

Chapter 2

Key issues

Introduction

1.1 The four submitters to this inquiry focused on various aspects of the bill, including:

- regulatory costs, burdens and consultation with stakeholders;
- the abolition of TUSMA and existing funding or levy arrangements;
- the decision to remove schedule 5 from the bill and retain the record-keeping and reporting requirements in Part 13 of the *Telecommunications Act 1997* (Telecommunications Act);
- disclosure of personal information; and
- extension of the registration period for numbers on the Do Not Call Register (DNCR).

Regulatory costs, burdens and consultation

1.2 As noted in Chapter 1, the measures in the bills are intended to reduce the regulatory burden on industry with the key measure being the abolition of TUSMA.

1.3 The committee received submissions from two telecommunications companies, Telstra and Optus. Telstra argued that regulatory costs on the telecommunications industry are a real concern which needs to be addressed by government.¹ Telstra supported the amendments in the bills and argued the reforms are 'sensible' and would reduce regulatory burden on industry:

...the reforms are sensible proposals to reduce the regulatory cost imposed on the telecommunications industry, without reducing consumer protections. These reforms will remove unnecessary and burdensome regulatory obligations, allowing telecommunications providers greater flexibility in how they deliver services to customers, ultimately to the benefit of our customers.²

1.4 Optus in its submission canvassed a broad range of matters in relation to the regulation of the telecommunications industry and industry costs, and particularly its concerns in relation to funding arrangements and the operation of the Universal Service Obligation (USO).³ Optus submitted that the USO should be funded from the Government's general revenue rather than by industry.⁴

1 Telstra, *Submission 1*, p. 1.

2 Telstra, *Submission 1*, p. 1.

3 Optus, *Submission 4*, p. 3.

4 Optus, *Submission 4*, p. 3.

1.5 In response, the Department of Communications (the department) noted that the bills are not appropriate to address such complex concerns, because the proposed amendments are more narrowly aimed at consolidating and streamlining existing bodies and arrangements. The department stated:

The Bills are concerned with delivering deregulatory measures in the communications portfolio that will reduce the compliance costs of both industry and consumers. The Government's announcement in May 2014 that it would abolish TUSMA and transfer its functions to the Department of Communications was clearly stated as being part of broader steps taken by Government as part of its deregulation agenda, and a move to smaller government by consolidating existing bodies into departments. The Government did not indicate that the transition of functions from TUSMA to the Department of Communications would lead to broader changes to existing funding or levy arrangements. These Bills are therefore not an appropriate vehicle to address the complex policy competition and funding issues raised by Optus on the USO.⁵

1.6 The department also noted that the proposed amendments were the result of extensive consultation between industry, government and consumer groups during the development of the bills.⁶ The department indicated that it would continue to consult with stakeholders in relation to additional deregulation opportunities.⁷

Extension of the registration period for the DNCR

1.7 Schedule 3 of the TLAD Bill would extend the registration period for numbers on the DNCR from three years to an indefinite period.⁸

1.8 Optus noted that it did not oppose this proposal.⁹ However, Optus highlighted a potential need to require ongoing maintenance of the DNCR, including the removal of numbers which are not in service. Optus submitted that the absence of such a requirement would mean that all fixed and mobile numbers could eventually be listed on the DNCR.¹⁰

1.9 In response, the department noted that maintenance of the DNCR was an operational issue which may need to be considered following the implementation of the proposed changes to the DNCR. It stated that the issue did not go directly to the question of whether or not the proposed amendments should proceed:

5 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

6 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

7 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

8 REM, p. 2.

9 Optus, *Submission 4*, p. 15.

10 Optus, *Submission 4*, p. 15.

While this issue is not directly relevant to the consideration of this Bill, Optus is raising an operational policy issue which requires broader consideration of the operation of the DNCR and whether it could be readily checked against the Integrated Public Number Database. This is a matter which the Government can give consideration to in the longer term.¹¹

Decision to remove schedule 5 – record-keeping and retention requirements

1.10 As noted in Chapter 1, schedule 5 would have amended the record-keeping and reporting requirements in Part 13 of the Telecommunications Act including a requirement for telecommunications companies to divulge the number of warrantless metadata requests they receive from law enforcement agencies.¹²

1.11 However, 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 due to stakeholder concerns.¹³ The Minister in his letter to the committee stated that the amendments to Part 13 of the Telecommunications Act contained in schedule 5 would have offered 'only modest deregulatory savings to the telecommunications industry'.¹⁴

1.12 On 25 November 2014, the TLAD Bill was amended in order to remove schedule 5. The decision to remove schedule 5 from the TLAD Bill was noted by a number of the submitters.¹⁵

1.13 The submission of the Office of the Australian Information Commissioner (OAIC) was supportive of the removal of schedule 5. OAIC stated that the record-keeping and reporting requirements in Part 13 the Telecommunications Act are important from the perspective of transparency and the public interest.¹⁶

1.14 The department advised that the decision to remove schedule 5 from the TLAD Bill took into account stakeholder concerns and the current focus on data and privacy in the telecommunications industry.¹⁷ In light of these considerations, the

11 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 3, *Additional Document 2*.

