

The Senate

---

Environment and Communications  
Legislation Committee

---

Telecommunications Universal Service  
Management Agency Bill 2011 [Provisions]

Telecommunications Legislation Amendment  
(Universal Service Reform) Bill 2011  
[Provisions]

Telecommunications (Industry Levy) Bill  
2011 [Provisions]

February 2012

© Commonwealth of Australia 2012

ISBN 978-1-74229-595-4

## **Committee membership**

### ***Committee members***

Senator Doug Cameron (ALP, NSW) (Chair)  
Senator Mary Jo Fisher (LP, SA) (Deputy Chair)  
Senator Catryna Bilyk (ALP, TAS)  
Senator Bridget McKenzie (NATS, VIC)  
Senator the Hon. Lisa Singh (ALP, TAS)  
Senator Larissa Waters (AG, QLD)

### ***Participating members participating in this inquiry***

Senator Simon Birmingham (LP, SA)  
Senator Scott Ludlam (AG, WA)

### ***Committee secretariat***

Mr Stephen Palethorpe, Secretary  
Ms Sophie Dunstone, Principal Research Officer  
Mrs Dianne Warhurst, Administrative Officer

### ***Committee address***

PO Box 6100  
Parliament House  
Canberra ACT 2600  
*Tel:* 02 6277 3526  
*Fax:* 02 6277 5818  
*Email:* ec.sen@aph.gov.au  
*Internet:*

[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=ec\\_ctte/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ec_ctte/index.htm)



# Table of Contents

|  |            |
|--|------------|
| <b>Committee membership .....</b>  | <b>iii</b> |
| <b>Acronyms and abbreviations .....</b>  | <b>vii</b> |
| <b>Chapter 1 - The Telecommunications Universal Service<br/>Management Agency Bill 2011; Telecommunications Legislation<br/>Amendment (Universal Service Reform) Bill 2011; and<br/>Telecommunications (Industry Levy) Bill 2011 .....</b> | <b>1</b>   |
| Conduct of the inquiry .....   | 1          |
| Background.....  | 1          |
| Overview of the bills .....  | 6          |
| Issues regarding the bills .....   | 10         |
| <b>Chapter 2 - Issues regarding the bills .....</b>  | <b>13</b>  |
| Consultation.....  | 13         |
| Industry levy .....  | 16         |
| Telephone services for people with a disability .....  | 22         |
| Other amendments.....  | 24         |
| <b>Additional Comments from Coalition Senators.....</b>  | <b>29</b>  |
| Context.....   | 29         |
| Deficient Consultation.....  | 29         |
| Lack of Cost Constraint.....   | 30         |
| Unnecessary Bureaucracy .....  | 31         |
| Support for Recommendations 1 and 2 .....  | 31         |
| <b>Additional Comments – Australian Greens .....</b>   | <b>33</b>  |
| <b>Appendix 1 - Submissions and answers to questions taken on notice .....</b>   | <b>35</b>  |
| <b>Appendix 2 - Public hearings .....</b>  | <b>37</b>  |



## Acronyms and abbreviations

|                           |   |
|---------------------------|---|
| <b>ACCAN</b>              | Australian Communications Consumer Action Network                                       |
| <b>ACCC</b>               | Australian Competition and Consumer Commission  |
| <b>ACMA</b>               | Australian Communications and Media Authority   |
| <b>CCS Act</b>            | Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2011 |
| <b>CPI</b>                | consumer price index  |
| <b>CSG</b>                | Customer Service Guarantee  |
| <b>DBCDE</b>              | Department of Broadband, Communications and the Digital Economy                         |
| <b>DTS</b>                | Disability Telecommunications Service   |
| <b>FHA</b>                | Financial Heads of Agreement  |
| <b>HFC</b>                | Hybrid Fibre Coaxial  |
| <b>Industry Levy bill</b> | Telecommunications (Industry Levy) Bill 2011  |
| <b>Mbps</b>               | Megabits per second   |
| <b>MoU</b>                | memorandum of understanding   |
| <b>NBN</b>                | National Broadband Network  |
| <b>NRS</b>                | National Relay Service  |
| <b>STS</b>                | standard telephone service  |
| <b>TIO</b>                | Telecommunications Industry Ombudsman   |
| <b>TUSMA</b>              | Telecommunications Universal Service Management Agency                                  |
| <b>TUSMA bill</b>         | Telecommunications Universal Service Management Agency Bill 2011                        |
| <b>USO</b>                | Universal Service Obligation  |

**Universal Service Reform bill** Telecommunications Legislation Amendment  
(Universal Service Reform) Bill 2011



# Chapter 1

## **The Telecommunications Universal Service Management Agency Bill 2011; Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011; and Telecommunications (Industry Levy) Bill 2011**

### **Conduct of the inquiry**

1.1 On 3 November 2011, on the recommendation of the Selection of Bills Committee, the Senate referred three related bills: the Telecommunications Universal Service Management Agency (TUSMA) Bill 2011; Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011; and Telecommunications (Industry Levy) Bill 2011 (the bills), to the Environment and Communications Legislation Committee for inquiry and report by 27 February 2012.

