

Chapter 2

Issues regarding the bills

2.1 Submitters to the inquiry were supportive of the National Broadband Network (NBN) and generally recognised the need for changes to the Universal Service Obligation (USO) in light of the transition to the NBN. However, submitters also raised a number of concerns regarding the bills, such as:

- consultation during the development of the bills;
- the industry levy;
- services for people with a disability; and
- various amendments regarding the operation and responsibilities of the Telecommunications Universal Service Management Agency (TUSMA).

2.2 These issues are discussed below.

Consultation

2.3 Macquarie Telecom and Optus both raised concerns regarding consultation undertaken by the Department of Broadband, Communications and the Digital Economy (DBCDE) during development of the bills.

2.4 Both companies felt they had not been given adequate opportunity to comment on the TUSMA policy during development of the bills. Macquarie Telecom voiced the following criticism of the consultation process:

Macquarie is concerned about the narrow scope of industry consultation that the DBCDE has provided on this important matter. The DBCDE afforded industry very limited opportunity to provide input into the development of the Policy. In turn, the Policy formed the basis on which the Government and Telstra negotiated the Agreement and on which the Reform Bills were drafted.

In Macquarie's view, the DBCDE's industry consultation process has been insufficient. At the very least operators who under the Reform Bills are obliged to financially contribute to the cost of funding universal services should have had an opportunity to participate in the development of the Policy. Alternatively, if the Government chose to only involve Telstra in the finalisation of the Policy and the Agreement, then the universal service funding arrangements should be strictly between the Government and Telstra.¹

1 Macquarie Telecom, *Submission 1*, p. 2.

2.5 Optus shared these concerns. Mr Andrew Sheridan, General Manager, Interconnect and Economic Regulation, Interconnect and Regulatory, Optus told the Committee that the consultations were very brief:

Submissions had to be put into discussion papers in a fairly short time frame. Very early on in the piece we did get a sense that the policy had been locked in. One good example I will point to is the Castalia report [*Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations* report], which is relied upon by the department in terms of coming up with the new funding arrangements or the increase in the cost. There was no request formally to industry for a comment on that report. There was no opportunity for us to provide data into that report. It relies heavily on data that has been provided by Telstra, without any scrutiny from the industry. So I think there are some concerns in terms of the process that was followed in developing the policy. Specifically, in terms of the actual costs, in Optus's submissions we called out very early on that we were concerned that where the policy was heading there would be an increase in the cost of the USO to the industry. The first time that we actually saw the figures was when the draft legislation was put out.²

2.6 Conversely, other submitters had no complaints about the government's consultation.³ For example, the Australian Communications Consumer Action Network (ACCAN) described the consultation process thus:

ACCAN found out about these bills at the same time that everyone else did, but the department always makes itself available to us to answer questions and to discuss issues. So it has been standard, I suppose. The usual process has been followed.⁴

2.7 In response to criticisms regarding consultation during development of the bills, DBCDE responded:

I know stakeholders have raised issues with consultation undertaking and developing the policy underpinning these reforms. These measures were agreed to support the government's broader package of telecommunications reforms, implementation of the NBN and, most importantly in this context, the structural separation of Telstra. These are key competition reforms that are supported by the rest of the industry and so we see them as part of a bigger package which, overall, is in the interests of the industry. While it was not practical to consult during the policy development phase to the extent that people normally expect of us—normally our practice is to share material as much as is possible with players in the industry—we did consult

2 Mr Andrew Sheridan, General Manager, Interconnect and Economic Regulation, Interconnect and Regulatory, Optus, *Proof Committee Hansard*, 2 February 2012, pp 5–6.

3 See Mr Frank Verver, *Proof Committee Hansard*, 2 February 2012, p. 13 and Mr Jonathan Gadir, Senior Policy Adviser, Australian Communications Consumer Action Network (ACCAN), *Proof Committee Hansard*, 2 February 2012, p. 16.

