

# Chapter 5

## Consumer issues

Existing consumer safeguards are based on the lowest common denominator, the standard telephone service, and this is no longer relevant to most small, micro and home based businesses and to a large proportion of residential consumers.<sup>1</sup>

I do not believe it is acceptable to have a data service in remote parts of our region where you can go and boil the jug and drink half the coffee before the data is downloaded.<sup>2</sup>

5.1 An important focus of this inquiry was the extent to which the current regulatory regime protects consumers. Specifically, the Committee was asked to inquire into the extent to which the Universal Service Obligation meets the increasing consumer demand for reasonable telecommunications services (paragraph 1(g)); whether consumer protection safeguards in the current regime provide effective and comprehensive protection for service users (paragraph 1(d)); and whether other changes could be made to the current regulatory regime to protect consumers (paragraph 1(k)).

5.2 As noted in Chapter 4, the Telecommunications Act provides that one of the main objects of the regulatory regime is to promote the 'long term interests of end users'.<sup>3</sup> However, there has been significant criticism in recent years from consumer groups such as the Australian Consumers' Association, which claims that there is a 'crisis of consumer confidence'<sup>4</sup> in the telecommunications market caused by the self-regulatory regime that has failed to protect consumers.<sup>5</sup>

5.3 This chapter looks at whether the consumer protection measures in the current regime are working, particularly in relation to whether Australians receive adequate and reasonable telecommunication services. The following issues are discussed in turn:

- the framework for consumer protection;
- the DCITA Review 2004;
- the Universal Service Regime;

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1 Mr Ewan Brown, SETEL, *Committee Hansard*, 11 April 2005, p. 50.

2 Mr Tom Warren, ODEC, *Committee Hansard*, 14 April 2005, p. 49.

3 Telecommunications Act, section 3.

4 Australian Consumers' Association submissions to Environment, Communications, Information Technology and the Arts References Committee 2002 Inquiry into the *Australian Telecommunications Network* and the Legislation Committee's 2003 Inquiry into the *Provisions of the Telstra (Transition to Full Private Ownership) Bill 2003*.

5 Australian Consumers' Association, *Submission 16*, p. 12.

- the Customer Service Guarantee (CSG);
- industry codes and standards;
- the Telecommunications Industry Ombudsman (TIO); and
- other issues.

### **The framework for consumer protection**

5.4 The framework for consumer protection in telecommunications matters has been described, in an understatement, as 'not elegantly ordered', due to:

... having to incorporate an accumulated pastiche of legislative obligations inherited from past licence obligations, general consumer protection laws, ministerial powers and new requirements to develop and adhere to industry-specific codes, within a regime whose policy is to promote 'the greatest practicable use of self-regulation'.<sup>6</sup>

5.5 A range of bodies has responsibilities in consumer issues, including:

- the ACA, which is responsible for registering industry codes and making industry standards, monitoring and reporting on consumer issues and public information;
- the ACCC, which administers the general consumer protection provisions of the TPA and has a role in price monitoring and reporting, as well as being required to be consulted about industry codes and standards;
- the Telecommunications Industry Ombudsman (TIO), an independent complaint-handling body;
- ACIF, the peak industry self-regulatory body which is primarily responsible for developing industry codes;
- the Telephone Information Services Standards Council (TISSC), which regulates Australian telecommunication services with the prefix 190 in relation to message content and advertising; and
- the Office of the Federal Privacy Commissioner, which must be consulted in the development of industry codes and standards concerning privacy issues.

### ***Universal Service Regime***

5.6 The universal service regime, set out in Part 2 of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* (the TCPSS Act), consists of the Universal Service Obligation (USO) and the Digital Data Service Obligation (DDSO). The regime is funded by an industry levy imposed under the *Telecommunications (Universal Service Levy) Act 1997*.

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6 Holly Raiche and Alasdair Grant, 'Consumer and Community Issues', *Australian Telecommunications Regulation* (3ed), Alasdair Grant (ed), UNSW Press, 2004, p. 240.

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*Universal Service Obligation*

5.7 The USO requires certain services to be provided by the Universal Service Provider, which is currently Telstra. The ACA has not approved any competing universal service providers to date. Telstra is compensated through the Universal Service Levy imposed on all carriers.

5.8 The USO ensures that all people in Australia, wherever they reside or carry on business, have reasonable access, on an equitable basis, to:

- (a) standard telephone services (STS);
- (b) payphones; and
- (c) prescribed carriage services (none have yet been prescribed).

5.9 The ACA defines the STS as the basic fixed telephone used to speak with people in other locations. Telephone companies are required to provide features which include access to:

- local, national and international calls;
- 24 hour access to the emergency call service number;
- operator assisted services;
- directory assistance; and
- itemised billing, including itemised local calls on request.<sup>7</sup>

5.10 As the Universal Service Provider, Telstra must supply a telephone service to places of residence and businesses upon request, including a suitable handset where requested. The service is subject to normal commercial charges and to government price caps where these apply. Comparable services must also be provided for people with disabilities (discussed further below). The USO does not include mobile services, the Internet or other enhanced telecommunications services.

5.11 Telstra is also obliged to have a policy statement and marketing plan, approved by the ACA, which outlines how Telstra intends to fulfil its obligations as the universal service provider, including its obligations to people with a disability, those with special needs and eligible priority customers.

5.12 A central object of the USO is that any losses resulting from supplying the required services will be compensated by subsidies determined by the Minister upon advice from the ACA.<sup>8</sup> USO subsidies are available for the supply of services in a universal service area up to three years in advance.

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7 ACA website, 31 May 2005, at:  
[http://www.aca.gov.au/consumer\\_info/fact\\_sheets/consumer\\_fact\\_sheets/fsc08.htm](http://www.aca.gov.au/consumer_info/fact_sheets/consumer_fact_sheets/fsc08.htm).

8 Subsidies are determined according to sections 16, 16A and 16B of the TCPSS Act.

### *Digital Data Service Obligation (DDSO)*

5.13 The DDSO is the obligation placed on a digital data service provider to ensure that digital data services are accessible, on an equitable basis, to all people in Australia, wherever they reside or carry on business. The DDSO consists of two obligations:

- the general DDSO for people in general digital data service areas (approximately 96% of the population); and
- the special DDSO for people in special digital data service areas (approximately 4% of the population, usually living or working at a distance of more than 4.5 kilometres from their local telephone exchange).

5.14 The special and general digital data service provider is obliged to have in place a special and a general digital data service plan that sets out how it will fulfil its obligations within each area.<sup>9</sup> Telstra is currently the sole digital data service provider.

5.15 Digital service is generally an ISDN service with a data transmission rate of 64 kbits per second, which is higher than generally available over the ordinary telephone network.<sup>10</sup>

### *Customer Service Guarantee*

5.16 Another consumer safeguard is the Customer Service Guarantee (CSG), an instrument of the *Telecommunications (Customer Service Guarantee) Standard 2004 (No. 1)*.<sup>11</sup> The object of the CSG Standard is to encourage improvements in service and guard against poor service.

5.17 The CSG is a legal requirement that all telephone service providers meet specified timeframes to connect services, repair reported faults and keep appointments, subject to limited exceptions. The CSG is designed to encourage improvements in services from carriage service providers, such as timeliness of supply and to safeguard residential and small business consumers against poor performance.<sup>12</sup>

5.18 Carriage service providers have an incentive to comply with the CSG Standard since compensation payments must be paid to customers if standards are not

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9 ACA website, 17 March 2005, at: [https://www.aca.gov.au/telcomm/universal\\_service\\_regime/universal\\_service\\_obligation/overview/usointro.htm](https://www.aca.gov.au/telcomm/universal_service_regime/universal_service_obligation/overview/usointro.htm).

10 ACA website, 20 June 2004, at: [https://www.aca.gov.au/consumer\\_info/fact\\_sheets/consumer\\_fact\\_sheets/fsc62.htm](https://www.aca.gov.au/consumer_info/fact_sheets/consumer_fact_sheets/fsc62.htm).

11 As amended by sections 115, 117 and 120 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

12 DCITA, *FAQ*, website, 5 May 2005 at: [http://www.dcita.gov.au/tel/faqs/consumer\\_rights\\_and\\_benefits/faq\\_-\\_telephone\\_service\\_consumer\\_safeguards\\_for\\_all\\_australians](http://www.dcita.gov.au/tel/faqs/consumer_rights_and_benefits/faq_-_telephone_service_consumer_safeguards_for_all_australians).

met, unless an exemption applies, for example, with the roll-out and development of some new services.<sup>13</sup> In cases of systemic breaches, the ACA can issue remedial directions.<sup>14</sup>

5.19 The CSG complements the USO by setting a standard for timely connection and repair of services that a primary universal service provider needs to maintain when fulfilling its minimal service obligation.<sup>15</sup>

### **DCITA Review 2004**

5.20 In late 2003, the Minister for Communications, Information Technology and the Arts asked DCITA to review and report<sup>16</sup> on the operation of the USO and the CSG, and whether the contestability regime and alternative telecommunications services had resulted in improved technologies and services for rural and remote Australia compared with metropolitan areas.<sup>17</sup>

### ***The CSG***

5.21 The DCITA review, released in April 2004, concluded that the CSG arrangement is 'currently promoting the objects of the Act' in that it has proven to be an 'effective mechanism for providing timely connection and repair of fixed telephone services across Australia'.<sup>18</sup> The review also stated that any adverse effects compliance has on competition and industry efficiency continue to be outweighed by benefits to consumers. The review concluded that no changes to the CSG Standard were required, but the situation should be monitored.<sup>19</sup>

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13 See below, and Ms Corbin, CTN, *Committee Hansard* 13 April 2005, p. 31.

14 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 199, website 5 May 2005, at: [http://www.dcita.gov.au/\\_\\_data/assets/pdf\\_file/10103/Review\\_of\\_the\\_Operation\\_of\\_the\\_Universal\\_Service\\_Obligation\\_and\\_Customer\\_Service\\_Guarantee.pdf](http://www.dcita.gov.au/__data/assets/pdf_file/10103/Review_of_the_Operation_of_the_Universal_Service_Obligation_and_Customer_Service_Guarantee.pdf).

15 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 200.

16 In accordance with section 159A of the TCPSS Act.

17 DCITA, *Universal Service Obligation and Customer Service Guarantee Review*, June 2004, accessed 17 April 2005, at: [http://www.dcita.gov.au/tel/fixed\\_telephone\\_services/industry\\_issues/the\\_universal\\_service\\_obligation\\_uso/universal\\_service\\_obligation\\_uso\\_and\\_customer\\_service\\_guarantee\\_review\\_csg/universal\\_service\\_obligation\\_and\\_customer\\_service\\_guarantee\\_review/contents/executive\\_summary](http://www.dcita.gov.au/tel/fixed_telephone_services/industry_issues/the_universal_service_obligation_uso/universal_service_obligation_uso_and_customer_service_guarantee_review_csg/universal_service_obligation_and_customer_service_guarantee_review/contents/executive_summary).

18 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 221.

19 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 221.

## ***The USO***

5.22 In relation to the USO, the DCITA review considered that the existing regulatory arrangements broadly met, but did not best promote, the objects of the Telecommunications Act and Part 2 of the TCPSS Act. The review stated that the primary obligations - that the STS and general digital and special digital data services are 'reasonably accessible to all people in Australia on an equitable basis' - were appropriate and worked well. The review also found that the ministerial powers of determination and the requirement that universal service providers have an approved policy statement and an approved standard marketing plan (SMP) were both appropriate.<sup>20</sup>

5.23 However, the DCITA review found difficulties in the definition of the STS, the costing model and the funding arrangements. The review also found that the needs of people with disabilities and Indigenous Australians were not well met and required further attention, and suggested that some specific changes to Telstra's current SMP should be made. The review stated that 'some practical and emerging difficulties are evident with the current definition of, and provisions for, the STS', and advised that a review appeared warranted.<sup>21</sup>

5.24 The review reported that many stakeholders considered the current USO cost model was no longer viable.<sup>22</sup> The funding arrangements also appeared problematic, in that they reduced the incentive for market entry by other providers, inhibited the development of advanced services in regional, rural and remote areas, impeded the development of competition in non-metropolitan Australia and had little direct effect on Telstra's investment decisions about where and how it meets its USO obligations.<sup>23</sup>

### ***DDSO delivery arrangements***

5.25 The DCITA review considered that the DDSO arrangements did not need change. The DDSO was being supplied on a reasonable and equitable basis<sup>24</sup> and Telstra had displayed high rates of performance in connecting and repairing services

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20 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 56.

21 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 56.

22 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 99.

23 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 129.

