



Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991

No. 99 of 1991

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AMENDMENTS CONSEQUENTIAL ON AUSTRALIAN AND OVERSEAS
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Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991

No. 99 of 1991

An Act to enact transitional provisions, and to repeal some Acts and amend others, because of the enactment of the *Telecommunications Act 1991*, the *Australian and Overseas Telecommunications Corporation Act 1991* and associated Acts

[Assented to 27 June 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. The Act may be cited as the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991*.

Commencement

2. (1) Part 1 commences on the day on which this Act receives the Royal Assent.

(2) Part 2, Part 3 (except section 24) and Part 4 commence on 1 July 1991.

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(3) Section 24 and Part 5 commence on the day fixed under subsection 2 (1) of the *Australian and Overseas Telecommunications Corporation Act 1991*.

PART 2—TRANSITIONAL PROVISIONS

Interpretation

3. (1) In this Part:

“AUSSAT” means AUSSAT Pty Ltd;

“OTC” means OTC Limited.

(2) In this Part, unless the contrary intention appears, expressions have the same meanings as in the *Telecommunications Act 1991*.

Application

4. This Part has effect despite anything contained in the *Telecommunications Act 1991*.

Pre-existing notifications and directions to AUSTEL

5. (1) Any notification or direction given to AUSTEL under section 28 or 29 of the *Telecommunications Act 1989* and in force immediately before the repeal of that section is taken to have been given to AUSTEL under section 49 or 50, as the case may be, of the *Telecommunications Act 1991* on the commencement of that last-mentioned section.

(2) A reference in a notification or direction referred to in subsection (1) to a provision of the *Telecommunications Act 1989* is a reference to the provision of the *Telecommunications Act 1991* that corresponds, or most closely corresponds, to the first-mentioned provision.

Pre-existing advisory committees established by AUSTEL

6. (1) Any advisory committee that was established by AUSTEL under section 32 of the *Telecommunications Act 1989* and was in existence immediately before the repeal of that section is taken to have been established under section 53 of the *Telecommunications Act 1991* on the commencement of that last-mentioned section.

(2) Any direction that was given by AUSTEL under subsection 32 (3) of the *Telecommunications Act 1989* to a committee referred to in subsection (1) of this section and was in force immediately before the repeal of that subsection is taken to have been given to AUSTEL under subsection 53 (3) of the *Telecommunications Act 1991* on the commencement of that last-mentioned subsection.

Existing carriers may continue to operate pending grant of licences

7. (1) In this section:

“corporation to which this section applies” means AUSSAT, OTC or Telecom.

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(2) A corporation to which this section applies may, after the commencement of this section, continue to perform the functions and exercise the powers that it was entitled to perform and exercise immediately before that commencement until:

- (a) a decision is made by the Minister whether to grant to the corporation a licence under section 57 of the *Telecommunications Act 1991*; or
- (b) the Minister, by notice published in the *Gazette*, determines that this section is to cease to apply to the corporation;

whichever first occurs.

Disclosure of pre-existing communications

8. Section 88 of the *Telecommunications Act 1991* applies to any disclosure or use by a person of a fact or document that takes place after the commencement of that section even though:

- (a) it relates to a communication that was carried, or a telecommunications service that was supplied, before that commencement; or
- (b) the fact or document came to the knowledge, or into the possession, of the person before that commencement.

Relief in respect of past infringing conduct

9. Despite the repeal of section 69 of the *Telecommunications Act 1989*, that section continues in force in respect of conduct that was engaged in before that section was repealed.

Pre-existing interconnection rights

10. If, immediately before the commencement of section 137 of the *Telecommunications Act 1991*, a carrier within the meaning of the *Telecommunications Act 1989* had, under section 49 of the *Telecommunications Act 1989* or section 10A of the *AUSSAT Act 1984*, a right to interconnect its facilities to another carrier's network on payment of an amount agreed between them or determined by AUSTEL, the payment of that amount is a term and condition for the purposes of the right of the first-mentioned carrier to interconnect its facilities to that other carrier's network under section 137 of the *Telecommunications Act 1991* and is taken to have been agreed or determined as mentioned in paragraph 137 (2) (b) of that Act.

Pre-existing class licences

11. (1) Until class licences are issued under section 209 of the *Telecommunications Act 1991*, services supplied after the commencement of that section in accordance with class licences within the meaning of the *Telecommunications Act 1989* that were issued under section 75 of that Act and were in force immediately before the

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repeal of that section are taken to be supplied under class licences issued under the first-mentioned section.

(2) This section has effect subject to section 12 of this Act.

