

1988

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Transport and
Communications, the Hon Ralph Willis M.P.)

TELECOMMUNICATIONS AMENDMENT BILL 1988

OUTLINE

The aim of the Bill is to:

- . establish a new corporate structure for Telecom, as the Australian Telecommunications Corporation, establish a Board, redefine the role of the Minister, Board and management, provide for new employment provisions and remove day-to-day controls;
- . amend the Telecommunications (Interception) Act to extend the exemption which currently applies to Telecom staff who would otherwise be guilty of interception in carrying out installation and maintenance work, so that it applies to private sector employees legally carrying out maintenance on or installation of PABXs.

This Bill is the first stage of legislative amendments to implement the Government's reform package for Telecom as announced by Senator Gareth Evans, in the 25 May ministerial statement "Reshaping the Transport and Communications Government Business Enterprises".

The Telecom reform package, as with the Government's other concurrent GBE reforms has four elements:

- . revised corporate and financial structures;
- . new planning and accountability mechanisms;
- . modification of major strategic controls;
- . removal of day-to day controls.

In future the Government is to be less involved in scrutinising the activities of Telecom. Instead the Government will focus on planning, through corporate plans and financial targets, and accountability for results with only some aspects monitored on an on-going basis. The emphasis is to concentrate on the bottom line, on how successfully the goals and targets are met. The Board's most important function will be to formulate policy directions for the Corporation, in accordance with the Act and any directions from the Minister. The Managing Director, has the responsibility, under the Board for managing the affairs of the Corporation, and can perform all its functions and exercise all its powers.

The reform process requires legislative and administrative changes. Reforms which require legislation will be implemented in two stages:

- . this Bill which provides for: the change of name to the Australian Telecommunications Corporation and the establishment of the Board; new employment provisions; and removal of day to day controls;

a second Bill (proposed for passage in the Autumn sittings 1989, and to operate from 1 July 1989) which remakes the Telecommunications Act 1975 as the Australian Telecommunications Corporation Act 1989, redefines the objectives, functions and powers of the Corporation, and provides for the corporate planning and financial accountability measures. This second bill will fit in with the Bill to provide for new regulatory arrangements for the telecommunications industry in Australia as announced in the ministerial statement of Senator Evans on 25 May, "Australian telecommunications services: a new framework".

This Bill provides for the constitution of the Board, including Chairperson, Deputy Chairperson and the Managing Director and up to six other Directors. Board members are appointed by the Governor-General and are subject to dismissal for under-performance (in addition to current grounds such as misbehaviour, mental illness etc), in line with the emphasis on accountability for results. The Managing Director is appointed by the Minister after receiving a recommendation from the Board. Terms and conditions of employment for the Managing Director are a matter for the Managing Director and the Board, but the Board will consult with the Remuneration Tribunal about the remuneration package for the Managing Director in line with the amendments to the Remuneration Tribunals Act introduced in Part V of the Government Business Enterprises (Miscellaneous Reforms) Bill.

The change over from Commission to Corporation retains the same body corporate and takes account of the need for the continuation of such matters as delegations, etc. All the provisions dealing with the change of name and the Board will come into operation from a date to be proclaimed, likely to be 1 January 1989.

Employment provisions in the current Act will be replaced by simpler provisions which make the Board responsible for determining terms and conditions of employment. These provisions operate from a separate proclamation date to allow for ongoing consultations between Telecom and relevant unions before the changes are made, and to allow for appropriate new awards to be created.

The Bill includes provisions for continuity of employment for current staff.

Day-to-day controls are to be minimised in line with the devolving of responsibility to the Board. There will be appropriate mechanisms to allow the Minister to exercise strategic oversight, through the corporate plan and financial targets; these are currently being developed and will be provided for in the second stage legislation, once the required asset revaluations are completed and the new financial structure for Telecom is established. Telecom will be free to engage in such standard business practices as entering into contracts, partnerships, joint ventures, and normal investment arrangements suitable for a business enterprise. In some cases the Board will be required to notify the Minister in writing before business activities are expanded. Borrowings will also be freed from specific approval requirements, subject to continued overall Loan Council scrutiny.