24 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, pp 47-48.

under the DDSO. The review found that the need to fund the DDSO, therefore, was less significant than the need to fund the STS provision under the USO.<sup>25</sup>

5.26 The Special Digital Data Service Obligation (SDDSO), however, is subject to an industry funded equipment subsidy that is paid to subscribers to help with the additional expense purchasing equipment required to access the SDDS.<sup>26</sup>

### **Criticism of services under the USO**

5.27 During this inquiry the Committee heard repeated criticism of the USO, particularly in rural and regional areas, in terms of services currently being provided, the limited range of the USO and the funding arrangements.

#### ***The standard telephone service***

5.28 Several witnesses in rural Australia argued that the STS offered to them is not 'reasonable and equitable' compared with similar services in metropolitan Australia. Many argued that the STS should include mobile phones. For example, Mr Tom Warren from the Orana Development and Employment Council (ODEC) in western New South Wales stated:

... in this age of modern technology, it is reasonable to expect a reasonable service at a reasonable price to be delivered under accepted universal service obligation provisions. My board believe that at this point in time the telecommunications companies are not delivering according to their obligations.<sup>27</sup>

5.29 A particular concern is safety in rural areas when there is no access to mobile telephones in emergencies. Mrs Tess Le Lievre from Louth in outback NSW gave an example:

I cannot get through to anybody if something goes wrong. My son once tipped over the four-wheeler. He was upside down. I do not know what happened but they rang the Broken Hill flying doctor and for some reason—it has never happened before or since—they did not get through. They ended up ringing Bourke and the ambulance came down ... It was a very slow trip up. It is the accidents that frighten me. I feel we are an accident waiting to happen.<sup>28</sup>

5.30 Others expressed concern about untimed local calls. All service providers offering standard telephone services are required to offer an untimed local call option

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25 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 104.

26 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 104.

27 Mr Tom Warren, *Committee Hansard*, 14 April 2005, p. 49.

28 Mrs Tess Le Lievre, *Committee Hansard*, 14 April 2005, p. 52.

in standard zones.<sup>29</sup> However, the practical effect of this obligation is different in rural areas. One witness told the Committee at the Dubbo hearing:

I get an area with a 32-kilometre radius of approximately 3,000 square kilometres where I can make untimed local calls. In Gadooga there are three seven-digit prefix numbers, which means that I can contact only 300 people. If I was in the same 32 kilometres in the electorate of Grayndler [in Sydney] I could dial up approximately three million people on the Sydney charge point for the same price.<sup>30</sup>

### ***Costing and funding of the USO***

5.31 The DCITA review in 2004 considered three options for improving the USO subsidy scheme:

- developing a new costing scheme for the USO (payphones and the STS), accommodating the SDDS in the funding and planning 3 to 5 years in advance;<sup>31</sup>
- retaining the policy of Telstra receiving subsidies from industry, and setting a minimum threshold for 'eligible revenue', with all carriage service providers above a set 'eligible revenue' contributing to USO funding,<sup>32</sup> or
- requiring Telstra to fund all costs associated with fulfilling the historic telephony USO.<sup>33</sup>

5.32 The DCITA review concluded that the third option, funding by Telstra, was preferred:

... because it would resolve many of the contentious issues that have surrounded the USO funding scheme since its inception, is administratively efficient, would have few major negative effects, and equity concerns with this approach can be addressed in other ways.<sup>34</sup>

5.33 The Committee notes, however, that the Government has made no changes to the costing and funding regime since the DCITA Review. The Committee notes that USO subsidies have been steadily reduced from \$240m in 2001-02 to \$211,335,923 in

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29 TCPSS Act, Part 4.

30 Mr Michael Davis, *Committee Hansard*, 14 April 2005, p. 54.

31 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 100.

32 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 129.

33 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 158.

34 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 159.



2004-5.<sup>35</sup> On 31 August 2004 the Minister sought advice from the ACA on USO subsidies for the next three years, and announced those subsidies on 30 June 2005.<sup>36</sup> The subsidies are \$171,403,872 in 2005-06, \$157,691,562 in 2006-07 and \$145,076,237 in 2007-08.

5.34 During this inquiry the Committee heard various criticisms of the costing regime. Optus argued that the industry subsidy should end in 2007-08 when the then current subsidies ended.<sup>37</sup>

Telstra should fund the USO itself; it should no longer receive a cross subsidy from its smaller less profitable competitors. Telstra obtains significant advantage from being the USO provider which means it is highly unlikely that USO services are loss making at all. Further, it is anti-competitive for smaller, less well resourced providers to have to pay a subsidy for Telstra's rural and regional services. This is a significant impediment to rural and regional telecommunications infrastructure investment.<sup>38</sup>

5.35 AAPT expressed a similar view,<sup>39</sup> as did ATUG:

Our economic analysis suggests that there is no sustainable case for a cross-subsidy of the USO. Where you have such a strongly entrenched incumbent, with so many benefits that it gains from incumbency, we think it is quite a reasonable trade-off for the USO to be simply an unfunded licence condition.<sup>40</sup>

5.36 The Committee notes that arguments that Telstra should fund the USO often referred to overseas experience where the incumbent bears the costs:

In the UK, for instance, British Telecom provides USO services without compensation, because the regulator has found the intangible benefits are greater than the actual USO costs. ... The Nordic countries provide a particularly interesting comparison. They face challenges in the delivery of ubiquitous telecommunications services similar to those we face in Australia: large geographic land masses; dispersed populations; and

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35 DCITA, website, 31 May 2005, at: [http://www.dcita.gov.au/tel/fixed\\_telephone\\_services/industry\\_issues/the\\_universal\\_service\\_obligation\\_uso#1](http://www.dcita.gov.au/tel/fixed_telephone_services/industry_issues/the_universal_service_obligation_uso#1).

36 See: [http://www.minister.dcita.gov.au/media/media\\_releases/uso\\_subsidies\\_set\\_for\\_next\\_three\\_years](http://www.minister.dcita.gov.au/media/media_releases/uso_subsidies_set_for_next_three_years).

37 Optus, *Submission 12*, p. 4.

38 Optus, *Submission 12*, p. 4; pp 8ff, also cites the DCITA Review in support of Telstra funding the USO.

39 AAPT, *Submission 13*, p. 10.

40 Mr Richard Thwaites, *Committee Hansard*, 11 April 2005, p. 40.

extreme climatic conditions. In these countries the incumbent bears the cost of the USO in full.<sup>41</sup>

5.37 The Committee notes also that the DCITA review discussed above concluded that Telstra should fund the USO.<sup>42</sup>

5.38 Telstra, however, expressed concerns about the current funding arrangements, stating that it was 'continuing to under-recover its costs of providing service to rural areas', that the current payments from industry were not sufficient and that Telstra bore 'a disproportionate burden of these costs'.<sup>43</sup> Telstra also pointed to Australia's international obligations:

... as set out in the WTO Regulatory Reference Paper which forms part of the WTO Agreement on Basic Telecommunications. The Reference Paper contains the following obligation, emphasising the principle that the cost burden of a USO is to be spread on a non-discriminatory basis between industry participants so that one participant (i.e., Telstra) does not bear a disproportionate burden of the costs:

"Universal Service: Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member."<sup>44</sup>

5.39 The NFF also argued strongly for all providers to continue to fund the USO, and even suggested that not only should an obligation 'be placed on those who share in the benefits of this minimum universal service to actually provide such a service', but that:

All providers must contribute to the provision of services, infrastructure and the costs related to the fulfilment of the USO, recognising the benefits, both tangible and intangible that all providers receive from the existence of the USO.<sup>45</sup>

5.40 Telstra argued that if the USO were expanded (as discussed below), it should be fully funded, as there would be substantial additional costs of rolling out services in rural and remote areas:

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41 Optus, *Submission 12*, pp 13-14.

42 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 158, website 5 May 2005, at: [http://www.dcita.gov.au/\\_\\_data/assets/pdf\\_file/10103/Review\\_of\\_the\\_Operation\\_of\\_the\\_Universal\\_Service\\_Obligation\\_and\\_Customer\\_Service\\_Guarantee.pdf](http://www.dcita.gov.au/__data/assets/pdf_file/10103/Review_of_the_Operation_of_the_Universal_Service_Obligation_and_Customer_Service_Guarantee.pdf).

43 Telstra, *Submission 25*, p. 5.

44 Telstra, *Submission 25*, p. 45.

45 NFF, *Submission 15*, Appendix "A", note 13, p. 7.

The USO is essentially a means by which Australian consumers living in lower-cost CBD and metropolitan areas cross-subsidise the higher costs of providing telephony services to Australian consumers living in high-cost rural and remote areas of Australia. ... Indeed, in some instances it is simply not economic to roll-out a fixed line network (hence consumers are provided with services such as satellite phones). The majority of the costs of meeting these requirements are ultimately borne by Telstra's shareholders.<sup>46</sup>

5.41 Telstra called for 'careful policy consideration' if any decision were made by to increase the scope of the USO, stating:

The benefits to rural and regional consumers will need to be balanced against the costs to the remainder of Australia.

Furthermore, much of the cost of an extended USO would never be recovered. ... Given that the USO is a Government social policy, any non-recoverable rollout costs should be appropriately funded from general taxation revenue or via consumer or industry levies in relation to USO funding, consistent with the practice of almost every other industry subject to community service obligations.<sup>47</sup>

5.42 A submission from Mr Doug Coates, private citizen, warned the Committee about Telstra's predicament as the universal service provider:

The Committee needs to be aware of the Magic Puddin' syndrome. The way this syndrome works is that politicians and their constituents seek to increase the standard of service, thus raising its cost, whilst at the same time reducing the allowable USO cost so as to limit the cost burden on the industry. Telstra is the magic puddin', which by some unknown miracle is able to provide higher-level services at lower costs.<sup>48</sup>

5.43 The Committee notes that the Minister has recently announced that the Government does not intend to change the current USO costing and funding arrangements.<sup>49</sup>

### ***Contestability arrangements***

5.44 Under the contestability regime developed in 2002, pilot programs were designed to encourage service providers to bid for the right to be the universal service provider in specific areas. The regime was developed in response to claims that:

- the net cost of USO delivery was not accurate;

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46 Telstra, *Submission 25*, p. 45.

47 Telstra, *Submission 25*, p. 45.

48 Mr Doug Coates, *Submission 2*, p. 5.

49 Senator the Hon Helen Coonan, 'Telecommunications safeguards to remain', *Media release*, 086/05, 28 July 2005.

- Telstra was not responsive to rural and remote consumers in respect of the quality and timeliness of USO services;
- there was a lack of choice for consumers; and
- there were no incentives for carriers to enter regional areas.<sup>50</sup>

5.45 The DCITA review found in 2004 that it was hard to draw firm conclusions about the contestability arrangements. The review pointed out that there was no competitive entry due to Telstra's substantial economies of scale in the pilot areas, and subsidy levels being too low to attract any new competition.

5.46 The review concluded that the contestability regime should remain in place in case of renewed commercial interest, and an approved telecommunications service as an alternative to the STS should be retained because it has potential in supplying services to Indigenous communities. However, the review stated that:

... the lack of interest in contesting USO subsidies suggests little value in continuing pilots after 30 June 2004.<sup>51</sup>

5.47 ATUG's submission to the DCITA Review, which ATUG presented to the Committee, noted the failure of the contestability pilot program, stating that it indicated 'that there is no role for the USO scheme in developing competitive infrastructure'.<sup>52</sup> Telstra used the lack of interest in the pilot program to support its claims about the cost of fulfilling the USO.<sup>53</sup>

5.48 While the DCITA review could not reach firm conclusions about the contestability arrangements, it did point out that:

As a result of this lack of interest, there is no evidence indicating that the contestability regime, and the ability to offer alternative telecommunications services, has resulted in an improvement in technologies and services available to people in rural and remote Australia compared with what is on offer in metropolitan Australia.<sup>54</sup>

5.49 The Committee notes that it appears other measures are required to foster competition in regional areas.

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50 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 73.

51 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, pp 75-76.

52 ATUG, *Submission 20*, p. 17.

53 Telstra, *Submission 25*, p. 43.

54 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, pp 75-76, website 5 May 2005, at: [http://www.dcita.gov.au/\\_data/assets/pdf\\_file/10103/Review\\_of\\_the\\_Operation\\_of\\_the\\_Universal\\_Service\\_Obligation\\_and\\_Customer\\_Service\\_Guarantee.pdf](http://www.dcita.gov.au/_data/assets/pdf_file/10103/Review_of_the_Operation_of_the_Universal_Service_Obligation_and_Customer_Service_Guarantee.pdf).

