

LABOR SENATORS MINORITY REPORT: *KEEP TELSTRA PUBLIC*

CHAPTER 1

INTRODUCTION

Summary of the Bill

1.1 The *Telstra (Transition to Full Private Ownership) Bill 2003* repeals the provisions of the *Telstra Corporation Act 1991* that require the Commonwealth to retain 50.1% of equity in Telstra, enabling Telstra to be fully privatised.

1.2 The Bill allows the timing of the sale to remain open purportedly to maximise the Commonwealth's financial interests. There is no legislative requirement in the Bill preventing any sale of Telstra before regional services levels are "up to scratch" despite the Howard Government's election commitment to that effect. If the Bill is passed, the Coalition Government will be able to sell Telstra whenever it wants to, irrespective of the state of regional services.

1.3 The Bill includes provision for an optional regional licence condition the terms of which are entirely at the discretion of the Minister. This provision cannot be described as "future proofing" as there is no guarantee of any particular level of regional services in this section. There is even no guarantee that Telstra's existing regional service levels will be maintained.

1.4 The Bill requires a review of regional communications every five years by a committee appointed solely by the Minister. There is no requirement for the Minister to do anything with the review other than table it in Parliament and respond to the review as the Minister sees fit. This provision also cannot be described as "future-proofing" as there is no guarantee of any particular level of regional services contained therein.

1.5 The Bill removes the Ministerial Power of Direction over Telstra once the Government share falls below 50 per cent. This removes an important reserve power for the Government to ensure that Telstra acts in the national interest. Despite the fact that this power has never been used, it has always been a significant power in ensuring Telstra's takes the Government's majority ownership seriously.

1.6 Under the Bill, Telstra will cease to be subject to the *Freedom of Information Act* once the Commonwealth no longer has majority ownership of Telstra. A privatised Telstra will not be subject to Senate Estimates hearings and other forms of parliamentary scrutiny which ensure Telstra remains accountable to the Australian

people. Similarly, Telstra will no longer be required to provide their employees with legislated Commonwealth employee standards for long service leave, maternity leave and occupational health and safety. Savings provisions in the Bill only guarantee rights accrued until Telstra ceases to be in majority Government ownership.

1.7 The Bill includes a provision empowering the Government to create and sell “sale- scheme hybrid securities” in the Telstra sale process. These are relatively complex financial instruments with a mixture of debt and equity characteristics likely to appeal to institutional investors. There is no restriction in the legislation as to the amount of equity that may be sold by way of hybrid security. Department of Finance and Administration representatives did confirm that issuing hybrids may have the effect of increasing the government’s net debt position, contradicting the Government’s position that the Telstra sale proceeds will be used to reduce government debt.

1.8 The Bill’s explanatory memorandum assumes a sale cost of between 1.1% and 2% of the final sale price. Assuming the Commonwealth’s remaining share in Telstra is worth \$30 billion, this would mean between \$330 million and \$600 million would be handed to investment bankers and corporate lawyers in any further sale of Telstra.

1.9 In summary, the Bill allows the Commonwealth to sell Telstra without ensuring regional services are up to scratch and without any so called “future-proofing” or guarantee of regional service levels whatsoever. This Bill to sell Telstra is not in the interests of Australians, especially those living in regional areas.

Conduct of the inquiry

1.10 Labor Senators were opposed the exceedingly tight eleven week time frame set aside for this Inquiry. This time frame was instituted at the Government’s behest. Labor believes that the potential sale of Australia’s largest government enterprise requires a Senate committee process that is not hamstrung by an exceedingly tight deadline designed to serve the Government’s political agenda.

1.11 On September 11, 2003, Labor Senator Sue Mackay drew the Committee’s attention to the small number of submissions that had been received. This was due to the tight time frame of around four weeks for submissions and the lack of regional advertising for the Inquiry. As a result of Labor’s intervention the Committee then agreed to extend the deadline for submissions and conduct a further advertising campaign in regional Australia.

1.12 Labor Senators were generally dissatisfied with the Inquiry’s short time frame and the lack of appropriate regional hearings. There were no hearings conducted in Western Australia, South Australia, Tasmania, the Northern Territory, Northern Queensland, and Victoria.

