

# **POSTAL SERVICES LEGISLATION AMENDMENT BILL 2000**

## **Recommendations**

The Committee recommends that the Bill be accepted, subject to the following amendments and recommendations:

### **Recommendation 1**

The Committee recommends that the Community Service Obligation be extended to include the delivery of secondary and tertiary distance education materials at a uniform and affordable rate to persons wherever they may reside or carry on business.

### **Recommendation 2**

The Committee recommends that Section 29(2)(b) of the Bill be amended or removed to eliminate uncertainty as to the rights of Australia Post to seek relief from breaches of its reserved services, particularly in the offshore mailing of local mail.

### **Recommendation 3**

The Committee recommends that the impact of competition on the uniform pricing of small parcels be reviewed annually. If competition undermines Australia Post's ability to maintain such uniform pricing, the Community Service Obligation should be amended to include the delivery of small parcels at a uniform and affordable rate to persons wherever they may reside or carry on business.

### **Recommendation 4**

The Committee recommends that the Government give strong consideration to including rural and remote licensed post offices in the Rural Transactions Centres Scheme.

### **Recommendation 5**

The Committee recommends that Australia Post should maintain its top up payments to licensed post offices where they are needed to keep outlets viable, and that Australia Post review its contract with licensed post offices to ensure the equal treatment of LPOs and corporate post offices, maintain the payments for services in relation to costs, and settle other outstanding problems. Australia Post should also make further efforts to improve the access of licensed post offices to online technology and other information services.

### **Recommendation 6**

The Committee recommends that the growth of competition be kept under review, with a view to the early introduction of a mechanism under which Australia Post's competitors can share in the cost of delivering the Community Service Obligation in proportion to market share.

**Recommendation 7**

The Committee recommends that Schedule 4 of the Bill be amended to limit the ACCC's role to those instances where Australia Post fails to reach a negotiated agreement with a competitor on the issue of fair access.

**Senator Alan Eggleston**  
**Chair**

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## The Committee's Inquiry

1.1 On 12 April 2000 the Senate referred the Postal Services Legislation Amendment Bill 2000 to the Legislation Committee on Environment, Communications, Information Technology and the Arts for inquiry and report by 5 June 2000. The Committee advertised its inquiry in all major metropolitan newspapers and on the Internet. The Committee received 21 submissions (listed at Appendix 1) and it held a public hearing on the Bill at Parliament House in Canberra on 8 May 2000. A list of the witnesses who appeared at the public hearing is at Appendix 2.

## Provisions of the Bill

### Overview

1.2 The Postal Services Legislation Amendment Bill 2000 (the Bill) implements the Government's response to the National Competition Council's review of the *Australian Postal Corporation Act 1989* by proposing to:

- (a) reduce the scope of the services reserved to Australia Post, thereby increasing the opportunities for competition in postal services; and
- (b) provide a postal services access regime under the *Trade Practices Act 1974*, to facilitate access to Australia's Post's network by other market participants.<sup>1</sup>

1.3 The Bill also proposes to convert Australia Post, a statutory corporation established under the *Australian Postal Corporation Act 1989*, to a public company under the Corporations Law, wholly-owned by the Commonwealth. This, the Government argues, is consistent with its policy that all Government Business Enterprises (GBEs) should be companies registered under, and subject to, the Corporations Law. The Government argues that, for reasons of competitive neutrality, Commonwealth owned entities competing against other companies should be subject to the Corporations Law.<sup>2</sup>

1.4 The Bill strikes a compromise between the two possible paths of deregulation proposed by the National Competition Council (NCC) and Australia Post:

- In its *Review of the Australian Postal Corporation Act* the NCC recommended a more rapid path, with full competition in business mail and both incoming and outgoing international mail from 1 January 2000, with the Community Service Obligation (CSO) funded by a mix of internal cross-subsidy and budgetary supplementation.
- Australia Post desired a less rapid path. They recommended that:

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1 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, p 1.

2 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, p 1.

- the reserved service be reduced to 125 g and two times the standard letter rate (90c) from 1999, and 125g and the standard letter rate (45c) from Jan 2001;
- the standard letter rate (45 cents) be retained until 2002;
- international incoming mail remain reserved to Australia Post; and that
- access by competitors be subject to commercial negotiation, with no formal regulatory role for the Australian Competition and Consumer Commission (ACCC).

#### *Modification of Australia Post's Reserved Services*

1.5 Schedule 1 to the Bill contains the amendments to the *Australian Postal Corporation Act 1989*. This Schedule includes the provisions that reduce Australia Post's reserved services. Currently, subject to the exceptions to the reserved services set out in section 30 of the Act, Australia Post has the exclusive right to carry letters within Australia, whether the letters originated within or outside Australia. The Bill reduces the reserved service so that Australia Post's exclusive right only applies in relation to letters that originate in Australia and are for delivery in Australia.

1.6 The Bill creates two further exceptions to the reserved services, the weight and price exceptions. Currently, Australia Post's reserved services include the carriage of a letter weighing 250 grams or less. The Bill proposes to reduce Australia Post's reserved services to the carriage of a letter weighing 50 grams or less.

1.7 Currently, carriage of a letter for at least 4 times the standard postal article rate is an exception to the reserved services. The standard postal article rate is 45 cents, which means that the carriage of a letter for at least \$1.80 is an exception to the reserved services. Thus Australia Post's current reserved services include the carriage of a letter for an amount less than \$1.80. The Bill proposes to reduce Australia Post's reserved services to the carriage of a letter for less than 45 cents.

1.8 Other sections of the Bill renumber the existing Australian Postal Corporation Limited Act 1989 (Schedule 2), and contain amendments (Schedule 3) to other Acts such as the *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982*. These amendments will have the effect that Australia Post will cease to be subject to these aspects of the administrative law package, but are consequential upon Australia Post's proposed new status as a public company under the Corporations Law.

#### *Access Regime to Australia Post Services and Network*

1.9 Schedule 4 contains the proposed amendments to the *Trade Practices Act 1974* (TPA) to insert a new Part XIX, a postal services access regime. The objective of the regime is to promote the long-term interests of users of postal services and to ensure that these services are supplied as efficiently and economically as possible. Part XIX is designed to assist competitors to gain access to services supplied by a strong market incumbent.

1.10 The proposed new regime provides for the declaration of postal services by the ACCC, if commercial negotiations between Australia Post and the access seeker fail. Such a declaration may, but need not, follow a public inquiry. If the ACCC makes a declaration, the declaration specifies a postal service provided by a particular provider. In particular, within 6 months of the commencement of Schedule 4, the Minister for Communications, Information Technology and the Arts must make a determination that bulk mail services and post-office boxes are declared services.