1.2 The three bills were also referred to the House of Representatives Standing Committee on Infrastructure and Communications on 3 November 2011 for inquiry and report.<sup>1</sup> That Committee decided not to proceed with its inquiry as it 'would unnecessarily duplicate the inquiry process concurrently being undertaken by the Senate committee.'<sup>2</sup>

1.3 In accordance with usual practice, the Committee advertised the inquiry on its website and in *The Australian*. The Committee also wrote to various organisations inviting submissions. The Committee received 5 submissions (listed at Appendix 1) and held a public hearing in Melbourne on 2 February 2012 (see Appendix 2).

### **Background**

#### ***Universal Service Obligation***

1.4 The Universal Service Obligation (USO) requires the primary universal service provider (currently Telstra) to ensure that standard telephone services (STS) and payphones are reasonably accessible to all people in Australia on an equitable basis, irrespective of where they live or conduct business.<sup>3</sup> The USO is currently funded by the telecommunications industry via the universal service levy, as outlined

---

1 House of Representatives Standing Committee on Infrastructure and Communications, *Inquiry into bills referred 3 November 2011*, available: [www.aph.gov.au/house/committee/ic/3Nov/index.htm](http://www.aph.gov.au/house/committee/ic/3Nov/index.htm) (accessed 9 November 2011).

2 Ms Sharon Bird MP, Chair, House of Representatives Standing Committee on Infrastructure and Communications, *House of Representatives Hansard*, 22 November 2011, p. 13310.

3 Explanatory Memorandum (TUSMA bill), p. 3.

in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.<sup>4</sup> The levy contribution is calculated on the basis of each participating telecommunications carrier's annual 'eligible revenue'.<sup>5</sup>

1.5 The USO is currently administered by the Australian Communications and Media Authority (ACMA).<sup>6</sup>

### ***National Relay Service***

1.6 The *Telecommunications (Consumer Protection and Service Standards) Act 1999* also makes provisions for the National Relay Service (NRS). The NRS:

...provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.<sup>7</sup>

1.7 The NRS is delivered under contract with the Commonwealth Government. Under the current contractual arrangements, the NRS is delivered by Australian Communications Exchange Limited and an outreach service is provided by WestWood Spice.<sup>8</sup>

1.8 The NRS is currently being reviewed as part of the government's review of access to telecommunications by people with disability, older Australians and people experiencing illness.<sup>9</sup>

### ***Emergency call services***

1.9 Emergency call services in Australia are covered by the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards)*

---

4 *Telecommunications (Consumer Protection and Service Standards) Act 1999*, s. 8.

5 *Telecommunications (Consumer Protection and Service Standards) Act 1999*, ss 20, 20A and 20H.

6 Australian Communications and Media Authority (ACMA), *Universal Service Obligation*, available: [www.acma.gov.au/WEB/STANDARD/pc=PC\\_2491](http://www.acma.gov.au/WEB/STANDARD/pc=PC_2491) (accessed 17 February 2012).

7 *Telecommunications (Consumer Protection and Service Standards) Act 1999*, s. 93.

8 Explanatory Memorandum (TUSMA bill), p. 3.

9 Department of Broadband, Communications and the Digital Economy (DBCDE), *Review of access to telecommunications by people with disability, older Australians and people experiencing illness*, available: [www.dbcde.gov.au/consultation\\_and\\_submissions/review\\_of\\_access\\_to\\_telecommunications\\_by\\_people\\_with\\_disability\\_older\\_australians\\_and\\_people\\_experiencing\\_illness](http://www.dbcde.gov.au/consultation_and_submissions/review_of_access_to_telecommunications_by_people_with_disability_older_australians_and_people_experiencing_illness) (accessed 17 February 2012).

*Act 1999*.<sup>10</sup> Under the Acts, the telecommunications industry must provide access to the emergency call service for standard telephone services free of charge.<sup>11</sup>

1.10 At present, Telstra and the Australian Communications Exchange Ltd are the national providers of the emergency call service.<sup>12</sup>

### ***The National Broadband Network and the structural separation of Telstra***<sup>13</sup>

1.11 The USO reforms being considered by the Committee arise in the context of the establishment of the National Broadband Network. On 7 April 2009 the Commonwealth Government announced the establishment of NBN Co to design, build and operate a wholesale-only national high-speed broadband network (the National Broadband Network or NBN) capable of delivering speeds of up to 100 Megabits per second (Mbps). The NBN will connect all premises in Australia to improve service delivery in areas such as health and education and, more broadly, drive productivity growth in Australia.