4 Mr Jonathan Gadir, Senior Policy Adviser, ACCAN, *Proof Committee Hansard*, 2 February 2012, p. 16.

with stakeholders on the implementation of universal reforms on multiple occasions and over a series of years. Discussion papers dealing with all of these issues have been released. In fact, I think in 2009, 2010 and 2011 we released discussion papers which dealt with universal service obligations.⁵

Committee view

2.8 The Committee notes that consultation on the bills, by DBCDE's own admission, was not as extensive as the department's usual consultation process. The Committee shares the department's view that, in general, as much information as possible should be shared with stakeholders where it is appropriate and possible to do so. That said, government consultation on 'Universal Service Policy in the National Broadband Network environment' commenced in October 2010 when stakeholders were invited to provide comments on a discussion paper titled *Implementation of Universal Service Policy for the transition to the National Broadband Network environment*.⁶ Indeed, consultation on universal service policy can be traced back to April 2009 when the government released a discussion paper entitled *National Broadband Network: Regulatory Reform for 21st Century Broadband* in which the minister stated in the foreword '[t]he Government will consider key options for reform, including improving universal access arrangements...for telephony and payphones'.⁷

2.9 This was followed by further consultation on the discussion paper *Universal Service Obligation legislative reform for transition to the National Broadband Network* during 2011.⁸

2.10 Consultation on possible changes to the USO during the implementation of the NBN was conducted over a period of more than 12 months, commencing in October 2010 to November 2011 when the bills were introduced into Parliament.

5 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group, Department of Broadband, Communications and the Digital Economy (DBCDE), *Proof Committee Hansard*, 2 February 2012, p. 35.

6 DBCDE, *Implementation of Universal Service Policy for the transition to the National Broadband Network environment*, available: www.dbcde.gov.au/broadband/national_broadband_network/universal_service_policy/implementation_of_universal_service_policy_for_the_transition_to_the_national_broadband_network_environment (accessed 15 February 2012), p. iii.

7 DBCDE, *National Broadband Network: Regulatory Reform for 21st Century Broadband*, available: www.dbcde.gov.au/data/assets/pdf_file/0006/110013/NBN_Regulatory_Reform_for_the_21st_Century_Broadband_low_res_web.pdf (accessed 22 February 2012).

8 DBCDE, *Universal Service Obligation legislative reform for transition to the National Broadband Network*, available: www.dbcde.gov.au/broadband/national_broadband_network/universal_service_policy/universal_service_obligation_legislative_reform_for_transition_to_the_national_broadband_network (accessed 15 February 2012).

2.11 The Committee was also informed by ACCAN that the department made officials available to answer questions and discuss issues.

2.12 The Committee also notes that these bills form a key part of the broader telecommunications competition reform package which overall will benefit the industry and consumers.

2.13 It is, therefore, the view of the Committee that consultation on the bills was sufficient in the circumstances.

Industry levy

2.14 The Telecommunications Universal Service Management Agency Bill 2011 in conjunction with the Telecommunications (Industry Levy) Bill 2011 establishes the process for assessment, collection and recovery of an industry levy.⁹ Funds raised via the levy will contribute to the costs associated with operating TUSMA, and will replace the existing universal service and National Relay Service (NRS) levies currently applied to carriers.¹⁰

2.15 At present, the USO levy costs the telecommunications industry \$145 million per annum, comprising \$131.2 million for standard telephone services (STS) and \$13.8 million for payphones.¹¹ The NRS currently costs the industry \$15.5 million per annum.¹²

2.16 The estimated overall cost for TUSMA is \$330–\$340 million per annum between 2012-13 and 2014-15.¹³ The Commonwealth Government has committed base funding of \$50 million over the two financial years 2012–13 and 2013–14, and \$100 million per annum after that.¹⁴

2.17 Under the Telstra Agreement (see Chapter 1), from 1 July 2012 TUSMA must pay Telstra \$230 million per annum (not indexed to the CPI):

...for supply of the [standard telephone] services, subject to payment adjustments to take account of increases or reductions in Telstra's costs if there is a change in the scope of the [standard telephone] services Telstra is required to provide.¹⁵

9 Explanatory Memorandum (TUSMA bill), p. 61.

10 Explanatory Memorandum (TUSMA bill), p. 61.

11 Explanatory Memorandum (TUSMA bill), 11.

12 Explanatory Memorandum (TUSMA bill), 13.

13 Explanatory Memorandum (TUSMA bill), 14.

14 Explanatory Memorandum (TUSMA bill), 10.

15 Telstra, *Additional information on the Definitive Agreements*, available: www.telstra.com.au/abouttelstra/download/document/2011-definitive-agreements-telstra-nbnco.pdf (accessed 15 February 2012), p. 19.