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## *Expanding the USO*

5.50 The Committee heard differing views about the effectiveness of the current USO in providing 'reasonable and equitable access' to telephones and payphones in regional and remote areas. The Committee also heard different views on what should be done to improve access to the developing technologies such as internet, mobile phone services and broadband.

5.51 The Estens Report in 2004 concluded that the USO was not an effective mechanism for providing broad consumer access to an increased range of services, and that other more appropriate policy options such as government-funded incentive schemes were available to achieve future equity objectives.<sup>55</sup>

5.52 Service providers like AAPT and Optus supported those views, claiming that the USO is sufficient as it stands.<sup>56</sup> For example, AAPT argued that the USO regime is effective in what it set out to do - preserving an existing level of service - but that it is not adaptable for delivering new services. Furthermore:

AAPT continues to believe that new access infrastructure should be developed in regional areas separately from the activities of any service provider. It should not require any direct funding, but may need protection from overbuild from Telstra.<sup>57</sup>

5.53 AAPT also argued that the USO regime creates the perception that, unless services are subsidised, they will not or should not be delivered.<sup>58</sup>

5.54 Similarly, Optus supported a separately developed broadband infrastructure scheme, such as through the Higher Bandwidth Incentive Scheme (HiBIS)<sup>59</sup> and the Cooperative Communications Infrastructure Fund. Optus argued that funding 'should be directed to support competitive broadband platforms (DSL, wireless and satellite)'.<sup>60</sup> ATUG also stated:

Given the requirement for Government funding for many of these projects and general agreement that the USO should not be extended to mobiles or broadband provision, ATUG believes carriers building competing infrastructure should not be required to contribute to the USO funding scheme.<sup>61</sup>

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55 Regional Telecommunications Inquiry, *Connecting Regional Australia*, 2002, Finding 7.3, p. 263.

56 Optus, *Submission 12*, p. 4; AAPT, *Submission 13*, p. 10.

57 AAPT, *Submission 13*, pp 10-11.

58 AAPT, *Submission 13*, pp 10.

59 HiBIS is discussed in detail below.

60 Optus, *Submission 12*, pp 14-15.

61 ATUG, *Submission 20*, p. 17.

5.55 By contrast, some organisations that deliver programs to people in rural and remote areas strongly supported expansion of the USO to include new technologies.

***Support for the inclusion of broadband in the USO***

5.56 The Committee heard from many witnesses that the USO should contain broadband.<sup>62</sup> Indeed, it was pointed out that the current obligation to provide universal telephone connection to all residents is something that a country like Bangladesh would now be considering.<sup>63</sup> It was argued that Australia's universal obligation should at least include access to the Internet and mobile phones.<sup>64</sup>

5.57 As noted at the start of this chapter, Mr Ewan Brown from SETEL told the Committee that the STS:

... is no longer relevant to most small, micro and home based businesses and to a large proportion of residential consumers. SETEL believes that a higher universal service benchmark would enable much greater competitive supply of services commensurate with economies of scale.<sup>65</sup>

5.58 As outlined in Chapter 2, particularly strong concerns were expressed in regional Australia by small businesses that rely on broadband in order to remain competitive with business in the capital cities.

5.59 Mr Lee of the Western Australian Local Government Association (WALGA) stated that the USO, the DDSO and the special DDSO should be rewritten to be more technologically indexed, so as to ensure that the service to people in regional areas is up to date and compatible with that in metropolitan areas. He argued that the convergence of voice and data technologies needs to be considered in the context of making such special provisions.<sup>66</sup>

5.60 The WALGA, as 'a major service provider to, and custodian of community interests across the state, especially in the rural and remote context',<sup>67</sup> presented a clear case for expanding the USO. Stating that the USO and the DDSO were central 'pillars' in meeting consumers' telecommunications needs, WALGA claimed that the

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62 Ms Teresa Corbin, CTN, *Committee Hansard*, 13 April 2005, p. 31; Mr Peter Knox, ACE, *Committee Hansard*, 13 April 2005, pp 104-105.

63 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 50.

64 For example, CTN, *Submission 30*, pp 6-7.

65 Mr Ewan Brown, *Committee Hansard*, 11 April 2005, p. 50.

66 Mr Alden Lee, *Committee Hansard*, 29 April 2005, p. 9.

67 WALGA, *Submission 22*, p. 1.

Western Australian government's Telecommunications Needs Assessment (TNA)<sup>68</sup> provides empirical support for the view that the STS effective minimum throughput of 19.2kbps is insufficient for consumer needs. WALGA supported a bi-annual review of the USO, a minimum equivalent data transmission requirement in the USO of 28.8kbps and incremental raising of the data transmission requirement over time.<sup>69</sup> A regular review should compare the level of technology to metropolitan and regional areas, so that services in regional areas could be maintained at a higher technological level.<sup>70</sup>

5.61 Other submissions called for an annual review of the USO. For example, Mr Malcolm Moore stated:

The USO has been partially effective in ensuring that all Australians have some access to reasonable telecommunications services, but the USO needs to be regularly (annually) amended to reflect the respective changes in technology requirements to be in line with those in major capital cities.<sup>71</sup>

5.62 However, the Communications Electrical and Plumbing Union (CEPU) warned that the issue of whether broadband should be included in the USO could not be considered in isolation from 'the other policy issues (retail price regulation, access pricing, structural arrangements)'. The CEPU argued 'Contrary to the wishful thinking of the Page Report, there are no short cuts to an equitable broadband future'.<sup>72</sup>

5.63 The Townsville Council also supported regular reviews of telecommunication services across the country in order to deliver equitable services, and specifically supported the views of the WALGA.<sup>73</sup> However, the Townsville Council stated that the Estens Report recommendations on regional services:

... assume that future governments (even when strapped for cash!) will fund such community service obligations. This is not a safe or sensible assumption from the perspective of regions such as North Queensland. It is

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68 Released in July 2003 by the Western Australian Department of Industry and Resources, the TNA is a comprehensive examination of access to, and satisfaction with, communications services across regional Western Australia, It focused on standard phones, mobile phones, internet and high speed data (broadband), broadcasting (radio and television), and access to communications support services (training, sales, support) for regional Western Australians. WADIR website, accessed 23 May 2005 at: <http://www.doir.wa.gov.au/businessandindustry/78014A8643AD499E9504C8F1B0951AE3.asp>.

69 WALGA, *Submission 22*, p. 3.

70 Mr Alden Lee, *Committee Hansard*, 29 April 2005, p. 9.

71 Mr Malcolm Moore, *Submission 6*, p. 10.

72 CEPU, *Submission 40*, p. 30.

73 *Regional Telecommunications Inquiry Report (Estens Report)*, 2002, Recommendations 9.1 and 9.6.

preferred that part of the proceeds from T3 be allocated for a pool of funds sufficient to cover a CSO of this nature.<sup>74</sup>

### ***Voice over internet protocol (VoIP)***

5.64 IP is a standards-based packet switched network protocol, initially adopted as the main network protocol for the Internet and able to be used to transport not only data but also voice and video across all types of networks. The Australian Consumers' Association stated that the use of IP to transport voice traffic is now becoming commercially viable.<sup>75</sup>

5.65 Some submissions and witnesses to this inquiry agreed that the USO should include VoIP facility. However, there was concern about how this should be achieved and how the VoIP roll-out is currently being managed. Ms Corbin from CTN stated:

... the current practice is that, while the new service is rolling out and being developed, [new service providers] can apply to the authority for exemptions on some regulation, and one of them is the CSG. We have asked for more transparency, consultation and accountability about these exemptions because we are really concerned about them undermining the customer service guarantee in the long run.<sup>76</sup>

5.66 The Australian Consumers' Association also commented on VoIP, explaining that:

Using IP packets to transmit voice is much more efficient as there is no concept of dedicated point-to-point circuits. This should allow much cheaper voice services to consumers, as well as integration of voice services into other data application. However, key challenges remain in maintaining quality of service (QOS) and coping with the disruptive challenges the approach poses to traditional voice telephony regulation – such as price controls.<sup>77</sup>

5.67 Telstra owns the major cable network and the traditional copper voice telephony wires. Thus while Telstra is rolling out test VoIP services and smaller providers are piggy backing on existing broadband services, the lack of infrastructure prevents VoIP competition. The Australian Consumers' Association stated:

We fear this could mean delay in making this technological development [VoIP] available to Australian consumers [which has the] potential to dramatically lower prices.<sup>78</sup>

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74 Townsville Council, *Submission 34*, p. 2.

75 Australian Consumers' Association, *Submission 16*, p. 9.

76 CTN, *Submission 30*, p. 4; Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 31.

77 Australian Consumers' Association, *Submission 16*, p. 9, footnote 19.

78 Australian Consumers' Association, *Submission 16*, p. 9.



5.68 The Committee recognises the importance of VoIP on broadband for regional and remote Australia in the near future as the means of carrying voice. Mr Paul Budde made specific reference to the limited future of voice through copper wire. In referring to the successful competition that currently exists between service providers with voice, he argued that:

Voice, of course, is on the way out—it is a dead product. You can try to milk it as long as possible, of course, but, as I indicated, over the next five to 10 years it is only 10 per cent of total telecommunications revenue.<sup>79</sup>

5.69 The Committee heard that voice through copper wire is best provided at present in tandem with other services. iiNet, for example, claims continuing success with telephony through the standard wire network when bundled with other products:

We are reselling another carrier's telephony products at the moment, and that has grown quite substantially. The marketplace seems to cry out for bundled products, so it is probably not viable these days in Australia to just be an internet provider, to just be a dial-up provider or to just be an ADSL provider. You seem to have to offer the whole bundle in order to compete with the major carriers.<sup>80</sup>

### ***Hearing and speech impaired customers***

5.70 The Australian Communication Exchange<sup>81</sup> (ACE) supported the inclusion of broadband in the USO on the basis that the universal service provider must ensure that visually and hearing impaired people are able to be looked after better by the National Relay Service (NRS). ACE provides the NRS under contract to DCITA. The NRS provides people who are deaf or have a hearing and/or speech impairment with access to an STS on comparable terms to those enjoyed by other Australians.<sup>82</sup>

5.71 The Committee notes ACE's concerns about the erosion of equal telecommunications access, including emergency calls on mobile phones, for people who are deaf or have a hearing or speech impairment, since the closure of the analogue mobile phone network in 2000, and the introduction of digital and Internet Protocol (IP) networks.<sup>83</sup> A DCITA survey in 2004 of 911 respondents revealed that 74% of impaired people could not access TTY away from home, that the most popular options for communications were TTY, SMS and mobile phone, and that almost half those people lived in households with income less than \$30,000 per annum.<sup>84</sup>

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79 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 50.

80 Mr Stephen Dalby, *Committee Hansard*, 29 April 2005, p. 37.

81 ACE, *Submission 7*, p. 5.

82 As defined by section 95 of the TCPSS Act. See ACE, *Submission 7*, p. 1.

83 ACE, *Submission 7a*, p. 1.

84 ACE, *Submission 7a*, p. 2.

5.72 ACE also raised the definition of the STS, referring to the importance of having:

... a more flexible and forward looking definition of a Standard Telephone Service and the significant benefits available to deaf, hearing impaired and speech impaired Australians from the availability of appropriate broadband technologies.<sup>85</sup>

5.73 Since 2001, various inquiries into the needs of speech and hearing-impaired people in Australia have made a range of recommendations. These have included calls to provide hearing impaired people with mobile telephones compatible with hearing aids, portable wireless devices that can use the NRS and video compression and transmission technology for video communication using sign language.<sup>86</sup> Others have suggested DCITA should develop costing models and funding arrangements for deaf people using Auslan to be able to afford videotelephony<sup>87</sup> and the requirement for an industry-wide, carrier independent, telecommunications disability equipment program, for people with disabilities.<sup>88</sup> This Committee's report in 2004 on the Australian telecommunications network also recommended an equipment program and a consultative planning process for the introduction of new telecommunications technology.<sup>89</sup>

5.74 Mr Peter Knox on behalf of ACE argued that, if broadband were provided through the NRS as part of the USO, speech and hearing impaired people would be able to use internet telephony, which is more suited to text than voice, to their great and lasting benefit.<sup>90</sup> He also pointed out that the cost of providing appropriate broadband technologies for access by the speech and hearing impaired is not great, particularly when seen in the light of getting such people into useful employment.<sup>91</sup>

5.75 The Australian Association of the Deaf Inc (AAD) also raised the issue of pricing regimes for the deaf in Australia, claiming that the efficient use of the

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85 ACE, *Submission 7*, p. 2.

