

Chapter 4

Transparency and Accountability

Government undertakings

4.1 Prior to the September 2013 election, the Coalition's NBN policy identified increased transparency as a key change they would make to NBN Co, should they be elected:

NBN Co will report to Parliament on rollout and end user take-up on a monthly basis. NBN Co will also make this data available each week on the NBN Co website. NBN Co will report to Parliament on its financial performance on a quarterly basis.¹

4.2 The Coalition formed government after the September 2013 election. On 24 September 2013, while answering media questions about the government's interim Statement of Expectations to NBN Co, the Minister for Communications, the Hon Malcolm Turnbull MP confirmed the focus on the need for transparency in communications about the NBN:

But our commitment is, our focus is, to have a much greater level of transparency and openness.²

4.3 Mr Turnbull has made a number of subsequent undertakings. On Sunday Agenda on SkyNews on 15 December, Minister Turnbull said:

The main promise, the most important thing we said about the NBN was that we would tell the truth, and we would liberate the management of NBN Co to tell that truth.³

4.4 Speaking in the House of Representatives on 11 February 2014, Mr Turnbull said:

The bottom line is that as far as the NBN project is concerned, the government's commitment is to be completely transparent.⁴

4.5 In the same speech, he also said:

Maximum transparency is going to be given to this project.

4.6 The interim Statement of Expectations instructs NBN Co in how the government expects them to provide increased scrutiny and transparency:

1 Liberal Party, 'The Coalition's Plan for Fast Broadband and an Affordable NBN' (April 2013), p.12.

2 The Hon Malcolm Turnbull MP, Press Conference: Interim NBN Co Statement of Expectations (24 September 2013), at: <http://www.malcolmturnbull.com.au/media/press-conference-interim-nbn-statement-of-expectations>

3 *SkyNews Australian Agenda*, 'Interview with Malcolm Turnbull' (15 December 2013).

4 *House of Representatives Hansard*, 11 February 2014, pp. 13-14.

You will be aware that Government policy provides for increased security and transparency of NBN Co and its activities. As a first step in improving transparency we ask that you publish weekly information on your website indicating the numbers of premises passed, those premises that are passed but cannot receive a service (e.g. service class 0) and those premises with an active service for each element of the network. Your advice is also sought on longer term arrangements for improving the transparency of NBN Co operations.⁵

4.7 Under previous management, NBN Co exhibited unprecedented transparency for a government business enterprise. A summary of the measures employed by NBN Co in this regard was provided during the May 2013 senate estimates hearing:

One of the most consistent criticisms that I know you have had to sit and listen to endlessly is that there is more transparency in the Kremlin than there is at NBN Co. headquarters—I am sure you have heard that quip—so I just want to go through in some detail the information that is publicly available. The government and NBN Co. are committed to an unprecedented degree of public transparency on the NBN. Senator Cameron, you would be amazed at the amount of information that is freely and publicly available on the rollout of the NBN if you took the time to look and were not lazy about it—not that I am suggesting you are. Senator Cameron, you have not sat around this table and put your hand out and demanded that all of these questions be answered because, unlike some around this table, you have not been too lazy to go and do the work yourself.

NBN Co. provides monthly updates on the rollout progress on its website. These spreadsheets are called the monthly ready for service report. It lists NBN Co.'s most recent estimates of the status of every single fibre and service module on which construction has commenced, all 401 of them; every fibre distribution area to be completed before 30 June this year, all 667 of them; every new development on which construction has commenced, all 861 stages; and every fixed wireless site under construction, of which there are 92. NBN Co. also posts its one year construction schedule, which lists the areas in which construction will commence within a year, and its three year construction schedule, which lists the areas in which construction will commence within the next three years. In addition, NBN Co. posts its proposed footprint list, which lists every address for which services will become available within the next seven months, to assist retail service providers with their planning. NBN Co. also has a mapping tool which shows the network construction status in every part of Australia. The mapping tool includes a searchable list of every retail service provider connected to a particular address and a link to their NBN plans. NBN Co. also provides a list of all 121 points of interconnect and a construction schedule for each of them. NBN Co. also releases updates on rollout progress each quarter, which are available on its website, and provides detailed information on NBN costs and rollout progress every

5 Interim Statement of Expectations, p. 2.

six months in the performance report to the joint committee on the National Broadband Network.