AMENDMENTS TO TELECOMMUNICATIONS (INTERCEPTION) ACT 1979

As part of the regulatory measures announced in the Government's statement "Australian telecommunications: a new regulatory framework" the private sector will be permitted to carry out maintenance work on PABX from 1 January 1989, in addition to the installation of PABXs currently allowed. The Telecommunications (Interception) Act currently exempts Telecom employees who would otherwise be guilty of interception because of conversations overheard during the course of their work. The Bill extends this exemption to private sector employees lawfully engaged in installation and maintenance of PABX equipment. The provision making it an offence to divulge any information obtained already applies generally to all persons exempted.

FINANCIAL IMPACT STATEMENT

The Bill does not involve any additional expenditure by the Commonwealth or additional revenue for the Commonwealth.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 Short title etc.

Provides for the Act to be cited as the Telecommunications Amendment Act 1988.

Clause 2 Commencement

Subclause 2(1) provides for provisions removing day-to-day controls to operate from Royal Assent; this includes provisions in Part I of Schedule 1.

Subclause 2(2) provides for the commencement of provisions for the change of name to Corporation and the creation of the Board, from a date to be proclaimed (planned for 1 January 1989); this includes:

- clause 6 - providing for the continuation of Telecom as the Australian Telecommunications Corporation;
- clause 11 which substitutes a new Part IV dealing with the creation of the Board and the appointment of Directors including the Managing Director;
- Part II of Schedule 1 which changes references to Commission to Board and alters other references and definitions;

Subclause 2(3) covers the amendments to employment provisions, also to operate from a date to be proclaimed, which can be earlier or later than the date for the amendments in subclause 2(2); these amendments include:

- clause 13 which substitutes a streamlined Part V;
- amendments in Part III of Schedule I changing references to "officer", "Service" etc which will not be used in the new legislation;

Clauses 32 and 33 allow either the Corporation amendments or the employment amendments to be proclaimed first.

PART II - AMENDMENTS OF TELECOMMUNICATIONS ACT 1975

Clause 3 Principal Act

Part II of the Bill has amendments of the Telecommunications Act 1975.

Clause 4 Application of Act

Inserts a proposed section 3AA which confirms the presumption that the Act applies within and outside Australia, in accordance with normal drafting practice.

Clause 5 Heading to Part II

Amends the title of Part II of the Principal Act to change Commission to Corporation.

Clause 6 Australian Telecommunications Corporation

Substitutes a proposed section 4 which provides for continuity of the Australian Telecommunications Commission as the Australian Telecommunications Corporation.

Inserts a proposed section 4A which continues provisions currently in section 21 (1) that Telecom is a body corporate, has a seal etc.

Clause 7 Particular Powers of Commission

Amends section 10 to expand Telecom's powers about contractual and financial matters. At present, most of these powers can only be exercised after receipt of approvals from the Treasurer or Minister and are dealt with in separate sections which are proposed to be repealed, for example the powers relating to contracts currently in sections 79 and 79A.

Clause 8 Commission to notify Minister of significant business activities

Substitutes proposed section 10A which provides that the Commission is required to give prior written notice to the Minister of specified new business activities entered into by Telecom or its subsidiaries; these include creation of subsidiaries, joint ventures, partnerships and, in accordance with guidelines (if any) from the Minister, acquisitions of major shareholdings and substantial businesses, and engaging in significant new business activities. This requirement does not preclude the operation of section 100(2) which requires the Commission to keep the Minister informed of the Commission's activities.

Clause 9 Delegation of Corporation's powers

Inserts proposed section 10B to give the Corporation a power of delegation to an employee (similar to that in existing section 33, proposed to be repealed by clause 11). Normally, the powers and functions of the Corporation are carried out by the employees of the Corporation under the control of the Managing Director, in accordance with the policies determined by the Board. The power of delegation is to cover important matters where it may be necessary for the employee to prove that the action taken was specifically authorised.

The provision makes it clear that the power of delegation can only be exercised by the Managing Director (under proposed subsection 29 (2) the Managing Director acts on behalf of the Corporation) or by an employee specifically authorised by the Board (for example a State Manager).