And:

Telstra will receive funding to operate and maintain its existing copper network, to provide [standard telephone services], in areas outside NBN Co's fibre footprint (the "copper continuity obligation"). This obligation requires that Telstra not disconnect a service address that is connected to the copper network as at 1 July 2012:

- in areas where the NBN will not be deployed, for the term of the TUSMA Agreement; and
- in the NBN fibre footprint, until the copper line is disconnected in accordance with the Subscriber Agreement.¹⁶

2.18 Telstra will also be paid \$40 million per annum (not indexed to the CPI) for the provision of the payphone USO and \$20 million for the provision of emergency call services.¹⁷

2.19 In total, the Telstra Agreement provides for annual payments to Telstra of \$270 million for the provision of STS and payphones¹⁸ and \$20 million for the emergency call service.¹⁹ These payments to Telstra will be derived, in part, from the industry levy.²⁰

2.20 Macquarie Telecom and Optus opposed the introduction of the industry levy on the basis the levy was anti-competitive and, in the words of Macquarie Telecom, was 'nothing more than a tax on competition'.²¹ Both companies were particularly displeased that they would, in their view, be "subsidising" Telstra via the industry levy:

In effect, competitive carriers are required to make payments to Telstra for the privilege of competing with Telstra. Macquarie submits that the USO levy is nothing more than a tax on competition.

The committee should note that in 2004 the then minister for communications fail[ed] to accept departmental advice that Telstra should fund all of the USO. Macquarie agrees with this advice and believes that it should have been reflected in the reform bills—that is, the government

16 Telstra, *Additional information on the Definitive Agreements*, p. 19.

17 DBCDE, *Policy Statement: Universal Service Obligation legislative reform for transition to the National Broadband Network*, available: www.dbcde.gov.au/data/assets/pdf_file/0020/136433/Universal_Service_Policy_in_the_National_Broadband_Network_environment.pdf (accessed 15 February 2012), pp 6 and 7.

18 Explanatory Memorandum (TUSMA bill), p. 14.

19 Explanatory Memorandum (TUSMA bill), p. 14.

20 Senator the Hon Kate Lundy, *Senate Hansard*, 9 February 2012, p. 32.

21 Mr Chris Zull, Senior Manager, Regulatory and Government, Macquarie Telecom, *Proof Committee Hansard*, 2 February 2012, p. 1.

alone should pay Telstra to provide universal services and as such competitive carriers should not be expected to subsidise Telstra.²²

And:

I would like to open by confirming that Optus supports the need for a universal service obligation to provide a safety net for consumers. However, we have long expressed concerns about the funding arrangements for the USO. Specifically we have consistently argued that past and current funding arrangements for the USO lack transparency, compensate Telstra for costs that it has either not incurred or is likely to have recovered anyway and, since it acts as a tax on Telstra's competitors, tilt the playing field in favour of Telstra.²³

2.21 Macquarie Telecom and Optus also suggested that the cost of levy incurred by telecommunications companies would eventually be passed on to consumers.²⁴ Optus elaborated:

[The USO payments to Telstra] can have a damaging effect on competition and ultimately, consumers. The driving force of the NBN reforms is to level the competitive playing field: to allow firms to compete against each other on their own merits and drive down costs and increase innovation, in their rivalry to win consumers. Ultimately, if one player is receiving funding without a commensurate increase in cost, this improves their ability to compete to the detriment of its rivals. Should this result in the capture of a large share of the market, in the end, consumers could face higher prices. This is particularly concerning in the fixed line market where long term contracts are present and consumers are notoriously 'sticky'.²⁵

2.22 Despite voicing strong opposition to the industry levy, both Macquarie Telecom and Optus supported the structural separation of Telstra and agreed that their positions in the market will be more competitive as the NBN is implemented. In this regard Mr Healy of Macquarie Telecom stated that even given Macquarie Telecom's concerns with the TUSMA legislation, 'each day competition will get better and better.'²⁶

22 Mr Chris Zull, Senior Manager, Regulatory and Government, Macquarie Telecom, *Proof Committee Hansard*, 2 February 2012, pp 1–2.

