

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

1.1 On 10 February 2015, the Senate referred 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 for inquiry and report by 1 May 2015.¹

Scope and conduct of the inquiry

1.2 This is the second time the committee has examined these bills. The committee's previous inquiry commenced on 30 October 2014 after the Senate, on the recommendation of the Selection of Bills Committee, referred the provisions of the bills to the committee for inquiry and report. The committee's report was tabled on 9 February 2015.²

1.3 In re-referring the bills to the committee, the motion agreed to by the Senate directed the committee to re-examine the bills in the context of the December 2014 revisions to the Telecommunications Universal Service Management Agency Agreement between Telstra and the Commonwealth (TUSMA Agreement).³ Accordingly, the committee has limited its re-examination of the bills to the parts relevant to this issue. Specifically, this included the following:

- schedule 1 of the TLAD Bill, which would provide for the abolition of Telecommunications Universal Service Management Agency (TUSMA) and the transfer of its functions to the Department of Communications (the department) in accordance with the Government's announcement in the 2014–15 Budget; and
- the Levy Amendment Bill, which proposes consequential and transitional changes to the *Telecommunications (Industry Levy) Act 2012* (Levy Act).

1.4 Readers interested in the remaining schedules of the TLAD Bill should refer to the committee's first report.⁴

1 *Journals of the Senate*, 2013–15, no. 74 (10 February 2015), p. 2120.

2 *Journals of the Senate*, 2013–15, no. 75 (9 February 2015), p. 2059.

3 *Journals of the Senate*, 2013–15, no. 74 (10 February 2015), p. 2120.

4 This report may be viewed online here: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Telecommunications_Deregu/Report

Submissions and public hearing

1.5 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The closing date for submissions was 27 February 2015.

1.6 The committee received four submissions, which are listed at Appendix 1. A public hearing was held in Melbourne on 10 March 2015—a list of witnesses who gave evidence at that hearing is at Appendix 2. The submissions and transcript of evidence may be accessed through the committee's website: www.aph.gov.au/senate/ec.

1.7 The committee thanks all the organisations and individuals who assisted the committee with the inquiry.

Reports of other committees

1.8 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety. The bills were considered by the Scrutiny of Bills Committee in its *Alert Digest* no. 15 of 2014. No comments were made on the bills.⁵

Background to schedule 1 to the TLAD Bill and the Levy Amendment Bill

1.9 The TLAD Bill proposes that TUSMA would cease 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.⁶ As noted in the committee's first report on the bills, 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*;⁷
- 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;⁸

5 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 15 of 2014*, 19 November 2014, pp 54, 56.

6 Revised Explanatory Memorandum, p. 42.

7 Revised Explanatory Memorandum, p. 2.

8 Revised Explanatory Memorandum, p. 42.

- 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);⁹
- 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;¹⁰ and
- provision for the collection and disclosure of a range of specified information between service providers and government agencies.¹¹

1.10 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.¹²

The TUSMA Agreement

1.11 The Commonwealth and Telstra entered into the TUSMA Agreement on 23 June 2011. At the same time, the Definitive Agreements between NBN Co and Telstra, which provided for Telstra's involvement in the roll out of the National Broadband Network (NBN), were entered into.¹³

1.12 The department's submission explained that the TUSMA Agreement:

- imposed contractual obligations on Telstra to deliver the universal service obligation for standard telephone services (STS USO), the payphones universal service obligation (Payphones USO) and emergency call services;
- obliged TUSMA to:
 - fund specific communications by Telstra to voice-only customers who have not taken an NBN service within particular time periods prior to the relevant date for the cut-off of copper services;
 - reimburse Telstra for reasonable connection costs incurred in connecting eligible voice-only customers who connect to the NBN to acquire a voice service but not a broadband service;

9 Revised Explanatory Memorandum, p. 43.

10 Revised Explanatory Memorandum, p. 2.

11 Revised Explanatory Memorandum, Statement of Compatibility, pp 8–9.

12 Revised Explanatory Memorandum, p. 125.

13 Department of Communications, *Submission 3*, p. 2.

- contained provisions for Telstra to be paid fees to undertake research related to the migration of traffic lights and public alarms, although the department noted that these provisions have not been used to date.¹⁴

1.13 The TUSMA Agreement is currently administered by TUSMA. The bills propose that TUSMA's functions would be transferred to the department from 1 July 2015.¹⁵

