

Independent Expert Report nbn SAU Variation Expenditure

October 2023

Final

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Part A Introduction and context

1 Background

NBN Co (an Australian Government owned corporation) owns and operates Australia's national broadband network (NBN).

Part XIC of the Competition and Consumer Act 2010 (CCA) establishes a regime for third party access to telecommunications infrastructure services. Under that regime, NBN Co has previously submitted to the ACCC, and had accepted by the ACCC in 2013, an undertaking, referred to as a 'Special Access Undertaking' (SAU), to govern third party access to NBN Co's infrastructure services provided by means of the NBN until 2040.

NBN Co has recently submitted to the ACCC a variation to that SAU (SAU Variation), which involves a comprehensive revisit of the regulation of access to the services of the NBN by the SAU. The ACCC is required to make a decision, under section 152CBG(3) of Part XIC of the CCA, on whether to accept or reject NBN Co's variation.

2 Independent Expert Report

Grex Consulting (Grex) has been engaged by DLA Piper as an independent expert in accordance with the *Federal Court of Australia's Expert Evidence Practice Note (GPN-EXPT)*. At all times throughout the engagement, Grex has performed the services in accordance with Rule 23.13 of the Federal Court Rules and the Federal Court of Australia's Expert Evidence Practice Note.

Throughout this Report, Grex describes assumptions made and the reasons for making those assumptions and, where relevant, gives reasons for each opinion that Grex expresses in this Report.

Grex provides, where relevant, any qualifications to any opinion expressed where Grex considers that the Report may be incomplete or inaccurate without the qualification and/or where Grex is unable to form a conclusive opinion because of insufficient research, insufficient information, or for any other reason.

3 Process & Methodology

The following process was followed to review and assess the documentation provided and briefings given by NBN Co in support of its expenditure forecasts during the ACCC Briefings¹ and other documents relied upon in the preparation of this Report.²

The process and steps undertaken by Grex are summarised below:

- Information review and assessment, comprising the following steps:
 - a. Report and data collation:
 - i. Request existing information and data,

¹ The ACCC Briefings comprise the list of documents in Attachment A to this Part C and include the RFI Process.

² As listed in Attachment A to this Part C.

- ii. Attend ACCC Briefings,
 - iii. Collect and review existing material and data, and
 - iv. Request further information and clarification from NBN Co.
 - b. Analysis and assessment:
 - i. Document and information review and assessment,
 - ii. Analysis and evaluation based on data gathered through the process described above, and
 - iii. Document findings (in the report).
- Report development, comprising the following steps:
 - a. Draft report
 - i. Issue initial draft report,
 - ii. Review and verify any further relevant new and revised information and clarifications provided by NBN Co, and
 - iii. Gap analysis to identify areas for further investigation or opportunity.
 - b. Final report
 - i. Final report development and finalisation
 - ii. Issue Final Report.

Through this process and steps, NBN Co has provided various briefings, data and responses to requests from both ACCC and Grex. This is described in detail in Part C but is illustrated below:

