

# Chapter 1

## Introduction

### Terms of reference and conduct of the inquiry

1.1 On 14 November 2013, the Senate established the Select Committee on the National Broadband Network to inquire into and report on the government's reviews of the National Broadband Network (NBN) and the governance of NBN Co, with interim reports as the committee sees fit and a final report on or before 10 June 2014.

1.2 The committee's terms of reference identify the following areas of inquiry:

- the establishment of the government's strategic review of the NBN including:
  - the adequacy of the terms of reference,
  - the selection of personnel and expert advisers to the review,
  - the data provided to the strategic review, in particular, any variation between that data and data used by NBN Co in preparing its annual report and corporate plan, and
  - the impact of the strategic review on the operational effectiveness of NBN Co;
- the outcome of the strategic review of the NBN, including:
  - the extent to which the review fulfilled its terms of reference,
  - the reliability of assumptions made in the review, including, inter alia, the cost of alternative network equipment, the revenues of NBN Co under alternative scenarios, construction requirements and access to Telstra's copper network,
  - the implications of any alternatives considered for the long-term structure of the industry, in particular, the structural separation of access networks from retail operations, and
  - any other matters arising from the strategic review;
- the establishment and findings of the government's cost benefit analysis;
- the conduct and findings of the government survey of the availability of broadband in Australia; and
- any related matter.<sup>1</sup>

1.3 The committee held eight public hearings between November 2013 and March 2014. It tabled its first interim report on 26 March 2014.

1.4 On 14 May 2014, the Senate agreed to extend the date for the presentation of the committee's final report to the last sitting day of the 44th Parliament.<sup>2</sup> The

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1 *Journals of the Senate*, No. 3, 14 November 2013, p. 133.

committee subsequently agreed to continue accepting submissions and has held eight further public hearings since the tabling of the first interim report. The sixteen hearings held to date have taken place in Canberra, Sydney, Hobart, Perth and Terrigal (NSW).

1.5 The submissions made to the committee, additional documents provided and public hearings held are listed in Appendices 1, 2 and 3.

1.6 The committee thanks all those who have assisted with its inquiry to date, including those who have made submissions and given evidence at hearings.

### **Structure of this report**

1.7 This second interim report examines issues relevant to the committee's terms of reference since the first interim report, including significant developments in the rollout of the NBN project, the cost-benefit analysis and other NBN reviews issued during 2014 and 2015, and the governance and management of NBN Co.

1.8 The report is structured as follows:

- chapter 1 (this chapter) outlines the background to the NBN project and to this inquiry, the key findings of the committee's first interim report and the government response to that report;
- chapter 2 analyses relevant developments with the NBN since the first interim report and any governance issues arising, including progress on implementation of the government's multi-technology mix (MTM) rollout, the release of the 2014-17 NBN Co corporate plan, the cost per premises review, and the finalisation of the Revised Agreements between the Commonwealth and Telstra, and NBN Co and Telstra and Optus;
- chapter 3 discusses the key findings of NBN Co's Fixed Wireless and Satellite Review, and related issues around the deployment of fixed wireless and satellite;
- chapter 4 examines the Cost-Benefit Analysis and Review of Regulation prepared for the government by the 'Vertigan Panel' of experts;
- chapter 5 discusses the Broadband Quality and Availability report, and related issues around the reliability of its findings and methodology, and prioritisation in the delivery of the NBN;
- chapter 6 discusses issues related to NBN Co governance, including the 'Independent audit - NBN public policy processes April 2008 to May 2010', known as the Scales Review; and the KordaMentha 'Governance Review' of NBN Co; and
- chapter 7 provides a summary of the committee's conclusions and its recommendations.

1.9 The committee will pursue further lines of inquiry, and continue to monitor the rollout of the NBN and the governance of the NBN project and NBN Co, before presenting further interim reports as required, and its final report to the Senate.

