



Telecommunications (Consumer Protection and Service Standards) Act 1999

No. 50, 1999



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**An Act about telecommunications, and for related
purposes**

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Telecommunications (Consumer Protection and Service Standards) Act 1999

No. 50, 1999

**An Act about telecommunications, and for related
purposes**

[Assented to 5 July 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

2 Commencement

- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
 - (2) The following provisions of this Act commence on 1 July 1999:
 - (a) the definition of *approved universal service plan* in subsection 5(2);
 - (aa) the definition of *approved digital data service plan* in subsection 5(2);
 - (ab) the definition of *digital data service obligation* in subsection 5(2);
 - (ac) the definition of *digital data service provider* in subsection 5(2);
 - (ad) the definition of *draft digital data service plan* in subsection 5(2);
 - (b) the definition of *draft universal service plan* in subsection 5(2);
 - (ba) the definition of *general digital data service area* in subsection 5(2);
 - (bb) the definition of *general digital data service obligation* in subsection 5(2);
 - (bc) the definition of *general digital data service provider* in subsection 5(2);
 - (c) the definition of *levy* in subsection 5(2);
 - (d) the definition of *national universal service provider* in subsection 5(2);
 - (e) the definition of *net cost area* in subsection 5(2);
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- (f) the definition of *participating carrier* in subsection 5(2);
- (g) the definition of *regional universal service provider* in subsection 5(2);
- (ga) the definition of *special digital data service area* in subsection 5(2);
- (gb) the definition of *special digital data service obligation* in subsection 5(2);
- (gc) the definition of *special digital data service provider* in subsection 5(2);
- (h) the definition of *universal service obligation* in subsection 5(2);
- (i) the definition of *universal service provider* in subsection 5(2);
- (j) Part 2;
- (k) Part 3.

3 Objects and regulatory policy

The following provisions of the *Telecommunications Act 1997* apply to this Act in a corresponding way to the way in which they apply to that Act:

- (a) section 3 (objects);
- (b) section 4 (regulatory policy).

4 Simplified outline

The following is a simplified outline of this Act:

- A universal service regime is established. The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (a) standard telephone services; and

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(b) payphones; and

(c) prescribed carriage services; and

(d) digital data services.

- Provision is made for the National Relay Service (NRS). The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.
- Local calls are to be charged for on an untimed basis.
- The ACA may make performance standards to be complied with by carriage service providers in relation to customer service.
- Certain carriers and carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- Provision is made for the protection of residential customers of carriage service providers against failure by the providers to supply standard telephone services.
- The ACA may impose requirements on carriers, carriage service providers and certain other persons in relation to emergency call services.
- Telstra is subject to price control arrangements.
- This Act regulates telephone sex services.

- The Minister may direct Telstra to take action directed towards ensuring that Telstra complies with this Act.

5 Definitions

(1) Unless the contrary intention appears, expressions used in this Act and in the *Telecommunications Act 1997* have the same meaning in this Act as they have in that Act.

(2) In this Act:

approved digital data service plan means an approved digital data service plan under Division 4A of Part 2.

approved universal service plan means an approved universal service plan under Division 4 of Part 2.

digital data service obligation has the meaning given by section 19A.

digital data service provider means:

- (a) a general digital data service provider; or
- (b) a special digital data service provider.

draft digital data service plan means a draft digital data service plan under Division 4A of Part 2.

draft universal service plan means a draft universal service plan under Division 4 of Part 2.

general digital data service area has the meaning given by section 19B.

general digital data service obligation has the meaning given by section 19A.

general digital data service provider has the meaning given by section 26A.

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levy means levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

national universal service provider has the meaning given by section 20.

net cost area has the meaning given by section 50 or 52.

participating carrier has the meaning given by section 16.

regional universal service provider has the meaning given by section 20.

special digital data service area has the meaning given by section 19C.

special digital data service obligation has the meaning given by section 19A.

special digital data service provider has the meaning given by section 26A.

standard telephone service has the meaning given by section 6.

Telecommunications Industry Ombudsman means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme.

Telecommunications Industry Ombudsman scheme means the scheme referred to in section 128.

this Act includes the regulations.

universal service obligation has the meaning given by section 19.

universal service provider means:

- (a) the national universal service provider; or
- (b) a regional universal service provider.

6 Standard telephone service

(1) A reference in a particular provision of this Act to a *standard telephone service* is a reference to a carriage service for each of the following purposes:

- (a) the purpose of voice telephony;
- (b) if:
 - (i) voice telephony is not practical for a particular end-user with a disability (for example, because the user has a hearing impairment); and
 - (ii) another form of communication that is equivalent to voice telephony (for example, communication by means of a teletypewriter) would be required to be supplied to the end-user in order to comply with the *Disability Discrimination Act 1992*;

the purpose of that form of communication;

- (c) a purpose declared by the regulations to be a designated purpose for the purposes of that provision;

where:

- (d) the service passes the connectivity test set out in subsection (2); and
 - (e) to the extent that the service is for the purpose referred to in paragraph (a)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision; and
 - (f) to the extent that the service is for the purpose referred to in paragraph (b)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision; and
 - (g) to the extent that the service is for a particular purpose referred to in paragraph (c)—the service has the characteristics (if any) declared by the regulations to be the designated characteristics in relation to that service for the purposes of that provision.
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- (2) A service passes the connectivity test if an end-user supplied with the service for a purpose mentioned in paragraph (1)(a), (b) or (c) is ordinarily able to communicate, by means of the service, with each other end-user who is supplied with the same service for the same purpose, whether or not the end-users are connected to the same telecommunications network.
- (3) The following are examples of purposes that could be declared by regulations made for the purposes of paragraph (1)(c):
 - (a) the purpose of the carriage of data;
 - (b) the purpose of tone signalling.
- (4) In making a recommendation to the Governor-General at a particular time about the making of regulations for the purposes of paragraph (1)(c), the Minister must have regard to the following matters:
 - (a) whether a carriage service for the purpose proposed to be declared by the regulations can be supplied using the same infrastructure as is, at that time, being used by universal service providers to supply a standard telephone service for the purpose referred to in paragraph (1)(a);
 - (b) such other matters (if any) as the Minister considers relevant.
- (5) This section does not prevent a characteristic declared by regulations made for the purposes of paragraph (1)(e), (f) or (g) from being a performance characteristic.
- (6) In this section:

this Act includes the *Telecommunications Act 1997*.

7 Application of this Act

The following provisions of the *Telecommunications Act 1997* apply to this Act in a corresponding way to the way in which they apply to that Act:

- (a) section 8 (Crown to be bound);
 - (b) section 9 (extra-territorial application);
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- (c) section 10 (extension to external Territories);
- (d) section 11 (extension to adjacent areas);
- (e) section 12 (Act subject to Radiocommunications Act);
- (f) section 13 (continuity of partnerships).

Part 2—Universal Service Regime

Division 1—Introduction

8 Simplified outline

The following is a simplified outline of this Part:

- This Part establishes a universal service regime.
- The main object of the universal service regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (a) standard telephone services; and
 - (b) payphones; and
 - (c) prescribed carriage services; and
 - (d) digital data services.
- The key elements of the universal service regime are as follows:
 - (a) the specification of the universal service obligation and the digital data service obligation;
 - (b) the declaration of universal service providers and digital data service providers;
 - (c) the carrying out of universal service plans and digital data service plans;

- (d) the regulation of universal service charges and digital data service charges;
- (e) the assessment, collection, recovery and distribution of the levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

9 Objects

The objects of this Part are to give effect to the following policy principles:

- (a) all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to:
 - (i) standard telephone services; and
 - (ii) payphones; and
 - (iii) prescribed carriage services; and
 - (iv) digital data services;
- (b) the universal service obligation described in section 19 should be fulfilled as efficiently and economically as practicable;
- (ba) the digital data service obligation described in section 19A should be fulfilled as efficiently and economically as practicable;
- (c) the losses that result from supplying loss-making services in the course of fulfilling the universal service obligation should be shared among carriers;
- (d) information on the basis of which, and the methods by which, those losses and those carriers' respective shares in those losses are to be determined should be open to scrutiny by:
 - (i) those carriers; and
 - (ii) the public;

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to the greatest extent possible without undue damage to a carrier's interests being caused by the disclosure of confidential commercial information;

- (e) certain costs associated with fulfilling the digital data service obligation should be shared among carriers.

10 Special meaning of *Australia*

- (1) A reference in this Part to *Australia* includes a reference to:
- (a) the Territory of Christmas Island; and
 - (b) the Territory of Cocos (Keeling) Islands; and
 - (c) an external Territory specified in the regulations.
- (2) The definition of *Australia* in section 7 of the *Telecommunications Act 1997* does not apply to this Part.

11 Payphones

For the purposes of this Part, a *payphone* is a fixed telephone that:

- (a) is a means by which a standard telephone service is supplied; and
- (b) when in normal working order, cannot be used to make a telephone call (other than a free call or a call made with operator assistance) unless, as payment for the call, or to enable payment for the call to be collected:
 - (i) money, or a token, card or other object, has been put into a device that forms part of, is attached to, or is located near, the telephone; or
 - (ii) an identification number, or a code or other information (in numerical or any other form) has been input into a device that forms part of, is attached to, or is located near, the telephone; or
 - (iii) a prescribed act has been done.

12 Prescribed carriage services

For the purposes of this Part, a *prescribed carriage service* is a carriage service specified in the regulations.

12A Digital data services

- (1) For the purposes of this Act, a *digital data service* is:
- (a) a general digital data service (see subsection (2)); or
 - (b) a special digital data service (see subsection (3)).

General digital data service

- (2) For the purposes of this Act, a *general digital data service* is a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

Special digital data service

- (3) For the purposes of this Act, a *special digital data service* is a carriage service that provides for a capability for the delivery of digital data to an end-user broadly comparable to the corresponding capability provided by a data channel with a data transmission speed of 64 kilobits per second supplied to end-users as part of the designated basic rate ISDN service.

Designated basic rate ISDN service

- (4) For the purposes of this section, if:
- (a) immediately before 1 July 1997, Telstra supplied a basic rate Integrated Services Digital Network (ISDN) service; and
 - (b) the service complied with any of the standards for ISDN services made by the European Telecommunications Standards Institute (ETSI);
- the service is a *designated basic rate ISDN service*.

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Comparability of digital data capability

- (5) For the purposes of subsection (2), the determination of the comparability of the digital data capability of a carriage service is to be based solely on a comparison of the data transmission speed available to an end-user of the service.

13 Supply of standard telephone services

- (1) A reference in this Part to the *supply* of a standard telephone service includes a reference to the supply of:
- (a) if the regulations prescribe customer equipment for the purposes of this paragraph—whichever of the following is applicable:
 - (i) that customer equipment;
 - (ii) if other customer equipment is supplied, instead of the first-mentioned customer equipment, in order to comply with the *Disability Discrimination Act 1992*—that other customer equipment; and
 - (b) if paragraph (a) does not apply—whichever of the following is applicable:
 - (i) a telephone handset that does not have switching functions;
 - (ii) if other customer equipment is supplied, instead of such a handset, in order to comply with the *Disability Discrimination Act 1992*—that other customer equipment; and
 - (c) other goods of a kind specified in the regulations; and
 - (d) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.
- (2) A reference in this Part to the *supply* of a standard telephone service includes a reference to the supply, to a person with a disability, of:

- (a) customer equipment of a kind specified in the regulations;
and
 - (b) other goods of a kind specified in the regulations; and
 - (c) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the standard telephone service.
- (3) In this section:

disability has the same meaning as in the *Disability Discrimination Act 1992*.

14 Supply of prescribed carriage services

A reference in this Part to the *supply* of a prescribed carriage service includes a reference to the supply of:

- (a) customer equipment of a kind specified in the regulations;
and
 - (b) other goods of a kind specified in the regulations; and
 - (c) services of a kind specified in the regulations;
- where the equipment, goods or services, as the case may be, are for use in connection with the prescribed carriage service.

14A Supply of digital data services

General digital data service

- (1) A reference in this Part to the *supply* of a general digital data service includes a reference to the supply of:
- (a) customer equipment of a kind specified in the regulations;
and
 - (b) other goods of a kind specified in the regulations; and
 - (c) services of a kind specified in the regulations;
- where:
- (d) the equipment, goods or services, as the case may be, are for use in connection with the general digital data service; and

Section 14A

- (e) the supply complies with such requirements, restrictions or conditions (if any) as are specified in the regulations.
- (2) Regulations made for the purposes of paragraph (1)(e) may require that the supply of a specified kind of customer equipment is to be by way of hire. If those regulations impose such a requirement, this Part has effect, in relation to the customer equipment concerned, as if a reference to *supply* were a reference to supply by way of hire.
- (3) Regulations made for the purposes of paragraph (1)(e) may require that specified customer equipment is to be supplied on the basis that the customer concerned enters into a legally enforceable agreement containing such terms and conditions relating to the ownership, possession, location, disposal or use of the equipment, as are specified in, or ascertained in accordance with, the regulations.
- (4) Subsections (2) and (3) do not, by implication, limit paragraph (1)(e).

Special digital data service

- (5) A reference in this Part to the *supply* of a special digital data service includes a reference to the supply of:
 - (a) customer equipment of a kind specified in the regulations; and
 - (b) other goods of a kind specified in the regulations; and
 - (c) services of a kind specified in the regulations;where:
 - (d) the equipment, goods or services, as the case may be, are for use in connection with the special digital data service; and
 - (e) the supply complies with such requirements, restrictions or conditions (if any) as are specified in the regulations.
- (6) Regulations made for the purposes of paragraph (5)(e) may require that the supply of a specified kind of customer equipment is to be by way of hire. If those regulations impose such a requirement, this

Part has effect, in relation to the customer equipment concerned, as if a reference to *supply* were a reference to supply by way of hire.

- (7) Regulations made for the purposes of paragraph (5)(e) may require that specified customer equipment is to be supplied on the basis that the customer concerned enters into a legally enforceable agreement containing such terms and conditions relating to the ownership, possession, location, disposal or use of the equipment, as are specified in, or ascertained in accordance with, the regulations.
- (8) Subsections (6) and (7) do not, by implication, limit paragraph (5)(e).

15 Service area

For the purposes of this Part, a *service area* is:

- (a) a geographical area within Australia; or
 - (b) any area of land; or
 - (c) any premises or part of premises;
- regardless of size.

16 Participating carriers

- (1) For the purposes of this Part, a person is a *participating carrier* in relation to a financial year if the person was a carrier at any time during the financial year.
- (2) This section does not apply to a person if the person is of a kind declared by the regulations to be exempt from this section.

17 Eligible revenue

For the purposes of this Part, the *eligible revenue* of a participating carrier for a financial year is the amount that, under the regulations, is taken to be the eligible revenue of the carrier for the financial year.

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18 Approved auditor

- (1) A reference in this Part to an *approved auditor* is a reference to a person included in a class of persons specified in a written determination made by the ACA for the purposes of this section.
- (2) A copy of a determination under subsection (1) is to be published in the *Gazette*.

Division 2—Universal service obligation

19 Universal service obligation

- (1) For the purposes of this Act, the *universal service obligation* is the obligation:
 - (a) to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (b) to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (c) to ensure that prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.
 - (2) To the extent necessary to achieve the obligation mentioned in subsection (1), it is part of the universal service obligation:
 - (a) to supply standard telephone services to people in Australia on request; and
 - (b) to supply, install and maintain payphones in Australia; and
 - (c) to supply prescribed carriage services to people in Australia on request.
 - (3) The Minister may make a written determination that it is part of the universal service obligation to supply, install and maintain payphones at specified locations in Australia. The determination has effect accordingly.
 - (4) A copy of a determination under subsection (3) must be published in the *Gazette*.
 - (5) The regulations may prescribe, for the purpose of paragraph (1)(b), what is, or is not, necessary to ensure that payphones are reasonably accessible as mentioned in that paragraph, including:
 - (a) criteria for determining the locations of payphones; and
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- (b) the process for public consultation on the location of payphones; and
 - (c) the process for resolution of any complaints about the location of payphones.
- (6) Subsection (3) does not limit the generality of subsection (5).
 - (7) Subsection (5) does not limit the generality of subsection (3).
 - (8) An obligation does not arise under paragraph (2)(a) in relation to particular equipment, goods or services the supply of which is treated under section 13 as the supply of a standard telephone service if the customer concerned requests not to be supplied with the equipment, goods or services.
 - (9) An obligation does not arise under paragraph (2)(c) in relation to particular equipment, goods or services the supply of which is treated under section 14 as the supply of a prescribed carriage service if the customer concerned requests not to be supplied with the equipment, goods or services.
 - (10) To avoid doubt, an obligation arising under paragraph (2)(a) in relation to customer equipment requires the customer concerned to be given the option of hiring the equipment.

Division 2A—Digital data service obligation

19A Digital data service obligation

- (1) For the purposes of this Act, the *digital data service obligation* is the obligation:
 - (a) to ensure that one or other of the following:
 - (i) general digital data services;
 - (ii) special digital data services;are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (b) to ensure that general digital data services are reasonably accessible to at least 96% of the Australian population on an equitable basis; and
 - (c) to ensure that special digital data services are reasonably accessible to the remainder of the Australian population on an equitable basis.

General digital data service obligation

- (2) For the purposes of this Act, the *general digital data service obligation* is the obligation to ensure that general digital data services are reasonably accessible to all people in general digital data service areas on an equitable basis.
- (3) To the extent necessary to achieve the general digital data service obligation, it is part of that obligation to supply general digital data services to people in general digital data service areas on request.