Pre-existing eligible services

12. (1) Where, immediately before the repeal of section 104 of the *Telecommunications Act 1989*:

- (a) a person was supplying a value added service, or a private network service, within the meaning of that Act:
 - (i) that was connected to a telecommunications network operated by a carrier within the meaning of that Act; and
 - (ii) in respect of the supply of which the person had obtained the carrier's approval; and
- (b) because of subsection 104 (1) of that Act, the service was taken to be supplied under a class licence within the meaning of that Act;

then, so far as it is supplied after that repeal, the service is taken to be an eligible service supplied under a class licence within the meaning of the *Telecommunications Act 1991*.

(2) However, if at any time after that repeal the person supplies the service in a way that is not in accordance with that approval, subsection (1) ceases to apply in relation to the supply of the service by the person.

Pre-existing numbers

13. Section 241 of the *Telecommunications Act 1991* does not prohibit the provision of a telecommunications service by the use of numbers allocated before the national numbering plan referred to in that section is prepared.

**Effect of standards determined under section 106 of the
*Telecommunications Act 1989***

14. A technical standard that, immediately before the repeal of section 106 of the *Telecommunications Act 1989*, was in force under that section has effect after that repeal (including for the purposes of section 46A of the *Acts Interpretation Act 1901*) as if:

- (a) section 246 of the *Telecommunications Act 1991* had commenced on the day when the standard was determined; and
- (b) the standard had been determined under section 246 of the *Telecommunications Act 1991*.

Pre-existing authorities for connection of customer equipment

15. Where, immediately before the commencement of Part 12 of the *Telecommunications Act 1991* there was in force a permit (in this section called the “**previous permit**”) issued under section 118 of the

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Telecommunications Act 1989 or a permit (in this section also called the “**previous permit**”) taken by section 126 of that Act to be issued under Division 4 of Part 5 of that Act:

- (a) the previous permit is taken, on that commencement, to be a permit (in this section called the “**new permit**”) issued under Division 6 of Part 12 of the *Telecommunications Act 1991*, being a permit that includes the conditions (if any) to which the previous permit was subject immediately before that commencement; and
- (b) the person who was, or was taken to be, the holder of the previous permit is taken, on that commencement, to be the holder of the new permit.

Pre-existing licences for performing cabling work

16. Where, immediately before the commencement of Part 12 of the *Telecommunications Act 1991* there was in force a cabling licence (in this section called the “**previous cabling licence**”) issued under section 131 of the *Telecommunications Act 1989* or a cabling licence (in this section also called the “**previous cabling licence**”) taken by section 139 of that Act to be issued under Division 5 of Part 5 of that Act:

- (a) the previous cabling licence is taken, on that commencement, to be a cabling licence (in this section called the “**new cabling licence**”) issued under Division 7 of Part 12 of the *Telecommunications Act 1991*, being a cabling licence that includes the conditions (if any) to which the previous cabling licence was subject immediately before that commencement; and
- (b) the person who was, or was taken to be, the holder of the previous cabling licence is taken, on that commencement, to be the holder of the new cabling licence.

Pre-existing delegations by AUSTEL

17. Any delegation of a function or power of AUSTEL under the *Telecommunications Act 1989* that was made under section 140 of that Act and was in force immediately before the repeal of that section continues in force after the commencement of section 279 of the *Telecommunications Act 1991* as a delegation made under that section of the corresponding function or power of AUSTEL under that Act, being a function or power that AUSTEL is authorised by that section to delegate.

Continuation of investigations

18. (1) Where before the repeal of Part 6 of the *Telecommunications Act 1989* AUSTEL had commenced, but had not concluded and reported on, an investigation under that Part, AUSTEL may complete and report on the investigation in accordance with that Part.

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(2) Where before the repeal of Part 6 of the *Telecommunications Act 1989* the Minister had requested AUSTEL to conduct an investigation under that Part but AUSTEL had not concluded and reported on the investigation, AUSTEL must commence, or continue, as the case may be, and conclude and report on, the investigation in accordance with that Part.

(3) Part 6 of the *Telecommunications Act 1989* continues in force for the purposes of this section.

Existing members and associate members of AUSTEL

19. (1) A person who held office as a member of AUSTEL immediately before the repeal of Part 7 of the *Telecommunications Act 1989* continues in office for the unexpired portion of the period of his or her appointment as if:

- (a) section 368 of the *Telecommunications Act 1991* had been in force when the appointment was made; and
- (b) the person had been appointed under that section.

