

Chapter 1

Referral to the committee

1.1 On 17 September 2009, the Senate referred the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 to the Senate Environment, Communications and the Arts Legislation Committee for inquiry and report by 26 October 2009.

1.2 On 23 September, in accordance with usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by 7 October 2009. The committee also directly contacted a range of individuals and organisations to invite submissions.

1.3 The committee received 119 numbered submissions, listed at Appendix 1. The committee also received 224 form letters listed at Appendix 1.

1.4 The committee held public hearings in Melbourne and Canberra on 13 and 14 October 2009. The participants are listed at Appendix 2.

Purpose of the bill

1.5 The bill proposes to amend the *Telecommunications Act 1997*, Parts XIB and XIC of the *Trade Practices Act 1974*, the *Radiocommunications Act 1992* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. The bill also makes consequential amendments to the *National Transmission Network Sale Act 1998*.

1.6 The bill seeks to introduce a series of regulatory reforms intended to enhance competitive outcomes in the Australian telecommunications industry and strengthen consumer safeguards. It seeks to 'promote an open, competitive telecommunications market to provide Australian consumers with access to innovative and affordable services'.¹

1.7 The reform package can be divided into three parts: addressing the vertical and horizontal integration of Telstra; streamlining the access and anti-competitive conduct regimes; and strengthening consumer safeguard measures such as the Universal Service Obligation and the Customer Service Guarantee.²

Outline of the bill

Structure of the telecommunications sector

1.8 Part 1 of Schedule 1 proposes to insert a new Part 33 into the *Telecommunications Act 1997* with provisions for Telstra to voluntarily structurally separate.

1 Explanatory Memorandum, p. 3.

2 Explanatory Memorandum, p. 1.

1.9 According to the explanatory memorandum:

Structural separation may, but does not need to, involve the creation of a new company by Telstra and the transfer of its fixed-line assets to that new company. Alternatively it may involve Telstra progressively migrating its fixed-line traffic to the [National Broadband Network] over an agreed period of time and under set regulatory arrangements, and sell or cease to use its fixed-line assets on an agreed basis. This approach will ultimately lead to a national outcome where there is a wholesale-only network not controlled by any retail company – in other words, full structural separation in time³

1.10 Part 1 of Schedule 1 also provides for Telstra to be functionally separated should Telstra choose not to voluntarily implement structural separation. The bill achieves functional separation by requiring Telstra to:

- 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 strong internal governance structures that provide transparency for the regulator and access seekers, and that ensure that equivalence arrangements are effective.⁴

1.11 In the explanatory memorandum, the government cites Telstra's 'ongoing dominance in the Australian telecommunications market' as the reason for its strategy 'to correct this unique market structure, by introducing a set of measures designed to promote competition...while providing Telstra with the flexibility to choose its future path'.

1.12 Under the bill, if Telstra chooses not to structurally separate, divest its hybrid fibre coaxial (HFC) cable network and its interests in Foxtel, Telstra will be prevented from acquiring spectrum which could be used for advanced wireless broadband services. However, in the event that the Minister is satisfied that Telstra's structural separation undertaking is sufficient to address the government's concerns about Telstra's dominant position in the market, the bill does enable the Minister to remove the requirements around the divestment of the HFC cable network and Foxtel.⁵

Access and anti-competitive conduct regimes

1.13 Part 2 of Schedule 1 seeks to amend the current 'negotiate-arbitrate' model in Part XIC of the *Trade Practices Act 1974* for agreeing terms of access between providers and access seekers, in order to address the government's concern that the current model is not achieving effective outcomes.

3 Explanatory Memorandum, p. 1.

4 Explanatory Memorandum, p. 2.

5 Explanatory Memorandum, p. 2.

1.14 The bill allows the regulator, the Australian Competition and Consumer Commission (ACCC), to set up-front prices and non-price terms for declared services. These are intended to set a benchmark that access seekers can fall back on, should negotiations with the provider fail.

1.15 The bill also removes the ability to have decisions made under Part XIC of the Trade Practices Act subject to merits review, in order to 'promote regulatory certainty and timely decision-making'. Judicial review processes will continue to be available.

1.16 Part 3 of Schedule 1 is intended to streamline the enforcement process to which the ACCC must adhere. The bill makes changes to the competition notice process, and specifically to consultation and observation of procedural fairness by the ACCC.⁶

Consumer protection

1.17 The bill amends the *Telecommunications (Consumer Protection and Service Standards) Act 1999* by strengthening the Universal Service Obligation (USO), Customer Service Guarantee (CSG) and priority assistance services, as well as enhancing the regulatory powers of the Australian Communications and Media Authority (ACMA). These amendments are detailed in Parts 4 to 8 of Schedule 1 of the bill.

1.18 Part 4 of Schedule 1 includes new requirements of the universal service provider such as minimum performance benchmarks that must be met by the universal service provider. Performance standards to be determined by the Minister include maximum periods of time for new connections, fault rectification and reliability standards, and performance standards in relation to payphones. There will also be 'new rules in relation to public consultation and notification of proposals to remove payphones'.⁷

1.19 Under Part 5 of Schedule 1, the Minister can establish minimum CSG performance benchmarks. Part 5 also seeks to clarify CSG waiver provisions including the requirement for a customer's express agreement for a waiver and the inclusion of a statement outlining consequences of the CSG waiver.

1.20 Part 6 of Schedule 1 introduces a new service provider rule requiring service providers to either offer a priority assistance service in accordance with the Communications Alliance code on priority assistance, or inform customers of providers from whom they can purchase such a service if they require it. Telstra will remain bound by its current carrier licence condition requiring it to have priority assistance services.

1.21 Part 7 of Schedule 1 expands the powers of the ACMA to issue infringement notices under the Consumer Protection Act. The government intends that this will 'assist the ACMA in enforcing obligations under the telecommunications regulatory regime'.

6 Explanatory Memorandum, pp. 3-4.

7 Explanatory Memorandum, p. 5.

1.22 Part 8 of Schedule 1 substitutes a new definition of civil penalty provision to simplify and clarify the definition.⁸

1.23 There was general support for the enhancement of consumer safeguards in the bill, and this report concentrates on issues relating to the structural separation of Telstra, and on Trade Practices Act reforms.

8 Explanatory Memorandum, pp. 5-6.