

**TELECOMMUNICATIONS LEGISLATION
AMENDMENT (COMPETITION AND
CONSUMER SAFEGUARDS) BILL 2009**

First Reading

Bill and explanatory memorandum presented by **Mr Albanese**.

Bill read a first time.

Second Reading

Mr ALBANESE (Grayndler—Minister for Infrastructure, Transport, Regional Development and Local Government) (6.13 pm)—I move:

That this bill be now read a second time.

The government has embarked upon an ambitious program to fundamentally transform Australia's telecommunications industry in the interest of all Australians.

The National Broadband Network (NBN) is the largest nation building investment in Australia's history.

The establishment of the NBN will fundamentally transform the competitive dynamics of the communications sector in this country. NBN Co. will be a wholesale only telecommunications provider with open access arrangements. This represents a nationally significant and long overdue micro-economic reform that will drive future growth, productivity and innovation across all sectors of the economy.

Just as the roads, railways and electricity networks of the 20th century laid the foundations for future human interaction and economic progress, the NBN will transform Australia's economy into and beyond the 21st century. The well-recognised potential of high-speed broadband to drive future productivity growth, innovative applications and our future international competitiveness means the NBN is vital to Australia's long-term economic and social prosperity.

As transformative as the NBN initiative is, it is a detailed and complex project. During the eight-year roll-out of the NBN, the existing telecommunications regulatory regime remains critical to the delivery of affordable, high-quality services to businesses and consumers. Telecommunications services are a vital input to the daily functioning of and activity in modern societies. The reforms being introduced today are required to address longstanding and widespread concerns that the existing telecommunications regulatory regime is failing Australian consumers and businesses. On a range of measures of price, quality of services and availability, Australia continually trails key international competitors.

At the time of the announcement of the National Broadband Network the government gave a commitment to the people of Australia that we would reform the existing telecommunications regulatory regime to improve this situation.

The response to our request for views on the need for reform was overwhelming. Over 130 submissions were received in response to the 'National Broadband Network: Regulatory Reform for 21st Century Broadband' discussion paper that the Australian government released on 7 April 2009. The submissions supported reform of the existing telecommunications regime to:

- improve competition
- strengthen consumer safeguards, and
- remove redundant red tape.

The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 is designed to reshape regulation in the telecommunications sector in the interests of consumers, business and the economy more broadly. It is also designed to position the telecommunications industry to make a smooth transition to the NBN environment as the new network is rolled out. The measures will provide the flexibility for Telstra to choose its future path and streamline the regulatory framework to enhance competition and better protect consumers.

I Vertical and Horizontal Separation

The first element of this reform program will focus on the current structure of the telecommunications sector.

Telstra is one of the most highly integrated telecommunications companies in the world across a range of telecommunications platforms. Telstra owns the only fixed-line copper network that connects almost every house, as well as the largest cable network, half of the largest pay TV provider and the largest mobile phone network. Partly because of this integration, it has been able to maintain a dominant position in virtually all aspects of the market, despite more than 10 years of open competition. It is the government's view that Telstra's high level of integration has hindered the development of effective competition in the sector, and has contributed to Australia continually lagging behind other developed economies on the availability, price and quality of telecommunications services.

While significant structural reform has occurred in other key infrastructure industries such as electricity, gas and aviation, previous governments of both persuasions have failed to adequately address the underlying structural problems in the Australian telecommunications sector.

The bulk of the current telecommunications regulatory regime was introduced in 1997. Over 10 years later, the government believes that the failure to address the issue of Telstra's level of integration has meant that current regulation has failed to promote effective competition.

The measures included in this legislation will finally correct the mistakes of the past, when opportunities to

undertake structural reform in the telecommunications sector were missed or avoided.

Our commitment to a wholesale-only model for the NBN will deliver structural reform in the industry in the longer term. However, the government considers it vital to ensure that, during the transition to the NBN, the existing regulatory regime generates outcomes in the interest of consumers and businesses.

The ambitious reform program set out in this bill is designed to promote effective competition in the sector by addressing the underlying incentives Telstra has as a highly integrated company to favour its own retail businesses. The government therefore proposes in this bill to require the functional separation of Telstra, unless Telstra voluntarily submits an enforceable undertaking to structurally separate to the ACCC. The minister will provide guidance to the ACCC on the matters it would need to take into account when considering whether to accept a structural separation undertaking.

Functional separation is a regulatory tool that has been used successfully in other countries such as the UK and New Zealand, and is being considered by the European Commission, to address the underlying incentives that fixed-line incumbents have to favour their own retail businesses.

This bill proposes implementing a functional separation regime by altering the Telecommunications Act 1997 to require that:

- Telstra conducts its network operations and wholesale functions at arm's length from the rest of Telstra;
- Telstra provides equivalent price and non-price terms to its retail business and non-Telstra wholesale customers; and
- this equivalence of treatment is made transparent to the regulator and competitors via strong internal governance structures.