Proposed section 27 provides separately for delegations by the Board.

Clause 10 Charges for telecommunications services and other charges

Amends section 11 so that regulations can be made to the effect that some rentals and charges determined under section 11, where prices are set in a competitive market, are not required to be notified in the Gazette.

Clause 11 Part IV - Directors of the Corporation

Repeals Part IV dealing with the "Constitution and Meetings of the Commission", and substitutes a proposed Part IV which deals with the structure and role of the Corporation.

Division 1 - Board of Directors

Proposed section 21 - Establishment - establishes a Board of directors.

Proposed section 22 - Role - defines the role of the Board as determining the policies of the Corporation, while ensuring the proper and efficient performance of functions and duties. This is subject to the Act and to directions (if any) by the Minister under proposed section 23.

Proposed section 23 - Directions to Board - continues provisions currently in section 7 for directions by the Minister about the exercise of Telecom's powers and functions. Existing directions are continued in force by clause 27.

Proposed section 24 - Constitution - outlines the membership of the Board, as the Chairperson, Deputy Chairperson, Managing Director and up to six other directors.

Proposed section 25 - Meetings - establishes the standard procedures for the calling and running of meetings, with a quorum of five, if there are nine directors and four in other cases. There are provisions for chairing meetings in the absence of the Chairperson and the Deputy Chairperson, and for meetings to be held by such means as telephone or closed circuit television

Proposed section 26 - Disclosure of interest - sets out the requirements for declaring and recording direct and indirect pecuniary interests. A director is precluded from deliberations where the director has an interest.

Proposed section 27 - Delegation by Board - provides that the Board can delegate its powers (as opposed to the powers of the Corporation) to individual directors. This does not include the Board's powers under section 10B (to authorise an employee to exercise the power to delegate the Corporation's functions) or any of its powers in relation to the Managing Director.

Division 2 - Managing Director

Proposed section 28 - Managing Director - establishes the position of Managing Director.

Proposed section 29 - Duties - defines the role of the Managing Director, which is, under the Board, to manage the Corporation. Proposed subsection 29(2) provides that the Managing Director can exercise all the powers and perform all the functions of the Corporation.

Division 3 - Provisions Relating to directors other than the Managing Director

Proposed section 30 - Application of Division - makes it clear this Division does not apply to the Managing Director.

Proposed section 31 - Appointment of directors - provides for the appointment of directors by the Governor-General, as at present.

Proposed subsection 31(2) provides for the appointment of a Board with a balance of expertise, including one director who the Governor-General is satisfied, having regard to consultations between the Minister and unions, has an appropriate understanding of the interests of employees.

Proposed subsection 31(3) provides that an appointment is not invalid merely because of any defect or irregularity in the appointment.

Proposed section 32 - Term of appointment - provides for the maximum term of five years with government directors (any director who is a member of the Australian Public Service), holding office during the pleasure of the Governor-General.

Proposed section 33 - Directors hold office on a part-time basis - this provision does not, of course, refer to the Managing Director

Proposed section 33A - Remuneration and allowances - Remuneration of Directors is by determination of the Remuneration Tribunal, with remuneration as prescribed in regulations under this Act if no determination is in force. By virtue of the Remuneration Tribunals Act, there is no payment for a government director.

Proposed section 33B - Leave of absence - The Board grants leave to directors on such terms and conditions as the Board determines - this provision does not apply to the Managing Director whose leave is a matter for the terms and conditions of employment determined by the Board - see proposed section 33L.

Proposed section 33C - Resignation - provides for the resignation of directors in writing to the Governor-General.

Proposed section 33D - Termination of Appointment - Termination of appointment is by the Governor-General. These provisions do not apply to a ors government director who holds office during the Governor-General's pleasure and only while the director remains a member of the Australian Public Service. Proposed subsections 33D (1) and (2) provide for the dismissal of directors for the usual reasons such as misconduct, bankruptcy etc

An additional ground for dismissal is ongoing underperformance. Under proposed subsection 36D (3) - where the Minister is of the opinion that the performance of the Board or the Corporation has been unsatisfactory for a significant period of time, the Minister recommends the termination of appointment of all or some of the directors. Proposed subsection (4) applies for the termination of appointment of individual directors where the Minister is of the opinion that the performance of that director has been unsatisfactory.