### **Background to the inquiry**

1.10 The history of the NBN is set out in some detail in chapter 1 of the committee's first interim report.<sup>3</sup>

1.11 In brief, the National Broadband Network was initially proposed by the Labor government in 2008 as a partnership between government and the private sector. A panel of experts was established to consider proposals from the private sector to create the network, but the panel reported to government in early 2009 that none of the six proposals received was sufficiently well developed to present a value-for-money outcome.<sup>4</sup> The expert panel also advised the government that rolling out a fibre to the node (FTTN) network was unlikely to offer a cost effective upgrade path to a fibre to the premises (FTTP) network.<sup>5</sup>

1.12 Following this advice, the government decided to consider an alternative plan for the NBN, which was developed under Cabinet oversight between January and April 2009. On 7 April 2009 the government announced the establishment of a new government business entity (later named NBN Co) to design, build and operate a super-fast National Broadband Network, a national wholesale-only, open access broadband network using primarily FTTP to provide speeds of up to 100 megabits per second (Mbps) to 90 per cent of premises (later revised upward to 93 per cent), supplemented by wireless and satellite technologies outside the fibre footprint.<sup>6</sup>

1.13 Work toward implementing the NBN began shortly after the announcement, including the commissioning of an implementation study, which was delivered to the government in March 2010. In December 2010 NBN Co's first corporate plan, and the government's Statement of Expectations (SoE) to NBN Co were released.

1.14 The commencement date for rollout of the FTTP NBN was effectively 7 March 2012, nine months later than expected, due to the time taken to finalise the necessary agreements between NBN Co and Telstra Corporation. In August 2012

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3 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp 2–11.

4 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia', 20 January 2009, at: [http://www.archive.dbcde.gov.au/2013/september/national\\_broadband\\_network/extract\\_from\\_evaluation\\_report/extract\\_from\\_the\\_evaluation\\_report2.pdf](http://www.archive.dbcde.gov.au/2013/september/national_broadband_network/extract_from_evaluation_report/extract_from_the_evaluation_report2.pdf)

5 'Extract From The Evaluation Report For The Request For Proposals To Roll-Out And Operate A National Broadband Network For Australia', 20 January 2009, at: [http://www.archive.dbcde.gov.au/2013/september/national\\_broadband\\_network/extract\\_from\\_evaluation\\_report/extract\\_from\\_the\\_evaluation\\_report2.pdf](http://www.archive.dbcde.gov.au/2013/september/national_broadband_network/extract_from_evaluation_report/extract_from_the_evaluation_report2.pdf)

6 Hon Kevin Rudd MP, Prime Minister and Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'New Broadband Network', Media Release, 7 April 2009.

NBN Co's second corporate plan was released, covering 2012-15. In March 2013 NBN Co revised its 2013 forecasts downwards, due to the failure of its contractors to mobilise the necessary resources to meet the corporate plan's projected timelines. In May 2013 Telstra temporarily ceased pit remediation work to resolve asbestos handling issues; the remediation was recommenced in August.

1.15 In April 2013 the Coalition opposition launched its alternative NBN policy, promising a faster and cheaper rollout, with all Australians to be delivered a download speed of up to 25Mbps by 2016, and a completed rollout with up to 100Mbps by 2019. This would be achieved by replacing the fibre rollout with a technology mix comprising 71 per cent FTTN and 22 per cent FTTP in the fixed line footprint.<sup>7</sup>

1.16 Following its election in September 2013, the Coalition government announced six reviews into the NBN:

- the Strategic Review;
- an independent cost-benefit analysis and regulatory review;
- a broadband quality and availability study;
- an NBN governance review;
- an independent audit of the NBN public policy process; and
- a fixed wireless and satellite review (added by the Strategic Review in December 2013).

1.17 The Strategic Review was submitted to the government in December 2013. The Strategic Review was analysed in detail in this committee's first interim report, which is discussed further below.

