MINORITY REPORT

Australian Democrats

INTRODUCTION

The majority report

The Australian Democrats support the recommendations contained in the majority report, unless otherwise identified in this report. It needs to be stated at the outset, however, that the Democrats do not believe the policy direction of these bills is fundamentally in the national interest. This is discussed further in the section on competition policy below.

The Democrats are aware, however, that while questioning the Government position is important, divergence from the thrust of the legislation is unlikely given that the Government and Opposition are by and large in agreement. This being the case we have concentrated on measures in the new regulatory regime which will protect consumers, particularly those more marginal. The fact is that competition will not apply equally to all services or benefit all customers because new market entrants are only likely to compete at the lucrative end of the market. Certain residential customers, disabled persons, those in rural and remote areas, etc, are unlikely to benefit from competition in the way that large business customers will, or those in high density urban centres.

If the interests of persons unlikely to benefit are not adequately protected, social inequities will be exacerbated. Given the already fundamental, but increasingly growing, importance of telecommunications services for actively participating in society, this should not be taken lightly. If these bills go through the Senate unamended, Australia faces an increased danger of becoming a society divided into the information and communications rich and the information and communications poor

Conduct of the Inquiry

The Australian Democrats strongly reject the view outlined in the majority report that broad consultation took place with stakeholders - other than with the carriers and a few other key organisations.

The inquiry was advertised just prior to Christmas and submissions required by mid-January 1997. Such timing meant that many individuals and groups, other than the carriers and industry lobbyists, were unaware of the inquiry and hard pressed, if not unable, to lodge a submission. This is not surprising when one considers the 11 bills run to hundreds of pages and are available only at a cost (unless one has access to the internet).

In our view, this difficulty was compounded by entirely unnecessary procedural restrictions. In particular, the public was informed that submissions had to make specific legislative amendments to the Bills. Failure to do so was said to result in the submission either being ignored or given less weight.

This is a virtually unheard of criterion for Senate inquiries. Its only purpose, we believe, was to discourage submissions.

For organisations such as the carriers, who have significant resources at their disposal, including teams of lawyers, etc, this requirement posed no difficulty. However, most consumer, environment, residential and consumer groups (among many others who have a keen interest in telecommunications), lack access to financial or legal resources and are often staffed by volunteers. For these, the challenge of having to work through hundreds of pages of proposed legislation in a few weeks over Christmas, and then to provide specific amendments, should not be under-estimated.

It also needs to be pointed out that it was only at the insistence of the Australian Democrats that organisations and individuals who made submissions regarding health and environmental issues to the 1996 Senate Environment, Recreation, Communications and the Arts References Committee Inquiry into the sale of Telstra, were invited to submit. However, despite this request, individual councils who had previously made submissions were not directly informed of the inquiry although they had made clear their interest. The only local government organisation the Committee invited was the Australian Local Government Association (ALGA). While it was essential the ALGA was invited, there were a number of Councils for which powers and immunities particularly of were of importance, and we were astonished the Coalition and Opposition did not see fit to invite them.

The Democrats also urged that public hearings be held outside Canberra to enable organisations that would find it difficult to travel to Canberra the ability to participate. This request was rejected.

The Democrats reject the view, expressed in the majority report, that the rationale for the proposed arrangements was known well in advance and is accepted by all stakeholders. It is our view the inquiry was conducted in such a way to discourage debate on the broader issues of Government policy, shared by the Opposition. Members of the community should have been encouraged to comment as they saw fit. It is neither sufficient nor appropriate to just seek comments designed to support the implementation of Government policies.

Competition policy

The Australian Democrats believe the framework for competition which was established under the *Telecommunications Act 1991*, and which is being furthered by the proposed new regulatory regime, has been an abject failure.

The Government and Opposition have been adamant that competition has driven down the costs and prices of telephone services, in spite of the fact that there is little evidence of this occurring. We do not believe competition will necessarily lead to these outcomes. Evidence points to the fact that technological developments are likely to be far more influential in determining price outcomes. This is what has occurred in Australia with respect to STD prices, which fell significantly throughout the 1980's. Competition is more likely to simply have the effect of reducing Telstra's share of the telecommunications market, while increasing costs to consumers through the unnecessary duplication of infrastructure. Given that Telstra is, at this stage, a publicly owned company, the interests of Australians as owners of Telstra, and as consumers, have not been demonstrated in this legislation.

The problem stems in part from the fact that telecommunications policy in the 1990's has not been driven by serious socio-economic analysis, but rather by ideological slogans. "Competition is good, and the more we have of it the better." As the Australian Democrats said at the time of the Hilmer competition policy reform legislation, competition should neither be seen as a goal in itself nor a good in itself, but rather as a means to an end. Despite the reluctance of many commentators to acknowledge the self-evident, competition is not always appropriate. It does not always lead to socially optimal outcomes. Facilities-based competition in the field of telecommunications is a case in point.