### *The Community Service Obligation*

1.11 Under the reforms the Community Service Obligation (which Australia Post estimates at \$67 million and is set out in Section 27 of the Act) will continue to be funded by Australia Post from within its own revenues. This decision was taken in lieu of having the CSO partly funded by taxpayers (the NCC's suggestion) or shared with competitors in proportion to market share (as occurs in telecommunications markets).

### **Postal reform - Background**

1.12 Until 1982 Australia Post and its predecessor the Postmaster General's Department retained a monopoly on the provision of domestic and international postal services, with the reserved service being a letter weighing up to one pound (500 grams). In 1982 the monopoly was modified after the Bradley Committee of Inquiry, which reduced the reservation to allow others to carry letters at 10 times the standard letter rate.<sup>3</sup>

1.13 In 1994, following an Industry Commission report, Australia Post's monopoly was reduced to letters below 250 grams and to 4 times the standard letter rate, while it retained a monopoly over inwards and outwards international mail. The list of exceptions to the reserved service was revised to include document exchanges, some advertising material and the transfer of letters within an organisation. The current legislation sets out the next stage of reform for the postal services industry.<sup>4</sup>

### **The Impact of Competition**

1.14 The Committee feels that the path of reform set out in the Bill is a graduated and effective way of introducing competition into postal markets whilst preserving Australia Post's ability to maintain its network and service its Community Service Obligations.

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3 Department of Communications, Information Technology and the Arts, Submission 21, pp 2-3.

4 Department of Communications, Information Technology and the Arts, Submission 21, pp 2-3.

1.15 The Government has, in the Committee's view, established strong grounds for further opening the postal sector to competition. In its Explanatory Memorandum to the Bill the Government concluded that: 'Australia Post operates a relatively low risk network business yet its targeted return on assets is high compared to all publicly listed companies, is higher than any public company in the transport industry and equals the best performing public company in the retail sector.' In addition the National Competition Council, in its inquiry, concluded that:

Australia Post's monopoly imposes significant constraints on competition in several sectors of the market which would otherwise be contested. Under the Competition Principles Agreements legislative barriers to competition should remain only if there is a net public benefit resulting from their retention and if the objective of the legislation can only be achieved by restricting competition...

Australia Post's profits provide a return on equity which is well in excess of what could be considered typical for a corporation of this type suggesting that the extent of the monopoly is too large and that prices could be lower or services (or service standards) enhanced;

Australia Post is seen as inflexible in its dealings with major customers, exploiting the lack of service provider choice to set its own conditions of contract, service standards (which are inadequately monitored) and prices.<sup>5</sup>

1.16 Further competition will have a clear benefits, both to consumers and the economy:

Effective communications are very important to commercial dealings by both individuals and businesses. Traditional postal services should be produced as efficiently as possible, sold at the lowest possible prices and provide a flexible range of services which meet customer needs. It is also important that services are developed which take advantage of new opportunities. This means capitalising on new techniques and technologies by exploiting advances in information technology and telecommunications to enhance postal services. It also means pricing these new services as competitively as possible. A postal service industry which is operating in a competitive environment will be in a good position to tackle broader competitive challenges, such as those arising from electronic services.<sup>6</sup>

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5 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, pp 4-5.

6 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, p 5.

1.17 The Government's chosen approach to postal reform received the endorsement of the Major Mail Users Association and Readers Digest. Mr John Gillroy told the Committee:

We also believe that the approach being taken—and it has also been endorsed by Australia Post in its public announcement—of slowly opening up Australia Post to more commercial pressures is a good thing. Whether or not there will be actual competition in the marketplace is another question, but opening it up for the possibility of that happening will, we believe, benefit Australia, Australia Post and certainly the major mail users.<sup>7</sup>

1.18 Some witnesses, in particular the Communications Electrical and Plumbing Union (CEPU) expressed concern that the pace of reform was too fast and that as many as 17,000 jobs could be 'put at risk' if Australia Post were to lose 38 per cent of its revenue.<sup>8</sup> However other witnesses suggested that Australia Post ability to compete would remain robust and that it would thrive in the new environment. Mrs Jane Hanna, from the Department of Communications and the Arts (DOCITA), said:

It is not anticipated that this package of reforms will have a significant effect on Australia Post and will not give rise to significant competition. On the other side, if other businesses are not able to develop in competition with Australia Post, there are alternative employment opportunities for people in those organisations.<sup>9</sup>

1.19 She explained the access regime would continue to work in a way which allowed Australia Post to control large mail volumes:

We do not expect that the reduction in the reserved service will make a significant difference on Australia Post. We hope that the access regime will be a way of encouraging some competition in the market, not as alternative providers of full services but people who can interconnect in some way with Post. That should guarantee that mail volumes remain with Post—that they are not taken off somewhere else—because people interconnect that mail volumes will stay or even increase in volume.<sup>10</sup>

1.20 DOCITA's Chris Cheah supported this reasoning:

If the postal market as a whole grows and Australia Post is basically carrying the interconnected mail traffic, there is even a possibility that Post's overall system might grow as a result.

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7 *Proof Committee Hansard*, Canberra, 8 May 2000, p 32.

8 Mr Jim Claven, *Proof Committee Hansard*, Canberra, 8 May 2000, p 16.

9 *Proof Committee Hansard*, Canberra, 8 May 2000, p 43.

10 *Proof Committee Hansard*, Canberra, 8 May 2000, p 44.

If you look at the telecommunications market, the volume of traffic that has been going across the telecommunications network since liberalisation has increased enormously. So if a similar scenario were to play out in the postal market it is possible that there might be some growth even there.<sup>11</sup>

1.21 The Major Mail Users Association also assessed Australia Post's ability to compete as high, and stated that the majority of bulk business mail would remain below the 50 gram threshold:

We would like to draw attention again to the fact that the 50 grams weight being proposed for the reserve services actually takes in 91.66 per cent of all the bulk business mail processed by our members. So, when then it is appreciated that the vast majority of any reserve services letter mail likely to be lost to Australia Post if the monopoly were reduced actually comes from that section of the mail, the bill's 50 grams proposal is, in our opinion, not likely to make a big difference to its business mail contracts that our members represent...

