

Chapter 3

Review Processes and NBN Co Governance and Culture

Background

3.1 The select committee was 'established to inquire into and report on the Government's reviews of the National Broadband Network (NBN) and the governance of NBN Co', including the processes for the reviews and the outcome of those reviews. The Committee is required to report on 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.

3.2 As noted, to date there are no less than six review processes that have been announced pertaining to the NBN. These are:

- 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
- Review of the fixed wireless and satellite programs.

3.3 The Coalition broadband policy includes details of reviews which would be initiated by a Coalition Government. The NBN Co Strategic Review was to be a rapid but rigorous business review of NBN Co's rollout progress and costs, structure, internal capabilities, commercial prospects and strategic options to report to Government in 60 days. The Minister announced the terms of reference for the Strategic Review on 3 October 2013.¹

3.4 The Independent cost-benefit analysis and review of regulation was to 'analyse the economic and social costs and benefits...arising directly from the availability of broadband of differing properties via various technologies, and to make recommendations on the role of government support and a number of other long-term

1 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, Media Release, 'Dr Ziggy Switkowski Appointed Executive Chair of NBN Co Strategic Review of NBN Project to Commence' (3 October 2013).

industry matters'. Terms of reference and panel for the review were announced by the Government on 12 December 2013.²

3.5 The Coalition Policy document was unclear on the relationship between the Strategic Review and the implementation of the Coalition's policy. At the launch of the Coalition Policy, Mr Turnbull was asked:

QUESTION: You've said in announcing the policy you will commence a commercial review that will have 60 days to work out how quickly your National Broadband Network plan can be rolled out. You also announced that it will be rolled out by 2016. Please can we have those two aims resolved? You can't know that you will deliver it by 2016 if you need a commercial review to tell you.

MALCOLM TURNBULL: Let me take that question. I can answer that.

What we have got here is a policy that is very realistic, that we have researched very carefully, that we have discussed with people very knowledgeable in the field – people that are actually building new generation broadband networks, both here and internationally. So we haven't spent a lot of time – we have spent some time with academics – we have actually spent time with the men and the women that are really doing the work, that really know what they're talking about. They are the people that I would encourage every journalist who is interested in this area to talk to. They are the most knowledgeable people.

Now we believe the goals here are very realisable but what we are going to do, as Tony has said, immediately the NBN Co will set out a realistic objective assessment of how long it is going to take in dollars and time to complete the project on the current trajectory, on the current design and then set out what savings can be achieved both in dollars and time by making changes of the kind that we have proposed and indeed there are some other changes, because we didn't want to overcomplicate our proposal.

There are other changes of a more technical nature that can also make some considerable savings. So that is the, and the point of that is that that will have the benefit of all of the NBN's experience and have access to that information. So I am very confident that that will confirm the reasonableness of what we have proposed.³

3.6 The Coalition Policy document is equally unclear on the relationship between the Cost Benefit Analysis and the implementation of the Coalition's policy. At the launch of the Coalition Policy Mr Abbott and Mr Turnbull were asked:

2 The Hon Malcolm Turnbull MP, Minister for Communications, Media Release, 'Panel of Experts to conduct cost-benefit analysis of broadband & review NBN regulation' (12 December 2013).

3 Joint Press Conference, The Hon. Tony Abbott MP and The Hon. Malcolm Turnbull MP (9 April 2013), at: <http://mt.tbone.com.au/homepage-issues/launch-of-coalition-broadband-policy-transcript-of-tony-abbott-and-malcolm-turnbull-press-conference/#sthash.f5XcBUpn.dpuf>.

QUESTION: Who will do the independent review? Who have you commissioned to do that and will you abide by any recommendations they make if they conflict with your policy?

TONY ABBOTT: Look, it will be a fully independent review. It may be the Productivity Commission although we're conscious of the fact that the Productivity Commission has a very heavy workload. It may be Infrastructure Australia. But one way or another there will be a full independent review of telecommunications going forward, of broadband going forward and that will obviously include a cost-benefit analysis, a published cost-benefit analysis of our version of the National Broadband Network.

QUESTION: Will you do a cost-benefit analysis of Labor's NBN because Mr Turnbull you hinted at it at the kick-starter conference earlier this year. So, will you do a cost-benefit analysis of the NBN?

MALCOLM TURNBULL: The big question...the answer is yes, all of that will be examined but one of the...

QUESTION: A cost-benefit analysis of the NBN?

MALCOLM TURNBULL: The answer is yes.

3.7 The conduct and outcome of the cost benefit analysis in regard to the chosen broadband technologies will be examined by the committee in subsequent hearings.

