

# Chapter One

## Context of the inquiry

1.1 The Select Committee on the National Broadband Network (the committee) was established by the Senate on 25 June 2008.

1.2 The committee has published three interim reports. The third report was tabled on 26 November 2009. Recommendation 12 of that report recommended that the Senate agree to amend the committee's terms of reference, extending the committee's reporting date to 30 April 2010, and adding the following paragraph to its terms of reference:

(2A) The Committee is to examine the findings of the National Broadband Network Implementation Study, the Government's response to the Implementation Study and any subsequent implications of that report for the National Broadband Network policy.<sup>1</sup>

1.3 On 26 November 2009, the Senate revised the committee's terms of reference as recommended.

1.4 On 17 March 2010, the Senate again revised the committee's terms of reference, extending the reporting date to 12 May 2010.

1.5 The Government publicly released the Implementation Study on 6 May 2010, less than one week before the committee was due to make its final report. In light of that timing, on 12 May 2010, the Senate agreed to extend the reporting date to 17 June 2010.

1.6 This report is the committee's Fourth Interim Report. It addresses progress on the NBN on the mainland and in Tasmania to date, including consideration of the exposure drafts of legislation establishing arrangements for the ownership, operations, access obligations and services of the NBN Co.

1.7 The committee will conduct further hearings on the Implementation Study in the coming weeks and will table its final report on 17 June 2010. Further details are provided at the end of chapter 2.

1.8 The full terms of reference, as amended, can be found at appendix 1.<sup>2</sup>

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1 Senate Select Committee on the National Broadband Network, *Third Report*, 26 November 2009 ('Third Report'), Recommendation 12, [www.aph.gov.au/senate/committee/broadband\\_ctte/third\\_report/report.pdf](http://www.aph.gov.au/senate/committee/broadband_ctte/third_report/report.pdf).

2 A fuller overview of the historical context of the inquiry is contained in the *Third Report*, pp 1–4.

## **Conduct of the inquiry**

1.9 On 9 March 2010 the committee decided to conduct further hearings into progress on the National Broadband Network, including consideration of exposure drafts of legislation establishing arrangements for the ownership, operations, access obligations and services of the NBN Co.

1.10 The exposure draft legislation and documentation was released by the Government on 24 February 2010.<sup>3</sup> It consisted of exposure drafts of a National Broadband Network Companies Bill 2010, a Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010, and accompanying explanatory notes.

### ***Conduct of further hearings***

1.11 The committee advertised its decision to conduct further hearings, calling for submissions by 30 March 2010. The details of the committee's decision were placed on the committee's website and advertised in *The Australian*. The committee agreed to receive, process and publish as appropriate a number of late submissions.

1.12 The committee held two further public hearings in Melbourne and Canberra, and received an additional 24 written submissions. When added to the numbers of previous hearings conducted by the committee and written submissions, the committee has held a total of 17 public hearings and received a total of 127 written submissions. Details of all the hearings, including a list of witnesses who gave evidence, can be found at appendix 2. A list of the 127 submissions can be found at appendix 3. Appendix 4 contains additional material received by the committee during its further hearings, including details of answers received to questions taken on notice.

### ***Hearings conducted in absence of Implementation Study***

1.13 As noted above, the committee's terms of reference were explicitly revised so that the committee would examine the findings of the National Broadband Network Implementation Study, the Government's response to it, and any implications of that report for the National Broadband Network.

1.14 The Implementation Study is a critical document prepared for the Government by its Lead Advisor for the National Broadband Network. The Lead Advisor is a consortium of the management consultancy firm McKinsey & Company and the professional services firm KPMG 'McKinsey-KPMG'. The Lead Advisor was appointed following a Request for Expression of Interest process in which interested

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3 The Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Senate, 'Draft Legislation Released for NBN Co Operations', Joint media release, 24 February 2010, [www.minister.dbcde.gov.au/media/media\\_releases/2010/011](http://www.minister.dbcde.gov.au/media/media_releases/2010/011), accessed 17 April 2010.

parties were invited to submit a tender to conduct a comprehensive and multi-disciplinary study ('the Implementation Study') which would:

...determine the operating arrangements, detailed network design, and ways to attract private sector investment and ways to provide procurement opportunities for local businesses.<sup>4</sup>

1.15 At the time of writing of the *Third Report*, the Implementation Study was expected to be completed by February 2010. The Government in fact received it on 5 March 2010.<sup>5</sup> Despite calls for the immediate release of the document, the Government refused to make it publicly available. It was not until 24 March 2010 that the Minister for Broadband, Communications and the Digital Economy (the minister) told journalists that the Government would make the Study public 'before the federal budget in May'.<sup>6</sup> It was not until 6 May 2010 that the Government finally released the Study to the public.<sup>7</sup>

1.16 One of the consequences of that release date was that, at the time of the committee's hearings on 14 and 15 April 2010, the Implementation Study had not been released by the Government. Unfortunately, this resulted in the committee not having the ability to consult widely as to the findings of the Implementation Study, the Government's response, or the implications of it. The committee deplores the wasted opportunity that has resulted from the Government's posturing and inexcusable delaying tactics. Chapter 2 of this report provides further analysis of the relevant matters.