The government's clear preference is for these structural issues to be addressed on a voluntary basis. That is why the bill provides that the functional separation requirements will not operate if Telstra volunteers to structurally separate.

The government retains an open mind on the best model for structural separation as we transition to the NBN.

It may, but does not need to, involve the creation of a new company by Telstra and the transfer of its fixed-line assets to that new company.

Alternatively, it may involve Telstra progressively migrating its fixed line traffic to the NBN over an agreed period of time and under set regulatory arrangements and for it to sell or cease to use its fixed line assets on an agreed basis. This approach will ulti-

mately lead to a national outcome where there is a wholesale only network not controlled by any retail company—in other words, full structural separation in time. Such a negotiated outcome would be consistent with the wholesale only, open access market structure to be delivered through the National Broadband Network.

The government has commenced constructive discussions with Telstra on how NBN Co. and Telstra could work collaboratively towards the NBN. We believe that we can work towards achieving a solution in the national interest that also meets the interests of Telstra and its shareholders.

In addition to addressing the vertical integration of Telstra the government is introducing measures to address Telstra's horizontal integration.

Telstra's level of horizontal integration across the different delivery platforms—copper, cable and mobile—is in contrast to many countries where there are restrictions on incumbents from owning both cable and traditional fixed line telephone networks. Unlike Australia, in a range of countries the fixed line incumbent does not also own the largest mobile carrier as measured by market share.

The government intends to correct the unique market structure in Australia by introducing a set of measures designed to promote competition across the various telecommunications platforms while providing Telstra with the flexibility to choose its future path.

The proposed amendments will prevent Telstra from acquiring specified bands of spectrum which could be used for advanced wireless broadband services unless it structurally separates, divests its Hybrid Fibre Coaxial cable network and divests its interests in Foxtel. The legislation provides scope for the minister to remove the requirements around the cable network and Foxtel if he is satisfied that Telstra's structural separation undertaking is sufficient to address concerns about the degree of Telstra's power in telecommunications markets.

These reforms are not without cost. However, international precedents where governments have made reforms to the underlying market structure indicate that the benefits will outweigh the costs. The proposed reforms are critical to help reshape the telecommunications market and increase opportunity for innovation and employment growth at all levels in the sector. This will benefit all Australian consumers, businesses, including in rural and regional Australia, and the economy more broadly.

II Part XIC and XIB of the Trade Practices Act

The second element of this bill will reform the telecommunications access regime and the way in which anticompetitive conduct is dealt with by the regulator.

To compete effectively in this industry and provide services to consumers, companies need access to bottleneck services on fair and reasonable terms. Part XIC of the Trade Practices Act 1974 provides a regulated telecommunications access regime to ensure competitors can access these services. However, the operation of this regime has long been problematic. Access seekers have been frustrated by constant delays and disputes. More than 150 access disputes have been lodged with the ACCC in relation to telecommunications compared to a total of only three disputes across other regulated industries.

In order to correct this clear imbalance, it is necessary to reform the telecommunications access regime to make the process more streamlined and less vulnerable to opportunistic procedural delays. This will provide greater certainty to both access providers and access seekers. Submissions to the recent public consultation process on regulatory reform were strongly in favour of changing the access regime to achieve this outcome.

This bill will amend part XIC to require the ACCC to:

- set upfront pricing, terms and conditions for declared services for three to five years;
- make binding rules of conduct in relation to the service, allowing immediate remedies for breaches to be applied; and
- determine fixed principles to apply beyond the duration of the access determination.

Further, to simplify the access regime and deliver greater regulatory certainty there will be no merits review of regulatory decisions made by the ACCC under part XIC. The scope for exemptions from access obligations and access undertakings will be reduced.

The government is also proposing to amend part XIB of the Trade Practices Act 1974 to ensure the ACCC is able to act quickly on breaches of competition law and prevent unnecessary detriment to the market. To facilitate this, the requirement for the ACCC to consult with a party prior to issuing a competition notice will be removed. Any party that receives a competition notice will continue to have the opportunity to argue its case in court and a court finding of anticompetitive conduct will still be required before penalties are applied. In addition, the reforms to part XIB will include clarification that the competition notice regime applies to content services, such as subscription television services, delivered by carriers and carriage service providers.

III Consumer safeguards

The government is committed to ensuring that consumers are protected and service standards are maintained at a high level during the transition to the NBN.

Currently there are a number of consumer safeguards in place to protect consumers.

- The universal service obligation, known as the USO, has the objective of ensuring standard telephone and payphone services are accessible to all Australians on an equitable basis.
- The customer service guarantee, known as the CSG, requires telephone companies to meet minimum performance requirements or to pay compensation when these requirements are not met.
- Priority assistance arrangements require the highest level of telephone service practicable to residential consumers who have a diagnosed, life-threatening medical condition with a high risk of rapid deterioration.

