

The Senate

Environment, Communications,
Information Technology and the Arts
Legislation Committee

Provisions of the Postal Services Legislation
Amendment Bill 2003

August 2003

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Referral and conduct of the inquiry

1.1 On the recommendation of the Selection of Bills Committee, on 25 June 2003 the Senate resolved that the provisions of the Postal Services Legislation Amendment Bill 2003 (the Bill) be referred to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 18 August 2003.¹

1.2 The Committee invited submissions on the Bill in an advertisement in *The Australian* on Wednesday, 2 July 2003. It also wrote direct to a number of relevant organisations inviting submissions. The Committee received six submissions which are listed at Appendix 1. It also held a public hearing in Melbourne on Friday, 8 August 2003, details of which are shown in Appendix 2.

1.3 The Committee thanks all those who contributed to its inquiry by preparing submissions and by appearing at the hearings.

The Bill

1.4 The Bill was introduced into the House of Representatives on 19 June 2003.

1.5 The Second Reading Speech states that the Bill addresses regulatory and consumer issues relating to the current postal regime. Further, the Bill is intended to provide greater consumer and social benefits by providing independent oversight of Australia Post's service performance and operational activities and it will legitimise a number of existing practices in the postal services market.²

1.6 The proposed provisions deal with the following broad issues:

- Australia Post's involvement in non-reserved services;
- operation of Australia Post's reserved service;
- oversight of Australia Post's service performance; and
- Service Improvement Plans.

1.7 Schedule 1 of the Bill proposes to amend:

- the *Australian Communications Authority Act 1997* to provide the Australian Communications Authority (ACA) with responsibility for monitoring and reporting on Australia Post's supply of postal services and its performance in relation to its prescribed performance standards;
- the *Australian Postal Corporation Act 1989* to:
 - extend the responsibilities of the Australian Competition and Consumer Commission (ACCC) in relation to Australia Post;

1 Selection of Bills Committee, Report No. 7 of 2003, 25 June 2003.

2 Postal Services Legislation Amendment Bill 2003, Second Reading Speech, p 1.

- exclude document exchanges and aggregation services from Australia Post’s reserved services;
 - allow performance standards in relation to Australia Post’s delivery arrangements to be prescribed;
 - update a reference to a repealed Act; and
 - establish a levy on Australia Post to fund the new functions conferred on the ACCC and ACA; and
- the *Trade Practices Act 1974* to allow the ACCC to delegate its powers under the *Australian Postal Corporation Act 1989* to a member of the Commission.

1.8 In overview of the Government’s intentions for the Bill, Mr Brenton Thomas of the Department of Communications, Information Technology and the Arts (DCITA) told the Committee:

... from the government’s perspective, this is an important piece of legislation [which] has three really important elements. It is important because it legitimises services that are highly valued to business customers through the amendments to the document exchange and aggregation service. It is also important because it provides a far greater level of independent scrutiny of a range of services that are provided by Australia Post to consumers. It is also important because it provides greater transparency of Australia Post.³

1.9 Submitters generally welcomed the proposals contained in the Bill, although the Communications, Electrical and Plumbing Union (CEPU) and Post Office Agents Association Limited (POAAL) expressed concerns about some elements of the proposed amendments. These are discussed below.

Australia Post’s involvement in non-reserved services

1.10 Concerns have been raised in the past that Australia Post unfairly competes in the market place by cross-subsidising its competitive services with revenue from its reserved service⁴. In the main these concerns have been raised by newsagents and have focused particularly on the sale of stationery products by Australia Post.⁵

3 Proof Hansard, 8 August 2003, p. ECITA 30.

4 Section 29 of the *Australian Postal Corporation Act 1989* (the Act) provides the exclusive right to Australia Post to carry letters within Australia, including the collection of letters for delivery and the delivery of letters within Australia. It also has the exclusive right to issue postage stamps within Australia. Section 30 of the Act lists exceptions to reserved services and allows the carriage of letters to an Australia Post office for delivery under a bulk discount service or carriage of mail from one document exchange service centre to another.

5 Postal Services Legislation Amendment Bill 2003, Explanatory Memorandum, p. 4.

1.11 The National Competition Council (NCC) examined this issue in its February 1998 review of the Australian Postal Corporation Act.⁶ While not finding evidence to support the claims of cross-subsidisation, the NCC recommended that there be a requirement for detailed auditing and accounting information on Australia Post's activities to provide for transparency of the financial relationships between different elements of its business.