Special digital data service obligation

- (4) For the purposes of this Act, the *special digital data service obligation* is the obligation to ensure that special digital data services are reasonably accessible to all people in special digital data service areas on an equitable basis.
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- (5) To the extent necessary to achieve the special digital data service obligation, it is part of that obligation to supply special digital data services to people in special digital data service areas on request.

Supply of customer equipment or other goods or services

- (6) An obligation does not arise under subsection (3) in relation to particular equipment, goods or services the supply of which is treated under subsection 14A(1) as the supply of a general digital data service if the customer concerned requests not to be supplied with the equipment, goods or services.
- (7) An obligation does not arise under subsection (5) in relation to particular equipment, goods or services the supply of which is treated under subsection 14A(5) as the supply of a special digital data service if the customer concerned requests not to be supplied with the equipment, goods or services.

Rebate system

- (8) The regulations may provide that:
- (a) an obligation that arises under subsection (3) in relation to particular customer equipment the supply of which is treated under subsection 14A(1) as the supply of a general digital data service; or
 - (b) an obligation that arises under subsection (5) in relation to particular customer equipment the supply of which is treated under subsection 14A(5) as the supply of a special digital data service;

is taken to have been fulfilled by a person (in so far as the obligation relates to a particular customer) if:

- (c) the customer acquires or hires the equipment from a third person; and
- (d) the customer is entitled to a rebate from the first-mentioned person in respect of that acquisition or hire; and
- (e) the amount of the rebate is equal to the amount ascertained in accordance with the regulations; and

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- (f) the liability to pay the rebate has been discharged; and
 - (g) the entitlement to the rebate complies with such requirements, restrictions and conditions (if any) as are specified in the regulations.
- (9) Regulations made for the purposes of paragraph (8)(g) may require that the customer be given the option of assigning the customer's right to the rebate to the third person.
- (10) Subsection (9) does not, by implication, limit subsection (8).

19B General digital data service areas

- (1) The Minister may make a written determination that a service area ascertained in accordance with the determination is a general digital data service area for the purposes of this Act. The determination has effect accordingly.
- (2) A copy of a determination under subsection (1) must be published in the *Gazette*.
- (3) The Minister must exercise the powers conferred by this section in a manner that is consistent with the fulfilment of the digital data service obligation.

19C Special digital data service areas

- (1) The Minister may make a written determination that a service area ascertained in accordance with the determination is a special digital data service area for the purposes of this Act. The determination has effect accordingly.
- (2) A copy of a determination under subsection (1) must be published in the *Gazette*.
- (3) The Minister must exercise the powers conferred by this section in a manner that is consistent with the fulfilment of the digital data service obligation.

Division 3—Universal service providers

20 Universal service providers

- (1) The Minister may make a written declaration stating that a specified carrier is the *national universal service provider*.

Note: If a selection system has been determined under section 22, a declaration under this subsection must be consistent with the system.

- (2) The Minister may make a written declaration stating that a specified carrier is the *regional universal service provider* for a specified service area.

Note: If a selection system has been determined under section 23, a declaration under this subsection must be consistent with the system.

- (3) A declaration under subsection (1) or (2) has effect accordingly.

- (4) The Minister must exercise his or her powers under this section in such a way that:

- (a) at any particular time, there is not more than one declaration in force under subsection (1); and
- (b) no service area in relation to which a declaration is in force under subsection (2) overlaps (either wholly or in part) with another service area.

- (5) A declaration under this section:

- (a) takes effect at the start of the next financial year after the one in which it is made; and
- (b) if it specifies a financial year at whose end it ceases to have effect—ceases to have effect at the end of that financial year, unless sooner revoked.

This subsection has effect subject to subsections (7), (8) and (9).

- (6) A revocation of a declaration under this section takes effect:

- (a) if it specifies a financial year at whose end it is to take effect—at the end of that financial year; or

- (b) otherwise—at the end of the financial year in which it is made.

This subsection has effect subject to subsections (7) and (8).

(7) If:

- (a) a declaration (the *original declaration*) is in force under subsection (1) in relation to a particular carrier; and
- (b) a fresh declaration is made under subsection (1); and
- (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
- (d) the fresh declaration specifies another carrier;

then:

- (e) the fresh declaration takes effect at that time; and
- (f) the original declaration ceases to have effect at that time.

(8) If:

- (a) a declaration (the *original declaration*) is in force under subsection (2) in relation to a particular carrier and in relation to a particular service area; and
- (b) a fresh declaration is made under subsection (2); and
- (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
- (d) the fresh declaration specifies another carrier; and
- (e) the service area specified in the fresh declaration is the same as the service area specified in the original declaration;

then:

- (f) the fresh declaration takes effect at that time; and
- (g) the original declaration ceases to have effect at that time.

(9) If:

- (a) a declaration is in force under subsection (2) in relation to a particular carrier; and
- (b) at a particular time, the carrier ceases to hold a carrier licence;

the declaration ceases to be in force at that time.

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- (10) A declaration under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (11) A reference in this section to a *carrier* does not include a reference to a person of a kind declared by the regulations to be exempt from section 16.

21 Effect of universal service provider declaration

- (1) The national universal service provider is the universal service provider:
 - (a) for Australia, except each service area in relation to which a declaration is in force under subsection 20(2); and
 - (b) for so much of any service area as is not within such an area.
- (2) A regional universal service provider in relation to a particular service area is the universal service provider:
 - (a) for that area; and
 - (b) for each service area that is within that area.

Note: If, at a particular time during a financial year, a carrier ceases to be the regional universal service provider for a particular service area and is not replaced as the regional universal service provider for that area by another carrier, the national universal service provider automatically becomes the universal service provider for that area.

- (3) For the purposes of this Part, a person in relation to whom a declaration is in force under subsection 20(1) or (2) at any time during a financial year is a universal service provider in relation to the financial year.
- (4) For the purposes of this Part, the areas for which a person is a universal service provider are taken to be a single area.
- (5) The universal service provider for an area must take all reasonable steps to fulfil the universal service obligation, so far as the obligation relates to that area.

22 Selection system for national universal service provider

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting a carrier to be the national universal service provider in relation to specified financial years.
- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's net universal service cost for the financial year concerned; or
 - (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's net universal service cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 27 in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 20(1) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

23 Selection system for regional universal service providers

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting carriers to be regional universal service providers for specified service areas in relation to specified financial years.

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- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's net universal service cost for the financial year concerned; or
 - (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's net universal service cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 27 in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 20(2) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

24 Selection systems—information-gathering powers

- (1) If the Minister has reason to believe that a carrier or carriage service provider has information that is relevant to:
 - (a) the exercise of the powers conferred on the Minister by subsection 22(1) or 23(1); or
 - (b) the administration of a system determined under subsection 22(1) or 23(1);the Minister may, by written notice given to the carrier or provider, require the carrier or provider to give to the Minister, within the period and in the manner and form specified in the notice, any such information.

- (2) A carrier or carriage service provider must comply with a requirement under subsection (1).

25 Multiple national universal service providers

- (1) The regulations may authorise the Minister to declare that 2 or more carriers are to be national universal service providers.
- (2) The regulations may also authorise the Minister to declare that this Act has effect, in relation to any such declared provider, as if the universal service obligation applicable to the provider were limited as set out in the declaration. However, declarations may only be made in accordance with this subsection for the purpose of dividing the universal service obligation between 2 or more declared providers.
- (3) A declaration made in accordance with this section has effect accordingly.
- (4) The regulations may provide that this Part applies in relation to any such declared providers subject to such modifications as are specified in the regulations.
- (5) In this section:

modifications includes additions, omissions and substitutions.

26 Multiple regional universal service providers

- (1) The regulations may authorise the Minister to declare that 2 or more carriers are to be regional universal service providers for the same service area.
- (2) The regulations may also authorise the Minister to declare that this Act has effect, in relation to any such declared provider, as if the universal service obligation applicable to the provider were limited as set out in the declaration. However, declarations may only be made in accordance with this subsection for the purpose of

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dividing the universal service obligation between 2 or more declared providers.

- (3) A declaration made in accordance with this section has effect accordingly.
- (4) The regulations may provide that this Part applies in relation to any such declared providers subject to such modifications as are specified in the regulations.
- (5) In this section:

modifications includes additions, omissions and substitutions.

Division 3A—Digital data service providers

26A Digital data service providers

- (1) The Minister may make a written declaration stating that a specified carrier is a ***general digital data service provider*** for a specified general digital data service area.

Note: If a selection system has been determined under section 26C, a declaration under this subsection must be consistent with the system.

- (2) The Minister may make a written declaration stating that a specified carrier is a ***special digital data service provider*** for a specified special digital data service area.

Note: If a selection system has been determined under section 26D, a declaration under this subsection must be consistent with the system.

- (3) A declaration under subsection (1) or (2) has effect accordingly.

- (4) A declaration under this section:

(a) takes effect:

- (i) if the declaration is the first declaration under subsection (1) or (2), as the case may be—on the date specified in the declaration; or
(ii) in any other case—at the start of the next financial year after the one in which it is made; and

(b) if it specifies a financial year at whose end it ceases to have effect—ceases to have effect at the end of that financial year, unless sooner revoked.

This subsection has effect subject to subsections (6), (7) and (8).

- (5) A revocation of a declaration under this section takes effect:

- (a) if it specifies a financial year at whose end it is to take effect—at the end of that financial year; or
(b) otherwise—at the end of the financial year in which it is made.

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This subsection has effect subject to subsections (6) and (7).

(6) If:

- (a) a declaration (the *original declaration*) is in force under subsection (1) in relation to a particular carrier; and
- (b) a fresh declaration is made under subsection (1); and
- (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
- (d) the fresh declaration specifies another carrier; and
- (e) the service area specified in the fresh declaration is the same as the service area specified in the original declaration;

then:

- (f) the fresh declaration takes effect at that time; and
- (g) the original declaration ceases to have effect at that time.

(7) If:

- (a) a declaration (the *original declaration*) is in force under subsection (2) in relation to a particular carrier and in relation to a particular service area; and
- (b) a fresh declaration is made under subsection (2); and
- (c) the fresh declaration is expressed to replace the original declaration with effect from a specified time; and
- (d) the fresh declaration specifies another carrier; and
- (e) the service area specified in the fresh declaration is the same as the service area specified in the original declaration;

then:

- (f) the fresh declaration takes effect at that time; and
- (g) the original declaration ceases to have effect at that time.

(8) If:

- (a) a declaration is in force under subsection (1) or (2) in relation to a particular carrier; and
- (b) at a particular time, the carrier ceases to hold a carrier licence;

the declaration ceases to be in force at that time.

Section 26B

- (9) A declaration under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (10) A reference in this section to a *carrier* does not include a reference to a person of a kind declared by the regulations to be exempt from section 16.

26B Effect of digital data service provider declaration

- (1) A digital data service provider in relation to a particular service area is a digital data service provider:
 - (a) for that area; and
 - (b) for each service area that is within that area.
- (2) For the purposes of this Part, a person in relation to whom a declaration is in force under subsection 26A(1) or (2) at any time during a financial year is a digital data service provider in relation to the financial year.
- (3) For the purposes of this Part, the areas for which a person is a digital data service provider are taken to be a single area.
- (4) A general digital data service provider for a general digital data service area must take all reasonable steps to fulfil the general digital data service obligation, so far as the obligation relates to that area.
- (5) A special digital data service provider for a special digital data service area must take all reasonable steps to fulfil the special digital data service obligation, so far as the obligation relates to that area.

26C Selection system for general digital data service providers

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting carriers to be general digital data service providers for specified general digital data service areas in relation to specified financial years.

Section 26D

- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's digital data cost for the financial year concerned; or
 - (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's digital data cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 40A in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 26A(1) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

26D Selection system for special digital data service providers

- (1) The Minister may, by written instrument, determine a selection system for the purpose of selecting carriers to be special digital data service providers for specified special digital data service areas in relation to specified financial years.
- (2) A system so determined must require the selected carrier to have elected that:
 - (a) an amount specified in the election will be the carrier's digital data cost for the financial year concerned; or

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- (b) a method of ascertaining an amount, being a method specified in the election, will apply for the purposes of determining the carrier's digital data cost for the financial year concerned.
- (3) A system so determined may require an applicant for selection to give the Minister a copy of the document that the applicant would be required to give to the Minister under section 40A in the event that the applicant is successful. This subsection does not, by implication, limit subsection (1).
- (4) If a system has been determined under this section, the Minister must not exercise the powers conferred by subsection 26A(2) in a way that is inconsistent with the system.
- (5) This Part does not prevent a method mentioned in paragraph (2)(b) from being the same as a method that would have applied if the system concerned had not been determined.
- (6) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

26E Selection systems—information-gathering powers

- (1) If the Minister has reason to believe that a carrier or carriage service provider has information that is relevant to:
 - (a) the exercise of the powers conferred on the Minister by subsection 26C(1) or 26D(1); or
 - (b) the administration of a system determined under subsection 26C(1) or 26D(1);the Minister may, by written notice given to the carrier or provider, require the carrier or provider to give to the Minister, within the period and in the manner and form specified in the notice, any such information.
- (2) A carrier or carriage service provider must comply with a requirement under subsection (1).

Division 4—Universal service plans

27 Universal service provider must submit universal service plan

- (1) A universal service provider for a particular area must give the Minister a draft universal service plan for that area.
- (2) The provider must give the Minister the plan within 90 days after the provider became the universal service provider for that area.

28 Universal service plans

A draft or approved universal service plan for an area is a plan that sets out how the universal service provider for that area will progressively fulfil the universal service obligation (in so far as the obligation relates to that area).

Note: An *approved universal service plan* is a draft universal service plan that has been approved by the Minister.

29 Replacement of approved universal service plan

If an approved universal service plan (the *original plan*) for an area is in force, a draft universal service plan for the area may be expressed to replace the original plan. When the draft plan becomes an approved universal service plan, the original plan ceases to be in force.

30 Approval of draft universal service plan by Minister

- (1) If a universal service provider gives the Minister a draft universal service plan, the Minister must:
 - (a) approve the draft plan; or
 - (b) refuse to approve the draft plan.
- (2) If the Minister approves the draft plan, the draft plan becomes an approved universal service plan.

- (3) If the Minister refuses to approve the draft plan, the Minister may, by written notice given to the provider, direct the provider to give the Minister, within the period and in the terms specified in the direction, a fresh draft universal service plan for the area concerned. The provider must comply with the direction.

31 Public comment—draft plan

- (1) Before giving the Minister a draft universal service plan under section 30, a universal service provider must:
- (a) publish a preliminary version of the draft plan and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
 - (b) give consideration to any submissions received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.
- (3) This section does not apply to a draft plan given to the Minister in accordance with a direction under subsection 30(3).
- (4) This section does not apply to a draft plan given to the Minister in accordance with a notice under section 38.

32 Minister to have regard to certain matters

- (1) In deciding whether to approve a draft universal service plan for an area, the Minister must have regard to whether:
- (a) the plan provides for the universal service obligation (in so far as it relates to that area) to be fulfilled:
 - (i) as efficiently and economically as practicable; and
 - (ii) at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; and
 - (iii) progressively throughout that area within such period as the Minister considers reasonable; and

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- (b) the draft plan complies with any requirements in force under section 33.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

33 Minister may formulate requirements for draft plans

- (1) The Minister may, by writing, formulate requirements to be complied with by draft universal service plans.
- (2) The following are examples of requirements:
 - (a) timetables for the supply of services;
 - (b) performance standards relating to the fulfilment of the universal service obligation;
 - (c) the form of a draft universal service plan.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

34 Notification of decision

- (1) After deciding whether to approve a draft universal service plan for an area, the Minister must give a written notice setting out the decision to:
 - (a) the universal service provider for the area; and
 - (b) the ACA.
- (2) A copy of a notice under subsection (1) must be published in the *Gazette*.
- (3) If the Minister refuses to approve a draft universal service plan for an area, the Minister must give a written notice setting out the reasons for the refusal to the universal service provider for the area.

35 Variation of approved universal service plan

- (1) This section applies if:
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- (a) an approved universal service plan for an area (the *current plan*) is in force; and
 - (b) the universal service provider for the area gives the Minister a draft variation of the plan.
- (2) The Minister must:
- (a) approve the variation; or
 - (b) refuse to approve the variation.
- (3) The Minister must not approve the variation unless the Minister is satisfied that, if it were assumed that the universal service provider were to give the Minister a draft universal service plan in the same terms as the current plan (as proposed to be varied), the Minister would approve that draft plan.
- (4) After deciding whether to approve the variation, the Minister must give a written notice setting out the decision to:
- (a) the universal service provider; and
 - (b) the ACA.
- (5) A copy of a notice under subsection (4) must be published in the *Gazette*.
- (6) If the Minister refuses to approve the variation, the Minister must give a written notice setting out the reasons for the refusal to the universal service provider.
- (7) If the Minister approves the variation, the current plan is varied accordingly.

36 Public comment—variation of plan

- (1) Before giving the Minister a draft variation of a plan under section 35, a universal service provider must:
- (a) publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and

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- (b) give consideration to any submissions that were received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.
- (3) This section does not apply to a draft variation given to the Minister in accordance with a notice under section 38.

