

The Senate

Environment, Communications,
Information Technology and the Arts
Legislation Committee

Provisions of the Telstra (Transition to
Full Private Ownership) Bill 2003

October 2003

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Senator Bill Heffernan (LP, NSW) to replace Senator Santoro for the inquiry on 1 October 2003

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Senator the Hon Nick Bolkus (ALP, SA)
Senator the Hon Ron Boswell (NATS, QLD)
Senator Bob Brown (AG, TAS)
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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.

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.

CHAPTER 2

SUMMARY OF EVIDENCE RECEIVED

2.1 168 submissions were received from a wide range of individuals and groups, including private citizens, community and consumer organisations, farmer associations, local councils, business groups, trade unions, telecommunication companies, investment managers and governments.

2.2 Views expressed in the submissions and at the hearings ranged from those who were opposed to the full sale of Telstra under any circumstances; those who could accept the sale but only if rural telecommunications were brought up to, and could be guaranteed to be maintained into the future at, standards comparable with those in urban areas; those who felt that structural impediments to competition needed to be removed before Telstra was fully privatised; through to those who considered that the current regulatory regime, enhanced by the future proofing provisions in the Bill, were sufficient to protect consumers and promote competition.

2.3 Most of those opposed to passage of the Bill under any circumstances argued that a fully privatised Telstra would put profits and shareholder value ahead of the interests of consumers, particularly in unprofitable rural and regional Australia. They linked ownership with control and doubted that future governments could be relied upon to regulate a fully privatised Telstra in the public interest. Concerns were also expressed by some about loss of jobs, loss of revenue from dividends and Telstra falling into foreign hands. As well as individual submitters a number of community organisations, such as the Country Women's Association, the Combined Pensioners and Superannuants Association of NSW, the Australian Council of Social Service and the National Rural Health Alliance, as well the Communications, Electrical and Plumbing Union (CPSU) and the Community and Public Sector Union, expressed total opposition to the full sale. The NSW and Queensland Governments also opposed the full sale, as did Mr Peter Andren MP and Mr Tony Windsor MP, the Independent Federal Members for Calare and New England respectively. The position of the Local Government and Shires Associations of NSW was fairly typical of the views of submitters concerned about the impact on rural Australia:

The Associations maintain that service standards have not improved sufficiently to sanction the sale of the remainder of Telstra. We are further concerned that the sale of Telstra will remove political suasion over its conduct and allow it to behave in a monopolistic manner in regional Australia. ... In the absence of incentives or binding obligations, commercial reality would dictate that Telstra withdraw from unprofitable rural and regional markets. ... It would be naive to think that so-called

future proofing strategies will guarantee that relativity with urban services is maintained in perpetuity.¹

2.4 Most farmer and small business groups acknowledged that significant improvement had been made to telecommunications in rural Australia and did not oppose the full sale. They also generally welcomed the funding initiatives of the Government aimed at enhancing telecommunications in rural and regional Australia. They argued, however, that more still needed to be done to bring rural and regional services up to urban standards and to guarantee that this equivalence of standards was maintained into the future. The National Farmers Federation (NFF), the NSW Farmers Association, the Western Australian Farmers Federation, the Central Macquarie Business Group and the Small Enterprise Telecommunications Centre Ltd (SETEL) expressed views along these lines. The NFF stated that levels of service in rural and regional Australia would need to be equivalent to those in urban areas before considering the further sale of Telstra, but stressed that significant progress continued to be made to rectify these inequities.²

2.5 SETEL said that it was important not to ignore the interests of small businesses in urban Australia:

SETEL seeks to ensure that adequate safeguards are in place, at the time of sale of the remaining Commonwealth shareholding in Telstra, to ensure that not only services to small businesses in regional, rural and remote Australia are protected, but that services to those small businesses in urban Australia are also protected.³

2.6 Telstra's competitors, AAPT, Optus, Primus Telecom and Comindico, as well as the Competitive Carriers Coalition and the Australian Telecommunications Users Group (ATUG), were not opposed to full privatisation, but shared concerns about Telstra's market dominance and considered that structural and competition issues needed to be addressed before proceeding. AAPT considered that selling Telstra was very important for creating a competitive environment and that, 'It does not make sense having firms like AAPT competing against the Australian government'. AAPT went on to say that:

Our contention is that the focus needs to be on getting the government out of ownership and focussing on competition. Our concern is that the bill is largely deficient in that regard because it does not actually address what powers and regulators the government might need if competition stalls.⁴

2.7 Optus likewise considered that competition was the key issue:

1 Submission No. 44 (Local Government and Shires Associations of NSW), p. 3.

2 Mr Mark Needham, *Proof Committee Hansard*, 2.10.03, p. 43.

3 Submission No. 139 (SETEL), p. 3.

4 Mr David Havyatt, *Proof Committee Hansard*, 30.9.03, p. 89.

The full privatisation of Telstra is likely to result in Telstra being a more aggressive competitor. While Optus does not consider that this provides a rationale in opposition to full privatisation, it does mean that there needs to be increased focus by the government on both the structure of Telstra, and the operation of the regulatory regime.⁵

2.8 ATUG stated that there had been gains for users from competition and there were important consumer safeguards in place, but suggested that with regard to future proofing governments should be required to give explanations for not accepting particular recommendations arising from the independent review process and that the review period should be less than five years because of the rapid pace of technological change. ATUG did not think that government ownership acted as a brake on Telstra's use of market power and argued for stronger regulatory powers for the Australian Competition and Consumer Commission (ACCC) and the Australian Communications Authority (ACA).⁶

2.9 Unqualified support for the Bill came from JP Morgan Australia and ABN AMRO Rothschild. ABN AMRO Rothschild argued that:

The combination of the full privatisation, a rigorous and transparent regulatory regime and a competitive market place will provide maximum benefits to Australia and its citizens. Australia has the latter two elements: a leading regulatory regime and a highly competitive market by world standards. However the final element is lacking.⁷

2.10 Several individual submitters also supported full privatisation. Mr Olson, a lawyer from Parkes, said that Telstra only began to improve after it was partially privatised, pointing out that governments regulate all the time and do not need to own something to regulate it.⁸

Satisfaction with standards of service and employment implications

2.11 The Committee noted that among those opposed to the full sale of Telstra, either now or into the future, there was general satisfaction with the standard of basic telephone services. Technological advances, however, had created an expectation of more sophisticated services, particularly in relation to mobile telephone coverage and fast internet and broadband access. In respect of internet access the Committee noted a level of dissatisfaction with the 19.2 kbps dial up Internet speed licence condition. The Committee stressed that this was only a minimum baseline, as confirmed by

5 Submission No. 165 (Optus), p. 3.

6 Ms Rosemary Sinclair, *Proof Committee Hansard*, 30.9.03, pp. 54-58.

7 Submission No. 137 (ABN AMRO Rothschild), p. 3.

8 Mr Mark Olson, *Proof Committee Hansard*, 1.10.03, p. 51.

Mr Estens in his evidence, and that it was already being lifted.⁹ With regard to the future proofing provisions of the Bill, concerns seemed to be less with the adequacy of existing and proposed consumer protection safeguards than with the willingness of governments to enforce the rules once Telstra was fully privatised.

2.12 One exception to this general level of satisfaction with the current standard of basic services was the CEPU. The CEPU claimed that job cuts and reductions in capital expenditure on infrastructure that accompanied partial privatisation had led to a deterioration in customer service and network maintenance.¹⁰ The Committee could find no evidence to support the Union's claims. In fact, the ACA's Telecommunications Performance Monitoring Bulletin for the June 2003 quarter shows that rural and remote CSG fault rectification timeframe performance improved during the quarter and continues to exceed 90 per cent. For the period January-August 2003 less than one telephone service in every 100 experienced one or more faults per month and on average 99.06 per cent of all Telstra's telephone services did not experience a fault over that period. Likewise, Telstra's performance against CSG connection timeframes continues to exceed 90 per cent at the national level.¹¹

2.13 On the basis of this evidence, the Committee concluded that the CEPU claims were motivated by concerns over staffing levels rather than over any actual deterioration in services. On the issue of employment, evidence submitted to the Committee indicated that while there had been reductions in Telstra's staff numbers, employment in the telecommunications industry as a whole had increased with the entry of new players into the market and it was highly probable that many of those who had ceased employment with Telstra had been picked up by competitors. According to ABN AMRO Rothschild, '... the employment levels in the Australian telecommunications industry have risen since the partial privatisation of Telstra.'¹² The observation that there had been a transfer of employment, '... is supported by the overall statistics, which show a total increase in employment in the industry overall – the logical conclusion being that to the extent there has been attrition in one entity then those people have either moved or absorbed more employment from other industries'.¹³ ABN AMRO Rothschild was also able to demonstrate from overseas examples that privatisation and competition in the telecommunications industry would be likely to lead to reduced costs and increased profits across the economy, providing an impetus for growth and employment in the economy as a whole.¹⁴

9 Mr Dick Estens, *Proof Committee Hansard*, 1.10.03, p. 35.

10 Submission No. 119 (CEPU), pp.2, 22 and 26-27. Mr Shane Murphy, *Proof Committee Hansard*, 1.10.03, p. 13.

11 ACA, Telecommunications Performance Monitoring Bulletin, Issue 25, p. 3.

12 Submission No. 137 (ABN AMRO Rothschild), p. 16.

13 Mr Steve McCann, *Proof Committee Hansard*, 30.9.03, p. 101.

14 Submission No. 137 (ABN AMRO Rothschild), p. 16.

2.14 The Community and Public Sector Union (CPSU) claimed that under the Bill over 20,000 female Telstra employees would lose paid maternity leave entitlements in a fully privatised Telstra. In its evidence Telstra said that the company had:

... personally communicated to all our staff some weeks ago, when this matter first arose, that it was Telstra's intention to maintain the existing maternity leave arrangements.

Telstra added that this would be for new employees as well as current employees.¹⁵

2.15 Some submitters expressed concern that a fully privatised Telstra would fall into foreign hands. These concerns have no basis in fact and are demonstrative of a general ignorance of the foreign ownership restrictions that apply to Telstra, which are unaltered by this Bill. Under the Bill, Telstra will continue to be an Australian owned and controlled corporation. Aggregate foreign ownership cannot exceed 35 per cent and no foreign individual or entity may own more than 5 per cent of Telstra. Telstra's Head Office and base of operations must remain in Australia and its Chair must be an Australian citizen.¹⁶

The benefits of privatisation

2.16 In their joint submission, DCITA and DOFA said that the Government's stated position in relation to the sale of its remaining shareholding in Telstra is that:

- in a modern and dynamic telecommunications environment, it is competition that drives new services and lower prices, and regulation that provides the safeguards to protect consumers;
- Telstra is subject to an effective regulatory framework that protects consumers and promotes competition. The Government's reform of the telecommunications sector has encouraged greater competition and given Australians access to a wide range of high quality, innovative and low cost telecommunications services;
- the sale of the Government's remaining shareholding will allow it to focus on regulatory issues and continue to allow Telstra to focus on commercial issues;
- it would not proceed with any further sale until it was satisfied that arrangements were in place to deliver adequate services to regional Australia. With the announcement of a comprehensive response to the Regional Telecommunications Inquiry, the Government is now satisfied that arrangements are in place for the delivery of adequate telecommunications services; and

15 Mr Bill Scales, *Proof Committee Hansard*, 2.10.03, p. 54.

16 *Telstra (Transition to Full Private Ownership) Bill 2003*, Second Reading Speech.

- while the Government has decided to proceed with the sale legislation, the timing of any further sale is dependent on equity market conditions. The Government has stated it will only then proceed with the sale when market conditions are conducive to achieving an appropriate return for taxpayers from the sale.

2.17 The Government has also made it clear that it considers it important to remove the conflict of interest whereby it is both regulator of the telecommunications industry and the majority shareholder in the largest player in the industry.¹⁷ The Government has stated that the proceeds of the sale of its remaining shareholding will be used to retire debt and may also be allocated to fund other liabilities. While the Commonwealth will forego future dividends from Telstra, retiring net debt will reduce the cost of debt servicing and free up funds to deliver tax reductions and expenditure on government programs.¹⁸ The Commonwealth will also continue to benefit from taxation payments, by both the company and a larger base of shareholders.¹⁹

2.18 In relation to the issue of whether debt servicing reductions as a result of using the proceeds of the sale of the remainder of Telstra to retire Commonwealth Government debt would exceed the flow of dividends from Telstra that the Government would otherwise have received, Mr Heazlett of DOFA had this to say:

At an initial stage, we have looked at the issue at a simpler level where you can, as a first cut, look to examine the interest rate that is payable on Commonwealth debt. As a clear reference point, you would look to the current 10-year bond rate, which, as I read it off the Reserve Bank site, at the end of September was 5.38 per cent and compare that with the dividend payable on Telstra shares. Based on the ordinary dividends paid in 2002-03, there is a clear benefit of excess of savings on interest over dividends received at those two parameters, but as yet the government has not made a decision to proceed to sale. At the time that we do proceed to sale, we will examine those issues in detail.

Senator Cherry - In the 2003-03 year there was a clear benefit of savings on interest over dividends received. Are you saying that in the current 2002-03 year the interest savings would have exceeded the dividend?