In mobile telephony, the former Government argued that, in spite of consumer preference and better performance of analogue, digital technology should supersede it because of its additional features and because it suited their approach to competition. They were supported in this by the then Opposition. The shift to digital was made compulsory by a commitment to remove

frequencies allocated to analogue technology. The result is that, instead of encouraging a single shared digital network, competing firms were encouraged to build three separate physical networks.

This has led to various undesirable outcomes. Firstly, the costs faced by consumers for digital mobile technology are no doubt greater than they might otherwise have been since it is consumers who bear the costs of unnecessary duplication. Secondly, the roll-out has been focused on urban, high density areas where competition is greatest. This has meant that coverage is less than it might otherwise have been. A single network across Australia, rather than three separate networks in urban areas would have been substantially more efficient.

Thirdly, it has imposed significant costs on residents and local communities. The major parties ensured carriers erecting mobile phone towers were granted immunity from State and local planning and environment regulations. The result being that carriers erected towers with little regard for consultation or concerns of residents. This has led to innumerable protests around the country, legal actions, court cases etc. Many of these problems could have been avoided if a single network had been built, with due regard to planning, environmental and health concerns.

Competition in the roll out of pay-TV or broadband cables has led to similar outcomes. It would have been far simpler, cheaper and more environmentally appropriate for a single cable to have been rolled out. Instead, Telstra and Optus have been encouraged to build duplicate systems at a cost of billions of dollars. The end result is that consumers pay more than they should, coverage is far less than it could have been, and residents have been made to suffer by planning exemptions permitting carriers to rollout cables virtually as they please, damaging streetscapes.

Socially undesirable outcomes are compounded by the fact that the hybrid optical fibre coaxial cable that Telstra and Optus are rolling out is likely to be obsolete in the not too distant future. A single optical fibre network, rolled out underground, would have been far superior.

The end result of encouraging competition in infrastructure, with little regard for appropriate planning, environment or health concerns, has been disastrous for residents and consumers. To encourage more of the same is foolhardy.

TELECOMMUNICATIONS BILL 1996 (VOLUME 1)

Industry codes and standards

The Democrats are concerned about the effectiveness of a self-regulatory approach to consumer protection, based on codes of practice.

Whether effective monitoring and evaluation is possible is yet to be determined and raises many questions. Moreover, carrier compliance with such codes is voluntary. This raises serious concerns, especially if codes cover matters which consumers would expect, if not demand, compliance with. If codes exist, but are rarely being followed, then what is their purpose? Under what circumstances can they be deemed to have failed?

While enforcing compliance with such codes may not be in general keeping with the intent of the legislation, the Democrats believe that failure to do so is problematic.

The Democrats share the concern of consumer organisations, such as CTN and the Australian Consumers Association, that adequate consumer/public input is essential if such codes are to fulfil their intended purpose. Self regulation will only gain public confidence if inclusiveness of consumer perspectives is assured.

Recommendation
Consideration be given to ensuring public consultation, or consumer representative involvement, in the development of draft Codes.

Privacy

While the privacy recommendations in this part of the majority report offer an improvement, the Australian Democrats are not comfortable with the handling of privacy concerns in self regulatory codes of practice. Issues of such importance should be given solid legislative backing, rather than being swept up in the current trend towards self regulation.

The Government has said it will legislate to extend federal privacy requirements to the private sector as a whole. As noted in the submission from the Privacy Commissioner, this means that any privacy related provisions which are passed may need to be revisited when the private sector Privacy Act comes into operation.

Universal Service Obligation

Customer premises equipment

Recommendation
The right to retain a rental handset should be explicitly a part of the standard telephone service, as recommended by the Consumers Telecommunications Network

Equipment for people with disabilities

The Democrats' strongly support recommendation 2.13 of the majority report, enabling equipment for people with a disability to be specified as part of the Universal Service Obligation.

It is essential, however, that such determinations are actually made. For this reason, we also support the recommendations of the majority report of the Standard Telephone Service Review Group, which would see the inclusion of the National Relay Service in the USO. This was also recommended in the submission from the National Relay Service Advisory Council.

Recommendation
The National Relay Service should be included in the USO.

Disability Discrimination Act

The National Relay Service Advisory Council and the Consumers Telecommunications Network pointed out that the DDA should not be relied on as the lever to force service providers to be accessible.

According to the National Relay Service Advisory Council, the problem with relying on the DDA is that service providers have to date only considered accessibility issues after they have either been taken to court or had a complaint made to the Human Rights and Equal Opportunity Commission. In their view, it should not be necessary for anyone to mount a court challenge to obtain access to a basic service. This is a view shared by the Democrats.

Operator Assisted Services

Recommendation
Operator assisted directory and other services should be maintained free of charge. The same should hold for operator assisted services provided to disabled persons. Consideration should be given to including such services in the definition of the Universal Service Obligation so that the cost is shared among carriers.

USO plans

CTN and other consumer organisations have raised the concern that the legislation allows for, but does not require, prior lodgement of universal service plans. This is clearly inadequate.

Recommendation
Universal service plans should be lodged prior to the grant of a tender or selection of a universal service provider.

