

The Senate

Environment and Communications
Legislation Committee

Telecommunications Legislation Amendment
(Deregulation) Bill 2014 [Provisions]

Telecommunications (Industry Levy)
Amendment Bill 2014 [Provisions]

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Chapter 1

Background

Introduction

1.1 On 30 October 2014, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014 (Levy Amendment Bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 9 February 2015.¹

1.2 The reason for referral was that the bills contain a number of legislative changes which have the potential to significantly change the operation of the telecommunications industry. A principal issue for the committee's consideration is therefore the impact of the bills on regulatory stability in the telecommunications industry.²

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 10 December 2014.

1.4 The committee received four submissions, which are listed at Appendix 1. The submissions may be accessed through the committee's website at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/NWC

1.5 The committee decided not to hold a public hearing for this inquiry given the limited number of submissions received.

Background to the bills

1.6 The purpose of the bills is to reduce regulatory burden on industry participants. The Revised Explanatory Memorandum (REM) explains that the TLAD Bill would streamline telecommunications regulation while maintaining important consumer safeguards. It notes that the proposed amendments will contribute to the Government's agenda of reducing the regulatory burden on industry and consumers and implement the Government's 2014 Budget announcement to abolish the Telecommunications Universal Service Management Agency (TUSMA).³ TUSMA is a statutory agency responsible for achieving public interest telecommunications

1 *Journals of the Senate*, No. 63, 30 October 2014, p. 1690.

2 Senate Selection of Bills Committee, *Report No. 14 of 2014*, appendix 8.

3 Revised Explanatory Memorandum (REM), Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014, p. 1.

services policy objectives, and providing for the assessment, collection and recovery of the industry levy.⁴

1.7 The Levy Amendment Bill makes consequential and transitional changes to the *Telecommunications (Industry Levy) Act 2012* (Levy Act) due to the proposed abolition of TUSMA.⁵

1.8 The REM notes that the proposed amendments in the TLAD Bill, other than those relating to the abolition of TUSMA in schedule 1, are the result of an extensive consultation process, including:

- a government discussion paper released on 6 December 2013 seeking comment on the registration period for numbers on the Do Not Call Register;
- a government discussion paper released on 15 April 2014 seeking comment on a number of deregulatory proposals through an online discussion board; and
- a Deregulation Stakeholder Forum held on 12 May 2014, where representatives from industry, consumer groups and government agencies reached consensus on a number of proposed deregulatory measures.⁶

1.9 On 11 November 2014, the Minister for Communications, the Hon Malcolm Turnbull MP, wrote to the committee to advise that proposed schedule 5 of the TLAD Bill would be removed from the bill due to stakeholder concerns.⁷ The Government in the House of Representatives subsequently moved an amendment to remove schedule 5 from the TLAD Bill.⁸ Schedule 5 would have amended the record-keeping and reporting requirements in Part 13 of the *Telecommunications Act 1997* (Telecommunications Act), including removing some requirements for telecommunications companies to divulge the number of warrantless metadata requests they receive from law enforcement agencies.⁹

Overview of bill provisions

1.10 The bills contain a range of amendments aimed at lessening the regulatory burden on industry.

1.11 Schedule 1 of the TLAD Bill provides for the abolition of TUSMA and the transfer of its functions to the Department of Communications (the department) in accordance with the Government's 2014 Budget announcement. TUSMA would cease

4 REM, p. 1.

5 REM, p. 1.

6 REM, p. 2.

7 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 2, *Additional Document 1*.

8 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 1, *Additional Document 1*.

9 Explanatory Memorandum, (EM), Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014, p. 3.

to exist following the commencement of schedule 1 with obligations for administering contracts for public interest telecommunications services to be transferred to the Secretary of the department.¹⁰ The specific amendments in schedule 1 include:

- the repeal of the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act) and the *Telecommunications (Universal Services Levy) Act 1997*;¹¹
- the repeal of section 89 of the TUSMA Act, which requires the minister to prepare a levy target in relation to the operation of TUSMA, in advance of the rest of the TUSMA Act being repealed;¹²
- consequential amendments to a number of Acts to replace references to TUSMA or the TUSMA Act with references to new provisions in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act);¹³
- transfer of the policy objectives and functions currently set out in the TUSMA Act in respect of public interest telecommunications services to the Consumer Protection Act, along with the arrangements for the assessment, collection and recovery of the industry levy; and¹⁴
- provision for the collection and disclosure of a range of specified information between service providers and government agencies.¹⁵

1.12 Schedule 2 of the TLAD Bill would repeal Part 9A of the Consumer Protection Act, which regulates the supply of telephone sex services via a standard telephone service. It also includes consequential amendments to the *Australian Communications and Media Authority Act 2005* and the *Export Market Development Grants Act 1997*.¹⁶

