Chapter 3

Access, competition and consumer safeguards

3.1 The bill proposes changes to parts XIB and XIC of the *Trade Practices Act 1974* administered by the Australian Competition and Consumer Commission (ACCC).

Access and anti-competitive conduct regimes

3.2 Part XIB of the *Trade Practices Act 1974* (TPA) prohibits a service provider with a substantial degree of market power from engaging in conduct which has either the effect or purpose of substantially lessening competition.[1] Part XIB also contains provisions for the ACCC to issue a competition notice if it believes a carrier or carriage service provider is engaging in anti-competitive conduct.

3.3 The bill proposes two changes to Part XIB. First, the bill seeks to clarify the scope of ACCC intervention in instances of perceived anti-competitive conduct relating to content services.[2] This has arisen due to concerns that current practices, involving the bundling of content access with telecommunications services, may constitute anti-competitive conduct.[3] The government's position is that the current provisions do not specify whether content services, as defined in the *Telecommunications Act 1997*, are covered by Part XIB.[4]

3.4 Second, the bill seeks to streamline the competition notices process to reduce delays. The consultation process, a statutory requirement in the competition notices process, has been criticised on the grounds that it is open to manipulation by parties intentionally drawing out negotiations to secure a competitive advantage.[5] The government is seeking to reduce delays currently penalising the victims of alleged anti-competitive conduct.[6]

Inclusion of content services

3.5 Item 158 amends section 151AF to clarify that a telecommunications market, for the purpose of part XIB, includes content services as defined in the *Telecommunications Act 1997*.

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1 Explanatory Memorandum, pp. 53-54.

2 Explanatory Memorandum, pp. 53-54.

3 Explanatory Memorandum, pp. 53-54.

4 Explanatory Memorandum, pp. 53-54.

5 Explanatory Memorandum, pp. 54-55.

6 Explanatory Memorandum, pp. 54-55.

3.6 Content services include broadcasting services, online information services and online entertainment services that are currently offered as part of bundled packages by service carriers and carriage service providers.[7]

3.7 Optus supported the change. It said:

> The opportunity exists for content especially that acquired on an exclusive basis, to be used for anti-competitive purposes through bundling with telecommunication services. It is appropriate, therefore, that content should be subject to the anti-competitive conduct provisions.[8]

3.8 On the other hand, Foxtel disagreed with regulating access to content, on the grounds that this 'will constitute an inappropriate interference with the economic rights of rights holder and content providers.'[9] BT Investment Management argued that:

> the ACCC is shaping-up to get into pay TV issues and on line content issues which may well have implications beyond Telstra…
>
> The ACCC already has wider discretionary powers over conduct in the telecommunications industry than apply in other industries. The… proposed changes listed above increase regulatory uncertainty which is not in the long term interests of end users because it inhibits competition and increases risks in making investment.[10]

3.9 The Government argues that, on the contrary, the reforms will increase regulatory certainty. It has reasoned that inclusion of content services is advisable since:

> it is unclear whether Part XIB applies to content services supplied by carriers and carriage service providers. Clarifying the scope of Part XIB will increase regulatory certainty and reduce the risk of protracted legal disputes on this issue.[11]

3.10 FreeTV agreed that the government's proposed reforms would increase certainty.[12]

Changes to the competition notice regime

3.11 The bill proposes repealing provisions that require the ACCC to consult the affected provider before issuing a Part A competition notice.[13] It would expressly

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7 Explanatory Memorandum, pp 55-56.

8 Optus, *Submission 47*, p. 8. Similarly Australian Telecommunications Users Group, *Submission 44*¸ p. 7. Austar, *Submission 71*, p. 5.

9 Foxtel, *Submission 98*, p. 16-17.

10 BT Investment Management, *Submission 74*, p. 7.

11 Explanatory Memorandum, p. 4.

12 FreeTV, Submission 72, p. 3.

remove any common law obligation on the ACCC to observe requirements of procedural fairness in relation to issuing a Part A competition notice.[14]

3.12 The Government supports this change on the grounds that '…the consultation process prior to the issuing of a competition notice can delay enforcement action….'