Mr Heazlett - At any share price above \$4.50, the savings based on the 10-year bond rate are in excess of the dividends.²⁰

With regard to whether continuing to receive a dividend stream from Telstra would outweigh debt servicing savings, AAPT has calculated that the Government would

17 Submission No. 135 (DCITA and DOFA), pp. 33-34.

18 Submission No. 135 (DCITA and DOFA), pp. 37.

19 Explanatory Memorandum, p. 4.

20 Mr Mark Heazlett and Senator John Cherry, *Proof Committee Hansard*, 7.10.03, p. 11.

make a net gain of \$235million per annum if all the proceeds of the sale were used to retire debt.²¹

2.19 Another consideration is that using the proceeds to reduce debt will mean securing certain debt servicing savings in place of uncertain dividend streams. ABN AMRO Rothschild identified this and other downstream financial benefits for the Commonwealth:

... the sale of Telstra reduces the risk profile for the Commonwealth Government by replacing uncertain equity income with a certain debt cost reduction. The Commonwealth will continue to share in performance improvements made by Telstra after selldown, through taxation receipts that accompany any higher profitability. ...there is an indirect financial benefit to the Commonwealth through the fact that the privatisation of Telstra is expected to generate ongoing benefits for the overall economy through improved telecommunications performance, feeding into a whole range of other industry sectors that are users of these services and whose real cost will decline and quality of service improve. The improvement in economic performance will in turn be reflected in the overall tax base of the Commonwealth.²²

Similarly, Mr Heazlett told the Committee that:

I would make a comment that, in making judgements about whether you are owning or selling shares in Telstra, an important consideration to keep in mind is that the revenue or the flow of funds that the government may obtain from Telstra through dividends is subject to the commercial risk of Telstra's operations. The money that the government will save from the repayment of debt is risk-free money. If there is an argument that you should retain Telstra because of the flow of future dividends, effectively you are making a judgement that you are punting the taxpayers' resources on a higher risk enterprise than the repayment of debt.²³

2.20 As long as the Commonwealth is required to maintain a 50.1 per cent shareholding in Telstra, it cannot raise new equity capital or introduce a dividend investment plan because that would reduce the Commonwealth's ownership below this level. This inability to access equity markets and consequent need to rely on debt markets adds to the cost of capital and limits the amount of funds that can be returned to shareholders.²⁴ This in turn creates investment uncertainty and has undoubtedly depressed Telstra's share price. The ALP's opposition to the full sale of Telstra has not only cost the Australian taxpayer some \$30 billion, but has reduced the value of

21 Submission No. 114 (AAPT), p. 7.

22 Submission No. 137 (ABN AMRO Rothschild), p. 16.

23 Mr Mark Heazlett, *Proof Committee Hansard*, 7.10.03, p. 13.

24 Submission No. 135 (DCITA and DOFA), pp. 34-35.

the shares and dividend returns of the several million Australians who own shares in Telstra.

2.21 The Committee agrees with the Government that ownership is not the issue and that it is effective regulation that protects consumers and promotes competition. Not only is this the case now, but it has been for many years:

In practical terms, the Government's method of controlling Telstra shifted from direct ownership to the regulatory regime in 1997 when Telstra first gained private shareholders. Government control of Telstra will not be reduced by the proposed change of ownership because the regulatory regime is legislated independent of government ownership of Telstra.²⁵

2.22 Telstra also pointed out that the power of Ministerial direction, which would be repealed by the Bill, had never been used. Telstra went on to say that while it had never been used, there remained a deeply held perception in the investment community that the Government's majority ownership of Telstra allowed the government of the day to influence its direction, and that while there was no substance to this perception, these investor concerns acted as a significant disincentive to invest in Telstra.²⁶

2.23 Telstra has been required to operate on a commercial basis since 1991 when the company was incorporated under the Telstra Corporation Act, and as the telecommunications industry has been progressively liberalised, in an increasingly competitive market. The Committee believes that in such an environment services can most effectively and efficiently be delivered to consumers by privately owned and operated enterprises and that community service obligations can best be met through a combination of regulation and government funding targeted at services that are not commercially sustainable. As AAPT pointed out, 'We have had 100 years of the government trying to run telecommunications'. If people are dissatisfied with the level of service they are receiving, '... they need to turn their minds to what we need to do differently and not to what we need to continue to do'.²⁷ It is the Committee's contention that it is only since the process of privatisation and competition began that Telstra seriously began to put the customer first and to introduce efficiencies that enabled it to offer consumers lower prices and better services.

25 Submission No. 144 (Telstra), pp. 1-2.

26 Submission No. 144 (Telstra), p. 5.

27 Mr David Havyatt, *Proof Committee Transcript*, 30.09.03, p. 89.

CHAPTER 3

THE SALE PROCESS

3.1 The Bill provides for the timing of the sale to remain open and gives the Government the flexibility to use a range of approaches for the sale process, the objective being to maximize the returns from the sale of its remaining holdings. Proceeds from the sale will be used to retire debt and may also be allocated to fund other Commonwealth programs. While the Commonwealth will forego future dividends from Telstra, it will continue to benefit from taxation payments, both by the corporation and by private shareholders. Also, by retiring debt the Commonwealth will save an estimated \$3.6 billion a year in interest payments, potentially freeing up extra funding for infrastructure and environmental programs and other priority programs.

3.2 In the case of Telstra Sales 1 and 2, the Government considered, but did not use the option of hybrid securities in addition to the release of ordinary shares. In this Bill the Government has both options and may sell its holding in a single or in several tranches.

3.3 Hybrid securities combine a mixture of debt and equity characteristics. They come in many forms, but broadly speaking they pay a fixed return, like a bond, and have an option to convert into equity, that is shares, of the issuing company. More recent styles of hybrid securities typically are issued at \$100, have a set dividend rate for a five year period and may be ‘reset’ (rolled over on new terms) at the end of that period, or converted into shares or redeemed for cash. The holder can convert into shares at a discount to the current share price, eg 5%. With newer style hybrids, the conversion ratio is usually \$100 worth of shares, not a fixed number of shares for each security, and because of this they do not track the share price. There are, however, many variables on this model, for example whether conversion is optional or mandatory and whether the securities can or cannot be redeemed, and the degree of choice affects the rate of return. Broadly speaking, hybrid securities offer a lower risk investment than shares, with a guaranteed income and protection against falls in the share price.¹

3.4 It is important to note that the Government is simply keeping its options open in order to maximize the return at the time of sale and has made no decisions about the way in which it will structure the sale. The configuration of the sale will be the subject of a scoping study. The definition of ‘hybrid security’ in the Bill is intentionally broad so that if the Government decides that a hybrid security is to be part of the T3 process, an instrument can be designed that fits the needs of the market at the time of the offer.

1 *Hybrid Securities: A blend of shares and bonds*, Australian Stock Exchange. *Fundraising by using hybrid securities and on-sale of securities*, Penny Grau, Partner, Clayton Utz.

The T3 sale is scheduled in the budget estimates to commence in October 2005 and may be spread over a number of years. It would not be appropriate for the Bill to lock the government into a particular type of instrument, when the nature of markets and the characteristics of an instrument that would be appropriate could change substantially between now and when the government makes a decision to proceed with the sale. As ABN AMRO Rothschild pointed out:

The use of a hybrid instrument...is really based on tapping those sources of demand to produce the best possible outcome. So the question as to whether or not hybrids should be used in the context of a T3 sell down is really not one that could or should be answered today. It is a question that should be answered at the time of the sell down. Our perspective is that the government should have maximum flexibility to utilise such an instrument if it were decided that that was appropriate. The right forum for that is during the scoping study in relation to a T3 sell down.²

3.5 While under the legislation the Government theoretically could sell the whole of its remaining equity in the form of hybrid securities, Mr Heazlett of DOFA pointed out at the hearing on 17 September that, 'It would be foolish to ignore what was a \$10 billion source of demand in previous share offers. In Telstra 1 and Telstra 2, you had something like \$10 billion subscribed by retail investors. If you are managing an offer, you do not want to turn your back on it'.³ Mr Heazlett also noted that:

Australian retail investors were a fundamentally important part of the success of the T1 and T2 offers. You would not go into a subsequent offering ignoring the fact that they were an important body of investors and that their desires and needs are important in structuring how you go about it.⁴

3.6 These observations were confirmed by the Department in an opening statement at the hearing on 7 October:

In view of the media comment that followed the hearing on the 17th, I would like to affirm for the record that retail will be an important part of any future offering by the Australian government of Telstra shares. We said that at the hearing and I am just affirming that now for the record, given the media coverage.⁵

3.7 The Government's objective with such a large float will be to attract as much demand as possible, which may mean appealing to a market segment that was not previously well established. In other words, were the government to decide to issue

2 Mr Steve McCann, *Proof Committee Hansard*, 30.09.03, p. 94.

3 Mr Mark Heazlett, *Proof Committee Hansard*, 17.09.03, p. 16.

4 Mr Mark Heazlett, *Proof Committee Hansard*, 17.09.03, p. 13.

5 Mr David Yarra, *Proof Committee Hansard*, 7.10.03, p. 2.

hybrid securities, the reason would be to tap into new sources of demand to supplement private shareholdings.

CHAPTER 4

THE BEST WAY TO PROTECT CONSUMERS: REGULATION OR OWNERSHIP?

4.1 Many of the submissions argued that once Telstra is fully privatised it will no longer be committed to maintaining and improving services to regional Australia and that the government will be powerless or lack the political will to compel it to do so. These submitters claimed that only by continuing to have majority ownership of Telstra will the Government have the ability to exercise control over Telstra and ensure that it fulfills its community obligations.

4.2 This view was not shared, however, by most of those directly involved in the industry, either as industry players or as regulators. Amongst this group there was almost universal acknowledgement that ownership had nothing to do with the Government's ability to regulate, and indeed some submitters amongst this group pointed out that the Government would be a more effective and impartial regulator when it was no longer the majority owner and beneficiary from the profits of one of the industry participants. AAPT commented that:

While the Government has appeared to be hands-off in the management of Telstra, there is nevertheless concern among industry participants that telecommunications policy may be unduly influenced by the Government's desire to enhance the price of Telstra shares and to return dividends to Telstra shareholders (including itself) over and above the returns to shareholders of other firms investing in telecommunications.

Opponents of Telstra privatisation argue that a public controlling interest in Telstra is necessary to curb undesirable behaviour of Telstra. Yet there is no evidence that over the last six years the Government had influenced the behaviour of Telstra any more than it has influenced any private sector corporation.

The Government's control of Telstra has been exercised principally through legislation. ...legislation has controlled aspects of Telstra's behaviour (and other carrier's behaviour) such as the ongoing requirement for universal service, customer service guarantees, and some price controls.¹

4.3 While these comments relate principally to competition and carrier access issues, they apply equally to consumer protection.

4.4 In this regard, the Committee noted the general lack of awareness by many private submitters of the extent of government regulation already in place to ensure

1 Submission No. 114 (AAPT), p. 5.

that consumers, no matter where they live, receive an adequate standard of telecommunications services. There was also a tendency by many submitters to fail to recall how things were before the privatisation process began. Again to quote AAPT:

It is now hard to remember the days prior to any liberalisation of the telecommunications regime. In that era Australian business and residential customers were dependent on the service provided by Telecom Australia. They were subjected to a number of incredibly damaging industrial disputes that brought Australian business to a near standstill. They suffered long delays in receiving new and innovative services, and customer service was very poor.²

4.5 There was no effective intervention by government on behalf of consumers in those days, when it fully owned the monopoly telecommunications provider. Telstra seemed only to connect telephones and repair faults when it was good and ready. It was only when the Government decided to move to full privatisation that regulation was introduced to protect consumers, as well as to promote competition which is the subject of the next chapter.

Current consumer safeguards

4.6 Telecommunications legislation currently provides a large array of consumer protection measures. In addition to general consumer protection (general contract law, State and Territory fair trading laws and Part V of the Trade Practices Act), the Telecommunications (CPSS) Act and telecommunications carrier licence conditions provide a range of specific safeguards. As well as these safeguards which apply to all telecommunications service providers, there are a number of Telstra specific regulations.

4.7 Telstra is responsible for providing the Universal Service Obligation (USO) that ensures that all people in Australia have reasonable access, on an equitable basis, to standard telephone services, payphones, prescribed carriage services and digital data services.

4.8 The Network Reliability Framework (NRF) that came into effect in January 2003 requires Telstra to meet performance standards, particularly in relation to multiple faults, for its nearly 8 million residential and small business customers with five lines or less. If the threshold level of multiple faults is breached, Telstra must take action to fix the problem. All breaches must be reported to the ACA and the ACA can direct the remediation of individual services and take enforcement action, including in the Federal Court. Telstra is also required to publicly report every month on the performance of its network, and the ACA can use the data to identify problem areas requiring remediation. Indeed, as a result of the NRF, the ACA has identified 54 exchange service areas (ESAs) throughout the nation (in NSW, Queensland, the Northern Territory, Western Australia, Victoria and Tasmania) in need of

2 Submission No. 114 (AAPT), p. 3.

improvement and plans will be developed to improve their performance. It is expected that work to improve most of the ESAs will be completed by the end of the year and the ACA will monitor and report on Telstra's progress. According to Telstra, 'This activity complements continuing Telstra programs to upgrade its network including a \$231 million Network Reliability Program starting in 2003/04. In 2002/03, Telstra undertook the \$165 million Rural Network Taskforce and began implementing the Network Reliability Framework'.³

4.9 Telstra also has the following obligations in relation to pricing and services for disadvantaged groups:

- for residential customers, a right to untimed local calls for voice and non-voice calls; for business customers, a right to untimed local voice calls;
- price control arrangements for carriage services, content services and facilities supplied by Telstra, including a requirement to have in place a package of measures for low-income consumers; and
- medical priority assistance arrangements, which provide for a priority assistance service to eligible customers who have a diagnosed life-threatening medical condition.

4.10 In addition to the above, all carriers and carrier service providers must comply with the provisions of the Customer Service Guarantee (CSG) scheme. Under the CSG customers are compensated if a provider breaches performance standards in relation to timeliness of new service connections and fault repairs and the keeping of appointments. The CSG also protects residential customers against failure by a provider to provide standard carriage services. The CSG has been kept under regular review and has been improved several times with installation and repair times reduced significantly.

Targeted funding for future proofing

4.11 In addition to consumer safeguards, the Government has embarked on a strategy of targeted funding initiatives to support the development of sustainable improvements in telecommunications services, particularly in rural and regional areas.

4.12 To date, the Government has provided more than \$1 billion to improve communications and information technology infrastructure and services in regional, rural and remote Australia. The principal vehicle for allocating this support has been the Networking the Nation (NTN) program which was established under the first partial sale of Telstra to provide \$250 million over five years.

4.13 A further \$670 million has been provided under the Social Bonus package for a range of initiatives, targeting areas such as alternative network support, extending

3 Telstra Response to the Regional Telecommunications Inquiry (Estens Inquiry) September 2003, p. 3.

mobile phone coverage, supporting local government networks and upgrading services in Australia's most remote areas.

4.14 The Government's response to the Etsens Report includes allocating over \$180 million to a number of initiatives aimed at further improving existing telecommunications services, 'locking in' service improvements and 'future proofing' telecommunications services in regional, rural and remote Australia. The initiatives aim to ensure that improvements to services achieved in recent years are maintained into the future and that regional users share equitably in the benefits of future advances in technology. This blueprint for 'future proofing' includes a National Broadband Strategy with funding of \$142.8 million over four years to provide access to affordable broadband services in regional, rural and remote Australia.⁴

Additional safeguards

4.15 The Bill reflects the Government's ongoing commitment to protect the interests of consumers, competitors and the community generally. In addition to maintaining the consumer regulatory safeguards such as the Universal Service Obligation, the Customer Service Guarantee, price controls and the Network Reliability Framework outlined above, the Bill provides for new safeguards and future proofing for regional Australia, giving effect to the recommendations of the Estens Report.

