

**TELECOMMUNICATIONS (CONSUMER PROTECTION
AND
SERVICE STANDARDS) AMENDMENT BILL (NO.2) 2000**

LABOR SENATORS' REPORT

AUGUST 2000

EXECUTIVE SUMMARY

Labor Senators acknowledge the fundamental importance of the Universal Service Obligation in ensuring the equitable delivery of telecommunications services to rural and regional Australia.

Labor Senators condemn the Government for its continuing push for the full privatisation of Telstra, a policy that will inevitably see a decline in services to rural and regional Australia.

Labor Senators note that the Government has sought to portray competitive tendering of the Universal Service Obligation as both the solution to the decline of services to rural and regional Australia following on from the partial privatisation of Telstra, and as an argument for full privatisation.

Labor Senators note the Government's own admission of the limitation of the scope of its competitive tendering policy by requiring Telstra to remain as the Primary Universal Service Provider ('PUSP'), or carrier of last resort, in the two proposed pilot project areas.

Labor Senators believe that the Universal Service Obligation ('USO') must be upgraded in the future to encompass access to minimum digital data services, and condemn the Government for continuing to ignore the growing need for reliable data services for Australians in remote or isolated communities.

In this context, Labor Senators support the trial and proper evaluation of USO contestability on a local, regional or niche basis.

Labor Senators recommend that the *Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 2) 2000* be amended to:

- provide for a public and independent review of the two trials and subsequent report to Parliament, that review to take place before further Universal Service Obligation contestability decisions are considered;
- retain Telstra as the national PUSP and to remove the provisions allowing a carrier other than Telstra to become a PUSP;
- remove the ability of the Government to appoint a carrier other than Telstra as a PUSP for an area if an agreement is entered into under either section 56 or 57 of the *Telstra Corporation Act 1991* as currently permitted by the Act. This will ensure that Telstra continues as the PUSP for all of Australia, including for those Australians living in the extended outer zones, approximately 80 percent of the Australian landmass.
- require a PUSP or Competing Universal Service Provider ('CUSP') who offers an Alternative Telephone Service ('ATS') to fully inform customers of the different service and price arrangements available under the ATS as compared with the Standard Telephone Service ('STS').
- require a PUSP or CUSP to publicly consult on initial and subsequent marketing plans where an ATS is materially different from any ATS that has been previously approved.

- provide that the level of USO subsidy received by a PUSP or CUSP is proportionately lower if the standard of service available under an ATS is lower than the standard of service available under the STS.
- require the Minister to receive advice from the ACA before setting the level of USO subsidy.

INTRODUCTION

The *Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 2) 2000* ('the No.2 Bill') provides for the repeal and substitution of the universal service regime in the existing Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('the Act').¹

Part 2 of the Act currently imposes a Universal Service Obligation (USO) on Telstra to ensure that standard telephone services (ie. voice telephony), payphones and prescribed carriage services are provided to all people in Australia on an equitable basis, wherever they reside or carry on business. The complementary digital data service obligation (DDSO) underpins access on request to a 64 kbps (or comparable) data service.

Part 2 of the Act also provides for the funding by telecommunications carriers of the cost of providing the USO and the DDSO.

The Government has been exploring options for the introduction of contestability for the provision of the USO.

On 23 March 2000, the Government announced a number of initiatives in relation to the provision of universal service in Australia and of untimed local calls in remote Australia. In broad terms, the Government said it would:

- (a) enhance industry certainty by enabling the Minister to determine a universal service provider's net universal service cost (NUSC) in advance for 2000-01 and subsequent financial years, for up to three years in advance;
- (b) undertake a competitive selection process to award the \$150 million allocated for the provision of untimed local calls in remote Australia (the Extended Zones), with the successful tenderer subsequently becoming the universal service provider for the area;
- (c) amend the universal service regime to allow for contestability of its provision;
- (d) undertake two pilot schemes in regional Australia to trial the competitive supply of services under the USO with Telstra as the carrier of last resort; and
- (e) extend the funding base for the USO and DDSO to include carriage service providers as well as carriers.²

The *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 1) 2000* ('the No.1 Bill') amended the Act to implement decisions (a) and (b).

The No.2 Bill and the *Telecommunications (Universal Service Levy) Amendment Bill 2000* ('the Levy Bill') seek to provide the legislative framework necessary to implement the Government's other decisions.

1 Explanatory Memorandum, p.2.

2 Explanatory Memorandum, pp.2-3.

On 23 August 2000, the Government announced that the two USO contestability trials would be conducted in:

- the Greater Green Triangle of south-west Victoria and south-east South Australia, expanded to include the Central Goldfields and Greater Bendigo; and
- North-east New South Wales and the Queensland Downs, stretching from Kempsey in New South Wales, inland, to Caloundra Shire in Queensland.³

The Government has determined that the provision of payphone services and the DDSO will not be contestable. It has also determined that Telstra will provide a safety net service, by continuing as a carrier of last resort or Primary Universal Service Provider ('PUSP') in the two trial areas.

LABOR SENATORS' OVERALL POSITION

Labor has publicly stated its cautious support for the trial and proper evaluation of USO contestability on a local, regional or niche basis.