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

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

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

15 See, Telstra, *Submission 1*, p. 1; Office of the Australian Information Commissioner, *Submission 2*, p. 1; Optus, *Submission 4*, p. 15.

16 Office of the Australian Information Privacy Commissioner, *Submission 2*, p. 1.

17 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

government wanted to ensure that reporting requirements were consistent across government prior to removing existing reporting obligations.¹⁸

1.15 Optus submitted that any overlap in reporting requirements should be assessed for potential regulatory compliance savings for industry and the utility of information provided to law enforcement agencies should also be examined.¹⁹

Disclosure of personal information

1.16 As noted in Chapter 1, schedule 1 of the TLAD Bill would provide for the collection and disclosure of a range of specified information between service providers and government agencies.²⁰

1.17 The Cyber Law and Policy Community (CLPC) noted its concern that the proposed amendments would allow government agencies and carriers increased access to personal information.²¹ In particular, CLPC was concerned that the proposed sharing arrangements could see an increased risk of data breach, identity theft, poor handling of information and inappropriate disclosures, including in relation to the status of persons with a disability.²²

1.18 Accordingly, CLPC recommended that the bills be subjected to a 'privacy impact assessment'.²³ The CLPC submission contained a number of further recommendations, including a requirement for individual notification that personal information has been shared.²⁴

1.19 However, in response, the department noted that the Statement of Compatibility (SOC) with Human Rights for the bills (on pages 6–12 of the Revised Explanatory Memorandum (REM)) included extensive discussion and assessment of relevant provisions in the bills that engage the right to privacy.²⁵

1.20 The department's response further explained that all government agencies which may be involved in the sharing of personal information are subject to obligations around the handling of personal information under the *Privacy Act 1988*. Further, carriage service providers are subject to specific additional requirements under Part 13 of the Telecommunications Act. On this basis, the department concluded:

18 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 1, *Additional Document 2*.

19 Optus, *Submission 4*, pp 15–16.

20 REM, Statement of Compatibility, p. 8.

21 Cyberspace Law & Policy Community, *Submission 3*, p. 1.

22 Cyberspace Law & Policy Community, *Submission 3*, p. 2.

23 Cyberspace Law & Policy Community, *Submission 3*, p. 1.

24 Cyberspace Law & Policy Community, *Submission 3*, p. 2.

25 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

...CLPC's concern that these arrangements could see an increased risk of data breach, identity theft, poor handling of information or inappropriate disclosures is unfounded.²⁶

1.21 In relation to CLPC's recommendations to address its privacy concerns, the department submitted:

...the Australian Privacy Principles under the *Privacy Act 1988* already provide a robust set of arrangements for the collection, use, disclosure and storage of personal information, including the security and destruction or de-identification of personal information if it is no longer required. Accordingly, the Department does not consider the suggested enhancements are warranted. Such arrangements are likely to be administratively costly and complex to implement and neither the OAIC nor any other groups with specific privacy or consumer interests have raised similar concerns.²⁷

Committee comment

1.22 The committee considers that the bills will contribute to reducing the regulatory burden on the telecommunications industry. In this respect, the submission from Telstra indicated support for measures aimed at lessening compliance costs for both industry and consumers. The committee also acknowledges the extensive consultation conducted by the department in relation to these measures.

1.23 However, the committee notes that a number of more complex issues were raised by Optus regarding existing funding and levy arrangements. While the proposed amendments in the bills are not intended to address these broader aspects of existing funding or levy arrangements, the committee considers that the proposed abolition of TUSMA and transfer of its functions to the department are sensible steps towards greater efficiency in the regulation of the telecommunications industry.

1.24 The committee further considers that the introduction of an indefinite registration period for the DNCR is consistent with community expectations and concerns regarding unsolicited telemarketing calls. On this basis, the committee is supportive of this measure while noting that consideration may need to be given to how the DNCR is maintained.

1.25 The committee notes that, while one submitter raised concerns regarding potential privacy implications of the proposed measures in the bills, those concerns were comprehensively addressed by the response provided by the department. In particular, the committee notes that the Australian Privacy Principles provide extensive protection of personal information.

26 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

27 Mr Drew Clarke, Secretary, Department of Communications, letter dated 23 December 2014, p. 2, *Additional Document 2*.

Recommendation 1

1.26 The committee recommends that the Senate pass the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014.

**Senator Anne Ruston
Chair**