1.18 An interim revised SoE for NBN Co was issued by the new government on 24 September 2013, and subsequently replaced by a further revised SoE dated 8 April 2014 and released on 2 May, which remains in effect at the date of this report. Citing the findings of the Strategic Review, the new SoE set out the requirement of the government that the NBN transition from a primarily FTTP model to an 'optimised multi-technology mix' (MTM) under which NBN Co is to 'determine which technologies are used on an area-by-area basis so as to minimise peak funding, optimise economic returns and enhance the Company's viability', guided by the Abbott government's policy objective of providing all premises with download speeds of at least 25Mbps (with commensurate upload rates), and 90 per cent of fixed line premises with 50Mbps.<sup>8</sup>

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7 'The coalition's plan for fast broadband and an affordable NBN', April 2013, at <http://lpaweb-static.s3.amazonaws.com/Policies/NBN.pdf>

8 The Hon Malcolm Turnbull MP, Minister for Communications and Senator the Hon Mathias Cormann, Minister for Finance, 'Government Expectations' letter to NBN Co, 8 April 2014, at <http://www.nbnco.com.au/content/dam/nbnco2/documents/SOE-Shareholder-Minister-letter.pdf>, p. 2.

1.19 The Broadband Availability and Quality Report was submitted to government in December 2013, and released in full in February 2014. The remaining four reviews commissioned by the government were released between May and October 2014. The cost per premises review was released on 24 February 2015. These are all discussed in detail in the later chapters of this report.

### ***Parliamentary committee scrutiny of the NBN***

1.20 Prior to the establishment of this committee, three parliamentary committees inquired into various aspects of the NBN project: the first Senate Select Committee on the NBN from 2008-2010;<sup>9</sup> a 2010-11 inquiry by the House of Representatives Standing Committee on Infrastructure and Communications;<sup>10</sup> and a Joint Committee on the NBN from 2011-13.<sup>11</sup> In addition, scrutiny of relevant legislation and policy on the NBN continues to be undertaken from time to time by the Senate Standing Committees on Environment and Communications, including through the Estimates process.

### **The committee's first interim report**

1.21 The committee's first interim report focused on its terms of reference relating to the process and content of the 2013 Strategic Review of the NBN. Based on evidence received up to March 2014, the committee expressed significant concerns with the accuracy and reliability of the Strategic Review, related government policy, and governance arrangements for the NBN.

1.22 The committee noted with concern that the Strategic Review was developed in just five weeks, and was subject to no independent external oversight.<sup>12</sup> Moreover, the publicly-released version of the Review was heavily redacted, and the government declined to allow the committee to see the unredacted version (even *in camera*).<sup>13</sup>

1.23 Drawing on the evidence available in the redacted report and gathered from its own hearings and research, the committee found that the assumptions and conclusions set out in the Strategic Review were unreliable in the case of all examined scenarios, and the FTTP 'revised outlook' in particular included financial manipulations and other irregularities. Moreover, important characteristics of broadband quality such as upload speeds and the comparative reliability of differing

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9 [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/broadband/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/broadband/index)

10 [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=ic/nbn/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ic/nbn/report.htm)

11 [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jcnbn/reports.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jcnbn/reports.htm)

12 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp viii, 96.

13 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, pp 20–21.

technologies were not taken into account. The committee described this as a 'systemic fault' in the Strategic Review.<sup>14</sup>

1.24 The committee expressed equally strong concerns with the reliability of assumptions underpinning the MTM, the recommended option. The committee assessed that the Strategic Review's estimates relied on cost and revenue assumptions that were often not based on empirical evidence—perhaps most notably, the absence of verifiable information about the state of Telstra's copper network and the remediation and maintenance costs involved in using it for an FTTN rollout. In addition, the committee observed that increased operational costs arising from the more complex technology environment of the MTM were not reflected. Moreover, while the Strategic Review acknowledged the need for the eventual upgrade of FTTN services to FTTP, no explicit costs were included for such an upgrade, rendering the MTM costings short-to-medium term estimates only.

1.25 The committee also expressed concern that the MTM model suggested a variation in broadband quality based on the socioeconomic profile of different areas: a discriminatory model inappropriate for a taxpayer-funded government business enterprise, and one which, in proposing the provision of user-pays 'fibre on demand' to non-FTTP customers, would disadvantage small businesses and individuals outside the fibre footprint. The committee concluded that the Coalition's model would entrench broadband inequality in Australia.<sup>15</sup>

1.26 The committee concluded that the Strategic Review did 'not comprise a sufficient information base for the NBN Co Board or the Minister to adopt an alternative deployment path for the NBN'. The committee recommended the preparation of a significantly revised strategic review addressing the errors and inadequacies visible in the December 2013 document.<sup>16</sup>

1.27 The committee raised concerns about the governance arrangements for NBN Co, finding that key appointment processes to the board and management of the company following the change of government were conducted in such a way as to create 'the perception, at least, that these are political appointments for a political purpose',<sup>17</sup> and queried the board's endorsement of the Strategic Review 'given its clear deficiencies'.<sup>18</sup>

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14 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 72.