Proposed section 33E - Terms and conditions of appointment not provided for by Act - the Minister can determine terms and conditions for directors about matters not provided for by the Act; for example, the Minister could determine that the director is provided with a fax machine, staff to assist in particular tasks, an office in Telecom headquarters, but not anything in the way of remuneration or allowances covered by the Remuneration Tribunal.

Proposed section 33F - Deputy Chairperson - provides for the appointment of a Deputy Chairperson who automatically acts as Chairperson, without the need for a special appointment, when the Chairperson is absent from Australia or unable to attend meetings, or when the position is vacant. The Deputy will chair meetings, and perform any other duties of the Chairperson.

Proposed section 33G - Acting appointments - provides for the appointment of Acting Deputy Chairperson and acting directors. The maximum term is 12 months (see Acts Interpretation Act, section 33A)

Division 4 - Provisions relating to Managing Director

Proposed section 33H - Appointment - The Managing Director is appointed by the Minister after the Minister receives a recommendation from the Board. Having received a recommendation, the Minister can appoint a person not recommended, although in practice it is anticipated the Minister would accept the Board's choice.

A part-time Director can be considered for Managing Director but must resign the part-time position before appointment.

Proposed section 33J - Managing Director holds office during the Board's pleasure etc - The Managing Director is not appointed for a term but holds office during the pleasure of the Board - see proposed section 33L.

Proposed section 33K - Managing Director holds office on a full-time basis - This is one term of employment not left to the Telecom Board.

Proposed section 33L - Terms and conditions of appointment not provided for by Act - The Managing Director holds office on terms and conditions determined by the Telecom Board. It is expected that the Board and the Managing Director would enter into arrangements setting out the terms and conditions on which the Managing Director holds office, including grounds on which the Board could terminate the appointment without compensation, and details of compensation payable if the appointment is terminated on other grounds, by either party.

The remuneration of the Managing Director is determined by the Board, in consultation with the Remuneration Tribunal which is given an advisory role to cover remuneration packages for Government Business Enterprises such as Telecom. Other legislation dealing with terms and conditions of employment such as compensation, superannuation, long-service leave and maternity leave will not apply to the Managing Director. In line with the 25 May ministerial statement, Reshaping the Transport and Communications Government Business Enterprises, these new remuneration arrangements apply only to a person appointed after an international search.

Clause 29 preserves all the rights of the current Managing Director during his current term.

Proposed section 33M - Disclosure of interests - requires the Managing Director to provide a written statement to the Chairperson of all direct and indirect pecuniary interests, for example, that the Managing Director is a beneficiary under a trust controlled by other persons holding shares at the time of the statement in companies listed in the statement.

Proposed section 33N - Acting Managing Director - allows the appointment by the Minister of a director or other person to act as Managing Director. The maximum period for acting is 12 months (see Acts Interpretation Act, section 33A).

Clause 12 Repeal of Division 1 of Part V

Repeals provisions for the appointment of the Chief General Manager. The position of Chief General Manager is to be abolished. Clause 30 protects the rights of the current Chief General Manager.

Clause 13 Staff

Repeals Divisions 2 to 7 of Part V, which sets out detailed staffing provisions, and inserts new streamlined employment provisions.

Proposed section 38 Staff - provides for Telecom to employ such people as are needed to perform its functions and exercise its powers, on terms and conditions to be determined by the Corporation

Proposed section 39 - Corporation as employer - requires the Corporation to be a good employer.

Clause 31 provides for the continuation of employment of all Telecom officers and employees at transition.

Under subclause 2(3) these amendments will not operate until a date to be proclaimed and the Government has announced that the proclamation will not be made until agreement has been reached between Telecom and relevant unions about preservation of existing terms and conditions on changeover.

Clause 32 and 33 allow the maximum flexibility for proclamation of the employment amendments, either before or after the commencement of the change to Corporation and the new Board.

