

Chapter 3

Delivering the National Broadband Network

The Announcement

3.1 On 7 April 2009, the Government announced that it would establish a new company to build and operate a 'superfast' fibre-to-the-premise (FTTP) National Broadband Network (NBN). Describing it as the 'largest nation building infrastructure project in Australian history', the government has promised a network connecting 90 percent of all Australian homes, schools and workplaces with broadband services at speeds of up to 100 megabits per second (Mbps), with remaining premises connected with next generation wireless and satellite technologies delivering broadband speeds of 12 Mbps.¹

3.2 While seeking private sector investment, capacity and expertise, the government advised that ownership restrictions would be established to protect the objective of a wholesale, open access network.²

3.3 Under the government's FTTP NBN proposal, every house, school and workplace is to 'get access to affordable fast broadband'.³ The government has also claimed that the NBN will directly support up to 25,000 local jobs every year, on average, over the eight year life of the project.

3.4 Key elements of the government's NBN proposal are:

- the government will be the majority-shareholder in the new joint public-privately-owned company;
- the government will sell down its interest in the company within five years of the completion of the network;
- the government, in partnership with the private sector, will invest up to \$43 billion over eight years to build the NBN;
- the government will fund its investment through the Building Australia Fund (BAF) and Australian Infrastructure Bonds (AIBs);
- the NBN will provide fibre optic transmission links between cities, major regional centres and rural towns;
- the NBN will be a national wholesale-only, open access broadband network;

1 *New National Broadband Network*, Joint Media Release, the Prime Minister, the Treasurer, the Minister for Finance, the Minister for Broadband, (NBN Joint Media Release), 7 April 2009.

2 NBN Joint Media Release, 7 April 2009.

3 NBN Joint Media Release, 7 April 2009.

- the NBN will be built and operated on a commercial basis by a company at arms length from the government; and
- the NBN is expected to be rolled out simultaneously in metropolitan, regional and rural areas.⁴

3.5 The government stated that it would invest in this infrastructure to 'stimulate jobs in the short-term and pay a dividend to the Australian people through enhanced productivity and innovation in the long-term.'⁵

3.6 The \$43 billion preliminary estimate for the cost of the network was developed 'taking into account advice from specialist technical advisers'.⁶

3.7 The Government indicated that its next steps in delivering the FTTP NBN would be:

- commencing an implementation study to determine operating arrangements for the NBN, network design, ways to attract private sector investment, and ways to provide procurement opportunities for local businesses;
- commencing negotiations with the Tasmanian Government on an expanded proposal to enable the NBN roll-out in Tasmania by July 2009;
- implementing measures to roll out fibre optic transmission links addressing broadband blackspots;
- Introducing legislation that will govern the NBN company and to facilitate the roll-out of fibre networks;
- making an initial \$4.7 billion investment in the network; and
- commencing consultations on reforms to the existing telecommunications regulatory regime.⁷

3.8 At the time of writing, all of these measures were in train. Although it is apparent that the 'initial \$4.7 billion investment' is a carryover from the proposed funding for the now terminated RFP NBN proposal, it is unclear how, or over what timeframe, the \$4.7 billion will be allocated.

4 NBN Joint Media Release, 7 April 2009.

5 NBN Joint Media Release, 7 April 2009.

6 NBN Joint Media Release, 7 April 2009.

7 NBN Joint Media Release, 7 April 2009. The Minister, Senator the Hon Stephen Conroy, advised in an address to the National Press Club on 28 April that the implementation study would also examine the appropriate pricing levels on the NBN.

Establishment of NBN Company

3.9 On 28 April 2009, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, announced that the NBN Company (the Company) had been established⁸ and that an executive search firm would soon be appointed to assist in the selection of a Chief Executive Officer (CEO) and board members for the Company.⁹

3.10 Details about the final make-up, governance and operating arrangements of the Company are still to be determined, however the Company's Constitution includes an initial, albeit rather basic framework.

3.11 Rule 4.1.1 of the Company's Constitution states that the object of the company is to 'roll-out, operate and maintain a national broadband network'.¹⁰

3.12 The share capital of the company is \$100,000, with the issued share capital being \$10. There are ten shares to be subscribed for by the Commonwealth valued at \$1 each.¹¹ The Company currently has three Board members, directors who are officers of the Department of Broadband, Communications and the Digital Economy, the Department of Treasury and the Department of Finance and Deregulation.¹²

3.13 The Company Constitution provides these directors with significant powers, including the ability to appoint the CEO of the company, following consultation with the Minister for Broadband, Communications and the Digital Economy, and the Minister for Finance and Deregulation.¹³

3.14 Proposed legislation relating to the operation and governance of the network Company, development of strategies to maximise the scope of private investment in, and the optimal capital structure for, the Company, and how to structure the company to facilitate its privatisation, will all be considered during the implementation study, details of which are examined in paragraphs 3.29 to 3.35 in this chapter.¹⁴

8 The company is registered with the Australian Securities and Investment Commission as A.C.N. 136 533 741 LIMITED and is a public company limited by shares, incorporated in the Australian Capital Territory.