37 Minister may direct the ACA to give reports and/or advice

- (1) Before deciding whether to approve a draft universal service plan or a draft variation of an approved universal service plan, the Minister may direct the ACA to give the Minister such reports and/or advice as the Minister requires to assist in making the decision.
- (2) The ACA must comply with the direction.
- (3) This section does not, by implication, limit the Minister's powers under section 486 of the *Telecommunications Act 1997* (which deals with public inquiries).

38 Minister may direct variation or replacement of plan

- (1) This section applies if an approved universal service plan (the *current plan*) for an area is in force.
- (2) The Minister may give the universal service provider for the area a written notice requiring the provider:
 - (a) within the period and in the terms set out in the notice, to give the Minister a draft variation of the current plan; or
 - (b) within the period and in the terms set out in the notice, to give the Minister a fresh draft universal service plan for the area that is expressed to replace the current plan.
- (3) The provider must comply with the notice.

39 Compliance with approved universal service plan

If an approved universal service plan for an area is in force, the universal service provider for the area must take all reasonable steps to ensure that the plan is complied with.

40 Register of universal service plans

- (1) The ACA is to maintain a Register in which the ACA includes all approved universal service plans currently in force.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*:
 - (a) inspect the Register; and
 - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACA may provide the relevant information:
 - (a) on a data processing device; or
 - (b) by way of electronic transmission.

Division 4A—Digital data service plans

40A Digital data service provider must submit digital data service plan

- (1) A digital data service provider for a particular area must give the Minister a draft digital data service plan for that area.
- (2) The provider must give the Minister the plan within 90 days after the provider became a digital data service provider for that area.

40B Digital data service plans

A draft or approved digital data service plan for an area is a plan that sets out how a digital data service provider for that area will progressively fulfil:

- (a) if that area is a general digital data service area—the general digital data service obligation (in so far as the obligation relates to that area); or
- (b) if that area is a special digital data service area—the special digital data service obligation (in so far as the obligation relates to that area).

Note: An *approved digital data service plan* is a draft digital data service plan that has been approved by the Minister.

40C Replacement of approved digital data service plan

If an approved digital data service plan (the *original plan*) for an area is in force, a draft digital data service plan for the area may be expressed to replace the original plan. When the draft plan becomes an approved digital data service plan, the original plan ceases to be in force.

40D Approval of draft digital data service plan by Minister

- (1) If a digital data service provider gives the Minister a draft digital data service plan, the Minister must:
 - (a) approve the draft plan; or
 - (b) refuse to approve the draft plan.
- (2) If the Minister approves the draft plan, the draft plan becomes an approved digital data service plan.
- (3) If the Minister refuses to approve the draft plan, the Minister may, by written notice given to the provider, direct the provider to give the Minister, within the period and in the terms specified in the direction, a fresh draft digital data service plan for the area concerned. The provider must comply with the direction.

40E Public comment—draft plan

- (1) Before giving the Minister a draft digital data service plan under section 40D, a digital data service provider must:
 - (a) publish a preliminary version of the draft plan and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
 - (b) give consideration to any submissions received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.
- (3) This section does not apply to a draft plan given to the Minister in accordance with a direction under subsection 40D(3).
- (4) This section does not apply to a draft plan given to the Minister in accordance with a notice under section 40M.

Section 40F

40F Minister to have regard to certain matters

- (1) In deciding whether to approve a draft digital data service plan for a general digital data service area, the Minister must have regard to whether:
 - (a) the plan provides for the general digital data service obligation (in so far as it relates to that area) to be fulfilled:
 - (i) as efficiently and economically as practicable; and
 - (ii) at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; and
 - (iii) progressively throughout that area within such period as the Minister considers reasonable; and
 - (b) the draft plan complies with any requirements in force under section 40G.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.
- (3) In deciding whether to approve a draft digital data service plan for a special digital data service area, the Minister must have regard to whether:
 - (a) the plan provides for the special digital data service obligation (in so far as it relates to that area) to be fulfilled:
 - (i) as efficiently and economically as practicable; and
 - (ii) at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community; and
 - (iii) progressively throughout that area within such period as the Minister considers reasonable; and
 - (b) the draft plan complies with any requirements in force under section 40G.
- (4) Subsection (3) does not, by implication, limit the matters to which regard may be had.

40G Minister may formulate requirements for draft plans

- (1) The Minister may, by writing, formulate requirements to be complied with by draft digital data service plans.
- (2) The following are examples of requirements:
 - (a) timetables for the supply of services;
 - (b) performance standards relating to the fulfilment of the digital data service obligation;
 - (c) the form of a draft digital data service plan.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

40H Notification of decision

- (1) After deciding whether to approve a draft digital data service plan for an area, the Minister must give a written notice setting out the decision to:
 - (a) the digital data service provider concerned; and
 - (b) the ACA.
- (2) A copy of a notice under subsection (1) must be published in the *Gazette*.
- (3) If the Minister refuses to approve a draft digital data service plan for an area, the Minister must give a written notice setting out the reasons for the refusal to the digital data service provider concerned.

40J Variation of approved digital data service plan

- (1) This section applies if:
 - (a) an approved digital data service plan for an area (the *current plan*) is in force; and
 - (b) the digital data service provider concerned gives the Minister a draft variation of the plan.

Section 40K

- (2) The Minister must:
 - (a) approve the variation; or
 - (b) refuse to approve the variation.
- (3) The Minister must not approve the variation unless the Minister is satisfied that, if it were assumed that the digital data service provider were to give the Minister a draft digital data service plan in the same terms as the current plan (as proposed to be varied), the Minister would approve that draft plan.
- (4) After deciding whether to approve the variation, the Minister must give a written notice setting out the decision to:
 - (a) the digital data service provider concerned; and
 - (b) the ACA.
- (5) A copy of a notice under subsection (4) must be published in the *Gazette*.
- (6) If the Minister refuses to approve the variation, the Minister must give a written notice setting out the reasons for the refusal to the digital data service provider concerned.
- (7) If the Minister approves the variation, the current plan is varied accordingly.

40K Public comment—variation of plan

- (1) Before giving the Minister a draft variation of a plan under section 40J, a digital data service provider must:
 - (a) publish a preliminary version of the draft variation and invite members of the public to make submissions to the provider about the preliminary version within a specified period; and
 - (b) give consideration to any submissions received from members of the public within that period.
- (2) The period specified in the invitation must run for at least 30 days.

Section 40L

- (3) This section does not apply to a draft variation given to the Minister in accordance with a notice under section 40M.

40L Minister may direct the ACA to give reports and/or advice

- (1) Before deciding whether to approve a draft digital data service plan or a draft variation of an approved digital data service plan, the Minister may direct the ACA to give the Minister such reports and/or advice as the Minister requires to assist in making the decision.
- (2) The ACA must comply with the direction.
- (3) This section does not, by implication, limit the Minister's powers under section 486 of the *Telecommunications Act 1997* (which deals with public inquiries).

40M Minister may direct variation or replacement of plan

- (1) This section applies if an approved digital data service plan (the *current plan*) for an area is in force.
- (2) The Minister may give the digital data service provider concerned a written notice requiring the provider:
- (a) within the period and in the terms set out in the notice, to give the Minister a draft variation of the current plan; or
 - (b) within the period and in the terms set out in the notice, to give the Minister a fresh draft digital data service plan for the area that is expressed to replace the current plan.
- (3) The provider must comply with the notice.

40N Compliance with approved digital data service plan

- (1) If an approved digital data service plan for a general digital data service area is in force, the general digital data service provider concerned must take all reasonable steps to ensure that the plan is complied with.

Section 40P

- (2) If an approved digital data service plan for a special digital data service area is in force, the special digital data service provider concerned must take all reasonable steps to ensure that the plan is complied with.

40P Register of digital data service plans

- (1) The ACA is to maintain a Register in which the ACA includes all approved digital data service plans currently in force.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 53 of the *Australian Communications Authority Act 1997*:
- (a) inspect the Register; and
 - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACA may provide the relevant information:
- (a) on a data processing device; or
 - (b) by way of electronic transmission.

Division 5—Regulation of universal service charges

41 Universal service charges

- (1) This section applies if a person is the universal service provider for a particular area.
- (2) For the purposes of this Division, a *universal service charge* is a charge imposed, or proposed to be imposed, by the person for:
 - (a) the supply of standard telephone services to persons in the area; or
 - (b) calls made from payphones in the area; or
 - (c) the supply of prescribed carriage services to persons in the area.

42 Declaration subjecting universal service charges to price control arrangements

- (1) The Minister may, by notice published in the *Gazette*, declare that specified universal service charges are subject to price control arrangements under this Division.
- (2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

43 Price control determinations

- (1) This section applies if a declaration is in force under section 42 in relation to a particular universal service charge.
- (2) The Minister may make a written determination setting out:
 - (a) price-cap arrangements and other price control arrangements that are to apply in relation to the charge; or
 - (b) principles or rules in accordance with which the universal service provider may impose or alter the charge;or both.

Section 44

- (3) A determination has effect accordingly.
- (4) A determination under this section takes effect at the start of the next financial year after the one in which it is made.
- (5) A determination under this section may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

44 Content of price control determinations

- (1) A determination under section 43 relating to a universal service charge may:
 - (a) prohibit the charge from being imposed or altered without the Minister's consent; or
 - (b) prohibit the charge from being imposed or altered without the ACCC's consent; or
 - (c) prohibit the charge from being imposed or altered without prior notice being given to the Minister; or
 - (d) prohibit the charge from being imposed or altered without prior notice being given to the ACCC; or
 - (e) empower the Minister to direct the ACCC to give the Minister such reports and advice as the Minister requires for the purposes of assisting the Minister in deciding whether to give a consent in accordance with the determination.
- (2) Subsection (1) does not, by implication, limit section 43.

45 Price control determinations subject to determinations under Part 9

- (1) This section applies if a determination under subsection 154(1) or 157(1) is in force in relation to a charge imposed, or proposed to be imposed, by Telstra.
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- (2) A determination under this Division is of no effect in so far as it relates to that charge.

46 Compliance with price control determinations

A universal service provider must comply with a determination in force under this Division.

Division 5A—Regulation of digital data service charges

46A Digital data service charges

- (1) For the purposes of this Division, if a person is a general digital data service provider for a particular area, a ***digital data service charge*** is a charge imposed, or proposed to be imposed, by the person for the supply of general digital data services to persons in the area.
- (2) For the purposes of this Division, if a person is a special digital data service provider for a particular area, a ***digital data service charge*** is a charge imposed, or proposed to be imposed, by the person for the supply of special digital data services to persons in the area.

46B Declaration subjecting digital data service charges to price control arrangements

- (1) The Minister may, by notice published in the *Gazette*, declare that specified digital data service charges are subject to price control arrangements under this Division.
- (2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

46C Price control determinations

- (1) This section applies if a declaration is in force under section 46B in relation to a particular digital data service charge.
- (2) The Minister may make a written determination setting out:
 - (a) price-cap arrangements and other price control arrangements that are to apply in relation to the charge; or
 - (b) principles or rules in accordance with which the digital data service provider may impose or alter the charge;

or both.

- (3) A determination has effect accordingly.
- (4) A determination under this section takes effect at the time specified in the determination.
- (5) A determination under this section may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

46D Content of price control determinations

- (1) A determination under section 46C relating to a digital data service charge may:
 - (a) prohibit the charge from being imposed or altered without the Minister's consent; or
 - (b) prohibit the charge from being imposed or altered without the ACCC's consent; or
 - (c) prohibit the charge from being imposed or altered without prior notice being given to the Minister; or
 - (d) prohibit the charge from being imposed or altered without prior notice being given to the ACCC; or
 - (e) empower the Minister to direct the ACCC to give the Minister such reports and advice as the Minister requires for the purposes of assisting the Minister in deciding whether to give a consent in accordance with the determination.
- (2) Subsection (1) does not, by implication, limit section 46C.

Section 46E

46E Price control determinations subject to determinations under Part 9

- (1) This section applies if a determination under subsection 154(1) or 157(1) is in force in relation to a charge imposed, or proposed to be imposed, by Telstra.
- (2) A determination under this Division is of no effect in so far as it relates to that charge.

46F Compliance with price control determinations

A digital data service provider must comply with a determination in force under this Division.

Division 6—Assessment, collection, recovery and distribution of universal service levy

Subdivision A—Introduction

47 Simplified outline

The following is a simplified outline of this Division:

- This Division sets out a scheme under which losses that result from supplying services in the course of fulfilling the universal service obligation, and certain costs that are associated with fulfilling the digital data service obligation, are shared among carriers.
- If a universal service provider incurs a loss (called a *net universal service cost*) from supplying services to certain areas (*net cost areas*) in the course of fulfilling the universal service obligation, or a digital data service provider incurs certain costs (called *digital data costs*) in the course of fulfilling the digital data service obligation, the provider may be entitled to a payment (a *levy credit*) to recoup those losses or costs.
- A levy credit is funded out of the proceeds of the levy imposed on carriers by the *Telecommunications (Universal Service Levy) Act 1997*.
- Certain information about the operation of the scheme is available to the public.
- The ACA is required to make an annual assessment of levies and levy credits.

Section 48

- The ACA may make advances on account of levy credits.
- Certain carriers are required to obtain guarantees given by third persons in relation to the discharge of the carriers' liability for levy.

48 Financial year

A reference in this Part to a *financial year* is a reference to the 1999-2000 financial year or a later financial year.

Subdivision B—Net cost areas

49 Universal service provider must propose service areas for declaration as net cost areas—ordinary declaration

- (1) This section applies if a person is a universal service provider on the first day of a financial year.
- (2) Within 60 days after the beginning of the financial year, the person must give the ACA a written notice that:
 - (a) specifies service areas for which the person is the universal service provider and that, in the person's opinion, the ACA should declare under section 50 as net cost areas for the financial year; and
 - (b) sets out why, in the person's opinion, the ACA should so declare the specified areas.
- (3) A notice under subsection (2) must be in a form approved in writing by the ACA.
- (4) In addition to the matters set out in paragraphs (2)(a) and (b), a notice under subsection (2) must contain such other information (if any) as the approved form of notice requires.

50 Net cost areas—ordinary declarations

- (1) The ACA must comply with this section within 60 days after receiving a notice under section 49 from a person.
- (2) For each service area specified in the notice, the ACA must decide:
 - (a) to declare the area as a net cost area for the financial year; or
 - (b) to declare as a net cost area for the financial year a service area if:
 - (i) the person is the universal service provider for the area; and
 - (ii) the area includes the whole or a part of the service area specified in the notice; or
 - (c) not to declare as mentioned in paragraph (a) or (b).
- (3) If the ACA makes a decision under paragraph (2)(a) or (b), the ACA must make a written declaration stating that the area concerned is a net cost area for the financial year. The declaration has effect accordingly.
- (4) Before making a decision under subsection (2), the ACA may make whatever inquiries it thinks necessary or desirable in order to determine what decision it should make under that subsection.
- (5) In making a decision under subsection (2), the ACA must:
 - (a) have regard to the reasons specified in accordance with paragraph 49(2)(b); and
 - (b) comply with any directions in force under section 53.

51 Universal service provider may propose service areas for declaration as net cost areas—special declaration

- (1) This section applies if a person is a universal service provider on the first day of a financial year.
- (2) During the financial year, or within 45 days after the end of the financial year, the person may give the ACA written notice that:

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- (a) specifies service areas for which the person is the universal service provider and that, in the person's opinion, the ACA should declare under section 52 as net cost areas for the financial year; and
 - (b) sets out why, in the person's opinion, the ACA should so declare the specified areas.
- (3) A notice under subsection (2) must be in a form approved in writing by the ACA.
 - (4) In addition to the matters set out in paragraphs (2)(a) and (b), a notice under subsection (2) must contain such other information (if any) as the approved form of notice requires.

52 Net cost areas—special declarations

- (1) The ACA must comply with this section within 30 days after receiving a notice under section 51 from a person.
- (2) For each service area specified in the notice, the ACA must decide:
 - (a) to declare the area as a net cost area for the financial year; or
 - (b) not to declare as mentioned in paragraph (a).
- (3) If the ACA makes a decision under paragraph (2)(a), the ACA must make a written declaration stating that the area concerned is a net cost area for the financial year. The declaration has effect accordingly.
- (4) Before making a decision under subsection (2), the ACA may make whatever inquiries it thinks necessary or desirable in order to determine what decision it should make under that subsection.
- (5) In making a decision under subsection (2), the ACA must:
 - (a) have regard to the reasons specified in accordance with paragraph 51(2)(b); and
 - (b) comply with any directions in force under section 53.

- (6) The ACA must not make a declaration under this section stating that an area is a net cost area for the financial year unless the ACA is satisfied that:
- (a) the person has incurred, or is likely to incur, a substantial loss attributable to the supply by the person of services to the area during the financial year; and
 - (b) the loss is wholly the result of circumstances beyond the person's control; and
 - (c) when the person became aware of those circumstances, the person took all reasonable steps to minimise the loss.
- (7) A reference in subsection (6) to a person supplying services to an area during a financial year is a reference to the person:
- (a) supplying standard telephone services to persons in the area; or
 - (b) supplying, installing or maintaining payphones in the area; or
 - (c) supplying prescribed carriage services in the area;
- during that financial year.

53 Minister may give directions about declaring net cost areas

The Minister may give the ACA written directions about:

- (a) the criteria it should apply; or
- (b) the matters to which it should have regard;

in deciding whether or not to declare an area as a net cost area for a financial year.