1.12 Proposed Division 2 of Part 4A of the Bill seeks to implement this recommendation by enabling the ACCC to require Australia Post to keep records relating to the financial relationship between parts of Australia Post's business that relate to reserved services and parts that do not. It would also allow the ACCC to prepare and publish reports on such information.

1.13 The proposed amendments in the Bill also provide for the recovery of costs incurred by the ACCC in performing these monitoring functions.

1.14 While noting past concerns about cross-subsidisation, all witnesses acknowledged that there is no evidence of this taking place. Mr Thomas stressed that while 'there is no evidence here that Australia Post is undertaking any cross-subsidisation from its reserve services ... it [the relevant provision in the Bill] is important because it provides greater transparency of Australia Post'.⁷

1.15 However, the Post Office Agents Association Limited (POAAL) was concerned at the possibility that these proposed new requirements would lead to unnecessary duplication of accounting services and that the costs of implementing the requirements would flow to that organisation's members.⁸

1.16 Mr Michael McCloskey, of Australia Post, in addressing issues raised during the hearing, advised the Committee in relation to the costs of the new supervisory roles that:

While there will be some additional costs associated with the proposed supervisory roles of the ACA and the ACCC, these will not be material. ...

Any accounting costs incurred by Australia Post do not have any bearing on the rates of payment to licensees.⁹

1.17 However, in response to further questions on the financial impact on Australia Post of the proposed levy, Mr McCloskey advised that:

The indications in the budget papers that went to the last budget session were that the ACCC's costs would be in the order of \$900,000 in the first

6 National Competition Council, *Review of the Australian Postal Corporation Act*, February 1998.

7 Proof Hansard, 8 August 2003, p. ECITA 30.

8 POAAL, Submission No. 4, p. 4.

9 Proof Hansard, 8 August 2003, p. ECITA 24.

year and \$600,000 in each of the subsequent out years. Insofar as the ACA was concerned, the indication was that the base cost would be around \$2.5 million—I think it was a base cost of \$2.4 million in the first year, going up to \$2.5 million and \$2.6 million in each of the subsequent years. In addition there was an amount of \$2 million in the first year in case the ACA felt they needed to construct a new model for the costing of our CSOs. So all up, taking that exceptional \$2 million out as a once-off and only a possible cost, I think we are looking at around \$3.5 million a year that would be levied from Australia Post on an ongoing basis. We would expect that amount to reduce over time because we would expect that, as the agencies concerned and Post become more familiar with the processes required, the level of effort and input would reduce and therefore the costs would reduce.¹⁰

1.18 Mr McCloskey added that while he did not consider this to be a material cost in the overall scheme of a business the size of Australia Post:

It would affect Australia Post's profit and ultimately the level of return to the shareholder in the form of income tax or dividends.¹¹

1.19 In response to the concerns raised about the potential cost of the proposed monitoring system, Mr Thomas told the Committee that:

... just to be sure about the cost issue, because obviously there is some speculation on exactly what these things are and what they might cost, we have put into place a proposal that will review the costs after 12 months to see whether the cost structure is in fact appropriate.¹²

Operation of Australia Post's reserved service

1.20 Under the current Act, the carriage of letters from small businesses to an aggregation service provider and between the customer of a document exchange service and the document exchange service centre is reserved to Australia Post. As explained in footnote 5, exceptions to the reserved service provide for the carriage of letters by an aggregation service for the purposes of bulk mail rates or by a document exchange service.

1.21 Aggregation services involve the collecting of mail of small businesses, who would not normally qualify for cheaper bulk mail rates, to be aggregated and barcoded to achieve quantities which then qualify for Australia Post's bulk interconnection rates. According to Australia Post's Mr Gary Lee:

Aggregation was implemented by us in July 2000...because it is of benefit to Australia Post and to the community...It is of benefit because it provides us with more mail that we can process efficiently.¹³

10 Proof Hansard, 8 August 2003, p. ECITA 27.

11 Proof Hansard, 8 August 2003, p. ECITA 27.

12 Proof Hansard, 8 August 2003, p. ECITA 28.

13 Proof Hansard, 8 August 2003, p. ECITA 25.

1.22 Document exchange services provide for the delivery of mail between one document exchange service and another and provide a means to exchange documents between members of the services, such as groups of professions. Mr Lee advised that:

Document exchanges have been in existence for a long time... we estimate that approximately 35 million to 40 million pieces of reserved mail are carried [through document exchanges] at the moment. Let me put that into the context of four billion plus pieces of mail that we carry per annum. We have observed this activity continuously and we have not seen any major expansion of the activity which would cause any concern to us.¹⁴

