

Chapter 1

Background

Introduction

1.1 On 30 October 2014, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014 (Levy Amendment Bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 9 February 2015.¹

1.2 The reason for referral was that the bills contain a number of legislative changes which have the potential to significantly change the operation of the telecommunications industry. A principal issue for the committee's consideration is therefore the impact of the bills on regulatory stability in the telecommunications industry.²

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions by 10 December 2014.

1.4 The committee received four submissions, which are listed at Appendix 1. The submissions may be accessed through the committee's website at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/NWC

1.5 The committee decided not to hold a public hearing for this inquiry given the limited number of submissions received.

Background to the bills

1.6 The purpose of the bills is to reduce regulatory burden on industry participants. The Revised Explanatory Memorandum (REM) explains that the TLAD Bill would streamline telecommunications regulation while maintaining important consumer safeguards. It notes that the proposed amendments will contribute to the Government's agenda of reducing the regulatory burden on industry and consumers and implement the Government's 2014 Budget announcement to abolish the Telecommunications Universal Service Management Agency (TUSMA).³ TUSMA is a statutory agency responsible for achieving public interest telecommunications

1 *Journals of the Senate*, No. 63, 30 October 2014, p. 1690.

2 Senate Selection of Bills Committee, *Report No. 14 of 2014*, appendix 8.

3 Revised Explanatory Memorandum (REM), Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014, p. 1.

services policy objectives, and providing for the assessment, collection and recovery of the industry levy.⁴

1.7 The Levy Amendment Bill makes consequential and transitional changes to the *Telecommunications (Industry Levy) Act 2012* (Levy Act) due to the proposed abolition of TUSMA.⁵

1.8 The REM notes that the proposed amendments in the TLAD Bill, other than those relating to the abolition of TUSMA in schedule 1, are the result of an extensive consultation process, including:

- a government discussion paper released on 6 December 2013 seeking comment on the registration period for numbers on the Do Not Call Register;
- a government discussion paper released on 15 April 2014 seeking comment on a number of deregulatory proposals through an online discussion board; and
- a Deregulation Stakeholder Forum held on 12 May 2014, where representatives from industry, consumer groups and government agencies reached consensus on a number of proposed deregulatory measures.⁶

1.9 On 11 November 2014, the Minister for Communications, the Hon Malcolm Turnbull MP, wrote to the committee to advise that proposed schedule 5 of the TLAD Bill would be removed from the bill due to stakeholder concerns.⁷ The Government in the House of Representatives subsequently moved an amendment to remove schedule 5 from the TLAD Bill.⁸ Schedule 5 would have amended the record-keeping and reporting requirements in Part 13 of the *Telecommunications Act 1997* (Telecommunications Act), including removing some requirements for telecommunications companies to divulge the number of warrantless metadata requests they receive from law enforcement agencies.⁹

Overview of bill provisions

1.10 The bills contain a range of amendments aimed at lessening the regulatory burden on industry.

1.11 Schedule 1 of the TLAD Bill provides for the abolition of TUSMA and the transfer of its functions to the Department of Communications (the department) in accordance with the Government's 2014 Budget announcement. TUSMA would cease

4 REM, p. 1.

5 REM, p. 1.

6 REM, p. 2.

7 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 2, *Additional Document 1*.

8 The Hon Malcolm Turnbull MP, Minister for Communications, letter received 11 November 2014, p. 1, *Additional Document 1*.

9 Explanatory Memorandum, (EM), Telecommunications Legislation Amendment (Deregulation) Bill 2014 (TLAD Bill) and Telecommunications (Industry Levy) Amendment Bill 2014, p. 3.

to exist following the commencement of schedule 1 with obligations for administering contracts for public interest telecommunications services to be transferred to the Secretary of the department.¹⁰ The specific amendments in schedule 1 include:

- the repeal of the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act) and the *Telecommunications (Universal Services Levy) Act 1997*;¹¹
- the repeal of section 89 of the TUSMA Act, which requires the minister to prepare a levy target in relation to the operation of TUSMA, in advance of the rest of the TUSMA Act being repealed;¹²
- consequential amendments to a number of Acts to replace references to TUSMA or the TUSMA Act with references to new provisions in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act);¹³
- transfer of the policy objectives and functions currently set out in the TUSMA Act in respect of public interest telecommunications services to the Consumer Protection Act, along with the arrangements for the assessment, collection and recovery of the industry levy; and¹⁴
- provision for the collection and disclosure of a range of specified information between service providers and government agencies.¹⁵

1.12 Schedule 2 of the TLAD Bill would repeal Part 9A of the Consumer Protection Act, which regulates the supply of telephone sex services via a standard telephone service. It also includes consequential amendments to the *Australian Communications and Media Authority Act 2005* and the *Export Market Development Grants Act 1997*.¹⁶

1.13 Schedule 3 of the TLAD Bill would extend the registration period for numbers on the Do Not Call Register (DNCR) to an indefinite period.¹⁷ The *Do Not Call Register Act 2006* (DNCR Act) provides that telemarketers must not contact registered numbers. Currently, subsection 17(1) of the DNCR Act provides that an Australian number remains registered on the DNCR for a three year period unless the minister makes an instrument specifying a longer period.¹⁸

10 REM, p. 42.

11 REM, p. 2.

12 REM, p. 42.

13 REM, p. 43.

14 REM, p. 2.

15 REM, Statement of Compatibility, pp 8–9.

16 REM, p. 2.

17 REM, p. 2.

18 REM, p. 103.

1.14 Schedule 4 of the TLAD Bill would repeal the arrangements in Part 6 of the Telecommunications Act for the Australian Communications and Media Authority (ACMA) to register industry codes in respect of e-marketing. Currently, Part 6 of the Telecommunications Act enables bodies or associations representing sections of industry to develop industry codes and register them with ACMA.¹⁹

1.15 Schedule 6 of the TLAD Bill would reduce the scope of the pre-selection obligations on telecommunications providers in Part 17 of the Telecommunications Act, which provides a framework by which pre-selection can be activated. Subject to determination by ACMA, the provisions currently allow a consumer with a standard telephone service or a specified declared carriage service to choose a carrier or carriage service provider (other than the service provider that supplies the telephone line and local calls) to supply other services such as national long-distance calls, international calls and calls to mobile phones as set out in the ACMA's determination.²⁰

1.16 Schedule 7 of the TLAD Bill would modernise a number of publishing requirements in the Consumer Protection Act.²¹ Schedule 8 of the TLAD Bill would streamline the operation of the Customer Service Guarantee arrangements set out in Part 5 of the Consumer Protection Act. Part 5 of the Consumer Protection Act provides for performance standards and benchmarks that carriage service providers are required to comply with in respect of supplying certain kinds of carriage services to retail customers.²²

1.17 The Levy Amendment Bill makes consequential and transitional changes to the Levy Act, reflecting that the intended abolition of TUSMA will require substantive provisions concerning the assessment, collection and recovery of the industry levy to be transitioned from the TUSMA Act to the Consumer Protection Act.²³

19 REM, p. 104.

20 REM, p. 106.

21 REM, p. 121.

22 REM, p. 123.

23 REM, p. 125.