Subdivision C—Assessment of liability for levy and of entitlement to levy distributions

54 Claims for levy credit

- (1) This section applies to a financial year if a person is a universal service provider, or a digital data service provider, in relation to the financial year.

Section 54

- (2) Within the period of 90 days after the end of the financial year, the person may give the ACA a written claim for a levy credit for that financial year.
- (3) The claim must be in a form approved in writing by the ACA.
- (4) If the person is a universal service provider in relation to the financial year, the claim must set out:
 - (a) the person's net universal service cost for the financial year (worked out under section 57); and
 - (b) details of how that net universal service cost has been worked out; and
 - (c) such other information (if any) as the approved form of claim requires.
- (4A) If the person is a digital data service provider in relation to the financial year, the claim must set out:
 - (a) the person's digital data cost for the financial year (worked out under section 61A); and
 - (b) details of how that digital data cost has been worked out; and
 - (c) such other information (if any) as the approved form of claim requires.
- (5) The claim must be accompanied by a report of an approved auditor that:
 - (a) is in a form approved in writing by the ACA; and
 - (b) states that the auditor has been given sufficient access to the person's records in order to audit the claim; and
 - (c) states that the auditor has audited the claim; and
 - (d) contains a declaration of the opinion of the auditor, being a declaration in the terms specified in the form.
- (6) A form approved by the ACA for the purposes of subsection (3) may provide for verification by a statutory declaration of statements in claims for levy credits.

55 No levy payable unless at least one claim for a levy credit is made

- (1) This section applies to a financial year if, at the end of the period of 90 days after the end of the financial year, no claim for a levy credit for that financial year has been lodged under section 54.
- (2) No person is liable to pay an amount of levy in respect of the financial year.

56 ACA to give copies of claims to other participating carriers

- (1) This section applies if a claim for a levy credit for a financial year is lodged under section 54.
- (2) As soon as practicable, and in any case within 14 days, after the lodgment, the ACA must give a copy of the claim to each person (other than the person who lodged the claim) who is a participating carrier for that financial year.

57 Net universal service cost of a universal service provider for a financial year

- (1) A person's net universal service cost for a financial year depends on which of the following paragraphs is applicable for that financial year:
 - (a) if:
 - (i) the person is a universal service provider in relation to that financial year because of the operation of a selection system determined under section 22 or 23; and
 - (ii) the person has elected that a specified amount will be the person's net universal service cost for the financial year;the person's net universal service cost for the financial year is equal to that amount;
 - (b) if:

Section 57

- (i) the person is a universal service provider in relation to that financial year because of the operation of a selection system determined under section 22 or 23; and
 - (ii) the person has elected that a specified method of ascertaining an amount will apply for the purposes of determining the person's net universal service cost for the financial year;
- the person's net universal service cost for the financial year is worked out using that method;
- (c) if:
- (i) the person is a universal service provider in relation to that financial year; and
 - (ii) the person is not a universal service provider in relation to that financial year because of the operation of a selection system determined under section 22 or 23; and
 - (iii) a determination is in force under subsection (6) in relation to that financial year;
- the person's net universal service cost for the financial year is worked out in accordance with the determination;
- (d) if:
- (i) the person is a universal service provider in relation to that financial year; and
 - (ii) the person is not a universal service provider in relation to that financial year because of the operation of a selection system determined under section 22 or 23; and
 - (iii) no determination is in force under subsection (6) in relation to that financial year;
- then:
- (iv) if the amount worked out using the formula in subsection (2) is greater than zero dollars—the person's net universal service cost for the financial year is equal to that amount; or
 - (v) if the amount worked out using the formula in subsection (2) is not greater than zero dollars—the

person's net universal service cost for the financial year is zero dollars.

(2) The formula is:

Avoidable costs – Revenue forgone

where:

avoidable costs means:

- (a) if a determination is in force under subsection (9)—the amount ascertained in accordance with the determination; or
- (b) if no determination is in force under subsection (9)—the total of:
 - (i) the amount (if any) by which the total costs (in this definition called the **operating costs**) incurred by the person during that financial year (other than the allowances, costs and amounts referred to in subparagraphs (ii), (iii) and (iv)) exceed what it is reasonable to expect that the operating costs would have been if the person had not supplied services to net cost areas during the financial year; and
 - (ii) the amount (if any) by which the total allowances made by the person for depreciation during that financial year of capital items exceed what it is reasonable to expect that the total allowances so made would have been if the person had not supplied services to net cost areas during the financial year; and
 - (iii) the amount (if any) by which the person's total opportunity costs of capital for that financial year exceed what it is reasonable to expect that those costs would have been if the person had not supplied services to net cost areas during the financial year; and
 - (iv) the amounts (if any) specified, for the purposes of this paragraph, in such provisions of determinations under section 60 as apply in relation to the person, in relation to the financial year, because of section 61.

Section 57

revenue forgone means an amount equal to so much of the revenue earned by the person during that financial year as it is reasonable to expect that the person would not have earned during that financial year if the person had not supplied services to net cost areas during that financial year.

- (3) A reference in subsection (2) to a person supplying services to net cost areas during a financial year is a reference to the person:
 - (a) supplying standard telephone services to persons in the net cost areas for that financial year for which the person was the universal service provider; or
 - (b) supplying, installing or maintaining payphones in those areas; or
 - (c) supplying prescribed carriage services in those areas; during that financial year.
- (4) If the person was a carrier for part only of the financial year, a reference in subsection (2) or (3) to the financial year is a reference to that part of the financial year.
- (5) An amount applicable to a person under subsection (2) for a financial year must be determined in accordance with such provisions of determinations under section 60 as apply in relation to the person, in relation to the financial year, because of section 61.
- (6) The Minister may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (1)(c). The determination has no effect unless each person who was a participating carrier immediately before the determination was made gave a written consent to the making of the determination.
- (7) The amount worked out under a determination under subsection (6) may be zero dollars.
- (8) A copy of a determination under subsection (6) must be published in the *Gazette*.

- (9) The ACA may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (a) of the definition of *avoidable costs* in subsection (2).
- (10) A determination under subsection (9) must provide for an amount to be ascertained wholly or partly by reference to an indexation factor.
- (11) A determination under subsection (9):
 - (a) may only be made with the Minister's consent; and
 - (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (12) Before making a determination under subsection (9), the ACA must consult each person who was a participating carrier immediately before the determination was made.

58 Reduction of excessive costs etc.

- (1) The Minister may, by written instrument, formulate principles that are to be applied in determining the extent (if any) to which costs, allowances or opportunity costs of a kind mentioned in subparagraph (b)(i), (ii) or (iii) of the definition of *avoidable costs* in subsection 57(2) are to be treated as excessive for the purposes of subsection (2) of this section.
- (2) For the purposes of the calculation of the formula in subsection 57(2) in relation to a particular financial year, if:
 - (a) any of the following conditions are satisfied:
 - (i) a person has incurred costs of a kind mentioned in subparagraph (b)(i) of the definition of *avoidable costs* in subsection 57(2);
 - (ii) a person has made allowances of a kind mentioned in subparagraph (b)(ii) of that definition;
 - (iii) a person has opportunity costs of a kind mentioned in subparagraph (b)(iii) of that definition; and

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- (b) the costs, allowances or opportunity costs are treated, under the principles in force under subsection (1), as excessive to any extent;
the amount of the costs, allowances or opportunity costs, as the case may be, is to be reduced by the amount of the excess.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

59 Shortfalls in revenue earned

- (1) The Minister may, by written instrument, formulate principles that are to be applied in determining the extent (if any) to which there is taken, for the purposes of subsection (2), to be a shortfall in relation to revenue earned as mentioned in the definition of **revenue forgone** in subsection 57(2).
- (2) For the purposes of the calculation of the formula in subsection 57(2) in relation to a particular financial year, if:
 - (a) a person has earned revenue as mentioned in the definition of **revenue forgone** in subsection 57(2); and
 - (b) under the principles in force under subsection (1), there is taken to be a shortfall in relation to that revenue;
the amount of the revenue is to be increased by the amount of the shortfall.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

60 ACA determinations about working out a universal service provider's net universal service cost

- (1) The ACA may make written determinations:
 - (a) for or in relation to specifying methods of calculating an amount referred to in:
 - (i) subparagraph (b)(i), (ii) or (iii) of the definition of **avoidable costs** in subsection 57(2); or

- (ii) the definition of *revenue forgone* in subsection 57(2); as applying in relation to a universal service provider in relation to a financial year; or
 - (b) specifying amounts for the purposes of subparagraph (b)(iv) of the definition of *avoidable costs* in subsection 57(2) as so applying.
- (2) An instrument under this section:
 - (a) may only be made with the Minister's consent; and
 - (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
 - (3) Before making a determination in relation to a financial year under this section, the ACA must consult each person who was a participating carrier immediately before the determination was made.

61 Application of determinations under section 60

- (1) Except so far as the contrary intention appears in a determination under section 60, a provision of such a determination applies in relation to:
 - (a) the first financial year that ends after the commencement of the last-mentioned provision; and
 - (b) each later financial year.
- (2) Despite anything in an instrument under section 60, but subject to subsection (4) of this section, a provision of a determination under that section does not apply in relation to a financial year ending before the commencement of that provision.
- (3) A person may elect in writing that a provision that, apart from subsection (4), does not apply in relation to the person in relation to a particular financial year is to apply in relation to the person in relation to that financial year.
- (4) An election under subsection (3) has effect accordingly.

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(5) In this section:

commencement, in relation to a provision of a determination under section 60, means:

- (a) in the case of such a provision as originally in effect—the time when the provision took effect; or
- (b) in the case of a provision as varied by another provision of an instrument under section 60—the time when the last-mentioned provision took effect.

61A Digital data cost of a digital data service provider for a financial year

(1) A person's digital data cost for a financial year depends on which of the following paragraphs is applicable for that financial year:

(a) if:

(i) the person is a digital data service provider in relation to that financial year because of the operation of a selection system determined under section 26C or 26D; and

(ii) the person has elected that a specified amount will be the person's digital data cost for the financial year;

the person's digital data cost for the financial year is equal to that amount;

(b) if:

(i) the person is a digital data service provider in relation to that financial year because of the operation of a selection system determined under section 26C or 26D; and

(ii) the person has elected that a specified method of ascertaining an amount will apply for the purposes of determining the person's digital data cost for the financial year;

the person's digital data cost for the financial year is worked out using that method;

(c) if:

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- (i) the person is a digital data service provider in relation to that financial year; and
 - (ii) the person is not a digital data service provider in relation to that financial year because of the operation of a selection system determined under section 26C or 26D; and
 - (iii) a determination is in force under subsection (4) in relation to that financial year;
the person's digital data cost for the financial year is worked out in accordance with the determination;
 - (d) if:
 - (i) the person is a digital data service provider in relation to that financial year; and
 - (ii) the person is not a digital data service provider in relation to that financial year because of the operation of a selection system determined under section 26C or 26D; and
 - (iii) no determination is in force under subsection (4) in relation to that financial year;then:
 - (iv) if the amount worked out using the formula in subsection (3) is greater than zero dollars—the person's digital data cost for the financial year is equal to that amount; or
 - (v) if the amount worked out using the formula in subsection (3) is not greater than zero dollars—the person's digital data cost for the financial year is zero dollars.
- (2) For the purposes of this section, if a person is a digital data service provider for an area in relation to a financial year, the person's **customer equipment costs** for the financial year is an amount equal to the sum of:
- (a) the total costs incurred by the person in acquiring customer equipment that:

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- (i) is covered by a declaration that was in force under section 46B during the financial year in relation to charges imposed, or proposed to be imposed, by the person for the supply of customer equipment of a kind specified in regulations made for the purposes of paragraph 14A(1)(a) or (5)(a); and
 - (ii) was supplied by the person during the financial year to persons in the area; and
 - (b) the total rebates that became payable during the financial year by the person, in accordance with regulations made for the purposes of subsection 19A(8), in respect of customer equipment acquired or hired by persons in the area.
- (3) The formula referred to in paragraph (1)(d) is as follows:
- $$\text{Customer equipment costs} - \text{Customer charges} + \text{Supplementary amount}$$
- where:
- customer charges** means the total amount payable by persons in the area referred to in subsection (2) by way of charges for the supply by the person during the financial year of customer equipment covered by paragraph (2)(a).
- customer equipment costs** means the person's customer equipment costs for the financial year.
- supplementary amount** means the amount (if any) specified in, or ascertained in accordance with, regulations made for the purposes of this definition.
- (4) The Minister may make a written determination specifying a method of ascertaining an amount for the purposes of paragraph (1)(c). The determination has no effect unless each person who was a participating carrier immediately before the determination was made gave a written consent to the making of the determination.
 - (5) The amount worked out under a determination under subsection (4) may be zero dollars.
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- (6) A copy of a determination under subsection (4) must be published in the *Gazette*.

61B Reduction of excessive costs

- (1) The Minister may, by written instrument, formulate principles or rules that are to be applied in determining the extent (if any) to which costs are to be treated as excessive for the purposes of subsection 61A(2).
- (2) For the purposes of the application of subsection 61A(2) in relation to a particular financial year, if:
- (a) a person has incurred costs of a kind mentioned in paragraph 61A(2)(a); and
 - (b) the costs are treated, under the principles or rules in force under subsection (1), as excessive to any extent;
- the amount of the costs is to be reduced by the amount of the excess.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

62 Participating carriers must lodge returns of eligible revenue

- (1) Within 90 days after the end of a financial year, each participating carrier in relation to that financial year must give the ACA a written return of the carrier's eligible revenue for that financial year.
- (2) The return must be in a form approved in writing by the ACA.
- (3) The return must set out:
- (a) the carrier's eligible revenue for that financial year; and
 - (b) details of how that eligible revenue was worked out; and
 - (c) such other information (if any) as the approved form of return requires.

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- (4) A person who intentionally or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Note: See also sections 4AA and 4B of the *Crimes Act 1914*.

- (5) A form approved by the ACA for the purposes of subsection (2) may provide for verification by a statutory declaration of statements in returns under this section.
- (6) The return must be accompanied by a report of an approved auditor that:
- (a) is in a form approved in writing by the ACA; and
 - (b) states that the auditor has been given sufficient access to the person's records in order to audit the return; and
 - (c) states that the auditor has audited the return; and
 - (d) contains a declaration of the opinion of the auditor, being a declaration in the terms specified in the form.

63 ACA may inquire into the correctness of a claim or return

The ACA may make whatever inquiries it thinks necessary or desirable in order to determine:

- (a) whether or not a claim by a universal service provider for a levy credit for a financial year correctly states the universal service provider's net universal service cost for that financial year; or
- (aa) whether or not a claim by a digital data service provider for a levy credit for a financial year correctly states the digital data service provider's digital data cost for that financial year; or
- (b) whether or not a return by a participating carrier of the carrier's eligible revenue for a financial year correctly states the carrier's eligible revenue for that financial year.

64 ACA to assess liabilities and entitlement

- (1) For each financial year, the ACA must make a written assessment for the purposes of this Part.
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- (2) The assessment must set out, for each participating carrier in relation to that financial year:
 - (a) the carrier's eligible revenue for the financial year; and
 - (b) the carrier's levy debit under section 67 for the financial year; and
 - (c) the carrier's levy debit balance (if any) under section 68 for the financial year; and
 - (d) if the assessment sets out a levy debit balance of the carrier for the financial year—the levy payable by the carrier on that levy debit balance.

- (3) The assessment must set out, for each universal service provider in relation to that financial year:
 - (a) the universal service provider's net universal service cost for the financial year; and
 - (b) the universal service provider's levy credit balance (if any) under section 69 for the financial year; and
 - (c) if the assessment sets out a levy credit balance of the universal service provider for the financial year—the amount payable to the universal service provider under section 85 for the financial year.

- (3A) The assessment must set out, for each digital data service provider in relation to that financial year:
 - (a) the digital data service provider's digital data cost for the financial year; and
 - (b) the digital data service provider's levy credit balance (if any) under section 69 for the financial year; and
 - (c) if the assessment sets out a levy credit balance of the digital data service provider for the financial year—the amount payable to the digital data service provider under section 85 for the financial year.

- (4) The assessment must be made on the basis of:

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- (a) the respective claims for levy credits lodged by universal service providers and digital data service providers in relation to the financial year; and
 - (b) the respective returns under section 62 lodged by the participating carriers in relation to the financial year; and
 - (c) the information and documents obtained by the ACA because of its inquiries under section 63; and
 - (d) any other information or documents that the ACA has and that it thinks relevant to making the assessment.
- (5) Despite anything in this Part, the ACA may, for the purposes of making its assessment, accept, either in whole or in part, a statement in a claim or return.

65 Explanation to the Minister if assessment not made within 270 days

- (1) This section applies if the ACA has not made its assessment under section 64 in relation to a financial year within 270 days after the end of the financial year.
- (2) The ACA must give the Minister a written statement explaining why the ACA has not made its assessment within that 270-day period.
- (3) In this section:

assessment does not include an amended assessment.

66 Amendment of assessments

- (1) The ACA may amend its assessment by making such alterations and additions as it thinks necessary, even if levy credits or levy has been paid in respect of the assessment.
- (2) Unless the contrary intention appears, an amended assessment is taken, for the purposes of this Part, to be an assessment under section 64.