In fact, the deployment information provided by NBN Co. on its website is so comprehensive that a J Xenon, on Whirlpool—and I should congratulate this individual—has created a website called mynbntracker, which enables users to track the detail of the rollout in their area, all using publicly available data. The website www.mynbn.jxenon.com allows you to enter your location and track all the public information available for your rollout region, including the status of construction process. This is extrapolated from publicly available information on the construction process tabled by Mr Quigley at parliamentary committees, including the expected completion date; the type of deployment, greenfields or brown fields; the name of the fibre serving area model; the name of the fibre serving area; the point of interconnect your area is connected to; the number of premises in your FSAM and FSA; and a list of all retail service providers. It is just remarkable what you can do when you take the time to have a look and do a little bit of hard work. NBN Co.'s website is a good place to start.

And there is an awful lot more information available publicly. GBEs are not required to release publicly their corporate plans but this government has released both NBN Co corporate plans containing detailed financial and deployment information—once again, on the website. NBN Co. also post on its website its annual reports, which include detailed financial and deployment information. NBN Co. also posts on its website detailed information about its special access undertaking, the wholesale broadband agreement, including related documents such as its network design rules.

NBN Co. executives routinely attend Senate estimates hearings and joint committees, providing detailed information if they are ever asked by any of the opposition senators and literally answer hundreds of questions placed on notice. At the last joint parliamentary committee in April Mr Quigley detailed the cost per premises passed and connected; a detailed breakdown of capital expenditure, including contingencies; a detailed breakdown of operational expenditure; detailed information on pricing, usage and take up; and detailed information across all stages of the construction cycle.

Finally, unlike most incorporated government companies, NBN Co. is subject to the FOI Act and releases information under this act regularly. Also available on its website are the board charter, the audit committee charter, the communications committee charter et cetera. There is a wealth of information on NBN Co. freely available out there for all to access.⁶

4.8 The Committee recognises that increased transparency and accountability is always welcome, particularly in the operations of a government business enterprise responsible for one of the largest infrastructure projects in our nation's history. Accordingly, this report will evaluate measures introduced under the current management of NBN Co to improve transparency.

6 *Committee Hansard*, Budget Estimates 2013, pp. 161-62.

Public Information on the rollout

Construction schedule

4.9 Current NBN Co management has removed much of the publicly available forecasting information on the rollout from NBN Co's website. Dr Switkowski noted during Supplementary Estimates hearings in November 2013:

...we have also brought greater clarity to the information that is publicly available about the state of the rollout—in particular, the maps on the NBN Co. website. Yes, the maps may not be as colourful as they once were but they are simpler and they do not create expectations that, as history as shown, NBN Co. and the industry struggle to meet.⁷

4.10 On 24 May 2013, former NBN Co Chairman Siobhan McKenna wrote to Mr Turnbull explaining why NBN Co informed local communities when physical design construction is occurring in their area:

Under NBN Co's construction partner contracts, “construction commenced” represents the milestone at which NBN Co releases to a construction partner a Contract Instruction to commence work in an area, as well as a Network Design Document (NDD). At this point, the construction partner starts developing Detailed Design Documents (DDD).

The preparation of each DDD involves construction field work. The work includes address verification, planning approval assessment, the electrical field design and the preparation of a field inspection report. Generating the field inspection report requires relevant ducts in the area to be “rodded and roped” and there may also be work on the ducts such as flushing using a “vac-truck” if there are duct blockages. This work is carried out by NBN Co's construction partners and is known as the “onsite proving exercise”. This work will always involve the presence of construction crews. It usually involves the erection of safety fences, traffic management and use of construction equipment. NBN Co's construction partners (or their subcontractors) are clearly present and visible in an area while these activities are happening. Telstra and its construction contractors (and their crews) are also in the field undertaking the remediation works requested by NBN Co once NBN Co has completed its onsite proving exercise. Local residents see these activities taking place in their community.

Local residents and businesses have an interest in whether their local area could be disrupted by any construction work and how long the disruption will last. Local residents and businesses will perceive little difference (if any) between construction activities as part of the field work and onsite proving exercise, Telstra's remediation to satisfy NBN Co's requirements, and construction activities that may involve the installation of fibre optic cable (whether in ducts or overhead), digging and or drilling on public

7 *Committee Hansard*, Supplementary Estimates 2013, p. 94.

property, installing pits or installing fibre distribution hub cabinets. These latter activities occur after the approval of the construction partner's DDD.⁸

4.11 This issue was canvassed at a public hearing of the committee in Canberra in November 2013. NBN Co acknowledged issues of public safety around providing this information to communities:

Senator CONROY: NBN Co. appears to have made a decision that that sort of activity, that you have just agreed looks like construction, is no longer to be considered construction—in fact, one of your public spokespeople actually denied that there was construction involved in what you are looking at there, and your maps have been altered to indicate that that is not construction. So I am just wondering whether or not you are keeping the public informed of what is happening. As you can see, there is a map right there that indicated where that Mudgee work, which you just saw a photograph of, was taking place, and that is the new map under your stewardship that represents that no activity is taking place in the area. So could you give me an explanation of why you have stopped informing the public where construction activity is taking place?