Board appointments and selection of new management team

Appointment of new NBN Co Board

3.8 Since the September 2013 federal election, the Government has replaced most of the NBN Co Board. On 3 October 2013 shareholder Ministers announced:

- The Government had received offers of resignation from five of the seven NBN Co directors and one resignation. The Government had accepted four of these offered resignations but has asked Dr Kerry Schott and Ms Alison Lansley to continue serving on the Board.
- The tenure of the seventh director, Mr Brad Orgill, has been terminated.
- With the approval of the Cabinet, the Ministers for Communications and Finance had appointed Dr Ziggy Switkowski to the Board as Chairman.
- Dr Switkowski had also been appointed as Executive Chairman of the NBN Co, pending the appointment of a new Chief Executive to replace Mike Quigley, who announced his intention to resign from the position in July.
- The Government intended to nominate additional non-executive directors to the Board shortly.⁴

4 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, Media Release, 'Dr Ziggy Switkowski Appointed Executive Chair of NBN Co Strategic Review of NBN Project to Commence', (3 October 2013).

3.9 Media reporting at the time noted that the board members were asked to resign by the Minister for Communications:

Meanwhile, Mr Turnbull confirmed he asked the company's seven board directors to resign last week, and all but one have done so.

"That request should not be regarded as any criticism of any of the directors," he said. "The reason for that was simply to give the Government complete flexibility in remaking the board in light of its new policy agenda."

"Decisions about the board will be taken by the Cabinet in due course."⁵

3.10 On 12 November 2013 the shareholder Ministers announced that Mr Patrick Flannigan, Mr Simon Hackett and Mr Justin Milne had been appointed as Non-Executive Directors of NBN Co.⁶

3.11 At the committee's public hearing on 11 December 2013, the Acting-Chair, Senator the Hon Stephen Conroy, put to NBN Co executives that the NBN Co Board was unable to consider draft version 13 of the 2013-16 Corporate Plan because the Minister had asked NBN Co Board members to resign at the board meeting on either 19 or 20 September 2013. Mr Brown took on notice to review the minutes of the meeting and provide an answer.⁷ At the time of writing NBN Co had not provided an answer to this question.

3.12 Similarly, Mr Drew Clarke, Secretary of the Department of Communications, also took on notice a question as to what day Minister Turnbull asked NBN Co Board members to offer their resignations:

CHAIR: They all did resign on the 19th or the 20th, didn't they?

Mr Clarke: I do not have the dates in front of me but there was a number of resignations.

CHAIR: So what happened, that they by osmosis heard on the grapevine that their resignations were desired?

Mr Clarke: No, there is a distinction between being asked to offer your resignation and being asked to resign.

CHAIR: I will accept that. So when were they asked to offer their resignation – if that makes it easier for you?

Mr Clarke: Thank you, it does. I do not have the dates in front of me but I would be very happy to take that on notice.⁸

5 Emma Griffiths, 'Malcolm Turnbull moves to put Coalition's stamp on NBN Co', ABC News (24 September 2013), at: <http://www.abc.net.au/news/2013-09-24/turnbull-moves-to-put-coalitions-stamp-on-nbn/4978020>

6 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, Media Release, 'NBN Co Board Appointments', (12 November 2013).

7 *Committee Hansard*, 11 December 2013, p. 20.

8 *Committee Hansard*, 11 December 2013, p. 66.

3.13 Mr Clarke has subsequently advised that 'the Department is unable to comment on arrangements between the NBN Co Board and the Minister'.⁹

3.14 Fairfax Media requested the minutes of the 20 September 2013 Board meeting under Freedom of Information.¹⁰ This request was denied. Fairfax sought the views of Mr Timmins, an FOI expert, in regard to NBN Co's decision to refuse the FOI request. Mr Timmins noted that NBN Co's arguments were 'speculative, ridiculous and without foundation' and 'all in all a confused and confusing set of words that suggest a really big effort to dream up something to put on paper but in the end are unpersuasive'.¹¹ Mr Mesman, NBN Co's FOI officer, subsequently noted at the 12 March public hearing:

I stand by my reasons. I presume you have access to those reasons, but, as a starting point, the actual document was found to be within the commercial activities exemption. I specifically referred to a secondary issue, outside of the commercial activities exemption, because the applicant had specifically asked for the attendances of the members of the board of directors. That was a complement to my primary reason, which was that I found that the board minutes were subject to our commercial activities exemption.¹²

3.15 The committee notes that NBN Co previously released Board minutes—on 30 August 2013—under Freedom of Information.

Selection of new NBN Co Board members

3.16 Mr Clarke advised the committee about the selection of new NBN Co Board members at the public hearing on 11 December 2013:

CHAIR: At estimates you advised that the selection of board members for NBN Co. after the election followed the usual process of long lists, short lists and a recommendation to the minister. Was that your evidence?

Mr Clarke: It was, Senator, with a qualification around Dr Switkowski. I think they were on different tracks, but the general point of my evidence stands. As you will recall, the timings of the appointments of Dr Switkowski and the subsequent appointments were separate. I do not want to infer that it was all bundled up into one single process.¹³

3.17 Mr Clarke advised that the appointment of new board members had followed the usual process, with the firm Russell Reynolds engaged by the Department of Communications in relation to the search for new board members.