Recommendation
Public/consumer comment on universal service plans should be required, as well as public/consumer participation in deciding the requirements such plans should address.

Payphones

Ministerial discretion for payphone siting has been highlighted as inadequate by the CTN and the Australian Consumers Association.

Recommendation
A clearly defined policy with objective criteria, scope for public input/consultation, and a process for appeal against ministerial determinations is required.

Untimed local calls

Given the strong community demand for retention of a right to untimed local calls, this right should be retained.

It is often overlooked that a substantial number of households do not currently receive the benefit of untimed local calls. This is either because they are located in remote locations or because their local call zone is located just outside their major service centre.

Ideally all customers in Australia should have access to an untimed local call to their major service centre.

Recommendation
All Australians should be provided access to untimed local calls

The House of Representatives Standing Committee on Expenditure undertook an inquiry into Telecom's zonal and charging policies in rural and remote areas in 1986, entitled *Poles Apart*. A similar inquiry was undertaken by this Committee in 1984, entitled *Ringing in the Changes*. These reports made significant recommendations about the need for ensuring flexibility in call zones and that they reflect the best interests of consumers. In light of the findings and recommendations of these reports, the Democrats make the following recommendations.

Recommendation
Consideration should be given to expanding local call zones to ensure all Australians are able to call their major service centre at untimed rates.

Recommendation
Consideration should be given to possibilities for progressively expanding the size of local call zones.

Those customers who do not currently have access to the option of untimed local calls, benefit from the provision of a reduced rate of timed calls. At the very least, these should be protected as part of the untimed local call protection (as has been recommended by the Consumers Telecommunications Network and the Australian Consumers Association.

Recommendation
Reduced rates for timed local calls in very remote areas (pastoral/community calling rates), should be protected as part of the untimed local call protection

It was disappointing to be informed by Telstra at a public hearing that details about revenue from local calls, STD and ISD could not be revealed for 'commercial-in-confidence' reasons. The Democrats argue that, given the apparent reduction in costs to deliver long distance calls, due largely to technological advances, pricing policies for STD calls should be reviewed.

Recommendation
Pricing policies for STD calls should be reviewed.

Untimed data calls for business

There is no disagreement that the option of untimed data calls should be retained for residential customers and charities. However, the Committee heard significant debate on the merits or otherwise of retaining this option for business customers.

The Democrats are recognise that, under certain scenarios, it may be possible that retention of untimed data calls for business could result in residential customers bearing a disproportionate share of the costs of network upgrades, thereby effectively cross-subsidising business users. This will gradually become less of a problem with greater take up of ISDN services which are provided on a timed basis.

For the time being however, we are not convinced that there is sufficient evidence to substantiate this case. Until such time, we believe business (especially small business) should have the option of untimed local data calls.

This is not to say that this issue should not be revisited. For this reason we support recommendation 2.16 of the majority report.

Customer Service Guarantee

The Democrats endorse recommendation 2.17 of the majority report which ensures the Customer Service Guarantee fully reflects the corresponding provisions of the 1991 Act. These were the result of amendments successfully moved by the Australian Democrats during the debate over the *Telstra (dilution of public ownership) bill 1996*.

The following further recommendations are in line with the views and amendments moved (without success) by the Australian Democrats during the Senate debate over the *Telstra (dilution of public ownership) bill 1996*.

Recommendation
Delete the provision enabling customers to waive, in whole or in part, their rights under the Customer Service Guarantee.

Recommendation
The Australian Communications Authority should be able to make a performance standard without the need for Ministerial direction.

TELECOMMUNICATIONS BILL (VOLUME 2)

Emergency call services

The Democrats strongly welcome the majority report recommendations concerning emergency call services and how they should be funded.

We accept the view of the majority that carriers are not the only organisations with the capability or skills to operate an emergency call service. However, we are strongly of the view that selecting an operator requires *very careful* consideration. Given the absolute importance of this service to the safety and protection of all Australians (as well as the privacy implications involved), it is preferable that Telstra (as the universal service provider) be responsible for operating the service. However, Telstra should be appropriately compensated for by other carriers for operating the service. It is likely this can best be done by nominating emergency services as part of the USO.

If the service is contracted out, however, it is imperative that this not be done solely on the basis of price considerations alone, with the sole intention of minimising costs for those responsible for its funding.

Recommendation
The Government consider introducing means by which highest standards of emergency call operators can be guaranteed.

Secondly, performance standards should be mandated and enforced. It is entirely inappropriate if performance standards are not required for the handling of emergency calls. Adequate service may be a matter of life or death. Care must taken to ensure not only that the service does not deteriorate, but that it improves in line with technological advancements.

The pre-election policy document *Better Communications* states "A Coalition Government will not permit carriers to charge for operator assisted calls and will set an overall requirement that 90 per cent of all operator assisted calls be answered within ten seconds. This requirement will cover directory assistance, emergency calls, long distance and international calls and fault reporting." (p.28) This policy should be enacted.

Recommendation
Enforceable performance standards for emergency call handling (and other operator assisted calls as spelled out in *Better Communications*) be introduced.