86 House of Representatives Standing Committee on Communications, Information Technology and the Arts, *Connecting Australia: Wireless Broadband*, November 2002, p. 47, Recommendation 12 [para. 6.25].

87 HREOC, *When the Tide Comes In: Towards Accessible Telecommunications for people with Disabilities in Australia*, 2003, Recommendation 21.

88 ACE, *Submission 7*, p. 3. The principles for the provision of such equipment were identified at an ACIF forum in 2001 and published in the ACIF *Alert newsletters*, Autumn, Winter and Spring, 2001.

89 Senate Environment, Communications, Information Technology and the Arts References Committee, *The Australian telecommunications network*, August 2004, Recommendations 14 and 15, p. 147.

90 ACE, *Submission 7*, pp 4-5.

91 Mr Peter Knox, *Committee Hansard*, 13 April 2005, p. 104.

broadband videophone requires minimum bandwidth speeds of 384/384 upload/download with unlimited download capacity:

Also required is a fixed Internet Protocol (IP) address. Current broadband pricing regimes that provide the required service are priced at premium rates thereby reducing Deaf consumer participation. As Broadband Videophones are widely used in the US and UK, it would seem reasonable to look at this technology as the acceptable voice equivalent means of communication for Deaf people. It is only fair that IP providers make their services accessible to all and that these services are affordable.<sup>92</sup>

### ***The HiBIS model***

5.76 The Higher Bandwidth Incentive Scheme (HiBIS) is part of the National Broadband Strategy, which commenced in 2003 with \$107.8 million available over four years. On 7 July 2005, the Minister for Communications, Information Technology and the Arts, Senator the Hon Helen Coonan, announced a further \$50 million in HiBIS funds for broadband in rural and regional Australia.<sup>93</sup> As at 15 April 2005 HiBIS had 12,843 customers, and provided the incentive for Telstra to upgrade 260 exchanges to ADSL.<sup>94</sup> It was suggested to the Committee that HiBIS should become an integral part of the USO and could be used to explore future opportunities.<sup>95</sup>

5.77 The DCITA website outlines the HiBIS scheme, stating that it:

... offers an opportunity for people in regional Australia to access broadband services at prices comparable to those available in the cities. HiBIS registered Internet service providers (ISPs) receive incentive payments from the Australian Government for providing eligible people in regional Australia with higher speed broadband access in line with city prices.

Providers must use these incentive payments to reduce the price of existing services or to help fund the cost of providing new services to regional areas. The most consumers need pay for a HiBIS broadband service, including all equipment, setup and connection charges, is \$2,500 over three years for an ADSL service (equivalent to \$69 per month), or \$3,000 for a non-ADSL service (equivalent to \$83 per month). HiBIS providers can offer services below those prices.

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92 AAD, *Submission 45*, pp 4-5.

93 Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts, *Media Release*, website, 7 July 2005 at: [http://www.minister.dcita.gov.au/media/media\\_releases/\\$50\\_million\\_in\\_extra\\_hibis\\_funds\\_for\\_broadband\\_in\\_the\\_bush](http://www.minister.dcita.gov.au/media/media_releases/$50_million_in_extra_hibis_funds_for_broadband_in_the_bush)

94 Senate Environment, Communications, Information Technology and the Arts References Committee, *Provisions of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005*, May 2005, p. 10.

95 Mr Paul Budde, *Committee Hansard*, 13 April 2005, p. 47.

Generally, regional, rural or remote residential customers, small business owners and not-for-profit organisations in regional areas who did not have access to a metro-comparable service at the start of the scheme in April 2004 are eligible to receive a HiBIS service.<sup>96</sup>

5.78 Several witnesses were concerned that HiBIS does not provide the expected incentive. For example, Mr Gary Chappell from the Peel Development Commission in WA stated:

The general consensus of people within the regions is that the HiBIS is too expensive, so HiBIS, as an alternative to a person who lives outside the ADSL technical range, is not a viable solution. The ongoing monthly costs are the things they fear—\$79 for a two-way satellite, or roughly \$80. So that 70 or 80 dollars per month for the life of the service is a cost they really do not want to commit to.<sup>97</sup>

5.79 In outback NSW, similar concerns were expressed about the cost of HiBIS which, according to Mr Michael Davis from Narromine, is beyond the reach of most middle income earners in regional Australia.<sup>98</sup> Mr Davis stated:

I have gone on to the HiBIS scheme under the satellite for my internet connection, because I just did not have enough time in my life to put up with dial-up. It costs me \$70 a month to be provided with something that in the city is provided for approximately \$25 a month. I am not criticizing the satellite broadband—it is very good. We need it for our business. We sell sheep over the internet, and we bank. I am 200 kilometres from my bank. I don't just jump in and go and cash a cheque. We transfer money via the internet and try to operate that way.<sup>99</sup>

5.80 For others, particularly service providers, HiBIS presents other problems. Mr Stephen Dalby from iiNet Ltd, one of the largest ISPs in the country, argued that as a result of the high ongoing costs of acquiring backhaul services HiBIS does 'nothing more than provide subsidies to Telstra':

We have found that the HiBIS program is of no value to us and we have not registered for it. We would love to be providing services to country customers and we say, 'What can we do to provide broadband services to country customers without running at a loss?' The HiBIS program would not allow us to do that. It is not the capital cost—that is not an issue—it is the recurring costs.<sup>100</sup>

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96 DCITA website, 13 May 2005, at: <http://www.telinfo.gov.au/HiBIS%20page.htm>.

97 Mr Gary Chappell, *Committee Hansard*, 29 April 2005, p. 67.

98 Mr Michael Davis, *Committee Hansard*, 14 April 2005, p. 54.

99 Mr Michael Davis, *Committee Hansard*, 14 April 2005, p. 54.

100 Mr Stephen Dalby, *Committee Hansard*, 29 April 2005, p. 39.

5.81 Optus, which provides the HiBIS service to customers eligible for the special subsidy only,<sup>101</sup> supports the broadband incentive scheme, stating:

... the HiBIS model in broad terms has been an appropriate vehicle to facilitate affordable broadband in rural and regional Australia. All Australians now have reasonable access to broadband services at around the same price whether by DSL, satellite or wireless. Optus believes there should be a continuation of HiBIS, and the allocation of further funding – should demand be evident.<sup>102</sup>

5.82 The Committee notes that the 2005-2006 Federal Budget contained \$50m for the Metropolitan Broadband Blackspot Program (MBBP) - a program based on HiBIS that will give incentives for providers to invest in networks where metropolitan broadband services were unlikely to be commercially affordable without Government support.<sup>103</sup> Optus claims that the \$50m should be part of their proposed Bridge to Broadband package, in which the funds should be isolated for competitive providers of broadband to develop new competitive technologies (such as wireless broadband), and not to fund Telstra to give it a competitive advantage.<sup>104</sup>

### **Evidence about the CSG**

5.83 The Committee also heard from people in rural and regional Australia who claim that the CSG does not ensure adequate service delivery.<sup>105</sup> Mrs Tess Le Lievre from Louth in outback NSW stated that recently her telephone was out of order for 16 days, and 'I am not a person that makes a lot of fuss—I try to give everybody a little bit of time—but 16 days was the sort of thing I did not like at all'.<sup>106</sup>

5.84 NFF President Peter Corish told the Committee that the NFF Telecommunications Taskforce reported that NFF performance benchmarks set prior to the Estens Report have not been achieved. He stated:

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101 HiBIS special subsidy applies to consumers without ISDN availability. For checking ISDN availability, see DCITA website, 13 May 2005, at: [http://www.dcita.gov.au/\\_data/assets/word\\_doc/9735/isdn\\_availability.doc](http://www.dcita.gov.au/_data/assets/word_doc/9735/isdn_availability.doc).

102 Optus, *Submission 12*, p. 15.

103 *Australian Financial Review*, 11 May 2005, p. 15; The Hon Senator Helen Coonan, Minister for Communications, Information Technology and the Arts, *Media Release*, website, 13 May 2005, at: [http://www.minister.dcita.gov.au/media/media\\_releases/metropolitan\\_broadband\\_blackspots\\_programme](http://www.minister.dcita.gov.au/media/media_releases/metropolitan_broadband_blackspots_programme).

104 Optus, *Submission 12*, p. 8. See discussion in Chapter 4.

105 Mrs Tina Reynolds, Dubbo Chamber of Commerce, *Committee Hansard*, 14 April 2005, p. 59; Mr Mark Needham, NFF, *Committee Hansard*, 11 April 2005, p. 3.

106 Mrs Tess Le Lievre, *Committee Hansard*, 14 April 2005, p. 52.

These very reasonable benchmarks relating to basic telephone service faults and repairs must be met before Government can say with credibility that services in the bush have been improved.<sup>107</sup>

5.85 Moreover, the NFF believes there has been a decline in the rural telephone repair performance in recent years of as much as five percent,<sup>108</sup> based on successive quarterly statistics published by the ACA since September 2000.<sup>109</sup> The NFF statistics on Rural Telephone Repair Performance showed best performances at 95% during the September quarters for 2000, 2001, 2002 and 2003, but declining to 93% in the 2004 September quarter. Moreover, with the worst performances occurring usually in the March quarters, the worst performance dropped in 2003 to 90%. This trend was repeated in 2004.<sup>110</sup> Figures for the first quarter of 2005 place performance in rural areas at 91%, which is a drop of 1% from the previous quarter.<sup>111</sup> The Committee notes that these figures support other evidence to this inquiry of poor service delivery.<sup>112</sup>

5.86 The Committee notes that the ACA considers performance to be at a 'satisfactorily high level' when performance is at a measure of 90% or more.<sup>113</sup> However, the CSG performance standards are described as minimum compliance standards<sup>114</sup> - with compulsory compensation to customers if standards are not met - and not optimal or aspirational indicators of performance. As a result, it is unclear to the Committee why a rating that is 10% below the basic service level would be deemed high performance.

5.87 The NFF stated that it 'continues to pursue the "same level of service" for farmers and rural communities'.<sup>115</sup> However, the current CSG:

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107 NFF website, *News Release*, 16 June 2005, at: <http://www.nff.org.au/pages/nr05/082.html>.

108 NFF website at: <http://www.nff.org.au/pages/nr05/082b.pdf>.

109 NFF website at:  
[http://internet.aca.gov.au/ACAINTER.65636:STANDARD:1611311777:pc=PC\\_1378](http://internet.aca.gov.au/ACAINTER.65636:STANDARD:1611311777:pc=PC_1378).

110 NFF website at: <http://www.nff.org.au/pages/nr05/082b.pdf>.

111 Australian Communication Authority, *Telecommunications Performance Monitoring Bulletin*, Issue. 32, March 2005 Quarter, p. 39.

112 For example, Mrs Tina Reynolds, Dubbo Chamber of Commerce, *Committee Hansard*, 14 April 2005, p. 59; Mr Mark Needham, NFF, *Committee Hansard*, 11 April 2005, p. 3; NSW Farmers' Association, *Telecommunications Survey*, Press Conference presentation, NSW Parliament House, 13 July 2005, accessed at <http://www.nswfarmers.org.au/>

113 Australian Communication Authority, *Telecommunications Performance Monitoring Bulletin*, Issue. 32, March 2005 Quarter, p. 4.

114 In an ACA produced Consumer Fact Sheet - *Customer Service Guarantee 2000 (No.2)* - it is stated that the CSG 'requires telephone companies to meet minimum performance requirements', p. 1 of 4, accessed at:  
[http://www.acma.gov.au/ACMAINTER.2097430:STANDARD:986025926:pc=PC\\_1712](http://www.acma.gov.au/ACMAINTER.2097430:STANDARD:986025926:pc=PC_1712)

115 NFF, *Submission 15*, p. 3.

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... continues to enshrine inequality into service level standards for a significant number of non-metropolitan residents. An opportunity exists for the current community size based criteria for the CSG to be replaced with non-discriminatory, non-population based criteria that apply to a revised CSG or service provider Customer Service Level Agreement (CSLA) standard. Any new criteria must better reflect access by the provider to the necessary resources rather than continuing with the current outmoded parameters.<sup>116</sup>

5.88 Some suggested the CSG was being undermined by the provision of exemptions to some providers. Ms Corbin from the Consumers Telecommunications Network, for example, stated that:

... while the new service is rolling out and being developed they can apply to the authority for exemptions on some regulation, and one of them is the CSG. We have asked for more transparency, consultation and accountability about these exemptions because we are really concerned about them undermining the customer service guarantee in the long run.<sup>117</sup>

### **Unfair consumer contracts and Standard Forms of Agreement**

5.89 One issue which arose during hearings was the use of Standard Forms of Agreement (SFOAs) in the telecommunications industry.

