

CHAPTER ONE

INTRODUCTION

Background

1.1 The Telecommunications Legislation Amendment Bill 2000 (the Bill) was introduced into the Senate on 30 August 2000.¹ The Senate referred the provisions of the Bill to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee (Selection of Bills Committee Report No. 14 of 2000) on 6 September 2000. The Committee was originally required to report to the Senate by 3 October 2000 but this date was later extended to 8 November 2000² for reasons set out in paragraph 1.13.

The Bill

1.2 The purpose of the Bill is to establish safety net mechanisms for the management of electronic addressing, particularly Internet addressing, within the telecommunications regulatory framework.

1.3 The *Telecommunications Act 1997*, coupled with related legislative reforms, established a new telecommunications regulatory framework that commenced on 1 July 1997.³ Key elements of that framework were full and open competition, reinforced consumer protection arrangements and reformed technical regulation. The changes implemented by the 1997 legislative package promoted a significant degree of self-regulation by the industry that was to be tempered by appropriate safeguards administered by the Australian Communications Authority (the ACA) and the Australian Competition and Consumer Commission (the ACCC).⁴

1.4 While the Government remains committed to responsible self-regulatory management structures for the industry, it has determined that appropriate safety net provisions are required in relation to the management of electronic addressing. In his second reading speech, Senator the Honourable Chris Ellison highlighted the need to safeguard the public interest in the management of electronic addressing services especially given their significance in terms of commercial entry into the information technology environment:

1 Senate, *Official Hansard*, 30 August 2000, p. 15547, per the Special Minister of State, Senator the Honourable Chris Ellison

2 Senate, *Official Hansard*, 3 October 2000, p. 17687, per Senator Coonan

3 The telecommunications legislative package comprised the Telecommunications Bill and eleven related bills: House of Representatives, *Official Hansard*, 5 December 1996, p. 7799 per the Minister for Sport, Territories and Local Government and Minister Assisting the Prime Minister for the Sydney 2000 Games, the Honourable Mr Warwick Smith

4 House of Representatives, *Official Hansard*, 5 December 1996, p. 7799 per the Minister for Sport, Territories and Local Government and Minister Assisting the Prime Minister for the Sydney 2000 Games, the Honourable Mr Warwick Smith. See also A. J. Shaw, Chairman ACA, *The Australian Communications Authority and the New Regulatory Environment*, Telecommunication Journal of Australia, Vol. 47, No 3, 1997, p. 37

Electronic addressing services have become a crucial element of national infrastructure. The registration of a domain name is now a gateway to e commerce for many Australian businesses, and crucial to the branding of an online presence.

As these services are a public asset, it is important that they are managed in the public interest. The absence of an appropriate competitive environment, adequate consumer safeguards, or technical competence and efficiency could have negative flow-on effects for the development of the information economy in Australia.⁵

1.5 The Bill proposes to safeguard the public interest in relation to electronic addressing by clarifying the powers of the ACA and the ACCC. The first schedule of the Bill amends the *Telecommunications Act 1997* to clarify the situations in which it would be appropriate for the ACA and ACCC to intervene in the management of electronic addressing. The second schedule of the Bill amends the *Australian Communications Act 1997* to give the ACA responsibility for managing a specified kind of electronic addressing when instructed to do so by the Minister for Communications, Information Technology and the Arts.

Electronic addressing and self regulation

1.6 Although the term ‘electronic addressing’ is not legislatively defined, the *Explanatory Memorandum* to the Bill states that:

Electronic addressing is essentially a series of alphanumeric characters that enables a network to recognise the intended destination of a communication across the network, or to establish a connection between two or more points.⁶

1.7 The Internet domain name system (DNS) is an important form of electronic addressing. It was developed because the growth of the Internet made the central recording of host names in the USA unmanageable. The DNS serves as a distributed database so that the allocation of host names is distributed among naming authorities rather than being centralised.⁷ All computers have an Internet Protocol (IP) address which is a unique numerical code that identifies a computer’s location on the Internet network and domain names provide an entity with a unique name on the Internet. The DNS translates IP addresses into domain names and domain names into IP addresses:

The Domain Name System (DNS) service acts very much like a telephone company directory assistance service. It provides mapping between Internet “host” computer names and Internet addresses. Given a host name, it will look up and return a host address. ...

5 Senate, *Official Hansard*, 30 August 2000, p. 15547

6 *Explanatory Memorandum*, Telecommunications Legislation Amendment Bill 2000, p. 1. It also states that in Part 22 of the *Telecommunications Act 1997* which deals with electronic addressing and numbering in relation to carriage services, ‘numbering’ means any sequence of characters specified in the ACA’s numbering plan and ‘electronic addressing’ is any other sequence used in relation to communication by a carriage service not specified in the numbering plan.