Dr Switkowski: Certainly. As you have described, some of the communications appear to be directed towards issues of public safety, traffic management et cetera—that is construction commenced—but over time have been interpreted as the beginning of a reasonable period by which time premises in that area will have access to high-speed connectivity. Over time, that figure I think has produced an expectation that has not been met. I understand the context of this originally, and that is: from construction commenced, to remediation, to build completion was expected to be a period of time of six to eight months.⁹

4.12 The lack of public information about the rollout is mentioned in a number of submissions. jxeeno notes that:

I am concerned with the decreasing levels of transparency at NBN Co, especially regarding information available publically. Since the change in Government, NBN Co has stopped publishing a number of documents previously publicly available....Removal of such files from the public has hampered public efforts to track the progress of the project, especially the removal of the Monthly Ready for Service plan, which limits the ability of individuals within rollout regions from finding out when they can expect to have service available in their area.¹⁰

4.13 This sentiment is echoed in another submission from Mr. Raper:

Great uncertainty now surrounds the NBN roll out and, despite claims to the contrary prior to the election, decreasing transparency at NBN Co has

8 Letter from Siobhan McKenna, Chairman, NBN Co to Malcolm Turnbull, Shadow Minister for Communications and Broadband (24 May 2013).

9 *Committee Hansard*, 29 November 2013, p. 39.

10 *Submission 12*, p. 13.

limited the ability of ordinary citizens like me to obtain information on the status of the NBN roll out...

Previously NBN Co published a variety of reports that enabled interested parties to track the roll out of the NBN. The Australian public could directly access these reports and monitor the progress of the NBN roll out. Alternatively, websites such as mynbn.info integrated data from these various reports and presented them in a user friendly way to those who did not wish to trawl through lines and lines of spreadsheet data. Indeed, I found mynbn.info presented NBN Co's data in a much more user friendly way than NBN Co's own website.

Regrettably, since the change in Government and despite assurances of increased transparency from Mr Malcolm Turnbull prior to the election, NBN Co have removed or restricted access to reports that were previously available to all Australians....

It is difficult to understand why NBN Co would wish to restrict access to reports it previously published freely. Removal of the reports from public access limits the Australian public's ability to track progress of the roll out.¹¹

4.14 Evidence of community confusion from these measures appears in a number of submissions and in evidence taken at public hearings. For example, Digital Tasmania made the following comments at a public hearing in Hobart on 4 February 2014:

Consumers in many areas have expressed their disappointment to Digital Tasmania and in the media when much of the planned fibre-optic and fixed wireless areas were dropped from the rollout map following the change of government. As of mid-August last year, work was under way to connect fibre NBN to around 90,000 premises across Tasmania. When those rollout maps were revised after the coalition was elected, approximately 60,000 homes and businesses seem to have dropped off the map. This is two-thirds of Tasmanian homes and businesses which appear to have been taken off the construction schedule.¹²

4.15 Similarly, the City of Alexandrina is concerned that areas which were previously scheduled for rollout have apparently disappeared from the rollout schedule, with no information substituted to explain what is happening:

Our main concerns are that two of our areas that had been identified as under construction by NBN Co have now fallen off of the map. Goolwa and Victor Harbor are contiguous localities and we are concerned about any apparent piece meal approach to the roll-out. We also believed that plans and work for Strathalbyn were well advanced, but they too seem to have been lost.

11 *Submission 37*, pp. 1-3.

12 *Committee Hansard*, 4 February 2014, p. 25.

The recent change of Federal Government has delayed the project bringing uncertainty to our community and restricting our ability to implement programs based on access to high speed broadband. We are aware that the government intends to introduce a wider range of technologies; however our greatest concern is the delay to programs that we believed were well advanced.¹³

4.16 A submission from Mr Matt Wilkinson echoed these concerns.¹⁴ Mr Wilkinson has had previous communications with NBN Co on the matter of the fibre footprint in Band 1 and Band 2 exchange service areas, and NBN Co's undertaking to serve his premises with fibre:

From my understanding, as of 15 July 2013, SA Power Networks was awarded a contract by NBN Co to complete the Fibre rollout to around 300,000 premises, of which 5STI-01 is to be included....

Prior to the 2013 Federal Election, Mr Turnbull, in his capacity of Shadow Minister for Communications and Broadband made a firm promise on a number of occasions to honour the existing signed contracts if elected to Government.