Thirdly, the NECWG strongly made the point that a single national emergency call number should be the Government's policy objective. The Democrats recognise that, at present, there are technical impediments which preventing the use of a single national emergency call number.

Recommendation
The Government should undertake to ensure technical and other impediments to the introduction a single national emergency call number are overcome at the earliest possible time. Such a system should then be mandated and implemented.

Public inquiries

The majority report recommends that members of the public be provided with a minimum of 28 days (from date of notification), to provide written submissions to the Australian Communications Authority in relation to an inquiry.

The Democrats believe that spelling out a 'minimum' number of days that may constitute a 'reasonable opportunity' is entirely appropriate. However, we note that there is a difference between this recommendation and other similar ones. For example, the Committee recommended a minimum of 60 days in which to make representations to the ACA regarding proposed technical standards, disability standards and connection rules. Whereas the Committee recommended reducing the number of days for public consultation for industry standards developed by the ACA from 90 to 30 (recommendation 2.11).

Recommendation
Consideration be given to introducing a uniform minimum number of consultation days for ACA initiated public consultations. This should be accompanied by the clear statement that this is a 'minimum'. If providing a 'reasonable' opportunity requires a longer consultation period, then this should be provided.

TELECOMMUNICATIONS BILL (VOLUME 3)

Industry development plans

The Australian Democrats share the concern of the Australian Telecommunications Industry Association (ATIA) that there is a lack of criteria against which the Industry Minister may decide to give an exemption from the industry development obligation.

The majority Committee report expressed the view that legislative entrenchment of such criteria may not be appropriate. Under these circumstances, the Democrats are of the view that *ad hoc* arrangements under which certain carriers would be able to circumvent industry development requirements should not be permitted.

Recommendation
The Industry Minister should not be provided with discretion to declare specified carriers exempt from industry development obligations.

The Democrats are of the view that the industry development plans as currently outlined needlessly limit their effectiveness as a tool of industry policy and weaken the Government's ability to extract desired outcomes for industrial development.

Carriers are only required to have an industry development plan in force within 90 days of being granted their licence. It is far more appropriate that approval of industry development plans by the Industry Minister be made a pre-requisite for obtaining a licence. This would ensure the Government has more leverage and that industry development plans are not simply bureaucratic procedures which have no relevance in-themselves.

Recommendation
Approval of proposed industry development plans by the Industry Minister should be a pre-condition for being granted a carrier licence.

Lack of an appropriate enforcement mechanism for circumstances where a carrier does not meet the targets included in their plan is another source of concern.

Evidence was provided to the Committee by the Department of Foreign Affairs and Trade (DFAT) to the effect that an enforceable contractual agreement between the carrier licensee and the Government for local content provision

may be in contravention of Australia's World Trade Organisation (WTO) obligations.

This is no reason, however, for failure to establish enforcement mechanisms for those aspects of industry development plans which do not contravene WTO obligations.

Recommendation
Appropriate enforcement mechanisms be established for the industry development plan licence condition.

Carriers' powers and immunities

The carriers' powers and immunities framework contained in Schedule 3 is far from satisfactory.

Integrated national approvals system

A late submission was lodged by the Australian Local Government Association (ALGA) spelling out an alternative framework for guiding the rollout of telecommunications infrastructure. It seeks to establish a proper national approvals system administered at the local level by councils.

The Majority report decided that the ALGA proposal *in its present form* is not capable of being adopted (paragraph 4.54). The principle reason being that the carriers have raised a concern that local government authorities appear to be able to enter and exit the approvals system at will, which would weaken significantly the key justification for the ALGA's approach whose purpose is to establish an integrated national approvals system.

The Democrats argue, however, that these are not grounds for dismissing the approach. There is no reason why the ALGA proposal cannot be modified to avoid undesirable loopholes given the political will to do so. In our view the proposal - while not yet fully developed - potentially offers a far more attractive solution than that proposed in the Bill. The Australian Democrats would be supportive of engaging in a process to further develop and improve upon the model proposed by the ALGA.

Recommendation
The Government urgently begin to negotiate and develop an integrated national approvals system along the lines recommended by the Australian Local Government Association.

Definition of a designated overhead line

The definition of a 'designated overhead line' based on size is a cause for concern. The Government argues that as a service-based definition facilities is not appropriate, a size based definition is preferable.

The Democrats acknowledge the view of the majority report that if community concerns are based on issues such as visual amenity, a definition focusing solely on say broadband cable, for example, would be inappropriate. There is no reason, however, why cable of less than 13 mm in diameter should not be a cause of local concern. Nor is it clear to see what would prevent carriers from rolling out a number of cables aerially along the same stretch, as long as each is individually less than 13 mm in diameter.

Recommendation
The definition of designated overhead lines should capture all cabling which could cause raise community or environmental concerns.