The December 2014 revisions

1.14 The department advised that the December 2014 amendments to the TUSMA Agreement followed negotiations the Government and NBN Co engaged in with Telstra to 'facilitate the shift of the...[NBN] from a primarily fibre to the premises (FTTP) model to a "multi-technology mix" (MTM) model'. The department explained that the 'majority of the amendments were made simply to make the TUSMA Agreement accommodate the MTM NBN model rather than a primarily FTTP NBN model'. The department went on to state:

For example, references to the 'NBN fibre network' were replaced with references to the 'NBN Co Fixed Line Network', which was defined in a technology-neutral manner so as to encompass the additional network technologies to be deployed as part of the MTM NBN (primarily Fibre to the Node, Fibre to the Basement and HFC [Hybrid fibre-coaxial]).¹⁶

1.15 Other changes made to the TUSMA Agreement in December 2014:

- facilitated the proposed integration of TUSMA's functions into the department by requiring the department to administer the TUSMA Agreement on behalf of the Commonwealth should TUSMA be abolished;¹⁷
- extended the period of time during which TUSMA may require Telstra to take remedial action in the event of a breach; and
- included a compensation regime for Telstra if additional separation costs are incurred 'in the highly unlikely event' that the MTM rollout ceases after between 75 per cent and 93 per cent of premises have been passed.¹⁸

14 Department of Communications, *Submission 3*, p. 1.

15 Department of Communications, *Submission 3*, p. 2.

16 Department of Communications, *Submission 3*, p. 2.

17 Department of Communications, *Submission 3*, p. 2.

18 The department explained that the inclusion of a compensation regime 'reflects an acknowledgement by the Commonwealth that, in the highly unlikely event the rollout ceases after 75% of premises have been passed by the MTM roll out, the operation of the remaining residual part of the copper network by Telstra is likely to be commercially unprofitable and accordingly it would be unreasonable for the full cost burden of newly imposed separation regulation to be borne by Telstra'. Department of Communications, *Submission 3*, p. 3.

1.16 The December 2014 revisions included further changes 'that were operational in nature, to address issues encountered by both parties in administering the Agreement'.¹⁹ The department's submission noted that examples of these included:

- amendments 'to incorporate operational arrangements agreed between TUSMA and Telstra in relation to payphone reporting and to clarify the scope of reimbursable costs in relation to provision of the emergency call service'; and
- changes 'to reflect that copper lines in relevant areas will be transferred by Telstra to NBN Co and to ensure consistency between the soft dial tone requirements in the TUSMA Agreement and the soft dial tone requirements in the Telstra's varied Migration Plan'.²⁰

1.17 During the committee's public hearing, the department's general counsel provided the following more detailed explanation of the operational amendments related to the soft dial tone requirements and the copper continuity arrangements:

On the soft dial tone it was a longer period, so there is a slightly longer period now that the soft dial tone will stay in place under the amended arrangements. There are also changed arrangements to reflect the transfer of ownership of the copper from Telstra to NBN Co. In particular there is a copper continuity obligation in the TUSMA agreement that is preserved on an ongoing basis, obviously. Under that copper continuity arrangement, in the residual seven per cent that are getting serviced by wireless and satellite, Telstra's prima facie obligation is to satisfy the standard telephone service USO using the copper in that seven per cent. If you are outside of town, outside the 93 per cent boundary, it may well be the case that your copper is transferred to NBN Co because it is part of a copper bundle that goes to NBN Co. Ownership will transfer to NBN Co and NBN Co will have to license that copper back to Telstra to allow it to continue to provide the copper in the residual seven per cent, the copper USO service.²¹

1.18 The department noted that the amendments to the TUSMA Agreement are dependent on amendments to the Definitive Agreements between NBN Co and Telstra coming into effect. Until that occurs, the existing TUSMA Agreement remains in effect.²²

19 Telecommunications Universal Service Management Agency (TUSMA), *Submission 4*, p. 1.

20 Department of Communications, *Submission 3*, p. 3. A soft dial tone allows a customer to contact Telstra's customer service and fault centre numbers and to make emergency calls.

21 Ms Angela Flannery, General Counsel, Department of Communications, *Proof Committee Hansard*, 10 March 2015, pp 19–20.