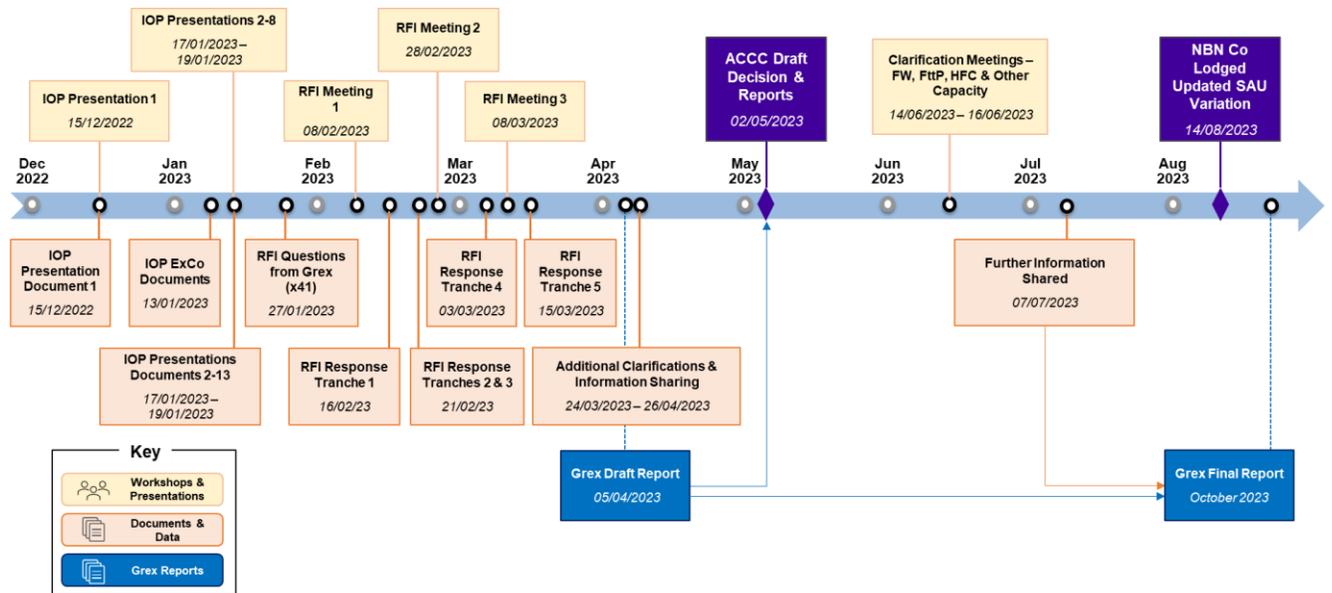


Table 1: Timeline of information shared and meetings conducted with NBN Co and ACCC in preparing both the draft and final Report³

³ Further iterations of the draft report and the process to finalise the Report are described in more detail in Appendix C.

4 Structure of this Report

This Report is split into the following four parts:

- **Part A: Introduction and Context:** this Part provides an introduction to the Report and details the background context to the assessment of expenditure carried out. The process and methodology followed are summarised in Grex's role as an independent expert in Part C.
- **Part B: NBN Co Expenditure Process:** this Part details NBN Co's process to determine its expenditure forecasts used for the First Regulatory Cycle under the SAU. A breakdown of the Integrated Operating Plan (IOP) process is provided, as well as the (relevant) expenditure-related components of the SAU process (i.e., the BBM), and the interconnection between the two processes is explained. Further, NBN Co's demand forecasting methodology is summarised, as well as the key drivers of the capital and operating expenditure forecasts.
- **Part C: NBN Co Expenditure Assessment:** This Part presents the findings of the expenditure assessment. The findings are presented across capital expenditure and operating expenditure, aligned to the categories and initiatives or spend items as described by NBN Co. This Part presents analyses of NBN Co's current reporting and monitoring mechanisms, identifying areas that can be leveraged and gaps that can be filled through the recommended process for ex ante and ex post expenditure reviews described in Part D.
- **Part D: Recommendations:** This Part recommends a process to capture the current mechanisms and data used by NBN Co presently and proposed in the SAU Variation whilst making further enhancements to support ACCC's review and assessment of expenditure during the First Regulatory Period and beyond. A brief comparison is also provided against the mechanisms employed by comparable regulators across UK, Canada, and NZ.

5 Recommended process – Part D

Part F of NBN Co's supporting submissions makes numerous references to its proposed expenditure assessment framework being consistent with the approach adopted under the National Energy Rules (NER) and detailed in the Expenditure Forecast Assessment Guideline for Electricity Distribution.

