Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011

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Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011

Date introduced: 2 November 2011
House: House of Representatives
Portfolio: Broadband, Communications and the Digital Economy

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1, Parts 1 and 3 at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2011 commences; Schedule 1 Part 2 at the same time as section 3 of the Telecommunications Universal Service Management Agency Act 2011 commences or 1 July 2012—whichever is the later.1

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 (the Bill) forms part of a package of legislation which is intended to achieve continuity of key telecommunications safeguards in the transition to the National Broadband Network (NBN). The other Bills in the package are the Telecommunications Universal Service Management Agency Bill 2011 (the TUSMA Bill)2 and the Telecommunications (Industry Levy) Bill 2011 (the Industry Levy Bill).3 A full explanation of the background to the package of legislation is contained in the Bills Digests for those Bills.

The main purpose of this Bill is to make consequential amendments to telecommunications and related legislation (including the Telecommunications Act 1997, the Telecommunications (Consumer

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1. However the provisions of Schedule 1, Part 2 will not commence if section 3 of the Telecommunications Universal Service Management Agency Act 2011 does not commence.


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Protection and Service Standards) Act 1999, and the Australian Communications and Media Authority Act 2005) as a result of the new legislative scheme in the TUSMA Bill.

In particular, this Bill includes provisions which, if specified pre-conditions are met, would enable the progressive removal of the current Universal Service Obligation (USO) for standard telephone services and payphones. The regulated USO obligation is intended to be replaced by the contractual arrangements in the TUSMA Bill.\(^4\)

The Industry Levy Bill imposes a levy that will provide for relevant industry participants to contribute to the costs of the Telecommunications Universal Service Management Agency (TUSMA) that are not met by dedicated Budget funding.\(^5\)

**Background**

The main public-interest telecommunications services are regulated under current telecommunications legislation. These are the USO (for standard telephone services and payphones) and emergency call service provision. Existing legislation also provides for the Commonwealth to contract with the private sector for the provision of the National Relay Service (NRS).\(^6\)

Currently the USO requires Telstra, as the current primary universal service provider, to ensure that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Under Part 2 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Consumer Protection Act), the whole of the telecommunications industry contributes funding towards the delivery of the USO through levy arrangements.\(^7\)

The Consumer Protection Act also sets out the policy objectives for the NRS. Under current Commonwealth contract arrangements, the relay service is delivered by Australian Communication Exchange Limited, and an outreach service for the NRS is provided by WestWood Spice.\(^8\) Industry funds the cost of the NRS contracts through levy arrangements similar to the USO scheme.\(^9\)

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5. Ibid.
6. The National Relay Service is an Australia-wide phone service for people who are deaf or have a hearing or speech impairment. It is also available to anyone who wants to call a person with a hearing or speech impairment.
8. Further information is available on the WestWood Spice website at: [http://www.westwoodspice.com/images/Case_Studies/WWS_Case%20Study_1.pdf](http://www.westwoodspice.com/images/Case_Studies/WWS_Case%20Study_1.pdf)

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The arrangements for emergency call services in Australia are covered by the *Telecommunications Act 1997* (the Telecommunications Act), Part 8 of the Consumer Protection Act and legislative instruments made under those Acts. The telecommunications industry is required to provide access to the emergency call service for standard telephone services free of charge. Currently, the national providers of the emergency call service are Telstra and the NRS provider. The NRS element is funded through the NRS levy, but Telstra’s costs are not funded through levy arrangements.

### Basis of policy commitment

The existing USO regulatory arrangements were designed for a market where there was a vertically integrated operator of a national telecommunications network. As a direct result of the rollout of the NBN Co next generation fibre network, there will be a progressive decommissioning of Telstra’s copper fixed-line network. It is expected that, ultimately, all retail service providers will be able, via the NBN, to offer high quality voice and high-speed broadband services nationally.

Telstra’s role as the emergency call person also reflects its historical position as the vertically integrated owner of a national telecommunications network. The Government’s intention is that, while the supplier of the emergency call service will remain subject to direct regulation, the service will be delivered through contracts between the Commonwealth and the telecommunications industry to contribute to the costs of the emergency call service through levy arrangements. This will also enable the provision of the emergency call service to be opened up, through a competitive process, to alternative suppliers.

The Government’s commitment to the reform of the USO and its intention to develop a new Universal Service provider was announced in June 2010.

### Committee consideration

On 3 November 2011, the Senate referred this Bill and its companion Bills to the Senate Standing Committee on Environment and Communications, for inquiry and report by 27 February 2012.  

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10. ‘Emergency call service’ is defined in section 7 of the *Telecommunications Act 1997* as a service for receiving and handling calls to an emergency service number; and transferring those calls to a police force, fire or ambulance service.