Transitional provisions

There is no legitimate justification for transitional provisions enabling broadband aerial cabling installations to continue until 30 September 1997, and other installations to continue until 31 December 1997, under existing arrangements. Carriers have known for years that a new regulatory regime was to be introduced on 1 July 1997. Moreover, they have been clamouring for the new regime to be introduced. Yet, the one feature of the new regime which they have not welcomed is the introduction of proper planning procedures for infrastructure installations. Not only is the new regime insufficiently tight to ensure optimal social outcomes, but its introduction has been arbitrarily delayed. The sole purpose of this delay is to enable carriers to continue to take advantage of a regulatory regime which enables infrastructure to be installed without adequate regard to planning and environmental concerns.

Recommendation
Transitional arrangements be deleted from the Telecommunications Bill 1996.

Low impact facilities

The Bill provides for ongoing exemptions from State and Territory environment and planning laws under certain circumstances (eg for low impact facilities, inspection of land and facility installation permits issued by the ACA).

The Government argues that low impact facilities are not contentious from a planning perspective. In which case, their exemption from State and Territory planning and environment laws provides for a more streamlined process.

This ignores the concern raised by the ALGA, that an authorisation to exempt 'low impact' facilities ignores the potential cumulative impacts of these facilities. More importantly, however, the danger lies in the fact that we do not have a definition of 'low impact facilities'. The definition is to be the subject of an AUSTEL inquiry . We could find ourselves in a situation where mobile phone tower installations for example, which have been the cause of much community protest, are classified as 'low impact'.

While the definition is to be tabled as a disallowable instrument, this is problematic because the Parliament does not have the power to modify such instruments but only to disallow them.

Recommendation
No exemption be given for low impact facilities from State and Territory laws, at least not while the definition is unknown.

Recommendation
Any definition of 'low impact' should take into account public health concerns, as well as those relating to visual amenity.

Recommendation
Under no circumstances should mobile phone tower installations be classified 'low impact', including co-locations.

Subscriber drops

The Government has proposed that subscriber drops be handled in the Code of Practice, along with so-called 'low impact' facilities. The Department of Environment, Sport and Territories (DEST), however, has argued that

exemptions for subscriber drops are a concern for buildings or places of heritage significance.

Recommendation
Subscriber drops for buildings or places of heritage significance should not be immune from State planning and environment laws.

Ministerial Code of Practice
The proposed Ministerial Code of Practice sets out condition that are to be complied with by carriers when engaging in activities immune from State and Territory environment and planning laws.

The problem with reliance on the Code of Practice is that we still do not know what this will contain. Moreover, there are no requirements in the proposed legislation for public consultation or an inquiry in developing this Code.

This is a notable omission given that under section 117(5) of the current act, before determining a Telecommunications National Code, the Minister must publish a draft of the Code and invite the public to comment on the draft. The Minister must then cause a public inquiry to be held for purposes of receiving and considering submissions about the draft.

It is the view of the Democrats that if such a Code is to be determined, a fully open public inquiry is required. Such a requirement should ensure the community is provided sufficient time for making a submission. It should also require that the report stemming from the inquiry be public.

Recommendation
If compliance with a Code of Practice is to be required for carriers undertaking activities exempt from State and Territory laws, then this should only be accepted when *all* activities to be covered by the Code are *clearly and fully* identified. Community acceptance of these activities should be widespread and not contentious. Furthermore, the Code itself should be the product of a totally open and frank public inquiry (required by legislation), enabling reasonable amount of time for public comment/input.

In conclusion, we believe the Government's ready dismissal of the ALGA's proposal, not to mention those from other organisations with like-minded concerns, is unwise. For this reason, we are engaging in ongoing discussions with the ALGA and other organisations to produce more acceptable outcomes.

Sadly, the Government has not presented an attractive and viable alternative regime to replace the disastrous system which is currently in place. Given the intense community concern over these matters, and the widespread desire for

solid and effective planning and environmental guidelines, the Government should have proposed something more worthy.

TRADE PRACTICES AMENDMENT BILL 1996

The Australian Broadcasting Corporation has raised important concerns in their submission about the access requirements of broadcasters (who form a subset of content service providers).

TAF membership

Composition of the TAF and the effectiveness of TAF processes is essential to having a service declared and therefore subject to the access regime. However, TAF membership is limited to carriers and carriage service providers. The ABC have raised this as a concern. They argue that, unlike other content service providers, they have neither direct nor indirect links with TAF members. This disadvantages service providers, such as the ABC, which do not have a voice on the TAF.

The Government may seek to oppose this amendment on the ground that the TAF would become unwieldy if content service providers were represented. In the opinion of the Democrats, such representation is unlikely to make much difference to how wieldy the TAF is, but it would serve an important purpose.

While content service providers are to have an opportunity to make submissions to a public inquiry held by the ACCC about proposals to make a declaration of eligible services under section 151AL, this is a weaker position to be operating from.

Recommendation
Representation of content service providers on the TAF be allowed.

If content service providers are not TAF members or adequately represented on the TAF, then TAF processes should be strengthened to allow greater input by non-TAF members.

Recommendation
The TAF should be required to
- publicly circulate draft service declarations, inviting public comment;
- consider all public submissions made; and
- consider submissions made on proposed service declarations within a set time frame.

