TELSTRA CORPORATION LIMITED

SUBMISSION TO TASKFORCE ON REDUCING THE REGULATORY BURDEN ON BUSINESS

25 November 2005

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Executive Summary

> *"The goal of regulatory reform is to improve national economies and enhance their ability to adapt to change. Better regulation and structural reforms are necessary complements to sound fiscal and macroeconomic policies. Continual and far-reaching social, economic and technological changes require governments to consider the cumulative and inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes are relevant and robust, transparent, accountable, and forward-looking. Regulatory reform is not a one-off effort but a dynamic, long-term, multi-disciplinary process."* ***OECD Guiding Principles for Regulatory Quality and Performance, 2005***

The telecommunications industry is one of the most highly regulated industries in Australia – and the amount and intrusion of regulation is increasing. On the basis of Telstra's own experiences with regulators - and the associated 'red tape' and reporting requirements – we believe the telecommunications industry can be correctly described as 'over-regulated'.

The high cost of poor quality regulation, unnecessary regulation and regulation that cannot effectively deal with the pace of change now taking place in the telecommunications sector must inevitably prove negative for consumers and the overall Australian economy.

In addition, this over-regulation of the telecommunications industry comes at a time of increasing technological change and investment uncertainty.

Therefore, unless the Government addresses this situation of over-regulation of the telecommunications industry, Australia will not be able to achieve its maximum economic growth potential, with consequential negative impacts for the general community.

None of this should, however, be interpreted as a rejecting of the need for appropriate regulation. In demonstrated cases of material market failure, economic regulation is necessary. Regulation may also be necessary to achieve a range of other goals, such as social and environmental. But after many years of experiencing layer-upon-layer of regulation being imposed on our businesses with often competing Government objectives, Telstra believes that the current inquiry is necessary in order for Government to address a number of fundamental issues designed to reduce an undue regulatory burden on business generally. Telstra therefore applauds the Prime Minister and the Treasurer for establishing this Taskforce.

Government carried out a review of the competition regulation framework in the telecommunications industry earlier this year and has foreshadowed a major review of competition regulation in 2009. However Telstra believes that the competition regulation changes announced in August 2005 do not go far enough to remedy existing deficiencies. The industry has serious concerns that the current competition regulations act as significant deterrents to major investment in new technologies and new advanced telecommunications facilities – to the detriment of the overall economy and consumer welfare. In saying this, Telstra is not advocating abolition of competition regulation. Our position is best expressed in the following terms: legacy regulation (from 1997) for legacy technology and new arrangements for new investment.

Based on the above considerations, progress on regulation can be achieved by following this process:

- Government establishing a clear set of principles as to when business regulation is necessary.

- The starting point for Government when considering whether new economic regulations are necessary should be:

    - Competitive market conditions should produce the optimal outcome for the economy generally and consumers.
    - economic regulation should only be introduced in demonstrated cases of material market failure.
    - the complexity of business should require the Government to seek solutions from industry in the first instance if market failure has been clearly demonstrated.
    - if industry developed solutions prove unattainable, Government regulation should only be introduced after genuine consultation with business in the design of, and implementation arrangements for, the proposed new regulation - to ensure that the resultant regulation does not produce unintended consequences that will inevitably prove negative for economic growth and overall consumer welfare. This process should include a thorough regulatory impact assessment.

It is also important for Government to recognise that market conditions can change rapidly, particularly as a result of rapid technological change.

It is therefore important that Government put regular regulatory reviews in place, as well as mandatory sunset clauses.

Mandatory sunset clauses will cause Government to ensure that the relevant regulations are properly reviewed against original reasons for their introduction and whether those reasons are still relevant, appropriate, etc. If Government then concludes that the regulations are still necessary, Governments should revert to the above-mentioned principles, namely:

- Will industry’s solutions achieve the relevant objectives?

- If Government action is deemed necessary, genuine consultation with industry should take place on the design and implementation of the relevant regulations.

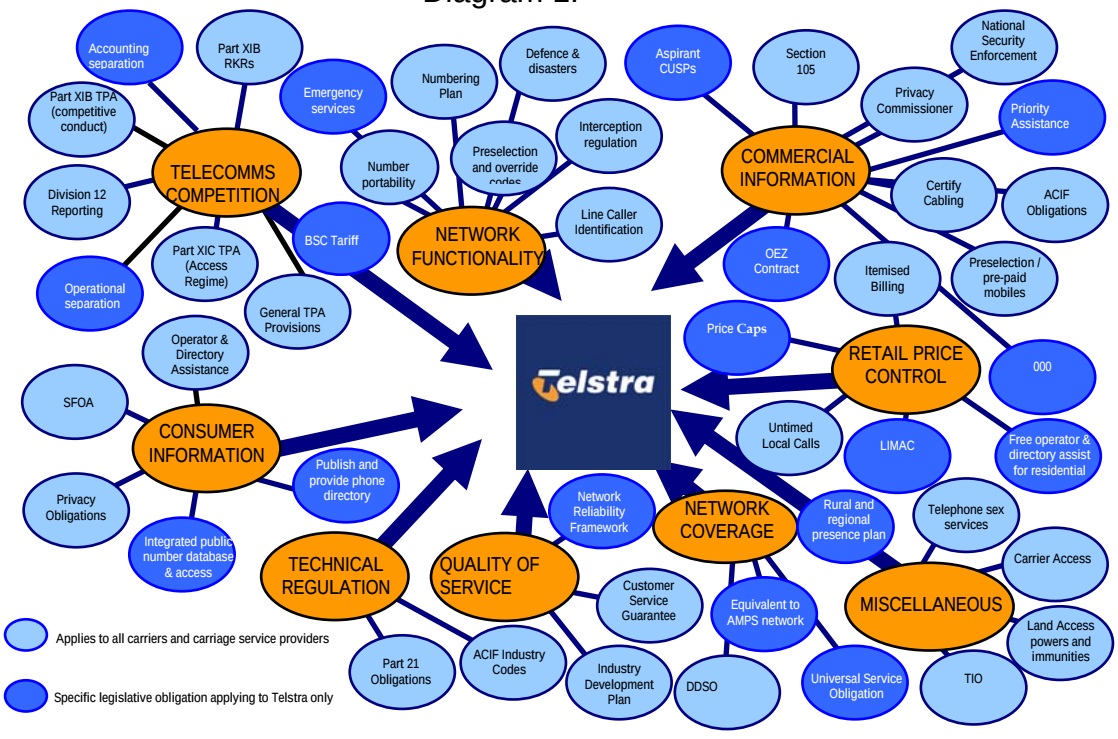
In circumstances of demonstrable and material market failure and where industry solutions do not mitigate the market failure then Governments seek to resolve market failure through regulation. Drawing on work undertaken by the OECD and the Council of Australian Governments (COAG), the following principles should be adopted by Government when developing all regulation:

- **commit to reform**
- **assess and review**
- **transparent and non-discriminatory**
- **promote competition**
- **eliminate unnecessary regulations**
- **integrate market processes**
- **link policies**
- **economy-wide investment neutrality**

Finally, on the basis of significant interaction with Government and regulators over many years, Telstra believes Government should not introduce or maintain regulations that are designed to achieve a range of goals or objectives; eg, social policy regulations such as Price Caps being used to achieve competition policy goals. This can be described as the principle of **Singularity of Objective**.

The diagram below shows the complex regulatory framework that applies to Telstra.

Diagram 1:



1. Introduction

> *"Arenas in which competition is pervasive and vigorous are best left to fend for themselves without governmental intrusion, both because competition is a powerful protector of the public interest and because regulation has heavy costs. These costs include the direct expenses of administration and compliance and the indirect burdens of the ancillary consequences for economic efficiency…*
>
> *Where competitive forces are adequate and effective, the regulator should eschew all forms of regulation."* ***Baumol and Sidak (1994) Toward Competition in Local Telephony p.28***

Regulation serves an important function in improving economic outcomes for consumers and the economy more generally when there is material market failure. In the telecommunications industry competition is now extremely well established and continues to thrive yet the regulatory framework has not managed to keep up to date with this fast moving industry. The telecommunications regulation framework has been unsuccessful in scaling back as competition has grown and expanded across markets.

Over-regulation wastes resources that could otherwise be better used to improve services to customers. When over-regulation restrains Telstra, the impacts flow through to businesses and consumers all around the economy because virtually all individuals and businesses regularly use telecommunications services.

The regulatory framework should be based around proven principles and not be overly-prescriptive. The high level objectives of regulation in telecommunications should be transparent and consistently applied by all regulators. Mixing social policy objectives into competition policy and vice versa creates confusion and unintended consequences for consumers, regulators and business.

The answer to every problem in the industry should not be to regulate first and if that doesn't work, then regulate some more. Market based competition is more successful at driving through solutions that consumers actually want rather than government imposed regulation determining customer preferences. The regulatory framework has been unsuccessful in scaling back regulations when criteria has been achieved such as the removal of reporting requirements when there is a track record of consistently good performance.

By contrast in the energy sector there are clear moves initiated by the Commonwealth Government to reduce conflicting regulation and dismantle elements such as price caps that are no longer considered to be the best way to meet social policy objectives.

In the gas industry the Ministerial Council on Energy has provisionally recommended to grant a binding 15 year no coverage rule to proposed greenfield gas transmission pipelines or distribution networks that meet specified criterion. In addition there will be a 15 year price regulation holiday over the qualifying pipelines. These measures are being considered to reduce regulatory risk and encourage further investment in gas infrastructure.[1]

This year the Department of Communications, Information Technology and the Arts (DCITA) sought comment on their Issues Paper regarding the telecommunications competition regulation. Telstra submitted a response to the Issues Paper in May 2005. The issues that were raised in that submission in relation to the telecommunications regulatory framework still stand and will be of interest to this Taskforce.

In August 2005, the Federal Government announced that it will review the telecommunications competition regulation regime in 2009, which will consider Parts XIB and XIC of the Trade Practices Act 1974 (TPA). Telstra's view is that that review should occur sooner than 2009. There are also many other regulations that continue to cause impediments to Telstra's business objective to improve our service to customers by providing a seamless interface.

This submission contains:

- an overview of the aim of regulation and principles of best practice regulation;
- data on the significance of the telecommunications industry and Telstra's role in the industry;
- details on the growth of telecommunications regulation and reasons why Telstra can no longer be regarded as a monopolist;
- recommendations of ways in which the regulatory framework should be adjusted to better implement its objectives and to improve its design; and
- a number of examples of over-regulation are provided in the appendices with suggestions about how the objectives could be better met. The examples cover redundant and ineffective regulation that ought to be repealed or amended; regulation requiring excessive compliance; and regulation requiring harmonisation across states.