9 Answer to Questions on Notice, 11 December 2013, No. 37.

10 Ben Butler, Lucy Battersby, 'NBN Co blocks FOI request: reputations at stake', *Sydney Morning Herald*, (17 February 2014), at: <http://www.smh.com.au/business/nbn-co-blocks-foi-request-reputations-at-stake-20140216-32ttz.html#ixzz2wr9VUbhq>

11 Cited in *ibid.*

12 *Committee Hansard*, 12 March 2014, p. 41.

13 *Committee Hansard*, 11 December 2013, p. 57.

3.18 Further evidence provided by Mr Clarke about the process for appointing board members raised questions of possible probity problems with the appointments process. However, the committee was not able to gain a clear insight of the process and sought further evidence from the Department of Communications:

CHAIR: Before Mr Milne was announced as being a board appointee there were media reports that he was at NBN Co. working for NBN Co. Did you see any of those reports? Are you familiar with those reports? Do you know if it is true?

Mr Clarke: I do not recall seeing those reports.

CHAIR: I saw them myself, so I was surprised at the time. Or not surprised, given the previous publicity that he was getting a job at NBN Co. Who placed Mr Flanagan's name on the list?

Mr Clarke: I am not going to be able to give you precise answers to these questions.

CHAIR: I am happy for you to take that on notice.

Mr Clarke: Certainly.¹⁴

3.19 The Department has advised that Russell Reynolds Associates included Justin Milne and Patrick Flanagan as short listed candidates for the NBN Co Board, noting:

Following the appointment of Dr Ziggy Switkowski as Executive Chairman, the Department appointed Russell Reynolds Associates, a global executive search provider, to conduct a search for executives suited to the NBN Co Board.

At the 19 November 2013 Senate Estimates hearing the NBN Co Executive Chairman, Dr Ziggy Switkowski, stated:

“As chairman I led the way in identifying potential board members. There was a reasonable list. To that end we were advised, and I know that the advisers were commissioned by the department, and I provided input – indeed, my recommendations – as to board appointments from the perspective that it was the minister who was going to make the call.”¹⁵

3.20 The process for selection of a new NBN Co Chairman was discussed in evidence at the committee's public hearing on 11 December 2013. Mr Clarke outlined the process followed, including a short list for consideration by shareholder ministers prior to the appointment by Cabinet.¹⁶ Mr Clarke explained the input of the shareholder ministers to the CEO selection process:

Mr Clarke: There was a process by which the shareholding minister made a choice.

CHAIR: Who put Mr Switkowski's name in the ring?

14 Ibid, p. 59.

15 Answer to Questions on Notice, 11 December 2013, No. 35.

16 *Committee Hansard*, 11 December 2013, p. 57.

Mr Clarke: I believe it was the minister.¹⁷

Additional Executive Members

3.21 Mr JB Rousselot was appointed Head of Strategy and Transformation at NBN Co on 23 October. In the role he was to 'lead the Strategic Review process that is commencing this week and then help manage the implementation of recommendations and their incorporation into the company's 2014-17 Corporate Plan'.¹⁸

3.22 On 13 November 2013 Mr Greg Adcock was appointed Chief Operating Officer of NBN Co. The company also announced that current Chief Operating Officer Mr Ralph Steffans would step down and leave the company immediately.¹⁹

3.23 On 12 December NBN Co announced that Mr Bill Morrow had been appointed Chief Executive Officer of NBN Co. The announcement stated that '[Morrow] will join the company in the New Year and will be based in Sydney'.²⁰ Media reports at the time indicated that Mr Morrow would take up the position 'between March and April'.²¹

Shareholdings of board and executive members

3.24 Other probity issues involving NBN Co board members were raised during the committee's public hearing on 17 December 2013. These relate specifically to a potential conflict of interest involving NBN Co board members and senior management:

Dr Switkowski: I am completely confident that there is no conflict of interest that will prevent us from reaching the optimum outcome for NBN Co. Completely confident.

Senator LUDLAM: Do any of your board or any of your senior management team have shares in Telstra?

Dr Switkowski: I do not know the status of the shareholdings of one of our board members, but I do know that that person was appointed to the board with equity in Telstra shares and I think had undertaken to divest himself of those shares.

Senator LUDLAM: How about your management team?

Dr Switkowski: I am not aware.

Senator LUDLAM: What are your processes internally within the company for disclosure of that sort of thing? How would you be made aware of it?

17 Ibid, p. 58.

18 NBN Co, Media Release, 'JB Rousselot appointed Head of Strategy and Transformation', (23 October 2013).

19 NBN Co, Media Release, 'Greg Adcock named NBN Co Chief Operating Officer', (17 October 2013).

20 NBN Co, Media Release, 'Bill Morrow appointed NBN Co CEO', (12 December 2013).

21 Josh Taylor, 'Joining NBN Co is about leaving a legacy: Morrow', *ZDNet*, (12 December 2013).

Dr Switkowski: We would expect such holdings to be disclosed and then to be discussed, at this stage, with me.²²

3.25 Further evidence was given that two of the NBN Co executives held Telstra shares, with one executive seeking legal advice with regards to his shareholdings.²³

Processes of Appointments

3.26 During the Committee's public hearing on 29 November 2013, Dr Switkowski was questioned about the timing of approaches made to himself, Mr Milne and Mr Rousselot:

Senator CONROY: Thank you. I note that last week you had a discussion about when you were first approached for the position. I am sure you were aware, for were horrified at the time, to see that there was media speculation very early in the year that you had been approached and offered the position. I just want to be very precise—and I accept 'precise' does not necessarily mean five o'clock on x day—about when you were first approached to take on a role at NBN Co.