We do not believe that, from the discussions we have had with the developing alternative postal service providers—some of whom have been mentioned today: Deutsche Post, TNT mail and, until just recently, Streetfile—any of those services are going to come in and provide a service equal to Australia Post which would be attractive in any way to our members to move the vast bulk of the mail into the system.<sup>12</sup>

### **Concerns about the Bill**

1.22 Apart from the CEPU's concern at the impact that the pace of reform might have on jobs and Australia Post's revenue, other witnesses expressed concerns in regard to the reduction in Australia Post's reserved services and the possible effect on its Community Service Obligations (CSO). They stressed the importance of the CSO to people living in rural and remote areas. A few witnesses canvassed the possibility either of letters below 50 grams being "bulked up" with additional material to escape the reservation, or of local mail being prepared offshore (re-mailing). The CSO and the issue of remailing and 'bulking up' are discussed in the following section. The issue of the access regime is addressed later in the report.

### **The Community Service Obligation**

1.23 The nature and preservation of Australia Post's Community Service Obligations (CSOs) was a strong theme in evidence to the Committee's inquiry. The Committee heard concerns that the new competitive pressures arising from the reforms could place pressure on Australia Post's ability to fund the CSO from within its own revenues, or that the pressures of further competition would undermine the

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11 *Proof Committee Hansard*, Canberra, 8 May 2000, p 44.

12 Mr John Gillroy, *Proof Committee Hansard*, Canberra, 8 May 2000, p 32.



integrity of the delivery and post office network ('the network') which underpins the CSO. This was a particular concern of witnesses from rural and remote areas. The Committee also heard evidence that recommended that the CSO be extended to cover larger postal items and educational materials.

1.24 The Committee acknowledges the importance of these concerns, and is keen to see the integrity of Postal services to rural communities preserved. However it is reassured by undertakings from the Government and Australia Post that the integrity of the postal network will not be undermined, that sufficient revenues will be available to fund the CSO, and that services to rural areas will not decline. These issues will be reviewed in 2003 and should be carefully assessed at that time.

#### *The scope of Australia Post's Community Service Obligations*

1.25 The CSO is currently set out in Section 27 of the Australian Postal Corporation Act 1989. The Bill inserts a new Section 27 which leaves the CSO substantially unchanged. In the Bill, the CSO prescribes that Australia Post must carry postal articles of 50 grams or less within Australia, and articles of 250 grams or less from and to overseas addresses. It must also carry 'standard postal articles' (250 grams or less) at a single uniform postage within Australia. Under Section 27(7) Australia Post must ensure:

- (a) that the services that Australia Post is obliged to provide under this section are made reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
- (b) that Australia Post's performance in providing those services reasonably meets the social, industrial and commercial needs of the Australian community.<sup>13</sup>

1.26 The CSO is further defined by regulations which stipulate the frequency, speed and accuracy of delivery standards that Australia Post is required to meet. Under Section 5 of the regulations Australia Post must:

- service 98 per cent of all delivery points daily (excluding weekends and public holidays);
- service 99.7 per cent of all delivery points at least 2 days each week.<sup>14</sup>

1.27 Under Section 6 of the regulations Australia Post must deliver at least 94 per cent of reserved services letters within a specified delivery time, ranging from the next day to within four working days, depending upon distance and the place of posting.

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13 *Postal Services Legislation Amendment Bill 2000*, pp 14-15.

14 *Australian Postal Corporation (Performance Standards) Regulations 1998*, No 99 of 1998, pp 2-3.

Under Section 9 of the regulations Australia Post must maintain at least 4000 retail outlets, and at least 50 per cent of those outlets must be located in a rural or remote zone. Those outlets in rural areas must be located within 7.5 km of 85 per cent of the residences.<sup>15</sup>

### *The importance of the Community Service Obligation*

1.28 Concern about the maintenance and viability of the CSO was strong among witnesses representing country people. Dr Wendy Craik, Executive Director of the National Farmers Federation (NFF) stated that:

Australia Post provide not only a good postal service but also additional services, which are obviously important to people in rural and regional Australia ... We believe that there is a need for legislated standards. We believe that there is a need for equitable cost and access for all Australians. We believe that there is a need for community service obligations to ensure that cost and access are equitable. We certainly support the notion of some competition but we obviously want to see it done carefully so that our constituents do not lose out. We believe that the community service obligation ought to ensure that people get basic services made available to them.<sup>16</sup>

1.29 Ms Sally Nicholl of the Country Womens Association (CWA) argued that:

the primary role of Australia Post must be a commitment to the provision of basic services of letter transportation and delivery at a uniform postage rate. Postal service is a matter of vital concern to all in rural and remote areas. If deregulation prices fall in high volume areas but increase in lower density and remote areas, we can see this as a problem because many of our members live in rural and remote areas where there is only a small community in towns. While provision of other services is welcomed— such as being able to pay accounts at post offices or agencies—the basic mail service is of paramount importance to us.<sup>17</sup>

1.30 Ms Jenny McLellan of the Isolated Children's Parents Association (ICPA) put the view that:

We feel that the delivery of mail in rural and remote areas should be written in as a basic right under the community service obligation of Australia Post. We also have made a recommendation that there should be clear guidelines regarding that issue.

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15 *Australian Postal Corporation (Performance Standards) Regulations 1998*, No 99 of 1998, pp 3-4, 6.

16 *Proof Committee Hansard*, Canberra, 8 May 2000, p 2.

17 *Proof Committee Hansard*, Canberra, 8 May 2000, p 2.

For our families and the people that we represent, although technology has produced a lot of changes and there are various alternatives to letter services for rural and remote residents, their letter and postal services are absolutely essential for them for educational, business, health and social reasons.<sup>18</sup>

### *Government Assurances*

1.31 The Government has given an undertaking that the integrity of the CSO will be maintained, and that no postal outlets will close as a result of the reforms. In a media release of 16 July 1998 The Minister for Communications and the Information Economy Senator Richard Alston stated that the standard letter rate would remain frozen at 45c until 2003 and that:

No post office or mail centre in regional Australia will close as result of our package. Australia Post will continue vital subsidies to 700 licensed post offices in regional and rural Australia and maintain current concessional rate arrangements for the delivery of distance education material to isolated children.<sup>19</sup>

1.32 In evidence the Department of Communications, Information Technology and the Arts (DOCITA) said that this assurance extended to smaller postal outlets and mail runs. These assurances have been echoed by Australia Post, with a caveat that demographic or economic changes in small towns could cause closures which would be difficult to reverse:

If you are talking about major closures and a significant reduction in the network, then, no, that will not occur as a result of this package.<sup>20</sup>

1.33 The Post Office Agents Association (POAA), which is one of two organisations representing the 3000 Licensed Post Offices and 5180 mail contractors, stated that while they were grateful for the Government's assurances, they still were concerned that 'many licensed post offices could actually be forced to close because they become unviable and the licensee closes the outlet himself or herself, not because Australia Post, the government or whoever comes along and says, 'Thou shalt be closed'.'<sup>21</sup>

1.34 The POAA reminded the Committee that many of the Licensed Post Offices (LPOs), which were crucial to the delivery of the CSO in rural areas, would not be viable businesses without some income support from Australia Post. This comes in the form of top-up payments, which have been slowly decreasing over time. The POAA's Marie McGrath Kerr stated that:

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18 *Proof Committee Hansard*, Canberra, 8 May 2000, p 3.