1.1 The aim of regulation

Regulation can influence the operations of markets to deliver more favourable outcomes when there is demonstrated and material market failure. Regulation may also be necessary to achieve a range of other goals, such as social and environmental. However, regulation of competitive markets distorts pricing and sends the wrong signals about optimal demand to consumers, suppliers and importantly to investors. Ultimately this leads to lower levels of economic growth than would otherwise be achieved. It is important for us all that the

[1] MCE (Nov 2005) Review of the National Gas Pipelines Access Regime: Proposal for Consultation p.15

competitive market signals in telecommunications are not distorted by inappropriate, unnecessary or redundant regulation.

There is certainly a role for some regulation in modern complex economies. Regulatory solutions developed by industry can be a helpful vehicle in industries such as telecommunications where detailed technical knowledge is required to maintain order across the industry such as in standard setting. In rapidly evolving competitive markets such regulation can be in danger of becoming irrelevant too if it is not regularly updated. The reason for regulating must be demonstrably clear and legitimate before the entrepreneurial skill that drives prosperity, is restrained by rules, sanctions and intrusive requirements.

Every effort should be made to ensure that regulation is well designed and able to remain relevant to current issues of concern. The failure of telecommunications regulation indicates that Governments need to return to first principles. Adhering to the principles of best practice regulation can assist regulators to design better regulation and find ways of removing 'red tape' regulation.

1.2 Principles of Best Practice Regulation

The OECD recently confirmed an established and working set of principles that guide the quality and performance of regulation.[2] Applying these principles to the telecommunications industry would go a long way to creating a regulatory framework that would protect that which needs to be protected, but allows telecommunications companies to get on with their business of evolving to meet changing consumer demand. These principles are:

- **commit to reform** - adopt at the political level broad programmes for regulatory reform that establish clear objectives and frameworks for implementation.
- **assess and review** - assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment
- **transparent and non-discriminatory** - ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory
- **promote competition** - review and strengthen where necessary the scope, effectiveness and enforcement of competition policy
- **eliminate unnecessary regulations** - design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

[2] OECD (Jun 2005) "OECD Guiding Principles for Regulatory Quality and Performance"

- **integrate market processes** - eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market process, thus strengthening economic efficiency and competitiveness.
- **link policies** - identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

The following additional principles developed by COAG are also particularly relevant.

- **economy-wide investment neutrality** - the various sectors of the economy compete for scarce investment capital. It is therefore important that economic regulation does not distort investment signals. Thus it is important that economic regulation - such as access arrangements to critical economic infrastructure - is applied consistently across the whole economy unless differential arrangements can be justified.
- **singularity of objective** - numerous examples can be found at both the Commonwealth and State level of Governments using, say, competition policy measures to achieve social policy objectives (eg, use of Price Caps to protect low income earners from price rises in lieu of a properly structured and funded Community Service Obligations (CSO) arrangement) or attaching consumer protection arrangements to Licence Conditions. Such arrangements can distort investment signals, leading to a lower level of investment than would have otherwise occurred with consequential negative implications for the overall economy and the community generally (including the people targeted under the relevant Government's social policy objective). Social policy objectives should be achieved through stand-alone, transparent measures that recognise that CSOs should, generally, be funded by the whole community.

The quality of regulation of the telecommunications industry would improve significantly if regulators applied these principles in the development and review of regulation and were required to report against these principles in the regulatory impact statements.

Each of the recommendations in this submission are linked back to these core principles guiding good practice in regulation.

2. The importance of the telecommunications industry to Australia

The telecommunications industry is a significant direct contributor to economic growth and capital investment (which is necessary for future growth) as well as an enabler for economic growth in all other industries which depend on high quality telecommunication services. Telstra plays a leading role in the telecommunications industry and hence the overall economy.

Further the telecommunications industry is extremely dynamic with rapid technological changes, an accelerating rate of new companies entering the industry and an exploding demand for speed and functions as telecommunications become increasingly pivotal to our everyday lives.

2.1 Direct contribution to the economy

The list below illustrates some of the direct benefits that the communications sector (including post and courier services as well as telecommunications) has on the Australian economy.

- The telecommunications sector contributes capital investment of around $7bn (2004-05) to the Australian economy which is a significant contribution (around 5%) to total national (non-dwelling) capital expenditure of around $152bn.[3] Capital investment is critical to sustain existing economic growth into the future and to create capacity for faster growth in the future as the population grows and expectations for improved standards of living continue. It represents an intergenerational trade-off between consuming now (eg through lower prices) and saving for the future.
    - During 2004/2005 Telstra invested approximately $887 million in local access network infrastructure and $511m in GSM and CDMA mobile networks.
- The communications services industry contributed $22bn to real GDP in 2004-05 (or 2.65% of total real GDP). This makes communications services approximately the same size as agriculture ($23.2bn) and bigger than the utility sector ($17.9bn) and culture/recreation sector ($18.5bn). [4]
    - Telstra's value add (or contribution to Australian nominal GDP) is estimated at $15.1bn in 2004-05 (about 2% of nominal GDP), and one of the largest single entity contributions to Australian GDP.
- 185,279 people were employed in the communications service sector at August 2005. Reflecting the robustness of competitors there has been significant growth in non-Telstra employment in this industry since competition was introduced. The communications services sector has significantly outperformed all other sectors over the last decade.
    - Telstra employs over 52,000 people (including contractors) on a full time equivalent basis. This is approximately 0.5% of the entire employed labour force in Australia. Even with recently announced plans to reduce Telstra headcount, Telstra staff will remain a considerable part of the labour force.
- Telstra pays income tax to Government of around $1.8bn and pays around $250m to state, territory and local governments in the form of various taxes including payroll taxes, workers compensation charges, land tax, fringe benefits tax and local govt rates and charges.
- Telstra paid dividends of $4.131bn in 2004/05 to approximately 1.6m shareholders. The Federal Government received approximately $2.1bn.
- Nearly every business and household in the country regularly accesses telecommunications services.

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[3] ABS Catalogue 5204.0

[4] ABS catalogue 5206.0

2.2 Indirect contribution to the economy

In addition to the direct effects listed above, telecommunication products and services are widely recognised as enablers of economic growth through productivity improvements in almost ever other industry around the economy. The telecommunications industry also stimulates indirect employment in other industries.

- The information communications technology sector in Australia contributes around 0.1% to 0.2% points to economy wide productivity growth of 1.1%. This is somewhere between 10% and 20% contribution to productivity acceleration.[5]
- Nearly every business and household across Australia uses telecommunications on a daily basis and this use is rising. The share of household disposable income devoted to telecoms has risen from around 1.4% in 1992 to around 2.6% in 2005.[6]
- The flow on benefits to employment in other industries as a result of telecommunications is approximately 1 additional job for each telecommunications job. This implies that the telecommunications industry stimulates about 190,000 extra support and indirect employment.[7]
- The convergence of communication and information technologies that is currently driving transformation indicates that the sector will become increasingly important in the way Australians work, learn and play in the future. The telecommunications sector will continue to become more critical going forward in a global, knowledge based economy.
- The economic boost from reforms to the telecommunications market is estimated to be $12.4bn in 2004-05.[8]

2.3 The telecommunications industry is extremely dynamic

Technological change is extremely rapid creating new opportunities, risks and closing down old opportunities at an extraordinarily fast pace in the telecommunications industry. Successful companies need to be able to respond quickly to changes. Prescriptive regulation holds companies back from adapting to new challenges.

At times change is so fast that the established statistics can't accurately measure the changes on the ground because of time lags. This aged data is used to assist parliamentary and regulatory decision making and create regulations that then become out of date very quickly. It is imperative that regulations in telecommunications apply for fixed time periods after which their continued application must be justified.

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[5] Productivity Commission (May 2003) Australia's Productivity Surge and its Determinants

[6] Telstra calculation using ABS data

[7] Assumption from OVUM report by Roger Entner and David Lewin (Sept 2005) The Impact of the US Wireless Telecom Industry on the US Economy: A Study for the CTIA- The Wireless Association

[8] ACMA (Nov 2005) Consumer Benefits Resulting from Australia's Telecommunications Sector

Table 1 Technology has fundamentally changed over the past 6 years

1999	2005
Fixed markets dominated by narrowband access to voice	Broadband access to range of voice and data services for >20% households
Circuit switched networks dominate	Moving fast to all IP networks
Voice calls the main source of revenues for fixed incumbents	Voice calls represent less than 20% of fixed incumbents' revenues
Internet bubble about to burst	Internet services are an integral part of most peoples' lives
Fixed and mobile complementary and separate	Substitution of fixed lines to mobiles is growing steadily. Fixed and mobile (voice and data) convergence becomes a distinct possibility.
Convergence a distant concept	Convergence beginning

Source: OVUM 2005

The scope for regulatory error in a rapidly changing environment is far higher than it would be in an environment which is relatively technologically stable such as energy. It is difficult to conceive of a way that prescriptive legislation (including subordinate regulations) can stay relevant given the slow amendment processes.

3. Over-regulation of the telecommunications industry

The telecommunications industry is one of the most highly regulated industries in Australia and the amount and intrusive nature of regulation is increasing. The table below lists the key Commonwealth Acts setting out the regulatory framework. Sitting under the Acts is a raft of subordinate regulations. The overwhelming majority of these regulations apply only to Telstra and not to our competitors, which is ultimately, in the long run, unsustainable in a highly competitive environment.

3.1 Existing Commonwealth legislation

Table 2 Commonwealth Legislation applying to Telstra

Commonwealth Legislation	Associated Regulations under the Commonwealth Legislation
Parts XIB and XIC of Trade Practices Act 1974	Trade Practices Regulations 1974 Australian Competition and Consumer Commission (Allowances) Regulations 1983
Telecommunications Act 1997	Telecommunications (Arbitration) Regulations 1997 Telecommunications (Equipment for the Disabled) Regulations 1998 Telecommunications Regulations 2001
Broadcasting Services Act 1992	Broadcasting Services (Digital Television Format Standards) Regulations 2000

Radiocommunications Act 1992	Radiocommunications Regulations 1993 Radiocommunications (Coordination) Regulations 1995
Telecommunications (Carrier Licence Charges) Act 1997	
Telecommunications (Carrier Licence Fees) Termination Act 1997	
Telecommunications (Consumer Protection and Service Standards) Act 1999	Telecommunications (Consumer Protection and Service Standards) (Special Digital Data Service) Regulations 1999 Telecommunications (Remote Area Rebate) Repeal Regulations 2003
Telecommunications (Interception) Act 1979	Telecommunications (Interception) Regulations 1987
Telecommunications (Numbering Charges) Act 1997	
Telecommunications (Universal Service Levy) Act 1997	
Archives Act 1983	Archives Regulations 1984
Australian Communications Authority Act 1997*	Australian Communications Authority Regulations 1998
Australian Communications and Media Authority Act 2005	
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992	Broadcasting Services (Datacasting Charge) Regulations 2001 Broadcasting Services (Digital Television Standards) Regulations 2000 Broadcasting Services (Transmitter Access) Regulations 2001
Freedom of Information Act 1982	Freedom of Information (Fees and Charges) Regulations 1982 Freedom of Information (Miscellaneous Provisions) Regulations 1982
Privacy Act 1988	Privacy (Private Sector) Regulations 2001
Criminal Code Act 1995	Crimes Regulations 1990
Spam Act 2003	Spam Regulations 2004
Telstra Corporation Act 1991	Australian and Overseas Telecommunications Corporation Regulations 1992 Telstra Corporation (Ownership-Interests in Shares) Regulations 1997 Telstra Corporation (Transfer of Shares-Stamp Duty) Regulations 1997 Telstra Corporation Regulations 2000

In addition to the list above, in September this year, Parliament passed 5 bills associated with the sale of Telstra.