9 Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, Address to the National Press Club (NPC Address), 28 April 2009.

10 Constitution of ACN 136 533 741 Limited (Company Constitution), p. 2.

11 See Company Constitution, Rules 10.2 and 10.3, p. 6.

12 See Company Constitution, Rule 6.3.2, p. 3.

13 See Company Constitution, Rule 13.1.1, p. 8.

14 See Department of Broadband, Communications and the Digital Economy, *Request for Expression of Interest number DCON/09/23 for Provision of Lead Advisory Services relating to the Implementation Study for the National Broadband Network* (REOI), p. 27.

Roll-out of NBN in Tasmania

3.15 On 8 April 2009, the Federal and Tasmanian Governments announced that the first phase of the NBN would be launched in Tasmania. Acknowledging the proposal submitted by the Tasmanian Government under the earlier RFP process, the government noted that while the RFP process had been terminated, the Panel of Experts had 'encouraged further negotiation' on the development of the Tasmanian proposal. The ACCC had also advised that the proposal 'raised no issues from a competition perspective'.¹⁵

3.16 While the implementation study to determine coverage issues for the NBN as a whole is yet to be completed, the Tasmanian proposal promises a FTTP network to reach 200,000 Tasmanian households and businesses, all hospitals and almost 90 per cent of schools.¹⁶ The remainder of the state will be covered by a combination of a Tasmanian Government-built wireless network and the Australian Government's NBN satellite solution.¹⁷ While the minister has referred to government funding for two new satellites, the committee notes with concern that there are scant details on the government's proposed NBN satellite solution.

3.17 The Tasmanian NBN build is expected to take five years and create 'hundreds of local jobs'.¹⁸ However, this timeframe seems unduly lengthy, as the government has also stated that negotiations between the Federal and Tasmanian Governments have already begun with a view to rolling out the Tasmanian FTTP and next generation wireless networks by July 2009.¹⁹ Work on the remainder of the NBN build is scheduled to commence in early 2010.²⁰

3.18 The committee also notes that plans for the integration of the Tasmanian component of the NBN into the overall network are to be developed as part of the implementation study.²¹

Regulatory Reform for 21st Century Broadband

3.19 On 7 April 2009, in response to continuing concerns expressed by stakeholders, the government also released a discussion paper detailing options to improve the effectiveness of the existing telecommunications regulatory regime.²²

15 *Tasmania first to receive superfast broadband*, Joint Media Release, Prime Minister, Premier of Tasmania, Minister for Broadband (Tasmanian Media Release), 8 April 2009.

16 Tasmanian Media Release, 8 April 2009.

17 Tasmanian Media Release, 8 April 2009.

18 Tasmanian Media Release, 8 April 2009.

19 NPC Address, 28 April 2009.

20 NBN Joint Media Release, 7 April 2009.

21 REOI, p. 27.

3.20 The discussion paper traverses a range of issues, many of which have been the subject of debate for some considerable years. These include:

- options to address deficiencies in the current negotiate-arbitrate access model contained in Part XIC of the *Trade Practices Act 1974* (TPA);²³
- the need to strengthen telecommunications sector-specific anti-competitive conduct provisions contained in Part XIB of the TPA;²⁴
- whether existing facilities access arrangements should be amended or integrated into Part XIC of the TPA;²⁵
- the appropriate separation arrangements for Telstra;²⁶
- the need for Telstra to divest its interests in Foxtel;²⁷
- opportunities to remove unnecessary regulation;²⁸ and
- the adequacy of the current consumer safeguard framework, including the desirability of replacing the existing Universal Service Obligation, Customer Service Guarantee and possibly the Network Reliability Framework with a Communications Service Standard as recommended by the Glasson Review.²⁹

3.21 Submissions to the review are due by 3 June 2009. Following the consultation process, the government has stated that it anticipates legislation will be introduced before the end of the year.³⁰

3.22 The government also stated that the discussion paper would formally commence the review of conditions relating to the operational separation of Telstra required by section 61A of the *Telecommunications Act 1997*, which provides that the minister must cause to be conducted a review of these requirements before 1 July 2009.