1.13 Schedule 3 of the TLAD Bill would extend the registration period for numbers on the Do Not Call Register (DNCR) to an indefinite period.¹⁷ The *Do Not Call Register Act 2006* (DNCR Act) provides that telemarketers must not contact registered numbers. Currently, subsection 17(1) of the DNCR Act provides that an Australian number remains registered on the DNCR for a three year period unless the minister makes an instrument specifying a longer period.¹⁸

10 REM, p. 42.

11 REM, p. 2.

12 REM, p. 42.

13 REM, p. 43.

14 REM, p. 2.

15 REM, Statement of Compatibility, pp 8–9.

16 REM, p. 2.

17 REM, p. 2.

18 REM, p. 103.

1.14 Schedule 4 of the TLAD Bill would repeal the arrangements in Part 6 of the Telecommunications Act for the Australian Communications and Media Authority (ACMA) to register industry codes in respect of e-marketing. Currently, Part 6 of the Telecommunications Act enables bodies or associations representing sections of industry to develop industry codes and register them with ACMA.¹⁹

1.15 Schedule 6 of the TLAD Bill would reduce the scope of the pre-selection obligations on telecommunications providers in Part 17 of the Telecommunications Act, which provides a framework by which pre-selection can be activated. Subject to determination by ACMA, the provisions currently allow a consumer with a standard telephone service or a specified declared carriage service to choose a carrier or carriage service provider (other than the service provider that supplies the telephone line and local calls) to supply other services such as national long-distance calls, international calls and calls to mobile phones as set out in the ACMA's determination.²⁰

1.16 Schedule 7 of the TLAD Bill would modernise a number of publishing requirements in the Consumer Protection Act.²¹ Schedule 8 of the TLAD Bill would streamline the operation of the Customer Service Guarantee arrangements set out in Part 5 of the Consumer Protection Act. Part 5 of the Consumer Protection Act provides for performance standards and benchmarks that carriage service providers are required to comply with in respect of supplying certain kinds of carriage services to retail customers.²²

1.17 The Levy Amendment Bill makes consequential and transitional changes to the Levy Act, reflecting that the intended abolition of TUSMA will require substantive provisions concerning the assessment, collection and recovery of the industry levy to be transitioned from the TUSMA Act to the Consumer Protection Act.²³

19 REM, p. 104.

20 REM, p. 106.

21 REM, p. 121.

22 REM, p. 123.

23 REM, p. 125.

Chapter 2

Key issues

Introduction

1.1 The four submitters to this inquiry focused on various aspects of the bill, including:

- regulatory costs, burdens and consultation with stakeholders;
- the abolition of TUSMA and existing funding or levy arrangements;
- the decision to remove schedule 5 from the bill and retain the record-keeping and reporting requirements in Part 13 of the *Telecommunications Act 1997* (Telecommunications Act);
- disclosure of personal information; and
- extension of the registration period for numbers on the Do Not Call Register (DNCR).

Regulatory costs, burdens and consultation

1.2 As noted in Chapter 1, the measures in the bills are intended to reduce the regulatory burden on industry with the key measure being the abolition of TUSMA.

1.3 The committee received submissions from two telecommunications companies, Telstra and Optus. Telstra argued that regulatory costs on the telecommunications industry are a real concern which needs to be addressed by government.¹ Telstra supported the amendments in the bills and argued the reforms are 'sensible' and would reduce regulatory burden on industry:

...the reforms are sensible proposals to reduce the regulatory cost imposed on the telecommunications industry, without reducing consumer protections. These reforms will remove unnecessary and burdensome regulatory obligations, allowing telecommunications providers greater flexibility in how they deliver services to customers, ultimately to the benefit of our customers.²

1.4 Optus in its submission canvassed a broad range of matters in relation to the regulation of the telecommunications industry and industry costs, and particularly its concerns in relation to funding arrangements and the operation of the Universal Service Obligation (USO).³ Optus submitted that the USO should be funded from the Government's general revenue rather than by industry.⁴

1 Telstra, *Submission 1*, p. 1.

2 Telstra, *Submission 1*, p. 1.

3 Optus, *Submission 4*, p. 3.

4 Optus, *Submission 4*, p. 3.

1.5 In response, the Department of Communications (the department) noted that the bills are not appropriate to address such complex concerns, because the proposed amendments are more narrowly aimed at consolidating and streamlining existing bodies and arrangements. The department stated:

The Bills are concerned with delivering deregulatory measures in the communications portfolio that will reduce the compliance costs of both industry and consumers. The Government's announcement in May 2014 that it would abolish TUSMA and transfer its functions to the Department of Communications was clearly stated as being part of broader steps taken by Government as part of its deregulation agenda, and a move to smaller government by consolidating existing bodies into departments. The Government did not indicate that the transition of functions from TUSMA to the Department of Communications would lead to broader changes to existing funding or levy arrangements. These Bills are therefore not an appropriate vehicle to address the complex policy competition and funding issues raised by Optus on the USO.⁵

1.6 The department also noted that the proposed amendments were the result of extensive consultation between industry, government and consumer groups during the development of the bills.⁶ The department indicated that it would continue to consult with stakeholders in relation to additional deregulation opportunities.⁷

Extension of the registration period for the DNCR

1.7 Schedule 3 of the TLAD Bill would extend the registration period for numbers on the DNCR from three years to an indefinite period.⁸

1.8 Optus noted that it did not oppose this proposal.⁹ However, Optus highlighted a potential need to require ongoing maintenance of the DNCR, including the removal of numbers which are not in service. Optus submitted that the absence of such a requirement would mean that all fixed and mobile numbers could eventually be listed on the DNCR.¹⁰

1.9 In response, the department noted that maintenance of the DNCR was an operational issue which may need to be considered following the implementation of the proposed changes to the DNCR. It stated that the issue did not go directly to the question of whether or not the proposed amendments should proceed:

5 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

6 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

7 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

8 REM, p. 2.

9 Optus, *Submission 4*, p. 15.

10 Optus, *Submission 4*, p. 15.

While this issue is not directly relevant to the consideration of this Bill, Optus is raising an operational policy issue which requires broader consideration of the operation of the DNCR and whether it could be readily checked against the Integrated Public Number Database. This is a matter which the Government can give consideration to in the longer term.¹¹

Decision to remove schedule 5 – record-keeping and retention requirements

1.10 As noted in Chapter 1, schedule 5 would have amended the record-keeping and reporting requirements in Part 13 of the Telecommunications Act including a requirement for telecommunications companies to divulge the number of warrantless metadata requests they receive from law enforcement agencies.¹²

1.11 However, on 11 November 2014, the Minister for Communications, the Hon Malcolm Turnbull MP, wrote to the committee to advise that proposed schedule 5 of the TLAD Bill would be removed due to stakeholder concerns.¹³ The Minister in his letter to the committee stated that the amendments to Part 13 of the Telecommunications Act contained in schedule 5 would have offered 'only modest deregulatory savings to the telecommunications industry'.¹⁴

1.12 On 25 November 2014, the TLAD Bill was amended in order to remove schedule 5. The decision to remove schedule 5 from the TLAD Bill was noted by a number of the submitters.¹⁵

1.13 The submission of the Office of the Australian Information Commissioner (OAIC) was supportive of the removal of schedule 5. OAIC stated that the record-keeping and reporting requirements in Part 13 the Telecommunications Act are important from the perspective of transparency and the public interest.¹⁶

1.14 The department advised that the decision to remove schedule 5 from the TLAD Bill took into account stakeholder concerns and the current focus on data and privacy in the telecommunications industry.¹⁷ In light of these considerations, the

11 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

12 Explanatory Memorandum, (EM), Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014, p. 3.

13 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 2, *Additional Document 1*.

14 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 2, *Additional Document 1*.

15 See, Telstra, *Submission 1*, p. 1; Office of the Australian Information Commissioner, *Submission 2*, p. 1; Optus, *Submission 4*, p. 15.

16 Office of the Australian Information Privacy Commissioner, *Submission 2*, p. 1.

17 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

government wanted to ensure that reporting requirements were consistent across government prior to removing existing reporting obligations.¹⁸

1.15 Optus submitted that any overlap in reporting requirements should be assessed for potential regulatory compliance savings for industry and the utility of information provided to law enforcement agencies should also be examined.¹⁹

Disclosure of personal information

1.16 As noted in Chapter 1, schedule 1 of the TLAD Bill would provide for the collection and disclosure of a range of specified information between service providers and government agencies.²⁰

1.17 The Cyber Law and Policy Community (CLPC) noted its concern that the proposed amendments would allow government agencies and carriers increased access to personal information.²¹ In particular, CLPC was concerned that the proposed sharing arrangements could see an increased risk of data breach, identity theft, poor handling of information and inappropriate disclosures, including in relation to the status of persons with a disability.²²

1.18 Accordingly, CLPC recommended that the bills be subjected to a 'privacy impact assessment'.²³ The CLPC submission contained a number of further recommendations, including a requirement for individual notification that personal information has been shared.²⁴