1.23 Mr Lee stressed that the legislation is designed to correct anomalies in the current law. The Explanatory Memorandum notes that at least one document exchange service has been collecting and delivering mail for its customers,¹⁵ which is considered to be 'a longstanding and integral part of these businesses and that its prohibition could impinge on their ongoing viability'.¹⁶ DCITA confirmed, however, that such activities are currently illegal.¹⁷ Similarly, an 'aggregator can deliver the mail legally to Australia Post but the person who wishes to aggregate can deliver the mail themselves to the aggregator but cannot call on a courier or the aggregator to pick up their mail and deliver it into that system'.¹⁸ The purpose of proposed subsection 30(1B) is to legitimise existing practices, which has the explicit support of Australia Post.

1.24 Both the CEPU and POAAL expressed concerns about this proposal, while acknowledging that there are safeguards in the Bill to restrict the operations of such services.

1.25 In its submission, the CEPU expressed concern that extending the legal rights of certain categories of postal service providers could impact on Australia Post's financial standing and the integrity of its reserved service operations.¹⁹ It sees the legalising of activities which are currently illegal as eroding the reserve service²⁰ and called for the introduction of a regime of penalties in the Act, similar to that applying to the telecommunications sector, for breaches of the legislation.

1.26 POAAL is concerned that licensed post offices will lose the business of small business customers, which would impact adversely on their financial viability. It called for the legislation to be strengthened to ensure strict adherence to guidelines

14 Proof Hansard, 8 August 2003, p. ECITA26.

15 Explanatory Memorandum, p. 8.

16 Explanatory Memorandum, p. 8.

17 Proof Hansard, 8 August 2003, p. ECITA4.

18 Proof Hansard, 8 August 2003, p. ECITA26.

19 CEPU Submission No. 2, p. 2.

20 Proof Hansard, 8 August 2003, p. ECITA6.

established for the use of document exchange services collecting mail, and for the legislation to include specific penalties to act as a proper deterrent to abuses.²¹

1.27 In response to the issue of penalties, Mr Thomas noted that should there be ‘a breach of the arrangements that are in this bill, it would be within Australia Post’s ability to take action in the Federal Court. Penalties could be extracted through that process’.²²

1.28 On the issue of monitoring possible breaches of reserved services, Mr Lee noted that:

We do not have a formal monitoring process in place. I would refer to how we manage this process in terms of the act as it stands today. Typically, through our employees, through our agents, through our retail outlets, we fairly quickly find examples where mail is being carried which we believe to be mail reserved to Australia Post. In terms of the DX situation ... if a document exchange were to expand by means of some breach of the regulation as it is proposed, we are confident that that would become very obvious to us very quickly. They would have to advertise to seek members. There are a number of ways in which we would pick up that information, and as soon as we became aware of that we would have immediate recourse to the courts to stop it.²³

1.29 In addressing specific issues raised during the hearing, Mr McCloskey stated that:

The current practices of DX operators do not impact on Post’s business and we are in agreement with the need to properly define them through legislation. Insofar as practical implementation is concerned, a number of key safeguards suggested by Post have been included in the bill to ensure that there are no unintended wider impacts. Accordingly, Post is in a position to endorse the measures as proposed.²⁴

Oversight of Australia Post’s performance standards and service improvement plans

1.30 Division 1 of new Part 4A provides for the ACA to monitor and report on the supply of postal services by Australia Post. Currently, the Auditor-General is required to prepare a performance report in relation to Australia Post’s performance against its prescribed performance standards.

1.31 The proposed provisions allow for prescribed performance standards to be met by Australia Post and for the preparation of service improvement plans in the

21 Proof Hansard, 8 August 2003, p. ECITA 16.

22 Proof Hansard, 8 August 2003, p. ECITA 28.

23 Proof Hansard, 8 August 2003, p. ECITA 29.

24 Proof Hansard, 8 August 2003, p. ECITA 24.

event that ACA reports that Australia Post has not met a prescribed performance standard.

