CLC affiliates with VUT

***The Communications Law Centre** (CLC) has formalised a second university affiliation, with Victoria University of Technology (VUT) in Melbourne.*

Since inception in 1987, the Centre has been affiliated with the University of NSW through the Faculty of Law. The CLC's Melbourne office opened in 1990, initially with the support of the Victoria Law Foundation, and has been funded over the years by the ANZ Trustees, Reichstein Foundation, Myer Foundation and the Australian Film Commission.

At the signing of the agreement on 15 April, the VUT Vice-Chancellor, Professor Jarlath Ronayne, said: 'The affiliation adds a very valuable dimension to the University's teaching and research activities in the areas of media, law and communications at a time when there is a strong call for sound, ethical direction in public policy and information management'.

CLC chair, Peter Waters, said the Centre tried to complement, not duplicate, the work of the academies, industry and government. Its public interest focus distinguished its output. 'From the Melbourne office in particular, we are exploring the consequences of [communications] change for the weaker sections of society and trying to promote better media accountability.'

He said that at VUT the Centre looked forward to 'a relationship that enriches us both and the communities which our institutions serve.'

The CLC Melbourne staff of Paul Chadwick, Victoria Marles, Bruce Shearer and Jenny Mullaly are now located at:

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Paul Chadwick

Telstra privatisation

True to its word, the Government introduced legislation to partially privatise Telstra in the first week of Parliament. **Holly Raiche** looks at the new Bill.

The Telstra (Dilution of Public Ownership) Bill 1996, introduced into the House of Representatives on 2 May 1996, is part of the larger telecommunications reform package which the Government is committed to passing through Parliament 'by the end of the year'.

This Bill does two things. It allows Telstra to be partially privatised and introduces 'customer service guarantees'.

Partial privatisation

The cornerstone of the Bill is Clause 8AB, amending the Telstra Corporation Act 1991, to remove the prohibition on the Commonwealth transferring any of its shares in Telstra.

The proposed restrictions stop the Commonwealth and Telstra from doing anything which 'causes or contributes' to the Commonwealth having less than two-thirds interests in Telstra. Those interests can include shareholdings, voting rights, paid up share capital, and rights for distribution of capital or profits on Telstra's winding up.

For those who have followed the debates on defining 'control' in broadcasting, the ownership limits sound familiar. In broadcasting, limitations on shareholding, voting and other rights are used, among other tests, to determine whether a person is in a position to control a broadcasting licence. In this Bill, however, the limits are simply on holding of shares or voting or other rights. They do not attempt to look at who may be in a position to 'control' Telstra through other means.

Presumably, the Bill's emphasis is on 'ownership' because the Commonwealth's holding will be so large that control may not be an issue. If the Government does sell further interests in Telstra, however, the Bill's current emphasis on ownership will not be adequate to ascertain and restrict who really controls Telstra, as the recent controversy over Canwest's interests in Channel Ten can attest.

The other restrictions on the sale deal with foreign involvement. 'Central management and control' of Telstra must stay in Australia; Telstra must maintain 'a substantial business and operational presence' in Australia; and Telstra's chairperson and a majority of its directors must be Australian citizens.

The Bill prohibits an 'unacceptable foreign-ownership situation' (Clause 8BG), defined as a group of foreign persons holding a 'stake' in Telstra of more than 11.6667% (equivalent to 35% of the one third equity sale) or an individual foreign person holding a 'stake' of more than 1.6667% (equivalent to 5% of the one third equity sale).

The term 'stake' is defined (Clause 11 of Schedule 1) as the aggregate of the person's direct control interests 'of that type' plus direct control interests 'of that type' held by the person's associates. 'Associates' include a long list of categories of the person's relatives and corporate associates.

Again, the interests which can comprise a 'stake' include shareholding, voting and other rights. And again, they do not include other measures which might amount to control.