67 Levy debit of a participating carrier for a financial year

- (1) A participating carrier's *levy debit* for a financial year is the amount worked out using the formula:

$$\text{Contribution factor} \times (\text{Total net universal service cost} + \text{Total digital data cost})$$

where:

contribution factor has the meaning given by subsection (2).

total digital data cost means the total digital data costs for the financial year of all the digital data service providers in relation to the financial year.

total net universal service cost means the total net universal service costs for the financial year of all the universal service providers in relation to the financial year.

- (2) The *contribution factor* for the financial year depends on whether a determination is in force under subsection (3) in relation to the financial year:
- (a) if a determination is in force under subsection (3) in relation to the financial year—the contribution factor is ascertained in accordance with the determination;
 - (b) if no determination is in force under subsection (3) in relation to the financial year—the contribution factor is worked out using the following formula:

$$\frac{\text{Carrier's eligible revenue}}{\text{Total eligible revenue}}$$

where:

carrier's eligible revenue means the participating carrier's eligible revenue for the financial year.

total eligible revenue means the total eligible revenue for the financial year of all the participating carriers in relation to the financial year.

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- (3) The Minister may make a written determination specifying a method of ascertaining the contribution factor for the purposes of paragraph (2)(a). The determination has no effect unless each person who was a participating carrier immediately before the determination was made gave a written consent to the making of the determination.
- (4) A copy of a determination under subsection (3) must be published in the *Gazette*.

68 Levy debit balance of a participating carrier for a financial year

If a person's levy debit under subsection 67(1) for a financial year exceeds the sum of:

- (a) the person's net universal service cost for that financial year;
and
 - (b) the person's digital data cost for that financial year;
- then:
- (c) the person has a levy debit balance for that financial year;
and
 - (d) the amount of that balance is the amount of the excess.

69 Levy credit balance for a financial year

If the sum of:

- (a) a person's net universal service cost for a financial year; and
 - (b) the person's digital data cost for that financial year;
- exceeds the person's levy debit under subsection 67(1) for that financial year:
- (c) the person has a levy credit balance for that financial year;
and
 - (d) the amount of that balance is the amount of the excess.

70 Publication of assessment

As soon as practicable after making an assessment under section 64 for a financial year, the ACA must:

- (a) cause a copy of the assessment to be published in the *Gazette*; and
- (b) give a copy of the assessment to each participating carrier in relation to that financial year.

Subdivision D—Disclosure by the ACA of information about decisions relating to net cost areas and assessments

71 Public may request information

- (1) A person may request the ACA to make available to the person:
 - (a) specified information or documents on the basis of which the ACA has made its assessment under section 64 for a financial year; or
 - (b) specified information about how the ACA has worked out the matters that such an assessment sets out because of subsection 64(2), (3) or (3A); or
 - (c) specified information or documents relating to a decision by the ACA under section 50 or 52 to declare an area as a net cost area for a financial year.
 - (2) The ACA must comply with a request as provided in section 73. This subsection has effect subject to subsection (3).
 - (3) The ACA must not make available under this section:
 - (a) information (other than information prescribed for the purposes of this paragraph):
 - (i) that was obtained from, or relates to, a person who is a universal service provider, or a digital data service provider, in relation to a financial year; and
 - (ii) the making available of which under this section can reasonably be expected to cause substantial damage to the person referred to in subparagraph (i); or
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- (b) information prescribed for the purposes of this paragraph; or
- (c) so much of a document as sets out information of a kind referred to in paragraph (a) or (b).

72 Request for information that is unavailable under section 71

- (1) For the purposes of this section, each of the following persons is an *eligible person*:
 - (a) a person who is a universal service provider in relation to a financial year;
 - (aa) a person who is a digital data service provider in relation to a financial year;
 - (b) a person who is a participating carrier in relation to a financial year.
- (2) An eligible person may request the ACA to make available to it specified information or documents of a kind referred to in subsection 71(1) that subsection 71(3) prevents the ACA from making available to the eligible person under section 71.
- (3) The ACA must comply with a request as provided for in section 73. This section has effect subject to subsection (4).
- (4) The ACA must not, under this section, make available to an eligible person (in this section called the *first eligible person*) information, or so much of a document as sets out information:
 - (a) that was obtained from, or relates to, another eligible person; and
 - (b) the making available of which to the first eligible person can reasonably be expected to cause substantial damage to the other eligible person's commercial or other interests;unless the ACA is satisfied:
 - (c) that the information could be obtained by the first eligible person lawfully, and without the other eligible person's consent, from a source other than the ACA; or
 - (d) in the case of a request under paragraph 71(1)(a) or (b)—that:

- (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACA made the assessment concerned; and
 - (ii) having regard to the policy principles in section 9, the first eligible person's interest in being able to examine that basis and those methods in order to see how its liability to pay levy, or its entitlement to a payment under section 85, as the case requires, has been assessed outweighs the other eligible person's interest in avoiding the damage referred to in paragraph (b); or
- (e) in the case of a request under paragraph 71(1)(c)—that:
- (i) the first eligible person has made the request in good faith for the sole purpose of informing itself about the basis on which, or the methods by which, the ACA made the decision to make the declaration concerned; and
 - (ii) having regard to the policy principles in section 9, the first eligible person's interest in being able to examine that decision outweighs the other eligible person's interest in avoiding the damage referred to in paragraph (b).
- (5) In determining the question referred to in paragraph (4)(b), the ACA must have regard to:
- (a) whether any undertakings have been given under subsection (6) and, if so, the nature of those undertakings; and
 - (b) such other matters (if any) as the ACA considers relevant.
- (6) For the purposes of this section, a person may give the ACA a written undertaking that, in the event that specified information, or the whole or a part of a specified document, is made available to the person under this section, the person will not disclose the information, or the contents of the document, except to one or more specified persons.

Note: Information, documents or persons may be specified by name, by inclusion in a class or in any other way.

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- (7) If a person gives an undertaking under subsection (6), the person must comply with the undertaking.

73 How the ACA is to comply with a request

- (1) The ACA may comply with a request by a person under section 71 or 72 by:
- (a) communicating information to the person in writing or in some other form; or
 - (b) making documents available for inspection by the person or by an employee, agent or professional adviser of the person; or
 - (c) giving to the person copies of, extracts from, or summaries of, documents.

- (2) In this section:

document includes a part of a document.

Subdivision E—Collection and recovery of levy

74 When levy payable

Levy assessed under section 64 becomes due and payable on the 28th day after the ACA gives a copy of the assessment to the participating carrier in respect of which the levy has been assessed.

75 Levy a debt due to the Commonwealth

Levy may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

76 Validity of assessment

The validity of an assessment under section 64 is not affected by a contravention of this Act.

77 Evidence of assessment

- (1) This section applies if there is produced:
 - (a) a copy of the *Gazette* that sets out what purports to be a copy of an assessment made under section 64; or
 - (b) a document that purports to be such a copy.
- (2) Except so far as the contrary is established, it must be presumed:
 - (a) that the copy of the *Gazette* sets out, or that the document is, as the case may be, a copy of such an assessment; and
 - (b) that the ACA has duly made the assessment; and
 - (c) that the amounts and other particulars set out in the assessment are correct.

78 Onus of establishing incorrectness of assessment

In any proceeding, the onus of establishing that an assessment under section 64 is incorrect is on the party making that assertion.

79 Refund of overpayment of levy

If there is an overpayment of levy, the overpayment is to be refunded.

80 Cancellation of certain exemptions from levy

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay levy.
- (2) The cancellation does not apply if the provision of the other Act is enacted after the commencement of this section and refers specifically to levy imposed by the *Telecommunications (Universal Service Levy) Act 1997*.

81 Commonwealth not liable to levy

- (1) The Commonwealth is not liable to pay levy.
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- (2) A reference in this section to the *Commonwealth* includes a reference to an authority of the Commonwealth that cannot, by law of the Commonwealth, be made liable to taxation by the Commonwealth.

Subdivision F—Distribution of levy

82 Universal Service Reserve

- (1) The Universal Service Reserve that was, immediately before the commencement of this section, in existence because of section 211 of the *Telecommunications Act 1997* continues in existence under and subject to the provisions of this Act.
- (2) The Universal Service Reserve is a component of the Reserved Money Fund.
- (3) The Universal Service Reserve is to be administered by the Department.

83 Payments into Universal Service Reserve

There must be transferred to the Universal Service Reserve from the Consolidated Revenue Fund:

- (a) amounts equal to amounts of levy paid under this Part; and
- (b) money appropriated by law for the Universal Service Reserve's purposes; and
- (c) amounts equal to interest from the investment of money in the Universal Service Reserve; and
- (d) amounts equal to amounts that were overpaid under section 85 and have been recovered; and
- (e) amounts equal to amounts paid under section 89.

84 Purposes of Universal Service Reserve

- (1) The purposes of the Universal Service Reserve are:
- (a) making payments under section 85 or 88; and

- (b) refunding any overpaid amounts of levy; and
 - (c) refunding any other amounts paid into the Universal Service Reserve in error; and
 - (d) reimbursing the Commonwealth for:
 - (i) the costs or expenses incurred by the Commonwealth or the ACA in administering the *Telecommunications (Universal Service Levy) Act 1997* and this Division during any period; and
 - (ii) without limiting subparagraph (i), costs or expenses incurred in connection with recovering levy; and
 - (iii) costs incurred by the Commonwealth during the period in collecting, compiling, analysing and publishing information about the operation of that Act and this Division.
- (2) For the purposes of paragraph (1)(d), the Minister administering the *Financial Management and Accountability Act 1997* may, from time to time, determine the amount of a reimbursement to be made to the Commonwealth in relation to a period on such basis as he or she thinks appropriate.
- (3) Despite subsection (2), the total of the amounts reimbursed under paragraph (1)(d) must not exceed the total of the amounts paid into the Universal Service Reserve under paragraphs 83(b) and (c).

85 Levy distribution

If a person has a levy credit balance for a financial year because of section 69, an amount equal to the amount of that balance is payable to the person out of the Universal Service Reserve.

86 Levy not to be distributed until paid

No amount is payable under section 85 in relation to a financial year unless and until:

- (a) the ACA has made an assessment under section 64 for that financial year; and

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- (b) each participating carrier in respect of which levy was assessed has paid the levy.

87 Recovery of overpayments

- (1) For the purposes of this section, an *overpaid amount* is so much of an amount paid under section 85 as represents an overpayment.
- (2) An overpaid amount is a debt due to the Commonwealth.
- (3) An overpaid amount may be recovered by the Commonwealth by action in a court of competent jurisdiction.
- (4) If a person is liable to pay an overpaid amount, the overpaid amount may be deducted from one or more other amounts that are payable to the person under this Part, and if it is so deducted, the other amounts are taken to have been paid in full to the person.

Subdivision G—Advance on account of distribution of levy

88 Advance on account of distribution of levy

If the ACA is satisfied that, because of special circumstances, it is appropriate to do so, the ACA may, on behalf of the Commonwealth, make an advance on account of payments that may become payable to a person under section 85 in relation to a financial year.

89 Repayment of excess advances

- (1) If:
 - (a) a person has received a total amount, by way of advances on account of payments that may become payable to the person under section 85 in relation to a particular financial year; and
 - (b) that total amount is greater than the amount that became payable to the person under section 85 in relation to that financial year;

the person is liable to pay to the Commonwealth the amount of the excess.

- (2) If a person is liable to pay an amount to the Commonwealth under subsection (1):
- (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; or
 - (b) the amount may be deducted from any other amount that is payable to the person under this Part, and if the amount is so deducted, the other amount is taken to have been paid in full to the person.

Subdivision H—Levy guarantee

90 Levy guarantee

- (1) This section applies to a person (the *first person*) at a particular time if:
- (a) the first person is a carrier at that time; or
 - (b) the first person ceased to be a carrier during the 2-year period that ended at that time.
- (2) The first person must ensure that, at that time, there is in force a guarantee given by a third person in respect of the discharge of the first person's liability (if any) for levy.
- (3) The third person must be:
- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or
 - (b) the Reserve Bank of Australia; or
 - (c) a body corporate formed under the law of a State or Territory to carry on the business of banking within Australia; or
 - (d) a body corporate whose sole or principal business is the provision of financial accommodation to other persons, where the body corporate is a registered corporation within the meaning of the *Financial Corporations Act 1974*; or
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- (e) a body corporate accredited in writing by the ACA for the purposes of this paragraph.
- (4) A reference in this section to a *carrier* does not include a reference to a person who, under subsection 16(2), is exempt from section 16.

91 Exemptions from levy guarantee

- (1) A person is exempt from section 90 if the person held a general telecommunications licence, or a public mobile licence, that was in force under the *Telecommunications Act 1991* on 30 June 1997.
- (2) The ACA may make a written determination exempting a specified person from section 90 if:
 - (a) in the ACA's opinion, there is no reasonable likelihood that the person will incur a liability for levy; or
 - (b) both:
 - (i) the person has held a carrier licence for at least 2 years; and
 - (ii) in the ACA's opinion, there is no significant risk that the person will fail to discharge fully the person's liability for levy.
- (3) A determination under subsection (2) has effect accordingly.

92 Compliance with levy guarantee obligations

- (1) A person must not contravene section 90.
- (2) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or

(d) conspire with others to effect a contravention of subsection (1).

(3) Subsections (1) and (2) are ***civil penalty provisions***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions.

Part 3—The National Relay Service

Division 1—Introduction

93 Simplified outline

The following is a simplified outline of this Part:

- Provision is made for the National Relay Service (NRS).
- The NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.

94 Definitions

In this Part:

levy quarter means a quarter for which NRS levy is payable.

National Relay Service or *NRS* has the meaning given by subsection 95(1).

NRS contract means the contract under which the National Relay Service is provided.

NRS levy means the levy payable in accordance with this Part.

NRS provider means the person who provides the National Relay Service.

NRS service plan means a plan referred to in subsection 95(2).

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quarter means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

taxpayer, for a quarter, means a person who is liable to pay NRS levy for the quarter.

Division 2—The National Relay Service

95 The National Relay Service (the NRS)

- (1) A reference in this Part to the National Relay Service (or *NRS*) is a reference to a service that:
 - (a) provides persons who are deaf, or who have a hearing and/or speech impairment, with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service; and
 - (b) is provided by a person under a contract with the Commonwealth.
- (2) The NRS contract must provide for the NRS provider to prepare service plans for the NRS. The service plan must include at least the following matters:
 - (a) timetables for the supply of the NRS; and
 - (b) performance standards to be met by the NRS provider.
- (3) The Minister must arrange for each NRS service plan to be published in whatever manner the Minister considers appropriate.

96 Publication of costs of providing the NRS

- (1) Before the start of each levy quarter, the NRS provider must give the Minister a written estimate of the total cost of the provider in providing the NRS during the quarter. The estimate must be prepared in accordance with the NRS contract. The Minister must cause the estimate to be published in the *Gazette*.
- (2) Within 30 days after the end of each levy quarter, the NRS provider must give the Minister a written statement of the total cost of the provider in providing the NRS during the quarter. The statement must be prepared in accordance with the NRS contract.

The Minister must cause the statement to be published in the *Gazette*.

97 ACA reports and advice about NRS service plans

- (1) The ACA must monitor all significant matters relating to the performance by the NRS provider of the provider's obligations under an NRS service plan.
- (2) As soon as practicable after the end of each financial year, the ACA must give a written report to the Minister about the performance by the NRS provider during the financial year of the provider's obligations under an NRS service plan.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (4) In addition to the report under subsection (2), the ACA must give the Minister such reports or advice as the Minister requires in relation to the NRS service plan.
- (5) A reference in this section to a *financial year* is a reference to the 1999-2000 financial year or a later financial year.

Division 3—The NRS levy

98 Levy quarters

NRS levy is payable for each of the quarters in a financial year, starting with the 1999-2000 financial year.

99 Persons liable to pay levy (taxpayers)

NRS levy for a quarter is payable by each person who:

- (a) is a participating carrier in relation to the financial year in which the quarter occurs; and
- (b) is covered by the most recent section 64 assessment made before the start of the quarter.

100 Amount of levy

- (1) The *total levy* for a quarter (the *current quarter*) is calculated as follows:
 - (a) the starting point is the estimated NRS cost for the current quarter (the *current estimate*);
 - (b) if there is a levy shortfall for the previous quarter, then that shortfall is added to the current estimate;
 - (c) if there is a levy surplus for the previous quarter, then that surplus is deducted from the current estimate.
- (2) Each taxpayer's NRS contribution amount for the current quarter is calculated as follows:

$$\text{Total levy} \times \frac{\text{Taxpayer's eligible revenue}}{\text{Total eligible revenue of all the taxpayers}}$$

Note: Levy is imposed on the NRS contribution amount by the *NRS Levy Imposition Act 1997*.

- (3) In this section:
-

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actual NRS cost, for a quarter, means the amount published for the quarter under subsection 96(2).

eligible revenue, for a taxpayer for a quarter, means the taxpayer's eligible revenue as shown in the most recent section 64 assessment made before the start of the quarter.

estimated NRS cost, for a quarter, means the amount published for the quarter under subsection 96(1).

levy shortfall, for a quarter, means the amount by which the estimated NRS cost for the quarter falls short of the actual NRS cost for the quarter.

levy surplus, for a quarter, means the amount by which the estimated NRS cost for the quarter exceeds the actual NRS cost for the quarter.

101 Payment of levy

- (1) NRS levy is payable to the ACA on behalf of the Commonwealth.
- (2) A person who is liable to pay NRS levy for a quarter must pay it to the ACA on or before the 14th day of the second month in the quarter.
- (3) Unpaid NRS levy may be recovered as a debt in a court of competent jurisdiction, by the ACA acting on behalf of the Commonwealth.

