

CHAPTER 1

INTRODUCTION

The reference

1.1 On 13 August 2003, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Telstra (Transition to Full Private Ownership) Bill 2003 to the Committee for inquiry and report by 30 October 2003.

1.2 The inquiry was specifically advertised twice, initially in all national and major metropolitan newspapers on 20 August and subsequently on or around 17 September 2003 in the regional press that published on a daily basis. Invitations to submit were also placed in *The Australian* on 27 August and 10 September, and on the Committee's webpage. The Committee received 168 submissions, which are listed at Appendix 1.

1.3 The Committee took evidence from 89 witnesses at seven public hearings in Canberra (17 September and 2, 7 and 14 October 2003), Sydney (30 September 2003), Dubbo (1 October 2003) and Nambour (3 October 2003). Details of witnesses who appeared at the public hearings are listed in Appendix 2. In the course of the hearings witnesses tabled a number of documents and other material for the information of the Committee. These exhibits are listed in Appendix 3.

1.4 The Committee expresses its appreciation to all those who made submissions and gave evidence to this inquiry.

The Bill

1.5 The purpose of the Bill is to amend the Telstra Corporation Act 1991 to repeal provisions that require the Commonwealth to retain 50.1% of equity in Telstra, thus enabling the Corporation to become fully privately owned. The Bill sets out arrangements for the conduct of the sale of the Commonwealth's remaining equity in Telstra. It also includes provisions designed to future proof Telstra's services after the sale, especially in regional, rural and remote communities, including a framework for regular independent reviews of the adequacy of regional telecommunications services.¹

Background

1.6 This is the fifth Senate committee inquiry into the privatisation of Telstra. In May 1996, the Government introduced legislation to Parliament to sell one-third of the Commonwealth's equity in Telstra Corporation by means of a share float. The Bill

1 Telstra (Transition to Full Private Ownership) Bill 2003, Explanatory Memorandum, pp. 2-3.

was subsequently referred to the Senate Environment, Recreation, Communications and the Arts References Committee for inquiry. The References Committee conducted an Australia-wide inquiry between May and September 1996 and tabled its report in the Senate on 9 September 1996. The issues relevant to the full privatisation of Telstra were canvassed extensively in that Report.² The Bill was passed by the Senate, with amendment, on 11 December 1996. On the same day the Senate referred to the Economics Legislation Committee the matter of public equity in Telstra as provided for in the Bill. The Bill included an amendment to its commencement provisions which ensured that the resultant Act would not be proclaimed until 1 May 1997. The Committee recommended in March 1997 that the partial sale of Telstra should take place by the issue of ordinary voting shares.³ The one-third sale proceeded in late 1997 and raised \$14.3 billion.

1.7 On 15 March 1998 the Prime Minister, Hon John Howard MP, announced that it was the intention of the Government to seek a mandate at the next federal elections to sell the two-thirds share of Telstra that was still government-owned. The Prime Minister committed the Government to using the bulk of the proceeds from the sale to retire public debt.⁴

1.8 The first *Telstra (Transition to Full Private Ownership) Bill 1998* was introduced in the House of Representatives on 30 March 1998. On 1 April 1998 the Senate referred the Bill to the Environment, Recreation, Communications and the Arts Legislation Committee for inquiry and report. The Committee reported to the Senate on 26 May 1998, recommending that the Bill proceed subject to amendments recommended in its report. The Bill was put to the vote in the Senate on 11 July but it was not passed.

1.9 Prior to the federal elections of 3 October 1998, the Government announced that it was committed to a staged approach to any further privatisation of Telstra. It would first sell a further 16 per cent of its equity in Telstra. It committed itself to legislation to provide that, until an independent inquiry certified that Telstra's service levels were adequate, there would be no further sell down of the government's 51 per cent share.⁵

1.10 On 2 December 1998 the Senate referred the *Telstra (Transition to Full Private Ownership Bill) 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendments Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the

2 Senate Environment, Recreation, Communications and the Arts References Committee. *Telstra: To Sell or not to Sell?* September 1996.

3 Senate Economics Legislation Committee, *Inquiry into Public Equity in Telstra Corporation Ltd*, March 1997.

4 Senate Environment, Recreation, Communications and the Arts Legislation Committee. *Telstra (Transition to Full Private Ownership) Bill 1998*, May 1998, p. 1.