1. Telstra (Transition to Full Private Ownership) Act 2005
2. Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005
3. Appropriation (Regional Telecommunications Services) Act 2005-2006
4. Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Act 2005
5. Telecommunications Legislation Amendment (Future Proofing and Other Measures) Act 2005

3.2 Growth of Regulation

Telecommunications specific regulation has grown from 184 pages in 1991 to somewhere in order of 900 pages not counting the recent Telstra Sale Bills. Further, as the table below indicates, since industry was 'deregulated' in 1997, the volume of telecommunications legislation has grown over 6 times.

Table 3 Increase in the Number of Instruments from 1997 - 2005

Relevant Instruments	Number as at July 1997	Number as at Aug 2005
Commonwealth Legislation	10	19
Subordinate Regulatory Instruments:		
Regulations	9	25
Notices	0	7
Determinations	0	77
Declarations	0	37
Directions, Standards & Rules	1	16
ACIF:		
ACIF Codes	0	26
ACIF Guidelines	0	69
ACIF Specifications	0	8
Other relevant Codes and Guidelines	0	10
ACCC Telecommunications Register of instruments	0	25
ACMA Technical standards	0	29
TOTAL INSTRUMENTS	**20**	**348**
TOTAL SUBSTANTIVE PAGES	**1,602**	**10,013**

The subordinate regulations in particular are experiencing rapid growth simply because they are relatively easy to introduce. This process results in an ad hoc incremental accumulation of overly prescriptive regulation. The Australian Communications Industry Forum (ACIF) plays an important role in orderly conduct of the industry but it too needs to ensure that it is operating in accordance with best practice principles. In an increasingly global market, Australia should gradually move to harmonise standards with international standards where appropriate.

The regulation of telecommunications is a growth industry. The number of staff employed to regulate the industry is continuing to grow. Telstra's reporting obligations grow each year. Telstra must now make over 480 routine reports each year to Government and regulators. That requires at least 70 full time staff resources devoted to reporting alone that could otherwise be delivering better services to customers.

Table 4 Estimated Number of Regular Reports to Government of Regulators in 2005

Regular External Reports	Estimated Number of Reports	Annual frequency	Annual (estimated number of reports)
Weekly	4	52	208
Fortnightly	3	26	78
Monthly	10	12	120
Quarterly	14	4	56
Half Yearly	3	2	6
Annually	17	1	17
Every 3 years	2	0.33	1
TOTAL Number Reports			486

The number of reports required by the Australian Competition and Consumer Commission (ACCC) has been increasing by between 2 or 3 new reports each year since 2003 and appears likely to continue to increase into 2006. Some 75% of reports to the ACCC are required from Telstra only, with the remaining 25% applying to all carriers.

Additional regulation has recently been introduced or is currently being considered in the following areas:

- Operational separation (Telstra only)
- Regional and Rural Presence Plan (Telstra only)
- Record Keeping Rules (RKRs) (some apply to Telstra only)
- Network Reliability Framework (NRF) (Telstra only)
- Do Not Call Register

The price control regime is becoming increasingly complex with each determination despite evidence of consistently high levels of compliance. This contravenes principles of incentive based regulation.

3.3 The over-regulation of Telstra is a legacy from the past

The current state of over-regulation in telecommunications is largely due to the fact that the regulatory framework was designed for an era in telecommunications history that is well and truly passed. There are two key features around which the regulatory framework was designed. The first feature was to transition the industry from monopoly to full competition. These provisions are contained in the TPA Parts XIB and XIC which were designed in 1996/97 to encourage and nurture new entrants into the industry to compete against the former monopolist Telstra. The triggers built into the framework that allow those Parts to scale back when competition had evolved have not been activated. There is now a dramatic mismatch in the objectives of the regulatory framework and what the industry actually needs to function effectively into the future.

The second key feature of the 1997 regulatory framework is that Telstra, by virtue of its origin as a government trading enterprise, was regarded as an instrument to deliver telecommunication related social policies. The 1997 Telecommunications Act and the 1999 Telecommunications (Consumer Protection and Service Standards) Act 1999 are heavily laden with a range of obligations directed at Telstra to deliver and fund social policies.

The telecommunications industry has progressed, perhaps faster than was anticipated by legislative drafters. Both of the key features around which the legislation was designed are no longer appropriate constructs for regulation of the telecommunications industry.

3.4 Telstra is no longer a monopolist

The TPA telecommunications regulations introduced in 1997 aim to prohibit anti-competitive conduct in the telecommunications industry and boost new competitors to enter the industry by opening access to Telstra's infrastructure. In 2005 the market has grown from just 2 or 3 carriers in 1997 to over 100 carriers and 1000 carriage service providers including over 700 internet service providers. Competition has generated overall real price decreases of nearly 30% since 1997.

Telstra's retail market shares are falling. Telstra's retail market share is less than 50% in the international long distance, mobile, advertising, narrowband and broadband internet markets. Telstra's retail market share is naturally higher in the basic access, local call and domestic long distance markets, though the company's share in these markets is also declining. Telstra's market share remains high only in sparsely-populated areas where competitors choose not to invest because returns do not justify the investment and where costs are only partially covered by the universal service obligation.

Telstra's profitable infrastructure network faces competition. Optus HCF network provides them with access to 69% of customers in Sydney, 75% of customers in Melbourne and 51% of customers in Brisbane. Taking ULL based networks into account, (based on publicly available data) Telstra competitors have alternative infrastructure in place to reach 84% of our services in operation in Sydney, 82% in Melbourne, 67% in Brisbane, 83% in Adelaide, 92% in Perth and 72% in Canberra. In most of these locations there is more than one alternative provider. Further, competitors can acquire local call resale services, also at below cost, to extend their reach to 100%. Barriers to entry are very low, as entry is facilitated by using Telstra resale services to build a customer base with little investment risk.

Recent technological change and changes in consumer demand have also contributed to the erosion of monopoly characteristics of the market or, to put this another way, technological developments have had the effect of widening the appropriate definition of market.

- The ‘last mile’ of infrastructure (the copper from the exchange to the premise) is no longer monopoly infrastructure due to the following industry developments.
    1. the development of wholesale access services (such as ULL, Spectrum sharing, local call resale) has allowed Telstra’s competitors to use Telstra’s network to deliver services to customers without having to shoulder the very significant risks associated with network deployment;
    2. Mobile markets are intensely competitive and are increasingly substituting for fixed line services. There is nearly twice the number of mobile services in operation as there are fixed line services. Development of fixed line pricing policies must take into account mobile pricing options;
    3. the development of WI-FI and WI-MAX mean a service provider doesn’t even need wires to compete;
    4. Telstra’s competitors run wires into premises wherever a profit can be made; and
    5. the new technology of Voice over Internet Protocol means that customers can use their broadband services for voice calls as a substitute for fixed lines.

- Separate telecommunications markets are merging with customers wanting tailored packages of products and services from a range of markets. A traditional mobile seller can now cross old boundaries into internet, email and video content. There is robust competition in these larger markets.

The obligations in the telecommunications legislation primarily fall upon Telstra to deliver and fund despite the fact that there are many other carriage service providers in the industry now. Many obligations should equally apply to other carriers so their customers receive the same levels of service quality as Telstra’s customers. For other obligations, it is more sensible for Telstra to deliver the obligation and other carriers to contribute fairly to the cost of delivery. Any review of telecommunications regulation should reconsider the merits and demerits of continuing with industry funding of obligations as opposed to government funding.

It is clear that the telecommunications industry is intensely competitive. Applying the same laws that were designed to open the markets to competition, to markets that are fully competitive has serious effects on investment, innovation and industry development as detailed below. The telecommunications regulations are in need of an overhaul.

3.5 The impacts of over-regulation of Telstra

The effects of over-regulation and poorly conceived regulation on companies can be extremely detrimental to the economy. Over-regulation restrains innovation, investment and pricing reductions.

Advanced telecommunications services are as much a part of Australia's critical economic infrastructure as energy, water, and ports. They are also a vital input for all industries – and, especially, rural based businesses and export-orientated businesses. Additionally advanced telecommunications are increasingly becoming an integral part of peoples' lifestyles; eg, communication, entertainment, etc. Therefore over-regulation of the telecommunications industry has serious consequences for the rest of the economy and the overall well-being of the community – and, thus, Australian's living standards.

Over-regulation reduces investment

The most critical effect of over-regulation on business is the reduced incentives to invest. With increasingly global capital markets, competitive returns that are commensurate with the risks must be available to attract capital to invest. A decrease in capital investment has dire consequences on the capacity of the economy to grow in the future to meet future demand generated by population growth. There are also immediate impacts in terms of lost employment opportunities associated with lower investment.

The regulatory framework in the telecommunications industry actually dampens incentives to invest in existing infrastructure and new technologies. In particular, there is uncertainty as to whether the open access rules under Part XIC of the TPA will apply to new investment. If the open access rules do apply then there is little incentive for carriers to invest in new technologies when the stipulated prices are below cost.

The evidence of poor incentives to invest can be seen all around the industry.