Dr Switkowski: My recollection is that around about March-April I would have crossed paths with Mr Turnbull when we would have talked about the telecom industry broadly and NBN, but not with my joining that organisation being a topic. That evolved in the weeks that followed.

Senator CONROY: Sorry, in the weeks that followed March and April?

Dr Switkowski: Yes. I had always assumed at that time—I think I am right—that the minister was consulting widely with the industry, talking to a lot of people, and sometime around about—

Senator CONROY: He would have been talking widely to a lot of journalists.

Dr Switkowski: and some time—and I am not clear about this—around the middle of the year the topic would have been raised about joining the NBN and considering being on a list of potential candidates for the Chair role.

Senator CONROY: Did you have any discussions with Mr Turnbull about any other individuals who would be possible employees or board members of NBN Co.?

Dr Switkowski: I think in our conversations names did come up for all sorts of reasons.

Senator CONROY: But did Mr Milne's name come up or Mr Rousselot's name come up?

Dr Switkowski: For the board?

Senator CONROY: For any position—board or executive.

22 *Committee Hansard*, 17 December 2013, p. 64.

23 *Ibid.*

Dr Switkowski: It is hard to disentangle at which point I raised the matter of Justin Milne and JB Rousselot and their attraction for NBN Co., but I certainly did talk to the minister about those people, absolutely.

Senator CONROY: So you raised them with Mr Turnbull?

Dr Switkowski: As I said, it is hard to disentangle how these topics arose. Both of those individuals were known to each of us and they would have been, along with others—and there were lots of others—names that were judged to be relevant to the NBN situation.²⁴

3.27 The media speculation referred to in this exchange was published in the Australian Financial Review and Crikey in May and June 2013, well before the commencement of any selection processes.²⁵ This speculation referred to personal associations between Minister Turnbull and the prospective appointees. The article in Crikey noted that 'Milne worked as head of datacasting at OzEmail when Turnbull was chairman'.²⁶ It also reported that 'the French-born Rousselot, who was reportedly inspired to move to Australia after meeting Turnbull on a skiing trip, formerly worked at OzEmail and Turnbull's boutique advisory firm'.²⁷ An answer to a Question on Notice also confirmed prior personal association between Mr Turnbull and Mr Rousselot:

Mr Rousselot and Minister Turnbull jointly own an old Cousta Boat and have done so for over 15 years. This is the only joint asset they hold.²⁸

3.28 This evidence, and the answers from Dr Switkowski set out above, suggest that any subsequent selection processes by which he, Mr Rousselot and Mr Milne were selected for roles in NBN Co were not genuine merit selection processes. The Committee concludes that the processes of recruitment for the Board and Management have created the perception, at least, that these are political appointments for a political purpose. In reaching this conclusion the Committee is not making any conclusions about the skills and experience of any of the individuals.

24 *Committee Hansard*, 29 November 2013, p. 3.

25 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.

26 *Ibid.*

27 *Ibid.*

28 Answer to Question on Notice, Supplementary Estimates 2013, No. 193, available at: http://www.aph.gov.au/~media/Estimates/Live/ec_ctte/estimates/supp_1314/communications/answers/QON_193.ashx

Summary of findings—Key Appointments

- **Key appointment processes for the NBN Co Board and management pertaining to the conduct of the Strategic Review reflect to a large extent media reports naming the same personnel before the election. There is also clear evidence that key appointees have prior personal associations with the Minister.**
- **The Committee concludes that some of the processes of recruitment for the Board and management of NBN Co have created the perception, at least, that these are political appointments for a political purpose. In reaching this conclusion, the Committee is not making any conclusions about the skills and experience of any of the individuals.**

NBN Co culture

Findings of the Strategic Review

3.29 A key finding of the Strategic Review relates to the culture of NBN Co and its effect on the rollout of the network. The Strategic Review explained part of the methodology used in examining the culture of NBN Co:

The Independent Assessment conducted approximately 60 interviews including all senior management and a sample of employees from a number of divisions, locations and levels. While this was not a comprehensive organisational review it is KordaMentha's professional opinion that there are a number of people and culture issues that are important to note in the Strategic Review and that NBN Co should address these issues in the preparation of its Corporate Plan.²⁹