23 Mr Andrew Sheridan, General Manager, Interconnect and Economic Regulation, Interconnect and Regulatory, Optus, *Proof Committee Hansard*, 2 February 2012, p. 2.

24 Mr Matthew Healy, National Executive—Regulatory and Government, Macquarie Telecom, *Proof Committee Hansard*, 2 February 2012, p. 3 and Optus, *Submission 2*, pp 8–9.

25 Optus, *Submission 2*, p. 9.

26 Mr Matthew Healy, National Executive—Regulatory and Government, Macquarie Telecom and Mr Andrew Sheridan, General Manager, Interconnect and Economic Regulation, Interconnect and Regulatory, Optus, *Proof Committee Hansard*, 2 February 2012, p. 8.

2.23 In contrast to the views of Macquarie Telecom and Optus, ACCAN indicated that TUSMA would not allow unreasonable cost increases to be passed onto consumers because the membership of TUSMA would comprise industry representatives:

I think [the argument that there is insufficient incentive for TUSMA itself to constrain its expenses] is a low risk because the industry has a loud voice and the membership of TUSMA, according to these bills, will be predominately industry.

...

[The telecommunications industry] will not allow outlandish additional services to be added to the responsibilities of TUSMA. Presumably, they would express their views very loudly. So it is a low risk.²⁷

2.24 In response to claims that payments made to Telstra under the Telstra Agreement and derived from the proposed industry levy would result in a \$700 million "windfall gain" for the company, Telstra gave the following response:

That is the revenue stream that derives from the agreement. There are still the costs going out for the provision of services to people that need to be taken into account. Further to that, just to ensure that everyone understands the USO levy, Telstra itself contributes in the order of 65 per cent of that levy. So in fact we are paying ourselves a large part for the provision of those services. It is a rather circular process, but nonetheless having an industry levy, as is the government position, requires us to contribute. We note our competitors' comments in that space but, as I say, we are comfortable with where the government has taken this process so far and the remuneration that is attached to this arrangement.

...

We think [new arrangements are] a step in the right direction. As I say, we have always thought that the remuneration for provision of the USO is low and we have put the case to government many times before about what we thought was an appropriate level. This is the current position we have arrived at through these negotiations.²⁸

2.25 Telstra also explained that whilst the breadth of the USO would be unlikely to expand as a result of the TUSMA bills, its costs to continue to deliver the USO would increase as the NBN is implemented and fewer customers remain on the existing copper network:

We have got significant legacy infrastructure and where we are talking about the USO is really where Telstra thinks it makes a net loss on provision of service. It is no coincidence that the NBN [fibre footprint]

27 Mr Jonathan Gadir, Senior Policy Adviser, ACCAN, *Proof Committee Hansard*, 2 February 2012, p. 17.

28 Mr James Shaw, Director Government Relations, Telstra, *Proof Committee Hansard*, 2 February 2012, p. 26.

rollout stops at 93 per cent. It is that last seven per cent where it was just uneconomic for the NBN to be rolled out. Well, it is uneconomic for any fixed line infrastructure to be rolled out in those areas and it is very costly to supply any other form of infrastructure. We have existing infrastructure that has been rolled out over a long period of time that is ageing, that needs upgrades, and there are constant needs to change technology platforms, update those, provide maintenance. In these areas, because they are the remotest parts of Australia, they are the areas subject to significant interference, if you like, from natural disasters...and going in and repairing those networks when they get blown over by cyclones, et cetera. So it is a constant cost.²⁹

2.26 With respect to whether future payments from TUSMA to Telstra under the Telstra Agreement represented a financial gain to Telstra, DBCDE stated:

This is a vexed question that you have obviously had quite a few people raise with you, as they have with us over the full course of these negotiations. We have seen estimates of the cost of delivering the USO. Those estimates range from zero through to \$1.8 billion—those are the lowest and highest estimates that have been mentioned to us. ...The current number that is used is an arbitrary number. It was derived from a process that yielded, based on some reasonably rigorous analysis, a number of \$550 million a year. As always, costs and prices involving infrastructure businesses are fairly subjective because it depends a lot on cost allocation methodologies. To provide us with some reassurance that the numbers that we were discussing with Telstra were in a realistic ballpark we commissioned some independent costing work during the negotiations, which was published in the middle of [2011]. The negotiations and that analysis essentially happened in parallel, so at the time we were not informed about the numbers that were being generated by this analysis. But we were quite reassured that the number that we eventually struck with Telstra was a midpoint in the range of estimates developed by that analysis. We think that we did a good job in negotiating a price with Telstra. We have that independent assurance that we were in a realistic range for costing the services. As to the actual cost of delivering them, all I can say is that the negotiations with Telstra were very difficult. Whether there is a margin in there for Telstra I simply do not know. Telstra would not tell us and they did not tell you. Nobody else knows, so I cannot answer your question definitively. All I can say is that we did our best to negotiate a minimum price and we had some independent reassurance.³⁰

2.27 The department continued:

There is throughout the life of the contract an incentive for Telstra and TUSMA to reduce the costs of delivering the USO, because at any point the

29 Ms Yolanda Chorazyczewski, Group Regulatory Manager, Telstra, *Proof Committee Hansard*, 2 February 2012, p. 27.

30 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group, DBCDE, *Proof Committee Hansard*, 2 February 2012, p. 37.

parties can call for a review of costs and if there are ways of reducing the cost of delivering the services then the benefits are shared between TUSMA and ultimately the levy payers. Telstra, as was pointed out before, is...the main levy payer. So Telstra has, inherent in the structure of the contract, an incentive to minimise the costs to TUSMA. Secondly, the prices struck under the agreement are in nominal dollars, so the real value of the stream of payments to Telstra under the contract fall over time. Thirdly, there is a reasonable presumption...that the operating costs of [remote parts of] the network will increase over time. It has very long lengths, it is in the most hostile parts of the country and Telstra's job is to maintain it. We are not envisaging that they will be reinvesting in a new network. Rather, they will be maintaining it in its current operating condition. It stands to reason that the operating costs will rise over time in that sort of context. All of those things together tell a story in which Telstra has an incentive to minimise the costs and if possible move out of this part of the business in the medium term.³¹

2.28 In response to concerns about increases to the industry levy and the prospect that these costs would be passed onto consumers, DBCDE pointed to the membership of TUSMA being drawn from the telecommunications industry (see section below for further discussion of TUSMA's membership) and the importance of members being conscious of the interests of levy payers.³² The department stated this would result in TUSMA being 'very attuned to minimising the cost of delivering the functions of the organisation'.³³

Committee view

2.29 The Committee notes the cost estimates for meeting the STS and payphone USO in the *Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations* report commissioned by DBCDE (also known as the "Castalia report"). The Castalia report concluded that the net cost to provide the STS USO during 2009–10 was in the range of \$215–\$262 million.³⁴ The report estimated that the provision of the payphone USO had a net cost during 2009–10 of \$35–48 million.³⁵ Based on these calculations, the net cost of providing both the STS and payphone USO can be estimated to lie between \$250–\$310 million per annum.

31 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group, DBCDE, *Proof Committee Hansard*, 2 February 2012, p. 38.

32 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group, DBCDE, *Proof Committee Hansard*, 2 February 2012, p. 36.

33 Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group, DBCDE, *Proof Committee Hansard*, 2 February 2012, p. 36.

34 Mr Paul Paterson (Castalia Strategic Advisors), *Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations*, June 2011, p. 17.

35 Mr Paul Paterson (Castalia Strategic Advisors), *Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations*, June 2011, p. 18.

2.30 The Committee also accepts the advice from Telstra and DBCDE that the costs associated with maintaining the copper network for provision of the STS USO will increase as this infrastructure ages and as fewer customers continue to rely on copper for fixed line services. Further, the Committee acknowledges that Telstra itself will be subject to the industry levy and will in fact pay a large percentage of the total levy amount.

2.31 The Committee also draws attention to the provisions in the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 that will introduce a framework which, after an initial commencement period, may progressively remove USO regulatory obligations from Telstra and eventually enable other telecommunications industry players to tender for these services, any payments for which will be derived from the industry levy.