Some 31,600 search results on his promise can be found on Google here:

<http://www.google.com.au/search?q=malcolm%20turnbull%20honour%20existing%20contracts%20nbn>

As of December 2013, a number of FSA were removed from the NBN Co website, 5STI-01 included. To date, there is no indication as to when it will reappear in the rollout schedule, nor via which means the broadband will be delivered. Current experience shows that (as in Tas), existing contracts (to roll out fibre) are being torn up, and replaced with FTTN.¹⁵

4.17 The City of Victor Harbor voiced similar concerns:

In March 2012 Victor Harbor was confirmed as a high priority location for one of the first stages of the National Broadband Network (NBN) fibre to the premises rollout schedule through the Port Elliot Project (rural areas to receive a different service later). Victor Harbor and the region thought it hit the jackpot upon receiving the news however upon hearing of the current review there is a lot of uncertainty, anger and frustration within the local community.¹⁶

4.18 The lack of consultation or communication with local communities, and the absence of information available to these communities on the rollout, was thrown into stark relief in evidence given by the Mayor of Geraldton, Mr Carpenter, during the 29 January 2014 hearing in Perth:

13 *Submission 14*, p. 2.

14 *Submission 50*, p. 2.

15 This matter is chronicled on the Whirlpool forum at the following URL:
<http://forums.whirlpool.net.au/archive/1959073#r35745544>

16 *Submission 53*, p. 4.

Senator LUDLAM:...since the election, when there was a very sharp and deliberate change of policy—we are still trying to establish what it is—what contact has the city had with NBN Co. or its various subentities?

Mr Carpenter: Prior to then, the amount of work that they did with us was excellent. They kept us well informed of rollout dates and all that type of stuff and where the particular areas where they were going to be laying the cable were. It was fantastic. As soon as the election came, it was like a guillotine; it just stopped.

Senator LUDLAM: That is an uncomfortable metaphor, but we can adopt that. That is nearly five months ago. What contact have you had with the corporation since then?

Mr Carpenter: I personally have had none, and as far as I know the officers of the city have not had any either.

Senator LUDLAM: Really? So all you get is in the public domain when they start removing FSAM areas from the maps?

Mr Carpenter: I was not aware of that until I saw it here today.¹⁷

Weekly progress report

4.19 NBN Co, as directed in the Interim Statement of Expectations, has provided on its website a summary of weekly network progress. This summary contains information on premises passed for each network element (brownfields fibre, greenfields fibre, fixed wireless and satellite) the number of premises within that footprint that face a longer connection timeframe (so called 'service class zero' premises) and the number of activated premises for each network type. The current week's network progress is also presented on a state and territory basis.

4.20 This is a laudable development—previously network rollout progress was released at less frequent intervals. However, as is evident from the 25 February Estimates hearing, NBN Co produces weekly a Program Summary Report which contains considerably more information on rollout progress than what is made available on NBN Co's website. As set out during the Estimates hearing of 25 February 2014:

Senator CONROY: Are you familiar with the program summary reports that were provided to the previous government?...

Dr Switkowski: I am familiar with that particular report if from this distance it is the one I think it is.

Senator CONROY: Yes. It is entitled 'Program summary report'. It covers the date an FSAM was switched on, the number of premises connected, the take-up rate in every active FSAM in Australia, the contract instructions issued, the number of builds, bulk drops completed et cetera. Sound familiar?

17 *Committee Hansard*, 29 January 2014, p. 28.

Dr Switkowski: That has certainly been part of the internal management reporting because I observed that on the first day I arrived.

Senator CONROY: I am hoping you get it each week and read it.

Dr Switkowski: We get that report every week and review it, yes.

Senator CONROY: You are using the royal 'we'? I want to make sure you are part of the royal we?

Dr Switkowski: I am chief executive, so yes.

Senator CONROY: So these reports are still prepared internally with the same information? They will be expanding, because the number of—

Dr Switkowski: Yes. For all intents and purposes, yes.¹⁸

4.21 The information contained in the weekly progress report published on the website contains only a subset of this information. No information is provided on individual FSAMs (i.e. the date an FSAM was switched on, the take-up rate in every active FSAM in Australia, the contract instructions issued, the number of builds drops etc.). As noted above, the weekly progress report also contains little information on the rollout itself. The dearth of detail in the weekly progress report was mentioned by jxeeno, creator of the independent rollout tracker myNBN.info site, in his submission to the Committee:

It should be noted that NBN Co has also stated releasing its weekly rollout statistics as part of the Interim Statement of Expectations. Such efforts should be commended, however, provide little detail in terms of the actual rollout and its expected availability.¹⁹

4.22 It is unclear to the Committee why much of the pertinent information about network progress has been omitted from the weekly bulletin on NBN Co's website. This is particularly the case for the information on take up rates in individual FSAMs. Prior to 7 September 2013, these take up rates demonstrated that Australians are taking up fibre services at world-record rates.²⁰ However, the Committee notes that weekly provision of data demonstrating the popularity of the fibre service may make it problematic for NBN Co to switch to an inferior fixed-line deployment technology.

