CHAPTER 4

TELECOMMUNICATIONS BILL 1996: SCHEDULES (VOLUME 3)

Background

4.1 Volume 3 of the Telecommunications Bill 1996 (the Bill) contains Schedules 1 to 4 to the Bill. Schedule 1 to the Bill provides details of standard carrier licence conditions, including obligations regarding industry development; access to telecommunications transmission towers, underground facilities and supplementary facilities; access to network information; and the inspection of facilities.

4.2 Schedule 2 to the Bill contains standard service provider rules, including obligations on service providers who supply a standard telephone service to supply customers with access to directories assistance and operator services and itemised billing. In addition, service providers must co-operate in the establishment and maintenance of a industry-wide database of public numbers for use in connection with directory, emergency service and law enforcement obligations.

4.3 Schedule 3 to the Bill provides for certain land access powers and immunities from State and Territory environment and planning laws.

4.4 Schedule 4 to the Bill details decisions that may be subject to reconsideration by the Australian Communications Authority (ACA). [1]

4.5 Recommendations have been made by the Committee in regard to Schedule 1 (Parts 2, 5 and 6) and Schedule 3. There are no suggested changes to Schedules 2 and 4.

Standard carrier licence conditions (Schedule 1)

4.6 Clause 61 of the Schedule 1 to the Bill provides that all carrier licences are bound by the conditions set out in Schedule 1 to the Bill. In addition to the conditions discussed below, the Schedule requires carriers to comply with the proposed *Telecommunications Act 1997* (Part 1) and provide other carriers with access to certain facilities (Part 3) and certain network information (Part 4) in order to enable them to establish and efficiently operate their own networks.

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1 Schedules 1-4, Telecommunications Bill 1996, Vol 3.

Industry Development (Part 2)

4.7 Part 2 of the Schedule requires carriers to have an industry development plan in force within 90 days of being granted their licence, to have a plan in force at all times after that time and to report annually on their progress in implementing the plan.

4.8 The plan is defined as a plan for the development in Australia, in connection with the carrier's business as a carrier, of industries involved in the manufacture, development or supply of facilities and related research and development.

4.9 The industry plan (including any variations) and annual reports must be provided to the Minister for Industry, Science and Tourism (Industry Minister) and summaries of the plans and reports must be published. A carrier must have regard to any views expressed by the Industry Minister about industry development when formulating or varying an industry plan. The Industry Minister may declare specified carriers to be exempt from these industry development obligations.

4.10 The Australian Telecommunications Industry Association (ATIA)[2] supported the continued industry development obligations on carriers. The Association expressed concern, however, at the lack of criteria against which the Industry Minister may decide to give an exemption from the industry development obligation. The submission suggested that the provisions be amended to qualify exemptions as normally applying only in those cases where carriers are making annual investment in infrastructure of less than $1 million.[3]

4.11 The Committee is concerned that guidance in regard to the circumstances in which an exemption from the industry development obligations should be given. This would be of assistance both to potential new carriers and the industry generally. Some flexibility should, however, be available for individual cases to be considered and thus legislative entrenchment does not appear appropriate.

4.12 The Committee would like the Industry Minister to respond to this concern in the Government response to this Report.

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2 The Australian Telecommunications Industry Association is the peak industry association representing local and international companies involved in the design, development and production of telecommunications and associated electronic products and systems.

3 Australian Telecommunications Industry Association, Submission 45, Vol 3, p 525.

4.13 The ATIA also recommended that more detail about the content of industry development plans be included in the legislation. To this effect the submission recommended that plans be required to address:

(a) Strategic commercial relationships

  (i) levels of local content

  (ii) investment and trends in investment in Australian based operations

  (iii) encouragement/facilitation of strategic alliances with Australian companies/multinationals

  (iv) encouragement of new activities with Australian based suppliers

(b) Research and development activities

  (i) generation of investment in new technologies

  (ii) growth and ownership of Australian Intellectual Property

  (iii) international opportunities for new technology

  (iv) training of new staff

  (v) technology transfer to Australia

(c) Exports

  (i) direct exports

  (ii) facilitated exports

(d) Employment

  (i) new employment opportunities

  (ii) training opportunities.[4]

4.14 In evidence before the Committee, carriers expressed some concerns about including this level of detail in the industry development provisions. The Committee heard from Telstra:

4 Australian Telecommunications Industry Association, Submission 45, Vol 3, pp 525-526

> We have concerns about ATIA's suggestion of more detailed and prescriptive specification, because what is the ultimate industry benefit from these? We see very little, because we are already overachieving, in our view. We see the potential for creation of new obligations, the need to put on more staff to check against lawyers and so on.[5]

from Optus Communications/Optus Vision (Optus):

> The only concern that [we] would have about being too specific is particularly with things that are not readily measurable or quantifiable... [W]e certainly historically ran into a problem where we made some estimates of what would happen in particular areas that then for whatever reason have not come to fruition. There has been a semantic debate about what is an estimate and what is actually a commitment.[6]

and from Vodafone:

> We see that, in a sense, it is unnecessary; here is an imposition that is just adding to the bureaucracy, the administration. We are already going far beyond, in terms of our industry plan and our reporting arrangements.[7]

4.15 The Committee is conscious of the difficulties that are potentially associated with setting a prescriptive list of matters which must be addressed by industry development plans. It is nevertheless of the view that, particularly for new carriers, the additional guidance presented by the ATIA proposal may well be of value.