22 *Regulatory Reform for 21st Century Broadband*, Joint Media Release, Prime Minister, Treasurer, Minister for Finance, Minister for Broadband (Regulations Media Release), undated (released 7 April 2009).

23 *National Broadband Network: Regulatory reform for 21st Century Broadband*, Discussion Paper (Regulatory Reform Paper), April 2009, pp 12-16.

24 Regulatory Reform Paper, pp 16-17.

25 Regulatory Reform Paper, pp 25-26.

26 Regulatory Reform Paper, pp 17-25.

27 Regulatory Reform Paper, pp 23-25.

28 Regulatory Reform Paper, April 2009, p. 45.

29 Regulatory Reform Paper, April 2009, pp 28-47.

30 NPC Address, 28 April 2009.

Backhaul for Regional Australia

3.23 As part of its NBN proposal, the government also announced that it would immediately address the issue of regional backhaul blackspots by investing \$250 million in fibre optic transmission links. Another consultation paper, which was released on 23 April 2009, sought stakeholder views to identify and prioritise locations for investment, technical parameters for the backhaul network, the funding and service delivery arrangements, and the ownership of the infrastructure.³¹

3.24 Submissions relating to the consultation paper were due by 12 May 2009. The consultation paper outlines indicative timing for the implementation of the backhaul initiative. A Request for Tender (RFT) is to be issued in May, with responses due in June. The evaluation of the RFT and the negotiation and award of contract(s) are to be finalised in July, with construction of the transmission links to commence in September 2009.³²

3.25 The committee notes that along with feedback from stakeholders as part of this consultation process, plans for the integration of the backhaul network into the overall NBN are to be developed as part of the implementation study.³³

Fibre access and fibre in greenfields estates

3.26 The government is also conducting a parallel consultation process relating to fibre in greenfield estates, and improving access to certain facilities and network information to facilitate roll-out of fibre optic networks (*Facilitation of Fibre Roll-out*). In order to participate in this consultation process, interested parties are required to register on the Department's website.

3.27 The Department's website indicates that these consultations will commence shortly, but no specific timeframe has been announced. However, the government has stated its intention to introduce enabling legislation for both measures in the 2009 Winter sittings.³⁴

The NBN implementation study

3.28 On 7 April 2009, the government advised that, while its objective is to achieve, within the \$43 billion funding envelope, a 90 per cent coverage FTTP network, with the remaining coverage delivered through wireless and satellite

31 *Fast-track for National Broadband Network in regional Australia*, Media Release, Minister for Broadband, Communications and the Digital Economy (Backhaul Media Release), 23 April 2009.

32 Department of Broadband, Communications and the Digital Economy, *Backhaul Blackspots Initiative, Stakeholder Consultation Paper*, April 2009, p. 3.

33 REOI, p. 27.

34 NPC Address, 28 April 2009.

technologies, this estimate would be subject to the outcome of an implementation study.³⁵

3.29 On 24 April 2009, the government released a Request for Expressions of Interest (REOI) for the provision of lead advisory services relating to the NBN implementation study. Short-listed applicants would then be given the opportunity to participate in a Request for Tender (RFT) process to deliver these services.³⁶

3.30 The REOI provided additional information on the issues to be examined by the implementation study, namely:

- proposed legislation relating to the operation and governance of the NBN Company;
- the regulatory regime;
- ownership restrictions for retail telecommunications providers, and appropriateness of any foreign ownership restrictions for the NBN Company;
- funding requirements for the network roll-out beyond the initial \$4.7 billion investment;
- development of strategies to maximise the scope of private ownership in the NBN Company;
- the optimal capital structure for the NBN Company over time;
- development of detailed commercial/financial and engineering analysis of the network roll-out;
- the best structure of the NBN to facilitate the Government's long term privatisation objectives;
- development of plans to integrate the Tasmanian and backhaul initiatives into the overall network;
- network design consistent with the Government's objectives;
- development of strategies to provide procurement opportunities for local business;
- development of a detailed implementation plan and risk management strategy for the NBN; and
- stakeholder consultation.³⁷

3.31 The committee notes the number of significant issues pertaining to the implementation of the NBN that will require resolution through this process.