1.32 Division 1 also provides for the ACA to calculate the cost to Australia Post of carrying out the community service obligations (CSOs) for the financial year. The ACA must report to the Minister and Australia Post on the costs it has calculated for the financial year. Currently Australia Post calculates these costings and there is no independent costing.²⁵

1.33 The CEPU considers that these new requirements will involve some duplication of functions and that the cost of such duplication will be borne by the public.²⁶

1.34 This is a view shared by POAAL who noted that costs have a tendency to drift downwards and may impact on members' commissions through fees, discounts and the like from Australia Post.²⁷

1.35 POAAL also raised its concern that the introduction of the new methodology to calculate CSOs was in preparation for the deregulation of Australia Post. It sought an undertaking that the organisation be consulted in the CSO process as the CSOs impact directly on its members.²⁸

1.36 While welcoming the creation of a transparent process of accountability for Australia Post, POAAL did note its concern that Australia Post and the ACA report to the same Minister. In its view, this could give the appearance of conflict and a lack of transparency.²⁹ Mr McCloskey stated that Australia Post does not have any concerns in this respect³⁰ while Mr Thomas told the Committee that:

Part of the thinking behind the greater role of the ACA was to allow them to have a fuller view of the entire performance capacity of Australia Post. It goes well beyond what the Audit Office current does in terms of their assessment of performance standards. The thinking was that it would be better to have it housed within one body that would be looking at the systemic operation of Australia. Therefore, rather than having two bodies looking at pieces of the performance, we would have it within one function that was looking at a bigger picture anyway as part of the bill process.³¹

25 Explanatory Memorandum, p. 12.

26 CEPU Submission No. 2, p. 3.

27 Proof Hansard, 8 August 2003, p. ECITA 17.

28 Proof Hansard, 8 August 2003, p. ECITA 16.

29 POAAL Submission No. 4, p. 7; Proof Hansard, 8 August 2003, p. ECITA 16.

30 Proof Hansard, 8 August 2003, p. ECITA 30.

31 Proof Hansard, 8 August 2003, p. ECITA 30.

Summary and Recommendation

1.37 The Committee believes that it is important that the provisions in the Bill be implemented as proposed. DCITA's Mrs Jane Hanna noted that 'the main thrust of the bill is to try to inject some independent oversight of Post'.³² Australia Post's reserved service is a monopoly, albeit one that is government owned and operated. In the absence of market forces to regulate Australia Post's activities the Committee acknowledges that the Government is duty bound to implement a system of independent scrutiny of the company's activities as a means of assuring the public, the Parliament, and its potential competitors that the company is operating within acceptable bounds. The scrutiny is a cost that must be borne in the interests of transparency, and the Committee accepts that the ACCC and the ACA are the appropriate agencies to perform the important monitoring tasks, given their related expertise in the telecommunications field.

1.38 The Committee also considers that it is unacceptable for the Government to be seen to 'turn a blind eye' to the illegal operations of aggregation and document exchange services. Strict enforcement is equally unacceptable. The legislation is not, as the CEPU would argue, an attempt to deregulate by stealth – although it is clear that the union is philosophically opposed to any market liberalisation which it suspects might affect the interests of its members working within Australia Post. The operations of the aggregators and document exchange services are complementary to Australia Post, not in competition. Since their inception they have grown to play an important and legitimate role in the postal services market and they should be relieved of the uncertainty in their business operations that is associated with their current status. The Committee is reassured that the Bill contains appropriate safeguards to ensure that there are no unintended consequences that might otherwise arise.

1.39 Accordingly, the Committee recommends:

That the Postal Services Legislation Amendment Bill 2003 be agreed to without amendment.

Senator Alan Eggleston
Chair

32 Proof Hansard, 8 August 2003, p. ECITA 4

LABOR SENATORS' DISSENTING REPORT POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003

1.1 The Postal Services Legislation Amendment Bill 2003 aims to provide greater consumer and social benefits through independent oversight of Australia Post's service performance and operational activities and legitimising existing practices in the postal services market.

1.2 Labor Senators support the minor components of this Bill but have serious reservations about the measures to deregulate aspects of Australia Post's services.

1.3 Labor Senators dissent from the recommendation of the Government majority on the Committee that the Postal Services Legislation Amendment Bill 2003 be agreed to without amendment.

1.4 Labor Senators note the Government's proposals for major reform of regulatory processes in the communications sector, including the prospective merger of the Australian Communications Authority and the Australian Broadcasting Authority. They therefore question the necessity for this Bill to proceed at this time. A holistic review of the regulation of the postal services market would be more sensible than the current piecemeal approach.

1.5 Further, according to evidence given to the Committee by officers of the Department of Communications, Information Technology and the Arts, the provisions in the Bill intended to improve transparency in Australia Post's operations are largely in response to representations from the newsagents' lobby about possible cross-subsidisation, which all parties agree are unfounded.

