



Telecommunications Legislation Amendment (Communications Fund) Bill 2008

Jonathan Chowns
Economics Section

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Telecommunications Legislation Amendment (Communications Fund) Bill 2008

Date introduced: 13 February 2008

House: House of Representatives

Portfolio: Broadband, Communications and the Digital Economy

Commencement: On the day after the Royal Assent

Links:

The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be found on BillsNet at <http://www.aph.gov.au/bills/>. Bills that have passed by both houses can be found under the 'Acts' link at <http://www.comlaw.gov.au/>.

Purpose

This Bill proposes to amend that part of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that concerns the Communications Fund. It will allow for the capital of the fund — and not just the income from it, as the legislation currently implies — to be applied to another purpose, the building of a national broadband network. This may be additional to the current purpose which is to fund the Government's response to the recommendations of [Regional Telecommunications Independent Review Committee](#) (RTIRC) which has yet to report. There are also provisions dealing with the legal mechanisms by which funds may be provided including equity contributions, loans, grants, direct asset purchases and acquisitions of units in trusts.

Background

The history of the Communications Fund is set out in detail in the [digest](#) for the Bill (now the Act) that set up the Communications Fund, the [Telecommunications Legislation Amendment \(Future Proofing and Other Measures\) Act 2005](#) ('the Communications Fund Act 2005') and in the [digest](#) for the [Bill](#) (now the Act) that amended it in 2007, the [Telecommunications Legislation Amendment \(Protecting Services for Rural and Regional Australia into the Future\) Act 2007](#) ('the Communications Fund Amending 2007 Act').

The short history is this: The Communications Fund is the creation of the previous Coalition government. It arose out of internal negotiations over the Commonwealth's sale of the 3rd and last tranche of Telstra shares. For the support of certain members of the Coalition for the passage of the enabling sale legislation, agreement was reached to set aside, out of the proceeds, \$2 billion from which income could be drawn to support broadband services in rural and regional Australia.

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As originally introduced, the Bill provided for funds of *up to \$2 billion* to be credited to the Communications Fund Account but a Government amendment saw a reversion to the original proposal for a fund of at least \$2 billion.

The purpose of the Communications Fund was to generate income to fund the Government's response to the recommendations of the [Regional Telecommunications Independent Review Committee](#) (the Committee). The formation of the Committee was provided for in the same Bill which provided that the first review should commence before the end of 2008.¹ The founding legislation was given Royal Assent on 23 September 2005² and membership of the Committee announced on 13 August 2007 by the previous Government³.

The ALP 2007 election platform included an undertaking to provide funds of \$4.7 billion towards a project to build a national fibre broadband network which would provide broadband access to 98% of the population. \$2 billion of the \$4.7 billion was expressed to be the amount in the Communications Fund. This would have been against the spirit, if not the express provisions, of the [2005 Act](#). In response, the previous Parliament passed the [2007 Act](#) which required the Minister 'to take all reasonable steps to ensure' that the balance of the Communications Fund did not fall below \$2 billion. This effectively prevented access to the initial capital of the fund for any purpose. Amongst other things, this Bill reverses this amendment.

What this Bill does

Broadly, the Bill does two things. First, it removes the requirement that was inserted by the [2007 Act](#) that required the Minister to take reasonable steps to keep the balance of the Communications Fund above \$2 billion. The effect of this amendment was either to restrict the use of the Communications Fund to the income generated by it or to require a period of accumulation to elapse before larger amounts could be drawn from it. By removing this requirement, all of the funds standing in the Communications Fund may be drawn upon at once for the permitted purposes.

The second significant change made by the Bill is to permit the use of the Communications Fund for another purpose; the creation of a national broadband network.

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1. Subsection 158P(3), *Telecommunications (Consumer Protection and Service Standards) Act 1999*
 2. http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=oldblst&Criteria=BILLS_LIST_ID:s24%3B
 3. http://www.minister.dcita.gov.au/coonan/media/media_releases/dr_bill_glasson_to_chair_regional_telco_review

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This may or may not overlap with the original purpose which was to fund the Government's response to the [Regional Telecommunications Independent Review Committee](#). This Committee is still conducting its inquiry, but it is possible that its recommendations may fit with the Government's plan for a national broadband network details of which are thin: Other than the [ALP broadband policy](#) there is no public information about the broadband plan that is not mere speculation. A tender process will be conducted early this year to find a firm to join with the Government in creating the network. No tender documents have been released at the time of writing.