1.13 It is the conclusion of Labor Senators that this Inquiry has been a short, sharp and dirty exercise. Labor Senators have constantly resisted attempts by Government Committee members to steamroll this Bill through the Senate and minimise any

adverse publicity for the Coalition. Government members have made no serious attempt to consider properly the large number of submissions and witnesses who drew the Committee's attention to the serious shortcomings in the Bill. This is evidenced by the fact that the Government's Majority Report has made only one minor recommendation for the Bill which does nothing to alter the substance of the Bill or provide any safeguards for regional Australians who will be adversely affected by the sale of Telstra.

CHAPTER 2

SUMMARY OF EVIDENCE RECEIVED

2.1 Of the 168 submissions received from a wide range of individuals and groups, an overwhelming majority of 137 opposed the Bill. Only six submissions fully supported the Bill. 21 submissions sought changes to the regulatory environment surrounding Telstra and four submissions did not take a position on the Bill. The percentage of submissions opposed to the Bill—around 80%—seems to roughly correlate with opinion polls and surveys documenting community opposition to the further sale of Telstra, particularly in regional Australia.

2.2 The 137 submissions opposed to the Bill included such diverse groups such as: the Local Government Association and Shires Association of NSW; the Combined Pensioners and Superannuants Association of NSW; the Department of Industry and Resources WA; the Australian Consumers Association; the CEPU; the CPSU; the Country Women’s Association of NSW; the South Australian Farmers Federation; the NSW Farmers Association; a State Government Minister and independent regional Members of Federal Parliament; and a large number of ordinary citizens.

2.3 As stated in the Majority Report, most of those opposed to the Bill argued that a fully privatised Telstra would put profits and shareholder value ahead of the interests of consumers, particularly in rural and regional Australia. These submissions linked ownership with control and doubted that future governments could be relied upon to regulate a fully privatised Telstra in the public interest. Many of these submissions confirmed Labor’s fears that a fully privatised Telstra would be a huge private monopoly that would be too powerful for any government to effectively regulate. They agreed with Labor that Telstra would neglect its regional customers and focus on more lucrative metropolitan markets.

2.4 Of the six submissions supporting the Bill one was from the Federal Government, one was from Telstra whose executives could expect significantly higher remuneration in a fully privatised environment, and two were from the investment banks ABN Amro Rothschild and JP Morgan who would stand to profit considerably if they were involved in any further sale of Telstra. Only two of the six submissions supporting the sale of Telstra appeared to come from truly disinterested individuals.

2.5 As stated in the Majority Report Telstra’s competitors, AAPT, Optus, Primus Telecom and Comindico, as well as the Competitive Carriers Coalition and the Australian Telecommunications Users Group (ATUG), had major concerns about Telstra’s market dominance.

2.6 AAPT was concerned that the Bill did not have any focus on improving competition in the Australian telecommunications market¹. Optus also expressed contention that the Bill did not address competition issues adequately². The Competitive Carriers Coalition stated that Telstra's market dominance would be exacerbated by private ownership without any significant changes to Telstra's structure and regulatory arrangements³.

2.7 There was a general concern amongst competitors that turning Telstra into a private monopoly without any competitive reforms, as this Bill allows, would make it even more difficult for competitors to counter Telstra's market dominance. As the Competitive Carriers Coalition notes, "public ownership has provided some limited discipline on Telstra's willingness to exercise its market power to the full extent".⁴

2.8 The National Competition Council also stressed that before privatising a public monopoly like Telstra the Government has an obligation to consider the merits of structural separation formally, which has not occurred.⁵ Many of these submissions expressed a general concern that fully privatising Telstra without addressing some of the structural and regulatory issues associated with Telstra's massive market power will impede competition in the telecommunication's sector.

2.9 Most farming groups submitting to the inquiry expressed concerns that Telstra's services were not yet up to scratch or opposed the sale of Telstra outright. The Howard Government has promised not to sell Telstra until services are up to scratch but there is no caveat in the Bill to this effect. The National Farmers Federation (NFF) stated that there was some way to go before Telstra's services are "up to scratch".⁶ Dick Estens also effectively stated before the Committee that services were not yet "up to scratch".⁷ These expert views contradict a recent statement on August 13 by Prime Minister John Howard, "that people, whatever their views are on the sale of Telstra, they do believe conditions in the bush have got better and that we have got things more or less up to scratch in the bush."⁸

2.10 The Western Australian Farmers Federation (WAFF) complained of poor regional telephone and Internet services and complained the Bill had "scant provisions relating to the adequacy of telecommunications in regional, rural and remote areas of

¹ Mr Havyatt, *Proof Committee Hansard*, 30.9.03, p. 89.