22 Department of Communications, *Submission 3*, p. 3.

Implications of the December 2014 revisions

1.19 The department emphasised that the December 2014 revisions to the TUSMA Agreement did not include any 'weakening of the obligations imposed on Telstra to continue to deliver the STS USO, Payphones USO or emergency call services'. Further, the department noted the revisions did not increase the annual amounts payable to Telstra for the delivery of these services.²³ The unchanged nature of the Australian Communications and Media Authority's (ACMA's) role in monitoring compliance with, and the enforcing of, the USO regime was also noted.²⁴

1.20 Some of the operational changes were examined during the committee's public hearing. In relation to the period of time during which Telstra may be required to take remedial action in the event of a breach, which has been extended from 14 days to six months, the department's general counsel explained that action can still be taken within 14 days. The extension from 14 days to six months 'entitles the Commonwealth a greater period of time' to exercise its rights, providing TUSMA (or, as proposed by the bill, the department) greater flexibility given that both TUSMA and ACMA have enforcement roles in this area. It was stated that:

The original rationale of the contract is that TUSMA should not take action if the ACMA is taking action in relation to the same breach. So the 14-day period just was not enough time to allow the Commonwealth, via TUSMA and the ACMA, to work out who was going to do what...

So now they also are not forced to make a decision within two weeks as to whether they will take action in relation to a corresponding regulatory breach. TUSMA can wait and see whether the ACMA may take action; or it can take action within 14 days or any time after that.²⁵

1.21 The department argued that the December 2014 revisions would not hinder the matter being examined by this inquiry: the proposed integration of TUSMA into the department. The department's submission noted that the TUSMA Agreement was originally entered into between Telstra and the Commonwealth before TUSMA was created. As the Commonwealth is the counterparty to the TUSMA Agreement (TUSMA is not a separate legal entity), the department considers it 'will be able to effectively integrate management of the TUSMA Agreement into the functions of the department as the other functions of TUSMA are integrated into the department'.²⁶ Telstra and TUSMA similarly advised that they do not consider the bills are affected by the December 2014 amendments to the TUSMA Agreement.²⁷

23 Department of Communications, *Submission 3*, p. 2.

24 Ms Angela Flannery, General Counsel, Department of Communications, *Proof Committee Hansard*, 10 March 2015, pp 1–2.

25 Ms Angela Flannery, General Counsel, Department of Communications, *Proof Committee Hansard*, 10 March 2015, pp 17, 18.

26 Department of Communications, *Submission 3*, p. 3.

27 TUSMA, *Submission 4*, p. 2; Telstra, *Submission 1*, p. 1.

1.22 The submission from Optus noted that it 'understands that the revised agreement between Telstra and the Commonwealth has simply re-confirmed the arrangements that were first agreed in 2011'.²⁸ Optus' submission raised matters related to the operation of the USO itself, rather than the transfer of TUSMA's functions to the department. Optus argued that the USO has been in place for over 20 years, and that while the industry and technology has changed substantially over this time, there has been little change in how the USO is delivered and funded. Optus argued that the USO arrangements 'are not fit for purpose and that the transition to the NBN provides an ideal opportunity for policy reform'.²⁹ Although the committee reviewed Optus' submission, it notes that the submission goes to matters beyond whether the revisions to the TUSMA Agreement have an effect on the measures proposed in the bills.

Committee view

1.23 The committee was asked by the Senate to re-examine the bills in the context of the December 2014 revisions to the TUSMA Agreement between Telstra and the Commonwealth. The committee does not consider the changes to the TUSMA Agreement have implications for the measures proposed by the bills. The committee notes that this position is supported by all of the submissions the committee received.

1.24 In its first report on the bills, the committee concluded that the bills 'will contribute to reducing the regulatory burden on the telecommunications industry'.³⁰ The committee stands by that recommendation. The bills should be considered by the Senate without further delay.

Recommendation 1

1.25 The committee recommends that the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014 be passed.

Senator Anne Ruston
Chair

28 Optus, *Submission 2*, p. 3.

29 Optus, *Submission 2*, p. 3.

30 Senate Environment and Communications Legislation Committee, *Telecommunications Legislation Amendment (Deregulation) Bill 2014 [Provisions]*; *Telecommunications (Industry Levy) Amendment Bill 2014 [Provisions]*, February 2015, p. 9.

