

# CHAPTER 1

## INTRODUCTION

### Background

1.1 Telstra is one of Australia's largest corporations. It has about 68.2 per cent of Australia's telecommunications market.<sup>1</sup> In the 1997-98 financial year it had revenue of \$17.3 billion, profits after tax of over \$3 billion, and paid dividends of \$9 billion.<sup>2</sup>

1.2 Telstra is the descendent of Telecom, the public monopoly telecommunications provider created in 1975 by the break-up of the former Australian Postmaster General's Department. Telecom was corporatised in 1989. Telecom merged with the former Overseas Telecommunications Commission (OTC) in 1992; and it changed its name to Telstra in 1995 (in 1993 overseas). Full competition in telecommunications was introduced from 1 July 1997 with the *Telecommunications Act 1997* and related acts.

1.3 This is the Senate Committee's third inquiry into the privatisation of Telstra. In May 1996, the government introduced legislation to Parliament to sell one-third of the Commonwealth's equity in Telstra Corporation by means of a share float. The Bill was subsequently referred to the Senate Environment, Recreation, Communications and the Arts References Committee for inquiry. The References Committee conducted an Australia-wide inquiry between May and September 1996 and tabled its Report in the Senate on 9 September 1996. The issues relevant to the full privatisation of Telstra were canvassed extensively in that Report.<sup>3</sup> The Bill was passed, and the one-third sale proceeded in late 1997. It raised \$14.3 billion for the Commonwealth.<sup>4</sup>

1.4 On 15 March 1998, the Prime Minister, the Hon John Howard MP, announced that it was the intention of the government to seek a mandate at the next federal elections to sell the two-thirds share of Telstra that is currently government-owned. The Prime Minister committed the government to using the bulk of the proceeds from the sale to retire public debt.

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1 1998-1999 Telecommunications Strategies, p. 49

2 Telstra Corporation Ltd., *Annual Report 1998*, pp. 22, 28 and 29

3 Senate Environment, Recreation, Communications and the Arts References Committee. *Telstra: To Sell or not to Sell?* September 1996, Senate Environment, Recreation, Communications and the Arts Legislation Committee. *Telecommunications Bills Package 1996*, March 1997, Refer also to the Senate Economics References Committee. *Inquiry into Public Equity in the Telstra Corporation Ltd*, March 1997.

4 Submission No. 75 to the Senate Committee's May 1998 inquiry into the *Telstra (Transition to Full Private Ownership) Bill 1998*, p. 603 (Office of Asset Sales and Information Technology Outsourcing)

1.5 The first *Telstra (Transition to Full Private Ownership) Bill 1998* was introduced in the House of Representatives on 30 March 1998. On 1 April 1998 the Senate referred the Bill to the Environment, Recreation, Communications and the Arts Legislation Committee for inquiry and report. The Committee reported to the Senate on 26 May 1998 and made 8 recommendations (see Appendix 3). The Bill was put to the vote in the Senate on 11 July 1998 and was not passed.

1.6 Prior to the federal elections of 3 October 1998, the government announced that it was committed to a staged approach to any further privatisation of Telstra. It would first sell a further 16 per cent of its equity in Telstra. It committed itself to legislation to provide that until an independent inquiry certifies that Telstra's service levels are adequate, there would be no further sell down of the government's 51 per cent share.<sup>5</sup>

### **This Committee's Inquiry**

1.7 On 2 December 1998 the Senate referred the present *Telstra (Transition to Full Private Ownership Bill) 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendment Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the *NRS Levy Imposition Amendment Bill 1998* to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 15 February 1999. On 15 February 1999, the reporting date was extended to 18 February 1999 by resolution of the Senate. The Senate subsequently extended the reporting date to 8 March 1999.

1.8 The inquiry was advertised in all State major newspapers and in the *Week-End Australian* of Saturday 12 December 1998. The inquiry was also advertised on the Internet. The Committee received 27 submissions and these are listed at Appendix 1.

