

## CHAPTER 1

### INTRODUCTION

#### Referral of the Bills

##### 1.1 On 10 December 1996 the Senate resolved:

That the provisions of the following bills be referred to the Environment, Recreation, Communications and the Arts Legislation Committee for inquiry and report by 25 February 1997:

Australian Communications Authority Bill 1996

Radiocommunications Amendment Bill 1996

Radiocommunications (Receiver Licence Tax) Amendment Bill 1996

Radiocommunications (Transmitter Licence Tax) Amendment Bill 1996

Telecommunications Bill 1996

Telecommunications (Carrier Licence Charges) Bill 1996

Telecommunications (Carrier Licence Fees) Termination Bill 1996

Telecommunications (Numbering Charges) Bill 1996

Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996

Telecommunications (Universal Service Levy) Bill 1996

Trade Practices Amendment (Telecommunications) Bill 1996.<sup>1</sup>

1.2 The reporting date was subsequently extended to 5 March 1997 by resolution of the Senate on 24 February 1997.

#### Objectives of the Bills

1.3 The eleven individual Bills referred to the Committee are parts of a comprehensive package of legislation designed to establish the regulatory framework for telecommunications in Australia for the period beginning 1 July 1997.

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1 Journals of the Senate No 68, 10 December 1996, p 1240.

1.4 The current regulatory regime commenced on 1 July 1991 at a time when Australia's telecommunications markets were dominated by government monopolies. It was designed to open up those monopolies, in a controlled manner, to competition. It was always intended as a transitional regime which would be replaced when the market was ready for a more openly competitive regime.

1.5 The objectives of the post-1997 regulatory framework are to facilitate the development of an Australian telecommunications industry based on:

- world class infrastructure using the latest market driven technology mix;
- a multitude of service providers offering diverse and innovative carriage and content services; and
- contestable market strategies which drive prices down and the quality of service up.<sup>2</sup>

### **Brief outline of the post-1997 regulatory arrangements**

1.6 Under the post-1997 regulatory arrangements the operation of a competitive market is the primary mechanism for delivering the benefits of telecommunications technology to individual consumers and to the community as a whole. The arrangements:

- impose no quotas on the number of carriers or service providers who may enter the market, and remove regulatory distinctions between carriers on the basis of the technology they use; and
- encourage industry self-regulation of consumer standards and technical standards, while allowing for regulatory solutions to be applied should self-regulation fail.

1.7 Where practicable, the post-1997 arrangements seek to bring carriers and service providers within the ambit of general regulatory mechanisms, rather than selectively regulate the industry. The arrangements:

- give the Australian Competition and Consumer Commission (ACCC) responsibility for regulating competition (under the current

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2 Second reading speech, House of Representatives Hansard, 5 December 1996, p 7799.

regulatory regime the Australian Telecommunications Authority (AUSTEL) has this responsibility)<sup>3</sup>;

- remove the limited exemption the industry receives from the restrictive trade practices provisions of the *Trade Practices Act (1974)*; and
- remove carriers' exemption from State and Territory planning and environment laws in most circumstances.

1.8 The arrangements recognise however that particular features of the telecommunications market necessitate selective regulation. In particular:

- the very high degree of concentration of market power in a number of markets necessitates specific legislation to guard against anti-competitive conduct and to ensure access to carrier infrastructure;
- the operation of a competitive market alone will not necessarily yield a socially equitable distribution of benefits. The Bills therefore impose on carriers and carriage service providers service obligations and obligations toward consumers; and
- Australian industry has benefited from industry development arrangements applying under the current regime; the Bills continue to impose industry development obligations on carrier licensees.

### **The structure and content of the Bills**

1.9 The package of Bills comprises 826 pages of legislation and associated Explanatory Memoranda. The five principal Bills making up the package are briefly described below. Six of the eleven Bills enable the Commonwealth to apply fees, levies and charges. These Bills, which total 27 pages, are separately drawn up as a consequence of section 55 of the Constitution, which stipulates that laws imposing taxation cannot deal with any other matter. These tax Bills are dealt with in Chapter 8.

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3 The Australian Communications Authority, to be established by the merger of the AUSTEL and the Spectrum Management Agency, will regulate the remaining aspects of this legislative package.

### *Telecommunications Bill 1996*

1.10 The Telecommunications Bill 1996 (514 pages) is the core of the package of Bills. It is intended to replace the *Telecommunications Act 1991*. Most significantly, the Bill:

- prescribes carrier licence conditions;
- provides for monitoring of carriers and service providers by the Australian Communications Authority (ACA);
- sets out a regime for the development of industry codes and standards;
- re-enacts the universal service regime;
- provides a customer service guarantee and ensures that residential customers receive the standard telephone service;
- reinforces the protection of confidentiality of information;
- provides for the phasing out of the advanced mobile phone system (AMPS);
- prescribes a regime for the creation of technical rules and standards;
- provides for the regulation of numbering.

