NBN alternative', *BRW*, 28 February 2012, http://www.brw.com.au/p/technology/turnbull_stays_mum_on_nbn_alternative_7hRMo3xvd1iCiGHoEP1qoN; 'Turnbull accuses Labor of "pork barrelling"', *Computerworld*, 6 June 2012; http://www.computerworld.com.au/article/426798/turnbull_accuses_labor_pork_barrelling/ (accessed 19 March 2015); The Hon Malcolm Turnbull, *House of Representatives Hansard, Questions without notice*, 16 June 2014, p. 5944; 'Govt set to unveil NBN report', *Lateline* (transcript), 4 May 2010, <http://www.abc.net.au/lateline/content/2010/s2890371.htm>; The Hon Mr Hartsuyker, *House of Representatives Hansard*, 19 September 2012, p. 11265; The Hon Mr Fletcher, *House of Representatives Hansard*, 26 October 2010, p. 1564
- 15 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. 83.
- 16 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. 35.
- 17 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp 2–6.
- 18 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 4.
- 19 Department of Broadband, Communications and the Digital Economy, answer to question on notice (Question 4) following Senate Standing Committee on Environment, Communications and the Arts Budget Estimates hearings, May 2009.

6.18 Former ACCC Chair, Professor Graeme Samuel AC, described the Scales Review as 'probably the least valuable' of all the coalition government reviews of the NBN, stating that it was 'fundamentally flawed in its evidence base' and insulting and offensive in its dismissal of the expertise and advice of both the ACCC, and the panel of experts.²⁰

6.19 Professor Rod Tucker, who was a member of the panel of experts, explicitly rejected the assertions in the Scales Review that the panel relied unduly on the ACCC advice, and did not examine different technology options for the NBN:

In my view, all of these assertions are incorrect, and this taints the credibility of the audit.

In reality, the panel spent many hours discussing and analysing the technology options and the upgrade paths...The Panel also independently evaluated other models for upgrades.

The panel, which included telecommunications experts from both industry and academia, carefully scrutinised all advice it received, and drew heavily on its combined experience...

A fundamental flaw with the audit process was that Scales, by his own admission, did not have access to key information, with limited access to documents associated with the panel of experts' activities.

Members of the panel, constrained by strict confidentiality rules, were also unable to share any further information with Scales about the details of panel discussions and deliberations.²¹

6.20 Professor Reg Coutts, another member of the panel of experts, corroborated Professor Tucker's comments, reaffirming that:

we thoroughly considered the options for the NBN particularly FTTN and the possible scenarios to transition to a FTTP solution which is accepted worldwide as the 'final solution'...²²

6.21 Professor Coutts confirmed that the panel reached its own conclusions before it received the ACCC's advice. He also criticised the Scales Review for citing a single report on the relative costs of FTTN versus FTTP to discount the analysis of the ACCC and the panel, while ignoring several significant global reports which came to contrary conclusions. Professor Coutts expressed his hope that ultimately:

the history of NBN will be written from objective analysis of the evidence (both written and oral) and after reflection of outcomes for Australia.²³

20 Professor Graeme Samuel AC, 'The National Broadband Network – the prognosis for competition in telecommunications', TelSoc Charles Todd Oration, 5 November 2014, Melbourne, p. 1, at http://telsoc.org/sites/default/files/events/pdf/telsoc_graeme_samuel_speech_01.pdf

21 Professor Rod Tucker, 'In support of a fibre to the premises NBN', *The Conversation*, 20 August 2014, at <http://theconversation.com/in-support-of-a-fibre-to-the-premises-nbn-30618>

22 Professor Reg Coutts, letter to the editor, *Communications Day*, 22 August 2014, pp 5–6, at <http://www.couttscommunications.com/Published-Articles/cd140822.pdf>

Major projects and cost-benefit analyses

6.22 Describing the policy development process for NBN Mark II, the Scales Review stated that although it was proposed that the project be delivered through a public non-financial corporation, the process did not involve any cost-benefit analysis or business case. A preliminary cost estimate of \$43 billion for its implementation was developed by the relevant government agencies, but:

[w]hen the broad parameters of NBN Mark II were announced, the operating arrangements, detailed network design, ways to attract private sector investment, detailed costings and the appropriate regulatory regime all remained as works in progress, to be determined following the Implementation Study that would be undertaken by specialist external advisors over the coming months.²⁴

6.23 The Scales Review further stated that:

Notably missing from the requirements set out for the Implementation Study was any evaluation of the Government's policy objectives, its decision to implement the NBN through establishing NBN co and a cost benefit analysis. The study was to focus solely on detailed implementation issues with the merits of the policy remaining untested.²⁵

6.24 Professor Tucker observed that the Scales Review had 'missed the point' that 'consideration of upgradeability and its costs was one of a number of factors that fed into the 'value for money' criterion' for evaluating the NBN proposals.²⁶ That value for money assessment was required to consider the costs, benefits and risks of each proposal.²⁷

6.25 Consistent with the views of Associate Professor Kai Riemer discussed in chapter 4 above, Professor Samuel noted the inherent 'fragility' of cost-benefit analyses in the area of telecommunications technology, given their reliance on many assumptions that are hard to pin down, such as future broadband take-up rates, driven by technology that may not yet exist, and willingness to pay. Like Associate Professor Riemer, Professor Samuel suggested that in such cases it was reasonable to conclude that a business case or investment analysis may be more useful:

Those in the Commonwealth bureaucracy associated with the formulation of the Labor NBN policy, through to its legislative implementation, advise me that the fragility of a cost benefit analysis associated with the ability to

23 Professor Reg Coutts, letter to the editor, *Communications Day*, 22 August 2014, p. 6.

24 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xxi.

25 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. xxiii.

26 Professor Rod Tucker, 'In support of a fibre to the premises NBN', *The Conversation*, 20 August 2014, at <http://theconversation.com/in-support-of-a-fibre-to-the-premises-nbn-30618>

27 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. 22.

produce desired outcomes by altering difficult to define assumptions, led the former government to focus on a detailed business case or investment analysis.²⁸

6.26 The business case undertaken as part of the former government's implementation study in 2010 determined that the \$43 billion rollout estimate during the NBN development process was conservative, and that the government could expect a return on its investment equity sufficient to fully recover its funding. These findings were not disputed by the current government in the Strategic Review.²⁹

6.27 The Scales Review recognised that the public policy process undertaken between January and April 2009:

involved considerable iteration of the basic proposition as assumptions around costs of delivery and associated revenue were estimated, challenged and settled.³⁰

Implementation of the Scales Review recommendations

6.28 Following the release of the Scales Review, the Minister for Communications endorsed its recommendations:

they're very sound recommendations and indeed they are consistent with commonsense and in fact in large part with our existing policy. He recommends for example that large public sector infrastructure projects which cost above \$1 billion should be subject to a cost benefit analysis. Our policy is that projects in excess of \$100 million should be subject to cost benefit analysis.³¹

6.29 Indeed, the Coalition's infrastructure policy promised that it would:

require all Commonwealth infrastructure expenditure exceeding \$100 million to be subject to analysis by Infrastructure Australia to test cost-effectiveness and financial viability. This will include dams, telecommunications, hospitals, educational institutions, energy projects and water networks but will not extend to defence projects.³²

28 Professor Graeme Samuel AC, 'The National Broadband Network – the prognosis for competition in telecommunications', TelSoc Charles Todd Oration, 5 November 2014, Melbourne, p. 2, at http://telsoc.org/sites/default/files/events/pdf/telsoc_graeme_samuel_speech_01.pdf

29 Senator the Hon Conroy, *Senate Hansard*, 26 August 2014, p. 5653.

30 Bill Scales AO, *Independent Audit: NBN Public Policy Process April 2008-May 2010*, 25 July 2014, p. 43.

31 Malcolm Turnbull MP, Minister for Communications, transcript of interview with David Lipson, Sky News *AM Agenda*, 5 August 2014, at <http://www.malcolmturnbull.com.au/-media/transcript-am-agenda-on-the-nbn-policy-audit-and-data-retention>

32 *The Coalition's Policy to Deliver the Infrastructure for the 21st Century*, September 2013, at <http://paweb-static.s3.amazonaws.com/13-09-05%20Coalition%202013%20Election%20Policy%20%E2%80%93%20Better%20Infrastructure%20Planning%20%E2%80%93%20policy%20document.pdf>, p. 2.