The Government may oppose the above recommendation on grounds that it is not appropriate for the TAF to be required to consult more widely. At present, the Bill requires that before the ACCC makes such a declaration it needs to be satisfied that the TAF has given likely access seekers and consumer representatives a reasonable scope for comment. The Democrats would share such sentiments and believe the former recommendation, enabling representation on the TAF, is more appropriate to resolve the issue.

Set top boxes

Concern about the provision of 'set top boxes' which allow access to services via a home television has been raised by the Consumers Telecommunications Network and the Australian Broadcasting Corporation.

The decision as to whether or not to develop a common standard for conditional-access customer equipment is currently left to industry. There is, however, a clear consumer benefit in common standards being developed. Given this, the Government should act to ensure common standards are developed. Consumers would then benefit from only requiring a single set top box from which they could access services from several service providers. Ideally, such equipment should be available either for lease or hire.

Recommendation
Industry should be required to develop a common standard for conditional-access customer equipment.

Recommendation
Consumers should have the option of either renting or purchasing this equipment.

OTHER ISSUES

Price discrimination on local call charges

The Democrats are strongly sympathetic to the views expressed by the Consumers Telecommunications Network at paragraph 9.6 of the majority report.

The majority report of the Committee is critical of maintaining price discrimination restrictions because it thought it would result in weakened competition, and thereby lessen consumer welfare. The alternative, however, may result in certain consumers benefiting substantially, while many others are left behind (and potentially even cross-subsidising the former).

Recommendation
Prohibition of price discrimination on local call charges across call zones be imposed on Telstra.

Telstra argued (paragraph 9.7 of the majority report) that if they only are subject to a non-discrimination requirement, while others are not, it would be unfairly constrained relative to its competitors.

Recommendation
Consideration be given to imposing non-discrimination requirements upon all carriers.

Usage of price control arrangements as per recommendation 9.1 of the majority report are an alternative, but far less direct, means of ensuring that price ceilings around the country reflect price reductions in areas where competition exists.

Report of the Standard Telephone Service Review Group

The Democrats are of the view that the recommendations of the majority report of the Standard Telephone Service Review Group offer positive suggestions. In this light, support for recommendation 9.2 of the majority report is implicit.

Recommendation 9.3 makes a variety of suggestions, the implications of which need to be fully understood. The Democrats support recommendation 9(a) which binds Telstra to its existing commitment to provide 93.4 per cent of customers in Australia with access to digital data capability by 1 July 1997 and to establish further targets for extension of the availability of these services

over the period to 1 January 2000. This entrenches Telstra's ISDN commitments by putting them in the Act as a licence condition.

It is important to note, however, that while Telstra is currently controlled by price caps, there is no price cap for ISDN at present. Consideration should be given to whether a price cap should be imposed for ISDN as coverage and uptake spreads.

Recommendation
Consideration be given to whether price cap should be imposed for ISDN as coverage and uptake spreads.

Recommendation 9(b) recommends reviewing the appropriateness of whether to make provision of digital data capability a prescribed carriage service from 1 July 1998. It is consistent with the STS Review Group Majority Report, which recommended:

> "A carriage service providing a digital data capability should be made a prescribed carriage service from 1 July 1998 to ensure that it is reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business by 1 January 2000, unless such prescription is not necessary to achieve this objective." (Review of the STS, December 1996, p12)

The Democrats welcome this admission that the Government may need to pursue the option of incorporating digital data capability into the USO to ensure such services are delivered universally.

It is important to note, however, that USO provisions include a specific price cap power which would enable prices for digital data capability services to be controlled regardless of whether Telstra is the universal service provider or not.

It is noteworthy that 9(c) recommends the pursuit of either legislative or industry self-regulatory approaches to give effect to the STS Review Group's recommendations in relation to quality of service and the funding of special telecommunications services and equipment for people with disabilities. This is refreshing at a time when the desire for self regulatory solutions is seemingly at an all time high. It is our view that care needs to be taken when prescribing self regulatory approaches. Such approaches should only be adopted when there is sufficient reason, and not simply because they are currently fashionable.

Impact of new technology on people with disabilities

The Democrats welcome recommendation 9.4 of the majority report which requires the establishment of appropriate arrangements to ensure due regard is given to the impact of new technologies on people with disabilities. These arrangements might include funding research into digital interference with equipment used by the deaf and hearing impaired and equipment used in hospitals, wheelchairs, pacemakers and the like.

However, we reject the suggestion made during the public hearings of the Committee, that a proportion of monies from the Government's fund for health risks associated with EMR should be appropriated for this purpose.

Recommendation
Funds allocated to the RF EME research program should not be appropriated for research into digital interference. A separate funding allocation, perhaps in the form of another increase in licence levies, should be made available for this purpose.

Analogue mobile phone network

The Deafness Forum pointed out in their submission that, at present, most cochlear implantees and many hearing aid users cannot use digital mobile phones due to electromagnetic interference from them. Interference problems from digital technology are significantly widespread and affect various other members of the community.