1.9 The Committee examined 30 witnesses at two public hearings in Canberra (3 February 1999 and 16 February 1999). Details of witnesses who appeared at the public hearings are listed in Appendix 2.

1.10 The Committee expresses its appreciation to all those who made submissions and gave evidence to the inquiry.

### *Submissions*

1.11 There was no substantial opposition in submissions to the further privatisation of Telstra. The majority of submissions were not concerned with the issue of ownership. Rather they concentrated on consumer service issues such as the Universal Service Obligation, the Customer Service Guarantee and on the level of competition in the industry.

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5 Liberal Party of Australia and National Party of Australia, *Communications: Making Australia Stronger*, [Coalition policy statement], September 1998

1.12 The majority of submissions with a shared viewpoint (6) came from Telstra's competitors, Optus, AAPT, Vodafone, Macquarie Corporate Telecommunications and Hutchison Ltd and from the Australian Telecommunications Users Group (ATUG). They shared concerns regarding the regulatory powers of the (Australian Competition and Consumer Commission) ACCC, particularly in what they perceived to be excessive delay in reaching decisions about possible anti-competitive conduct by Telstra. They all requested amendments to Part X1B of the *Trade Practices Act 1974* to curb what they see as Telstra's anti-competitive behaviour.

1.13 They were also concerned about the size of Telstra's Universal Service Obligation (USO) claim for 1997/98 (\$1.8 billion compared with \$252 million the previous year) and suggested various approaches to deal with this problem, including amendments to the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* to allow for "improved" methods of assessment of the USO losses.

1.14 Only three submissions opposed the further sale of Telstra on the grounds that a fully privatised Telstra will look after shareholder interests to the detriment of consumers. They came from the Communications Electrical Plumbing Union (CEPU), the Consumer's Telecommunications Network (CTN) and Professor John Quiggin, who referred the Committee to his submission to the May 1998 inquiry into the full privatisation of Telstra. They argued that quality of service has already suffered under partial privatisation, and the CEPU also had concerns about the impact of outsourcing.

1.15 The Committee received 4 submissions from individuals concerned about quality of service issues. Amongst other submissions, the Telecommunications and Disability Consumer Representation Project expressed concern about the lack of access to new telecommunications technologies for people with disabilities.

1.16 The Committee notes that over a quarter of the submissions received came from Western Australia (five submissions, including one from the Western Australian State government) and South Australia (two submissions, including one from the South Australian State government). Those submissions expressed the concern of people in regional and more remote parts of Australia for equality of access to a reasonable level of telecommunications services and to new telecommunications technologies.

1.17 The Committee supports the process of full privatisation of Telstra. No substantial arguments to the contrary were presented to the Committee during its inquiry. The majority of submissions were not concerned with the issue of ownership of Telstra but concerned with the issues of the provision of Universal Service Obligation (USO) services and of the effectiveness of the competitive regime.

1.18 The Committee notes that there was support for the government's proposal to put the USO to tender from a majority of witnesses including from the National Farmers' Federation and from all major industry players such as Optus, AAPT and Vodafone, Macquarie Corporate and Hutchison Telecommunications.

## Benefits of Privatisation

1.19 The Department of Communications, Information Technology and the Arts stated in its submission to the Committee that:

Completing the privatisation of Telstra is a logical extension of the Government's policy objectives in privatising one third of the company. The arguments for selling the rest of the Commonwealth's equity are substantially the same as those relating to partial privatisation, including the beneficial effect on Telstra's performance of market disciplines imposed by investors' scrutiny and changes in the share price; maximising Telstra's capacity to access capital in the private market; moving shareholder risk to private shareholders; and enabling the retirement of significant amounts of public debt at the same time providing some funding for communications infrastructure and environment protection enhancement projects.<sup>6</sup>

1.20 In the Explanatory Memorandum to the *Telstra (Transition to Full Private Ownership) Bill 1998*, the government made it clear that, in its view, part privatisation has many drawbacks:

The drawbacks of this arrangement are that the Government would have to continue to balance both regulatory and shareholder objectives in addressing telecommunications policy. Telstra would continue to be governed by a regime which seeks to emphasise competitive neutrality on the regulatory side, but also requires specific additional governance and reporting requirements related to public ownership.