6.30 The Minister for Communications and the Minister for Finance issued a revised Statement of Expectations to NBN Co on 8 April 2014³³ mandating a new technology mix for the NBN rollout, months in advance of the completion of the cost-benefit analysis on the NBN commissioned by the government.

6.31 The minister's stated basis for the Statement of Expectations was the government's 2013 Strategic Review.³⁴ As the committee has previously reported, the Strategic Review itself was completed in just five weeks, and was subject to no independent external oversight.³⁵ As the committee's first interim report demonstrated, and ongoing evidence since that time continues to show, the assumptions and findings of that document were deeply flawed.

6.32 As discussed in chapter 2, the Coalition government has also moved away from the previous practice of commissioning independent review of NBN Co's Corporate Plans.

6.33 More broadly, beyond the telecommunications portfolio the government has also been notable for its failure to accept the recommendations of the Scales Review and indeed, to comply with its own election promise in regard to the preparation and publication of cost-benefit analyses in advance of the implementation of major infrastructure projects. For example:

- the 2014 federal budget allocated Commonwealth funding of \$1 billion for stage two of Melbourne's East West Link road project without the publication of a cost-benefit analysis;
- infrastructure and road upgrades around the proposed Badgery's Creek airport in Western Sydney were similarly announced without completed cost-benefit analyses being submitted to Infrastructure Australia; and
- Commonwealth funding of some \$2 billion for the WestConnex project in New South Wales was announced with no cost-benefit analysis in place.³⁶

The KordaMentha 'Governance Review'

6.34 The Coalition in opposition adopted an uncompromising and indiscriminate approach to their criticism of NBN Co personnel, with the NBN Co board and

33 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, *Letter* to Dr Ziggy Switkowski, Executive Chairman, NBN Co Ltd, 8 April 2014, http://www.communications.gov.au/_data/assets/pdf_file/0014/221162/SOE-Shareholder_Minister_letter.pdf.

34 See The Hon Malcolm Turnbull MP, 'Rebooting the NBN Project', Speech to *CommsDay* Conference, 18 November 2013, at <http://www.malcolmturnbull.com.au/media/rebooting-the-nbn-project-speech-to-commsday-conference>

35 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 96.

36 See 'Promise check: All \$100m-plus infrastructure projects to have cost-benefit analysis', ABC Online *Fact Check*, 7 November 2014, at <http://www.abc.net.au/news/2014-11-07/cost-benefit-analysis-promise-check/5850038>

management subject to a series of sustained and personal attacks. These began with attacks on the integrity of former NBN Co CEO Mike Quigley with reference to his previous role(s) at AlcatelLucent.³⁷ Later, these attacks focussed on Mr Quigley's credentials and competence in his role as CEO of NBN Co.³⁸ These attacks soon broadened to encompass the credentials and competence of the entire NBN Co Board, culminating in the threat of a judicial inquiry.³⁹ In July 2013, the NBN Co Chairman Siobhan McKenna took the unusual step of writing to Mr Turnbull signalling that the Board had taken measures to protect itself from 'threats':

Non-executive Directors have been told directly and indirectly by members of the opposition that they can expect a Judicial Enquiry investigating their governance post-election. The Non-executive Directors naturally sought to engage independent legal counsel on this matter, which they have a right to do, and appointed Herbert Smith Freehills. It is not unusual for company directors faced with threats to exercise their right to appoint external advisers.⁴⁰

6.35 The Coalition indicated in its April 2013 election policy that it would conduct a review of the NBN Co board.⁴¹

6.36 Consultants KordaMentha were engaged by NBN Co in December 2013 to provide a 'limited review' of the company's 'governance, management and the accountability of its Board and officers', from its inception in April 2009 to the change of government in September 2013, and the provision of information by NBN Co to parliament and taxpayers.⁴² The Governance Review was tabled on 13 August 2014.