3.30 Mr Korda elaborated on this methodology during the public hearing on 17 December 2013:

Trying to compact in what we say, one of our processes – as we said in the strategic review – we interviewed approximately 60 people internally, including the executive committee and many employees that we randomly selected to get a view of the people and culture. That phrase was a common phrase that was used. We could have used the words 'siloes' but there are many siloes with NBN. There is the construction silo, the revenue silo, the chief operating officer silo, the finance silo, and so just if you took premises past there could be three different versions of premises past within the organisation. That is an example, and I think Ziggy mentioned it before.³⁰

3.31 Dr Switkowski also commented on the NBN Co culture, advising the committee of his observations on first joining NBN Co:

The review found what I also found in the early weeks when I joined NBN, early in October – that is, that, commendably, there was a high regard and respect for the promises that were built into a corporate plan. But there was

29 Strategic Review, p.72

30 *Committee Hansard*, 17 December 2013, p. 70.

a very high resistance or reluctance to recognise that what was being experienced and delivered in the field was well away from the assumptions and the promises in the corporate plan. The culture was such that these differences were not properly debated and tested, and adequate remedial action was not taken. I have seen evidence of that in the inquiries and the interrogations of this committee. There is a kind of ferocious determination to say that what was in the plan and what was in the headlines of two years ago must have been right, and that they must still be right. The fact is they are not. They were not right then; they are not right now.³¹

3.32 The overall finding of the Strategic Review was that the culture of NBN Co was widely seen to be a problem, notwithstanding the motivated and committed people who had been attracted to work for the company.³²

3.33 The Independent Assessment identified a number of factors believed to be responsible for the problematic culture in NBN Co:

- 'living in the political and media fish bowl';
- Hiring process lacking rigour;
- Whole-of-business strategy neglected in favour of targets within functional groups assumed to combine to progress the project;
- Lack of trust in motives of senior management;
- Fear of being blamed for mistakes; reluctant to document decisions for fear of consequences;
- Duplication of roles and functions; and
- Complex organisational structure with more personnel overheads than estimated for in the corporate plan.

3.34 Mr Korda too noted the problems of focusing solely on numbers:

We sort of observed the end result and we did find – we went through to try to find where all these cost savings were to be – there was just a general lack of business case for many significant decisions that needed to be made. I think it also had an overlay of trying to meet the culture of premises past. So you will get some decisions about passing premises in May or June that pushed up the costs.³³

3.35 Other 'exogenous risks' identified by the Independent Assessment as affecting the culture of NBN Co include political and media interest and inherent risk in forecasting.³⁴

3.36 The Strategic Review also noted that:

31 Ibid, p. 16.

32 Strategic Review, p. 72.

33 Committee Hansard, 17 December 2013, p. 70.

34 Strategic Review, p. 73.

...the Executive Committee has not been seen to operate efficiently and has tended to “seek to protect” perceived areas of responsibility and influence. While a number of recent changes are expected to improve the performance of the senior leadership team it was observed that “there is still a long way to go to optimise the performance of the organisation”. While the selection of a CEO is important for any organisation, it will be critically important for NBN Co.³⁵

3.37 The Strategic Review noted that ongoing culture and organisational change—including long term direction focus, organisational structure and workforce model—are part of the re-direction of NBN Co under the implementation of the revised Statement of Expectations.³⁶ However the Strategic Review also details 'immediate' and 'medium term' next steps for the organisation. 'Immediate steps' focus on the task of the new CEO as the driver of review and change in the organisation and culture, as its new future direction is moulded by the revised Statement of Expectations. An 'immediate priority' is:

...to identify critical capability gaps, address overlapping roles, and realign responsibilities within the organisation. The company will need a substantial concerted effort and investment to make the changes required in CY14. Organisational capabilities will be reviewed and lifted, not just in relation to copper and HFC.³⁷

3.38 In outlining the 'medium term next steps', the strategic review is explains that defining a new operating model pursuant to the revised Statement of Expectations will be necessary to align construction, IT, business change and associated operational processes to support copper, HFC and FTTN.³⁸ The Strategic Review argues that:

This model will necessarily consider organisational changes to improve efficiency and productivity along with the redefinition of processes, culture and risk management practices that will support execution and delivery of the NBN.³⁹

3.39 The Strategic Review notes that 'Changing the culture and re-directing and re-focusing the organisation will take several months and will be critical to success'.

'Political & Media Fish Bowl'

3.40 The Strategic Review has identified that NBN Co staff living in a 'political and media fish bowl' is a major contributor to the cultural problems at the company.⁴⁰

35 Ibid.

36 Strategic Review, p. 122.

37 Ibid, p. 119.

38 Ibid, p. 120.

39 Ibid.

40 Ibid, p. 72.

3.41 The company as a Government Business Enterprise will necessarily be the subject of scrutiny. However, whether that scrutiny is reasonable and enables the company to make unfettered decisions is another consideration.

