



Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Bill 2005

Jonathan Chowns
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
What is a relay service?.	2
The present arrangements for provision of the NRS.	3
Basis of policy commitment.	3
Transitional arrangements if new NRS provider selected.	3
More than one provider of the NRS	3
ALP/Australian Democrat/Greens policy position/commitments	4
Discussion of the proposed changes	4
Examination of stated reasons for amendment.	4
Published reports on NRS	5
Telecommunications Services Enquiry 2000 & Regional Telecommunications Services Enquiry 2002	5
HREOC Report 2003	5
Allen Consulting Report – reported performance of ACE 2003	6
Australian Communications Authority – NRS performance review	7
Main Provisions	7
Schedule 1, Part 1 – Amendments commencing on Royal Assent	7
Schedule 1, Part 2 – Amendments consequential on the Financial Framework Legislation Amendment Act 2005	7
Concluding Comments.	8
Endnotes.	9

Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Bill 2005

Date Introduced: 10 February 2005

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: The main provisions commence on Royal Assent

Purpose

To amend the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to allow the National Relay Service (NRS) to be provided by more than one service provider after the contract with the current provider expires on 30 June 2006. More than one provider may need to be engaged in two circumstances; firstly, in any transition or handover period during which the current provider and a new provider(s) may need to operate concurrently; and, secondly, in the event that more than one provider is selected to provide the service.

Background

What is a relay service?

People who are deaf, hearing impaired and/or speech impaired are able to communicate with each other—or with anyone else—by having their messages ‘relayed’ by a human telephone operator. The NRS enables communications to be initiated by the person who is deaf, hearing impaired and/or speech impaired or by someone wanting to communicate with such a person. Emergency calls are also handled by the NRS. In essence, the NRS is a text-voice translation service for users of the standard telephone service.

In general terms, the NRS allows communications to be effected in the following ways:

- by having the spoken word converted by the operator into text which is then conveyed to the other person and read on a special device
- by having text which is produced by the user on a special device read aloud by the operator to the other person.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The present arrangements for provision of the NRS

The National Relay Service is mandated under Part 3 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The legislation is currently drafted in such a way that there can be only one provider of the National Relay Service. That is, the legislation speaks of there being one NRS provider which is engaged under one contract with the Commonwealth.¹ The legislation does not contemplate that there can be more than one provider or that the NRS can be provided under more than one contract. The current provider, since 1995, of the NRS is a not-for-profit company, Australian Communications Exchange Ltd (ACE).

In addition to the relay service, ACE also provides what is known as the “outreach program”. The outreach program has two main functions; to increase public awareness of the relay service and to provide training to users of the service including training in the use of teletypewriters (TTY). The inclusion of these functions arose out of the Government’s acceptance of recommendation 16 of the Besley Report in 2001 (see below).²

The contract between the Commonwealth and ACE expires on 30 June 2006. Prior to that time, the Commonwealth is proposing to conduct a competitive tender process. In the lead up to the commencement of that process, in December 2004 the Department of Communications, Information Technology and the Arts (the Department) released a draft statement of requirement for the NRS (“the SoR”) asking for comments by 18 February 2005.³

Basis of policy commitment

Transitional arrangements if new NRS provider selected

In the event that another provider(s) is selected to provide the call relay service and the outreach program, the legislation, as it is presently drafted, will not permit the concurrent engagement of ACE and the new provider(s) during any transition or handover period. As noted, this is because the legislation contemplates that there is only one provider.

To allow for the possibility of a transition period, it is necessary to amend the legislation.

More than one provider of the NRS

In addition to providing for a concurrent engagement of two providers during any transition period, the amendments will allow for the possibility that more than one provider may be selected to provide the call relay service and the outreach program. For instance, the relay service and the outreach program might have different providers.

To allow for the possibility of there being more than one provider it is necessary to amend the legislation.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

ALP/Australian Democrat/Greens policy position/commitments The Labor Party supported the Bill when it was debated in the House of Representatives.⁵

Discussion of the proposed changes

Examination of stated reasons for amendment

On their face, both of the reasons given for the amendments are sound. However, in relation to the second point, it would appear that the Department presently intends that there will be only one contracted NRS provider. This is apparent from the Department's Draft SoR for the NRS which was released for comment in December 2004.⁶ The draft SoR sets out the proposed framework for the provision of the NRS after the expiry of the ACE contract in June 2006. The SoR, when finalised, will form the basis of a competitive tender process that the Department will conduct in 2005.

The SoR states that the NRS is made up of two discrete components – the relay service and the outreach program – and that ‘tender responses will be required to meet the service requirements for both components.’⁷ Furthermore, it states that;

“The NRS provider will be required to be a single corporate legal entity.