1.12 The 2009 NBN policy was a microeconomic reform measure designed to improve competition in the Australian telecommunications sector. The government's plan to achieve structural reform and improve competition required separation of the infrastructure provider from retail service providers, to be achieved by the structural separation of Telstra.<sup>14</sup> This is to be effected by the gradual migration of customers from Telstra's copper network to the NBN fibre network which is the subject of commercial agreements between NBN Co and Telstra which are now being considered by the Australian Competition and Consumer Commission (ACCC).

1.13 As outlined by the Joint Parliamentary Committee on the NBN:

Subsequently, the Government introduced three pieces of legislation which were passed in 2011 and are the foundation for the Government's NBN policy. These are the: *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2011 (Cth)*, (*the CCS Act*), the *National Broadband Network Companies Act 2011 (Cth)*, and

---

10 Explanatory Memorandum (TUSMA bill), p. 3.

11 Explanatory Memorandum (TUSMA bill), p. 3.

12 Explanatory Memorandum (TUSMA bill), p. 3.

13 The following information is drawn largely from the Joint Parliamentary Committee on the National Broadband Network, *Review of the Rollout of the National Broadband Network: Second Report*, November 2011, available: [www.apph.gov.au/house/committee/jcnbn/report2/fullreport.pdf](http://www.apph.gov.au/house/committee/jcnbn/report2/fullreport.pdf) (accessed 9 February 2012).

14 The structural separation of Telstra is defined by the Australian Competition and Consumer Commission (ACCC) as 'the legal separation of Telstra's assets and activities into separate corporate entities with entirely separate owners / shareholders' (see Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2011 Explanatory Memorandum, p. 1).

*Telecommunications Legislation Amendment (National Broadband Network Measures- Access Arrangements) Act 2011 (Cth).*

The CCS Act contains a "package of legislative reforms aimed at enhancing competitive outcomes in the Australian telecommunications industry and strengthening consumer safeguards". These reforms include:

- "addressing Telstra's vertical and horizontal integration by requiring Telstra to either voluntarily structurally separate or be subject to mandatory functional separation;
- streamlining the access and anti-competitive conduct regimes, and strengthening consumer safeguard measures such as the Universal Service Obligation, the Customer Service Guarantee and priority assistance; and
- measures to improve regulatory enforcement".<sup>15</sup>

1.14 On 20 June 2010, prior to passing of the CCS Act and associated NBN legislation, NBN Co and Telstra entered into a non-binding Financial Heads of Agreement (FHA). Amongst other things, the FHA outlined the high level terms and conditions for the decommissioning of Telstra's copper and Hybrid Fibre Coaxial (HFC) networks to enable the progressive migration of customers' services from Telstra's copper and subscription television cable networks to the NBN.

1.15 At the same time, the government announced a suite of public policy reforms to support the transition to the NBN. These included the establishment of a new entity, USO Co which would assume responsibility for most of Telstra's Universal Service Obligations for the delivery of standard telephone services, payphones and emergency call handling from 1 July 2012. This was to ensure that essential communications services would be protected and assist the structural reform of the industry.

1.16 Together with the public policy reforms, the FHA, if completed, will deliver a post-tax net present value of approximately \$11 billion to Telstra<sup>16</sup> and will reduce overall NBN roll-out costs by:

- giving NBN Co access to Telstra's existing infrastructure;
- enabling decommissioning of the copper access network as the fibre is rolled out; and
- allowing for the progressive migration of customer services from Telstra's copper and subscription television cable networks to the NBN.

---

15 Joint Committee on the National Broadband Network, *Review of the Rollout of the National Broadband Network: Second Report*, November 2011, p. 35.

16 Telstra, 'Telstra signs Financial Heads of Agreement on NBN', media release, 20 June 2010, available: [www.telstra.com.au/abouttelstra/media-centre/announcements/telstra-signs-financial-heads-of-agreement-on-nbn-1.xml](http://www.telstra.com.au/abouttelstra/media-centre/announcements/telstra-signs-financial-heads-of-agreement-on-nbn-1.xml) (accessed 17 February 2012).

1.17 On 23 June 2011, following further negotiations, NBN Co and Telstra entered into several Binding Definitive Agreements. These agreements are also known as the "Telstra Agreement".

#### *Telstra Agreement*

1.18 The Telstra Agreement comprises four documents which form the basis of Telstra's participation in the rollout of the NBN.

1.19 There are three main components of the Telstra Agreement which benefit NBN Co, Telstra and Australian taxpayers by:

- granting NBN Co access to Telstra facilities and infrastructure over a minimum period of 35 years to ensure the NBN can be rolled out efficiently and avoid duplicating infrastructure;
- providing for the progressive migration of Telstra's copper and HFC customers to the NBN resulting in Telstra's gradual structural separation and establishing NBN Co as Telstra's preferred fixed-line network; and
- providing for interim arrangements for immediate access to Telstra infrastructure.