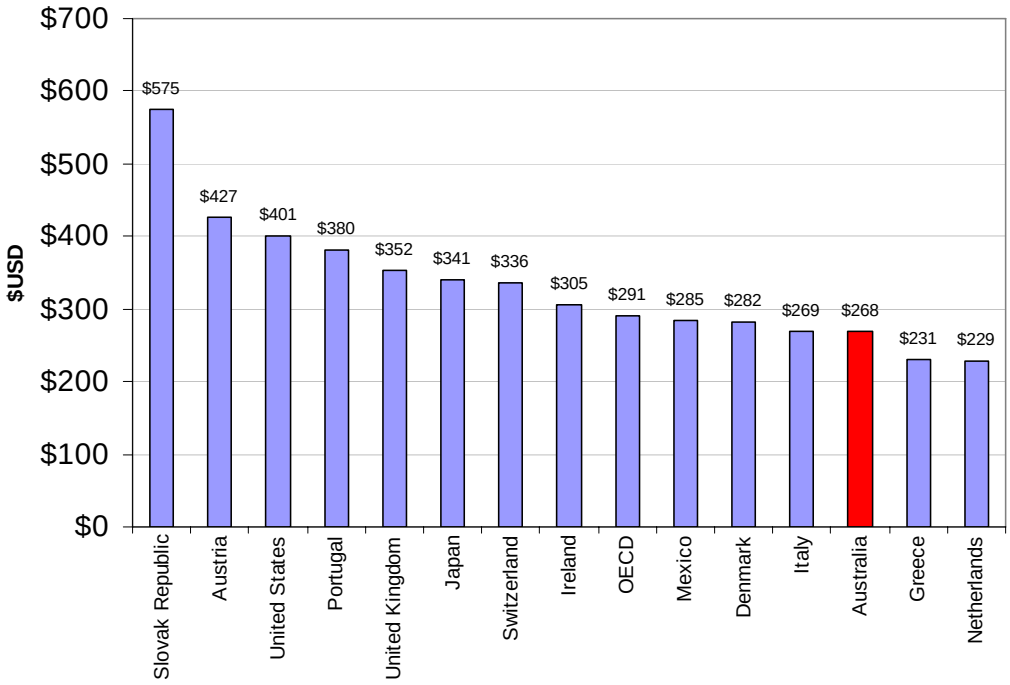
- Telstra's competitors prefer to resell services using Telstra infrastructure rather than build their own because it is cheaper.
- Telstra has delayed roll-out of fibre to the premises in Australia because of regulatory uncertainty.

Unfortunately the disincentives will remain until regulators create effective exemptions to access rules as in the United States of America and even in the United Kingdom.

The graph below compares Australia with other OECD nations using the OECD 2005 published data to 2003. In terms of average investment per access channel (fixed PSTN network plus broadband) over the 4 years up to 2003, Australia ranked below the OECD average.

Graph 1

Telecom Investment Per Access Channel
Average 2000-2003

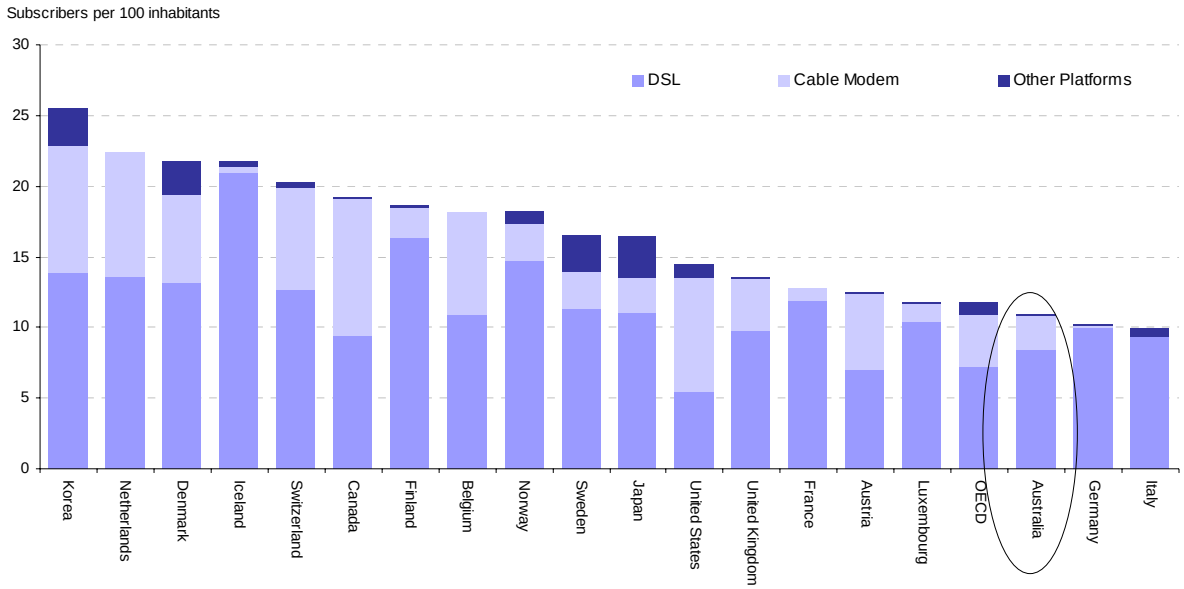


Source: OECD 2005

Similarly the latest OECD figures show that Australia's rate of broadband penetration is below the OECD average, although Australia is catching up.

Graph 2

Broadband Penetration Rates



These graphs show that on a global scale Australia is lagging behind in telecommunications investment. Over-regulation can drive a wedge between the growth rates of telecommunication development in Australia and other advanced OECD countries. Lack of experience in new service provision will limit Australian involvement in the global information economy.

Over-regulation stalls business ability to respond to customers

In telecommunications the pace of change is extremely rapid. Companies need to be able to move quickly to grasp windows of opportunity in new markets.

Regulators are monitoring Telstra's behaviour more closely than all other operators and in new markets there can often be considerable uncertainty as to what the rules are or are likely to be. Smaller competitors are able to react quickly to rising opportunities without excessive regulatory scrutiny. They do not face the same restrictions as Telstra.

When Telstra seeks to take to market a new offer on products, services or pricing plans, it is frequently the case that regulatory approval from the ACCC and, on occasion the Australian Communication and Media Authority (ACMA) is needed. Considerable internal effort and resources are consumed in presenting a case to both the ACCC and the ACMA for approval. This happens after Telstra has already satisfied internal processes to ensure product offers comply with legislation. Even just to match the offers already in the market place from our competitors, considerable time over several months and advice from legal, economic and audit experts are devoted to risk assessment specifically to minimise the possibility of a claim by the ACCC that our offer is anti-competitive and to minimise the risk of a competition notice being issued. The level of regulatory discretion in interpretation of regulation creates considerable uncertainty and is very costly.

Telstra is unable to respond to competitors' market offers as rapidly as other companies because of the complex controls over price changes and the threat of high penalties such as those in Part XIB of the TPA, which were recently increased to $3m per day. Telstra is discouraged from being a market price and product leader because of the high risk of intervention from the ACCC.

Over-regulation stifles innovation

As stated previously, excessive regulation stifles innovation that can enhance living standards and generate productivity improvements in the economy. An example of this is set out below.

> ***Wireless Broadband (EVDO)***
> Telstra has invested millions to rollout wireless broadband to increase the internet options available to consumers and business. Telstra's EVDO technology provides wireless data downloads at broadband speeds – an average of 300-600 kilobits per second but capable of bursts of up to 2.4 megabits per second. Currently available in capital cities and selected regional centres, Telstra anticipates further rollout if there is sufficient demand and the regulatory settings are right.
>
> Telstra Bigpond launched two wireless broadband plans on 25 August. The day after the launch the ACCC contacted Telstra asking whether the company intended to wholesale the products to competitors. The ACCC did this despite vigorous competition in the market, including numerous 3G mobile networks; two wireless broadband networks (Unwired and iBurst); and a recent history of aggressive pricing by Telstra's competitors.
>
> Even if the ACCC decides not to attempt to force Telstra to wholesale wireless broadband, its potential to intervene impacts on Telstra's willingness to innovate and invest in product development. Potential for intervention increases our cost base and slows the innovation process.

4. Why regulation in telecommunications is increasing

The structure of the telecommunications regulatory framework has inadequate checks and balances to prevent the growth of regulation. The following controls are absent from the regime:

- Regulatory Impact Statements (RIS) are not always effective in evaluating whether regulation should be imposed so new regulation is continually approved even when the net benefits are negligible;
- too few sunset provisions and where there are powers of revocation they are rarely used. The result is that redundant regulation is not receding. The framework is now outdated as it was originally designed to open the industry from 2 market players to many new entrants;
- independently determined criterion or milestone indicators to measure when there is sufficient competition and compliance to scale back regulations;

- clear limitations on the use of regulatory discretion to introduce new regulation;
- there are almost no rights to appeal the imposition of new regulation; and
- lack of clarity over regulators' roles as there are multiple regulators with overlapping responsibilities create competition between regulators to control new areas of regulation.

The lack of checks and balances must be addressed to prevent an ad hoc accumulation of regulation over time. The remainder of this submission provides practical solutions aimed at improving the design and implementation of telecommunications regulation in Australia with examples to illustrate the regulatory flaws in the current arrangements.

Many examples of 'red tape' regulation are presented in the 3 attached appendices. The first appendix A gives examples of redundant and ineffective regulation that ought to be repealed. The second appendix B contains examples of regulation that has required excessive compliance burden which prevents Telstra from better improving customer services. The last appendix C provides examples of regulation that is complicated by jurisdictional legislation.

5. Recommendations for improving the design of regulation

The following key recommendations aim to improve the overall design of the regulatory framework:

- improve the symmetry of regulation across industry participants;
- review funding mechanisms for social obligations ;
- amend or remove regulations that distort investment; and
- increase the utilisation of industry solutions to market failure.

5.1 Improve the symmetry of regulation across industry participants

Most regulatory obligations apply to Telstra and do not apply to other infrastructure service providers. To continue with unfairly distributed obligations across industry contravenes the principle of best practice regulation of competitive neutrality where regulation should not provide a competitive advantage to one industry player over another. It is time that these obligations were either removed, imposed on all relevant industry participants, or, where applicable, appropriately and equitably funded.

The key examples where competitive neutrality is breached are detailed below.

Universal Service Obligations – Telecommunications (Consumer Protection and Service Standards) Act 1999
The cost determined by the Minister significantly underestimates the actual cost (possibly by a factor of three) and Telstra must fund the deficit. Telstra's ability to sustain the funding of the USO deficit is being eroded because the

ACCC sets wholesale prices without regard to this cost. Profits have traditionally been used to subsidise unprofitable services. It is absolutely critical that the actual USO cost determined by the Minister is re-evaluated to more realistically reflect actual costs.

Retail Price Controls
There is no need for continuing the price control regime as intense competition shows that there is no capacity for the exercise of monopoly power through monopoly prices. If the objective of price controls is to provide subsidies to customers, then there are less distorting mechanisms to achieve that objective than through pricing. However, the Government has decided to retain price controls until at least 2009.

The price control regime applies to Telstra but not to other carriers. It seriously reduces the flexibility Telstra has to respond to each customer's interests, compete in the market and it creates unnecessary compliance hurdles stifling price innovation. For instance, Telstra is unable to make similar price offers to competitors and consequently is excluded from some markets. Therefore competitors can offer higher line rentals and lower call prices than Telstra can offer under the current price regime. In order to increase line rentals Telstra must obtain ACCC consent in addition to complying with controls on a line rental basket.