1.6 Labor Senators are also concerned that this legislation may be part of a process of deregulation of the postal services sector, which, once started, cannot be easily reversed. Australia Post's legislated reserved services are in the public interest so as to ensure the maintenance of an efficient and affordable basic postal service. Any undermining of these reserved services will ultimately affect Australia Post's ability to cross-subsidise its postal services to less economically viable areas.

1.7 In evidence to the Committee, the CEPU stated that:

'The legislation ... may seem relatively innocuous compared to the more far reaching directory provisions of the earlier bill ... but there can be no doubt about its overall thrust or the direction in which it is headed. It has two main effects: it legalises activities which are at present illegal, eroding the reserved service, and it sets up part of the regulatory machinery that will be needed for further market liberalisation. It takes a step along the deregulatory road and paves the way for further steps'.¹

1.8 POAAL also expressed similar concerns in its submission² and in its oral evidence. POAAL stated that the proposed role for the Australian Communications Authority (ACA) in monitoring and reporting on Australia Post's performance, and

¹ Proof Hansard, 8 August 2003, p. ECITA 8.

² POAAL Submission No. 4, p.6; Proof Hansard, 8 August 2003, p. ECITA 19.

assuming responsibility for the costing of postal community service obligations (CSOs), was 'as a foot in the door towards deregulation'.³

1.9 Labor Senators are also concerned about the transfer of the monitoring role currently performed by the Australian National Audit Office (ANAO) to the ACA. We believe that the ANAO has a longstanding record of providing effective, independent oversight of Australia Post, on which the Parliament places a high value. The efficacy of the ACA's role in relation to monitoring the telecommunications sector has been called into question in recent rounds of Senate Estimates proceedings.

1.10 On the basis of relatively unhelpful responses to questions asked at the hearing, we are also concerned about the amount of information that the ACA will make publicly available in future, for example in relation to the costing of the CSOs.

1.11 Further, Labor Senators are concerned about the possible impact on Australia Post's profitability associated with the costs of introducing the new regulatory system recovered from Australia Post by way of an annual levy.

1.12 Initially, Australia Post's Mr McCloskey, told the Committee that 'while there will be some additional costs associated with the proposed supervisory roles of the ACA and the ACCC, these will not be material'.⁴ However, on further questioning about the financial impact of the Bill, Mr McCloskey advised that an amount of around \$3.5 million a year would be levied from Australia Post on an ongoing basis. The Bill also would allow for an amount of \$2 million for the ACA to perform its CSO oversight functions. Mr McCloskey advised that this sum 'would affect our profit and ultimately the level of return to the shareholder in the form of income tax or dividends'.⁵

1.13 Labor Senators are concerned that the Bill does not allow for any penalties for breaches of the proposed legislation in regards to document exchange and aggregation services.

1.14 One of the stated objectives of the Bill is to legitimise longstanding activities in the document exchange and aggregation services area, where private providers have offered a service to their members 'which is technically reserved to Australia Post' and therefore illegal.⁶ The proposed amendments will legitimise this activity and will also establish strict guidelines for the performance of the activity. While recognising that Australia Post can take action in the Federal Court, there is no allowance for penalties for breach of the legislation.

1.15 Labor Senators consider that the proposed legislation should include specific penalties for the breach of the provisions to act as a proper deterrent to unlawful operators, which are broadly in line with penalties applying in the telecommunications sector.

1.16 The CEPU were highly concerned about the overall deregulatory agenda of the Bill:

³ Proof Hansard, 8 August 2003, p. ECITA 19.

⁴ Proof Hansard, 8 August 2003, p. ECITA 21.

⁵ Proof Hansard, 8 August 2003, p. ECITA 27.

⁶ Proof Hansard, 8 August 2003, p. ECITA 24.

‘In our view, it does nothing to benefit or support Australia Post. It does next to nothing to benefit or support Australian households in terms of improving their postal services. What it does do is legalise the transfer of part of Australia Post’s market to private sector operators. At the same time, these operators will have no community service obligations and no mandated service standards to meet. Quite frankly, it is a bit of a gift’.⁷

1.17 Labor Senators do not find convincing the evidence of Australia Post that there is no need for a formal monitoring process within Australia Post to detect breaches of the legislation by unlawful operators. Given the importance of the financial viability of its reserved services, Labor Senators believe Australia Post must remain alert to possible breaches of the law.

DOCUMENT EXCHANGE AND AGGREGATION SERVICES

2.1 Document exchange and aggregation services provide alternative private postal services to businesses and in particular small businesses.