Division 4—The NRS Reserve

102 The NRS Reserve

- (1) The NRS Reserve that was, immediately before the commencement of this section, in existence because of section 221I of the *Telecommunications Act 1997* continues in existence under and subject to the provisions of this Act.
- (2) The NRS Reserve is a component of the Reserved Money Fund.
- (3) The purpose of the NRS Reserve is to make payments to the NRS provider under the NRS contract.
- (4) The following amounts must be transferred to the NRS Reserve from the Consolidated Revenue Fund:
 - (a) amounts of NRS levy that are credited to the Consolidated Revenue Fund;
 - (b) interest from the investment of money in the NRS Reserve.

Part 4—Continued access to untimed local calls

103 Simplified outline

The following is a simplified outline of this Part:

- Local calls are to be charged for on an untimed basis.

104 Requirement to provide an untimed local call option

If a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider must give the customer an untimed local call option.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Eligible local call* is defined by section 106.

Note 3: *Untimed local call option* is defined by section 105.

105 Untimed local call option

- (1) For the purposes of this Part, if a carriage service provider charges an eligible customer for eligible local calls made using a standard telephone service supplied to the customer, the provider gives the customer an untimed local call option if, and only if, the service is supplied to the customer on terms and conditions under which:
 - (a) the customer may choose, on connection of the service, to have the charges for eligible local calls that are made using the service worked out on an untimed basis; and
 - (b) if the customer chooses as mentioned in paragraph (a)—the carriage service provider must not work out the charges for such calls in any other way except with the customer's written consent; and

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- (c) if the customer:
 - (i) does not choose as mentioned in paragraph (a); or
 - (ii) consents to having the charges for such calls worked out otherwise than on an untimed basis;the customer may later give the carriage service provider a written notice to the effect that the customer wishes the charges for such calls to be worked out on an untimed basis; and
- (d) if the customer gives the carriage service provider such a notice—the carriage service provider:
 - (i) must, in respect of the earliest practicable period beginning after it receives the notice, work out the charges for such calls on an untimed basis; and
 - (ii) must not, in respect of a period after the period referred to in subparagraph (i), work out the charges for such calls in any other way except with the customer's written consent.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for eligible local calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

106 Eligible local calls

- (1) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is a residential/charity customer, if the call:
 - (a) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
 - (b) is either:
-

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- (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
- (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Standard zone* is defined by section 108.

Note 3: *Applicable zone* is defined by section 109.

Note 4: *Untimed basis* is defined by subsection (3).

- (2) For the purposes of the application of this Part to a carriage service provider who charges for a call made using a standard telephone service supplied to an eligible customer in a particular standard zone, being an eligible customer who is not a residential/charity customer, if the call:
- (a) is a voice call or, if a voice call is not practical for a particular end-user with a disability, a call that is equivalent to a voice call; and
 - (b) is made between points in the applicable zone in relation to the provider and in relation to the customer; and
 - (c) is either:
 - (i) of a kind that, immediately before 20 September 1996, a general carrier offered to supply, or supplied, on an untimed basis between points in that standard zone; or
 - (ii) made using a standard telephone service supplied to the customer in fulfilment of the universal service obligation;

the call is an *eligible local call* unless the call involves the use, by at least one party to the call, of a public mobile

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telecommunications service, or a satellite service, that is not supplied to that party in fulfilment of the universal service obligation.

Note 1: *Eligible customer* is defined by section 110.

Note 2: *Standard zone* is defined by section 108.

Note 3: *Applicable zone* is defined by section 109.

Note 4: *Untimed basis* is defined by subsection (3).

- (3) For the purposes of this section, calls of a particular kind are supplied on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

- (4) In this section:

general carrier means a person who held a general telecommunications licence under the *Telecommunications Act 1991* immediately before 20 September 1996.

residential/charity customer means:

- (a) a residential customer; or
- (b) a customer that is:
 - (i) a charitable body or organisation; or
 - (ii) a welfare body or organisation.

satellite service means a carriage service, where customer equipment used in connection with the supply of the service communicates directly with a satellite-based facility.

107 Benefits for customers outside standard zones

- (1) For the purposes of this section, if a customer of a carriage service provider is in Australia, but is not in a standard zone, the customer is a *designated customer*.

- (2) The regulations may formulate a scheme to give benefits to designated customers, where the benefits:
 - (a) relate to charges for calls made using a standard telephone service supplied to the customer; and
 - (b) are comparable to the benefits given to eligible customers under section 104 (which deals with the requirement to provide an untimed local call option).
- (3) For the purposes of subsection (2), a comparison of benefits is to have regard to (among other things), the ability to make calls to essential business and community services on an untimed basis.
- (4) Regulations made for the purposes of subsection (2) may impose requirements on carriage service providers.
- (5) A carriage service provider must comply with any applicable requirements imposed by regulations made for the purposes of subsection (2).
- (6) The Minister must take all reasonable steps to ensure that, at all times after the commencement of this section, regulations are in force for the purposes of subsection (2).
- (7) For the purposes of this section, charges for particular calls are worked out on an untimed basis if, and only if, the charges for those calls are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.

108 Standard zones

- (1) For the purposes of this Part, if:
 - (a) immediately before 1 July 1991, Telecom supplied, or offered to supply, to persons within a particular area within Australia, a carriage service that was, immediately before that date, a standard telephone service (within the meaning of the *Telecommunications Act 1991*); and

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- (b) under the terms and conditions on which Telecom supplied, or would supply, that service to persons in that area, the charges for calls of a particular kind between points within that area made using the service were, or would be, worked out on an untimed basis;

that area is a *standard zone*.

Note: *Untimed basis* is defined by subsection (2).

- (2) For the purposes of this section, charges for calls of a particular kind are worked out on an untimed basis if, and only if, the charges for the calls of that kind are worked out by reference to the number of such calls made during a particular period, regardless of how long each call lasted.
- (3) In this section:

Telecom means the Australian Telecommunications Corporation, as it existed immediately before 1 July 1991.

109 Applicable zones

- (1) A reference in this Part to the *applicable zone* in relation to a carriage service provider and in relation to an eligible customer, being a customer in a particular standard zone, is a reference to whichever of the following is applicable:
- (a) if:
- (i) the provider is the universal service provider for the customer; and
 - (ii) there is in force a written notice given to the ACA by the provider nominating a specified area as a nominated area; and
 - (iii) the customer is in the nominated area and chooses to adopt that nominated area as the applicable zone in relation to the provider and in relation to the customer;
- the nominated area;
- (b) if:

Section 110

- (i) the provider is the universal service provider for the customer; and
- (ii) paragraph (a) does not apply;
the standard zone;
- (c) if:
 - (i) the provider is not the universal service provider for the customer; and
 - (ii) there is in force a written notice given to the ACA by the provider nominating a specified area as a nominated area; and
 - (iii) the customer is in the nominated area;
the nominated area;
- (d) if:
 - (i) the provider is not the universal service provider for the customer; and
 - (ii) paragraph (c) does not apply;
the standard zone.
- (2) To avoid doubt, an area nominated under subsection (1) may overlap a standard zone.
- (3) For the purposes of this section, if:
 - (a) a customer of a carriage service provider is in a particular area; and
 - (b) the provider is the universal service provider for that area;
the provider is the universal service provider for the customer.

110 Eligible customer

For the purposes of this Part, if a customer of a carriage service provider is in a standard zone, the customer is an *eligible customer*.

Section 111

111 Points

For the purposes of the application of this Part to a mobile-type carriage service, a *point* includes a mobile or potentially mobile point.

112 Application of this Part

This Part does not apply in relation to a contract for the supply of a standard telephone service if:

- (a) the contract was entered into before the commencement of section 231 of the *Telecommunications Act 1997*; and
- (b) the contract would not have complied with Part 8 of that Act if the contract had been entered into immediately after the commencement of that section.

Part 5—Customer service guarantee

113 Simplified outline

The following is a simplified outline of this Part:

- The ACA may make performance standards to be complied with by carriage service providers in relation to customer service.
- If a carriage service provider contravenes a performance standard, the carriage service provider is liable to pay damages to the customer for the contravention.
- The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale of damages determined by the ACA.
- The Telecommunications Industry Ombudsman may issue an evidentiary certificate in relation to a contravention of a performance standard.

114 Interpretation

(1) In this Part:

customer includes prospective customer.

damages includes punitive damages.

(2) In determining the meaning that an expression has when used in a provision of the *Telecommunications Act 1997*, or in a provision of this Act other than this Part, subsection (1) is to be disregarded.

Section 115

115 Performance standards

- (1) The ACA may, by written instrument, make standards to be complied with by carriage service providers in relation to:
 - (a) the making of arrangements with customers about the period taken to comply with requests to connect customers to specified kinds of carriage services; and
 - (b) the periods that carriage service providers may offer to customers when making those arrangements; and
 - (c) the compliance by carriage service providers with the terms of those arrangements; and
 - (d) the period taken to comply with requests to rectify faults or service difficulties relating to specified kinds of carriage services, where the rectification follows the making of a customer report about a fault or service difficulty; and
 - (e) the keeping of appointments to meet customers, or representatives of customers, where the appointment relates to:
 - (i) a connection of a kind covered by paragraph (a); or
 - (ii) a rectification of a kind covered by paragraph (d); and
 - (f) any other matter concerning the supply, or proposed supply, of a carriage service to a customer.
 - (2) A standard under this section that relates to a particular kind of carriage service does not apply to a particular carriage service provider in connection with the supply of that kind of service at a particular location unless the carriage service provider:
 - (a) supplies that kind of service at that location; or
 - (b) offers to supply that kind of service at that location.
 - (3) The ACA must not make a standard under this section unless it is directed to do so by the Minister under section 124.
 - (4) A standard under this section may be of general application or may be limited as provided in the standard. This subsection does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
-

- (5) A standard under this section takes effect:
 - (a) if the instrument making the standard specifies a day for the purpose—on that day; or
 - (b) otherwise—on the day on which the standard was notified in the *Gazette*.
- (6) A standard under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

116 Damages for breach of performance standards

- (1) If:
 - (a) a carriage service provider contravenes a standard in force under section 115; and
 - (b) the contravention relates to a particular customer;the carriage service provider is liable to pay damages to the customer for the contravention.
- (2) The amount of damages payable for a particular contravention is equal to the relevant amount specified in the scale in force under section 117.
- (3) However, if:
 - (a) the carriage service provider:
 - (i) credits an amount to an account that the customer has with the provider; or
 - (ii) pays an amount to the customer; and
 - (b) the credit or payment was made as a result of a right or remedy that:
 - (i) was available to the customer otherwise than under this Division; and
 - (ii) arose out of the same event or transaction as the contravention;the amount of damages payable for the contravention is to be reduced (but not below zero) by the amount of the credit or payment.

Section 117

- (4) The customer may recover the amount of the damages by action against the carriage service provider in a court of competent jurisdiction.
- (5) The liability of the carriage service provider under this section may be discharged:
 - (a) by giving the customer a credit in an account the customer has with the carriage service provider; or
 - (b) in any other manner agreed between the carriage service provider and the customer.
- (6) An action under this section must be instituted within 2 years after:
 - (a) in the case of a contravention that continued throughout a period—the time when the contravention began; or
 - (b) in any other case—the time when the contravention occurred.
- (7) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

117 Scale of damages for breach of performance standards

- (1) The ACA may, by written instrument, specify a scale of damages for contraventions of standards under section 115.
- (2) The scale must:
 - (a) specify categories of contraventions; and
 - (b) specify a dollar amount as the amount of damages payable for contraventions covered by each of those categories.
- (3) A dollar amount specified in accordance with paragraph (2)(b) must not exceed \$25,000.
- (4) A category may be specified by reference to contraventions that continue over a specified number of days.
- (5) Subsection (4) does not, by implication, limit the ways in which a category may be specified.

- (6) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

117A Time for payment of damages for breach of performance standards

Decision whether to accept liability for damages

- (1) If, at a particular time, a carriage service provider first has reason to believe that an event has occurred that is reasonably likely to result in the carriage service provider being liable to pay damages to a particular customer under section 116, then, within 14 days after that time, the carriage service provider must decide whether to accept that liability.
- (2) In making a decision under subsection (1), the carriage service provider must have regard to whether there is any reasonable basis for the carriage service provider to dispute the liability.
- (3) If a carriage service provider makes a decision under subsection (1) to accept, or not to accept, a liability to pay damages to a particular customer, the carriage service provider must give the customer written notification of the decision within 14 weeks after the decision is made.

Crediting customer account

- (4) If:
- (a) a carriage service provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and
 - (b) the liability is to be discharged by giving the customer a credit in an account the customer has with the carriage service provider;
- the liability must be discharged within the period of 14 weeks after the decision is made and:
- (c) if it is practicable for the carriage service provider to give the customer the credit within that 14-week period and in time
-

Section 117A

for the customer to be notified of the credit in the first bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill; or

- (d) if paragraph (c) does not apply, but it is practicable for the carriage service provider to give the customer the credit within that 14-week period and in time for the customer to be notified of the credit in the second bill sent to the customer during that period—by giving the customer the credit in time for the customer to be notified of the credit in that bill.

Other manner of discharging liability

- (5) If:

- (a) a carriage service provider makes a decision under subsection (1) to accept a liability to pay damages to a particular customer; and
- (b) the liability is not to be discharged by giving the customer a credit in an account the customer has with the carriage service provider;

the liability must be discharged within 14 weeks after the decision is made.

Customer

- (6) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.

Transitional

- (7) The reference in subsection (1) to a *particular time* is a reference to a particular time after the end of the period of 12 months beginning on the date of commencement of this section.

118 Remedial directions—compliance with performance standards

- (1) This section applies if a carriage service provider is subject to a standard in force under section 115.
 - (2) The ACA may give the provider a written direction:
 - (a) requiring the provider to take specified action directed towards ensuring that the provider does not contravene, or is unlikely to contravene, the standard; or
 - (b) requiring the provider to take such action as will ensure that the extent of the provider's compliance with the standard reaches or exceeds a specified goal or target.
- Note: Under section 124, the Minister may give the ACA directions in relation to the exercise of its powers under this Part.
- (3) The following are examples of the kinds of direction that may be given to a carriage service provider under subsection (2):
 - (a) a direction that the provider implement effective administrative systems for monitoring compliance with a standard in force under section 115;
 - (b) a direction that the provider take such action as is necessary to ensure that the extent of the provider's compliance with a standard in force under section 115, in so far as that standard relates to the keeping of appointments to meet customers in rural areas, reaches or exceeds a specified goal or target.
 - (4) Before giving a direction under subsection (2), the ACA must consult the Telecommunications Industry Ombudsman. However, this rule does not apply if the Minister, under section 124, required the ACA to give the direction.
 - (5) A carriage service provider must not contravene a direction under subsection (2).
 - (6) A direction under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 118A

118A Right of contribution

- (1) If:
 - (a) a carriage service provider (the *first provider*) contravenes a standard in force under section 115; and
 - (b) the contravention relates to a particular customer; and
 - (c) the first provider is liable, under section 116, to pay damages (the *primary damages*) to the customer for the contravention; and
 - (d) the contravention is wholly or partly attributable to one or more acts or omissions of another carriage service provider (the *second provider*); and
 - (e) the first provider has discharged the liability for the primary damages;the second provider is liable to pay damages (the *secondary damages*) to the first provider for the acts or omissions.
- (2) The amount of the secondary damages for the acts or omissions is:
 - (a) if the contravention is wholly attributable to the acts or omissions—an amount equal to the primary damages; or
 - (b) if the contravention is partly attributable to the acts or omissions—such amount (not exceeding the primary damages) as the court thinks fair and reasonable.
- (3) If the second provider makes a payment to the first provider as a result of a right or remedy that:
 - (a) was available to the first provider otherwise than under this section; and
 - (b) arose out of the same acts or omissions;the amount of the secondary damages payable for the acts or omissions is to be reduced (but not below zero) by the amount of the payment.
- (4) The first provider may recover the amount of the secondary damages by action against the second provider in a court of competent jurisdiction.

Section 119

- (5) An action under this section must be instituted within 2 years after the first provider discharged the liability for the primary damages.
- (6) If the customer dies, a reference in this section to the *customer* includes a reference to the legal personal representative of the customer.
- (7) Paragraph (1)(a) does not apply to a contravention that occurs before the end of the period of 6 months beginning on the date of commencement of this section.

119 Evidentiary certificate issued by the Telecommunications Industry Ombudsman

- (1) The Telecommunications Industry Ombudsman may issue a written certificate:
 - (a) stating that a specified carriage service provider has contravened a standard in force under section 115; and
 - (b) setting out particulars of that contravention.
- (2) In any proceedings under this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.
- (4) Subsection (1) does not apply to the Telecommunications Industry Ombudsman unless the Telecommunications Industry Ombudsman gives the Minister a written notice consenting to the conferral of the powers conferred by that subsection.
- (5) If no notice is in force under subsection (4), subsection (1) has effect as if the reference in that subsection to the Telecommunications Industry Ombudsman were a reference to the ACA.
- (6) The Minister must cause a copy of a notice under subsection (4) to be published in the *Gazette*.

Section 120

- (7) The continuity of a notice under subsection (4) is not affected by:
- (a) a change in the occupancy of the position of Telecommunications Industry Ombudsman; or
 - (b) a vacancy in the position of Telecommunications Industry Ombudsman that does not continue for more than 4 months.