Submissions to the USO Review, the Regional Telecommunications Independent Review Committee, and the recent consultation paper on regulatory reform, indicate that the existing consumer access arrangements require strengthening.

Voice telephony services are increasingly being delivered using a range of technologies such as fibre-optic cable or radiocommunications. It is critical for consumers and the economy that these new delivery modes continue to support reliable and good-quality telephone calls.

The introduction of new technologies and changes in the market are challenging the effectiveness and relevance of consumer safeguards. There is evidence over the last several years that standards of service delivery are falling, with compliance reporting increasingly showing that the industry is failing to meet the CSG requirements, preferring to pay customers compensation rather than to meet mandated repair time frames.

In addition, current USO requirements on Telstra are opaque and imprecise, and need to be revised.

To address these matters the government is introducing a number of significant changes to strengthen existing consumer safeguards now to better protect consumers' access to basic voice services as we transition to a new communications environment. The bill also contains measures to improve the effectiveness of the regulating body, the Australian Communications and Media Authority (known as the ACMA).

The USO will be improved to include a legislated requirement for Telstra to supply on request a basic service at specified standards. This will include connection and repair periods, reliability requirements and performance benchmarks.

Telstra will also be required to provide payphones in accordance with criteria specified by the government, and for the ACMA to have the power to direct whether payphones can be removed. Mandatory performance benchmarks in relation to the delivery of universal ser-

vices, backed up with civil penalties, will encourage improved compliance. These measures will provide greater certainty and clarity for both consumers and Telstra.

To arrest the decline in telecommunications service quality standards, minimum performance benchmarks will be put in place for the CSG. These benchmarks will be backed up with civil penalties and infringement notices imposing fines for non-compliance.

New time frames for connections and repair will apply to Telstra and other wholesale providers to assist retail providers meet their CSG benchmarks. This is intended to reduce the scope for retail providers to blame non-compliance on poor service from the network provider.

However, provisions for exempting services from the CSG will remain in place to avoid stifling innovation and customer choice, but only with the customer's express agreement. This will make it easier for providers to offer new and low priced services that may better meet the needs of some consumers. Services supplied in fulfilment of the USO will not be exempt from the CSG. A customer's agreement to waive their CSG rights will not be able to be deemed, for example, through a standard form of agreement under part 23 of the Telecommunications Act.

To assist people with life-threatening illnesses, all providers will be required to either offer a priority assistance service to customers or inform them of providers from whom they can purchase such a service. The legislation does not change the existing obligation on Telstra to provide a priority assistance service.

As was announced in March 2009, this legislation will provide the ACMA with the power to issue additional infringement notices. This will enable the ACMA to take strong and swift regulatory action without delay, greatly improving the effectiveness of telecommunications regulation.

In the interests of consumers getting access to 21st-century broadband, the government is considering future USO arrangements further.

Once the detailed operating arrangements for the NBN have been settled, the government will consider the broader range of issues associated with the delivery of universal access in an NBN environment.

IV Removal of red tape

The final element of the package is for the removal of red tape.

The government is committed to reducing red tape and eliminating regulation where the need for it no longer exists. This is consistent with larger commitments to address impediments to Australia's long-term productivity growth. The government has decided that as part of these regulatory reforms it will implement a number of red-tape removal measures.

- It will exempt carriers with annual revenues of less than \$25 million from having to pay an annual carrier licence charge, or having to contribute to the universal service levy or the national relay service.
- It will reduce reporting requirements under the CSG and priority assistance so long as performance benchmarks are being met.
- Once functional separation is in place or Telstra has submitted an enforceable undertaking acceptable to the ACCC to structurally separate, unnecessary accounting and operational separation requirements will be repealed.
- The licence condition that requires Telstra to provide technical assistance to enable customers to achieve 19.2 kilobits per second internet services will be abolished.

Measures to implement the annual carrier licence charges exemption for small carriers, the reduced reporting requirements, and the removal of a Telstra licence condition are not included in this bill. These decisions will be given effect through subordinate legislative instruments under existing legislative powers.

V Conclusion

The wide-ranging package of reforms implemented by this bill is intended to address the problems we find across the whole Australian telecommunications sector. They represent the most significant reforms to the telecommunications legislative framework since 1997.

They vary in scale from subtle adjustments to dramatic restructuring of the status quo, and implementing them will have a transformative effect on competition and service provision. The task of undertaking difficult, bold but necessary reform in Australia's long-term national interest is one which this government embraces wholeheartedly.

No-one should underestimate the government's commitment to our policy objectives in this area. This bill is the next step, and other legislation can and will be introduced as necessary. I commend this bill to the House.

Debate (on motion by **Mrs May**) adjourned.

LEAVE OF ABSENCE

Mr ALBANESE (Grayndler—Leader of the House) (6.37 pm)—I move:

That leave of absence for the remainder of the current period of sittings be given to the honourable members for Canberra and Hinkler on the ground of parliamentary business overseas.

Question agreed to.