35 NBN Joint Media Release, 7 April 2009.

36 REOI, p. 7.

37 REOI, p. 27.

3.32 The REOI is the first of a two step selection process to engage a Lead Adviser to the implementation study. More than one party may be appointed to perform this role. Following the REOI, a select tender process is proposed.³⁸

3.33 The Lead Adviser is to be contracted to provide advisory services on all relevant issues arising throughout the implementation study, provide sign-offs, work with other advisers to the Department, and provide a report on the study in February 2010, with one or more interim reports on specific issues to be available from August 2009.³⁹

3.34 The committee notes with interest that the Department is 'not seeking fully developed proposals for the conduct of the implementation study in response to this REOI' and that it is not necessary for respondents to provide a pricing structure in the EOI.⁴⁰

3.35 The Department released an indicative timetable for the process, subject to variation at its discretion, with responses to the REOI due by 19 May and notification to short-listed applicants in the week commencing 25 May. The RFT documents are scheduled to be provided to short-listed applicants on 29 May, with the RFT closing on 16 June. Work on the implementation study is due to commence in the week of 6 July 2009, with a final report due in early 2010.⁴¹

The Response

3.36 The initial response from industry, business and other stakeholders to the government's announcement was enthusiastic; however, there were almost immediate calls for further detail to be revealed.

3.37 The Australian Local Government Association (ALGA) applauded the government's decision as allowing 'local communities to realise enormous economic and social opportunities' and 'expanding Australia's productive capacity and educational frontiers'. However, they also cautioned that the unprecedented nature of the project required a close working relationship between Federal and local governments to ensure that 'the interests of the 21 million residents living throughout Australia are taken into account.'⁴²

3.38 While recognising the need for an expedited delivery model, ALGA observed that 'a fast broadband network ...and sensitivity to local community interests are not

38 REOI, p. 7.

39 REOI, pp 26-27.

40 REOI, p. 9.

41 NPC Address, 28 April 2009.

42 *Local Government welcomes NBN expansion*, Media Release, Australian Local Government Association, (ALGA Media Release), 7 April 2009.

mutually exclusive'.⁴³ ALGA also welcomed the decision to mandate FTTP in all new greenfield developments by 1 July 2010.⁴⁴

3.39 The committee notes ALGA's earlier criticism of the lack of cross-jurisdictional coordination in development and planning projects (see chapter 2 paragraphs 2.82 to 2.83).

3.40 The Australian Greens welcomed the government's announcement, stating that the NBN was 'an important plank in building Australia's new green economy and had the potential to help the fight against climate change', but noted that 'it must be achieved while protecting the environment and taxpayer funds'.⁴⁵

3.41 Australian Greens' Leader, Senator Bob Brown, highlighted areas of the plan that required scrutiny, including the timetable for the roll-out, the needs of rural/regional communities, local government and the not-for-profit sector, in addition to the impact of the roll-out on existing environmental and planning laws.⁴⁶ The committee notes that the government is planning to fast-track legislation to streamline arrangements for access to certain facilities as part of its NBN roll-out, although it is unclear at this stage whether the Federal Government will include provisions to override local planning laws (see paragraphs 3.26 to 3.27 above). The Australian Greens also supported the decision to commence the NBN roll-out in Tasmania.⁴⁷

3.42 Dr Bill Glasson, who chaired the 2008 review into rural telecommunications services, supported the announcement and stated that:

If we are to grow rural and regional Australia we have to make sure these telecommunications services extend into the heart of rural Australia as far as we can get them.⁴⁸

3.43 Noting that the government's decision would allow Telstra to be involved in the project, he added that the decision would allow the government 'the opportunity to go back to the major infrastructure players like Telstra and work with them to deliver this infrastructure in a way that fits with the people of Australia'.⁴⁹

43 ALGA Media Release, 7 April 2009.

44 ALGA Media Release, 7 April 2009.

45 *Greens Will Scrutinise Broadband Network in Senate*, Media Release, Australian Greens Leader Senator Bob Brown, (Greens Media Release), 7 April 2009.

46 Greens Media release, 7 April 2009.

47 *Broadband for Tasmania: Our ticket to a clean, green, clever jobs boom?*, Media Release, Australian Greens Deputy Leader – Senator Christine Milne, 7 April 2009.

48 *Broadband network 'must accommodate rural needs'*, ABC News Online, accessed 7 April 2009.

49 *Broadband network 'must accommodate rural needs'*, ABC News Online, accessed 7 April 2009.

3.44 The Nationals expressed concern about the network's cost and also the number of regional towns that would miss out on the 100Mbps fibre roll-out.

