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**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

**Deputy Secretary  
Richard Windeyer**

Senator Andrew Bragg  
Chair  
Senate Standing Committees on Environment and Communications  
PO Box 6100 Parliament House  
Canberra ACT 2600

Dear Senator

Thank you for the opportunity for the Department of Infrastructure, Transport, Regional Development and Communications (the Department) to make a submission to the Senate Environment and Communications Legislation Committee's inquiry into the *Telstra Corporation and Other Legislation Amendment Bill 2021* (the Bill). This submission seeks to provide an explanation on the key measures contained in the Bill to assist the Committee in its considerations.

Telstra Corporation Limited (Telstra) has advised its shareholders and the market of its intention to undertake a corporate restructure. The Bill would amend legislation relating to Telstra to make sure all regulatory obligations, including foreign ownership, location of headquarters and makeup of directors, currently placed on Telstra continue to operate in an equivalent manner irrespective of the restructure undertaken by Telstra. Put simply, it will ensure there is regulatory equivalency of obligations across a restructured Telstra group.

Telstra has indicated its restructured group will comprise the following main entities:

- **Telstra Group Limited** (Telstra Group) – this entity will be a new parent company that owns the other three Telstra entities.
- **Telstra InfraCo Limited** (InfraCo) – this entity will be the current Telstra entity (known as “Telstra Corporation Limited”) and will in the future only operate Telstra’s passive infrastructure assets including ducts, fibre, rural and remote copper, exchange buildings, and poles.
- **Amplitel** (TowerCo) – this is a new entity and will own and operate most of Telstra’s passive tower assets. Telstra sold a 49 per cent non-ownership share of its Amplitel holdings to a consortium in September 2021. A unit trust will also be established to operate all of the towers owned by Amplitel and the remaining towers owned by Telstra.
- **Telstra Limited** (ServeCo) – this is a new entity and will operate Telstra’s current retail business and own the base stations, and other network units in Telstra’s network, as well as its data centres, existing spectrum assets and some non-shareable towers. Most of Telstra’s employees will be employed by ServeCo.

The proposed restructure envisions that InfraCo and ServeCo will be telecommunications carriers and Carriage Service Providers, as defined by the *Telecommunications Act 1997*. A graphic showing Telstra’s current plan for the restructured Telstra Group can be found at **Attachment A**.

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### *Regulatory equivalency is the guiding principle of the Bill*

The purpose of this Bill is to make sure the Commonwealth's policy interest in protecting consumers, promoting competition and supporting Telstra's public interest roles in Australia's telecommunications system is not diminished as a result of any future restructure. The Bill has been developed on the principle of regulatory equivalence – that is, the regulatory obligations that currently fall on Telstra should also fall on one or more entities in the new corporate group in a way that continues to achieve regulatory outcomes which reflect, or are consistent with, those policy interests.

While Telstra is free to restructure its business as it sees fit, successive Parliaments have placed and maintained a range of obligations on that business, and it is intended that these remain effective.

### *Re-pointing Telstra-specific obligations*

In order to achieve regulatory equivalence, the Bill uses a 'two limb' approach to re-point Telstra-specific obligations to the relevant entities within the Telstra group. This approach initially re-points certain obligations across all demerged Telstra entities, with other retail telecommunications obligations placed generally on ServeCo (see **Attachment B**, which contains a table showing how obligations are re-pointed).

The Bill does this by setting up a series of definitions:

- Demerged Telstra companies are defined as Telstra Group, InfraCo, Amplitel and ServeCo.
- Telstra successor companies are defined as demerged Telstra companies, and other declared entities (details on the declaration process are set out below). The Bill generally re-points corporate obligations contained in the *Telstra Corporation Act 1991*, to Telstra successor companies.
- Designated Telstra successor companies, which are defined as demerged Telstra companies, and other entities declared by the Minister for Communications (the Minister) from time to time. The Bill uses the 'designated Telstra successor company' concept in various parts when needing to refer telecommunications specific provisions of the statute book. For example, the proposed ministerial directions powers set out in various parts of the Bill make reference to designated Telstra successor companies (see for example, new section 577BAA of the *Telecommunications Act 1997*, which allows the Minister to direct a designated Telstra successor company to assist another designated Telstra successor company to comply with an obligation set out in the revised Definitive Agreements).

Whilst the definitions of 'Telstra successor company' and 'designated Telstra successor company' will initially cover the same entities, if the Bill were to be passed, having these two separate definitions allows flexibility.