Whilst this Report does not analyse the relative merits of adopting a process which is very similar to the Australian Energy Regulator's (AER) review of electricity utilities, it does recommend the adoption of a detailed, rigorous process of review. This is set out in Figure 1 below.⁴

⁴ Grex has included some annual timeframes in the illustration below which may be subject to adjustment between ACCC and NBN Co depending on the type of metrics and reporting established.

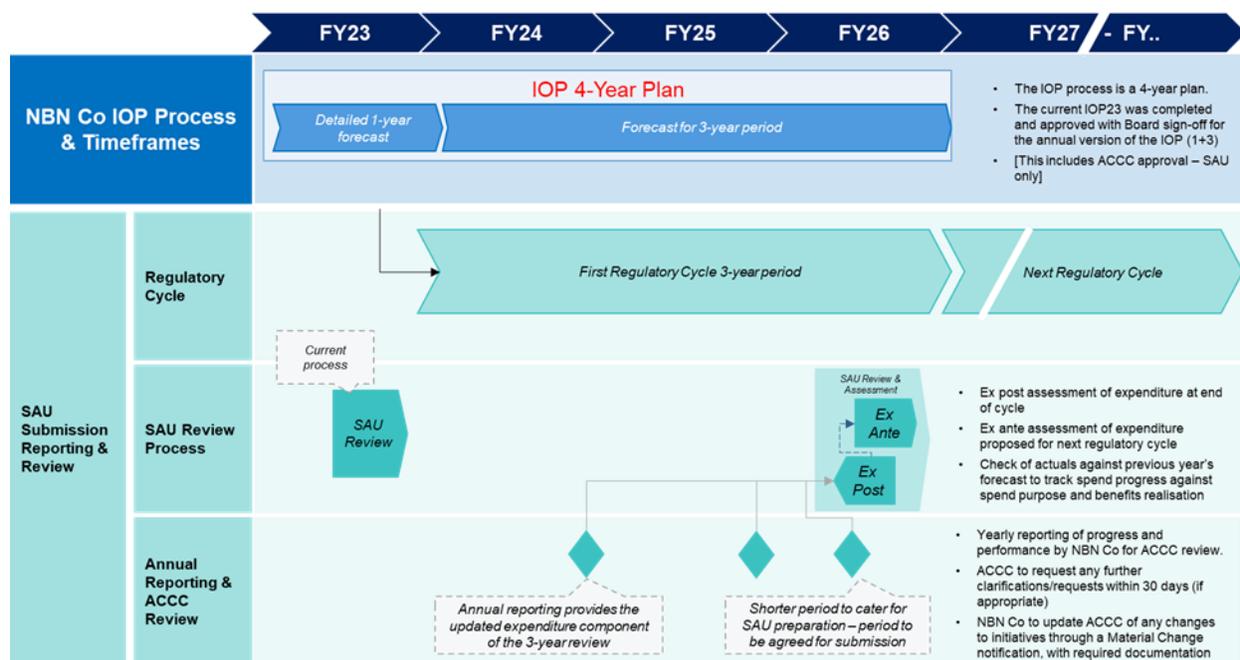


Figure 1: Recommended process to prepare for and review expenditure (Source: Grex)

For an effective review and assessment, the following two main activities are recommended for the process further described in Part D of this Report:

- (early in First Regulatory Cycle) collection of data and information to establish a baseline and metrics for review. The transparent provision by NBN Co of data, information, and metrics to measure the progress of capital and operating expenditure against targets it has set will be critical to enable an effective review, and
- (at/towards the end of the First Regulatory Cycle) a timely review on an ex-ante and ex-post basis, using the data, information and metrics collected during the First Regulatory Cycle.

Part D of this Report seeks to establish a starting point for the provision of this data, information and reporting to prepare for the recommended process of reporting, monitoring and review. Wherever possible, relevant, and sufficiently detailed data and information is recommended to be provided by NBN Co as part of this process on the same regular basis that NBN Co has described to ACCC through its briefings its own Integrated Operating Plan (IOP) process.