3.42 The Coalition in opposition adopted an uncompromising and indiscriminate approach in this regard, with the NBN Co Board and 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 Alcatel-Lucent.⁴¹ Later, these attacks focussed on Mr Quigley's credentials and competence in his role as CEO of NBN Co.⁴² These attacks soon broadened to encompass the credentials and competence of the entire NBN Co Board, culminating in the threat of a judicial inquiry.⁴³ 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.⁴⁴

3.43 Opposition attacks were also more generally focussed on the company and the project. Initially, these attacks focussed on 'demolish[ing]' the network.⁴⁵ Thereafter the Coalition would reflexively criticise network developments as they arose. For example, when the satellite program was announced in February 2012, it was attacked for being a 'Rolls Royce' solution. Mr Turnbull said:

Now the satellite industry, which is a large one, has told us and told anyone else who cares to listen, that there is more than enough capacity on existing

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- 41 See, for example, JCNBN *Hansard* (May 2011), at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2F2011-05-16%2F0001%22>. 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-debasing-himself?start=2>
- 42 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-quigley-over-nbn-management.aspx>
- 43 For example, *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>
- 44 Cited in 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/>
- 45 For example, Emma Rogers, "Abbott orders Turnbull to demolish NBN," *ABC News* (14 September 2010), at: <http://www.abc.net.au/news/2010-09-14/abbott-orders-turnbull-to-demolish-nbn/2260320>

satellites. That's existing satellites available for lease and satellites that are scheduled to be launched already to provide broadband services to the several hundred thousand customers in rural and remote Australia that these satellites of the NBN are going to service.⁴⁶

3.44 Even straightforward regulatory processes—such as the process for securing orbital slots for the long term satellites—were targeted.⁴⁷

3.45 Subsequently, Coalition attacks focussed on the performance of the company against its targets. Often these criticisms ignored evidence necessitating changes to Corporate Plan targets, particularly those relating to the shift in the commencement date brought about by the nine-month delay in finalising the Definitive Agreements with Telstra and achieving regulatory approval from the ACCC. For example, at the 16 April 2012 hearing of the Joint Committee, Mr Quigley said:

Mr Quigley: I will return for a couple of moments, if I can, to make some comments on the corporate plan from December 2010 and comparisons of the current rollout with the targets that were in that plan. In the fourth quarter of 2010, when we were finalising the plan, there were a number of assumptions we had to make which were based on the best information that was available to us at the time. Those assumptions were highlighted and bolded and put in a box, in fact, on page 16 of the corporate plan. A number of assumptions we made at that time have changed for reasons which we simply could not control. The most obvious of which was the deal with Telstra, which we assumed would be finalised by June 2011. In fact, it was not finalised until nine months later, in March this year.

The second was that, just weeks before the December 2010 plan was released, we had anticipated that the network would use 14 points of interconnect. You may recall that, at the end of November 2011, the ACCC recommended to government that the network use 121 points of interconnect. The list of these was not finalised until May 2011. While we attempted to include this change in the corporate plan, we could not know the full consequences of that decision and the impact it would have on the rollout.

The third area—in fact, just days before the 2010 corporate plan was released—is that the government announced the greenfields policy. While we did our best to factor the impact of this policy into the plan, it is now clear that our estimates of greenfields demand was far too high. Our plan also did not take into account the large proportion of connections for new housing that were transferred back to Telstra as the policy was finalised. So two fundamental assumptions driving our greenfields numbers changed. The best estimate of project demand of new developments turned out to be

46 The Hon Malcolm Turnbull MP, Doorstop Interview (8 February 2012), at: <http://mt.tbone.com.au/media/transcripts/transcript-doorstop-interview-8-feb-2012/#sthash.eqJ5gMWU.dpuf>

47 JCNBN *Hansard*, 16 April 2012, from p. 53. See also: <http://www.malcolmtturnbull.com.au/media/nbn-contracts-to-buy-two-satellites-without-the-orbital-slots-to-fly-them-i>

way too high and a change in policy saw us move a lot of those numbers that we had assumed in December 2010 back to Telstra. As a result we need to reflect these changes in our new corporate plan targets to be provided to the government in May. Those were probably the three most significant assumptions in the December 2010 plan which had to be modified but there were also others.

We are now in the process of developing a new corporate plan based on current assumptions and we will provide this to government at the end of May. So it is neither reasonable nor valid to compare NBN Co.'s performance with the deployment forecasts that were included in the December 2010 corporate plan.

3.46 At a doorstep in Sydney on 5 May 2013, Mr Turnbull said:

The NBN will be lucky to meet 15% of its June 30 target. It was meant to pass, according its own plan 1.2 million premises by 30 June this year. It will be lucky if it does 15% it's more likely to something around 10%. This is a colossal failure. It is proceeding at a snail's pace.⁴⁸

3.47 Similarly, Mr Fletcher, Parliamentary Secretary to the Minister for Communications, said in an article in *The Australian* on 4 December 2012:

The fibre-optic network is supposed to pass 12.2 million premises around Australia by 2021. More than three years later, as at June 30, 2012, it had passed just 38,914 - less than one third of 1 per cent towards the finish line. Yet NBN Co's corporate plan, issued in December 2010, promised to pass 317,000 premises by June 30, 2012.⁴⁹

3.48 The committee considers that the effect of these sustained attacks had an adverse impact on the staff and culture of NBN Co. In fact, the Strategic Review considers this a key exogenous risk:

NBN Co has been subject to intense political and media interest since inception. The Independent Assessment commented that this attention has adversely impacted the performance of NBN Co and the efficient deployment of the network. While the ongoing interest in the project is understandable, NBN Co would benefit from being allowed to focus on its core task away from the political spotlight.⁵⁰

3.49 Despite this being identified as a key risk to performance, current leadership does not appear to have taken steps to address this risk.