4.16 In accordance with recommendations 8.1 and 8.2 of the Estens Inquiry, the Government has undertaken to impose a licence condition on Telstra to maintain a local presence in regional, rural and remote Australia, including through developing a local presence plan setting out the range of activities and strategies it will undertake to maintain its local presence in regional areas, and reporting publicly on its achievements against the plan. Specifically, the Bill gives the Minister for Communications, Information Technology and the Arts the power to impose a licence condition requiring Telstra to prepare and implement local presence plans, outlining proposed activities in regional Australia. A provision will be added to the Telecommunications Act to enable the Minister to establish administrative arrangements for the implementation and monitoring of these plans.

4.17 The local presence plan requirements are aimed at ensuring the continuation and further development of such Telstra initiatives as Telstra Country Wide (TCW) which was established to improve the delivery of services to regional, rural and remote Australia. In its response to the Estens Inquiry, Telstra confirmed, 'its commitment to regional, rural and remote Australia and will continue its local presence based on the Telstra Country Wide business model (Recommendation 8.1).

4 Submission No. 135 (DCITA and DOFA), p. 22-26.

Telstra would have no difficulty with a licence condition that has the objective of maintaining the benefits from an ongoing local presence.’⁵

4.18 Telstra Country Wide was launched in June 2000 and is responsible for 5.9 million services with revenue of more than \$5 billion. According to Telstra, ‘Telstra Country Wide has delivered significant and sustainable improvements in communications across Australia and is committed to continuing these gains on behalf of our customers. The key to our progress has been the Telstra Country Wide business model that bases our 35 Area General Managers and their sales and service teams in the communities they serve around Australia’.⁶ Inherent in the TCW concept is the devolution of responsibility to local managers for building business opportunities and understanding and meeting the service requirements of regional customers. During the course of the inquiry a high degree of satisfaction with the Telstra Country Wide business model was evident. Mrs Brown of the Country Women’s Association of NSW, for instance, said at the Sydney hearing, ‘Country Wide had given us back a face ... Country Wide brought back, to a large extent, a local face. I have to say that all their representatives are wonderful people and are willing to backtrack’.⁷

4.19 In line with the recommendation of the Estens Inquiry, the Bill also provides for the establishment of a Regional Telecommunications Independent Review Committee (RTIRC) to review services in regional Australia at least every five years and to report its findings to the Minister. The RTIRC will be tasked with reporting on the extent to which people in regional, rural and remote Australia have equitable access to telecommunications compared with urban areas and with recommending to the Minister whether action should be taken to improve equitable access. Reviews must include public consultation with people in regional, rural and remote areas. If the RTIRC does recommend particular actions, the Minister will be required to issue a statement announcing the Government’s response. This will ensure that the Commonwealth responds to recommendations and justifies its approach to regional, rural and remote Australia.⁸

4.20 Governments at all levels – federal, state and local – regulate the activities of privately owned companies in the public interest and Telstra is no different. In fact, as explained above, the current Bill strengthens the capacity of the government to regulate Telstra by enabling the Minister to include specific conditions in Telstra’s licence and by providing a regular review and reporting system on its performance. Some submitters argued that the Bill should not be passed until a much more extensive range of regulations was in place. This assumes that once Telstra is fully privatised the Government will be powerless to introduce new laws and regulations

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

6 Telstra webpage.

7 Mrs Margaret Brown, *Proof Committee Hansard*, 30.09.03, p. 30.

8 Explanatory Memorandum, pp. 18-19.

should the need arise. Some of the same submitters made the point that laws and regulations passed by this Government will not be binding on future governments and could be changed. Existing regulation need not, of course, remain static and future governments can enhance it as circumstances require, for example by expanding the USO to include a requirement to introduce technological upgrades.

4.21 Indeed, the Committee would contend that the Government would be better able and more willing to regulate a corporation which it did not own than one it did. By privatising Telstra the inherent conflict between the government being both owner and regulator will be removed. In a free market Telstra will be just one among a number of private companies, required to compete for customers and meet certain standards, no longer owned by a regulator with a vested interest in its profitability. As long as Telstra remains a state owned enterprise there will always be the temptation for future governments to shift the regulatory balance away from protecting consumers to maximising revenue streams from this huge asset. The consumers who would be most vulnerable in this situation would be those living in rural Australia. The Committee agrees with ABN AMRO Rothschild that not only is regulation not dependent on ownership, but it can actually impede effective regulation:

The privatisation of Telstra, which, of course, is partly privatised already, and the further sell down of Telstra is an independent observation to the regulatory environment. It does not impede at all the government's ability to regulate. Arguably, to reduce the removal of a conflict actually improves the government's ability to regulate.⁹

4.22 Some submitters, while not unhappy with the level of existing and proposed consumer safeguards, were sceptical about the willingness of governments of any persuasion to effectively regulate what would be the country's largest and arguably most powerful privately owned corporation. The Committee took the view that the public would not accept sub standard telecommunication services and that no government would be prepared to risk losing voter support by failing to enforce regulations, especially as it no longer had a stake in Telstra's profitability or revenues.

4.23 The claim was also made that initiatives such as Telstra Country Wide were simply a marketing ploy to win public support for full privatisation and that Telstra could not be relied upon to continue with it once it was fully privatised. In its evidence to the Committee, Telstra said that TCW was a successful business model and practical evidence of this was that it was being extended to outer metropolitan areas. Telstra said that, '... our guarantee that we intend to maintain it is further evidence that we think it is in our commercial interests to do so. It works'.¹⁰

9 Mr McCann, *Proof Committee Hansard*, 30.09.03, p. 96.

10 Mr Scales, *Proof Committee Hansard*, 2.10.03, p. 58.

Disability services

4.24 Concerns were expressed by the Combined Pensioners and Superannuants Association of NSW and by the Telecommunications and Disability Consumer Representation (TEDICORE) about the future of the wide range of services currently provided by Telstra to people with disabilities. Both organisations expressed their satisfaction with these services, but were fearful that they would be discontinued or scaled back if Telstra were fully privatised.¹¹

4.25 Again the Committee took the view that ownership was not the issue here. Special provisions to ensure that people with disabilities have access to standard telephone services are prescribed in legislation and regulations. The USO provider, currently Telstra, is required to supply equipment to people with disabilities, including teletypewriter machines, modems, handsets with hearing aid couplers, hands free telephones, adaptors for people with cochlear implants and telephones with adjustable ring tones and voice amplifiers. TEDICORE made the point that Telstra provides some services to people with disabilities outside its USO obligations as a good corporate citizen. As Telstra already operates as a commercial enterprise, free of government interference in its management, there is no reason to believe that it would cease to provide these services after full privatisation. In any event there would be nothing to prevent the Government from introducing new regulations to ensure that these services continued in the unlikely event that they were ever under threat.

11 Mrs Maureen Ballantine, *Proof Committee Hansard*, 30.09.03, pp. 80-81. Ms Gunela Astbrink, *Proof Committee Hansard*, 03.10.03, p. 50-51.

Telecommunications Regulatory Controls Imposed on Telstra Corporation Limited



CHAPTER 5

COMPETITION REGULATION

5.1 It is worth recalling that under the Labor Government there was little by way of competition in telecommunications – very little choice of phone company and access to very few services. The Howard Government introduced full and open competition to the telecommunications market in 1997. This has resulted in:

- greater choice of provider. There are now 89 licensed telephone companies (40% of whom operate in regional Australia) – in 1996 there were just three;
- significantly lower prices; and
- an increased range of products and services.

According to the latest statistics from the ACCC, all call prices fell 24.8 per cent between 1996 and 2001. Fixed to mobile call costs fell by 13.3 per cent, mobile call costs fell by 27.4 per cent, local call costs fell by 29.1 per cent, long distance call costs fell by 29.6 per cent and international call costs fell by 61.2 per cent. The price of fixed telephone calls for people living outside capital cities fell 22.4 per cent.¹

5.2 An independent report by the Allen Consulting Group, commissioned by the ACA, found that competition benefited consumers to the tune of between \$595 and \$878 per household in 2001-02 and led to \$900 million in increased profits per year for small business.² Mr Willet of the ACCC said that, ‘I think it is true to say that the reforms implemented to date have been positive in terms of increasing competition in communications services-telecommunications services more generally-and increasing benefits to consumers’.³ In addition to open competition stimulating new investment of almost \$20 billion, the Allen Consulting report found that it has increased the size of the economy by \$10 billion and created 100, 000 new jobs.

5.3 Most of Telstra’s competitors, while supportive of full privatisation, expressed concern about Telstra’s market power and argued that consideration needed to be given to strengthening the powers of the competition regulators and to structural issues.

5.4 Telstra’s corporate governance is covered by four main classes of laws:

1 ACCC Telecommunications reports 2000-01.

2 Allen Consulting Group Benefits resulting from changes in Telecommunications Services Report for the ACA – October 2002.

3 Mr Ed Willet, *Proof Committee Hansard*, 14.10.03, p10.

- laws applying generally to Australian companies such as corporations law, taxation laws, and the Australian Stock Exchange listing rules, as well as;
- the Trade Practices Act;
- laws relating specifically to the telecommunications industry such as the Telecommunications Act, and the Telecommunications (CPSS) Act ; and
- specific requirements on Telstra contained in the Telstra Corporation Act .

5.5 The competition elements of the telecommunications framework are covered by two parts of the Trade Practices Act. Part XIB addresses anti-competitive conduct and a range of competitive reporting requirements. Part XIC specifically addresses issues of access to telecommunications facilities and services. The telecommunications specific rules complement, while going considerably beyond, normal trade practices law.

5.6 Part XIB supplements the ACCC's general powers to deal with anti-competitive conduct by enabling it to issue competition notices to carriers and carrier service providers with substantial market power engaging in conduct with the purpose or effect of substantially lessening competition. The issue of notices is designed to promptly stop the conduct and opens the way for substantial penalties and damages. Under Part XIB, the ACCC can also require a carrier or carrier service provider to file its charges and can make record keeping rules requiring them to keep both financial and non-financial information in a prescribed form. The ACCC is also required to report on competitive safeguards and telecommunications charges and, where directed, about the level of competition in the industry.

5.7 The telecommunications access regime under Part XIC is designed to promote the interests of end users by facilitating access to the networks of carriers. This includes declaring services for access, approving access codes, approving access undertakings, arbitrating disputes for declared services and registering access agreements.

5.8 The ability to access the networks and services of competing carriers and carrier service providers, particularly to originate and terminate traffic, is considered essential to the development of competition in telecommunications. If the ACCC declares services, carriers and carrier service providers are required to provide interconnection with, and access to the services, together with various ancillary services (eg. billing data, conditional access equipment). In the first instance, terms and conditions of supply for declared services, including price, are negotiated commercially. If these negotiations are unsuccessful, then access is provided under terms set out in an undertaking given by the access provider. If a matter cannot be resolved and is not covered by an undertaking, or an undertaking is not in place, the ACCC may determine terms and conditions.

5.9 In 2001, the Government introduced amendments to streamline the access regime, thereby facilitating the commercial settlement of access disputes.

5.10 The competition regulation was also amended in 2002, in response to the Productivity Commission report, *Telecommunications Competition Regulation*. Key measures included provisions to:

- encourage further investment in infrastructure for broadband and other key communications services, by enabling potential investors to obtain up-front certainty about access prices and terms and conditions;
- provide greater certainty and more timely access for access seekers by removing merits review of ACCC arbitrations, requiring the ACCC to produce model terms and conditions for 'core' telecommunications service, encouraging voluntary undertakings and ensuring the effective operation of the standard access obligations;
- improve the operation of the anti-competitive conduct regime; and
- enable the Minister to give a direction requiring the preparation and publication of enhanced accounting separation measures to provide greater transparency of Telstra's wholesale and retail operations, particularly in relation to the core interconnection services provided over Telstra's network.⁴

5.11 Mr Cheah of DCITA stated that:

I think the government's view at the moment is that the competition regime now strikes the right balance in relation to competition issues. As you would be aware, competition issues have been subject to amendments over the last two or three years on an almost annual basis, the last one being a fairly comprehensive set of changes in response to the Productivity Commission Inquiry. I think the government's view currently is that it is comfortable with the current settings and thinks that they need to be given a chance to work through. The evidence from disputes within the industry seems to have died down a lot. I think the view is that the current settings need to be given a chance to work properly.⁵

5.12 In any case, the question of competition regulation is separate to the ownership of Telstra. Competition regulation is not static and the Government has consistently displayed a willingness to improve the regulatory regime. There is no reason that this will not continue into the future. According to Mr Cheah:

I think the government's consistent view is that the issues of competition regulation have been delinked from the issue of privatisation. The two things are not related, in the government's view. You can deal with competitive structural issues without looking at ownership questions. Ownership is not linked to regulatory matters.⁶

4 Submission No 135 (DCITA and DOFA), pp. 17-22

5 Mr Chris Cheah, *Proof Committee Hansard*, 7.10.03, p. 2.

6 Mr Chris Cheah, *Proof Committee Hansard*, 7.10.03, p. 3.

Accounting separation

5.13 In June 2003 the Minister for Communications, Information Technology and the Arts issued a Direction to the ACCC that requires the ACCC to issue Record Keeping Rules to Telstra to implement the enhanced accounting separation measures.⁷ This accounting separation will make Telstra's costs and its treatment of access seekers more transparent and it was considered a particularly important step by a number of submitters. ATUG commented that:

The issue with services based competition is that whoever owns the infrastructure gets to control the cost structure of the downstream retail service providers. That is why the accounting separation regime that has just been put in place is terribly important for us to get transparency on what those costs look like if the infrastructure owner is selling to their own retail arm compared to selling to their competitors' retail arms.⁸

5.14 In his evidence Mr Feil of the National Competition Council (NCC) stated that:

The legislative changes required Telstra to prepare separate accounts for its wholesale and retail operations. To complement this accounting separation by Telstra, the ACCC has been introducing changes to record keeping rules that it applies to the major telecommunications companies. These reforms in general somewhat mitigate the concerns about the market power of Telstra.⁹

5.15 The measures introduced by the Government in recent years have considerably enhanced the powers of the ACCC to create a more competitive environment. Even before these measures were introduced, evidence provided by the ACCC showed that prices for telecommunications services overall fell by approximately 19 per cent between 1997-98 and 2001-02, and increased competition was thought to be a major contributing factor in this fall.¹⁰ The ACCC went on to state:

I think it is true to say that the reforms implemented to date have been positive in terms of increased competition in communications services – telecommunications services more generally – and increasing benefits for consumers. As I noted, I think those benefits have been most pronounced where competition has worked best.¹¹

7 Submission No. 135 (DCITA and DOFA), p. 22.

8 Mrs Rosemary Sinclair, *Proof Committee Hansard*, 30.09.03 p. 57.

9 Mr John Feil, *Proof Committee Hansard*, 14.10.03, p. 3.

10 Mr Michael Cosgrave, *Proof Committee Hansard*, 14.10.03, p. 9.

11 Mr Ed Willett, *Proof Committee Hansard*, 14.10.03, p. 10.

5.16 In terms of whether there was any link between ownership and its ability to regulate, the ACCC confirmed that its regulatory power was entirely independent of ownership:

None of our role relies on partial ownership or on any ownership issue. Our role is a regulatory one and it relies on our powers under legislation.¹²

5.17 While some submitters argued that the recent strengthening of competition regulation was welcome, but did not go far enough, the Committee took the view that the full impact of the recent changes to competition regulation introduced by the Government had yet to be felt and it would be premature to be considering further changes at this early stage.