Committee Experience

Public Hearings

4.23 Under the previous Parliament, there were three Parliamentary committees focussed on the NBN: the Environment and Communications Legislation Standing Committee, the Joint Parliamentary Committee on the National Broadband Network, and the House of Representatives Standing Committee on Infrastructure and Communications ('Inquiry into the role and potential of the National Broadband Network', report tabled 25 August 2011). Under the 42nd Parliament, there were two

18 *Committee Hansard*, Additional Estimates 2014, p. 58.

19 *Submission 12*, p. 13.

20 *Committee Hansard*, Budget Estimates 2013, p. 152.

Parliamentary committees focussed on the NBN: the Environment and Communications Legislation Standing Committee, and the Senate Select Committee into the National Broadband Network. Under the current Parliament, there are again two committees relevant to the NBN: the Environment and Communications Standing Committee and the Senate Select Committee on the National Broadband Network.

4.24 Under the current Parliament, NBN Co executives have continually pled a lack of availability to appear at hearings of the Committee. On each occasion, the committee had exchanged numerous letters with NBN Co in an attempt to find a compromise on a hearing date and time which would be suitable to NBN Co. On each occasion, the committee has been flexible in making the arrangements for public hearings in order to accommodate the busy schedules of NBN Co executives, and has twice changed the dates of hearings due to notice from NBN Co that the hearing date would clash with a board meeting. The committee had no choice but to issue three summons for NBN Co executives to appear and give evidence.

4.25 On one occasion, NBN Co executives did not comply fully with the order to appear, citing key staff being unavailable. On another occasion, the public hearing on 17 December 2013, Dr Switkowski advised the committee that he had chosen the NBN Co representatives who he thought would best be able to address the committee's questions, despite the Committee's order as to who should appear:

CHAIR: I am asking you about your actual ongoing operation. Mr Korda is not involved in the actual deployment and Mr Adcock is. We did ask for him, and it continues to be a surprise to the committee that you continue not to provide the witnesses that the committee asks for. That is an unusual set of circumstances. I have not bothered having an argument about it because we want to get on with the hearing. But I just find it extraordinary that you continue to prevent the committee from having access to the people who can directly answer the questions. Mr Rousselot has just indicated that Mr Adcock is the person to ask, and we asked for him to be here, sitting next to you, right now. Mr Rousselot just tried to pass the question to him.

Dr Switkowski: My reading of the mandate of this committee led me to conclude that the interests of this committee were going to be focused on the contents of the strategic review, and that was supported by my reading of Hansard from last week. So I have assembled a team today that I believe to be—

CHAIR: The committee decides who we will ask questions of.²¹

4.26 The committee notes that this is not the only example of arrogant behaviour from NBN Co executives at the committee's public hearings. The following exchange occurred at the committee's hearing on 11 December 2013:

Mr Cooney: Apologies, it is just my understanding—advice was given to us that three members of the committee constitute a quorum of the committee.

21 *Committee Hansard*, 17 December 2013, p. 7.

CHAIR: Yes, and when a senator calls a quorum then a quorum is called and it is tested. But you do not get to call a quorum. Got it?

Mr Cooney: Sorry, I did not mean to call a quorum; it was just a clarification.

CHAIR: It is very clear—got it? Mr Cooney, you have just attempted to close down a parliamentary committee and failed, so let us be very clear about what you just did: you have just attempted to close down a parliamentary committee.

Mr Cooney: I was asking for clarification.

CHAIR: You have just attempted to close down a parliamentary committee—so much for NBN Co. wanting to participate and have scrutiny.²²

Questions on Notice

4.27 The committee has also faced difficulties in obtaining answers to questions taken on notice by NBN Co and the Department of Communications. Answers were provided over a month late to questions taken on notice at the committee's public hearings on 28 and 29 November 2013. All answers to questions taken on notice at the committee's public hearings on 11 and 17 December 2013 are yet to be submitted to the committee.