> These delays may lead to irreversible damage to the parties that are affected by any alleged anticompetitive conduct…. [Removing the requirement of procedural fairness] will deny the party alleged to have taken part in anti-competitive conduct the ability to delay the ACCC's enforcement activities on procedural grounds. The focus for both parties will therefore be on resolving the alleged illegal conduct, rather than on litigation aimed at challenging the processes followed by the ACCC. The competition notice can be lifted at any time if the ACCC is satisfied that the allegation of improper conduct is mistaken, or the situation has been corrected.
>
> If the ACCC commences court proceedings to enforce a Part A competition notice, the ACCC would still have to prove to the court that the competition rule had been breached by the alleged offender.[15]

3.13 Telstra submitted that these changes exempt the ACCC from procedural fairness obligations without policy justification:

> As a model litigant, the ACCC should at all times be required to meet an even higher standard of procedural fairness…. a competition notice is an administrative instrument. If used incorrectly, it is potentially damaging, hence the need for proper administrative process and administrative law protections. If not, how can any investor have confidence that the power will not be misused? … the changes to Part XIC and Part XIB contained in the Bill will significantly increase regulatory uncertainty by allowing unfettered regulatory discretion. This will not provide the industry with the guidance and clarity it requires during a period of significant transition.[16]

3.14 Other submissions generally supported the changes to Part XIB.[17] The ACTU supported the reform 'because it will prevent those being issued with the notice from being able to delay the process'.[18] Similarly, Pipe Networks pointed out that the change would 'ensure that Telstra's focus is on remedying its anticompetitive conduct

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13 A Part A competition notice states that the provider has engaged in certain anti-competitive conduct. A Part B competition notice states that the provider has contravened the competition rule (that is, the prohibition on anti-competitive conduct) - sections 151AKA, 151AL. The two types of notice have different effects in any subsequent legal proceedings. There is no requirement for consultation before issuing a Part B competition notice. See Explanatory Memorandum, p. 53ff.

14 Item 159, amendments to section 151AKA of the Trade Practices Act.

15 Explanatory Memorandum, p. 4; similarly p. 54-55.

16 Telstra, *Submission 88*, p. 4, 11.

17 For example Optus, *Submission 47*, p. 8; Free TV, *Submission 72*, p. 3.

18 ACTU, *Submission 52*, p. 5.

rather than disputing the process by which those notices were issued'.[19] iiNet argued that the proposed changes to Part XIB in fact did not go far enough, asserting that the ACCC should be able to issue binding rules of conduct in relation to anti-competitive conduct.[20]

Changes to part XIC of the Trade Practices Act

Background on the access regime

3.15 Part XIC of the *Trade Practices Act 1974* (TPA) contains the telecommunications access regime. Under this regime, the ACCC may 'declare' specific telecommunications services. A telecommunications provider that supplies the declared service (an access provider) is obliged to supply it to other telecommunications service providers (access seekers) on request (subject to certain exceptions).

3.16 The terms on which a declared service is supplied are determined by agreement between the access provider and the access seeker. Failing this, the terms are as specified in:

- an access undertaking previously lodged by the access provider and accepted by the ACCC (if there is one); or
- in the absence of a relevant undertaking, a determination by the ACCC following arbitration.

3.17 This is known as the negotiate-arbitrate model.

3.18 The explanatory memorandum specifies that this approach was chosen over more direct methods of setting access terms in order to encourage market-based outcomes. However, determining terms and conditions of access under Part XIC has proven to be time-consuming and litigious. Since the start of the Part XIC regime in 1997, there have been 157 telecommunications access disputes notified, compared with three in other sectors. At March 2009, the ACCC was considering 51 access disputes, all involving Telstra.[21]

Changes to the access regime

3.19 The bill proposes reforms of the regime to allow the regulator to set up-front prices and non-price terms for declared services. The ACCC will issue 'access determinations' for each declared service, with terms and conditions (and any appropriate exemptions or special rules) usually set for a period between three and five years. The regulator will also be able to determine 'fixed principles', such as how depreciation is treated, to remain in force over a longer period if necessary.

3.20 The ACCC will have the power to make binding rules of conduct for the supply of declared services which would apply either in addition to, or as a variation

19 Mr D. Clapperton (Pipe Networks), *Proof Committee Hansard*, 13 October 2009, p. 25.

20 iiNet, *Submission 70*, attachment, p. 6-8.

21 Explanatory Memorandum, p. 45-6.

of, an access determination. The duration of binding rules of conduct would be limited to a maximum of 12 months. The government argues that this will allow the regulator to act quickly on issues affecting the supply of retail services. It is envisaged that binding rules of conduct will only be used on an occasional basis.[22]

3.21 Access providers and access seekers may also make 'access agreements'. An access agreement would override an access determination or binding rules of conduct.[23]

3.22 The bill also removes the right of appeal to the Australian Competition Tribunal against certain decisions of the ACCC under Part XIC ('merits review').[24] The explanatory memorandum states that:

> merits review of ACCC decisions under the [Trade Practices Act] can contribute to delays and regulatory uncertainty. This is problematic in the telecommunications sector which is characterised by rapid technological advances and changing market conditions.