The Bill also deals with the manner in which the Commonwealth may contribute money from the Communications Fund. The legal mechanism for implementing the plan will likely emerge as part of the tender process. Possibilities include partnership, unincorporated or incorporated joint venture, a trust, direct grants, loans or direct purchases of assets by the Commonwealth. This Bill allows for each of these possibilities.

Main provisions

Item 1 amends the simplified outline in existing section 158ZE to expand the purposes to which the money in the Communications Fund may be put to include 'purposes relating to the creation or development of a broadband telecommunications network.'

Items 2 to 6 insert definitions of new terms used in the Bill.

Item 7 expands the meaning of unit to include a unit in a unit trust.

Items 8 and 9 make non-substantive changes to **paragraphs 158ZI(1)(b) and (c)**.

Existing section 158ZH provides for the establishment of a Communications Fund Special Account (the Fund Account). **Item 10** of the Bill amends **subsection 158ZI** to extend the purposes to which the Fund Account may be put. Acquisitions of shares (**proposed paragraph (d)**), debentures (**proposed paragraph (e)**) and units in a unit trust (**proposed paragraph (f)**) in a company or unit trust that is, or will be, involved in the creation or development of a broadband network are permitted. Also permitted are grants for the creation or development of a broadband network (**proposed paragraph (g)**); grants relating to the supply of a broadband service; purchases of assets for a broadband network or purposes incidental to these purposes (**proposed paragraph (j)**).

Item 11 repeals existing **section 158ZJ** which required that the Fund Account be credited with \$2 billion. **Item 16** provides that the repeal of this section does not affect the credit made before the commencement of this Bill.

Item 12 repeals **section 158ZJA** which requires the Minister to take all reasonable steps to ensure that the balance of the Communications Fund exceeds \$2 billion. This was inserted in 2007 in order to protect the fund from the Labor Party's express election

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undertaking to use the capital of the fund to assist with the provision of a national broadband network.

Item 13 makes amendments to **section 158ZL** that are consequential upon the amendments made by **item 10**. Its effect is to require written agreements for the expanded range of grants of financial assistance, provided for by the amendments in item 10, to a State.

Item 14 makes amendments similar to **Item 13** — but to **section 158ZM** — that are consequential upon the amendments made by **Item 10**. Its effect is to require written agreements for the expanded range of grants of financial assistance, provided for by the amendments in item 10, to a person other than a State.

Item 15 inserts new **section 158ZNA**. **Proposed subsections (1), (2) and (3)** define the three kinds of securities that the Commonwealth may buy with monies from the Fund Account; ‘broadband network shares’, ‘broadband network debentures’ and ‘broadband network trust units’. It then provides that none of these securities is affected by Division 3 or section 39 of the [Financial Management and Accountability Act 1997](#). Division 3 deals generally with the management of investments in the Communications Fund. A distinction is therefore made between investments which the Fund Account holds in order to generate returns and securities that the Commonwealth may purchase in an entity that is involved in fulfilling the purposes of the Communications Fund. Section 39 of the [Financial Management and Accountability Act 1997](#) deals with the investment of public money and includes provisions are not appropriate for the intended purpose of the Communications Fund. The exclusion of section 39 is not novel; a similar provision applies to the [Future Fund](#), for example.

Concluding comments

This Bill is consistent with the election commitment of the Labor Party.

Nothing can be said about the relative merits of applying the Communications Fund to the recommendations of the [Regional Telecommunications Independent Review Committee](#) (RTIRC) or the Government’s national broadband network because, in the former case, the Committee has yet to report and in the latter case, no details are settled. However, it can be said that the original plan, under which only the earnings of the Communications Fund would be applied to rural, regional and remote communications problems, would have made available relatively small amounts annually in circumstances in which larger investments may have been required in those areas.

On the other hand, the Bill leaves open the possibility that the original focus on telecommunications in rural, regional and remote Australia will be abandoned. It is possible that the Communications Fund could be applied largely to a broadband network in areas not originally intended to be assisted by the Communications Fund. It is also

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possible that the Government may commit the entire Communications Fund to the national broadband network leaving nothing in the Fund for its response to the RTIRC.

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