At present, the Conciliation and Arbitration Commission has an extended jurisdiction under Division 8 of Part V, similar to that for other government bodies (without the requirement of the existence of an interstate dispute). The Industrial Relations (Consequential Provisions) Bill includes amendments to carry this extended jurisdiction over to the Australian Industrial Relations Commission and clause 34 allows for the continued operation of Division 8, if the employment provisions are proclaimed before the new industrial relations legislation.

Clause 14 Borrowing otherwise than from the Commonwealth

Amends section 72A so the Treasurer's approval is not required before Telecom enters into agreements to borrow money. Telecom will still be subject to Loan Council arrangements.

Clause 15 Financial Policy of the Commission

Amends section 73 which sets out the financial policy to be followed by Telecom, to remove from a provision which requires funds to be available for payment of superannuation, a reference to the Minister for Finance.

The superannuation arrangements for Telecom will be the subject of guidelines to be provided for under amendments to the Superannuation Act. Until these changes are in force the funds to be set aside for superannuation can be determined at officer level in the Department of Finance under the current Superannuation Act.

Clause 16 Repeal of section 74

Repeals section 74 which currently provides for the approval of the Treasurer for Telecom to open bank accounts - see clause 17.

Clause 17 Application of money

Amends section 75 of the Act which provides for the application of Telecom's moneys by substituting a new subsection (2). The current provision limits the investment of moneys not immediately required to investment on fixed deposit in an approved bank, in Commonwealth securities or in any other manner approved by the Treasurer. The new provision allows investment in any other manner consistent with sound commercial practice.

Clause 18 Repeal of sections 79 and 79A

Repeals sections 79 and 79A which deal with approvals for contracts above a specified limit and guidelines for hedging contracts. Clause 7 amends section 10 to include these powers in the general powers of Telecom, without the need for approvals.

Clause 19 Annual Report

Amends section 99 which deals with the Telecom Annual Report, to require particulars of subsidiaries, partnerships, joint ventures, share purchases and businesses acquired.

Proposed subsections (1C) to (1E) cover the requirement to provide information on the Managing Director's income in the same manner as the requirements for executive officers under the Companies Act 1981.

Clause 20 Rewards for information as to damage to property

Amends section 103, which allows Telecom to offer rewards for damage to property, by removing the current monetary limit of \$100 or such higher amount as is prescribed (currently \$50,000).

Clause 21 New sections 110A and 110B

Inserts proposed section 110A - Public Works Committee Act - which exempts Telecom from the operation of the Public Works Committee Act 1969. Telecom has already been exempted by regulation but in accordance with the Government's Guidelines for Statutory Authorities and Government Business Enterprises, this section includes the exemption in enabling legislation.

Proposed section 110B - Lands Acquisition Act - exempts Telecom from the Lands Acquisition Act 1955. By virtue of section 10 of the Acts Interpretation Act, this will apply to any act which repeals and re-enacts the Lands Acquisition Act.

Note : The Corporation will not be empowered to obtain land through compulsory process. Any acquisition through compulsory process must be carried out through relevant Commonwealth Departments, and then only if there has been no effort to acquire by agreement. These arrangements acknowledge the Law Reform Commission recommendations on the matter of land acquisition. Telecom will be directed to observe Government policy in this regard.

Clause 22 Consequential and minor amendments of Telecommunications Act 1975

Provides for three sets of amendments to the Telecommunications Act, in Schedule 1:

Part I - to operate from Royal Assent - these relate to the removal of day-to-day controls. Two definitions in section 3 are amended to omit references to the Commission so they can operate if the change to Corporation and the creation of the Board commences before the staffing provisions;

Part II - Amendments relating to Corporation and Boards- to operate from the same day as the changes to Corporation and Board; these amendments:

alter references to "Commission" to "Corporation" or, in some cases "Board";
omit definitions (eg "Commissioner") and insert new definitions;

amend some other provisions to take account of the fact that the Corporation does not have members, and there will be a separate legal entity, the Board; for example subsection 6(1), which deals with the duties of the Commissions, is rephrased to allow for the fact that the necessary opinion must be formed by the Board;

Current section 97 dealing with Superannuation is to be repealed as the Superannuation Act deals with this matter and is being amended to implement the Government's decision on guidelines for GBE superannuation schemes;

Proposed section 97 repeats the substance of the current section 21(3) which provides immunity for Telecom from the operation of State and Territory laws. The reference to section 80 makes it clear that the re-enactment of this provision is not intended to have any effect on Telecom's liability to payroll tax (see Commonwealth Authorities Legislation (Pay-roll Tax) Amendment Act 1988).