3.23 The ACCC's decisions will still be liable to judicial review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.[25] Substantial support for the proposed reforms was demonstrated in stakeholder responses to the *National Broadband Network: Regulatory Reform for 21st Century Broadband* April 2009 discussion paper.[26]

Comments in submissions on Part XIC changes

3.24 Submissions to this inquiry generally agreed that the negotiate-arbitrate model has failed. They supported the proposed changes, with some provisos or suggestions noted below. For example Optus said:

> The negotiate/arbitrate model under Part XIC has proven to be a failure. It has provided Telstra with both the incentive and means to game the system to its advantage, which has resulted in a merry-go-round of regulatory disputes, delay and legal challenges. [27]

3.25 Similarly the Australian Telecommunications Users Group said:

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22 Item 71ff, amendments to the *Trade Practices Act 1974.* Explanatory Memorandum, p. 3.

23 Item 116, proposed sections 152AY, 152BE. Explanatory Memorandum, p. 138.

24 Item 108 repeals the right of review by the Tribunal of the ACCC's decision in relation to an application for exemption from standard access obligations. Item 128 repeals the right of review by the Tribunal of the ACCC's decision in relation to accepting or varying an access undertaking.

25 Explanatory Memorandum, p. 137.

26 Explanatory Memorandum, p. 51.

27 Optus, *Submission 47*, p. 8.

> ATUG supports these amendments to Part XIC to provide more streamlined and timely outcomes which will be of benefit to end users by improving choice.[28]

3.26 Telstra supported changes to Part XIC of the Trade Practices Act 'that will more closely align it with the access pricing arrangements used in other industries'. However, Telstra argued that the bill 'contains none of the explicit and inherent safeguards for access providers present in other regulatory frameworks'. Telstra argued that the bill gives the regulator much greater discretionary power than in those other industries:

> This Bill is highly unusual in that it gives the regulator significant powers without setting out very careful prescriptions on how those powers should be used.

3.27 Telstra also argued that the changes to Part XIC need to be deferred until clear policy guidance to the regulator, along the lines of other industries, is included.[29]

3.28 Foxtel preferred to retain the negotiate-arbitrate model, and did not think that the ACCC should be able to make upfront determinations.[30] BT Investment Management argued that the changes 'are unreasonable and give a role to the ACCC beyond what is reasonable for an independent regulator.' [31]

3.29 The department responded that 'there are quite a lot of criteria set out that the Commission is required to take into account [in making an access determination]…'

> For example, under proposed new provision 152BCA, the commission has to take into account 'whether the determination will promote the long-term interests of end users'. That test requires it to have regard to the extent to which the determination will promote competition, achieve any-to-any connectivity and encourage efficient use of and investment in telecommunications infrastructure, having regard to feasibility of supply of services, the legitimate commercial interests of the suppliers of the services and the incentives and risks for investment.[32]

3.30 While there was widespread support for Part XIC reform, there were some specific proposals and concerns raised regarding the relationship between access agreements and access determinations; the treatment of exemptions from standard access obligations; the transitional provisions; the removal of merits review; and the need for changes to the regime governing access to facilities.

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28 Australian Telecommunications Users Group, *Submission 44*, p. 7. Other supporters of the changes (some with provisos or suggestions) were Mr J. Horan (Primus Telecom), *Proof Committee Hansard*, 13 October 2009, p. 25; ACTU, *Submission 52*, p. 2; Macquarie Telecom, *Submission 69*, p. 3; Austar, *Submission 71*, p. 5; Primus Telecom, *Submission 76*, p. 3.

29 Telstra, *Submission 88*, p. 3.

30 Foxtel, *Submission 98*, pp. 2,7, 8.

31 BT Investment Management, *Submission 74*, pp 1, 8.

32 Mr R. Buettel (Department of Broadband, Communications and the Digital Economy), *Proof Committee Hansard*, 14 October 2009, p. 28.