...The community, private shareholders, business analysts, Parliamentarians and Telstra management would continue to have difficulty in discerning the differences between the roles of Government as a majority owner of Telstra and regulator of the telecommunications industry. Members of the public, in particular, would continue to have difficulty in accepting that majority ownership does not equate to Ministerial control of the management of day-to-day operations of Telstra.

In short it would tend to maintain the impression that Commonwealth ownership directly influences the price, quality and range of services provided. The phased approach to full private ownership is intended to allay fears that privatisation will lead to service decline by introducing change on a graduated basis, but the confusion of roles will continue for so long as the Commonwealth is an owner.<sup>7</sup>

1.21 The Explanatory Memorandum also stresses that continued part government ownership of Telstra would act as a barrier to the development of the company:

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<sup>6</sup> Submission no. 10, p 1 (Department of Communications, Information Technology and the Arts—DOCITA)

<sup>7</sup> *Telstra (Transition to Full Private Ownership) Bill 1998*, Explanatory Memorandum, p 7

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Telstra would be constrained in its ability to raise new capital through equity (no Government will want to pay two-thirds of a call on shareholders). It may also be constrained in forming strategic alliances and may find itself retrained from entering potentially lucrative ventures.

1.22 Telstra also picked up on those themes in its submission, arguing that full privatisation would enable it to move forward more strongly focused on meeting competition from global communications companies (for example by raising new capital). Other benefits mentioned included the resolution of the perceived conflict with the government's dual role as part owner of Telstra, and as the telecommunications industry regulator.<sup>8</sup>

Further privatisation would allow Telstra to compete more effectively against the well resourced, global communications companies now operating in Australia. These companies are experienced operators in a variety of markets and regulatory regimes all around the world. Further privatisation would also give us better access to capital, markets and technology, and provide us with increased opportunity to become a more significant competitor in the global communications market, including being able to strategically partner with other companies in pursuit of our commercial objectives.<sup>9</sup>

### **The Bills**

1.23 *The Telstra (Transition to Full Private Ownership) Bill 1998* is part of a package of bills that have all been referred to the Committee. The *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the (National Relay Service) *NRS Levy Imposition Amendment Bill 1998* are consequential bills. They make minor amendments to the *Telecommunications (Universal Service Levy) Act 1997* and to the *NRS Levy Imposition Act 1998*. The bills make no changes to the delivery or terms of the Universal Service Obligation (USO) or to the National Relay Service. The provisions contained in those two bills have not been raised in any submission to this Committee's inquiry and they will not be further discussed in this report.

1.24 Submissions have concentrated instead on the provisions contained in the *Telstra (Transition to Full Private Ownership) Bill 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* and the *Telecommunications Legislation Amendment Bill 1998*. A brief outline of the main provisions in each of the 3 bills that have been the focus of the Committee's inquiry follows:

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<sup>8</sup> Submission no. 21, p 6 (Telstra)

<sup>9</sup> Evidence, 16 February 1999, p. 2

*Telstra (Transition to Full Private Ownership) Bill 1998*

1.25 The bill provides for the Commonwealth to sell up to 49.9 per cent of its equity in Telstra. However it must retain 50.1 per cent equity until certain conditions have been met.

- Sale of the Commonwealth's remaining 50.1 per cent equity can only occur after an independent inquiry into Telstra's performance finds that Telstra has met "prescribed criteria" for a designated period of at least 6 months and after the inquiry has given a written certificate to that effect to the Minister. The certificate is to be published in the Commonwealth Gazette before sale can occur. It must also be tabled in both Houses of Parliament.
- The "prescribed criteria" against which Telstra's performance is to be assessed are to be set out in regulations (disallowable by either House of Parliament) which are to be made within 18 months of the Bill becoming law.
- The Ministerial power of direction under section 9 of the *Telstra Corporation Act 1991* will be repealed when Commonwealth ownership falls below 50%.

