

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

6.1 The Committee has concluded that the Bill provides a sound legislative basis for ensuring that all Australians, irrespective of whether they live in an urban, suburban, regional or remote area, will have access to a good level of telecommunications services now and in the future, and supports its passage. Despite suggestions that there is an obvious and necessary nexus between ownership and service quality, the Committee could find no evidence that full privatisation of Telstra would impede the Government's ability to regulate the level of services provided by Telstra. The representatives of Telstra Corporation told the Committee in unequivocal terms that they operate the business in accordance with the law, which would apply irrespective of whether the Government owned none or 20 million shares, and the fact of 50.1 per cent Government ownership does not feature in its decision-making processes. Similarly, the representatives of the Australian Competition and Consumer Commission assured the Committee that the Commission's ability to regulate Telstra effectively does not rely on the Government's majority or part ownership of the company.<sup>1</sup>

6.2 The argument of a nexus all too often came from witnesses who did not appear to have a full understanding of the system of regulation already applying in the telecommunications sector, such as the Universal Service Obligation contained in the *Telecommunications Act 1997* and in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, or the roles of the Australian Communications Authority, the Australian Competition and Consumer Commission, the National Competition Council and the Telecommunications Industry Ombudsman. This lack of knowledge of the regulatory system by the average citizen is understandable given its complexity, but it is a matter of concern to the Committee that misunderstandings based on half-truths have been allowed to flourish in relation to the practical effects of the full privatisation of Telstra. Accordingly, the Committee is recommending that the Government launch an appropriate public awareness program in order to overcome what appear to be false yet relatively well-entrenched beliefs in the community.

6.3 The amount of confusion about the regulatory system included a demonstrated lack of understanding over how laws are made, with various submitters talking as if the hands of future governments were tied which stopped them strengthening consumer safeguards and competition powers if the need was ever seen to arise. The Committee noted that the ultimate accountability of any government to consumers is through the ballot box at elections and is of the opinion that governments ignore public opinion on crucial issues such as telecommunications at their peril.

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1 Mr Ed Willett, Proof Committee Hansard, 14.10.03, p. 24.

6.4 A similar discussion is appropriate in relation to the sale mechanism. The Labor and Democrat members on the Committee sought to imply during the hearings that the provision in the Bill for the possible use of hybrid securities in the sale process was a basis to oppose the sale, apparently on the grounds that retail investors (the so-called ‘mums and dads’) might be excluded. Apart from that contention being highly questionable as a statement of fact, the Bill, of course, does nothing of the sort, but simply provides a platform for the Government to act on whatever advice is contained in the scoping study to be undertaken immediately prior to the launch of the sale process. The Bill does not *prescribe* that hybrid securities must be used; nor does it *proscribe* any option along the debt-equity spectrum. Nothing is ruled in or out.

6.5 While hybrid securities were not a common instrument used in Australia when first suggested for consideration at the time of the initial sale of government shares in Telstra by Senator Harradine (as they similarly were at the time of the second tranche sale), hybrid securities are now a well understood and frequently used tool in the Australian market, particularly in attracting institutional investors. Given the size of any sale of the government 50.1 per cent shareholding, which is estimated at around \$30 billion, Committee members were of the view that it was not unreasonable to anticipate that the Government should be considering a mixture of different options for any sale.

6.6 At the time that the government of the day acts to sell Telstra, it may act on the advice of the scoping study, or reject it and choose to adopt a different approach. In either case, the people of Australia will be able to pass judgement on its actions at the following election. It is illogical to write into the legislation specific provisions which favour one sale process over another, as market conditions change over time and possibly quite rapidly. The ‘good idea’ of 2003 may be financial poison at some stage in the not too distant future.

6.7 The fundamental issue in relation to the Bill’s passage is that the business of government is government, not running businesses in competition with private competitors. The Government is currently both regulator and key shareholder, which holds considerable potential for conflict of interest situations to arise.

6.8 The Bill will enable the key quandary with its current operations to be resolved once and for all – whether Telstra is to be a private company, like any other private company operating under the laws of the land as set by the Parliament, or is it an arm of government performing service delivery according to the whims of the government of the day.

6.9 The Committee considers that many of the concerns expressed by submitters could be met by fine-tuning some of the future proofing recommendations of the RTI (Estens Inquiry) that have been accepted by the Government in this Bill. Concerns were expressed by many submitters that while services might be maintained at adequate levels by today’s standards, they might not keep pace with advances in technology and with the level of services provided to urban communities. Linked to this, the Committee noted concerns that reviews every five years of Telstra’s

performance by the Regional Telecommunications Independent Review Committee (RTIRC) were not regular enough, given the pace of change in telecommunications technology. Finally, the Committee noted the view expressed by some that the RTIRC should have more than an advisory role and that its recommendations should be binding on government.

6.10 Taking account of these concerns, the Committee considers that there would be merit in shortening the review period from five to three years. This would enable the RTIRC to more effectively take into account technological advances in assessing Telstra's performance.

6.11 On the advisory role of the RTIRC, the Committee could not see how this could be altered without the Government effectively surrendering its decision making powers to an unelected body of experts. In its response to recommendation 9.4 of the Estens Inquiry, the Government stated that there would be a requirement for the review reports to be tabled in Parliament and for the Government to prepare a formal, public response to report recommendations. The Committee considers that there might be benefit in governments, if they did not accept particular recommendations, being required to give detailed reasons for their rejection of the recommendation. The Committee notes that this approach was mentioned in the Estens report. In the Committee's view, the inclusion of such a provision would add force to the RTIRC's advice, without compromising the Government's decision making powers.

6.12 Accordingly, the Committee makes the following recommendations:

**Recommendation 1: The Committee recommends that reviews by the Regional Telecommunications Independent Review Committee (RTIRC) into telecommunications in regional, rural and remote parts of Australia be undertaken at least every three rather than every five years.**

**Recommendation 2: The Committee recommends that in the event that a recommendation or recommendations of the RTIC are not accepted by the Minister, the Minister be required to give reasons for the decision.**

**Recommendation 3: The Committee also recommends that the Government launch a public awareness program to improve understanding of the current system of regulation of the telecommunications industry and the rights of consumers under this regulatory regime.**

**Recommendation 4: The Committee reports to the Senate that it has considered the Telstra (Transition to Full Private Ownership) Bill 2003 and recommends that the Bill should proceed.**

**Alan Eggleston  
Chairman**