2.2 Aggregation services aggregate and bar code the mail of small mail generators to enable them to qualify for the bulk mail discounts offered by Australia Post for volume based, bar coded lodgements of mail. Document exchange services provide time critical deliveries of specialised documents on behalf of professionals, such as doctors or lawyers.

2.3 Under the current legislation, the carriage of letters from small businesses to the aggregation service is reserved to Australia Post. This Bill contains provisions to amend the bulk mail exception in the Act to include the carriage of letters from the customer to the aggregator.

2.4 Document exchange provisions in the current Act allow for the carriage of mail from one document exchange centre to another or within a document service centre. This carriage of mail however, is still reserved to Australia Post. This Bill contains provisions to remove this carriage from the reserved service and legitimise current practices.

2.5 The Bill contains some conditions that must be met by the document exchange service and its members including requirements that members must choose to be members, pay a fee for the service, be given an identifier by the service and that the document exchange service provider must have provided a separate receptacle for each member to lodge and collect letters.

2.6 The concerns raised in the submissions to the Senate Inquiry and at the Senate Hearing in relation to aggregation and document exchange services are centred around the fact that this Bill will essentially legalise activities that are presently illegal, thereby eroding the reserve service and setting up part of a regulatory machine that will be needed for further market liberalisation.

2.7 In evidence to the Committee, the CEPU stated:

“You have a weird process here: you have an illegal activity which is being countenanced and then you have the legislation coming in to legalise it. What

⁷ Proof Hansard, 8 August 2003, p. ECITA 8.

is to stop more illegal activities occurring in order to further what we know is the government's deregulatory agenda and then the government coming in and saying, 'We will fix that up, too'?"⁸

2.8 While the Committee heard that legitimising this activity would have no impact on Australia Post's business, there seems to be a level of uncertainty in how the actual monitoring of these services would be carried out to ensure that they were acting under the conditions of the Bill.

2.9 However, the main issue seems to be that legitimising services provided by aggregation and document exchange providers potentially paves the way for the deregulation of Australia Post's reserved services.

Ms Eason from, the CEPU stated:

'As I said, the union's view is that the whole process is a form of deregulation by stealth and therefore should be regarded unfavourably by the Senate. But if this legislation were to be proceeding and getting enough support to go through then certainly we would think that you should be looking at mechanisms to tighten the penalties for breaches of the legislation'.⁹

COMPETITION REFORMS AND THE ROLE OF THE ACCC AND THE ACA

3.1 Currently, the Act provides for regulations to enable the Australian Competition and Consumer Council (ACCC) to inquire into disputes about the rate of reduction offered by Australia Post to its bulk mail customers.

3.2 The Government considers this provision is too narrow given that Australia Post's monopoly over the carriage of certain letters and its legislated power to determine the terms and conditions under which services are provided in the absence of agreement between the customer and Australia Post.

3.3 Therefore, this Bill seeks to extend the powers of the ACCC to keep detailed accounting and auditing information about Australia Post's reserved services. These provisions are designed to ensure that Australia Post is not cross-subsidising its competitive services from its core reserved services to the detriment of competitors to its non-competitive services, such as newsagents. This is designed to provide for greater accounting transparency for Australia Post.

3.4 This Bill also contains measures to allow the ACCC to require Australia Post to keep records about the financial relationship between different parts of Australia Post business and to publish reports. The amendments will also facilitate the ACCC's task of reviewing any proposed increases in the prices of Australia Post reserve services, such as the standard postal rate.

3.5 The intention of these amendments are to address concerns of competing businesses, such as newsagents, that Australia Post is cross subsidising its competitive services with revenue from its reserved, monopoly services.

3.6 The aim is to ensure greater transparency in Australia Post's accounts and identify any areas of cross subsidisation. However, there is a level of concern over

⁸ Proof Hansard, 8 August 2003, p. ECITA 10.

⁹ Proof Hansard, 8 August 2003, p. ECITA 10.

the duplication of accounting activities, as the ACCC would be collecting much the same information that Australia Post already collects.

3.7 There is also a concern of the ability of the ACCC to impose new accounting methods and to ensure there is no cross subsidisation, particularly as it was found by the National Competition Council that there is no evidence of any cross subsidisation occurring. It is therefore essential to determine whether this duplication of activity between Australia Post and the ACCC will have any actual benefit to either Australia Post or the industries in which it operates.