2.32 For these reasons, and based on the cost estimates from the Castalia report, it is the Committee's view that the payments of \$270 million per annum to Telstra for provision of the STS and payphone USO appear to be reasonable. The Committee also believes it is appropriate for the telecommunications industry to provide funding to TUSMA by way of an industry levy given the industry will be the beneficiary of these funds via the contracts and agreements awarded and managed by TUSMA. The Committee further notes that the government is contributing base funding to TUSMA of \$50 million per annum in 2012–13 and 2013–14, and \$100 million per annum subsequently.

Telephone services for people with a disability

2.33 During the course of the inquiry, ACCAN proposed an additional function for TUSMA to improve service provision for people with a disability. ACCAN recommended that a 'Disability Telecommunications Service (DTS) should be adopted and its contracts managed by TUSMA within the framework established by the TUSMA Bill'.³⁶

2.34 ACCAN explained that the DTS would:

- Maintain and enhance the existing National Relay Service (NRS).
Small but significant changes will remove problems associated with the service's affordability, usability, availability, accessibility and efficiency. The NRS services provided to the Deaf, speech-impaired and hearing-impaired communities are vital but in need of a long overdue overhaul.
- Deliver a truly functionally equivalent communications service for NRS users.

This means funding three new services: next generation text relay⁵, video relay service and captioned telephony. The entire Australian

36 ACCAN, *Submission 4*, p. 5.

society and economy will benefit from services that bridge the digital divide.

- Expand to new consumer communities that have not been able to enjoy subsidised equipment and tailored services.

There is a need for new relay services for culturally and linguistically diverse consumers with disability, call assistance services for people with cognitive disabilities and call connection and directory assistance services for people with disability.

- Ensure that the assistive devices and technologies that people need to achieve functionally equivalent telecommunications are universally available.

In place of Telstra and Optus equipment programs must be an independent one-stop shop program providing the assistive technology needed to deliver functional equivalence for all telecommunications.³⁷

2.35 In response, DBCDE informed the Committee it was aware of ACCAN's proposal which had also been provided to the government's current 'Review of access to telecommunications by people with disability, older Australians and people experiencing illness'.³⁸ The department stated:

The disability review is still considering submissions at the moment. After it reports to government, it will be a matter for the government to decide whether to proceed any of those proposals. It is too early at this stage to consider putting it in the bill. As senators are aware, there is a mechanism under the bill for additional functions to be added by means of regulation, which would be subject to parliamentary scrutiny. If the government were to agree to any of those proposals then that is the mechanism by which they would be delivered.³⁹

Committee view

2.36 The Committee believes that telecommunication services for people with a disability should be provided in an appropriate, reliable and accessible way. The Committee welcomes ACCAN's suggestions for improving disability telecommunication services and encourages the government to consider in detail, as part of the review of access to telecommunications by people with disability, ACCAN's proposal for a Disability Telecommunications Service.

37 ACCAN, *Submission 4*, p. 6.

38 DBCDE, *Review of access to telecommunications by people with disability, older Australians and people experiencing illness*, September 2011, available: www.dbcde.gov.au/consultation_and_submissions/review_of_access_to_telecommunications_by_people_with_disability_older_australians_and_people_experiencing_illness (accessed 15 February 2012).

39 Mr Rohan Buettel, Acting First Assistant Secretary, Networks Policy and Regulation Division, DBCDE, *Proof Committee Hansard*, 2 February 2012, p. 36.

Other amendments

2.37 The Telecommunications Industry Ombudsman (TIO) and ACCAN proposed various amendments intended to improve the operation of TUSMA. In summary, these proposals included:

- clarifying the objects of the TUSMA bill, at clause 11, to reflect several of the specific objectives in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; ⁴⁰
- amending subclause 29(1) of the TUSMA bill to expand TUSMA's reporting requirement to include more information about the performance of contractors and grant recipients; ⁴¹
- amending Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to establish a formal information sharing arrangement between TUSMA and the TIO; ⁴² and
- amending clause 38 of the TUSMA bill so that the membership of TUSMA must include consumer representatives. ⁴³

2.38 These proposals are discussed in the following sections.

Objects of the TUSMA bill

2.39 The TIO recommended the inclusion in the objectives of the TUSMA bill:

...some of the other objectives presently included in the *Telecommunications (Consumer Protection and Service Standards) Act*, especially as they concern matters such as the fulfilment of the USO in ways that are, as far as practicable, responsive to the needs of consumers. ⁴⁴