(2) A person who held office as an associate member of AUSTEL immediately before the repeal of Part 7 of the *Telecommunications Act 1989* continues in office for the unexpired portion of the period of his or her appointment as if:

- (a) section 369 of the *Telecommunications Act 1991* had been in force when the appointment was made; and
- (b) the person had been appointed under that section.

(3) Any directions given under subsection 160(5) of the *Telecommunications Act 1989* to a person referred to in subsection (2) that were in force immediately before the repeal of that Act continue in force as if:

- (a) subsection 369(2) of the *Telecommunications Act 1991* had been in force when the direction was given; and
- (b) the directions had been given under that subsection.

Existing regulations under *Telecommunications Act 1989*

20. (1) Subject to subsection (3), any regulations made under section 185 of the *Telecommunications Act 1989* and in force immediately before the repeal of that section continue in force as if made under section 406 of the *Telecommunications Act 1991*.

(2) A reference in a regulation so continued in force to a provision of the *Telecommunications Act 1989* is taken to be a reference to the corresponding provision of the *Telecommunications Act 1991*.

(3) This section does not apply to a regulation the making of which would not be authorised by the *Telecommunications Act 1991*.

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Existing regulations under *Telecommunications (Application Fees) Act 1989*

21. (1) Subject to subsection (3), any regulations made under the *Telecommunications (Application Fees) Act 1989* and in force immediately before the repeal of that Act continue in force as if made under the *Telecommunications (Application Fees) Act 1991*.

(2) A reference in a regulation so continued in force to a provision of the *Telecommunications Act 1989* is taken to be a reference to the corresponding provision of the *Telecommunications Act 1991*.

(3) This section does not apply to a regulation the making of which would not be authorised by the *Telecommunications (Application Fees) Act 1991*.

Application of State and Territory laws to Telecom

22. (1) Subject to section 59 of the *Australian Telecommunications Corporation Act 1989* and subsection (2) of this section, Telecom is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which the Commonwealth is not subject.

(2) Subsection (1) applies only in relation to the period beginning at the commencement of this section and ending immediately before the commencement of section 116 of the *Telecommunications Act 1991*.

PART 3—REPEALS

Repeal of regulatory legislation

23. The *Telecommunications Act 1989* and the *Telecommunications (Application Fees) Act 1989* are repealed.

Repeal of Acts relating to Telecom and OTC

24. The *Australian Telecommunications Corporation Act 1989* and the *OTC Act 1946* are repealed.

**PART 4—AMENDMENTS CONSEQUENTIAL ON
TELECOMMUNICATIONS ACT 1991**

Amendments consequential on new regulatory legislation

25. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**PART 5—AMENDMENTS CONSEQUENTIAL ON AUSTRALIAN
AND OVERSEAS TELECOMMUNICATIONS CORPORATION
ACT 1991**

Amendments consequential on formation of AOTC

26. The Acts specified in Schedule 2 are amended as set out in that Schedule.

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SCHEDULE 1

Section 25

**AMENDMENTS CONSEQUENTIAL ON TELECOMMUNICATIONS
ACT 1991**

AUSSAT Act 1984

Section 3 (definition of "Corporation"):

Omit the definition.

Section 4:

Omit "1989", substitute "1991".

Sections 10, 10A and 10B:

Repeal the sections.

Section 10C:

Omit "that, by virtue of this Act, AUSSAT has the right to provide", substitute "the carrying on of any business or activity, or the exercise of any power or right, that AUSSAT is entitled to provide, carry on or exercise, as the case may be, under this Act or the *Telecommunications Act 1991*".

Sections 11, 12 and 17:

Repeal the sections.

Australian Broadcasting Corporation Act 1983

Section 3 (definition of "telegraph line"):

Omit "1989", substitute "1991".

Subsection 77 (2):

Omit the subsection, substitute:

"(2) In respect of the erection, placing and maintenance of an electric line by a person under paragraph (1) (a), that person has the same powers, and is subject to the same obligations, as are conferred or imposed on a general carrier under Division 3 of Part 7 of the *Telecommunications Act 1991* to install or maintain a facility within the meaning of that Act."

Australian Postal Corporation Act 1989

Section 11:

Omit "1989", substitute "1991".

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SCHEDULE 1—continued

Australian Telecommunications Corporation Act 1989

Section 4:

Omit “1989”, substitute “1991”.

Section 11:

Omit “1989”, substitute “1991”.

Paragraph 28 (a):

Add at the end “and”.

Paragraph 28 (b):

Omit “45; and”, substitute “45.”.

Paragraph 28 (c)

Omit the paragraph.

Section 30:

Repeal the section.

Parts 8 and 9:

Repeal the Parts.

