

# Chapter 1

## Introduction

### Terms of reference

1.1 On 19 March 2008, the Senate referred the provisions of the Telecommunications Legislation Amendment (Communications Fund) Bill 2008 (the bill) to the Senate Standing Committee on Environment, Communications and the Arts (the committee) for inquiry and report by 30 April 2008.

1.2 On 26 March 2008, in accordance with usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by 17 April 2008; the inquiry was re-advertised in *The Australian* on 1 April 2008. The committee also directly contacted a number of organisations and individuals to invite submissions. The committee received four submissions, which are listed in Appendix 1.

1.3 The committee acknowledges the Parliamentary Library for its work preparing the *Bills Digest* on the bill, which assisted the committee in considering the bill.

### Background to the bill

#### *Purpose of the bill*

1.4 The bill has two purposes.

1.5 First, the bill amends the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act) to:

...enable money in the Communications Fund to be used for the purpose of funding the creation or development of a national broadband network...<sup>1</sup>

1.6 The government has proposed the amendment because the Act currently prevents the Communications Fund (the fund) being used for purposes other than to implement recommendations arising from regular independent reviews of telecommunications services in regional Australia by the Regional Telecommunications Independent Review Committee (RTIRC).<sup>2</sup>

1.7 Second, the bill amends the Act to allow the \$2 billion capital of the fund to be expended for the purposes of the creation of a national broadband network. The

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1 Minister for Infrastructure, Transport and Regional Development, Mr Anthony Albanese, *House of Representatives Hansard*, 13 February 2008, p. 203.

2 The RTIRC was established under the *Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Act 2005*. Commencing in 2008, the reviews will take place every three years.

government has proposed the amendment because the Act currently prevents the capital of the fund being drawn upon, which means that only the income generated by the fund may be accessed.<sup>3</sup>

1.8 In the Second Reading Speech to the bill, the Minister for Infrastructure, Transport and Regional Development, Mr Anthony Albanese, stated:

The previous government legislated to prevent funds being drawn below \$2 billion and to only allow expenditure of the revenue stream. This government is prepared to invest \$2 billion right now to fund this critical piece of national infrastructure.<sup>4</sup>

1.9 The minister also stated that the creation of the proposed national broadband network will fulfil the original aims of the fund:

The intent of the Communications Fund is to address the telecommunications needs of regional, rural and remote Australians. The...plan to roll out a national broadband network is fully consistent with this...<sup>5</sup>

### ***History of the fund***

1.10 The fund was established in September 2005 from the proceeds of the sale of the third and final tranche of Telstra shares, from which \$2 billion was set aside. It was intended that income from the fund would be used 'to support broadband services in rural and regional Australia'.<sup>6</sup>

On 21 March 2007, the ALP announced an election commitment to provide \$4.7 billion for the building of a national broadband network to provide broadband access to 98 per cent of Australians. Of the \$4.7 billion, \$2 billion was to be drawn from the fund.<sup>7</sup>

1.11 In response to this commitment, the Coalition introduced to parliament the Telecommunications Legislation Amendment (Protecting Services for Rural and Regional Australia into the Future) Bill 2007. The bill inserted s 158ZJA into the Act, which requires the minister to take all reasonable steps to ensure that the balance or

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3 Ibid.

4 Ibid.

5 Ibid.

6 *Bills Digest*, 'Telecommunications Legislation Amendment (Communications Fund) Bill 2008', p.2. The fund was created by the *Telecommunications Legislation Amendment (Future Proofing and Other Measures) Act 2005*, which amended the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

7 *Transcript of press conference*, ALP Caucus Room, Canberra, 21 March 2007 p. 2.

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value of the fund does not fall below \$2 billion. The amendment thus currently prevents the capital of the fund being accessed.<sup>8</sup>

***Inquiry into the Telecommunications Legislation Amendment (Protecting Services for Rural and Regional Australia into the Future) Bill 2007***

1.12 The Senate Standing Committee on Environment, Communications, Information Technology and the Arts conducted an inquiry into the provisions of the Telecommunications Legislation Amendment (Protecting Services for Rural and Regional Australia into the Future) Bill 2007.<sup>9</sup> It received two submissions and made no recommendations on the bill. The report stated:

...the committee received little evidence on the bill and the two submissions it received addressed the bill in only general terms. No specific issues with the bill were identified. The committee decided not to hold a public hearing and has nothing further to report to the Senate regarding the bill.<sup>10</sup>

**Outline of the bill**

1.13 The bill achieves its purposes in two ways. First, it removes the s 158ZJA requirement that the minister maintain the balance of the fund at not less than \$2 billion. This will allow the funds to be accessed immediately.

