

## **Terms of Reference**

On 6 September 2005, the Senate referred the following inquiry to the Environment, Communications, Information Technology and the Arts Legislation Committee for report by 12 September 2005.

- (1) The Telstra (Transition to Full Private Ownership) Bill 2005;

The Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005;

The provisions of the Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005;

The provisions of the Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005, and;

The provisions of the Appropriation (Regional Telecommunications Services) Bill 2005

to be referred at whatever stage the bills have reached at the end of the time available for the consideration of government business on 8 September 2005.

- (2) In examining the bills, the committee consider only the following issues:

(a) the operational separation of Telstra;

(b) the role of the Australian Competition and Consumer Commission (ACCC), including:

(i) the requirement that it consider the costs and risks of new infrastructure investment when making access decisions, and

(ii) streamlining the decision-making processes, including the capacity for the ACCC to make procedural rules;

(c) the role of the Australian Communications and Media Authority, including:

(i) the provision of additional enforcement powers,

(ii) improvement of the effectiveness of the telecommunications self-regulatory processes by encouraging greater consumer representation and participation in the development of industry codes; and

(d) the establishment of a perpetual \$2 billion Communications Fund.



# Table of Contents

|                                                                                                |            |
|------------------------------------------------------------------------------------------------|------------|
| <b>Committee Membership .....</b>                                                              | <b>iii</b> |
| <b>Terms of Reference .....</b>                                                                | <b>v</b>   |
| <b>Recommendations .....</b>                                                                   | <b>ix</b>  |
| <b>Abbreviations .....</b>                                                                     | <b>xi</b>  |
| <b>Chapter 1 - Background .....</b>                                                            | <b>1</b>   |
| Conduct of the inquiry .....                                                                   | 1          |
| Outline of the bills .....                                                                     | 2          |
| Acknowledgements .....                                                                         | 5          |
| Note on references in this report .....                                                        | 5          |
| <b>Chapter 2 - The Operational Separation of Telstra .....</b>                                 | <b>7</b>   |
| Comments on operational separation .....                                                       | 9          |
| The Committee's view .....                                                                     | 20         |
| <b>Chapter 3 - Other issues .....</b>                                                          | <b>23</b>  |
| The role of the ACCC .....                                                                     | 23         |
| The role of the Australian Communications and Media Authority .....                            | 29         |
| The proposed Communications Fund .....                                                         | 35         |
| <b>Labor Senators' dissenting report .....</b>                                                 | <b>41</b>  |
| Procedural failings of the inquiry .....                                                       | 41         |
| Identified failings: legislative short-comings identified during the hearings .....            | 43         |
| The Government's Operational Separation regime .....                                           | 47         |
| Conclusion .....                                                                               | 50         |
| <b>Australian Democrats minority report .....</b>                                              | <b>51</b>  |
| Full Privatisation of Telstra - Telstra (Transition to Full Private Ownership) Bill 2005 ..... | 53         |

|                                                                                                            |           |
|------------------------------------------------------------------------------------------------------------|-----------|
| Competition reform measures .....                                                                          | 59        |
| Consumer measures .....                                                                                    | 64        |
| Future proofing .....                                                                                      | 64        |
| Conclusion and recommendations .....                                                                       | 70        |
| <b>Appendix 1 - Submissions, Answers to Questions on Notice, Tabled Documents and Correspondence .....</b> | <b>73</b> |
| Answers to Questions on Notice .....                                                                       | 74        |
| Tabled Documents .....                                                                                     | 74        |
| Correspondence .....                                                                                       | 74        |
| <b>Appendix 2 - Public Hearing .....</b>                                                                   | <b>75</b> |
| Friday, 9 September 2005 – Canberra .....                                                                  | 75        |