### *Trade Practices Amendment (Telecommunications) Bill 1996*

1.11 Administration of competition aspects of telecommunications under the post-1997 regulatory framework lies with the ACCC, rather than with AUSTEL as was the case with the 1991 regulatory regime.

1.12 The Bill inserts two new Parts, dealing specifically with telecommunications, into the *Trade Practices Act 1974*:

- Part XIB deals with anti-competitive conduct and applies in addition to the general restrictive trade practices provisions (Part IV) of the Act; and
- Part XIC deals with access to services and applies in addition to the general access provisions (Part IIIA) of the Act.

### *Radiocommunications Amendment Bill 1996*

1.13 The Radiocommunications Amendment Bill 1996 amends the *Radiocommunications Act 1992*. The main objective of the amendments is to prepare for changes to the regulation of telecommunications in Australia provided for elsewhere in this legislative package and to improve the mechanisms for management of the radiofrequency spectrum.

*Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996*

1.14 The Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996 contains transitional provisions and consequential amendments related to the legislative package, including access arrangements and the proposed merger of AUSTEL and the SMA.

*Australian Communications Authority Bill 1996*

1.15 The Australian Communications Authority Bill 1996 establishes the ACA as the regulator (apart from competition matters) for the post-1997 regulatory framework.

1.16 The ACA will be formed by merging the previous telecommunications regulator, AUSTEL, with the regulator of radiocommunications spectrum, the Spectrum Management Agency (SMA). The competition regulation functions of AUSTEL will be transferred to ACCC.

1.17 The Bill sets out the functions and powers of the ACA which are primarily to regulate telecommunications in accordance with the Telecommunications Bill 1996 and to manage the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*.

## **Conduct of the Inquiry**

1.18 The Committee was conscious that the proposed post-1997 regulatory arrangements were developed over a period of some years, under both Labor and Coalition Federal governments, during which time extensive consultation took place with stakeholders. To a large degree, the broad rationale of the proposed arrangements is accepted by all stakeholders. The Committee's intention therefore was not to re-open debate on broad issues of policy, but rather to ensure that the Bills provide for the implementation of the policy intentions in a workable manner.

1.19 The inquiry was advertised in the national press on 14 and 18 December 1996, and on the Internet via the Senate World Wide Web homepage from 13 December 1996. The Committee received 88 written submissions, and a number of additional supplementary submissions, from a broad range of individuals and organisations. A list of submissions is at Appendix 1. Following the closing date for submissions the Committee also received a large volume of correspondence from individuals and organisations concerned about the possible imposition of timed charges on local data calls.

1.20 The Committee held public hearings on 29 and 30 January, and on 7, 14 and 18 February 1997 at Parliament House, Canberra. Appendix 2 lists the public hearings, their subject matter, and the 91 witnesses who appeared. The Committee received private briefings on 29 January, 18 and 24 February 1997 from the Minister for Communications and the Arts, Senator the Hon Richard Alston, and officers of the Department of Communications and the Arts. Departmental officers also attended all public hearings in order to respond to questions relating to the content of the Bills. Officers of the SMA and AUSTEL attended relevant hearings for similar purposes. The Committee thanks the Minister and officers within his portfolio for their co-operation.

1.21 The public hearings were programmed to deal with subject areas which had received prominence in submissions. The Committee questioned witnesses concerned with each subject area collectively. This enabled greater elucidation of issues than would have been the case if witnesses were called to appear separately before the Committee, but required witnesses concerned with multiple subject areas to make multiple appearances before it, and placed unusual demands on the Committee secretariat and the Department of the Parliamentary Reporting Staff. The Committee thanks those concerned for their co-operation.

## **Structure and Content of the Report**

1.22 The Committee's Report deals with recommendations regarding Volumes 1-3 of the Telecommunications Bill 1996, the Trade Practices Amendment (Telecommunications) Bill 1996, the Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996 and the Radiocommunications Amendment Bill 1996 in Chapters 2-7. The remaining Bills are dealt with in Chapter 8. Chapter 9 of the Report considers issues which do not fit clearly into any of the individual Bills. Within Chapters 2-8 the Committee's recommendations follow the structure of the Bills to which they refer.

1.23 Because of the time constraints faced by the Committee it has not been possible to report on all of the issues raised during the Committee's inquiry in this Report. The Report deals only with those issues where Committee members have recommended specific amendments to the legislation or other measures of dealing with the particular area of concern. Some issues which were the subject of numerous submissions and considerable discussion during the Committee's hearings are, therefore, not discussed in this report. Although the Committee spent considerable time considering all the views put to it on a wide range of issues, on many occasions the Committee decided not to recommend any changes to the Bills as a result of its deliberations. Readers of the Report who are interested in those issues are referred to the submissions and Hansards of the Committee's hearings.<sup>4</sup>

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4 Page numbers throughout this Report refer to the draft *Official Hansard Report* of the Committee proceedings.