As foreshadowed above, the Bill would create new powers for the Minister to 'carve in' or 'carve out', by legislative instrument, an entity or a class of entities as a 'Telstra successor company' or a 'designated Telstra successor company'. This could be on an individual basis or class basis, and also in respect of all, some or certain provisions of, the telecommunications laws (being the core telecommunications laws to which Telstra is currently subject). These provisions create flexibility to apply obligations to new entities created by Telstra or to adjust which entities are required to meet obligations in the situation where Telstra moves assets or service capability from one entity to another within its corporate structure. Once specified, an entity would need to comply with all relevant obligations, a class of obligations or specific obligations, as set out in the relevant instrument. Only constitutional corporations or other companies engaged in a telecommunications business (as defined under the Bill) would be capable of being declared a 'Telstra successor company' or a 'designated Telstra successor company'.

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Taken as a whole, these provisions seek to maintain the regulatory outcomes achieved by the existing telecommunications regulatory obligations currently imposed on Telstra. They also provide some flexibility to allow the Minister to adjust the target of regulatory obligations if Telstra continues to restructure itself into the future, and provide the possibility of ensuring regulatory coverage in the event of the transfer or sale of telecommunications businesses and telecommunications assets by the demerged companies to entities outside of the corporate group into the future.

### *Telstra's unique role in telecommunications service delivery will be preserved*

Despite significant change in the telecommunications industry over the past decade, including the rollout of the National Broadband Network, Telstra still plays a unique role in the Australian telecommunications market nationally as well as in regional, rural and remote Australia.

Telstra's role in the delivery of public interest telecommunication services has long been reinforced by a range of regulated consumer safeguards, including the Universal Service Obligation (USO) that guarantees the delivery of basic telephone and payphone services, including in rural and remote areas, the Customer Service Guarantee (CSG), the Network Reliability Framework, and Priority Assistance, as well as the operation of the Triple Zero Emergency Call Service.

Delivery of the Universal Service Obligation and Triple Zero Emergency Call Service are further supported by a contract with Telstra, the Telstra Universal Service Obligation Performance Agreement, which also provides for Telstra's ongoing use of copper to deliver telephone services in rural and remote areas.

Telstra's public interest telecommunications obligations generally apply nationally, but they can be of added importance in regional, rural and remote Australia where alternative telecommunications providers may be limited, and communications services help to overcome geographical and social isolation.

While Telstra has given clear and repeated undertakings that it will continue to deliver on these obligations, the Bill makes sure they continue to operate effectively by re-pointing the obligations to the new service delivery company (ServeCo), Telstra is establishing as part of its restructure.

The Bill also gives the Commonwealth visibility regarding the assets and contracts of ServeCo needs in order to continue to deliver these obligations. It is expected that Telstra entities will establish inter-company contracts to maintain the supply of important services relating to the Universal Service Obligation. The Bill establishes a right for the Commonwealth to obtain copies of these contracts in order to understand if they will enable regulatory obligations, such as the USO or CSG, to continue to be met.

As a further mechanism to ensure that regulatory obligations continue to be met, the Bill also establishes a new Ministerial directions power that would enable the Minister for Communications to issue Telstra with a binding direction, should the Commonwealth become concerned that Telstra may fail to fulfil these long-standing obligations. The Minister for Communications also retains the ability to use existing powers in the Telecommunications Act to place new carrier licence conditions on Telstra, if needed.

The annual funding of these obligations is heavily dependent on the Telecommunications Industry Levy (TIL). Given the changes taking place in the sector, including the establishment of new tower companies, the Bill includes an amendment to the TIL regime. The amendment would provide flexibility to enable new persons to be added to TIL contributors by regulation, should this be necessary to maintain the effectiveness of TIL funding.

These measures reflect the Government's unwavering commitment to people across Australia continuing to have access to essential public interest telecommunications services.

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*The Bill will preserve existing statutory competition authorisations connected to the Definitive Agreements between NBN Co Limited and Telstra*

NBN Co Limited (NBN Co) has a series of long standing contracts and agreements (the Definitive Agreements) with Telstra under which Telstra committed, among other things, to supply access to its infrastructure to NBN Co Limited (NBN Co) over an extended period. Ongoing access to that infrastructure, which will be owned by one or more of Telstra's successor and/or related companies following the restructure, is essential to the operation of the National Broadband Network (NBN) for the duration of the Definitive Agreements, irrespective of changes in infrastructure asset ownership in the Telstra group. NBN Co and Telstra expect to agree amendments to the Definitive Agreements to reflect the changes to the Telstra structure.