Enforcement of the restrictions on ownership is up to the Minister, not a regulatory agency. It is the Minister

who determines whether a person has sought to avoid the provisions on ownership (Clause 8BM); it is the Minister who receives information on Telstra's ownership matters (Clause 8BN); and it is the Minister who can seek injunctions in relation to ownership issues (Clause 8CD). The lack of accountability and public scrutiny of that process must be an issue, given the level of public concern about control of Telstra.

The sale process is set out in the 'Telstra Sale Scheme' which allows, under Clause 8AJ, for a direct sale of the shares, sale by a number of instalment purchase arrangements, or sale in tranches.

Telstra and its directors must cooperate with the sale process, including providing information for carrying out the Scheme, and will receive compensation for assistance provided. Supplementary provisions for the sale include matters such as exemption from stamp duty for share transfer and funding from consolidated revenue for costs incurred.

There is also provision (Clause 8AM) for the Commonwealth to assume responsibility for the financial obligations of Telstra or its subsidiaries. The Commonwealth assumed approximately $800 million debt when AUSSAT was privatised and there may be public concern about the level of debt the Commonwealth is assuming in the course of this sale.

Customer service guarantees scheme

The Coalition promised legislated customer service guarantees to ensure service quality after Telstra is partially privatised. The result is the *Telecommunications Act 1991's* new Division 6 of Part 5: Customer service guarantee.

The Bill allows AUSTEL to determine standards for carriers on maximum times for service connections and fault repairs. AUSTEL may also determine a scale of damages, up to $3000 for contravention of those standards.

When a carrier breaches a standard, the Telecommunications Industry Ombudsman (TIO) may issue a written certificate stating particulars of the breach. That certificate is 'prima facie evidence of the matters in the certificate'. (Clause 87H) Customers may recover the damages in court.

On 20 May the Senate referred the Telstra Privatisation Bill to the Environment, Recreation, Communications and the Arts Reference Committee for inquiry and report by 22 August 1996. *(See page 24)*

There are two major criticisms of this Scheme: its coverage of consumer issues and the process for dealing with a breach of the standards.

Consumer groups have criticised the customer service guarantee scheme for dealing only with connection and fault repair times.

The Australian Consumers Association and CTN argue that service standards should also include standards for network upgrades, network congestion and transmission and other quality issues, billing accuracy and operator assisted services. Other consumer issues which should be addressed, as part of a more comprehensive consumer package, include provision of accurate and comprehensible product/price information, billing separation between telephony and other services, itemised billing for local calls, privacy protection and a pledge for on going consumer consultation.

The Bill relies on the courts for enforcement of breaches of standards. Yet most consumers do not have the time or money to enforce payment of damages through the courts, particularly since the maximum amount payable will be $3000.

The TIO was established to provide a dispute resolution mechanism which is free for consumers, has the resources to investigate individual complaints, can resolve them quickly and can enforce decisions for payment up to a reasonable limit. Yet the Bill seems to ignore that whole TIO process.

Another difficulty with the process is its use of 'damages'. Damages at law reflect actual harm suffered by an individual as a result of some action. Yet AUSTEL's task (Clause 87G) is to set a scale of dollar figures for damages payable for specified categories of contraventions. How can a fixed damages scale possibly reflect the actual harm occasioned under very different circumstances and by people with very different needs?

Finally, the TIO has very specific powers and functions under its Constitution which do not include providing evidentiary statements which might be used in a court against TIO Company members. Clearly, the organisation's Constitution would need to be altered to reflect a role not contemplated by its members when the company was established.

These criticisms are not with the laudable intention of government to set enforceable service standards; they are with this Bill's inadequate coverage of all service quality issues and processes to enforce service levels.

AUSTEL should be required to set service standards against a full range of quality issues; indeed, it should have done so long ago. But complaints about a breach of standards should be left to the TIO's processes which are free, accessible and effective.

AUSTEL can have a role in determining what penalty may be appropriate for a breach of service standard. But the TIO, with its current power to make determinations against carriers, is still a far more appropriate way to enforce payment than through the courts. ❑

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