



## The Hon Malcolm Turnbull MP

MEMBER FOR WENTWORTH  
SHADOW MINISTER FOR COMMUNICATIONS AND BROADBAND

Rod Sims  
Chairman, ACCC  
Level 20  
175 Pitt Street  
Sydney NSW 2000

*By email and facsimile*

20 May 2013

### **Misleading and deceptive representations by the Australian Government made in trade and commerce about NBN Co. Limited**

Dear Mr. Sims,

I am writing to draw the Australian Competition and Consumer Commission's attention to conduct by the Australian Government, through its ministers, that in my submission constitutes a direct contravention of section 18 of Schedule 2 of the *Competition and Consumer Act 2010* ('the CCA'), which contains a broad prohibition against misleading or deceptive conduct.

The conduct consists of misleading and deceptive statements made by Ministers, including the Prime Minister, and made in promotional material about NBN Co. published and distributed by the Australian Government on behalf of Ministers.

These statements include variations of the flagrant falsehood that "connection to the NBN is free". This claim is made by the Prime Minister, Ms Gillard, on her official Facebook page. Similar claims have been made by a number of other Ministers including the Minister for Broadband, Communications and the Digital Economy, Senator Conroy; the Minister for Families, Community Services and Indigenous Affairs, Ms. Macklin; and the Minister for School Education, Early Childhood and Youth, Mr. Garrett.

Connection to the NBN is not free. To be connected – and indeed to be able to physically attach a device to the NBN, given NBN Co's publicly articulated construction strategies of 'build-drop' and 'demand-drop' (as explained in the Annex) – a consumer must enter into an agreement with a Retail Service Provider for the latter to provide service. This, without exception, entails financial commitments that typically include initial fees and/or monthly service charges incurred over a contractually specified period.

In particular I draw your attention to the brochure printed and authorized under her electoral communications allowance by Ms. Macklin, which includes this claim: "The NBN will deliver superfast, affordable and reliable broadband internet to every home with a free connection."

This assertion, not even qualified by any caveat that such a connection must be a 'standard connection', is demonstrably false. Even setting aside the reality that a consumer must enter into a contract for active service with an RSP to obtain "superfast, affordable and reliable broadband internet," the NBN Co has made it clear that where provision of a fibre connection to a residential or commercial premises is 'non-standard' (i.e. the required fibre run from the nearest road exceeds a specified distance or involves other abnormal costs) a charge will be levied to defray the expense of such work.

Details of additional misleading and deceptive statements in material about NBN Co. published and distributed on behalf of Ministers are set out in the enclosed Annex.

It is well accepted that the Australian Government is bound by the provisions of the CCA insofar as it is carrying on a business. NBN Co is a government business enterprise involved in trade and commerce. It is wholly owned by the Australian Government, with the Finance and Communications ministers nominated as its Shareholder Ministers.

If NBN Co or one of its officers were to assert that "connection to the NBN is free" this claim would indisputably be subject to section 18 and, in my submission, amount to a contravention of the CCA.

The question that arises is whether exactly the same misleading and deceptive statement made by the Australian Government through its Ministers (including the Prime Minister and one of the two Shareholder Ministers) likewise constitutes a contravention. Surely such a representation is no less a contravention of the CCA if made by the corporation's sole owner in material that makes express reference to the NBN Co, provides extensive information about the NBN Co's business offerings, refers consumers to the NBN Co website for further information, and is unquestionably intended to promote the business of the NBN?

The Government in my opinion, through its ministers, has contravened section 18. We request that the Commission take appropriate action including requiring correction of the misleading statements and an undertaking that they will not be repeated.

I look forward to your response.

A handwritten signature in black ink, appearing to read 'Malcolm Turnbull', is written over the typed name.

**Malcolm Turnbull MP**

## **ANNEX – Letter of 20 May 2013 – Misleading and deceptive representations by the Australian Government about the trade and commerce of NBN Co. Limited**

### **1. Misleading and deceptive statements**

The enclosed material includes a number of variations to the effect that “connection to the NBN is free”. Connection is not free. As stated in the letter it requires a contractual commitment to pay an RSP over a specified period of time. If a fibre connection is non-standard (or a premise is outside the fibre footprint) upfront connection charges will also be incurred.

The material claims the NBN “supports high definition video conferencing for e-health and education”. This claim misleads consumers by intimating high definition video conferencing is a requirement to obtain health or education services over the network. This is not the case.