Priority Assistance - Carrier licence conditions Schedule 4, part (5)(a)
The delivery of priority assistance to Telstra's customers is important to Telstra. However, it is inequitable for Telstra to be the only service provider obligated to offer priority assistance to its customers. While ACIF has developed the industry code – C609:2003 Priority Assistance for Life Threatening Medical Conditions –this self-regulatory code only applies to other providers if they elect to offer priority assistance to their customers. Customers of all other service providers should have priority assistance available to them.

Network Reliability Framework -
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997
The NRF obligation only applies to Telstra. We consider that this obligation should also apply to other network operators. There is no reason that customers who are experiencing high levels of faults on non-Telstra network shouldn't also benefit from required levels of service quality and that other network operators shouldn't also be monitored by the regulator.

Customer Service Guarantee (CSG)
Although the CSG is an industry standard, there is an opportunity for exemptions to be granted, which we believe some new entrants have sought although there is no public register of exemptions. The use of exemptions indicates that the CSG standard may be overly onerous.

Regional and Rural Presence Plan – Carrier Licence Condition
Although this licence condition has only recently been introduced it does not adhere to the principle of competitive neutrality across industry players because it only applies to Telstra. This regulation should equally apply to other carriers to ensure that all customers have the same protections and ability to source services and support in a consistent manner across Australia. This licence condition should be removed because it imposes unnecessary costs and administrative burdens and reduces commercial flexibility. This level of intrusion into business decision making is excessive and unnecessary.

Operational Separation – Carrier Licence Condition
Other carriers and retailers should be subject to this same Licence Condition.

5.2 Review funding mechanisms for social obligations

The COAG principle of singularity of objective is particularly relevant with regards to
the asymmetrical application of social policy obligations. Telstra agrees with the Productivity Commission that social policy objectives are best achieved through stand-alone, transparent measures.

The Productivity Commission[9] drew upon work from Humphry 1997 to state that

> "a stricter adherence to explicit on-budget funding of Community Service Obligations by governments improves external governance because it would promote the recognition, clarification and funding of the economic and social benefits to the community provided by the GTEs [government trading enterprises] over and above the direct benefits of their goods and services as paid for by consumers. It would subject them to annual scrutiny to ensure programs are appropriate, cost effective and reflective of government priorities….."

Humphry has recommended that Community Service Obligations should be fully funded at avoidable cost to ensure they did not adversely affect the financial performance of the GTE. The National Competition Council and the ACCC have put forward similar views on the funding of Community Service Obligations.[10]

In line with these views, the optimal approach is for government to directly fund social programmes, including telecommunications.

Retail telecommunication providers are well placed to deliver government's telecommunications social policy objectives. This approach is superior because the cost of these measures would be transparent and therefore can be assessed and prioritised alongside alternative government objectives.

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[9] Productivity Commission (July 2005) Financial Performance of Government Trading Enterprises 1999-00 to 2003-2004 p. 58-59

[10] National Competition Council (Jan 1999) National Competition Policy: Some Impacts on Sociatey and the Economy p.67

However where this is not possible, it is important the Government ensures that its social policy objectives are not undermined by inconsistent or asymmetrical policy decisions by the regulator. On this basis Government should use the powers available to it under the Trade Practices Act to ensure that its retail parity pricing policy for line rental charges is not undermined by the ACCC's position on geographically de-averaged ULL (wholesale) prices.

In expressing these views, Telstra clearly states that it supports the continuation of telecommunications related social programmes and that Telstra will continue to comply with any and all obligations in this regard.

5.3 Amend or remove regulations that distort investment

On 15 November 2005, Telstra released details of its strategy for growth. Telstra's announcements, including disclosures to the Australian Stock Exchange, necessarily contained disclaimers indicating that investment strategies and the financial projections assume a reasonable regulatory environment in which to operate. The reality is that it may not be practical for Telstra to implement strategies, such as the five year $10bn next generation internet protocol network investment, if regulation does not allow a competitive return on shareholder investment.

Too many regulations in the telecommunications arena compromise the principle of economy-wide investment neutrality. This happens when other industries are treated more leniently by regulations and are able to attract capital more easily, lowering their costs to invest, giving more infrastructure per dollar. As described above, the framework can create uncertainty that discourages investment in telecommunications altogether. This view is consistent with the OECD principle that specifically recommends elimination of unnecessary regulatory barriers to trade and investment through continued liberalisation and better integration of market forces throughout the regulatory process, thereby strengthening economic efficiency and competitiveness.

Other regulations distort investment. Regulations should aim to be technologically non-specific to allow their objectives to be met whilst leaving the decisions about the appropriate delivery platforms to commercial decision-makers. Regulations can be created to direct private investment to achieve government objectives such as s price control regime requiring separate pricing structures for public schools and charity customers.

Some regulations are overly intrusive in directing funding for internal operations and investment. Some examples are the licence condition requiring Telstra to publish a Regional and Rural Presence Plan, which diminishes commercial flexibility, the CSG, which influences operational decision-making and the NRF, which directs capital investment decisions. Whilst each of these individual obligations may have merits, the combined impact is a diminished flexibility to determine the priorities and objectives of the business which then determine how the business is organised and operated. The importance of this diminished commercial flexibility is

exacerbated by the fact that most of these obligations do not apply equally to our competitors and where they do exemptions from compliance are allowed.

To encourage investment in new technologies, there must be sufficient returns to reward risk and enterprise. Being required to open access to new infrastructure to competitors at low prices that are not set in a way that allows recovery of costs discourages the construction of new infrastructure. These new markets and technologies are intensely competitive markets and there is no bottleneck market failure justification for regulation. Despite this, the regulatory framework allows for various regulations to be applied to new industries through declaration or automatic applications unless an exemption is granted. The catalyst for new regulations is often complaints from competitors to the regulators. The current regime fails to meet the key regulatory principle of predictability and certainty as to whether exemptions will apply and if so for how long which acts as a major deterrent to investment.

In the USA the Federal Communications Commission recently exempted investment in telecommunications wireline and wireless technology in broadband from open access regulation in recognition of the need to improve incentives for investment.

In the UK, the package of reforms to regulation agreed between BT and OFCOM are only applicable to specific telecommunication products and services such that all new technologies are exempt.

Similarly, the Government should exempt from Part XIC of the TPA new technologies and markets where there are no bottleneck issues thereby creating ‘safe harbours’. This will improve incentives for investment in new technology in areas such as Voice over Internet Protocol and roll-out of fibre to the premises and fibre to the node.

The obligation in Part 17 of the Telecommunications Act 1997 for preselection is redundant for voice services delivered over an internet protocol platform, such as Voice over Internet Protocol. Customers effectively preselect of their own volition rather than carriage service providers offering preselection. This out of date legislation adds to the unnecessary burden of regulation as Telstra must seek exemptions where compliance is not technically feasible.

5.4 Increase utilisation of industry solutions to market failure

The Taskforce should consider ways to promote opportunities for industry developed solutions to market failure in preference to externally imposed regulation. Self-regulation allows numerous benefits when compared to ‘black letter’ regulation including:

- a high level of commitment of businesses to the rules;
- well informed rule making;
- low costs to government;
- industry, community and regulator participation; and
- flexibility and responsiveness to changing environments

The OECD principles of best practice regulation are also relevant to industry self-regulation processes where there is also a risk of overly-prescriptive approaches to regulation unless best practice principles are adhered to.

ACIF is instrumental in developing codes, standards and guidelines for the telecommunications industry. There are currently 26 published industry codes[11] and compliance with codes becomes mandatory once they are registered by the ACMA. ACMA seeks to promote compliance with self-regulatory consumer codes through two categories of activity[12] :

- proactive strategies, such as activities designed to raise awareness of codes, promote the benefits of code compliance and monitor levels of compliance; and
- reactive strategies, where issues have arisen suggesting there is a problem with code compliance.

The advantage with a regulatory approach based on industry-specific code development, is that it is able to capitalise upon detailed industry knowledge and is more inclined to deliver pragmatic least cost regulation.

Importantly, embedded into the ACIF code process is the need to undertake a regular review of existing codes to ensure they are still meeting the needs of industry stakeholders.

The telecommunications industry provides a positive example of how industry codes can successfully work in practice. These codes provide a single national regime for the telecommunications industry and cover a range of issues including consumer protection.

6. Recommendations for improving the implementation of existing regulatory processes

The following key recommendations aim to improve the existing regulatory framework:

- strengthen the RIS mechanism;
- introduce regular reviews to revise existing regulations;
- introduce sunset clauses on key regulations;
- standardise regulatory discretion; and
- strengthen rights of industry to appeal regulatory decisions.

Each recommendation aims to take telecommunications regulation closer to achieving one or more of the OECD principles of best practice regulation.

6.1 Improve the process for assessing the need for new regulation through the Regulatory Impact Statement mechanism

[11] http://acif.org.au/documents_and_lists/codes

[12] ACA, (2003), Consumer Codes Compliance and Enforcement, October, p.2

A 2005 Economist Intelligence Unit report[13], having surveyed 230 global senior risk executives, identified that "there is a feeling among many executives that, in their haste to prevent another WorldCom or Enron, the regulators have rushed in far-reaching regulations without fully understanding their impact on business." Telstra agrees with this observation and believes that the RIS process should be strengthened to check the continued growth of regulation. This will improve the cost effectiveness, singularity and transparency of regulation in addition to eliminating unnecessary regulations.

The existing process is failing because:

- the regulatory bodies tend to undertake RIS after the regulatory solution is decided rather than before the preferred option is selected;
- the process does not adequately consider whether there is demonstrable and material market failure to justify any regulation; and
- an evaluation of costs versus benefits is largely absent.

The Productivity Commission undertakes annual Regulation Reviews to assess the adequacy of regulation including a review of whether or not RIS were undertaken for new regulations. The benchmark for assessing the adequacy is set too low or the process against which the adoption of new regulation is measured is inadequate. Regulation is continuing to grow despite robust competition. This supports Telstra's view that the Office of Regulatory Review's (ORR) regulatory review processes are not achieving their objectives.

Some relatively simple improvements that the Taskforce may consider to restructure and strengthen the RIS processes are listed below.

- greater powers for the ORR to reject RIS statements and challenge the need for new regulation. When the RIS is rejected, the need for the regulation should be reconsidered;
- set higher benchmarks in determining the adequacy of RIS;
- strengthen the definition of costs and benefits required to be assessed to deter incomplete analyses;
- RIS to include consideration of the costs that regulation imposes on business and the real incremental benefits accruing from the regulation over and above existing data/processes;
- improve public consultation on draft RIS allowing sufficient time for comment;
- elevate the importance of RIS by re-locating the RIS to the front of the regulation development process;
- demonstrate that there is material market failure;
- require to show that alternatives to legislation have been considered;
- the preferred option should be selected on the basis of providing the highest net benefits; and
- the preferred option should be appropriate to the size of the problem. One-off or temporary occurrences of a problem do not warrant industry wide permanent regulation.