15 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 96

16 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 97.

17 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 108.

18 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 116.

1.28 The committee also assessed that transparency had 'decreased markedly at NBN Co since the change of government', noting difficulties experienced both by the committee itself and by members of the public in gaining access to key documents and statistics, and answers to questions on notice.<sup>19</sup>

1.29 The recommendations of the committee's first interim report are provided at [Appendix 4](#).

### **The government's response to the first interim report**

1.30 The government's response to the committee's interim report was not provided until 13 August 2014. It did not engage with any of the substantive issues raised in the first interim report. Instead, it referred to political material contained in the Coalition Senators' dissenting report, and to an article published by the Minister for Communications, the Hon Malcolm Turnbull MP, on his blog on 2 May 2014, *Response to the Senate Select Committee on the NBN*.<sup>20</sup>

1.31 In that document, the minister stated that the government 'categorically rejects each one of [the committee's] claims' that the cost, revenue and rollout figures in the Strategic Review were distorted.<sup>21</sup> The Minister rather reiterated the bases cited in the Strategic Review for its conclusions on these matters.

1.32 The minister also offered '[a] response... to several NBN myths perpetrated in the interim report',<sup>22</sup> rejecting for example the assertion of the committee that efficiencies and improvements already in train would cut FTTP costs significantly, to resemble the Strategic Review's 'radically redesigned' scenario rather than the 'revised outlook'. The Minister stated that the consultants to the Strategic Review had advised that \$3.9 billion of the \$4.9 billion design-related savings identified by NBN Co and cited by the committee were still at a preliminary phase, not yet approved by the Board of Directors, and inconsistent with the extant (2012) NBN Co corporate plan.<sup>23</sup> The remaining \$1 billion efficiencies were discounted by 50 per cent in the Strategic

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19 Senate Select Committee on the National Broadband Network, *Interim Report*, March 2014, p. 132.

20 At <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>

21 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 2.

22 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 1.

23 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 12.

Review due to 'long lead times and uncertainty over the magnitude of cost reduction'.<sup>24</sup>

1.33 In addition, the minister expressed scepticism as to whether, under the oversight of a Labor government, NBN Co could have achieved the 'vast transformation in organisational culture, behaviour and capabilities necessary' to implement the Strategic Review's 'radically redesigned' FTTP model.<sup>25</sup>

1.34 The minister's response rejected the committee's criticism that the need to upgrade the network in future was not factored into the forecast costs for the MTM, and then confirmed that this was the case. The minister stated that:

The Strategic Review's discussion of upgrade paths is necessarily illustrative because there is no certainty when (or whether) the upgrades described will be required as a response to increased demand for broadband.

In addition, there is also considerable uncertainty about the future path of technological advances...

It is not accurate to state that the Strategic Review is silent on these costs, however. On the contrary, its analysis demonstrates that even after allowing for possible future upgrade costs, there is a significant net benefit in choosing the multi-technology mix NBN over FTTP.<sup>26</sup>

1.35 The minister argued that 'a credible upgrade path' to download speeds of 100Mbps or more was available for all of the technologies in the MTM fixed line footprint, but these were not likely to be needed—if at all—until at least the 2020s, and delaying upgrade would result in reduced costs.<sup>27</sup>

1.36 The minister refuted the committee's concerns about decreased transparency within NBN Co, defending the redactions in the published Strategic Review as 'modest' and necessary, and stating that measures had rather been taken to increase transparency within NBN Co since the change of government.<sup>28</sup>

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24 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 14.

25 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 29.

26 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 23.

27 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, p. 24.

28 The Hon Malcolm Turnbull MP, Minister for Communications, *Response to the Senate Select Committee on the NBN*, 30 April 2014, at <http://www.malcolmturnbull.com.au/media/response-to-the-senate-select-committee-on-the-nbn>, pp 25–26.