The material claims the proposed Coalition version of the NBN “does not” [support -health and education]. While this claim is not directly about the NBN, it is a falsehood clearly intended to promote it as a business by misrepresenting an alternative offering.

The material falsely claims it will cost “up to \$5000 to be connected” to the proposed Coalition version of the NBN which will offer “download speeds of 25 megabits per second”. While these two claims are not directly about the NBN, they are false, and are clearly intended to promote it as a business by misrepresenting an alternative offering.

### **2. ‘Demand drop’ and ‘build drop’**

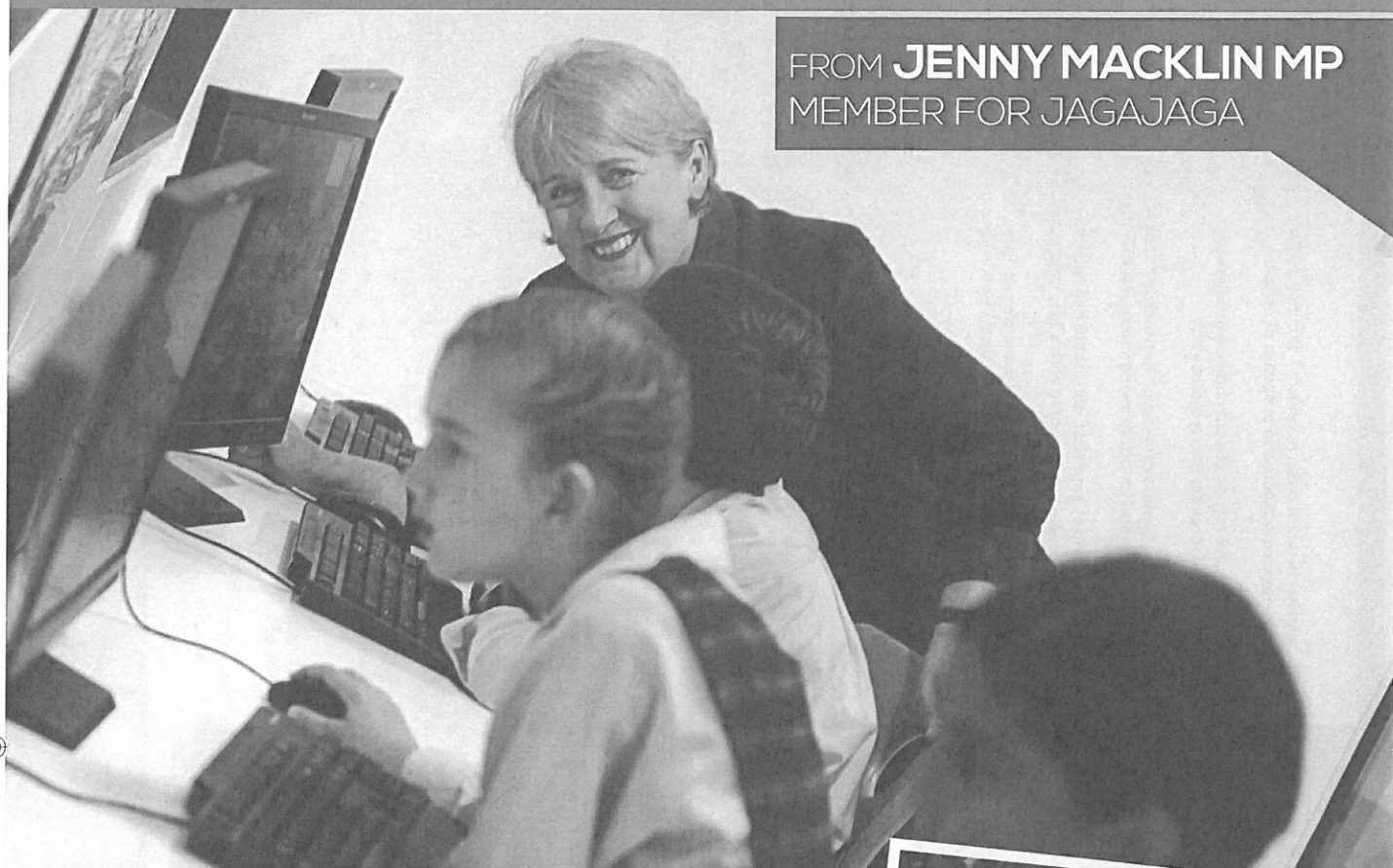
The NBN Co pursued a deployment strategy of ‘demand-drop’ until mid-2012. Under this approach, fibre was run to street-side pits or poles. The final fibre run from the pit or pole to the interior of each premises would not be installed until an order for active service was received via a Retail Service Provider. Therefore, premises were not actually provided with the NBN (and could not physically connect any device to the NBN) unless a contract for service was in place.