2.40 The TIO believed such an amendment was warranted to ensure that the USO was fulfilled 'in ways that are, as far as practicable, responsive to the needs of consumers, and consistent with Australia's open and competitive telecommunications regime'. ⁴⁵ The TIO suggested that the TUSMA bill's:

...objectives will be more transparent, and their application to TUSMA's management of the contracts and grants for the delivery of the USO and public interest telecommunications services clearer, if [other the

40 TIO, *Submission 5*, p. 7.

41 TIO, *Submission 5*, p. 8.

42 TIO, *Submission 5*, pp 8–9.

43 ACCAN, *Submission 4*, p. 4.

44 Mr Simon Cohen, Telecommunications Industry Ombudsman, *Proof Committee Hansard*, 2 February 2012, p. 21.

45 TIO, *Submission 5*, p. 7.

Telecommunications (Consumer Protection and Service Standards) Act objectives] are included in the TUSMA Bill.⁴⁶

TUSMA's reporting requirements

2.41 Clause 29 of the TUSMA bill provides for TUSMA's performance monitoring function. The TIO suggested:

...that this reporting requirement could be made more specific and include matters such as the adequacy of compliance with performance standards in the customer service guarantee, which sets out the maximum time frames for connection and repair of standard telephone services.⁴⁷

Information sharing with the TIO

2.42 The TIO noted that the Universal Service Reform Bill includes amendments to the *Australian Communications and Media Authority Act 2005* and the *Competition and Consumer Act 2010* which allow the Australian Communications and Media Authority (ACMA) and the Australian Competition and Consumer Commission (ACCC), respectively, to share information with TUSMA. The TIO continued:

The TIO, the ACMA, the ACCC and TUSMA (once established) undertake independent, yet complementary functions. The TIO – in addition to resolving disputes between consumers and their service providers – provides the telecommunications industry and the community with an independent perspective on the consumer experience. Through the thousands of contacts we receive each week and the many residential or small business consumers we help each year, we are able to identify complaint trends and their probable causes and to provide this valuable information to stakeholders. The TIO's comprehensive data places us in a position to assist TUSMA meet its monitoring and reporting obligations.

While the TIO can and intends to liaise informally with TUSMA where appropriate, a formalised arrangement supported by legislation – preferably in Part 6 of the Consumer Protection Act – may facilitate more effective sharing of information.⁴⁸

2.43 At the public hearing, the TIO explained the benefits of such an information sharing arrangement being enshrined in legislation:

...we think there is value in the TIO being specifically permitted to share information with TUSMA to assist TUSMA in meeting its monitoring and reporting obligations. We hold substantial and potentially valuable information about consumer complaints concerning standard telephone and other services. We also work with service providers, where we identify

46 TIO, *Submission 5*, pp 7–8.

47 Mr Simon Cohen, Telecommunications Industry Ombudsman, *Proof Committee Hansard*, 2 February 2012, p. 21.

48 TIO, *Submission 5*, pp 8–9.

potentially systemic issues that may impact on a number of consumers, to address root causes of complaints we see. Making this information available to TUSMA may assist TUSMA in meeting its reporting and monitoring obligations.

...

At the moment, of course, I have no specific remit to share information with TUSMA, as it has not been created. There is a permission in relation to the ACMA and the ACCC, and we do provide information at a reasonably high level in terms of trends that we are seeing and matters that we are dealing with. I have made a submission in relation to the review of my own office not only to seek the arrangements within our own constituent documents but also more broadly, in terms of the legislative framework around the TIO, to really free us up to provide information that those who have responsibilities in the telco space require. I think that doing that would enhance our effectiveness not only as an agency that can deal with individual complaints but in the way that we can contribute more broadly to the improvement of telecommunications...Our view is that an amendment to part 6 of the [*Telecommunications (Consumer Protection and Service Standards) Act 1999*] would achieve that, and we think that that could happen under the second of the bills that is being considered by the committee.⁴⁹

Membership of TUSMA

2.44 During the course of the inquiry, ACCAN was critical of the proposed membership of TUSMA, stating:

The choice of telecommunications industry operations, law, economics, business or financial management and public administration would appear to inappropriately skew the membership of TUSMA to reflect the outlook and experience of those who are delivering the services, as distinct from those receiving the services.⁵⁰

