

Chapter 1

Introduction

1.1 On 3 December 2015, the Senate referred the provisions of the Telecommunications Legislation Amendment (Access Regime and NBN Companies) Bill 2015 to the Environment and Communications Legislation Committee for inquiry and report by 22 February 2016.¹

Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 15 January 2016.

1.3 The committee received seven submissions, which are listed at Appendix 1. The public submissions are also available on the committee's website at www.aph.gov.au/senate_ec.

1.4 A public hearing was held in Canberra on 5 February 2016. A list of witnesses who gave evidence at this hearing is at Appendix 2. The transcripts of evidence may be accessed through the committee's website: www.aph.gov.au/senate_ec.

1.5 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Structure and scope of the report

1.6 The remaining sections of this chapter provide background information about the bill. The following chapter examines the bill in detail and the evidence received by the committee. The committee's findings are also outlined in the next chapter.

Background and overview of the bill

1.7 The bill follows the cost-benefit analysis and review of regulatory arrangements for the National Broadband Network (NBN) undertaken by the panel chaired by Dr Michael Vertigan AC (the Vertigan Panel). The Vertigan Panel produced the following three reports:

- *A statutory review under section 152EOA of the Competition and Consumer Act 2010* (June 2014) (referred to in this report as the 'Statutory Review');
- *Volume I: National Broadband Network market and regulatory report* (August 2014) ('Market and Regulatory Report'); and

1 *Journals of the Senate*, 2013–15, No. 134 (3 December 2015), p. 3625.

- *Volume II: The costs and benefits of high-speed broadband* (August 2014) ('NBN Cost-benefit Analysis').

1.8 The Government's response to the Vertigan Panel's recommendations was outlined in a policy statement released in December 2014 entitled *Telecommunications Regulatory and Structural Reform*. The Government's response outlined three overarching regulatory policy principles that would inform the Government's approach to regulation in the telecommunications market. These principles are that:

- regulation should allow competition at both the retail and wholesale/infrastructure levels;
- to the greatest extent possible industry players should be treated consistently under the regulatory framework; and
- new high-speed broadband access networks (which control 'last mile' connections to consumers) should be vertically separated.²

1.9 The policy statement added that 'the Government believes that its approach to regulation in the telecommunications market should not unnecessarily restrict competition'. However, the policy statement argued that a competitively neutral regulatory regime was 'compromised' by legislative and regulatory changes implemented between 2009 and 2011 to enable the implementation of the NBN. The paper stated:

Elements of the NBN policy adopted by the then-government required NBN Co to provide very substantial non-commercial services and sought to provide competitive protections to NBN Co in commercially attractive areas so that it could fund non-commercial services with an internal cross-subsidy.

This model is unsustainable in the long term and not in the interests of the consumers who ultimately fund the cost of the services under any model, and typically face higher costs where competition is reduced.³

1.10 The bill is the first of two planned legislative tranches that would give effect to the Government's response to the Vertigan Panel. According to the explanatory memorandum, the bill would 'fine-tune the operation of the telecommunications access regime and NBN Co's line of business obligation'.⁴ In his second reading speech, the Minister stated that the bill would implement some 'minor but helpful changes to the regulatory framework', and that the second legislative tranche would

2 Australian Government, *Telecommunications regulatory and structural reform*, December 2014, www.communications.gov.au/file/13111/download?token=1HHR3qa3 (accessed 8 December 2015), p. 4.

3 Australian Government, *Telecommunications regulatory and structural reform*, p. 4.

4 The explanatory memorandum noted that most of the Vertigan Panel's recommendations in this area were made in the Statutory Review report. Explanatory Memorandum, p. 1.

'deal with some of the more significant issues set out in the Government's telecommunications policy road map'.⁵

1.11 The bill contains proposed amendments to the *Telecommunications Act 1997*, the *Competition and Consumer Act 2010* (CCA) and the *National Broadband Network Companies Act 2011* (NBN Companies Act). Minor consequential amendments to the *National Transmission Network Sale Act 1998* are also included in the bill.

1.12 The proposed amendments are contained in one schedule to the bill, which comprises eight parts. The key matters addressed by these parts are outlined below:

- Part 1: Facilities access—the proposed amendments in this part seek to clarify matters relating to the interaction between the different access regimes in the Telecommunications Act and the CCA.
- Part 2: Access to customer cabling—this part seeks to ensure that access seekers can access in-building cabling owned or controlled by another service provider that is used to supply a declared service.
- Part 3: Pilots and trials—this part would exempt NBN Co and other relevant carriers from non-discrimination obligations for the purpose of conducting pilots or trials of certain services.
- Part 4: Access determinations—the proposed amendments in this part relate to the approach taken by the Australian Competition and Consumer Commission (ACCC) in making access determinations.
- Part 5: Special access undertakings—proposed amendments would require the ACCC to specify the changes it considers are necessary for it to accept the undertaking (as distinct from changes that are desirable) and would allow the varied undertaking submitted in response to include variations that have the same effect or substance as the variations sought by the ACCC, but do not use the exact wording
- Part 6: Fixed principles—the proposed amendments are intended to ensure consistency in approach in the ACCC's treatment of fixed principles terms and conditions in previous access determinations or special access undertakings.
- Part 7: NBN corporations' line of business restrictions and authorised conduct—proposed changes to the restrictions imposed on NBN corporations would allow surplus assets to be disposed of and for regulations to be made that specify circumstances when the line of business restrictions do not apply. In addition, the provisions in the CCA that authorise NBN Co to engage in certain anti-competitive conduct without risking legal action would be amended to change the object of the authorisation.

5 The Hon Paul Fletcher MP, Minister for Territories, Local Government and Major Projects, *House of Representatives Hansard*, 2 December 2015, p. 14448.

- Part 8—the proposed amendments in this part would provide that facilities access services supplied under certain existing agreements between NBN Co and Telstra, and NBN Co and Optus (known as the definitive agreements), are not declared services to the extent that they are supplied under those agreements.

Reports of other committees

1.13 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.14 In its *Alert Digest No. 1 of 2016*, the Scrutiny of Bills Committee stated that it had no comment on the bill.⁶

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2016, 3 February 2016, pp. 46–47.