In mid-2012 the deployment strategy was amended to ‘build-drop’. Under this approach, fibre is run to enclosures (‘PCDs’) on the exterior of each premise. Upon receipt of an order for service from an RSP, NBN Co brings the fibre from the PCD through the wall and inside the premise where it is terminated at an Optical Network Termination device. The ONT provides ports for Ethernet and telephone cables.

We're building the

# National Broadband Network

FROM **JENNY MACKLIN MP**  
MEMBER FOR JAGAJAGA



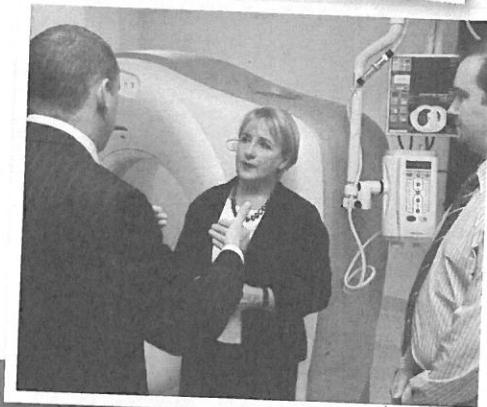
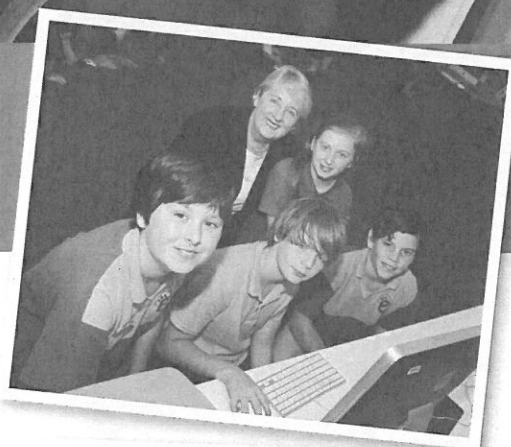
## NBN: Superfast internet

For Schools | Hospitals | Business  
Households | Families | Seniors

**The National Broadband Network (NBN) is being rolled out in the northern suburbs of Melbourne.**

The NBN will ultimately be rolled out to 100 percent of local homes, businesses, schools and hospitals. **No area will miss out.**

- Once rolled out in your area, you will be able to upgrade to the superfast NBN through your current internet provider such as Telstra, Optus and iinet.
- Connection to the NBN is free.
- NBN users **will not pay line rental** for their household phone line.



**Inside:** What the NBN will mean for you



We're building the National Broadband Network

## Why do we need Labor's NBN?

**Our copper network was originally designed for phones - not today's internet.**

Australia still relies on an ageing copper network laid down a century ago to connect our homes and businesses to the internet.

Our internet broadband performance now lags behind many other countries.

**The Government's NBN is fibre optic cable, connected directly to the home. Fibre to the home is often called 'future proof' technology.**

For a family, this simply means that mum and dad as well as the kids can all rely on the NBN at the same time to do their work.

As the household's internet demands grow, the NBN can be counted on to keep delivering superfast speeds.



## Want to know more?

Visit [www.nbn.gov.au](http://www.nbn.gov.au)



[www.facebook.com/nbngovau](http://www.facebook.com/nbngovau)

Free call: NBN Info Centre on 1800 023 076



**Jenny Macklin MP**

Member for Jagajaga

Em: [jmacklin.mp@aph.gov.au](mailto:jmacklin.mp@aph.gov.au) | Ph: 9459 1411

## DID YOU KNOW?

It is estimated that when today's year 7 students finish high school their household's internet needs will have increased six-fold.

Nationwide, the amount of internet data downloaded has increased by more than 50 per cent in the last year.

The amount of internet data moving around the world is expected to grow four-fold from 2011 to 2016.

## OUR OLD COPPER NETWORK SIMPLY ISN'T UP TO IT.

Our copper network was originally laid down for telephone - not the internet.

Tony Abbott's alternative to the NBN still relies on that copper network - a network laid down a century ago.