1.20 NBN Co has stated some of the benefits of the Telstra Agreement:

The outcome, we believe, is good for taxpayers and good for the broader community. We will, in making use of Telstra's facilities, avoid duplicating existing infrastructure. The deal reduces our costs to build the NBN, it reduces the risk of delays and, very importantly, it reduces potential disruption to local communities.<sup>17</sup>

1.21 The Telstra Agreement includes nine "conditions precedent" which must be either satisfied or waived for the Telstra Agreement to be completed. Of relevance to the TUSMA bills, one of the conditions precedent is the TUSMA Agreement, the Information Campaign and Migration Deed being entered into by Telstra and the Commonwealth in a form acceptable to NBN Co.

1.22 On 23 June 2011 the government and Telstra agreed on a package of measures to ensure basic universal telecommunications services standards during and after the NBN rollout. As part of this package of measures, TUSMA will be established to assume responsibilities for administering the USO and other public interest services. The TUSMA bills being considering in this inquiry give effect to and complement the agreement between Telstra and the Commonwealth Government regarding TUSMA.

---

17 Mr Mike Quigley, Chief Executive Officer, NBN Co, *Joint Committee on the National Broadband Network Hansard*, 5 July 2011, p. 2.

## Overview of the bills

### *Telecommunications Universal Service Management Agency Bill 2011*

1.23 The Telecommunications Universal Service Management Agency Bill 2011 (TUSMA bill) seeks to establish the Telecommunications Universal Service Management Agency as the statutory agency with responsibility for the implementation and administration of service agreements or grants that deliver universal service and other public policy telecommunications outcomes.<sup>18</sup>

1.24 In the government's view, the changes to existing USO regulatory arrangements proposed by the TUSMA bill are necessary because:

The USO regulatory arrangements were designed for a market where there was a vertically integrated operator of a national telecommunications network. The rollout of the [National Broadband Network] will result in a fundamental change to the structure of the Australian telecommunications market as Telstra's near ubiquitous national copper fixed line network will be progressively decommissioned as NBN Co rolls out its next generation fibre network nationally.

The NBN will be operated on a wholesale-only and equivalent basis. In an environment where all retail service providers are able, via the NBN, to offer high quality voice and high-speed broadband services nationally, it is appropriate that the model for delivering universal service and other public policy telecommunications outcomes be reformed to facilitate the competitive supply of universal service and other public policy telecommunications outcomes...In this regard, the service delivery arrangements for the [Universal Service Provider] will transition to a model similar to the current arrangements for the provision of the NRS, in that the Government will contract with service providers for the supply of these important services.

...

As part of the reforms, a new statutory agency, TUSMA, will be established to manage the [USO] and other public interest telecommunications contracts and grants. The establishment of a statutory agency dedicated to the implementation and effective administration of telecommunications service agreements and grants will promote high quality and efficient contract and grant managements to maximise the benefit for consumers and manage risks appropriately, within a transparent and accountable legislative framework.<sup>19</sup>

1.25 The TUSMA bill establishes TUSMA and confers the following powers (among others) on the agency:

---

18 Explanatory Memorandum (TUSMA bill), p. 2.

19 Explanatory Memorandum (TUSMA bill), pp 3–5.

- 
- the power to do all things necessary or convenient to be done for or in connection with the performance of its functions; and
  - the power to enter into contracts on behalf of the Commonwealth Government.<sup>20</sup>

1.26 TUSMA will be required to take all reasonable steps to ensure that the policy objectives of the bill, as follows, are achieved:

- (a) that standard telephone services are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (ii) be supplied to people in Australia on request; and
- (b) that payphones are to:
  - (i) be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
  - (iii) be supplied, installed and maintained in Australia; and
- (c) that end-users of standard telephone services in Australia are to have access, free of charge, to an emergency call service; and
- (d) that the National Relay Service is to be reasonably accessible to all persons in Australia who:
  - (i) are deaf; or
  - (ii) have a hearing and/or speech impairment;
 wherever they reside or carry on business; and
- (e) that there are to be such:
  - (i) customer information programs; and
  - (ii) customer cabling installation programs; and
  - (iii) carriage service development programs; and
  - (iv) other measures (if any) as are specified in the regulations;
 as are necessary to support the continuity of supply of carriage services during the transition to the national broadband network;
- (f) the objectives (if any) specified in the regulations, where those objectives relate to the supply of carriage services.<sup>21</sup>

1.27 TUSMA will be constituted as a body corporate and have a membership comprising a chair and between four and six other members. Each member of TUSMA will be appointed by the minister and must have substantial experience or knowledge and significant standing in one of the following fields: operation of a sector of the telecommunications industry; economics; business or financial