4.28 During the hearing of 17 December 2013, the Chair signalled to NBN Co CEO Dr Switkowski that questions in writing would be lodged with NBN Co on the Strategic Review:

CHAIR: Thank you for that opening statement. Dr Switkowski, the committee will have a number of relatively detailed questions, which we wanted to put to you in writing. We appreciate how busy you have been and how busy the company have been since the change of government. If we provide these to you by the end of the week, would it be possible to get responses to the committee by, say, 24 January.

Dr Switkowski: I am sure that is very reasonable.

CHAIR: Thank you.²³

4.29 To date, answers to all of these questions have not been received by the Committee. On 10 February 2014, the committee wrote to NBN Co seeking an update on when answers to questions on notice would be provided.²⁴ On 25 February 2014, during a Senate estimates hearing, NBN Co Chair Dr Switkowski was again reminded of outstanding questions on notice:

22 *Committee Hansard*, 11 December 2013, p. 43.

23 *Committee Hansard*, 17 December 2013, p. 3.

24 Correspondence is available here:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Broadband_Network/NBN/Additional_Documents

Senator CONROY:...At the Senate Select Committee on the NBN hearings in December, I asked Dr Switkowski: The committee will have a number of relatively detailed questions which we want to put to you in writing. We appreciate how busy you have been and how busy the company have been since the change of government. If we provide these to you by the end of the week, would it be possible to get responses by, say, 24 January? Dr Switkowski replied: I am sure that that is very reasonable.

It is now a month later and no answers have been provided to the committee. Why not?

Dr Switkowski: Let me—

Senator CONROY: If the answer is that you have provided them to the minister's office and they are in his office, please just indicate that and save time.

Dr Switkowski: I acknowledge your implied criticism and accept it. As I said, this is now the fifth such appearance before the Senate estimates or Senate subcommittee. I think there were more than 250 questions. We have been working our way through them. I am hopeful that we will get them out relatively quickly.

Senator CONROY: So they are actually still with NBN Co? They are not sitting on the minister's desk waiting for him to tick them off?

Dr Switkowski: They may be. I do not know where every question is in the process. Honestly, I do not.

Senator CONROY: I appreciate your candour. We will get grumpier if we have not got them returned to the committee to allow us to make use of the answers to further the questioning.

Dr Switkowski: Could we space out these supplementary hearings, perhaps?

Senator CONROY: Look, NBN Co is used to dealing with hundreds and hundreds and hundreds of questions from the Senate and other parliamentary committees, so it is no surprise to your Canberra office that we would be chasing this number of questions. It is absolutely normal for this committee and other committees to ask you this many questions. So it is nothing new. It might be, I appreciate, to you, but it is absolutely nothing new to the people sitting around you and behind you. They have managed in the past to get the questions in prior to all committee hearings and all estimates. I am just hoping that you can do the same.²⁵

4.30 On 28 February 2014, following the estimates hearing, a response to the committee letter of 10 February 2014 was received from NBN Co. This response did not refer to the originally agreed timeframe for submission and contained no undertaking to submit answers by a given date.

4.31 Further, in answers to Questions on Notice that have been received from earlier hearings, there is evidence of NBN Co and the Department of Communications

25 *Committee Hansard*, Additional Estimates 2014, p. 56–57.

refusing the information requested on highly spurious grounds. This is despite the fact that the information requested was previously publicly available. One example was Question on Notice 205, which asked:

For each of the Fibre Serving Access Modules (FSAMs) identified by NBN as [...]

- a. What is NBN Co's current estimate of the “premises count within the FSAM once construction has been completed.”
- b. On what date was the FSAM determined to have construction commenced as defined using the metrics issued prior to the election on 7 September? (construction commenced is identified as point “e” in exhibit 18-1 of the draft NBN Co Corporate Plan 2013-16).²⁶

4.32 The information requested is available in a document called the Monthly Ready for Service, which NBN Co Head of Product and Sales, John Simon, confirmed that NBN Co produces on a monthly basis.²⁷ Mr Simon was asked whether this report is still available on NBN Co's website:

Senator CONROY: That is the monthly Ready for service report. You identified that you knew what it was. Are they still published on the website?

Mr Simon: Yes. We still send out—

Senator CONROY: I do not think they are.

Mr Simon: We send out a Ready for service—

Senator CONROY: No. That is not what I asked. I am going to come to that. I asked whether they are still published on the website. Could you correct your answer?

Mr Simon: I do not believe that report in that format is published on the website. We send it to our RSP partners for their planning for sales purposes.