**WE NEED THE NBN.**

## HEALTH

If your child is sick, the NBN means you could consult your GP using a high-definition video conferencing from home.

## WORK

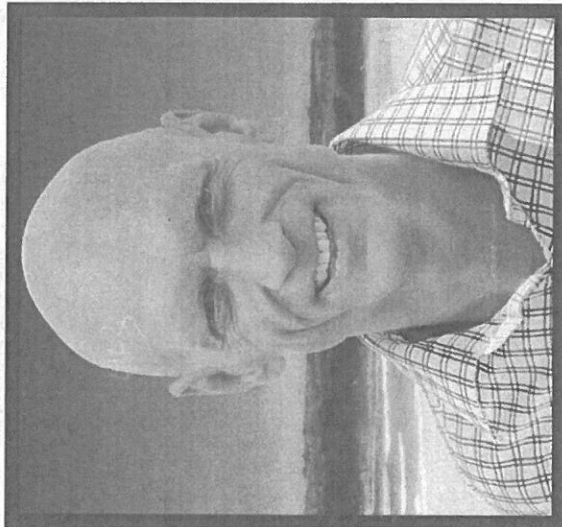
The NBN makes teleworking a real option - making working with big files including data hungry files like video and photos much faster.

## HEALTH

For people with chronic conditions like diabetes or heart disease, telemonitoring over the NBN could save you visits to the doctor.

## EDUCATION

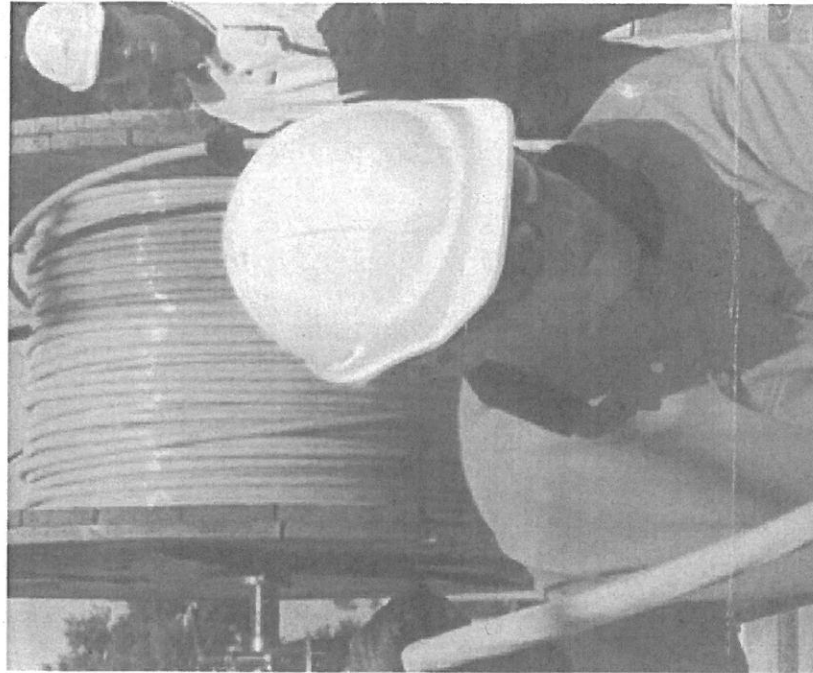
The NBN means kids will have access to specialist subjects their school doesn't offer, or be able study from home.



## Peter Garrett AM

Labor MP for Kingsford Smith

PO Box 249 Maroubra 2035  
Tel: 02 9349 6007  
web: [petergarrett.com.au](http://petergarrett.com.au)



## Labor's

National Broadband Network  
is coming to 4.8 million  
premises over the next 3 years



## The Hon Greg Combet AM MP

Minister for Climate Change and Energy Efficiency  
Minister for Industry and Innovation  
Federal Member for Charlton



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### Delivering the National Broadband Network (NBN) to Maryland

I'm writing to assure you Labor will connect the NBN directly to your home.

Under Labor's plan, residents of Maryland could see construction begin as early as this year.

Tony Abbott has confirmed this will change under his policy.

The NBN is part of the Labor Government's plan for the future.

High speed broadband is providing new opportunities for businesses, and is changing the way we communicate.

This essential infrastructure is just like electricity or water - it is something that should be standard in every home and business, right across the country.

Labor believes everybody should have access to faster, affordable and more reliable broadband – no matter where you live.