[13] Economist Intelligence Unit, 'Regulatory risk: trends and strategies for the CRO, July 2005, p.4

In addition, a mechanism is required that considers the compounding effect of incremental additions to regulation because the total impost of the range of new regulations may be greater than the sum of the benefits of the individual regulations as analysed through the RIS process.

6.2 Introduce regular reviews to revise existing regulations

In addition to improving processes to assess the appropriateness of new regulation, independent audits will help evaluate the continued relevance and cost effectiveness of existing regulation, as is a feature of the 'assess and review' best practice principle. This could become a new role for ORR or another central government entity that has interdepartmental oversight. The continued need for prescriptive reporting arrangements and existing regulations should be regularly assessed in order to release onerous compliance burdens and direct resources towards operational efficiencies. Where compliance reports show that there are no issues of concern (eg the performance against the extreme failure CSG is consistently higher than required) and accounting separation RKRs, the regulation should be withdrawn.

Independent audit should be conducted at regular intervals to determine if the benefits from regulations are outweighed by the costs. Where audit cannot substantiate that there are net benefits to consumers, the regulation should be removed.

Without such review the growth in regulation will continue unabated with the maze of legislation and subordinate instruments resulting in industry responses becoming excessively slow and opportunities for progress and innovation are lost.

One approach is to establish a requirement whereby the implementation of new regulation can only proceed if existing regulation is removed. Without such a mechanism to level off the accumulation of regulation looking into the future, it is difficult to imagine how large companies that are heavily scrutinised will be able to make any key decisions quickly.

6.3 Introduce sunset clauses on key regulations

The 'assess and review' best practice principle recommends that regulations should be updated through automatic review procedures such as sun-setting. Sunset clauses introduce mechanisms to automatically retire old regulation without the need for lengthy or costly review processes. At the time of the sunset, regulation should be terminated unless a compelling case can be made to retain it. A new cost benefit should be undertaken to ensure there are still net benefits and that regulation is the best option. Sunset clauses should be applied to existing as well as new regulation.

This is particularly important in the telecommunications industry because technological change is so rapid that regulations become out of date quickly. The main advantage to regulators in using sunset clauses is that it provides a clean slate from which to develop more successful approaches rather than being reliant on repairing past attempts to solve issues of concern. Sunset clauses provide regulators with a clean slate to start again, that is, to reflect on the objectives and link policies to objectives in ways that support reform.

6.4 Standardise regulatory discretion

The COAG recognises that "good regulation should attempt to standardise the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs…. This should not ignore the danger of administrative action effectively constituting regulation and thus avoiding disciplines of regulation review. There is a need for transparency and procedural fairness in regulation review and administrative decisions should be subject to effective administrative review processes."[14]

Currently there is little incentive for regulators to be mindful of the impact of their data requests on business, which is resulting in a rapid increase in regulators demands for information through RKRs, section 155 information requests and other ad hoc requests. This is becoming increasingly problematic, particularly with staff resources trending down in private enterprise rather than trending upwards as is the case with the regulatory bodies. There is a place for some forms of reporting, however business cannot afford to direct resources towards activities that add no value to the business, regulators or, in particular, consumers. Regulators should be required to consider a staged approach to information requests where the initial request is at a high level and detail is only required if the high level data justifies further investigation.

Recent application of policy and regulator's decisions concerning regulatory obligations for new entrants to the Australian telecommunications market, have frequently resulted in the granting of exemptions from complying with existing regulations. The principle of competitive neutrality is contravened because the application of regulations means that Telstra's competitors are treated more leniently than Telstra. New entrants argue that they are in 'start-up mode' but often the competitors are an Australian branch of large multinational competitors in the global telecommunications industry with highly developed skill and experience.

Exemption processes are a legitimate and reasonable element of an effective regulatory regime. However, exemptions must be transparent (see CSG under section 5.1) and clearly justifiable according to a set of established criteria agreed by industry.

Record Keeping Rules (RKRs)

[14] COAG 2004 Op.Cit. p.6

Under section 151BU of the TPA, the ACCC has the ability to issue RKRs. RKRs require specified carriers or carriage service providers to keep and/or retain records containing information relevant to the operation of the telecommunications-specific competition regime in Parts XIB and XIC of the TPA.

The TPA gives the ACCC very significant discretion as to the scope and terms of any RKR. As part of its RKR powers, the ACCC can require regular reports to be provided to the ACCC, aspects of those reports to be disclosed to the public and, in some cases, specific disclosure reports to be prepared and made available to the public. The ACCC has every incentive as a regulator to maximise the scope of any RKR to maximise the information it collects, thereby imposing a substantial compliance burden on the recipient of the RKR. There is no requirement for the ACCC to take into account the costs imposed on the recipient of the RKR, why those costs are justified, or, undertake an assessment of the need for existing RKRs.

The RKR regulation is an example of poorly conceived regulation because principles of cost effectiveness and proportionality are not upheld. In practice RKR are generally an excessive response to issues of concern. The regulation could be improved if sunset clauses were required on RKRs.

Ad hoc information requests – TPA Part XII Section 155

The Trade Practices Act Part XII s155 applies to all companies but the telecommunications industry is singled out from all other industries and treated differently to allow the ACCC to obtain information from the telecommunications industry more easily than from companies in other industries. In most industries the request for information is sought by the ACCC if there is or may be a breach of the TPA. However for telecommunications the ACCC may request information if it is relevant to a designated telecommunications matter which is defined as powers and functions conferred on the ACCC by the Telecommunications Acts and Part XIB and Part XIC of the TPA. This is a much lower threshold for telecommunications than other industries as there need not even be a likelihood of a breach. This clearly contravenes the principle of intra-industry competitive neutrality.

Consequently the ACCC use s155 relatively regularly to obtain information from Telstra and it is an unreasonable imposition on Telstra in terms of compliance and intrusion. Significant resources are consumed within Telstra locating and organising the material to meet these requests. The cost obviously varies depending on the nature of the information request, however they routinely cost in the range of $150,000 - $250,000 to fulfil each information request from the ACCC.

There is considerable uncertainty around the timing and use of this regulation making it extremely difficult to budget resources to meet these ad hoc information requests. s155 information requests represent unacceptable levels of intrusion into business operations. The freedom currently enjoyed by

regulators in relation to information requests is appropriately reduced such that the decisions of regulators to request information are subject to scrutiny from an independent body.

6.5 Strengthen rights of industry to appeal regulatory decisions

The 'transparent and non-discriminatory' best practice principle stipulates the need to ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non-discriminatory and contain an appeals process.

The powers of regulators in Australia are extensive. For example, there are virtually no rights of appeal to the ACCC's introduction of RKRs, new declarations, new licence conditions and ACMA determinations and standards. This means that new regulations can be imposed without taking into consideration the views of the regulated entity as to the practicality of the regulation, the associated costs and the appropriate duration of the regulation.

Under the recent changes to Part XIC of the TPA, the ACCC is exempted from meeting standards of procedural fairness when making an interim access determination for a declared service if it has already made a pricing determination. The effect of this amendment is that the ACCC can issue broad pricing principles for a declared service; and then, so long as the interim access price is consistent with the pricing principles, the ACCC need not adhere to ordinary standards of procedural fairness in relation to deriving the interim price. The change needs to be reversed.

There should be reform of the s155 information request powers so that the thresholds for use are raised and regulators are held more accountable for properly justifying the expense they impose through use.

7. Conclusion

The Taskforce on Reducing the Regulatory Burden on Business has an important role to play in creating a more positive environment for business investment and resultant increased levels of economic activity through improvement of the quality of existing and future regulation. The information presented in this submission identifies regulatory issues that are not only critical to Telstra and the telecommunications industry, but also to the whole economy and the community generally because of the importance of telecommunications to the national economy and overall living standards. Telstra provides recommendations on how the design and implementation of telecommunications regulatory framework can be improved.

Telstra looks forward to a future where there is greater recognition that market forces deliver the best results for consumers, with a consequential reduction in the regulatory burden that is currently tying industry – and especially Telstra – up in unnecessary red tape.

Appendices

Appendix A - Examples of redundant and ineffective regulation to be repealed/amended

The growth in regulation should be controlled by requiring the removal of old regulation when new regulation is introduced. The following are examples of redundant or ineffective regulation that should be removed:

Price Controls

Price controls have been a feature of the regulatory regime since 1989, before the market was opened to competition, when the objective was to increase Telstra's incentive to make and share productivity gains with customers. Despite Telstra being confidently assured in 1997 that retail price caps and access pricing were interim measures, they are to remain until at least 12 years later - in 2005 the Minister decided to continue with price controls until at least 2009 when a further review will be conducted.

There is no evidence of market failure requiring price control intervention. Around the world regulators are watering down price control regimes except in Australia where the controls are becoming tighter despite complete compliance by Telstra.

Accounting Separation RKR - Trade Practices Act 1974 Part XIB

The accounting separation RKR should be repealed when operational separation is introduced next year as it will largely become redundant. Even now, it adds little value despite consuming considerable resources estimated at approximately $10m within Telstra to date. Time and time again the RKRs demonstrate that wholesale customers are not systematically being discriminated against. Again when compliance reporting reveals that there is no ongoing problem the reporting requirement should be withdrawn. The ACCC, which administers accounting separation, has admitted that, even after the accounting separation regime was expanded to require Telstra to provide 3 new reports, the regime has "improved transparency only to a limited extent"[15].

Internet Interconnect RKR - Trade Practices Act 1974 Part XIB

In February 2003, the ACCC announced a formal inquiry into the potential 'declaration' of an Internet interconnection service under Part XIC of the TPA following successive investigations into Internet interconnection that had commenced as early as July 1997, some 6 years earlier. In May 2004, the ACCC issued its preliminary findings that the ACCC did not have sufficient information on which to make a decision whether or not to declare the service. After unsuccessfully seeking further information from the industry via an extensive questionnaire, the ACCC issued an RKR to around 11 Internet Service Providers.

[15] ACCC (June 2005) Imputation Testing and Non Price Terms and Conditions Report Relating to the Accounting Separation of Telstra for the March Quarter 2005, p6.

The RKR applied to a range of industry participants with retrospective effect, effectively requiring records to have been retrospectively kept for the previous 3 years, arguably a logical impossibility. Industry participants, including Telstra, complied with the RKR under protest but identified that the expansive scope and ambiguous drafting of the RKR made compliance extremely difficult.

In October 2004, the ACCC released a draft report on the outcome of its Part XIC inquiry. The ACCC indicated it still did not have sufficient information to allow it to form a view whether it should declare an Internet interconnection service. The ACCC proposed another RKR with partial retrospective effect as a basis for ongoing industry monitoring. The draft RKR was significantly more expansive in the range of information subject to record keeping and applied to 17 industry participants. Again, industry participants expressed concerns with the expansive drafting and level of ambiguity in relation to the RKR and challenged the need for an RKR.