1.26 The proceeds from the sale are to be used to:

- Increase funding (by \$250 million) under *Natural Heritage Trust of Australia Act 1997*;
- Make \$70 million available to establish Rural Transaction Centres in country towns;
- Allocate \$150 million to provide untimed local calls in extended zones (and abolish Telstra's pastoral call rate) and upgrade the telecommunications network in remote Australia.
- An additional \$81 million over three years will be provided to the Regional Telecommunications Infrastructure Fund (RTIF) including enhancing telecommunications to remote islands such as Cocos, Norfolk, King, Flinders Kangaroo and other Islands and the Australian Antarctic Territories;
- Provide 100 per cent continuous mobile phone coverage on key major national highways. (\$25 million) and
  - Allocate \$120 million to a Television Fund which will be used to extend SBS television transmission to areas with more than 10,000 people.

*Telecommunications (Consumer Protection and Service Standards) Bill 1998*

1.27 This Bill brings together existing consumer protection measures and, as noted by the Department of Communications, Information Technology and the Arts in its submission, it also adds new powers in relation to compliance with consumer safeguards: These are that:

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- (a) The Minister will have the power to direct Telstra to take specific action to ensure that it complies with the Act (Part 10, clause 159). This power will remain irrespective of the level of commonwealth ownership in the future.
  - (b) The Australian Communications Authority (ACA) will be given the power (Part 5, clause 118) to direct a telephone company to redress systemic problems in relation to the Customer Service Guarantee (penalty for non compliance will be up to \$10 million). This will enable the ACA to look proactively into systemic problems (eg. consistent faults in a particular geographic area) and direct a Carriage Service Provider (CSP) about the things it should do to ensure those problems do not recur.
  - (c) Subclause 128(3) will make it clear that there is only one Telecommunications Industry Ombudsman (TIO) scheme.
  - (d) Subclause 155(3) will clarify that price control arrangements can include charges for untimed local calls in regional areas.
  - (e) Subclause 155(4) will allow different price control arrangements to apply to different customers in relation to one type of Telstra service charge.
  - (f) Subclause 155(5) will require Telstra to comply with any determination setting out price control arrangements.<sup>10</sup>

1.28 Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Bill 1998* (the Consumer Bill) re-enacts Part 7 of the *Telecommunications Act 1997* and relates to the universal service regime designed to ensure that all people in Australia, wherever they reside or carry on business, have reasonable access to standard telephone services, payphones and other prescribed services.

1.29 Part 3 relates to the National Relay Service and Part 4 continues the requirement on Carriage Service Providers to give customers an untimed local call option and adds a scheme to give comparable benefits to remote customers who do not have that access (in the form of a rebate of up to \$160 per annum).

1.30 Part 5 of the Consumer Bill continues the operation of the Consumer Service Guarantee but expands the powers of the ACA as described in paragraph 1.27 (b) above.

1.31 Part 6 continues the operation of the Telecommunications Industry Ombudsman (TIO) scheme and Part 7 provides protection to residential customers from losing pre-paid monies if their Carriage Service provider becomes insolvent or fails to provide a service.

1.32 Part 8 provides for reliable telephone access to Emergency Calls Services which is currently guaranteed under Part 12 of the *Telecommunications Act 1997*.

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10 Submission No. 10 (Department of Communications, Information Technology and the Arts), p 4

Telstra is the “emergency call person” designated by the ACA. However, multiple operators may be necessary to manage calls from teletypewriter machines and the ACA is revising arrangements made under subordinate legislation to this effect.

1.33 Part 9 covers the Price Control regime. At present, the cap on untimed local calls extends to 30 June 1999 and is currently being reviewed.