RECOMMENDATION 4.1

The Committee recommends that clause 6 of Schedule 1 of the Telecommunications Bill 1996 be amended to require carrier industry development plans to include any relevant particulars regarding the carrier's proposed activities in the areas of strategic commercial relationships, research and development activities, exports and employment as described in paragraph 4.12.

5 Mr Rob Lomdahl, Director Issues Management, Regulatory and External Affairs, Telstra Corporation Ltd, *Committee Hansard*, p 151.

6 Mr Paddy Costanzo, Manager Policy, Optus Communications, *Committee Hansard*, p 151.

7 Mr Chris Dalton, Regulatory Policy Manager, Vodafone Pty Limited, *Committee Hansard*, p 152.

4.16 In the course of its deliberations, the Committee was made aware of the difficulties faced by people with disabilities to access equipment which would assist them make full use of telecommunications services. In particular, the Committee notes that much of the equipment used by the Deaf and hearing impaired is imported, based on obsolete technology and relatively expensive.[8]

4.17 The Committee considers that there would be benefits both to people with disabilities and the industry development arrangements if carriers were required to give greater consideration to the opportunities for Australian industry to undertake research and development or to produce products for this market.

RECOMMENDATION 4.2

The Committee recommends that, in addition to the amendment detailed in Recommendation 4.1, clause 6 of Schedule 1 to the Telecommunications Bill 1996 be amended to provide that carrier industry development plans must include a section on disabled users that outlines the carrier's proposed activities in relation to equipment for use by people with disabilities, including research and development; the encouragement of new activities with Australian based suppliers; and exports.

4.18 The Committee notes that the industry development plan obligations do not incorporate an enforcement mechanism for circumstances where a carrier does not meet the targets included in their plan. In evidence to the Committee the Department of Foreign Affairs and Trade (DFAT) advised that an enforceable contractual agreement between the carrier licensee and the government for a local content provision relating to goods would contravene World Trade Organisation (WTO) obligations.[9] In a submission to the Committee, the Department explained national treatment obligations under the WTO:

> The general principle is that internal measures, including taxation and other internal measures, should not be applied so as to afford protection to domestic production and that there should be no less favourable treatment of like imported goods.
>
> The Uruguay Round Agreement on Trade Related Investment Measures (TRIMS) represents an elaboration of measures which

8 Mr Phillip Harper, Chairperson, National Relay Service Advisory Council, *Committee Hansard*, p 197.

9 Miss Joan Hird, Director, GATT Projects, Department of Foreign Affairs and Trade, *Committee Hansard*, p 154.

> would constitute less favourable treatment. These include mandatory or enforceable conditions imposed in regard to local content and import/export ratios which are imposed in return for an advantage. Such measures are prohibited. The TRIMS obligations would not however preclude measures such as enforceable undertakings in respect of establishment of production or R&D facilities, or other targets which do not restrict the purchase or use of imported products, or specific commitments on R&D activity.[10]

4.19 The Department of Industry, Science and Tourism (DIST) advised the Committee that:

> the deeds that came in at the start of the duopoly period, and when Vodafone came in, are legal documents. So... the ultimate sanction is legal action.[11]

4.20 The ATIA commented in regard to the issue of enforcement of industry development obligations that:

> ...at the end of the day what we would prefer to see, rather than actually having some kind of sanction in there— there is a sanction under the existing arrangements but it is just so large—We believe that, at the end of the day, it is going to come down to moral persuasion. We have been very supportive of the approach that the three existing carriers have taken under their industry development commitments.[12]

4.21 The Committee notes advice from DIST, that, while they have sought discussions with carriers regarding their industry development plans during the period of the current regulatory regime, the discussions have been resolved to the satisfaction of all parties.[13]

4.22 The Committee does not consider it appropriate to establish firm enforcement mechanisms for the industry development plan licence condition.

4.23 It is, nevertheless, of the view that the Industry Minister should monitor closely, and report to Parliament on, the extent to which carriers are meeting their industry development plan commitments.

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10 Department of Foreign Affairs and Trade, Submission 85, Vol 5, p 943.

11 Mr David Williamson, Assistant Secretary, Information Industries Branch, Department of Industry, Science and Tourism, *Committee Hansard*, p 153.

12 Mr Alex Gosman, Executive Director, Australian Telecommunications Industry Association, *Committee Hansard*, p 153.

13 Mr Alan Evans, First Assistant Secretary, Department of Industry, Science and Tourism, *Committee Hansard*, p 153.

RECOMMENDATION 4.3

The Government members of the Committee recommends that Part 2 of Schedule 1 to the Telecommunications Bill 1996 be amended to require the Minister for Industry, Science and Tourism to table a report, before 31 December 1998 and thereafter before the end of each subsequent year, on progress made by carriers in meeting industry development commitments in the previous financial year.

[Dissenting position by Opposition members to be inserted here.]