---

20 TUSMA Bill 2011, clause 34.

21 TUSMA Bill 2011, clause 11.

management; law; or public administration.<sup>22</sup> The terms and conditions for TUSMA members during their appointment are also outlined in the TUSMA bill.<sup>23</sup>

1.28 The TUSMA bill requires the appointment of a chief executive officer of TUSMA with responsibility for the day-to-day administration of the agency.<sup>24</sup>

1.29 Clause 13 of the TUSMA bill empowers TUSMA to enter into contracts or make a grant of financial assistance on behalf of the Commonwealth.<sup>25</sup>

1.30 An NBN corporation is required, if directed by the minister, to provide information or documents to TUSMA if that corporation has information or a document that is relevant to the performance of TUSMA's functions or the exercise of TUSMA's powers.<sup>26</sup>

1.31 TUSMA will be responsible for the Telecommunications Universal Service Special Account. The account will be funded via an industry levy as well as payments for damages and breaches under clause 13 of the bill and repayment of a grant under clause 13 of the bill.<sup>27</sup> The account will be used to fund the administrative costs of TUSMA and amounts payable by the Commonwealth Government under clause 13 of the bill.<sup>28</sup>

1.32 Clauses 22 through 26 outline the transitional arrangements for the USO, emergency call service, NRS and continuity of supply of carriage services.<sup>29</sup> It is the government's intention that the transitional arrangements will apply in particular to:

- a Telecommunications Universal Service Management Agency Agreement between the Commonwealth and Telstra, announced on 23 June 2011, for the provision of standard telephone services, payphones, an emergency call service, and to support the transition of copper-based services to the NBN Co fibre network (clauses 22, 23, 24 and 26);
- in relation to the provisions of the NRS:
  - a relay service contract with Australian Communication Exchange Limited; and
  - an outreach service contract with WestWood Spice (clause 25); and

---

22 TUSMA Bill 2011, clauses 37 and 38.

23 TUSMA Bill 2011, clauses 41–48.

24 TUSMA Bill 2011, clauses 58 and 59.

25 TUSMA Bill 2011, clause 13.

26 TUSMA Bill 2011, clause 78.

27 TUSMA Bill 2011, clause 85.

28 TUSMA Bill 2011, clause 86.

29 TUSMA Bill 2011, clauses 22–26 and Explanatory Memorandum (TUSMA bill), p. 7.



- any contracts entered into with any persons before commencement of the Bill relating to the achievement of the police objective that there are to be such customer information, customer cabling installation and carriage service development programs that are necessary to support the continuity of the supply of carriage services during the transition to the NBN (clause 26).<sup>30</sup>

1.33 The TUSMA bill sets out the provisions for the assessment, collection and recovery of an industry levy.<sup>31</sup> The levy will be imposed under the Telecommunications (Industry Levy) Bill 2011 and will replace the existing universal service and NRS levies currently applied to carriers.<sup>32</sup>

### ***Telecommunications (Industry Levy) Bill 2011***

1.34 The Telecommunications (Industry Levy) Bill 2011 (Industry Levy bill) imposes a levy to support the provision of public interest telecommunications services.<sup>33</sup> In conjunction with the TUSMA bill, the Industry Levy bill determines who must pay the levy and provides for the administration and enforcement of the levy scheme.<sup>34</sup>

1.35 Those required to pay the levy will be telecommunications carriers, or if so determined by the minister, carriage service providers.<sup>35</sup> The amount of the levy is determined under the TUSMA bill and is related to the payee's annual eligible revenue.<sup>36</sup>

### ***Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011***

1.36 The Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 (Universal Service Reform bill) makes consequential amendments to the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Australian Communications and Media Authority Act 2005*.<sup>37</sup> In particular, the Universal Service Reform bill contains provisions which, if specified pre-conditions are met, enable the progressive removal of the current USO for standard telephone services and payphones.<sup>38</sup> The bill sets out

---

30 Explanatory Memorandum (TUSMA bill), p. 45.

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

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

33 Telecommunications (Industry Levy) Bill 2011 (Industry Levy bill),

34 Senator the Hon Kate Lundy, *Senate Hansard*, 9 February 2012, p. 33.

35 Senator the Hon Kate Lundy, *Senate Hansard*, 9 February 2012, p. 33.

36 TUSMA bill, clauses 91–93.

37 Explanatory Memorandum (Universal Service Reform bill), p. 2.

38 Explanatory Memorandum (Universal Service Reform bill), p. 2.

the manner in which the progressive shift from a regulatory scheme to a contractual scheme is expected to occur.