3.45 While noting that the government's announcement marked a 'significant departure from its previous commitments' and noting the 'difficulties faced by private operators seeking funds for investment in the present economic climate'⁵⁰, the Business Council of Australia (BCA) stated that the decision 'provides leadership and a road ahead for the telecommunications sector and for users of broadband services' and 'has the potential to contribute to the productivity and economic growth in the coming decades'⁵¹. The BCA indicated that further business and community support for the project could be garnered by:

...providing publicly and in full the investment case for the planned rollout, including the broader consumer, productivity and economic benefits identified from this investment.⁵²

3.46 The BCA also supported the government's regulatory review as providing a:

...timely opportunity to update telecommunications policy settings to ensure we both encourage investment and meet the needs of consumers as technology and market conditions evolve in the years ahead.⁵³

3.47 The benefits of the government's proposal to patients in rural and regional areas were highlighted by the Australian Medical Association (AMA). The AMA stated that:

[t]o improve medical care in the bush, broadband services should be rolled out as far as possible into rural and regional Australia and be able to support the transmission of high-quality images thousands of kilometres' [thereby speeding up] diagnosis and perhaps reduce the need for some patients to travel long-distances for specialist consultations.⁵⁴

3.48 However, while noting that improved broadband was 'a tool' to be utilised in patient care, the AMA cautioned that this would not eliminate the need for more doctors and nurses in regional areas, properly funded and staffed rural hospitals and increased funding for e-health infrastructure.⁵⁵

3.49 Telstra welcomed the government's announcement and the opportunity to provide input into the regulatory reform process. While stating that it would work

50 *Broadband rollout holds productivity potential*, Media Release, Business Council of Australia (BCA Media Release), 7 April 2009.

51 BCA Media Release, 7 April 2009.

52 BCA Media Release, 7 April 2009.

53 BCA Media Release, 7 April 2009.

54 *AMA: Better broadband good for patients*, Media Release, Australian Medical Association, (AMA Media Release), 7 April 2009.

55 AMA Media Release, 7 April 2009.

with the government to assist with the implementation of its proposal, Telstra noted that it would 'remain at all times committed to ensuring the best interests of our shareholders, employees and customers.'⁵⁶

3.50 Optus also welcomed the government's announcement, stating that the proposed model had 'the potential to fundamentally change the competitive landscape and create a truly level playing field'. Stating that the announcement was a 'clear indication that the NBN will not be built without fundamental regulatory reform', Optus also called for regulatory reform to be expedited and associated legislation to be introduced as soon as possible. Optus noted that the success of the NBN model would be judged on 'whether a competitive market structure is established, offering broadband at attractive prices to as many Australians as possible.'⁵⁷

3.51 The committee notes the recent Federal Court ruling that confidential Optus wholesale information had been shared by Telstra with their own retail arm, in breach of the Access Agreement. Justice Edmonds concluded that Telstra had:

Used traffic information of Optus, or Communications Information of Optus for the purposes of the Access Agreement, both in the preparation of market share reports and in distributing those reports among Telstra personnel.⁵⁸

3.52 Citing this ruling, Optus has renewed its call for Telstra to be separated.⁵⁹

3.53 The Australian Industry Group emphasized the need to ensure domestic suppliers are given 'fair access' to opportunities to contribute to the roll-out. The Australian Industry Group also noted that there were still a number of questions that needed to be answered in relation to the public private partnership model proposed, the regulatory arrangements governing access to and involvement in the network, and the eventual sell-down of the Government's holding in the NBN company.⁶⁰

3.54 While stakeholders were generally supportive of the government's announcement, the proposal also has attracted criticism.

3.55 Claiming that the announcement was an acknowledgment of the 'complete failure of the Rudd Government's broadband strategy'⁶¹, Leader of the Opposition, the

56 *Telstra welcomes opportunity to engage Government on broadband rollout*, Media Release, Telstra, 7 April 2009.

57 *Optus welcomes the end of Telstra's fixed line monopoly*, Media Release, Optus, 7 April 2009.

58 *Optus Networks Ltd v Telstra Corporation Ltd (No. 2)* [2009] FCA 422

59 *Communications Day*, 4 May 2009, p. 2.

60 *Broadband network: A foundation for productivity*, Media Release, Australian Industry Group, 7 April 2009.

61 *Rudd's broadband gamble*, Joint Press Release, Hon Malcolm Turnbull MP, Leader of the Opposition, Senator the Hon Nick Minchin, Shadow Minister for Broadband, Communications and the Digital Economy (Opposition Press Release), 7 April 2009.

Hon Malcolm Turnbull MP, provided a long list of criticisms. Mr Turnbull stated that the government had not provided any evidence of:

- the economic viability of the NBN proposal or the return that would be required;
- the cost to families to use the network;
- whether there will be sufficient demand to make the network commercially viable;
- the impact of competing technologies on the viability of the network;
- what the business plan for the project is; or
- the risks that taxpayers will bear.

