

Chapter One

Historical 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, to inquire into and report on by 30 March 2009:

- (a) the government's proposal to partner with the private sector to upgrade parts of the existing network to fibre to provide minimum broadband speeds of 12 megabits per second to 98 per cent of Australian's on an open access basis; and
- (b) the implications of the proposed National Broadband Network (NBN) for consumers in terms of:
 - (i) service availability, choice and costs;
 - (ii) competition in the telecommunications and broadband services; and
 - (iii) likely consequences for national productivity, investment, economic growth, cost of living and social capital; and
- (c) other related matters.

1.2 The full terms of reference were quite extensive and can be found at appendix 1. Although the usual advertising procedures were followed inviting written submissions, the committee was surprised that none had been received by the initial submission closing date. A large mail out followed, with an extension to the submission deadline advertised on the website.

1.3 The committee held seven public hearings and received 32 written submissions prior to tabling its first Interim Report in the Senate on 2 December 2008. During this period a number of milestone dates set by the government were extended, resulting in the bids for the Request for Proposal (RFP) process closing on 26 November 2008, much later than originally anticipated.

1.4 The qualifying bids on the RFP were evaluated by the Panel of Experts established by the government. The evaluation was supported by a written assessment of the proposals by the Australian Competition and Consumer Commission (ACCC). The Panel's final report was provided to the government on 21 January 2009.

1.5 No government preference for any submitted proposals was provided during the following ten weeks, which fuelled industry uncertainty and speculation as to the fate of the proposed NBN. Eventually, instead of choosing a winning bid, the government terminated the RFP process and announced a new NBN proposal in its place.

The new proposal

1.6 On 7 April 2009, the Prime Minister, the Hon Kevin Rudd, the Treasurer, the Hon Wayne Swan, the Minister for Finance, the Hon Lindsay Tanner and the Minister for Broadband, Communications and the Digital Economy, the Hon Stephen Conroy, jointly announced 'the establishment of a new company to build and operate a new super fast National Broadband Network.'¹

1.7 The media release also announced the Rudd Government's decision to 'terminate' the National Broadband Network (NBN) Request for Proposals (RFP) process, stating that their decision was made:

... on the basis of advice from the independent Panel of Experts that none of the national proposals offered value for money. The Panel noted the rapid deterioration of the global economy had a significant impact on the process.²

1.8 The government refused to make public the Panel's report, on which this decision was made. Consequently, on 13 May 2009, the Senate passed an order that no legislation relating to the NBN proposal be considered by the Senate until the final report of the Expert Panel and that of the Australian Competition and Consumer Commission (ACCC) are tabled in the Senate.

1.9 This committee published a second interim report, tabled in the Senate on 12 May 2009, which provided a summary of the inquiry process and outcomes to that date. The report provided evidence of the need to revise the terms of reference for the inquiry in order to ensure that the new proposal would be subject to the full scrutiny of the Senate inquiry process. A draft of proposed terms of reference was included in the interim report.

Revised terms of appointment for the committee

1.10 On 13 May 2009, the Senate approved a revised terms of reference for the committee, extending the committee and requesting that a final report be tabled in the Senate by 23 November 2009.

1.11 The revised terms of reference reflected the new broadband proposal of the Rudd Government; however the remainder of the terms were similarly broad in scope and largely unchanged.

1.12 The revised terms included inquiry into:

- (a) the government's decision to establish a company to build and operate a National Broadband Network (NBN) to:

1 http://www.minister.dbcde.gov.au/media/media_releases/2009/022, accessed 5 October 2009.

2 http://www.minister.dbcde.gov.au/media/media_releases/2009/022, accessed 5 October 2009.

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- i. connect 90 per cent of all Australian homes, schools and workplaces with optical fibre-to-the-premise (FTTP) to enable broadband services with speeds of 100 megabits per second;
 - ii. connect all other premises in Australia with next generation wireless and satellite technologies to deliver broadband speeds of 12 megabits per second or more;
 - iii. directly support up to 25,000 local jobs every year, on average, over the eight year life of the project.
- (b) the implications of the NBN for consumers and taxpayers in terms of:
- i. service availability, choice and costs,
 - ii. competition in telecommunications and broadband services, and
 - iii. likely consequences for national productivity, investment, economic growth, cost of living and social capital.³

1.13 The full set of the revised terms of reference can be found at appendix 2; however, notable inclusions were that the committee's investigation examine:

- i. any economic and cost/benefit analysis underpinning the NBN;
- ii. the ownership, governance and operating arrangements of the NBN company and any NBN related entities;
- iii. any use of bonds to fund the NBN; and
- iv. any regulations or legislation pertaining to the NBN.⁴

Conduct of the revised inquiry

1.14 The committee advertised the inquiry under its revised terms of reference, calling for submissions by 3 July 2009. The details of the committee's revised terms of reference and reporting date were placed on the committee's website.