While the Government has at least acknowledged the difficulty which the phase out of the AMPS network would have on those rural and remote customers who do not have access to the digital network, they have shown comparatively little concern for the needs of disabled persons.

Recommendation
The AMPS network should not be phased out until the digital network is truly accessible to people with hearing impairment.

Adopting this approach should ensure carriers immediately and voluntarily invest in research and design to overcome interference problems. The Democrats believe the phase out of the AMPS network should be reviewed.

Recommendation
The phase out of the AMPS network be reviewed.

Public health and electromagnetic energy concerns

The Democrats disagree with the recommendations of the majority report of the Committee on many issues relating to electromagnetic radiation and possible health risks. It is disappointing that the Committee has introduced into the report views which were neither canvassed by the submissions nor brought forward in evidence by witnesses.

We make the observation that the recommendations in the majority report on this issue largely reflect an industry position and ignore the matter of existing research and the Government's role in protecting public health.

The Committee notes (9.19) that the Telecommunications National Code 1996 (TNC) requires compliance with standards but witnesses pointed out that the Australian Standards (AS) were based on thermal effects and ignored the more significant effects of athermal radiation.

> Mrs Ward - The legislation refers to the Australian standard AS 2772. the studies that I have just spoken about suggest that that standard is inappropriate and that it does not protect people from low levels of radiation. It is only based on a thermal level of radiation. So we are suggesting that the Australian Standards actually needs to be adjusted and there needs to be some reference to a stricter or a tighter Australian standard in the bills.

The majority report notes the requirements under the TNC for carriers to supply information on the estimated strength of the EMR field:

- *as measured at a point 5 metres distant from the base of the structure supporting the source of generation of the field;*

However we would point out that the 5 metres distance is somewhat arbitrary because the maximum field for a mobile phone tower, for instance is, according to the industry, 150 metres from the base.

The Democrats note the RF EME research fund of $4.5 million and make the comment that whilst research associated with mobile towers and other communications devices and equipment is very necessary, there are many who are exposed to significant levels of microwave/radiofrequency who will not be picked if research is limited to communications equipment.

We would also add that $4.5 million is a very small sum of money, given its spread over three areas and four and a half years. In comparison to the $2.6

billion which the government will derive from sale of spectrum with these bills, it is a small sum indeed.

As noted in the majority report, a significant shortcoming in the inquiry was the absence of evidence from scientific individuals and organisations in connection with the health effects of electromagnetic radiation. The evidence given by the Electromagnetic Radiation Alliance of Australia and others on this subject should have been given more prominence in the report.

Ms Ward of EMRAA cited a number of such research studies:

> You will perhaps be aware of the work of Dr Peter French of St Vincent's Hospital in Sydney. He has shown that cells that are exposed to radiation from mobile phone frequencies actually have genetic changes. There are changes in shape and structure. We think this is a fairly significant finding. .... Dr Ross Adey in the US has done similar work. .....He has shown that those mobile phone frequencies have an effect on rats. Drs Lai and Singh have also shown that rats exposed to mobile phone frequencies have breaks in single strand and double strand DNA. ..... In another study, Dr Soma Sarkar found that mice who were exposed to one watt per kilogram between 120 and 200 days experienced rearrangement of DNA.
>
> Dr Bruce Hocking, you are probably aware, in Sydney recently released a report that showed there was an increased incidence of leukaemia among people living in a four kilometre radius of television towers in North Sydney. There was a Russian study of 1,000 workers who were exposed to levels of radiation that were between one-twentieth and one-half of the Australian standard. Those people suffered changes in the nervous and cardiovascular systems. Here we have very low levels of radiation having biological effects.
>
> At the WHO conference in Munich on the biological health of athermal levels of radiation, speaker after speaker pointed out that there were quite profound effects at those levels of radiation.
>
> It is our belief that there is such persuasive evidence that radiofrequency radiation could well cause problems - if you do not say that it definitely causes those problems - and we believe that some precautionary approach needs to be instituted and reflected in the legislation.

The Democrats disagree with the Committee in its argument that a broad definition of 'environment' is sufficient for the ACA to act in respect of public health.

The Report again falls back on compliance with industry standards as a measure of safety and argues that the .. *Committee was not convinced, on the evidence before it, that the legislation required further amendment.* A large part of this section of the report is given over to defence of Standards Australia

and very little reported about the evidence given of the research which points to biological effects of, for instance, low level, microwave radio frequencies, not currently dealt with in the Standards.

In our view, the most value from this fund would be from the conduct of research in Australia. The World Health Organisation project does not involve any new research but is, rather, a compilation of existing and largely industry-based research. Furthermore, it is wasteful in the extreme to be spending any of this sum on public information before the outcome of any research.

We note that the NH&MRC will manage the research program and recommend that in deciding priorities and funding projects, input be sought from representatives of community organisations and consumer groups with particular interest in this field and with union representatives from industries in which exposure to EMR occurs.

Recommendation
In deciding priorities and funding projects, the NHMRC be requested to seek input from representatives of community organisations and consumer groups with particular interest in this field and with union representatives from industries in which exposure to EMR occurs.