3.8 Some organisations when tabling their concerns over the extension of the ACCC power in the Senate Hearings have sought assurances that of the effects of this Bill would not have any detrimental impact on small business operators running licensed post offices. In particular concerns were expressed that the Bill would not result in any additional costs being passed onto small business operators stemming from the implementation of new accounting methods. Small business operators expressed concern that Australia Post as a result of these reforms might reduce commissions for small business operators of licensed post offices or mail contractors, reduce any customer service, particularly in rural areas, or reduce the range of products and services that are currently available.

3.9 While the role of the ACCC is considered to be generally positive, there are some serious reservations about the role of the Australian Communications Authority (ACA).

3.10 In evidence to the Committee, POAAL stated:

‘Certainly transparency would be extremely useful. We invited a representative of the ACCC to speak at a branch meeting here in Melbourne only last week. One of the points that he made perfectly clear to us is that the ACCC is interested in the wider public good, which I think is a wonderful expression. I have no problems at all with the ACCC being involved through this legislation. The costs are a different matter, but the actual involvement of the ACCC I support. We do have some problems, as I said, with the ACA because we see that as a foot in the door towards deregulation. We have concerns that both the ACA and Australia Post report to the same minister. We have serious concerns there’.¹⁰

Labor shares these concerns. There is some concern that the ACA has not been sufficiently independent of the Minister in its presentation of telecommunications performance reports.

3.11 The ACA will effectively take over the monitoring of Australia Posts prescribed service standards, a function currently performed by the Auditor General.

3.12 The stated aim of the ACA’s role is to provide independent oversight of Australia Posts performance in the supply of postal services and to report on its findings. The ACA will identify any particular or systematic problems in the delivery of services and bring these to the attention of Australia Post and the public.

3.13 The Government considers that the ACA is the most appropriate organisation to carry out these functions because of its current role in relation to oversighting

¹⁰ Proof Hansard, 8 August 2003, p. ECITA 19.

delivery of telecommunications services. Again, Labor Senators remain concerned the ACA is not sufficiently independent of the Minister to perform these functions.

3.14 The Bill will also amend the Act to provide the Minister with discretion to exempt Australia Post, in certain circumstances, from the requirements to prepare service improvement plans when it has failed to meet minimum standards.

3.15 Again there are some real concerns with the proposed role of the ACA including the fact that Australia Post and the ACA report to the same Minister.

3.16 In addition, the ACA is considered to be an organisation that has been captured by the Government and has been criticised for publishing overly positive reports on the telecommunications industry in the lead up to the Government's push for the privatisation of Telstra. The concern is that the ACA's Australia Post role would aid any further Government's attempts to deregulate Australia Post.

3.17 A further concern with any extension of ACCC and ACA regulatory powers is that the amendments may be designed to appease Australia Post's competitors, such as newsagents, rather than to implement any real improvements or strengthening of Australia Post.

3.18 A further concern about these regulatory provisions are that in order to cover the costs of the ACCC and the ACA there would be the imposition of new levies on Australia Post, which would undoubtedly be incurred by the public whether through increased postal costs or reduced Government dividends.

3.19 In evidence to the Committee, the CEPU stated:

"The new functions given to the ACCC and the ACA will involve new costs which will be incurred by the public, one way or another, for no certain benefit to the community. They appear to be designed to give comfort to Post's competitors, such as newsagents or aggregators, rather than to help improve and strengthen this essential service. In the meantime, they lay the ground for a more extensive deregulation of the postal market."¹¹

CONCLUSION

4.1 In summary, Labor Senators acknowledge evidence given to the Committee that the legislation represents 'a kind of halfway house between ... a more fully regulated liberalised market and the current situation'.¹² Both the CEPU and the POAAL used the same expression in describing the Bill: 'neither fish nor fowl'.

4.2 In evidence to the Committee the CEPU stated:

'We have ... a kind of hybrid: it is neither fish nor fowl, really. It gives a special kind of leg-up to some people who are already operating but it does not put any obligations on them so it does not spread the CSO across the whole of the industry or put it on budget, although I think that is what the ACA's costings will facilitate. It also does not have any mechanisms for independent charges being brought against people who are in breach of the act. It is still up to Australia Post to seek relief, and obviously they are under political pressure not to do that if I read between the lines in the explanatory

¹¹ Proof Hansard, 8 August 2003, p. ECITA 8.

¹² Proof Hansard, 8 August 2003, p. ECITA 10.

memorandum correctly. They are under pressure, I presume, to countenance activities which are in line with government policy even if the government cannot get that policy passed through the parliament and legalise it".¹³

4.3 Labor Senators believe that the legislation should not proceed until Government proposals for the regulation of the wider communications sector have been examined in detail.