1.37 Key elements of the Universal Service Reform bill include:

- amendments to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to enable the removal of the current regulated obligations on the primary universal service provider and shift to a fully contractual model for the provision of universal service outcomes;
- amendments to the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Telecommunications (Universal Service Levy) Act 1997* and the *NRS Levy Imposition Act 1998* so that the USO and NRS levies, respectively, will cease to apply after 30 June 2012;
- amendments to the *Financial Management and Accountability Act 1997* so that TUSMA will be a prescribed agency; and
- a range of technical amendments to the *Australian Communications and Media Authority Act 2005*, the *Competition and Consumer Act 2010*, the *Criminal Code Act 1995*, the *Sea Installations Act 1987* and the *Telecommunications Act 1997* to:
  - recognise the establishment of TUSMA;
  - allow the ACMA to administer, enforce and report on the new levy provisions; and
  - reflect the shift in responsibility for the delivery of universal service outcomes and other public interest services to TUSMA.<sup>39</sup>

### **Issues regarding the bills**

1.38 Most submitters to the inquiry acknowledged the need for changes to the USO as Australia transitions to the National Broadband Network (NBN).<sup>40</sup> However, submitters also raised a number of issues regarding the bills, such as:

- consultation during the development of the bills;
- the industry levy;
- services for people with a disability; and
- other amendments regarding the operation and responsibilities of TUSMA.

1.39 These issues are discussed in Chapter 2.

---

39 Explanatory Memorandum (Universal Service Reform bill), p. 4.

40 See for example Macquarie Telecom, *Submission 1*; Optus, *Submission 2* and Australian Communications Consumer Action Network (ACCAN), *Submission 4*.

---

***Concerns raised by the Senate Scrutiny of Bills Committee***

1.40 The Senate Standing Committee for the Scrutiny of Bills raised concerns regarding the Telecommunications Universal Service Management Agency (TUSMA) Bill 2011. The Scrutiny of Bills Committee sought advice from the Minister regarding:

- review mechanisms available to consumers and others who may be aggrieved by an alleged breach of the public interest requirements or a failure by TUSMA to adequately enforce this obligations through contract law; and
- the absence of an explanation of the application of strict liability to the offence of failing to lodge an eligible revenue return in the explanatory memorandum.

1.41 The Minister for Broadband, Communications and the Digital Economy provided the following response:

The proposed removal of the USO legislated obligations is not intended to diminish the safeguard that the USO has so far provided with respect to public interest telecommunication services for consumers. Instead, moving to a competitive contractual regime is intended to benefit consumers as it promotes more innovative, effective and efficient service delivery arrangements...Under the proposed new arrangements, consumers will continue to have access to existing compensation and dispute resolution schemes, including compensation under the Customer Service Guarantee (CSG).<sup>41</sup>

1.42 And:

The [Scrutiny of Bills Committee] highlighted the principles of Commonwealth criminal law policy outlined in part 4.5 of the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers* (the Guide). Part 4.5 provides that application of strict or absolute liability to all physical elements of an offence has generally only been considered appropriate where the following considerations are applicable:

- The offence is not punishable by imprisonment and is punishable by a fine of up to 60 penalty units for an individual (300 for a body corporate) in the case of strict liability or 10 penalty units for an individual (50 for a body corporate) in the case of absolute liability. A higher maximum fine has been considered appropriate where the commission of the offence will pose a serious and immediate threat to public health, safety or the environment;
- The punishment of offences not involving fault is likely to significantly enhance the effectiveness of the enforcement regime in deterring offences; and

---

41 Senate Standing Committee for the Scrutiny of Bills, *First Report of 2012*, 8 February 2012, p. 42.

- There are legitimate grounds for penalising persons lacking "fault", for example because they will be placed on notice to guard against the possibility of any contravention.

The strict liability offence in clause 120 [of the TUSMA Bill] accords with these principles.<sup>42</sup>

---

42 Senate Standing Committee for the Scrutiny of Bills, *First Report of 2012*, 8 February 2012, p. 44.

## 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.<sup>1</sup>

---

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.<sup>2</sup>

2.6 Conversely, other submitters had no complaints about the government's consultation.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

### *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*.<sup>6</sup> 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 21<sup>st</sup> 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'.<sup>7</sup>

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.<sup>8</sup>

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](http://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 21<sup>st</sup> 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](http://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](http://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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> The NRS currently costs the industry \$15.5 million per annum.<sup>12</sup>

2.16 The estimated overall cost for TUSMA is \$330–\$340 million per annum between 2012-13 and 2014-15.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

---

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](http://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.<sup>16</sup>

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.<sup>17</sup>

2.19 In total, the Telstra Agreement provides for annual payments to Telstra of \$270 million for the provision of STS and payphones<sup>18</sup> and \$20 million for the emergency call service.<sup>19</sup> These payments to Telstra will be derived, in part, from the industry levy.<sup>20</sup>

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'.<sup>21</sup> 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](http://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.<sup>22</sup>