1.15 Due to the number of requests for providing late submissions after the official closing date, the committee agreed that late submissions could continue to be received, processed and published, as appropriate. Under the revised terms of reference, the committee has received a total of 61 additional written submissions at the time of reporting; these are in addition to the 41 submissions the committee published under the original terms of reference. A list of the 102 submissions can be found at appendix 3.

3 http://www.aph.gov.au/Senate/committee/broadband_ctte/tor.htm, accessed 11 October 2009.

4 http://www.aph.gov.au/Senate/committee/broadband_ctte/tor.htm, accessed 11 October 2009.

Public hearings

1.16 Under the revised terms of reference, the committee has held five public hearings in Canberra, Sydney, Melbourne and Hobart. There were ten public hearings held under the previous terms of reference, producing a combined total of fifteen public hearings held during the course of this inquiry. Details of these hearings, including a list of witnesses who gave evidence, can be found at appendix 6.

Late progress

1.17 On 26 October 2009, the Minister for Broadband, Communications and the Digital Economy (the minister) tabled out of session the ACCC report, together with a 12 page extract from the almost 900 page Expert Panel report. His objective in tabling these documents was to remove the Order of the Senate which prevented the Senate from considering telecommunications bills, and consequently allow the Senate to consider all pending NBN-related legislation.

1.18 At the time of reporting, this measure was not successful in lifting the Order of the Senate. However, a subsequent compromise with the crossbench saw the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 exempted from the order. The bill was subsequently scheduled for consideration by the Senate during the final two sitting weeks of the 2009 parliamentary year.

1.19 At the Supplementary Senate Estimates hearings, the minister announced the deferral of the next two pieces of telecommunications legislation until early 2010, being: the legislation providing a governance framework for the NBN Co and its subsidiaries; and laws to mandate the installation of FTTP in greenfield estates.

1.20 A chronology of events that have occurred relating to the government's NBN proposals can be found at page ix.

This report

1.21 The committee considers that the National Broadband Network is an issue of such national significance that this report should not signify the end of the inquiry process. Rather, the committee believes that there is a critical need for ongoing monitoring and reporting throughout the life of this project.

1.22 The committee also notes that, at the time of reporting, the findings of the government's Implementation Study into the NBN, which is expected to set out the way in which the NBN will be funded, rolled-out, managed and operated, are still some months away, leaving many crucial questions unanswered.

Structure of the report

1.23 Chapter two of this report will detail the new broadband policy proposal announced on 7 April 2009, and comment on various aspects of the proposal,

including the differences between the previous fibre-to-the-node (FTTN) proposal and the current fibre-to-the-premise (FTTP) policy. A brief review of the OPEL initiative proposed by the previous Coalition Government will be included, as will a discussion of the footprint of 90 per cent FTTP coverage, versus the satellite and wireless technologies that are to service the remaining 10 per cent.

1.24 Chapter three will examine the progress made since April, noting the various discussion papers published by the government, and outline the issues under examination within the government's Implementation Study.

1.25 Chapter four will compare the advantages and disadvantages of aerial cabling with those of underground cabling, for the rollout of new fibre technology in the NBN.

1.26 Chapter five will look at aspects of NBN Co Ltd, established by the government as a commercially viable Government Business Enterprise for the purpose of building and operating the NBN in its formative years. Specifically, the chapter will review what little detail is available relating to the governance and role and funding of NBN Co and its fully owned subsidiary company, NBN Tasmania.

1.27 Chapter six will consider the issue of cost-benefit analysis, looking at the commercial viability of the NBN and how it might impact on productivity.

1.28 A separate chapter (chapter seven) has been allocated to discuss the importance of ensuring the development of broadband applications continues in parallel with the implementation of the NBN.

1.29 Chapter eight will review the government's intention to reform the telecommunications regulation regime, and examine those aspects of the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 relevant to the NBN proposal.

1.30 Chapter nine provides the committee's concluding remarks and final recommendation.

1.31 The committee would like to express its appreciation for the cooperation of all organisations and individuals who continue to make their time available to assist the inquiry, whether by personal appearance at a public hearing or by providing the committee with a written submission. Particular thanks are extended to Mr Jonathan Chowns, previously working within the Parliamentary Library, who provided the committee and secretariat with a wealth of contextual information throughout the inquiry process. The committee would also like to record its appreciation to the officers of the secretariat who assisted with the conduct of the inquiry and the drafting of this third report.

Note on references

1.32 References to the committee Hansard are to the proof Hansard – page numbers may vary between the proof and the official Hansard.