19 Australia Post, Submission 20, Attachment 2, Media Release, Senator Richard Alston, 16 July 1998.

20 Mrs Jane Hanna, *Proof Committee Hansard*, Canberra, 8 May 2000, p 44; Mr G. Ryan, Australia Post, *Proof Committee Hansard*, Canberra, 8 May 2000, p 49.

21 Mrs Marie McGrath-Kerr, *Proof Committee Hansard*, Canberra, 8 May 2000, p 26.

In June 1995 1,340 LPOs were given a top-up, which cost Australia Post \$9 million. That is clearly a community service obligation, forming part of Australia Post's \$80 million, or whatever it was, that was given to CSOs back then. That has now decreased to 516 LPOs being paid a total of \$3.7 million. I have no problem with considering an income protection or top-up to income on a formula basis to be a CSO; to me, that seems quite logical.<sup>22</sup>

1.35 Mrs McGrath-Kerr told the Committee that the top-up payments were being phased out as businesses were on-sold to new proprietors: 'I cannot say we were madly enthused about the top-up ceasing, because we would have liked to see it continue'.<sup>23</sup>

1.36 Concerns about the viability of LPOs were also visible in the submission of the Licensed Post Officers of Australia, which also represents licensed post offices. They told the Committee that 'rural and isolated post offices are already operating under great financial hardship; some are working for less than the social security allowance. Further cut backs in payments would seriously affect a great number of these offices with some already contemplating closure'.<sup>24</sup>

1.37 The viability of licensed post offices is obviously crucial to the credibility of the assurances provided by the Government and Australia Post, and it remains unclear as to whether Australia Post intends to continue phasing out the payments or retain them where needed. While the income sources of LPOs are sometimes diverse, the Committee suggests that Australia Post give consideration to continuing (or extending) payments where they are deemed necessary to maintaining the viability of an outlet and thus maintaining the integrity of its network and its delivery of the CSO.

1.38 The Licensed Post Officers of Australia submitted that the current relationship between Australia Post, including the current license agreement, was wanting and needed to be reviewed. While some of its concerns are outside the scope of this Inquiry, others are germane to the ability of Australia Post to maintain the integrity of its network through a more competitive transition. The LPOA reminded the Committee that nearly 80 per cent Australia Post's retail outlets had been privatised, and raised concerns that:

- The commissions paid to LPOs were 25 per cent lower than those paid to corporate post offices, even as many payments remain tied to the standard letter rate which is fixed until 2003, rather than to inflation. This, they argue, is 'counterproductive for the provision of an equal and uniform service across Australia';
- Many small and remote LPOs do not have access to technology that is present in other parts of the postal network, such as EFTPOS, giroPost, mail tracking

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22 Proof Committee Hansard, Canberra, 8 May 2000, p 28.

23 *Proof Committee Hansard*, Canberra, 8 May 2000, p 27.

24 Licensed Post Officers of Australia Ltd., Submission 6, p 1.

software, the DELNET dedicated access, and the Australia Post intranet. These are important for customer service, security, and better communication and service between Australia Post and its LPOs;

- the higher commissions paid to corporate post offices mean that they can offer better deals to business customers;
- unfair practices in regard to the liability for cheques lost in Australia Post's system and the irregular delivery and pick up of mail.<sup>25</sup>

1.39 As well as being difficult in business terms for LPOs, such problems also have the potential to compromise Australia Post's service delivery standards and could put at risk the Government's assurances that no post office will close. The Committee acknowledges that such matters are mostly related to a private contractual arrangement. However, there is a significant public interest in Australia Post moving to deal with these issues in a fair and sensitive manner, and the Committee would encourage it to do so.

*Should the scope of the CSO be changed?*

1.40 During its public hearing the Committee heard a range of evidence about whether the scope of the CSO was adequate, whether it should be extended or whether service delivery standards needed to be upgraded. The NFF felt that the CSO was largely adequate and could be maintained under the reforms, but stressed that it should not be downgraded, and that it should be regularly reviewed:

We believe that there is a need for legislated standards. We believe that there is a need for equitable cost and access for all Australians. We believe that there is a need for community service obligations to ensure that cost and access are equitable.

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We certainly welcome the government's commitment to maintain the current levels of service in relation to postal standards for basic letters and also to maintain 2,500 or slightly more postal outlets in rural and regional Australia. We support the maintenance of a standard letter monopoly and a price cap of 45c till 2003.

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it is important to us that the current level of letter deliveries and postal deliveries, where about 90 per cent of our constituents get at least five deliveries a week and everybody gets at least one delivery a week, is maintained, that performance standards are maintained and that the standard letter rate is maintained and able to be funded out of the reserved services.<sup>26</sup>

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25 Licensed Post Officers of Australia Ltd, Submission 6, pp 2-5.

26 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, pp 1-3.