1.19 However, in response, the department noted that the Statement of Compatibility (SOC) with Human Rights for the bills (on pages 6–12 of the Revised Explanatory Memorandum (REM)) included extensive discussion and assessment of relevant provisions in the bills that engage the right to privacy.²⁵

1.20 The department's response further explained that all government agencies which may be involved in the sharing of personal information are subject to obligations around the handling of personal information under the *Privacy Act 1988*. Further, carriage service providers are subject to specific additional requirements under Part 13 of the Telecommunications Act. On this basis, the department concluded:

18 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

19 Optus, *Submission 4*, pp 15–16.

20 REM, Statement of Compatibility, p. 8.

21 Cyberspace Law & Policy Community, *Submission 3*, p. 1.

22 Cyberspace Law & Policy Community, *Submission 3*, p. 2.

23 Cyberspace Law & Policy Community, *Submission 3*, p. 1.

24 Cyberspace Law & Policy Community, *Submission 3*, p. 2.

25 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

...CLPC's concern that these arrangements could see an increased risk of data breach, identity theft, poor handling of information or inappropriate disclosures is unfounded.²⁶

1.21 In relation to CLPC's recommendations to address its privacy concerns, the department submitted:

...the Australian Privacy Principles under the *Privacy Act 1988* already provide a robust set of arrangements for the collection, use, disclosure and storage of personal information, including the security and destruction or de-identification of personal information if it is no longer required. Accordingly, the Department does not consider the suggested enhancements are warranted. Such arrangements are likely to be administratively costly and complex to implement and neither the OAIC nor any other groups with specific privacy or consumer interests have raised similar concerns.²⁷

Committee comment

1.22 The committee considers that the bills will contribute to reducing the regulatory burden on the telecommunications industry. In this respect, the submission from Telstra indicated support for measures aimed at lessening compliance costs for both industry and consumers. The committee also acknowledges the extensive consultation conducted by the department in relation to these measures.

1.23 However, the committee notes that a number of more complex issues were raised by Optus regarding existing funding and levy arrangements. While the proposed amendments in the bills are not intended to address these broader aspects of existing funding or levy arrangements, the committee considers that the proposed abolition of TUSMA and transfer of its functions to the department are sensible steps towards greater efficiency in the regulation of the telecommunications industry.

1.24 The committee further considers that the introduction of an indefinite registration period for the DNCR is consistent with community expectations and concerns regarding unsolicited telemarketing calls. On this basis, the committee is supportive of this measure while noting that consideration may need to be given to how the DNCR is maintained.

1.25 The committee notes that, while one submitter raised concerns regarding potential privacy implications of the proposed measures in the bills, those concerns were comprehensively addressed by the response provided by the department. In particular, the committee notes that the Australian Privacy Principles provide extensive protection of personal information.

26 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

27 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

Recommendation 1

1.26 The committee recommends that the Senate pass the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014.

Senator Anne Ruston
Chair

LABOR SENATORS' DISSENTING REPORT

Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014 were referred to the Senate Environment and Communications Legislation Committee for inquiry and report on 30 October 2014. Submissions closed on 10 December 2014.

Among other things, these bills deal with the abolition of the Telecommunications Universal Service Management Agency (TUSMA) and the transfer of its functions to the Department of Communications.

On 14 December 2014, the Government announced that it had reached agreement with Telstra on the revised Definitive Agreements. These agreements included revisions to the Commonwealth Agreements, including revisions to the TUSMA Agreement.

This committee undertook the majority of its deliberations and accepted submissions on these Bills prior to Telstra's announcement that it had varied the TUSMA Agreement with the Commonwealth. It is Labor's view that the new arrangements for TUSMA set out in these bills should be reconsidered in light of these amendments to the TUSMA Agreement with Telstra.

Labor considers that the Senate Environment and Communications Legislation Committee should re-examine the Telecommunications (Industry Levy) Amendment Bill 2014 and the Telecommunications Legislation Amendment (Deregulation) Bill 2014 to give the appropriate scrutiny to these new arrangements, ensure that the bill, as drafted, is still appropriate in light of the variations to the TUSMA Agreement, and to ensure that affected stakeholders have adequate opportunity to comment in light of these developments.

Recommendation 1:

Labor Senators recommend that the Telecommunications (Industry Levy) Amendment Bill 2014 and the Telecommunications Legislation Amendment (Deregulation) Bill 2014 be referred back to the Senate Environment and Communications Legislation Committee for consideration in light of new developments.

**Senator Anne Urquhart
Deputy Chair
Senator for Tasmania**

**Senator the Hon Lisa Singh
Senator for Tasmania**

Appendix 1

Submissions

- 1 Telstra
- 2 Office of the Australian Information Commissioner
- 3 Cyberspace Law & Policy Community
- 4 Optus