3.56 The Opposition also condemned the time and money spent on the terminated FTTN RFP tender process and sought a more detailed explanation from the government as to why the tender had failed.⁶² The Committee notes that the Auditor-General has announced that a preliminary audit of the RFP process will be commenced by mid-May (see chapter 2, paragraph 2.70)

3.57 Family First Senator Steve Fielding sought greater accountability for the proposed expenditure of taxpayer's money and understandably queried the choice of Tasmania rather than Victoria as the starting point of the NBN roll-out.⁶³

3.58 Concerns were also raised by stockbroking analysts about the large upfront cost, the commercial viability of the proposed network and the extent to which productivity would be enhanced.⁶⁴

Issues for further consideration

3.59 While the committee welcomes the government's decision to improve access to FTTP for 90 per cent of households, workplaces and schools, a substantial proportion of the proposal detail is yet to be revealed, including: how the NBN will be funded; the ownership, governance and operating arrangements of the new NBN company; and the design and implementation of the network. These issues will be further explored in the remainder of this chapter.

Funding

3.60 The committee is concerned at the mixed signals coming from government on the likely cost of the network. For example, the Finance Minister conceded that there may be a cost blow-out, while the Broadband Minister claimed that the estimated

62 Opposition Press Release, 7 April 2009.

63 *Rudd's broadband plan flawed*, Media Release, SF/456, Senator Steve Fielding, Leader of Family First, 7 April 2009.

64 *Broadband price rise tipped under \$43b plan*, ABC News Online, 7 April 2009.

combined public-private investment of \$43 billion 'is at the top end of what it would cost to build' the NBN, and that the government may not even be required to contribute \$22 billion.⁶⁵

3.61 While the government's Expert Panel concluded that none of the proposals made in response to the earlier RFP process presented a 'value-for-money outcome', no supporting evidence has been provided by the government on what original costing analysis led to this conclusion. The committee highlights previous calls from across the industry for the government to release details of the report by the Panel of Experts together with the advice provided by the ACCC.

3.62 On the other hand, the government has also not provided any detail as to the commercial viability of its alternative FTTP network, nor details of the advice received upon which the \$43 billion cost was estimated. The committee strongly urges the government to release its cost/benefit analysis, particularly with regard to its viability compared to proposals provided under the terminated RFP process.

3.63 The level of speculation and confusion is a reflection of the government's limited detail and transparency about the implementation of the FTTP NBN, and in particular, the way in which it will be financed. The committee is interested in knowing whether Expert Panel provided a comparative analysis of the costs associated with deploying a FTTP vs a FTTN network.

3.64 While advice on the technical aspects of the network are best left to the telecommunications experts, including the Lead Advisor to the implementation study, the manner in which the project is to be financed is the direct responsibility of the government under the current proposal.

3.65 The committee questions the government's assertion that private investment will be forthcoming, given that the strategies in which to attract and maximise private investment are still to be developed by the implementation study, and also given the Expert Panel's conclusion on the current recession's impact on access to debt and equity funding.

3.66 Of additional interest is the proposed issuance of Australian Infrastructure Bonds (AIBs) to help finance the NBN. The use of AIBs to fund other infrastructure projects has also been mooted. However the way in which money, raised through a general issuance of AIBs, will be allocated to various infrastructure projects including the NBN, has not been clarified.

3.67 As previously noted in chapter 2, the very success of raising funds through AIBs is a risky assumption in this current financial climate, particularly when the government has not provided any cost/benefit analysis of this proposal that might provide investor confidence in the AIBs.

65 *Conroy plays down NBN cost*. Australian Financial Review, 29 April 2009.

Ownership

3.68 The committee notes the government's intention to sell down its shareholding in the NBN Company in the five years after the completion of the network.

3.69 While the issue of how to structure the NBN Company to facilitate such a sell down will be addressed during the implementation study, the committee considers that there are a number of complexities associated with this decision, including:

- what completion means in this context, given the open ended nature of such infrastructure;
- what rationale there is to re-privatise the network;
- the lack of detail on the conditions which the government would set as a trigger to sell off the network; and
- the problematic nature of essential public services being offered on a for-profit basis, where shareholders interests do not always coincide with the public interest.

3.70 The committee considers that issues relating to the proposed initial and any future changes to the ownership arrangements for the NBN require further detailed examination.

Regulatory framework

3.71 Despite industry criticisms throughout the RFP process of lack of regulatory clarity, the government has again failed to provide regulatory certainty – as opposed to regulatory promises – prior to seeking further input from industry and other stakeholders.

3.72 The committee notes that its conclusion (in the December 2008 Interim Report) that the failure to include a basic regulatory framework, upon which bidders could build their business case as part of the terminated RFP, was a prescient one.⁶⁶ The committee is again concerned that, without a confirmed regulatory framework, any input into the current implementation study process may again be compromised and thereby possibly further delaying the mainland roll-out of the network.