4.33 As noted above, this document used to be publicly available on NBN Co's website until it was taken down under current management. Despite the apparent ease with which this information could be provided by NBN Co, the reason given for refusing to provide this information was:

Provision of more detailed information at the Fibre Serving Area Module (FSAM) level is not provided publicly and to report regularly at this level would require an unnecessary diversion of the company's resources.²⁸

26 Answer to Question on Notice, Supplementary Estimates 2013, No. 205. Full list of FSAMs available in Question on Notice 205, available here: http://www.aph.gov.au/~media/Estimates/Live/ec_ctte/estimates/supp_1314/communications/answers/QON_205.ashx

27 *Committee Hansard*, Additional Estimates 2014, pp. 58–59.

28 Answer to Question on Notice, Supplementary Estimates 2013, No. 205.

4.34 As set out above, the document in question is distributed monthly to NBN Co's retail customers. As the information requested in this question on notice pertained to information that NBN Co previously made available publicly available, there is no commercial reason to keep the information secret. The Committee considers that the refusal to supply this information is directly at odds with the Minister's many public statements committing to improve transparency at NBN Co.

4.35 Similar refusals to provide information that NBN Co produces regularly as part of its normal business activities were visible in other questions of notice. The answer to question on notice 207, for example—which asked for information about the number of premises for which build instructions had been issued—referred back to the answer to Question on Notice 205, despite the fact that NBN Co produces the information weekly as part of the Program Summary Report, and the answer to 205 had no relevance whatsoever to the question asked. Similarly, the information requested in QoNs 206 and 208—again, available from documents that NBN Co produces regularly as part of its normal business activities—was refused on the same spurious grounds. As discussed at Senate estimates:

Senator CONROY: I will come to my question. I am just drawing your attention to it so you could have a quick look at it. The reason given for providing no additional information in relation to question 205 was that information is not provided at FSAM level. What I am confused about is how an answer to question on notice 205 can be an answer to a question that had not been asked about FSAMs. You actually refer me to a question that has nothing to do with the question I actually asked you. It is a completely different question that I ask and you say, 'Go and look at 205.'

Dr Switkowski: I will have to reflect on that and come back to you.

Senator CONROY: I do appreciate that it goes through an iteration process, Dr Switkowski, where it moves beyond your control. But it makes the organisation look silly if the questions quite literally point to a question that has nothing to do with the original question asked.

Dr Switkowski: On this one you may have a point.

Senator CONROY: Still referring to question 207, are you aware that the program summary reports contain the numbers of premises for which NDDs had been released; the number for which construction has commenced; and the number for which build instructions have been issued?

Dr Switkowski: I think that is right.

Senator CONROY: The direction you have from the government is to be more transparent. The minister has made numerous statements about this. You said you have discussed them with him. Since the change of government, you have removed virtually all the publicly available information about the rollout. You have also refused to provide this information in direct answers to questions on notice, even though you produce the information that the Senate has asked for monthly. You have provided an absolutely incorrect direction in one of your answers on why it could not be provided—that it is a costly diversion or, in other words, it is too much money, even though it is a report in front of you. Even the

information that is provided in the weekly stats contains only a fraction of information that is actually available to you in the program summary reports. So while you may believe that you are providing more information by standing up and holding press conferences and just spouting the things that you want to talk about, the actual core information that was being provided by the organisation has been withdrawn.²⁹

Strategic Review

4.36 On 3 December 2013, the Senate ordered the Minister representing the Minister for Communications, Senator the Hon Fifield, to table the strategic review no later than noon on 9 December 2013.³⁰ In responding to the order, a letter from Senator Fifield addressed to the Clerk of the Senate was tabled on 5 December. The letter advised that the strategic review should be withheld from the Senate on the grounds that the document may be prejudicial to the Government's commercial interests if it were to be publicly released:

The analysis undertaken by NBN Co includes detailed information and modelling of options to rollout the NBN using different architecture and technologies. The public release of this analysis could be prejudicial to NBN Co's future negotiations with a number of parties including vendors of telecommunications networks, equipment suppliers, information and business system providers, and construction contractors.³¹

4.37 The Minister's statement refusing to comply with the Senate's order concluded with the reassurance that the Government was implementing measures to achieve greater transparency in relation to the NBN (although these were not identified) and will continue to promote greater transparency of information in a manner 'which will not prejudice the financial interests of the Government and taxpayers'.

4.38 On 12 December 2013 the Government tabled in the Senate a redacted copy of the strategic review. The committee subsequently requested that NBN Co release a complete unredacted copy of the review, *in camera*, on a confidential basis to protect the commercial nature of the information. The request was denied by the Minister for Communications in a letter to NBN Co CEO, Dr Switkowski, on 17 December 2013. The letter stated that the review should not be released 'for reasons of public interest immunity'. It repeated the claim that releasing the document would damage the commercial interests of the Government and damage legal proceedings. The letter also directed officials from NBN Co not to answer any questions from the committee in relation to redacted material included in the review, either in public or in-camera, at the hearing in Sydney on 17 December 2013.