Access agreements to prevail over access determinations

3.31 Several submissions were concerned that allowing access agreements to override the ACCC's access determinations would be at risk of abuse by Telstra's market power. For example Pipe Networks argued that the proposals are flawed since 'they allow access seekers' existing contractual agreements with Telstra to trump future terms of access set by the ACCC':

> It would be dangerous to allow carriers and access-seekers to contract out of Regulated Terms because of the significant risk that carriers (and especially Telstra), by virtue of its position and superior bargaining power, could exert leverage upon access seekers to induce them to contract out of the Regulated Terms, to the detriment of competition.[33]

3.32 Pipe Networks argued that the bill's scheme in which precedence goes to access agreements, in a situation of market power, without access to arbitration, could lead to a result worse than the status quo.[34]

3.33 Several proposals were put forward in response to this issue. The Competitive Carriers Coalition suggested that access seekers with commercial agreements should be able to revert to ACCC-determined conditions on application. Macquarie Telecom suggested that an access agreement should only prevail over an access determination where the inconsistency is for the benefit of the access seeker. iiNet made similar arguments. [35]

3.34 The department commented that 'the relationship between access determinations and access agreements will also be given further consideration in the light of submissions provided by a number of parties'.[36]

Treatment of exemptions from standard access obligations

3.35 Section 152AS of the Trade Practices Act allows the ACCC to grant exemptions from the standard access obligations for declared services via a disallowable instrument. The standard access obligations cover:

- Supply of active declared service to service provider;
- Interconnection of facilities;
- Provision of billing information;
- Timing and content of billing information;
- Conditional-access customer equipment, and

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33 Pipe Networks, *Submission 51,* p. 2,6 & *Proof Committee Hansard,* 13 October 2009, p. 26. Similarly D. Foreman (Competitive Carriers Coalition), *Proof Committee Hansard,* 14 October 2009, p. 8.

34 Pipe Networks, *Submission 51,* p. 6.

35 Competitive Carriers Coalition, *Submission 48,* p. 9-10. Similarly Macquarie Telecom, *Submission 69,* p. 4. iiNet, *Submission 70,* attachment, p. 3. Internode, *Submission 73,* p. 2.

36 Department of Broadband, Communications and the Digital Economy, answers to questions taken on notice.

- Exceptions.[37]

3.36 The bill repeals section 152AS. The need for ordinary exemptions is removed because the ACCC will be able to include provisions in an access determination which remove or limit the obligation of carriers or carriage service providers to comply with some or all of the standard access obligations. Anticipatory exemptions would still be available.[38]

3.37 In their submission to the inquiry, Unwired Australia noted that:

> The application of exemptions to defined geographic areas has been of some recent interest and litigation. There is particular concern in some quarters about the appropriateness of these exemptions, and, in particular, whether the legislative process as subsequently applies sufficiently requires the ACCC to consider the effect on all markets.[39]

3.38 Unwired Australia recommended that the bill be amended so that an access determination must specify terms and conditions for all declared services, and that the determination not be able to exempt providers from offering the declared service.[40]

3.39 The department responded that:

> the bill continues to allow the ACCC to reduce regulation in a targeted manner, by providing that access determinations be able to exempt particular providers or classes of providers from having to provide access to the declared service.[41]

Concerns with transitional provisions

3.40 Under the bill the ACCC, if it has started a public inquiry about a proposed access determination, may terminate any arbitration on foot about the related declared service.[42] Access seekers were concerned that this could create injustice. iiNet suggested that the trigger for terminating an arbitration should be the making of the access determination, not the starting of a public inquiry. Macquarie Telecom suggested that the price terms in the access determination should be backdated to when the access seeker started negotiations with the access provider.[43]

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37 *Trade Practices Act 1974*, sections 152AR, 152AS.

38 Item 94. Item 116, proposed paragraph 152BC(3)(h). Explanatory Memorandum pp. 51, 134. An anticipatory exemption applies to a service that is not yet declared at the time the exemption is made.

39 Unwired Australia, *Submission 55*, p. 13.

40 Unwired Australia, *Submission 55*, p. 13.

41 Department of Broadband, Communications and the Digital Economy, answers to questions taken on notice.

42 Item 154(12).

43 iiNet, *Submission 70*, attachment, p. 4. Macquarie Telecom, *Submission 69*, p. 4.

