

Chapter 1

Background

1.1 On 6 September 2005 the Senate resolved that the following bills and provisions of bills be referred to the Environment, Communications, Information Technology and the Arts Legislation Committee at whatever stage the bills had reached at the end of the time available for the consideration of government business on 8 September 2005:

- the Telstra (Transition to Full Private Ownership) Bill 2005 (the Telstra Bill);
- the Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005 (the Competition and Consumer Issues Bill);
- the provisions of the Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 (the Future Proofing Bill);
- the provisions of the Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005 (the Carrier Licence Charges Bill); and
- the provisions of the Appropriation (Regional Telecommunications Services) Bill 2005 (the Appropriation Bill).

1.2 In examining those bills, the Committee was to consider only selected issues, as set out in the terms of reference on page v., and was required to report by 12 September 2005. Three of the bills were introduced in the House of Representatives on 7 September 2005. The remaining two bills, the Telstra Bill and the Competition and Consumer Issues Bill, were introduced in the Senate on 8 September 2005.

Conduct of the inquiry

1.3 The Committee advertised the inquiry in *The Australian* on Thursday 8 September 2005, calling for submissions by Friday 9 September. In accordance with its usual practice, the Committee also directly contacted approximately fifty relevant organisations and individuals to invite submissions.

1.4 Submissions were received from 24 organisations and individuals, as listed in Appendix 1. While most of these submissions addressed the specific terms of reference as required, some canvassed broader issues which were beyond the Committee's consideration. The Committee also received correspondence from a small number of individuals voicing opposition to the inquiry timeframe and to the privatisation of Telstra, and has listed these in Appendix 1.

1.5 The Committee held a public hearing in Canberra on Friday, 9 September 2005, including a roundtable of stakeholders. Details of the public hearing are in Appendix 2.

Outline of the bills

The Telstra (Transition to Full Private Ownership) Bill 2005

1.6 The Telstra Bill amends the *Telstra Corporation Act 1991* to repeal provisions that require the Commonwealth to retain 50.1% of equity in Telstra, thus enabling the corporation to become fully privately owned. The Bill sets out arrangements for the conduct of the sale of the Commonwealth's remaining equity in Telstra.

1.7 The Committee notes that a previous bill to achieve this objective, the Telstra (Transition to Full Private Ownership) Bill 2003, was the subject of a previous committee inquiry and report.¹

1.8 Part 2 of Schedule 1 makes various consequential amendments to various Acts and regulations as a consequence of Telstra ceasing to be Commonwealth controlled. There are also various transitional provisions.

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

1.9 The Competition and Consumer Issues Bill provides for a number of measures, one of which is operational separation of Telstra. The aim of operational separation is to provide equivalence and transparency of Telstra's wholesale and retail operations.

1.10 The Bill also makes changes to the telecommunications regulatory regime. The aim is to enhance the regime's capacity to respond to market developments and emerging networks, and changing consumer needs. It is intended that the Bill will:

- increase investment certainty;
- improve the operation of telecommunications-specific anti-competitive conduct regulation and access regulation;
- enhance the capacity of the Australian Communications and Media Authority (ACMA) to respond to consumer interests;
- revoke the requirements for carriers to have industry development plans; and
- other minor amendments.²

1 Environment, Communications, Information Technology and the Arts Legislation Committee, *Provisions of the Telstra (Transition to Full Private Ownership) Bill 2003*, October 2003.

2 *Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005*, Explanatory Memorandum, p. 1.

The Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005

1.11 The Future Proofing Bill contains four schedules:

- Schedule 1 inserts a new Part 9C into the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act) to establish the \$2 billion Communications Fund. This fund will resource the Commonwealth Government's response to independent reviews of rural, remote and regional services;
- Schedule 2 inserts a new Part 9B in the TCPSS Act relating to regular reviews of regional telecommunications;
- Schedule 3 inserts a new Division 6A into Part 6 of the *Telecommunications Act 1997*, which will provide that industry bodies and associations that develop consumer-related industry codes can be reimbursed by the ACMA for their costs in developing these codes;³ and
- Schedule 4 amends the *Telstra Corporation Act 1991* to 'switch on' appropriations in sections 8AL, 8AS and 8BA of the *Telstra Corporation Act 1991* that will have been temporarily 'switched off' by the Telstra (Transition to Full Private Ownership) Bill 2005 for constitutional reasons.⁴

1.12 Schedule 2 allows for independent reviews, in order to assess the adequacy of telecommunications in regional, rural and remote areas of Australia. The Minister for Communications, Information Technology and the Arts (the Minister) will have the power to appoint an independent expert committee, the Regional Telecommunications Independent Review Committee (RTIRC). The RTIRC will undertake reviews and report its findings and recommendations to the Minister.

1.13 The Committee notes that Schedule 2 replaces the provisions of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005 (the Regular Reviews Bill),⁵ which was introduced into parliament earlier this year and was the subject of inquiry and report by this Committee in May 2005.⁶ In that report, the Committee made several recommendations to improve the operation of

3 See also the *Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005*.

4 *Explanatory Memorandum*, pp 2-3. Section 53 of the Constitution provides that a proposed law appropriating revenue or moneys shall not originate in the Senate.

5 See the Hon Peter McGauran MP, Minister for Agriculture, Fisheries and Forestry, *House of Representatives Hansard*, 7 September 2005, p. 3.

6 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Provisions of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005*, May 2005.

the Regular Reviews Bill. The Committee notes that several key recommendations have been implemented in Schedule 2.⁷

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

1.14 The Carrier Licence Charges Bill enables telecommunications industry bodies to recover costs incurred in the development of consumer-related industry codes of practice from all licensed telecommunication carriers.⁸

1.15 When enacted the Bill would:

- amend the *Telecommunications (Carrier Licence Charges) Act 1997* and the *Telecommunications (Carrier Licence Charges) Amendment Act 1998*;
- in combination with the Future Proofing Bill, enable the total amount of annual charges imposed on carrier licences to include an additional amount to reimburse industry bodies for costs incurred in developing consumer-related industry codes;
- complement Schedule 1 to the Competition and Consumer Issues Bill, which would remove the requirement for carriers to have a current industry development plan; and
- make minor changes to the *Telecommunications (Carrier Licence Charges) Act 1997* to mirror the *Legislative Instruments Act 2003* and remedy an error in an amendment to this Act.⁹

The Appropriation (Regional Telecommunications Services) Bill 2005

1.16 The Appropriation Bill appropriates sums out of the Consolidated Revenue Fund for the ordinary annual services of the Government in relation to regional telecommunications services and related purposes.¹⁰

7 In particular, Recommendation 1 (that the maximum period of the review cycle be reduced from five to three years) has been addressed in proposed subsection 158P(4); Recommendation 2 (that the Bill provide that the first review is to be conducted within two years of the Bill obtaining Royal Assent) has been addressed by proposed subsection 158P(3), which states that the first review must start before the end of 2008 or such earlier time as the Minister determines) and Recommendation 3 (that the membership of the RTIRC be restricted so that no more than one service provider can be represented) has been addressed by proposed subsection 158T(5), which excludes carriers or carriage service providers from the RTIRC.

8 Department of the Parliamentary Library, Bills Digest No. 41 2005-06, *The Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005*, 8 September 2005, p. 2.

9 *Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005, Explanatory Memorandum*, p. 2.

10 *Appropriation (Regional Telecommunications Services) Bill 2005*.

Acknowledgements

1.17 The Committee thanks all those who contributed to its inquiry by preparing submissions and by appearing at the hearing, including the roundtable, at short notice. The Committee also thanks all staff involved in this inquiry.

Note on references in this report

1.18 References in this report are to individual submissions as received by the Committee rather than a bound volume of submissions. References to Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