5.18 Some submitters raised concerns about structural issues, but stopped short of advocating full structural separation at this time given the complexities involved and issues of compensation for private shareholders. The Committee noted that in February this year the ALP announced that it would not be pursuing structural separation as:

... the existence of the minority shareholding in Telstra and the cost and complexity therefore associated with such separation, make that an inappropriate strategy for reforming Telstra.¹³

12 Mr Ed Willett, *Proof Committee Hansard*, 14.10.03, p. 11.

13 Lindsay Tanner MP, 6 February 2003.

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.¹

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.

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**

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**

Australian Democrats Minority Report

Introduction

1.1 The Australian Democrats will be voting against the Telstra (Transition to Full Private Ownership) Bill 2003, because the Government has failed to make out a case that this Bill is in the public interest. On all key criteria, the Government has failed to make out a case that the sale is justified, whether it be on competition, service, legal or financial grounds.

1.2 This Inquiry has been very important in that it has provided an opportunity to explore the various arguments presented by the Government in favour of the sale and register community and expert response. The clear conclusion has been that the sale is not justified on the terms proposed by the Government, remains opposed by the overwhelming majority of the Australian population, and should be opposed by the Senate.

1.3 Telstra is not a typical private company - partly for historical reasons and partly because of the regulatory regime – it is one of the most vertically integrated telecommunications carriers in the world, retaining a near monopoly position over the formerly publicly owned Customer Access Network (the CAN), and, as a result, is in a market dominant position in most other sectors of the telecommunications market. It is particularly dominant in regional areas, being the Universal Service Obligation (USO) provider, and frequently the only provider of broadband links and CDMA mobile phone coverage. Telstra's market dominance is highlighted in the following table comparing revenues and market share:

Table 1 Telstra revenues and market share 2002

Item	Revenue (\$m)	% total revenue	% Telstra market share
Basic access	\$2,734m	13%	90%
Local calls	\$1,947m	9%	78%
National long distance	\$1,168m	6%	71%
Fixed-to-mobile	\$1,419m	6%	75%
International calls	\$409m	2%	64%
<i>TOTAL PSTN</i>	<i>\$7,677m</i>	<i>37%</i>	<i>81%</i>
Mobile services	\$3,575m	17%	52%
Data services	\$2,533m	12%	63%
Internet services	\$605m	3%	35%
Directories	\$1,169m	6%	13%
Customer equipment	\$223m	1%	n.a.
Intercarrier services	\$1,121m	5%	100%
Controlled entities	\$2,001m	10%	n.a.
Other	\$1,995m	10%	n.a.

(Source: ACCC Telecommunications Market Indicators, Emerging Structures Report, Telstra Annual Reports)

1.4 More importantly Telstra provides a range of services that are absolutely vital to the national security and economic and social development of Australia. Australians are increasingly relying on e-commerce, e-health, and banking. For many businesses,

especially small business, efficient and effective communication systems are critical. So for example high speed Internet is essential for successful engagement with the modern economy and society. A cost effective, reliable communications system is especially critical for Australians living in regional, rural and remote areas, where tyranny of distance, isolation and lack of services can be overcome.

1.5 The Democrats have long recognised that government has a significant role to play in the supply of telecommunications infrastructure because it is an essential service. As stated in the Democrat Minority report for the Telstra (Transition To Full Private Ownership) Bill 1998:

We do not see government ownership and regulation of the industry as incompatible or illogical. The Parliament is the maker of the laws and regulations under which the company operates not the Government of the day. To suggest otherwise is either to underplay the power and role of the Parliament, or overemphasize the government's regulatory functions¹.

1.6 In 1996, the Democrats chaired the Committee into the Telstra (Dilution of Public Ownership) Bill 1996². The Committee found that it was essential for Telstra to remain in full public ownership. The report argued that in full public ownership, Australians will retain:

- access to quality services at competitive prices;
- social benefits flowing from Telstra's revenues to government;
- opportunities for employment and local manufacturing; and
- an interest in developing telecommunications technologies and industry innovation.

1.7 The Democrats supported the Committee's three key recommendations that:

- Telstra remain in full public ownership;
- the Telstra (Dilution of Public Ownership) Bill be divided into two bills: one concerning the proposed sale; the other concerning the Customer Service Guarantee; and
- environmental programs of the Government be funded from recurrent expenditure or from a proportion of Telstra's profits.

¹ Senate Environment, Recreation, Communications and the Arts Legislation Committee. *Telstra (Transition to Full Private Ownership) Bill 1998*, Minority report by the Australian Democrats and Greens (WA), May 1998.

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

1.8 In its minority report for the Telstra (Transition To Full Private Ownership) Bill 1998, tabled in May 1998, the Democrats again recommended that Telstra remain in majority public ownership; and that:

- the Bill's Preamble contain reference to the three tiers of the universal service obligation;
- the standard telephone service be immediately upgraded to a 64 kilobits service and its definition be extended to include internet and mobile telephony;
- the ACA be empowered to make changes to the universal service obligation without the need for ministerial direction;
- customers receive automatic compensation in instances where service providers have not met the CSG performance standards;
- regular reviews of the universal service obligation and the customer service guarantees standard be guaranteed in legislation; and
- if contrary to public opinion, the Senate passes the Bill, then Section 9 of the Telecommunication Act 1998, the power of the minister to direct the Telstra Board in the public interest, be retained.³

1.9 And again, in the Senate report on Telstra (Transition to Full Private Ownership Bill) 1998, and related bills, tabled on 8 March 1999, the Democrats recommended that the remaining two-thirds of Telstra remain in public ownership, and that:

- the Customer Service Guarantee performance standards be the subject of constant review by the Australian Communication Authority and that the ACA be empowered to amend CSG performance standards without receiving Ministerial direction. This should occur regardless of Telstra's ownership status;
- service providers provide details of the CSG to their customers as a matter of course. Service providers should automatically pay compensation to customers in instances of CSG breaches;
- the price of the 64kps ISDN or equivalent service and the comparable satellite service, supplied as a part of the USO, be capped at an affordable level;
- the definition of the standard telephone service be broadened to include mobile telephony and Internet access. This should occur regardless of Telstra's ownership status;

³ Senate Environment, Recreation, Communications and the Arts Legislation Committee. *Telstra (Transition to Full Private Ownership) Bill 1998*, Minority report by the Australian Democrats and Greens (WA), May 1998.

- regular reviews of the USO be guaranteed in legislation. This should occur regardless of Telstra's ownership status;
- a permanent panel of review be established, comprising industry, consumer, legal and departmental representation to conduct regular reviews of the USO.
- the current wide ranging Ministerial power of direction contained in section 9 of the *Telstra Corporation Act 1991* be retained;
- any inquiry into Telstra's performance must be a public process which must include the calling of submissions from the public, the conduct of public hearing and the tabling of the inquiry's report before the Parliament; and
- any proposal for the further sale of any part of Telstra, regardless of the outcome of an inquiry, be the subject of legislation to be passed by the Parliament.⁴

1.10 It is the Government's focus on debt reduction and shareholder value over the national security, economic and social development of Australia that continues to be of concern to the Democrats and the majority of Australians. The Democrats argue that in its rush to reduce debt, despite Australia having one of the lowest national debts in the OECD, the Government have not given adequate consideration to the implications of the full privatisation of a vertically integrated monopolistic Telstra, and the alternatives. And until they do so, the Democrats, will again not support the full privatisation of Telstra.

In the Public Interest and Benefit

1.11 In the 1996 Liberal & National Parties Policy on "Privatisation: In the Public Interest and the Public Benefit", the policy states:

The Liberal and National Parties believe privatisation should only occur where it is demonstrably in the public interest. We do not take the view that privatisation is an end in itself. Indeed there are many Government functions which public interest and accountability considerations demand remain in public ownership and control.

1.12 Under its "Charter for the National Interest"⁵, Liberals and Nationals argued that privatisation will be in accordance with principles, to safeguard the national interest, these included:

⁴ 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*, Minority report by the Australian Democrats, May 1998.

⁵ Liberal & National Parties Policy on "Privatisation: In the Public Interest and the Public Benefit 1996, pg. 3.

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- evidence of a clear public benefit to be derived from the privatisation of a particular sector;
 - focus on benefits to consumers, including protection of consumers interests;
 - a commitment to maintain community service obligations, recognising the special needs of rural and regional Australians;
 - proceeds of privatisation will not be used to fund recurrent expenditure

1.13 As outlined below the Democrats argue that the Government has in fact failed to demonstrate that the full privatisation of Telstra is in the public interest and provides clear public benefit.

1. What 50.1% Government Ownership means

1.14 A key argument against the sale of Telstra is that 49.9% private ownership leaves the company ‘half-pregnant’, already required to act in the commercial interests of all shareholders, but restrained by public ownership from making full commercial investment decisions. As Telstra argued to the Committee:

The Corporations Act ensures that Telstra’s minority shareholders are protected against government requirements that might otherwise be imposed by virtue of its majority shareholder votes. Telstra, its Board and executive have been required to act in the best interests of all shareholders since 1991 when the company was incorporated under the Telstra Corporation Act.⁶

1.15 However, Telstra in its evidence acknowledged that the Government’s 50.1% ownership allows it to decide the composition of Telstra’s Board of Directors. If a director failed to satisfy the Government, it could easily vote them off, which remains a powerful control mechanism for all majority shareholders. As Professor Bob Walker, a shareholder activist told the Committee:

Majority shareholder have a controlling interests, and are capable of calling the shots on the financing and operating decisions of corporations – regardless of the pious sentiments expressed in the Corporations Act. Indeed, this reality is recognised in accounting standards which are regulations to the Corporations Act – notably those dealing with the application of equity accounting (a shareholder in excess of 20% prima facie conveys the capacity to exercise significant influence and consolidation accounting (majority shareholding confer the capacity to control financial and operating decisions.⁷

⁶ Submission no. 144, Telstra, p.4.

⁷ Submission no. 160. Bob Walker, p. 3-4.

1.16 Professor Quiggin argued that Telstra's majority public ownership, in acting as a break on offshore investment, probably saved the company a large amount of money in that it was unable to fully engage in the carrying of the "dot.com" bubble during the 1990s, and that the loss of wealth in Australia, as a percentage of GDP was small in comparison with the US and elsewhere as a result.⁸

1.17 Government officials also acknowledged to the Committee that majority ownership has resulted in a high level of reporting and interaction between the Department of Finance and Telstra management:

The Corporations Act sets out quite an intense overlay of reporting to Government as the majority shareholder in terms of annual reporting that private sector companies do not have, and that generates interaction. There is a lot of interaction. It is typically at management level. We do not interact at director level, but we interact at management level.⁹

1.18 It should also be noted that section 9 of the Telstra Corporation Act provides public reporting requirements to the Parliament that private companies do not have, including the requirement of Telstra to submit to scrutiny by Senate Estimates Committee, and to requests for information under the Freedom of Information Act. Part 3 of the Act also provides the ability for the Minister to give certain directions to Telstra in the public interest, a power which is yet to be exercised.

1.19 Under the Bill that is being considered, these public accountability measures will be removed. The Minister's power to direct will cease to apply when Commonwealth's equity has fallen below 50 per cent, as will the application of the Freedom of Information Act and the application of Commonwealth public sector employment and occupational health and safety laws. When the Commonwealth's equity falls below 15% the Bill will repeal:

- the power of the Minister under section 8AS to require Telstra to provide financial reports to the Commonwealth;
- the obligation of Telstra under s8AE to notify the Minister of significant events;
- the obligation under s8AF to keep the Ministers for Communications and Finance informed of the operations of Telstra and its subsidiaries;
- the obligation under s8AG to provide the Minister with its corporate plan;
- the obligation under s8AYA to provide the Commonwealth with prior notice of any action which may dilute the Commonwealth's holding;

⁸ Submission no. 67, John Quiggin, p.1.

⁹ David Yarra, Acting General Manager, Asset Management Group, DOFA, *Proof Committee Hansard*, 7.10.03, p. 9.

1.20 Similarly, there is little evidence around the world that reducing public ownership improves customer outcomes, particularly in markets where the former Government telco retains strong market dominance. Comparing public ownership with the OECD's price domestic phone charges comparator highlights this relationship (all countries judged in relation to Australia's domestic phone cost of \$452 US ppp). Three of the four countries with the cheapest phone prices have majority publicly owned telcos, while 3 of the 4 with the highest prices had private ownership rates in excess of 90%.

Table 2. Public ownership and domestic phone charges – selected OECD countries:

Country	% telco public ownership	% difference in domestic phone prices to Australia
Iceland	95%	-54%
Switzerland	62.7%	-36%
Korea	0%	-34.3%
Sweden	70.6%	-33%
UK	0%	-30.7%
Japan	46%	-29.2%
Netherlands	34.7%	-28.3%
Canada	0%	-26%
Norway	77.7%	-14.6%
Finland	53.1%	-14%
Austria	75%	-12.7%
Ireland	0%	-11.3%
US	0%	-10.1%
Germany	42.8%	-8.5%
France	56.5%	-6%
New Zealand	0%	-2.9%
Australia	50.1%	0.0%
Belgium	50.1%	+1.1%
Turkey	100%	+4.4%
Italy	0%	+4.6%
Spain	0%	+10.4%
Portugal	5-19%	+44.3%

(Source: OECD Communications outlook 2003)

1.21 As can be seen, majority public ownership does make a significant impact on Telstra's ability to operate, notwithstanding the obligation on the board to maximise profits. This Bill substantially reduces the requirements of Telstra to interact with Government and the Parliament and thus properly fulfil its public interest obligations.