1.14 Second, the bill will enable the fund to be used for purposes related to the creation of a national broadband network. This is in addition to the purpose of financing the government's implementation of the RTIRC's review recommendations.<sup>11</sup>

1.15 The bill also makes provision for a number of different legal structures that might be needed to implement the national broadband network, depending on the nature of what is proposed by the successful tenderer. The bill therefore allows for Commonwealth contributions from the fund to a partnership, an unincorporated/incorporated joint venture or a trust, or by direct grant, loan or direct purchase of assets.

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8 Despite the intent of the amendment, it is observed that parliament cannot bind a subsequent parliament. There is no legal impediment to the current parliament amending the *Telecommunications Legislation Amendment (Future Proofing and Other Measures) Act 2005* to alter the terms governing the fund's operation.

9 The name of the committee was changed in February 2008.

10 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Telecommunications Legislation Amendment (Protecting Services for Rural and Regional Australia into the Future) Bill 2007 [Provisions]*, July 2007, p. 2.

11 Section 158ZE. The *Bills Digest* to the bill notes that the RTIRC's recommendations 'may [nevertheless but not necessarily] fit with the government's plan for a national broadband network' (p. 4).

**Main provisions of the bill**

1.16 The main provisions of the bill are as follows:<sup>12</sup>

**Item 1** of the bill amends the Act to expand the purposes for which the fund may be used to include ‘purposes relating to the creation or development of a broadband telecommunications network.’

**Items 2 to 6** insert definitions of new terms used in the bill, such as 'broadband telecommunications network'.

**Item 7** expands the meaning of 'unit' to include a unit in a unit trust.

**Items 8 and 9** make non-substantive changes to paragraphs 158ZI(1)(b) and (c).

Existing s 158ZH provides for the establishment of a Communications Fund Special Account (the fund account). **Item 10** amends s 158ZI to extend the purposes to which the fund account may be put as follows:

- proposed paragraphs (d), (e) and (f) will permit the acquisitions of, respectively, shares, debentures or units in a unit trust in a company or unit trust that is or will be involved in the creation or development of a broadband network;
- proposed paragraph (g) will permit financial assistance grants for the creation or development of a broadband network;
- proposed paragraph (h) will permit the making of financial assistance grants relating to the supply of a broadband service;
- proposed paragraph (i) will permit the acquisition of assets for use in connection with a broadband telecommunications network; and
- proposed paragraph (j) will permit the fund account to be used for any purpose incidental or ancillary to a purpose set out in paragraph (d), (e), (f), (g), (h) or (i).

**Item 11** repeals existing section 158ZJ, which requires that the fund account be credited with \$2 billion. **Item 16** provides that the repeal of this section does not affect a credit made before the commencement of the bill.

**Item 12** repeals section 158ZJA, which requires the minister to take all reasonable steps to ensure that the balance or value of the fund does not fall below \$2 billion.<sup>13</sup>

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12 The following is adapted from *Bills Digest*, Telecommunications Legislation Amendment (Communications Fund) Bill 2008, pp 4-5.

13 This was the section inserted in 2007 in order to protect the fund from the Labor Party's election undertaking to use the fund's capital to create a national broadband network.

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**Item 13** amends s 158ZL to require a written agreement where one of the grants of financial assistance, provided for by the amendments in item 10, is made to a state.

Similarly, **item 14** amends s 158ZM to require a written agreement where one of the grants of financial assistance, provided for by the amendments in item 10, is made 'to a person other than a state'.

**Item 15** inserts new s 158ZNA. Proposed subsections (1), (2) and (3) define the three kinds of securities that the Commonwealth may buy with monies from the fund account: broadband network shares, broadband network debentures and broadband network trust units.

Further, the item provides that none of the defined securities is affected by Division 3 of the Act or by s 39 of the *Financial Management and Accountability Act 1997* (FMA Act). Division 3 of the Act governs the management of investments in the fund; a distinction is therefore made between investments held in the fund account to generate returns, and securities purchased by the Commonwealth in an entity involved in fulfilling the purposes of the fund. Section 39 of the FMA Act governs the investment of public money, but is considered inappropriate for the intended purpose of the fund.<sup>14</sup>

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14 The exclusion of s 39 of the FMA Act is not novel; a similar provision applies to the Future Fund, for example.