5 Department of the Parliamentary Library, *Telstra Sale: Background and Chronology*, p. 8.

NRS Levy Imposition Amendment Bill 1998 to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report. The Committee reported to the Senate on 8 March 1999 and made six recommendations, including that the Bills should be passed.⁶

1.11 The *Telstra (Further Dilution of Public Ownership) Act 1999* was passed by Parliament on 21 June 1999. The Act authorised the sale of up to 49.9% of the Commonwealth's equity. The sale of a further 16 per cent of Telstra proceeded in 1999, which raised \$16.4 billion.⁷

1.12 On 19 March 2000, the Government announced the establishment of a Telecommunications Service Inquiry (TSI) in order to assess the adequacy of telecommunications services in metropolitan, regional, rural and remote areas of Australia. The TSI was chaired by Mr Tim Besley and made 17 recommendations. The then Minister for Communications, Information and the Arts, Senator the Hon Richard Alston, detailed the Government's response on 15 and 24 May 2001. The Government's response included a \$163.1 million package of measures to improve telecommunications services, including strengthening the Universal Service Obligation (USO) and Customer Service Guarantee (CSG), \$88.2 million to extend mobile telephone coverage, \$3.3 million for satellite handset subsidies, \$50 million for the Internet Assistance Program and \$52.2 million for a National Communications Fund to assist significant telecommunications programs in the education and health services sectors for regional communities.⁸

1.13 On 12 February 2002 the Government affirmed its 1998 election commitment not to proceed with any further sale of Telstra until it was satisfied that arrangements were in place to deliver adequate services to all Australians. On 16 August 2002 Senator Alston established the Regional Telecommunications Inquiry (RTI - chaired by Mr Dick Estens) to assess the adequacy of telecommunications services in regional, rural and remote Australia, and to advise on a number of other policy issues as set out in specified terms of reference. The RTI reported in November 2002 that the Government had responded positively and comprehensively to the findings of the TSI and that arrangements had been put in place that were addressing the community concerns identified in the TSI report. The RTI recommended that Telstra, as the primary universal provider, be required to maintain an ongoing local presence in

6 Senate Environment, Communications, Information Technology and the Arts Legislation Committee. *Telstra (Transition to Full Private Ownership Bill) 1998*, the *Telecommunications (Consumer Protection and Service Standards) Bill 1998*, the *Telecommunications Legislation Amendments Bill 1998*, the *Telecommunications (Universal Service Levy) Amendment Bill 1998* and the *NRS Levy Imposition Amendment Bill 1998*, May 1998.

7 Submission No 135 (Department of Communications, Information Technology and the Arts (DCITA) and Department of Finance and Administration (DOFA)), p. 13.

8 Department of the Parliamentary Library, Bills Digest No. 10 2003-04. *Telstra (Transition to Full Private Ownership) Bill 2003*, August 2003, Appendix A, pp. 13-14.

regional Australia. It was also recommended that regular independent reviews should be conducted into the adequacy of telecommunications in regional Australia.

1.14 The Government responded to the RTI in June 2003, accepting all 39 of its recommendations, and announced that it would invest \$181 million to improve access to telecommunication services, to enhance a range of existing services and to ensure that regional Australia continued to share equitably in the benefits of future technologies.⁹ In its response, a copy of which was tabled at the Committee's Canberra hearing on 2 October 2003, Telstra stated that it welcomed the opportunity to improve telecommunications services for its customers in regional, rural and remote Australia through its response to the RTI. Telstra stated that it would work cooperatively with government agencies to implement the recommendations.¹⁰

Conduct of the inquiry

1.15 The reference from the Selection of Bills Committee, and its subsequent endorsement by the Senate on 13 August, required this Committee to complete its inquiry by 30 October 2003, a period of some 11 weeks. This period was clearly seen by the Senate as a realistic timeframe, given the fact that the sale of Telstra had been the subject of three previous inquiries by the ECITA Committee and at least one other parliamentary inquiry, as described above.

1.16 The Committee first met to consider its approach to the inquiry on 14 August 2003 and it was decided by a consensual decision-making process that the inquiry be advertised in the national and major metropolitan newspapers on 20 August with a deadline for submissions of 17 September, thereby allowing four weeks for submitters to present their views to the Committee.

1.17 It was also agreed that the Chair should issue a media release, to be circulated through the fax-stream of the Minister for Regional Services, Territories and Local Government, to all newsrooms in regional areas to promote the fact that the Committee was seeking submissions on the Bill. As a result, the Chair undertook a number of interviews with regional radio stations about the inquiry, during which he was able to invite submissions from interested parties.

1.18 The decision was also made to seek to conduct hearings in the week commencing 29 September, in locations to be determined once the Committee had the opportunity to examine submissions and to determine what centres had provided a large enough number of submissions of a sufficient quality to warrant the Committee holding a hearing in that location.

9 Department of the Parliamentary Library, Bills Digest No. 10 2003-04, *Telstra (Transition to Full Private Ownership) Bill 2003*, August 2003, pp. 4-5. Submission No 135 (DCITA and DOFA), pp. 28-29.

10 Telstra Response to the Regional Telecommunications Inquiry (Estens Inquiry), September 2003, p. 2.

1.19 At its meeting on 21 August the Committee gave more detailed consideration to its hearing program. The Committee agreed in principle to conduct hearings as follows:

- 30 September in Sydney
- 1 October in Dubbo
- 2 October in Canberra
- 3 October in Brisbane or Melbourne, dependent on submissions.

1.20 At its next private meeting on 11 September, the Committee's Deputy Chair, Senator Mackay, tabled a letter on behalf of Labor Senators drawing attention to the relative paucity of submissions that had been received at that time, despite the deadline for submissions not being for another four days.