3.73 The future role of the ACCC and the nature of the access regime, while raised in the discussion paper as areas for separate stakeholder consultation, appear to have been relegated to part of an all-encompassing 'regulatory regime' item, upon which the Lead Adviser to the implementation study is to provide advice 'as required'.⁶⁷

66 See Senate Select Committee on the National Broadband Network, Interim Report, December 2008, p. 47.

67 See Regulatory Reform Paper, pp 8-9 and REOI, p. 27.

Consumer safeguards

3.74 The committee acknowledges the government's emphasis in the Regulatory Reform Discussion paper on consumer safeguard issues, particularly the implications of the NBN for the Universal Service Obligation (USO) and the proposal to replace a number of measures with an overarching Communications Service Standard.⁶⁸

3.75 However, the committee remains concerned that the major consumer issue associated with the NBN, both in terms of the long-term viability of the network and the impact on end-users, is the future cost to customers of broadband services. The committee notes that there have been widely different claims about the prices that would be required to ensure a return on investment.⁶⁹

Digital divide

3.76 Increasing concern about the potential of the proposed NBN to entrench rather than close the digital divide between metropolitan and rural and regional Australia, warrants further examination. While Tasmania will receive two imminent boosts to its broadband capability – the backhaul Basslink cable and the first phase of the NBN roll-out – other states have expressed concern that comparable services will not be delivered to their smaller regional and rural towns.⁷⁰

3.77 In addition, there is now a government-confirmed basis for a potentially greater digital divide than now exists; this is due to the commitment to provide 90 per cent of homes, schools and workplaces with 100 Mbps, while the remaining 10 per cent will only receive 12 Mbps. The committee acknowledges the government's commitment to the provision of 12 Mbps access in many regional and remote areas now matches that promised under the previous OPEL initiative. However this disparity highlights that metro-comparability will continue to be beyond the reach of regional and remote communities.

Other technologies

3.78 The implications of the NBN in relation to the convergence of technologies raised during the committee's inquiry seem to have been put into the 'too hard basket'. The government has postponed consideration of this issue until 2011, after the next election, despite acknowledging that 'current regulatory frameworks have not always kept pace with convergence and in some cases are challenged by such developments'⁷¹

68 Regulatory Reform Paper, pp 28-47.

69 See for example, Henry Ergas; Paul Broad, AAPT; stockbroking analysts; Optus.

70 See if there is something in the COAG communiqué or use newspaper article to ref.

71 Regulatory Reform Paper, p. 48.

3.79 The committee also notes that the critical issue of spectrum allocation, already subject to a consultation process conducted by ACMA, will be subject to consultation as part of the regulatory reform options paper.

3.80 While the committee acknowledges the government's decision to include wireless and satellite technologies as part of its NBN, the committee notes that the regulatory reform discussion paper states that the 'relative roles of satellite and wireless in the National Broadband Network will be determined by the government following the implementation study'.⁷² As previously mentioned (see paragraph 3.16), the committee has concerns that, at the time of writing, details relating to the significant proposal to deploy two new satellites as part of the government's NBN proposal, including funding thereof, had not been released.

Process

3.81 The committee notes that the REOI states that the 'Department does not warrant or guarantee that any RFT will be released by the Department in respect of the Services.'⁷³ Given the outcome of the RFP process, the committee is concerned that there is little assurance for prospective respondents that this process will go ahead.

3.82 Once submitted, an EOI will become the property of the Department and may be copied and used for various purposes; these include:

...complying with governmental and parliamentary reporting requirements including requests for information by Parliament or Parliamentary Committees'.⁷⁴

3.83 However, the committee considers that this provides little assurance that the government will ensure an open and transparent process, particularly in view of the requirements that short-listed respondents sign a Deed of Confidentiality even before they can receive the RFT documents.⁷⁵

3.84 The extent to which the Department and the minister accede to requests from this committee for information about the NBN and the various processes associated with it, will demonstrate whether the government has taken on board industry concerns about the lack of transparency during the previous RFP process.

Conclusion

3.85 The committee supports the government's objective of providing an open access network, delivering high speed broadband through fibre, wireless and satellite

72 Regulatory Reform Paper, p. 26.

73 REOI, p. 5.

74 REOI, pp 23-24.

75 REOI, p. 10.

technologies at affordable prices to all Australians. However, the difference between this vision and reality will be the way in which it is implemented.

3.86 While acknowledging the government's commitment to consult with industry and other stakeholders on various aspects of the current and future telecommunications regimes, the committee is concerned that the apparent lack of coordination between these numerous processes may confuse rather than complement each other, and certainly have potential to further delay the deployment.