**Only Labor will connect the NBN to every single home and business for free.** The Abbott Liberal plan will mean you pay thousands of dollars to connect.

It is critical that Labor's plan for Maryland is not jeopardised.

I know the NBN will improve the way education and health care is delivered locally. It will also create local jobs.

If you have questions about the NBN roll-out, please call my office on 4954 2611 or visit [www.nbn.gov.au](http://www.nbn.gov.au).

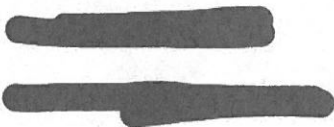
Yours sincerely,

**Greg Combet AM MP**  
Federal Member for Charlton



# Kate Ellis MP

FEDERAL MEMBER FOR ADELAIDE



Dear Mr and Miss

Across Adelaide, I know that local residents, schools and businesses can see the possibilities open to us through the National Broadband Network, which is why I have worked hard to ensure that our local area is among the first to receive the roll-out.

Super-fast broadband means so much more than surfing the web; our kids can access the libraries of the world, local businesses gain a competitive edge in expanding their operations and our health services can be linked into a global network of resources.

That's why I'm pleased that our Government is providing around \$630,000 to the City of Prospect Council for the establishment of the Prospect Digital Hub and Enterprise, which I opened today with the City of Prospect Mayor David O'Loughlin.

The Digital Hub and Enterprise will provide practical assistance to local residents, schools, community organisations and businesses to ensure they can harness the possibilities of super-fast broadband, through the National Broadband Network.

Local residents, community groups and schools will have the chance to learn about engaging with technology and the online world through a comprehensive and up-to-date online literacy training program.

Small and medium businesses can access direct assistance and training to improve their business models, develop their online services and expand their online presence; enabling them to remain competitive at home and overseas.

The Prospect Digital Hub, located at 1 Thomas Street, Nailsworth, is now open and I hope you can take advantage of this fantastic local service.

Please feel free to contact my office on 8269 2433 if you would like any further information, as we invest in building our local community and deliver great results for Adelaide.

Yours sincerely

**Kate Ellis**  
Federal Member for Adelaide



Being rolled out  
in Lingiari

## COPPER

**YOU PAY \$5,000 OR  
ARE LEFT DISCONNECTED  
FROM LABOR'S NBN**

**Liberal**

## FIBRE

**CONNECTION TO  
THE NBN IS FREE**

**VS**

**LABOR**



### TONY ABBOTT'S BROADBAND LEMON

- ✗ A standard fibre connection will cost up to \$5,000
- ✗ Uses 100 year old copper wire with slow speeds
- ✗ Not every household pays the same price
- ✗ Not every home gets high definition video conferencing for e-health and education
- ✗ Hasn't been independently verified or costed with experts calling it a "lemon"

### THE NATIONAL BROADBAND NETWORK

- ✓ A standard fibre connection is free for households
- ✓ Delivers high speeds through fibre optic cables
- ✓ Every household pays the same wholesale price - in the city and in the regions
- ✓ Gives our kids access to the libraries of the world and boosts our health services
- ✓ Only Labor's NBN will meet our broadband needs both now and in the future.

Australian  
**Labor**

**Warren Snowdon MP**  
Member for Lingiari  
Phone: 8952 9696  
Email: Warren.Snowdon.mp@aph.gov.au | Address: 3/12 Gregory Tce Alice Springs



Authorised by Warren Snowdon 6 Giles Street Alice Springs

# DARREN CHEESEMAM MP

FEDERAL MEMBER FOR CORANGAMITE



034-3228

Mr JE & Mrs JM Roker  
PO Box 575  
TORQUAY VIC 3228

Dear Mr and Mrs Roker,

## National Broadband Network in Bellbrae

Great news for everyone in Bellbrae, the NBN is coming in 2016.

Every home will be able to connect to the optical fibre network, giving you access to the world's best internet speeds.

Work from home or run a modern business, consult with medical specialists via high definition video and give students access to the best learning resources.

The NBN packages start from \$29.95 a month with no connection fee.

However, if the Liberals have their way, you will never see the NBN here in Bellbrae and have to rely on the out-dated copper wire network for slower speeds.

Under the Liberals if you want fibre, you will pay \$5,000 for the connection.

If you have any questions about the NBN please contact my office on 5243 2400 or visit [www.nbnco.com.au](http://www.nbnco.com.au) for more information.

Yours Sincerely,

Darren Cheeseman MP