1.41 When asked if the reduction in the reserved service from 250 grams to 50 grams would impact negatively on the CSO or rural people, the NFF said:

We have not heard any particular opposition to that from our constituents. The important thing is that there is a standard letter rate of 50 grams. I understand that is the majority of general letters that are sent out, so that is probably not such a major issue...One of the really important things for rural constituents is that postal services provide the ability for people to get bulk card copy for education and other areas of endeavour. I think it is important that they still have access to that at a reasonable price.<sup>27</sup>

1.42 The ICPA stressed that ‘the delivery of mail in rural and remote areas should be written in as a basic right under the community service obligation of Australia Post. We also have made a recommendation that there should be clear guidelines regarding that issue’.<sup>28</sup> In their submission they argued that the present wording in Section 27 of the Act, which defines the CSO as a letter service ‘reasonably accessible to all people in Australia on an equitable basis’ is ‘not precise and can be subjected to different interpretations’. They also requested the CSO ‘include parcel delivery for rural and remote residents’ and that the reserved service be maintained at 250 grams or less. Their key recommendation was that:

The government support at least a weekly mail service (where requested) to residents in remote areas for regular delivery and return of Distance Education or School of the Air educational lesson packages, at a cost that does not discriminate against geographically isolated students and that postage rates be uniform within Australia.<sup>29</sup>

1.43 While small parcels were currently charged at a uniform rate, Australia Post was unable to provide assurances that the price of parcels would not be affected under the reforms:

The parcel business is already profitable and we already have distance charges built into the rates for parcels of over 500 grams. In any service there is a fixed cost and variable cost, and we have covered that. Where it might impact is on the small parcels where we do have a universal price. You can send a 250-gram parcel anywhere in Australia for \$2.50. In very remote areas, obviously with \$2.50 we lose; there is cross-subsidisation within that. We may need to review the very small parcels.<sup>30</sup>

1.44 Distance education material was of particular concern in relation to the cost of parcels. In response to a Committee suggestion that there be an exclusion written into the Act for distance education material to be carried at the standard rate (for both secondary or tertiary materials) witnesses responded positively:

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27 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, p 3.

28 Ms Jenny McLellan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 3.

29 Isolated Children’s Parents Association, Submission 11, p 2.

30 Mr Gerald Ryan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 55.

- NFF:

I think that would be desirable. I understand from the media release from the minister for communications that the government has an undertaking that Australia Post will maintain current concessional rate arrangements for the delivery of distance education material to isolated children. We would certainly support that, given the participation rates of rural and regional students in education, both high school and tertiary.<sup>31</sup>

- The ICPA:

We want it supported and written in as a right. I am talking about compulsory years of schooling, not people who might be doing tertiary education. Postage rates must be uniform within Australia, as they have been in the past...I realise there is only a certain amount of finance. If you could include tertiary education, I would be more than happy, but we have to address the compulsory years of schooling as a number one priority.<sup>32</sup>

- The CWA:

I believe that our organisation would be very pleased if the distance education material were sent at a better rate, but I think we would want to include tertiary education as well. I was an external student at a university in Perth, and I believe that women should be able to have the same educational advantages as they have in the compulsory years.<sup>33</sup>

1.45 In discussion with the Committee Chair, Senator Eggleston, DOCITA officers explained that the CSO issue had been carefully considered by a number of public inquiries and their findings had formed the basis of the government's decision that the CSO should not be extended:

**Mrs Hanna**—The extent of the CSO has been considered on quite a few occasions by the NCC and before that there was a CSO inquiry conducted in 1996. They have all recommended that the CSO should not be increased...

**Mr Cheah**—I think the point of Mrs Hanna's reply was to say that there have been a few public inquiry processes that have preceded the government's decisions on this particular issue. It is those public inquiry processes, which presumably have been able to take account of a full range of views, which have on balance brought about the conclusion that the CSO should not be expanded.<sup>34</sup>

1.46 The Committee acknowledges that previous enquiries have made decisions about the CSO. However it considers that there is a strong case for expanding the CSO to include a guarantee about the affordable postage of secondary *and* tertiary distance education materials.

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31 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, p 5.

32 Ms Jenny McLellan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 6.

33 Ms Sally Nicholl, *Proof Committee Hansard*, Canberra, 8 May 2000, p 6.

34 *Proof Committee Hansard*, Canberra, 8 May 2000, p 42.

This is an important matter of equity and opportunity for rural people in relation to those with direct access to educational institutions. The Committee also suggests that the uniform pricing of small parcels should be kept under review by the Government. If competition threatens the uniform pricing of these parcels, consideration should be given to including small parcels in the CSO.

1.47 Australia Post outlets also provide a range of services which are not included in the CSO but which many rural people find valuable, such as bill payment and limited banking services. The CWA's Sally Nicholl said that:

Anything that gets done out of the post offices will help the isolated families. We do not want to see those services cut back to any less than they have already been cut back to. I would hope that Mr Howard would honour what he has said—that there will be no further demise of any services that are already out in the rural and remote areas. Any of those banking services or facilities—and many of the little post offices do have those services—should not be cut back or stopped in any way. They are a benefit. Many people do not have banking in their areas, so anything that can be done to help those families out there must be retained.<sup>35</sup>

1.48 The Committee stresses that the potential benefits offered by satellite technology should not be overlooked in the context of broadening access to electronic transactions for people in rural and remote areas. Use of that technology would enable even the smallest post office to offer essential banking and bill payment facilities.

1.49 The NFF acknowledged that the decline in services was a real concern to rural people, and that postal reform needed to be considered in this context:

There is no doubt that our constituents are concerned about a possible reduction in service. Given the history of the last 10 to 15 years and services in rural and regional Australia, I do not think I would be sufficiently courageous to stand up here and say our constituents are not concerned about a possible reduction. They have seen it happen across health, they have seen it happen across finance and they have seen it happen across a whole range of areas.<sup>36</sup>

1.50 Australia Post sought to assure the Committee that it did not wish to reduce such services, but explained that they were outside the CSO and were provided on a commercial basis:

It is certainly not our intention that services would be reduced. Of course, many of the services we offer are outside of our CSO obligation, and they are provided on a commercial basis, particularly banking services. Currently they are provided at the rate that does generate a rate of return for us, but it will always be subject to continuing negotiations with the banks and others.

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35 *Proof Committee Hansard*, Canberra, 8 May 2000, p 5.

36 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, p 3.



So there is always that qualifier there. We are looking to increase basic business banking availability through our retail network as well. We have a couple of trials under way with the NAB and the Commonwealth Bank in those areas.<sup>37</sup>

1.51 Mr Marcel Schondelmaier from the Licensed Post Officers Association of Australia urged that funds available through the Rural Transaction Centres (RTCs) Program and Networking the Nation be used ‘to ensure the viability of licensed post offices and, in some instances, improve and enhance the ability to provide an all-inclusive service to Australians’.<sup>38</sup> Evidence from the Post Office Agents Association suggested that the participation of Licensed Post Offices in the Rural Transaction Centres Scheme did offer a ray of hope:

Prior to this hearing, Mr Howarth and I met with representatives of the rural transaction centres, the RTCs group, which comes under the auspices of Senator Ian Macdonald, with members of the Department and with Australia Post. We spent an hour and a half discussing how technology could be extended into LPOs using the RTC system. It very much looks as though we are getting a result there, so that is extremely pleasing. We do not just say things like this; we actually go out and try to get some results. We have been working on this now ever since RTCs were first mooted but this morning’s meeting was very positive, and it looks as though that could see the RTC services, particularly giroPost and EFTPOS, which is Australia Post’s electronic network, extended into some of these post offices with community support.<sup>39</sup>

1.52 The POAA told the Committee that the RTC’s program was still in its infancy, with only 10 RTC’s currently operational, two in LPOs. The POAA stated there are currently 1200 LPOs that do not have electronic capabilities, and that two-thirds of them could benefit from having access to electronic transaction capabilities.<sup>40</sup> As mentioned in paragraph 1.47 above, use of satellite technology could resolve current access problems for those LPOs. The Committee encourages the Government to make strong efforts to integrate LPOs with the RTC network as it rolls out, with a view to ensuring the continued viability of the national postal network and retaining access to essential services for rural people.