11. Explanatory Memorandum, p. 3.

12. The legislative underpinning of the contracts is contained in section 13 of the *Telecommunications Universal Service Management Agency Act* (when enacted).

13. The relevant levy will be imposed under the *Telecommunications (Industry Levy) Act* (when enacted).


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A discussion of the submissions made to the inquiry by the major telecommunications industry groups is contained in the Bills Digests for the TUSMA Bill\(^{17}\) and the Industry Levy Bill\(^{18}\).

**Financial implications**

There will be no additional financial cost to the Commonwealth arising from this Bill.

The other Bills contained in this legislative package do have some cost. In particular, the Government will provide dedicated funding to TUSMA of $50 million per annum for the years 2012–13 and 2013–14, and then $100 million per annum thereafter.

The proposed telecommunications industry levy will also have a financial impact on the telecommunications industry. That levy is designed to recover from service providers the total of TUSMA’s costs, expenses and other obligations that are not covered by Commonwealth funding. The total amount to be collected in any eligible levy period will depend on the total residual amounts to be collected\(^ {19}\).

**Key provisions**

The Bill amends the *Australian Communications and Media Authority Act 2005*\(^ {20}\), the *Competition and Consumer Act 2010*\(^ {21}\) and the *Sea Installations Act 1987*\(^ {22}\) to insert references to the *Telecommunications Universal Service Management Agency Act 2011* and to TUSMA itself.

The amendments to the Financial Management and Accountability Regulations 1997 in item 5 operate so that TUSMA becomes a ‘prescribed agency’ under section 5 of the *Financial Management and Accountability Act 1997* which provides for the proper use and management of public money, public property and other Commonwealth resources.

**Amendments to the Telecommunications Act**

Items 7–55 amend the *Telecommunications Act 1997* (Telecommunications Act). In particular, item 22 inserts proposed subsection 72(2A) into the Telecommunications Act so that it will be a condition of a carrier licence to pay the industry levy in full. In turn, item 17 inserts proposed

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20. Items 1–3 of Schedule 1 to the Bill.
21. Item 4 of Schedule 1 to the Bill.
22. Item 6 of Schedule 1 to the Bill.

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subsection 58(4A) which will allow ACMA to refuse to grant a carrier licence to an applicant if the applicant has been disqualified for a failure to pay in full the industry levy.

Items 14, 19, 23–26, 29–30, 37–41 and 46–53 amend various references to the term ‘this Act’ within the Telecommunications Act to include a reference to the TUSMA Act.

Amendments to the Consumer Protection Act

The USO is currently contained in subsection 9(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act). The USO is the obligation to:

- to ensure that ‘standard telephone services’ are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business
- to ensure that ‘payphones’ are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business, and
- to ensure that ‘prescribed carriage services’ are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

In this context, a reference to the supply of a ‘prescribed carriage service’ is a reference to the supply of customer equipment or other goods or services that are used in connection with the prescribed carriage service; and are prescribed by regulations.  

A number of the amendments in the Bill delete references to the term ‘prescribed carriage service’ as the operation of the TUSMA Act means that the concept of ‘prescribed carriage service’ is no longer needed.

**Item 71** of Part 1 of the Bill inserts proposed sections 8H–8K into Division 1 of Part 2 of the Consumer Protection Act which relates to the USO. According to the Explanatory Memorandum, ‘proposed sections 8H and 8J operate together to provide processes for the progressive removal of Telstra’s regulatory obligation to supply the standard telephone service’.  

**Proposed section 8J** imposes on the Minister the obligation to make certain declarations about alternative contractual arrangements in relation to standard telephone services (STS).

**First** during the period beginning 18 months and no later than 23 months after the commencement of the section, the Minister must make one of two declarations being either that:

- in his or her opinion, there are satisfactory alternative contractual arrangements relating to standard telephone services, or
- the 18 month period starting immediately after the declaration is made is the *first declaration deferral period* for the purposes of this section: proposed subsection 8J(1).

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Second, before the end of the first declaration deferral period, the Minister must make a subsequent declaration being either that there are satisfactory alternative contractual arrangements relating to standard telephone services, or that the 18 month period starting immediately after the declaration is made is the second declaration deferral period: proposed subsection 8J(3).

Third, before the end of the second declaration deferral period, the Minister must again make a declaration being either that there are satisfactory alternative contractual arrangements relating to standard telephone services, or that there are no such satisfactory alternative contractual arrangements: proposed subsection 8J(5).