Access to telecommunications transmission towers and underground facilities (Part 5)

4.24 Part 5 of the Schedule establishes obligations on carriers (first carriers) to provide other carriers (second carriers) with access to:

- facilities and sites used for the supply of a carriage service by means of radiocommunications (clauses 29 and 30 of the Schedule respectively); and
- underground facilities used for, or designed to hold, lines[14] (clause 31 of the Schedule).

with the aim of ensuring as far as possible that these facilities are co-located. A carrier will have rights of access to another carrier's site in order to maintain its facilities installed on that site by reason of the carrier powers provided in Part 1 of Schedule 3 to the Bill.[15]

4.25 In its submission, Vodafone suggested minor amendment to clauses 29(2) and 30(2) which provide that first carriers are not required to give second carriers access to:

- telecommunications transmission towers they own or operate; or
- sites they own, occupy or control, or have a right (whether conditional or unconditional) to use, on which telecommunications transmission towers they own or operate are situated

14 Section 7 of the Telecommunications Bill 1996 provides that a 'line' means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

15 Explanatory Memorandum, Telecommunications Bill 1996, Vol 3, p 8.

unless the access is provided for the sole purpose of enabling the second carrier to install a facility used, or for use, in *connection with* the supply of a carriage service by means of radiocommunications; and the second carrier gives the first carrier reasonable notice that the second carrier requires the access.[16]

4.26 Essentially, Vodafone suggested that reference to 'connection with' was somewhat ambiguous in relation to the supply of carriage services by means of radiocommunications. Thus, Vodafone suggested that the current references to 'connection with' be replaced with 'relation to' for greater clarity.

4.27 The Committee concluded that the issue raised by Vodafone was essentially a technical matter, most appropriately referred to the Department of Communications and the Arts (DOCA) for consideration.

RECOMMENDATION 4.4

The Committee recommends that the Department of Communications and the Arts consider replacing current references to *'connection with'* in clauses 29 and 30 of Schedule 1 to the Telecommunications Bill 1996 with *'relation to'* for clarification purposes.

Inspection of facilities (Part 6)

4.28 Part 6 of the Schedule contains obligations relating to record-keeping and the inspection of facilities which are based on the current obligations on carriers under the Telecommunications National Code 1996 (TNC). Clauses 37 and 38 of the Schedule require carriers to keep records about their underground facilities and to inspect their facilities regularly.

4.29 The Australian Local Government Association (ALGA) submitted that carriers should be required to:

- keep records of telecommunications transmission towers and designated overhead lines[17]; and

16 Vodafone Pty Limited, Submission 13, Vol 1, p 85.

17 Clause 3 of Schedule 3 to the Telecommunications Bill 1996 provides that a 'designated overhead line' refers to a line (i) that is suspended above the surface of land (other than submerged land); or a river, lake, tidal inlet, bay, estuary, harbour or other body of water; and (ii) the maximum cross-section of any part of which exceeds 13 mm (unless otherwise specified by regulations).

- make available copies of the records to State, Territory and Local Government authorities on request.[18]

4.30 The Committee considers it appropriate to extend the current recording requirement to encompass towers and underground cabling. In relation to making available copies of records generated by such an amendment to relevant authorities, the Committee notes that clause 46 of Schedule 3 currently provides that the ACA may inform the public about underground facilities and recommends that this clause be consequentially amended to cover towers and overhead cabling.

RECOMMENDATION 4.5

The Committee recommends that clause 37 of Schedule 1 and clause 46 of Schedule 3 to the Telecommunications Bill 1996 be amended to :

a) require that carriers keep records of telecommunications transmission towers and designated overhead lines; and

b) provide that the Australian Communications Authority has a discretion to inform members of the public about the kinds and location of telecommunications transmission towers and designated overhead lines respectively.

Mandatory undergrounding to overhead cabling (new licence condition)

4.31 The Committee notes that the carriers' powers and immunities framework contained in Schedule 3 to the Bill effectively prohibits the rollout of designated overhead lines from 1 July 1997 without the approval of each relevant administrative authority (subject to certain transitional provisions).

4.32 The Committee further notes that clause 10 of the TNC currently provides that carriers must relocate any broadband aerial cabling installed or maintained by the carrier in the area when the only cabling installed or maintained in the area by another carrier, or by a public utility, is underground cabling, unless the carrier has a written agreement to the contrary with the relevant local government authority.[19]

18 Australian Local Government Association, Submission 51, Vol 3, pp 593, 594 and 596.

19 Telecommunications National Code 1996, p 10.

4.33 While Schedule 3 to the Bill addresses community concerns in relation to the rollout of new cabling, the Bill does not appear to fully address the issue of undergrounding existing cabling in a manner similar to the Telecommunications National Code. However, the Committee acknowledges that the Government is working towards facilitating the development of a long-term strategy to relocate all existing overhead cables underground, through the establishment of a Working Group announced by the Minister in December 1996[20], consistent with Recommendation 31 of the Senate Environment, Recreation, Communications and the Arts References Committee's report into the partial privatisation of Telstra.[21]

4.34 In relation to the Working Group and the development of an undergrounding strategy for all cabling, Optus stated that

