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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS (INDUSTRY LEVY) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications
and the Digital Economy, Senator the Hon. Stephen Conroy)

TELECOMMUNICATIONS (INDUSTRY LEVY) BILL 2011

OUTLINE

This Bill imposes a levy on certain persons to fund the Telecommunications Universal Service Management Agency (TUSMA) in relation to:

- payments made by TUSMA to contractors or grant recipients under clause 13 of the Telecommunications Universal Service Management Agency Bill 2011 (the TUSMA Bill), and
- TUSMA's administrative costs.

Contracts and grants entered under clause 13 of the TUSMA Bill must relate to the achievement of any or all of the policy objectives, as described in clause 11 of that Bill, which cover the delivery of standard telephone services, payphones, the emergency call service, the National Relay Service, and programs to support the continuity of supply of carriage services during the transition to the National Broadband Network (NBN).

This Bill operates in conjunction with Part 6 of the TUSMA Bill, which details the assessment, collection and recovery arrangements for the levy. Part 6 sets out the method for quantifying TUSMA's costs, expenses and other obligations for each eligible levy period, and for calculating each person's contributions to those costs based on their share of the total industry eligible revenue. A levy is imposed on a person under this Bill if the person has a levy amount for an eligible levy period because of clause 99 of the TUSMA Bill. A person will only have a levy amount if they are a carrier (unless the Minister has also determined that carriage service providers should participate in the levy scheme) that is not of a kind determined by the Minister to be exempt.

The Government announced on 23 June 2011 that it would contribute \$50 million in funding towards TUSMA's costs for the 2012-13 and 2013-14 financial years, and \$100 million per annum thereafter. Consequently, the levy will only cover TUSMA's costs, expenses and other obligations where these are not already covered by Commonwealth funding.

FINANCIAL IMPACT STATEMENT

Part 6 of the Telecommunications Universal Service Management Agency Bill 2011 provides for the calculation of the levy.

The levy recovers from certain persons the total of TUSMA's costs, expenses and other obligations that are not covered by Commonwealth funding. The total amount to be collected in any eligible levy period will depend on the amount of TUSMA's liabilities to be incurred for that period, including payments by TUSMA to contractors or grant recipients under clause 13 of the TUSMA Bill. TUSMA will also be required to make payments in relation to existing Commonwealth contracts for the delivery of public telecommunications services, which will, through the operation of transitional clauses in the TUSMA Bill, be taken to have been entered into by TUSMA under clause 13. The agreement the Commonwealth entered into with Telstra in June 2011 provides for annual payments to Telstra of \$290 million to cover the provision of standard telephone services, payphones and the emergency call service. Current contracts for the National Relay Service will also require TUSMA to make payments (currently \$17.1 million per annum (GST inclusive)). Other amounts may be required to cover contracts or grants to support to support the continuity of supply of carriage services during the transition to the NBN. The Government has estimated that TUSMA's total annual liabilities will be approximately \$330 to \$340 million.

The relative contributions of each person required to pay the levy amount will depend on the person's share of total industry eligible revenue. The share provides the basis on which total costs are apportioned and collected from each person. Consequently, a person earning 50 per cent of total eligible revenue would be liable to fund 50 per cent of the overall levy target amount.

NOTES ON CLAUSES

TELECOMMUNICATIONS (INDUSTRY LEVY) BILL 2011

Clause 1 – Short title

Clause 1 provides that the Bill, once enacted, may be cited as the *Telecommunications (Industry Levy) Act 2011*.

Clause 2 – Commencement

Clause 2 of the Bill provides for the commencement of the Bill.

Clauses 1 and 2 of the Bill, and any other provisions not covered in the table provided at subclause 2(1), will commence on the day on which the Bill receives the Royal Assent.

Clauses 3 to 8 of the Bill commence at the same time that clause 3 of the Telecommunications Universal Service Management Agency Bill 2011 (the TUSMA Bill) commences. Clause 3 of the TUSMA Bill commences on a single day to be fixed by proclamation, but that day must not occur before the latest of several events relating to the acceptance by the Australian Competition and Consumer Commission of voluntary structural separation undertakings and related commitments by Telstra Corporation Limited. If there is no proclamation within six months after the later of these events, clause 3 will commence on the day after the end of that six month period.

Linking the commencement of clauses 3 to 8 of the Bill to the commencement of clause 3 of the TUSMA Bill ensures that the new industry levy imposed under this Bill comes into effect at the same time that the legislative requirements in Part 6 of the TUSMA Bill relating to the assessment, collection and recovery of that levy.

Clause 3 – Definitions

Clause 3 sets out definitions of three key terms used in the Bill – ‘eligible levy period’, ‘levy amount’ and ‘person’. Each term is defined as having the same meaning as in the TUSMA Bill.

Clause 4 – Act to bind Crown

Clause 4 provides that the Bill binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory, and of Norfolk Island. However, it does not bind the Crown in right of the Commonwealth.

Clause 5 – Extension to external Territories

Clause 5 extends the Bill to each external Territory referred to in clause 9 of the TUSMA Bill. Clause 9 of that Bill refers to the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and any other external Territories prescribed by regulations made for the purposes of paragraph 10(c) of the *Telecommunications Act 1997*.

Clause 6 – Imposition of levy

Clause 6 provides that if a person has a levy amount for an eligible levy period because of clause 99 of the TUSMA Bill, levy will be imposed on that amount.

This clause must be read in conjunction with clause 99 of the TUSMA Bill, which sets out the means of determining a person's levy amount for an eligible levy period. In general, the levy amount will be a person's levy contribution factor for the relevant eligible levy period (as worked out under clause 98 of that Bill) multiplied by the overall levy target amount for the eligible levy period (as worked out under clause 88 of that Bill).

Clause 7 – Amount of levy

Clause 7 provides that the amount of the levy this Bill imposes on a levy amount for an eligible levy period is equal to that levy amount.

Clause 8 – Person liable to pay levy

Clause 8 provides that the levy imposed on a person's levy amount for an eligible levy period is payable by that person. Under clause 105 of the TUSMA Bill, the levy is due and payable on the 28th day (or a later day determined in writing by the Australian Competition and Media Authority (the ACMA)) after the ACMA gives the person a copy of the ACMA's assessment of levy under clause 100 of that Bill. Under clause 106 of the TUSMA Bill, the levy is a debt due to, and is recoverable in a court of competent jurisdiction by, the ACMA on behalf of the Commonwealth.