

# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 On 10 February 2011 the Senate, on the recommendation of the Selection of Bills Committee, referred the provisions of the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010 to the Environment and Communications Legislation Committee for inquiry and report by 16 March 2011.<sup>1</sup>

1.2 The committee advertised the inquiry on its website and in the national press and invited submissions by 24 February 2011. The committee also invited submissions directly from relevant organisations and associations, particularly within the information, communications and technology sector. The committee received 24 submissions. The names of persons and organisations that made submissions to the inquiry can be found in Appendix 1 to this report.

1.3 Two public hearings were held; one in Canberra on 4 March 2011 and one in Sydney on 9 March 2011. The names of witnesses that appeared at the hearings may be found in Appendix 2. The committee thanks submitters and witnesses for their contributions.

### Background to the bills

1.4 On 7 April 2009, the government announced plans to establish a new company to build and operate a new high speed national broadband network (NBN). The NBN will be a ubiquitous, wholesale-only, open-access network, to be rolled out simultaneously in metropolitan, regional and rural areas.<sup>2</sup>

1.5 On 7 April 2009, the government also announced that it was seeking views on options for reforming the existing telecommunications regime to make it work more effectively, particularly during the transition to the National Broadband Network. A

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1 Senate Selection of Bills Committee, Report No. 1 of 2011. See *Senate Hansard*, 2 February 2011, p. 79. The bills were introduced into the House of Representatives on 25 November 2010 and passed with two amendments on 1 March 2011. See paragraph 3.67 and *House of Representatives Hansard*, 1 March 2011, pp. 57–63. The bills were introduced to the Senate on 2 March 2011.

2 Prime Minister, Treasurer, Minister for Finance, Minister for Broadband, 'New National Broadband Network', media release, 7 April 2009.

discussion paper *Regulatory reform for 21st century broadband* was released on that date, with submissions due on 3 June 2009.<sup>3</sup>

1.6 When it was first announced, the government expected that the network would involve an investment of up to \$43 billion to provide up to 100 megabits per second broadband to 90 per cent of premises by fibre, and 12 megabits per second to all other premises by wireless or satellite.<sup>4</sup>

1.7 More recently the government has announced an increase to the fibre footprint: 100 megabits per second to 93 per cent of premises by fibre, and 12 megabits per second to seven per cent of premises by fixed wireless (ie not mobile wireless) or satellite. NBN Co estimates a total funding requirement to 2021 of \$40.9 billion, being \$27.5 billion of government equity, and \$13.4 billion of debt funding.<sup>5</sup> Forecast revenue until 2020 is \$20.8 billion, and the expected internal rate of return is 7.04 per cent, well in excess of the current five year government bond rate of 5.38 per cent.<sup>6</sup>

1.8 On 9 April 2009, NBN Co was established as a government business enterprise to build the NBN.

1.9 Following the receipt of submissions to the discussion paper, on 15 September 2009 the government introduced the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009. Among other things, this bill was concerned with 'addressing Telstra's vertical and horizontal integration'.<sup>7</sup> In this regard, the bill provided for Telstra to voluntarily structurally separate or be required to functionally separate.

1.10 As the explanatory memorandum noted at page 1:

Structural separation may, but does not need to, involve the creation of a new company by Telstra and the transfer of its fixed-line assets to that new company. *Alternatively, it may involve Telstra progressively migrating its fixed-line traffic to the NBN over an agreed period of time and under set regulatory arrangements, and sell or cease to use its fixed-line assets on an agreed basis. This approach will ultimately lead to a national outcome*

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3 Prime Minister, Treasurer, Minister for Finance, Minister for Broadband, 'Regulatory reform for 21st century broadband', media release, 7 April 2009.

4 Prime Minister, Treasurer, Minister for Finance, Minister for Broadband, 'New National Broadband Network', media release, 7 April 2009.

5 Senator the Hon. P. Wong, Minister for Finance and Senator the Hon. S. Conroy, Minister for Broadband, Communications and the Digital Economy, *Statement of Expectations*, 17 December 2010, p. 1; and NBN Co, *Corporate Plan 2011–2013*, December 2010, pp. 12 and 23.

6 NBN Co, *Corporate Plan 2011–2013*, December 2010, pp. 23 and 134.

7 Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, p. 1.

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*where there is a wholesale-only network not controlled by any retail company—in other words, full structural separation in time. Such a negotiated outcome would be consistent with the wholesale-only, open access market structure to be delivered through the National Broadband Network.*<sup>8</sup>

1.11 This makes explicit the possibility that the National Broadband Network, beyond being a significant infrastructure project, will be the means by which the structural separation of Telstra will be effected.