Part III - Amendments relating to Staff - to operate from the same proclamation date as the employment amendments. They remove references to "officer" "Service", currently used in the Act.

PART III - AMENDMENT TO TELECOMMUNICATIONS
(INTERCEPTION) ACT 1979

Clause 23 Principal Act

This Part amends the Telecommunications
(Interception) Act 1979.

Clause 24 Telecommunications not to be intercepted

Amends section 7 by extending the exemption currently applying to Telecom employees so that private sector employees who are lawfully engaged in installation or maintenance of PABX equipment, are also exempted. The Government has decided that the private sector should be permitted to carry out PABX maintenance and the exemption is necessary so employees do not become guilty of interception through their work. The offence of divulging information obtained in the course of this work is sufficiently broad not to require amendment.

PART IV - CONSEQUENTIAL AMENDMENTS OF CERTAIN ACTS

25 Consequential amendments

Provides for two sets of amendments to other Acts, in Schedule 2

Part I - Amendments relating to Corporation - to operate from the same proclamation date as the Corporation/Board amendments; they mainly deal with references to the Australian Telecommunications Commission in other Acts and change the reference to "Corporation".

Part II - Amendments relating to staff - to operate from the same proclamation date as the employment provisions; these amendments remove references to "officer" etc in line with the employment provisions.

Note - Many Commonwealth Acts apply to Telecom because of definitions - eg "Commonwealth authority" which will not be affected by this Bill, as Telecom is not altering its status as a statutory authority, or where the change of name can be picked up in regulations. These include various legislation relating to employment, for example, Long Service Leave (Commonwealth Employees) Act 1976, Maternity Leave (Commonwealth Employees) Act 1973, Commonwealth Employees (Rehabilitation and Compensation) Act 1988, Superannuation Act 1976.

PART V - TRANSITIONAL PROVISIONS

26 Charging determinations

Saves determinations of prices and rentals under section 11

27 Directions

Saves any directions by the Minister in force under section 7 as if they had been given to the Board

28 Delegations

Saves delegations made under section 33 of the powers of the Commission, as if they had been made under proposed section 10B. Subclause 28(2) allows the new delegations provision to operate on the existing staffing provisions.

29 Existing Managing Director

Saves the rights of the current Managing Director while he holds his current position.

Clause 30 - Existing Chief General Manager

Saves the rights of the Chief General Manager while he holds his office.

Clause 31 - Employment of staff members to continue

Saves the employment of Telecom staff when the new employment provisions come into operation. Telecom and relevant unions will reach agreement on details of how the new employment arrangements will be handled and the amendments to employment provisions are subject to separate proclamation (see clause 2).

Clause 32 Part V

A technical drafting provision to allow the provisions for the Chief General Manager to continue in Part V, without a heading, if the employment provisions are proclaimed before the change to Corporation and Board.

Clause 33 Transitional Provision - Divisions 2 to 7 of Part V

Subclause 33 (1) allows for the Corporation/Board amendments to operate before the employment amendments.

Subclause 33 (2) allows for the employment amendments to operate before the Corporation/Board amendments.

Clause 34 Division 8 of Part V

Leaves Division 8 of Part V to operate until repealed and replaced in the new Industrial Relations legislation.

Clause 35 Disclosure of telecommunications messages

Allows the offence provisions in section 82 to operate on people who have been officers despite amendments which remove a reference of officer (in Schedule I).

Clause 36 Telecommunications (Interception) Act 1979

Allows for the consequential amendments to the Telecommunications Interception Act 1979 to operate from commencement of either the Corporation/Board amendments or the employment amendments.

Clause 37 Transfer of funds

Allows for the continued appropriation of moneys for Telecom after the change of name.