2. Services

1.22 It is clear that customer dissatisfaction with telecommunications services is on the rise. An analysis of the results from Consumer Awareness and Information Needs Surveys conducted by the Australian Communications Authority in 2000, 2001 and 2002, paint a worsening picture of consumer confusion and distrust in the telecommunications marketplace. The Australian Consumer Association noted that:

all comparable indicators show a decline in consumer regard for the market. There is an explicit and progressive deterioration in consumer confidence (Ref 3).¹⁰

Table 3. Australian Communications Authority Consumer Awareness and Information Needs Survey 2000-2002

Attitudes about telecommunications issues - residential consumers				
Issue	Per cent agreeing with the statement			
	2000	2001	2002	Change
(Ref 1) Providers of telephone services today are more responsive to my needs than they were five (2000 three) years ago	73	71	63	-10
(Ref 2) I find it difficult to compare the prices and service features of different telephone companies	59	66	68	9
(Ref 3) I feel more confident about making a decision regarding telecommunications now than I would have five (2000 three) years ago	67	66	61	-6
(Ref 4) I am confident that my interests as a consumer are being protected in today's competitive telecommunications environment	n/a	55	50	-5
(Ref 5) I feel it is easier and less hassle to keep all my telecommunications services with one provider	78	80	82	4
(Ref 6) I would be happy to shop around and make use of multiple providers if it meant I got a better deal for my telecommunications services	63	62	62	-1
(Ref 7) It is hard to know where to go to get objective, unbiased information on different telecommunications costs and services	70	71	71	1

(Source: Australian Consumer Association, submission no. 72, pg 2-3.)

1.23 Recent figures from the Telecommunications Industry Ombudsman showed that complaints against Telstra rose by 2.9% in the year to June 30, while complaints overall fell 10.9%¹¹. The Australian Communications Authority has reported that customer satisfaction with Telstra fell from 74% to 60% in 2002. The 2003 OECD Communications Outlook showed that Australians are paying more for their phones than most industrialised countries, 44% more than the British, 35% more than Canadians, and 11% more than Americans. The ACA Telecommunications Monitoring Bulletin also showed a downward trend in all indicators of the Customers Service Guarantee (CSG). This is discussed further under Infrastructure Investment.

1.24 There has been some improvement in service and pricing with the extension of untimed local calls to all Australians. However as noted by the National Rural Health Alliance the lack of fixed voice telephony is a major issue for one group of Australians – those living in Indigenous communities:

¹⁰ Submission no. 72, Australian Consumer Association, p. 2-3.

¹¹ Telecommunications Industry Ombudsman, Annual report 2003.

A significant portion of these communities does not have access to a public payphone and many of these communities are without telecommunications of any kind..... While the RTI [Regional Telecommunications Inquiry]¹² report noted the lack of services in these regions the reports recommendations were not very substantial – only noting that “further support will be needed, and that Telstra should place a high priority on the provisions of payphones or alternative community phone systems.”¹³

1.25 With respect to Broadband, Australia is behind other countries in penetration and cost. Broadband in Australia is predominately provided using either Hybrid Fibre Coax (cable) or through Telstra’s traditional copper network using digital subscriber line (DSL) technologies. Access to Broadband, a key tool for modern business and commerce, and facilitator of e-health and e-education, is still limited and is a contentious issue, especially for regional and rural Australia.

1.26 In terms of the Customer Service Guarantee, there has been a marked decline in Telstra’s performance over the last two years, particularly in urban areas:

Table 4. Percentage of Faults repaired by Telstra within CSG timeframes:

Category	June 01	Dec 01	June 02	Dec 02	June 03
Urban areas	8	11	14	11	18
Rural areas	5	6	7	6	8
Remote areas	13	6	3	6	6
National	7	9	12	9	14

(Source: ACA Telecommunications Performance Monitoring Bulletin)

1.27 The ACA has indicated that it is concerned by Telstra’s urban faults performance and has “sought assurances from Telstra that they will take the necessary steps to raise the level of performance.”¹⁴ It remains to be seen how effective that will be.

1.28 The CEPU questioned the effectiveness of the benchmark of CSG faults, arguing that the emphasis on statistics has resulted in ‘quick fix’ temporary work being done to clear faults without dealing with underlying problems. The ACA acknowledged that “some, and only some” of the causes of recurring faults relate to remedial work¹⁵, but that the new Network Reliability Framework (NRF) will allow the regulator to “be able to work out where recurring faults were, what sorts of problems were being exhibited and to do something about them.”¹⁶ The NRF has only been in operation for nine months, but the ACA has already required Telstra to

¹² RTI, Connecting Regional Australia, Report of the Regional Telecommunications Inquiry, November 2002.

¹³ Submission no. 35, National Rural Health Alliance, p.5.

¹⁴ Evidence ACA 7/10/03 p.26

¹⁵ Evidence ACA 7/10/03 p.34

¹⁶ Evidence ACA 7/10/03 p.28

perform remedial work on 54 poorly performing exchanges and, following an audit of a further 48 exchanges, has identified a further 4 requiring remedial work.

1.29 The Network Reliability Framework is still in its early stages, but could prove to be a powerful tool to require upgrading of the network. As a result of the RTI Report, the ACA was required to prepare a table on improving the effectiveness of the NRF, which was handed to the Minister on 30 September 2003.¹⁷

1.30 The Democrats urge the Government to respond to that report promptly and support further enhancement and enforcement of the NRF. The fundamental problem remains however the regulatory environment in which the ACA operates. By legislation, the ACA is obliged to a “light” regulator, relying on industry codes and self-regulation as much as possible. Continuing questions arise as to the extent to which a “hands off” regulator can properly regulate a monopoly infrastructure provider. While it is clear that the ACA is taking tentative steps to strengthen its regulatory framework, this work is in its very early stages, and could be hampered by the regulatory environment in which the Government requires it to operate.

3. Regional Rural Australia and Future Proofing

1.31 Telecommunications are an essential economic and social infrastructure in rural and remote areas, and are becoming more important in the context of the “information economy” and the need to access services such as e-commerce, e-learning, e-health and banking¹⁸. For example a recent survey of rural community needs in Western Australia, conducted by the Communications Expert Group (CEG), showed high levels of use of computers and the Web by rural business and individuals, demonstrated by the high average usage in the Pilbara (81%) and Kimberley (84%) regions compared to average Metropolitan usage 70%.¹⁹

1.32 While there is evidence to suggest that telecommunications in rural and remote areas have improved significantly in recent years, which advances in technology and a number of government initiatives have contributed to, there is further evidence that services still remain inadequate.

1.33 The RTI report concluded that telecommunications services in regional, rural and remote Australia were adequate. However this conclusion was made on the basis that strategies were currently in place to improve services over the next few years. The inquiry heard evidence from several individuals and organisations²⁰, including Dick Estens - author of the RTI report, that Telstra's regional services, as they currently stand, are not up to scratch.

¹⁷ Evidence ACA 7/10/03 p.25

¹⁸ Submission no. 35, National Rural Health Alliance, p.2.

¹⁹ Submission no. 141, Communications Expert Group, p.2.

²⁰ NSW Farmers Federation; National Farmers Federation; and National Rural Health Alliance.

1.34 According to submissions the three biggest issues for people in regional and rural Australia are mobile phone coverage, more Internet speed, and reliability on fixed phones. Survey results by the NSW Farmers Association in 2002, showed that:

75 per cent of respondents were dissatisfied with landline and internet speeds, 76 percent were dissatisfied with mobile coverage. Overall satisfaction with Telstra services was 27 percent, with 48 percent dissatisfied with services. Thirty six percent recognised that general services had improved; a further 35 percent disagreed.²¹

1.35 While there are strategies in place coming out of the Telecommunications Service Inquiry (TSI)²² and RTI, to address some of these issues the Democrats are concerned that these will not be sufficient. For a start, while the Government has pledged funding to support the recommendations from the Esten's report, there are no guarantees that if another government comes into power, that the funding "promises" will be met. There are doubts that funding levels are adequate, for example there are claims that the \$16 million funds toward mobile phone coverage will not be sufficient. More importantly there are still telecommunications areas that strategies are currently not in place. For example, the inquiry heard evidence that there was an increasing necessity of higher bandwidth services such as ADSL in rural and regional areas, yet there were no recommendations emanating from the RTI report and no strategy in place to address the issue. Towns such as Gilgandra and Coonabarabran with 2,500 to 3,000 people have been trying to get ADSL rolled out in their towns. Telstra initially told them that if they could get roughly around 20 paying customers, it would be on, however Telstra have since increased the minimum number to 150 paying customers.

1.36 The NSW Farmers Association summed up what many submissions and witness were saying when they stated:

While the association welcomes the government's announcement that it would adopt all 39 recommendations from the Estens inquiry and would spend \$181 million to improve services, the fact remains that until these efforts translate into better services for regional and rural Australia, and at comparable level to city customers, then privatisation should not occur.²³

1.37 Concerns were also raised by the National Rural Health Alliance that telecommunications benchmarks are identified in terms of cost and carrier convenience – and not in terms of the needs of rural Australians.²⁴

1.38 Given the gap that currently exists between regional and rural Australia and metropolitan Australia a case has been made that mechanisms need to be in place to

²¹ Mr Brown, NSW Farmers Federation, *Proof Committee Hansard*, 1.10.01, p.42

²² TSI, Connecting Australia, Report of the Telecommunications Services Inquiry, September 2000

²³ Mr Brown, NSW Farmers Federation, *Proof Committee Hansard*, 1.10.03, p.43.

²⁴ Submission no. 35, National Rural Health Alliance, p.3.

‘future proof’ rural and regional Australia to ensure equitable service levels and access to technologies.

1.39 It was argued that Telstra would need to remain a presence in regional areas to maintain an understanding of the needs of regional communities and for it to provide the required level of service.²⁵ There are concerns that a privatised Telstra will be more demanding of commercial rate of return from all their assets – and so more willing to close down low return assets - as we have seen with many services (eg. banking, air services) withdrawing their presence to regional Australia.²⁶

1.40 The Explanatory memorandum states that:

Item 1 of Schedule 1 to the Bill provides that any licence condition made by the Minister for Communications, Information Technology and the Arts requiring Telstra to maintain a local presence in regional, rural or remote parts of Australia may empower the Minister or the Australian Communications Authority (ACA) to make decisions of an administrative character. Such a licence condition could, for example, require the Minister to approve a draft local presence plan setting out how Telstra will fulfil its obligations to maintain a local presence in regional, rural and remote parts of Australia.²⁷

1.41 However, based on the current Government’s record, the Democrats believe that the Government would give more weight to the commercial imperative of Telstra and be reluctant to intervene. The current proposal to fully privatise Telstra clearly demonstrates the Government’s failure to act in the public interest.

1.42 It has also been argued that market forces on their own can never provide rural Australia with the telecommunications services it needs. The National Farmers Federation (NFF) contend that it is the Government’s responsibility to ensure that there are appropriate and adequate services in regional and rural Australia. In their submission the NFF stipulate that:

The Government should..... provide targeted Government funding necessary to ‘future proof’ the ongoing provisions of equitable telecommunication services as new technologies emerge.²⁸

1.43 While the Government contends that item 32 of Schedule 1 to the Bill “Part 10 – Independent reviews of regional telecommunications” is a future proofing mechanism, the NFF argue that the provision does not guarantee any meaningful outcome. There are no provisions for a mechanism:

²⁵ Submission no. 44, Local Government Association of NSW, p.2.

²⁶ Submission no. 35, National Rural Health Alliance, p.10.

²⁷ Explanatory Memorandum Telstra (Transition To Full Private Ownership) Bill 1998.

²⁸ Submission no. 155, National Farmers Federation, p. 6.

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- To require implementation of the independent reviews committee recommendations;
 - For funding.

4. Research & Development

1.44 There is evidence to suggest that Telstra is reducing its focus on R&D as staff at the Telstra Research Laboratories (TRL) have been cut by almost half since the early 1990s. And it has been argued that, without continued majority ownership by the Government, Telstra will continue to reduce its overall R&D activities and re-direct what remains to short-term stock market driven activities. According to Mr Hinton, who works for Telstra Research Laboratories:

Since partial privatisation in 1996, TRL management has reflected Telstra's move toward Vendor Management and commodity technologies by re-focusing TRL's research effort away from hardware to software. If Telstra is fully privatised, with its focus on short-term profit and share price, research will be further focused on "value adding" to commodity technologies because this is where the quickest and easiest profits reside."²⁹

1.45 Mr Hinton further argues that:

the demographics of Australia are very different from that of North America and Europe. The equipment that Telstra purchases is principally designed for those markets. Without local expertise to ensure such equipment is either compatible or can be made compatible, to conditions in rural and remote Australia, the most affordable technologies will not be suitable for deployment outside the highly populated and profitable eastern seaboard.³⁰

1.46 Without local research to adapt these technologies to Australian conditions, rural and regional Australia may have to wait some time for such technologies and services. Telstra is increasingly relying on vendors to solve technological problems, but it has been reported that there have been many cases where the vendor does not have adequate local expertise to resolve the failure.

1.47 It has also been claimed that Telstra has abandoned its involvement in the development of telecommunications standards. It is argued that:

if Telstra does not influence standards deliberations, it will find that the equipment it purchases is designed to a standard that is unsuited to Australian conditions, particularly rural and remote Australia. This will either increase costs to telecommunications users or exclude them from the latest technological advances in services.³¹

²⁹ Submission no. 25, Kerry Hinton, p. 3.

³⁰ Submission no. 25, Kerry Hinton, p. 1.

³¹ Submission no. 25, Kerry Hinton, p. 6.

1.48 In fact it was reported that “staff at TRL have been informed many times that the days of TRL having a role in the ‘national interest’ are over and TRL’s sole responsibility now is to maximise Telstra’s share price.”³²

5. Competition

1.49 The Government has argued that privatisation will increase competition in the domestic markets³³. Yet despite partial privatisation of Telstra in 1997 and 1999, the ACCC has concluded that:

While reforms implemented to date have been positive in terms of increasing competition in communications services and in increasing benefits to consumers.....competition has not developed as extensively as generally expected after full competition was introduced in 1997 and that various telecommunications markets are not yet effectively competitive.³⁴

1.50 In fact during 2001-02 progress towards achieving competitive telecommunications markets slowed.

1.51 The ACCC argues that there are some existing and potential emerging structural impediments to development of effective competition in potential contestable markets. As shown earlier in table 1, Telstra dominates the market in all major telecommunications services. Telstra:

- remains in almost total control of the Customer Access network;
- remains the only supplier of territorial fibre infrastructure into many regional areas;
- in relation to the internet, Telstra not only provides the connection service for the vast majority of subscribers, but is also the biggest single Internet Service provider (ISP), providing such services as web hosting, email accounts and Domain Name Services (DNS);
- through it’s Foxtel partnership also dominates content and distribution of pay-TV services. Australia is the only developed country where the incumbent telco is also allowed to operate the cable TV network ;
- is the only company in a strong position in all telecommunications markets and hence is in a position to use leverage in one market to support its activities in another;
- continues to be in a position to protect traditional sources of profits;

³² Submission no. 25, Kerry Hinton, p. 5.