3.87 The committee is also deeply concerned at the number of outstanding issues that go to the heart of the viability and deployment of the NBN that still need to be resolved through the implementation study and other processes (see paragraph 3.59). The committee is particularly concerned that the government has made a commitment to invest a significant amount of public money in a project before these important parameters have been determined.

3.88 Given the level of stakeholder engagement the committee has already undertaken, the committee considers it is best placed to provide a single avenue for stakeholders to comment on all issues relating to the proposed NBN, and seeks the opportunity to submit a consolidated set of recommendations to the government during the pre-implementation phase of the NBN roll-out.

3.89 Having regard to the need for greater clarity and detail about the basis upon which the decision to deploy a FTTP/wireless/satellite NBN was made, the committee proposes that its terms of reference be revised to reflect the Government's change in direction for delivering the NBN. The committee will table a Notice of Motion containing the revised terms of reference, a draft of which can be found at appendix 2.

3.90 Also, in the light of the government's announcement that it would introduce NBN-related legislation during the Winter sittings, the committee is seeking an extension of its reporting date to the 26 November 2009 to enable it to examine this legislation.

3.91 The committee considers it has a continuing role to play in holding the government to account over its NBN proposal, particularly during the pre-implementation phase. However, the committee also is of the view that the size and nature of the project requires regular implementation progress reports and therefore makes the following recommendation:

Recommendation 3

3.92 That the government:

- **provides the committee with the Final and any Interim Reports prepared by the Lead Advisor to the implementation study.**
- **table a progress report in the Senate on the implementation of the NBN by no later than 17 September 2009, and that this progress report detail timeframes, benchmarks and milestones for specified deliverables against**

which the implementation of the project can be measured, including costings; and

- **table further progress reports by the end of the Winter and Spring Sittings until such time as the NBN company's annual reports are available, which include evidence that the timeframes, milestones and benchmarks have been reached, the reasons for any failure to do so and remedial action to be taken.**

3.93 To ensure that the committee and, subject to confidentiality provisions, the public, who will be the largest stakeholders in the proposed NBN, are kept apprised of developments in the roll-out of the network, the committee also recommends:

Recommendation 4

3.94 That the government provide the committee with a copy of:

- **the detailed implementation plan for the roll-out of the National Broadband Network, to be developed as part of the implementation study, on the first sitting day after it is provided to the Department; and**
- **the risk management strategy for the NBN roll-out.**

3.95 Finally, the government advised that its decision to proceed with its investment in optical fibre technology was informed by advice from the Panel of Experts, and the Australian Competition and Consumer Commission's endorsement of the use of FTTP in preference to FTTN.⁷⁶

3.96 An extract from the Expert Panel's report to the minister is available on the Department's website.⁷⁷ It remains unclear whether or how much more of the Expert Panel's Report, or the ACCC's report, will be publicly released. The committee therefore recommends:

Recommendation 5

3.97 That, as soon as possible, but no later than the last sitting day of the Winter sittings, the government provide to the committee the following:

- **the Australian Competition and Consumer Commission's formal report on the National Broadband Network (NBN) proposals to the NBN Panel of Experts**
- **the final report provided to the government from the NBN Panel of Experts on submissions to the NBN process.**

76 Joint Media Release, 7 April 2009.

77 To access the Expert Panel Report extract, go to:
http://www.dbcde.gov.au/communications_for_business/funding_programs_and_support/national_broadband_network

3.98 In particular, the committee questions whether any analysis by the ACCC or the Panel of Experts of the regulatory review submissions provided to the Department could be considered to have dealt with commercial-in-confidence information. It therefore makes the following recommendation:

Recommendation 6

3.99 That those aspects of the Expert Panel and the ACCC reports that discuss or make any conclusions or recommendations about the existing regulatory framework and options for its reform be provided to the committee as soon as possible, but no later than the last sitting day of the Winter sittings.

3.100 The RFP process was roundly criticised for putting the cart before the horse with respect to the regulatory framework that would underpin the proposed NBN; the current government proposal may be similarly criticised for putting the vision before the analysis.

3.101 The mixed signals coming from government on the regulatory arrangements to apply once the NBN is in operation and those that will apply during the transition period, as well as the funding and likely future costs to consumers of the proposal, leave many questions unanswered. This leads the committee to speculate on the adequacy or even existence of sound evidence upon which this proposal has been based.

3.102 The committee considers that there is a need for continuing scrutiny of a proposal upon which rests not only the country's future technological capacity but also that of its economy.

Senator Mary Jo Fisher
Chair

May 2009