Labor Senators recognise that contestability may provide better service to customers in USO areas, while reducing the cost to industry through a reduction in the USO Levy.

However, Labor Senators also acknowledge that USO contestability may not have this outcome. In particular, Labor Senators recognise the views of the Communications, Electrical and Plumbing Union that:

*... the Government is venturing into unknown and highly problematic territory.*⁴

Accordingly, Labor Senators believe that any move to contestability of the USO must proceed on a cautious and considered basis.

Recommendation 1:

Labor Senators support the trial and proper evaluation of USO contestability on a local, regional or niche basis.

The No.2 Bill goes well beyond that necessary to implement the two trials proposed by the Government. In fact, the No.2 Bill would permit a move to full contestability of all aspects of the USO, albeit subject to parliamentary scrutiny through disallowance of most of the key decisions.

Labor Senators are concerned that USO contestability should not be extended until the two trials have been properly evaluated. Telstra's submission supports this view "*as a matter of public policy due diligence*".⁵

3 Media Release, Minister for Communications, Information Technology and the Arts, Senator the Hon. Richard Alston, 23 August 2000.

4 Submission 6, p.2.

Recommendation 2:

The No.2 Bill should be amended to provide for a public and independent review of the two trials and subsequent report to Parliament, that review to take place before further USO contestability decisions are considered.

PRIMARY UNIVERSAL SERVICE PROVIDERS

The No.2 Bill establishes Telstra as the PUSP, or carrier of last resort, for all service areas and for all USO services until such time as another person is declared the PUSP. A declaration that a carrier other than Telstra should become the PUSP for a given geographical area and service will be a disallowable instrument.⁶

Labor has publicly stated that, if contestability is to be introduced, Telstra should be the PUSP for all parts of Australia. Australians are entitled to expect that Telstra, as the national carrier, will continue to be there for them.

Labor Senators believe that the introduction of competition is just that, a means to provide competition for Telstra in the provision of basic telephone services. It should not be used as an excuse or reason to allow Telstra to withdraw from providing these services altogether.

Accordingly, Telstra should continue to be required to make its services available to customers across Australia. Not only will this ensure that basic telephone services continue, it will also help to ensure that competition occurs in those areas where other carriers decide to offer their services.

Recommendation 3:

The No.2 Bill should be amended to retain Telstra as the national PUSP and to remove the provisions allowing a carrier other than Telstra to become a PUSP.

In this regard, Labor has criticised the Government's failure to require Telstra to continue as a Universal Service Provider if it fails to win the \$150 million tender for the provision of untimed local calls in the extended outer zones. These zones make up approximately 80 percent of the Australian landmass.

The No.1 Bill automatically makes the winner of the \$150 million tender the sole PUSP for that area. Unlike the proposed two trials, there is no provision for Telstra to continue as the PUSP. Accordingly, if it does not win the tender, Telstra will not be required to provide a safety net service for the 40,000 customers in the outer extended zones.

As Telstra's representatives told this Committee:

MR BRADLEY: We would then look at the provision of services in those areas on a commercial basis.

5 Submission 3, pp.4-5.

6 Explanatory Memorandum, pp.3-4.

SENATOR BISHOP: What does 'on a commercial basis' mean?

MR BRADLEY: It means we may not service every customer in those areas. We will have to assess that as we get there. In those outer extended zone areas, some of our infrastructure is quite new and some of it is quite old; some of it has high costs and some of it has lower costs; some of the customers are more profitable and some are less profitable, and some are quite loss-making. So I suppose it is a matter of going through those circumstances and deciding where we can legitimately provide service.⁷

This change has occurred despite a lack of consultation with or the consent of the 40,000 Australians living in the outer extended zones. Because of the strict probity requirements surrounding the tender, those Australians will not be consulted before the tender is awarded.

The tender will not deliver customers in the outer extended zone choice and is inimical to Telstra's status as the national carrier.

Labor Senators are also concerned that the Government may exclude Telstra as the PUSP from other areas of the Australian landmass without seeking the approval of the Parliament. Agreements, such as that relating to the provision of untimed local calls in the outer extended zones, entered into under either section 56 or 57 of the *Telstra Corporation Act 1991*, are not disallowable. Subsection 20(2) of the Act deems the successful tenderer to be the regional USP for the area and services covered by the agreement.

Recommendation 4:

The No.2 Bill should be amended to remove the ability of the Government to appoint a carrier other than Telstra as a PUSP for an area if an agreement is entered into under either section 56 or 57 of the *Telstra Corporation Act 1991* as currently permitted by the Act. This will ensure that Telstra continues as the PUSP for all of Australia, including for those Australians living in the extended outer zones, approximately 80 percent of the Australian landmass.

ALTERNATIVE TELECOMMUNICATIONS SERVICES

Both PUSPs and CUSPs will be able to seek the approval by the ACA of a marketing plan to supply one or more Alternative Telecommunications Services ('ATS') in fulfilment of the USO. The ACA must be satisfied that the ATS will appropriately fulfil the USO before an ATS can be offered to customers. The ACA must also be satisfied that the marketing plan appropriately deals with relevant matters.⁸

⁷ Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Proof Committee Hansard*, 18 August 2000, p.24.