6.37 NBN Co advised the committee that between 1 October 2013 and 30 June 2014, \$350,000 was spent on the Governance Review, and during that period a total of \$2,620,000 was paid to KordaMentha for advisory and corporate services.⁴³

37 See, for example, Joint Committee on the National Broadband Network, *Committee Hansard*, May 2011. See also Renai LeMay, 'The Earl of Wentworth is debasing himself', *ITNews*, 29 April 2011, at: <http://www.itwire.com/virtualisation/46833-the-earl-of-wentworth-is-debasing-himself/46833-the-earl-of-wentworth-is-debasinghimself?start=2>

38 See, for example, James Hutchison, 'Turnbull attacks Quigley over NBN management', *ITNews*, 24 September 2012, at: <http://www.itnews.com.au/News/316706,turnbull-attacks-quigleyover-nbn-management.aspx>

39 For example, ABC *Lateline*, 'Turnbull Critical of NBN Co Board', 18 July 2013, at: <http://www.abc.net.au/lateline/content/2013/s3806353.htm> See also <http://www.malcolmtturnbull.com.au/media/transcript-arguments-in-favour-of-electronic-voting>

40 Renai LeMay, 'Poison words: Turnbull + NBN board go to war', *Delimiter*, 18 July 2013, at: <http://delimiter.com.au/2013/07/18/poison-words-turnbull-nbn-board-go-to-war/>

41 *The Coalition's plan for fast broadband and an affordable NBN*, April 2013, at <http://lpaweb-static.s3.amazonaws.com/Policies/NBN.pdf>, p. 13.

42 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 4.

43 NBN Co Limited, answer to question on notice (question 8) following the committee's public hearing on 11 July 2014.

Key findings of the Governance Review

6.38 The Governance Review stated that it assessed NBN Co primarily against the Commonwealth government business enterprise (GBE) guidelines.⁴⁴ Like all other NBN reviews, its key findings mirrored the Coalition's position pre-election, in particular that NBN Co directors during the period were 'skilled and experienced individuals' but their mix of skills and experience 'was not appropriate for a company of the nature, scale and complexity of NBN Co'. The Governance Review identified five 'relatively minor' issues in relation to which the GBE guidelines 'were not fully complied with'.⁴⁵

6.39 The Governance Review also made a number of findings in relation to NBN Co's 'carriage of information'. The Review described a 'sense of frustration' within NBN Co about being 'under the political microscope', and about ensuring appropriate communication between the board, department and shareholder ministers.

6.40 A key finding in the report related to the handling of corporate plans by NBN Co. The Governance Review cited the Strategic Review's conclusion that the 2012 corporate plan was too optimistic and unlikely to be achieved, while it did not mention the 2013 corporate plan prepared by NBN Co at all. The Governance Review further drew attention to the provision in the GBE guidelines that corporate plans were confidential to shareholder ministers, implying that the 2012 corporate plan should not have been publicly released, as this 'reduced the usefulness of the document' in communicating with shareholder ministers and the department.⁴⁶

6.41 The Governance Review drew attention to communication problems in two other areas of NBN Co's activities:

- the inclusion of 'Service Class 0' in reporting to shareholder ministers on premises passed; and
- inconsistency in the reporting on 'premises passed' by satellite.

6.42 On two further issues considered, NBN Co's characterisation of the value of the Telstra Definitive Agreements and its contract procurement processes, the Governance Review found no fault in the practices of NBN Co during the period.

Issues arising from the Governance Review

Treatment of board members' feedback

6.43 During its process KordaMentha sought interviews with 25 current and former board members and staff of NBN Co. Fifteen of the 25 declined to be interviewed.

44 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 6.

45 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 8.

46 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 9.