> From Optus's point of view, we have publicly said for some time that we fully support a long-term strategy for the undergrounding of all aerial infrastructure, including electricity, Telstra telephone lines and broadband cable. We have already given money to the federal government to set up a round-table or some form of discussion with the state governments, the power authorities, all of the telecos and local government to try to find the way in which those moneys are raised that do not just attach to the telecommunications carriers. We see that as the only way of addressing a true community need...
>
> ...we encourage the council to use that money to establish the start of a fund in their municipality for the gradual undergrounding of all infrastructure. We will bear our common costs of any of those projects, and we would be delighted to participate in a fund that looked towards a long-term undergrounding of all infrastructure, but to attach that kind of proposal directly to the telecommunications carriers is totally discriminatory. I cannot see how it differs from the comments you made this morning about the states taxing the carriers...
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> ...the community's concern is about the totality of the visual environment. To see a process where one cable— ours or Telstra's— is brought down in that kind of a process I think would be terribly disappointing for the community.

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20 Alston, Sen the Hon R, *Government tightens Telecommunications National Code,* Press Release dated 3 December 1996.

21 Telstra: To Sell or not to Sell ? - Consideration of the Telstra (Dilution of Public Ownership) Bill 1996, Report from the Senate Environment, Recreation, Communications and the Arts References Committee, September 1996, p 164.

> If we are going to do this properly, we have to sit down at COAG and work with the state electricity authorities and with local government and address it properly. It will take a lot longer, but you will get a result like in Adelaide where some municipalities have half their constituents enjoying totally aerial free infrastructure. That is what we would like to see in the long term, not the attachment of the payment just to the carriers.[22]

4.35 In its submission, the ALGA suggested that an additional licence condition should be applied to carriers:

> All carriers must agree to relocate underground any cabling installed or maintained by the carrier in an area when the majority of aerial cabling in that area is relocated underground.
>
> Further the carrier must agree to share the cost of undergrounding with other carriers and/or public utilities.[23]

4.36 While sympathetic to the views expressed by the ALGA, the Committee believes that the best approach to undergrounding cabling would be to achieve a single, co-ordinated strategy. This approach would:

- minimise the potential for environmental damage arising from multiple undergrounding processes;
- achieve economies of scale; and
- ensure that an equitable distribution of the costs (between carriers and public utilities) associated with undergrounding is achieved.

4.37 In the interim, the Committee recommends that the Minister consider applying a new licence condition to carriers along similar lines to that provided by clause 10 of the TNC.

RECOMMENDATION 4.6

The Committee recommends that the Minister apply a new licence condition to carriers requiring them to place their designated overhead lines underground in areas where all other aerial cabling is placed underground.

4.38 A further Committee recommendation in relation to undergrounding telecommunications infrastructure is located in Chapter 8.

22 Ms Sam Mostyn, Director, Corporate Affairs, Optus Vision, *Committee Hansard*, pp 194-5.

23 Australian Local Government Association, Submission 51, Vol 3, p 596.

Carriers' powers and immunities (Schedule 3)

4.39 The provisions contained within Schedule 3 to the Bill are intended to replace the regime of carriers' powers and immunities provided for in Part 7 of the 1991 Act.

4.40 The general land access powers given to carriers by Division 3 of Part 7 of the 1991 Act and the immunities from State and Territory environment and planning laws provided by the Telecommunications (Exempt Activities) Regulations made under section 116 of that Act will not continue, except for transitional provisions specified at Part 2 of the Schedule for works already notified in accordance with the 1991 Act.

4.41 Instead, Part 1 of the Schedule provides authority for carriers to inspect land, maintain facilities, connect subscribers to an existing network or install any declared 'low impact facilities'[24] or temporary defence facilities. Other installation of facilities will be regulated under State or Territory law (and also will be subject to some special requirements for environmentally sensitive projects provided for at clause 50). There is provision for a carrier to apply to a specially-constituted panel of the ACA for a permit to carry out installation of facilities where the carrier does not obtain the approval of the relevant State, Territory or local government body or the owner of the land. A permit for a designated overhead line will not be granted unless the approval of any relevant State, Territory and local government body has been obtained.

4.42 Carrying out activities authorised by the Bill will be subject to a range of conditions including current conditions under Division 3 of Part 7 of the 1991 Act and the Telecommunications National Code (TNC) made under section 117 of the 1991 Act.[25]

4.43 During the course of the inquiry's proceedings, the Committee received a number of submissions raising both substantive and minor concerns in relation to the proposed framework for carriers' powers and immunities to take effect from 1 July 1997. Views appeared to be polarised between support for a continuation of the existing powers and immunities framework pursuant to Part 7 of the 1991 Act and support for alternative proposals (or variations of the

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24 On 23 December 1996, the Minister for Communications and the Arts directed AUSTEL to conduct a public inquiry into (i) facilities that could be considered for determination as 'low-impact facilities' and (ii) provisions and/or conditions for incorporation in the Code of Practice. AUSTEL is due to report its findings to the Minister by 30 April 1997.

25 Explanatory Memorandum, Telecommunications Bill 1996, Vol 3, p 16.

proposed framework) that provided a greater role for local government authorities in approvals processes.

4.44 The Committee's recommendations in relation to a number of minor concerns raised in submissions appear in the latter part of this section.