² Submission No. 165, p. 3.

³ Submission No. 52, p. 1-3.

⁴ Submission No. 52, p. 2.

⁵ Mr John Feil, *Proof Committee Hansard*, 14.10.03, p. 2-8.

⁶ Submission No. 155, p. 4.

⁷ Mr Dick Estens, *Proof Committee Hansard*, 1.10.03, p. 38.

⁸ Transcript of the Prime Minister, the Hon John Howard MP, Interview with David Speers, Sky TV, 13.8.03.

Australia”.⁹ The WAFF also stated that a majority of their members surveyed opposed the further sale of Telstra.

2.11 The South Australian Farmers Federation opposed the sale of Telstra outright, stating:

No Government could enter into an agreement with a privatised Telstra that would guarantee rural and regional Australians the level of telecommunications service provision and investment that is required now, and for the future.¹⁰

2.12 The NSW Farmers Association also opposed the legislation on the grounds that the Bill gives no assurance that regional telecommunications services will be future proofed and that a fully privatised Telstra will be “extremely difficult” to regulate.¹¹

2.13 Unions remain overwhelmingly opposed to the sale of Telstra. The CEPU stated that majority public ownership of Telstra will help ensure Telstra behaves in a socially responsible manner. They state that Telstra’s staff and investment cutbacks under the Howard Government and the resulting serious problems with Telstra’s network will only get worse if Telstra is privatised.¹² The CEPU documented Telstra’s staffing levels declining from 76,522 in 1996 to 37,169 in 2003.¹³ Telstra’s capital expenditure peaked in 2000 at well over \$4 billion and is now projected to fall below \$3 billion.¹⁴ The CEPU also considered the regional future proofing provisions in the Bill (the regional licence condition) as, “so qualified as to be virtually meaningless”.¹⁵

2.14 The Majority Report disagrees with the CEPU’s claims that the job cuts and reductions in capital expenditure on infrastructure accompanying partial privatisation had led to a deterioration in customer service and network maintenance. To back this up, the Majority Report claimed that an average 99.06 per cent of all Telstra’s telephone services did not experience a fault over January-August 2003 based on the ACA’s Telecommunications Performance Monitoring Bulletin for the June 2003 quarter which.¹⁶ However, these figures were exposed as a sham during the course of the inquiry. The ACA effectively admitted this 99.06 per cent figure was a monthly average and that an annual average fault-free level would be considerably worse.¹⁷

⁹ Submission No. 136, p. 2-5.

¹⁰ Submission No. 106, p. 1.

¹¹ Submission No. 128, p 2.

¹² Submission No. 119. p. 2.

¹³ Submission No. 119. p. 20.

¹⁴ Submission No. 119. p. 26.

¹⁵ Submission No. 119, p. 3.

¹⁶ Chairs Report, p.9.

¹⁷ Dr Robert Horton, *Proof Committee Hansard*, 30.9.03, p. 27.

2.15 The CEPU NSW Branch drew attention to the serious problems in Telstra's regional network and stated that the "union is of the firm belief that the full privatisation of Telstra will be a disaster for telecommunications services no matter where you live".¹⁸

2.16 Mr Shane Murphy of the CEPU NSW Branch also revealed that Telstra is still installing pair gains, despite Telstra previously telling a Senate Inquiry into the Australian Telecommunications Network that it had ceased doing so.¹⁹ Recommendation 2.7 and 4.2 of the Regional Telecommunications Inquiry called on Telstra to address problems associated with the data-speed inhibiting pair gains technology. At the Canberra hearings, Mr Bill Scales of Telstra was forced to correct the record and admit that Telstra is still installing some pair gains technology.²⁰