## Structure of this report

1.17 Chapter 2 of this report discusses the Implementation Study. It also describes how the Government's failure to publicly release the Implementation Study earlier – or even an interim report from the Lead Advisor – significantly compromised the transparency and accountability of government processes, the legitimacy of the NBN

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4 *Request for Expression of Interest for Provision of Lead Advisory Services relating to the Implementation Study for the National Broadband Network* (REOI), 24 April 2009, p. 7. See *Third Report*, pp 32–33, [3.15]–[3.18].

5 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, Canberra, 15 April 2010, p. 63.

6 James Chessell, 'Conroy to show his hand on national broadband network', *The Australian*, 25 March 2010, [www.theaustralian.com.au/business/conroy-to-show-his-hand-on-national-broadband-network/story-e6frg8zx-1225844965288](http://www.theaustralian.com.au/business/conroy-to-show-his-hand-on-national-broadband-network/story-e6frg8zx-1225844965288), accessed 28 April 2010. See also the Hon Stephen Conroy MP, Minister for Broadband, Communications and the Digital Economy, 'Address to CommsDay Summit 2010', Sydney, 20 April 2010, [www.minister.dbcde.gov.au/media/speeches/2010/006](http://www.minister.dbcde.gov.au/media/speeches/2010/006), accessed 28 April 2010.

7 The Hon. Lindsay Tanner, Minister for Finance and Deregulation and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Landmark study confirms NBN vision is achievable and affordable', Joint media release, 6 May 2010, [www.minister.dbcde.gov.au/media/media\\_releases/2010/040](http://www.minister.dbcde.gov.au/media/media_releases/2010/040) (accessed 6 May 2010).

project, and caused significant costs to stakeholders as a result of the ensuing uncertainty and information vacuum.

1.18 Chapter 3 examines the progress of the NBN on the mainland, specifically the selection of five 'pilot' first release sites and the announcement of the Government's \$250 million NBN Regional Backbone Blackspots program.

1.19 Chapter 4 examines NBN Co's decisions on product offering and network architecture.

1.20 Chapter 5 analyses the exposure draft of the National Broadband Network Companies Bill 2010, circulated by the Government on 24 February 2010.

1.21 Chapter 6 analyses the exposure draft of the Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2010, which was also circulated by the Government on 24 February 2010.

1.22 Chapter 7 outlines and assesses NBN Co's business progress. In particular, it focuses on the commercial viability of the company, the sufficiency of training, accreditation and certification processes for the future workforce deploying the NBN, and the lack of transparency in the appointment process for some senior positions in the company.

1.23 Chapter 8 discusses the progress of the roll-out of the NBN in Tasmania.

1.24 Chapter 9 addresses progress on the wireless and satellite fronts.

1.25 Chapter 10 briefly outlines developments concerning legislation relating to the NBN, specifically legislation designed to structurally separate Telstra, and legislation requiring the deployment of fibre to greenfields developments.

## **Acknowledgements**

1.26 The committee would like to express its appreciation for the cooperation of all organisations and individuals who made their time available to assist the inquiry, whether by personal appearance at a public hearing or by providing the committee with a written submission.

1.27 The committee expressly acknowledges the dedicated and professional work of the officers of the secretariat who assisted with the conduct of the inquiry and the drafting of its reports.

1.28 Particularly, the committee acknowledges that the subject of the inquiry is complex, technical and involves a mix of law, governance and politics. The committee particularly thanks Secretariat Officers Mr Stephen Palethorpe and Ms Fiona Roughley who have, in difficult circumstances and in very constrained timetables, produced a report that is intelligent, relatively easy to read and is sensitive to the wishes of the majority of committee members while maintaining a balance and independence for which the Secretariat is rightly renowned.

1.29 The committee would also like to extend its thanks to staff of the Parliamentary Library, and other officers within the committee office who generously assisted the secretariat. Particular thanks are extended to Mr Hamish Hansford and Mrs Dianne Warhurst.

### **A note on references**

1.30 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard*.