Integrated national approvals system

4.45 The Australian Local Government Association (ALGA) submission proposed a major reworking of the framework proposed in the Schedule. It's proposal involved a more prominent role for local government, the creation of an 'integrated national approvals system', and a new National Code.

4.46 Essentially, the ALGA claimed that:

> [its] policy has been that as from 1 July the Government should either hand back control over telecommunications facilities **fully** to State and Local Government, or establish a proper national approvals system administered at the local level by Councils...
>
> the current Bills create an unnecessarily complex two tier system [involving Commonwealth and States/Territories laws] which apparently satisfies no-one...[26]

4.47 The ALGA proposed an 'integrated national approvals system' as an alternative to the proposed two tier system. The ALGA proposal involves:

- delegation of the power to issue facility installation permits (Division 6), to 'designated local authorities' normally local government Councils;
- an ability for carriers to appeal to the ACA in the event that a Council refuses an application for a facility of national significance (Division 6); and
- a completely revamped National Code (similar to the Ministerial Code of Practice proposed by clause 13) setting out the procedures and criteria to be applied in processing and determining applications, requirements for undergrounding, and provisions for 'deemed approval' of minor works which conform with agreed guidelines and standards.[27]

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26 Australian Local Government Association, Submission 51a, Vol 5, p 1107.

27 Australian Local Government Association, Submission 51a, Vol 5, p 1107.

4.48 The ALGA envisaged that the new National Code would be a disallowable instrument, as currently proposed by clause 13(7), in relation to the Code of Practice. The National Code would include the following features:

- definitions broadly in line with the TNC and Schedule, but incorporating new definitions in relation to designated overhead lines, maintenance and heritage;

- a range of baseline standards for engineering practice and environmental protection, linked to provisions for local guidelines and deemed approvals. These standards would include, among other things, a presumption that undergrounding of cables is best practice, unless otherwise stated in local guidelines;

- provision for Councils to make minor variations in local guidelines to generic best practice and environmental standards to meet local conditions. Local guidelines would also incorporate planning proposals, for example, preferred tower sites. There would be a formal process for making local guidelines, including consultation with the community and carriers;

- a wide range of minor works would be eligible for 'deemed approval' without individual applications being required, provided proposals conformed fully with best practice and environmental standards, plus any local guidelines. This provision would apply in lieu of the current proposal for definition of 'low impact' facilities (clause 5(1)(b) and 5(3));

- applications for permits would be submitted to the 'designated local authority', normally the local Council. Information requirements would be similar to those currently required by the TNC for 'medium impact' facilities. Requirements would include: public notification and consultation; environmental assessments; and an analysis of cumulative impacts. Referrals would be necessary to various Commonwealth and State agencies; Councils would be able to attach reasonable conditions to approvals, however, these conditions would be appealable along with refusals; and

- carriers would be able to apply to the ACA for reconsideration of applications of national significance which had been rejected by a local authority or to which unreasonable conditions had been attached. Criteria for national significance would be as set out in clause 25. Refusal of a permit for designated overhead lines of national significance could also be appealable, subject to the

> presumption that undergrounding of cables is best practice. There would also be normal rights of appeal to the Administrative Appeals Tribunal and other Commonwealth bodies.[28]

4.49 Each of the three carriers and the Royal Australian Planning Institute (RAPI) responded to the ALGA proposal for an integrated national approvals system.

4.50 RAPI expressed support for the proposal, arguing that the arrangements proposed in Schedule 3 to the Bill are contrary to sound planning principles.[29]

4.51 The carriers each advised that a detailed response to the proposal was not possible given the level of detail provided by the ALGA.[30] Optus, in particular, noted that:

> The ALGA proposal ... is little more than a bare framework, which is understandable in the short time frames within which these issues are being considered. However, the absence of detail makes it very difficult for Optus to evaluate the practical implications of the ALGA proposal.[31]

4.52 All the carriers indicated support for a framework which deals with carrier powers and immunities at a national level and, in this context, welcomed the ALGA contribution. They suggested, however, that the proposal may not achieve such a national approach and expressed a number of other reservations.[32]

4.53 Both Optus and Telstra expressed concerns that the proposal may enable individual local authorities to opt out of the national arrangements. Optus noted the potential for instability if councils are able enter or exit from the national arrangements after, for example, an election.[33] These carriers also had reservations that the proposed approach may lead to there being differing rules

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28 Australian Local Government Association, Submission 51a, Vol 5, pp 1110-1111.

29 Royal Australian Planning Institute, Submission 56a, Vol 6.

30 Vodafone Pty Ltd, Submission 13a, Vol 6; Optus Communications/Optus Vision, Submission 40c, Vol 6; and Telstra Corporation Ltd, Submission 43e, Vol 6.

31 Optus Communications/Optus Vision, Submission 40c, Vol 6.

32 Vodafone Pty Ltd, Submission 13a, Vol 6; Optus Communications/Optus Vision, Submission 40c, Vol 6; and Telstra Corporation Ltd, Submission 43e, Vol 6.