1.21 Again consensually, the Committee agreed to extend the submission deadline until 23 September and to advertise the invitation for submissions as soon as practicable in all daily regional newspapers. The Chair was also asked to issue a second media release by fax-stream to all the regional newsrooms to announce the Committee's decision that the deadline for submissions had been extended. As a consequence, the Chair again conducted several interviews about the inquiry with regional radio stations and networks. Bearing in mind the tight timetable, the potential cost, and deadlines for placing advertisements in the print media circulating on less than a daily basis, it was recognised that any wider advertising would likely be impracticable.

1.22 Concerns were raised at that time by the Chair that while the advertising previously placed in the national and major metropolitan newspapers on 20 August gave the contact phone number and email address of the secretariat, it did not contain a street address and fax number for submissions to be sent to the Committee. The secretariat was asked to ensure that these matters were corrected in the second round of advertising.

1.23 The Committee had always recognised that its decision to extend the deadline for submissions meant that it would have to meet by teleconference to finalise the schedule of hearings, as the Senate would not be sitting. Accordingly, the secretariat sought feedback from Committee members about their availability for the earliest time nominated, and received confirmation that all parties could be represented. Appropriate arrangements were made for the teleconference to proceed. Had any of the parties indicated their unavailability at that time, a mutually agreed time later in the day would have been sought.

1.24 Within an hour of the teleconference's scheduled commencement, the secretariat was informed that the nominated ALP representative was no longer available. The Chair was advised immediately and he resolved that the meeting should proceed because a quorum of four members of the Committee had made arrangements to take part in the teleconference, the difficulty of arranging another teleconference with busy senators and the need to finalise a proposed schedule of hearings. The

teleconference duly took place, with it being clearly understood that Labor members would be consulted in relation to any decisions that were taken immediately after the conclusion of the teleconference.

1.25 The teleconference agreed to conduct hearings as follows, again on a fully consensual basis:

- 30 September in Sydney
- 1 October in Dubbo
- 2 October in Canberra
- 3 October in Nambour.

It was noted that submitters from other locations could be heard by teleconference.

1.26 It is now a matter of record that those hearings were successfully conducted and that witnesses were included by teleconference from Western Australia and other locations when they had been unable to attend a hearing in person. Three other hearings were held in Canberra, with representatives of a range of Australian Government agencies. The Committee firmly believes that this hearing program was sufficiently comprehensive for it to have heard evidence from a representative cross-section of submitters and opinions held on the Bill. Little new material could be expected to be gained by further hearings.

1.27 The Committee resolved on 18 September to advise several Federal and State parliamentarians, who had written to the Committee to urge that hearings be held in their electorates, that, while the Committee was sympathetic to their view that hearings should be held in regional centres, its decisions on hearing locations were primarily based on the receipt of submissions. The Committee believed that, considering the costs involved, it would be an irresponsible use of public monies for a Senate committee - including the members, the secretariat and Hansard with their attendant staff and recording equipment - to travel to a location from where little or no public interest had been expressed in appearing before the Committee as evidenced by submissions received.

Discussion

1.28 Given that the ALP has seen fit to issue a number of media releases asserting various forms of malfeasance on the Committee's behalf during the course of this inquiry, it wishes to take the opportunity in this report to clarify matters.

1.29 Firstly, in relation to the adequacy of the Committee's advertising of the inquiry, it should be noted that the Committee spent some 18 per cent of its notional annual administrative budget on this one inquiry, a budget it has to share with the ECITA References Committee. The Department of the Senate Committee Office also twice included invitations for submissions in its fortnightly advertisement placed in *The Australian* - on 27 August and 10 September. This inquiry received

168 submissions. The March 1999 inquiry received only 27. That is hardly evidence of a grossly inadequate advertising program.

1.30 Secondly, the Government members of the Committee went out of their way to cooperate with all requests made by either the ALP or Democrat members on the Committee throughout the inquiry: for example, by acceding to the ALP members request for additional advertising in regional newspapers and the Democrat request for a special hearing with officers of the Department of Finance and Administration to discuss the issue of hybrid securities. The Government members, however, declared a halt to further hearings after the scheduled round had been completed because, as stated in para 1.26, it was felt that all relevant issues had been covered in evidence already taken by the Committee and that further hearings could only have the effect of causing unnecessary delay in the tabling of the report and thus the debate in the Senate, not to mention the additional cost such hearings would entail.

1.31 It should be noted that seven hearings were conducted in the course of the inquiry, including two in regional centres, as well as hearing witnesses by teleconference link-up. The 1999 inquiry held two hearings, both in Canberra, with 16 groups of witnesses. By comparison, this inquiry heard from 41 groups of witnesses, including from several private citizens. Finally, the Labor senators are claiming to have initiated the hearings held in regional areas. The Committee's minutes follow the format of the Senate *Journals* and do not summarise discussions in detail. Accordingly they provide no firm guidance in this respect. Suffice to say here that Government senators have a different recollection of discussions than those of the Labor senators.