³³ Liberal and National Parties Policy 1996, Privatisation: In the Public Interest and for the Public Benefit, pg. 4.

³⁴ ACCC (2003) ACCC Telecommunications Reports 2001-02. p.7.

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- remains the only Universal Service Obligation (USO) provider

1.52 Professor Quiggin argues “given [Telstras] dominance in a wide range of connected markets, it is almost impossible to prevent abuse of market power”.³⁵ During 2001-02 the ACCC received 210 complaints of anti-competitive conduct, of these, 13 (69% against Telstra) progressed to substantive investigation.³⁶

1.53 The Australian Telecommunications User Group (ATUG) identified two major problems:

Market power – which has remained an issue even in potentially more competitive markets such as urban areas and still requires significant regulatory attention for certain services and in certain markets.

Market failure – which has been a particular issue in non-competitive geographic markets such as regional, rural and remote areas and will continue to require significant regulatory attention and government funding.³⁷

1.54 The ACCC identified that without competition between telecommunications infrastructure providers, it is likely that:

- networks will not be developed and used to their full potential;
- new services (such as high speed Internet) will not be introduced as early as they otherwise would; and
- Services will not be provided efficiently and at least cost for consumers.³⁸

1.55 While the Government introduced recordkeeping rules to assist the ACCC assess anti-competitive behaviour, consultants Tasman Asia Pacific argue that:

while these measures are a necessary step towards establishing a ring fencing³⁹, it will not remove the source of Telstra’s market power and may not be an effective strategy to combat anti-competitive behaviour, which discourages real competition in the telecommunications industry.⁴⁰

1.56 Concerns have also been raised that despite majority share ownership and the Government’s powers under Part 3 of the Telstra Corporation Act 1991, the Government has not intervened in anti-competitive behaviour that is obviously against

³⁵ Submission no. 67, John Quiggin, p.16.

³⁶ ACCC data supplied to Committee, 27.10.03.

³⁷ Submission no. 70, Australian Telecommunications User Group, p.3.

³⁸ ACCC (2003) Emerging Market Structures in the Communications Sector, pg. xvi.

³⁹ Ring fencing essentially allows an accounting separation of the local fixed network.

⁴⁰ National Competition Council, Inquiry into the Structure of Telstra 2003, submission no. 25, p.2.

the public interest and instead has relied on an often costly process of regulation and court battles. Given the economic and social importance of an effective and efficient telecommunications infrastructure and service, the Communications Expert Group (CEG) argue that the Government still has a significant role in monitoring the effectiveness of competition and securing outcomes that benefit the community. Instead the Bill, under part 2 of schedule 1, proposes to remove Part 3 of the Telstra Corporation Act 1991. The Democrats argue that this provision should not be removed until market power is no longer a problem.

1.57 So not only does the Bill reduce the ability to monitor and intervene in market power abuse, the ACCC gave evidence that no areas of the Bill will improve competition⁴¹.

1.58 The Democrats believe that the Government has provided no evidence to support privatisation as a means of reversing the slow down in competition and benefits to consumers, as observed by the ACCC, and argue that further consideration must be given to structural separation and/or further regulation before any further privatisation occurs – as will be discussed in more depth below.

6. Regulation

1.59 Throughout the inquiry concerns were raised about the adequacy of current telecommunications regulation in ensuring efficient and effective telecommunications services and the ability of regulators to protect consumers interests in a timely manner under current arrangements. The Consumers Federation of Australia (CSF) argued that:

The current regulatory landscape delivers piecemeal and often unacceptable consumer outcomes..... It is seriously flawed to the extent that a safe, fair market cannot be assured and is not being reliably delivered.⁴²

1.60 Concerns have been raised by a number of groups⁴³ about the reliance the legislative framework has placed on self-regulation and market forces. For example section 4 of the of the Telecommunications Act notes:

The Parliament intends that telecommunications be regulated in a manner that:

a) *promotes the greatest practicable use of industry self-regulation; and*

⁴¹ Mr Willett, ACCC, *Proof Committee Hansard*, 14.10.01, p. 17.

⁴² Submission no. 129, Consumers Federation of Australia, cover let & p.1.

⁴³ Consumers Federation of Australia, submission no 129. Communications Law Centre, Submission to the Senate Environment, Communications, Information Technology and the Arts Reference Committee – Australian Telecommunications Network Review , August 2002 and the Consumer Law Centre of Victoria submission to the same review, August 2002.

b) *does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry;*

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3

1.61 The CSF argues that many of the safeguards are delivered not by reference to the legislation, but by a complex system of self-regulatory codes, that are not accessible to ordinary consumers. Specifically the CSF pointed to problems with Telstra failure in its compliance in its complaints handling, fair contract terms, reliable billing systems and accurate debt collection activities⁴⁴. The disproportionately high rate of complaints to the ACCC about telecommunications issues is another indication that regulation is failing.

1.62 The inquiry heard from many individuals and groups about the impact of regulatory failure on regional, rural and remote Australia. Their fear is that without adequate regulation there would be no guarantees that services will be maintained and that new technology would be introduced into regional Australia. The NSW Farmers Association argued at the Dubbo hearing that:

There is no apparent mechanism within the Bill to ensure that breaches of the USO and CSG would trigger automatic penalties for the carriers – an important issue in terms of reassurance about the effectiveness of these regulatory measures in the post privatisation era.⁴⁵

1.63 In their submission the NSW Farmers Federation stated that they are opposing any further privatisation of Telstra until the following regulations are in place:

1.64 Comparable services and costs between metropolitan and rural Australia are guaranteed in legislation;

- Timely and affordable access to future technology for rural and regional Australia is guaranteed under the Universal Services Obligation (USO);
- The USO include data standards as well as telephony services;
- A permanent trust fund is established with 10% of the proceeds from T3 to support the provision of high quality telecommunications services in rural and regional Australia;
- Each of the Customer Service Guarantees (CSG) criteria are met for each customer category (urban, major regional, minor regional, remote) in each State, rather than just the national average;

⁴⁴ Ms Stewart, Consumers Federation of Australia, *Proof Committee Hansard*, 2.10.03, p.3.

⁴⁵ Mr Brown, NSW Farmers Association, *Proof Committee Hansard*, 1.10.03, p.42.

- The CSG criteria include a better measure of carrier performance and volume faults and new installs, and are based on geographic not demographic criteria;
- Automatic penalties and a rectification process are defined for breaches of the USO and CSG in legislation.⁴⁶

1.65 The National Farmers Federation also argued that item 32 of Schedule 1 to the Bill "Part 10 – Independent reviews of regional telecommunications", in addition to being strengthened, should be implemented independently of the Bill and before the Bill is passed.⁴⁷

1.66 The inquiry also heard from economics Professor Bob Walker who argued for greater accountability to Parliament, minority shareholders and the community⁴⁸. Professor Walker, argued for the introduction of a similar regime applied by the State Owned Corporations (SOCs) Act in NSW. Key features of which include:

- Formal statements of the responsibilities of SOCs to the local community; and
- Requirements for the development by SOCs of an annual statement of corporate intent', indicating inter alia profit and operational targets – to be agreed by shareholding ministers and disclosed to parliament⁴⁹.

1.67 The effectiveness of regulators such as ACA and ACCC to prevent and redress anti-competitive behaviour in a timely and cost effective manner has also been questioned. A number of recommendations were made regarding changes to role of regulators including:

- An adjustment to the role of the ACCC to include responsibility for ex ante price approval of access prices, monitoring and enforcement of the price control regime⁵⁰.
- An adjustment of the role of the ACA to that of ensuring pro-competitive outcomes and to strengthen its focus on securing consumer outcomes from the industry⁵¹.
- Strengthen the role of the ACCC, especially in the disclosure of information to enable the quick resolution of access to claims, and to ensure a more equitable or even contract conditions and prices⁵².

⁴⁶ Submission no. 128, NSW Farmers Federation, cover letter.

⁴⁷ Mr Needham, National Farmers Federation, *Proof Committee Hansard*, 2.10.03.

⁴⁸ Submission no. 160, Professor Bob Walker, p.4.

⁴⁹ Submission no. 160, Professor Bob Walker, p.4.

⁵⁰ Submission no. 70, Australian Telecommunications User Group, p. 4.

⁵¹ Submission no. 70, Australian Telecommunications User Group, p. 4.

⁵² Submission no. 141, The Communications Expert Group, p.4.

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- Appropriate resourcing of the ACA, ACCC and TIO⁵³.
 - The ACCC and ACA should be invited to make recommendations in their annual performance reports, which the Minister should be required to respond to, including explanation were recommendations are not accepted⁵⁴.

1.68 The Consumers Federation of Australia also have concerns that:

if the consumer protection arrangements in telecommunications are inadequate to respond to the current market in which the largest participant is majority public owned, what hope that system responding to the sort of dominance Telstra would have if fully privatised.⁵⁵

1.69 The Government argues that a partial privatised Telstra is like being half pregnant and that the Government is in a difficult role as majority shareholder and regulator. But, government ownership and regulation of the industry is neither incompatible nor illogical. The Parliament is the maker of the laws and regulations under which the company operates not the Government of the day. While the Government argues that the ability to regulate Telstra effectively does not rely on the Government's majority or part ownership of the company, the NSW Farmers Association rightly argues that:

Post-privatisation, the weight of shareholder expectations and Telstra corporate influence will make it extremely difficult to implement changes or enhancements to the regulatory framework under which the corporation operates.⁵⁶

1.70 In response to a question by Senator Tchen who raised witnesses concerns about the government's ability once Telstra is privatised to effectively regulate the industry; ACCC Commissioner Ed Willett responded by suggesting that:

It is more consistent with the principles of good policy that these sorts of changes [regulatory] are made prior to privatisation.... That is why we wanted to highlight some issues of concern that we saw in the Emerging Structures Report...It is certainly better to make those sorts of changes now, before full privatisation.⁵⁷

1.71 More importantly the Government has previously stated that it will not privatise unless it is in the public interest, yet the evidence is clear that regulatory failure is occurring. Clearly the regulatory structure needs to be overhauled before full privatisation proceeds. Clearly, at a minimum, the Government needs to make a

⁵³ Submission no. 70, Australian Telecommunications User Group, p. 4.

⁵⁴ Submission no. 70, Australian Telecommunications User Group, p. 4.

⁵⁵ Submission no. 129, Consumers Federation of Australia, cover letter.

⁵⁶ Submission no. 128, NSW Farmers Federation, cover letter.

⁵⁷ Mr Willett, ACCC, *Proof Committee Hansard*, 14.10.03, p.11.

comprehensive response to the issues raised by the ACCC as the key industry regulator.

7. Structural Separation

1.72 In the course of its inquiry, the Committee received considerable evidence on whether the telecommunications markets in Australia can ever be fully competitive unless Telstra is structurally separated. It has been pointed out that competition authorities in the US ordered the break-up of the dominant Bell Company, while European authorities have fiercely opposed vertical integration in telcos in Europe.

1.73 The OECD has made strong recommendations that its members should consider structural separation as a means of promoting competition in utilities as an alternative to regulation. On telecommunications, it said:

There is substantial scope for separation of traditional copperwire services from cable and fibre optic broadband services and for unbundling the local loop to allow separate copper-based networks to develop.⁵⁸

1.74 The National Competition Council in Australia adopts a similar view to the OECD.

1.75 Subclause 4(3) of the Competition Principles Agreement (CPA), states that before a government introduces competition to a market traditionally supplied by a public monopoly, or privatise a monopoly, it will review (amongst other things) ‘the merits of separating any natural monopoly elements from potential competitive elements of the public monopoly.’⁵⁹ That review is yet to occur in respect of Telstra.

1.76 Similarly, the ACCC in its report to Government in July on competition in telecommunications, concluded that the structural power of Telstra precludes regulation being fully effective in ensuring fair competition and pricing. The Commission warned the Government that:

...the ongoing lack of effective competition in many telecommunications markets means that consumers continue to pay higher prices and received lower quality services across the entire communications sector than they otherwise would.⁶⁰

1.77 The ACCC argues that Telstra is “one of the most integrated communications companies in the world”, making it dominant in the sector. It points out that a powerful incumbent can stymie competition regulation in a range of ways, and

⁵⁸ OECD Structural Separation in Regulated Industries April 2001 p.50.

⁵⁹ National Competition Council (2003) Inquiry into the Structure of Telstra, submission no. 25, p.2.

⁶⁰ ACCC “Emerging market structures in the communications sector” report to the Minister June 2003 p.xiii

recommends that structural change is needed in the telecommunications market to maximise the potential of competition and consumer benefits.

1.78 ACIL Tasman, in a report tendered to the Committee on behalf of the Competitive Carriers Coalition, came to the view that all forms of structural separation needed to be examined to maximise the potential for competition.⁶¹ Economics Professor John Quiggin also recommended to the Committee that structural separation needed to be considered, arguing that Telstra's range of activities is "unparalleled":

The anti-competitive implications of Telstra's unparalleled horizontal and vertical integration have been noted on many occasions, both by its competitors and by independent commentators. Given dominance in a wide range of connected markets, it is almost impossible to prevent abuses of power.⁶²

1.79 Several models of structural separation could be considered:

- The OECD, the NCC and the Competitive Carriers Coalition mostly focus on 'vertical separation', separating out the wholesale network from the retail service provision. It has been acknowledged by several commentators that such an option carries with it high transitional costs;
- The ACCC and Professor Quiggin have argued instead for 'horizontal separation', separating out whole parts of Telstra's businesses with the potential to compete against the rest of the business.

1.80 The ACCC has recommended to Government that the Foxtel HFC (hybrid fibre cable) network be divested, which it argues could form a new competitor for Telstra. Professor Quiggin goes further and suggests that those segments of Telstra in fully competitive markets should be separated out from the core monopolistic phone company. These could include Telstra's ISP business (Bigpond), the Foxtel cable, the directories and ADSL retailing. Professor Quiggin considers that Mobilenet (where Telstra's market share is less than 50%) might also be considered for separation, but concludes that as many Australians would regard it as part of Telstra's core business, it should be retained.