⁸ Explanatory Memorandum, p.4.

The Department has accepted that an ATS may be of a lesser standard than the Standard Telephone Service ('STS') (ie. it may not include untimed local call access).⁹

Customers will have the option of whether they accept an ATS or default to the STS.

Both Telstra and the Communications, Electrical and Plumbing Union expressed concern that customers may not be fully informed about the consequences of accepting an ATS.¹⁰

The Government has stated that this concern will be addressed in the proposed marketing plans, although there is no direction to the ACA to this effect.

Labor Senators believe that this is a matter that should be put beyond doubt by being clearly spelt out in the legislation. Labor Senators believe that customers should be able to make informed decisions about the suitability of an ATS to their circumstances.

Recommendation 5:

The No.2 Bill should be amended to require a PUSP or CUSP who offers an ATS to fully inform customers of the different service and price arrangements available under the ATS as compared with the STS.

PUSPs and CUSPs may be required to consult publicly on their marketing plans. The No.2 Bill contains no guidance to the ACA as to when this consultation should occur. This should be clarified.

Recommendation 6:

The No.2 Bill should be amended to require a PUSP or CUSP to publicly consult on initial and subsequent marketing plans where an ATS is materially different from an ATS that has been previously approved.

STANDARD TELEPHONE SERVICE

PUSPs will be required to provide the Standard Telephone Service. However, CUSPs are not required to offer the Standard Telephone Service, although they may do so if they wish.

The Department accepted in evidence that the provision of an ATS could cost less than the provision of an STS but would attract the same level of subsidy.¹¹

This breaches the principle of competitive neutrality.

9 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Proof Committee Hansard*, 18 August 2000., pp.39-40.

10 Submission No.3, pp.7-8.
Submission No.6, pp.7-8.

11 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Proof Committee Hansard*, 18 August 2000., pp.39-40.

Telstra has proposed that the level of subsidy should be reduced in proportion to the degree to which an ATS falls below the standard of the STS.¹² This would reduce the obvious market incentive for PUSPs and CUSPs to push customers to accept an ATS of a lower standard than the STS as a means of generating profit, rather promoting means of delivering the STS or an ATS in a more efficient way.

Recommendation 7:

The No.2 Bill should be amended so that the level of USO subsidy received by a PUSP or CUSP is proportionately lower if the standard of service available under an ATS is lower than the standard of service available under the STS.

ARBITRAGE

Telstra expressed concern that competing Universal Service Providers could engage in arbitrage through the reselling of Telstra's STS.¹³

The Department of Communications, Information Technology and the Arts expressed the view that building a business based purely on arbitrage would be a "*very difficult business . . . to sustain.*"¹⁴ The Department argued that, in the event of arbitrage, Telstra would approach the ACCC immediately to have the access arrangements varied. The Department argued that it would not be in the long-term interest of end-users of telecommunication services for arbitrage to be permitted. The Department also argued that resale should be allowed in some circumstances.¹⁵

Labor Senators accept the Department's evidence and will monitor whether the Bill creates actual and sustainable examples of arbitrage. If arbitrage does occur and is not subsequently prevented by the ACCC, Labor Senators would support reconsideration of this issue.

UNIVERSAL SERVICE SUBSIDY

The Minister will determine USPs' subsidy entitlements for up to three years in advance. Subsidies will be able to be determined in respect of one or more service obligations under of the USO in respect of one or more service areas. Because of their fundamental importance to the operation of the scheme, such determinations will not be disallowable.¹⁶

Labor Senators have previously stated their support for this approach.

12 Submission 3, pp.7-8.

13 Op.Cit, pp8-9.

14 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Proof Committee Hansard*, 18 August 2000., p.44.

15 Ibid.

16 Explanatory Memorandum, p.5.

The Minister will be able to request the advice of the ACA in setting subsidies. The Minister's request will be able to specify principles, including the methodology, the ACA is to have regard to in preparing its advice. Use of the current methodology (efficient provider avoidable cost less revenue forgone) will be an administrative matter.¹⁷

When the Committee considered the No.1 Bill, the Communications, Electrical and Plumbing Union raised concerns that the Government's approach reduces the role of the ACA in developing and administering a methodology for the calculation and collection of the USO cost and Levy.¹⁸ The CEPU repeated its call in its submission to the current Inquiry.¹⁹ Telstra also expressed concern about the potential lack of consistency in setting the USO.²⁰

For these reasons, Labor Senators have consistently argued that the Minister should receive advice from the ACA before setting the level of USO subsidy.

Recommendation 8:

It is recommended that the No.2 Bill be amended so that the Minister is required to receive advice from the ACA before setting the level of USO subsidy.

SENATOR MARK BISHOP
(A.L.P., W.A.)

SENATOR THE HON. NICK BOLKUS
(A.L.P., S.A.)

17 Op.Cit.

18 Submission to the Committee, June 2000.

19 Submission 6, pp.4-5.

20 Submission 3, pp.8-10.