120 Waiver of customer service guarantee

- (1) The ACA may, by written instrument, make provision for customers of carriage service providers to waive, in whole or in part, their protection and rights under this Part in relation to a particular carriage service supplied, or proposed to be supplied, by the carriage service provider concerned.
- (2) If such a waiver is made, then, to the extent of the waiver, the carriage service provider is not bound by, and need not comply with, any standards in force under section 115 in relation to the supply of that service to that customer.
- (3) A waiver must be made in accordance with the rules set out in the instrument.
- (4) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

121 Savings of other laws and remedies

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
 - (2) This Part does not limit, restrict or otherwise affect any right or remedy a person would have if this Part had not been enacted.
 - (3) This Part does not limit, restrict or otherwise affect the operation of the Telecommunications Industry Ombudsman scheme. In particular, this Part does not affect a customer's right to complain to the Telecommunications Industry Ombudsman.
 - (4) Subsection (3) does not, by implication, limit subsection (2).
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122 Breach of performance standard is not an offence

A contravention of a standard in force under section 115 is not an offence.

123 Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does not apply to a breach of a performance standard

Clause 1 of Schedule 2 to the *Telecommunications Act 1997* does not apply to a contravention of a standard in force under section 115.

Note: Clause 1 of Schedule 2 to the *Telecommunications Act 1997* requires carriage service providers to comply with this Act.

124 Minister may direct the ACA about the use of its powers under this Part

- (1) The Minister may give the ACA written directions about how the ACA is to exercise its powers under this Part.
- (2) The ACA must comply with a direction under this section.
- (3) This section does not affect the Minister's power to give the ACA directions under other provisions about other matters.
- (4) A direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister must not give the ACA a direction under section 12 of the *Australian Communications Authority Act 1997* about how the ACA is to exercise its powers under this Part.

125 Review of performance standards following Ministerial direction

- (1) This section applies to a direction under section 124 that requires the ACA to make a standard under section 115.

Section 125

- (2) If the Minister revokes a direction, the ACA must revoke the section 115 standard that is in force because of the direction.
- (3) If the Minister varies a direction, the ACA must either:
 - (a) vary the section 115 standard that is in force because of the direction so that the standard complies with the varied direction; or
 - (b) revoke the section 115 standard and determine a new section 115 standard that so complies.
- (4) If a section 115 standard is in force because of a direction:
 - (a) the ACA may vary the standard on its own initiative, but only in such a way that the varied standard still complies with the direction; and
 - (b) the ACA may, on its own initiative, revoke the standard and determine a new section 115 standard that so complies.

Part 6—The Telecommunications Industry Ombudsman

126 Simplified outline

The following is a simplified outline of this Part:

- Certain carriers and carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- The membership of the scheme must be open to all carriers and carriage service providers.
- Carriers and carriage service providers must comply with the scheme.

127 Eligible carriage service providers

For the purposes of this Part, an *eligible carriage service provider* is:

- (a) a carriage service provider who supplies:
 - (i) a standard telephone service, where any of the customers are residential customers or small business customers; or
 - (ii) a public mobile telecommunications service; or
 - (iii) a carriage service that enables end-users to access the Internet; or
- (b) a carriage service intermediary who arranges for the supply of a service referred to in subparagraph (a)(i), (ii) or (iii).

Section 128

128 Telecommunications Industry Ombudsman scheme

- (1) Each carrier and each eligible carriage service provider must, in association with other carriers and other eligible carriage service providers, enter into a scheme providing for a Telecommunications Industry Ombudsman.

Note: Section 129 provides for exemptions from subsection (1) of this section.

- (2) The scheme is to be known as the *Telecommunications Industry Ombudsman scheme*.
- (3) To avoid doubt, there is only one Telecommunications Industry Ombudsman scheme, namely, the scheme operated by Telecommunications Industry Ombudsman Limited (ACN 057 634 787).
- (4) The scheme must provide for the Telecommunications Industry Ombudsman to:
- (a) investigate; and
 - (b) make determinations relating to; and
 - (c) give directions relating to;
- complaints about carriage services by end-users of those services.
- (5) The following is an example of such a complaint: a complaint about billing, or the manner of charging, for the supply of carriage services.
- (6) The scheme must not provide for the Telecommunications Industry Ombudsman to investigate complaints about:
- (a) the levels at which tariffs are set; or
 - (b) the content of a content service.
- (7) The membership of the scheme must be open to all:
- (a) carriers; and
 - (b) carriage service providers.

129 Exemptions from requirement to join scheme

- (1) The ACA may, by notice in the *Gazette*, declare that a specified carrier or eligible carriage service provider is exempt from the requirement set out in subsection 128(1). The declaration has effect accordingly.

Note: Carriers or providers may be specified by name, by inclusion in a particular class or in any other way.

- (2) In deciding whether a carrier or provider should be exempt from the requirement set out in subsection 128(1), the ACA must have regard to the following matters:
- (a) the extent to which the carrier or provider deals with residential customers in relation to the supply of carriage services;
 - (b) the extent to which the carrier or provider deals with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by the carrier or provider.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) Before making a declaration under this section, the ACA must consult the Telecommunications Industry Ombudsman.

130 Direction to join scheme

- (1) The ACA may give a carriage service provider a written notice directing the provider to enter into the Telecommunications Industry Ombudsman scheme.
- (2) The provider must comply with the direction.
- (3) In deciding whether to give a direction to a provider under this section, the ACA must have regard to the following matters:
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- (a) the extent to which the provider deals with residential customers in relation to the supply of carriage services;
 - (b) the extent to which the provider deals with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about the services supplied by the provider.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
- (5) Before giving a direction under this section, the ACA must consult the Telecommunications Industry Ombudsman.

131 Determination that a class of carriage service providers must join scheme

- (1) The ACA may make a written determination that the members of a specified class of carriage service providers must enter into the Telecommunications Industry Ombudsman scheme.
- (2) A copy of the determination must be published in the *Gazette*.
- (3) In deciding whether to make a determination under this section in relation to a class of carriage service providers, the ACA must have regard to the following matters:
- (a) the extent to which members of that class deal with residential customers in relation to the supply of carriage services;
 - (b) the extent to which members of that class deal with proprietors of small businesses in relation to the supply of carriage services;
 - (c) the potential for complaints under the Telecommunications Industry Ombudsman scheme about services supplied by members of that class.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACA may have regard.
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- (5) Before making a determination under this section, the ACA must consult the Telecommunications Industry Ombudsman.

132 Members of scheme must comply with scheme

A carrier or carriage service provider who is a member of the Telecommunications Industry Ombudsman scheme must comply with the scheme.

133 Register of members of scheme

- (1) The Telecommunications Industry Ombudsman is to maintain a Register of the names of the members of the Telecommunications Industry Ombudsman scheme.
- (2) The Register may be maintained by electronic means.
- (3) The Telecommunications Industry Ombudsman must ensure that the Register is open for inspection, at all reasonable times, by members of the public.

Part 7—Protection for residential customers against failure by carriage service providers to provide standard carriage services

134 Simplified outline

The following is a simplified outline of this Part:

- The ACA may determine that certain payments received by a carriage service provider from residential customers are protected payments.
- The ACA may formulate schemes aimed at ensuring that if:
 - (a) a residential customer of a carriage service provider makes a protected payment to the provider; and
 - (b) the provider fails to supply a standard telephone service to the customer;the customer is protected.
- A protection scheme may be enforced by the Federal Court on the application of the ACA or a residential customer.

135 Scope of Part

- (1) This Part applies to a carriage service provider if the provider supplies, or proposes to supply, a standard telephone service to residential customers.

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- (2) A carriage service provider is exempt from this Part if the provider was a carrier (within the meaning of the *Telecommunications Act 1991*) immediately before 1 July 1997.
- (3) The ACA may, by notice in the *Gazette*, declare that a specified provider is exempt from this Part. The declaration has effect accordingly.
- Note: Providers may be specified by name, by inclusion in a particular class or in any other way.
- (4) In deciding whether a person should be exempt from this Part, the ACA must have regard to the following matters:
- (a) the duration of the prior period (if any) during which the person carried on business in Australia as a carriage service provider;
 - (b) the scale of the person's prior operations in Australia as a carriage service provider;
 - (c) the person's business record;
 - (d) if the person is a partnership—the business record of each of the partners;
 - (e) if the person is an incorporated company—the business record of each individual, by whatever name called and whether or not a director of the company, who is concerned, or takes part, in the management of the company.
- (5) Subsection (4) does not, by implication, limit the matters to which the ACA may have regard.

136 Standard residential customer

- (1) For the purposes of this Part, if a residential customer, or a proposed residential customer, of a carriage service provider is supplied, or proposed to be supplied, with a standard telephone service by the provider, then:
- (a) the customer is a *standard residential customer* of the provider; and
 - (b) the service is a *standard carriage service*.
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- (2) Subsection (1) does not apply to a standard telephone service if:
- (a) the service is a public mobile telecommunications service; and
 - (b) the service is neither supplied, nor proposed to be supplied, to the customer in fulfilment of the universal service obligation.

137 Protected payments

- (1) The ACA may make a written determination that a specified payment made, or liable to be made, to a carriage service provider by a standard residential customer of that provider is a ***protected payment*** for the purposes of this Part. The determination has effect accordingly.

Note: Payments may be specified by name, by inclusion in a particular class or in any other way.

- (2) The payment must be received, or proposed to be received, by the provider directly or indirectly in connection with its business as a carriage service provider.
- (3) The following are examples of payments that may be specified in the determination:
- (a) payments for line rental;
 - (b) payments for equipment rental;
 - (c) payments by way of connection fees;
 - (d) a pre-payment for a standard carriage service.
- (4) For each protected payment, the determination must specify, or specify a means of ascertaining, a period for the purposes of this subsection. That period is called the ***minimum service period*** for the payment.
- (5) The minimum service period for a protected payment:
- (a) must begin when the payment is made; and
 - (b) must not run for longer than 2 years.

- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

138 Compliance with protection schemes for protected payments

- (1) Before demanding or receiving a protected payment, a carriage service provider must give the ACA a written election to be bound by a specified scheme formulated under this Part.
- (2) If a carriage service provider gives the ACA such an election, the provider is bound by, and must comply with, the scheme specified in the election.
- (3) If an election under this section is in force in relation to a particular scheme (the *original scheme*), the provider may give the ACA a written notice varying the election by omitting the original scheme and substituting another scheme formulated under this Part. The variation takes effect at the time specified in the notice.
- (4) Despite the variation, the original scheme continues to apply, in relation to protected payments made before the variation took effect, as if the variation had not been made.

139 Protection schemes for protected payments—alternative supply of standard carriage services

- (1) The ACA may, by written instrument, formulate a scheme that requires a carriage service provider bound by the scheme to enter into and maintain a legally enforceable arrangement aimed at ensuring that, if:
 - (a) a residential customer of the provider makes a protected payment to the provider; and
 - (b) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;the customer:

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- (c) is supplied, during the remainder of the period, with standard carriage services that are equivalent to the standard carriage services that the provider has not supplied; and
 - (d) is not required to pay more for the supply of those equivalent services than the customer would have had to pay had the provider supplied them.
- (2) A scheme formulated under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

140 Protection schemes for protected payments—third party guarantee

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
 - (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
 - (b) requires the provider to obtain a guarantee from a third person in respect of the provider's discharge of that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

141 Protection schemes for protected payments—insurance cover

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:

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- (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;
to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
 - (b) requires the provider to take out and maintain an insurance policy to indemnify residential customers against a total or partial failure to discharge that liability.
- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

142 Protection schemes for protected payments—holding of payments in trust accounts

- (1) The ACA may, by written instrument, formulate a scheme that:
- (a) makes a carriage service provider that is bound by the scheme liable, in the event that:
 - (i) a residential customer of the provider makes a protected payment to the provider; and
 - (ii) at any time during the minimum service period for that payment, the provider fails to supply standard carriage services to the customer;
to reimburse the payment on a pro-rata basis in proportion to that part or parts of the period during which the provider fails to supply the services to the customer; and
 - (b) requires the provider to hold protected payments it receives in trust accounts; and
 - (c) prohibits the provider from transferring any or all of the money in such an account to its beneficial ownership except in accordance with the draw-down rules set out in the scheme.

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- (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

143 Waiver of protection by customers

- (1) A scheme formulated under this Part may provide for standard residential customers of a carriage service provider to waive their protection and rights under the scheme in relation to a particular protected payment made to the provider.
- (2) If such a waiver is made, the provider is not bound by, and need not comply with, the scheme in relation to that payment.
- (3) A waiver must be made in accordance with the rules set out in the scheme concerned.
- (4) Rules mentioned in subsection (3) may require a carriage service provider to inform a customer about the consequences of a waiver.
- (5) Subsection (4) does not, by implication, limit the matters that may be dealt with by:
- (a) a code registered under Part 6 of the *Telecommunications Act 1997*; or
 - (b) a standard under Part 6 of the *Telecommunications Act 1997*.

144 Incidental rules

- (1) A scheme formulated under this Part may require carriage service providers to comply with such ancillary or incidental rules (if any) as are set out in the scheme.
- (2) Those rules include (but are not limited to) requiring carriage service providers to inform their standard residential customers about matters relating to the implementation of the scheme.

145 Enforcement of protection schemes

- (1) This section applies if a carriage service provider is bound by a scheme formulated under this Part.
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- (2) If:
- (a) the ACA; or
 - (b) a standard residential customer of the provider;
- thinks that the provider has:
- (c) failed to discharge a liability of the provider under the scheme; or
 - (d) otherwise breached the scheme;
- the ACA or the customer may apply to the Federal Court for an order under subsection (3).
- (3) If the Federal Court is satisfied that the provider has:
- (a) failed to discharge a liability of the provider under the scheme; or
 - (b) otherwise breached the scheme;
- the Court may make all or any of the following orders:
- (c) an order directing the provider to discharge a liability under the scheme;
 - (d) an order directing the provider to comply with the scheme;
 - (e) an order directing the provider to compensate any person who has suffered loss or damage as a result of the breach;
 - (f) any other order that the Court thinks appropriate.
- (4) The Federal Court may discharge or vary an order granted under this section.
- (5) This section does not, by implication, limit other remedies.
- (6) A reference in this section to a *carriage service provider* includes a reference to:
- (a) in a case where the provider is an individual or a partnership—the provider’s trustee in bankruptcy; or
 - (b) in a case where the provider is a body corporate or a partnership—each of the following:
 - (i) a receiver, receiver and manager, or other controller, of property of the body or partnership;
 - (ii) an administrator of the body or partnership;
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- (iii) an administrator of a deed of arrangement entered into by the body or partnership;
- (iv) a liquidator or provisional liquidator of the body or partnership;
- (v) a trustee or other person administering a compromise or arrangement made between the body or partnership and any other person or persons.

Part 8—Provision of emergency call services

146 Simplified outline

The following is a simplified outline of this Part:

- The ACA may impose requirements on any or all of the following:
 - (a) carriers;
 - (b) carriage service providers;
 - (c) emergency call persons;in relation to emergency call services.

147 Provision of emergency call services

- (1) The ACA must make a written determination imposing requirements on any or all of the following:
 - (a) carriers;
 - (b) carriage service providers;
 - (c) emergency call persons;in relation to emergency call services.
- (2) In making a determination under this section, the ACA must have regard to the following:
 - (a) the objective that a carriage service provider who supplies a standard telephone service should provide each end-user of that standard telephone service with access, free of charge, to an emergency call service, unless the ACA considers that it would be unreasonable for such access to be provided;

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- (b) the objective that, if a carriage service provider who supplies a standard telephone service is required to provide each end-user of that standard telephone service with access to an emergency call service operated by a recognised person, the recognised person should:
 - (i) receive and handle calls made by those end-users to the relevant emergency service number; and
 - (ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and
 - (iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation;
- (c) the objective that emergency service organisations should not be charged for services provided by a recognised person who operates an emergency call service, being services by way of:
 - (i) receiving and handling calls to an emergency service number; or
 - (ii) transferring such calls to an emergency service organisation; or
 - (iii) giving information in relation to such calls to an emergency service organisation;
- (d) the objective that emergency service organisations should not be charged for the following carriage services:
 - (i) carriage services used to connect calls made to an emergency service number;
 - (ii) carriage services used to transfer such calls to an emergency service organisation;
 - (iii) carriage services used to give information in relation to such calls to an emergency service organisation;
- (e) the objective that, as far as practicable, a common system is used to:
 - (i) transfer calls made to an emergency service number to an emergency service organisation; and
 - (ii) give information in relation to such calls to an emergency service organisation;

- (f) the objective that calls made to an emergency service number are transferred to an appropriate emergency service organisation with the minimum of delay;
- (g) the objective that, from the perspective of an ordinary end-user of a standard telephone service, there appears to be a single national emergency call system;
- (h) the objective that reasonable community expectations for the handling of calls to emergency service numbers are met;
- (i) the objective that carriage services used to make calls to an emergency service number should, as far as practicable, provide the emergency call person concerned with automatic information about:
 - (i) the location of the caller; and
 - (ii) the identity of the customer of the service being used by the caller;
- (j) the objective that carriers should provide carriage service providers with access to:
 - (i) controlled carriage services of the carriers; and
 - (ii) controlled networks of the carriers; and
 - (iii) controlled facilities of the carriers;in order that the providers can comply with their obligations under the determination;
- (k) the objective that carriage service providers should provide other carriage service providers with access to:
 - (i) controlled carriage services of the first-mentioned providers; and
 - (ii) controlled networks of the first-mentioned providers; and
 - (iii) controlled facilities of the first-mentioned providers;in order that the other providers can comply with their obligations under the determination;
- (l) the objective that a determination should be consistent with the following:

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- (i) Principle 11 of the Information Privacy Principles set out in section 14 of the *Privacy Act 1988*;
 - (ii) codes registered under Part 6 of the *Telecommunications Act 1997*;
 - (iii) standards determined under Part 6 of the *Telecommunications Act 1997*.
- (3) Subsection (2) does not, by implication, limit the matters to which the ACA may have regard.
- (4) A determination under this section may deal with ancillary or incidental matters, including the protection of the privacy of information transmitted in connection with a call to an emergency service number.
- (5) A determination under this section may deal with performance standards, including (but not limited to) performance standards relating to:
- (a) the answering of calls to emergency service numbers; and
 - (b) delays in transferring calls made to an emergency service number to the appropriate emergency service organisation; and
 - (c) the handling of complaints about emergency call services.
- (6) Subsections (4) and (5) do not, by implication, limit subsection (1).
- (7) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) In making a determination under this section, the ACA may apply, adopt or incorporate (with or without modification) any matter contained in a code or standard proposed or approved by a body or association, either:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- This subsection does not, by implication, limit section 589 of the *Telecommunications Act 1997*.