Sections 96 and 97:

Repeal the sections.

Section 102:

Repeal the section.

Broadcasting Act 1942

Subsection 4 (1) (definition of “telegraph line”):

Omit “1989”, substitute “1991”.

Subsection 74 (3):

Omit the subsection, substitute:

“(3) In respect of the erection, placing and maintenance of an electric line by a person under paragraph (1) (a), that person has the same powers, and is subject to the same obligations, as are conferred or imposed on a general carrier under Division 3 of Part 7 of the *Telecommunications Act 1991* to install or maintain a facility within the meaning of that Act.”.

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SCHEDULE 1—continued

Crimes Act 1914

Section 3 (definition of “public authority under the Commonwealth”):

Omit “, and includes AUSSAT Pty Ltd and OTC Limited”.

Subsection 76A (1):

Insert:

“ ‘carrier’ means:

- (a) a general carrier within the meaning of the *Telecommunications Act 1991*; or
- (b) a mobile carrier within the meaning of that Act; or
- (c) a person who supplies eligible services within the meaning of that Act under a class licence issued under section 209 of that Act;”.

Subsection 76D (1):

After “Commonwealth”, insert “or by a carrier”.

Paragraph 76D (2) (a):

After “Commonwealth”, insert “or by a carrier”.

Paragraph 76D (3) (a):

After “Commonwealth”, insert “or by a carrier”.

Section 76E:

After “Commonwealth”, insert “or by a carrier”.

Section 85ZB (definitions of “AUSSAT”, “carrier”, “OTC” and “Telecom”):

Omit the definitions.

Section 85ZB:

Insert:

“ ‘carrier’ means:

- (a) a general carrier; or
- (b) a mobile carrier; or
- (c) a person who supplies eligible services under a class licence issued under section 209 of the *Telecommunications Act 1991*;

‘communication’ does not include a communication solely by means of radiocommunication;

‘telecommunications network’ means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both;

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SCHEDULE 1—continued

‘telecommunications service’ means a service for carrying telecommunications by means of guided or unguided electromagnetic energy or both.”.

After section 85ZB:

Insert:

Interpretation—person acting for a general or mobile carrier

“**85ZBA.** For the purposes of this Part, a person who does any thing for or on behalf of a person who is, or persons at least one of whom is, a general carrier or a mobile carrier, is, in respect of:

- (a) the doing by that person of that thing; or
 - (b) any rental, fee or charge payable for or in relation to the doing by that person of that thing; or
 - (c) the operation by that person of a facility in connection with the doing of that thing; or
 - (d) a facility belonging to that person; or
 - (e) the operation by that person of a satellite;
- taken to be a carrier.”.

Section 85ZC

Omit “1989”, substitute “1991”.

Subsection 85ZK (2):

Omit “section 114 of the *Telecommunications Act 1989*”, substitute “section 253 of the *Telecommunications Act 1991*”.

Subsection 85ZKA (1):

- (a) Omit “Telecom,” (first occurring), substitute “a carrier,”.
- (b) Omit “supplied by Telecom,”, substitute “each of which is supplied by a carrier,”.

Paragraph 85ZKA (2) (a):

Omit “section 114 of the *Telecommunications Act 1989*”, substitute “section 253 of the *Telecommunications Act 1991*”.

Ombudsman Act 1976

Subsections 6 (4D) and (4E):

Omit “Part 6 of the *Telecommunications Act 1989*”, substitute “Part 15 of the *Telecommunications Act 1991*”.

Subsection 6 (4F):

Omit “1989”, substitute “1991”.

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SCHEDULE 1—continued

OTC Act 1946

Section 4:

Omit “1989”, substitute “1991”.

Sections 36, 37 and 38:

Repeal the sections.

Radiocommunications Act 1983

Subsection 3 (1) (definition of “radiocommunications transmitter”):

Omit “1989”, substitute “1991”.

Subsection 3 (1) (definition of “receiver”):

Omit “1975”, substitute “1991”.

Paragraph 24 (2) (f):

Omit the paragraph.

Paragraphs 25 (1) (j) and (k) and 35 (4) (c) and (d):

Omit “(which may include conditions for or in relation to giving effect to provisions of Division 1 of Part 3 of the *Telecommunications Act 1989*)”.

Paragraph 38 (2) (c):

Omit the paragraph.

Paragraphs 38 (6) (b) and (c):

Omit “(which may include conditions for or in relation to giving effect to provisions of Division 1 of Part 3 of the *Telecommunications Act 1989*)”.

Satellite Communications Amendment Act 1988

Section 3:

Repeal the section.