The *Australian Financial Review* quoted one director who declined to participate in the process describing it as a 'witch hunt'.⁴⁷

6.44 A draft of the Governance Review was provided to the current and former board members for comment. In response, a group of nine current and former directors wrote a joint letter dated 4 August 2014. The nine advised that they 'generally disagree with the findings in the Draft Report and consider them to be unsupported by the facts'. Noting the heavy workload placed on the board, the former members emphasised that they were, as acknowledged in the report, skilled and experienced individuals, and had 'each acted with care and diligence'. The letter outlined the accountability and governance measures undertaken by the board, including that it had 'devoted significant time to strategic risks' in a timely and comprehensive way, and had maintained effective relationships and appropriate disclosure with shareholder ministers and departmental officials.⁴⁸

6.45 The Governance Review appended the nine directors' letter to its report, but stated that 'none of their comments resulted in a modification to our report as we considered they were either of a general nature, reiterated or confirmed comments made in the Draft Report, difference of opinion and/or were not relevant'.⁴⁹

6.46 Also on 4 August 2014, former NBN Co CEO Mike Quigley provided a detailed response to the draft report. Mr Quigley took issue with a number of its findings and analyses including its reliance on the Strategic Review's flawed projections, its failure to acknowledge the 2013 draft corporate plan prepared by the NBN Co board and management team, and its lack of consideration of the progress made by NBN Co in resolving early problems and accelerating the rollout. Mr Quigley said that it 'was of considerable surprise to NBN Co's Technical, Operational and Financial senior management' in September 2013 that the cost and timeframe reductions identified in the 2013 corporate plan were discounted in the Strategic Review.⁵⁰

6.47 Mr Quigley also disagreed with the report's description of a 'sense of frustration within NBN Co' about public scrutiny of the company, saying '[t]here was, however, a sense of frustration among the senior management regarding the deliberate distortion of facts'.⁵¹

47 Anne Hyland, 'KordaMentha review of NBN Co slams top directors', 13 August 2014, at http://www.afr.com/p/technology/kordamentha_review_of_nbn_co_slams_3FoV57UN95eQ2r6Q6qqqNP.

48 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 76.

49 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 74.

50 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, pp 78–79.

51 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 79.

6.48 The Governance Review also published Mr Quigley's letter, but stated that aside from one paragraph of his six-page response, 'we considered the remaining comments were either unnecessary details, difference of opinion and/or not relevant'.⁵²

NBN Co management and governance

6.49 The committee's first interim report noted the Strategic Review's assessment of governance problems at NBN Co, based on a study also conducted by KordaMentha, observing that the intense politicisation of the NBN had adversely impacted the performance of NBN Co and the efficient deployment of the network.⁵³

6.50 The first interim report also discussed issues relating to transparency and accountability, including the provision of public information on the rollout, and NBN Co's cooperation with parliament. The committee recommended that concrete measures should be put in place by shareholder ministers and NBN Co to improve transparency and accountability.⁵⁴

6.51 As noted above, the government's revised SoE issued to NBN Co in April 2014 emphasised that NBN Co should pursue a high degree of transparency in its communications with the public and parliament. The government's response to the interim report 'noted' the committee's recommendation in this regard.⁵⁵

6.52 Since the committee's first interim report there have been significant changes in the management of NBN Co. Mr Bill Morrow, appointed Chief Executive Officer in December 2013, began his tenure on 2 April 2014.

6.53 At the committee's 11 July hearing, Mr Morrow described morale within the organisation at his arrival:

Many of the employees love what they are doing for the country. That keeps them there. But they, quite frankly, even used words such as 'hated', 'upset with' and 'disgusted with the way in which we were operated'. Those are not my words; those came out of many of the reviews that we had done. When you look further, as to why that is, again you had some leaders that were well respected and appropriately followed; you had others that were not. The kinds of cultural things about distrust, and the kinds of cultural things about not promoting doing the right thing for the company, even at the expense of someone's performance elements—those were absent within the company. So that was a bit of the state of affairs when we arrived.