- The cap on main services (connection & line rental charges, charges for mobile services, trunk & international calls) also extends to 30 June 1999. Telstra is required to reduce its standard price for rental services and trunk and international calls by 1 per cent in real terms each year. It is also required to reduce prices for main services by 7.5 per cent each year in real terms.<sup>11</sup>

1.34 As mentioned earlier, Part 10 of the Consumer Bill deals with various matters including giving the Minister a power to direct Telstra to comply with this Bill.

#### *Telecommunications Legislation Amendment Bill 1998*

1.35 This Bill adjusts the telecommunications specific competition regulation provisions contained in parts X1B and X1C of the *Trade Practices Act 1974*, and provisions of the *Telecommunications Act 1997*. It strengthens the ACCC’s powers to regulate and enhance competition and the ACA’s powers to enhance consumer safeguards.

1.36 In response to this Senate Committee’s recommendations on the earlier Telstra sale bill (May 1998), the Bill provides for the ACA to make a determination to require Carriage Service providers to give customers specified information about the terms and conditions on which goods and services are supplied and information about the Customer Service Guarantee.

1.37 The Bill enables the ACCC to disclose or require disclosure of information it requires to be kept under record keeping rules made under Division 6 of Part X1B of the *Trade Practices Act 1974*. The Bill also enables parties other than the ACCC to seek injunctive relief in regard to a breach of the competition rule contained in Part X1B of the *Trade Practices Act 1974* whether or not a competition notice has been issued in regard to the conduct (proposed item 26 of Schedule 1 to the Bill).

1.38 It provides persons with the right to initiate court action for a breach of the competition rule where the person disagrees with an ACCC decision not to issue a notice or where the ACCC is taking too much time in the person’s view.

1.39 The Bill contains an amendment to extend the ACCC’s information gathering powers. The amendment is designed to ensure that information obtained under the rules is treated as “protected Part X1B and X1C information” for the purposes of s. 155 (proposed item 40 of Schedule 1).

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11 Submission No.10 (DOCITA) p. 21-22



1.40 Under the current legislation, the ACCC is also able to make record-keeping rules for specified carriers and CSPs (Part 5, Division 5). The Amendment Bill contains significant amendments (proposed items 6 to 25, 27 and 28 of Schedule 1 to the Bill) to the legislation which broaden the scope of the current record-keeping rule provisions by enabling rules to relate to the operation of Parts XIB and XIC of the *Trade Practices Act 1974* and Part 6 of the *Telstra Corporation Act 1991* rather than simply in relation to the performance of an ACCC function or an exercise of an ACCC power conferred under those provisions.

1.41 Other amendments enable the ACCC to require carriers or carriage service providers to prepare reports on information kept pursuant to the record keeping rules and to disclose information provided in reports prepared pursuant to record-keeping rules to the public or specified persons.

1.42 The legislation clarifies that Telstra is required to comply with any price control arrangements determined by the Minister. Compliance with the *Telecommunications Act 1997* and with the amendments in this Bill (including subclause 158(4)) is a standard carrier licence condition. In addition, the Bill requires the ACCC to monitor and report on compliance by Telstra and universal service providers with price control arrangements applying to them, in addition to its general function of monitoring and reporting of charges paid by consumers (proposed item 29 of Schedule 1 to the Bill).

1.43 The Committee notes that the *Telecommunications Legislation Amendment Bill 1998* includes the following provisions recommended by the Committee, in its May 1998 report into the earlier *Telstra (Transition to Full Private Ownership) Bill 1998*. These include:

- greater transparency of Telstra's costs in relation to negotiations over cost based pricing of access to telecommunications infrastructure and
- the right to initiate court action for a breach of the competition rule where the person disagrees with an ACCC decision not to issue a notice or where the ACCC is taking too much time in the person's view.

1.44 The *Telecommunications (Consumer Protection and Service Standards) Bill 1998* provides for the opportunity for the Australian Communications Commission (ACA) to make a determination to require Carriage Service providers to give customers specified information about the terms and conditions on which goods and services are supplied and information about the customer service guarantee. This provision also stems from a recommendation of the Committee in its earlier report on this issue (see Appendix 3).