RECOMMENDATION

That Labor Senators recommend:

That the Postal Services Legislation Amendment Bill 2003 be amended to remove the provisions legitimising document exchange and aggregation services and the provisions providing the ACA with a regulatory role in regards to Australia Post services.

Senator Sue Mackay
Senator for Tasmania

Senator Kate Lundy
Senator for the ACT

¹³ Proof Hansard, 8 August 2003, p. ECITA 10.

DEMOCRAT SENATOR'S SUPPLEMENTARY REPORT POSTAL SERVICES LEGISLATION AMENDMENT BILL 2003

The import of this bill has been summarised in the Committee report. There are two key proposals:

- the ACA and ACCC taking on a regulatory function;
- the aggregation provisions allowing for Australia Post's competitors to undertake these services.

In relation to the proposed role of the ACA, the Democrats are not yet convinced of the need for such a role for the ACA. Before a new regulatory impost of \$3.5 million is imposed on Australia Post (thereby reducing its dividend to taxpayers), a case needs to be made that such a regulatory impost is necessary. The National Competition Council (NCC) examined this issue in its February 1998 review of the Australian Postal Corporation Act.¹ While not finding evidence to support the claims of cross-subsidisation, the NCC recommended that there be a requirement for detailed auditing and accounting information on Australia Post's activities to provide for transparency of the financial relationships between different elements of its business.

The evidence from Australia Post suggests that the ACA oversight of Australia Post will cost upwards of \$2.5 million a year, while ACCC oversight of cross-regulation will cost upwards of \$600,000 a year.

Given no evidence was found by the NCC or submitted by the Government that the current regulatory oversight by the ANAO is failing to identify any improper use of market power by Australia Post, the Democrats question the need for these provisions.

In relation to the aggregation of services proposal, the need for this change to the reserved activities of Australia Post flows, the Government argues, because some commercial operators are doing it now and they are acting illegally. This is an extraordinary justification to be put up for changing of the law. While the Post Office Agents Association Limited (POAAL) argued this change to reserved services would have an adverse effect on its business, Australia Post argued this effect would be minimal, affecting only around 1% of mail carried.

It is disappointing that the Government has failed to fully consult small businesses operating as postal agents before proceeding with this reform. However, as Australia Post is not opposed to the reform, it is difficult to argue against it.

The Democrats will reserve our position on this reform until the Senate debate, allowing the Government to expand in more detail what impact it expects this reform to have on small business operating as postal agents, and the prices they have already paid for the right to operate those businesses.

Senator John Cherry
Democrat member

1 National Competition Council, *Review of the Australian Postal Corporation Act*, February 1998.

Appendix 1

List of Submissions

- 1 Australia Post
- 2 Communications, Electrical and Plumbing Union (CEPU)
- 3 Australian Competition & Consumer Commission (ACCC)
- 4 Post Office Agents Association Limited (POAAL)
- 4A Post Office Agents Association Limited (POAAL)
- 5 Major Mail Users of Australia Limited (MMUAL)
- 6 Australian Communications Authority (ACA)

Appendix 2

Inquiry into the Postal Services Legislation Amendment Bill 2003 Melbourne Program

Date **Friday, 8 August 2003**
Time **9.30 am – 1.00 pm**
Room **Room K**
Address **Parliament House,**
 Spring Street,
 Melbourne

9.30-10.00	Department of Communications, Information Technology and the Arts (DCITA) (Introduction to the Bill) Mr Brenton Thomas, General Manager, Enterprise and Infrastructure Branch Ms Jane Hanna, Manager, Postal Policy
10:00-10.45	Communications, Electrical and Plumbing Union (CEPU) (Submission No. 2) Mr Brian Baulk, Divisional Secretary, Communications Division Ms Rosalind Eason, Senior National Industrial Research Officer
10.45-11.00	<i>Morning Tea</i>
11.00-11.45	Post Office Agents Association Limited (POAAL) (Submission No. 4) Ms McGrath-Kerr, National Chairman Mr Ronald Row, Deputy Chairman, SA/NT Branch
11.45-12.45	Australia Post Mr Michael McCloskey, Corporate Secretary Mr Peter Meehan, Chief Finance Officer Mr Gary Lee, Group Manager Letters and DCITA (Response to matters raised) Mr Brenton Thomas Ms Jane Hanna
1 pm approx	Adjournment