1.81 Horizontal separation has the potential to reinvigorate competition between different types of telcos and services. Mobile phones, for example, are in increasing competition with landlines. In Finland, for example, one third of households now rely entirely on mobiles. Internet protocols have the potential to offer cheaper voice and data products than the normal phone system. *The Economist's* survey of telecommunications has predicted that trends in wireless, broadband and the convergence of voice and data "will overthrow the local-loop monopolies some time

⁶¹ Submission no. 52, ACIL Tasman report, p. iv.

⁶² Submission no. 67, John Quiggin, p.16

during the next ten years.”⁶³ For Australia to ensure that the opportunities for competitive outcomes are maximised, we need to ask fundamental questions about whether the current structure of the telecommunications market is optimal, and whether the power of a vertically and horizontally integrated Telstra will kill off competition into the future. It is disappointing that, despite the recommendations of the National Competition Council, the ACCC and the OECD, the Government has not yet explored the competitive advantages, costs and benefits of the various structural separation alternatives. We recommend that this needs to occur.

8. Infrastructure Investment

1.82 With ownership of both the copper wire and the HFC network⁶⁴, lack of competition and a strategy to maximise shareholder value, there is no incentive for Telstra to invest in its infrastructure. In 2002/03 Telstra reduced its capital expenditure by 7.5%, with plans to further reduce capital expenditure in 2003/04 by 9.1%. Table 2 shows a steady decrease in infrastructure spending as a percentage of Telstra sales revenue, since 1998. This is in a climate where the ACA has ordered Telstra to carry out urgent remedial work on 54 rural exchanges and the September ACA Telecommunications Monitoring Bulletin shows a continuous decline in performance of the infrastructure.

Table 5. Telstra Capital expenditure as percentage of revenue (\$m)

	2003	2002	2001	2000	1999	1998
Switching	376	661	735	647	626	739
Transmission	378	416	429	693	602	563
Customer access	959	929	1004	1315	897	769
Mobile telecommunications networks	449	255	390	628	612	332
International telecommunications infrastructure	193	233	100	125	138	136
Capitalised software	555	559	737	599	502	227
Other	454	553	749	823	897	975
Total capital expenditure	3364	3606	4144	4830	4274	3741
Total Revenue	21,616	20,802	22983	20505	18171	17239
Capital expenditure as a % of revenue	15.5%	17.3%	18.0%	23.6%	23.5%	21.7%

(Source: Telstra Corporate and Telstra annual reports)

1.83 By world standards, Australia’s investment in telecommunications infrastructure is also falling. Between 1988 and 1999, Australia was investing on average 1.7% more than the OECD average percentage of telecommunications revenue, but in 2000 and 2001 fell to the OECD average. Measured in terms of investment per access path (i.e. phone lines including mobiles), investment was 22.3% above the OECD average (1988-1999) but fell to 4.8% below the OECD average by

⁶³ The Economist October 11 2002, A Survey of Telecoms p.18

⁶⁴ The ACCC have argued, that in protecting the revenue of both the copper wire and the HFC network, investment will not be made, or will be delayed, in services that would cannibalise the revenue of the other network.

2001⁶⁵. The reduced investment in infrastructure is and will continue to impact on innovation, new service development, and implementation and maintenance of infrastructure – especially to regional and rural Australia. The RTI report clearly indicated that there is a need for long-term government leadership in Telco infrastructure, as well as the need for ongoing government funding. However with full privatisation the Government cannot ensure incentives, requirements, or obligations will be ongoing when any future government can change them.

1.84 A key question in terms of infrastructure is future proofing. Following the recent Bigpond debacle, Telstra CEO Ziggy Switowski conceded that that Telstra had not paid enough attention to allowing for increased internet traffic and “we will pay more attention to that.”⁶⁶ This is symptomatic of Telstra’s continuing failure to invest the necessary funds to ensure that there is sufficient capacity to meet future needs. This is especially so in rural areas. The roll out of ADSL technology in Australia, much delayed compared with other industrial countries, is failing to get out into regional centres. Telstra has initiated a demand register requiring 150 expressions of interest before it will consider enabling an exchange. This leaves large towns like Coonabaraban and Gilgandra without ADSL, and at a considerable competitive disadvantage. For business, the competitive disadvantage of country towns is about to get worse, with Telstra announcing a new business ADSL product, but which will only be available to all Australian capital cities as well as major regional centres including Townsville, Bendigo, Dubbo, Albany, Mt Gambier, Alice Springs and Launceston.

1.85 According to evidence to the Committee from Telstra, it will cost Telstra \$5 billion to increase Internet speed from 19.2 kilobits per second if the standard were raised to 56 kilobits per second.⁶⁷ By contrast, the Government’s response to the RTI report provides only \$181 million in new funding, which will fall well short of the standards needed to deliver rural services. Even Dick Estens conceded that it will require progressively increasing levels of Government regulation to push up rural standards:

It (19.2kbps) is a minimum baseline but, obviously it needs to be lifted as time goes on.⁶⁸

1.86 However, the Department emphatically disagreed with this approach arguing it was not practicable to say there should be some kind of mandated service upgrade because services change so quickly.⁶⁹ But that is simply a cop-out. Between 1995 and 2000, Telstra’s capital investment averaged between 22% and 27% of its revenues. By 2003, it had slumped to just 15.5% of revenue, and is projected to fall to less than 14%

⁶⁵ OECD Communications Outlook 2003 p. 114-117.

⁶⁶ Quoted in “The Australian” 22/10/02 p.3.

⁶⁷ John Stanhope, Chief Finance Officer, Telstra, *Proof Committee Hansard*, 2.10.03, p.56.

⁶⁸ Dick Estens, *Proof Committee Hansard* 1.10.03 p.35.

⁶⁹ Mr Cheah, DCITA, *Proof Committee Hansard* 7.10.02, p.15-16.

this financial year.⁷⁰ This compares with the OECD average of around 23% of revenue. If Telstra was required to restore capital expenditure to 20% of revenue, a level it has held for all but the last few years, it would increase capital spending by \$1.35 billion a year, allowing, on Telstra's estimates, a full overhaul of the network to a 56kbps standard in just four years. The Democrats believe that this would not be an unreasonable ask for the Minister to use his powers under Part 3 of the Telstra Corporation Act 1991 to direct Telstra in the national interest to upgrade its full network to broadband capacity.

9. Financial

1.87 A key argument that the Government presents in favour of the sale of Telstra is an economic one – that the sale will improve the financial state of the public sector. However, the Democrats question this assertion, and question the basis on which it is made.

1.88 What is clear is that by world standards, Australia does not have a major problem in terms of public sector debt. Indeed, recent OECD data shows that Australia's public sector net financial liabilities are the second lowest in the OECD, and just one-tenth that of the OECD average:

Table 6. General Government Net Financial Liabilities (% of GDP) 2003

Country	% of GDP
Australia	4.8
UK	29.4
Canada	36.9
US	47.1
Japan	80.2
<i>OECD average</i>	<i>48.7</i>

(Source: OECD)

1.89 The recently issued *Review of the Commonwealth Government Securities Market* (Commonwealth Treasury, 2002) and the focus on this issue in the 2003-04 Budget papers indicates the difficulties that will result from further reductions in Government debt. Maintaining depth and liquidity within the Commonwealth Government Securities market is necessary for the stability of Australia's financial markets, or, as JP Morgan told the Committee:⁷¹

We share the view that a complete cancellation of any Treasury bonds would probably not be optimal for the overall benchmarking and liquidity in bond markets generally.

1.90 Professor of Accounting Bob Walker and Mrs Betty Walker, in their evidence to the Committee, called for a comprehensive financial analysis of the sale to be done,

⁷⁰ Telstra annual reports. Capital spending as a percentage of revenue was 23.3% (1995), 26.7% (1996), 28.2% (1997) and 23% (1998).

⁷¹ Evidence Stephen Chipkin, JP Morgan Managing Director JP Morgan 30/9/03 p. 72

looking at the net present value of the sale less Telstra's retention value. Professor Walker argued that the sale proceeds should be expressed in net present value terms to cover the likely costs associated with a sale in tranches. The evaluation of 'retention value' should examine not just dividend streams, but accounting earnings, the value of taxes attributable to majority public ownership and the residual value of Telstra shares (to capture re-invested earnings).

1.91 Professor Quiggin agreed with this broad analysis, arguing that the Modigliani-Miller theorem on the valuation of an enterprise suggests looking at the free cashflow rather than just paid dividends. He also argued that there are higher regulatory risks with any privatised body, a higher rate of equity rate of return expected, and a lower level of tax collected due to the release of dividend imputation credits. Taking these factors into account, he estimates that the value of shares in public ownership is about \$6.70 a share, suggesting a net loss of value of over \$10 billion if shares were sold at their current value of \$5 a share.⁷²

1.92 DOFA officials said that a cost benefit analysis would be conducted, but the conditions were "highly specific to the circumstances applying at the time" of the sale.⁷³ The Democrats believe that this is unsatisfactory given the Bill does not provide a clear benchmark as to the conditions of such a cost-benefit analysis and whether a sale would be precluded if they were not met.

1.93 A further concern about the sale is whether the market is sufficient to swallow a float of a \$30 billion holding, and what discounts and incentives the Government would need to provide to ensure the float was subscribed. This would be into a world equities market that is somewhat wary about telcos following the 1990s dot.com bubble;⁷⁴ into a situation where the 1.6 million "mums and dads" shareholders who bought into Telstra 2 and have lost an average of \$2.50 a share would be reluctant buyers; and where there could be a large number of other telco share floats in other countries competing for investment dollars.⁷⁵

1.94 It has been suggested that the Government may need to look to differing types of instruments such as hybrid securities to ensure that the float is fully subscribed. Hybrid securities, as a mixture of debt and equity, would see the Government assuming a higher level of risk to sell securities. Such securities, along with payments by instalments or heavy share price discounts, were conceded by several witnesses as necessary to ensure a 'successful' float. As ABN Amro Rothschild stated, such flexible structuring will be necessary "given the potential size of an offering and the

⁷² Submission no. 67, John Quiggin, p.6-7.

⁷³ Mr Heazlett, DOFA, 7.10.03, p.11.

⁷⁴ Economist survey of telcos 11/10/03 p.4.

⁷⁵ Submission no.137, ABN Amro Rothschild, list of holding for sell down, p.27.

inherent uncertainty of making demand estimates for any market offering at an undetermined time in future”.⁷⁶

Recommendations

1.95 The Australian Democrats recommend:

- That the Telstra (Transition to Full Private Ownership) Bill 2003 be rejected.
- That regulation to protect consumers, increase competition and improve network reliability be strengthened before any further privatisation is considered.
- That in accordance with sub-clause 4(3) of the Competition Principles Agreement (CPA), an independent authoritative review is undertaken on structural separation, including consideration of the ACCC Emerging Market Structures in the Communications report, before any further consideration is given to the full privatisation of Telstra.
- That a comprehensive analysis of Telstra’s investment in infrastructure be undertaken, and that Telstra be directed to increase its investment in infrastructure to meet tougher performance standards.

Senator John Cherry
Australian Democrats

⁷⁶ Submission no.137, ABN Amro Rothschild, p.24.

APPENDIX 1

List of Submitters

- 1 Mr Steve Olive, NSW
- 2 Mr John Mync, QLD
- 3 Mr/s B. Moore, NSW
- 4 Ms Thelma Bant, NSW
- 5 Mr Peter Burton, NSW
- 6 Ms Jo Aldridge, NSW
- 7 Mr Greg and Ms Joyce Newton, QLD
- 8 Mrs Winsome Buchanan, NSW
- 9 Mr Ken Brown-Terry, QLD
- 10 Ms Bronwyn McDonald, QLD
- 11 Mr Ross Wilson, NSW
- 12 Mr/s W. Feldmuller, QLD
- 13 Mr/s R. Traynor, NSW
- 14 Mr David Ashton, NSW
- 15 Mr John L. Nixon, QLD
- 16 Dr Jeff Morgan, QLD
- 17 Mr Allan and Ms Elizabeth Ross, NSW
- 18 Mr Arthur McEwan, VIC
- 18a Mr Arthur E. E. McEwan, VIC
- 19 Ms Ann Barry, QLD
- 20 Ms Colleen Moffit, NSW
- 21 Mr David Garner, NSW
- 22 Mr/s P.R. Worthing, NSW
- 23 eNTITY1 Pty Ltd, NT
- 24 Mr Brian R. Wilson, NSW
- 25 Mr/s Kerry Hinton, VIC
- 26 Mr Kelvin Claydon, NSW
- 27 Unemployment Networking, NSW
- 28 Ms Cheryl Arnott, NT
- 29 Paul Budde Communication Pty Ltd, NSW
- 30 Mr Colin McPherson, NSW
- 31 Ms Sue Gates, NSW
- 32 Mr/s K. A. Reye, QLD
- 33 Ms Heather Williams, QLD
- 34 Executive Planning P/L, TAS
- 35 National Rural Health Alliance, ACT
- 36 Mr Denis and Sue Brunsdon, NSW
- 37 Mr Kerri Higgins, NT
- 38 Mr Peter Stark, NSW
- 39 Mr Rob Colligan, NSW

- 40 Mr John Schembri, NSW
41 Mr Horton Books, NSW
42 Yiddinga Holdings P/L, VIC
43 Mr Stanley Brooke-Kelly, NSW
44 Local Government Association of NSW and Shires Association of NSW,
NSW
45 Combined Pensioners and Superannuants Association of NSW Inc.,
Bathurst Branch, NSW
46 Mr Frank Prosser, NSW
47 Combined Pensioners and Superannuants Association of NSW Inc, Central
Coast Area Council, NSW
48 Mr Edward Hampton, NSW
49 Mr Don E. Baker, NSW
50 Dr Narelle Overton, NSW
51 Mr Ange Kenos, VIC
52 Competitive Carriers Coalition, NSW
53 Mr Russel Roberts, VIC
54 Department of Industry and Resources, Government of Western Australia,
WA
55 Ms Linda Campbell, ACT
56 District Council of Grant, SA
57 Comindico, NSW
58 Mr Phil Morgans, NSW
59 Mr Greg Robinson, NSW
60 Mr John Feltham, North QLD
61 Birdgard, Australia, QLD
62 Mr George Hannaford, QLD
63 Ms Judy Costigan, QLD
64 Mr Steven Solly, NT
65 Mr Ian Miles, NSW
66 Ms Margaret MacDuff, QLD
67 School of Economics, Faculty of Business, Economics and Law, QLD
68 Marthakal Resource Centre Inc., NT
69 Mrs Mary E. Nelson, QLD
70 Australian Telecommunications Users Group Limited (ATUG), NSW
71 Mr Harry Gordon, NSW
72 Australian Consumers' Association, NSW
73 Mr Steven and Ms Vicki Shackel, NSW
74 Mr/s M. Wilson, NSW
75 Mrs Kathleen Donohue, QLD
76 Mr Robert Gordon, NSW
77 Mr A R (Tony) Pitt, QLD
78 Ms Anne Healy, NSW
79 Mr Kevin Seppanen, QLD
80 Mr Sean Ambrose, QLD
81 Mr Tomas Nilsson, TAS