Sea Installations Act 1987

Schedule:

Omit “*Telecommunications Act 1989*”, substitute “*Telecommunications Act 1991*”.

Telecommunications (Interception) Act 1979

Subsection 5 (1) (definitions of “carrier”, “Corporation”, “employee of the Corporation” and “Managing Director”):

Omit the definitions.

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SCHEDULE 1—continued

Subsection 5 (1):

Insert:

“ ‘**carrier**’ means:

- (a) a general carrier within the meaning of the *Telecommunications Act 1991*; or
- (b) a mobile carrier within the meaning of that Act; or
- (c) a person who supplies eligible services within the meaning of that Act under a class licence issued under section 209 of that Act;

‘**Managing Director**’, in relation to a carrier, means the chief executive officer (however described) of the carrier;”.

Subsection 5 (1) (definitions of “equipment”, “facility” and “line”):

Omit “1989”, substitute “1991”.

Subsection 5 (1) (definitions of “telecommunications network” and “telecommunications service”):

Omit the definitions, substitute:

“ ‘**telecommunications network**’ means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both, but does not include a system, or series of systems, for carrying communications solely by means of radiocommunication;

‘**telecommunications service**’ means a service for carrying communications by means of guided or unguided electromagnetic energy or both, being a service the use of which enables communications to be carried over a telecommunications system operated by a carrier but not being a service for carrying communications solely by means of radiocommunication.”.

Subsection 5 (3):

Omit “1989”, substitute “1991”.

Subsection 8 (1):

Omit “the Corporation” (wherever occurring), substitute “a carrier”.

Subsections 11 (1) and (2):

Omit “the Corporation”, substitute “a carrier”.

Subsection 11 (8):

Omit “the Corporation” (first occurring), substitute “a carrier”.

Paragraphs 11 (8) (a) and (b):

Omit “Corporation” (wherever occurring), substitute “carrier”.

SCHEDULE 1—continued

Subsection 11 (10):

Omit “the Corporation”, substitute “a carrier”.

Paragraph 11A (1) (a):

Omit “the Corporation”, substitute “a carrier”.

Subsection 11A (1):

Omit “Corporation” (last occurring), substitute “carrier”.

Subsection 11A (6):

Omit “the Corporation” (first occurring), substitute “a carrier”.

Paragraphs 11A (6) (a) and (b):

Omit “Corporation” (wherever occurring), substitute “carrier”.

Section 15:

Omit “Corporation” (wherever occurring), substitute “carrier”.

Section 20A:

Omit “the Corporation”, substitute “a carrier”.

Section 20B:

Omit “the Corporation”, substitute “a carrier”.

Subsection 21 (6):

Omit “the Corporation” (first occurring), substitute “a carrier”.

Paragraphs 21 (6) (a) and (b):

Omit “Corporation” (wherever occurring), substitute “carrier”.

Paragraph 21 (8) (a):

Omit “the Corporation”, substitute “a carrier”.

Section 25:

Omit “Corporation” (wherever occurring), substitute “relevant carrier”.

SCHEDULE 2

Section 26

**AMENDMENTS CONSEQUENTIAL ON AUSTRALIAN AND
OVERSEAS TELECOMMUNICATIONS CORPORATION ACT 1991**

Crimes Act 1914

Section 3 (definition of “Commonwealth officer”):

Omit from subparagraphs (d) (i), (ii) and (iii) “, the Australian Telecommunications Corporation, AUSSAT Pty Ltd or OTC Limited”.

Freedom of Information Act 1982

Schedule 2 (Part II):

- (a) Omit:
“Australian Telecommunications Corporation, in relation to documents in respect of its competitive commercial activities”.
- (b) Omit:
“OTC Limited, in relation to documents in respect of its competitive commercial activities”.
- (c) Insert:
“Australian and Overseas Telecommunications Corporation Limited, in relation to documents in respect of its competitive commercial activities”.

Sea Installations Act 1987

Schedule:

- (a) Omit “*Australian Telecommunications Corporation Act 1989*” and “*OTC Act 1946*”.
- (b) After “*Air Navigation (Charges) Act 1952*”, insert “*Australian and Overseas Telecommunications Corporation Act 1991*”.

NOTE

On the commencement of the amendments of the *Crimes Act 1914* made by section 25 of, and Schedule 1 to, this Act, the headings to sections 76D and 76E of that Act are altered by omitting “Commonwealth facility” and substituting “certain facilities”.

[*Minister’s second reading speech made in—
House of Representatives on 7 May 1991
Senate on 29 May 1991*]