2.17 Larissa Andelman of the CPSU stated that, as Telstra would no longer be subject to legislated Commonwealth public service maternity leave provisions, current 12 weeks paid maternity leave entitlement of Telstra employees would be under threat.²¹ Telstra stated in its submission that it was unlikely to change its approach to maternity leave, but this statement provides absolutely no guarantee that a fully privatised Telstra will not seek to downgrade the maternity leave entitlements of Telstra staff.²² Ms Andelman stated:

But what is abundantly clear is that if the bill remains in its current form there will be a loss of entitlements at Telstra.²³

2.18 Consumer groups expressed serious concerns about the Bill. The Australian Consumers' Association was highly critical of the proposed Telstra sale, stating:

The sale will place into private hands an enormously influential player with monopoly dimensions. Telecommunications is a vital national industry, one that delivers an essential and basic service to virtually every Australian. The regulators have had enormous difficulty curbing Telstra while it has been in majority Government ownership. We think that if the fuse of private fiduciary duty is lit on the powder keg of dominant market power, in the incendiary environment of declining levels of competition, significant consumer detriment will explode, harming all consumers, not just those in regional areas.²⁴

¹⁸ Submission no 137, p. 1-4.

¹⁹ Mr Shane Murphy, *Proof Committee Hansard*, 1.10.03, p. 16.

²⁰ Mr Bill Scales, *Proof Committee Hansard*, 1.10.03, p. 52.

²¹ Ms Larissa Andelman, *Proof Committee Hansard*, 30.9.03, p. 34.

²² Submission No. 144, p. 14.

²³ Ms Larissa Andelman, *Proof Committee Hansard*, 30.9.03, p. 35.

²⁴ Submission No. 72, p. 1.

The Australian Consumers' Association called on the Government to put in place more effective accounting separation measures for Telstra, force Telstra to divest itself of its Pay TV interest and HFC cable, and strengthen the ACCC telecommunications regulatory powers as a bare minimum before allowing any privatisation to proceed.

2.19 The Consumers' Federation of Australia pointed out that the existing telecommunications regulatory landscape delivers "often unacceptable consumer outcomes".²⁵

2.20 Teresa Corbin of the Consumers' Telecommunications Network refuted the Government's claims that it is regulation not ownership that will determine Telstra's standard of performance:

Our membership now believes that we need to own Telstra to ensure a reliable and affordable quality of service. There is no evidence that we have found to date that this can be achieved by more stringent regulation of the market.²⁶

Ms Corbin also pointed out that consumers were being forced to abandon their home phones due to spiralling line rental costs under the Howard Government. This was forcing people into a timed call environment through the use of their mobile phones.²⁷

2.21 The Queensland Government submitted its opposition to the sale of Telstra for the following reasons:

The full privatisation of Telstra is not beneficial to Australia for the following reasons:

Telstra provides a national Infrastructure for all Australians;

- it would be detrimental to competition;
- it decreases regulation and creates uncertainty in the market; and
- it puts the Universal Service Regime at serious risk.

The Commonwealth has given the Australian people an undertaking that it will not progress the sale of Telstra until it can certify services are adequate. However, services cannot be considered adequate while there is still inequitable access to telecommunications infrastructure and services across Australia.²⁸

²⁵ Submission No. 129, p. 1.

²⁶ Ms Teresa Corbin, *Proof Committee Hansard*, 30.9.03, p. 60.

²⁷ Ms Teresa Corbin, *Proof Committee Hansard*, 30.9.03, p. 64.

²⁸ Submission No. 156, p. 2.

Queensland Minister Paul Lucas presented to the Committee compelling evidence to the Committee in Nambour that Telstra's regional services were not "up to scratch", providing examples like poor regional mobile phone coverage and slow dial-up Internet speeds. Minister Lucas also stated that while Telstra should not be privatised, if a Government monopoly was to be privatised, it should be structurally separated as has occurred with many electricity companies, formerly owned by state governments.