3.50 On 18 December 2013 under the heading 'Wage bill soars as 400 staff top \$200K,' *The Australian* referred to data 'uncovered during the production of the

48 The Hon Malcolm Turnbull MP, Doorstop Interview (5 May 2013), at:

<http://www.malcolmturnbull.com.au/media/transcript-doorstop-5-may-2013>

49 Paul Fletcher, "National Broadband Network rollout proving to be a costly failure," *The Australian* (4 December 2013), at: <http://www.theaustralian.com.au/business/opinion/national-broadband-network-rollout-proving-to-be-a-costly-failure/story-e6frg9if-1226529240654#>

50 Strategic Review, p. 73.

landmark strategic review'.⁵¹ This data was either sourced from NBN Co or the Minister's office.

3.51 On 26 February 2014, an article appeared in the *Daily Telegraph* claiming that 'NBN Co sources have blamed former communications minister Stephen Conroy for changing the eligibility criteria for subscriptions, which had been limited to families and small businesses which had no other access to comparable services'. Under questioning during the 12 March committee hearing, Dr Switkowski acknowledged that 'NBN Co should not be commenting on such matters', but indicated that he had initiated no inquiries into the matter.⁵²

3.52 At Senate Estimates on 25 February 2014, NBN Co Executive Chairman Dr Switkowski stated:

As we revealed on Friday of last week, the total investment so far in NBN Co approaches \$7 billion for three per cent of the build.⁵³

3.53 The day following Dr Switkowski's statement, *The Australian* ran off its front page an article entitled 'NBN's \$7bn bill for 3pc of network'.⁵⁴ On 7 March 2014, the day the sixth audit/review of the NBN was announced, the Minister said:

But the truth is very little was actually done. To spend \$7 billion to get to less than 3 per cent of the country is a shameful legacy.⁵⁵

3.54 As NBN Co demonstrated during its half yearly results briefing (see figure below), the \$7.3 billion capital expenditure invested to date has gone into network and systems that pertain to the entire build, not just the brownfields fibre local and distribution network (LNDN).⁵⁶ This includes *inter alia* the fibre transit network, hardware for the satellite and fixed wireless build, and investment in core IT systems. As Malcolm Maiden pointed out in his article on the subject:

The NBN is big, but it's still basically a construction project, and construction projects absorb money and time at the front end as their foundations are built.

51 Annabel Hepworth and Mitchell Bingemann, 'Wage bill soars as 400 NBN staff top \$200k', *The Australian* (18 December 2013), at: <http://www.theaustralian.com.au/business/in-depth/wage-bill-soars-as-400-nbn-staff-top-200k/story-e6fngaif-1226785396991#>

52 *Committee Hansard*, 12 March 2014, pp. 2-3.

53 *Committee Hansard*, Additional Estimates 2014, p. 40.

54 Annabel Hepworth, 'NBN's \$7bn bill for 3pc of network', *The Australian* (26 February 2014), at: <http://www.theaustralian.com.au/national-affairs/nbns-7bn-bill-for-3pc-of-network/story-fn59niix-1226837728018#>

55 Cited in: 'National Broadband Network to face audit after revelations of \$30 million branding spend', *News.com*, at: <http://www.news.com.au/national/national-broadband-network-to-face-audit-after-revelations-of-30-million-branding-spend/story-fncynjr2-1226848075453>