It is our view that a worthwhile outcome will depend on input from those who stand to be most at risk by exposure and by a broad cross-section of professionals including those from university faculties of public and occupational and environment health and of medicine. What must be avoided is a technically expert group, such as that which currently agrees standards, being stacked by industry representation.

The Democrats point out that clause 25(1)(g) of the Schedule (ref 9.30) is, in effect, a cost/benefit analysis and, in our view, possible effects on health should not be traded off against .....*the advantages that are likely to be derived from the operation of the facilities* ...

The Majority report restates (9.32) the point that ..... *the legislation already requires mandatory compliance with industry standards likely to reduce any risk to the safety of the public.* Unfortunately, this legislation has more to do with limiting liability for the industry than it has to do with public safety.

Standards Australia (9.34) claims that its process is *completely open* and that travel and accommodation expenses are provided for representatives of the Consumer Federation of Australia to attend committee meetings. It is our

advice that the Consumer Federation has never attended technical standards meetings and neither have unions, local government and community organisations with an interest in the issue. SA's claim that consumer representatives have chosen not to be involved is unconvincing. In New Zealand consumers have successfully worked with the standards group for some time now.

It is important that process and membership be completely transparent, otherwise key interest groups who are outside this process will not have confidence in outcomes.

Moreover, the fact that *...Standards Australia's policy is to align with international standards and has voluntarily declared compliance with the WTO Technical Barriers to Trade Code ...* is in our view an indication that SA may abandon any social or health risk which might get in the way of opening up our communications industry to world trade.

Recommendation
A review be conducted into the processes followed by Standards Australia in this regard. Recommendations should be targeted towards ensuring SA's processes are completely open and transparent and that an appropriate cross section of representatives are included.

The review should also explore the extent to which compliance with the WTO Barriers to Trade Code impedes our ability to establish adequate health protection policies.

It should be noted that there was no consensus in the most recent attempt by SA to have AS2772.1 relaxed and CSIRO in particular opposed this move.

The Democrats agree *that the possible effects of athermal emissions should be investigated* (9.39). It should be noted however that there have been many studies made in this field over many years. The US National Academy of Science conducted a review of literature some time ago and recognises the fact of its existence.

The Democrats are of the view that most of the $4.5 million provided for research (and public information) into health issues associated with mobile towers and other communications devices should be spent on independent research in Australia and that public information should only follow that research.

Recommendation
The majority of the $4.5 million provided for research (and public information) into health issues associated with mobile towers and other communications devices should be spent on independent research in Australia. Public information should only follow that research.

The Democrats disagree with recommendation 9.6 which suggests that technology compatibility studies particularly in relation to interference between digital mobile phones and equipment used by the hearing impaired should be funded from this $4.5 million. Whilst we support the need for solutions to be developed as a matter or urgency, this work could well take up a substantial portion of this fund and, in any case, the industry should be made responsible for and fund the necessary adjustments to its equipment. This work should not be paid for from much needed research into effects on human health.

Communications industry social policy research fund

A joint submission was made by the Communications Law Centre in Sydney and Melbourne, the Consumers Telecommunications Network, the Centre for International Research on Communications and Information Technologies (CIRCIT) and the Latrobe University Online Media Program, the Centre for Telecommunications Information Networking in Adelaide, and the Australian Key Centre for Cultural and Media Policy in Brisbane.

This submission was also fully supported by Ian Reinecke, Pro-Vice Chancellor (Academic Services) at the University of Queensland, the Communications Economics Research Program, Institute for International Competitiveness at Curtin University, and the Telecommunications Needs Research Group at the Royal Melbourne Institute of Technology.

The submission proposes the establishment of an independent fund to support continued research into social policy issues in telecommunications. According to the submission

> "If we are to realise the full social benefits of the technological and industry developments, we must also undertake the work to fully understand and address the wider impacts of these developments. We

need an intelligent, informed, adaptive industry. That requires a diverse range of thinking, research and action.

"Further, a much greater reliance is being placed on industry self regulation. While the mechanisms which the Government is putting in place for participation by representatives of public and consumer interests are welcomed, those mechanisms will be of limited value if there is not adequate funding to ensure full participation by public and consumer interest organisations." (p.5)

It is proposed the Fund comprise around $2 million per year. The money being contributed by the major industry participants. Options for determining funding proportions and for administration of the fund are outlined in the submission. The Democrats believe the Government should be given flexibility to determine the most appropriate approach.

Recommendation
Support the implementation of the Communications Industry Social Policy Research fund along the lines suggested jointly by all major telecommunications research and consumer advocacy organisations.

CONCLUSION

The Democrats reject recommendation 9.6 of the majority report. The 11 bills in the telecommunications package should not be passed subject only to the amendments proposed in the majority report. These will not sufficiently protect the interests of the Australian community.

The Democrats also point out that given the complexity of the matters at hand and the fact that consultations are ongoing, further amendments or variations on those proposed in this minority report will be pursued as appropriate.

Senator Lyn Allison
Australian Democrats