In support of NBN Co access to Telstra's infrastructure post the proposed corporate restructure, the Bill includes provisions to allow Telstra successor and/or related entities to be bound by the Definitive Agreements in the same way that Telstra was prior to its restructure. This is in response to the infrastructure asset transfers that will arise from the proposed restructure. When the Definitive Agreements were first established in 2011 amendments were made to the *Telecommunications Act 1997* and the *Competition and Consumer Act 2010* to ensure that the activities of NBN Co and Telstra related to those agreements were authorised under section 51(1) of the *Competition and Consumer Act 2010*. The Bill makes further amendments to the *Telecommunications Act* to ensure new contracts, agreements or understandings reached between NBN Co and one or more designated Telstra successor companies in relation to the Definitive Agreements as a result of Telstra's restructure continue to be authorised.

The Bill also provides for a ministerial power to direct designated Telstra successor companies to take specified actions to facilitate another designated Telstra successor company fulfilling its obligations under the Definitive Agreements, if the Minister is satisfied, the relevant company has failed, is failing or is likely to fail to do so. These and other provisions in the Bill preserve essential rights and entitlements for NBN Co owed to it under the Definitive Agreements.

*Tower Access Framework continues under the Bill*

The Bill seeks to make sure that the current tower access framework continues to apply after any proposed restructures by any telecommunications carrier. While Telstra's changed tower ownership arrangements has drawn the Government's attention to this issue, the part of the Bill would apply to all carriers and is not Telstra specific.

The tower access framework is a longstanding part of the *Telecommunications Act 1997*. It operates by requiring carriers to provide other carriers access to their telecommunications transmission towers, and establishes a role for the Australian Competition and Consumer Commission (ACCC) to arbitrate disputes.

The Bill seeks to address a loophole in the framework, such that if a carrier were to establish a subsidiary and move tower assets into that subsidiary, the existing tower framework would no longer apply to those towers.

To do so, the Bill establishes the concept of a 'carrier company group', which is defined as a group of related companies, of which at least one is a carrier for the purposes of the *Telecommunications Act 1997*. In determining whether an entity is in the 'carrier company group', the Bill relies on sections 46 and 50 of the *Corporations Act 2001*, except that the 50 per cent control threshold is replaced with a 15 per cent control threshold. This means that if a carrier had at least a 15 per cent interest in an entity that owns telecommunications transmission towers, that the tower access framework would apply to those towers, once the provisions in the Bill take effect (see below).

The 15 per cent control threshold in the Bill reflects the Government's view that a 15 per cent stake in a company can be influential, and is a sufficient investment to connect the entities. However, the Government expects that there will be debate on whether the 15 per cent control threshold should be raised or lowered.

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Consequently, the provisions are drafted to begin to operate 60 days after the ACCC reports to the Minister on its review of the appropriate control threshold, which itself has a 6 month timeframe from the date of Royal Assent of the Bill. The Minister could then revise the threshold by instrument following consultation and consideration. If there are concerns about the setting of the control threshold at 15 per cent there is a 6 month process for the merits of those arguments to be made, and assessed by the competition regulator, and then considered by the Minister.

The Department is also aware that there may be debate whether other elements of the telecommunications framework be extended to related entities, including in relation to the access regime for ducts and pits, and also in relation to the general telecommunications access framework in Part XIC of the *Competition and Consumer Act 2010*. The Department considers that these ideas may have merit, but should be considered in a broader context, given that extending these elements of the regulatory framework could have far reaching consequences. The Department will consider these policy questions over 2022 and provide further advice to Government.

In summary, the Bill is designed to maintain longstanding policy objectives of successive governments as they relate to Telstra. I appreciate the Committee's consideration of this submission.

The Department is available to respond to any questions the Committee has in relation to the Bill and will be available to attend a hearing if invited by the Committee.