2.45 ACCAN was concerned that the TUSMA bill did not require the membership of TUSMA to include consumer representatives and as a result, the 'experience or knowledge of low-income consumers, the needs of people with a disability or indeed of telecommunications consumers generally is not among these fields of expertise'.⁵¹

2.46 To address this issue, ACCAN proposed that clause 38 of the TUSMA bill be amended so that there was an explicit requirement for consumer representation:

We submit that knowledge of telecommunications consumer affairs, knowledge of low-income consumers, knowledge of consumers with a

49 Mr Simon Cohen, Telecommunications Industry Ombudsman, *Proof Committee Hansard*, 2 February 2012, pp 21–22.

50 ACCAN, *Submission 4*, p. 4.

51 ACCAN, *Submission 4*, p. 4.

disability and knowledge of Indigenous consumers be added to the fields of expertise from which agency Members can be drawn; and that at least half the members come from these fields of expertise.⁵²

Committee view

2.47 The Committee sees merit in the proposals from TIO to enable TUSMA and the TIO to share certain information.

2.48 The Committee understands that the arrangement and parameters for the exchange of information between the TIO and the Australian Communications and Media Authority (ACMA) are detailed in a memorandum of understanding (MoU) between the two parties.⁵³ This MoU covers matters relating to:

- the exchange of information and advice about telecommunications consumer complaint investigations and the application of legislative and alternative dispute resolution remedies;
- the exchange of information about telecommunications and internet industry service and complaint trends; and
- compliance and enforcement action related to members of the TIO.⁵⁴

2.49 With respect to the TIO providing information to TUSMA, as the TIO is not a government agency but rather a company under the *Corporations Act 2001*, it is the Committee's view that it would be appropriate for the TIO and TUSMA to enter into a MoU, similar to the MoU between the ACMA and the TIO, to establish formal arrangements for the provision of information by the TIO to TUSMA.

2.50 The Committee notes that clause 122 of the TUSMA bill provides for the disclosure of information by TUSMA to the ACMA and the Australian Competition and Consumer Commission (ACCC). Expanding this clause to include the TIO would enable TUSMA to disclose information to the TIO.

2.51 The Committee therefore recommends the following:

52 ACCAN, *Submission 4*, p. 4.

53 Australian Communications and Media Authority (ACMA), 'ACMA and TIO signal closer cooperation on complaints, compliance and enforcement', media release, 25 March 2008, available: www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_311019 (accessed 20 February 2012).

54 ACMA, 'ACMA and TIO signal closer cooperation on complaints, compliance and enforcement', media release, 25 March 2008, available: www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_311019 (accessed 20 February 2012).

Recommendation 1

2.52 The Committee recommends that:

- **the Telecommunications Universal Service Management Agency (TUSMA) and the Telecommunications Industry Ombudsman (TIO) enter into a memorandum of understanding to formalise arrangements for the TIO to provide information to TUSMA for the purposes of TUSMA's monitoring and reporting responsibilities; and**
- **clause 122 of the Telecommunications Universal Service Management Agency Bill 2011 be amended to enable TUSMA to disclose information to the TIO.**

2.53 The Committee also sees merit in the proposal from ACCAN to require the inclusion of a person with experience or knowledge of consumer affairs in the membership of TUSMA. The inclusion of a person with such experience or knowledge recognises that the contracts managed by TUSMA are intended to service the needs of consumers through the USO and other public interest telecommunications services. Consumer representation in the membership of TUSMA will also ensure that consumers have a voice in decisions made by TUSMA.

2.54 The Committee therefore makes the following recommendation:

Recommendation 2

2.55 The Committee recommends that the Telecommunications Universal Service Management Agency (TUSMA) Bill 2011 is amended to make it a criteria for one of the appointments to the membership of TUSMA to be a person with substantial experience or knowledge, and significant standing, in the field of consumer affairs.

2.56 Subject to the recommendations above, the Committee recommends that the bills be passed.

Recommendation 3

2.57 The Committee recommends that the bills be passed.

A handwritten signature in black ink, appearing to read 'Doug Cameron', with a long, sweeping horizontal line extending to the right.

Senator Doug Cameron
Chair