2.22 A large number of individuals wrote to the Inquiry opposing the sale of Telstra. Mr Steve Olive of Bathurst, NSW, stated:

When you sell Telstra off completely you will be creating Australia's Microsoft - a totally dominant organisation with little regard for community requirements or desire to support areas that don't drive high profit.²⁹

2.23 Mrs Joan Limon of Sunnybrook, Tarago, stated:

If the remainder of Telstra is sold the gap between service in the rural and city areas will widen. I don't want to be a second class citizen as far as technology goes in this country and therefore oppose any further sale of Telstra.³⁰

2.24 Ms Judy Costigan of Noosaville wrote:

Telstra should be obliged to redirect some of its profit back into rural areas which seems to miss out on the many advantages offered to City dwellers. I am a share holder but first and foremost I am a concerned Aussie. Please keep for our future generations the remaining 51% of Telstra.³¹

2.25 Ms Cheryl Arnot of Darwin stated:

All Australians deserve equal access to high quality service in relation to phone and email provisions. There is no way that a private company relying upon sales returns will see it as their duty of care to provide equally to lightly populated areas spread over vast kilometres. Not everyone does, nor does choose to, live on the eastern seaboard where such private enterprises are likely to focus their attention and service provision. Retain what we have remaining in government control, this is an enterprise which should benefit all of the public.³²

2.26 Telstra's submission gave an indication of what the Government could expect from a privately owned Telstra. Telstra stated that it should not be subject to Telstra-specific regulations, despite Telstra holding a monopoly position over Australia's fixed line network:

²⁹ Submission No. 1, p. 1.

³⁰ Submission No. 110, p. 1.

³¹ Submission No. 63, p. 1.

³² Submission No. 28, p. 1.

In this competitive environment it is not only appropriate but also a necessity that Telstra be subject only to industry-based regulation rather than face additional controls and obligations based on ownership. Special regulatory obligations that are not shared by all competitors in the industry would necessarily distort the market and investment. They would inevitably make Telstra less competitive and over time potentially lead to a ‘spiral-down’ of service, competitive pressure and technology innovation to the long-term disadvantage of consumers. It would also directly discriminate against Telstra shareholders.³³

This statement provides further evidence that a fully privatised Telstra would seek to minimise its regulatory obligations. Current Telstra-specific regulations include price controls, untimed local calls, the universal service obligation, and free directory assistance. By suggesting that these regulations are discriminatory Telstra is foreshadowing the possibility that it will use whatever means it has at its disposal to remove these regulations once privatised. Labor Senators note that price controls on our airports were abandoned following their privatisation in 2002.

2.27 Telstra has also stated that any optional regional licence condition imposed on them, “should not be unduly prescriptive or burdensome, and should be broadly compatible with Telstra’s commercial interests”, as stated in the Regional Telecommunications Inquiry recommendation 8.1.³⁴ This statement demonstrates that a fully privatised Telstra will only seek to service regional Australia where it is profitable to do so.

2.28 Appearing before the Committee, Telstra also refused to rule out providing political donations to political parties as a fully privatised company. As one of Australia’s largest companies with over \$20 billion in revenue, and \$3.4 billion in profits, Telstra would be able to wield enormous influence with political parties by way of political donations. Like any private company, a fully privatised Telstra would seek to minimise its regulatory obligations and maximise profitability and shareholder return.

2.29 Some of the most damning evidence regarding the Bill came from the Department of Communications, Information Technology and the Arts (DCITA). Questioning by Labor Senator Sue Mackay revealed that the supposed “future-proofing” mechanisms of the Bill were woefully inadequate, if not non-existent. DCITA confirmed that the make up of the optional regional licence condition was entirely at the discretion of the Minister. DCITA also confirmed there were no targets, benchmarks or standards for regional services in this provision:

Senator MACKAY—So in theory could the Minister state that, for example, as a local regional presence condition, Telstra would have to maintain one

³³ Submission No. 144, p. 6.

³⁴ Submission No. 144, p. 10.

regional shop in Gundagai and one technician in Kalgoorlie? There would be no conflict with the bill as it is currently drafted, in that there is no definition.

Mr Allen (DCITA)—That is correct...³⁵

Under further questioning from Senator Mackay the Department was unable to provide any guarantee for decent regional services under this Bill.³⁶

2.30 Mr Allen of DCITA confirmed that the regional licence condition of the Bill, the supposed “future-proofing” provision, was an entirely optional condition that was entirely at the discretion of the Minister.³⁷

2.31 The Department also confirmed there were no caveats in the Bill that Telstra could not be sold until regional services are “up to scratch”.³⁸

2.32 The Department also stated that it was not the Government’s intention to bring Internet services under the umbrella of the Universal Service Obligation. The Universal Service Obligation ensures that standard telephone and payphone services are reasonably accessible to all Australians on an equitable basis regardless of where they live. If Telstra was fully privatised and had no obligation to provide Internet services reasonably and equitably to regional Australians we can safely assume that regional Australians would be paying more for Internet services and receiving an inferior service, as is often the case now. Once again the Government has shown no desire to “future-proof” the new frontier in telecommunications services—the Internet—and is pushing ahead with the sale of Telstra regardless.