7 AUNIC Registration Services, *The Australian Internet registration services, Configuring a Delegated Domain Name System*, <http://www.aunic.net/dns.html> (18/9/00), p. 1 of 8

The Domain Name System itself is a distributed database of domain names and Internet addresses. DNS translates names (for example, panther.wildcats.com) to IP addresses (for example, 205.1.2.3) and vice versa.⁸

1.8 The DNS arranges the structure of names on a hierarchical basis. Top level domains include both country/global (such as .au and .uk) and generic domains (such as .com, .net and .org). Second level domains include those ending with a country domain such as net.au, com.au gov.au as well as those ending with a generic domain such as ibm.com and olympics.com. Examples of a third level domain include aph.gov.au and telstra.com.au.

1.9 The administration and regulation of the .au namespace has moved from a single delegated authority towards regulation by a broadly-based industry body. Originally, the authority to administer the .au domain was delegated to Mr Robert Elz from the Melbourne University by the Internet Assigned Numbers Authority (IANA).⁹ IANA's functions have since been transferred to the Internet Corporation for Assigned Names and Numbers (ICANN).¹⁰ In 1996, Mr Elz sub-delegated the authority to administer the .com.au domain to Melbourne IT Ltd, a company which until recently was fully owned by the Melbourne University.¹¹ The .com.au domain enables commercial enterprises currently registered and trading in Australia to have an Internet address closely resembling their commercial name and it is therefore of considerable economic and public significance.¹² ICANN also accredited Melbourne IT (and others) as a registrar for top level domain names including .com, .org and .net. The .gov.au domain is administered by the Commonwealth Office of Government Online.

1.10 Significant developments reflecting the trend towards industry self-regulation for this part of Australia's communications infrastructure include:

- the Commonwealth Government's Agency, the National Office for the Information Economy (NOIE), agreed to assist in developing an effective Internet industry self-regulatory regime and to supervise the transfer of Mr Elz's delegation for the .au domain to a new self-regulating regime;¹³
- the establishment in 1999 of a non-profit company, auDA, as the industry's self-regulatory body;¹⁴ and

8 Tenon Intersystems, *WebTen User's Guide, Version 3.0, 1/2000*, Domain Name System, http://www.tenon.com/products/webTenUserGuide/12_DNS.html (18/09/00), p. 1 of 14

9 <http://www.iana.org/>

10 <http://www.icann.org/>

11 Internet Names Australia, *Company History*, <http://www.ina.com.au/about/history.html> (18/09/00), p. 1 of 1

12 Internet Names Australia, *Domain Name Allocation Policy*, <http://www.ina.com.au/register/names.html> (18/09/00), p. 1 of 5

13 The National Office for the Information Economy, *Reforming .au domain name administration, Project Overview*, http://www.noie.gov.au/projects/information_economy/domains_au/ (19/09/00), p. 1 of 3

14 auDA, *.au domain administration*, <http://www.auda.org.au> (19/09/00), p. 1 of 3. Before auDA is endorsed by the Government, it must meet certain objectives including that the self-regulatory regime has dispute resolution mechanisms: http://www.noie.gov.au/projects/information_economy/domains_au/

- the transfer of Mr Elz's authority to auDA for the management of the .com.au namespace.¹⁵

1.11 As mentioned above, the purpose of this Bill is to provide safety net mechanisms through the ACA and the ACCC in the event that self-regulation is ineffective.

Conduct of the inquiry

1.12 The Committee wrote to a range of interested and relevant individuals and organisations and placed advertisements on the Committee's web site on 8 September and in national newspapers on 12 and 13 September 2000 inviting submissions to the inquiry. The closing date for submissions was Friday 15 September 2000. In response, the Committee received 1 submission and this is listed as Submission No. 1 at Appendix A.

1.13 Committee members expressed concern that the inquiry's short timeframe had coincided with the Olympic Games and that this may have affected the capacity of some individuals and organisations to prepare appropriate responses. In order to be satisfied that all relevant concerns in relation to the Bill had been raised, the Committee requested that the Senate extend the time for reporting from 3 October 2000 to 8 November 2000.¹⁶ The Senate agreed to the request and the inquiry was re-advertised on the Committee's web site on 5 October 2000 and in national newspapers on 10 October 2000.

1.14 In response to the Committee's further efforts, another six submissions were received. These are listed at Appendix A as Submission Nos 2 - 7. A public hearing was held in Canberra on 30 October 2000. A list of witnesses is at Appendix B.

15 See the letter of transfer of authority at <http://www.ada.org.au/docs/letter-com.au>, p.1 of 1

16 Senate, *Official Hansard*, 3 October 2000, p. 17687, per Senator Coonan