5.90 Section 479 of the Telecommunications Act permits the formulation of an SFOA for the supply of voice telephony services, data transmission, tone signalling, or live or recorded information services. Suppliers who use SFOAs are required to lodge them with the ACA<sup>118</sup> and to make them available to customers on request.<sup>119</sup> The ACA may make a written determination requiring suppliers to give customers information about the supply of both voice telephony and data services. The ACA is authorised, through the *Telecommunications (Standard Form of Agreement Information) Determination 2003* (the Determination), to publish this information.

5.91 The Determination requires suppliers to have summaries of the SFOAs, to give those summaries to new customers and to tell existing customers that they can ask for a summary at least once every two years. The Determination requires that suppliers prepare notices for consumers if an SFOA is to be varied in such a way that customer detriment is caused, and for the notice to be published in a place that is reasonably likely for the customer to be aware of its contents.<sup>120</sup>

5.92 The CLC submitted that there were problems with the Determination:

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116 NFF, *Submission 15*, p. 3.

117 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 31.

118 Section 480.

119 Section 481. See CLC, *Submission 23*, p. 13.

120 CLC, *Submission 23*, p. 13.

The Determination simply instructs suppliers on the method that must be used to notify customers of changes. ... neither the Act nor the Determination adequately deals with the circumstances in which changes may be made to the contract.<sup>121</sup>

5.93 The CLC argued that the legislative arrangements that allow carriers unilaterally to vary their contracts with consumers needed reform.

5.94 In order to improve contractual arrangements, ACIF delivered to the ACA in February 2005 the Consumer Contracts Industry Code.<sup>122</sup> The development and enforcement of the Code is discussed in the next section in more detail. The Explanatory Statement to the Code states that it 'identifies and prohibits the use of unfair terms':

This Code seeks to ensure that the terms of contracts between service providers and residential and small business consumers are fair and are presented by service providers in a form that is readily accessible, legible and capable of being readily understood by consumers.<sup>123</sup>

5.95 However, the CLC noted limitations to the code:

- the new arrangements will not apply to the supply of subscription television services or to content providers where they are also not providing a carriage service;
- there will still be legislative uncertainty as to the circumstances in which Part 23 of the *Telecommunications Act 1997* (Cth) and ACA's Telecommunications (Standard Form of Agreement Information) Determination 2003 may be used to circumvent consumer protection provided under general law or the Trade Practices Act.<sup>124</sup>

5.96 The CLC noted that the ACA's proposals to amend the determination 'are at a preliminary consultation stage', but:

... it is unlikely that the proposed amendments will adequately address problems such as ... an industry practice which continues to operate ... at odds with general law and specific consumer protection legislation.<sup>125</sup>

5.97 In Victoria, recent amendments to Part 2B of the *Fair Trading Act 1999* provide that unfair terms in consumer contracts are void,<sup>126</sup> and list various factors to

121 CLC, *Submission 23*, p. 14.

122 ACIF C620:2005, republished in March 2005 with amendment.

123 ACIF, *Industry Code Consumer Contracts*, pp ii & iii, ACIF website, 29 June 2005 at: [http://www.acif.org.au/\\_\\_data/page/12605/C621.pdf](http://www.acif.org.au/__data/page/12605/C621.pdf)

124 CLC, *Submission 23*, p. 14.

125 CLC, *Submission 23*, p. 14.

126 Under section 32W, a term is to be regarded as unfair 'if contrary to the requirement of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer'.



be taken into account in determining whether particular terms are potentially unfair. One of these factors used to determine unfairness is to consider whether a term permits the supplier but not the consumer unilaterally to vary the terms of the contract.<sup>127</sup>

5.98 Dr Wilding from the CLC described the Victorian legislation as a 'helpful underpinning regulatory measure that encourages industry to develop its own solutions'.<sup>128</sup> He commented:

There are certainly areas that have been identified by Consumer Affairs Victoria as quite clearly in breach of its laws. We would expect that, simply as a result of that action alone, there would be changes within those contracts.<sup>129</sup>

5.99 Mr Allan Horsley from the ACA confirmed that companies were working towards redrafting their contracts to comply with that legislation.<sup>130</sup> Dr Wilding added, however, that he did not think:

... that a general law alone has the potential to improve a whole set of specific telecommunications provisions in these consumer contracts in the same way that a combined approach of a state or federal fair trading law with an industry based set of rules can achieve ... I think the preference of most consumer groups would be for the Trade Practices Act to be amended to insert unfair terms provisions, but we have not pursued that because it seems clear that that is unlikely.<sup>131</sup>

5.100 Dr Wilding noted that the 'unconscionable conduct' provisions of the TPA were also available.<sup>132</sup>

5.101 During the inquiry GSM Gateway claimed that an upstream mobile network operator had exploited the alleged deficiency in Part 23 of the Telecommunications Act to alter the SFOA with downstream clients of GSM Gateway.<sup>133</sup> On 26 May 2005, the ACCC confirmed that it was currently investigating the matter and was 'conducting broader market inquiries to determine whether there is evidence to support the alleged conduct and to assess whether the conduct complained of is likely to amount to a contravention of the TPA'.<sup>134</sup>

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127 Paragraph 32X(d).

128 Dr Derek Wilding, *Committee Hansard*, 13 April 2005, p. 11.

129 Dr Derek Wilding, *Committee Hansard*, 14 April 2005, p. 11.

130 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 52.

131 Dr Derek Wilding, *Committee Hansard*, 13 April 2005, p. 12.

132 Dr Derek Wilding, *Committee Hansard*, 14 April 2005, p. 11.

133 Mr Peter Kelly and Mr Thomas Amos, *Committee Hansard*, 13 April 2005, pp 84-85.

134 ACCC, *Submission 17A*, p. 1.

5.102 The CLC suggested two options for creating fairness for all parties in any contract variation:

**Option One** ...remove the SFOA regime for all services except fixed-line services [so] that consumers would be given full contracts for all mobile and internet services.

**Option Two** ...retain in substance the operation of the SFOA regime in Part 23 [of the *Telecommunications Act 1997*] but amend the provision dealing with variation of contracts.<sup>135</sup>

5.103 The CLC recommended an amendment to subsection 481(2) of the Telecommunications Act to provide certainty as to the circumstances in which unilateral variation can operate fairly for all parties. The proposed amendment would:

... remove the reference to ‘any variation of the agreement’ and replace the reference to ‘the agreement’ with ‘the current terms of the agreement’. This will remove any implicit support for the proposition that an SFOA is able to be varied unilaterally and to the detriment of consumers. The Code will then come into effect, allowing for variation in some limited circumstances as agreed between suppliers and consumers in the Working Committee. Circumstances not covered by the Code will be covered by general law and other relevant legislation.<sup>136</sup>

## **Industry codes and standards**

5.104 This inquiry heard compelling evidence of a major problem in the delivery of consumer protection through industry codes and standards. The Committee heard that the industry relies too much on self-regulation to the detriment of end users, that some codes have been developed without sufficient consumer consultation or input and that the time taken to produce them has been excessive.

### ***The legislative framework***

5.105 Part 6 of the Telecommunications Act details the circumstances in which the telecommunications industry may make industry codes.

5.106 Sections 117 to 125 outline the ACA's responsibilities. The ACA may register an industry code, and before doing so must be satisfied that the code provides appropriate community safeguards and that the ACCC, the TIO and at least one body or association that represents the interests of consumers have been consulted about the code's development. The ACA is responsible for ensuring compliance with the codes under civil penalty provisions.<sup>137</sup> Where there is no industry code or a code is

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135 CLC, *Submission 23*, p. 15.

136 CLC, *Submission 23*, p. 15.

137 Part 31 of the Telecommunications Act provides that pecuniary penalties are payable for contraventions of civil penalty provisions.

deficient, the ACA has a reserve power to make an industry standard.<sup>138</sup> While compliance with ACA standards is mandatory, sign-up to industry codes is voluntary. However, where a code has been registered, the ACA's enforcement powers apply to all industry participants, whether or not they are signatories. The TIO will also apply the code provisions to consumer complaints. The ACA has registered codes on a range of issues, including billing, credit management, customer and network fault management, complaint handling and, more recently, consumer contracts.

5.107 The Australian Communications Industry Forum (ACIF) was established in 1997 to develop codes in accordance with the Act. Funded by members, ACIF states that it 'leads and facilitates communications self-regulation in the interests of both industry and consumers'.<sup>139</sup> ACIF's submission claimed:

ACIF's 25 Codes embody industry best-practice across a broad range of operating, technical and consumer protection matters. In particular, ACIF's consumer codes provide significant consumer benefits, having been developed collaboratively by industry and consumer representatives and registered by the ACA, after satisfying the ACA that they provide appropriate community safeguards.<sup>140</sup>

5.108 ACIF stated that the codes are compiled under principles of 'self-regulation without undue financial and administrative costs for suppliers',<sup>141</sup> and did not recommend any changes to the existing regulatory policy or framework.<sup>142</sup> However, not all groups agreed.

### ***Criticism of the codes process***

5.109 Some groups argued that the process of creating industry codes needs review.<sup>143</sup> For example, the CLC referred to this Committee's previously proposed amendment to the regulatory policy section of the Telecommunications Act (section 4) to 'promote the use of industry self-regulation where this will not impede the long term interests of end users'.<sup>144</sup> In supporting this proposed amendment, the CLC claimed that the ACA has not been sufficiently clear about the need for:

... genuine consumer participation in code development, the need to demonstrate that the provisions of codes meet some benchmarks [and] the

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138 Sections 123 and 125.

139 ACIF, *Submission 9*, p. 1.

140 ACIF, *Submission 9*, p. 4.

141 ACIF, *Submission 9*, p. 4.

142 ACIF, *Submission 9*, p. 2.

143 For example, CLC, *Submission 23*, p. 8; CTN, *Submission 30*, p. 3.

144 Senate Environment, Communications, Information Technology and the Arts References Committee, *A lost opportunity? Inquiry into the provisions of the Australian Communications and Media Authority Bill 2004 and related bills and matters*, March 2005, p. 78, Recommendation 13.

need for monitoring compliance with codes or implementation of a system whereby industry reporting is genuine and accurate.<sup>145</sup>

5.110 CTN also expressed strong views about self-regulation and the need to protect consumers:

The ACA [needs] to develop the single Standard using a Customer Lifecycle approach...to take the place of the current miscellaneous collection of stand alone codes.<sup>146</sup>

5.111 The Australian Privacy Foundation also expressed concern about the failure of the regulatory regime to protect consumer interests adequately, pointing to the self-regulatory nature of the codes process as the principal problem:

Our main criticism of the regulatory regime is that it relies far too heavily on self-regulation. While some useful Codes and Guidelines have emerged from ACIF, the ACIF processes have been cynically manipulated by industry participants to delay and avoid effective regulation. The processes also stretch and exhaust the limited resources of relevant consumer NGOs such as CTN and APF. Many industry participants have even failed to sign up to Codes they have been involved in drafting. The ACA and Department have been far too reluctant to step in even when self regulatory processes have manifestly failed ...<sup>147</sup>

5.112 The TIO's 2003/2004 annual report was very critical of the administration of the codes for a range of reasons, including problems with the content and complexity of the codes and limited compliance assistance from ACIF or intervention by the ACA:

... Consumer Codes are one of the most important underpinnings of the co-regulatory consumer protection regime for the telecommunications industry. Codes have been criticised by consumers and industry for being too complex and prescriptive and for taking too long to develop.

There are also concerns about the coverage given by individual Codes to particular issues and whether some are unduly narrow, leading to calls for a single overarching Code. From the TIO's perspective, however, the key problems are the low sign-up rate and issues of compliance and enforcement. Just over half of all Consumer Code breach investigations by the TIO in the past year involved non-signatories. This suggests a lack of support for Consumer Codes by the very industry that has developed them. After seven years of work this is a poor result.

Equally troubling is the relatively low rate of Code enforcement, whether in the sense of compliance activity by ACIF or formal regulatory intervention

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145 CLC, *Submission 23*, pp 8-9.

146 CTN, *Submission 30*, p. 5.

147 Australian Privacy Foundation, *Submission 52*, p. 1.

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by the regulator. For instance, there is clear evidence of widespread systemic non-compliance with the Complaint Handling Code.<sup>148</sup>

### ***Meeting consumer expectations***

5.113 Subsection 112 of the Telecommunications Act sets out the general principles relating to industry codes and standards. Paragraph 112(3)(d) requires the ACA to have regard to 'the public interest, including the public interest in the efficient, equitable and ecologically sustainable supply' of carriage services, goods and services used in connection with carriage services 'in a manner that reflects the legitimate expectations of the Australian community'.