Yours sincerely

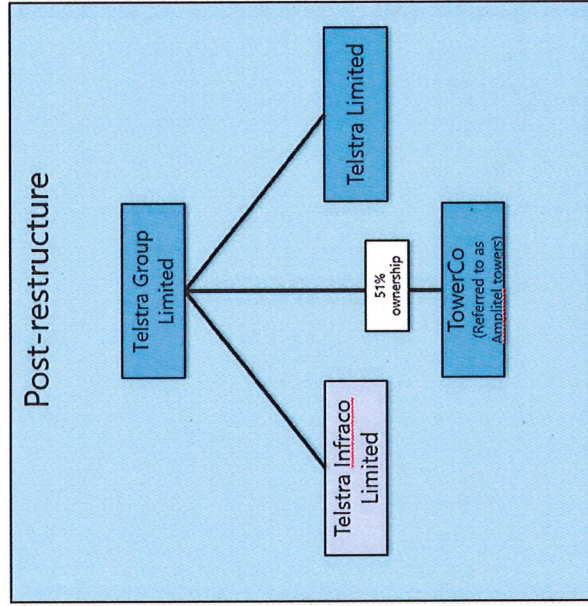
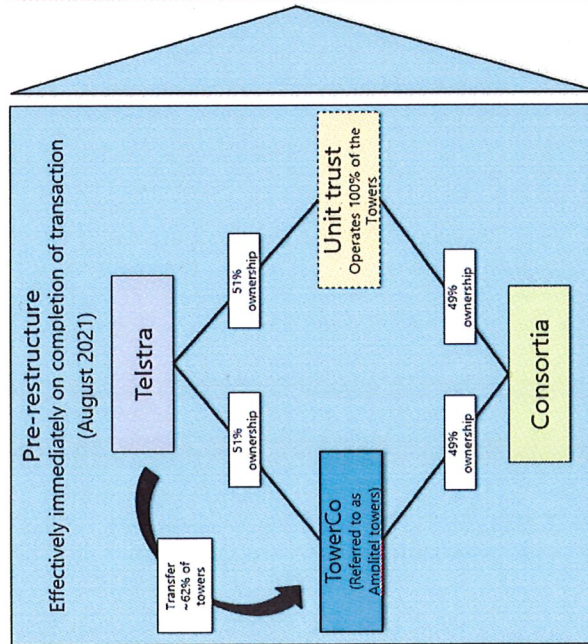
Richard Windeyer  
Deputy Secretary  
Communications and Media  
2 November 2021

Attachment A

## Telstra's Restructure

Telstra has publicly indicated that it will be looking for opportunities to monetise some assets. The recent sale of 49% of its towers business is an example. Telstra sold a non-controlling stake to a consortium of Future Fund, Commonwealth Superannuation Corporation and Sunsuper.

**Telstra Group Limited** will be a holding company that is the parent of the group. It will not own any significant assets.



- **Telstra InfraCo Limited** will be the entity that operates Telstra's fibre, its copper network and many passive assets such as ducts and pits.
- **Telstra Limited (ServeCo)** will be the entity that provides retail services to customers and will also own the mobile base stations that provide mobile services across Australia.
- **Amplitel (TowerCo)** will own Telstra's passive tower assets.

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**Attachment B**

| <b>Obligation</b>   | <b>Effect</b>  | <b>Bill reference</b>      | <b>Repointed to</b>  |
|---|--|----------------------------|--|
| <p><b>Structural Separation Undertaking</b></p>   | <p>Two new sections will be inserted after existing section 577A. The effect of new section 577ACA is to repoint the structural separation undertaking (SSU) obligations which currently apply to Telstra Corporation Limited to other designated successor companies. The effect of new section is to 577ACB will allow directions to be given for the facilitation of the SSU .</p>  | <p>Item 41, Schedule 2</p> | <p>Telstra InfraCo Limited, Telstra Limited (ServeCo) and any designated Telstra successor company (specified in instrument)</p> |
| <p><b>Migration Plan</b></p>  | <p>Two new sections will be inserted after the existing section 577BE. These sections cover Telstra’s final migration plan and are similar to the new sections that cover structural separation undertaking in Item 41. New section 577BEA will enable certain obligations and commitments under the plan to be repointed to other relevant companies in the new Telstra group. New section 577BEB will allow directions to be given for the facilitation of the migration plan.</p> | <p>Item 59, Schedule 2</p> | <p>Telstra InfraCo Limited, Telstra Limited (ServeCo) and any designated Telstra successor company (specified in instrument)</p> |
| <p><b>Carrier Licence Conditions</b><br/>Section 7 (operator services)<br/>Section 8 (directory assistance services)<br/>Section 9 (alphabetical public number directory)<br/>Section 10 (integrated public number database)<br/>Section 12 (priority assistance arrangements)<br/>Section 13 (low-income measures)<br/>Section 14 (Network Reliability Framework – definitions and general requirements)</p> | <p>Proposed new section 63A will allow repointing of these existing licence conditions to ServeCo. This section also covers some transitional arrangements to make sure there are no disruptions to these obligations. ServeCo is best placed to meet these ‘retail’ focused obligations following the restructure of the Telstra group.</p>   | <p>Item 22, Schedule 2</p> | <p>Telstra Limited (ServeCo)</p>   |