In January 2005, notwithstanding those concerns, the ACCC released its final report on the outcome of its Part XIC inquiry. The ACCC concluded it would not declare an Internet interconnection service given the ACCC had insufficient information upon which the ACCC could make a decision. However, the ACCC proposed a draft RKR and invited public comment. The ACCC largely dismissed industry criticism of its proposed draft RKR, but identified that Telstra, Optus, AAPT, MCI and PowerTel had each stated that the proposed RKR was ambiguous.

Again, industry participants expressed concerns with the expansive drafting and level of ambiguity in relation to the RKR and challenged the need for an RKR. Telstra, in particular, made repeated submissions to the ACCC that the scope of the RKR should be reduced and the drafting clarified. Telstra also offered, on a number of occasions, to meet with the ACCC to work through Telstra's concerns or that a broader industry discussion be held on the appropriate scope of the RKR.

Telstra experienced significant difficulties in interpreting the ambiguous drafting of the RKR and was also forced to seek clarification from the ACCC on a range of compliance issues. Telstra also sought an exemption from the ACCC from some provisions of the RKR which were excessive in scope and imposed significant compliance costs disproportionate to any likely benefit to the ACCC. The ACCC denied the exemption.

The ACCC's reluctance to recognise legitimate industry concerns in the context of drafting RKR such as the Internet Interconnection RKR is a cause for considerable concern. In particular:

- The ACCC has a responsibility, as a telecommunications regulator, to draft its RKR so that the ACCC achieves its regulatory purpose in a manner that does not impose undue financial and administrative burden on the industry

- The ACCC should adopt a more selective and focussed approach to satisfy its information requirements. An approach based on information sampling would be more consistent with regulatory best practice.
- The ACCC should be required to always prepare a regulatory impact statement, consistent with Government policy and the requirements of the ORR.

The ACCC should remove this RKR.

Redundant elements of the CSG Standard

The CSG Standard, referred to earlier, contains a number of redundant clauses including:

Reference to enhanced call handling features

The Standard references the following enhanced call handling features: call waiting, call forwarding, call barring, call number display and calling number display blocking.

The reference to these features should be removed from the Standard because these features are predominantly already provided on all services. These features can be connected and repaired in a matter of hours via a software change so CSG timeframes of 1 to 3 days aren't relevant. The connection and repair of enhanced features – in comparison to service connections and service faults - is not a critical agenda item for consumers.

Credit Management - Section 21(2) of the CSG standard

The objective of this section was to provide consumer protection in credit management cases. Section 21 (2) states that a carriage service provider must provide a customer with 21 days written notice prior to disconnecting them for non-payment of account. The section is open to interpretation as the term disconnection is not defined in the Standard.

This section of the standard should be repealed on the basis it is both duplicative and redundant regulation as the ACIF Credit Management Code (C541) establishes rules for both temporary and permanent disconnections. The Code, developed by consumers, regulators and suppliers, and registered by the ACMA, stipulates that 7 days notice is sufficient advice. This 7 day requirement has remained throughout three revisions of the Code.

Connection to specified services - Division 2 Section 9(2) of CSG Standard

This regulation has been drafted around Telstra's connection timeframes but is not necessarily suitable for other carriers that are now providing their own

infrastructure. In any case this sections needs to be amended to take account of new entrants.

Directory Assistance – Licence Condition Clause 8 Telecommunications Act 1997 Subclause 7 (1) Schedule 2, Telstra Carrier Charges – Price Control Arrangements, Notification Disallowance Determination No.1 of 2002 - Clause 26

The purpose of subclause 7 is to require Telstra to provide free directory assistance to its residential customers for calls made from fixed phones. In the age of the mobile and on-line search engines as well as Telstra's requirement to provide White Pages free of charge, the merits of this social policy are questionable. Telstra estimates that the cost of implementing free directory assistance to residential customers is in the order of approximately $35m per annum.

Priority Assistance - Carrier licence conditions Schedule 4, part (5)(a)

Priority Assistance offers those Telstra customers, who have a diagnosed life threatening medical condition and who meet the eligibility criteria, the highest level of service practicably available at the time on the connection and repair of telephone services.

Experience has shown there is a high percentage of provisionally tagged priority customers who fail to ratify their application through an approved assessment process. This has resulted in increased costs and has meant that Telstra has had to prioritise this work above that of other work, sometimes to the detriment of other customers.

Consideration should be given to amending this licence condition to affirm that priority assistance will only be provided to those customers who have pre-registered for the service by providing an authorised application form.

Ss60 and 106 of the Radiocommunications Act

These clauses are unnecessary because the acquisition of spectrum in an auction (or a secondary market) is already subject to regulation through s50 of the TPA.

The Productivity Commission criticised this duplication of regulatory measures in its report on Radiocommunications[16] and recommended that the Radiocommunications Act auction limits power be done away with - yet nothing has happened. The PC said, "A supplementary layer of regulation, in the form of competition limits, is not required to address the competitive structure of new or future markets." [17]

Unnecessary Reporting Requirements

- CSG Extreme Failure (Estens Regional Telecommunications Inquiry Recommendation 2.3). Extreme failure has now been reported by Telstra for a number of years. There has been such significant and sustained

[16] Productivity Commission (2002) Radiocommunications Inquiry Report No. 22

[17] Op cit, p.110 .

improvement in performance that the report is no longer useful nor necessary.

- Monitoring of progress in relation to placing facilities underground: Clause 50, Schedule 3 (Telecommunications Act 1997). Telstra does not believe this report is necessary as consistent evidence has been provided that 99% of new Telstra customer access network infrastructure is placed underground.
- There is considerable overlap in the content of reporting requirements of Division 12 to ACCC and Consumer Benefits Analysis Report to the ACMA.

Appendix B - Examples of regulation requiring excessive compliance

Telecommunications regulation is frequently pitched at an intense level of detail that can orientate corporate behaviour towards meeting minimum regulatory requirements, rather than seeking innovative means of better serving customers. Resources are diverted from improving customer products and services towards compliance activities.

When regulation is too prescriptive, companies become restrained from developing flexible approaches tailored to customers' true requirements. Prescribed reporting requirements, such as RKRs, are too inflexible to remain relevant over time. Telstra has often debated with regulators regarding the objectives, existing information sources and scope of information required to assist regulators in their information requests. Unfortunately, Telstra has found that once an obligation for a report is introduced, the obligation is rarely removed even if the issue is no longer a relevant concern.

Public self-reporting enables companies to focus on stakeholder groups' current concerns and issues, and provide the context to explain salient factors to interested parties. Telstra undertakes various levels of self-reporting in order to improve standards of service to customers by proactively informing them about service delivery and assisting them to make informed decisions and comparisons amongst providers. The following are examples of obligations demonstrating excessively burdensome compliance requirements:

Retail price controls

The price control regime is extremely complex. The current arrangements are contained in a 21 page document with a supplement of another 50 pages explanation which further add to the compliance difficulties. For example:

- measures to demonstrate local call price parity are incredibly complex,
- poor definitions make it difficult to demonstrate enhancements in value to the fixed line network so we can't seek to recover costs
- disaggregation of business customers into large and small will cost at least $5m in IT development could take between 6-18 months to adjust billing systems for questionable additional value to the regulator.

To change an existing residential line rental price the following process must be followed:

- provide 14 days notice to the ACCC. If ACCC have any issues the notice period is stopped until the issues are resolved. ACCC nearly always raises issues which creates unpredictability of launch dates;
- consult with Low Income Measure Advisory Council (LIMAC) to seek and consider their views;
- ensure LIMAC is resourced;
- inform ACMA of significant changes to the low income package ;
- develop a marketing plan for low income customers;
- exchange letters between ACCC and Chair of LIMAC; and
- provide customers 30 days notice of changes.

LIMAC must also report annually to the Minister of changes to LIMAC package.

Customer Service Guarantee Standard (CSG) – Telecommunications (Consumer Protection and Service Standards) Act 1999

Telstra is committed to delivering high quality services to its customers. To ensure compliance with its regulatory obligations Telstra has organised its internal business practices to focus on meeting the connection, repair and appointment standards prescribed by the CSG. In service terms these mandated standards are one dimensional and prescribe timeframes for delivery of service in different geographical locations.

The inflexibility of the regulation and need to standardise processes to comply with the CSG acts as a restraining factor in improving overall customer service. A good example of the ineffective nature of the regulation is where a customer already has an existing service and requests an additional service, which must be connected in the same CSG mandated timeframe. Owing to current regulation, such requests attract the same urgency as those for customers possibly requesting their first basic telephone service at a premises, therefore discouraging consideration as to the true priority of the customer. Many customers don't value quick connection times as highly as connection of all their services – not just their fixed telephone lines.

The CSG penalty payment liability to any individual customers has a cap of $25,000 for delayed connections for telephone services, yet the cap on penalties for delayed electricity connections in Victoria is only $250. The principle of economy-wide neutrality needs to be considered here.

The reporting of CSG performance requires details to be captured by exchange service area which is an excessive level of detail. State based reporting would be more reasonable. The Telstra Service Performance and Telstra CSG Extreme Failure quarterly reports and compliance together consume an estimated 25,000 hours per year which is equivalent to an additional 12.5 full time staff.

Service Provider Determinations

ACMA Telecommunications Service Provider (Premium Service) Determinations 2004 No's 1 and 2 generate excessive compliance burden, with dubious benefits to the target audience and no apparent measures as to achievement of objectives. These Determinations necessitate that all customers be provided (3 pages of) information in writing about financial risks associated with the use of premium services, regardless of whether they use these services or not. This costly and onerous obligation encourages minimum steps in order to comply with the obligation, rather than allowing suppliers the flexibility to create innovative and effective means of targeting and informing customers. The regulation does not serve customers best interests.

Component Pricing - Trade Practices Amendment (Component Pricing) Bill

These new laws make pricing and advertising more prescriptive and complex, and prevent moves to improve consumer service.

The proposed Trade Practices Amendment (Component Pricing) Bill will require that businesses must advertise or quote a single-figure price at which a good or service can be obtained. The concern is that this will make it very hard for suppliers to offer package deals and complex services with any optional extras, as this will require advertising to include explanation of pricing of all the optional extras, even though these may not be of interest the majority of prospective customers and will only serve to confuse them about the baseline prices. GST inclusive pricing may also not be appropriate for businesses that are entitled to input tax credits, and may actually cause more harm than good as businesses are left to calculate their own GST exclusive prices.

Section 105 reporting - Telecommunications Act 1997

The objective of Section 105 reporting is to report on quality of service, for a range of customer service and network performance measures. The ACMA Section 105 Annual Report contains 13 modules (collectively containing 34 sub modules). These modules contain quantitative and qualitative data. This report consumes about 20,000 hours each year, which is equivalent to about 10 full time staff. The extent of Section 105 reporting is excessive in relation to the objectives. This diversion of resources makes it harder to focus on improving customer service.