End of merits review

3.41 The bill repeals provision for merits review of certain ACCC decisions by the Australian Competition Tribunal. The intention of removing merits review in some circumstances is to reduce delays and regulatory uncertainty. The ACCC's decisions will still be liable to judicial review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977.*[44]

3.42 Submissions from Telstra's competitors mostly supported this move. For example Optus said:

> Today almost all commercial negotiations end up in a dispute before the ACCC, with these disputes in turn appealed to the Australian Competition Tribunal or the Federal court… Optus also argued for the removal of the provisions relating to the lodgement of ordinary access undertakings and merits based appeal processes, on the basis that each of these arrangements has been largely used to frustrate and delay the regulatory decision making processes.[45]

3.43 On the other hand Vodaphone Hutchison Australia, while agreeing that the negotiate-arbitrate model should be abolished, thought that the provisions give too much discretion to the ACCC:

> We do not consider that the judicial review process is sufficient for promoting accountability in the Commission's decision. The threshold for identifying errors in law is too high… We consider that an independent merits review is necessary…[46]

3.44 Telstra opposed the end of merits in context of the regulator's wide discretion and the importance of its decisions:

> Typically, such rights are only removed where regulators have limited discretion. That is not the case here. Abolishing appeals on the merits of the ACCC's decisions only increases regulatory uncertainty, especially in view of the dramatically expanded powers. Telecommunications will be the only national utility industry in which there is no merits-based review of the regulator's access pricing decisions.[47]

3.45 Foxtel suggested a compromise approach, retaining a more limited form of merits review with time limits and restrictions on the information able to be considered.[48]

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44 Explanatory Memorandum, p. 137.

45 Optus, *Submission 47,* p. 8. Similarly Australian Telecommunications Users Group, *Submission 44*, p. 7.

46 Vodaphone Hutchison Australia, *Submission 40*, pp. 1-2.

47 Telstra, *Submission 88*, p. 10. Similarly BT Investment Management, *Submission 74*, p. 8.

48 Foxtel, *Submission 98*, p. 14.

Access to facilities

3.46 A regulatory framework aimed at ensuring fair access for all telecommunications providers to telecommunications transmission towers and underground facilities is legislated in Schedule 1 of the *Telecommunications Act 1997*. Pipe Networks noted that this facilities access regime 'exists independently of the regime for access to 'declared services' in Part XIC of the Trade Practices Act 1974' and that 'Both Schedule 1 and Part XIC presently adopt a 'negotiate-arbitrate' model'.[49] Pipe Networks argued that the negotiate-arbitrate model under the Telecommunications Act 'suffers from the same failings as that in Part XIC' and that access to facilities legislated in Schedule 1 was potentially more relevant to the National Broadband Network (NBN) than that under Part XIC:

> Of the nine services currently declared under Part XIC, six of those services relate to services supplied using legacy copper cables which may be rendered obsolete by the currently preferred Fibre-To-The-Premises (FTTP) model for the National Broadband Network (NBN).
>
> In contrast, access to duct will be a vital component of the NBN. Access to telecommunications towers (for the deployment of fourth generation wireless services to provide coverage of 'gaps' in FTTP infrastructure) is also likely to be a significant part of the NBN. Access to both these types of facility is regulated by Schedule 1 and not Part XIC.[50]

3.47 On that basis, Pipe Networks and Macquarie Telecom both recommended that the negotiate-arbitrate model under Schedule 1 of the Telecommunications Act should also be amended by the bill.[51] The department commented that regulation of access to telecommunications facilities is being considered separately.[52]

Other matters

3.48 iiNet was concerned that the provisions about access determinations and binding rules of conduct may not allow urgent action to add to the terms of an existing access determination which does not cover the field. It suggested that the ACCC's power to make interim determinations, or binding rules of conduct, should be extended to cover this situation.[53]

3.49 iiNet suggested that when holding a public inquiry on a proposed access determination, the ACCC should be able to consider all previous inquiries under Part XIC, not only previous inquiries on access determinations.[54]

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49 Pipe Networks, *Submission 51*, p. 3.

50 Pipe Networks, *Submission 51*, p. 4.

51 Pipe Networks, *Submission 51*, p. 4; Mr Matt Healy, National Executive, Regulatory and Government, Macquarie Telecom, *Committee Hansard*, 13 October 2009, p. 26.

52 Department of Broadband, Communications and the Digital Economy, answers to questions taken on notice.

53 iiNet, *Submission 70*, attachment, p. 4.

54 iiNet, *Submission 70*, attachment, p. 4.

3.50 Unwired Australia suggested that the ACCC should be able to make fixed principles determinations that are to operate across all access determinations during their period of currency.[55]

Committee comment on changes to the Trade Practices Act

3.51 The committee accepts the strong evidence of the need to reform the negotiate-arbitrate model, and notes that most submitters support the bill's proposals.