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.<sup>23</sup>

2.21 Macquarie Telecom and Optus also suggested that the cost of levy incurred by telecommunications companies would eventually be passed on to consumers.<sup>24</sup> 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'.<sup>25</sup>

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.'<sup>26</sup>

---

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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup> The department stated this would result in TUSMA being 'very attuned to minimising the cost of delivering the functions of the organisation'.<sup>33</sup>

### **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.<sup>34</sup> The report estimated that the provision of the payphone USO had a net cost during 2009–10 of \$35–48 million.<sup>35</sup> 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'.<sup>36</sup>

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 relay<sup>5</sup>, 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.<sup>37</sup>

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'.<sup>38</sup> 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.<sup>39</sup>

### *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](http://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*; <sup>40</sup>
- 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; <sup>41</sup>
- 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; <sup>42</sup> and
- amending clause 38 of the TUSMA bill so that the membership of TUSMA must include consumer representatives. <sup>43</sup>

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. <sup>44</sup>

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'. <sup>45</sup> 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.<sup>46</sup>

### ***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.<sup>47</sup>

### ***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.<sup>48</sup>

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.<sup>49</sup>

### ***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.<sup>50</sup>

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'.<sup>51</sup>

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.<sup>52</sup>

### *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.<sup>53</sup> 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.<sup>54</sup>

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](http://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](http://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.**

**Senator Doug Cameron  
Chair**

# **Additional Comments from Coalition Senators**

## **Context**

The TUSMA reform Bills must be considered in context, that is, as part of the rollout of the National Broadband Network to replace most of Telstra's copper network.

The NBN has been characterised by secrecy, overspending, delays, and waste. The Government's deal with Telstra to facilitate the rollout of the NBN is complicated and kept under wraps, making it impossible for the Parliament or voters to determine whether the deal represents value for money. Indeed, the Government has systematically sought to prevent effective scrutiny of the entire NBN project.

Coalition Senators are also mindful that these Bills do not materially impact on the delivery of the USO itself. Instead, the Bills create a framework for the administration of contracts that are already in place to deliver the USO and other public interest telecommunications services some years from now.

It is in this context that the Committee has been tasked to consider the TUSMA reforms.

## **Deficient Consultation**

Coalition Senators are convinced by evidence that consultation in relation to USO reform has been deficient.

Notwithstanding the assertion by the Department of Broadband, Communications, and the Digital Economy (DBCDE) that a number of rounds of consultation took place in relation to the broader issue of USO delivery, it is clear from the Government's NBN policy statement of 20 June 2010<sup>1</sup> that its model for delivery of the USO in an NBN environment was substantially finalised at that time.

It is also clear the TUSMA model for the delivery of the USO was developed without any consideration of alternative options or objective evaluation of value for money as part of a broader set of private negotiations between Telstra and the Government over the NBN. DBCDE noted:

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.<sup>2</sup>

---

1 [www.dbcde.gov.au/broadband/national\\_broadband\\_network/nbn\\_policy\\_statements](http://www.dbcde.gov.au/broadband/national_broadband_network/nbn_policy_statements).

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

Telstra will receive \$2.7 billion over 10 years for delivering the USO for standard telephone services and payphones, significantly more than it would have received in the pre-NBN environment. This windfall assisted in obtaining Telstra's agreement to the broader NBN deal. It was clearly not in the Government's interests to permit third party scrutiny or invite industry input as the USO agreement was negotiated and settled.

Far from settle these concerns, the Department exacerbated them when answering questions about whether future payments from TUSMA to Telstra under the Telstra Agreement were a financial gain to Telstra. DBCDE said:

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 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.<sup>3</sup>

The total lack of transparency in developing the TUSMA model and negotiating an agreement with Telstra to contract to deliver the USO is of serious concern, although hardly a surprise given the Government's track record of opacity and back room deals when implementing its broadband policy.

### **Lack of Cost Constraint**

The Coalition is concerned about the potential for future increases in TUSMA's cost as a result of increasing administrative overheads and expansions in the size and scope of programs under its control.

TUSMA has no incentive to constrain costs. From 2014–15, the Government's contribution to TUSMA will be a flat \$100 million, with costs above that level to be raised by an industry levy. Any blowout in TUSMA's costs will therefore be borne by the telecommunications industry, and ultimately by consumers.

Although TUSMA will be constrained by its prescribed policy objectives, it is easy to envisage pressure being applied in the future to expand the public interest telecommunications services for which TUSMA may become responsible.

---

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

For instance, ACCAN has proposed a Disability Telecommunication Service. It is not unreasonable to expect that such a service, if it becomes policy and is implemented, may be added to TUSMA's responsibilities, consequently increasing its cost base and cost to telecommunications consumers.