There is also a need for better communication from regulators of the purpose, use, and data classifications (eg data on quarterly, seasonally adjusted annualised average) of the information sought. Ad hoc requests from regulators for further information outside of the annual Section 105 report should be carefully assessed by the regulators to determine whether the benefits will outweigh the costs. For instance, regulatory bodies should develop and follow processes to ensure their data requests are necessary, properly formulated, and not duplicating information previously provided.

Corporations Law - Corporate Governance and Financial Reporting

Australian companies have become subject to increasingly complex regulation governing their internal affairs and financial reporting. Key changes have:

- imposed significant additional disclosure, reporting and other obligations (for example the requirements to prepare a remuneration report and to put that report to shareholders for a non-binding vote);
- imposed additional certification processes on both management and auditors;
- imposed committee structures and board independence requirements;
- further regulated auditors and audit and non-audit services; and
- required the implementation of codes of conduct.

Corporate accountability and, accordingly, increased shareholder protection, is offered as the key to detecting fraud in companies, enhancing investor

confidence and therefore, delivering better company performance as well as promoting efficient markets and, in the end, a healthier economy.

However, over-regulation could prove in time to have the opposite of each of these effects. Companies with a policy of best practice in corporate governance will always strive for full compliance with all regulations. When the regulations are excessive and conflicting, significant time, cost and other resources are required to navigate the minefield of regulations and achieve that result. The requirement for board oversight of many of these compliance activities also means that directors and other senior management spend time focussing on the company's compliance systems rather than on the company's strategy and performance. That result is not necessarily favourable to investors.

Furthermore, for those companies which do not have a policy of best practice in corporate governance, commentators have argued that their empirical evidence shows fraud is not likely to be detected by requiring a high level of diligence on compliance and control systems but, instead, is more likely to be detected through tip-offs, internal audits or by accident. Accordingly, even for recalcitrant corporate citizens, detailed regulation will not necessarily prevent the kind of behaviour it is aimed at preventing.

Remuneration Reporting

Despite recent improvements to align specific remuneration disclosures required under the Corporations Act with those required specifically through accounting standards, the umbrella under which disclosure is regulated is still quite complex. There are currently disclosure obligations included in the Corporations Act directly and also in the accounting standards, which has the backing of the Corporations Act. The Corporations Regulations currently provide reporting relief from remuneration disclosures in the financial reports where they are appropriately included in the Remuneration Report. There are also two accounting standards which cover disclosure, AASB 1046 and AASB 124. AASB 1046 requires disclosure in the financial report specific to Australia whilst the requirements of AASB 124 ensure Australian reporting complies with international reporting requirements.

The AASB are currently reviewing the possibility of combining AASB 124 and AASB 1046 and Telstra is going to provide a comment letter in relation to this. Even if this does proceed the situation will still exist where companies will need to provide remuneration reporting based on dual obligations under the Corporations Act, consider offered relief, and also consider the minimum requirements to meet what is needed to comply with international requirements.

Financial Services Reforms (FSR)

The breadth of the definitions of financial product advice and dealing in a financial product means that telecommunications providers who are merely conduits for access to financial products and services may be covered by FSR obligations, even where the actual issuer of the underlying financial product or service is themselves regulated.

For example, telecommunications carriers are increasingly offering means by which customers may access services from financial institutions (such as electronic banking), or bundling products (eg a phone handset with insurance) and co-branding of products provided on a bundled or packaged basis. Informing customers of such services, or co-branding, or bundling, or even advertising such services, may trigger onerous FSR obligations even though the risk to customers may be low.

The FSR's current coverage of non-cash payment facilities does not take into account the value of amounts held in, and payments made through, a non-cash payment facility. The same potentially onerous obligations apply regardless of the level of risks faced by a customer in using such facilities. While ASIC is formulating some relief in relation to low value non-cash payment facilities, there is uncertainty as to how effective or useful this will be (given that ASIC may take a conservative approach to ensure it does not overstep its boundaries).

The FSR's current coverage of non-cash payment facilities, and the FSR obligations that may arise in relation to them, do not adequately take into account the context in which non-cash payment facilities may be offered. For example, the ability to pay for certain goods and services may only be a convenient add-on to a 'core' mobile telephone service. Current exceptions from the FSR do not cover such a scenario very effectively. Further, disclosure obligations are not compatible with the manner in which consumers expect these services to be delivered.

Taxation Law

State taxes should be abolished in accordance with the GST timetable. Stamp duty remains a major hindrance to corporate restructuring. There are unnecessary areas of uncertainty regarding the application of the GST Regime to a number of basic transactions. These include, for example, the treatment of vouchers and cross border transactions.

The Commonwealth Government and the ATO should undertake a consultative review of the Goods and Services Tax regime. The GST Regime was introduced over 5 years ago and it is seen as an opportune time to make amendments to address those areas of uncertainty in the GST regime and compliance costs particularly for B2B transactions.

The Fringe Benefits Tax (FBT) regime continues to place an unnecessary compliance burden, which many employers and practitioners consider as excessive and inappropriate. The Government needs to undertake a review of the FBT laws, in particular the reportable fringe benefits regime, which creates a compliance nightmare for employers as there is a requirement to trace every item of expenditure for each employee and the minor benefits rule. With respect to the $100 threshold for minor benefits, to allow real compliance savings this threshold needs to be increased and indexed each year.

Superannuation

The regulatory and compliance burden imposed on the superannuation industry is very onerous. The prescriptive nature of the supervision (e.g. audit report requirements dictated by Australian Prudential Regulation Authority (APRA) on an annual basis) is adding significant cost without any demonstrable increase in member benefit. Much of this regulation stems from the Safety of Superannuation regime which had as its raison d'etre in the collapse of an APRA regulated organisation (Commercial Nominees).

The requirement to document comprehensive compliance plans and the attendant monitoring has significantly increased superannuation administration costs.

The registerable superannuation entity (RSE) licensing requirement, introduced from 1st July 2004 and requiring completion by 30th June 2006, is so onerous as to have forced many providers of superannuation benefits (especially in the corporate sector) to walk away from the industry. Hitherto those funds had operated effectively and efficiently in providing superannuation benefits, however, their Trustees were either unable or unwilling to take on the additional administrative burden of applying for an RSE licence and operating within an RSE licence regime.

The prolonged time taken for a licence application to be processed and the licence issued is itself is evidence of the administrative complexity of the process. Only a very small number of licences have been issued to date although it is almost three quarters of the way through the transition period. Superannuation industry participants are universally critical of the complexity and the excessive compliance burden associated with making a licence application.

Appendix C - Examples of Commonwealth regulation with jurisdictional overlaps generating compliance complexities

In designing jurisdictional legislation on issues such as consumer protection where industry has already developed national Codes (or is planning to develop Codes) governments must exempt these industries from the legislation to prevent overlapping regulation.

There are many examples of compliance complexities arising from jurisdictional overlaps. The following indicate some of the key areas that generate concern:

Telephone Marketing

There needs to be greater harmonisation of telephone marketing laws in Australia. For example, legislation regulating telephone marketing includes:

- Financial Services Reform Act 2001;
- Amendments to the Victorian (VIC) Fair Trading Act;
- New South Wales (NSW) Fair Trading Amendment Act 2003;
- Telecommunications Act;
- Ministerial Counsel for consumer affairs modified practices for direct marketing;
- The Australian Direct Marketing Code of Practice; and
- The ACIF Customer Transfer Industry Code C546.

In particular, the new legislation enacted by the Victorian and New South Wales governments, has created a disparate regulatory approach toward telephone marketing nationally. For instance a call centre calling interstate customers is required to follow different administrative rules. The national ACIF code should be paramount.

Door to Door Sales Legislation

The differences in each State and Territory law on door to door legislation add to the complexity and costs of ensuring compliance for organisations that conduct business nationally. Particular difficulties arise where marketing activities are conducted in areas that border two different States or Territories.

Privacy

The Office of the Privacy Commissioner (OPC) should be encouraged to liaise with State Governments and privacy bodies to ensure that a consistent approach is taken to privacy regulation. Wherever possible, additional State legislation relating to privacy should only be passed to address specific State-based issues and reduce the overlap between Federal and State regimes and, therefore the costs and complexity of compliance.

Further, it is not necessary to have Part 13 of the Telecommunications Act, which deals with Privacy, and the ACIF Code on dealing with Protection of Personal Information of Customers of Telecommunications Providers (C523:2001) as well as the proposed Integrated Public Number Database (IPND) Standard which will also deal with privacy concerns.

Privacy issues should be concentrated in one law rather than scattered across different legislation and codes.

Sarbanes-Oxley
Additional regulatory compliance complexity is imposed on those Australian companies with US reporting obligations pursuant to the US Sarbanes-Oxley Act of 2002 (SOX). While SOX in some instances complements the Australian regulatory regime, in a number of areas it also conflicts with the Australian regime (for example in relation to auditor independence).

Since the enactment of SOX, the United Sates of America has witnessed a number of companies terminating their registration under the Securities Exchange Act of 1934 in order to avoid the excessive and costly compliance requirements of SOX. That result arguable runs counter to the intended benefit of more efficient capital markets and a healthier economy.

Debt Collection
States and Territories have different debt collection laws. This can make compliance a difficult task for a business which has customers all over Australia and uses the same processes to bill each customer. To have different processes for each State and Territory would cost a significant amount and add to the cost to customers.

Unclaimed Monies
Unclaimed monies legislation impacts primarily where a customer overpays a bill at the end of a contract and a business is then unable to locate that customer. Inconsistencies in State laws in this area increase compliance costs. Harmonising these laws would simplify systems requirements. In addition, it would be helpful to establish a minimum threshold amount that must be reached before these laws are triggered.

Uncollected Goods
Uncollected goods legislation impacts where goods are returned for servicing and, on being informed the goods are not able to be fixed, customers leave the goods with the business. Inconsistencies between State and Territory legislation increase compliance costs and make it impossible to have a nationally consistent practice for disposal of goods. In addition, it would be appropriate to review these laws as a number of them impose conditions on the destruction of these commercially valueless goods that are onerous and of no value to customers.

Consumer Contracts
All telecommunications carriers and carriage service providers must comply with an ACIF industry code on Consumer Contracts which has been registered by the ACMA under the Telecommunications Act 1997 in addition to the consumer protection provisions of the TPA. However there is also jurisdictional legislation (the Victorian Fair Trading Act) covering the same or similar subject matter. The telecommunications industry should be exempt from complying with jurisdictional legislation as there is already a national code.

Intellectual Property

Currently, there is no single government department responsible for administering IP rights. Responsibility for IP rights should be consolidated in one department or government agency. At the very least, there should only be one department responsible for administering copyright.