2.33 The Chairman of the Regional Telecommunications Inquiry Dick Estens effectively provided evidence in Dubbo that Telstra’s services were still not up to scratch. When asked by Senator Kate Lundy whether services were up to scratch, Mr Estens said, “there is a raft of funding and expenditure on implementations that need to be done to get to that degree...obviously there will still be some issues out there.”³⁹

2.34 Mr Estens also effectively admitted that his Regional Telecommunications Inquiry Report of last year has already become dated. Under questioning from Senator Cherry, Mr Estens stated that the 19.2kbps minimum data speed in recommendation 4.1 of his report, “has to be lifted”.⁴⁰ Subsequent analysis of the licence condition the Government has implemented in response to this recommendation shows that Telstra will not have to upgrade their whole network to provide universal, immediate access

³⁵ Mr Allen, *Proof Committee Hansard*, 7.10.03, p. 6.

³⁶ *Proof Committee Hansard*, 7.10.03, p. 18-19.

³⁷ Mr Allen, *Proof Committee Hansard*, 7.10.03, p. 6.

³⁸ Mr Cheah, *Proof Committee Hansard*, 7.10.03, p. 4.

³⁹ Mr Estens, *Proof Committee Hansard*, 1.10.03, p. 38.

⁴⁰ Mr Estens, *Proof Committee Hansard*, 1.10.03, p. 35.

to this modest data speed (19.2kbps). Telstra will only have to provide this data speed on request and will be able to avoid doing so if prevented from doing so “by circumstances beyond its control”.⁴¹ This is another telling indication of the Howard Government’s unwillingness to properly regulate Telstra, even when it is majority publicly owned.

2.35 The telecommunications monitoring and reporting role of the Australian Communications Authority was exposed as seriously flawed during Committee hearings, following questioning from Senator Sue Mackay. The Australian Communications Authority’s telecommunications reports are meant to provide some guidance on Telstra’s level of service and are critical to the Telstra sale debate. These Government has previously used them to argue that Telstra’s services are “up to scratch”. During the course of the inquiry it was revealed that some of these reports are seriously misleading. The Network Reliability Framework “percentage of service without a fault” and “percentage service availability” figures released by the Australian Communications Authority have passed off monthly averages as annual averages. This has grossly inflated Telstra’s annual performance levels in these categories and enabled the Government and Telstra to claim that Telstra’s annual network reliability framework figures are above 99%, contradicting anecdotal and union evidence about poor Telstra network reliability levels. Dr Robert Horton of the Australian Communications Authority was honest enough to concede that these figures which are currently presented as a 2003 average should be called a 2003 monthly average, despite some of his staff continuing to argue otherwise.⁴²

2.36 The Australian Communications Authority also claimed that 100% of Telstra payphones were available to make calls in the June 2003 quarter. Questioning of Australian Communications Authority staff revealed that this figure does not refer to full functionality, only the ability to make at least one call of a variety of call types including a 000 emergency call. If the ACA was to use the full functionality test which ensures that consumers can make card and coin calls on a payphone it was revealed that the availability rate is more likely to be around 80%.⁴³

2.37 Labor Senators are of the view that the Australian Communications Authority must take its telecommunications reporting obligations seriously and not put itself in a position where it may be seen to be providing misleading statistical reporting and methodologies favourable to the government of the day. When the Australian Communications Authority’s June 2003 Quarter Bulletin was released the Government was happy to quote the 99.9% network reliability framework figures and 100% payphone availability figures as evidence of “high levels of performance in

⁴¹ Mr Lindsay Tanner, MP, Media Release, *Government Squibs it on key Telstra Recommendation*, 16.10.03.

⁴² *Proof Committee Hansard*, 7.10.03, p. 27-29.