52 KordaMentha, *NBN Co Limited Corporate Governance Review*, 8 August 2014, p. 74.

53 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp 108–115.

54 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp 117–133.

55 Australian Government, *Australian Government response to the Senate Select Committee on the National Broadband Network Interim Report*, July 2014, p. 4.

I will point out: we have much work to do, but there is hope, I believe, amongst the employees and the contractors that we are taking this seriously and moving through the changes necessary.⁵⁶

6.54 Following Mr Morrow's arrival, NBN Co undertook a restructuring of its senior management team and the replacement of several senior executives. Mr Bradley Whitcomb was appointed Chief Culture and Business Transformation Officer and Ms Karina Keisler as head of corporate affairs in May 2014, both moving as Mr Morrow had from Vodafone Australia. On 6 June Mr Morrow announced that Mr Stephen Rue would replace Mr Robyn Payne as Chief Financial Officer, commencing on 1 July. Mr Dennis Steiger joined the organisation as Chief Technology Officer on 21 July, effectively replacing Mr Gary McLaren.

6.55 In NBN Co's annual report 2013-14, Mr Morrow wrote:

One of the goals in our new strategic direction is making NBN Co the best place to work. The Company conducted its first wide-ranging employee engagement survey during the fourth quarter [of F/Y 2013-14]. The participation rate of 80 per cent was encouraging, but the score was not. The survey produced an engagement score of 44 per cent which is lower than the average for the telecommunications sector (49 per cent). However, the results have provided the Executive Team with important information needed to develop a long-term change program focused on improving work practices, personal performance, career opportunities, leadership, organisational practices, HR policies, and how we recognise results. It will take some time, but it is a goal to which I am personally committed.⁵⁷

6.56 The committee notes that NBN Co's 2014-17 corporate plan sets out that the employee engagement survey conducted in May 2014 showed a drop in the 'measure of engagement behaviours at NBN Co' from 68 per cent to 44 per cent (the benchmark is 80 per cent). Mr Rue provided some comments on this at the 12 March 2015 public hearing:

Employee engagement is a very important piece of work that we as a management team look at. The more engaged that our employees are the more they have an affinity towards NBN Co and its brand, the better our company will be and the better the outcomes will be. It is something that we put a lot of time and effort into, into people's careers, into making sure that jobs are very clear—role clarity, et cetera. We actually spend a lot of time on this. It is very important. So, we are conscious of the low level. We are also conscious that that movement of that engagement over time does not happen quickly, and it is something that we are very focused on.⁵⁸

6.57 Speaking at a Senate Estimates hearing in May 2014, Mr Morrow noted that the importance of reforming NBN Co's governance and culture extended beyond the organisation, to relationships with external partners, and emphasised NBN Co's

56 Mr Bill Morrow, *Committee Hansard*, 11 July 2014, p. 21.

57 NBN Co Limited, *Annual Report 2013-14*, 30 June 2014, p. 15.

58 *Proof Committee Hansard*, 12 March 2015, p. 67.

commitment to improve its rollout forecasts and processes, and to eliminate internal 'silos'.⁵⁹

6.58 Addressing another Senate Estimates hearing on 24 February 2015, Mr Morrow highlighted changes made since the new management team had been in place including 'a series of important reviews to chart a new course', repositioning NBN Co as a customer-focused organisation, establishing 'new values and supporting leadership behaviours', and reforming key performance indicators and governance decision-making.⁶⁰

6.59 The committee notes that NBN Co's 2013-14 Annual Report indicates that the NBN Co board approved a \$60,000 contract to CicoMilne Pty Ltd, a company 100 per cent owned by one of its own board members, Mr Justin Milne.⁶¹ The Department of Communications also awarded a \$14,000 contract to CicoMilne Pty Ltd.⁶² According to media reports, Mr Milne was approached by the Coalition for an NBN Co position as early as June 2013.⁶³

NBN Co and the committee

6.60 The committee has continued to experience difficulties in obtaining meaningful information from NBN Co, including general or non-responsive answers to questions, and NBN Co's ongoing refusal to provide contract and other information frequently deemed by the company to be 'commercial in confidence' without appropriate justification. The committee will continue to pursue this matter through appropriate Senate processes.