5.114 Many groups argued that the 'legitimate expectations of the Australian community', particularly in the USO, are not being met. For example, the CLC proposed a detailed series of legislative amendments to 'provide the necessary fine-tuning to self regulation',<sup>149</sup> some of which are discussed below.

### ***Involvement of consumers***

5.115 The CLC was particularly concerned about the need for inclusion of consumers in code development, and called for consumer involvement in 'both the "front end" and "back end" of self-regulation':

This means involving consumers on an equal footing in all code development work and then ensuring that they are involved in registration and review processes. ... [L]ocking consumers out of the decision-making (for example, in the way that codes are developed in some forums other than ACIF), has the potential to produce poor outcomes for both industry and consumers.<sup>150</sup>

5.116 AAPT, however, suggested there was a better solution to the problem of code development. Mr David Havyatt told the Committee:

We keep on drawing on the same pool of consumer representatives without...creating any real process for those consumer representatives to undertake real and detailed research about what consumer issues are. ... [T]here may be a better model for undertaking that which was not considered in the CDC report<sup>151</sup> but does...occur in the energy industry... [T]here is in fact a separate body—the consumer institute—that...is separately researching and providing inputs into ordinary processes. [It] addresses some of the balance questions by actually drawing all those

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148 Ombudsman's overview, *TIO Annual Report 2003/04* at: [http://www.tio.com.au/publications/annual\\_reports/ar2004/annual\\_200402a.htm](http://www.tio.com.au/publications/annual_reports/ar2004/annual_200402a.htm)

149 CLC, *Submission 23*, p. 9.

150 CLC, *Submission 23*, p. 8.

151 *Consumer Driven Communications: Strategies for better representation*, December 2004, discussed below.

resources into one place. ... the funding for consumer research [would] be linked in some way to government expenditures rather than being some kind of vague question built around submissions.<sup>152</sup>

5.117 ACA representative Mr Allan Horsley reinforced the need for funding in relation to consumer input into the development of codes:

My own view is that consumer groups are under resourced and that may on occasion cause them to have to revisit things or take time to come to a position. Equally, I think, consumer groups struggle because there is no single entity, and so there is a need for them to in a sense harmonise a view.<sup>153</sup>

### ***The Consumer Driven Communications Report***

5.118 With the aim of improving 'the effectiveness of consumer input and influence to the regulation and governance of the communications industry', the ACA requested representatives from eight consumer organisations to develop strategies for strengthening consumer representation in telecommunications.<sup>154</sup> In late 2004 the Consumer Driven Communications (CDC) Report was released.<sup>155</sup>

5.119 The report lists twelve themes identified in discussions and submissions. These themes focus on the need to ensure that consumers receive products and services with adequate safeguards, that they are protected, represented and funded adequately, and that they participate in policy development. The report states that a strong consumer presence is crucial to an effective regulatory framework,<sup>156</sup> and that its 71 recommendations:

... have been framed and crafted with a view to practical changes which will improve the participation of consumers and their representatives in setting and guiding consumer outcomes in the communications industry.<sup>157</sup>

5.120 The Committee has recognised the need for consumer participation in the regulatory framework for some time. In its inquiry on the legislation that established

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152 Mr David Havyatt, *Committee Hansard*, 11 April 2005, p. 35.

153 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 51.

154 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, p. 2.

155 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004.

156 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, p. 1.

157 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, p. 19.

the ACMA, the Committee made a series of recommendations that emphasised participation by, and protection for, consumers in the telecommunications industry.<sup>158</sup>

5.121 The Committee notes that the ACA has not yet formally responded to the CDC report.

### ***The Consumer Contracts Industry Code***

5.122 As discussed above, a new Consumer Contracts Industry Code has recently been registered by the ACA.<sup>159</sup> The Code aims to:

... address aspects of consumer detriment arising from the imbalance in bargaining power between service providers and their residential and small business customers, [and] .... seeks to ensure that the terms of contracts between service providers and residential and small business consumers are fair and are presented by service providers in a form that is readily accessible, legible and capable of being readily understood by consumers.<sup>160</sup>

5.123 The Code refers to an expectation that industry compliance will enhance customer confidence in the fairness, accessibility and intelligibility of consumer contracts as better contract terms become standard practice.<sup>161</sup>

5.124 The Committee heard criticism of the delay in producing the Code and notes that its development by ACIF took almost five years. Ms Teresa Corbin, Executive Director of CTN, for example, noted 'We waited a long time for consumer contracts to be resolved, and I think that caused a lot of unnecessary pain for consumers'.<sup>162</sup> Ms Corbin also noted:

Even after a code becomes registered, it takes a year to turn around. So, in effect, a regulator has to step back for 12 months, even after a code is registered, before it can do any compliance auditing.<sup>163</sup>

5.125 ACA representative Mr Allan Horsley agreed that the process had been 'a bit long' and that efforts were being made to speed up the process in future.<sup>164</sup> He

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158 Senate Environment, Communications, Information Technology and the Arts References Committee, *A Lost Opportunity? Inquiry into the provisions of the Australian Communications and Media Authority Bill 2004 and related bills and matters*, 2005, recommendations 9, 13, 14, 15 and 16. Government senators agreed in principle to those recommendations.

159 The Code was registered on 4 May 2005.

160 ACIF, *Industry Code Consumer Contracts*, 2005, p. ii.

161 ACIF, *Industry Code Consumer Contracts*, 2005, p. iii.

162 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 30.

163 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 30.

164 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 47.

considered that a maximum of nine months was a reasonable amount of time from start to registration by the ACA.<sup>165</sup> He noted in relation to the ACA's role:

We informally encourage ACIF. We use our staff who attend the meetings to encourage timely completion, and your point is probably to steel people to do things much better in the future. A new code process has just started on another code, and there is an across-the-board commitment that it will be done in a far more timely fashion.<sup>166</sup>

5.126 Ms Anne Hurley on behalf of ACIF acknowledged that there were 'deficiencies' in the process:

We have taken that on board, with the requirement now to deal with the issue of unexpectedly high bills and credit management issues. We are currently revising the credit management code and we are taking the best of the practices from the consumer credit code and refining them even further. We are bringing in professional project management to ensure that there is a six-month time frame and everything is delivered according to milestones along the way, to ensure there is a timely outcome.<sup>167</sup>

5.127 When asked how the ACIF could describe the self-regulatory regime as not needing any change<sup>168</sup> when it has taken so many years to develop this code, Ms Hurley from ACIF agreed that it had taken too long, but added:

The outcome also needs to be acknowledged that the consumer contracts code is the first time anywhere in the world that there has been an industry response to dealing with unfair contract terms.<sup>169</sup>

### ***Compliance***

5.128 As noted above, the TIO has been very critical of the level of industry compliance with codes, and has referred in particular to ACIF's failure to provide adequate support and encouragement to industry participants to comply. Mr Charles Britton from the Australian Consumers' Association told the Committee that ACIF was 'process captured' and that completion of a code tended to be seen as the end of the process:

... the confusion about ACIF is such that the very fact that a process has been completed is being seen as an outcome. In fact, outcomes from things like contract codes are what happens in the marketplace, not simply that you have managed to deliver a document.<sup>170</sup>

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165 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 50.

166 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 50.

167 Ms Anne Hurley, *Committee Hansard*, 13 May 2005, p. 16.

168 ACIF, *Submission 9*, p. 2.

169 Ms Anne Hurley, *Committee Hansard*, 13 May 2005, p. 21.

170 Mr Charles Britton, *Committee Hansard*, 13 April 2005, p. 61.



5.129 The Committee notes that the CDC Report recommended that ACIF take a more active role in encouraging industry compliance with the codes, including establishing a 'Codes Compliance and Monitoring Committee' and providing assistance to industry suppliers through training and improved guidance documents.<sup>171</sup> The Committee was encouraged to hear that ACIF has recently appointed a compliance manager to assist the industry with compliance – a role that was previously spread across a number of staff and had less prominence as a result.<sup>172</sup>

5.130 Other evidence criticised the ACA's performance. The CLC argued that the ACA has not been clear enough in the past about 'the need for monitoring compliance with codes or implementation of a system whereby industry reporting is genuine and accurate'.<sup>173</sup>

5.131 However, Mr Horsley on behalf of the ACA described the level of overall compliance as 'reasonable', stating:

We have found instances where some carriers have been slow to comply with codes. We would also say that, where the ACA has had reason to meet with a carrier to investigate compliance and when issues are raised with them, the response to comply has been pretty reasonable.<sup>174</sup>

5.132 Mr Horsley acknowledged that there were often problems 'at the coalface' with compliance despite 'sophisticated compliance regimes' at management level, and noted that the ACA may issue a direction where it is not satisfied about a company's compliance with a code. The ACA had done so in one case:

... the ACA became very concerned about Vodafone's perceived failure to comply with the mobile number portability code. We went to Vodafone and sought some compliance. That did not come as fast as we would have liked and we issued a direction. After a period of some months, which involved some substantial software changes as a consequence of the software upgrade, we now have compliance.<sup>175</sup>

5.133 Ms Corbin from CTN also pointed to low numbers of companies signing up to codes which may be reviewed within a relatively short period:

I think there is a real concern about the fact that not many industry members have actually signed codes. They say that the reason they do not sign them is that it is actually really hard to tick all the boxes and make sure that they are complying fully and legally. They say that there is a legal question about them signing off on a code and that that process takes a long

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171 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, pp 16 & 17.

172 Ms Anne Hurley, ACIF, *Committee Hansard*, 13 April 2005, p. 18.

173 CLC, *Submission 23*, p. 9.

174 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 52.

175 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, p. 52

time. So, if you review a code every year or two, that basically means that all the signatories drop off and then have to go through all of their internal processes again. If the industry has negotiated a code and this is the benchmark—they may not be [rapt] about it, but it is the benchmark that they believe they can meet and it is what they come out with as their end product—but people do not sign it, you have to ask, ‘Where is our confidence that this is really happening?’<sup>176</sup>

5.134 Ms Corbin also referred to a lack of knowledge amongst providers about the codes:

I also find that players, particularly newer players—and there are more and more of those, and I often go to visit them—do not really understand what the codes are about. They often ask me questions, and I have to say to them: ‘Look, I am coming at it from a consumer perspective. You really need to talk to somebody from an industry body or even a government source.’ I know the regulator goes around and visits them, but I think there is a real opportunity there for industry associations to provide some training, because I do not think that there is a lot of understanding about what compliance really means—and I think that is part of the difficulty.<sup>177</sup>

5.135 Ms Corbin noted that the CDC report had suggested ongoing monitoring:

[ACIF has] an internal scheme and they have started to focus more on monitoring in the last two to three years, but a lot of the focus is about getting the statistics, interpreting them and all that sort of thing. One of the issues there is actually having somebody, probably ACMA, pulling all of the data together.<sup>178</sup>

5.136 In relation to the new Consumer Contracts Code, the ACA's Acting Deputy Chairman, Mr Allan Horsley, told the Committee that the ACA would be 'proactive' in ensuring compliance.<sup>179</sup> Ms Hurley from ACIF also stated that to assist with compliance of the new code:

... ACIF has held a number of industry briefings in Sydney and Melbourne so that suppliers are fully aware of what their requirements are for compliance under the code.<sup>180</sup>

5.137 However, the Committee was told that legislative recognition of these responsibilities was desirable. The CLC recommended a new section 120A in the Telecommunications Act to formalise monitoring of compliance with codes or practice.<sup>181</sup> The new section should require reporting by suppliers/industry

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176 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 33.

177 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 33.

178 Ms Teresa Corbin, *Committee Hansard*, 13 April 2005, p. 33.

179 Mr Allan Horsley, *Committee Hansard*, 4 May 2005, pp 52-53.

180 Ms Anne Hurley, *Committee Hansard*, 13 April 2005, p. 15.

181 CLC *Submission 23*, p. 11.

associations on an annual basis and, where the ACMA considers that monitoring is not providing adequate or accurate data, monitoring by the ACMA.

5.138 The CLC also supported the CDC's recommendation of a new section 125A to cover situations where evidence suggests that self-regulatory mechanisms will not adequately respond to an identified consumer protection need.<sup>182</sup> The new provision should state that in deciding whether to exercise this power, the ACMA is to refer to the views of, and consult with, any bodies or associations that represent a section of the industry and any bodies or associations that represent consumers.

