

ACTU

Submission

Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009

Australian Council of Trade Unions

7 October, 2009

Introduction

The Australian Council of Trade Unions (ACTU) represents 2 million employees working across all sectors of the Australian economy. Three Unions represent employees within the telecommunications sector - the Communications, Electrical, and Plumbing Union (CEPU), the Community and Public Sector Union (CPSU), and the Association of Professionals, Engineers, Scientists & Managers, Australia (APESMA). This is a joint submission from the ACTU, CEPU, CPSU and APESMA.

The Senate inquiry into the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* provides the ACTU, and telecommunications unions, with the opportunity to comment on the future directions of the industry, particularly with regard to the proposed changes to Telstra. This industry, and particularly Telstra, employ significant numbers of Australians. The Bill makes significant changes to four Acts relevant to the telecommunications industry: the *Telecommunications Act 1997*, Parts XIB and XIC of the *Trade Practices Act 1974*, and the *Radiocommunications Act 1992* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. There are also amendments to the *National Transmission Network Sale Act 1998*.

With regards to the changes to the Telecommunications and Radiocommunications Acts, the ACTU, and affiliated unions, recognise that the Government is committed these changes, but we do urge them to ensure that, however where Telstra's workforce is affected, it is conducted in a way that is transparent and fair, and that no employee is worse off. We also ask that the Government consult employees, and their unions, about any changes.

The ACTU supports the changes to the two sections of the Trade Practices Act, as we indicated in our July submission to the Government on the National Broadband Network Company Legislation and Access Network.

Amendments to the *Telecommunications Act 1997*

The Bill includes changes to this Act that provides Telstra options for voluntarily structurally separating. If Telstra fails to do this they will be required to functionally separate by undertaking the following things (as stated in the explanatory memorandum to the Bill):

- *Conduct its network operations and wholesale functions at arm's length from the rest of Telstra*
- *Provide the same information and access to regulated services on equivalent price and non-price terms to its retail business and non-Telstra wholesale customers; and*
- *Put in place and maintain strong internal governance structures that provide transparency for the regulator and access seekers that equivalence arrangements are effective¹*

If Telstra does not voluntarily structurally separate and are required to undertake the abovementioned requirements, then on the first point, the ACTU accepts that changes to the structure of Telstra will be made, but we urge the Government to ensure that transparent and fair rules are set out for the division of the workforce across the wholesale and retail divide and that no employee is worse off under the new arrangements. We also ask that the Government consult employees, and their unions, about any changes.

In particular, where functional or structural separation of any networks, and assets and workforce are transferred to that new company then the ACTU believes that the following five conditions should apply:

1. That the new company be obliged to employ the workforce that is currently responsible for those areas of the business that are separated;
2. That the employment arrangements of those employees be retained;
3. That any qualifying period for unfair dismissal under the *Fair Work Act 2009* be waived;

¹ The Parliament of the Commonwealth of Australia, House of Representatives. *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009, Explanatory Memorandum*. Circulated by the authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy. p. 2

4. That any accrued entitlements, including annual leave and long service leave be carried over; and,
5. That any policies pertaining to employment conditions be no worse than those applying at Telstra, for example, any redundancy policies.

These conditions should also apply if any of the networks are transferred to an existing company.

Again, if these requirements must be undertaken by Telstra then, on the second point, the ACTU supports amendments to the access to regulated services on equivalent price and non-price terms to its retail business and non-Telstra wholesale customers.

On with the third point, the ACTU supports strong internal governance that enables better transparency for the regulator, and better equivalent access arrangements for access seekers.

Amendments to the *Radiocommunications Act 1992*

The significant amendment to the *Radiocommunications Act 1992* prevents Telstra from acquiring specific bands of spectrum, spectrum that would be used by Telstra for advanced wireless broadband services, *unless* Telstra structurally separates and divests its hybrid fibre coaxial cable network and interests in Foxtel.

As with the changes to the *Telecommunications Act 1997*, the ACTU accepts that changes to the structure of Telstra are going to be made, but we urge the Government to ensure that clear rules are set out for the division of the Telstra workforce, where the divestiture of these assets may affect the workforce. We also ask that the Government consult employees, and their unions, about any changes.

Furthermore we urge them to think about the wider industry implications because these changes will not only impact upon Telstra but other telecommunications companies in an industry that employs significant numbers of people.

Amendments to Part XIC of the TPA

We support the role of the ACCC in setting the price and non-price terms for those declared telecommunications services. The ACCC has the appropriate knowledge and

experience to regulate access to the services that telecommunications companies provide. Whilst acknowledging this, we do note that any situation where broader powers are given to a regulator should be subject to close scrutiny and review to ensure the process is transparent and efficient. This is particularly relevant when considering the potential for impacts on other industries/utilities outside the telecommunications sector.

The current negotiate-arbitrate model offers neither certainty nor flexibility, with a lengthy and cumbersome process that is not in the interests of end-users. A shift to a model where the ACCC is able to directly set the terms and conditions of access is more appropriate, particularly where there will be a single access provider, and multiple access seekers. Significant costs are involved in the negotiate-arbitrate model, where access seekers and providers engage in long running disputes, the costs of which are ultimately borne by the consumer. These disputes have in some cases taken many years to finally resolve; if the NBN is to be operational within the next 5-8 years then a more expeditious process must be found in order to give certainty to investors and a speedy switch-on of services for consumers.

The model used to determine these terms and conditions should be transparent in the methods and inputs used, with the process open to public scrutiny. This will also need to be sufficiently flexible in the short term to allow adaptation to changing market conditions, and to allow for unexpected difficulties that will inevitably arise in regulating an industry that will have fundamentally shifted in structure.

Amendments to Part XIB of the TPA

This section of the TPA will be amended so that the ACCC will not have to consult before issuing a Part A competition notice. Furthermore, the Bill explicitly states that the ACCC is not required to observe requirements of procedural fairness in relation to the issuing of this notice.

The ACTU supports this amendment because it will prevent those being issued with the notice from being able to delay the process, and thus the outcome.

Amendments to *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The ACTU supports the strengthening of existing legislative requirements to protect consumers. The changes to the Universal Service Obligation, which include new requirements for performance standards determined by the Minister, are welcomed. We also support changes that give the Minister the power to specify, by written determination, rules and performance standards in relation to supply, maintenance and location of payphones that a primary universal service provider must adhere.

The ACTU also supports the powers that ACMA will be given with regard to the removal of payphones by the primary universal service provider.

The ACTU also supports the strengthening of the Customer Service Guarantee (CSG), which sets performance benchmarks to stop the decline in the quality of service and standards in telecommunications.

The ACTU also supports changes to this Act with that strengthen priority assistance and we also support the strengthening ACMA's expanded powers in relation to infringement notices.