1.12 Following introduction of the bill, Telstra and NBN Co began discussions and negotiations to see whether the 'negotiated outcome' contemplated in the explanatory memorandum—the migration of Telstra customers onto the NBN—could be achieved.

1.13 In December 2009, NBN Co issued a product consultation paper describing the high level view of the proposed wholesale product and the network architecture. This was followed by a series of industry briefings in Sydney and Melbourne.<sup>9</sup>

1.14 On 24 February 2010, exposure drafts of the present bills were released for public comment.<sup>10</sup>

1.15 In May 2010, the government released an Implementation Study by McKinsey and Company and KPMG. The study found that high speed broadband could be built on a financially viable basis with affordable prices for consumers. The study made 84 recommendations covering technology, financing, ownership, policy framework and market structure.<sup>11</sup>

1.16 On 20 June 2010 Telstra and NBN Co entered a non-binding Heads of Agreement that would give NBN Co access to certain Telstra facilities and allow for progressive migration of Telstra's copper and cable traffic onto the NBN, an arrangement that if formally concluded and implemented will lead to the structural separation of Telstra as contemplated by the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009.<sup>12</sup>

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8 Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009, p. 1 (emphasis added).

9 NBN Co, *Annual Report 2009–10*, p. 10.

10 The Hon. L. Tanner, MP, Minister for Finance and Deregulation and Senator the Hon. S. Conroy, Minister for Broadband, Communications and the Digital Economy, 'Draft legislation released for NBN Co operations', media release, 24 February 2010.

11 The Hon L. Tanner, MP, Minister for Finance and Deregulation and Senator the Hon. S. Conroy, Minister for Broadband, Communications and the Digital Economy, 'Landmark study confirms NBN vision is achievable and affordable', media release, 6 May 2010. McKinsey-KPMG, *Implementation Study for the National Broadband Network*, 5 March 2010.

12 NBN Co, *Annual Report 2009–10*, p. 10; and Prime Minister, Minister for Finance and Minister for Broadband, 'Agreement between NBN Co and Telstra on the rollout of the National Broadband Network', media release, 20 June 2010.

1.17 On 28 September 2010, the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 lapsed at the end of the parliament.

1.18 On 28 October 2010, the government introduced a nearly identical bill, the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, which received royal assent on 15 December 2010. As well as providing for the separation of Telstra, the bill amended Part XIC of the *Competition and Consumer Act 2010* by reforming the telecommunications access regime to reduce delays and opportunities for gaming and provide upfront certainty on access prices and terms and conditions. NBN Co will be subject to this reformed access regime in addition to the proposed requirements set out in the Access Bill.

1.19 On 20 December 2010, the government released NBN Co's corporate plan, and a 'statement of expectations'. According to the government, the Corporate Plan showed that:

'the National Broadband Network (NBN) will provide all Australians with world class broadband on a financially viable basis at affordable prices. The Corporate Plan shows taxpayers will get their investment back, with interest; the NBN will provide a rate of return significantly higher than the government bond rate; and all Australians will gain access to this state-of-the-art network.'<sup>13</sup>

1.20 The statement of expectations sets out the government's policy objectives for the NBN including: coverage; legislative and regulatory frameworks; ownership arrangements; funding; planning; reporting and performance management.<sup>14</sup>

1.21 On 10 February 2011, Telstra and NBN Co announced that they had finalised key commercial terms to allow for the more efficient rollout of the NBN. These pave the way for NBN Co to use Telstra's assets to roll out the NBN and for Telstra to decommission its copper network.<sup>15</sup>

1.22 The first NBN services were officially launched in August 2010 in the Tasmanian communities of Scottsdale, Smithton and Midway Point. The fibre network is now under construction at five first release sites on the mainland at

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13 Prime Minister, Treasurer, Minister for Finance, Minister for Broadband, 'Government releases NBN Co corporate plan', media release, 20 December 2010, [www.minister.dbcde.gov.au/media/media\\_releases/2010/120](http://www.minister.dbcde.gov.au/media/media_releases/2010/120) (accessed 16 March 2011).

14 Prime Minister, Treasurer, Minister for Finance, and Minister for Broadband, 'NBN rollout: statement of expectation's, media release, 20 December 2010; and Australian Government, *National Broadband Network: progress update December 2010*, December 2010, p. 7.

15 Senator the Hon. S. Conroy, Minister for Broadband, Communications and the Digital Economy, 'Major step forward for Government - Telstra - NBN Co agreement', media release, 10 February 2011. See also Mr J. Shaw, Director Government Relations, Telstra, *Committee Hansard*, 9 March 2011, p. 10.