33 Optus Communications/Optus Vision, Submission 40c, Vol 6; and Telstra Corporation Ltd, Submission 43e, Vol 6.

between telecommunications cabling and other public utility cabling or between 'broadband' and 'standard telephony' cabling.[34]

4.54 Each of the carriers indicated that while resolving their concerns regarding the proposal could be achieved through further discussions, such a process would take a considerable period of time. It would be unlikely that that process could be completed in time to meet the current timeframe for implementing the post 1997 arrangements. Both Optus and Vodafone indicated their continuing support for the arrangements contained in the Schedule.[35]

4.55 The Committee notes that the carriers have raised a number of significant issues which are not clearly addressed by the ALGA proposal. In particular, their legitimate concern that local government authorities appear to be able to enter and exit the approvals system at will would appear to weaken significantly the key justification for the ALGA's approach, which is to establish an integrated national approvals system. The Committee therefore feels that in its present form the ALGA alternative proposal are not capable of being adopted.

General Provisions (Divisions 1 to 4, Part 1)

4.56 Part 1 of the Schedule provides a simplified outline of the Part (Division 1), and deals with the inspection of land (Division 2), installation of facilities (Division 3) and maintenance of facilities (Division 4).

4.57 Clause 2 sets out definitions of terms used in Part 1. Vodafone recommended changes to make the definitions more consistent with those used in the Telecommunications National Code 1996 (TNC)[36]:

- the terms "height", "volume", and "fully enclosed" should be defined as in the revised TNC
- the definition of "public utility" should accord with the definition of "public utility" within the revised TNC.

4.58 The Committee agrees that the suggested changes would clarify the legislation.

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34 Optus Communications/Optus Vision, Submission 40c, Vol 6; and Telstra Corporation Ltd, Submission 43e, Vol 6.

35 Optus Communications/Optus Vision, Submission 40c, Vol 6; and Vodafone Pty Ltd, Submission 13a, Vol 6.

36 Vodafone Pty Ltd, Submission 13, Vol 1, p 85.

RECOMMENDATION 4.7

The Committee recommends that the definitions of the terms "height", "volume", "fully enclosed" and "public utility" provided in clause 2 of Schedule 3 to the Telecommunications Bill 1996 be amended in a manner consistent with those used in the Telecommunications National Code 1996.

4.59 Clause 3 defines the term "designated overhead line" as a line suspended above the surface of land or bodies or water which have a maximum external cross-section exceeding 13 millimetres (or another distance specified in regulations).[37]

4.60 The ALGA submitted that:

> It is inappropriate that the definition for designated overhead line is based on a description of its size. If this definition is not amended it will exclude many of the cables used in suburban areas which have caused significant community concern.[38]

4.61 The ALGA suggests that the definition be revised to refer to any line, other a standard telephony cable.

4.62 Telstra also expressed concerns that a definition based on the diameter of the cable has the potential to capture lines used solely for the purposes of telephony services. Telstra recommended the exclusion of lines used solely for the provision of public switched telephony services.[39]

4.63 In response to these proposals, DOCA noted that the 13 millimetres was chosen:

> because the aerial broadband cable that is currently being rolled out is essentially 17 millimetres...
>
> There are two options. One is to choose the size of it and the other is to choose the services. It is very difficult to choose the services that run over the cable because the real problem here seems to be the visual impact of the cable.[40]

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37 Clause 3, Schedule 3, Telecommunications Bill 1996.

38 Australian Local Government Association, Submission 51, Vol 3, p 599.

39 Telstra Corporation Ltd, Submission 43, Vol 3, p 500.

40 Ms Fay Holthuyzen, First Assistant Secretary, Telecommunications Industry Division, Department of Communications and the Arts, *Committee Hansard*, p 220.

4.64 The Committee acknowledges the concerns expressed by submitters. It is not of the view, however, that the alternatives suggested by submissions fully address these concerns. In particular, if community concerns are based on issues such as visual amenity, a service-based definition appears to be inappropriate. The Committee suggests that the Government monitor the operation of this provision with a view to ensuring the definition of designated overhead lines captures all cabling which causes community or environmental concerns.

4.65 Clause 4 authorises a carrier to enter onto and inspect land for certain purposes. The ALGA submitted that:

> If a carrier has ... disturbed the land in any way, the carrier should fully restore the land including stabilisation and revegetation as appropriate.[41]

4.66 The Committee agrees that it is reasonable to require carriers to repair any damage done during an inspection of land. This is most appropriately done through amendment to Division 5, which deals with conditions relating to inspection of land.

RECOMMENDATION 4.8

The Committee recommends that Division 5 of Part 1 of Schedule 3 to the Telecommunications Bill 1996 be amended to require carriers to repair any damage done during inspection of land undertaken pursuant to clause 4 of that Schedule.

4.67 Clause 5 authorises a carrier to install certain facilities and carry out ancillary or incidental activities with immunity from State and Territory planning and environmental laws. Authority under this clause is only given:

(a) where the carrier is granted a facility installation permit by the ACA under Division 6 of this Part;

(b) where the facility is a 'low impact facility';

(c) where the facility is a temporary defence facility; or

41 Australian Local Government Association, Submission 51, Vol 3, p 599.

(d) the activity is carrier out before 1 July 2000 for the purpose of connecting a subscriber to a network existing at the commencement of the proposed Telecommunications Act and the connection does not cross over or under a street or a road.