### *CSO funding issues*

1.53 The Committee also heard evidence about the arrangements made under the proposed reforms for the funding of the CSO. Notwithstanding the possible impact of competition on Australia Post’s revenues, the Bill institutes no new regime for funding the CSO. Australia Post will continue to fund the CSO from within its own revenues as it has in the past.

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37 Mr Gerald Ryan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 55.

38 *Proof Committee Hansard*, Canberra, 8 May 2000, p 7.

39 Ms Marie McGrath-Kerr, *Proof Committee Hansard*, Canberra, 8 May 2000, p 28.

40 Ms Marie McGrath-Kerr, *Proof Committee Hansard*, Canberra, 8 May 2000, p 28.

1.54 Two alternatives were considered by the NCC and the Government prior to this decision being reached. The first, which was suggested by the NCC, is that any shortfall in Australia Post's ability to fund CSOs (as a result of the introduction of full competition as it recommended) should be funded from Commonwealth budget outlays. The second was that the cost of the CSO be shared between Australia Post and other market participants in proportion to their market share, as currently occurs in domestic telecommunications markets.

1.55 The Government states that in submissions to the NCC review a number of organisations, including the NFF, the Australian Consumers Association, the NSW Farmers Association and the ICPA, were 'particularly critical of budget funding (even if agreed 5 years in advance) which they see as the most fragile method of funding the CSO'.<sup>41</sup> In evidence to this Committee the NFF reiterated its opposition to this method of funding the CSO:

We do not want to see the community service obligation funded off budget. Our experience with things like the diesel fuel rebate is that if it is funded off budget that leads to an argument every year to retain it. We think this is particularly important given the concern about cross-subsidisation of competitive areas by reserved areas... Our real fear is that it would be a budget item that the Department of Finance could attempt to exercise its enthusiasm over.<sup>42</sup>

1.56 The NFF also gave cautious support to cost-sharing between Australia Post and its competitors, stating that 'in all fairness, competitors should [share the cost of the CSO]':

We looked at this in about 1997, when the discussion of deregulation of Australia Post was on the agenda before. It was our view that it was difficult to conceive of an efficient and cost-effective system where you could actually bill the other carriers for part of that community service obligation, whereas in telecommunications, because of the nature of the beast, that is made more possible. If someone could come up with a system that was cost effective in terms of finding a way to do it, I do not think we would have a major difficulty but we have not been able to see a cost-effective way so that you could do it. Failing that, we have said that it is important that it come out of the reserve service of Australia Post.<sup>43</sup>

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41 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, p 12.

42 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, pp 2-3.

43 Dr Wendy Craik, *Proof Committee Hansard*, Canberra, 8 May 2000, p 2.

1.57 DOCITA's Mrs Jane Hanna explained to the Committee the reasons why the Government decided to continue to have Australia Post fund the CSO from within its reserved service revenues:

In this package of legislation, the government decided that it was not an opportune moment to try to regulate the rest of the postal industry; that it was not worth doing that in this exercise and was something that we would consider down the track when perhaps there is further de-regulation. So there is no identified other industry to levy.<sup>44</sup>

1.58 Mr Chris Cheah also explained that:

Firstly, in terms of some of these practicality issues, there is a definitional problem with exactly what the boundaries of the postal industry are. Is it people who are carrying big parcels? Where do you draw the line between, for example, delivery firms, large parcels, letters and stuff like that? There is a bit of a continuum there. That is one part of it. Another is that in the telecommunications industry the USO at the moment gets imposed on licensed telecommunications carriers. So you have a clearly identifiable set of players on whom you can actually impose a levy. You do not have that in the postal industry.<sup>45</sup>

1.59 The Committee accepts these arguments as to the impracticality of levying competitors while the shape of the emerging market is unclear. However the Committee also agrees with the NFF that the current situation is, in principle, unfair. The Committee holds the view that this situation should continue to be monitored and that it be reviewed as the market develops, with a view to developing a fair and equitable formula for identifying market participants and sharing the cost of the CSO among them. The planned review in 2003 would provide an early opportunity to revisit this issue. The trigger does not need to be further deregulation but merely the success of new entrants in obtaining market share.

1.60 Pending the 2003 review, the Committee supports the role of Australia Post in continuing to fund the CSO from its reserved service revenues. The Committee does not support the suggestion made in the NCC report that the CSO be funded from the Commonwealth Budget. This would, as the NFF argues, make the funding of a crucial public good vulnerable to budgetary pressures. It could also arguably see taxpayers subsidising the prices of Australia Post's competitors and introduce an unwelcome market distortion. As a general principle, the CSO and the maintenance of the national postal network should be funded from postal industry revenues and growth.

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44 *Proof Committee Hansard*, Canberra, 8 May 2000, p 43.

45 *Proof Committee Hansard*, Canberra, 8 May 2000, p 43.