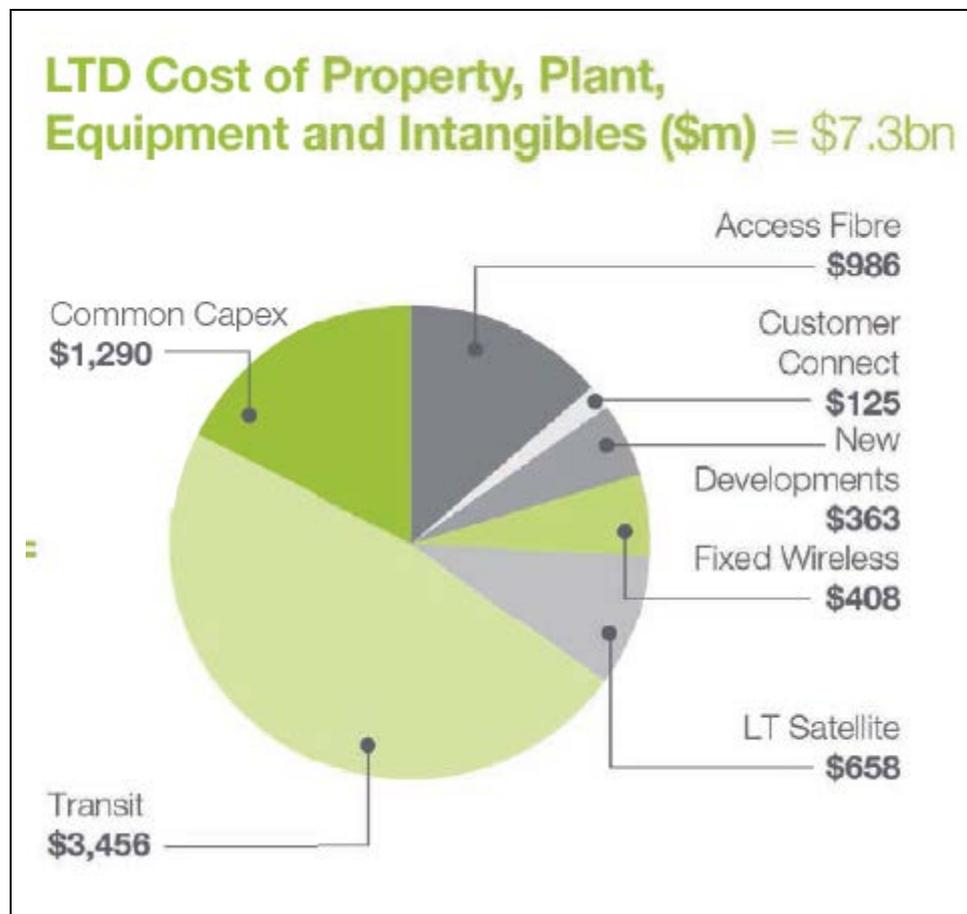
56 NBN Co, Half Yearly Results Presentation (21 February 2014), at: <http://www1.nbnco.com.au/content/dam/nbnco/documents/Half-Year-Results-Presentation-PDF.pdf>

By December 31, \$3.5 billion had been sunk into a broadband "transit network" that connects towns and cities. The transit network "passes" no premises in a statistical sense, but it is the NBN's spine. At December 31, it was 60 per cent complete, and 38,000 kilometres long.

Another \$658 million had been spent on hardware for the satellite portion of the network that will service remote areas, including two satellites that are being built in California, and a ground station at Bourke in western New South Wales.

Backbone infrastructure for the wireless portion of the network that will be sandwiched by fibre and satellite was in place at a cost of \$408 million, and 94 of a planned 121 points of interconnect for companies wanting to tap into the network had been completed. The NBN is behind its original schedule, but is far from only 3 per cent complete.

NBN Life To Date Capital Expenditure



Source: NBN Co

Summary of Findings—NBN Co culture

- **The committee notes the finding of the Strategic Review that the intense politicisation of the NBN has adversely impacted the performance of NBN Co and the efficient deployment of the network.**

Concluding Remarks and Recommendations

3.55 Key appointment processes for the NBN Co Board and management pertaining to the conduct of the Strategic Review reflect to a large extent media reports naming the same personnel before the election. There is also clear evidence that key appointees have prior personal associations with the Minister. The Committee considers that some of the processes of recruitment for the Board and management of NBN Co have created the perception that these are political appointments for a political purpose. In reaching this conclusion, the Committee is not making any judgements about the skills and experience of any of the individuals.

3.56 A key finding of KordaMentha was that 'no material issues exist within the accounts of NBN Co'. However, the Strategic Review draws radically different conclusions from the information contained in the 2013-16 Corporate Plan, which was signed off by an independent board in June 2013. Further, the Committee has found that the Revised Outlook includes financial manipulations and other irregularities. The Committee considers that the assumptions and conclusions set out in the Strategic Review are unreliable in the case of all examined scenarios.

3.57 It is not clear to the Committee how the NBN Co Board could have endorsed the Strategic Review, given its clear deficiencies. In the Committee's view, this should be investigated to ascertain how and at what point the governance processes at NBN Co have failed under the current Government.

3.58 The committee is also uneasy at the way in which the Government has unveiled multiple reviews and the very short timeframes announced for their completion. Noting the committee's findings of the Strategic Review, and the Government intention for the reviews to feed into the development of NBN Co's Corporate Plan 2014-17, the committee considers that the reviews and their findings should be subject to continuing and close parliamentary scrutiny.

3.59 The committee notes the finding of the Strategic Review that the intense politicisation of the NBN—driven principally by Coalition opposition to the project—has adversely impacted the performance of NBN Co and the efficient deployment of the network.

Recommendation 3

Governance processes between NBN Co and the Minister should be investigated to determine how a document with the deficiencies evident in the Strategic Review was produced and signed off by the NBN Co Board and the Minister.

Recommendation 4

The Committee recommends that the Senate amend the Committee's Terms of Reference to enable ongoing and robust Parliamentary oversight of the National Broadband Network.