- (9) Before making a determination under this section, the ACA must consult representatives of each of the following groups:
- (a) carriers;
 - (b) carriage service providers;
 - (c) recognised persons who operate an emergency call service;
 - (d) emergency service organisations;
 - (e) consumers of standard telephone services.
- (10) A carriage service provider may provide the access referred to in paragraph (2)(a) itself or by arranging with another person for the access to be provided.
- (11) In this section:
- emergency service organisation*** means:
- (a) a police force or service; or
 - (b) a fire service; or
 - (c) an ambulance service; or
 - (d) a service specified in the numbering plan for the purposes of this paragraph; or
 - (e) a service for despatching a force or service referred to in paragraph (a), (b), (c) or (d).

148 Compliance with determination

- (1) A person on whom a requirement is imposed by a determination in force under section 147 must comply with the determination.
- (2) Subsection (1) has effect subject to sections 149 and 151.
- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
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(d) conspire with others to effect a contravention of subsection (1).

(4) Subsections (1) and (3) are *civil penalty provisions*.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. This provision is a civil penalty provision for the purposes of that Act.

149 Access to emergency call services

(1) This section applies if:

(a) an emergency call service is operated by a recognised person; and

(b) a determination under section 147 requires a carriage service provider who supplies a standard telephone service to provide each end-user of that standard telephone service with access to that emergency call service; and

(c) a determination under section 147 requires the recognised person to:

(i) receive and handle calls made by those end-users to the relevant emergency service number; and

(ii) if appropriate—transfer such calls to an appropriate emergency service organisation; and

(iii) if appropriate—give information in relation to such calls to an appropriate emergency service organisation.

(2) The recognised person must comply with the requirement mentioned in paragraph (1)(c) on such terms and conditions as are:

(a) agreed between the following parties:

(i) the carriage service provider;

(ii) the recognised person; or

(b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made in an arbitration under this section must not be inconsistent with a Ministerial pricing determination in force under section 150.

150 Ministerial pricing determinations

- (1) The Minister may make a written determination setting out principles dealing with price-related terms and conditions relating to requirements of a kind referred to in subsection 149(1). The determination is to be known as a ***Ministerial pricing determination***.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) In this section:

price-related terms and conditions means terms and conditions relating to price or a method of ascertaining price.

151 Access to be provided

- (1) This section applies if a determination under section 147 requires a person to provide access as mentioned in paragraph 147(2)(j) or (k).

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- (2) The person must provide that access in accordance with the requirements set out in the determination and on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the person;
 - (ii) the carriage service provider to whom access is required to be provided; or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.
- If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.
- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (5) Subsection (4) does not, by implication, limit subsection (3).

Part 9—Price control arrangements for Telstra

152 Simplified outline

The following is a simplified outline of this Part:

- This Part provides for price control arrangements for carriage services, content services and facilities supplied by Telstra.

153 Definitions

In this Part:

carrier charge means:

- (a) a charge for a carriage service, or a content service, supplied by Telstra; or
- (b) a charge for a facility supplied by Telstra.

charge includes:

- (a) any charge or fee (whether payable periodically, in instalments or otherwise); and
- (b) a nil charge or nil fee; and
- (c) in relation to a carriage service, includes:
 - (i) any charge or fee (including of a kind referred to in paragraph (a) or (b)) for or in relation to a facility used, or intended for use, in relation to the supply of the service; and
 - (ii) any other charge or fee (including of a kind referred to in paragraph (a) or (b)) for or in relation to the supply of the service.

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154 Minister may determine price control arrangements

- (1) The Minister may determine in writing that specified carrier charges are subject to price control arrangements.
- (2) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

155 Effect of price control arrangements

- (1) Where a carrier charge is subject to price control arrangements, the Minister may determine in writing:
 - (a) price-cap arrangements and other price control arrangements that are to be applied in relation to the charge; or
 - (b) principles in accordance with which Telstra is to make alterations to the charge;or both.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) To avoid doubt, price-cap arrangements and other price control arrangements determined under this section may relate to charges for untimed local calls in particular areas.
- (4) A determination under this section may make different provision with respect to different customers. This section does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (5) Telstra must comply with a determination under this section.

156 Alteration of charges subject to price control arrangements

- (1) Where Telstra proposes to alter a carrier charge that is subject to price control arrangements, the following provisions have effect.

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- (2) Where, under the applicable determinations under section 155, the consent of the ACCC is not required to the proposed alteration, Telstra may make the proposed alteration.
- (3) Where, under the applicable determinations under section 155, the consent of the ACCC is required to the proposed alteration, Telstra must not make the proposed alteration unless the following paragraphs have been complied with:
 - (a) if those determinations require the giving to the ACCC of a period of notice before the proposed alteration is made—that period has ended or the ACCC has waived the giving of the notice;
 - (b) if those determinations require the giving to the ACCC of particular information not later than a particular time before the alteration is made:
 - (i) the information was so given; or
 - (ii) some only of the information was so given and the ACCC has waived the giving of the remainder of the information; or
 - (iii) the ACCC has waived the giving of the information;
 - (c) subject to paragraph (d), either:
 - (i) the ACCC has consented to the proposed alteration; or
 - (ii) the period within which the ACCC is required under those determinations to give or refuse its consent to the proposed alteration has ended and the ACCC did not before the end of that period refuse its consent to the proposed alteration;
 - (d) if, before the end of the period within which, but for this paragraph, the ACCC would be required under the applicable determinations to give or refuse its consent to the proposed alteration, the ACCC requested Telstra to provide further information about the proposed alteration, the first-mentioned period is taken to be extended by a period equal to the number of days commencing on the day on which the request was made and ending on the day on which the further information was provided.

Section 157

157 Carrier charges subject to notification and disallowance

- (1) The Minister may determine in writing that specified carrier charges are subject to notification and disallowance.
- (2) An instrument under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

158 Alteration of charges subject to notification and disallowance

- (1) If Telstra proposes to alter a carrier charge that is subject to notification and disallowance, Telstra must, by written notice, inform the Minister of the alteration at least 30 days before it is to take effect.
- (2) The Minister may, within 30 days after receiving the notice:
 - (a) by writing request the ACCC to give a written report as to whether the proposed alteration should be disallowed in the public interest; and
 - (b) direct Telstra in writing not to make the alteration until the Minister has received and considered the report.
- (3) The ACCC must give the report to the Minister within 30 days after receiving the request.
- (4) If the Minister, after taking the ACCC's report into account, is of the opinion that the proposed alteration is not in the public interest, he or she may, by written notice given to Telstra within 30 days after receiving the report, direct Telstra not to make the alteration.
- (5) Telstra must comply with a direction under subsection (4).

Part 9A—Telephone sex services

158A Simplified outline

The following is a simplified outline of this Part.

- This Part prohibits unacceptable conduct by telephone sex service providers, and carriage service providers, in relation to telephone sex services.
- Conduct is unacceptable if the customer:
 - (a) has not agreed in writing to the supply of telephone sex services; and
 - (b) has not been issued with a Personal Identification Number or some other means of limiting access by other persons to the telephone sex service.
- If a carriage service provider engages in unacceptable conduct in relation to a telephone sex service, charges for the service must not be included in a bill sent by or on behalf of the carriage service provider to the customer concerned.
- The supply of other goods and services must not be tied to the supply of a telephone sex service.
- The regulations may prohibit or regulate the supply, advertising or promotion of a specified telephone sex service.

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158B Unacceptable conduct in relation to a telephone sex service

- (1) A telephone sex service provider or a carriage service provider must not engage in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)).

Note: *Telephone sex service provider* is defined by section 158K.

- (2) For the purposes of this Part, if:
- (a) a telephone sex service provider uses a standard telephone service to supply a telephone sex service to an end-user in Australia; and
 - (b) the supply is by way of a voice call; and
 - (c) a person (the *relevant customer*) is a customer of a carriage service provider in relation to the voice call; and
 - (d) a charge for the supply of the telephone sex service is expected to be included in a bill sent by or on behalf of the carriage service provider to the relevant customer;

the telephone sex service provider and the carriage service provider are taken to have *engaged in unacceptable conduct* in relation to the telephone sex service unless:

- (e) the relevant customer has agreed in writing to the use of the standard telephone service to supply telephone sex services in general; and
- (f) the telephone sex service provider has reason to believe that:
 - (i) the relevant customer has been issued with a Personal Identification Number that provides a means of limiting access by other persons to telephone sex services supplied using the standard telephone service; or
 - (ii) the relevant customer has been provided with some other means of limiting access by other persons to telephone sex services supplied using the standard telephone service; and
- (g) the telephone sex service provider has reason to believe that:
 - (i) if subparagraph (f)(i) applies—the end-user of the telephone sex service has used the Personal

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Identification Number referred to in that subparagraph to access the telephone sex service; or

- (ii) if subparagraph (f)(ii) applies—the end-user of the telephone sex service has used the other means referred to in that subparagraph to access the telephone sex service; and

- (h) the voice call is made to a number with an approved prefix.

Note 1: *Telephone sex service* is defined by section 158J.

Note 2: *Approved prefix* is defined by section 158H.

- (3) Subsection (1) is a ***civil penalty provision***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

Charge for supply of telephone sex service not to be included in bill

- (4) If a carriage service provider engages in unacceptable conduct in relation to a telephone sex service (within the meaning of subsection (2)), a charge for the supply of the telephone sex service must not be included in a bill sent by or on behalf of the carriage service provider to the relevant customer.

- (5) Subsection (4) is a ***civil penalty provision***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (4) is a civil penalty provision for the purposes of that Act.

Agreements

- (6) An agreement referred to in paragraph (2)(e) has no effect for the purposes of this section if it deals with a matter other than the use of a standard telephone service to supply telephone sex services.

Section 158B

Defence

- (7) In any proceedings against a carriage service provider under Part 31 of the *Telecommunications Act 1997* that arise out of this section and relate to a telephone sex service supplied using a standard telephone service supplied by the carriage service provider, it is a defence if the carriage service provider establishes:
- (a) that it did not know; and
 - (b) that it could not, with reasonable diligence, have ascertained; that the standard telephone service was, or was to be, used by a telephone sex service provider to supply the telephone sex service.
- (8) For the purposes of subsection (7), in determining whether a carriage service provider could, with reasonable diligence, have ascertained whether a standard telephone service supplied by the carriage service provider was, or was to be, used by a telephone sex service provider to supply a telephone sex service, the following matters are to be taken into account:
- (a) whether any inquiries were made of persons who proposed to use standard telephone services to supply commercial services by way of voice calls;
 - (b) whether persons who use standard telephone services to supply commercial services by way of voice calls are under any contractual obligation to notify the carriage service provider of the nature of those commercial services;
 - (c) whether the carriage service provider monitors, or arranges for the monitoring, of advertisements that are:
 - (i) for commercial services supplied by way of voice calls made using standard telephone services; and
 - (ii) published in mass-circulation newspapers or mass-circulation magazines circulated in Australia;
 - (d) any other relevant matters.

158C Supply of goods or services not to be tied to the supply of telephone sex services

- (1) A person (the *first person*) must not:
- (a) supply, or offer to supply, goods or services; or
 - (b) supply, or offer to supply, goods or services at a particular price; or
 - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the first person;
- on condition that the person to whom the first person supplies or offers or proposes to supply the goods or services will agree to the supply of one or more telephone sex services.
- (2) Subsection (1) is a *civil penalty provision*.
- Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.
- (3) An expression used in this section and in section 47 of the *Trade Practices Act 1974* has the same meaning in this section as it has in that section.

158D Regulations may prohibit or regulate certain telephone sex services

- (1) The regulations may prohibit or regulate any or all of the following:
- (a) the supply of a specified telephone sex service;
 - (b) the taking of specified calls to a specified telephone sex service;
 - (c) the use of a standard telephone service to supply a specified telephone sex service;
 - (d) the use of a standard telephone service to carry specified calls to a specified telephone sex service;
 - (e) the advertising of a specified telephone sex service;

Section 158E

(f) the promotion of a specified telephone sex service.

Note: A telephone sex service or call may be specified by name, by inclusion in a specified class or in any other way.

(2) Regulations made for the purposes of subsection (1) may make provision with respect to a matter by conferring on the ACA or the Australian Broadcasting Authority a power to make a decision of an administrative character.

Compliance

(3) The following provisions have effect:

- (a) a telephone sex service provider or a carriage service provider must not contravene regulations in force for the purposes of paragraph (1)(a), (b), (c) or (d);
- (b) a person must not contravene regulations in force for the purposes of paragraph (1)(e) or (f).

(4) Subsection (3) is a ***civil penalty provision***.

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (3) is a civil penalty provision for the purposes of that Act.

158E Aiding, abetting etc.

(1) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3); or
- (d) conspire with others to effect a contravention of subsection 158B(1) or (4), 158C(1) or 158D(3).

(2) Subsection (1) is a ***civil penalty provision***.

Section 158F

Note: Part 31 of the *Telecommunications Act 1997* provides for pecuniary penalties for breaches of civil penalty provisions. Subsection (1) is a civil penalty provision for the purposes of that Act.

158F Evidentiary certificate—telephone sex service

- (1) The Australian Broadcasting Authority may issue a written certificate stating that a specified service is, or was, a telephone sex service.
- (2) In any proceedings under the *Telecommunications Act 1997* that relate to this Part, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

158G Onus of proof—agreement and limiting access

In any proceedings against a person under the *Telecommunications Act 1997* that relate to this Part, it is to be presumed, unless the contrary is established, that paragraphs 158B(2)(e), (f) and (g) are not applicable.

158H Approved prefix

- (1) For the purposes of this Part, each of the following is an *approved prefix*:
 - (a) 1901 or, if there is in force a written determination made by the Minister or the ACA specifying another prefix for the purposes of this paragraph, that other prefix;
 - (b) if there is in force a written determination made by the Minister or the ACA specifying a prefix for the purposes of this paragraph—that prefix.
- (2) A determination under paragraph (1)(a) or (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 158J

158J Telephone sex service

- (1) For the purposes of this Part, a *telephone sex service* is a commercial service supplied using a standard telephone service, where:
 - (a) the supply is by way of a voice call made using the standard telephone service; and
 - (b) having regard to:
 - (i) the way in which the service is advertised or promoted; and
 - (ii) the content of the service;it would be concluded that a majority of persons who call the service are likely to do so with the sole or principal object of deriving sexual gratification from the call.
- (2) However, a service is not a telephone sex service if it is a therapeutic or counselling service provided by a person registered or licensed as a medical practitioner, or as a psychologist, under a law of a State or Territory.

158K Telephone sex service provider

For the purposes of this Part, if a person uses, or proposes to use, a standard telephone service to supply one or more telephone sex services, the person is a *telephone sex service provider*.

158L Voice call

- (1) To avoid doubt, a reference in this Part to a *voice call* includes a reference to a call that involves a recorded or synthetic voice.
- (2) In determining the meaning of a provision of the *Telecommunications Act 1997*, or a provision of this Act other than this Part, subsection (1) is to be disregarded.

158M Savings of other laws

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

158N Transitional

- (1) This Part does not apply to a telephone sex service that is supplied before the end of the period of 6 months beginning on the date of commencement of this section.
- (2) However, an agreement referred to in paragraph 158B(2)(e) may be entered into before, at or after the commencement of this section.

Part 10—Miscellaneous

159 Direction to Telstra to comply with this Act

- (1) The Minister may, by written notice given to Telstra, direct Telstra to take specified action directed towards ensuring that Telstra complies with this Act.
- (2) Before giving a direction under subsection (1), the Minister must consult Telstra.
- (3) To avoid doubt:
 - (a) subsection (1) does not, by implication, limit a power conferred on the Minister, the ACA or the ACCC by or under any other provision of a law; and
 - (b) subsection (1) is not limited by a power conferred on the Minister, the ACA or the ACCC by or under any other provision of a law.
- (4) Telstra must comply with a direction under subsection (1).

160 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 12 November 1998
Senate on 30 November 1998]*

(175/98)