It is proposed that there will be a contract between the Department on behalf of the Commonwealth and the NRS provider, for the provision of the NRS.”⁸

The SoR does envisage that the single successful NRS provider will be permitted to use subcontractors to provide the outreach program (but not the call relay service component of the NRS⁹). While this would have the effect of allowing for two different providers for each component of the NRS it is not necessary to amend the legislation to achieve this result which is permissible under the legislation as it stands. In these circumstances, the amendment of the legislation is not justified by this rationale.

It is, however, necessary to amend the legislation to allow for a transition period in the event that another provider is successful in the tender process.

Whether the Department's contemplation of a change of provider is likely to lead to an ‘efficient, effective and ethical’ use (proper use) of Commonwealth resource, as required by section 44 of the *Financial Management and Accountability Act 1997* (the FMA Act), is an open question. While it is common practice, and in accordance with the Commonwealth Procurement Guidelines,¹⁰ to use a tender process to select service providers, it is not necessary in all cases. The proper use of Commonwealth resources is the overriding consideration.

In a situation in which:

- the NRS is a critical service, especially in relation to emergency calls

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- the current provider has generally performed well (as to which, see below),
- service level problems with the existing provider could be dealt in a new contract; and in the annual NRS plan which must be prepared by the provider; and
- there are no other local providers presently providing a similar relay service (there is only one NRS), although as the Allen Consulting Group noted in its report (see below) there are viable alternative suppliers of the NRS;

it is at least questionable whether proper use would be made of Commonwealth resources and whether the interest of NRS users are likely to be best served by a competitive tendering process.

Published reports on NRS

To shed some light upon the earlier comment on the performance of the current provider the following a very brief survey of publicly available reports about the NRS—and ACE in particular—is provided. Some of these canvass the views of interest groups.

At least five publicly available reports and discussion papers deal with the provision of the NRS.

Telecommunications Services Enquiry 2000 & Regional Telecommunications Services Enquiry 2002

Two reports dealing with telecommunications generally touched on the provision of the NRS. The Report of the Telecommunications Services Enquiry in 2000 ('the Besley Report')¹¹ was followed by the Report of Enquiry into Regional Telecommunications service in 2002 ('the Estens Report')¹². To the extent that these reports were relevant to the provision of the NRS, they made the following observations:

- the Besley Report recommended that a training program for users of TTY machines be incorporated into the NRS.¹³
- the Estens Report noted the Government's positive response to the Besley recommendation and the efforts that had been made by the Department to develop a new framework for TTY training. This included the successful negotiation with ACE to undertake the training function.

HREOC Report 2003

A report commissioned by the Human Rights and Equal Opportunity Commission was released in 2003.¹⁴ While the report deals at great length with telecommunications services for the disabled, there is little critical discussion about the provision of the NRS by ACE. The report does, however, note that;

“The National Relay Service is highly regarded in Australia, and ACE has clearly developed a great deal of technical expertise and empathy with consumers. ACE has

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

been a regular contributor to telecommunications inquiries, raising important issues: any-to-any text connectivity, disability equipment programs, emergency access, and mobile access denied.”¹⁵

Allen Consulting Report – reported performance of ACE 2003

In 2002 DCiTA commissioned the Allen Consulting Group (“ACG”) to conduct an evaluation of the NRS and the current provider, ACE. NRS users and stakeholders were involved in this evaluation. The full ACG report is not publicly available but the summary is generally favourable.¹⁶ The report notes that;

Stakeholders consulted were of the opinion that ACE has delivered a generally good service, with significant improvements in some areas. ACE has, on the whole, had a sound compliance record across the period from 1998-99 to 2001-02. There are however, specific areas where compliance could be improved, namely call blockage (the number of calls that receive a busy signal) and Outreach (a required program that promotes NRS services and provides information and training for current and potential users of the service).

In relation to the outreach program, the Report notes that:

Of all aspects of the NRS examined in this evaluation, the outreach program has attracted the most comment from stakeholders. While most are generally satisfied with the quality of the Outreach activities undertaken by the NRS Provider, they think more could be done.

One way of improving outcomes may be for Outreach funds to be separated from the call minute rate funding used for other aspects of the service. This change may improve transparency and provide an opportunity for NRSCC members to be more fully engaged in advising and commenting on more effective ways to market the NRS more widely.

In relation to the existence of possible alternative suppliers, the Report notes;

It is important to understand that the process of assessing the requirements (or indeed testing the market) for an alternative supplier of the NRS involves more than just identifying individual firms with particular capabilities. Given the importance of the NRS, the process needs to be carefully managed to ensure the potential risks associated with shifting from an existing supplier to a new supplier are minimised.

Alternative Suppliers

...