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- 82 Mr Barry Chapel, QLD
83 Australian Labor Party, Raymond terrace Branch, NSW
84 Ms Ruth Lipscombe, QLD
85 Grey Power Organisation, Gunnedah Branch, NSW
86 Mr Mervyn Grant, NSW
87 Mr Geoff Morris, NSW
88 Mr John McCarthy, QLD
89 Communications Electrical and Plumbing Union (CEPU) T & S Branch
Queensland, QLD
90 Ms Carol Richard, NSW
91 Central Macquarie Business Group, NSW
92 Mr Bill Fisher, SA
93 Ms Judith James, NSW
94 Ms Jann MacFarlane MP, WA
95 Mr Bob Elliston, TAS
96 Mr Peter C. Friis, QLD
97 Mr John and Ms Jo Williamson, NSW
98 Mr Martin Sims, NSW
99 Mr Greg J Pitman, QLD
100 Country Women's Association of NSW, NSW
101 Mr Robert Herd, NSW
102 Mr/s N. J. Smith, NSW
103 Ms Colleen Giles, QLD
104 Mr Peter and Ms Shirley Sinclair, QLD
105 Mr/s R. W. Scott, QLD
106 South Australian Farmers Federation, SA
107 Mrs V. D. Burnett, QLD
108 Mrs Ann E S Waterford, QLD
109 Mr David Campbell MP, NSW
110 Mrs Joan Limon, NSW
111 Mr Colin Smith, QLD
112 Mr Sean Mullen, QLD
113 Ms Michelle O'Byrne MP, Tas
114 AAPT, NSW
115 Senator Guy Barnett (on behalf of Constituents), TAS
115a Senator Guy Barnett (on behalf of Constituents), TAS
115b Senator Guy Barnett (on behalf of Constituents), TAS
116 Ms Janene Brown, NSW
117 Ms Kirsten Livermore MP, QLD
118 Primus Telecom, VIC
119 CEPU, VIC
120 Combined Pensioners and Superannuants Association of NSW Inc., NSW
121 JPMorgan Australia Limited, NSW
122 Ms Jennifer Crew, NSW
123 Mr Robert Mitchell MLC, VIC
124 The Australian Council of Social Services (ACOSS), NSW

- 125 AgForce Queensland, QLD
- 126 Mr/s Karin Kerr, QLD
- 127 Mr Greg Hall, MLC, TAS
- 128 NSW Farmers Federation, NSW
- 129 Consumers' Federation of Australia, ACT
- 129a Consumers' Federation of Australia, ACT
- 129b Consumers' Federation of Australia, ACT
- 130 Women with Disabilities Australia (WWDA), ACT
- 131 Ms Sharryn Jackson MP, WA
- 132 Mr Christian Zahra MP, VIC
- 133 Community and Public Sector Union (CPSU) (PSU Group),
Communications Union, ACT
- 134 Communications Electrical and Plumbing Union (CEPU) NSW Branch,
NSW
- 134a Communications Electrical and Plumbing Union (CEPU) NSW Branch,
NSW
- 135 Department of Communications, Information Technology and the Arts and
the Department of Finance and Administration, ACT
- 135a Australian Government Department of Finance and Administration, ACT
- 135b Australian Government Department of Finance and Administration, ACT
- 136 The Western Australian Farmers Federation (Inc), WA
- 137 ABN AMRO Rothschild, NSW
- 138 Isolated Children's Parents Association of Australia (Inc) (ICPA), SA
- 139 Small Enterprise Telecommunications Centre Limited (SETEL), ACT
- 140 Australian Council for Educational Leaders (SA), SA
- 141 Communications Expert Group, WA
- 141a Communications Expert Group, WA
- 142 Citizens Against Selling Telstra, ACT
- 143 Mr Bruce Hardiman, NSW
- 144 Telstra, ACT
- 144a Telstra, ACT
- 144b Telstra, ACT
- 145 Mr Tony Windsor B.Ec MP, NSW
- 145a Mr Tony Windsor B.Ec MP, NSW
- 146 Mr Don Ditchburn, QLD
- 146a Mr Don Ditchburn, QLD
- 147 Mr/s Avi Wakesburg, VIC
- 148 CEPU, Tasmanian Communication Branch, TAS
- 149 Mr Michael Pennay, NSW
- 150 Mr Phillip and Mrs Patricia Watson, QLD
- 151 TEDICORE (Telecommunications and Disability Consumer
Representation), QLD
- 152 Mr Rodney Chilcott, TAS
- 153 Mr Michael Widdup, QLD
- 154 Thomas and Associates Asia Pacific Pty Limited, NSW
- 155 National Farmers' Federation, ACT

156	Queensland Government, QLD
157	Mr John Mendel, NSW
158	Mr John R Lee, WA
159	Mrs Pam Schrader, NSW
160	Professor Bob Walker and Betty Con Walker, NSW
161	Mr Foster Crooke, VIC
162	Ms Julie Vandyke, NSW
163	Mrs May L. Lodge, NSW
164	Mr Nathan Abram, NSW
165	SingTel Optus, NSW
166	Australian Communications Authority, ACT
167	Australian Competition and Consumer Commission, ACT
167a	Australian Competition and Consumer Commission, ACT
167b	Australian Competition and Consumer Commission, ACT
168	Mr Peter Andren MP, NSW

APPENDIX 2

Witnesses at Public Hearings

17 September 2003 – Canberra

Department of Finance and Administration

Mr Mark Heazlett, Branch Manager, Telstra Branch

Mr David Yarra, Acting General Manager, Asset Management Group

30 September 2003 – Sydney

Country Women's Association of New South Wales

Mrs Margaret Brown, Chair, Study and Investigation Committee

Community and Public Sector Union

Ms Larissa Andelman, Assistant Secretary, Communications Division

Professor Robert Walker and Mrs Betty Con Walker

Local Government Association of New South Wales and Shires Association of New South Wales

Councillor Phyllis Miller, President, Shires Association of New South Wales

Councillor Allan Smith, Executive Member, Local Government Association of New South Wales

Mr Shaun McBride, Senior Policy Officer, Local Government Association of New South Wales and Shires Association of New South Wales

Australian Telecommunications Users Group Ltd.

Mrs Rosemary Sinclair, Managing Director

Communications Telecommunications Network

Ms Teresa Corbin, Executive Officer

JP Morgan Australia

Mrs Sofie Beaus, Vice President

Mr Stephen Chipkin, Managing Director

Ms Angela Karl, Analyst

Combined Pensions and Superannuants Association of New South Wales

Mrs Maureen Ballantine, Assistant State Secretary
Mr Bruce Hutton, Vice President
Mr Mario Mifsud, State President

Australian Council of Social Service

Mr Christopher Dodds, Telecommunications Adviser
Ms Megan Mitchell, Director
Mr Philip O'Donoghue, Deputy Director

AAPT Ltd.

Ms Jennifer Fox, Regulator Counsel
Mr David Havyatt, Head of Regulatory Affairs

ABN AMRO Rothschild

Mrs Catherine Brenner, Director AMRO Corporate Finance
Mr Patrick Broughton, Executive Director, Equity Capital Markets
Mr Jim Butler, Director, Rothschild Corporate Finance
Mr Steve McCann, Managing Director and Head of Equity Capital Markets

Small Enterprise Telecommunications Centre Ltd.

Mr Ewan Brown, Executive Director
Mr Gordon Frend, Director

1 October 2003 – Dubbo**Mr Peter Andren MP and Mr Tony Windsor MP****Communications, Electrical and Plumbing Union, NSW Postal and Telecommunications Branch**

Mr Shane Murphy, Branch Organiser

Central Macquarie Business Group

Mr Joe Knagge, Chairman
Miss Justine Brotherton, Promotions and Economic Development Officer,
Gilgandra Shire Council
Ms Juliet Duffy, Executive Officer, Orana Regional Development Board
Mr Thomas Warren, Chief Executive Officer, Orana Development and
Employment Council
Mr Robert Geraghty, General Manager, Coonabaraban Shire Council
Mr Darren Kennaugh, IT Manager, Gilgandra Shire Council

Mr Dick Estens**NSW Farmers Association**

Mr David Clarke, Executive Councillor
Mr Graham Brown, Executive Councillor, Rural Affairs Committee
Mr Darren Cameron, Manager, Government Relations

Mr Mark Olson**Mr John Moffitt****2 October 2003 – Canberra****Consumers Federation of Australia:**

Mr David Tennant, Executive Member
Ms Anna Stewart, Secretary

National Rural Health Alliance

Mr Gordon Gregory, Executive Director

Citizens Against Selling Telstra

Mr James Sinnamon, Media Spokesperson
Mr William Alford, Member

Communications Expert Group Pty Ltd

Dr Walter Green, Director

Competitive Carriers Coalition:

Mr David Forman, Director, Corporate Affairs and Regulatory, Comindico
Mr Ian Slattery, General Manager, Primus Telecom
Mr Rajiv Jayawardena, Manager, Planning and Regulatory, PowerTel Limited

Western Australian Farmers Federation

Mr Ross Hardwick, Executive Officer, Economics, Farm Business and Transport

National Farmers Federation

Mr Mark Needham, Policy Manager, Telecommunications

Telstra Corporation Ltd

Mr Bill Scales, Group Managing Director, Corporate Relations and Government Affairs

Mr John Stanhope, Chief Finance Officer and Group Managing Director, Finance and Administration

Dr Paul Paterson, Director, Regulatory, Corporate Relations and Government Affairs

Mr David Field, General Counsel, Regulatory, Corporate Relations and Government Affairs

Communications, Electrical and Plumbing Union

Mr Colin Cooper, Divisional President

Ms Rosalind Eason, Senior Industrial Researcher

3 October 2003 – Nambour

Hon Paul Lucas MP, Queensland Minister for Innovation and Information Economy

Mr Les Hadlow, President, Nambour Chamber of Commerce

Mr Barry Rowe, Maroochy Combined Chambers of Commerce

Mr Brian Symons, Member, Yandina Chamber of Commerce

Mr Harvey Bryce and Mr Greg Newton

Telecommunications and Disability Consumer Representation (TEDICORE)

Ms Gunela Astbrink, Policy Adviser

Communications, Electrical and Plumbing Union, Telecommunications and Services Branch Queensland

Mr Steven Mason, Secretary

Professor John Quiggin, Australian Research Council Federation Fellow, School of Economics and School of Political Science and International Studies, University of Queensland

Mrs Judith Costigan

Ms Coleen Giles

Mr Gregory Pitman

Mr Anthony Pitt

7 October 2003 – Canberra**Department of Communications, Information Technology and the Arts**

Mr Chris Cheah, Chief General Manager, Telecommunications
Mr Colin Lyons, General Manager, Telecommunications Competition and Consumer
Mr Simon Bryant, General Manager, Regional Communications Policy
Mr Brenton Thomas, General Manager, Enterprise and Infrastructure
Mr Philip Allnut, General Manager, ICT Industry Development
Mr Kim Allen, Senior Adviser, Legal Group

Department of Finance and Administration

Mr David Yarra, Acting General Manager, Asset Management Group
Mr Mark Heazlett, Branch Manager, Telstra Branch

Australian Communications Authority

Dr Bob Horton, Deputy Chair;
Dr Roslyn Kelleher, Senior Executive Manager, Telecommunications
Mr John Neil, Executive Manager, Telecommunications Analysis Group
Mr Allan Major, Director, Industry Analysis Team

14 October 2003 – Canberra**National Competition Council**

Mr John Feil, Executive Director
Mr Alan Johnstone, Director, Government Business and Regulation

Australian Competition and Consumer Commission

Mr Ed Willett, Commissioner;
Mr Brian Cassidy, Chief Executive Officer
Mr Michael Cosgrave, General Manager, Telecommunications

Appendix 3

Exhibits

Canberra, 17 September 2003

The Committee published a list of 11 questions prepared as the basis for the hearing.

Sydney, 30 September 2003

Community and Public Sector Union

Letter from Ms Larissa Andelman, Assistant Secretary, Communications Division, Community and Public Sector Union to Ms Pru Goward, Sex Discrimination Commissioner, dated 29 September 2003.

Consumers' Telecommunications Network

Privatising Telecommunications Conference Proceedings 2002

Dubbo, 1 October 2003

Mr Tony Windsor MP

A three-page questionnaire entitled *Have Your Say on the Full Sale of Telstra*.

NSW Postal and Telecommunications Branch, Communications, Electrical and Plumbing Union

Letter from Mr John Neil, Executive Manager, Telecommunications Analysis Group, Australian Communications Authority, to Mr John Ellery, Branch President, CEPU Communications Division, Victorian Telecommunications & Services Branch, dated 16 September 2003.

CD-ROM of photos of Grafton CASM plant.

Central Macquarie Business Group

Orana Regional Development Board Business Case for Enhancing Telecommunications in the Orana Region, prepared by Gibson Quai Pty Ltd, March 2002

Orana Regional Development Board Eol Evaluation Report for Enhancing Telecommunication Services in the Orana Region, prepared by Gibson Quai Pty Ltd, May 2002.

Canberra, 2 October 2003

Consumers Federation of Australia

Two page document entitled *Case Studies*

Telstra Corporation Ltd

*Telstra Response to the Regional Telecommunications Inquiry (Estens Inquiry),
September 2003*

Nambour, 3 October 2003

Hon Paul Lucas MP, Queensland Minister for Innovation and Information Economy

*Community Concerns on Telecommunications Issues in Western Qld following
Listening Trip by Minister Paul Lucas 11 – 13 December 2002.*

Telecommunications and Disability Consumer Representation (TEDICORE)

*Best practice in telecommunications for people with a disability in Australia, by
TEDICORE, March 2002*