⁴³ *Proof Committee Hansard*, 7.10.03, p. 30.

regional Australia”.⁴⁴ Now that the methodology behind these two figures has been exposed as highly misleading and arguably inaccurate the Government’s claims of high levels of performance in regional Australia cannot be justified.

2.38 Concluding on the evidence presented to the inquiry, Labor Senators are of the view that the great majority of submissions and witnesses provided compelling and irrefutable evidence in opposition to the further sale of Telstra. Three of the six submissions in favour of privatisation were from parties who stand to gain considerable financial benefit from any further sale of Telstra. In summary the majority of the evidence showed that:

- Telstra’s regional services are no way near “up to scratch”
- The Bill provides no guarantees for decent regional telecommunications services
- Monopoly publicly owned services should not be privatised without structural reform
- A fully privatised Telstra would be impossible to regulate in the public interest

⁴⁴ Senator Richard Alston Media Release, Telecommunications report shows continuing high levels of performance in regional Australia, 30.9.03.

CHAPTER 3

SALE SCHEME HYBRID SECURITIES & OTHER FINANCIAL MATTERS

Sale Scheme Hybrid Securities

3.1 A new addition in the Bill is the inclusion of flexible sale schemes, namely in the form of hybrid securities. The inclusion of hybrid securities in the Bill reflects, to some extent the uncertainty surrounding telecommunications stocks since their collapse in 2002, but also indicates that the Government may intend to sell larger tranches of Telstra equity in the future.

3.2 The Bill allows for the issuance of hybrid securities that can be issued on the basis that they will be redeemable in exchange for a share or shares in Telstra. The legislation enables a Commonwealth-owned hybrid issuer company to be established to issue sale scheme hybrid securities. On both these counts the draft legislation provides little detail on the form these hybrids will take or the manner in which these hybrids will be issued or managed by the Commonwealth or a Commonwealth owned issuer company.

3.3 Department of Finance and Administration (DOFA) representatives appeared on one occasion to provide specific responses to questions regarding flexible sale schemes. Their responses to questions regarding the form these hybrids would take, and specific details regarding their issue and management failed to remove Labor's concerns that the Bill allows the Government too much discretion in the conduct of a sale.⁴⁵

3.4 In addition, there were no clear responses as to how hybrids would impact on the budget, both in terms of the additional cost they might incur on the sale and how their issue would impact on the budget bottom line.

3.5 Importantly, however, DOFA did confirm that issuing hybrids would have the effect of increasing the government's net debt position. Labor believes this budget impact to be contrary to the government's stated intention for selling Telstra which is to reduce net debt.

3.6 In addition, using hybrids could result in the Commonwealth retaining ownership of Telstra at the expiry of the conversion period as a holder of Telstra hybrid securities may choose to not convert their instrument to equity at the

⁴⁵ *Proof Committee Hansard*, 17.9.03, p. 1-22.

conclusion of the conversion period. Once again, this reveals that the Howard Government's stated reasons for selling Telstra are being contradicted by this aspect of the Bill.

3.7 Labor Senators also note that there have been previous attempts at using flexible sale schemes in previous Telstra sales, and that on previous occasions, their characteristics proved problematic. No evidence was provided to the Committee to suggest that these problems have been addressed, however the hybrids have made their way into the Bill on this occasion.

3.8 For example, at the time of T2, hybrids were considered but then abandoned for two reasons. Firstly, there was a question as to whether it was considered a borrowing and whether this would be legally permissible; and secondly, the Government had a requirement that they should not adversely impact on the Commonwealth's fiscal position or the net debt position. On both counts, the Government has failed to address these outstanding issues.

3.9 On every occasion that Labor sought to clarify the structure of hybrids and their impact, their 'flexibility' was used to defer their implications for the budget and their apparent conflict with the Government's stated intentions of selling Telstra.