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| <p>Section 15 (monitoring and reporting at the Field Service Area (FSA) level)<br/>Section 16 (monitoring, remediation and reporting at the Cable Run level)<br/>Section 17 (monitoring, prevention, remediation and reporting at the customer service guarantee level)<br/>Section 18 (methodologies and variations to methodologies)<br/>Any new interim licence conditions imposed on Telstra between introduction of the Bill and commencement of new section 63A.</p> |  |                                      |   |
| <p><b>Carrier Licence Conditions -</b><br/>Section 11 (disclosure of Specified Premises Location information to NBN)</p>   | <p>Proposed new sections 63A(2) and section 63A(3) will have the effect of temporarily reappointing this licence condition to ServeCo and for Telstra InfraCo to also remain subject to it . because both will need to act in concert to provide the relevant information to NBN Co.</p>   | <p>Item 22, Schedule 2</p>           | <p>Both Telstra Limited (ServeCo) and Telstra InfraCo Limited</p>                               |
| <p><b>Primary Universal Service Provider</b></p>   | <p>Part 2 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> (TCPSS Act) which concerns public interest telecommunications services and The effect of these amendments would be to reappoint the universal service obligations to ServeCo, and provide the Minister with powers to apply the primary universal service provider obligations to more than one person and to establish requirements to report on contracts or asset transfers, or provide copies of relevant contracts.</p> | <p>Items 101 to 108A, Schedule 2</p> | <p>Telstra Limited (ServeCo)</p>  |
| <p><b>Retail Obligations - Triple Zero</b></p>   | <p>Amendments are proposed to be made to the <i>Telecommunications (Emergency Call Persons) Determination 2019</i> in Schedule 2. Telstra is currently the national operator of emergency call services (general) (i.e the emergency call person). These emergency call services provide allow end-users to make a free voice call to the emergency call person (ECP) for 000 and</p>  | <p>Items 142 – 144, Schedule 2</p>   | <p>Telstra Limited (ServeCo), or both Telstra Limited (ServeCo) and Telstra InfraCo Limited</p> |

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| <p><b>Retail Obligations</b> - emergency call service obligations and integrated public number database (IPND)</p>   | <p>112. The ECPs then transfer emergency calls to the emergency service organisations (police, fire or ambulance) in the State or Territory where assistance is required.<br/>The key amendment (at item 142) is to re-point the ECP obligations from Telstra to ServeCo.<br/>Amendments are proposed to be made to the <i>Telecommunications (Emergency Call Services) Determination 2019</i> in Schedule 2.<br/>The existing Determination imposes requirements on carriers, carriage service providers (CSPs) and emergency call persons (ECPs) for emergency call services (ECSSs).<br/>The amendments are largely mechanical changes, consequential to the changes at Item 135 which re-points certain licence conditions (including the IPND Manager conditions) and Item 143 which re-points the ECP role to Telstra Limited (ServeCo)), keeping with the Bill's intent of regulatory equivalency.</p> | <p>Items 145 – 147, Schedule 2</p>        | <p>Telstra Limited (ServeCo)</p>   |
| <p><b>Corporate Obligations</b><br/>Section 8 (Foreign Ownership and percentage of Australian directors)<br/>Section 8CC (Corporations power and communications power)<br/>Subsection 8CCA(1) (anti-avoidance provision)<br/>Clause 12 of the Schedule (updates to concepts of ownership)<br/>Section 5 and Parts 2 and 3 of <i>Telstra Corporation (Ownership—Interests in Shares) Regulations 2018</i> (interests in shares)</p> | <p>Proposed amendments that are directed at extending the corporate obligations under the <i>Telstra Corporations Act 1991</i> (Telstra Act) to all Telstra successor companies. Doing so will ensure regulatory equivalence for corporate obligations before and after the restructure.</p>  | <p>Items 9 to Item 78, Schedule 1 and</p> | <p>Demerged Telstra Companies (Telstra Group Limited, Telstra InfraCo Limited, Amplitel Pty Ltd, Telstra Limited (ServeCo)).</p> |

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