3.52 The committee believes that some issues raised by submitters, particularly access-seekers, may present opportunities to further improve the regulatory framework. In the time available, the committee was not able to form a view about the detail of some of these proposals and how any amendments might be framed. Areas in which the committee thought there was a particular need to carefully examine submitter concerns were the circumstances under which access agreements will prevail over access determinations, and the retention of the negotiate-arbitrate model in the facilities access regime in Schedule 1 of the *Telecommunications Act 1997*.

Consumer safeguards

3.53 Numerous submitters were supportive of the proposed changes to consumer safeguards.[56] ATUG voiced their support for 'stronger Consumer Safeguards and the new approach of using performance benchmarks', whilst Macquarie Telecom acknowledged that a 'consumer protection approach' would give consumers greater choice and control over their telecommunications.[57]

3.54 The Australian Communications Consumer Action Network (ACCAN) was supportive of the government's move to address the vertical integration of Telstra[58] but was concerned that the bill did not go far enough with regard to consumer safeguards.[59] ACCAN recommended that:

> …the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 be amended to redefine the definition of the Standard Telephone Service and to re-frame the LTIE so as to better serve the interests of end-users, whether consumers or business. [60]

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55 Unwired Australia, *Submission 55*, p. 12.

56 See Mr Andrew Sheridan, Optus, *Proof Committee Hansard*, 13 October 2009, p. 17; Mr John Horan, General Manager, Legal and Regulatory, Primus Telecom, *Proof Committee Hansard*, 13 October 2009, p. 26; Mr Matt Healy, National Executive, Government and Regulatory, Macquarie Telecom, *Proof Committee Hansard*, 13 October 2009, p. 26; Mr David Havyatt, Manager, Regulatory and Corporate Affairs, Unwired Australia, *Proof Committee Hansard*, 13 October 2009, p. 26.

57 Mr Matt Healy, National Executive, Government and Regulatory, Macquarie Telecom, *Proof Committee Hansard*, 13 October 2009, p. 25.

58 Mr Allan Asher, Chief Executive Officer, ACCAN, *Proof Committee Hansard*, 13 October 2009, p. 53.

59 ACCAN, *Submission 91*, p. 3.

60 ACCAN, *Submission 91*, p. 5.

3.55 ACCAN also proposed that the compensation payment mechanism be automated, to increase the incentive on service providers to respond to problems in a timely manner:

> Service guarantees, standards, benchmarks and all that are a good idea, but I would still leave in there a sufficient incentive for suppliers to get things right by providing for compensation payments where they fail to do what they promise to do—where they fail to turn up to install, to repair and things like that. These days most people are in the workforce or getting back into the workforce, and it is actually quite costly to have time off work to be at home, and doubly frustrating when technicians do not come, so it is appropriate for there to be compensation payments. In order to be efficient, I would make them automatic so that a service failure automatically gives rise to an obligation on the supplier to make those compensation payments without a consumer having to go through a whole bureaucracy to establish that.[61]

3.56 The committee notes the government appears to be aware of this issue, and has responded to it in the current proposals through increased clarity and enforcement of penalties. The explanatory memorandum comments that 'by increasing civil penalties in some cases, carriers will be more likely to comply with the obligations rather than pay compensation'.[62] The committee also draws attention to the fact that the explanatory memorandum specifically says that more extensive actions to expand the scope of the universal service regime could occur in future.[63]

Conclusion

3.57 The committee believes that the bill in its current form provides important and timely reforms to Australia's telecommunications regulatory regime that will be of benefit to providers and consumers. While further examination of issues raised above is warranted, the committee believes that the passage of the bill should not be delayed. In particular the committee notes the view, held by some stakeholders, that the legislation should be delayed until the results of the National Broadband Network implementation study are known. However the regulatory regime will operate regardless of the results of that study, and must be improved for consumers and carriers as soon as possible. The National Broadband Network should not be used as an excuse to delay reforms and to increase regulatory uncertainty.

3.58 Based on the answers to its questions on notice, the committee believes the government has recognised the concerns of stakeholders outlined above, and is examining them carefully. The committee asks that the minister address these concerns during consideration of the bills in the Senate.

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61 Mr Allan Asher, Chief Executive Officer, ACCAN, *Proof Committee Hansard*, 13 October 2009, p. 54.

62 Explanatory Memorandum, p. 74.

63 Explanatory Memorandum, p. 74.

Recommendation 1

3.59 The committee recommends that the bill should be passed.

Senator Anne McEwen
Chair