*“Bulking Up”*

1.61 Some witnesses, including Australia Post, expressed concerns that the 50-gram threshold for the reserved service was too low, and that standard mail could be easily ‘bulked up’ with the addition of a few extra items. This would see otherwise reserved mail lost to competitors and thus undermine the intent of the legislation. Australia Post tabled a standard letter as a demonstration of the weight of various inclusions. A standard business envelope with 3 sheets of 80 gsm A4 paper weighs 20 grams; with the addition of a single sheet brochure (light card, 4 grams) and a 20 page brochure (27 grams) the weight of the letter increases to 51 grams.<sup>46</sup>

1.62 When asked whether this practice would impact on their profits, Australia Post told the Committee:

A few forces are acting together here, including the aggregation of mail—where people are allowed to take mail from a number of sources and pre-sort it—and the reduction in the threshold of bulk mail down to 300 grams. If we take those things together, and we have done some numbers, the volume lost...through aggregation and competition in that area is, I guess, about \$85 million in total.<sup>47</sup>

1.63 While this may seem a substantial figure, Australia Post’s answer here aggregates a range of competitive pressures, of which the loss of mail over 50 grams is only one component. The opening up of competition in business mail over 50 grams is a given outcome (and clear intent) of the Bill; a more salient issue might be whether mail generators would be tempted to ‘bulk up’ mail solely to give them the opportunity to use a competitor. Readers Digest, a very large mail generator, told the Committee that such practices would most likely be commercially unviable:

To start printing and producing other material there is a cost. You are also going to automatic insertion, and a lot of inserters are based on four, six, eight, 12 stations. So if you are putting a program together each time you bring on an additional station there is additional cost. So what you have actually got is the cost of producing some advertising material and the cost of inserting it. Is it enough to save 2c?... For someone to do it deliberately, I very much doubt it. Again, people are going to have a look at it. But how much of the market is it? This is why that nine per cent and the review in a couple of years will really tell what actually happens.<sup>48</sup>

1.64 The Committee remains sceptical that ‘bulking up’ with the sole intent of pushing letter weights over 50 grams will be a significant problem. It recommends that the Government keep this issue under observation and assess it again in the 2003 review.

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46 *Proof Committee Hansard*, Canberra, 8 May 2000, p 52.

47 Mr Robert Ludlow, *Proof Committee Hansard*, Canberra, 8 May 2000, p 48.

48 Mr Christopher Smith, *Proof Committee Hansard*, Canberra, 8 May 2000, p 37.

## *Remail*

1.65 The practice whereby local mail is assembled and posted overseas for delivery back into Australia is known as remailing. This was of some concern to the CEPU and Australia Post. Such a practice, were it to occur, would be a violation of the reservation Australia Post will retain on mail below 50 grams. The CEPU commented:

We certainly believe that there will be a potential there for large overseas competitors— for example, with TNT, which has operations both in Australia and overseas and has recently announced an alliance with Singapore Post and Royal Mail—so that the production and sorting of domestic mail, mail to be delivered in Australia, which could be for a bank or an insurance company, would actually be done overseas and brought in to Australia, in this case by TNT...

In fact the government, in the provisions of the bill, says that it is going to do what it can to stop it. We think that once you open the gate you are not going to be able to stop it. It is going to be litigation, and the onus is going to be on Australia Post to prove intent. If they do not have the intent to break the reserve service, they will be able to do it.<sup>49</sup>

1.66 While Australia Post shared the concerns about the deregulation of international mail, it had greater confidence that the Government was committed to acting against remailing practices:

In essence, we had a concern that the deregulation of incoming international mail might open an opportunity for a large mailer to send their mail offshore electronically and to have that mail produced overseas and brought into Australia as deregulated incoming international mail and that that mail could then be delivered by anyone—Streetfile or their successor— at lower rates than we could offer, bearing in mind that our bulk rates also have to take account of high cost CSO mail paths whereas an alternative provider does not have to build that into their pricing mechanism...

In discussions with officials and the government, those concerns have been recognised and there are provisions in the bill that make it clear that if mail passes two tests that mail will be regarded as having originated in Australia and as being reserved mail. Those two tests essentially are, firstly, that the data upon which the mail has been based is generated in Australia and, secondly, that this mail was sent offshore with the in-tent of getting around the reserved service. The onus will be on us to demonstrate intent. As I understand it, that is not an unusual provision in relation to legislation of this type.<sup>50</sup>

1.67 The Bill's provisions to prevent remailing are contained in the proposed Sections 29(1) and (2):

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49 Mr Jim Claven, *Proof Committee Hansard*, Canberra, 8 May 2000, p 21.

50 Mr Gerry Ryan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 51.

- (1) Subject to section 30, Australia Post has the exclusive right to carry letters in Australia if those letters:
  - (a) originate in Australia; and
  - (b) are for delivery in Australia.
- (2) For the purposes of subsection (1), a letter is taken to originate in Australia if:
  - (a) some or all of the content or information in the letter is generated in Australia through an enterprise carried on in Australia; and
  - (b) the content or information is sent outside Australia for the purpose, or for purposes including the purpose, of avoiding the reserved services.<sup>51</sup>

1.68 The Committee feels that the Government's intent to discourage the practice of remail is clear. However, it may be that the onus the new Section 29(2)(b) places on Australia Post - and the Federal Court - to prove an *intent* to subvert the reserved service is too onerous, and could weaken the force of the Section.

1.69 The Committee feels that consideration should be given to removing Section 29(2)(b) from the Bill, to remove any temptation that could arise through legal uncertainty. Australia Post would still have recourse to the Federal Court for relief, under Section 31 of the Act, and the Federal Court would be entrusted with making an assessment of the facts.

### **The Postal Access Regime**

1.70 The Committee heard a range of evidence about the merits of the postal access regime set out in the Bill. It was generally welcomed by large mail users and potential competitors to Australia Post, while the CEPU and Australia Post had stronger concerns about its potential to undermine the CSO.

1.71 The access regime set out in the Bill provides first for commercial negotiation between Australia Post and its competitors over the terms of access to network services, such as sorting, delivery, and post office boxes. Australia Post may make an undertaking to the ACCC setting out the terms and conditions under which it will provide a service, or it can also apply to have a commercial agreement registered with the ACCC. If there is not an undertaking in effect the ACCC has the powers to declare a service. It may, if it chooses to, conduct a public inquiry before it declares a service, a course which the NFF emphasised would be 'desirable...to ensure that concerns are allayed'.

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51 *Postal Services Legislation Amendment Bill 2000*, pp 15.

1.72 At the outset of the regime Australia Post's bulk mail and post office boxes will be automatically declared by the Minister. Other services will be subject to the voluntary undertakings allowed for under the regime.<sup>52</sup> The ACCC will not be asked to arbitrate the terms of access to bulk mail and PO boxes unless negotiations fail.