### **Dispute resolution – the Telecommunications Industry Ombudsman**

5.139 The TIO deals with complaints that consumers have not been able to resolve with their telephone or internet company, and is an 'office of last resort'.<sup>183</sup> The TIO classifies complaints from TIO Member customers under a four tier complaint classification and escalation system:

At level 1, complaints are referred back to the relevant TIO Member, generally at an escalated customer service point, for a final attempt at resolution. If the complaint is not resolved in a fair and reasonable manner, the TIO will generally escalate it, if necessary through each of the three further levels, with additional costs to the Member.<sup>184</sup>

#### ***The main issues facing the TIO***

5.140 Mr John Pinnock, the TIO Ombudsman, described problems the office faces:

- The complaints code mechanism that obliges providers to refer customers to the TIO is not being honoured by providers or enforced by the ACA.
- The increase in customer service complaints strongly suggests a decline in performance of service providers.
- Customer hardship complaints are now significant as far as credit management issues are concerned, and are growing most rapidly with mobile carriers and resellers. Apart from Telstra recognising this as an issue, some of the other providers, who are members of the TIO, find that hardship complaints are beyond their capacity to resolve.
- Broadband issues are arising more frequently, including ISP assistance for customers to make the best choice when signing for a broadband service,

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182 CLC *Submission 23*, p. 11.

183 TIO website, 20 May 2005 at: <http://www.tio.com.au>. The TIO defines a complaint as an expression of dissatisfaction or grievance: Requests for information are registered as Enquiries. Complaints which are anonymous or regarded as trivial or vexatious are also registered as Enquiries (see TIO *Submission 39*, p. 2). In describing the TIO as an office of last resort, the website states 'This means that before contacting the TIO you must have tried to resolve your complaint with your service provider'.

184 TIO, *Submission 39*, p. 3.

delay in transferring from one ISP to another, broadband speed, customer service, aspects of contractual arrangements and advertising.

- There has not been a high level of compliance with the ACIF's complaint handling code.
- Mechanisms to ensure customer complaints are dealt with satisfactorily have not yet been resolved by the council of the TIO.<sup>185</sup>

5.141 The TIO's submission expressed concern over a growth of 'customer service complaints' over the past several years. This category included:

- failure to record changes in customer details, eg change of address
- failure to return calls or emails or reply to correspondence
- inability to contact provider
- failure or refusal to escalate complaint.<sup>186</sup>

### ***Billing complaints***

5.142 The TIO quarterly statistics from December 2004<sup>187</sup> show that, of the eight categories of complaints (billing, customer service/contracts, credit control, customer transfer, disconnection, faults, provision/porting and other), billing complaints top the list in all three services, with equal numbers of complaints about contracts in the mobile services area.

5.143 Billing complaints have increased, particularly in relation to mobile services:

... [in the December quarter] ... landline billing complaints rose 3.7 per cent, internet billing complaints rose 7.1 per cent and mobiles 19.5 per cent.

In landline services, the most significant billing complaint increase was in international data calls. Complaints rose by 107.5 per cent, from 530 to 1100.

In internet services, complaint numbers remained relatively consistent with previous quarters. A total of 39.3 per cent (48.5 per cent - Sept quarter) of all internet billing complaints related to dial-up services, 52.7 per cent (43.8 per cent) for ADSL and 4.0 per cent (5.4 per cent) for cable.

Mobile billing complaints have increased every quarter for the calendar year of 2004. CDMA complaints accounted for 30.3 per cent (21.2 per cent) of complaints with GSM complaints comprising 69.5 per cent (78.7 per cent).<sup>188</sup>

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185 Mr John Pinnock, *Committee Hansard*, 4 May 2005, pp 28–36.

186 TIO, *Submission 39*, p. 5.

187 TIO Complaints statistics, TIO website, 24 May 2005 at: <http://www.tio.com.au/statisticsQtr.htm>

188 *TIO Talks 33*, April 2005, TIO website, 1 June 2005, at: [http://www.tio.com.au/publications/annual\\_reports/ar2004/annual\\_200404.htm](http://www.tio.com.au/publications/annual_reports/ar2004/annual_200404.htm)

5.144 The Ombudsman suggested that some customer billing problems would be reduced if in situations where a customer purchased mobile content from a third party content provider, the service provider that billed the end user took responsibility for the bill:

In my view it does not matter whether they have a bilateral agreement with a content provider or aggregator of content to share revenue or whether they are merely acting on a fee-for-service basis as some form of billing bureau: if it is on the bill, they deal with it.<sup>189</sup>

### ***Possible solutions in complaints resolution***

5.145 The Committee heard a range of suggestions to improve complaints services for customers. It appears that many customers are not fully aware of the complaints mechanism or their rights.

#### *Awareness of TIO*

5.146 Several groups raised the issue of consumer awareness of the TIO. For example, the CTN stated that there should be:

... a thorough audit of compliance with the ACIF Complaints Handling Code in particular the requirement that consumers be told about the TIO and their right to contact them to assist with the resolution of disputes.<sup>190</sup>

5.147 The Ombudsman said that:

... the best way of ensuring that [customers] get to the TIO is that if they have an unresolved complaint which they have taken to their provider, that provider ought to refer them to the TIO.<sup>191</sup>

5.148 The Ombudsman, however, acknowledged that methods to improve awareness about the TIO's work, especially in rural areas, are not performing as well as they could. The complaint handling code<sup>192</sup> requires a supplier to advise a customer with an unresolved complaint about the TIO as an external review mechanism. Mr Pinnock told the Committee:

It is my observation over a number of years, both in relation to the first version of the complaint handling code as well as the current version, that that is more honoured in the breach than in the observance. Consistently over the last three years our internal figures show that somewhere between

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189 Mr John Pinnock, *Committee Hansard*, 4 May 2005, p. 31.

190 CTN, *Submission 30*, p. 7. The CTN argued that suppliers should distribute the TIO's contact details with all warning notices and final notices (p. 5).

191 Mr John Pinnock, *Committee Hansard*, 4 May 2005, p. 28.

192 Rule 7.6.1.

only 11 and 16 per cent of complainants come to us as a result of a direct referral by their provider.<sup>193</sup>

### *Resolution of complaints*

5.149 The Committee heard various suggestions about ensuring that consumers' complaints are heard and acted on. CTN referred to a need to:

Examine why Australian consumers find it so difficult to make complaints about their services and why so many never even bother to try and register their dissatisfaction.<sup>194</sup>

5.150 The Ombudsman, Mr Pinnock, told the Committee that he agreed with CTN's view that people were having trouble making complaints:

... principally because some providers, while not discouraging complaints, put up barriers to having complaints escalated.<sup>195</sup>

5.151 Mr Pinnock stated that his office, in dealing with a customer whose complaint has not been resolved, sends the complainant back to an escalated service point in the provider, with the TIO reference number and a telephone number that is not normally available to customers. Mr Pinnock suggested that the provider should be dealing with the complaint at this escalated point, and should make the contact number available to consumers generally. This would reduce the number of level 1 complaints recorded by the TIO, and so reduce the escalation rate.<sup>196</sup>

5.152 The CTN also called for mandatory definition of 'consumer complaint', which would include fault reporting, through a service provider determination.<sup>197</sup>

### *Expansion of the TIO's role*

5.153 Some groups made suggestions about the TIO's role in relation to converging technologies. The CTN, for example, saw the expansion of the TIO's jurisdiction to include pay TV as an absolute minimum reform.<sup>198</sup>

5.154 The Committee has previously recommended broadening the TIO's role to that of a general communications industry ombudsman,<sup>199</sup> in line with the

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193 Mr John Pinnock, *Committee Hansard*, 4 May 2005, pp 28 - 29.

194 CTN, *Submission 30*, p. 7.

195 Mr John Pinnock, *Committee Hansard*, 4 May 2005, p. 35.

196 Mr John Pinnock, *Committee Hansard*, 4 May 2005, p. 36.

197 CTN, *Submission 30*, p. 7.

198 CTN, *Submission 30*, p. 7.

199 Senate Environment, Communications, Information Technology and the Arts References Committee, *A Lost Opportunity? Inquiry into the provisions of the Australian Communications and Media Authority Bill 2004 and related bills and matters*, 2005, para 5.141 and Recommendation 17, pp 87-88.

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recommendation of the CDC report.<sup>200</sup> Mr Pinnock told the Committee that while he supported the concept, there was an issue as to what would be included. He suggested that, since the TIO is a consumer protection mechanism, converging technologies should be considered as a bundle, with the TIO able to deal with complaints about all aspects.<sup>201</sup> The TIO would then be able to deal with all complaints across the communications industry, including pay TV, network connection and customer equipment issues.<sup>202</sup>

5.155 The Ombudsman stressed that with his office now handling a weekly average of 3000 calls - compared with about 2500 six months ago - three important principles of any complaints handling scheme must apply for the TIO to serve consumers effectively:

- the scheme should develop in step with changes in the telecommunications industry, as opposed to evolving into something that it was never intended to be;
- the TIO should provide an adequate measure of protection irrespective of the services consumers use and the technology that is used to deliver them; and
- consumers should be able to bring a variety of complaints to the TIO in a way that increases the efficiency of complaints handling in the industry, reduces any overlap in jurisdiction and discourages consumers from forum shopping.<sup>203</sup>

### **Other issues**

5.156 Groups such as the CTN made a range of other recommendations which they considered were necessary to improve consumer protection. The Committee did not have time to examine these in detail, but notes that they included suggestions for better control of advertising, telemarketing and selling practices; improvement to the government-funded schemes for consumer advocacy and research; enforcement of community impact statements for new products and services; and payphone provision.<sup>204</sup>

5.157 The Committee did, however, consider in some detail the following three matters: price controls and low income customers, remote Indigenous communities and emergency call services.

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200 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, Recommendation 43, p. 13.

201 Mr John Pinnock, *Committee Hansard*, 4 May 2005, p. 31.

202 ACA, Final Report: *Consumer Driven Communications: Strategies for better representation*, December 2004, Recommendation 43, p. 13.

203 TIO Ombudsman, *TIO Talks 33*, TIO website, 24 May 2005 at: [http://www.tio.com.au/publications/TIO\\_talk\\_issues/33/33.2.htm](http://www.tio.com.au/publications/TIO_talk_issues/33/33.2.htm).

204 CTN, *Submission 30*.

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### *Price controls and low income customers*

5.158 As the ACCC noted in a recent report:

Price controls are considered to be a key telecommunications consumer safeguard. They are applied to Telstra to ensure that efficiency improvements are passed through to consumers as lower prices for telecommunications services in markets where competition is not yet fully developed. Price controls have also been used as a tool for achieving certain social policy/equity objectives.<sup>205</sup>

5.159 In particular, the ACCC noted:

Certain aspects of the current price control arrangements could be seen as assisting potentially disadvantaged consumers. Firstly, Telstra is obliged to provide a low-income package. There is also a cap on the price of local calls and on other calls made in extended zones. Thirdly, there are restrictions on the difference between metropolitan local call prices and non-metropolitan local call prices.<sup>206</sup>

#### *The price control scheme*

5.160 The Minister has the power to set price controls for Telstra's telecommunications carriage, content service and facilities. In the absence of healthy market competition – and associated competitive prices – price controls can help to constrain price rises. In theory, as competition increases the need for price regulation will decrease.<sup>207</sup>

5.161 Price control arrangements have been in place since 1989. The current three-year price cap regime is contained in a determination which expired on 30 June 2005 and has recently been extended.<sup>208</sup> The price cap arrangements were recently reviewed by the ACCC,<sup>209</sup> which made various recommendations on the arrangements to apply from 1 July. In summary, the ACCC recommended that the price cap regime be retained (while at differing levels) but not extended to other services. In addition,

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205 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. 1.

206 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. 101.

207 Price controls can have unintended impacts on the dominant competitor. Telstra argues that aspects of the price cap regime can restrict Telstra's capacity to recover costs for certain unprofitable services. In turn, the cost is passed on to other competitors in the form of access charges. In effect, competition may be stifled rather than enhanced. See Telstra, *Submission 25*, p. 16 and Alasdair Grant (ed.), *Australian Telecommunications Regulation: The Communications Law Centre Guide*, UNSW Press, 2004, pp 253-254.

208 *Telstra Carrier Charges – Price Control Arrangements, Notifications and Disallowance Determination No. 1 of 2002*.