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Townsville (Qld), Minnamurra and Kiama Downs (NSW), Armidale (NSW), Willunga (SA) and Brunswick (Vic).<sup>16</sup>

### Summary of the bills

1.23 The National Broadband Network Companies Bill 2010 (the Companies Bill) contains provisions ensuring that NBN Co operates on a wholesale-only basis. It provides that the Australian Government must retain full ownership of NBN Co until rollout is complete, and it establishes the framework for the eventual sale of NBN Co.

1.24 The Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010 (the Access Bill) has provisions requiring NBN Co to offer services on an equivalent basis, with discrimination only allowed where it aids efficiency and in other limited circumstances, subject to oversight by the ACCC. It has level playing field provisions affecting carriers who build or upgrade certain fixed-line superfast access networks after the introduction of the bill into parliament.

### Summary of submissions

1.25 Submitters and witnesses were unanimous about the importance of the passage of the bills.<sup>17</sup> They stressed the importance of broadband for business, health, education and research purposes, especially in rural and regional areas.

1.26 For example, in relation to health services and health research, the Group of Eight, a coalition of leading Australian universities, described the possibilities:

High-speed broadband network provides the capacity for distant doctors or patients—or midwives for that matter—to have real-time interactions with specialist colleagues in an urban setting if they need it... Broadband connectivity allows clinicians, wherever they are, to engage in things like grand rounds—when patients of interest are discussed in teaching hospitals, people who are not physically in that building can connect in real time and participate in the questions and answers... [In medical research] it can take years to get thousands of people in a normal randomised control trial. We can do online automated randomised control trials with people in their houses in a few months.<sup>18</sup>

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16 Australian Government, *National Broadband Network: progress update December 2010*, December 2010, p. 7.

17 For example, Internet Society of Australia, *Submission 9*, p. 1; Australian Communications Consumer Action Network (ACCAN), *Submission 11*, p. 3; Austar, *Submission 14*, p. 1; Telstra, *Submission 16*, p. 1; Optus, *Submission 17*, p. 2; and Primus Telecommunications, *Submission 24*, p. 1.

18 Prof. N. Glasgow and Prof. K. Griffiths, Group of Eight, *Committee Hansard*, 4 March 2011, pp. 57–58.

1.27 In relation to the potential benefits for the education sector, the Association of Catholic School Principals of NSW said:

E-learning is truly already a reality in our schools. We have moved from paper to e-books to personalised learning and now to e-publishing in a relatively short time. Scalability is necessary to allow us to continue to grow, as I said, and to provide 21<sup>st</sup> century skills...

Our school cannot meet the needs of the 21<sup>st</sup> century learner with 20<sup>th</sup> century infrastructure. Hence, the broadband is so important to us. Students are, as we know, the very greatest asset we have. The children of Australia, we believe, deserve an education that enables them to be global citizens of the 21<sup>st</sup> century. The 21<sup>st</sup> century classroom is currently grinding to a 20<sup>th</sup> century halt without fast reliable access to the internet. As educators and as parents—myself as a grandparent—we dream of the possibilities for our children and believe that national broadband really does have the potential to make some of these dreams a reality for our students.<sup>19</sup>

1.28 The Council of Small Business Organisations of Australia noted the opportunities of broadband for small business:

There are 2.4 million small businesses. They are diverse, but I think I can say with confidence that the greater bulk of them want this [access to affordable, high-speed broadband] for competitive reasons as much as anything... The other group of people that are really fascinating are women on farms. I have seen a few of them use the internet quite well to sell products... I know one young man is manufacturing and selling golf clubs online and doing quite a good job of it.<sup>20</sup>

1.29 The ACTU stressed the need for universal access at a standard wholesale price to bridge the 'digital divide':

If you examine the current take-up rates of access to broadband, it falls as the income of your family falls. In other words, low-income families or people on ordinary incomes were much less likely to have a home broadband connection than people who are more well off. In our view that is an unsustainable outcome and not an outcome which promotes social utility. An NBN program which provides for universal access and a universal wholesale price, we say, would be the best method to ensure that Australians have equality of access to broadband technology.<sup>21</sup>

1.30 Nevertheless, some submitters had concerns about aspects of the bills or recommended amendments on various matters which are discussed in chapters 2 and 3.

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19 Ms P. Saab, President, Association of Catholic School Principals of NSW, *Committee Hansard*, 9 March 2011, pp 38–39.

20 Mr P. Strong, Executive Director, Council of Small Business Organisations of Australia, *Committee Hansard*, 4 March 2011, pp 31–32.

21 Mr T. Lyons, Assistant Secretary, ACTU, *Committee Hansard*, 4 March 2011, p. 47.

1.31 Chapter 2 has further details of submissions on the Companies Bill and chapter 3 has further details of submissions on the Access Bill.