1.73 The Australian Document Exchange set out the importance of the access regime to their business, stating that:

If the amendments do not proceed, we believe it is critical for this committee to extend the rights of document exchange providers to deliver mail on behalf of their members to street addresses. Without this right, the relevance of Australian Document Exchange to its members will erode quickly and will continue to erode at a more rapid rate as there is greater acceptance of electronic communication. Without this right, AUSDOC will be unable to deliver a range of services that is expansive enough to be appealing and to compete with Australia Post, and, as a consequence, another form of competition, albeit modest, will cease to exist.<sup>53</sup>

1.74 The Major Mail Users Association (MMUA) and Readers Digest also supported the proposed access regime, but also argued that the preservation of the integrity of the entire postal network was important to their businesses:

A strong, viable Australia Post is essential to the commercial wellbeing of all our members. If there is any weakening of Australia Post's two-way network—by that we mean the outwards and inwards mail flow—then that will weaken our members' business.

....

In relation to the access areas of the bill that have been mentioned today, our feeling is that, under all the circumstances of changes, the bill has a reasonable approach to access service. It provides the opening for the alternative postal service providers to come on to the scene. It provides for them to negotiate with Australia Post and then it provides for dissatisfied suppliers to go elsewhere and seek the arbitration process of the ACCC.<sup>54</sup>

1.75 The Communications Electrical and Plumbing Union (CEPU), which is opposed to the passage of the Bill, also opposed the access regime for the following reasons:

The whole tenor of this has, we think, been written from the point of view of the concerns of the major mail users and the Australia Post competitors rather than good public policy. We think it is inappropriate to have a body determine the nature of access, the cost of access and the appeals process so you have one body that becomes the determiner and the arbiter.

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52 Postal Services Legislation Amendment Bill 2000, *Explanatory Memorandum*, p 2.

53 Mr Ken Barry, *Proof Committee Hansard*, Canberra, 8 May 2000, p 39.

54 Mr John Gillroy, *Proof Committee Hansard*, Canberra, 8 May 2000, pp 32-33.

There are a number of references in there to the provision and the guidelines for declaring access to a particular service, but there is no mention of community interest... We do not have faith in the ACCC taking into account the community service obligations of the universal letter service, what the community expect from a postal service. We do not believe the ACCC will have them at heart. That is certainly not reflected in the guidelines that are given to it, as mentioned in the bill.

...

Not only will Australia Post lose market share under the provisions reducing the reserve service but in the remaining section of the market, the part Australia Post keeps, prices will be forced down because Australia Post will be required to provide access at various levels of its network for the competitors and it will then have to match their prices.<sup>55</sup>

1.76 Australia Post, while happy to conduct commercial negotiations with competitors for access to its network, had originally sought a regime which relied solely on such negotiations and provided a limited role for the ACCC as an arbiter:

We put forward that the ACCC should oversee what we do in respect of competitors to ensure that they were not disadvantaged compared to our customers.<sup>56</sup>

1.77 Australia Post explained its position to the Committee in those terms:

On access, the ACCC is to be given an independent role to set access prices and margins—in the event of us being unable to negotiate arrangements with those who are seeking access. Our prices and margins in this area, which is really the bulk mail area, are important to us because that is the revenue out of which reserve services CSOs are funded. And it is the revenue partly out of which we secure the necessary reinvestment in the ongoing operation of the business.

So we are going to be particularly robust in representing our case to the ACCC to minimise any revenue and margin losses in the reserved services area. Of course we understand our major customers would like even lower prices than they get now for bulk mail, and we would be looking to the access regime as a means of achieving that. But, frankly, our considerations and clearly the government's have to be broader than that.<sup>57</sup>

1.78 The Committee acknowledges the concerns of the CEPU and Australia Post about the potential of the access regime to eat into reserved service revenues. The Committee's view is that Australia Post is best placed to conduct negotiations with its competitors on the issue of access. The mechanism of appeal to the ACCC should be in place for those cases where those competitors feel that they need to have recourse to an independent referee.

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55 Mr Jim Claven, *Proof Committee Hansard*, Canberra, 8 May 2000, pp 19-20.

56 Mr Ludlow, *Proof Committee Hansard*, Canberra, 8 May 2000, pp 56

57 Mr Gerry Ryan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 48.



1.79 The provisions of the access regime are gradual, and are open to public scrutiny and legal avenues of appeal. Market participants are given every opportunity to come to freely negotiated terms of access, and the regime encourages them to make efforts to do so in good faith before the Commission will become involved. For example, under the proposed Section 153KD(1) of the Trade Practices Act, the ACCC has the powers to terminate an arbitration if:

- (a) the notification of the dispute was vexatious; or
- (b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (c) the party who notified the dispute has not engaged in negotiations in good faith; or
- (d) access to the postal service should continue to be governed by an existing contract between the provider and the access seeker.<sup>58</sup>

1.80 Likewise, under the proposed Section 153KC(1) the Commission is required to take into account a list of considerations before making an access determination:

- (a) the legitimate business interests of the provider, and the provider's investment in a facility used to provide the postal service;
- (b) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (c) the interests of all persons who have rights to use the postal service;
- (d) the direct costs of providing access to the postal service;
- (e) any reduction in cost to the provider because of the access seeker performing functions that would otherwise have been performed by the provider;
- (f) the value to the provider of extensions whose cost is borne by someone else;
- (g) the operational and technical requirements necessary for the safe and reliable operation of the postal service or a facility used to provide the postal service;
- (h) the economically efficient operation of the postal service or a facility used to provide the postal service;
- (i) if the provider is Australia Post—the need for Australia Post to recover the cost of performing its community service obligations;

- (j) any other matters that the Commission thinks are relevant.<sup>59</sup>

1.81 This clause appears to the Committee to be a very comprehensive account of the matters the ACCC must consider, and specifically includes the concerns of the CEPU and Australia Post, such as the cost of the CSO and the integrity of the network (including reinvestment). Australia Post acknowledged that Section 153KC(1)(a) would cover reinvestment:

Early in the framing of that particular provision, we sought internal advice to the effect that it could be argued that those words would cover a reasonable rate of return on the investment used by the service provider in providing the infrastructure that was being accessed.<sup>60</sup>

1.82 Should the ACCC, in the view of Australia Post, not adequately take into account these issues Australia Post can appeal to a Tribunal with the same powers as the ACCC and thence to the Federal Court.<sup>61</sup> All the requirements of judicial review and procedural fairness thus appear to be present. The Committee suggests that the operation of the access regime should be carefully analysed at the review in 2003 with a particular attention to its impact, not only on competition, but on the CSO and Australia Post's ability to maintain the viability of its network.

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59 *Postal Services Legislation Amendment Bill 2000*, pp 51-52.

60 Mr Gerry Ryan, *Proof Committee Hansard*, Canberra, 8 May 2000, p 51.

61 *Postal Services Legislation Amendment Bill 2000*, pp 63-65.