TUSMA will also take on certain responsibilities currently performed by the Australian Communications and Media Authority. Coalition members are concerned that lessened responsibilities at ACMA will not be accompanied by a corresponding reduction in its budget.

### **Unnecessary Bureaucracy**

In the same vein, Coalition Senators question the need for an entirely new bureaucratic entity to administer the USO (particularly given the Government has largely removed the need for TUSMA to make decisions about contracts for the next 20 years).

ACMA has administered the USO for some years, and surely has the expertise to continue to do so, even as the USO moves to a contractual model and away from the current regulatory approach. The Government has at no point provided any justification for a new entity to administer public interest telecommunications services.

The Coalition is concerned the creation of a new bureaucracy will simply lead to more complexity and unwarranted costs which will ultimately be passed on to consumers.

### **Support for Recommendations 1 and 2**

The Coalition specifically supports the Committee's recommendations 1 and 2, which respectively recommend closer ties between TUSMA and the TIO, and the inclusion of a consumer advocate as a TUSMA member.

### **Recommendation**

**The Coalition recommends more stringent measures be put in place to ensure that any policy decision to impose responsibility for additional public interest communications services on TUSMA is justified, reasonable, and represents the most cost effective available means to achieve the specified objective.**

**Senator Mary Jo Fisher**

**Senator Simon Birmingham**

**Senator Bridget McKenzie**





## **Additional Comments – Australian Greens**

The Telecommunications Universal Service Management Agency Bill 2011, the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 and the Telecommunications (Industry Levy) Bill 2011 are the final package of bills establishing the National Broadband Network (NBN) regulatory framework and are supported by the Australian Greens.

These Bills create a new statutory agency to deliver basic voice, payphone and other public interest telecommunications services at an ongoing cost to the taxpayer of \$100 million per year. The Bills mandate reviews in the future to assess how well the Universal Service Obligation is being delivered in an NBN world.

The Australian Greens welcome input to this Senate Inquiry from consumers and end-users who convinced the Committee on the need for a consumer affairs representative on the Telecommunications Universal Service Management Agency (TUSMA) board.

The Australian Greens believe that the Universal Service Obligation needs to be brought into the 21<sup>st</sup> Century. In the 21<sup>st</sup> Century it is not merely voice telephony and public payphones but also fast data services that are essential.

Australia's National Broadband Network is one of the most important infrastructure projects this country has seen. Our network, once established, will bring us closer to the world and will be the envy of many countries given that 93 per cent of the population will have fibre coverage to homes, schools and businesses. The other 7 per cent of Australia's population will have data services through wireless + satellite.

Given convergence, the increasing reliance on data services to conduct business and the daily lives of so many Australians, data services have become an essential service just as much as the public telephone.

**Recommendation 1: That the Telecommunications Universal Service Management Agency (TUSMA) Bill defines a minimum standard of high speed data services and mandates TUSMA to deliver it via fibre to 93 per cent of the population and via wireless and satellite to the remaining 7 per cent.**

**Senator Scott Ludlam**



# **Appendix 1**

## **Submissions and answers to questions taken on notice**

### **Submissions**

- 1** Macquarie Telecom
- 2** Optus
- 3** Telstra Corporation Ltd
- 4** Australian Communications Consumer Action Network
- 5** Telecommunications Industry Ombudsman

### **Answers to questions taken on notice**

Letter from Telstra, dated 3 February 2012, an answer to a question taken on notice (from public hearing, Melbourne, 2 February 2012)

Letter from the Telecommunications Industry Ombudsman, dated 10 February 2012 in answer to a question taken on notice (from public hearing, Melbourne, 2 February 2012)

Letter from the Australian Communications Consumer Action Network, dated 10 February 2012 in answer to a question taken on notice (from public hearing, Melbourne, 2 February 2012).



# **Appendix 2**

## **Public hearings**

*Thursday, 2 February 2012*

### **Macquarie Telecom**

Mr Matt Healy, National Executive, Regulatory and Government

Mr Chris Zull, Senior Manager, Regulatory and Government

### **Optus**

Mr Andrew Sheridan, General Manager, Interconnect and Economic Regulation, Interconnect and Regulatory

### **Mr Frank Verver (private capacity)**

### **Australian Communications Consumer Action Network**

Mr Jonathan Gadir, Senior Policy Adviser

### **Telecommunications Industry Ombudsman**

Mr Simon Cohen, Ombudsman

### **Telstra**

Mr James Shaw, Director Government Relations

Ms Yolanda Chorazyczewski, Group Regulatory Manager

### **Department of Broadband, Communications and the Digital Economy**

Mr Daryl Quinlivan, Deputy Secretary, Infrastructure Group

Mr Rohan Buettel, A/g First Assistant Secretary, Networks Policy and Regulation Division

Mr Garth Donovan, A/g Assistant Secretary, USO Branch