Committee view

6.61 It is not appropriate for governments to conduct formal inquiries into the internal decision-making processes of predecessor governments, particularly when the inquiry in question is politically motivated. This government breached 113 years of Westminster convention in Australia by releasing to its agent, the Royal Commissioner into the Home Insulation Program, confidential Cabinet documents of

59 Senate Environment and Communications Legislation Committee, *Committee Hansard*, Budget Estimates hearings, 29 May 2014, pp 113–114.

60 Mr Bill Morrow, opening statement tabled at Environment and Communications Legislation Committee, Additional Budget Estimates hearing, 25 February 2014, p. 3.

61 NBN Co Limited, *Annual Report 2013–14*, 30 June 2014, p. 58.

62 Answer to Question on Notice No. 603, Supplementary Budget Estimates November 2013, at: http://www.aph.gov.au/~media/Committees/ec_ctte/estimates/bud_1415/Communications/answers/q603.pdf

63 On 12 June 2013, *Crikey* reported that Mr Milne and Mr Rousselot would be appointed at NBN Co if the Coalition won the election. At the time, Mr Turnbull rang *Crikey* and said this was 'untrue': 'Tips and Rumours', *Crikey*, 12 June 2013, at: http://www.crikey.com.au/2013/06/12/tips-and-rumours-898/?wpmw_switcher=mobile. See also David Ramli and Nabila Ahmed, 'Coalition wants ex-Telstra players for NBN Co board', *Australian Financial Review*, 13 May 2013, at: http://www.afr.com/p/technology/coalition_wants_ex_telstra_players_eTMq13dFgQnq0s5kQ6OFbL

the former Labor Government, a move that has been condemned by former Prime Ministers on both sides of politics. The nature of the Scales Review was similarly directed at the Cabinet deliberations of the former government.

6.62 The public policy decision-making process for the NBN has been well documented over the years. The first interim report of this committee contains a useful summary of the process. Considerable attention has been paid to the development of the NBN policy over recent years, and the publicly available information confirming the probity of the process. Despite this, in April 2013 as part of its pre-election broadband policy the Coalition announced that it would conduct an independent audit 'to examine the public policy process which led to the NBN'. The Scales Review is one of seven politically-motivated 'reviews' into the NBN that have been announced since the Coalition government was sworn in.

6.63 Before the election, the Coalition promised to undertake a cost-benefit analysis for any project worth more than \$100 million. Despite this, Minister Turnbull radically changed the rollout of the NBN—through a shareholder direction to NBN Co in the most recent Statement of Expectations—without first completing a cost-benefit analysis of the project, in direct contradiction to his pre-election promises and his many pious statements on the importance of such an analysis.

6.64 The government's record in relation to the recommendations of the Scales Review is illustrative. Despite describing the Review's recommendations as 'sound', the practice of the current government has been to ignore them. The Governance Review, for its part, made almost no recommendations, ignored feedback from NBN Co personnel, and does not appear to have warranted any response at all from the government.

6.65 In seeking to rewrite history on the NBN, the Scales Review and the KordaMentha Governance Review were partial and misleading. Their net result was to misrepresent and insult a wide range of eminent people and organisations, including the ACCC, ANAO and some of Australia's most senior corporate directors. These reviews have been central to what former ACCC Commissioner Mr Graeme Samuels has described as a 'political payback' process.

6.66 The committee remains concerned about the probity issues evident in the appointment of key personnel to NBN Co, identified in the committee's first interim report. Moreover, NBN Co's 2013-14 annual report indicates that NBN Co approved a \$60,000 contract to CicoMilne Pty Ltd, a company 100 per cent owned by one of its own board members, Mr Justin Milne. The Department of Communications also awarded a \$14,000 contract to CicoMilne Pty Ltd. According to media reports, Mr Milne was approached by the Coalition for an NBN Co position as early as June 2013.