If this happens, the regulatory obligations relating to the supply of STS under the Consumer Protection Act will remain in force and any arrangements regarding the removal of regulatory obligations will only be able to occur with further Parliamentary approval.25

The Minister must not make a declaration that, in his or her opinion, there are satisfactory alternative contractual arrangements unless the conditions prescribed in proposed subsection 8J(6) are satisfied. The conditions include, but are not limited to, that Telstra has entered into a contract under section 13 of the TUSMA Act (when enacted) and the contract is in force, the Minister is satisfied that Telstra is likely to substantially comply with the contract, and the Minister has obtained advice from the Australian Communications and Media Authority (ACMA) and from TUSMA.

Once the Minister has made a declaration under section 8J that there are satisfactory alternative contractual arrangements relating to standard telephone services, proposed subsection 8H(10) provides that within 90 days after the declaration comes into force, the Minister must make declarations under proposed section 8H about a ‘designated STS area’. The types of declarations are set out below.

The Minister may declare, in writing, that a specified area is a ‘non-fibre designated STS area’ only if:

• a final migration plan provides for the transition of services from Telstra’s copper network to the NBN fibre network is in force
• the Minister is satisfied that no NBN corporation has installed, is installing, or proposes to install, optical fibre lines to premises in the service area, and
• the Minister has also made a declaration under section 8J that there are satisfactory alternative contractual arrangements relating to standard telephone services.26

The Minister may declare, in writing, that a specified area is a ‘fibre designated STS area’ only if:

• a final migration plan provides for the transition of services from Telstra’s copper network to the NBN fibre network is in force

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25. Explanatory Memorandum, p. 32.
26. Proposed subsections 8H(2) and (3).
• the Minister is satisfied that an NBN corporation has installed, or is installing, optical fibre lines to premises in the service area, and
• the Minister has also made a declaration under section 8J that there are satisfactory alternative contractual arrangements relating to standard telephone services.\(^{27}\)

Before making a declaration that an area is a ‘fibre designated STS area’ the Minister must consult NBN Co.: \textit{proposed subsection 8H(9)}.

\textbf{Proposed section 8K} sets out the process for the removal of Telstra’s regulatory obligation for the provision of payphones. The process mirrors that set out in proposed section 8J, in that the Minister is required to make declarations about whether there are satisfactory alternative contractual arrangements relating to payphones. Until this can be achieved, the Minister is empowered to declare a first and a second declaration deferral period. However, before the end of the second declaration deferral period the Minister must declare either that, in his or her opinion, there are satisfactory alternative contractual arrangements relating to payphones, or that there are no such contractual arrangements. \textit{Proposed subsection 8K(6)} sets out the criteria to be considered by the Minister in making the declaration. This includes, but is not limited to, that Telstra has entered into a contract under section 13 of the TUSMA Act (when enacted) and the contract is in force, the Minister is satisfied that Telstra is likely to substantially comply with the contract, and the Minister has obtained advice from the ACMA and from TUSMA.

\textbf{Items 72 and 75} amend paragraph 9(1)(a) and subsection 9(2) so that the USO is an obligation to ensure that standard telephone services and payphones are reasonably accessible to all people in Australia—other than those people in designated STS areas. The basis for these provisions is that the Minister would have made declarations under proposed section 8J that satisfactory alternative contractual arrangements are in place in those areas.

Similarly, \textbf{item 76} inserts \textit{proposed subsection 9(2AA)} so that the obligation to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis will not apply if the Minister has made a declaration under proposed section 8K that satisfactory alternative contractual arrangements relating to payphones exist.

\textbf{Item 88} inserts \textit{proposed subsections 9G(5)–(9)} into the Consumer Protection Act. The effect of these provisions is to differentiate between the standard telephone service and the payphone obligations within the USO. The rationale for this is:

\begin{quote}
... to allow for a situation where, for example, the payphones USO ceases to apply to any universal service area in Australia but the obligation to supply standard telephone services still applies to universal service areas (other than designated STS areas). Alternatively, a situation
\end{quote}

\(^{27}\) \textit{Proposed subsections 8H(6) and (7)}.
may arise where the payphones USO still applies across Australia, but the gradual removal of the obligation for [standard telephone services] has commenced in some areas.  

**Item 101** inserts **proposed section 106(3A)** into the Consumer Protection Act. Existing section 106 provides for local calls which are made between phones within the same charging zone or to adjoining standard charging zones to be untimed and charged at a flat rate. The amendment operates so that eligible local calls will continue to be provided despite the gradual phasing out of the standard telephone service USO.

**National Relay Service**

Part 2 of Schedule 1 to the Bill amends the Consumer Protection Act in relation to the National Relay Service. In particular, **item 112** makes it clear that the NRS provisions in the Consumer Protection Act are to be replaced by alternative contractual arrangements under the TUSMA Act.

According to the Explanatory Memorandum ‘through this Bill and the proposed TUSMA Bill, transitional provisions will apply the new legislative scheme to existing NRS contracts entered into by the Commonwealth prior to commencement’.  

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29. Ibid., p. 46.

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