Other Financial Matters

3.10 DOFA confirmed in answers to questions on notice that spending the Telstra sale proceeds on infrastructure would worsen the Budget balance. DOFA has also confirmed it is Government policy to spend any Telstra sale proceeds on reducing Government debt or funding Commonwealth liabilities.⁴⁶

3.11 The Nationals debated spending the Telstra sale proceeds at their recent national conference. The Nationals appear to be unaware that spending the Telstra sale proceeds on regional infrastructure would worsen the budget balance and potentially put the Budget into deficit, something that their Liberal colleagues would be unlikely to countenance. It appears the Nationals have failed to secure either any guarantee for decent regional telecommunications services under the Bill or any guarantee they will be able to spend any Telstra sale proceeds on regional infrastructure or services. The Nationals have gained very little for regional Australia under this Bill other than a fully privatised Telstra that will be able to leave town faster than the banks.

3.12 Labor is not convinced that selling Telstra will benefit the Commonwealth financially. Labor has consistently argued that selling Telstra will have negative consequences for Commonwealth finances. Specifically the reduction in public debt interest will not offset the loss of dividends from Telstra into the medium term. When asked whether it was conceivable that the Commonwealth could end up worse off

⁴⁶ Department of Finance and Administration, *Response to Question on Notice – 7 October Hearings*, 17.10.03.

financially following any further sale of Telstra, Professor Robert Walker from the School of Accounting at the University of New South Wales responded, “yes, absolutely”.⁴⁷ Labor’s Shadow Finance Minister Bob McMullan stated that on August 2003 projections that selling Telstra would, at the very least, blow a \$1.7 billion hole in the budget.⁴⁸ The Government has failed to respond to Labor’s analysis that the Telstra sale would have a negative impact on the Budget in the medium to long term. Telstra delivered around \$1.7 billion in 2002-03 to the Commonwealth in dividends.

⁴⁷ Professor Robert Walker, *Proof Committee Hansard*, 30.9.03, p. 42.

⁴⁸ Bob McMullan, MP, Media Release, *Second Half Result Supports The Case Against Selling Telstra*, 28.8.03.

CHAPTER 4

CONCLUSION: KEEP TELSTRA PUBLIC

4.1 All of the evidence presented to this Inquiry has confirmed Labor's view that Telstra should remain a majority publicly owned company delivering high quality telecommunications services to all Australians.

4.2 Evidence presented to this Committee confirms that regional services are no way near "up to scratch". The Government's own mantra of not privatising Telstra before adequate regional telecommunications levels are in place has not been achieved.

4.3 No cogent arguments have been put forward supporting the privatisation of Telstra during the course of this inquiry.

4.4 A fully privatised Telstra would be a huge private monopoly too powerful for any Government to effectively regulate. Government regulation is no substitute for government ownership in ensuring that Telstra delivers decent telecommunications services to all Australians.

4.5 A fully privatised Telstra would prioritise shareholder value and profitability above all else. Majority public ownership of Telstra ensures Telstra also acts in the public interest and ensures Telstra is accountable to the people of Australia through Parliament, while also providing value to its two million shareholders.

4.6 Under this Bill, Telstra's regional service levels would be entirely at the discretion of the Minister and the government of the day. There are no guarantees whatsoever for future regional service levels in this Bill. There is no "future-proofing" in this Bill other than an optional regional licence condition with no prescribed standards whatsoever and five yearly reports which the Government only has to respond to. A fully privatised Telstra will neglect its regional customers in favour of more lucrative metropolitan markets.

4.7 Labor opposes the privatisation of Telstra under any circumstances, but under this Bill Telstra will be privatised without any substantive changes to its regulatory or structural arrangements. A fully privatised Telstra under this Bill would be a huge private monopoly. It would face little serious competition to its domestic fixed line network.

4.8 Selling Telstra will not benefit the Commonwealth financially. Once Telstra is sold the public dividend, around \$1.7 billion in 2002-03, is lost forever.

4.9 Telstra is critical to our nation's future. It is a key national asset. A privately owned Telstra will neglect its social responsibilities to the detriment of all Australians, especially those in regional Australia. Keeping Telstra in majority public ownership will ensure that all Australians, regardless of where they live, will receive adequate and equitable telecommunications services into the future. Telstra should not be privatised.

RECOMMENDATION

That the Senate oppose the *Telstra (Transition to Full Private Ownership) Bill 2003* outright and refuse to do any deals with the Government on the above Bill or any other bill which will result in Telstra being privatised.

**Senator Sue Mackay
Senator for Tasmania**

**Senator Kate Lundy
Senator for the ACT**