209 The review involved extensive consultation by the ACCC through written submissions and public meetings throughout Australia.



the ACCC recommended that supplies to bigger business customers (those that obtain more than five lines) should no longer be captured under these arrangements.<sup>210</sup>

5.162 The ACCC review concluded that low-income consumers have benefited to some extent from Telstra's low-income scheme, *Access for Everyone*. However, there was scope for improvement and some changes were recommended:

The ACCC believes that future price controls should ensure that all low-income consumers can benefit from the low-income scheme, and that low-income consumers are not worse off if they participate in the scheme. Therefore, the ACCC recommends that concessions be extended or a safety net plan be implemented to ensure that low-income consumers are not worse off compared to standard users.<sup>211</sup>

5.163 The ACCC made several specific recommendations in relation to low income consumers, including recommending that ways to improve public awareness of the low income scheme continue to be explored. The ACCC also suggested changes to strengthen the current regulatory controls.<sup>212</sup>

5.164 The Committee notes that on 22 June 2005 the Minister stated that she expected the existing price control regime would be 'rolled over for a short period' because of the current review of different aspects of 'the consumer framework for telecommunications and the regulatory framework for telecommunications'.<sup>213</sup> On 30 June the Minister announced that the current determination would be extended until 31 December 2005.<sup>214</sup>

#### *Telstra's Low Income Measures Assessment Committee*

5.165 The Telstra Low Income Measures Assessment Committee (LIMAC), established in June 2002, comprises representatives from a range of community and government agencies. Mr Christopher Dodds, Chairperson of LIMAC, told the Committee that the committee was established as 'part of a process to establish a compensatory mechanism for low-income, low-use' customers in what the industry termed 'rebalancing', that is, the ending of the cross-subsidy between call charges and line rental charges.<sup>215</sup> For such people, the effect of the increased monthly line rentals was substantial. He pointed to two significant outcomes that he considered LIMAC had achieved in negotiations:

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210 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. v.

211 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. vi.

212 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, pp 110, 116.

213 Senator the Hon. Helen Coonan, Minister for Communications, Information Technology and the Arts, *Senate Hansard*, 22 June 2005, p. 50.

214 'Telstra price controls extended', *The Australian*, 30 June 2005, at:<http://australianit.news.com.au/common/print/0,7208,15776749^15306^nbv^,00.html>.

215 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 11.

... the product that maintains a low rental level per month in return for higher call costs. If you are a low spend user that is of advantage. The other one was the linking of the pensioner concession that Telstra provided in addition to the government's pensioner concession to the line rental increase, so that for all pensioners—and that includes aged, disability and single parent pensioners—there has been no impact from the line rental increase at all. That is because the pensioner concession has been indexed against the line rental increases.<sup>216</sup>

5.166 Mr Dodds noted that Telstra had also introduced a range of support products, such as MessageBox for homeless people.<sup>217</sup> Telstra's *Access For Everyone* package aims to provide affordable telephone services to disadvantaged Australians, with ten main products and services being offered, and an eleventh, 'Bill Smoothing' to be launched in June 2005.<sup>218</sup>

5.167 Mr Dodds noted that the package, including the establishment of the LIMAC, had been made part of Telstra's licence conditions and thus was 'future proofed'. He argued that this was 'a very good model' for other utilities companies.<sup>219</sup> However, the Committee notes the ACCC's call for certain aspects of the current regulatory regime to be strengthened, as discussed above. In particular, the ACCC considered that Telstra's licence condition should be amended to require Telstra to comply with a low-income package and associated marketing plan specified by the Minister, noting 'The current regulatory scheme means that improvements or suggestions from parties other than Telstra are not necessarily heard'.<sup>220</sup>

### *Looking forward*

5.168 Mr Dodds argued that the USO was critical to low income people and should be expanded:

A commitment to ensure that there is universal access is as important for people who are income disadvantaged as it is for people who are disadvantaged through living in rural and remote areas and for people who are disadvantaged through being disabled. If parliament and the Australian government are committed to ensuring universal and equitable access then the USO...should be expanded to cover low-income people and it should be a requirement that all telecommunications companies have packages along the lines of, as a starting point, the low income measures committee and the

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216 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 12.

217 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 12.

218 Public Report to the Minister for Communications, Information Technology and the Arts, *Telstra's Access for Everyone Package*, to 31 December 2004, p. 5.

219 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 12.

220 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. 110.

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access program package. That package also needs to be broadened to reach beyond just low spend customers.<sup>221</sup>

5.169 The CTN also argued that all providers should be required to implement financial hardship policies, and that 'hard caps on bills based on proper credit assessments should be mandated immediately'.<sup>222</sup> The Committee notes that the ACCC's recent report referred to the fact that in the UK and the USA low-income schemes are part of the USO. The ACCC commented that 'Such an approach is arguably more robust than the current Australian approach'.<sup>223</sup>

5.170 Mr Dodds stated that 'a really significant number of low-income people are turning to prepaid phones'. Attention now needed to be paid to mobile phone services:

... as part of the next step in dealing with the next generation ... and in providing protection for low-income people, we have to start looking at the mobile market and at how to involve the mobile providers, including Telstra. ... We have to look at how we can get resources and support to people who are having difficulty in that mobile market.<sup>224</sup>

5.171 Mr Dodds warned that the potential problems caused by access to new technologies also needed to be considered:

Think of the sorts of horror stories we got about teenagers and their mobile phone bills when text messaging came in. Where are we going to be in two years time when 3G is everywhere and sending a video of what is happening at a party to everyone you know because it is really funny starts happening? The potential for unexpectedly high bills for families and teenagers is quite enormous.<sup>225</sup>

5.172 He also argued that a national plan for broadband access needed to be considered:

I think we need a national plan that is not just something as simple as the [LIMAC] that is providing support on the edge. These are bandaids. The issue of broadband is so critical that it needs a strategy. There are probably some bandaids that would help, but I think a national access plan is the approach that needs to be taken.<sup>226</sup>

5.173 Thus while there are some valuable protections for low income customers under current arrangements, there is evidence to suggest that more needs to be done, particularly in light of new technologies, and that controls need to be tightened.

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221 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, pp 12-13.

222 CTN, *Submission 30*, p. 6.

223 ACCC, *Review of Telstra's Price Control Arrangements*, February 2005, p. 110.

224 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 15.

225 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 15.

226 Mr Christopher Dodds, *Committee Hansard*, 4 May 2005, p. 16.

### ***Remote Indigenous communities***

5.174 In 2002 the Estens Report found that remote Indigenous communities remain the most disadvantaged telecommunications users in Australia and face unique difficulties in accessing adequate services.<sup>227</sup> The Estens Report also found:

- the direction of the Telecommunications Action Plan for Remote Indigenous Communities (TAPRIC) is supported as providing a holistic and well-targeted way forward ... but further funding will be required in the future [Finding 5.2]
- Telstra needs to continue progress in implementing payphone improvements in remote Indigenous communities as part of its USO ... [Finding 5.3]<sup>228</sup>

5.175 The Committee notes that the DCITA 2004 review also pointed to the need for some action by Telstra to improve services for remote and Indigenous communities:

The key ... should include the ability to allow for pre-payment for services, and to allow users the flexibility to access their pre-paid service at a number of locations.<sup>229</sup>

5.176 During this inquiry, Mr Mark Needham from the NFF argued that some of the recommendations of the Estens Report relating to remote Indigenous communities still required further work.<sup>230</sup> The Minister recently noted that as few as five per cent of people in remote Indigenous communities have access to a phone at home, compared with 99 per cent of Australians as a whole.<sup>231</sup>

5.177 LIMAC's *Access For Everyone* 2004 report<sup>232</sup> stated:

LIMAC is pleased to note the increase in perceived affordability of standard and mobile telephone services amongst this low-income segment [Indigenous Australians]. LIMAC is also pleased to note that satisfaction

227 Report of the Regional Telecommunications Inquiry, *Connecting regional Australia*, 2002, Finding 5.1, p. 9.

228 Report of the Regional Telecommunications Inquiry, *Connecting regional Australia*, 2002, pp 9&10.

229 DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004, p. 174.

230 Mr Mark Needham, *Committee Hansard*, 11 April 2005, p. 2.

231 Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts, 'Keynote address to the DCITA Indigenous Telecommunications Forum', Alice Springs, 17 May 2005, accessed at <http://www.dcita.gov.au/newsroom2/speeches>.

232 Public Report to the Minister for Communications, Information Technology and the Arts, *Telstra's Access for Everyone Package*, to 31 December 2004.

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with personal telecommunications services has returned to the levels reported in 2002.<sup>233</sup>

5.178 The Committee is concerned at LIMAC's report that satisfaction with services has only returned to 2002 levels. Progress in achieving equity for all Australians (which includes the disadvantaged, poor, remote and Indigenous Australians) in accessing telecommunications appears to be slow.

5.179 The Committee notes that TAPRIC was introduced in 2002 with \$8.3 million in funding over three years to implement two initiatives to improve services in remote Indigenous communities: improving payphone accessibility by working with telecommunications carriers and communities, and undertaking a study to develop a longer-term strategy and action plan for improving telecommunications in those communities.<sup>234</sup>

5.180 Under the TAPRIC Internet Access Program Phase 2, DCITA is making available computer equipment to selected remote Indigenous communities connecting to a suitable high bandwidth Internet service under the HiBIS scheme. Another \$3 million was 'rephased' in 2005-06 for the provision of community phones, an alternative to payphones. A DCITA representative recently advised that five trials are currently taking place with prepaid cards and access lines, and that 'the robustness of telephones, particularly in terms of weather impact' had also needed to be addressed.<sup>235</sup>

5.181 While the Committee did not receive further evidence about the situation in remote Indigenous communities so as to enable it to make specific findings, the situation is of concern. As the Estens Report noted:

Telecommunications has been identified as an important tool for the economic development and self-sufficiency of remote Indigenous communities, assisting them to achieve their social and business aspirations. However, these remote Indigenous communities have generally not attracted the interest of commercial service providers.<sup>236</sup>

### ***Emergency call service***

5.182 The Committee heard from the National Emergency Communications Working Group (NECWG), a group which considers the future development, funding, management and security of the Emergency Call Service (E000). Mr Robert Barker, a

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233 Public Report to the Minister for Communications, Information Technology and the Arts, *Telstra's Access for Everyone Package*, to 31 December 2004, p. 21.

234 See [http://www.dcita.gov.au/tel/indigenous\\_telecommunications](http://www.dcita.gov.au/tel/indigenous_telecommunications), accessed on 21 June 2005.

235 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Budget Estimates: Committee Hansard*, 24 May 2005, pp 127-128.

236 Report of the Regional Telecommunications Inquiry, *Connecting regional Australia*, 2002, p. 163.

founding member of the Working Group, told the Committee that the group wanted to draw attention to 'the difficulties of a critical community service trying to operate efficiently in an environment which relies in large part on self-regulation'. There were two main concerns about the E000 service:

- it is not a Telstra core business. While Telstra had done an excellent job, there will be no legislative obligation on Telstra to continue with the service after it is fully privatised; and
- there is nothing to ensure that new technologies like VoIP will be utilised for the E000.<sup>237</sup>

5.183 Mr Barker noted that Telstra's cost of running the service was about \$20 million per year and that 'there is no way known that the financial impact is structured fairly in what should be a competitive market environment'.<sup>238</sup> While all service providers were obliged to provide consumers with a free call to 000, Telstra provided all the equipment and staff associated with running the service. Mr Barker suggested there should be an independent structure, with separate funding, to ensure appropriate management and strategic planning of the E000 service so that it developed with new technologies.<sup>239</sup>

5.184 Mr Barker said that certain principles must be addressed to ensure the future operation of the E000 service, including that the service:

- is able to operate independently of a carrier;
- can utilise advanced technologies;
- is able to operate at least two centres, both with risk management and business procedures in place;
- has set performance standards and can provide performance reports; and
- is able to deal fast and effectively in emergencies such as terrorist attacks.<sup>240</sup>

5.185 The CTN also urged that these issues be looked at closely, particularly in relation to VoIP.<sup>241</sup>

## **Conclusion**

5.186 The Committee heard significant concern that the current self-regulatory regime is not adequately protecting consumers. The telecommunications regulatory regime emphasises the long-term interests of end users, but it appears that many

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237 Mr Robert Barker, *Committee Hansard* 29 April 2005, pp 51-52.

238 Mr Robert Barker, *Committee Hansard* 29 April 2005, p. 54.

239 Mr Robert Barker, *Committee Hansard* 29 April 2005, p. 52.

240 Mr Robert Barker, *Committee Hansard* 29 April 2005, p. 53.

241 CTN, *Submission* 30, p. 10.

consumers are being harmed by industry practices. It appears also that widespread lack of compliance with industry codes has been compounded by insufficient compliance leadership from ACIF and a lack of enforcement action by the ACA. While there are mechanisms for consumer input, particularly in relation to the development of industry codes, these do not appear in many cases to be operating as well as they might. Moreover, consumers often lack awareness of their rights, particularly in regard to complaint resolution.

5.187 The next chapter presents the Committee's findings and recommendations on these and other issues that have arisen during this inquiry.