4.39 At its public hearing on 17 December 2013, the committee put to Dr Switkowski the stark difference between the information provided to the Committee and Committee experience in previous parliaments:

29 *Committee Hansard*, Additional Estimates 2014, p. 63.

30 Parliament of Australia, *Journals of the Senate*, 5 December 2013, p. 254.

31 Letter from Senator the Hon Fifield, 5 December 2013.

Senator LUDLAM: But we are being asked to accept the entire basis for this project being financially and commercially viable on the basis of a couple of blacked-out rectangles.

Dr Switkowski: Might I say that this is a step ahead of anything else you might have been asked to comment upon.

Senator LUDLAM: No, it is not. I have been working on these committees for five years now and we have been provided with full financials to the company, apart from one period where the background material for the expert panel was not provided to anybody, including the Senate, in 2009.

Dr Switkowski: I stand corrected.³²

Concluding remarks and recommendations

4.40 To the Committee's knowledge, since the change of management NBN Co has done two things to improve transparency. The first, which it was directed to do in the Interim Statement of Expectations, is the provision of a summary of weekly network progress. The second is regular results briefings modelled on the convention of publicly listed companies, the first of which took place on 21 February 2014. These are laudable developments.

4.41 However, on balance, the Committee considers that transparency has decreased markedly at NBN Co since the change of government, despite undertakings prior to the election. In summary:

- There is clear evidence of community uncertainty about the rollout of the NBN. Communities are not informed when physical construction is taking place in their area, and local communities are not being advised when services are expected to become available;
- The weekly rollout information that is published is only a subset of what is available to NBN Co management and appears overly selective. No take up rates for individual areas are published;
- Answers to Questions on Notice are submitted late or not at all, are evasive, and some answers do not attempt to address the questions asked;
- NBN Co personnel appear reluctant to be subject to Parliamentary scrutiny. On three occasions, they have had to be summoned to committee hearings, and in some cases requests for specific personnel have been denied;
- there is evidence of a Freedom of Information request being denied for spurious reasons;
- NBN Co previously released its half yearly results to the Joint Parliamentary Committee on the National Broadband Network and its full audited results annually in its Annual Reports tabled in Parliament. Results briefings are an additional reporting route with a different format—and should be

32 *Committee Hansard*, 17 December 2013, p. 23.

commended—but there is little or no information produced as a result that was not provided under the previous Parliament; and

- A request for *in camera* scrutiny of the unredacted Strategic Review has been denied by the Minister, despite the fact that these assumptions underpin a proposed Commonwealth investment of over \$40 billion—not including flagged upgrades.

4.42 Of key concern to the Committee is the uncertainty evident in the community on the network rollout. The Strategic Review lists under 'immediate next steps' an action 'engage and consult widely with stakeholders':

NBN Co will commence a program to engage and consult widely with stakeholders concerning the findings of the Strategic Review. This engagement will include the Department of Communications, Department of Finance, ACCC and ACMA, as well as industry representatives, peak bodies, RSPs, suppliers, infrastructure and access providers, communities and other relevant groups.³³

4.43 It is now three months since the release of the Strategic Review, and the Committee can observe no progress in this area. The committee will be seeking advice from NBN Co about the specifics of its community engagement strategy in forthcoming hearings.

4.44 The committee notes the resignation of Mr Kieren Cooney as reported on 19 February 2014, after more than two years in his role as Chief Communications Officer. Dr Switkowski was reported as saying that Mr Cooney's resignation comes ahead of a review of marketing and communication in NBN Co, to be conducted prior to arrival of the new CEO Mr Bill Morrow in early April 2014. The committee expects that NBN Co will use this review as an opportunity to examine how it can improve transparency, better communicate with stakeholders and reduce the confusion evident in the community about the rollout of the NBN.

Recommendation 5

Shareholder Ministers and NBN Co should implement concrete measures to improve transparency and accountability. At a minimum, NBN Co should:

Immediately take steps to rectify community confusion on the rollout. NBN Co should inform communities where physical construction is taking place, and provide forecasting data on its website to advise local communities when services are expected to become available;

Attend all Parliamentary Committee hearings and answer questions on notice accurately and in a timely fashion, as is appropriate for a Government Business Enterprise accountable to the Australian people; and

Publish the full program summary report on its website, in accordance with the interim statement of expectations.

33 Strategic Review, p. 120.

**Senator the Hon Kate Lundy
Chair**

**Senator Scott Ludlam
Greens Senator for WA**