4.68 The clause also provides that the Minister may, by disallowable instrument, determine a facility to be a 'low-impact facility'.[42]

4.69 The ALGA expressed concerns that an authorisation to install 'low-impact facilities' ignores the potential cumulative impacts of those facilities. It also indicated concern that the definition of such a facility may be too wide. The ALGA recommended the removal of this concept from the Bill.[43]

4.70 Vodafone noted that clause 5 as currently drafted leaves the Minister with a discretion to make an instrument determining the criteria for a low-impact facility. The submission recommends that the Minister be required to make such a determination on 1 July 1997.[44]

4.71 The Department of Environment, Sport and Territories (DEST) recommended that the definition of a low-impact facility be subject to a public inquiry.[45]

4.72 The Committee holds the view that there are clear benefits to the community from enabling the efficient deployment of telecommunications infrastructure where the facilities have a low impact on the environment. The Committee notes that the Minister has directed AUSTEL to undertake a public inquiry into the definition of a low impact facility[46], and that any determination made by the Minister is subject to disallowance by the Parliament. It is not of the view, therefore, that the authorisation for low-impact facilities should be removed.

4.73 The Committee is, nevertheless, strongly of the view that certainty should be provided to both the community and industry regarding the low-impact facility authorisation. A Ministerial determination regarding this matter should be in place by 1 July 1997.

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42 Explanatory Memorandum, Telecommunications Bill 1996, Vol 3, pp 18-19.

43 Australian Local Government Association, Submission 51, Vol 3, p 600.

44 Vodafone Pty Ltd, Submission 13, Vol 1, p 85.

45 Department of Environment, Sport and Territories, Submission 50, Vol 3, p 574.

46 Minister for Communications and the Arts, Senator the Hon Richard Alston, 'Direction to the Australian Telecommunications Authority to hold a public inquiry, No 2 of 1996', *Commonwealth of Australia Gazette* S526, 24 December 1996 (made in accordance with paragraph 327(b) and subsection 50(1) of the *Telecommunications Act 1991*).

RECOMMENDATION 4.9

The Committee recommends that clause 5 of Schedule 3 to the Telecommunications Bill 1996 be amended to require the Minister to made a determination regarding low-impact facilities by 1 July 1997.

4.74 The ALGA recommended that provision be made in clause 5 that upon completion of any work undertaken pursuant to that clause, the carrier must fully restore, stabilise and revegetate disturbed areas within 14 days. If the carrier fails to do so the ALGA recommends enabling the property owner to engage another person to do so at the carrier's cost.[47]

4.75 The Committee considers it appropriate that carriers be placed under an obligation to restore disturbed areas within a reasonable timeframe, unless otherwise agreed by the property owner. It considers, however, that a broadly defined right for owners to engage other persons to undertake work at the carrier's cost may present significant difficulties in practice.

RECOMMENDATION 4.10

The Committee recommends that Schedule 3 to the Telecommunications Bill 1996 be amended to require carriers to restore, within a reasonable timeframe, any site disturbed by the installation of facilities undertaken in accordance clause 5 of that Schedule. Failure to comply with this requirement should be made subject to an appropriate penalty.

4.76 Clause 6 authorises a carrier to maintain an existing facility subject to certain conditions set out in Division 5 of this Schedule.

4.77 Telstra recommended that the definition of the term 'maintenance' be amended to include the installation of an additional facility in circumstances where that facility:

(a) is installed within an existing structure; and

(b) would have no greater environmental or associated impacts.

Telstra noted that this would reflect the concept of maintenance used in the TNC.[48]

47 Australian Local Government Association, Submission 51, Vol 3, p 601.

48 Telstra Corporation Ltd, Submission 43, Vol 3, p 501.

4.78 The Committee notes that, under the Telstra proposal, additional facilities would only be permitted to be installed if they did not contribute to greater environmental and associated impacts. This would appear to reflect current arrangements under the TNC. The Committee considers this amendment to be reasonable.

RECOMMENDATION 4.11

The Committee recommends that clause 6 of Schedule 3 to the Telecommunications Bill 1996 be amended to provide that the authorisation of maintenance activities includes the installation of additional facilities but only in so far as the facility complies with the conditions in clause 6(4) of the Schedule, including that it:

a) does not increase noise levels; and

b) is located inside a fully-enclosed building which does not need to be externally modified as a result of the installation.

Conditions relating to the carrying out of authorised activities (Division 5, Part 1)

4.79 Division 5 of Part 1 of the Schedule sets out the conditions which apply to some or all of the activities authorised under Divisions 2 to 4 of that Schedule (which authorise the inspection of land, installation of certain facilities and maintenance of facilities).

4.80 Among matters raised regarding this Division, a number of submissions noted concerns over the adequacy of standards against which a carrier must comply by virtue of clause 10 of the Division. In particular, concerns have been expressed regarding health and electro-magnetic radiation standards. The matter of the adequacy of relevant health standards is discussed in Chapter 9 of this Report.

4.81 Clause 13 provides that the Minister may make a Code of Practice setting out conditions that are to be complied with by carriers when engaging in any or all authorised activities, other than those covered by a facilities installation permit.

