



## Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005

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## **Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005**

**Date Introduced:** 7 September 2005

**House:** House of Representatives

**Portfolio:** Communications, Information Technology and the Arts

**Commencement:** Sections 1 to 3 will commence on the day that the Act receives Royal Assent. Schedule 1 will commence the day after the Act receives Royal Assent. Schedule 2 commences retrospectively on 30 June 1998.

### **Purpose**

The purpose of the *Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005* ('Bill') is to allow for the costs incurred by industry bodies in developing consumer-related industry codes of practice in the telecommunications industry to be recouped from all licensed telecommunication carriers.

### **Background**

The Bill is part of a suite of legislation introduced to facilitate the sale of the Government's remaining share in Telstra.

#### **Telecommunication industry codes and standards**

Part 6 of the *Telecommunications Act 1997* provides for the development of industry codes for the telecommunication industry by bodies and associations representing sections of the industry.

Industry codes may be registered with the Australian Communications and Media Authority ('ACMA'). Compliance with industry codes is voluntary, unless a direction is given by the ACMA for industry participants to comply with the code.

In the absence of an industry code, or where a code is deficient, the ACMA may develop an industry standard. Compliance with an industry standard is mandatory.

#### **Basis of policy commitment**

Schedule 3 of the *Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005* inserts new provisions into the *Telecommunications Act 1997* to provide for industry groups to apply to the ACMA for reimbursement for the cost of

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developing industry codes. For further background please refer to the Bills Digest for the *Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005*.

The Bill amends the *Telecommunications (Carrier Licence Charges) Act 1997* ('*Carrier Licence Charges Act*') to provide for ACMA to recoup payments to the industry body from licensed telecommunications carriers, through the fees and charges set out in the Act.

### **Senate Committee inquiry into the performance of the telecommunications regulatory regime**

The Senate Environment, Communications, Information Technology and the Arts References Committee's recent report into the performance of the telecommunications regulatory regime heard criticism from a number of witnesses as to the problems associated with the development and enforcement of industry codes for the telecommunications industry, specifically the consumer protection aspects of codes. Those criticisms included:<sup>1</sup>

- that the regulatory regime relied far too heavily on self-regulation
- the process for code development "stretch and exhaust" the limited resources of relevant consumer organisations
- that the Australian Communications Authority (now the ACMA) and the Department of Communications, Information Technology and the Arts have been too reluctant to step in when the self regulatory process have failed
- that the codes are too complex and prescriptive and take too long to develop, and
- the low sign up rate to the codes by industry participants.

### **Other comments**

The Bill does not deal with—nor purport to deal with—most of the criticisms made by industry and consumer groups in representations made to the Senate Inquiry mentioned above.

An outcome of the Bill will be to impose costs on carriers which currently do not contribute to the cost of consumer code development. The Explanatory Memorandum notes that these bodies nonetheless 'reap the benefits of self-regulation'.<sup>2</sup> By their nature, however, consumer codes tend not to provide benefits to industry but rather impose responsibilities and obligations towards consumers. All industry participants will therefore be required to pay for a process for which they may not have the resources to contribute and which will, in all likelihood, result in additional regulatory obligations.

The Bill does not provide for charges to be collected for the purpose of funding the development of industry codes that are not consumer-related. The industry will continue to fund the development of these.

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## Main Provisions

### Schedule 1

**Item 1** provides that a written determination of the amount of the application charge for a telecommunications carrier licence will be a legislative instrument under the *Legislative Instruments Act 2003*.

**Item 2** provides that a written determination of the annual charge for a telecommunications carrier licence will be a legislative instrument under the *Legislative Instruments Act 2003*.

Section 15 of the *Carrier Licence Charges Act* limits the total charges to be imposed on carrier licences. The total charges imposed on a carrier licence must not exceed the sum of amounts set out in the written determinations listed in section 15.

**Item 3** adds to the list of amounts set out in written determinations in section 15 of the *Carrier Licence Charges Act* the amount determined by the ACMA, and set out in a written determination, to reimburse industry bodies for the costs of developing consumer-related industry codes.

**Item 5** deletes from the list in section 15 of the *Carrier Licence Charges Act* the amounts which are the proportion of the Commonwealth's costs for the previous financial year attributable to administering industry development plans. The requirement on carriers to have industry development plans is being abolished by the *Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005*.

**Item 6** provides that an instrument for the purposes of limiting the total charges imposed on carrier licensees will be a legislative instrument under the *Legislative Instruments Act 2003*.

**Items 7, 8 and 9** make minor amendments.

**Item 10** sets out the conditions for when the amendments in the Bill necessary to effect the deletion proposed in item 5 (namely items 4, 5, 6, 8 and 9 of the Bill) will apply. Essentially the amendments can apply in any financial year after the first financial year in which the Bill is past (see **item 10(2)(b)**).

## Concluding Comments

The legislation amends the *Carrier Licence Charges Act* to so that ACMA may recoup from telecommunications carrier licensees the costs incurred by industry bodies and associations for developing industry codes.

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At a time when the delivery of telecommunications services is in the spotlight this legislation does not seek to address any of the recent criticisms which have been levelled at the process of developing industry codes for the telecommunications industry.

## Endnotes

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- 1 Senate Environment, Communications, Information Technology and the Arts References Committee, *The Performance of the Australian Telecommunications Regulatory Regime*, August 2005, pp 143-145, URL: [http://www.aph.gov.au/Senate/committee/ecita\\_ctte/trr/report/report.pdf](http://www.aph.gov.au/Senate/committee/ecita_ctte/trr/report/report.pdf).
- 2 Explanatory Memorandum, p. 3.

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