An examination of possible alternative suppliers in the current marketplace indicated that there are viable alternative suppliers of the NRS.¹⁸

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Australian Communications Authority – NRS performance review

The Australian Communications Authority monitors the performance of the NRS provider and is required to report after the end of each financial year. In its first published report after the ACG report was released, for the 2002/2003 financial year, the ACA reported that for the year 2002/2003;

ACE met all five of the service performance standards and nine of the ten Community outreach program performance indicators. The overall result represents an improvement on the performance achieved in 2001–02, when ACE met four of five performance standards and 11 of 16 Community outreach program performance indicators.

This was the most recent report tabled in Parliament. On the basis of past patterns, the report for the 2003/2004 year can be expected to be tabled during the March 2005 sitting period.

Main Provisions

The Bill proposes to amend the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('the Act'). In general terms, the amendments change all of the expressions which state or imply that there is only one NRS provider and only one contract.

Schedule 1, Part 1 – Amendments commencing on Royal Assent

Under Item 1 of the Bill, the definition of "NRS contract" is amended to permit a part of the NRS to be provided under a contract. This will allow for the possibility that different parts of the NRS may be provided by different providers. Currently, it is implicit that there can be only one contract for the whole of the NRS. Similarly, Item 2 amends the definition of "NRS provider" to recognise that a provider may provide a part of the NRS. Currently, it is implicit that a single NRS provider will provide the whole of the NRS.

Items 3, 4, 5, 6 and 8 make minor amendments to clarify that that the NRS may be provided by more than one provider. Item 7 corrects a minor error in the name of some legislation.

Schedule 1, Part 2 – Amendments consequential on the Financial Framework Legislation Amendment Act 2005

Item 9 makes the same minor amendment as Item 8 in Part 1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Concluding Comments

It is unusual for government procurement choices to be constrained by legislation in the way that the Act does presently. However, it is explicable by the fact that, at the time of commencement of the Act, ACE was already providing the NRS and simply continued to do so. The legislation simply described the existing state of affairs. Furthermore, at the time that ACE was originally engaged, the NRS did not include the training function which is the major part of the outreach program. This was included later in response to the recommendations of the Besley Enquiry. Therefore, at the time of the drafting of the original provisions of the Act, there would have been no need to allow for the division of NRS services amongst different providers.

On their face, these amendments are uncontroversial. Both reasons given for the amendments – to allow for a transition period and to allow for the engagement of more than one provider—are sound. However, it would appear that the Department does not, in fact, intend to engage more than one provider for the NRS. While there is still a need for the amendments to allow for the concurrent operation of two providers during any transition period the implication of this is that the advantages of these amendments will be realised only if a new provider selected.

In the case of a critical outsourced service such as NRS, Parliament may wish to consider whether the process of selecting – and the engagement of – a new provider through a competitive tendering process is an efficient, effective and ethical use of Commonwealth resources as required by the FMA Act. The current provider has been the subject of generally favourable reports and is the only established local provider of such a service (simply because there is only one NRS) and any service level issues with that provider could be dealt with in the new contract and yearly NRS plans.

While the amendments seem, on their face, to be uncontroversial, the practical implementation of them in the manner which seems apparent from the Departments draft statement of requirement may not lead to the same conclusion.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Endnotes

- 1 See, for example, section 94 definition of “NRS provider” and “NRS contract”.
- 2 Telecommunications Services Enquiry, *Connecting Australia* (Besley M.A., Chairman) Department of Communications, Information Technology and the Arts, Canberra, 2000.
- 3 http://www.dcita.gov.au/tel/access_for_people_with_disabilities/national_relay_service_-_draft_statement_of_requirement
- 5 Mr Stephen Smith, Second Reading Speech: Telecommunications (Consumer Protection and Service Standards) Amendment (National Relay Service) Bill 2005, House of Representatives, *Debates*, 16 March 2005, pp 75–76.
- 6 NRS draft statement of requirement
- 7 *ibid.*, paragraph 3, page 11 SoR.
- 8 *ibid.*, subparagraph 3.1.1 page 11.
- 9 *ibid.*, subparagraph 3.1.2, page 12.
- 10 http://www.finance.gov.au/ctc/commonwealth_procurement_guide.html
- 11 http://www.telinquiry.gov.au/final_report.html
- 12 <http://www.telinquiry.gov.au/rti-report.html>
- 13 Besley, *op. cit.*, p182.
- 14 Human Rights and Equal Opportunity Commission, “*When the Tide Comes In: Towards Accessible Telecommunications For people with Disabilities In Australia*” ,discussion paper prepared by Jolley W, Human Rights and Equal Opportunity Commission, June 2003.
- 15 *ibid.*, page 99.
- 16 Department of Communications, Information Technology and the Arts, Summary of the Report on the Evaluation of the National Relay Service, report prepared by Allen Consulting Group, Canberra 2002; available at:
http://www.dcita.gov.au/__data/assets/pdf_file/8356/Detailed_Summary.pdf
- 18 *ibid.*, p. 6.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.