4.82 The ALGA indicated its view that a Code of Practice made under this clause is essential to ensure that carriers undertake works with minimal environmental impacts. The submission recommends that the Minister be required to make such a Code on or before 1 July 1997.[49]

4.83 The Committee concurs with the views expressed by the ALGA. The development of a Code of Practice regulating activities which are authorised by Commonwealth law by 1 July 1997 will contribute significantly to community confidence in the new regime.

RECOMMENDATION 4.12

The Committee recommends that clause 13 of Schedule 3 to the Telecommunications Bill 1996 be amended to require the Minister to make a Code of Practice on or before 1 July 1997 setting out conditions with which carriers must comply when engaging in authorised land inspection and facilities installation and maintenance activities.

4.84 Clause 15 requires that, before engaging in an authorised activity in relation to any land, a carrier must give written notice of its intention to do so to the owner and occupier of the land.

4.85 The Vaucluse Progress Association recommended that a carrier giving notice under this clause be required to advise the owner or occupier of the land of its entitlements regarding compensation for financial loss or damage suffered because of anything done by a carrier when undertaking an activity authorised by the powers and immunities in this Schedule.[50]

4.86 The Committee considers that this suggestion would assist in ensuring owners or occupiers of land are aware of their rights under these regulatory arrangements.

RECOMMENDATION 4.13

The Committee recommends that clause 15 of Schedule 3 to the Telecommunications Bill 1996 be amended to require that, in giving notice to the owner or occupier of land of its intention to undertake activities authorised by that Schedule, a carrier must inform the owner or occupier of their rights to compensation should they suffer loss or damage as a result of that activity.

49 Australian Local Government Association, Submission 51, Vol 3, p 605.

Facility installation permits (Division 6, Part 1)

4.87 Division 6 of Part 1 of the Schedule concerns facility installation permits. A facility installation permit may be issued by the ACA, following an application from a carrier, authorising a carrier to install specified telecommunications facilities. Specified facilities include individual facilities, groups of facilities or whole networks. The permit grants the carrier a limited exemption from State/Territory environment and planning laws for the purposes of installing the specified facilities. The ACA must consider a number of criteria (clause 25) and consult with the Australian Competition and Consumer Commission (clause 27) and relevant environment and heritage authorities before issuing a permit (clause 26). In addition, the ACA must not issue a permit unless it has held a public inquiry in relation to the permit (clause 23(2)). A permit is subject to such conditions as are specified by the ACA in the permit (clause 30).

4.88 Clause 25(1)(g) of the Schedule provides that the ACA must not issue a facility installation permit that authorises a carrier to carry out the installation of one or more facilities unless the carrier satisfies the ACA that the advantages that are likely to be derived from the operation of the facilities in the context of the telecommunications network to which the facilities relate outweigh any form of degradation of environmental amenity that is likely to result from the installation of the facilities. Clause 25(5) of the Schedule sets out the criteria which the ACA must have regard to in determining clause 25(1)(g).[51]

4.89 In its submission DEST suggested that the term 'degradation of environmental amenity' in clauses 25(1)(g) and 25(5) be replaced with 'degradation of the environment' as a broader concept that matches the definition of 'environment' at clause 2.[52] Clause 2 provides that the term 'environment' in Part 1 includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings.[53]

4.90 The Committee considered that this suggestion was reasonable and consistent with the objectives of clause 25 specifically and Schedule 3 generally.

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50 Vaucluse Progress Association, Submission 15, Vol 1, p 126.

51 Clause 25, Schedule 3, Telecommunications Bill 1996.

52 Department of Environment, Sport and Territories, Submission 50, Vol 3, pp 573 and 575.

53 Clause 2, Schedule 3, Telecommunications National Code 1996.

RECOMMENDATION 4.14

The Committee recommends that the references to '*degradation of environmental amenity*' in clauses 25(1)(g) and 25(5) of Schedule 3 to the Telecommunications Bill 1996 be replaced with '*degradation of the environment*'.

Transitional provisions (Part 2)

4.91 Part 2 of the Schedule provides for certain transitional arrangements in relation to a range of matters including the previous arrangements for carriers' powers and immunities under the 1991 Act.

4.92 Clause 55 ensures that a building, structure or facility that was, when built, authorised by section 116 of the 1991 Act or Division 3 of Part 7 of the 1991 Act is not now made subject to State laws by virtue of the repeal of the 1991 Act. The Explanatory Memorandum to the Bill clarifies that the clause has been adapted from a similar provision in section 33 of the *Telstra Corporation Act 1991* passed as a consequence of what is now Telstra becoming subject to State laws which had not applied to it, or its predecessors, in the past.[54]

4.93 In its submission Telstra suggested that the clause 55 should also expressly grandfather a carrier's rights in relation to land acquired under the previous regime. The Committee considers this suggestion reasonable and consistent with the overall tenor of the transitional arrangements.

RECOMMENDATION 4.15

The Committee recommends that clause 55 of Schedule 3 to the Telecommunications Bill 1996 be amended to expressly grandfather a carrier's rights in relation to land acquired under the previous regime.

54 Explanatory Memorandum, Telecommunications Bill 1996, Vol 3, p 30.